

The Vision and Mission of *The Yale Journal of International Law*

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The twenty-fifth anniversary of the founding of *The Yale Journal of International Law* is an occasion to reflect on the origins of this remarkable journal, the sense of mission that animated its founders, and the context in which it was forged. It is also an occasion to look forward, for this journal, more than any other international law journal, saw itself engaged consciously and explicitly in an essentially futuristic enterprise. Unlike its contemporary counterparts, which were essentially retrospective, concerned with the codification and assembly of decisions from the past into a neat mosaic, then presented as “the law,” the new Yale journal’s avowed mission from the start was to contribute to the formation and appraisal of international policy. So let me begin with a brief informal history of *The Yale Journal of International Law*.

In 1974, a group of graduate and J.D. students who identified themselves as members of the New Haven School and who were intensely interested in international law coalesced and began to explore the possibility of establishing an international law journal at Yale that would meet the highest standards of scholarship and would also be hospitable to intellectual work in the policy-oriented mode.¹ The students met regularly in the reading room of the old international law library, then deep beneath High Street. Once they had clarified their plan and timetable, they approached the Law School administration for assistance. They were firmly rebuffed.

There were a number of reasons. Student international law journals, which now exist in abundance, were then a rare species and even academic international lawyers were uncertain whether “segregated” specialized international law journals, rather than “integrated” journals that regularly incorporated international law, would be the best strategy for propagating an international perspective. And there were other, more transient obstacles. Shortly before the students indicated their interest in establishing an international law journal, another student law journal had been started up, with the financial support of the Law School, but it quickly went out of business, largely because of the lack of continuing interest on the part of the

[†] Myres S. McDougal Professor of International Law, Yale Law School, Address at the *Yale Journal of International Law* Twenty-Fifth Anniversary Banquet (Mar. 5, 2000).

1. The original board was comprised of Eisuke Suzuki, the Editor-in-Chief; Kreszentia M. Duer and Catherine A. Sullivan, Executive Editors; and Mahnoush Arsanjani, Steven R. Gross, William J. Hust, III, Paul C. Lembesis, Richard S. Ross, Jan Schneider, and Gary J. Wolfe, Editors.

student organizers.² Assuming that interest in an international law journal would prove just as ephemeral, the Law School administration flatly refused to provide any assistance and made it clear that it did not want a student international law journal at Yale. Bear in mind the *Zeitgeist*. This was a period of unusual tension between the administration and the student body, a legacy of the protests during the Vietnam War and the other great social upheavals of that period.

The organizers, taken aback, regrouped. In secrecy, in the bowels of the international law library, usually working at night in a setting that must have seemed increasingly like an underground bunker, the students designed their journal, solicited the articles for the first issue, and began to lay it out. The Editor-in-Chief whom the small group selected was Eisuke Suzuki, a Graduate Fellow, who had come to Yale from Chuo University in Tokyo. Though Suzuki was living only on his fellowship, he took half of that hardly munificent sum and gave it to the new journal. Thanks to him and the dedication of the original board members, Volume 1, Number 1 of *Yale Studies in World Public Order*, bearing the date 1974, appeared in January 1975.

The Law School administration was not pleased, to say the least. The then Deputy Dean, Arthur Charpentier, called in Suzuki and berated him. As the supervisor of Suzuki's doctoral dissertation, I can testify from personal experience that this particular student-Editor-in-Chief was not intimidated by anyone. Suzuki stood his ground, defending the value of the enterprise and insisting that as members-in-good-standing of the Yale community, he and his associates in the venture were as entitled as anyone else to use the word "Yale." He vowed to continue the *Journal*.

True to its word, the Law School did not support the *Journal* in its first years. And true to their word, the organizers did not flinch from their commitment to publishing a journal. For four years, Suzuki, by then a Professor at the University of Houston, continued to act as Editor-in-Chief. In collaboration with a changing cast of students in New Haven, Suzuki and his band continued to publish succeeding numbers of the *Journal*, initially at Suzuki's expense and later through the contributions of former editors who, now in the "real world" and enjoying its material benefits, remained loyal to the enterprise.

After the editor-in-chiefship shifted back to Yale and its mantle fell on successive members of third-year classes, the *Journal*, now called *The Yale Journal of World Public Order*, began to appear more regularly. There was apparently no shortage of articles, but finances continued to be a problem. A good deal of the effort of each board was directed to fund-raising. I recall an editor-in-chief coming to my office to lament that a particular issue of the *Journal* was ready to go to press, but there were simply no funds to cover the costs. In retrospect, it is remarkable to think of this now entirely respectable

2. *The Yale Review of Law and Social Action*, a student-edited quarterly, published from 1970 to 1973.

journal, with its origins as a covert action.³ But, in fact, it began as a clandestine and insurrectionist operation. Unlike many of the student rebellions of that period, however, this one was not underwritten by Dad.

