

**Remarks:**  
**Comparative Visions of Global Public Order**  
**Symposium Dinner**  
**Honoring Henry Steiner and Detlev Vagts**

**David Kennedy**  
**March 5, 2005**

These have been a remarkable two days – with more in store tomorrow and Monday. Let me begin by offering thanks – first, to so many old and new friends who have come from so many distant locations to share your thoughts with all of us here. Over these four days, we will have heard something like 150 speakers from more than 30 countries.

I would also like to thank the Harvard International Law Journal. Their board and membership have put in remarkable service behind the scenes. From the start, they have shared the puzzling idea that a polyglot confab of legal intellectuals and university professors would be a fun and interesting way to spend the weekend. Thank you.

Thanks also to our sponsors – to Elena, and the Dean’s office. Thanks also to Cleary, Gottlieb, Steen and Hamilton. For a loyal “Clear-go-law” alum like myself, Cleary will always epitomize the global practice of law. Over the years, the firm has been remarkably supportive of our students’ international interests and activities. Just this past week, the ELRC’s team won the American regionals in the European Moot Court Competition, earning the right to compete in the Luxembourg final round. An email to Cleary’s Brussels office – and to Bill Alford – and their fares were covered. Quick, responsive, and generous – testament to the firm’s commitment to our students’ international legal education.

We have had help from across our little Balkanized world of research centers – the Human Rights Program, the East Asian Legal Studies Program, the European Law Research Center, the Graduate Program, the International Legal Studies Program, the Islamic Legal Studies Program and the David Rockefeller Center for Latin American Studies. Thanks to you all.

Our common endeavor has been to compare different ways of thinking about global legal order – different national traditions, different disciplinary traditions.

But of course, differences within are often more pronounced than differences between. Differences *within* the American or European or Latin American tradition – differences *within* the field of “trade,” or “international private law.”

Political, intellectual and methodological differences often divide our disciplines from themselves. Different “schools of thought,” different “theories” about law, or approaches to the legal profession.

Institutions have something to do with this heterogeneity. For more than fifty years the focus and determination of one man established a global consensus that there was such a thing as a “Yale School” of public international law. We learned today that the Economic Commission for Latin America -- ECLA -- stimulated a generation of intellectuals to promote a very specific “Latin American” vision for international law. Is there a Tokyo School? An UNAM school?

Sometimes new scholars seize and revitalize an established brand – something like this may be happening now at the Sorbonne, at SOAS, at Heidelberg, or Toronto. Or, in comparative law at Cornell. Sometimes a new cohort raises a less well known institution to global prominence – think NYU, but also the AUC, Birkbeck, Los Andes, Helsinki. The UN University in Costa Rica may be breaking out in this way. As Utah did a decade ago.

There is also an internationalist tradition here at Harvard. Less visible, sometimes, but here. Many of the foreign scholars here tonight first met one another at Harvard --- as graduate students, as visiting professors and scholars. In this, HLS is a classic metropolis, whose polyglot visitors make a global world for themselves while they are here – a world almost invisible to the center itself.

For all of you who are here at Harvard for the first time, I am pleased to welcome you to the institution I have called home since 1977.

This dinner honors two of my colleagues – Henry Steiner and Detlev Vagts, for their career long commitment to transnational law and to the study of international law here at Harvard. The HILJ is right to choose Detlev Vagts and Henry Steiner to honor at this event. They have been committed for a generation to just this kind of international discussion – and to the global village of professional international lawyers.

They have each pondered and worried and written about the *diversity, the heterogeneity of views* and methods within our village. Their responses differ. But between them they exemplify the consciousness of a generation of internationalists – here at Harvard, in the United States, and more broadly.

Together, they exemplify a commitment that undergirds our efforts here – a commitment they placed on the first page of their joint 1968 case book and reiterated in every edition thereafter:

“The inescapable decision in the contemporary world is to participate in the life of the international community.”

They believe it, I believe it. Many of us here tonight believe it with them.

Det and Henry have lived that belief differently, of course, and I'll say something about each of their particular creeds – but let me first sketch the institutional context in which they have affirmed this faith.

