BUILDING THE WORLD COMMUNITY: CHALLENGES FOR LEGAL EDUCATION

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We are witnessing a dramatic transformation in the world today, caused by a combination of forces such as global trade, foreign investment, the advent of the Internet and other communications technologies, the breakdown of authoritarian political structures, and expanded roles for individuals, multinational corporations, and non-governmental organizations in international activities. In the new, essentially borderless world, crucial problems that challenge humankind cannot be solved solely by individual states. Instead, the growing trend towards internationalization requires an ever greater degree of international cooperation. This is particularly true for transboundary problems such as the proliferation of nuclear weapons, widespread poverty, corruption, environmental degradation, terrorism, and war crimes. These developments highlight the emergence of a new world reality – and a new legal reality. What will be the effect of these changes on legal education? What challenges do we as legal educators face as we try to prepare our students and our institutions to confront this changing world?

CHALLENGES

The first challenge is in defying notions of national sovereignty. Attuned to isolationist global conditions and largely dissociated from the context of a "distant" world, American legal scholars of the past two centuries shaped the study of law primarily in accordance with domestic concerns. These early legal educators found it unnecessary to look to the outside world to teach U.S. law students. When Christopher Langdell became the Dean of Harvard Law School in 1870, he equated the study of law with the study of science. He felt that the creation of law derived from a logical set of objective principles that, in turn, were arrived at through appellate decisions. Langdell's theory was articulated in much of his writing: law, considered as a science, consists of certain principles or doctrines and "to have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer." This methodology, which narrowed the scope of legal education to solely studying American case law, was fundamentally tailored to accommodate a political culture where the practice of law was confined mainly to national borders. The acceptance of this belief amounted to the recognition of the overriding value of notions of absolute sovereignty. International law was seen as a set of ethical aspirations that would bend to notions of self-preservation and self-aid.

With the reality of wanton destruction caused by two world wars and the development of nuclear weapons, the principle of the absolute sovereignty of nations dramatically showed its inability to guarantee the well being of humankind. Various states then convened in an effort to regulate force, develop an international bill of rights, and to create and strengthen international organizations that would structure cooperation, peacefully resolve conflict, and provide states with a universal body of nascent civil administration. These changes challenged the notion of absolute national sovereignty and conceptualized new legal approaches more suited for an increasingly

interdependent world order. Nearly all areas of human activity have left the strict realm of purely domestic jurisdiction—trade, investment, crime, the environment—further strengthening the notion that no state can solve the complex issues it confronts by itself. In this framework, even the distinction between domestic and international issues has blurred since these are hardly issues that can be strictly typified as one or the other.

Despite the departure from isolationist and nationalistic perspectives of the past to an increasingly globally-minded interaction, the curricula of law schools continue to be focused on a domestic agenda and continue to use the Socratic method as the primary methodology. In a study conducted by the American Society of International Lawyers (ASIL), it was found that during the Langdellian era, there were only 23 institutions that offered international law in the United States. Surprisingly, the contemporary law student is only slightly more likely to have taken a course in international law than her counterpart in 1912. Moreover, although international law is offered on a wider basis, the full incorporation of the subject into legal training remains marginal. For example, there are still no questions on the bar exam concerning international law, no mandatory international law courses and, generally, no first-year exposure to the study of international law. Moreover, most law students today are not exposed to a proper understanding of legal traditions other than common law—civil law, religious law, and traditional law—as well as how to resolve conflicts that arise in cases under different legal traditions.

The second challenge for law schools is in creating a new concept of diversity. U.S. law schools have long focused on a concept of diversity that is domestic in nature—ensuring that there is a more balanced representation of various minority groups found in the U.S. population—but now there is a need for a more multinational concept of diversity. Law schools must anticipate in their own composition the composition of the world that their graduates will interact with—a world that is multinational and pluralistic.

