

A Research Process for the Entire World? Challenges in Foreign, Comparative, and International Law Instruction

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I. Introduction	357
II. Scaffolding Using a Process Framework	358
III. Unique Characteristics of FCIL Courses.....	361
IV. A Proposed Research Process.....	366
<i>A. Detailed Description of Framework.....</i>	<i>367</i>
<i>B. Choosing Language and Categories: Definitional Issues.....</i>	<i>371</i>
V. Application as a Scaffolding Tool	373
VI. Reflections	377
<i>A. Student Feedback</i>	<i>377</i>
<i>B. Instructor Feedback.....</i>	<i>382</i>
VII. Conclusion	383

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I. Introduction

“I’m sorry you felt you had to do work.”

That was my first instinctual response to a student evaluation comment made in spring 2021 after teaching a two-credit, semester-long course called Advanced Legal Research: Foreign, Comparative, and International Law. While the student said that they enjoyed the course, they also expressed unhappiness that our research exercises involved looking in so many different places and considering so many factors. It can be frustrating when we try so hard to reach students, and it is clear that students have not absorbed the lesson we hoped for. While sometimes difficult to hear, criticism can spark an idea or an innovation. After my initial reaction, I then thought about what the student was really saying: that they were simply overwhelmed by the sheer scope of the course and suffering from cognitive overload.¹

I certainly cannot blame students for feeling overwhelmed. Foreign, comparative, and international law (FCIL) research classes are difficult in this way for the instructor as well: What do I cover? What do I exclude? What do the students *actually* need? What do they *actually* have time for? While these concerns are common across all courses, they are particularly difficult in FCIL courses. When we think about it, foreign,² comparative,³ and international law⁴ really means the entire world. Can it ever be less than overwhelming?

To tackle these questions when planning to teach the FCIL course again, I went back to basics. A common refrain in research strategy across disciplines is to first make a plan, then utilize secondary sources to provide context and identify primary sources, and then dive into the primary sources. This framework for a research process is often given as research advice, but it can

1 “Cognitive load refers to the total amount of processing demands imposed on working memory in any given situation.” Elida V. Laski, *Instruction and Cognitive Load*, in SAGE ENCYCLOPEDIA OF CLASSROOM MANAGEMENT (W. George Scarlett ed., 2015); see Alyson M. Drake, *Building on CREAC: Reimagining the Research Log as a Tool for Legal Analysis*, 52 U. MEM. L. REV. 57, 67 (2021) (“[W]hen too much information is presented, the learner’s cognitive capacity is overloaded and much of the new information is lost.”).

2 Foreign law is the domestic law of a state that is not your own. “Generally, the law of another country.” *Foreign Law*, BLACK’S LAW DICTIONARY (11th ed. 2019). State is used in this article as a synonym for country or nation-state.

3 “The scholarly study of the similarities and differences between the legal systems of different jurisdictions, such as between civil-law and common-law countries.” *Comparative Law*, BLACK’S LAW DICTIONARY (11th ed. 2019).

4 This primarily includes public international law, which, at its most basic, governs the relationships between states, international organizations, and states and international organizations. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 101 (AM. L. INST. 1987). “International law, which in most other countries is referred to as ‘public international law’ is often distinguished from private international law (called conflict of laws in the United States). Private international law has been defined as law directed to resolving controversies between private persons, natural as well as juridical, primarily in domestic litigation, arising out of situations having a significant relationship to more than one state.” *Id.*

also be used as an instructional technique called scaffolding to break up the course into component parts.

This article will explore the suitability of a research process as a scaffolding technique in FCIL research courses. Part II will briefly introduce scaffolds and the use of this technique in law schools. Before we can apply a similar technique to FCIL courses, we have to understand what FCIL classes actually *are*, so Part III explores what these courses typically cover and how they are traditionally structured. By laying out the disparate structures of these courses, we start to see the pros and cons of using a research plan as a scaffolding technique in this context: Can there be a process that we can apply no matter what comes up, no matter the country or subject matter? Even if we can, will the process have so many caveats that it becomes meaningless, or can it help students better grasp what sources might exist? This is explored in Part IV with a proposed framework for a research process that was utilized in a two-credit semester-long FCIL course taught in spring 2022. This section explains how an instructor may discuss the framework with students and examines some ongoing issues in developing this framework and its vocabulary. Part V discusses how the process was used as a scaffold and provides some examples from course materials. Finally, Part VI reflects on both student and instructor feedback on the proposed framework to evaluate whether it proved to be a useful tool.

II. Scaffolding Using a Process Framework

This part does not seek to introduce brand-new pedagogical methods or provide an in-depth discussion on scaffolding; rather, it serves as a bridge to apply existing discussions of scaffolding techniques to FCIL courses specifically. In service of that, this section will briefly summarize the instructional technique of scaffolding and its benefits.⁵

“Educational scaffolding is a teaching method in which concepts build upon one another incrementally, with instructional support along the way.”⁶ The technique requires breaking up a new, complex concept into smaller, simpler parts (sometimes called “chunks”) that are easier to understand.⁷ The “chunks” begin relatively simply and, over time, become more complex, building on the material previously learned so that “students learn the pieces before they are

5 For those interested in instructional techniques, the sources cited in this section are a great place to start.

6 Adam N. Eckart, *Deal Me In: Leveraging Pedagogy to Integrate Transactional Skills into the First Year Legal Research and Writing Curriculum*, 21 U.C. DAVIS BUS. L.J. 125, 147 (2020). This definition is echoed in other pieces on the topic: See Charlotte D. Schneider, *Using Scaffolding Techniques for Legal Research Instruction*, 2 LEGAL INFO. REV. 61, 69-70 (2017) (quoting Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 93-103 (2010)); Drake, *supra* note 1, at 73-74.

7 Drake, *supra* note 1; Anne West, Janet Swason & Lindsay Lipscomb, *Scaffolding, in INSTRUCTIONAL METHODS, STRATEGIES AND TECHNOLOGIES TO MEET THE NEEDS OF ALL LEARNERS* (Paula Lombardi ed., 2019), <https://granite.pressbooks.pub/teachingdiverselearners/chapter/scaffolding-2/>.

required to understand the whole.”⁸ Scaffolding supports student learning by enabling students to connect known information to new information, which will make them better able to solve complex problems on their own.⁹

Scaffolding techniques can take many forms, including content scaffolding, task scaffolding, and material scaffolding.¹⁰ Alyson Drake, who writes extensively on the science of learning and instructional techniques for law students, summarizes these methods:

In content scaffolding, the professor selects content that is not too unfamiliar to the student, so students can focus on the skill being taught and not get lost in new content In task scaffolding, the professor models the steps that must be taken to complete a task while verbalizing her thought processes to the student [M]aterial scaffolding utilizes written prompts to help students perform a task or strategy.¹¹

These techniques can assist students in overcoming cognitive overload, more explicitly identifying similarities and differences across a variety of legal problems, and giving them a structure to organize their work.¹² Ultimately, the goal is that by solving some of these problems we increase student retention of the course material.

Writing about scaffolding techniques in legal research instruction is a relatively recent practice. Authors have written, however, on using scaffolding techniques to teach an advanced lesson on statutes and regulations (2016),¹³ incorporate transactional skills into 1L legal writing and research (2020),¹⁴ and teach legal analysis in research and writing (2021).¹⁵ What would be useful to explore—a topic that is seemingly missing from the literature—is the relationship between the research process and scaffolding techniques.¹⁶ While the idea of process-based instruction has existed and been debated for decades,

8 Drake, *supra* note 1, at 75.

9 Cindy E. Hmelo-Silver, Ravit Golan Duncan & Sclark A. Chinn, *Scaffolding and Achievement in Problem-Based and Inquiry Learning: A Response to Kirschner, Sweller, and Clark* (2006), 42 EDUC. PSYCH. 99, 101 (2007); CHRISTINE HARRINGTON & TODD D. ZAKRAJSEK, DYNAMIC LECTURING : RESEARCH-BASED STRATEGIES TO ENHANCE LECTURE EFFECTIVENESS 39 (2017).