For more than a generation, Harvard has been home to international law scholars committed to international engagement, by our government, our business community, by our citizenry – and by the legal profession.

Still, there has been no Myres McDougal, stamping his particular vision on our shared commitment. Instead, we have had a long string of individualists, idiosyncratic scholars. Indeed, our internationalists have often been institutional misfits – just a bit out of step with prevailing trends and the preoccupations of our domestic law colleagues.

Manley Hudson – lion of the interwar Research Draft – the alumni anecdotes I hear remember not only a noted scholar and teacher – but also something of a pedant, a formalist odd ball preoccupied with identifying the exact texts for citation by an international judiciary that had hardly been built --- just when his colleagues were rushing to embrace the administrative law, regulation and rule-making – the expert discretion – of the New Deal.

Abe Chayes was more well known in American legal thought for his civil procedure teaching, and work on public law litigation in American courts than for his defense of Nicaragua in the World Court or his behind the scenes work as Legal Advisor during the Cuban Missile Crisis. Abe had become State Department legal advisor not because he had studied or practiced or taught international law – but because he was drawn to constitutional questions of presidential power and the legal procedures for making American foreign policy. He remembered the ASIL of his early days as “the dreariest of places – not at all where the action was.”

Indeed, Abe told a marvelous story about his confirmation hearing in the Senate – having waxed eloquent on the advantages for the US of using the World Court, a skeptical southern senator bore down, “just how many judges are there on that Court, Mr. Chayes” – clearly heading for the follow-up “and how many of them are Americans.” But Abe had no idea how many judges there were. When he admitted as much, the Senator responded “I have no further questions, young man, you won't be any problem.”

International law has not been the route to fame and fortune here. Think of Roger Fisher, like so many of our internationalists, known far more for his work in other fields – negotiation – than for his pioneering work on dispute settlement in international law. In many ways my gravest professional misstep, at least in pecuniary terms, came while I was Roger's research assistant – he offered me first-come choice between two projects, TA-ing for his international law course or helping him edit some lectures he had done about negotiation – I chose the course, and Bill Ury got the lectures, which became Getting to Yes a year later.

Of course, no one is prophet in his own house – my own mentor, Louis Sohn told me the month I arrived on the faculty to be careful to get out of town. For years he had inhabited the upper floors of the ILS building, squirreling away the documents produced by the international institutions he revered. But the point was to get out – he sent me to Kiel, to Hamburg, to Geneva, to Brussels.

Louis's proudest achievement was crafted in the decade long negotiations over the Law of the Sea Treaty – the section on dispute resolution, which offered a smorgasbord of alternatives – arbitration, conciliation, mediation. He correctly foresaw this heterogeneity as an institutional model for the fragmented international judicial function the ILC has now asked Martti Koskenneimi to review.

Louis Sohn -- Polish Jew in a Court of Connecticut Yankees. European in so many things, courtly gentleman, twinkling ironist --- firm believer in the virtues of the heterogenous, in fragmentation, as well as the progressive march of multilateralism.

International legal studies here has always been a patchwork of fragments. There was Louis, handcrafting the UN system one document at a time, while down the hall Milton Katz and Kingman Brewster were bringing together whatever laws an American businessmen might bump into, here, there, wherever.

Or Richard Baxter, immersed in the laws of war, the practices of the American military, and the work of the World Court. Det often reminds me when he calls that I inherited Baxter's phone number along with his Langdell office --- if not his enthusiasm for the world court.

We have had – continue to have -- a deep bench of strong comparativists – but they are also a sprawling lot, historians, private law scholars, area studies experts. Hal Berman, historian of the West, native informer on the Soviet legal regime at a time many considered the phrase “Soviet *legal* regime” an oxymoron.

Arthur von Mehren, guru of international private law and commercial arbitration. Mary Ann Glendon, comparativist, internationalist, Papal representative at the Beijing conference. Bill Alford, East Asian law expert, who now directs our Graduate and International Legal Studies Program. Or Frank Vogel, whose Islamic Legal Studies Program is co-sponsoring our discussions this weekend.

