

3-31-1985

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Recommended Citation

Lillich, Richard B. (1985) "The Teaching of International Human Rights in U.S. Law Schools," *Antioch Law Journal*: Vol. 3 : Iss. 1 , Article 9.

Available at: <https://digitalcommons.law.udc.edu/antiochlawjournal/vol3/iss1/9>

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THE TEACHING OF INTERNATIONAL HUMAN RIGHTS LAW IN U.S. LAW SCHOOLS

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The teaching of international human rights law in U.S. law schools has come a long way in the past two decades. Twenty years ago a survey conducted by the American Society of International Law made no mention of the subject.¹ In 1965, the late Egon Schwelb, "Mr. Human Rights," in what he himself characterized as a "novel departure,"² offered a seminar on "The International Protection of Human Rights" at Yale. During the next half-dozen years, similar offerings were made available at California (Berkeley), Harvard, Virginia, and several other institutions. By 1971, when a panel at the annual meeting of the Society considered "The Teaching of International Aspects of Human Rights,"³ at least 13 law schools offered either a course or a seminar in international human rights law.⁴

With the publication of two course books during the 1970's,⁵ plus the public interest in human rights sparked by the Carter administration, the number of such offerings by U.S. law schools increased steadily, albeit far less spectacularly than most international human rights lawyers had hoped. Indeed, the major conclusion of a two-day conference in 1979 on "Teaching International Human Rights Law in Law Schools and Universities," organized by the International Human Rights Law Group of the Procedural Aspects of International Law Institute (PAIL) under a grant from the National Endowment for the Humanities, was that far too few schools had a separate international human rights law offering. Since the narrative report of the conference never has had wide

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¹ TEACHING OF INTERNATIONAL LAW AND RELATED COURSES IN AMERICAN LAW SCHOOLS (ASIL Occasional Paper, 1964).

² INTERNATIONAL LEGAL STUDIES: A SURVEY OF TEACHING IN AMERICAN LAW SCHOOLS 1963-1964, at 92 (ASIL, R. Edwards, Jr., ed. 1965).

³ Panel, *The Teaching of International Aspects of Human Rights*, 65 ASIL PROC. 240 (1971).

⁴ Those professors currently teaching a course in human rights are Sohn at Harvard, Bilder at Wisconsin and Michigan, Carey at N.Y.U., Newman at Berkeley, Nanda at Denver, Henkin at Columbia, Marroney [*sic*] at Syracuse, Van Dyke at Iowa, Lillich at Virginia, Del Russo at Howard and Georgetown, and McDougal at Yale.

Panel, *supra* note 3, at 255 (remarks of Bert B. Lockwood, Jr., reporting on a 1971 survey of international human rights law courses conducted by the University of Virginia School of Law).

⁵ L. SOHN & T. BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS: CASES AND MATERIALS (1973); and R. LILlich & F. NEWMAN, INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW AND POLICY (1979). See notes 12-13 and 22 *infra* and accompanying text.

circulation⁶ and since, in the opinion of this writer, its conclusions remain as valid today as they were 4 years ago, they are set out below and then reviewed in light of a recent PAIL survey on the teaching of international human rights law in U.S. law schools.

(1) *Relatively few law schools offered a course or seminar on international human rights law.* At the conference, it was reported that in 1979 only 15 law schools offered a course or seminar on the subject. A follow-up PAIL survey in early 1980 revealed that 20 institutions intended to offer a course or seminar during the 1980-1981 academic year.⁷ Nevertheless, this figure still represented only 11.9 percent of the 168 schools then listed by the Association of American Law Schools (AALS). Among the law schools that did not offer international human rights law at the time were such nationally ranked institutions as California (Berkeley), Chicago, Cornell, Michigan, Texas, UCLA, and Yale.⁸ Thus, despite considerable progress, the subject had yet to become an accepted elective in the normal law school curriculum.

(2) *Lack of student demand and interested instructors were the principal reasons for the relatively few international human rights law offerings.* Many conference participants observed (even 4 years ago) that student interest in the subject was not what one might expect. Law students were worried about passing their bar examinations and getting good jobs; international human rights law did not appear to be helpful in either regard. Peer group pressure and the mistaken belief that international human rights law was not "law" also militated against such offerings.

