TEACHING LINKAGES

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1. INTRODUCTION

This symposium represents a historic opportunity to study the phenomenon of linkages. The subject of linkages is the next logical step in the growing movement to address the impact of international trade rules on other areas of the law formerly conceived of as either autonomous to international trade concerns or as purely domestic concerns. Conceiving of this set of issues as a coherent body of rules and theories is different from the traditional conception of the “trade and ...” problem which seeks to incorporate or privilege one or more traditionally non-trade issues within the multilateral or regional trading rules. The international economic law community has moved beyond the consideration of the individual relationships between trade and the environment, trade and competition, trade and intellectual property, trade and human rights as isolated phenomena vying for the attention of the trade community. Thinking about linkages requires the construction of new theories and teaching methods to show how the various “trade and...” problems compare and contrast to each other and how linkages more generally challenge the trading system beyond the needs of any particular “trade and...” constituency.

2. THE FRUSTRATIONS

Teaching American law students about either the many “trade and...” issues or the broader subject of linkages is particularly frustrating for several related reasons. First, at many schools international trade and international business transactions are com-

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Published by Penn Law: Legal Scholarship Repository, 2014
bined into a single survey course which all but rules-out coverage of any of the advanced topics a teacher may wish to pursue. Even when international trade is a separate course, the need to cover the development of the GATT/WTO system, regional trading blocs, the role of national implementing statutes, and the sheer weight of the material leaves exploration of linkages for the end of the course when the teacher is rushed and students are crabby. In addition, studying linkages requires at least a nodding familiarity with such diverse topics as antitrust, intellectual property, environmental, labor, and human rights law, which the student (or teacher) would not necessarily have seen before in either the trade course or any other class at the law school.

Finally, legal scholarship on linkages is still in its embryonic form and published materials geared toward the teaching of linkages are basically non-existent. The nature of the currently available teaching materials requires the teacher to craft her own materials on linkages or force the students to wade through literally hundreds of pages surveying the various linkages in the existing published course materials.

In this Article, I describe and evaluate my most recent experiment to introduce linkage issues in a three credit international trade course. Previously, I had only explored the linkages between trade and competition in a small seminar devoted to that subject where students having completed the basic trade course wrote advanced research papers. I had sought for some time to teach linkages more comprehensively in the basic trade course to introduce the topic to the broadest student audience possible at the earliest possible stage. In the past eight years, I have taught international trade law using just about every different international

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2 At Brooklyn Law School, there is a separate International Business Transactions class for three credits which Professor Lan Cao and I each teach using a problem method and the most recent edition of the RALPH H. FOLSOM, MICHAEL WALLACE GORDON & JOHN A. SPANOGLE, JR., INTERNATIONAL BUSINESS TRANSACTIONS: A PROBLEM-ORIENTED COURSE BOOK (3d ed. 1995).
In the spring of 1997, I taught seventy international trade students using the third edition of Jackson, Davey & Sykes's casebook on International Economic Relations. I followed the basic outline of the casebook beginning with the constitutional structure of the United States regulation of international trade, the history and development of the GATT and the world trading system, the structure of the WTO and its dispute mechanism and then an in-depth analysis of the various import relief mechanisms under international and United States law. The class sessions consisted of a mixture of Socratic dialogue, lecture, class discussion, problems, and the occasional role playing exercise.

On the syllabus, I designated two sessions about seventy percent of the way into the course to discuss "trade and ..." issues broadly construed. About halfway through the course, I asked the students to indicate their top three preferences for linkage topics. I asked the students to choose from the chapters toward the end of the book on environmental, competition, intellectual property, trade and services, lesser developed countries, non-market economies, and other linkages (labor, human rights, and national security). Once I received the preferences, I divided the

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5 I do not discuss or assign Chapter two, reviewing the private law aspects of international business transactions, other than make this a purely optional matter for students who have not taken the separate International Business Transactions class offered at the law school. I do at most one session on customs law often with a practitioner guest lecturer because of a separate, two-credit Customs Law class offered at the law school.
students into seven groups based on the topics chosen and assigned each group to read the chapter in Jackson, Davey on their particular topic. I made it first-come, first-served to encourage prompt submission of preferences and gave everyone their first choice until groups had nine students. Only then did I move onto the second and third choices. In a big class, choices distributed fairly randomly both across subject interest and I had enough late filers that could be used to round out the less popular groups. In only a few cases did I have to drop down to students' third choices.

I provided each group with a nearly identical outline of questions to guide their discussion.\(^6\) The questions asked students to think about how linkages and non-traditional economies have been treated under the GATT and WTO, how they can or should be incorporated into the future work and dispute resolution system of the WTO and whether other institutional arrangements would be more successful in grappling with these issues.

At the same time, I also assigned a student to act as group leader to initiate the discussion based on my observations in class as to the sensible talkers who would initiate, but not dominate, the discussion and not lead the small group astray into a discussion of peripheral issues. On the appointed day, the students met in different corners of the classroom and two additional rooms near by. I floated from group to group to monitor progress, answer questions, and guide discussion back onto track if necessary. I made one visit to each group over the seventy five minute class session. Most of the groups had vigorous discussions, at least while I was present. Most of the groups used my all too brief presence to ask me factual questions about developments in their field or test preliminary hypotheses about approaches they were considering.