10 Drake, *supra* note 1, at 75.

11 Drake, *supra* note 1, at 75 (citations omitted).

12 See Drake, *supra* note 1, at 72-75. For a discussion on cognitive load, see *id.* at 65-69 (discussing the science behind cognitive load); *id.* at 65-66 (“[C]ognitive load theorists argue that learning complex, new information exhausts students’ finite working memory, and posits that there is a limit to how much information students are able to absorb at one time.”); Schneider, *supra* note 6, at 70-72; Laski, *supra* note 1.

13 Schneider, *supra* note 6.

14 Eckart, *supra* note 6.

15 Drake, *supra* note 1.

16 Last searched for June 2023.

legal educators would all benefit from an exploration of the use of a multistep research process from a science-based learning perspective.¹⁷

While this article does not fill this gap, a short explanation of how a research process could be used as a scaffold in a legal research class focused on domestic law is necessary for establishing a comparison to FCIL courses as discussed in the rest of this paper. Many variations of a multistep research process might be used in instruction. The one I use here is:

Step 1 - Preliminary Analysis

Step 2 - Secondary Sources

Step 3 - Codified Law (aka Statutes and Regulations)

Step 4 - Judicial Precedent

This is not a checklist—we do not always use it in order—but it is a way of thinking about the materials available to us and how we might go about finding and using them.

In various ways, many teachers likely use this process as a scaffold whether intentionally or not. It is common in legal research classes to structure the course around these steps, for smaller homework to focus on specific steps, leading up to larger assessments that incorporate multiple steps or all of them.¹⁸ When we remind the students of the three branches of government and discuss which branch creates which legal sources, we are connecting old to new information (content scaffolding).¹⁹ When we execute the research process, it models for them how they can complete problem-solving for a legal question (task scaffolding). When students are required to write down their process and strategy, it helps them solve legal problems by prompting them about the process (material scaffolding).²⁰

17 People have written about using research process frameworks in legal research instruction for decades. See, e.g., MARJORIE DICK ROMBAUER, *LEGAL PROBLEM SOLVING: ANALYSIS, RESEARCH, AND WRITING* (5th ed. 1991). An early article argues that a process-based framework reflects what students are also seeing in their doctrinal courses and “reflects the problem-solving process the course is designed to teach.” Christopher G. Wren & Jill Robinson Wren, *The Teaching of Legal Research*, 80 *LAW LIBR. J.* 7, 34 n.90 (1988). See Robert C. Berring, *Collapse of the Structure of the Legal Research Universe: The Imperative of Digital Information*, 69 *WASH. L. REV.* 9, 24 n.34 (1994). (describing a “heated exchange of articles” on whether research instruction should be process-based or bibliography-based).

18 For a collection of teaching materials, see *Sourcebook for Teaching Legal Research*, AALL ACADEMIC LAW LIBRARIES SPECIAL INTEREST SECTION, <https://www.aallnet.org/allsis/resources-publications/sourcebook-teaching-legal-research/> (last visited Sept. 20, 2023).

19 This strategy of connecting prior knowledge to “new” knowledge is particularly useful for balancing cognitive load. E.g., HARRINGTON & ZAKRAJSEK, *supra* note 9.

20 These are not the only uses of the research process in instruction, nor is the research process always the best method, but these broad strokes give us a shared vocabulary for the discussion throughout the article.

Another important aspect of a research process as a scaffold is that it is a visual tool we can literally show to students while we are discussing the framework. Using and repeating a visual representation of the process to students provides dual coding of the material, which studies have shown can help students better retrieve information from their long-term memories when they need it.²¹ It also provides instructors with an opportunity to explain to students *why* they are learning in a particular way, which in turn helps increase their motivation in the course, which can also help with cognitive overload and therefore retention.²² Telling students *why* we are being repetitive with information, *why* we are asking them to recall prior knowledge, and *how* this will help them execute a strategy independently is a strong tool for instructors because students want to be partners in learning.²³ Being explicit about our objectives also helps us as instructors think critically about *how* and *why* we are structuring our courses, which enables us to be better educators.

Given that a research process can be a useful tool in a legal research course for these reasons, we must first identify the unique characteristics of FCIL courses to see how scaffolding might apply and whether it can provide any similar benefits in these courses.

III. Unique Characteristics of FCIL Courses

Though FCIL jobs are often associated with the collection of specialized materials, FCIL librarians teach just like many other reference librarians.²⁴ According to a 2013 survey, 70% of librarians who have some FCIL

21 *E.g.*, Joshua Cuevas & Bryan L. Dawson, *A Test of Two Alternative Cognitive Processing Models: Learning Styles and Dual Coding*, 16 THEORY & RSCH. EDUC. 40, 53-54 (2018) (“When learners were asked to process both visual and linguistic information simultaneously, they retained substantially more information, twice as much, as those who were prompted to focus only on auditory/linguistic information.”).

22 Today’s students, largely from Generation Z, are pragmatic and “want to know, at the outset, how a skill or tool will help them in their careers.” Olivia Smith Schlinck, *OK, Zoomer: Teaching Legal Research to Gen Z*, 115 LAW LIBR. J. 269, 282, 286-87 (2023) (“Professors can be a source of motivation, particularly if they are enthusiastic and involved.”).

23 *See id.* at 290-91; Aliza B. Kaplan & Kathleen Darvil, *Think and Practice like a Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMM’N & RHETORIC: JALWD 153, 180-81 (2011) (on the importance of collaboration).

24 According to a description of FCIL librarians in a recent AALL Salary Survey: Serves as a reference librarian but focuses on providing reference assistance, research guides, bibliographies, and instructional materials related specifically to foreign, comparative, and international law (FCIL). Assists with collection development in FCIL materials, and works with faculty and students connected to FCIL May offer a general introductory course in FCIL research skills and/or several mini courses devoted specifically to particular types of specialized research in these areas. Usually requires facility with at least one foreign language Has a fundamental knowledge of Anglo-American legal research tools and strategies, as well as both civil law and common law legal systems and international organizations . . . ability to teach in a classroom setting as well as in less formal settings.

AM. ASS’N L. LIBRS., AALL BIENNIAL SALARY SURVEY & ORGANIZATIONAL CHARACTERISTICS 65 (2021), https://www.aallnet.org/salary_survey/aall-salary-survey-2021/.

responsibilities teach on the subject in some capacity; 52% of the respondents “teach a course on FCIL research, analysis, and writing.”²⁵ This section will explore the content and structure of these courses, which will inform the proposed framework.²⁶

First the obvious: FCIL research courses differ from those that focus on U.S. domestic law in that both the subject matter and the legal systems in question are very different. Typically, coverage includes²⁷:

- Public international law,²⁸ including treaties, customary international law, international courts;
- Foreign law, particularly source types and civil versus common law research;
- Transnational issues, particularly related to commerce and/or private international law (aka conflicts of laws); and
- Information about the European Union, United Nations, and other IGOs and NGOs.

Course structures also vary widely: Some syllabi lean more heavily toward international law than others; some are seven-week courses and others are a full semester; some are one credit and some are two; some may be ungraded. Courses may be taught to J.D.s only, LL.M.s only, or a combination of J.D.s and LL.M.s or other graduate degree student.

Although FCIL classes are in the category of “advanced” research classes, they are more introductory than their domestic-focused counterparts because the above subjects are often completely new to students. Most students receive some kind of basic domestic research instruction in their 1L year, and advanced research classes give them an opportunity to dive deeper into general U.S. law or take a more sophisticated look at specific subjects like tax or administrative law.²⁹ Unless an FCIL course has a pre- or co-requisite

25 Neel Kant Agrawal, *Training in FCIL Librarianship for Tomorrow's World*, 105 LAW LIBR. J. 199, 211 (2013).

26 *Infra* Part IV.

