

EDUCATING LAWYERS FOR TRANSNATIONAL CHALLENGES: THE CHALLENGE OF ISLAMIC LAW

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Islamic law remains one of few non-Western systems that are still of some normative, social or political relevance in the world today. The extent of its application varies in most Muslim countries in the Middle East (which is the cradle of Islam but is home only to 14 % of the world over 1 billion Muslims), Asia, and Africa but its importance is obvious. To the extent that Muslims feel obliged to organize their personal and some formal affairs in accordance with it wherever they may be, the spread of Islamic law has become global and its application is no longer confined to traditional Muslim countries. It has featured in international tribunals as well as decisions of many courts around the globe.

For instance, at the post-independence era of expropriation and nationalization of foreign investments in developing countries, foreigners invoked anti-expropriation principles of Islamic law in Muslim countries and those principles featured prominently among many others which relevant international tribunals considered in determining conflicting claims.¹ The Canadian Province of Ontario exemplifies domestic application of Islamic law in the West. The courts there have been required to grant a mandatory session for Muslim litigants in civil matters to settle their claims in accordance with Islamic law.² Similarly, courts in the United States have determined several issues of Islamic law even though most of these concerned substantially interpretation of US immigration, family relations and other domestic laws.³

¹ In *Libyan American Oil Company (LIAMCO) v. Libya* (20 I.L.M. 1 1981), the arbitral tribunal appointed by the President of the International Court of justice concluded that concession rights, as those granted LIAMCO, were regarded in Islamic law as incorporeal property that cannot be interfered with by any trend of nationalization. However, because the right of a state to nationalize under international law is sovereign, subject to the obligation of indemnification, the tribunal awarded damages in favor of LIAMCO.

² See e.g. Rosemarie Ruccella, *Muslims Call for Mediation in Canadian Courtrooms*, at <<http://muslim-canada.org/ryerson.htm>> visited February 20, 2004.

³ In *O'Lone v. Estate of Shabaz*, respondent Muslims challenged new prison policies that resulted in their inability to continue to attend Jumu'ah, a Friday weekly Muslim congregational service. The US Supreme Court fully analyzed Islamic law provisions on this ritual (482 U.S. 342 1987).

Thus, whether substantial in Muslim countries or peripheral in others, Islamic law is emerging as one of great challenges of transnational lawyers. Moreover, there is an observable preference in Muslim countries for Western trained lawyers, making basic understanding of Islamic law for these lawyers crucial. Many American and British law firms now have offices and personnel in many Muslim countries, yet most law schools have not faced up to this challenge resulting into failure of these lawyers to exude minimum understanding of Islamic law even as more opportunities for interaction continue to emerge.

Lack of knowledge of the legal tradition is not the only cause for concern for transnational lawyers handling causes in Muslim countries. Even where there is appreciable understanding of the law, a big concern is how a transnational lawyer synthesizes that law with international norms. Although the substance or structure of laws in most Muslim countries may reflect international norms, those norms will be better implemented when couched in terms that resonate with Islamic law. The distinctiveness of Islamic law is more than that of cultural or religious difference, it is jurisprudentially distinct, has areas of unresolved tension, and it is an independent source of legitimacy through which the ordinary Muslim measures other social values. One notable area of tension between Islamic and other dominant norms is protection of human rights, especially in the context of gender and minority relations.⁴ However, the fact that various reforms are taking place in many Muslim countries and now in the Middle East present boundless opportunities for continuous engagement with Islamic law. Yet, we cannot expect meaningful reform to take place when partners in such activity are not acquainted with rudiments of the subject matter.

Of all groups of transnational lawyers, the most challenged in this regard seem to be those whose practice relate to non-governmental organizations. This is because NGO lawyers deal with people at the grassroots and they work to transform thoughts or instill new values, in contrast with those that are concerned with business transactions or perhaps governmental organs. Even if transnational NGO lawyers learn on the job, experience has shown that this is not without great expense in terms of money, time and

⁴ See Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?* 15 Mich. J. Int'l L. 307 (1994).

expertise. The Misali instance is a case in point where transnational lawyers have used legitimacy of Islamic law to complement or promote a concern of the international community within the context of sustainably managing declining fish stocks in a marine conservation area.

