

THE INVISIBLE COLLEGE OF THOMAS FRANCK

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We are all students of Tom Franck. We say this advisedly, for not all of us studied with him formally and some of us have not seen him for many months. But the news of his passing reminded all of us—as it reminded every living international lawyer—of how much we learned from him, and how much we still owe him for the work we now do.

We are all international lawyers. But between the five of us, we only begin to span the range of Tom Franck's intellectual domain. Some of us are teachers and writers of international law. Some of us are government lawyers, advising the executive and legislative branches on matters of foreign affairs and national security law. Several of us have worked with the American Society of International Law, which Tom led; several of us have published in the *American Journal of International Law*, which Tom edited; and some of us, like Tom, have pleaded cases before the International Court of Justice (ICJ) and worked on the vexing legal problems facing the United Nations (UN) system. But one measure of Tom's stunning productivity and remarkable breadth is that between the five of us, we have read only a portion of Tom's writings and covered only a part of the

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issues that fascinated him throughout his lifetime. As significant, we represent only a tiny fraction of the students that Tom taught and inspired.

Great teachers breed teachers. Great scholars inspire scholarship. Great international lawyers spur young attorneys to careers in international and foreign affairs law. And great human beings teach by countless kindnesses how to treat other people. Tom Franck did all of these, not just for us, but for myriad of his other students, some of whom write in this volume. When we heard of his passing, we five decided to combine our recollections of Tom. Although separated by decades, our joint remembrance paints a remarkably consistent picture of the Tom Franck we have lost. One of us, Harold Hongju Koh, now the Legal Adviser of the United States Department of State, remembers meeting Tom while looking for a job:¹

I first met Tom, cheerfully bowtied and moustachioed, twenty-five years ago at his NYU School of Law office. I already knew his story: that he had started, like so many great internationalists, in Canada—the home of Lester Pearson, John Humphrey, Louise Frechette, Louise Arbour, and Philippe Kirsch—before emigrating south even before I was born to start teaching in Lincoln, Nebraska. As a fledgling international lawyer, I read his classic *Who Killed Article 2(4)?*,² a penetrating analysis of how international law can constrain the use of force. As a young lawyer at the Justice Department, I consulted his *Foreign Policy by Congress*,³ written with Ed Weisband, which tackled challenging questions about the Constitution in foreign affairs. But what my first brief meeting with him taught me was how much his time at the United Nations Institute For Training and Research (UNITAR) had given him both unique inside knowledge of the UN's workings and a compelling vision of the organization's possibilities (later fleshed out in *Nation Against Nation*⁴). As I left, it struck me that I had just met both a mentor and a *mensch*: a kind, generous, warm adviser who would show me regularly how one can combine an open, affable demeanor with pragmatic idealism and steely commitment to principle.

That job interview began a rewarding quarter-century of friendship, during which we became comrades and kindred spirits. We renewed our friendship periodically over coffee at American

¹ See also Harold Hongju Koh, *A Toast to "Tom the Frank,"* 35 N.Y.U. J. INT'L L. & POL. 303 (2003), from which some of this recollection derives.

² Thomas M. Franck, *Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States*, 64 AM. J. INT'L L. 809 (1970).

³ THOMAS M. FRANCK & EDWARD WEISBAND, *FOREIGN POLICY BY CONGRESS* (1979).

⁴ THOMAS M. FRANCK, *NATION AGAINST NATION: WHAT HAPPENED TO THE U.N. DREAM AND WHAT THE U.S. CAN DO ABOUT IT* (1985).

Society meetings in Washington, with telephone calls commenting on article drafts, at academic conferences in Washington Square and distant places, in hallway conversations before and after we testified together in Congress, and over the occasional dinner in The Hague. But where Tom inspired me most was with his remarkable, unending stream of creative scholarship: calling on the United Nations to become an effective tool of global governance, vigorously promoting the rule of law in foreign affairs, identifying Kantian fairness as the defining norm to measure the performance of international law and institutions, and advocating recognition of democratic governance as a human right.

Just days before he died, I sat next to Tom at a conference honoring Andy Lowenfeld upon his retirement from their beloved NYU School of Law. Tom looked frail, in obvious pain, but the old spark, bow tie, and moustache remained. In moving words, Tom generously praised Andy Lowenfeld, reviewed their years together, and recounted how years of common struggle had turned them from colleagues to fast friends. Knowing that I was awaiting confirmation as Legal Adviser, he improvised his text to include me in his praise, wishing me well in my new assignment, and letting me know that on my shoulders rode his and Andy's hopes for a new dawn in America's embrace of international law. When he finished, we hugged, and I said a brief goodbye. I thanked him for everything, not realizing I was really thanking him for all he had taught me over the years.

As I write this today, from the Legal Adviser's chair, I realize that I and our country have not thanked Tom Franck enough. In an academic world that is often cold, he was always warm. In a political world where cynicism reigns, he was always an idealist. In a human world that often disappoints, he never disappointed. We do not just mourn the passing of Tom Franck. We say goodbye to Tom the Frank, Tom the Fair, Tom the Friend. I will miss him, but I will not forget him. And his ideas and passions will never leave me.

