Reflections on International Legal Education and Exchanges

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In this era of economic and technological globalization, the benefits of international legal education exchanges are perhaps self-evident. I teach comparative law and have long espoused the importance of such exchanges. International legal education is necessary not only because we must prepare our students for an increasingly multinational economy and the accompanying disputes that often transcend national borders. International legal exchange is also important in its inherent comparative methodology, which can 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. This broader understanding may also make us less arrogant about our Anglo-American legal system and more respectful of others.

As an initial matter, what is international legal education and exchange? International legal education and exchanges can take place on a variety of levels. At minimum, an exchange can be on an individual scale with one-on-one research initiatives, and with the integration of comparative methodology in legal scholarship and in the teaching of domestic law. The next level can add individual courses in comparative or international law and apply the comparative methodology on a grander scale. The final—and of course most ambitious—level entails the more formal exchange programs of students and faculty.

Most American law schools have not made significant progress in integrating international perspectives with their domestic law courses. The more common strategy has been to add a select number of courses in international and comparative law. A recent ABA survey showed that 90 percent of the schools responding offered five or more international courses, and 84 percent offered comparative law courses.1 As for international exchanges and cooperation on a programmatic level, the numbers while increasing are fewer and the considerations greater and more numerous.

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1. The survey was conducted by the International Legal Education Committee of the ABA’s Section of International Law and Practice. For a good discussion of it, see John A. Barrett, Jr., International Legal Education in the United States: Being Educated for Domestic Practice While Living in a Global Society, 12 Am. U. J. Int’l L. & Pol’y 975, 991-93 (1997).
Certainly, when we think about international 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 legal education and what our roles may be as lawyers in society. In 1930 the question was posed to Karl Llewellyn, who responded dismissively about the American law school: "[W]hat 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." This sentiment resurfaced years later in the 1992 MacCrate Report, which concluded that there was a gap between the law school curriculum and the profession.3

The difficulty may be in how we define this legal professional that we are training. Roscoe Pound considered the legal profession as not simply a means of livelihood, but an "art as well as a proud craft, a learned and liberal profession."4 Today there is less agreement about this ideal and even less about how it translates into reality. In the August 1998 issue of the ABA Journal, a group of prominent lawyers, judges, and educators expounded on what it means to be a legal professional in the U.S. today.5 The astonishing lack of consensus around the table in defining what constitutes "professionalism" highlights the difficulty of our task. Certainly one thing is clear: increasingly, the goal of American legal education is not simply training in the substance of law, but also training in professional skills, values, and culture.

Today we train our students not only in the rules of torts and contract, but 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 professional standards, and we attempt to inculcate in them the culture of lawyering. All this may be more difficult to convey than substantive law, and far more difficult to translate to another legal system. It is much easier to convey the rules regulating business associations, tax, or international trade, than it is to translate the values or the cultures contained in these rules, and even more difficult to convey the values or the culture of the legal professionals who implement these regulations. Yet it is these other, intangible dimensions—skills, values, and culture—that do much more to define one as a lawyer. So in thinking about international 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 the exchange.

What Are We Exchanging?

On the first of these points: what substance we should be exchanging will depend in part on the particular needs and specialization of the schools

involved. But the recent trend toward globalization, marketization, and democratization gives a hint of the substantive areas we may want to include in any international exchange program. Typically these are 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 skills, values, and cultures of legal systems? What could we convey and how can we convey it? These are questions I have faced while teaching in China as a visiting professor, and while participating in various shorter-term exchange programs.

What are the skills essential to an American lawyer? While we may not be training foreign lawyers to practice in America or vice versa, we should understand what these skills are and the place they have in our legal system. These skills include problem-solving, critical thinking, legal research, negotiation, and oral and written advocacy. They are not, however, necessarily the skills emphasized in other legal systems. Different systems have different ways of handling and resolving similar issues. Some systems prefer informality over formality in dispute resolution, compromise over adjudication, harmony to a determination of right and wrong. An exchange program should include a component by which we clarify the underlying skills needed in the particular legal system, in addition to sharing the substantive knowledge.

Similarly, what is the legal culture that needs to be shared? By legal culture, I mean the generally accepted mode of conduct among lawyers in society. This could include the culture of timeliness, professional courtesy, competition, appropriate distance from judicial decision-makers—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 that of a lawyer in other cultures? What are the constraints facing our work, and how do they compare with lawyers’ constraints in other cultures?

