
Editorial

Editorial: On My Way Out IV – Teaching; Emma Thomas – May the Force Be with You!; *EJIL* Roll of Honour; In this Issue

On My Way Out IV – Teaching

I have almost reached the final phase of my academic and professional career and as I look back I want to offer, for what it is worth, some Do's and Don'ts on different topics to younger scholars in the early phases of theirs. A lot of what I may say will appear to many as a statement of the obvious – but if it so appears ask yourself why so many experienced and seasoned academics still fall into the trap. In previous Editorials I addressed the art of delivering a conference paper,¹ the management of one's scholarly agenda² and the pitfalls of editing or contributing to edited books.³ I turn here to the issue of teaching.

To put it mildly, there is considerable ambiguity, even ambivalence, in the messages, explicit and implicit, that a young university teacher receives upon starting his or her academic career as regards teaching. To be sure, much lip service is paid to the importance of teaching as part of the academic duties of the young teacher. Practice varies but in several systems, especially in the early stages of one's career, the title itself provides an indication: Instructor, Lecturer (even Senior Lecturer) and in several languages the title Professor itself indicates primarily the teaching function. Applicants are oftentimes required to provide a Statement on Teaching and in some systems there is a requirement and in others it is desirable to provide, in addition to a scholarly portfolio, demonstration of some 'teaching practice'.

But consider the following, almost universal, paradox. To receive a position as a kindergarten teacher, an elementary school teacher or a high school teacher, in most jurisdictions the applicant would have to have undergone specialized training – in addition to any subject-matter university degree he or she may have earned – to occupy a position of such individual and collective responsibility. The exception? University teachers. There are very, very few universities around the world that require any measure of formal training in the art and science of university teaching. A doctorate has become an almost universal requirement for teaching in our field – the USA being the glaring exception (as regards law). It is a requirement in practically

¹ 'Editorial', 26 *EJIL* (2015) 311, available at <http://ejil.oxfordjournals.org/content/26/2/311.full.pdf>.

² 'Editorial', 26 *EJIL* (2015) 795, available at <http://ejil.oxfordjournals.org/content/26/4/795.full.pdf>.

³ 'Editorial', 27 *EJIL* (2016) 553, available at <http://ejil.oxfordjournals.org/content/27/3/553.full.pdf>.

all other disciplines in the USA. And yet typically a doctorate programme is training for research, not for teaching.

In appointing entry-level university teachers, the screening process focuses almost entirely on the scholarly and intellectual achievements and prospects of the candidate. Even where, as mentioned above, a demonstration of some ‘teaching experience’ is required, it is limited to just that – a demonstration of so many hours of teaching experience. Good teaching? Bad teaching? Successful teaching (and what does *that* mean?) are not part of the investigation. The requirement is almost invariably purely formal. Whether you wish to count the above as ‘explicit’ or ‘implicit’ I leave it to you, but the message is clear enough.

The assumption is that one would have ‘picked up’ teaching skills from one’s experience as a student – a very problematic assumption. To be sure, all of us, with no exception, experienced as students teachers of wildly different qualities – great scholars who were awful teachers and run of the mill scholars who were wonderful teachers, and mostly a general mean of mediocrity – OK teachers. As students, we often are unable to differentiate in our minds between likeable and popular teachers and good teaching. Student evaluations, the form of which is copied from one institution to another, are rarely designed with the same care and professionalism that would be given to similar questionnaires in a serious social science research project, with attention to the classical biases of that investigative medium. They are oftentimes little more than popularity tests and rarely supplemented by additional verification techniques, unless you count the sporadic ‘class visits’ by another faculty member in the run up to, say, a tenure procedure – the visitor himself or herself (very often an awful or mediocre teacher) – as a meaningful verification. From my experience as a University President, and having examined some cases in depth, I am confident that student evaluations – important as they are as one indicator – are also rife with false positives and negatives.

That aside, even if one takes one’s student experience of an excellent teacher or teachers as a role model for one’s own teaching, one soon discovers, as no doubt many of you have, that it is one thing to have been taught by an excellent teacher; it is quite another to learn and know how to do the same without some guidance or even instruction. I may take my inspiration, as an art student, from a great painter. Does that mean that with nothing more than that I can simply paint as he or she painted?

