THE CULTURAL CONTEXT OF INTERNATIONAL LEGAL COOPERATION

Stephen Zamora, University of Houston, United States

The purpose of this conference is for legal educators to begin to respond to the phenomenon referred to as "globalization" by examining ways in which law schools in different countries can cooperate effectively. In so doing, we should also keep in mind the cultural background against which cooperative ventures will take place. Legal systems (and the institutions and doctrines that comprise them) are deeply imbedded in national and local cultures that vary greatly according to history and geography. The phenomenon referred to as globalization does not change this basic fact. [1[1]] Without some understanding of the history and culture of a country, one cannot fully understand the application of particular legal doctrines, or the role that law plays in a society.

The previous paragraph's statements may be so obvious that they hardly seem worth mentioning. Nevertheless, we often ignore them in practice. There is a tendency to teach comparative legal systems out of textbooks, with insufficient reference to the history and culture of the regions in which they operate. Law students (and their professors) in the United States often have only the vaguest notions of the history of the countries whose legal systems they are studying (and teaching). We are even more ignorant of the cultural attitudes and societal norms in which the legal systems operate.

I would like to call attention to this deficiency as we proceed in discussing the ways in which law schools can build cooperative programs. In comparing models of legal education in different countries, and in seeking to build bridges of cooperation, we should be cognizant of the cultural subtext – and prejudices -- underlying our discussions.

Cultural bias

As a matter of human nature, people have a tendency to choose the familiar over the unfamiliar. The exotic food or the strange music may tempt us, but after the occasional foray into the unfamiliar, we tend to return to what we know best.

This tendency applies to legal systems as much as it does to food or music. Educated in the law of our separate countries, we have a natural inclination to embrace what we have learned as the preferred norm. Even though we may criticize many aspects of the law as it is applied within our countries, we have a natural tendency to believe that the fundamental elements of our own legal system are uniquely suited to our own societies.

If there is any country in which this predilection for local legal models applies, it is the United States. Throughout our history, we have been profoundly influenced by foreign, particularly European, legal models and philosophies, which we have adapted to fit our needs. But as our own legal and political systems matured, and as the weight of U.S. military and economic power increased, we became a net exporter rather than an importer of legal

---

1[1] For a general analysis of globalization from a cultural/social scientific perspective, see Boaventura de Souza Santos, Toward a New Common Sense pp. 250 – 377(1995).

models. By the end of the Twentieth Century, according to Swiss law professor Wolfgang Wiegand, U.S. legal models threatened to become the jus commune of the postmodern world – at least the postmodern economic world.[2][2]

The global reach of many U.S. institutions has carried with it a certain hubris on the part of U.S. lawyers and law professors. This may seem preposterous to legal scholars from other countries, who count the longevity of their legal doctrines and institutions not in decades, as we do, but in centuries. While a predilection for one's own legal models may be natural and positive, it can also be an impediment to understanding and respecting the legitimacy of foreign law. The natural tendency to depreciate foreign legal models is most pronounced when there is a lack of understanding of the foreign law, and in particular, when there is a bias (often hidden and unstated) against the foreign culture.[3][3]

Such a bias may work against the United States as well. Pragmatists, we lawyers from the United States are well trained in substantive law and in practice skills, but with some exceptions, we lack a basic foundation of jurisprudential theory or legal history from which to ply our trade.[4][4] Many, perhaps most, of the students in U.S. law schools are not well grounded even in our own legal history, since legal history and jurisprudence are elective courses that are chosen by relatively few students. For this reason, foreign lawyers trained in a rigorous system of jurisprudential theory may view U.S. lawyers as shallow, and lacking a doctrinal anchor to guide us in our endeavors.

We can hope that misunderstandings and employment of stereotypes may disappear in the wake of cooperative programs such as those to be discussed at this conference, but this is not likely to happen without conscious effort. The following paragraphs offer a few suggestions for improving the environment for cross-cultural understanding of law. I am sure that many other examples will surface during our discussions.