Today, concern for the international is dispersed across the Harvard faculty – family law scholars work on cross-country adoption, property law scholars work on TRIPS and the global market in generic AIDS drugs, constitutionalists and civil procedure scholars study transitional justice across the globe, just as our colleagues in banking, finance and corporate law find themselves drawn to transnational topics. This is also far from new – Charlie Haar's policy work on environmental law took him to the Stockholm Conference in 1972 and had him cleaning up harbors in one country after another. Our International Tax Program – directed for many years by Ollie Oldman – was long our most visible link to the legal challenges of the developing world.

For all this diversity, for more than fifty years, Harvard's internationalists have shared Det and Henry's commitment to the international over the national. We have shared an intellectual tradition that embraces legal pluralism, heterogeneity. I share with my predecessors an anti-formal, anti-system understanding of law, attuned to policy, to purpose, to the balancing of conflicting considerations and the need for nuanced judgment. Attuned to context – global context. For a generation, internationalists at HLS have treated sovereignty as a bundle of rights, expectations, social and institutional practices, to be managed and rearranged. None of us have seen sovereignty – at the state level or at the national level – as an absolute matter of either rights or powers.

Harvard's internationalists have been cosmopolitans, attuned to the judgment of peers outside our nation – in the manner of the Supreme Court majority this past week holding the juvenile death penalty unconstitutional in part by reference to evolving *global* as well as national standards of morality.

Of course here, like anywhere else, the guard keeps changing. It changed when Henry and Det's Transnationalism replaced Katz and Brewster's International Business Transactions – a subtle shift from a businessman's-eye view to the regime's eye view of the policy maker. The winds shifted again when I got going, or when Anne Marie Slaughter and Joseph Weiler were running the show. We've recently added Ryan Goodman, who will surely change things again when he steps – gracefully I'm sure – into Henry's shoes at the Human Rights Program over the next few years. Different emphases, different priorities, within a common tradition.

This year we brought Jack Goldsmith from the Bush Justice Department, to teach international law, foreign relations law and the law of national security. Next year we will bring Gaby Blum from the Israeli Defense Force to teach international law and dispute resolution. When Jack, Gaby and Ryan teach international law here, starting next fall, the guard will have changed yet again.

I would be misleading you if I said these changes came easily, or if I failed to recall the political and methodological struggles that have engaged internationalists here. And I would mislead you if I denied that the taste of those disputes can sometimes still linger on the tongue.

Still, looking back, our institutional story *is* heterogenous. Sometimes, of course, we wish it were otherwise. But we are not a department, or a school of thought. We have no *one way* of seeing the international.

I see Henry and Det's transnational vision against this institutional background -- for all their differences in style, politics, and scholarly direction, to me they represent the vision of a generation.

What happens when a generation --- a generation against whom you have rebelled --- begins to depart the scene – gracefully, elegantly? You realize how much

you have learned, how much you walk in their path, their shadow really – and you begin to feel the pleasures and pangs of nostalgia.

The word they made famous – *transnational* – I encountered first in 1977 in Henry Steiner’s class – it says right on the transcript: *transnational law*. We took the class because it seemed more practical than public international law --- though I took that too --- and also because it offered some relief from the nuts and bolts of federal courts and corporate law. In transnational law – powered by the wings of Henry’s astonishing rhetorical energy --- we rose above the nitty gritty of any *one* national jurisdiction, and felt the promise of a life high above all that, in a place where “The Times” means the Financial Times, not the somewhat grimy New York version.

Two things seemed clear from day one. First, the “inescapable decision” ... “to participate in the international community.” Page one news for almost forty years. It remains a fighting faith.

Second – the emphatic sense that the received frames of reference for understanding global order simply did not add up. In 1968, considering the “problems which transcend national frontiers and require transnational analysis,” Henry and Det wrote:

“Far more significant than their classification into fields of national and international law, or private and public law, is some insight into the common questions which they raise and the relationships among the policies which point towards the resolution of such questions. Thus our book has no rigid compartments segregating material among these fields, but rather suggests that the varied topics occupy different positions on a spectrum between the extremes of “national” and “international” law, or on one between “private” and “public.” One topic flows into the other...”

