ARTICLES

PUBLIC INTERNATIONAL LAW AS A CAREER*

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Law students are likely at some point in their education to become fascinated with the idea of pursuing a career in public international law. What species of law could possibly be more important? they might ask. International law deals with the truly significant questions facing the world: war and peace, human rights, freedom of travel and emigration, terrorism and interventionism, international ecology and environmental preservation, and interesting new problems such as ocean mining and outer space exploration and exploitation. By comparison, the daily concerns of domestic lawyers, such as whether corporation A must pay corporation B a sum of money, do not seem vested with epochal significance. Yet immediately, the student encounters a fundamental paradox: although international law seems to be the most important species of law in content and significance, it is clearly the least important in terms of career opportunities. Law firms do not appear to care about the prospective applicant who wants to work in public international law or who has taken law school courses and seminars in that field.

In brief, there exists an egregious case of market undervaluation. The most important field is the one least financially rewarded. This undervaluation also extends to law schools, which are creatures of the financial marketplace to a far greater extent than their apologists would concede. Although courses in international law do have some standing in law schools, perhaps more than their marketability would suggest, law faculties generally look upon them as "soft law" and consign them to a distinctly secondary place in the curriculum. The law school, as Duncan Kennedy and others have pointed out, is really a microcosm of the world of the large law firm, and students are trained to become cogs in the financially successful institutions of corporate

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America.[1]

Law firms exist and persist by skimming profits off the transactional costs of interactions among corporations, citizens, and the government.[2] Some lawyers *increase* the friction of those transactions so as to generate more work for themselves. A law school graduate may eventually become disillusioned with the pressure to increase friction by couching contracts, codes, statutes, regulations, warranties, and pleadings in complex legal jargon that ensures the hiring of more lawyers to read and interpret those works.[3]

I would like to address the question of why there is such a huge undervaluation of public international law in legal education and practice. I will also try to examine some implications of this inquiry for law students. Finally, I shall make some personal remarks, not because my own situation is an example of anything in particular, but because I acknowledge that it is necessary for the observer to recognize his own position in the field he describes. I could hardly expect the reader to accept my observations about a field unless I am willing to turn these observations inward and examine my own reasons and biases for choosing an economically irrational career in public international law.

Professor David Kennedy has described the duality of international legal studies at Harvard Law School. On the one hand, "the international law library occupied pride of architectural place in a law school that offered an extremely wide variety of seminars on the law of far flung places."[4] But on the other hand, he perceived that international law was:

> not in the mainstream of my legal education . . . [the course offerings] were all upper level courses and yet did not seem to be related to first year domestic offerings in any hierarchical or progressive way. Although international law

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1. *See* Duncan Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW 40 (D. Kairys ed. 1982).

2. *See* R. NADER & M. GREEN, VERDICTS ON LAWYERS, i, vii, xv (1976) (Nader's introductory overview); M. Green *The Gross Legal Product: "How Much Justice Can You Afford?"* in R. NADER & M. GREEN, VERDICTS ON LAWYERS 65-77; *see also* J. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 40 (1976) (noting the historical development of the American corporate legal elite); Swaine, *Impact of Big Business on the Profession*, 35 A.B.A. J. 89, 169 (1949) (refuting various allegations of excessive business control over attorneys). *See generally*, P. HOFFMAN, LIONS OF THE EIGHTIES (1982) (offering the inside story of the "powerhouse law firms"); M. GREEN, THE OTHER GOVERNMENT (1975) (describing large corporate Washington law firms as a form of other government).

3. *See* Mensch, *The History of Mainstream Legal Thought*, in THE POLITICS OF LAW 21 (D. Kairys ed. 1982) (documenting the complexity of the common law that allowed lawyers to claim expertise beyond ordinary reason in early American society).

4. David Kennedy, *International Legal Education*, 26 HARV. INT'L L.J. 361, 366 (1985).

> seemed to make some claim to be concerned with fundamental jurisprudential questions or jurisdictional priority, many of the courses presented international law as the specialized continuation of some domestic subject such as taxation or investment . . . few if any of my professors "specialized" in international, comparative or historical legal studies.[5]

I can add from anecdotal experience that faculty members who microscopically examine Article 9 of the UCC or spend their lives researching advance sheets of cases brought under Rule 10-b5, tend to look at international law as parasitical on "real" law. They view international law as a hopeless attempt by quasi-lawyers (who are really political scientists) to claim that, somehow, international political decisions follow legal standards instead of those of national self-interest. It is not law, they say, because there are few international courts, fewer international decisions, and those decisions are not enforceable.

