

Special methods for educating the transnational lawyer

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I. Introduction

University law schools provide the academic engine that drives the practice of law. Historically, law schools have sought to balance the theoretical and practical needs of the chosen profession of the vast bulk of their graduates. This has not been an easy task and there is ample evidence of repeated failures to strike the most appropriate balance: in Oxford, the study of law originally involved the abstract and theoretical study of a law that no longer existed (Roman law); in New York and the eastern seaboard it resulted in concentrating only on the practical skills of pleading, drafting and negotiation. In most common law countries, it is only now that there has emerged a workable balance between these two great needs and a calm, albeit a somewhat uneasy one, has descended upon the education of lawyers. In the U.S. the emergence of clinical programs at law schools represents that last of the great accommodations necessary in that jurisdiction. Now, as this conference turns to evaluate the educational framework of the transnational lawyer, once again the precarious balance between practice and theory is thrown into question.

The fundamental question that any legal educator must ask is clear: what is my objective in training the putative transnational lawyer? Am I to train the individual in the skills necessary to practice law on a day to day basis, or am I educating the mind in the theoretical foundations of a profession whose day to day practical skills will be learned elsewhere? Difficult as that question is within a single national context, it has the potential for absurdity when applied on a transnational basis. To answer this question requires us to examine what we hope to achieve in a transnational legal education.

The aim of a transnational legal education is not to create individuals who can *practice* law in a number of diverse jurisdictions. Although graduates of such a program may well wish to do so, it should not be seen as an objective in itself, but merely as an incidental result. The aim of any such program should be to create lawyers who are comfortable and skilled in *dealing* with the differing legal systems and cultures that make up our global community.

II. The Foundational Base

Transnational legal education needs to start from a fundamental base: the study of a relevant national legal system. Students need to have mastered the intricacies and nuances of at least one national legal system. The lack of such foundational knowledge would threaten both students and the program with a quagmire of uncertainty. The skills and discipline required in the study of law are best honed within the framework of an identifiable national legal system. It is only through this study that the intellectual rigor of a lawyer can be established and maintained. Where national legal education falls down is in the failure to see beyond that intellectual constraint: to view the national as the universal. Transnational legal education has to view national training as a foundation upon which to build new, even more demanding challenges for the putative lawyer.

Thus the transnational lawyer will have the basic core education necessary to provide sufficient academic skills to proceed to the practice of law within the jurisdiction. It is not necessarily the case that this sufficiency of academic skills would, or should, match the national professional requirements; we are talking about sufficiency in academic ability not professional accreditation. Thus for example, there is a view that much of the academic skills gain in law school are achieved within the first two years, the remainder of the program tending to provide for a broadening of legal exposure and permitting students to identify potential areas of specialisation.

III. Developing the Transnational element of the program

The remainder of the period of study could then be used to develop the transnational element of the student's legal education. This portion of the program should be designed to compliment the academic legal skills acquired with a strong comparative focus. This can be achieved utilizing a number of specific devices.

First, each program should be partnered with comparable law schools located around the world. For those in any given alliance of law schools there should be

- a. Common Core curriculum
- b. Faculty exchanges
- c. Student exchanges
- d. A strong research element

I will deal with each in turn.

a. Common core curriculum.

Operating within a law school alliance, partner institutions should offer identical subject choices and module content to their students. It should be possible for a student from any of the institutions to complete their program in any of the partner institutions. This would require development of shared syllabi for all offered modules, credit equivalencies for grades and such like and mutual recognition of existing standards within the partner law schools. Ultimately, the degree would be awarded by the home law school, even if the final element of the program is satisfied in another institution.

b. Faculty exchanges

Modern technology can, and should, be used to expose students to differing faculty experiences. Modules can be offered so that some lecturing takes place by home based faculty and some through videoconferencing and so forth. Such videoconferencing should be integral to the process however and the danger of slipping into a simple add-on lecture avoided. From the outset, care must be taken to ensure that both students and the faculty themselves regard lecture delivery through technology to be as significant and as important as traditionally delivered material. This task should not be under-estimated as both students and faculty tend to diminish the importance of material delivered in this fashion, regarding it as a novelty rather than anything substantive. For the younger students reared on Nintendo and camera-phones, this may be less of a problem than it will be for faculty raised on telephones and the electronic TV ping-pong game.

However, there can be no doubt that technology cannot replace real time faculty exchanges. The benefits of having visiting faculty members on campus, interacting with students and faculty are enormous. Perhaps one of the most important benefits lie in the field of first class collaborative research on comparative areas of law. Nothing will work to create the transnational lawyer quicker than collaborative research output. Moreover from the student point of view, experiencing visiting faculty with different approaches, cultures and outlooks, provides for a much-needed diversity in law schools all too often susceptible to excessive homogeneity. Classes given and graded by visiting faculty provide the most economically efficient and uniformly fairest method of creating a 'global' culture among students, particularly those students who cannot avail of the student exchanges detailed

below. Finally, real time faculty exchanges tend to provide continuity in any putative law school alliance and make such alliances more enduring and less prone to atrophy.

One of the big difficulties is of course the practical management of such exchanges. Obviously these need to be managed on a case by case basis within each alliance, but some general observations are possible. Simple one or two semester exchanges provide one possible structure, ideally where there is a mutual swap that retains the resources for each of the law schools to continue their overall offerings. Nonetheless, while in principle these swaps are 'simple' in reality they are anything but and personal factors along with institutional requirements seldom enable them to occur with any great level of frequency. Members of a law school alliance should have a commitment from the institutions involved that they will, within reason, take steps to facilitate such swaps.

