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Making Transnational Law Mandatory: Requirements, Costs, Benefits

Mathias W. Reimann*

I will make a few brief remarks about what it takes, and what you might get out of, making Transnational Law a mandatory course because that is what we did at Michigan four years ago. As a result, we now have several years of experience with such an approach.

In order to make such a course mandatory, you need essentially three things. You need the will to bite the bullet—the faculty must make a decision to take the plunge. You need a group of teachers that can staff the necessary sections you have to offer. And you need materials to teach from. Let me briefly comment on each of these conditions.

First, whether you can ever persuade your faculty and your Dean to bite the bullet is something only you can tell. At Michigan, I found it much easier than I had anticipated. We had a Dean who was very supportive of the project. We also had an international advisory board pushing for it. When the matter came before the full faculty, it turned out most of my colleagues were complete pushovers. After an intense but relatively brief discussion, they voted almost unanimously not only to introduce Transnational Law as a new course but also to make it mandatory. Incidentally, much help came, perhaps somewhat surprisingly, from our clinical faculty. They emphasized that, while they were operating not in New York or D.C. but in a midsize town in the Midwest, they come across international issues all the time in their practice. This provided powerful anecdotal evidence of how inescapable such issues have become in the American legal universe today. It probably convinced quite a few of my colleagues who had been sitting on the fence that a basic understanding of transnational legal issues is truly indispensable for an early 21st century lawyer in the United States.

Second, regarding the requisite teaching force, you, of course, need enough bodies to staff the necessary sections, taking into account that in any given semester, some people will be on leave, visiting elsewhere, or

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not available for some other reason. At Michigan, we need to teach five sections per year which translates into a need for six or seven regular teachers of the course. We found it amazingly easy to assemble such a group. Especially the younger colleagues have been very open to it, perhaps because they realized that teaching a basic Transnational Law Course will force them to learn a few generally very useful things. In addition, one can rely on adjuncts to some extent which is, of course, easier in New York, Washington, or Chicago than in Ann Arbor. On the whole, we have never had the staffing problems we had feared. We never even had to knock on doors or twist arms. Of course, we are a relatively large faculty with a relatively strong overall comparative and international orientation. But we also emphasized that teaching such a course does not require deep erudition and broad expertise of international law since the course should be kept on a basic level anyway.

Third, regarding suitable teaching materials, there is, at least in my opinion, no casebook out there that truly serves the purpose of an introductory overview course of Transnational Law. You can, of course, use one of the established International Law casebooks but that would be far from an ideal fit because they are not written with a very basic and broad-based course in mind. Thus, we compiled our own set of teaching materials. I took the lead and was helped by various colleagues to varying degrees. We then developed the materials over time as we found out what worked well and what didn't. Currently, we have, so to speak, the third edition. All of us teach pretty much from the same set of materials though everybody fine-tunes them according to his or her individual needs or interests.

What are the costs of making a Transnational Law course mandatory? It does, of course, entail the expenditure of resources, i.e., teaching capacity, classroom space, student time, etc. In that regard, it is no different from any other new course. In addition to these considerations, we had worried about two other downsides none of which, however, materialized—at least not in any significant way. One was a concern regarding possible student resentment: would the students react strongly against having to take such a new course? The answer turned out to be, by and large, no. I am sure that there are some students who resent it but then again, there are others who resent Civil Procedure or Criminal Law. At the end of the day, the students take whatever you tell them to take, especially once the course is firmly established. The other concern was that such a mandatory course might deter students from coming to Michigan because an additional mandatory requirement may be resented. Our recruitment office, however, tells us consistently that there is no such adverse effect. If anything, the Transnational Law

course is a recruitment asset, i.e., an advantage. There is a lot of (mostly unsophisticated) excitement about international law among both law schools and law school applicants, and a school that puts its money where its mouth is probably looks more, rather than less, attractive. I have heard from several students that they have chosen Michigan over a peer school for that very reason.

Let me briefly mention three further benefits. The most obvious one is that you are graduating a student body every member of which has at least a minimal knowledge of law beyond American borders. To be sure, that knowledge is often minimal indeed. Still, at least every graduate knows what a treaty is, can read the recent crop of Supreme Court cases dealing with international issues and understand them, has a sense of what the WTO does, and realizes that the UN General Assembly cannot legislate. While that is not much, it is a lot more than what the majority of graduates knew before. Second, a Transnational Law course provides a basis for upper class international courses. Whatever you teach in that area—International Human Rights, Business Transactions, Arbitration or, in my case, International Litigation, you do not have to go back to the 101 level every single time. You do not have to explain what the Hague Conference on Private International Law is, that there is no foreign sovereign immunity for commercial activity, and that the Convention on the International Sale of Goods is binding law in the United States while the Unidroit Principles are not. As a result, it is much more gratifying to teach advanced international courses, not to mention that it saves a lot of time. Finally, there is a benefit that we had not anticipated but which turns out to be quite important. Sharing the teaching of the Transnational Law course has integrated the faculty, particularly its international component, because we each had to learn a minimum about each other's fields. I, for one, had been happily ignorant about international trade or the principles governing the use of force. Now, I had to come up to some speed and thus began to understand what my colleagues in these and other areas were doing. The trade specialists, in turn, had to learn something about human rights, the act of state doctrine, and arbitration clauses, etc. All this has entailed broader dialog and fostered cooperation. It has, so to speak, created an environment of continuous legal education in international matters for all of us. Even the non-international faculty have been drawn into that orbit in increasing numbers. In other words, international and comparative perspectives have become an almost routine aspect of faculty activity.

Today, the Transnational Law course is so firmly entrenched as a requirement that nobody wants to go back. A few weeks ago, those of us who teach the course went before the faculty and requested that it be upgraded from a two to three credit-course because we simply needed

more classroom time and student attention. The motion passed unanimously.

Questions raised by Roger Goebel (Fordham Law School):

Does anyone have this as a required upper level course?

What substantive material do you teach in this course?

And especially, do you include international human rights in that first year course?

Answer by Mathias Reimann:

We require the course—but not in the first year. So, while students have to take it before graduation, it is up to them when they do so. Seventy percent take it as a first year elective, the rest take it in the second or third year. Those of us who teach it are not sure which is the better option. Sometimes I wish more students would take it in their second year when they have a more solid grounding in law generally and in their own legal system in particular. It is difficult to explain what it means that treaties are the “supreme law of the land” if they know nothing about the federal system.

In terms of the substance we cover, I will gladly share the current syllabus with anybody who wants to take a look at it. I need to emphasize, though, that we do not try to teach much substance as such. Instead, we aim to teach how the international system is shaped, how it has evolved, and how it differs from our domestic legal system. For example, we do not try to teach the substance of international human rights but rather show the students what international human rights documents look like, where they come from, and why it is so difficult to enforce most of them. In a similar vein, we do not emphasize the substantive content of bilateral investment treaties but rather teach students why they matter, what developments they signify, and that one cannot just read them like a statute. It is teaching by illustration and example without any ambition to cover whole areas in any comprehensive fashion. The ultimate goal is to familiarize students with sources, thought processes, and pervasive issues. We hope that this will enable them to handle transnational issues, realizing that this is not rocket science but also that this area is full of pitfalls and that one cannot simply proceed as usual in the domestic context. Teaching substance as such is a forlorn cause in a two or three credit-hour introductory course of that nature.