The more generous of these professors might say that if there is such a thing as international law, students are best trained for it by learning to "think like a lawyer" in all the conventional courses. Then, when those students must someday grapple with a public international law problem, they will be well equipped to handle it using the usual tools of legal analysis. A leading private practitioner of public international law reacted the same way when I asked him whether he would be interested in interviewing the best students in my international law classes. He responded that he was only interested in my best students period, and not those who had taken international law. "They'll get all the international law training they need from us," he explained; "just send me the top students and we'll teach them the rest."

All of these attitudes and arguments can be refuted decisively. Yet who will listen? What non-international law professors will read these remarks? What busy practitioner will care? Nevertheless, for the record, here are some brief refutations:

(1) That international law is "really law" is a topic I have addressed at length elsewhere.[6] Suffice it here to say that any legal system, domestic or international, defines the set of entitlements of its subjects and provides for enforcement of those entitlements by depriving the transgressor of one or more of them. The domestic legal system accomplishes this enforcement in familiar ways (courts, judgments, the sheriff), whereas the international system does it by less visible, but equally effective, entitlement deprivations that are carefully regulated by pre-

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5. *Id.* at 366.

6. *See* D'Amato, *Is International Law Really "Law"?*, 79 NW. U.L. REV. 1293 (1985).

scriptive norms. No observer can understand international relations without knowing how these norms define proper national interests and provide for their enforcement.

(2) When law professors say that international law is not really needed as a subject because all that is necessary is the ability to "think like a lawyer," the best answer is to ask them to pick any subject other than torts, contracts, or criminal law, and justify its independent status. Are not sales, tax, agency, bankruptcy, trusts and estates, and constitutional law simply variants of contract law? Can not family law, antitrust, regulated industries, administrative law, and just about any other course you can name be considered as simply admixtures of torts and contracts? What justifies all those courses?[7] Proponents of those courses will insist that there is something "extra" about their subject matter that cannot be deduced from the principles of torts and contracts, and which requires a specialized understanding of other kinds of intellectual issues. We reply that the same is true of international law. Not only are there special problems when nations, as well as individuals, are the creators and subjects of the same law, but international law also borrows from an amalgam of foreign legal systems those special procedures and arguments that have fused to make international law a distinct specialty. Finally, if not most importantly, there are jurisprudential issues, such as figuring out what customary international law consists of and how it is proved, that have no close analogues in domestic law. In terms of intellectual challenge, public international law should take a back seat to no other legal discipline.

(3) Practicing international lawyers who claim that junior associates need no law school training in international law so long as they have good minds, may unknowingly be wearing blinders. Their law firms may have missed decisive international law issues in their litigation and negotiations simply because no lawyer on the staff realized that those issues were present in the factual situations. Attorneys may engage in international law practice without recognizing potentially crucial arguments in their favor. Regardless of whether they win or lose those cases, they may never know what they have missed (unless the other side comes up with those "missing" arguments). I have read many decisions in which I could spot hidden and potentially decisive international law issues that neither side argued and the judge certainly failed

7. *Cf.* Duncan Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW 47 (D. Kairys ed. 1982) (challenging the dichotomy between those subjects considered "hard" and those considered "peripheral" in the law school curriculum).

to notice. Hence, the international lawyers who hire young law students with the attitude that they will learn whatever public international law they will need to know in the course of working for the firm, may be begging the question by adopting this in-bred attitude.

Yet, as I have said, these "refutations" conjure up the image of hitting one's head against the wall. It may take years before rational argument makes a dent in the minds of comfortable law professors and more than comfortable practicing attorneys. International law today may be to law what eighteenth century biology was to science, and it may take a paradigm shift before international law is given its proper status in the law school curriculum and in law firm placement.

II.