Consequently,

“It has not been our purpose to identify or develop a concept of a coherent transnational legal system. Rather, we consider problems ...that transcend national frontiers...and suggest significant relationship among them and among the different paths towards their solution.”

If you wanted “system,” this was pretty confusing stuff – but if you wanted to get out there and practice, solve problems, it sounded terrific. Law was not simply something one bumped into while trying to do business -- but it wasn’t a system either. Transnational law was, aspired to be, a ‘regime.’ A disaggregated, fragmented regime.

Det and Henry have followed that regime in quite different directions, as we heard this afternoon. Corporate law – human rights, at once partners and antagonists. Decades ago, Det and Henry saw the possibility that they might one day lie down

together peacefully. Henry wrote about consumer boycotts – Det about transnational corporate responsibility.

But their paths diverged.

Indeed, I got to know Henry and Det separately – they didn't teach the course together, and in later years split the book apart to reflect their different intellectual paths.

Oddly, perhaps, I got to know each of them abroad.

Henry – it was the summer of 85, and we were in Geneva, strolling by the lake trying to make sense of the UN Human Rights Committee. Would human rights really take off? Was it the “has been” preoccupation of the Carter administration – we were, after all, well into the Reagan years. I was working at UNHCR – how could these ponderous UN bodies be made intellectually interesting? How could Human Rights be made the vehicle at once for critical thinking and activism? Clyde Ferguson had passed away, and I had picked up his course on human rights – Henry was moving to build a program in the same field. How would this affect our friendship – or our ongoing affiliation with like-minded – critically minded – colleagues?

Last fall the school celebrated Henry's truly remarkable achievement, building a world for students, for activists and scholars from around the world committed to a more just global – and local – order. For twenty years, Henry's Human Rights Program has been our institution's most visible source of voices from outside the West, and the leading path for students with public interest aspirations into the international world.

Over the last weeks, I have been reading – well, skimming – two careers worth of writing by Henry and Det. Much stands out – more, certainly, than I can recount here – but I'd like, in just a few minutes, to sketch a couple of highlights.

The range of Henry's bibliography impresses – from “Treitschke's Interpretations of Kleist and Heine” to “Flags of Convenience” --- and on to Brazil (“All Power to the Generals”), and then to his rising interest in minority rights, citizens initiatives and boycotts as instruments for social change, and finally to human rights.

It is not just range – there is trajectory there as well. Something seems to have happened during his time in Brazil, the late sixties, perhaps in 1968. His tone changes, the pace quickens. And something seems to have happened after he turned to Human Rights – the focus cleared, the passion deepened.

Throughout, Henry's intellectual voice is attuned to conflict, to contradiction, opposed tendencies, oppositions, dialectics. Listen just to the titles: “Pressures and Principles,” “Ideals and Counter-Ideals,” “International Boycotts and Domestic Order,”

A great deal of the vitality Henry has brought to the transnational field arises from his affinity for opposites – or his trafficking in contradiction.

In 1965, a rather technical piece on the “development of private international law by international organizations” is a riddle of tensions and oppositions.

Here is a sample –

“These two trends in doctrine – the recognition of multinational or community policies, and the recognition that choice of law will often foster purposes of national laws – suggest at once the desirability of international agreement over common principles and the problems in obtaining them.” (page 40)

As he writes, “the tensions” become ever more “considerable.” “Difficulties abound.”(page 43)

“Compare, for example, Section 332 of the Restatement of the Conflict of Laws of 1934 with the same section in Tentative Draft No. 6, of Restatement Second. The first provides.....[one thing] and the second.....[something else entirely.]”

Henry is not moved to resolve these tensions – indeed he mocks the effort.

“Codifying Restatement Second might serve as useful a function as imprisoning a broad area of tort law within a statute that reads: “one is liable for negligently causing injury.” Such a statute would obviously resolve all questions, except perhaps the measure, of the liability or standard for negligence, the mysteries of causation, and the nature of injury.” (page 41)

The point of scholarly inquiry is rather illumination than resolution. He concludes:

“scholarship has alerted the participants in this vast enterprise to the thorny problems involved. The commentator can well say: little may have been realized, but much you have made us realize.”