Another reason frequently mentioned for the relatively few offerings was the lack of interested instructors. Nine of the 21 persons then teach-

⁶ Teaching International Human Rights Law in Law Schools and Universities (PAIL Institute, Oct. 1980). Copies of the report may be obtained for cost by writing Hurst Hannum, Esq., Executive Director, Procedural Aspects of International Law Institute, Room 1027, 1346 Connecticut Ave., N.W., Washington, D.C. 20036.

⁷ They were American, Arizona State, Catholic, Cincinnati, Dayton, Denver, Harvard, Howard, Iowa, Minnesota, NYU, Ohio Northern, Pace, Rutgers (Camden), Santa Clara, Stanford, SUNY (Buffalo), Temple, Virginia, and Wisconsin. All but Catholic, Howard, and Wisconsin still have such an offering in their regular curricula. See notes 16-18 *infra*.

A contemporaneous survey by the American Bar Association, perhaps reflecting "the wish is the parent of the thought" principle, listed 47 law schools "offering or planning to offer one or more courses primarily concerned with international human rights." ABA Subcommittee on Human Rights Education, The ABA National Survey on Human Rights Teaching, App. (Dec. 1979). Included in the list were all the institutions mentioned in the 1980 PAIL survey—except for Howard, NYU, and Stanford—plus 32 other law schools. Well over half of the latter never offered such a course or seminar and, as the recent PAIL survey discovered, have no present intention of doing so.

⁸ California (Berkeley) and Michigan now have such an offering, as does Texas during its summer session. See notes 16-18 *infra*. Cornell and Yale have offered a course or seminar upon occasion, but Chicago and UCLA remain delinquent. See text at note 24 *infra*.

ing international human rights law actually attended the conference; in addition to these 21, only a handful of academics occasionally taught the subject. This lack of law faculty interest was underscored by the 1980 PAIL survey: 4 of 9 law schools reporting that they did not have an offering or intend to have one in the future cited as a reason lack of faculty interest (UCLA being one such school), while 4 of the 13 schools stating that they did not have an offering but intended to have one in the near future indicated either that they had no interested faculty member in residence or that, if they did, he or she did not offer such a course or seminar on a regular basis (Cornell and Yale being among such law schools). Clearly, the lack of interested full-time instructors on law school faculties was a serious obstacle to increasing the number of international human rights law offerings.

(3) *International human rights law should be taught as a separate course or seminar at every law school.* It should come as no surprise that there was unanimous agreement among the conference participants on this point, with most of the discussion focusing on the content of such an offering and who should be allowed to take it.

A consensus emerged that the offering, while stressing civil and political rights, should consider economic, social, and cultural rights as well. Moreover, it should strike a balance between introducing the students to the substantive law of international human rights and familiarizing them with international and domestic procedures for enforcing this law. A clinical component, field work, or internship should be offered whenever possible, as this would teach needed skills and show students that international human rights law has a practical application.

With respect to who should be allowed to enroll in a basic international human rights law course or seminar, there was general agreement that it should be open to both law school students and university graduate students, and perhaps undergraduates as well. Several participants made the point that an interdisciplinary student body was to be encouraged since it would benefit all concerned. Moreover, the offering should be structured in such a way that a course in public international law need not be a prerequisite, although such a course, as well as courses in administrative, constitutional, and criminal law, naturally would be most helpful.⁹

(4) *International human rights law should be taught in other international law courses.* Conference participants suggested that in law schools not offering a course or seminar in international human rights law, the instructor in public international law carve out a major section

⁹ On the question of prerequisites, the conference discussion tracked that of the ASIL panel in 1971. See Panel, *supra* note 3, at 257-58.

for it either in the basic course, a course in international organizations if one was offered, or both. Recent international law course books have made it easier to accomplish this objective by devoting much more space to international human rights law than their predecessors.¹⁰ Even when a law school offers international human rights as a separate entity, it should continue to be taught in the basic international course, since the latter will remain for some time the only one that most law students will take.