Another one of us, Miriam Sapiro, nominated to be Deputy United States Trade Representative, recalls Tom in this way:

Tom Franck was an extraordinary teacher, endowed with an abundance of intellect, wit, and passion that he shared liberally with those around him. If I had to choose just one term to describe him, it would be "magnanimous," a word whose etymology derives from the Latin for "great" (*magnus*) and "spirit" (*animus*).

I too met Tom twenty-five years ago, as a young law student drawn to the intersection of international law and policy. How fortunate I felt not only to find myself in his introductory course but to have him assigned as my adviser. I spent the next several months trying to penetrate Tom's formidable presence in the classroom and his busy schedule. He embodied the phrase "multi-tasking" before

it was popular, but Shelley Fenchel, Coordinator of the NYU Center for International Studies, did a masterful job of managing Tom and all of us with effortless grace. Just when I thought it might be time to contemplate a career in trusts and estates, Tom wrote me one of his famous letters suggesting I had a future in international law. The ticket to Tom's magic kingdom, I realized, was as simple as showing him a genuine commitment to the field. Many of Tom's students went on to challenging careers in the international arena because of his strong support and I came to understand that Tom thrived through us as well. He took great joy in our successes, professional and personal. That is the sign of a truly great leader, teacher, and friend.

Years later, Tom asked me to teach a course with him on the use of force in international law. Only Tom could write a comprehensive book on that subject in 191 pages.⁵ We taught together for five wonderful years. I still felt like his student and viewed his ability to treat me as an equal to be the skill of a great actor. One day I apologized to Tom that I would have to miss a class due to a trip. He told me not to worry, as another former student would be in town and happy to substitute. "Who is that?" I asked out of curiosity. "Mohamed ElBaradei," he replied nonchalantly. It was classic Tom. I shook my head in disbelief and counted my blessings to be working with a man who had inspired so many students to public service and yet remained so modest.

Tom had a profound respect for international law, not as a cold set of rules but as a vehicle for realizing humanity's nobler side. Undoubtedly his passion for the field was a product of his experience as a child in Nazi Germany. His deep commitment to human rights and a more just world and his love of living, learning, and teaching came through in all that he did. He left us with a legacy of wisdom that I shall continue to treasure for years to come.

Chris Borgen, a professor of international law, remembers this about Tom:

Tom Franck not only taught me international law; he taught me what it means to be a law professor.⁶ He clearly loved teaching, scholarship, and service. Now that I am a law professor myself, I have come to realize two things: very few excel at all three facets of the profession, and Tom was one of the few who did.

⁵ THOMAS M. FRANCK, *RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS* (2002).

⁶ And, of course, not only me. Former students of Tom Franck who graduated within a few years of me and who now teach include Kristen E. Boon (Seton Hall University School of Law), Marjorie Florestal (University of the Pacific McGeorge School of Law), Gregory H. Fox (Wayne State University Law School), Suzette M. Malveaux (Catholic University of America Columbus School of Law), and Virgil Wiebe (University of St. Thomas School of Law).

Consider scholarship. Not only are the breadth and depth of Tom's writings awe-inspiring,⁷ but his authorial voice was like his speaking voice: full of verve and wit, erudition and anecdote, and imbued with a sense that there are such things as right and wrong. He had an almost musical sense of the rhythm and pitch of the written word (perhaps owing to his appreciation of W.H. Auden). Reading Tom Franck's scholarship is not only enlightening, it is a joy.

Moreover, Tom was a true service-oriented scholar. When he was President of the American Society of International Law, I had the good fortune to be the Society's Director of Research and Outreach, a position he had created. He impressed upon me the importance of taking discussions of international law out of the ivory tower and into the venues where such discussions should matter most: the courts, the halls of Congress, the news media, and even the dinner tables around America. Years later, the "torture debates" proved him right.

But I think of Tom Franck most often as a teacher who cared deeply for his students. Each year, he convened an international conference where the students in his fellowship program would present their papers. Always present was a who's who of international law professors and diplomats from Africa, Asia, Europe, South America, and the United States. Consider how incredible this is: Tom put together his main program to showcase student work and put the experts in the role of commentators. Such generosity is all too rare. Tom was extraordinary, and he made the lives of those around him less ordinary.

Tom taught me that the scholarly enterprise is a privilege and a joy. Professors talk a lot about "academic freedom." For Tom Franck, that meant we have the freedom to focus on what is important, to work hard, to be engaged, and to try to make a difference. That is what Tom Franck did and what his life challenges us to do.