Many institutions offer a variety of teaching clinics, but these are almost invariably voluntary and not a requirement in the formation of young (or older) academics. In the professions, lawyers and doctors, among others, are required to undertake ‘continuing education’ (of variable quality) but not in our profession, that of university teachers.

I think it is fair to say that in the academic profession, teaching is one of the least professional dimensions of the university. The matter is particularly acute – at times tragic – when, indeed, it comes to doctoral supervision. There is, with few exceptions (Denmark being one), no training for supervisors of doctoral students – the future teachers in universities. I regularly give workshops, around the world, on writing a doctorate in law. They are well attended, and the feedback I receive from the attendees is mostly positive, sometimes very positive. I always offer a special workshop for supervisors. Rarely is the offer picked up, the attitude being ‘I have supervised x number of students; no one is going to teach me how to be a supervisor.’

But the problem goes beyond the ubiquitous absence of serious professional training for the teaching dimension of the academic profession.

In the measurable tangibles of academic progress – salaries, promotion, leave, appointment to another (more ‘prestigious’) university – teaching is always mentioned but in reality it hardly counts, unless one is truly catastrophic in the class room (a rare occasion, the norm is, as mentioned, ‘OK teaching’). What counts today is publication record, the laughable measures of ‘impact’ of one’s scholarship, and fundraising, all of which are typically assessed by a variety of very problematic quantitative indicators. Scholarship is the gold standard for academic career success. One of the highest prizes? A Research Chair which will absolve one from the duty of teaching so that one can dedicate oneself entirely to scholarly, more important, pursuits.

The impact of money is particularly pernicious. It is understandable that in a system in which universities must rely on fundraising to receive financial breathing space, the result is a series of incentives that overlook teaching.

But has anyone actually bothered to evaluate, especially in our discipline, the relative public good to society of the increasing and in my opinion excessive weight given to ‘scholarly production’ of oftentimes fungible articles, the average readership of which is humiliatingly low, and the diminution in the importance of teaching as a central purpose of the university? I can only give an intuitive evaluation but I doubt if a serious evaluation of such would justify the current discrepancy between the two.

There is another assumption at work here: either that a good scholar will be a good teacher (patently false) or, at least, that if someone is not a good scholar he or she cannot be a good teacher. There is a kernel of hard truth in this last proposition. Good teaching is not just or even primarily about smooth and clear delivery, charisma, etc. It is what you teach which is at least an absolutely necessary condition for good teaching and not simply how you teach it. But even here I want to add a caveat – which is about what counts as a good scholar. I have had wonderful teachers and I have some wonderful colleagues who are extraordinary teachers, and yet whilst they have published little – though of very high quality – they are at the same time veritably great scholars. They read, they think about what they read, they are knowledgeable and learned, deep and thoughtful, though their H Factor or Impact Factor might not reflect this. There is some virtue, surely, in reading widely and deeply and not just producing paper after paper that few read and that provide questionable added value. In the Jewish tradition the highest accolade a scholar may receive is to be regarded as a wise/knowledgeable pupil (*Talmid Chacham*). Many of them publish scantily, but they educate generations of students, many subsequent giants in the field, who owe so much to these wise/knowledgeable ‘pupils’.

Be all this as it may, the signalling of the career structure, implicit or explicit is here, too, abundantly clear. The ambitious young scholar (and note how the terminology so often shifts from teacher to scholar) is incentivized to spend his or her energy, creativity and time in building as impressive a scholarly portfolio (judged by those very same quantitative indicators), whereas teaching becomes a necessary chore not to say a de facto necessary evil – something that has to be done on the margin of that which really counts. So yes, there is some measure of exaggeration in the above, but I have employed such to drive home a point that I think is essentially true. If nothing else it is sad because so many young academics value teaching and enjoy it in a variety of ways.

Far be it for me to deride the importance of scholarship, but I do want to extol some of the virtues of teaching. Essentially, it is all a question of balance, if you want, of proportionality. Our scholarship is occasionally important. And for the world of knowledge as a whole it is crucial. But we should consider ourselves lucky if in a life of scholarship we are able to produce a few pieces that are neither ephemeral nor fungible and that leave some enduring impact. A lot of what we write, maybe even most, does not reach that standard and carries an opportunity cost, the cost often-times being our unwillingness or inability to dedicate the necessary amount of time, creative thinking and intellectual energy to our role as teachers.

