

## REFLECTIONS ON INTERNATIONAL LEGAL EDUCATION AND EXCHANGES

Margaret Y.K. Woo, Northeastern University, United States

I need not speak to this group about the benefits of international legal education exchange. Clearly, this would be “preaching to the converted.” I teach comparative law and have long espoused the importance of international legal exchanges. International legal education is important not only because we must prepare our students for an increasingly global economy and the accompanying disputes that often transcend national borders. International legal exchange is also important in its inherent comparative methodology that can so enhance our teaching of domestic law, substantively and methodologically. Certainly, the juxtaposition of different legal systems can render what was invisible visible and add to our understanding of our own legal system.

At minimum, then, international legal exchange can take place on an individual scale with the application of comparative methodology integrated in legal scholarship and the teaching of domestic law. The next level can take place with the addition of individual courses in comparative or international law, and the application of the comparative methodology on a grander scale. The final, and of course, most ambitious level is the more formal legal exchange programs.

Most American law schools have not made significant inroads in integrating international law with their domestic law courses. However, a recent ABA survey revealed that over ninety percent of the schools responding have indicated offerings of five or more international courses. Additionally, eighty-four percent of the responding schools offer comparative law courses. As for international legal exchanges and cooperation on a programmatic level, the numbers are fewer and the considerations are greater and more numerous. I thought I would raise some of these for discussion and consideration today.

When we think about international legal exchange programs, an initial question we need to answer is what are we exchanging. This in turn leads to the more fundamental question of what our goals may be in the legal education system. As Karl Llewellyn asked in 1930, “what do you need for your practice which [law school] does not offer? To which the answer is: almost everything you will need for your practice.” A recent article in the August 1998 of the ABA Journal brought this dilemma to mind. In this article, a group of prominent lawyers, judges, and educators expounded on the meaning of what it is to be a legal professional in the U.S. today. The lack of consensus around the table was astonishing and yet highlights the enormity and the difficulty of our task. Certainly, one thing is clear. Increasingly, the goal of American legal education is not simply the training in the substance of law, but also the training of professional skills, values, and culture.

Today, not only do we train our students in the rules of torts and contract, but also in the skills of negotiation, oral advocacy, critical thinking. While we do not espouse a certain political ideology in law, we do teach our students ethical values and standards of a lawyer, and inculcate our students in the culture of lawyering. Certainly, all this may be more difficult to convey than substantive law, and far more difficult to translate to another legal system. It is far easier to convey the rules regulating Business Associations, Tax, or International Trade, but far more difficult to translate the values or the cultures contained in these materials, and far more difficult still to convey the values or the culture of the legal professionals who implement these materials. Yet, it is these other dimensions (that is, skills, values, and culture) which are intangible but which define one as a lawyer. Thus, in thinking about international legal exchange programs, we need to ask not only what substantive areas should be included, but also what aspects of skills, values, and culture from the legal system we should include in this exchange.

What substantive area we should be exchanging will depend on the particular needs and specialization of the schools involved. The recent trends toward globalization, marketization, and democratization give a hint of the substantive areas we may want to include in any international legal exchange program. Typically these include courses dealing with relations between different states (public international law), studies of other legal systems (comparative law), and interactions between private citizens of different states or between a state and citizens of a different state (such as international business transactions, international trade, international tax). But what about the areas of skills, values, and cultures? What can we convey and how can we convey it?

These are questions I have faced while teaching in China as a visiting professor, and participating in various more short-term legal exchange programs. Most recently, I accompanied a delegation of federal judges on a legal exchange with the Shanghai High Court, and this coming summer, I will be conducting a comparative civil procedure training program funded by the Ford Foundation in Beijing. I am working with a German civil proceduralist in putting together a civil and common law civil procedure program to Chinese civil procedure teachers nationwide. Some of the issues I have faced are unique to student exchange programs, but many are applicable to faculty exchanges as well.

What are the skills essential to an American lawyer? While we may not be training foreign lawyers to practice in America or vice versa, understanding what these skills are and the place they have in our legal system can be very informative. These skills may include problem solving, critical thinking, legal research, negotiation, oral and written advocacy. Yet I think we may find that these skills vary from the skills emphasized in other legal systems. Different legal systems have different ways of handling and resolving similar issues. Some systems prefer informality over formality in dispute resolution, compromise over adjudication, harmony over a determination of right and wrong. This could in turn reflect on a different emphasis in skills for the lawyer in that system.

Similarly, what is the legal culture that needs to be shared? By legal culture, I mean the generally accepted mode of conduct amongst lawyers. This could include the culture of timeliness, professional courtesy, competition, appropriate distance from judicial decisionmakers – such as not asking a judge about a pending case at a dinner party. Indeed, how is the work environment different for the lawyer in America from a lawyer in other cultures? What are the constraints facing our work that may be different or similar to lawyers in other cultures?