27 Review of syllabi from the *Syllabi and Course Materials Repository*, AALL FCIL-SIS <https://www.aallnet.org/fcilsis/education-training/teaching-fcil/syllabi-course-materials-database/> (last visited Sept. 20, 2023). Of course, this is likely not a fully accurate indicator of all teachers, and some of the materials are more than ten years old, but it gives us a baseline, as there is a lot of information-sharing involved in the process of developing an FCIL course. See Agrawal, *supra* note 25 (“Common methods among the respondents for developing a curriculum for a course on FCIL research include adapting a syllabus utilized by another instructor, consulting the many syllabi posted on the AALL FCIL-SIS web site, and speaking with colleagues.”).

28 This seems to be the most common type of international law covered. For a brief overview of the sources of public international law, see Vicenç Feliú, *Update: Introduction to Public International Law Research*, GLOBALEX (Mar./Apr. 2021), https://www.nyuulawglobal.org/globallex/Public_International_Law_Research.html#_Sources_of_Public.

29 See Schneider, *supra* note 6, at 64 (“Students coming into advanced legal research have

for a doctrinal international law course, instructors have to assume students do not have preexisting knowledge of the subject matter. Many instructors may include an interest survey in an effort to evaluate students' preexisting knowledge, and while this can be helpful, students will still be coming from a wide variety of backgrounds.

This means that an FCIL course often spends more time introducing basic concepts than other advanced research courses. Foreign law is perhaps the most familiar to students by analogy to U.S. domestic law; however, it is a small subset of these classes, and each legal system is still different. Thanks to 1L year, most students know what statutes are and who makes them in the United States. But when discussing statutes in foreign law in an FCIL class, we also have to at least discuss gazettes³⁰ (basic government publications for which there is no exact U.S. equivalent) and, more critically, legal families (traditionally common versus civil law systems) and how that distinction affects statutes and statutory interpretation.³¹ Engaging with this idea of legal families, discussing how these systems differ, and why, helps students understand differences and similarities and provides them with basic information to help them be culturally competent when interacting with lawyers educated in a foreign legal system.³²

When it comes to public international law, sources are drastically different from domestic law sources. At their most basic, the sources of public international law are classified as conventions, customary international law, and general principles of law; judicial decisions and scholarly writings can serve as “subsidiary means” of determining international law rules.³³ To contrast international and foreign sources of law, consider:

knowledge from, at least, an entire first year of law school; the knowledge and skills from those foundation courses plus general knowledge about civics provide the requisite footing for using scaffolding techniques.”).

30 “An official gazette is the legal newspaper of a country, or of an administrative part of a country, which publishes the text of new laws, decrees, regulations, treaties, legal notices, and court decisions. The laws published in official gazettes are primary law in the official source; publication in the gazette, in many cases, initiates jurisdiction. The text published is the authoritative version, and commonly, the only published version.” *Official Gazettes*, CTR. FOR RSCH. LIBRS., <https://www.crl.edu/collections/topics/official-gazettes> (last visited June 18, 2022).

31 See JOHN HENRY MERRYMAN & ROGELIO PÉREZ-PERDOMO, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA* (2019).

32 See Aastha Madaan, *Cultural Competency and the Practice of Law in the 21st Century*, PROB. & PROP. (Mar. 1, 2017), https://www.americanbar.org/groups/real_property_trust_estate/publications/probate-property-magazine/2016/march_april_2016/2016_aba_rpte_pp_v30_2_article_madaan_cultural_competency_and_the_practice_of_law_in_the_21st_century/.

33 RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102 (1987). This listing of sources is pulled from Article 38 of the Statute of the International Court of Justice. *E.g., id.*; HUGH THIRLWAY, *THE SOURCES OF INTERNATIONAL LAW* (2d ed. 2019).

From where does international law derive its content and its authority? At the level of domestic law, questions of this kind rarely need to be posed, because the answer in most cases is evident. A fundamental element of a legal and social structure is a legislature, whatever particular form it may take. If the legislator has spoken, the result is (unless otherwise stipulated) binding law, to be observed by all persons present on the territory. The primary “source” of law is thus the legislature. In some legal systems, there may exist also a body of law established over the years by decisions of the courts, not in application of legislation but of a body of “common law” or “customary law,” and this too may be regarded as a “source.”³⁴

As an example of this in the classroom, an advanced research course in U.S. law often has time to include legislative history, at least in part thanks to an existing basic understanding of statutes from the 1L year. In an FCIL course, teaching *travaux préparatoires*—what a U.S. researcher could analogize as legislative history for treaties³⁵—is difficult to fit into a treaties class when you have to spend so much time on what treaties are and how we find them (a task that can be much more difficult than identifying statutes).

Beyond this specific example, and looking at the sources of international law more broadly, the history of the international system is critically important and also difficult to cover in a limited time. While students will (hopefully) receive this kind of background on the U.S. legal system throughout their law school classes, only a doctrinal international law class would provide those history lessons and context to help students develop a deeper understanding of the system.³⁶ Learning this context will also enable students to think critically about the international system and its effectiveness for our current world. Primarily, the structure of public international law has deep roots in the Western European system of states³⁷ and can often reflect a view of a world that exploits the colonized for the benefit of the colonizers.³⁸ Relatedly,

34 THIRLWAY, *supra* note 33, at 2.

35 A better term is drafting history or negotiating history. For more, see Jonathan Pratter, *Update: À la Recherche des Travaux Préparatoires: An Approach to Researching the Drafting History of International Agreements*, GLOBALLEX (Jan./Feb. 2021), <https://www.nyulawglobal.org/globalex/Travaux-Preparatoires.html>.

36 “It is not so much that modern practitioners and commentators rely directly on the history of international law. (Although they sometimes do.) Rather, knowledge of the historical development of international law can guide practitioners to use its modern forms most effectively.” ANTHONY S. WINER, MARY ANN E. ARCHER & LYONETTE LOUS-JACQUES, *INTERNATIONAL LAW LEGAL RESEARCH* 21 (2013).

37 See Rainer Grote, *Westphalian System*, MAX PLANCK ENCYCLOPEDIA OF PUB. INT’L L., <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-c1500> (June 2006).

38 See Prabhakar Singh & Benoît Mayer, *Introduction: Thinking International Law Critically: One Attitude, Three Perspectives*, in *CRITICAL INTERNATIONAL LAW: POSTREALISM, POSTCOLONIALISM, AND TRANSNATIONALISM* 13 (Prabhakar Singh & Benoît Mayer eds., 2014) (“Thus for the

the growth of the international system in such areas as criminal law, human rights, and even transnational business can stretch the basic conception of the sources of international law to their breaking point as they seek to solve modern problems.³⁹

With all these different areas of law and legal systems and the importance of history to truly mastering the subject, it is difficult to have a single throughline for the classes to revolve around the same way that happens with U.S. domestic law and the use of a multistep research process. That is not necessarily a bad thing—after all, international legal research is difficult and uses a variety of sources found in a myriad of places, so it may make sense that the classes reflect that research process. When doing research on foreign and international law topics, rarely can one rely just on Westlaw and Lexis,⁴⁰ or just free internet sources, or just print materials—rather, it is a careful combination of strategic use of these tools that gives the best results. The influential FCIL librarian Adolf Sprudz⁴¹ once said in regard to FCIL research:

Potentially, international legal research must cover a vast and complex field of operations. As a result of the plethora of materials, researchers may be faced with numerous and varied difficulties. For those with considerable subject expertise, appropriate bibliographical know-how, and adequate language capability, research in the international field will be considerably easier than for novices accustomed only to the well organized predictability and effectiveness of United States legal research sources. Although the importance of foreign and international legal materials has long been recognized by both the scholar and practitioners, complaints

longest time, international law was not only oblivious of the production of a fixed colonial subject by colonizers, but also in denial of its colonial charges of slavery and murder of natives in the name of colonial administration Essentially born of the need to find new markets, raw materials, and to defend captured ships full of spices, international law came clothed in the vocabulary of freedom and liberty (such as open sea and navigation) only to unleash colonization in the process.”). This is very similar to the idea, if not the same idea, of teaching critical theory in doctrinal classes. *E.g.*, Jerry L. Anderson, *Law School Enters the Matrix: Teaching Critical Legal Studies*, 54 J. LEGAL EDUC. 201 (2004) (in the U.S. legal academy); Emerge Masiya & Given Mdluli, *Critical Legal Education: A Remedy for the Legacy of Colonial Legal Education?*, 14 PRETORIA STUDENT L. REV. 70 (2020) (in South Africa); Nicholas F. Stump, “*Non-Reformist Reforms*” in *Radical Social Change: A Critical Legal Research Exploration*, 101 B.U. L. REV. ONLINE 6 (2021) (in U.S. legal research classes).

39 See, e.g., Michele Olivier, *Exploring Approaches to Accommodating Non-State Actors within Traditional International Law*, 4 HUM. RTS. & INT’L LEGAL DISCOURSE 15 (2010); Timothy P. Terrell & Bernard L. McNamee, *Transovereignty: Separating Human Rights from Traditional Sovereignty and the Implications for the Ethics of International Law Practice*, 17 FORDHAM INT’L L.J. 459 (1994).

40 For coverage on FCIL materials generally on Westlaw and Lexis, see Janet Kearney, *Resource Reviews: International Materials on Westlaw and Lexis: An Overview*, FCIL NEWSLETTER, Feb. 2021, at 4.

41 See Issue 3 of the ninety-fifth volume of *Law Library Journal* (2003) for tributes.

about the inadequacy of international legal documentation and its bibliographic structure are voiced repeatedly.⁴²

As much as we might wish, the arrival of the internet since Sprudz wrote this in 1983 has not improved or perfected the landscape. Marci B. Hoffman, an author of many FCIL research books, has described it well: “Some people believe that all of international law is now available for free on the web. Other people believe that the truth of international law lies only in the dusty volumes on a library shelf. I fall somewhere in between.”⁴³

IV. A Proposed Research Process

With all of these differing considerations swirling around an FCIL syllabus, students need some structure that can extend beyond one class if they are going to retain any of the information that might be covered in an FCIL course. Some *thing* that can serve as a way to think about the materials that might exist on a given topic and that also gives them a way to think about the process and strategy they might use on a given question. As an instructor, I wanted a better way to organize the course, something that I could use to make these previously implicit connections explicit and to give some repetitive structure across the course. I use the four-step version of the U.S. research process to teach domestic legal research for rLs,⁴⁴ and my students and I have experienced many of the benefits of scaffolding in that context.

A process like this needs to have room to grow. It needs to be less specific than the U.S. framework so it can be tailored to different types of law, depending on the research question. It needs to force us to identify the exact context of the system we are working in so we can be sure we are applying materials correctly, which is critically important when researchers encounter new topics. It also needs to clue us in to the types of secondary and primary materials that may exist.

Here is the basic outline of a proposed three-step research process:

Step 1 – Research Plan.⁴⁵ Identify →

- The question/task
- Type of law
- Specific entities of interest and key characteristics
- Relevant facts
- Key search terms/concepts

42 Adolf Sprudz, *International Legal Research: An Infinite Paper Chase*, 16 VAND. J. TRANSNAT'L L. 523 (1983).

43 MARCI B. HOFFMAN, *INTERNATIONAL LEGAL RESEARCH IN A NUTSHELL* (3d ed. 2021).

44 *Supra* Part II.

45 This could also be called preliminary analysis, and maybe it should be. At Fordham Law, instructors generally use that term in the rL teaching program to ensure consistency across the research curriculum.

- Plan of attack⁴⁶

Step 2 – Secondary Sources.

- Reference Materials: Finding aids, dictionaries, and encyclopedias
- Books and journal articles
- Gray Literature: Reports, working papers, other

Step 3 – Primary Sources.

- Locate the primary sources. Identify what the primary materials are for that area/jurisdiction and whether/how they are binding—identify the hierarchy.
- Consider strategies for finding.
- Apply!

By just having these three steps, students can have some sort of guidance system for research. No matter the topic, the jurisdiction, or the law type, they will need to create a research plan, probably consult secondary sources of a certain type, and refer to some kind of primary source, whatever that may mean. As students are accustomed to doing in the U.S. basic legal research class, they may move between pieces of this process in different order or move back and forth between them.

The next section provides a more detailed outline, with notes for the various areas that might be covered in an FCIL class. Then, because this framework is not without its challenges or complicated questions, the article ends by discussing definitional issues and concerns that arose in creating the framework.

A. Detailed Description of Framework

This description is based on the topics covered in an FCIL class in spring 2022. It contains my course notes on how I describe the research process to my students throughout the semester. Part V will focus on how scaffolding this was utilized throughout the course.

Step 1 – Research Plan: Identify →

The question/task: What exactly are you looking to identify or answer? Include here related ideas or follow-up questions so you can write them down and process them.

Type of law: How would you classify the overall area of law? Things to ask about: Is this about one country? Two? Multiple? Is this public or private in nature? Is it specific to an organization or a topic more broadly? Might you call it foreign, comparative, public international? Across multiple types? Here we are classifying the information so that we may use the following to fill in the context—context is key.

46 Many would call this “Next Steps,” but I like to be more aggressive with it, as it more directly emphasizes that there need to be specific measurable plans taking into account what they know about research and not just general steps like “find a secondary source” or “find cases.”

Specific entities of interest and key characteristics: Are you looking into a specific foreign jurisdiction or international organization? Some important considerations may be:

Foreign Law: jurisdiction; legal system and consequences of that (civil/common/etc.); governmental entity (national/federal/other political subdivision); area of law and what documents you think you might need.

Comparative Law: Ask these questions of each country.

International Law - Treaties: (when you know you have one) name; classify type: bilateral/multilateral; parties; any international organization involved that you know of?

International Law - International Organizations: (when you know you have one) What are the relevant bodies within the organization? What documents are created by the organization?

International Law - By Topic: Area of law and potential types of applicable international law, any international organizations. This includes noncodified international law (customary international law and general principles).

The EU: Identify the relevant primary sources or institutions involved; do you need to also include foreign law?

Relevant facts.

Key search terms/concepts:

- Parties - Is there a legal relationship between those involved that could affect what primary sources govern?
- Places - Is there something about where an event occurred that makes it legally significant? This is *not* about jurisdiction.
- Things - Are there any tangible or intangible objects? (We may also call this corporeal or incorporeal objects.) Also a catchall category for other important terms that may not fit elsewhere.
- Potential Legal Claim/Defense - Do you know any existing legal terminology? If not, make sure you've noted somewhere in your key concepts the conduct at issue, the mental state, and the existing injury.

Plan of attack: Based on what you know above, what sources in what order will you look to in an effort to answer the question? Steps should be concrete.

*Tip: You may need to do some preliminary research to answer some of these questions. Use a research guide on the topic/jurisdiction to fill in or update the above; as you learn more going through the steps below, update your plan.

Step 2 - Secondary Sources:

These provide commentary and analysis. "Secondary sources" is terminology used in U.S. law, and we're going to continue to use this term though not all legal research systems may use this broad category or terminology; it is our catchall. Use these materials to find background information that will help

you gain broader context for specific issues or jurisdictions; to identify the relevant institutions; to identify primary law/major documents; and/or to do a deeper dive. We may use all; we may use one; we may go in any order, all depending on the context of your question.