Misali is an Island in Zanzibar, Tanzania, and majority of its population practice subsistence fishing. Designated by Tanzanian laws as Misali Island Marine Conservation Area, it is renowned for its rare coral and sea turtles. The community used various unsustainable methods, including dynamiting, to increase its catch of a dwindling stock exacerbated by population increase and lack of opportunity. Environmental NGOs, notably the World Wildlife Foundation International, spent time and energy trying to convince the community to change its fishing methods with little success. The NGOs merely tried to implement Tanzania's laws designating the area as a conservation area. Thereafter the NGOs engaged a UK-based organization, Islamic Foundation for Ecology and Environmental Sciences (IFEES), because majority of the people of the Island are Muslim. IFEES employed principles of Islamic environmentalism through religious and community leaders to enlighten the community on their fishing responsibilities.

After conducting a series of workshops bringing forth Islamic stewardship principles and human responsibility toward other species, the unsustainable fishing practices of the communities dramatically changed, resulting in an increase in their fishing reserves. The project has been so successful that the World Wildlife Foundation International accepted it as a Gift of Islam to global environmental management effort, part of its global Sacred Gifts of Nature Program at an international gathering in Khatmandu, Nepal in November 2000. This was the only gift to emerge then from the African continent.⁵

Given the challenges that they face, lawyers will sometimes have to work through local rules that are discordant with their own notion of norms, which if they are not aware of or prepared for, will lead to difficulty, frustration, or failure in their part. Once lawyers appreciate differences in norms or other societal values, they will need to know how to create synthesis between them in order to perform their duties effectively. The current

⁵Janet M. Chernela, Ali Ahmad, et al., *Innovative Governance of Fisheries and Ecotourism in Community-based Protected Areas*, 12 PARKS J. 2 (2002).

practice of placing complete reliance on professionals to recommend suitable local partners has its limitations because the recommenders or even those recommended are not always disinterested and do have goals that may not serve those of the transnational lawyer.

We will need to confront difficulties that often result from academic indifference regarding marginal but potentially transnational norms by identifying and anticipating how those norms may affect the workings of transnational lawyers and introducing them to those lawyers.

With regard to interaction of Islamic law with other major legal systems, a comparative law approach is essential. Given the challenges and gaps between what lawyers learn at law schools and what clients expect from them in real life, I believe it will be beneficial to continue to teach relevant aspects of Islamic law as separate courses especially in areas where the law is strong and where it may offer new ways of promoting transnational values. For instance, the outlook of Islamic law is strong in protection of the environment, regulation of family relations, and alternative dispute resolution. In areas where it is relatively weak such as human rights, constitutional law, and international law it may be integrated into relevant courses of law schools. Already, some law schools in the United States offer certain aspects of Islamic law as an elective course. In Nigeria, all law schools that offer Islamic law courses teach them separately.

Like other features of globalization, provision of cross-border legal services is mostly a phenomenon of the developed countries. While lawyers from developed countries are mostly favored in the provision of transnational legal services, few lawyers from the developing world currently provide such services in developed countries or for clients from those countries. As such law schools in developing countries may not be facing equal pressure about educating their future lawyers beyond the prospect of pursuing extra-jurisdictional legal remedies.

The benefit of prior understanding of a variety of legal cultures cannot be overemphasized. Institutions such as the Environmental Law Institute in Washington, DC are responding to some of these challenges in the field of environment and natural resources law. The institute is involved in providing materials and instructions for transnational environmental lawyers working in Muslim countries. Given the scale of the

Islamic law challenge to transnational lawyers though, such commendable efforts of non-law schools will remain ad hoc and informal rather than being rigorously academic and anticipatory in equipping our future lawyers.

However, given the limitation of time at the disposal of law schools, we must assess the need for meeting the above challenges with the number of comparative or interdisciplinary courses that are worth considering for integration in future curricula. Whatever course is taken as a way of sharing quality and updated information in a short period, forming a cooperation network among law teachers is one option that we can no longer ignore if we must prepare transnational lawyers for future challenges.