The vision is probing, pedagogic, open. Vintage Steiner.

In 1984, Henry wrote his own survey of the “doctrines and schools of thought” in twentieth century international law.

“A pluralism,” he wrote, “at once cultural, political and ideological, has displaced the relative homogeneity of the subjects of international law in an earlier period.” (page 297)

Henry is interested in how we *imagine* law, and in how law *imagines the world*. Under the heading “doctrinal change” we read about the emergence of “ideological perspectives” on doctrine and on change.

He writes about “modes of doctrinal change *and argument.*” (page 303) International law *is* argument – argument rooted in vision, ideology, perspective, culture. And arguments conflict, collide, or simply flow past one another.

We might hope to organize all this neatly into “schools of thought” – but no, Henry concludes “the prominent contemporary schools of thought about international law are no more unified than the different modes of argument.” (page 305)

Well, I can tell you, Henry’s was a hard course to reduce to an outline.

And it wasn’t all ideas either – for Henry these arguments are embedded in struggles over power.

“Contemporary international law must, however, deal with conflicting demands from powerful and radically different contenders for power and wealth, as well as with larger number of issues requiring collective decisions. Many of its important clusters of doctrines .... do not suggest a shared political vision or an underlying similarity of interests. Rather they suggest compromises, perhaps stable and perhaps transient, traceable to a present arrangement and exercise of power. Just where interests will converge within that arrangement so as to yield agreement resists generalization or prediction. Shared principles or a dominant teleology among the many fields of regulation are more difficult to identify, as forces pull the international legal system in different directions.” (page 308).

And the pull of power is itself embedded in a higher field -- of value. But don’t be too hopeful – that too is rent with conflict and differences of perspective.

At the end of the piece, Henry spikes his landing, coming down firmly on a last paradox:

“These higher ideals, by endowing international law with a moral force or vision, constitute a strength and source of its growth. At the same time they signal its impotence on vital matters and heighten the sense of its weakness or irrelevance.”

We are honoring Henry and Det this evening, for what they have shared. But were I simply to read those last sentences aloud, we would have no doubt it was Henry, not Det, who penned them.

Of our transnational twosome, Det’s voice has always been more modulated, moderate – a just-over-the-line voice of judgment, rather than the spread wings of rhetorical paradox.

I got to know this voice most intimately, in 1988, in Thessaloniki. We were both there teaching for what seemed like a month, but was probably only a week, and found ourselves sharing numerous meals – often with Rudolf Bernhardt from Heidelberg – on the hotel terrace.

We talked about lots of things – Det’s father, my father, who is here tonight. Det talked about his wartime experiences in Alaska – my own father had been there at some point – Det spoke wistfully about his buddies in the war, and talked to me gently – obliquely -- about tenure, about changes in my own life.

We didn’t talk about the faculty battles of the time – we were both determined, I think, to try to leave them unspoken. Our own private don’t ask, don’t tell. Our talk was calm, reassuring, supportive – fatherly, in fact.

We talked about 1968 – Detlev hadn’t shared Henry’s enthusiasm – he remained worried, and interpreted the political tensions he had seen at Harvard through the template of what his own father had experienced in Hamburg – at the same institute for international affairs where I had spent a marvelous year after graduating from law school.

It will come as no surprise to hear that Det and I have not always seen things the same way. I probably should have suspected something when the year after I arrived on the faculty Det published a sharp editorial comment in the *AJIL* titled “Are There No International Lawyers Anymore?”

We have had different ideas about what it meant to be an international lawyer – of where the action was. But in the years since, I have never lost my appreciation for the paternal good will shown me that summer.

Det’s editorial was a polemic – a measured, moderate, Det-like polemic, to be sure – against the rising tide of specialization in the profession – a call to preserve the viewpoint of the generalist, the “complete international lawyer,” a point of view and capacity for judgment forged not only by detailed practical experience, but also by theoretical vision.