Reference Materials: Finding aids, dictionaries, and encyclopedias - These may give more substantive background or suggest specific titles or search strategies.

Finding Aid: Any source that helps you find other sources. A finding aid may serve as only a finding aid or it can provide some guidance. As an example of the former, think of a library website or Google; these websites help you find materials and are used throughout the research process. (We will practice with specialty finding aids, like the Index to Foreign Legal Periodicals.) As an example of the latter, a research guide—in addition to information they give you on the context of the country/topic, do they give you leads on secondary or primary sources? They could also be helpful in expanding your research plan to help better focus your research.

Dictionaries: Use for vocabulary you don't understand and to equate concepts in foreign law—even the same words might not mean the same thing. There are even common-to-civil-law dictionaries you may want to consult.

Encyclopedias: These are very important and useful for topics in comparative and international law. Overview important differences, organizations involved, history, etc. We say overview, but note that they can still be in-depth and authoritative.

Books and Journal Articles (aka Scholarly Works): Consult specialty sources as finding aids or places to dive deeper. This is a good time to consult a librarian, because there are so many of them, and not all workplaces have the same ones. (Consider such sources as specialty databases, certain titles, or material types that can be recommended.) Expand using indexes and keyword searches in the appropriate finding aids.

Gray Literature: Reports, working papers, other. These will be particularly important in international law topics. This is where we will group other sources that do not fit neatly into the other categories.

*Tip: Pay close attention within for references to other secondary sources and primary materials.

Step 3 - Primary Sources:

Locate the primary sources.

Identify what the primary materials are for that area/jurisdiction and whether/how they are binding; identify the hierarchy.

Foreign law: domestic legal materials (legislation/regulations/cases/constitutions)

International Law - Treaties:

- Find the text. Are they in force?

- If there's an organization involved—is there any enforcement documentation that's relevant, from a committee or other adjudicatory body?
- *Travaux préparatoires*—if background is needed.
- Context: Consider for U.S. treaties any domestic obligations: self-executing or non-self-executing? (Has a court made this determination? Is there a RUD on it?) Who are the parties? Are there any RUDs? Has there been any subsequent modification of the treaty? If so, identify the above for that as well.

International Law: Customary International Law (CIL): Where are you trying to prove CIL exists, and have they already recognized it as a primary source for that entity? If recognized by an entity in a primary source, does that source have binding effect?

Find those documents used to prove state practice and *opinio juris*. Nonexhaustive examples:⁴⁷

- State practice: diplomatic acts and correspondence, conduct in connection with resolutions/activities of international organizations; executive conduct; conduct in connection with treaties; legislative and administrative acts; decisions of national courts
- *Opinio juris*: public statements on behalf of state; official publications; legal opinions of the government; diplomatic correspondence; decisions of national courts; treaty provisions; conduct in connection with resolutions/activities of international organizations.

Consider: Does it prove state practice? *Opinio juris*? Both? In what way does it prove what the state thinks is the CIL principle—if a foreign primary source, how does that country treat that source?

European Union:

- Primary legislation: Treaties—same questions as on treaties above
- Secondary legislation: Regulations, directives (see also, national transposition aka foreign law), decisions
- Context: Regulations: Binding in member states—matter of “general application” Directives: Requires states to implement it nationally; “binding as to the result to be achieved”; will need to check for foreign law here likely—see foreign law above Decisions: adjudications binding between two parties—most common in competition decisions by the European Commission
- Other potential: Court of Justice of the EU. Context: Not stare decisis but do often rely on prior case rules

47 These specific examples of possible proof of customary international law are from the Report of the Int'l L. Comm'n, at 119-56, U.N. Doc. A/73/10 (2018), which includes the *Text of the Draft Conclusions on Identification of Customary International Law* with commentaries.

Some strategies for identification:

A) *I have a citation, and existing sources I've reviewed did not link directly.* In any order:

- Google – government websites or free specialty sources.
- WorldLII, <http://www.worldlii.org/>.
- Research guides – may tell you websites or print titles of the publications.
- Bluebook – may tell you websites or print titles of the publications.
- Libraries – search for print titles or databases.
- Librarian consultation.

B) *I am researching more generally by topic.* Follow steps I and II above to understand the topic, get citations and maybe direct links. Then in any order:

- Research guides – may tell you websites, specialty databases, or print titles.
- Libraries – search for databases and print collections.
- Librarian consultation.

Apply!

B. Choosing Language and Categories: Definitional Issues

There are numerous difficulties when using cross-cultural terminology as used in this framework. Perhaps the most obvious, important, and even controversial choice in this framework is the use of the terms secondary and primary sources. Let us examine the problems on just one particular source: how to classify cases.

In civil law jurisdictions, cases are considered secondary sources—they do not establish laws, and they are not binding.⁴⁸ In the United States and other common law countries, cases can establish laws and are considered primary sources, but not all of them are binding; we would call this a nonbinding case that is still primary, but it would be persuasive and not mandatory authority. So where do cases fall in this framework? If you identify in step I that you are looking at a civil law country, then you should put cases in step II because they are secondary; but if you are looking at a common law country, then you should put cases in step III because they are primary.⁴⁹

48 HOFFMAN, *supra* note 43, at 30. See JOHN G. APPLE & ROBERT P. DEYLING, A PRIMER ON THE CIVIL-LAW SYSTEM 36 (1995), <https://www.govinfo.gov/app/details/GOVPUB:JU13-PURL-LPS55055> (“In civil-law systems, the role and influence of judicial precedent, at least until more recent times, has been negligible (possibly as a result of Justinian’s dictum, quoted earlier); in the common-law countries, precedent has been elevated to a position of supreme prominence.”).

49 Note that we are using broad brushstrokes here to describe characteristics common to legal families. This is complicated further by the increasing similarities we see in legal systems around the world. It is extremely important to note that many scholars suggest moving beyond this distinction when it comes to the use of cases in civil and common legal systems. On the number and use of cases, e.g., A.N. YIANNPOULOS, CIVIL LAW SYSTEM, LOUISIANA AND COMPARATIVE LAW: A COURSEBOOK, TEXTS, CASES, AND MATERIALS 94 (2d ed. 1999) (“Yet, in all civil law countries deviation from settled judicial practice needs special justification

Rather than try to decide exactly how to categorize each source depending on the legal system, in this context I propose a broad categorization of sources that focuses more on authorship and purpose in line with the basic nonlegal classifications of primary and secondary sources.⁵⁰ By thinking of the function of source types, it can help us decide when in the research process to look for something.

This is not a new classification scheme I am proposing; rather, it takes the most common research advice, using common source definitions, and considers how that process can be turned into an instructional tool for a highly specialized course to help make strategy explicit for students. It might be described to students as:

- Primary = government source or other type of original source from a government entity of some kind; does NOT have as its purpose the analysis or explanation of the law; rather, it is a source of law or could be categorized as an enforcement document. This applies across foreign and international law, so U.N. documents would be classified here.
- Secondary = not by the governing entity; DOES have as its purpose the analysis and/or explanation of the law; created after primary sources.

Based on these definitions, cases then would fall into primary materials—they are authored by the government; they are designed to serve a governmental function; and they are not mainly authored to explain the law to a broad audience.

This does not solve all categorization problems for all sources: what about a government report on a historical issue, like from a government library or law reform body? Would that be gray literature because of its purpose, or a primary material because of its authorship? I do not think something this nitty-gritty needs to be answered within the framework—the most important thing is not the name of how we classify or categorize documents, but that we understand the context, which is why noting the role or context of the primary source is an explicit feature of the framework so that we use the appropriate source at the appropriate time.