Unfortunately, if the market undervalues international law, it may remain undervalued for a long time. Law students cannot be blamed for turning their intellectual energies to the problem of getting corporation A to pay a sum of money to corporation B, because that sum of money includes the attorneys' livelihood. What advice can be given to a law student who wants to spend a lot of time thinking about and studying international law?

One possibility is to go to work for corporation A. The student, however, must make sure that corporation A is a multinational corporation with a great deal of business outside the United States. The fact that foreign business is involved does not guarantee that in-house counsel in the international legal affairs division of corporation A will practice *public* international law, but there remains that possibility. Dealings with foreign governments, foreign legal systems, choice-of-law problems, and questions of sovereign immunity, certainly can arise when one's client is a multinational corporation. Additionally, the attorney will be dealing with foreign attorneys and foreign bar associations. A variety of individual issues facing employees of the corporation will also arise including: the validity of marriages abroad, adoptions, immigration and emigration, passports, visas, false arrests and detentions, and civil liberties in foreign countries. Finally, corporation A might have operations in areas that directly come under international law: the oceans of the world (fishing, seabed mining, conservation, navigation), international rivers, harbors and straits, the polar regions, or even outer space technology.

I have advised many of my students to look for work in the legal departments of corporations that have an international business, and from time to time I hear from some of them that they enjoy a tremen-

dous degree of responsibility for far-flung international business and legal matters. They say that public international law plays an important part in their professional lives. So there can be some public international law "success stories" in the legal department of the right corporation.

A second possibility is to work in the office of the Legal Adviser to the Department of State. These lawyers for the most part practice pure public international law. The work is obviously exciting and challenging, but the jobs are few and there is huge competition for limited positions.

Other branches of government have specialty divisions in their legal departments for international law, such as the Departments of Justice and Commerce. In addition, the entire Foreign Service field welcomes legally trained applicants for career positions.

The third possibility, joining a law firm, is unlikely to result in an international law practice except in special or "lucky" cases. Yet there are many international lawyers in law firms in New York and Washington D.C., and increasingly more in other major cities.

Fourth, many students interested in international law find that their first jobs do not include any work in that field. This is perhaps the most critical point of decision for young people interested in international law. Most people just tend to forget international law and become absorbed in the law practice they are in. It is difficult to keep in touch with a field when you are absorbed in entirely different matters. Sometimes, however, the best opportunities open up several years after you are doing nothing but domestic law.

Sometimes lightning will strike, as happened to a young lawyer working for a large law firm when, because of his knowledge of Spanish and his prior studies in international law, he was assigned to work on the project of a Latin American country. A year or two later, due to the volume of the work and the country's insistence, he left the firm and opened up his own practice devoted almost entirely to legal work for that country. He now has a highly successful small firm serving one satisfied client. Indeed, his example suggests a model for other countries — to have individual legal representation in the United States.

Young attorneys, however, should not wait for lightning to strike. The best thing for an attorney not practicing international law to do is to write an article or two on an international law subject. The best subjects are those that might interest your clients. For example, I suggested to a former student who is working for a large oil company that she write an article on deep-sea oil drilling. She is not involved with her company's international law division, but she could write an article

that, a few years from now, might enable her to obtain an important position in that division. In general, I would suggest to young lawyers that they contact their former professors of international law from time to time and ask for ideas about topics of current interest. Writing an essay in a legal periodical is the best way for a young attorney to rise above the crowd, and perhaps to lay the groundwork for a later career in international law.

Finally, a broad category of career opportunity is to teach public international law in a law school. There are over one hundred and fifty law schools that have, or could be talked into having, a faculty member who specializes in public international law. By research and writing, teachers of public international law can build an international reputation which can lead to employment as an attorney on important international law cases. So long as this practical work coincides with the professor's research and teaching interests and does not interfere with class preparation, experience as counsel in this kind of case may enhance and enrich the professor's knowledge of the field. All seriously interested students should consult two excellent books of career opportunities in international law published by the American Bar Association and the John Bassett Moore Society of International Law.[8]