---

[2][2] Wolfgang Wiegand, The Reception of American Law in Europe, 39 Am. J. Comp. L. 229 (1991). According to Wiegand, the dissemination of U.S. legal models is a result of several related phenomena, including the strength of U.S. corporations in the world economy, which export models of business organization and activity, and the increasing trend among foreign lawyers to engage in graduate legal studies in the United States.

[3][3] Some years ago, I gave a lecture to a U.S. audience that included a sophisticated international lawyer with considerable experience working in a country we both knew well, which I will call Country X. Before the talk, he asked what the subject would be, and I told him that it would be about "the mind of the lawyer from Country X." His pejorative rejoinder surprised me: "Well, I guess this is going to be a very short talk." Country X happened to be an important country, a large and sophisticated trading partner of the United States, with a long record of political and economic stability. The lawyer's comment betrays, in an exaggerated way, the biases that professionals in the United States sometimes hold have against foreign legal systems.

[4][4] The pragmatic appoach to legal education explains the attention given in U.S. law schools to practice-oriented subjects, sometimes referred to as "practice skills" courses – legal research and writing, clinical legal education, mock trial courses, courses in negotiation and mediation, etc.

According to Standard 302 of the Standards of Approval for Law Schools of the American Bar Association, accredited law schools in the United States must offer instruction not only in the substantive law, but also in practice skills such as legal analysis and reasoning, legal research, problem solving, and oral and written communication, as well as "adequate opportunities for instruction in professional skills." Lacking a formal requirement of an apprentice program before law students are admitted to practice, law schools have increasingly invested in "mock apprentice programs," through practice skills courses and placements of students as externs in law offices to earn academic credit.

Require students to take at least one course in international law and comparative legal systems.

In most U.S. law schools, students begin an intensive, three-year course of study, beginning with a full year of required courses in domestic law subjects, and continuing with two years of "elective" courses dominated by courses in domestic law and practice skills. These courses are almost always taught from an exclusively domestic perspective. International law and comparative law may be taken as elective courses in later years, but since most of our students do not intend to engage in international legal practice,[5[5]] they tend to bypass these subjects.

The message this gives to our students is obvious: the study of law means the study of U.S. law. Indeed, we tend to go even further: because of the geographic mobility of our law graduates, most U.S law schools attempt to teach a form of "national law" that de-emphasizes the differences between various state laws.

Professor John Barrett, while recognizing the increase in international course offerings in U.S law schools, notes that "the sad truth remains that the vast majority of law students continue to graduate from law school [in the United States] without any meaningful grounding in international law, in spite of the fact that almost everyone has the opportunity to take a course in international law."[6[6]]

It would be a mistake to take a passive stance, and to expect students to recognize the importance of international law studies in response to vague notions of "globalization." Our students enter law school tabula rasa, and are highly influenced (and indeed bound) by the menu of courses put before them, and by the advice of their professors.[7[7]] According to a survey published in the Journal of Legal Education in 1997, international and comparative law courses represented the largest category of new courses added to law schools' curricula in the late 1980's and early 1990's. However, the authors of the survey found that "[s]tudent demand played no special role" in the addition of these courses.[8[8]] The implication is that legal educators must bring students to the realization of a need to study international and comparative law, since their own instincts and experiences may not do so.

[5[5]] Contrary to their expectations, and despite the lack of academic training, many U.S. law graduates will become engaged in cross-border legal transactions on behalf of clients who increasingly engage in international business.

[6[6]] John Barrett, International Legal Education in U.S. Law Schools: Plenty of Offerings, but Too Few Students, 31 Int'l Lawyer 845, 852 (1997).