Another example illustrates other challenges. Say you are researching the law in France. In a broad sense, cases are not binding in France; they are

... On the other hand, . . . it has been suggested that the increase of precedents in the United States will eventually lead to an eclipse of the *stare decisis* doctrine.”). On the use of judicial review, e.g., Steven G. Calabresi, *The Global Rise of Judicial Review Since 1945*, 69 CATH. U. L. REV. 401 (2020).

50 Definitions for these terms abound. They are very often found in library research guides that give general research guidance; when described in specific academic areas, they indicate what they might mean more to a particular discipline. See, e.g., *Primary Sources: A Research Guide*, HEALEY LIBR. - UMASS BOS. (Sept. 29, 2023), <https://umb.libguides.com/PrimarySources/secondary>; *Primary and Secondary Sources*, GINN LIBR. - TUFTS UNIV., <https://ginnlibrary.tufts.edu/primary-and-secondary-sources> (last visited Oct. 5, 2023); *Library Research Guide for the History of Science: Introduction*, HARV. LIBR. (Sept. 18, 2023), <https://guides.library.harvard.edu/HistSciInfo/secondary>.

merely illustrative—but many attorneys read and use cases all the time. They are still issued by government officials, and they still do not set out to fully explain the law. I would class them as primary for those two reasons; *but*, for a beginning researcher on French law, it would be important to write down on the page what type of authority the case provides to avoid mistakes. This can also help researchers in international law fields that have far fewer similarities to domestic legal systems.

More importantly for the research process, I would know not to rely on cases for good explanations or analysis of the law. No matter whether we refer to them as “secondary,” they would not help me with those basic purposes of secondary sources: explaining, analyzing, and leading to many other primary sources. This would be particularly true in civil law countries, where cases tend to be much shorter and less narrative and expository than those in their law counterparts.⁵¹

This could also provide an opportunity for instructors to involve students in thinking critically about legal materials and the purposes they serve. Rather than lay out my own distinctions at the beginning of a discussion on sources, perhaps it would be better to give students documents and ask them to classify the documents. As a kind of translation exercise, instructors could ask how they classify these types of sources in U.S. law. This would allow us to better focus on the underlying purpose from the outset.

V. Application as a Scaffolding Tool

This section provides some examples of how to apply the above notes into actual course materials, including how to create the scaffold as a group, how to prompt comparisons of secondary sources, and how to incorporate the framework as a substantive question in assessment.

Creating and Incorporating the Visual Scaffold (content; task; material)



In the first introductory session, the class revisits the research process as the students learned it in their 1L legal research class—Step 1 Preliminary Analysis; Step 2 Secondary Sources; Step 3 Statutes and Regulations (aka Codified Law); Step 4 Judicial Precedent. This reminds them of a process they already know and helps prepare their minds to learn a slightly altered version in the three steps that are a better fit for FCIL—research planning; secondary sources; primary materials. In the United States, steps 3 and 4 are primary sources, so we discuss a solution that will help when we encounter different legal systems—in this case, combining the U.S. steps 3 and 4 into a singular category.

In this first class, we create the steps together with leading questions and then focus on the elements of research planning. I share the framework we create together with my students in a Google doc, and we update it throughout the semester. They are building on existing knowledge while recognizing that they are about to learn new information (content scaffolding). By creating

51 One of the best “lightbulb” moments for students in understanding the differences between common and civil law occurs when they actually compare cases from different legal families.

the final three steps using their contributions, I am modeling for them (task scaffolding). And it is their first exposure to steps they will follow in exercises and assessments (material scaffolding).

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3-Step Research Process Framework Basics - For All Topics

- 1) Research Plan: Identify →
 - a) The question/task
 - b) Type of law
 - c) Specific entities of interest & key characteristics
 - i) Foreign Law: Jurisdiction; Legal System and consequences of that (civil/common/etc); governmental entity (national/federal/smaller unit/etc.); area of law and what documents we might need to find
 - ii) International Law:
 - d) Relevant facts
 - e) Key search terms/concepts
 - f) Plan of attack

Example 1: After a discussion on foreign law, we note what entities of interest and key characteristics would look like in that context. This allows students to connect what they know about U.S. law and compare it in different systems.

As the semester goes on, we continue this pattern of the research process by applying it to a wide variety of legal problems and tools. In these further classes, we slowly expand each step as we learn more. As we learn these new topics throughout the semester, we maintain the framework—primarily, we focus on what the specific entities of interest and key characteristics might be, any specialized secondary sources on that particular area of law, and what the primary materials might be (another method of content scaffolding). The students use the process in their written work as a frame for their research, so the process is a material scaffold that provides prompts for solving problems.

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3-Step Research Process Framework Basics - For All Topics

- 1) Research Plan: Identify →
 - a) The question/task
 - b) Type of law
 - c) Specific entities of interest & key characteristics
 - i) Foreign Law: Jurisdiction; Legal System and consequences of that (civil/common/etc); governmental entity (national/federal/smaller unit/etc.); area of law and what documents we might need to find
 - ii) International Law:
 - (1) Treaty:
 - (a) Name
 - (b) Classify type: bilateral / multilateral
 - (c) Parties

Example 2: After a discussion on treaties, we note what key characteristics for a treaty might be. This helps students make an explicit connection that different characteristics will matter depending on the source types.

They learned in foreign law that legal systems can have different sources, and they now start to apply that in international law.

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- c) Books & Journal Articles
- d) Gray Literature: Reports, Working Papers, Other
- 3) Primary Sources
 - a) Locate the primary sources.
 - i) Foreign law: domestic legal materials (legislation/regulations/cases/constitutions)
 - ii) International law:
 - (1) Treaties:
 - (a) The treaty itself - always
 - (b) If there's an organization involved - is there any enforcement documentation that's relevant, from a committee or other adjudicatory body?
 - (c) Travaux preparatoires - if background
 - (2) CIL: Those documents used to prove state practice and opinio juris. Non-exhaustive examples:
 - (a) State Practice: diplomatic acts & correspondence, conduct in connection with resolutions/activities of int'l orgs; executive conduct; conduct in connection with treaties; legislative & administrative acts; decisions of nat'l courts
 - (b) OJ: public statements on behalf of state; official publications; legal opinions of the gov't; diplomatic correspondence; decisions of nat'l courts; treaty provisions; conduct in connection with resolutions/activities of int'l orgs.

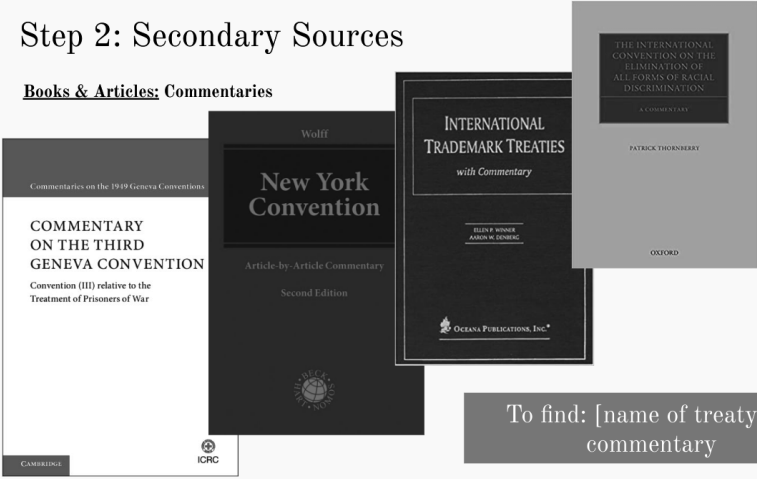
Example 3: After a discussion of customary international law, we add what the primary sources for a customary international law question might be.

Secondary Sources across Types (content, task)

As we discuss secondary sources, the students begin to conceptualize broad categories of secondary sources and learn how to determine specialized sources depending on the legal issue at hand. We incorporate these into the visual scaffold, but they are further dual-coded by using the same presentation format in the slide decks they can download for each class session.