Another possibility would be to make greater use of block teaching allocations. At this level it may in fact be preferable to have visiting faculty spend concentrated time with students and faculty, develop ideas and thoughts that students can have time to digest, research and expand upon, followed by another concentrated session to deal with the results of this analysis. Block teaching allocations, whereby a visiting lecturer spends 2-4 weeks at a partner law school, can often be used in conjunction with differing academic calendars to turn a seeming disadvantage to an advantage. Again, this is not without practical difficulties, but with sufficient commitment, poses fewer problems than the straightforward one or two semester exchange.

c. Student exchanges

There can be little nay-saying of the student exchange. It's advantages are obvious and many. However, there are substantial limitations to its role within a transnational legal education. First, it tends to deny access to those less fortunate. We are not merely talking about the disparities between developed and developing countries, but even within any given law school community there will be disparity of opportunity given the costs involved in exchanges. Over-reliance on student exchange may tend therefore to create a two tier class of students (those who availed of an exchange and those who did not) based on financial and personal circumstances. Second, student exchanges tend to involve heavy administrative investment for little purported return visible to either faculty or the institution. In tight fiscal situations, such exchanges tend to be the first offered on the sacrificial alter. Third, the benefit of the exchange is somewhat transient, normally leaving the institution with the student. The benefit is personalized, with only a haphazard institutional affect. Finally, making student

exchanges as the cornerstone of a transnational legal education, tends to limit the nature of law school alliances within linguistic possibilities.

Some of these disadvantages can be ameliorated if not overcome. Exchange slots might be based on merit/need with offers of financial assistance to those selected. Returning students might have to share their experience in a more structured manner than has been the case, involving seminars etc.

Moreover, greater use can be made of technology to enable a wider interaction between students in all the law schools situated within an alliance. Thus for example, chat room technology can be used to form transnational study groups, particularly where there is the common core curriculum. Academic discourse across cyberspace between students instantaneously can be used to create personal links on a far broader scale than simple student exchanges. In addition, students from around the world would be working on and sharing in the same course of study, helping each other and working together with an international faculty not limited by geography.

Under no circumstances is it being suggested that such exchanges should not play a vital role in transnational education; it is simply to point out that there are sufficient difficulties to give rise to considerable concern where such a mechanism provides the core element of the program.

e. Research element

Perhaps most overlooked is the use of research in creating a strong transnational legal education program. Students conducting research on areas can engage with their colleagues, both faculty and students, located throughout the alliance. Requiring comparative legal research that demands sharing of information between partner law schools forces students and faculty into a more global mindset. Students may use any of the devices above to achieve this goal. Thus in their research projects they may avail of visiting faculty from one of the partner law schools, they may visit another partner law school for site based research, and discuss their issue across all the members of the alliance using the technology of discussion/chat rooms. Research based learning imposes academic disciplines and rigors different from simple lecture or seminar delivery and is more likely to involve a student (and faculty) in the broad range of devices needed to secure a meaningful transnational legal education.

IV. The institutional structure

A meaningful program of this nature can only be undertaken within a fairly definite institutional framework and partnership. An amorphous structure that seeks to achieve too much will doubtless fail early on. Instead one needs to create a global network of partner law schools that would engage in such a program. Each network should consist of law schools comparable with each other. Disparity in size, status, resources, etc., tends to lead to domination by one or more subsets within a network. Each law school should appoint an academic co-ordinator tasked with developing and implementing the program. The function of this academic co-ordinator should be to liaise with the other law schools in the network on the planning, establishment and running of the program. Common curricula need to be developed among the network law schools. This should be done by identifying faculty who are willing to participate in the program and who will commit to the faculty exchange and technology usage essential to the success of the program.

The common curricula should concentrate on the broad comparative approaches to common themes. For example, in say civil obligations, the curriculum should deal with the effect of a promise within differing legal cultures; the obligation to others; the role of formalities in civil obligations and so forth. Developing the common curricula would prove among the most difficult of the elements of the program. This conference would presumably provide a wealth of possibilities from which each network can develop their common curricula.

In addition to drawing up a common curriculum, much emphasis would have to be placed on setting out clearly the required special arrangements. In particular, there would need to be trial runs of the technology, arrangements in place to deal with the practical issues of faculty and student exchanges, and so forth.

Initially a select cohort of students should be recruited for participation in the program. This cohort of students should have successfully completed at least two years of law school. The students should then enter the program in a carefully supervised manner. Their progress through the program should be carefully monitored and constantly reviewed. At the end of the first completed program an external review should be undertaken to advise on potential improvements and so forth.

V. Conclusion

Within a five page limit, it is difficult if not impossible to do more than simply raise many of the issues that need to be addressed in this area. There are many more aspects such as the role of work placements, joint student moots etc. that also need to be addressed. However, the aim has been to attempt to provide a brief introduction to the process of establishing a successful program. Of course, the reality is that the success of any program depends on the final product. Graduates from such a program need to be able to interact in a global setting. They need to be comfortable dealing with a variety of legal regimes and cultures. This cannot be achieved simply by teaching them 'foreign' law from a textbook. It requires an immersion in the differences that surround legal thought, even within systems regarded as 'similar'. This immersion is best achieved I believe not by simply sending students on overseas exchanges and telling them take whatever is on offer. Instead the aim should be to provide a common program followed by fellow law students in partner institutions around the globe. It needs to provide accessible ways in which they can interact with an international faculty and student body and establish a corps d'esprit among themselves. Such interaction enables a truer understanding of the reasons underlying our perceived differences and enhances a graduate's ability to act in a global environment. Properly structured, the new technology can enable us to achieve this goal in a non-elitist manner.