Nevertheless, adding up all these opportunities realistically does not produce an encouraging sum. It is very difficult to practice international law and make a living at the same time. You have to be convinced that sometimes the most important things in the world simply do not have much of a market value, and you must be prepared to make a financial sacrifice in order to do them. (Your friend's affection for you may be the single most valuable thing in your life, but does it have any market value? People who are demonstrating against the MX missile may — and I hope only "may" — be engaged in the single most important activity in the brief history of sentient life on the planet Earth, but they hardly are paid for their efforts. More likely, they are rounded up and thrown into jail.[9]) If making money makes life worth living, you should probably go into any field at all except public international law. On the other hand, if dedicating your life to the ideals of world peace and human rights gives your existence meaning, don't ex-

8. *See generally* CAREER PREPARATION AND OPPORTUNITIES IN INTERNATIONAL LAW (J. Williams 2d ed. 1984); J.B. MOORE SOCIETY OF INTERNATIONAL LAW DIRECTORY OF OPPORTUNITIES IN INTERNATIONAL LAW (7th ed. 1984).

9. *See* United States v. Allen, 760 F.2d 447, 449, 453-54 (2d Cir. 1985) (upholding the convictions of MX Missile protestors after rejecting defendants' international claims); United States v. Montgomery, 772 F.2d 733, 737-38 (11th Cir. 1985) (involving protesters convicted for protesting the MX Missile and nuclear activities).

pect others to pay you much. For if others placed much value on world peace and human rights, then we would have already attained those ideals and there would be no need for your services now. Instead, people place value on building up nuclear arsenals of planetary destruction and on in-groups exploiting out-groups. This global insanity is called the market system, so if you want to combat it, don't expect that very same system to reward you.

III.

Let me now make some personal observations about my career as a teacher and practitioner of public international law. The first dilemma I had to face was to reevaluate my relationship to the government. Putting it this way may strike the reader as grandiose, yet I believe studying international law is extremely liberating in terms of philosophical perspective. I was conscious of wanting to work in a discipline where the actors were nation-states, one of which was my own country. What should I think of the policies and preferences of the United States? As a citizen, could I possibly be an impartial observer? How could I write or advocate anything in international law if I could not genuinely treat all nations equally?

I wondered what it would be like for people who wanted to work in international law if they lived under dictatorships. No doubt they could not progress very far unless they served as justifiers and apologists for their governments. They would either have to absorb and internalize the values of their countries, or else be committed to a life of hypocrisy, but in either event they would have an all-powerful "client" whose policies they could not second-guess and whose actions they would have to justify by their legal arguments.

Fortunately for me, the United States is a free society. No one told me how I had to come out in my writings. When in the late 1960's my non-classroom time was spent entirely in research, writing, and active litigation contesting the legality of the Vietnam War, I was not muzzled or financially penalized in any way. I must add, however, that most of my colleagues were distinctly unsympathetic and that I was looked upon as a "nut." A few years later, when it became politically and academically respectable to oppose the Vietnam War, those social and collegial pressures abated.

My attitude toward the Vietnam War was itself a minority view. People were roughly divided into two main camps: the overwhelming majority (including academics) who supported the war for geopolitical reasons, and the minority (including draftees) who believed that the

war was a geopolitical mistake and not in the best interest of the United States. I was in a very small third camp, opposed to the war for reasons of international human rights. It was quite clear long before "hard" evidence surfaced that the United States engaged in war crimes atrocities in Vietnam that were not sporadic violations but endemic to our uncomfortable military situation there. Thrust into a guerrilla war, we responded the same way as did the United States troops in the Philippines in 1900.[10] Of the many incidents I could recount, let me just give one. By 1969, American aircraft had engaged in thirty-nine distinct bombing attacks on the internationally renowned leper sanatorium in Quyuh Lap, North Vietnam. The roofs of the buildings in the sanatorium were painted with the Red Cross.[11] Nevertheless, this humanitarian, non-military target was a favorite among United States pilots, many of whom now captain your friendly domestic airplanes. In an interview at the time, one of the pilots explained the "psychology" of this kind of bombing mission:

> When you hit school buildings, or hospitals, or especially dams, you have a feeling of accomplishment. You see the effects below in terms of scattering adults and children, or water bursting and knocking down houses, or buildings caving in.[12]

Instead, to drop bombs in the leafy jungle would mean that there would be no visual results. Yet the bombs *had* to be dropped somewhere, because the pilots were sent out with full loads of bombs and told to come back after dropping them.