Step 2: Secondary Sources

Books & Articles: Commentaries

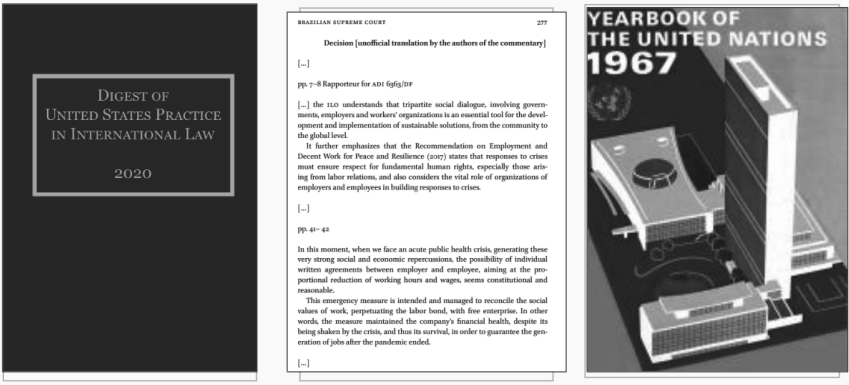


The image shows three book covers. On the left is 'Commentary on the 1949 Geneva Conventions' by the ICRC, published by Cambridge. In the center is 'New York Convention' by Wolff, an Article-by-Article Commentary, Second Edition, published by Oceana Publications, Inc. On the right is 'International Trademark Treaties with Commentary' by Susan R. Warner and Aaron W. Senechal, published by Oceana Publications, Inc. Above it is 'The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary' by Patrick Thornberry, published by Oxford.

To find: [name of treaty] + commentary

Example 4: Special secondary sources in treaty research.

Step 2: Secondary Sources in CIL



The image shows three sources. On the left is the cover of 'Digest of United States Practice in International Law 2020'. In the center is a page from the 'Brazilian Supreme Court' decision, showing a paragraph of text in English and Portuguese. On the right is the cover of the 'Yearbook of the United Nations 1967'.

Digests of State Practice Compilations of Nat'l Sources Yearbooks

Example 5: Special secondary sources in customary international law.

Assessment Questions (material)

Including questions that ask students to compare the role of the framework in different scenarios allows them to make explicit connections between strategy and a variety of legal issues. For example:

- What about this hypo is different from Exercise 1, and how might that affect your research plan, if at all?
- Compare this International Law Assessment with the Foreign Law Assessment; in what ways did the scope of each assessment change your research strategy?

VI. Reflections

Given that reflection is critical for student learning⁵² and instructor development⁵³ and is a required component of ABA Standards,⁵⁴ this section discusses how the framework was received from both student and instructor perspectives. This in turn is useful for evaluating the research process as a scaffolding technique.

A. Student Feedback

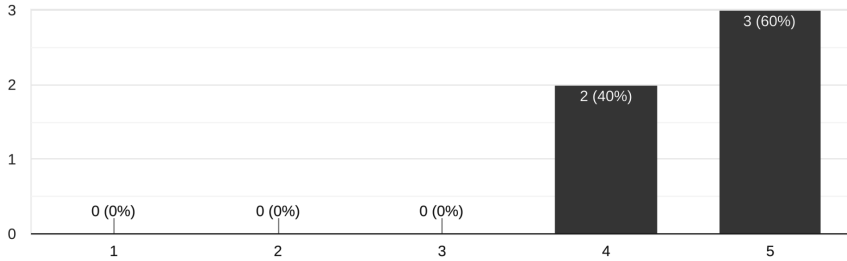
Here are some student reactions to the framework from the spring 2022 class.

Anonymous Survey: given at the same time as their course evaluations. On a scale of 1 Strongly Disagree to 5 Strongly Agree—

Question 1:

The research process framework gives me a good idea of where to start on an FCIL project, regardless of the specific topic.

5 responses



52 See, e.g., Thomas S.C. Debra Coulson & Marina Harvey, *Scaffolding Student Reflection for Experience-Based Learning: A Framework*, 18 TEACHING HIGHER EDUC. 401 (2013); Renee Nicole Allena & Alicia R. Jackson, *Contemporary Teaching Strategies: Effectively Engaging Millennials Across the Curriculum*, 95 U. DET. MERCY L. REV. 1, 16 (2017) (on student reflection in law school courses).

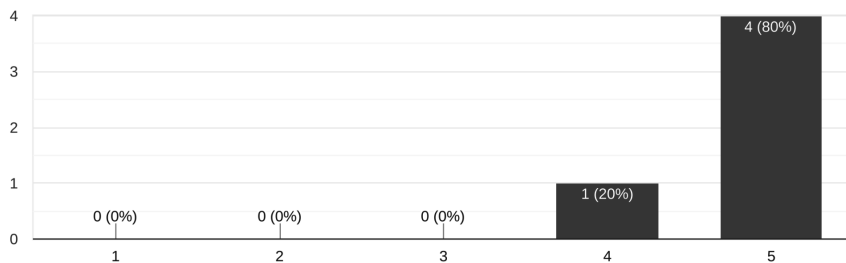
53 See, e.g., THOMAS S.C. FARRELL, REFLECTIVE TEACHING (revised ed. 2020); Hibajene M. Shandomo, *The Role of Critical Reflection in Teacher Education*, 4 SCH.-UNIV. P'SHIPS 101 (2010).

54 The text of the standards and/or the interpretations for Standards 302, 303, and 304 mention self-evaluation and reflection. STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standards 302-04 (AM. BAR ASS'N 2023-2024), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-standards-ch3.pdf.

Question 2:

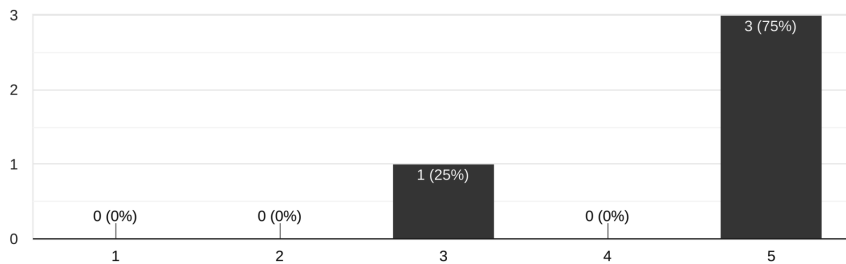
The research process framework helps me understand the types of legal materials that could exist on an FCIL research topic generally.

5 responses

**Question 3:**

The research process framework encourages me to consider the role legal sources play in a particular FCIL topic, including their possible binding nature.

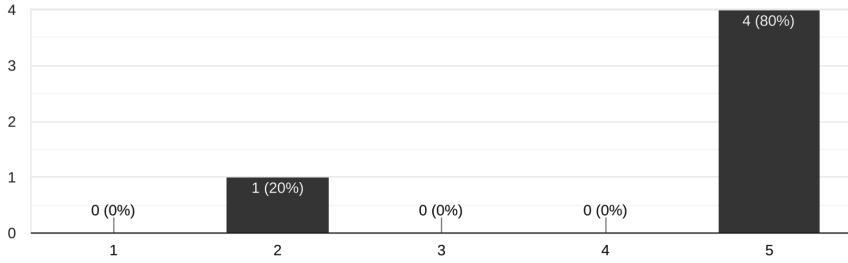
4 responses



Question 4:

Using a research process framework alleviates some of my anxiety for researching an FCIL topic I know nothing about because it gives me guide posts.