The class regrouped as a whole for the next session two days later. The team leaders briefly reported on each small group discussions and the class as a whole discussed the linkages between the various linkage phenomena. Finally, each student was required to prepare a four page think piece without any additional research to discuss their particular “trade and...” topic in light of the larger group discussion. The paper was graded as part of the classroom component of the course, which effectively meant that

\(^6\) The questions handed to the students are attached as Appendix 1.
it was an additional piece of information I used in making borderline determinations when the exam grade was at the edge between two grading tiers.

The exercise had three complementary purposes. First, it was both an attempt to improve the content of the course and to avoid the frustration of both teacher and student that after all the hard (and often dry) work, the course would not end before we got to “good stuff.” Second, it sought to allow the students to study in-depth topics of interest without having to force the whole class into that area. Finally, it was also a conscious attempt to nudge the students into more active learning, an increased sense of perspective, and a higher degree of self-reflection, all of which are established techniques suggested by cognitive science as effective learning and problem solving methods.

The experiment was more than satisfactory. The discussions in the small group were on average wonderfully stimulating for both me and the students. The students generated many intriguing ideas, almost always on track and often quite innovative. My personal favorite came from the trade and environment group which not only proposed the bare outline of a multilateral environmental agreement for inclusion in the WTO system, but also created its own acronym, the General Agreement on Trade and the Environment, or the GATE.

The subsequent session when the class met as a whole helped complete the picture. The group leaders briefly presented their findings and proposals which took about half of the class. For the remainder of the period, I sought to maintain a conversation between members of different groups (other than the group leaders) as to how the themes developed in one linkage applied to other linkages. In particular, I focused on whether particular linkages depended on whether the current trade regime under-valued non-market considerations (environment, labor, human rights) or failed to properly value market considerations (competition, intellectual property). I focused to a lesser extent on whether there were universalist values underlying creating global regimes for these issues and whether there were any legitimate boundaries remaining between international trade and domains of domestic law. In addition, I tried to put the conversation into the context of North-South issues and to get students to discuss which link-
ages promoted the interests of non-market economies and less developed countries, which issues favored the wealthier market economies, and how gains in one area were paid for in another. This session became the basis for reference in the remaining classes to linkage issues as they arose in other frontier areas of the WTO, NAFTA, and a consideration of the Helms-Burton controversy.

4. The Prognosis

This modest attempt at interdisciplinary teaching of linkages could be improved in a number of ways. First, I learned that I needed to be more careful in selecting group members and team leaders. In honoring student preferences, the groups on lesser developed countries and non-market economies ended up being dominated by students from countries falling into one or both of these categories. Many of these students were more reticent to express their views and the conversations lagged in places, even when I was present to encourage the group and throw out new ideas.

The other issue I noticed was that I obviously was spread too thin. For me, the seventy five minute class session sped by as I rushed from group to group buoyed on by the enthusiasm and ideas that I heard. However, the students would have benefited from more direction, information, and suggestions if I had been able to stay longer with each group. Upon reflection, I would suggest turning necessity into virtue by involving other faculty colleagues in the exercise. Had I thought of it in time, I could have asked colleagues teaching in related fields to assist the small group discussions. At my school, I could draw upon people with considerable expertise in issues relating to environmental, financial services, human rights, economic development, intellectual property, labor, and national security law. Adding their expertise would have enriched the small group discussions, provided expertise beyond anything I could do, and freed me up to concentrate on one or two of the groups. Perhaps more importantly, I missed a golden opportunity to involve my colleagues in the international curriculum and to promote the internationalization of their own important slices of the law school curriculum.

The papers submitted on the last day of the course spread out surprisingly well along the basic curve for grading purposes. The best papers showed a real sense of excitement with the subject
matter and some innovative thoughts about the type of issues under discussion today at the WTO and the OECD. The weaker papers tended to summarize the information from the reading assignments or discussed several topics without advancing a real thesis.

Overall, the students seemed to enjoy the experience. The students who took the time to comment on the whole process on their evaluations were quite positive about the linkage classes and requested more such exercises throughout the semester.

5. CONCLUSION

The more that linkages can be integrated into a traditional international trade course the better. The students will receive a more accurate picture of contemporary international trade law and policy as well as a better appreciation for the contentious issues being debated and resolved in the World Trade Organization, the European Union, NAFTA, and the many other international organization dealing with portions of the trade agenda. In short, this is where the action is, and any course which fails to even attempt to cover these issues presents an old-fashioned and dangerously incomplete picture of the current legal landscape.

The challenge to cover the richness of the linkages debate is formidable. It requires careful budgeting of time and pushing the existing teaching materials to introduce such issues into the introductory international trade course.

The method I tried was borne more out of desperation than anything. The modest success of this approach is only an amateurish beginning. My model can easily be improved and supplemented. Other kind of group discussions and problems can be designed. New materials or modules can be developed either through commercial publishers, electronic media, or more informal shared materials among academics. There are advanced research seminars which can deepen the knowledge of both faculty and students on linkage issues. There are interdisciplinary and practice oriented simulation classes which force students naturally into linkage discussion and analysis in order to solve problems. Discrete class sessions in traditional classes can be devoted to particular linkages. E-mail and internet home pages can be used to access primary documents from the front lines and provide a forum for ongoing discussion of linkage issues throughout the semester. Coming to grips with the many forms of emerging link-
ages in trade policy ends up forcing the teacher out of old habits and to start fresh in designing a trade course and determining the core knowledge a student needs and how best that knowledge can be taught and learned. I found the whole process invigorating as a teacher and look forward to reporting in future years on my improved attempts to teach linkages.