To my mind, it is Det’s vision of the international lawyer --- a knowledgeable, moderate, independent generalist, at once cosmopolitan and sensible – that holds his disparate scholarly work together.

Like Henry, Det looked out on a diverse, fragmented world. But far more than Henry, Det seems to yearn for system, solution, good sense.

Writing about transnational corporate law in 1971, for example, Det warms:

“There would be a breach of warranty on my part if I were to proceed on the representation that there exists such a thing as a coherent body of law governing the affairs of the global corporation. At present the most that one can find is a haphazard *mélange* made up of scraps of national rules stuck together after a fashion by a few conventions and some more or less tacit understandings about the reach of nations’ powers.” (p 247)

But somehow Det wishes it weren't so – he goes on: “a certain logic suggests that this is an unstable, indeed intolerable, state of affairs.”

Det does not revel in the heterodoxy of government regulations – but neither does he celebrate the deregulatory freedom of the transnational marketplace. He aims to “suggest which of the various routes towards a more sensible arrangement seem most promising.” (page 247) National law? Global regulation? A more reliable system of conflicts? Better rules about extraterritorial reach? His goal is a *regime*, a sound, workable regulatory regime.

And it was in this spirit that Det labored so long, and so productively – alongside Andy Lowenfeld and Louis Sohn, preparing the Third Restatement of the Foreign Relations Law of the United States, under Lou Henkin's chairmanship. Issued in 1987 by the ALI, their work product has been widely cited by the courts in the years since.

It also was in this spirit that Det considered ways to strengthen the regulation of transnational corporate activity.

In 1968 -- Henry was off in Brazil --- Det responded to the growing literature condemning the multinational enterprise. His contribution opens by quoting Noam Chomsky – “the rise of supranational corporations poses new dangers for human freedom.” (page 739, 83 HLR 739 1969-70).

There are, Det recognizes, “policy conflicts between the enterprise and the nations with which it must deal.” He finds it surprising that “the legal profession” has not had more to say on the topic.

But there is no reason to panic. The problem needs to be broken down, analyzed with particularity. MNEs differ, nations differ, national governments are themselves composed of multiple agencies and authorities. Considered dispassionately, the problems for managers and regulators are not that different --- both struggle for clarity and control of complex operations crossing boundaries, engaging the interests of multiple others.

What are required are *strategies*. Home government strategies, managerial strategies, host government strategies. Legal tools and techniques are there --- contracts, statutes, rules, informal agreements --- to be used to find solutions.

The conclusion is classic Det. He begins:

“After protracted contemplation of the MNE, I cannot find in it the malevolent influence, discernible by some observers....its political power does not seem particularly formidable, and there is a good case for the proposition that it pays its way in host countries.....If the MNE in fact poses a threat to human freedom it is because of its peculiar effectiveness. Its capacity to pursue a centralized and coordinated strategy removes decisionmaking power far from the reach of people

intimately affected by it. ....to say this is basically to accuse the MNE of being the vanguard of the often painful process of making the world Western, technological and integrated.”

But that is not the end of the story – Det hopes that “national governments alone or together will succeed” in bringing “the MNE into greater harmony with their policies.”

To do so, “nations will have to order their priorities more stringently, pool their information more liberally and iron out their substantive differences so as to present the MNE with a common front.] In the course of doing so, they may create international political institutions as remote and centralized as the MNE itself.”

In that great struggle – the lawyers role will be modest – “to offer both MNEs and governments their skill in bargaining out problems on a case by case basis,” and “their sensitivity to the interests at stake.” If all goes well, he concludes, “perhaps there will emerge regularities in procedures and substantive rules which will seem more like the traditional stuff of law.”

For all the modesty of their role, international lawyers are central players in Det’s vision world order.

In 1979, Detlev and his father co-authored a fascinating historical study of ideas about “balance of power” in international law. It turns out that international lawyers have relied, from Grotius onward, on various ideas about how power in the world was, could be, should be, would be “balanced.”

