Why I Teach

My entry into teaching was accidental. While practicing law in Chicago, I received a letter from the University of Michigan Law School inviting me to apply for a two-year teaching position in their writing program. I had not given much attention to teaching beforehand, nor did I do so at the time as I discarded the letter in my waste basket at home. My wife, Sandi, soon discovered it and, using the Socratic method, she challenged me to examine the opportunity further.

Six months later we moved to Ann Arbor as I began my adventure into teaching law. I knew that as a law student and as a practicing lawyer I loved research and writing more than anything else, and I was attracted by the opportunity to devote my life to this kind of work. So this was my original reason for leaving private practice and commencing a career in academia. But the classroom experience was a huge unknown because I had never taught or done much public speaking. This was the wild card with respect to making the change permanent. Yet within one month I was convinced that I could fulfill my classroom responsibilities adequately, and I knew that I wanted to make teaching my lifelong career.

The following academic year, 1963–64, I moved to St. Louis and began my “love affair” with the Washington University School of Law. I say “love affair” because I know that my academic life elsewhere would never have been the same nor would my answer to the central question as to why I teach. The law school was a special place, one that was very different from the schools that I had attended and the school at which I had previously taught.

Why do I teach? Although I know the answer to the question, it is not the same one that I would have given many years ago.
The entering class consisted of 80 students, and I was assigned to teach both sections of Property. I was the 11th member of the faculty. The atmosphere was friendly and intimate. Faculty members took their responsibility to teach very seriously and made themselves accessible to students in the hallways, in Holmes Lounge immediately after class, and in their offices. I got to know every student and many very well over time. I soon recognized that I was comfortable as a teacher and very happy to be at the law school.

Yet even then my answer as to why I teach would have been very close to the answer I would have given at the outset. Nevertheless, after about six years at Washington University I finally recognized that graduation was a disquieting time for me. Graduates and their families celebrated while I was enveloped with sadness and at times mild depression. It took me several more years to fully grasp the underlying reasons for this unhappiness. By then I understood that wonderful students enter your life, maintain contact for several years after graduation, and thereafter are silent as they become preoccupied with their professional and family lives. Quite simply, I missed them. Yet I knew this was an inevitable reality as a teacher.

But why did I miss them? There aren’t many jobs which guarantee that a hundred or more new and exciting people would enter my life annually. These were people who always challenged me in the classroom with their intellect and imagination. Indeed, nearly every important idea that I have voiced in a book or an article has been conceived in the classroom or in my office as a result of student questions and input. Teaching is an exhilarating and exciting experience almost beyond description. It is quick, intense, educational, vigorous, and even exhausting. So why do I teach? The dedication of my book on perpetuities offers a partial explanation: “In appreciation of my students, from whom I have learned much.”

However, there was something more. As I got to know my students and forged friendships, I recognized how their diversity had enriched my life. These were men and women from different backgrounds, races, and even countries and cultures who possessed varied interests and expertise. I borrowed heavily from their diverse experiences, but I also borrowed from their vitality, ingenuity, courage, and resourcefulness. These were the reasons I missed them. Nevertheless, over time my former students gave me even more. Ultimately they would reward me with their lasting friendship, their accomplishments within and beyond the law, and, most of all, they would reward me with their good deeds.

These, then, are the reasons why I have taught for over 46 years and want to continue teaching. It is because of what my students have given to me, including their ultimate gift of lives well lived. These gifts have made me a rich man. And after nearly 6,000 students, I still yearn for more.

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On September 6, 2006, President Bush admitted publicly what had been surmised for some time: that the U.S. government was holding unnamed alleged terrorist “enemy combatants” in secret detention centers throughout the world as part of the Global War on Terror (GWOT). Some prisoners are in U.S. custody; others have been rendered to third countries. This “extraordinary rendition” program, as it has euphemistically been dubbed, has been vociferously criticized in the United States and abroad as both unlawful and ill-conceived.… The stories of the individuals “outsourced” as a result of the U.S. rendition program are lurid in their details, involving hooded detainees, who are spirited away in the dead of night and sent in chartered aircrafts to remote countries where they typically suffer torture and maltreatment. In the words of one former CIA agent: “If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear—never to see them again—you send them to Egypt.”

The use of torture by Americans and foreign governments acting as surrogates for the United States should not come as a surprise. Given the wealth of information on coercive interrogation tactics that has emerged from reports on conditions at Guantanamo Bay, as well as the sickening photo and video footage emanating from Abu Ghraib prison, it would be naive to assume otherwise.… Given the insistence of the White House on provisions retroactively amending the Federal War Crimes Act of 1997, which effectively amnestied those committing offenses under the prior law, it is hard to ignore the tacit admission in the recently enacted Military Commissions Act (MCA) that the United States has embarked on an official policy inconsistent with current international definitions of torture.