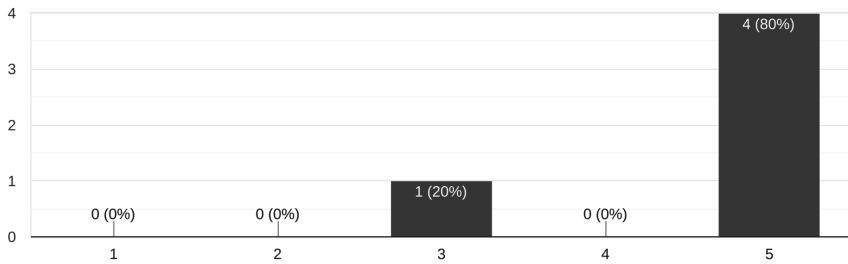
5 responses



Question 5:

Using a research process framework gives me transferable research skills so that I feel confident tackling a new FCIL project.

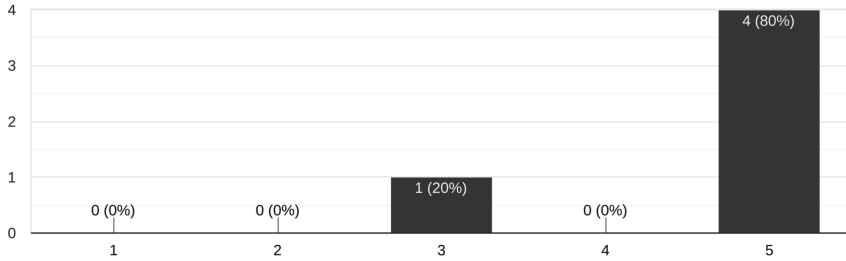
5 responses



Question 6:

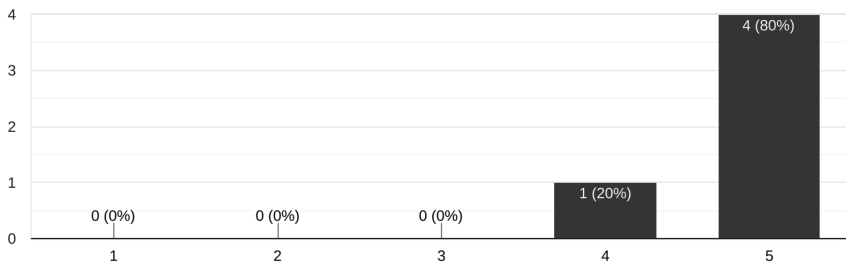
The research process framework we used throughout the class helped me build on existing knowledge and make connections to new areas of information and types of law as the class continued.

5 responses

**Question 7:**

I am likely to use the research process framework for future FCIL projects.

5 responses

**Question 8: What do you like about the framework?**

- I like how it breaks down each element into a more manageable research task.
- I like how organized it is.
- I liked that the framework breaks down the process into distinct parts. It makes the process less overwhelming, which makes my research more efficient.
- The organization is helpful; I usually come back to the framework for key words.
- At a minimum, it provides a starting point and a reminder of sources to search.

Question 9: What do you not like about the framework?

- I struggled with how many subsections there were when we dove into international law.
- I think some of the early parts of the framework (specifically early parts of the plan) are a bit tedious (the search terms, etc.).
- I tend not to use the plan of attack as much as I'd like.
- Some of it seems rhetorical, where I may instead create an excel spreadsheet to catalog my search terms, instead of listing general terms in the beginning of the document.

Question 10: Is there anything about the framework that did not make sense or that could have been explained better?

- No! I think I had the benefit of an awesome professor explaining everything though!
- No.
- The breakdown of Secondary and Primary sources (totally get it) but it made me feel like I had to recreate the entire outline again when I put it in actual order of my memo. I think the initial, introduction section including type of law, facts, etc. ..., provide a decent "what is this research about," but afterwards maybe should be organized into the actual document's organization and have something like "Paragraph 1: Secondary Source (X), Primary Source (Y), and steps."

Nonanonymous reflection in the final assessment: (identifying information redacted)

"I think the framework is an incredibly helpful tool—while I may have misunderstood its value at the beginning of the semester, seeing it used repeatedly throughout the semester has made me accustomed to using it. Especially for projects of this size, I could not imagine doing this research without the framework. At times, I revisited the framework to remind myself of keywords or aspects of the research I did not want to forget, but even without revisiting it, the framework is great for organizing my thoughts as I proceed through the research."

"Additionally, I found the repetition in the process (from last assignment to this one) to be helpful. The research memo portion of this assignment helped review the main pieces of the research process framework (research plan, secondary sources, primary sources) while also pulling in a new component (the international law component) that complicates some of those pieces."

"The issue I have with the research plan framework is for years I have always researched and built a research plan around my paper outline. While the research plan seems like a good starting point for general research, or highlighting where I should search, I found myself repeating the same analysis or steps in the research plan that I would later use, or already have done, in framing the paper. With the idea of writing a memo, using billable hours, I

would want to be as efficient as possible in creating one document to reflect upon, rather than two sources.”

B. Instructor Feedback

As with most instructional strategies, I can see from the students’ feedback as well as their work product that I will continue to flesh out and consider how I talk about this idea. While some of the scaffolding goals were met for some of the students, an ideal (though perhaps unattainable) scenario is for all the students to get all of the scaffolding benefits and walk away as research experts.

What I think is particularly interesting is that some of the more skeptical feedback is similar to the feedback I receive when teaching U.S. law-focused classes. In particular, I want to focus on how I can better communicate that this is a *process*, as the name indicates—that just because we call it “steps” does not mean we always go in exactly that order, that it is not always a required checklist. Perhaps greater emphasis on the concept and purpose of material scaffolding will assist with this. This particular class is also a very small sample size, as there were only five students.

From an instructor’s perspective, having a framework made it easier to create the class and give it some structure. It forced me to consider how the seemingly discrete concepts I cover in class are related in some way, focusing on the framework as a throughline. It gave me a building block for the classes as seen above in some of the instructional materials. It really helped with implementing scaffolding concepts.

Perhaps my favorite thing was that this process really helped the students see how different areas of law or different types of questions may require different strategies. I challenged them in class and in their homework more than once: Think about the different question types and what pieces of the framework apply and why. Even gifted researchers struggle to explain why they make certain choices, and this gave them a sort of vocabulary to help identify why they made the choices they made.

A major concern is that scaffolds are designed to eventually fade away so that students can show mastery themselves.⁵⁵ Requiring students to continue to use the research process as the format for their written assignments continues to prop them up and prevents them from moving on more independently. On the other hand, research instructors often use research plans as a grading method to understand student strategy. Another option might be to provide more in-class opportunities to illustrate their thought processes in place of written assessments, but the timing of these activities would be difficult with so much potential material in the course.

55 West et al., *supra* note 7 (“When the student takes responsibility for or masters the task, the teacher begins the process of ‘fading,’ or the gradual removal of the scaffolding, which allows the student to work independently.”); Eckart, *supra* note 6 at 148.

VII. Conclusion

While I may be left with many additional questions, the most immediate questions indicate that this is a useful instructional path that can continue to be refined:

Did it help with cognitive overload? For the most part.

Did it help them make comparisons across topics? Yes.

Did it give them a structure for their work? Yes, though not always a structure they understood.

Did it help the class feel collaborative so that the students felt like partners in learning?

Yes.⁵⁶

Did they feel they could be independent problem-solvers? For the most part.

Did it give me a structure for lesson plans? Yes.

There is still much room for exploration of established pedagogical techniques in legal research instruction and in legal education as a whole. It is my hope that this article can serve as a call to action for legal research pedagogy, especially in the context of advanced courses on particular topics. We should reflect on our existing methods and determine whether and how they implement best practices as we know them today. While we cannot be the sole problem-solvers of student retention and cognitive load, legal educators have an opportunity to break new ground on what is possible in legal education and what our best practices can look like in our small slice of this world.

⁵⁶ When I told the students I wanted their feedback because I wanted to write an article, they turned to their evaluations with a gusto I thought not possible in law students.