Almost ten years after the founding of the *Journal*, the Law School administration changed its policy with respect to student journals. Recognizing that they were important instruments of peer education, as well as possible contributors to legal scholarship, a more generous and supportive stance was taken and many journals have since flourished at Yale. Henceforth, the *Journal*, now called *The Yale Journal of International Law*, has had the full support of the Law School administration.

I.

In 1975, as now, the United States was unique in the world of legal scholarship in one remarkable way: Decisions about the publication of research, rather than being directed by the most senior and experienced scholars of the field, are made by the most junior and least experienced. Students decide which articles to publish; review their content; insist on additions, adjustments, and rewrites; and certify the scholarly quality of the various submissions.⁴ Perhaps this extraordinary feature of the American sociology of legal knowledge—the fact that the beginners who are the current heirs to the future are given significant control over what its content will be—accounts for the extraordinary vitality and originality of American law. The new *Yale Studies in World Public Order* was no exception to this. The founders, as members of the New Haven School of Jurisprudence, were volubly tired of stale ideas and were champing for an opportunity to play a role in shaping international legal scholarship.

So from its inception, the *Journal* conceived a very special and unique role for itself. The first piece in Volume 1, Number 1 made absolutely clear to readers why the *Journal* had been formed. Under the title *The Reasons for Yale Studies in World Public Order*, the Editors wrote:

As one looks around at the conflict-ridden world, it at first seems highly fractionalized and disunited; there appear to be ever-growing tendencies toward centralization of power in state governments and the belief that the only relevant participants in the world arena are “states” still prevails. State elites seem increasingly locked into an indefinite pursuit of “national” interests, as if such interests were mutually independent.

But a look beyond these superficial trends, past the dogmatically emphasized fortress of state “sovereignty” and the conventional concept of “the modern law of nations,” which, as its designation implies, is a principal ideology sustaining the “nation-state” system, leads us to perceive a pattern of global social process. This global pattern of social interaction makes us question our preliminary view of the world as a mere

3. Ironically, one of the articles in the first issue, by Jonathan E. Colby, was entitled *The Developing International Law on Gathering and Sharing Security Intelligence*, a detailed study of certain aspects of covert operations.

4. A curious analogue to this unusual feature is that much of the funding for research is controlled by foundations, many of whose officers are recruited from people who did not succeed in the academic world and hence turned to foundations.

constellation of state elites jockeying for power in both the internal and international arenas. It becomes apparent that the participants are not only state elites but also include various international organizations, transnational associations and other groups and individuals. As we become increasingly aware of the intense frequency of global interactions and communications which are part of our life, we realize that they make a sieve of the arbitrary demarcation between national and international law and make such a juxtaposition no longer viable.

Such intense interactions among peoples, made possible by transnational communications media and transportation systems, have led to the global homogenization of life patterns, which in turn has encouraged a rising common demand by people around the globe for wider participation in the producing and sharing of all major values: power, wealth, skill, enlightenment, respect, affection, well-being, and rectitude. All of us are, in fact, increasingly interdependent in our efforts to maximize our preferred interests for a dignified human existence. Such interdependence does not require direct physical contact with others: communications are established when one takes cognizance of others in one's perspectives and behavior. It is in such a context that foreign affairs become no longer the exclusive domain of departments of state or foreign offices.

Given such interdependency, and even simultaneity, of events on a planetary scale, no one at any level of community can act wholly within the realm of his immediate community; all behavior affects others at many different levels of community, from local through regional to global, and is simultaneously affected by the behavior of others. We commit ourselves to publishing articles which contribute to the understanding of this highly interrelated global process.⁵

This statement of credo by a group of students, nailed as it were to the church house door, was remarkable for the boldness of its conception of international law, the sophistication of the formulation, and the prescience of the observations. Many of the notions that were expressed in 1974 are now taken as commonplace. They were considered revolutionary, indeed, not international law, at the time.