For example, lawyers or judges may be subject to more state review in some cultures than in others. When I took part in a 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 important, how salaries are set and judges are trained to preserve judicial independence. Similarly, the exchange was not simply about the hierarchy of court administration, but also about elucidating the working relationship between various players in the court system—trial judges, chief judges, appeals court judges. In China chief judges approve and review decisions in difficult or complex cases. While this has the stated purpose of correcting


7. Most recently, I accompanied a delegation of federal judges on a legal exchange with the Shanghai High Court, and in summer 2001 I will be conducting a comparative civil procedure training program funded by the Ford Foundation in Beijing. I am coordinating with a German civil procedure teacher in presenting a civil and common law civil procedure program to Chinese civil procedure teachers nationwide. Some of the issues I have faced in the past are unique to student exchange programs, but many are applicable to faculty exchanges as well.
errors in judgments, it can also lead to misunderstandings about how judges work in China. In this instance, then, the more important exchange is not in the delineation of the factual information about how many judges are in each court, but rather the discussion of the interactions among members of the court—the legal culture of the court—and how that culture impedes or enhances judicial work.

Third, what are the professional values an international legal exchange wants 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 or community far more than loyalty to the individual client. While an American lawyer owes her client a duty of zealous representation, lawyers in other systems may further a client’s position only if that furthers other interests, such as those of the state.8

By understanding legal skills, culture, and values, and by knowing the places of overlap as well as the sites of divergence, we can better prepare our students to work more collegially and successfully with our foreign counterparts. To be successful, then, international exchanges require us to delve deeper into understanding our own motivations, needs, and creativity, as well as those of our counterparts from other cultures.

How Do We Conduct This Exchange?

And what are the teaching methods we can use for this exchange? How do we teach or share this body of information? Do we develop discrete exercises for our foreign participants and they for us? Do we share our unique Socratic method? What about small-group discussions? Or acting lessons? 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? By lectures or in class discussions? Each of these questions and goals warrants considerable time and discussion in planning any international legal exchange. In the experience of U.S. legal educators, a mixture of teaching and research methodologies is the most comprehensive way to enrich a curriculum or an exchange program.

In the same way that we need to broaden the subject of international legal exchanges by including skills, values, and culture, we also need to expand our thinking about the way these subjects are taught. Among other factors, 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 teaching techniques to use.

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

8. For example, the Law of the People’s Republic of China on Lawyers, Chapter 1, Article 3 requires that “in practicing law, a lawyer shall accept the supervision of the State, Society, and the parties”; see also William P. Alford, Tasselled Loafers for Barefoot Lawyers: Transformation and Tension in the World of Chinese Legal Workers, China Q., Mar. 1995, at 22.
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, or 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. Rhetoric logic is socially constructed, and the presentation of ideas can vary across culture. While we must not "essentialize" groups as the exotic "other," the existence of culture is undeniable, and studies have attempted to describe and identify certain cultural patterns. 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, which focuses on the simultaneous presentation of parallel points all lending explanation to the topic.  

Writing specialists have argued that, generally speaking, American writers favor directness and hierarchical writing in which generalizations are supported by subtopics. By contrast, Chinese writers may be likely to provide a series of concrete examples to make a point but will not state the point. Generally speaking, Chinese writers may give more deference to the knowledge and intelligence of the reader, producing a more indirect form of writing that leaves it to the reader to make inferential bridges. Spanish writers, meanwhile, are said to favor embellishment over bare enumeration of organizational structure. What teaching methods might we want to use to maximize learning in light of these variations in communication styles?

While learning the language of law is important, it is also important to imbue the legal terms with cultural literacy. For example, 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 they had had a hard time answering) was why the trial court, the lowest-level court in the Massachusetts court system, was called the "superior" court. Just informing these Chinese judges that the Superior Court of Massachusetts was the lowest-


level court was insufficient. There must be a historical, cultural, and social explanation.

Similarly, while most legal systems agree on the importance of professional independence, the meaning of this term and the extent of the independence require an understanding of the 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 to create an environment in which students can freely debate so that these assumptions can surface.

For one, we need to have a way of infusing cultural literacy into the curriculum and of placing the substantive information into the appropriate social, historical, and political context and background. Additionally, the best way may be for us to be aware of our own assumptions and raise questions about their continued validity. 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 embark upon international legal exchanges.

**Future Possibilities**

If we recognize that skills, values, and culture are an important, if not the most important, part of international legal exchanges, then we may want to broaden the exchange experience. Beyond the exchanges of curriculum and research, we may want to explore ways of exchanging practice experiences. In other words, exchanges could include a practical component—be it an internship or a clinical experience. The value of experiential learning, that is, the link between practice and education, has long been recognized. As John Dewey noted, “there is an intimate and necessary relation between the processes of actual experience and education.”  