(5) *International human rights law should be infused into as many noninternational law courses as possible.* As an alternative to a course or seminar on international human rights law, or (preferably) in addition to one, conference participants agreed that there should be an international human rights law component or at least dimension to such established law school courses as constitutional law, civil rights/liberties, criminal law, administrative law, and labor law. While there was general consensus in favor of this approach on the theoretical level, several participants thought it difficult to implement practically. Ideally, everyone agreed, international human rights norms should be integrated into all courses, but that was a major undertaking that would take years to accomplish.¹¹

(6) *International human rights teaching materials should be revised and new materials published.* Reviewing existing law school course books, the participants agreed that the Sohn and Buergenthal work was too long, included too much historical material, and was not sufficiently process-oriented.¹² On the other hand, the action-oriented approach of Lillich and Newman, while appealing to students, led to skimpy coverage of substantive international human rights law.¹³ Conference participants recommended that in their next editions both books include much more material on the two UN Covenants¹⁴ and on the role of specialized agen-

¹⁰ See, e.g., L. HENKIN, R. PUGH, O. SCHACHTER, & H. SMIT, *INTERNATIONAL LAW* 804-28 (1980); J. SWEENEY, C. OLIVER, & N. LEECH, *THE INTERNATIONAL LEGAL SYSTEM* 573-650 (2d ed. 1981); and B. WESTON, R. FALK, & A. D'AMATO, *INTERNATIONAL LAW AND WORLD ORDER* 466-595 (1980). So, too, does the most recent international organizations course book. See F. KIRGIS, JR., *INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING* 744-919 (1977).

¹¹ For the first steps in that direction, see text accompanying note 34 *infra*.

¹² The 1980 PAIL survey revealed that this course book was being used at two law schools. *Teaching International Human Rights Law in Law Schools and Universities*, *supra* note 6, App. C. For its present adoptions, see text accompanying note 22 *infra*.

¹³ The 1980 PAIL survey revealed that this course book was being used at 14 law schools. *Ibid.* For its present adoptions, see text accompanying note 22 *infra*.

¹⁴ International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, *entered into force* Mar. 23, 1976, GA Res. 2200 (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), *reprinted in* R. LILLICH, *INTERNATIONAL HUMAN RIGHTS INSTRUMENTS* 170.1 (1983); International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, *entered into force* Jan. 3, 1976, GA Res. 2200 (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), *reprinted in* R. LILLICH, *supra*, at 180.1.

cies and nongovernmental organizations. It also was suggested that a good handbook was needed to supplement both books, as well as for general purposes. The need for collections of basic documents and selected readings also was stressed.

The present writer believes the above six conclusions are as valid now as they were in 1980. Data obtained from a short questionnaire sent to all 170 AALS or ABA-accredited U.S. law schools in August 1982, followed up by numerous telephone calls during June 1983, confirm this belief.¹⁵ The most recent PAIL survey specifically substantiates the two major points (1 and 2) made above.

In the first place, there has been a continued steady increase in the number of law schools offering a separate course or seminar in international human rights law—from 13 in 1971, to 20 in 1980, to 46 at present. Of these 46 schools, 4 (or 3 percent of the 146 schools reporting) offer both a course and a seminar;¹⁶ 17 (or 12 percent) offer a course;¹⁷ and 25 (or 17 percent) offer only a seminar.¹⁸ Thus, 32 percent of the law schools recently surveyed offer either a course or a seminar, or both.¹⁹ Moreover, 9 additional schools (or 6 percent of the schools surveyed) indicated that they intended to schedule such an offering in the future.²⁰ Hence, as many as 55 law schools (or 38 percent of those surveyed²¹) may soon be teaching international human rights law.²²

¹⁵ The data that follow are based upon questionnaires returned by or information orally supplied by 146 of the 170 accredited U.S. law schools, or 86%. Apologies are made in advance for the errors inherent in such a survey.

¹⁶ American, Columbia, New York Law School, and Virginia.

¹⁷ Antioch, Boston University, California (Berkeley), Capital, Connecticut, Dayton, Franklin Pierce, Georgetown, Iowa, Notre Dame, Ohio Northern, Rutgers (Camden), Rutgers (Newark), Southwestern, Stanford, SUNY (Buffalo), and Texas.

¹⁸ Albany, Arizona State, Bridgeport, Cincinnati, Cleveland State, Denver, Florida, George Mason, George Washington, Harvard, JAG School (Army), Loyola (Los Angeles), Michigan, Minnesota, NYU, Northern Illinois, Northwestern, Nova, Pace, Pittsburgh, Santa Clara, Southern Illinois, Stetson, Temple, and West Virginia.

¹⁹ Of the 24 accredited law schools not reporting, however, it would not be unreasonable to assume that relatively few had an international human rights law offering. Thus, the percentage of all U.S. law schools having such an offering is probably closer to 26% than to 32%.

²⁰ Akron, Boston College, Catholic (Puerto Rico), Campbell, Detroit College, Richmond, Texas Southern, Utah, and Wayne State. Three of these schools reported a similar intention to the ABA in 1979 but never followed through (*see note 7 supra*), which makes one somewhat skeptical about whether they will now.