Yet, it would do a disservice to the founders of the *Journal* if we were to assume that their innovative mission was limited to a change of focus. The new editors also insisted on a change in the role of the international legal scholar and committed their journal to an entirely different approach. They wrote, at the conclusion of their *Reasons*:

The editorial board of *World Public Order* realizes that the publication of any journal is, in itself, direct participation in the process of enlightenment; that is gathering, processing, disseminating, and storing information. The task of enlightenment, it is submitted, will not be fulfilled by the dissemination of knowledge for the sake of knowledge alone. As students of the social sciences we are concerned with desirable conditions for a dignified human existence. In analyzing social issues social scientists cannot escape from making valuations or promoting certain policies. It is therefore necessary to subject their valuations and policy preferences to disciplined and critical evaluation for their impact upon the conditions of man.

As an editorial policy we prefer to publish articles which contribute to an understanding of world public order issues; which help to clarify the common interests of the world community and which state the author's policy goals. We emphasize that all points of view are welcome, so long as the individual writers indicate their value premises and clarify the community policies which they advocate.

We do not subscribe to what is conventionally called "objectivity" or "neutrality," which easily masks the hidden biases or value premises of the writer. Contemporary writings are inundated with hidden biases and concealed value premises in the name of

5. 1 YALE STUD. WORLD PUB. ORD. i, i-ii (1974).

objective observations. Biases can be minimized only if the writer explicitly clarifies his values and specifies the ways in which he proposes to achieve them. In reality, "despite assurances to the contrary," as Gunnar Myrdal says, "practical and political conclusions are almost always drawn nevertheless."

Studies in *law* as a discipline of the social sciences cannot be value-free. Those involved in a process of making, applying, and remaking of law are always making policy decisions involving value indulgences and deprivations. A legal craftsman is responsible for enlightenment which includes the explicit identification of the particular policies which authoritative decisions express. To stop short of recommending the policy which will best serve the fundamental goals to which he is committed may be tantamount to relinquishing the opportunity of a responsible citizen of the larger community of mankind. Though this formulation of editorial policy is in the tradition of the New Haven school of international law, we would not impose upon anyone the acceptance of a particular terminology or modalities in organization.⁶

Suzuki himself, writing the lead article, characterized it, in a footnote, as:

an essay of invitation addressed to anyone interested in the New Haven school of jurisprudence. Because many scholars and decision-makers believe that law is no more than an autonomous body of rules and brush aside jurisprudential consideration of policy as an intrusion of "politics" into the realm of "law," this essay at the same time means to welcome a debate necessary for dissipating the misunderstanding about the exact role of policy consideration in legal science and improving an intellectual framework for rational decision.⁷

Given these rather revolutionary ideas, it is hardly a surprise that the *Journal* commenced as it did.

II.

In the year 2000, there are more than seventy student journals of international law in the United States. At the time of the founding of *YJIL*, there were only seventeen student international law journals in the United States. Most had institutional support, but many had a rather indistinct sense of their identity and, for most, the positivist legal methodology of the mainline journals was their model. In contrast, *YJIL* quickly established its own very distinctive profile. Part of it derived from the fact that *YJIL* followed the approach pioneered by Professors Myres S. McDougal and Harold D. Lasswell, to both of whom the first issue was dedicated. But rather than slavish disciples, the students were collaborators of McDougal and Lasswell in shaping a modern international law, as the credo of the founders made clear. That credo has become part of what has now become the much more complex culture of the *Journal*. But part of the distinctiveness of the *Journal* can be attributed to a number of other innovations that the new *Journal* insisted on.

One was the willingness to publish student articles. The great student journals had long published student notes and other genres such as case

6. *Id.* at iii.

7. Eisuke Suzuki, *The New Haven School of International Law: An Invitation to a Policy-Oriented Jurisprudence*, 1 YALE STUD. WORLD PUB. ORD. 1, 1 n.* (1974).

comments, but journals were not hospitable to full-length articles by students. There was a certain irony to this reluctance, as one of the great secrets of student law journals is that many of the articles submitted to the journals by the stuffed shirts and gowns of the law are not publishable in the form received and often have to be substantially researched, rewritten, and heavily edited before they emerge as frequently important contributions to the discipline. But here, as elsewhere, there is a powerful institutional resistance to allowing the ghostwriters out of the closet. From its inception, *The Yale Journal of International Law* opened itself to student contributions of quality. This is a practice that has infiltrated many of the other student international law journals and is one of the contributions of *YJIL* to the sociology of knowledge of our field.