At Northeastern University, where I teach, the cooperative internship is an integral aspect of the academic program for every student. Each student rotates in and out of academic quarters and work quarters. The idea is that practice and theory are interdependent. And experiential learning is the best way to apply abstract knowledge and make more comprehensive what was learned in the classroom. Indeed, in learning how to be a lawyer (as opposed to legal doctrine, abstract legal analysis, and instrumentalist skills), “a law student must experience or be in the complex, situational context of a lawyer.”

Similarly, for any participants of a legal exchange program to fully comprehend the meaning of lawyers and the role of law in a different legal system, they must experience or be in the situational context of a lawyer. The international exchange program, then, could include an internship component. Obviously, international internships may not be possible with every country. There are financial and administrative costs involved. And some countries, like China or Japan, have restrictive rules regulating foreign lawyers’ practice. In these countries, internships if at all would have to be carefully tailored to

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12. Experience and Education 7 (New York, 1938).
the domestic regulations. Other countries may be more hospitable for such exchanges. While an internship component will add complications to the cost and administrative burden of a program, students who have had an internship have enjoyed it, and the rewards seem to be well worth the effort.

Finally, I want to address the one additional major obstacle: how do we ensure full exchanges with different countries if language is a barrier? Will exchanges be limited only to people who can cross the language barrier? Clearly, people with language proficiency can get the most benefit from legal exchange programs. For those who are not proficient, there are two possible ways to address the language barrier—technology and collaboration.

Collaboration between a domestic teacher and a foreign counterpart is one way to address the barrier, whether in teaching or in research. Even if the foreign visitor does not speak the language of the host country or is not as familiar with the country’s legal system, the domestic collaborator is. Collaboration allows each to draw on the other’s substantive knowledge and creativity, and to overcome the language obstacles, and it broadens the pool of eligible participants in legal exchanges. Collaboration also assists in bridging the cultural gap. In 1998, New York University’s Global Law School Program had no less than eleven courses taught jointly by the school’s global faculty and full-time domestic faculty. Of course, like all collaborations, co-taught courses are successful only if the teachers are compatible and there is some common ground in the approach to the subject matter.

Exchanges can also be enhanced by distance-learning technology now available widely. Distance learning takes advantage of the speed and reach of computers, e-mail, and Web sites to transcend the miles between nations. For those countries with access to e-mail and Web sites, this may be the least costly and most creative way of continuing legal exchanges. In contrast to in-country internships, it allows for exchanges without requiring a physical presence or incurring the attendant costs. Distance learning also overcomes some of the language issues: often reading comprehension is higher than oral comprehension.

Many faculty have taken advantage of distance learning by posting their courses on the Internet, and allowing students from other countries to log on and participate in online discussions. This could also be done as part of a collaboration between teachers in two countries: two courses, one in each country, could be run at the same time with students from both courses interacting with each other on the Internet. Kent Syverud of the Vanderbilt law school is holding just this type of course with Norio Higuchi of the University of Tokyo. There are multiple benefits to a collaboration of this kind. It combines the benefits of face-to-face teaching that distance learning can not completely replace with the breadth that distance learning brings. This kind of collaborative effort would be enhanced if the teachers could at some point change places and give students of another country the benefit of their respective expertise.

14. The problem is not insurmountable. For example, the University of Santa Clara summer law program in Hong Kong has both an academic and an internship component.
This mix of physical and virtual exchanges is exactly what has been done most recently at Harvard’s business school. Calling it “capture-release-recapture,”15 the Program for Global Leadership asks participants to spend three and a half weeks together, work separately in their own countries for eight, and then reconvene at the school for a final four weeks. The distance learning takes place during the eight-week break, when participants form teams and work together on a group project while at home. The participants can access online resources and talk with each other via e-mail.

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International legal exchanges require specific curricular attention to skills, values, and culture—subjects often not contained within the pages of a book. They also require a keen awareness of differences in teaching and communication styles in different cultures. It is only when we are aware of the variations and similarities that a comparative perspective can aid in the understanding of and respect for other legal systems. This in turn not only will make us better able to work with foreign lawyers and clients, but will also enhance our respect for cultural, gender-based, and religious differences at home.

15. Distance Learning @Harvard.edu, Harvard Magazine, July-Aug. 2000, at 76.