The failure of law schools to realize the need for such a new concept of diversity also allows for over-reliance on the Socratic method, which takes a "scientific approach" to legal education by forcing students to analyze actual decisions in terms of doctrinal logic. The over-reliance on this approach causes law schools to ignore a whole array of other intangible issues relevant to practicing law in an international, multicultural environment—such as the interplay of culture and nationality in legal decision making. Lawyers interacting with individuals in and from other nations must understand such interplay. Implicit in this statement is also the necessity for an understanding of the relationship between gender and the law, since concepts of gender are intricately linked to culture. This is not to advocate a position of cultural relativism, which allows societies to make their own rules, based on culture, with respect to the rights afforded to individuals. The human dignity of men and women must be respected in every culture, but culture must be respected and understood in order to allow lawyers to communicate effectively with clients and with each other.

A third challenge is in addressing new ethical and moral challenges. Globalization has created new social problems—such as increased international crime and environmental degradation. Increased interaction among nations means that a domestic financial crisis in one country can now more easily spread to another country; contagious diseases are also spread from country to country. Other perennial problems

like child labor and other unfair labor standards are exacerbated by growing export markets for goods. It is both a moral/ethical obligation to address these issues, as well as something that is in our own self interest to do. Consider the following global statistics regarding "human development" from the 1999 Human Development Report, produced by the UN Development Programme:

- **Health** – From 1990-97 the number of people infected with HIV/AIDS more than doubled, from less than 15 million to more than 33 million. Around 1.5 billion people are not expected to survive to age 60. More than 880 million people lack access to health services, and 2.6 billion lack access to basic sanitation.
- **Education** – In 1997 more than 850 million adults were illiterate. In industrialized countries more than 100 million were functionally illiterate. More than 260 million children are out of school at the primary and secondary levels.
- **Income and Poverty** – Nearly 1.3 billion people live on less than a dollar per day and close to 1 billion can not meet their basic consumption needs. The share in the global income of the richest fifth of the world's population is 74 times that of the poorest fifth.
- **Women** – Nearly 340 million women are not expected to survive to age 40. A quarter to half of all women have suffered physical abuse by an intimate partner.
- **Children** – Nearly 160 million children are malnourished. More than 250 million children are working as child laborers.
- **Environment** – Every year, 3 million people die from air pollution – more than 80% from indoor air pollution – and more than 5 million die from diseases caused by water pollution.
- **Human Security** – At the end of 1997, there were nearly 12 million refugees.

These are not problems that can be solved by lawyers alone, and certainly not by lawyers whose vision is limited by national borders. But we as lawyers can play an important role in addressing them. After all, we play an important part in the definition of legitimate expectations of behavior and we should use this position of influence to promote important values of human dignity.

STRATEGIES

How do we address these challenges? How do we move away from a self-centered approach to legal education? How do we promote a new, international concept of diversity in our law schools? There are differing schools of thought on these questions, but for rhetorical purposes we could identify two major camps. The first group, the "translators," contend that the global changes taking place are of minimal concern since lawyers deal primarily with domestic issues. Proponents assert that the practice of law primarily deals with domestic interests and issues that are confined to one nation's borders. They further allege that the modification of legal education is unnecessary because the global issue is "only a matter of translation." Therefore, the traditional concept of a legal education should remain intact. The second group goes beyond translation. The "modernizers" argue that much more is required to prepare lawyers for the changes currently taking place. They view translation on its own as an ineffective means of establishing a continuous relationship with a client; they believe that for such purpose knowledge of the client's cultural values is also of great importance. The modernizers' approach to legal education is to increase global

exposure by adding courses, hiring more international faculty, sponsoring more international academic programs, opening research centers with global labels, and augmenting the number of formal international linkages. Except for this quantitative increase, the law school experience would require no basic transformation.

It is becoming increasingly clear that neither of these approaches is sufficient to produce the type of fundamental changes that are necessary. Both schools of thought appear to underestimate the breadth of the changes currently taking place. What is needed, instead, is a profoundly different approach: one that advocates a *qualitative* rather than a *quantitative* change in legal education. I would like to outline briefly some of the strategies that may lead to such a fundamental changes in legal education. These strategies are being proposed and implemented at American University's Washington College of Law (WCL) and other schools around the country.