“For some analysts in each century the [balance] solution was to be found in moving to establish some institution.....Writers who sensed that such appeals were utopian had to look elsewhere. In other sectors of international law they [Others] saw at work a process of reciprocal claims and tolerances.” (page 578)

Without equilibrium of *some* sort, they feared the peace could not be kept.

Equilibrium needs tending. Someone needs, in Det’s words, the “capacity to understand the power structure and the unintended, but often inevitable, consequences that can flow from moves that exert pressure on one point in an interrelated system.”

For Det, this is the special work of the international legal profession ---- to understand the need for balance and the mechanisms by which the world is knit together.

The lectures Det delivered that summer we shared in Thessaloniki focused on a threat posed to the international legal profession by nationalism. Heterogeneity is one thing – nationalist division within the profession is altogether something else.

“It is,” he writes, “primarily the consciousness of .... [international lawyers] that matters in the creation of the universality of international law rules.” Page 12

He worries -- “Given that lawyers grow up within a nation, learn in its schools, serve in its armies and bureaucracies and absorb its language and its culture, how are true internationalists to be created?”

The international law community is fragile, limited. Effort is required to support the ideal of universality. Effort in the world of policy. But also professional work on the self. Sometimes this is a matter of learning the rules, the precedents, the paths thru a complex problem.

“An international legal consciousness” must be *nurtured*. It demands more of the lawyer than knowledge. Many in the foreign policy establishment, he notes, know a great deal about rules and procedures. The point, he wrote, is to “appreciate the significance of adhering to general rules” and to “persuade others of the fairness and the practicality of those rules.”

Det surveys the history of international consciousness – its roots in religion, in ethics.

And then he assesses what he terms the “major” deviations -- posed by the Russian Revolution, The Nazi project, and the early effort by the Third World to remake international law. All these “deviations” failed -- they marked international law, but they did not upset the balance.

He comes finally to what he calls the “United States deviation.”

“During most of the time since 1776, the departures of the United States from the consensus of the world community as to international law have not been greater than the norm.”

But Det identifies a new, and dangerous element. Writing in 1988, he notes that “it has been since the disastrous venture in Vietnam and particularly during the presidency of Ronald Reagan that observers have begun to see a new United States deviation from the general understanding of international law. The origin of this departure can be traced to an underlying mood of frustration....” (page 28)

Detlev laments the move – but he grieves also for the reactions of American international lawyers.

He reports that “most American international law argumentation that I have read tends to support the actions of the American government and to try to find reasoning within the orthodox canon of international law to that effect.”

Nationalism threatens the professional internationalist in other nations, to be sure. Indeed, I know of no more compelling account of the difficulties international lawyers can face preserving their cosmopolitan sensibility than Detlev’s astonishingly empathetic account of the deeply personal decisions and fates of international lawyers in the Germany of 1933-45.

But in Thessaloniki, Detlev focused on the “sadness” and “regret” with which his American colleagues pursue this apologetic practice. For Det, a true international consciousness demands more than *regret* – it demands a professional distance from our nation’s immediate objectives, and a broader fealty to shared rules.

Det asked how a more vigorous and independent profession could be fostered. He focused on universities. The need to study languages, learn the views of foreign counterparts – take their views seriously.

A professional international consciousness, he argues, may well require a “truly international full-time university.” In the meantime, how can we ensure that universities – law schools -- remain preserves in which a truly universalist consciousness can take root?

That question has led Det – and Henry, and, I must say has also led me -- to take seriously the project of fostering an academic milieu like this in which legal intellectuals can deepen their cosmopolitan and internationalist sensibilities.

It is in that spirit that we have all come here this weekend – colleagues from so many national and disciplinary traditions – to honor the vision of the university as site for transnational dialog, and antidote for the temptations of nationalism.

By doing so, I hope we honor Det and Henry more by our ongoing action than by whatever I can say here this evening.

Please join me in raising a glass to celebrate two colleagues and friends – for what they have taught, for their example, but above all for the heterogeneity of their vision – for their embrace of the foreign, and their commitment to be citizens of the world.

Det and Henry, we salute you.