At the risk of sounding sanctimonious, teaching is probably the most noble – giving – aspect of our profession (which is not to disregard the ego-caressing dimension of such.) The experience of teaching and educating, as many will attest, can be deeply satisfying and rewarding in the purest sense of these words.

There are also less noble pay offs.

If we are at all interested in leaving a ‘legacy’ – and a university career is one of the few workplaces where one can on occasion leave a legacy – it is much more likely to be in the minds and memories of our students than in the world of scholarship.

At a deeper level it is a question of self-understanding of our role and identity. I have tried to be a good scholar but I have almost always regarded my vocation to be that of a teacher and educator, with the concomitant investment of time, resources and self. I do not for one minute think that it is a less noble vocation – as I said, it is a question of measure and balance. It is regrettable that in the reality of contemporary academic life, for reasons alluded to above, the burden of incentives skews this balance so much in one direction.

There is no single model of what counts as good teaching and, more common in the United States than, say, Europe, is the uplifting experience of law students who do not only learn different law subjects from different teachers, but different ways of learning those law subjects from teachers whose conception of teaching and learning is as diverse as the subject matter they teach.

One might legitimately think that this is an impractical exhortation, given the system of incentives and values that underlie so much of university life today. In an earlier piece (‘On My Way Out – Advice to Young Scholars II: Career Strategy and the Publication Trap’⁴), I offered some advice to young scholars on how they might intelligently negotiate these pressures.

Nonetheless, apart from a general exhortation to Take Teaching Seriously as an integral and desirable part of one’s vocation and to remember that the classroom is oftentimes the harbinger of wonderful ideas that will feed into one’s scholarship, I do want to give some hopefully useful practical pointers to young teachers.

The most common ‘error’ lies in the conception of the good course, which is about to be taught. I want my students to end the course both knowing the subject matter and understanding it deeply; and I want them to achieve the above in an interesting and engaging manner. I think this is how many a young teacher will approach their course preparation. And rightly so. But here are some add-ons, some indispensable spices for this basic dish.

⁴ *Supra* note 2.

Law is a dynamic discipline in a very empirical and concrete way – new legislation, new cases, new treaties, new sources, new understandings, new social and other sensibilities. If I teach my IL or Con Law or Ad Law course in the first year, by the time the students graduate, and throughout their lives, what we covered will become increasingly irrelevant or outdated in terms of material knowledge. So I consciously need to build into the course the didactic elements that will enable my students to become lifelong auto-didacts. This can be done in a variety of ways, but it should not be done only through osmosis. Learning to read treaties or legislation, and other sources, critically and analytically, has to be consciously built in. It is hard, though perhaps not impossible, to achieve such if everything is spoon-fed. So the necessary tools have to be employed, either in the classroom or through homework, or both. Hermeneutics is at the heart of legal thinking – yet in few schools if any are our students given formal training in hermeneutics. I certainly received none and I studied and taught in some of the finest. So it has to happen in each and every class room. (Two to four hours on Articles 31 and 32 of the Vienna Convention do not meet the bill ...). So again, how do I design my course so that I am comfortable not only that my students know and understand the subject I am teaching, but that they acquire this particular tool that is so ubiquitous in all legal discourse?

There are specialized courses in legal research and writing – lawyering courses they are sometimes called. But there are specificities to each subject that will not be covered by these generic courses – and need to be built into one's own. We teach, train and educate not professors but future practising lawyers – in some ways each of our classes has to be, too, a lawyering class. I make heavy use of the professional reference librarians and actually ask them to give a couple of classes, especially on the use of online resources, including a couple of practicums with research assignments designed to exercise the students' online skills.

You may not agree with all or any of the above. As I have said, there is no unique model to what is good teaching. But I hope I have at least convinced you that it is worth your while, alone or with colleagues, to sit down and make such a checklist of didactic and heuristic objectives that you believe are important and then spend time and thought on how these may best be built into your course.

Finally, a few idiosyncratic ideas that have served me (and hopefully my students) well over the years.

- It is hard for me to imagine any course on any subject that would be taught effectively entirely by frontal lecturing or entirely by interactive teaching. Balancing the two is in my view almost indispensable. One or two practicums – be it moot courting, simulated negotiations, etc., are equally useful and very gratifying to the students.
- At the end of each course, I destroy my teaching notes. Thus, in the following year I can prepare afresh for class – reading the assignments as do the students, and coming up with novel or new ideas. It also helps you to appear fresh and engaged. On several occasions my Research Assistants have pointed out that I analysed the same text differently in the preceding year. I took that as a vindication and compliment.