Other commentators have espoused greater attention to the development of international and comparative law curricula in U.S. law schools. Professor Mary Daly, an expert in the law of professional responsibility, has written of the need to expand international course offerings generally, and to "internationalize" the professional responsibility curriculum through new course offerings and the incorporation of foreign legal materials. Mary Daly, The Ethical Implications of the Globalization of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the Twenty-First Century, 21 Fordham Int'l L.J. 1239 (1998).

[7[7]] Most law schools are notoriously bad at providing close, one-on-one academic counselling of students by professors, and are influenced in course selections by fellow students and practicing lawyers with whom they come in contact.

[8[8]] Deborah Jones Merritt and Jennifer Cihon, New Course Offerings in the Upper-Level curriculum: Report of an AALS Survey, 47 J. Leg. Educ. 524, 536 (1997).

We must do more than provide greater opportunities for law students to take elective courses in international and comparative law. To prepare our students for increased contact with other legal systems, we should establish a mandatory course for all students – Introduction to International Law and Comparative Legal Systems -- that would better prepare our graduates for a global economy. This introductory course could be relatively short, for the purpose of introducing students to the concept that there exist different models of law, and that there are valid alternatives to our own models. This course would also reinforce the concept that rules of international law should govern the behavior of governments and individuals.

If taught in the first year of law school, before our students are fully indoctrinated in our own legal system, the course would make students more open to the complexity of our postmodern legal systems, in which layers of private law, national law, and international law coexist. [9[9]]

Provide a greater range of opportunities for students to spend at least a brief period in residence in a foreign law school.

Increasingly, law schools throughout the world are seeking opportunities that will allow their students to spend a period of study in a foreign law school. Many U.S. law schools have established summer study programs abroad. The best of these are organized in conjunction with a host law school in the foreign country, with local professors offering courses in the local legal system.

An increasing number of law schools in the United States offer semester-abroad programs. Relatively few students attend such programs, but those who do will not only learn about foreign law: living in a foreign country helps one develop a perspective on one's own culture and society. Programs such as these are only successful if the host law school pays special attention to the needs of the foreign law student, through academic advising or tutoring directed to their particular needs.

We should seek ways to replicate successful programs, and develop new models to permit close contact with foreign legal systems. The latter could include utilizing opportunities for distance learning, or the incorporation of shorter periods of foreign study as modules within semester-long courses.

Law students should be encouraged to seek graduate law degrees abroad after they finish their domestic law degree.

This suggestion would seem to be unnecessary, given the influx of foreign lawyers enrolled in Master of Laws Programs in U.S. law schools. Unfortunately, relatively few students from the United States take the opportunity to seek masters' degrees in other countries. There are several reasons for this. First, lucrative job offers await many U.S. law graduates immediately upon graduation, and because of the high price of U.S. legal education, they feel compelled to accept the offers in order to pay off

---

[9[9]] Compare Vivian Grosswald Curran, "Dealing in Difference: Comparative Law's Potential for Broadening Legal Perspectives," 46 Am. J. Comp. L. 657, 663 (1998): "The growth of first-year perspectives courses in American law schools provides an opportunity to introduce increasing numbers of law students to comparative methodology and concepts at a beginning stage in their studies, and to make some headway in counteracting the tendency to adopt a mechanical approach to legal analysis."

student loans. Second, few foreign law schools offer Master of Laws programs geared to the special needs of foreign lawyers.

Law schools outside the United States should consider the value of creating Master of Laws programs designed for foreign law graduates. In the United States, we should encourage our recent graduates to pursue foreign law degrees, and law firms should encourage their prospective young lawyers to study in these programs. In so doing, young lawyers will acquire the skills that will serve them in the increasingly globalized practice that law firms face.

To allow recent law graduates to afford such programs, the Fulbright and other funding programs should expand the miniscule number of fellowship opportunities that now exist for post-graduate law study abroad by U.S. law students.

Law schools, especially in the United States, should develop opportunities for law students to take interdisciplinary courses that will help raise cross-cultural awareness.

