

## COLLECTION AND DISTRIBUTION OF MATERIALS FOR THE STUDY OF CURRENT INTERNATIONAL PROBLEMS: A "PORTFOLIO" SYSTEM

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One of the recurring problems involved in the teaching of international law is the availability and accessibility of documents of current relevance. The social utility and pedagogical advantage of dealing with actual or pending problems needs no amplification. Yet, subjects appearing in university catalogues under such progressive epithets as a "modern," "contemporary" or "current" law of nations are based, for the most part, upon case book materials of a rather ancient vintage. It is not surprising that the future opinion leaders of a society acutely conscious of the role of popular opinion in the formation and application of policy and, now, painfully aware of the necessity for anticipatory rather than posterior private action should find the role as well as the teaching of international law increasingly irrelevant. In point of fact, international law is as vigorous as ever and has more potential at this time for influencing international behavior than in earlier periods; but this is rarely conveyed in formal educational programs. The strong impulse toward "teach-ins" for facts and opinions about the most critical national and international problems emphasizes the *lacuna* in formal law courses.

Current doctrines, policies and theories should be tested by application to current problems. Questions such as self-determination, the termination of colonial status, non-intervention, the supervisory role of international organizations and so on are of the utmost relevance in the cases of Aden and Gibraltar. Study of cases such as these would give the student a dynamic picture of the complexities of decision making, as well as the pressures and constraints under which policy clarification and application proceeds. Any number of cases occurring in Africa and Latin America, the Middle East and Asia cover the entire spectrum of problems which contemporary international law seeks to regulate. The topicality or importance of the Vietnam case hardly requires comment.

The Rhodesian case provides a highly useful example of the complexities of international sanctioning. The informed student would wish to be supplied with the responses of courts and government agencies in other states as they are confronted with sanction or sanction-related cases as well as the internal Rhodesian response. The role of national pressure and interest groups as they seek to effect sanction policies and the value motives which impel them should also be considered in acquiring a full picture of this aspect of decision-making.

The problem of military intervention in contemporary international relations might be profitably studied from a prospective standpoint: i. e. when should a State intervene in the affairs of another. Probable hot spots could be chosen and projection of alternate developments could be prepared.

The primary difficulty involved in teaching such current or projected problems lies in the collection of material. Scholarly literature must travel a long

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road from conception to distribution; a short article of quality written before or during a crisis may not be published until after its resolution. Relatively few critical international cases are fought out in the courts. The collection and reproduction of relevant parts of the records of international organizations is a tedious, time-consuming operation and one almost impossible if the teacher is not situated near a repository. And such records hardly constitute sufficient description or explanation of the complexities of transnational decision. A relatively comprehensive picture can be gained only by study of the above documents plus national executive statements, parliamentary records, the communications of pressure and interest groups, the reports and evaluations of the media and so on. The excitement of dealing with real problems can be conveyed only if the documents used are current and comprehensive.

In diverse universities, individual teachers undertake to collect such current materials. But this constitutes a Herculean task which can rarely be acquitted on an individual basis. It also constitutes an enormous duplication of labor and may encounter such legal problems as infringement of copyright. Nor can the need for current materials be met by more case-books; the format of the case-book necessarily involves severe selectivity, its preparation is too lengthy and, most serious, a critical and current problem may be neither appropriate, useful, nor economical for subsequent retrospective study.

#### *A "Portfolio" System*

The need for current materials might be effectively met by a national "portfolio" system, in which a selection of current materials would be distributed, in the course of the year, to subscribing teachers throughout the country. A committee of international law and relations teachers would prepare, at regular intervals, a list of ten or so case problems. Sensitive to pedagogical requirements and limitations, they would direct the collection and reproduction of relevant documents as well as background papers. The material collected for each "case" would be prepared in a separate folder or portfolio and be sent, at fixed intervals, to subscribers. In addition to the student portfolio, a special teacher portfolio might be prepared, including a bibliography of relevant material available in most libraries as well as a listing of other material which might be of interest but was not, for various reasons, included.