- When you ask a question in class and are met with that familiar silence, I often tell the students: take a few minutes, talk to each other, and then I ask the question again. At that point there is a far greater willingness to ‘risk’ an answer and the answers and discussion are usually better.
- I am a conscientious objector to PowerPoint, not because I am an anti-technology Neanderthal, but because I believe it produces a schematic mind set and a class that becomes like a bar exam preparation course rather than an exercise in exciting and subtle thinking. I know there will be many objections to this, but I suppose you cannot teach an old dog new tricks.
- All my exams are ‘take aways’ – I have never administered an in-class exam. I want the students to have time to think and draft, rethink, revise and submit. I am not concerned with cheating. The students sign an honour statement and the exam is so challenging and time consuming that the ability to get external help is limited.
- In my exams I always tell the students that there will be one question that will cover material we did not examine in class. I assign the material before the exam and use this to test but also to demonstrate to the students that they have learned to digest new materials without the help of the classroom. I also say that in the questions that will address material covered in class, there will be points or issues that were not discussed in class – memory and digestion are not enough; even the exam is an occasion for critical and creative employment of the legal imagination. But most importantly it helps condition the way students understand the process of teaching and learning during the class.
- After the exam I distribute a detailed memo – not a model answer but an analysis of the issues and especially of common errors or omissions which indicate where students may have lost points. I will post one such memo on *EJIL: Talk!*
- I disallow the use of laptops in the class – unless the class involves the use of online resources – and, more extremely, I disallow note-taking. For each session of the class there are three designated note-takers (who rotate) and whose notes I review and then post on the class website. The rationale is simple: we teach law, and not stenography. And the business of taking down notes means that whenever a question is asked, the typical reply is – ‘can you repeat the question?’ – since the student is busy writing down what was said a few seconds earlier. Being able to dedicate oneself entirely to following the class without the burden of note-taking makes a considerable difference. Some students are sceptical at first (‘note-taking helps me think ...’) but after a trial period of a couple of weeks almost all become converts. Those who don’t are of course excused and may happily practise their stenography.

I could add a lot – but my intention is not to provide a manual for teachers but rather to put what I think is a serious issue squarely on the agenda and encourage discussion, debate and hopefully push back a trend that undermines a central facet of what the university is about, and who we are.

Embrace teaching!

Emma Thomas – May the Force Be with You!

The *EJIL* Editors have made every effort over the years in relations with our publisher, Oxford University Press, to obtain the very best for our authors and readers, including the most author-friendly copyright terms and reasonably priced subscription rates. This has not always made for easy and tension-free relations. Yet for the past seven years Emma Thomas, OUP's formidable senior publisher in charge of *EJIL*, has succeeded in navigating the stormy waters that our requests have at times created and has, with extraordinary ability, managed to look after *EJIL*'s best interests without of course sacrificing OUP's. Emma is leaving OUP now to take up a new career challenge and we at *EJIL* wish her the very best of success. We are losing an impressive colleague and a warm and generous friend.

EJIL Roll of Honour

EJIL relies on the good will of colleagues in the international law community who generously devote their time and energy to act as peer reviewers for the large number of submissions we receive. Without their efforts our Journal would not be able to maintain the excellent standards to which we strive. A lion's share of the burden is borne by members of our Boards, but we also turn to many colleagues in the broader community. We thank the following colleagues for their contribution to *EJIL*'s peer review process in 2016:

Amanda Alexander, Philip Alston, Roozbeh Baker, Virginie Barral, Robert Beckman, Richard Bellamy, Gabriella Blum, David Caron, Rose Cecily, Hilary Charlesworth, Steve Charnovitz, Vincent Chetail, Roger Clark, Kaitlin Cordes, Kristina Daugirdas, Kevin Davis, Oliver Diggelmann, Jeffrey Dunoff, Francesco Francioni, Bryant Garth, Marlies Glasius, Leena Grover, Hans Morten Haugen, Kevin Heller, Gleider Hernández, Loveday Hodson, Robert Howse, Andrew Hurrell, Jörg Kammerhofer, Michael Karayanni, Helen Keller, Sara Kendall, Tarun Khaitan, Claus Kress, David Kretzmer, Dino Kritsiotis, Andreas Kulick, Shashank Kumar, Jurgen Kurtz, Andrew Lang, Charles Leben, Randall Lesaffer, Mikael Madsen, Debora Malito, Triestino Mariniello, Giuseppe Martinico, Walter Mattli, Robert McCorquodale, John McCrudden, Lorna McGregor, David McGrogan, Frédéric Mégret, Naz Modirzadeh, Sonia Morano-Foadi, John Morss, Samuel Moyn, Liam Murphy, Stephen Neff, Anne Orford, Federico Ortino, Martin Paparinskis, Andreas Paulus, Clint Peinhardt, Teresa Phelps, Ilias Plakokefalos, Sergio Puig, Dirk Pulkowski, Morten Rasmussen, Kal Raustiala, Nicole Roughan, Cedric M.J. Ryngaert, Harm Schepel, Thomas Schultz, Joanne Scott, Kirsten Sellars, Eran Shamir-Borer, Sandesh Sivakumaran, Oisín Suttle, Katie Sykes, Anastasia Telesetsky, Jaime Tijmes, Antonios Tzanakopoulos, Antoine Vauchez, Jochen von Bernstorff, Armin von Bogdandy, Ana Filipa Vrdoljak, Michael Waibel, Kenneth Watkin, Stephen Weatherill, Ramses Wessel, Reinmar Wolff, Ingrid Wuerth, Claus Zimmerman.

In this Issue

This issue opens with an *EJIL*: *Keynote* article, in which Philippe Sands contemplates the ends (and end) of judicialization. Based on his lecture at the 2015 ESIL annual conference in Oslo, it forms a fitting introduction to an issue that addresses overarching

questions of legitimacy in international law, from the reception of international law in Asia to strong reactions to the idea of global governance by the WTO judiciary. An *EJIL: Live!* interview with Philippe Sands complements the article.

This issue's first regular article is Vincent Chetail's critique of the dominant narrative of migration control, drawing on early doctrines of the law of nations regarding the free movement of persons across borders, and thus offering an innovative path for rethinking this critical contemporary issue. In another example of looking back in order to confront difficult issues of today, Jan Lemnitzer draws on original archival research to propose the adoption of an adversarial model of a commission of inquiry for investigating the downing of flight MH17.

We are pleased to present in this issue a *Symposium* comprising three articles giving attention to international law in Asia. Simon Chesterman explores the reasons for Asia's under-participation and under-representation in international law and institutions, and predicts greater convergence and presence of Asia in global governance. Melissa Loja looks to archival records in order to shed new light on one of the most pressing questions of international law in Asia: the Senkaku/Diaoyu Islands dispute. And Zhiguanq Yin's article focuses on the translation of international law in the 19th century into China, thereby questioning the universality of Euro-centric jurisprudence.

A second *Symposium* in this issue focuses on the recent *Whaling Case* decision of the International Court of Justice. Following a brief introduction by Enzo Cannizzaro, Jean d'Aspremont uses the decision as a platform to analyse the distinction, or lack thereof, between the doctrines of sources and interpretation. Stefan Raffeiner then reflects on the relevance of organ practice and subsequent practice of states acting in international organizations to treaty interpretation, teasing out the issues raised in relation to Articles 31-32 of the Vienna Convention on the Law of Treaties. Enzo Cannizzaro bookends the symposium with a commentary on the contribution of the *Whaling Case* to our understanding of the interplay between the doctrines of proportionality and margin of appreciation.

In *Roaming Charges*, we focus on the young and the old, and the stories of lives told through the intense gaze of the subjects in these photographs.

We close the articles section of the Journal with an *Afterword*. In his Foreword in this year's first issue, Robert Howse reflected on the first two decades of the WTO Appellate Body. Here, we present a collection of critical responses to Howse's landmark article, from H el ene Ruiz Fabri, Bernard Hoekman, Andrew Lang, Petros Mavroidis, and Joost Pauwelyn, with a rejoinder by Howse.

We continue our rubric, *Re-lecture*, with essays by Anne-Charlotte Martineau and Oliver Lepsius, focusing respectively on George Scelle and Hans Kelsen.

Finally, our *Last Page* poem, by Alex Shattock, humorously shares some truths about our discipline in 'Dinner Party Conversation'.

JHHW