I thought long and hard whether I could blame the United States for these violations of human rights and I decided that I could not. In the first place, it seemed to me that other countries in the same position might do the same thing. (Many years later, this thought was con-

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10. *See* W. POMEROY, AMERICAN NEO-COLONIALISM: ITS EMERGENCE IN THE PHILIPPINES AND ASIA 88-92 (1970). In the so-called "Fil-American War" of 1898-1900, the United States conquered the Philippines in part to maintain commercial markets. *Id.* at 13-35, 190-200. American troops committed widespread atrocities against Filipinos, particularly after the Americans faced increasing guerilla resistance. *Id.* at 86, 88-96. As in Vietnam, the destruction of homes and even entire villages was common, and various methods of torture were used on peasants and soldiers alike. *Id.* at 89-95. Some U.S. troops were court-martialed for their abuses in this war. *Id.* at 91-92, 94; *see also* R. BARNET, INTERVENTION AND REVOLUTION: THE UNITED STATES IN THE THIRD WORLD 99-100 (1968) (analogizing the American support of terrorism in the post-World War II Greek government to the American support of the Diem government in Vietnam).

11. *See* D'Amato, Gould & Woods, *War Crimes and Vietnam: The "Nuremberg Defense" and the Military Service Resister*, 57 CAL. L. REV. 1055, 1086 (1969), *reprinted in* 3 THE VIETNAM WAR AND INTERNATIONAL LAW 407, 438 (R. Falk ed. 1972).

12. N. CHOMSKY, AMERICAN POWER AND THE NEW MANDARINS 14 (1969).

firmed by the Soviet atrocities in Afghanistan,[13] their own "Vietnam.") Secondly, the policy of the United States was subject to change. By bringing the atrocities to light, instituting lawsuits,[14] and making it clear to military commanders that they were personally at risk for commanding or condoning war crimes, there was a chance, in a free society, to make a difference. Thus I found myself in an interesting logical trap: I could not blame the United States without blaming myself because I was a citizen of the United States. The only way I could avert self-blame was to campaign actively against the policy I deplored. So long as I did engage in such a campaign, I could not blame the United States as a whole for its policy! In brief, as a member of the state, the battle I had was not with the state itself but with other members of the state.

This perspective, which may seem simplistic now, was liberating for me at that time. I could fight the United States government's policies in Vietnam in the name of the United States! The government, after all, did not *represent* the United States any more than I did; though the government might have effective power, it was as subject to the Constitution as I was. Incidentally, a small but sweet moment for me was when the United States paid me as a public defender for a case where the court reversed the convictions of persons who had disrupted a draft board office, and held unconstitutional a part of the Military Selective Service Act.[15] Receiving that check provided a real lift to my spirits because the United States actually paid me for defeating the government in a case that the government went to great lengths to win.[16]

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13. *See* SENATE COMM. ON FOREIGN RELATIONS & HOUSE COMM. ON FOREIGN AFFAIRS, 99TH CONG., 1ST SESS., COUNTRY REPORTS ON HUMAN RIGHTS FOR 1984 1159-69 (Joint Comm. Print 1985) (State Department Report chronicling abuses of human rights and atrocities committed in Afghanistan by the Soviet-backed regime).

14. *See* J.N. MOORE, LAW AND THE INDO-CHINA WAR 570-98 (1972) (Chapter XIII, The Justiciability of Challenges to the Use of Military Force Abroad, citing cases, and discussing the basis of challenging American actions in the Vietnam War).

15. United States v. Baranski, 484 F.2d 556, 570-71 (7th Cir. 1973) (reversing convictions of draft resisters and holding part of the Military Selective Service Act unconstitutional).

16. *Id.* at 556. In the *Baranski* case, the defendants had poured blood on a number of files in the draft board office. The court sequestered these files for evidence in the case, and the potential draftees whose files were sequestered were never drafted. The government decided not to appeal the case to the United States Supreme Court even though the Seventh Circuit held part of the Military Selective Service Act unconstitutional. The Seventh Circuit's decision also contradicted the Fourth Circuit precedent in another case involving the pouring of blood on Selective Service files. *See* United States v. Eberhardt, 417 F.2d 1009, (4th Cir. 1969) (affirming convictions under the same provision held unconstitutional in *Baranski*), *cert. denied*, 397 U.S. 909 (1970).