The list of cases to be covered that year would be released in the summer of the preceding academic term, with a timetable of dates upon which the materials would be forwarded to subscribers. Teachers would then indicate the "cases" which they wished and the number of portfolios, with sufficient time to prepare their courses and seminars accordingly. At the time the portfolios were sent out for immediate use, they would have the most recent material available.

#### *Coordinating Committee*

The coordinating committee would comprise teachers of international law, international relations and international organization. It would be desirable to co-opt a United Nations Staff member, both for the transnational perspective he might contribute as well as for the easier access to documents of the UN and related organizations he could provide. Among the functions of the

Committee would be the preparation of the list and supervision of the collection and selection of portfolio materials and the negotiation of reproduction rights where necessary. The Committee would establish connections with major press outlets as well as with the public information departments of international private organizations and with embassies. Since there are few foreign communications which are not now rapidly translated into English for governmental purposes, a liaison with relevant federal agencies would be desirable. The Committee might, in a sense, be permitted to become a subscriber to non-classified materials. This aspect of the project might be expedited by associating a prominent elected representative as an *ex officio* member of the Committee.

After the initial, provisional collection of documents had been made, the Committee would analyze it, determine the major problem areas which should be emphasized and set out guideline for future research. If background papers or summaries were called for, it would outline them and direct their preparation.

Possible internal procedures for the Committee need not be discussed here. Whether responsibility for each case would be given to particular Committee members or remain collegiate would turn upon a number of factors. The utility of a coordinating chairman and his duties would also have to be considered.

#### *Methods of Collection*

A small staff of full or part-time researchers would be responsible for the actual collection, evaluation and preliminary selection of case materials. Once channels for collection have been found or forged, this should become a relatively simple operation. A trained researcher, operating in Washington, D. C. or in New York, could probably assemble a preliminary collection of documents regarding any one case in several days. Thereafter, keeping the file up to date would constitute a perfunctory task.

As the preparation date of each portfolio approached, a larger staff of part-time labor would be required. Thus, there would be certain advantages in situating the office of the portfolio system in a university in which a pool of student and clerical personnel could be drawn upon for part-time work.

#### *Methods of Reproduction and Distribution*

The technical problems of reproduction and distribution can be resolved in a number of ways. The portfolio format rather than a pamphlet form of distribution permits the greatest flexibility; a number of different techniques of document reproduction may be incorporated. Material prepared for public distribution by organizations and groups may, where appropriate, simply be inserted, as is, in the portfolio.

The Committee might undertake reproduction and distribution itself, or join the project to a professional organization with facilities or contract the matter to an educational publishing firm. The key considerations in such choice must be cost and rapidity of communication. The "portfolio" system, in order to be economically feasible, must remain within the price-range of the average student. Pedagogical feasibility means distribution according to the pre-determined timetable.

### *Methods of Utilization*

The portfolio system could be used as either an adjunct to a conventional case-book course or as the primary material for courses or seminars in "Selected Problems." The material would be more appropriate for the case, socratic or dialogue method favored in American law schools than the judicial opinion itself. The law's epistemological assumption, expressed in the case method, that the judgment as a discrete unit of decision has predictable and fixed social effects is correct only in a community in which there is a high correlation of authority and control. This is not the case in transnational decision. A more fruitful perspective is one in which court opinions are put in a more comprehensive context. A "case" in its broadest sense, is not delimited by normative or disciplinary boundaries, but configures social interactive patterns. The materials collected for portfolios would follow these patterns.

### *Financing*

Once functioning, the portfolio system might conceivably support itself. Even if subscription to portfolios could not cover costs, additional income might be derived, from time to time, by publication of a particularly useful and timely collection as a documentary study aimed at a broader market. But initiation of the program would require funds and it is possible that back-up or supplementary funds might thereafter be needed.

The possibility of the availability of federal funds should be investigated. Private foundations should also be considered. UNESCO or UNITAR might be interested in such a program. Yet it would seem sound policy that the United States should exhaust domestic resources before seeking an international remedy.

The simplest method of organizing and financing the "portfolio" system would be through association with a university or with a professional organization. The American Society of International Law, the Carnegie Foundation, the Ginn Foundation, to name only a few prominent examples, appear to be particularly suitable because of their professional and publishing expertise, the numerous contacts which they enjoy and their locations.