Although it was initially believed that the number of prisoners rendered abroad has been relatively few, it now appears that the number may be scores or even hundreds. The covert nature of the operations and the allegations of prisoner mistreatment raise very troubling questions about the U.S. rendition program, which has been labeled by [an] EU Parliamentary Committee as “criminal” and “illegal.”

Many experts have applied themselves to an understanding of the deeper logic of terrorism and its causes, which is not our subject here. Those studies, however, in no way suggest that the kind of human rights abuses that currently taint the conduct of the
GWOT are necessary for a better outcome. Secret prisons, secret prisoners, indefinite detention, and the use of torture and cruel, inhuman, and degrading treatment, all in violation of international human rights law and international humanitarian law, should be uniformly and categorically rejected, particularly by lawyers who understand the complexities of the law and its central role in holding a society together when tested by adversity.

The Nuremberg principles, with their emphasis on individual criminal responsibility rather than collective punishment of entire nations or ethnic groups, suggest an alternative vision of the GWOT: one that would permit the United States to retain both legal and moral clarity as it combats the very deadly scourge of international terrorist attacks. Indeed, following the September 11 attacks, the United Nations Security Council adopted a series of resolutions building on the Nuremberg precedent by mandating, for all nations, that the crime of international terrorism be treated as other jus cogens crimes, such as genocide and war crimes, over which all states may exercise universal jurisdiction. The resolutions emphasized the duty of all states to prevent, as well as punish, acts of international terrorism, and set out a framework for the continued elaboration of international norms and prosecutions of international terrorist crimes.

**WHATEVER QUALMS** one might have about the Security Council adopting this kind of international “legislation,” undoubtedly the September 11 attacks themselves were so horrifying in scale that they unified states’ desires to finally make progress regarding the definition of terrorism and the prosecution of major international terrorist figures. Many commentators suggested the need for international terrorist courts; not a new idea (an international terrorism convention, complete with a court, was elaborated in 1937 although it never came into force), but one worth seriously considering, particularly given the desire of many states to see the International Criminal Court eventually assume such a task.

The Bush administration’s approach has appeared hypocritical and confused, attempting on the one hand to extricate the “war on terror” from the application of international humanitarian law, while arguing on the other hand, as a matter of domestic law, that because terrorism is a problem of war, not crime, the President may establish military commissions, detain individuals indefinitely without charges, eliminate the possibility of federal court supervision, and substantially aggrandize his own authority.

[This] … approach appears to have been remarkably short-sighted. Most international terrorists do not live in the United States or even in countries whose citizens are favorably disposed toward Americans. Intergovernmental cooperation is therefore essential for the[ir] apprehension. The kind of “universal jurisdiction by treaty” regimes found in all the antiterrorism treaties alluded to earlier requires all contracting states to try or extradite suspected terrorists. The Security Council resolutions adopted after September 11 suggest that they may, in addition, be enforceable as a matter of customary international law against nonparty (or uncooperative) states by the Security Council. This is assuming the United States is willing to cooperate in a manner that gives assurances to other states that American efforts will be cabined by law. The use of secret prisons, the holding of “ghost prisoners,” and the endemic use of torture and cruel, inhuman, and degrading treatment against detainees in U.S. custody, however, gives states political cover for refusing to cooperate with the United States when they might otherwise have done so.

**AMERICAN LEADERSHIP** at Nuremberg showed the formerly warring states of Europe a new way to conceptualize international relations and instill the rule of law. The administration has cited no evidence that Geneva and the other treaties elaborated at that time are obsolete; rather the government has made what is, at best, a tenuous case that they are inconvenient. Shattering the consensus that produced them has serious consequences not only for the conduct of the GWOT, but the stability of all the institutions established under U.S. leadership after the Second World War.

International law, like domestic law, is a system whose component parts are deeply intertwined. Unraveling portions of the legal fabric has unintended consequences for the whole. The war that was launched from the nightmare of September 11 has produced the nightmare of Guantanamo, the horror of Abu Ghraib, the broken lives of the U.S. soldiers killed or wounded in Iraq and Afghanistan, the deaths of tens, maybe hundreds, of thousands of Afghan and Iraqi civilians, and the shattered psyches of America’s torture and rendition victims. The damage done has been considerable, but it is perhaps not yet insurmountable if the United States government changes course.

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