The first strategy is to create linkages between the study of domestic and international law, because in our new global reality even "domestic" lawyers will at some point in their careers have to address issues of international law. At WCL, we have made revisions to the first year curriculum that incorporate international law issues into traditional first year "domestic" law courses. These studies help students understand the outer limits of the application of U.S. laws abroad as well as the application of treaty law and customary international law within the U.S. Teaching methodologies, such as moot court competitions, which have been traditionally used to develop advocacy skills in the domestic sphere are now being used to expose students to the interplay between domestic and international law. The creative use of simulations involving a combination of domestic and international law issues is also important. For example, one professor at WCL has his class conduct a simulation of an international joint venture negotiation with students at the University of Dundee, Scotland. The negotiations require students to consider business laws and concepts from the U.S., the U.K., and international law. Providing opportunities for experiential learning – clinics and externships – in settings that provide hands-on experience in cases which involve both domestic and international issues is also essential to preparing students for the reality of an interconnected world. In this vein, WCL created an International Human Rights Law Clinic, in which students are given primary responsibility on human rights and political asylum cases of clients from all over the world, which they litigate in international and domestic tribunals.

A second strategy is to have students study different legal systems. Law schools must offer courses in comparative law and international conflicts of laws in order to give students an understanding of types of legal traditions other than common law – civil law, religious law, customary law, and mixed systems. We must also recognize the limitations of the Socratic method in teaching other legal traditions, and use a variety of teaching methods, including simulations and experiential learning. We need to allow our students the opportunity to study abroad in countries with different legal systems – and not just to take U.S. courses in these programs. Those students who do participate in study abroad programs should be encouraged to supplement their classroom experience with an externship in a local law firm, court, or NGO. We can also bring the experience home by creating a community of lawyers from other legal traditions and bringing visiting scholars from other countries to the law school.

The third strategy is to include cultural and gender issues in the academic agenda. This can be done by adding courses that address these issues to the curriculum. It is also addressed by allowing students the opportunity to work with people of other cultures – e.g., as student attorneys in clinics like WCL's International Human Rights Law Clinic, as externs in organizations that represent foreign clients, or in organizations abroad. These experiences achieve maximum impact when students are able to reflect upon them afterwards in a classroom setting. Another component of promoting cultural understanding is providing students opportunities to develop their foreign language skills as lawyers – for example, at WCL, we offer a special course on international law taught in Spanish. Again, study abroad programs and externships abroad are also valuable, and equally valuable is the presence of students, faculty, and visitors from other countries in the law school.

A fourth strategy is to include perspectives of other academic disciplines in the study of law. The primary way to do this is through joint degree programs. This can also be achieved through faculty exchanges with professors from other academic disciplines, integrating other points of view into regular law school courses, and allowing law students to take a limited number of credits in other academic departments.

The fifth and final strategy is to promote social change and international awareness through purpose-oriented programs outside the curriculum. Law schools can be vehicles for meaningful social change in the international sphere, while at the same time providing valuable experience for their students. For example, WCL's Center for Human Rights and Humanitarian Law provides opportunities for students to do research, writing, and advocacy on human rights issues. At the same time these students are gaining experience, they are providing essential services to thousands of lawyers who need to stay up to date on the latest human rights developments, or lawyers who are helping to prosecute war criminals before one of the international tribunals. Inasmuch as individual states can no longer isolate themselves from the international community, legal training can no longer be enveloped within the four walls of a law school. Instead, law schools must connect themselves with the outside world and reconstruct their academic agendas to work with nongovernmental organizations, as well as with the governments and legal systems of other countries. While the study of case law continues to provide an indispensable vehicle for legal training, we now should know better than to limit legal training strictly to this one-dimensional approach.

CONCLUSION

We, as lawyers, have the opportunity to shape the legal institutions that will govern the future. As legal educators, we have the responsibility of preparing students to continue this process. And I want to stress the idea that changing legal education, like institution building, is also a process we are engaged in. We do not yet know the end result, we simply know that participating in this process is essential to solving the global problems facing today's world. What we also know is that our approach cannot simply be one of translating or modernizing. Standing alone, neither the approach taken by the "translators" nor the "modernizers" produces the paradigmatic shift required to educate lawyers in the new world reality. Both schools of thought appear to underestimate the breadth of the changes currently taking place. What is needed, instead, is a profoundly different approach: one that advocates a *qualitative* rather than a *quantitative* change in legal education. Following the strategies I have outlined – combined with others created as the world changes – we can move towards a real reconceptualization of legal education in accordance with the new world reality.