### *Effects*

The "portfolio" system will, at the very least, permit teachers of international law to incorporate current material while it is still current into their lectures and seminars, to a far greater degree than they could achieve by undertaking to collect the material themselves. In addition to conveying the excitement and complexities of current decision-making, current theories will be tested by current data in the context of current conditions rather than by exclusive comparison with past trends.

Properly applied, the "portfolios" may initiate a generation of future opinion leaders into the realities of foreign policy clarification and application. Confrontation with actual, current problems is the best laboratory training for future decision-making.

In the future, the "portfolio" system might introduce a degree of civic policing over the media communications of governments and private organiza-

tions alike. Aware that their statements and arguments will be subjected to searching examination in university forums, these elites may be impelled to take more reasonable positions. With an appropriate framework of inquiry, students using current material may be expected to dismiss the slogans and simplistic solutions of both foreign and local leaders and, in their place, demand realistic policy planning. The transformation from ignorant to informed interest may have significant effects on future policymaking.

Finally, the dispersal of current materials may precipitate major changes in international legal theory. Theories about law, articulated and implicit, are frequently shaped by the tools and materials available. The official culture of law is the judicial opinion. But actual decisions are frequently made in unorganized arenas, which remain, from the perspective of the lawyer, matters of "folk culture." Legal education does not yet supply the student with techniques for researching these. To speak of international law in terms of courts and legislatures is a wholly inadequate focus. It persists because the collection of international legal materials has followed municipal practices. A collection of portfolio materials from all phases of authoritative decision may impel teachers as well as students to a more comprehensive grasp of international decision dynamics.

## THE REASONABLY PRUDENT MAN

Gentlemen, I instruct my students  
 In certain facets of jurisprudence.  
 I deal with the reasonably prudent man  
 And apply the rules as best I can.  
 He is a man with qualities quaint  
 This is the picture that I paint:

Bravely he walks with the knowledge  
 That we taught him at our college,  
 That of others he may expect  
 Conduct that is quite correct.

For under the law he may presume  
 That he will never meet his doom  
 From dangerous conduct of his brothers  
 For the law presumes due care of others.

Bravely he walks until he's told  
 That he mustn't be so bold.  
 That when he walks through a door  
 He must fix his eyes upon the floor.

That when he walks upon the street  
 He must keep one eye upon his feet.  
 And with the other look with dread  
 For dangers that may lie ahead.

Negligence the law will not abide,  
 So he must look from side to side.  
 He must stop and look and hear,  
 It's only safe to walk with fear.

No longer can he bravely walk  
After all this legal talk.  
But if no care he can assume,  
What is the meaning of "presume"?  
Our hero, the legal prudent man  
Wants to qualify if he can.  
If he walks, he walks in fear,  
The slightest lapse will cost him dear.  
If he cannot walk with care,  
Perhaps, he says, I'd better fare  
If instead I always rode  
Back and forth from my abode.  
But does he know, is he aware,  
Of the requirements of due care,  
Of all the rules of the road  
That are such a heavy load?  
He must not drive too slow or fast,  
Or his first trip may be his last.  
For others he must be alert,  
Or with a lawsuit he will flirt.  
But he may presume care ordinary  
Of others for whom he must be wary.  
But now again I must explain,  
At the risk of driving him insane.  
Illegal it is to park at night,  
On a highway without a light.  
Such negligence, then, you may presume  
Will not lead you to your doom.  
But don't rely upon this rule,  
Unless you are an utter fool.  
For if you do you may find  
Our courts to you will be unkind.  
Another rule they'll then invoke,  
You'll think it like a monstrous joke.  
With solemn mien and dulcet tones,  
They'll tell you that your broken bones  
And the pain from which you wince  
Were caused by your own negligence.  
For you, my friend, must drive at a speed  
That would have prevented such a deed.  
Whether in rain or fog or dark,  
You must see the man who lightless parks.  
If reasonably prudent you would be  
Watch sharply to your port and lee  
And also, though it may seem daft  
A lookout keep both fore and aft.  
But then, my friend, it's a comfort to know,  
Whether you go fast or whether slow,  
Though the parker's absence you cannot assume,  
His freedom from negligence you may presume.