For example, lawyers or judges in some cultures may be subject to more state review than lawyers or judges from other cultures. Thus, in the legal exchange with judges in Shanghai, one topic for discussion was judicial administration. But the exchange was not simply how judges' salaries are set or how judges are trained, but more importantly, how salaries are set and judges are trained to preserve judicial independence. Similarly, the exchange is not simply on the hierarchy of court administration, but also on elucidating in the working relationship between various players in the court system -- judges, chief judges, appellate judges. In China, chief judges approve and review decisions in difficult or complex cases. While this has the stated purpose of correcting errors in judgments, it can also led to misunderstandings in how judges work in China. In this instance, then, the more exciting exchange is less in the delineation of the factual information about how many judges are in each court, but rather, in the discussion about the legal culture between members of the court and how that impede or enhance judicial work.

Finally, what are the professional values an international legal exchange want to impart? loyalty owed to clients? commitment to public service? How do we explain the importance of these values to our legal system? Some systems value loyalty to the state and/or community far greater than to the individual client. It is in understanding this and other legal skills, culture, and value (in knowing the places of overlap as well as sites of divergence) that can help us prepare our students to work more collegially and successfully with our foreign counterparts.

And what are the teaching methods we can use for this exchange? How do we teach or share this body of information? Can we develop discrete exercises for our foreign participants and they for us? Can we share our unique Socratic method? What about small group discussions? Or acting lessons? through internships? watching movies or television shows about lawyers? reading novels about important litigation? Could some of this information best be shared through simulations or clinics? lectures or in class discussions? Each of these questions and goals warrant considerable time and discussion to flesh out in any international legal exchange.

In addition to broadening the objects of international legal exchanges, my experience tells me that we also need to be mindful of the way these subjects are taught. Among other things, we need to be aware of the differences in social, cultural and political milieu that separate us from our foreign counterparts. These may manifest in differences in communication styles, variation in learning, differences in cultural assumptions. How these differences may play out in the classroom or at work will affect what techniques to use.

Certainly, as education specialists have pointed out, there are differences in learning and work style, and these may be applicable to some, but not to all students.

There may be a preference for lectures rather than for cooperative learning (where students volunteer information). Some students may be more familiar with a teaching style that emphasizes observation and memorization of facts rather than problem solving. There may be more passive learning styles such as listening, reading, and observing, rather than more active learning styles such as questioning, doing, and learning through discovery. In fact, in some cultures, active questioning may be viewed as a challenge to the authority of the teacher. Certainly, some cultures mandate a definite social and psychological distance between teacher and students.

There may also be a difference in communication styles. Some cultures, such as the U.S., demand a more linear writing style consisting of a logically patterned sequence of thought. In a linear writing style, one idea is introduced, supported with arguments, and then repeated for emphasis. This also coincides with what we view as good legal writing. Other cultures, meanwhile, may favor a more circular writing style. A circular writing style focuses on the simultaneous development of parallel points which all lend explanation to the topic. What teaching methods might we want to utilize should recognize and maximize the learning in light of these variations in communication styles.

In sum, while learning the language of law is important, it is also important to imbue it with cultural literacy information. For example, just last year a group of twenty Chinese judges came through the Massachusetts court system as part of the latest rule of law exchange. After the meeting, the Massachusetts judges who participated said that the most perplexing question (which the judges had a hard time answering) was why the trial court, the lowest level court in the state court system of Massachusetts, was called the superior court. Just informing these Chinese judges that the Superior Court of Massachusetts was the lowest level court is insufficient. There must be an historical, cultural, and social explanation.

Similarly, while most legal systems agree on the importance of professional independence, what this term may mean and the extent of this independence require an understanding of term's cultural context. Indeed, there may be differences in assumptions about the role of law and the legal system in society. The question then becomes how do we create an environment in which students can freely debate? How do we get at some of these assumptions?

For one, we need to have a way of infusing cultural literacy information into the curriculum and contextualize with readings in the social, historical, and political backgrounds.

Additionally, the best way may be for us to be aware of our own assumptions and raise questions about the continued validity of these assumptions. In time, this same method and questioning may be transferred to the student's own assumptions. These are all questions that we should address and study as we enter the exciting projects of international legal exchanges.

## Conclusion

- International legal exchanges are important on several levels - to better prepare our students for practice in the international as well as the domestic arena. On a theoretical level, it can also aid in the search for common principles among legal systems, and a better understanding of the role of law in societies. Yet, participating in an international legal exchange requires us to be alerted to a number of issues.

While I have offered few answers, I do believe we need to incorporate in these exchanges specific curricular attention to skills, values, and culture. These subjects are often not contained within the four corners of a book. Thus, if international exchanges can share this information, the exchange will most certainly be serving a genuine goal. After all, in this day and age of information, it is easy to read about substantive law, but less so, to understand how it works.

In teaching these and other subjects, we have to be keenly aware of differences in teaching and communication styles in different cultures, if we are to succeed at all in these exchanges. It is only when we can be aware of the variations and similarities that a comparative perspective both in its substance and methodology can aid in the understanding of and respect for foreign legal systems. This in turn will not only facilitate our ability to work with foreign lawyers or clients, but will also enhance our respect for cultural, gender-based, religious differences at home.