Out of the specific experiences I had regarding the Vietnam War,[17] I believe I developed an internationalist perspective. There are no "good nations" or "bad nations," but there are nations which from time to time violate the basic human rights of all peoples. One's moral perspective should be grounded, I believe, in these universal human rights. If one's own state violates these rights, one has a moral duty, I assert, to try to oppose effectively those policies. Effectiveness, I hasten to add, is not the same as joining in mass demonstrations or writing letters to Congress, though for some people such outlets may be all that are available. For people who have the training and opportunity to fight on a more effective basis, I believe that their moral obligation is commensurately greater.

In addition to the anti-Vietnam activities, I was fortunate to be involved as assistant counsel to Liberia and Ethiopia against South Africa in the World Court cases of the mid-1960s,[18] and in various individual human-rights cases throughout my teaching career.[19] Not all professors of international law get these opportunities and I am grateful that a good number of them have come my way. To some extent these cases involved clashes with my own university and colleagues, but I must admit that the freedom of a professor of law to take unpopular positions, while not as great as that of a sole practitioner or a member of a very small law firm, is certainly not as restricted as that of a lawyer in a large law firm. Lawyers in large firms are tremendously shackled by the decisions of their partners concerning what is good for business and what would reflect adversely upon existing clients. Yet, even their freedom to take an unpopular human rights case is favorable compared to those attorneys who work as in-house counsel for corporations (who may rarely if ever get leave to work on such cases) or counsel for the Departments of State or Justice or other branches of the government (who would be totally barred from handling any private human rights cases).

As much as I would like to see good students become professors of

17. *See generally* A. D'AMATO & R. O'NEIL, THE JUDICIARY AND VIETNAM (1972) (recounting some personal experiences involving the Vietnam war).

18. South West Africa (Ethiopia v. S. Afr.; Liberia v. S. Afr.), 1966 I.C.J. 6 (Judgment of July 18, 1966) (narrowly rejecting challenges to South African administration of South West Africa (Namibia)); *see* G-M. COCKRAM, SOUTH WEST AFRICA MANDATE 317-43 (1976) (discussing the case before the International Court of Justice); S. SLONIM, SOUTH WEST AFRICA AND THE UNITED NATIONS 278-309 (1973) (placing the ICJ 1966 judgment in the context of international efforts to solve the Namibian problem). *See generally* THE SOUTH WEST AFRICA/NAMIBIA DISPUTE. (J. DUGARD ed. 1973).

19. *See* A. D'Amato, *Litigating International Law* (to be published in 1986) (describing various human rights cases).

international law, I would not want to paint an idyllic picture of the academic scene. There are petty satraps in the academic field as in any other, and small-minded people who are clever at in-fighting and office politics manage to puff themselves up into large dimensions on law school faculties.

When I read about Einstein or other great scientists whose work I admire, I find in their lives a great sympathy toward their students and a large-minded willingness to have their theories revised or improved by the next generation. In my own field, however, I have found instead a fear of new ideas and especially a fear of having one's pet theories be upset by one's own students. In part, I attribute this difference to a medieval sense of "priesthood" that still seems to permeate international law, though it has long since dissipated in physics, chemistry or biology. The elderly priests of international law have their legitimacy at stake; what they've pronounced as the truth depends on the validity of the theoretical arguments they have used to support their pronouncements. If someone challenges the validity and consistency of that intellectual scaffolding, their words of wisdom might tumble down. Hence some of them may view students as heretics rather than as fellow truth-seekers.

If international law, by means of good scholarly standards, can increase in precision and objectivity, and if its underlying theory can be made clearer and more intellectually satisfying, much of the "priesthood" attitude will necessarily fade away. The discipline will become stronger as it becomes more logically rigorous. In my view, prospects for the field of international law are extremely optimistic. If students approach the field realistically, I think they will be pleasantly surprised.