²¹ This percentage probably should be adjusted downward for the reason suggested in note 19 *supra*.

²² At the 46 law schools currently teaching the subject, five instructors report using Sohn and Buerghenthal as teaching materials and 26 have adopted Lillich and Newman. *Compare* text accompanying notes 12-13 *supra*. Thirteen instructors use their own materials, generally for seminars, while no information is available on the materials used in the other offerings.*

*Editor's Note: A two-volume text edited by Theodor Meron, *Human Rights in International Law: Legal and Policy Issues* (1984), is now also available for teaching the subject.

This increasing acceptance of international human rights law in law school curricula is encouraging, but for two obvious reasons it still rates only about one and a half cheers. First, 62 percent or more of the U.S. law schools surveyed²³ still do not teach the subject, including such perennial "top ten" institutions as Chicago, Pennsylvania, and Yale, and such other leading schools as Cornell, Duke, Illinois, Indiana, Tulane, UCLA, USC, and Washington.²⁴ Second, even at those 46 institutions teaching the subject, support for it is very thin: seminars predominate over courses by a three to two margin, and many offerings are scheduled only every other year,²⁵ during summer sessions,²⁶ or even as part of overseas summer programs.²⁷ While hard figures are unavailable, it seems likely that no more than 750 U.S. law students are taking an international human rights law offering each academic year.

Second, as in 1979-1980, the lack of student demand and interested instructors appears to be the major roadblock to increasing the teaching of international human rights law in U.S. law schools. At least a dozen law schools—including some surprising ones²⁸—reported that there was no perceived demand from students for such an offering. Nearly half again as many law schools—once more including some surprising ones²⁹—indicated that no faculty member was interested in teaching the subject. Other law schools advised that funding priorities prevented them from offering a course or seminar on such a specialized subject.³⁰ The hoped-for economic recovery, of course, may generate both the financial resources and ultimately the increased student interest needed to support and justify new international human rights law offerings. Moreover, the fact that more students are taking such offerings right now will provide law schools with a pool of potential interested instructors in the future. Nevertheless, without being unduly pessimistic, it would be optimistic to expect that more than 50-60 schools, roughly one-third of accredited U.S. law schools, will teach international human rights law on a regular basis during the balance of this decade.

If this prognosis is correct, then international human rights lawyers

²³ The percentage of all U.S. law schools not teaching the subject probably is somewhat higher for the reason suggested in note 19 *supra*.

²⁴ In 1979, Yale and five of the eight schools in the latter category reported to the ABA that they were offering or intended to offer an international human rights law course. See note 7 *supra*. Now none of these schools contemplates such an offering, certainly a disappointing slippage of expectations.

²⁵ *E.g.*, Ohio Northern.

²⁶ *E.g.*, Texas.

²⁷ *E.g.*, Notre Dame.

²⁸ *E.g.*, Duke.

²⁹ *E.g.*, USC.

³⁰ *E.g.*, Colorado.

in academia, in addition to solidifying their offerings in the curricula of their law schools and building up the number of students enrolled in them, should concentrate their pedagogical efforts in two other areas, both stressed by the participants in PAIL's 1979 conference, namely, making sure that international human rights law is adequately covered in the basic international law course³¹ and that it also is infused into as many noninternational law courses as possible (points 4 and 5 made above). The first objective already seems to have been achieved, at least in large measure.³² The second objective will take much more time and effort to realize,³³ although PAIL already has a pilot project on "The Linkages between International Human Rights and U.S. Constitutional Law" in train³⁴ and hopes to receive funding soon for a similar project in the field of criminal law and procedure. In sum, while a lot has been accomplished since Dr. Schwelb's "novel departure" 20 years ago, and the prospects for further achievements in the teaching of international human rights law in U.S. law schools look more than passing fair, much remains to be done.

³¹ And, of course, encouraging more students to take such a course.

³² See text at note 10 *supra*.

³³ See text at note 11 *supra*.

³⁴ This project, supported by grants from the Dana Fund, the Exxon Education Fund, the Ford Foundation, and the Blaustein Institute, seeks—through exposing constitutional law professors to international human rights law and preparing supplementary materials for their use in teaching the basic constitutional law course—to infuse or integrate international human rights norms into one key area of the law school curriculum. Further information about the project may be obtained by writing PAIL, whose address is given in note 6 *supra*.