In the United States, legal education is short and intensive, with three years of coursework devoted exclusively to law. Prior to entering law school, our students will have completed four years of university studies, but since there is no preferred course of academic preparation for law, it is entirely possible that many students will have received no grounding in subjects such as world history, international relations, anthropology, comparative political theory, or other subjects that would make them attuned to cultural differences.[10[10]] Our law schools are conceived as professional schools, with a close connection to the world of law practice, but isolated from other colleges and departments in the university. This contrasts with many foreign universities, in which the law department is part of a larger college of social sciences or humanities.

U.S. law schools should offer more interdisciplinary courses to help fill this gap, either by encouraging our students to take at least one course outside of the law school, or by inviting professors from other disciplines to teach courses in our law schools from the perspective of other fields. International law scholars are increasingly building bridges to complementary academic disciplines, such as political science and international relations theory.[11[11]] This is laudable, and it may enrich our students' understanding of international law, but it does not fulfill what I am trying to highlight here: the need for students to take courses that help open their minds to cross-cultural issues. This need may be filled by encouraging our law students to take graduate courses in anthropology, history, comparative politics, etc.

Law schools should emphasize comparative and international legal studies in hiring faculty, and should encourage existing faculty to "internationalize".

[10[10]] In 1992, the American Society of International law published a study by political scientist John King Gamble, Teaching International law in the 1990s (ASIL, Studies in Transnational legal Policy No. 24, 1992). Professor Gamble found that only three percent of the 600 law students surveyed at 19 law schools had majored in international studies, and noted that most law students not been exposed to international law courses as undergraduates. Id. at 102, 105.

[11[11]] See the discussion in Peter Spiro,"Globalization, International Law, and theAcademy," 32 NYU J. Int'l L. and Pol. 567, 580 – 586 (2000).

Law schools used to have a very small number of faculty members – one or two professors – who specialized in international or comparative law. More recently, we have begun to see an "internationalization" of our law faculties. This has not only come about through the hiring of new professors who specialize in international and comparative law; rather, specialists in "non-international" fields – energy law, contracts, intellectual property law, health law, environmental law, etc. – have begun to develop expertise in international and comparative aspects of their fields as the fields themselves undergo the effects of globalization. Periods of foreign study (see below) can help foster this development.

In addition, in hiring new faculty, law schools should emphasize the value of international and comparative interests even for faculty who will teach "purely domestic" courses, since these professors are most likely to be able to prepare students to face a global law practice.

<u>Universities and governments should provide greater funding for international student and faculty exchanges</u>

Governments have generally endorsed the trend towards increased economic integration by liberalizing national laws that limit trade and investment, and by entering into regional economic arrangements, such as free trade agreements, to promote integration. Unfortunately, our educational systems are not adequate to the task of preparing our societies for increased interaction with other countries and cultures. We should promote international studies as a basic element of any educational environment, beginning in primary schools and continuing into university education.

At the same time that governments promote international economic integration, they should increase the means by which sectors that are key to this integration – such as the legal sector – can also internationalize. One way in which to do this is to increase the budgets of institutions that finance opportunities for international legal exchanges involving students and faculty. Many governments have developed programs to help fund graduate studies in foreign countries, and some provide funding for professors to teach abroad. (The U.S. Fulbright Scholar program provides both types of funding.) The number of students and faculty exchanges funded by these programs is extremely small, however.

Law schools and bar societies should press for greater funding to promote such exchanges. Students can benefit by exchanges that will make a significant impact as they proceed to develop their careers. If more law professors were provided opportunities for exchange, it would greatly improve their ability to courses with a comparative law perspective.

A conclusion to a subjective, open-ended essay such as this appears unnecessary, but I will include an additional, and probably obvious, statement. The suggestions put forth above are not likely to happen soon, but if we begin to consider them – and if they receive the support of institutions such as the ABA, AALS, and similar associations in other countries – they will eventually become realities rather than mere suggestions.