The fourth of our number, Peter Guthrie, an attorney at the Legal Adviser's Office at the United States Department of State, recalls:

I had the great privilege of studying at the feet of Professor Franck while at NYU during the fall of 2003. Although Professor Franck had "retired," the bowtie, moustache, intellect, and kindness all remained. 2003 proved to be a providential time to be Professor Franck's student as the recent invasion of Iraq illustrated the

⁷ For an excellent overview, see generally David Kennedy, *Tom Franck and the Manhattan School*, 35 N.Y.U. J. INT'L L. & POL. 397 (2003). Perhaps most astonishing for any of us who write for a living, David Kennedy calculates that as of 2003, Tom had written "[a] book every 17.8 months for 43 years. Or 6.34 publications a year—one every 8.2 weeks—for more than four decades." *Id.* at 397.

continuing relevance of his work and the reprise of his *Who Killed Article 2(4)?* article.⁸ Here was a man that could not only comfortably cite the writings of Thucydides, but did so in a way that resonated with immediate contextual meaning as he grappled with the implications for the international legal system of events happening right in front of our eyes. As interesting as those structural implications were, I more vividly remember one discussion in a Vanderbilt Hall seminar room on the practical consequences that should follow if, as he and many others argued, the 2003 invasion constituted a use of force unauthorized under international law. Professor Franck not only considered the types of response, such as withholding UN support for ongoing U.S. coalition efforts, that might make theoretical sense as an appropriate sanction, but he also encouraged us to wrestle with the humanitarian costs of such disengagement, particularly as Iraqi infrastructure and civilians were increasingly coming under attack by insurgents. Professor Franck, along with his co-teachers,⁹ engaged his students in addressing this and other contemporary issues of international law in a manner that was both intellectually honest and morally grounded. In doing so, he not only provided his students with the theoretical, historical, legal, and ethical foundations necessary to pursue a career in international law but also illustrated for us the many virtues of pursuing such a calling.

Professor Franck's path in international law involved overlapping roles as practitioner, scholar, and teacher. In all three of these roles, Professor Franck practiced what he preached: the necessity for lawyers to "stand tall for the rule of law."¹⁰ In doing so, he inspired me as a law student to pursue the calling of international law, and his words continue to remind me as a young attorney not to betray that calling. I count myself as one of the many fortunate to have gazed up at this giant of international law.

The last of us, Michael Mattler, now Minority Chief Counsel for the United States Senate Committee on Foreign Relations, remembers Tom in this way:

Much has been written about Professor Franck's contributions as a teacher, scholar, and practitioner of international law, and these were indeed staggering. He was both a philosopher and a technician, able to explain how and why the international legal system works and to marshal its rules and methods to address concrete

⁸ Franck, *supra* note 2.

⁹ I would be remiss if I did not mention that one of the other contributors here, Miriam Sapiro, co-taught one of my classes with Professor Franck. It is a further testament to his efficacy as a teacher and mentor that much of what is said here also applies to her and my other co-contributors.

¹⁰ Thomas M. Franck, *What Happens Now? The United Nations After Iraq*, 97 AM. J. INT'L L. 607, 620 (2003).

problems. He had a poet's gift for making an argument sing with grace, erudition, and authority. He was also a patient and devoted teacher, confronting his students with hard questions and showing them the pathways toward answering them.

But what I remember most, and most fondly, about Professor Franck was his extraordinary generosity.

Professor Franck did more than teach his students classroom lessons in international law. He opened his world to us. He wanted the junior fellows whom he picked to study with him—an eager but largely clueless bunch of second-year law students—to experience international law as he experienced it, and to share in his engagement with the people and institutions who make the international legal system function.

So Professor Franck invited us to sit not at his feet but at his table. And what a table it was. We met regularly with senior UN officials and diplomats. He invited us to help him litigate cases before the ICJ and to become active in the American Society of International Law. He assembled Supreme Court Justices and foreign ministry legal advisers for conferences to hear us present our research papers.

The opportunities Professor Franck gave us were exhilarating, humbling, and sometimes terrifying. But he gave us his confidence, well before we had earned it, helping us to believe we had contributions to make to the important discussions he invited us to be a part of. By setting high expectations for us and supporting us as we strove to meet them, he set us on paths of achievement.

In my post-NYU years, Professor Franck continued to be a mentor to me, delighting in my accomplishments and providing kind and wise advice when I needed it. My career path, which has included advising Secretaries of State and Senators on international law, drafting UN Security Council resolutions, and arguing before the ICJ, would scarcely have been possible without all that Professor Franck gave me. I was enormously fortunate to have Professor Franck as a teacher and friend, and I will miss him dearly.

What our recollections collectively teach is that Tom Franck is still with us. Tom Franck left behind far more than an extraordinary record of scholarship and ideas. By touching everyone he met with his intelligence, idealism, decency, and humanity, the childless Tom Franck gave birth to an invisible college of international lawyers.¹¹ What we share, as students of Tom Franck, are his commitments to principles of right process in global affairs, to Kantian fairness in international relations, and to a world governed by law, not by the nasty, brutish maxims of raw power. There will always be schools of

¹¹ Cf. Oscar Schachter, *The Invisible College of International Lawyers*, 72 Nw. U. L. REV. 217 (1977).

international law, but the Invisible College of Tom Franck—a school of teachers, scholars, and private and public practitioners of international law who learned by Tom's example—will continue to live and thrive through Tom's inspiration.