The *Journal* also continued to be open to innovative approaches. One personal example: When my colleague Andrew Willard and I invited a group of students at the Law School in the early 1980s to collaborate with us in developing a new mode of international law research, the study of "incidents," and the students produced a remarkable collection of studies done in the particular format we developed collaboratively, the then Editor-in-Chief of *YJIL*, Mark Agrast, read the collection and quickly decided that *YJIL* would publish the entire set as a single issue.⁸ *YJIL* editors played a major role in shaping the various studies and the issue proved to have a continuing effect on legal scholarship. Princeton University Press republished the set, in hardcover and paperback, and distributed it widely.⁹ The students who wrote the book, for their part, assigned the royalties to *YJIL*, which helped to exorcise its financial demon for a while. In the meantime, a number of other student international law journals began to invite incident studies and a fairly large number have since been published. Thus, *YJIL* played a major role as midwife to the birth of a new epistemic unit in international legal scholarship.

And the *Journal* remained committed to international development. Michael Eisner, a Co-Editor-in-Chief with Carl Liederman in 1991, had a year available before his clerkship. Appreciating how much he had gotten out of the *Journal* experience, and being a committed internationalist, he decided to help students in Chile form an international law journal on the American model. He persuaded the U.S. Agency for International Development (AID) to fund him for the year and, in short order, a student international law journal was flourishing in Santiago de Chile. On returning to the United States, Mike lobbied Yale to establish a link at the student level with the editors in Chile in order to share experiences. His efforts began the Linkage program that still flourishes at Yale.¹⁰

8. See *Special Feature—The Incident as a Decisional Unit in International Law*, 10 *YALE J. INT'L L.* 1 (1984).

9. See *INTERNATIONAL INCIDENTS: THE LAW THAT COUNTS IN WORLD POLITICS* (W. Michael Reisman & Andrew R. Willard eds., 1988).

10. This program sends groups of Yale Law School students and faculty members to Chile and Argentina to work on a variety of projects, including launching and producing law journals, conducting seminars, developing academic and scholarly programs, and doing research for NGOs

III.

There are remarkable differences between the *Zeitgeist* of 1974 and that of 2000. Then, international law was frozen by the Cold War and virtually every decision that was taken was distorted by the geo-strategic security considerations each side brought to that conflict. Economic self-determination was a powerful force, as many newly independent states, using command economy models, insisted on rights of expropriation and challenged many of the basic postulates that, later ascendant, were to make possible the transnational movement of capital and a vibrant world economy. While great wars were prevented by the nuclear “Balance of Terror” of the superpowers, small wars, particularly the so-called “wars of national liberation,” were able to flourish. The United States had momentarily lost direction and confidence after the debacle in Vietnam. Above all, people seemed to assume, at levels of consciousness so deep that they were unaware of them, that changing the fundamental structures of this system was a remote possibility—if it was possible at all.

The year 2000 presents quite a different world. The Cold War has ended, with the disintegration of the Soviet Union. The political landscape of central and eastern Europe has changed radically, leading former Vice President Dan Quayle to remark, in a triumph over Yogi Berra, that “[t]here is an irreversible trend to freedom and democracy in Eastern Europe. But this may change.”¹¹ In Central and South America, he may be right. The dramatic eclipse of autocracies and dictatorships by democratic and constitutional governments, which also seemed irreversible, has come under renewed stress. The spread of globalism and the beginning of the emergence of a truly homogenous global culture has also brought the globalization of local wars, the desperate externalization of refugees, who now move about the world rapidly, the rapid-fire movement of disease about the world and the globalization and organization of international crime. Yet the past quarter of a century has also seen non-governmental organizations rise to an effective new role, particularly in the promotion and prescription of new international law, that was scarcely imaginable in the past. The body of law we call the “international protection of human rights,” which seemed almost a fantasy when *YJIL* was founded, has become a critical strut of international politics and a major authoritative intervention in the domestic jurisdiction of even the greatest states. And while the environment, that fragile envelope of our planet in which we all live, is under unimaginable stresses as industrial and science-based civilizations use the resources of the planet ever more intensively, there is, now, the beginning

involved with human rights issues. For more information on this program, see Judith Leonie Miller, *Latin American Linkages*, YALE L. REP., Winter 2000, at 68.

11. Dan Quayle, Speech to the Newspaper Society Forum on Europe (1990), cited in Martin Sieff, *The Things They Say*, WHITE HOUSE WKLY., Mar. 29, 1999, available in LEXIS, News Group File.

of an international environmental law that may prove capable of dealing with the new problems.

It is clear that challenges to the maintenance of a minimum and tolerant world public order are as great as they were when this journal was founded twenty-five years ago. The challenge to the current editors and to future generations of Yale students who will assume responsibility for the management of this journal will be to continue to reshape it in ways that make it responsive to the needs of world order. This will keep *The Yale Journal of International Law* continuously young and vital, yet continuously true to the vision of those who founded it.