

**Transnational Curriculum for Tomorrow's Lawyers:
From the Viewpoint of Civil Procedure
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1. Introduction

In this paper, I will consider concisely the expected contents of the civil procedure course, which is my specialization at the University of Tokyo, in order to prepare tomorrow's transnational lawyers.

Before going into details, it would be necessary to clarify the meaning of the term "civil procedure". In Japan, as in Germany, which provided us the model of the modern civil procedure system in the 19th century, the term "civil procedure" includes in a broad sense the enforcement of the judgment (Zwangsvollstreckung) and the insolvency. Here, however, I will concentrate my attention on the civil procedure in a strict sense, i.e. the procedure of adjudication, so as to avoid any confusion which can occur, when we treat all these matters together.

In this context, "lawyer" plays two different types of roles: the role as a judge and the role as an attorney of party. Lawyer as an attorney of party will be focused on as the main theme, for the impact of globalization to the function of judge is relatively limited because of the principle of *lex fori*, as we will see below.

2. Adapting Legal Practice to the Globalization: Different Approaches

If it is true that tomorrow's lawyers must be more prepared for the globalization, there are several possible approaches to adapt legal practice to such a trend. The question, which approach to make use, may also influence the expected curriculum for the transnational lawyer.

a) One-Door/ Multi-Door-Model

When a user faces legal problems apparently related to two or more jurisdictions, there supposed to be two possibilities to access transnational legal services. First, he can manage the

matter seeking himself several lawyers both in his country and in the other country (multi-door-model). Possibly some big multinational companies provided with enough information and resources can choose this way, but for most of users, the second way would be preferable: to leave the matter to a lawyer or to a law firm which is competent to provide such services (one-door-model). The question here is how this lawyer or law firm can provide such services.

b) All-in-One/ Network-Approach

The first way is, so to say, all-in-one-approach. Logically, it would be the best, if each individual lawyer were competent for any transnational matters. But if this is unrealistic in today's trend toward specialization, an alternative may be provided by a big, multinational law firm which employs specialists for any jurisdiction.

Although this is already attempted by some big law firms especially in the US and the UK¹, it is easy to imagine that this kind of multinational firm can be kept only at a high administrative cost. Such a cost, however, makes it difficult for most of users to access transnational services which he needs. In this regard, a network of collaboration among independent lawyers or law firms from various countries seems more attractive (network-approach)². If many lawyers or firms have access to such a network, users can easily receive necessary legal services for him.

3. Particularity of Procedural Matters

With regard to the procedural matters, some of their features seem to give greater importance to the last approach.

First, it is universally admitted that procedure is governed by the *lex fori*. Accordingly, lawyers who represent parties in civil procedure should have adequate knowledge and experience of the procedure in the concerned jurisdiction. This is also one of the reasons, why the representation of the party in civil procedure is often limited to lawyers qualified in that jurisdiction.

In addition, compared with matters of substance, which are governed mainly by statutes and case law, the role of the custom or work habits of the courts is quite important for matters of procedure³. Thus, apart from statutes and case law, familiarity with the court practice is required. This also makes it difficult for lawyers to represent parties in a foreign jurisdiction.

Due to these features, the collaboration with foreign lawyers is inevitable in most of the cases involving transnational questions. Receiving such a case, the lawyer has to seek his foreign

¹ See for example an interesting report in the Economist, February 28th 2004, pp. 73-75.

² Apart from transnational affairs, this approach may also help lawyers in responding increasing need for more specialized legal services.

³ In Japan, some courts in big cities (Tokyo, Osaka, Fukuoka, etc.) have well established practice of their own, sometimes based on some informal agreements with the bar association of the region. This local practice is not always visible to foreigners.

collaborator, if he doesn't find one in his own law firm.

4. Need for Transnational Perspective

Based upon the consideration above, it may seem that the need for adapting the contents of civil procedure course at law schools to the globalization is relatively limited. But this does not mean that there is no need for transnational perspective in the field of civil procedure.

First, even if a case involving some transnational aspects seems manageable in the court of his country, this doesn't mean that the lawyer can simply bring the case to the court of his country. Naturally, he should examine the international jurisdiction of his country. In addition, whether there is already a lawsuit in a foreign jurisdiction or not, he must consider the risk of such a lawsuit, evaluating its outcome and impact for his jurisdiction. If necessary, he must consider adequate measures to prevent such a lawsuit in advance. Similarly, if there is already a related lawsuit in a foreign jurisdiction, he must consider how to react in his country to such a proceeding, for example, when a writ is served on his client. All these considerations require him adequate knowledge of international private law of his country, such as the rules of international jurisdiction or the rules about the effects of foreign judgments⁴. On the other hand, if he brings the case to the court of his country, he should also examine the possibility of the enforcement of the expected judgment in the concerned foreign jurisdiction. This requires the knowledge of international private law of that country and therefore possibly the collaboration of lawyers from there.

Thus, not only when the client need to bring a lawsuit in a foreign jurisdiction, but also when he can bring the case to the court of his country, his lawyer needs sometimes a collaborator in the concerned foreign jurisdiction.

Furthermore, even if the lawyer finds a competent collaborator in the concerned foreign jurisdiction, it does not mean that he can put the case wholly into the foreign lawyer's hands: there must be at least one lawyer who is capable of integrating the whole service. In this regard, a well organized multinational law firm would bring an advantage. But if we make use of a network instead of such a law firm, the lawyer receiving a case involving transnational questions must know how to use this network efficiently. In other words, he must know when and what help he needs from his foreign collaborator. And this integration of the whole service should be oriented and adapted to the interest of the client⁵. Here, the lawyer needs the ability to recognize the client's interest and to work out a suitable legal strategy on a global scale.

In short, the lawyer is expected to be not only an expert of civil procedure of his country,

⁴ In addition, the lawyer should know the rules concerning the distinction between matters of substance and matters of procedure, in order to consider in what extent the *lex fori* will be applied.

⁵ For example, if the client is a multinational company, the service should be adapted to the global strategy of the company. Here, the lawyer should consider how to maximize its benefit on a global scale. By contrast, if the client is a Japanese woman who faces a trouble with her foreign ex-spouse and who wants to live peacefully in Japan with her Child, the lawyer should consider above all how to ensure the client's life in Japan.

which is essential to his ability, but also a manager of the case equipped with transnational perspective⁶.

5. Expected Role of the Legal Education

a) Expected Contents of Education

The next question, also principal to this conference, is what law schools can and should do in order to equip tomorrow's lawyers with such ability that we have seen above.

First, it is natural that matters of international civil procedure should be integrated to the legal education, whether as a part of the course of civil procedure or as an independent subject.

Secondly, in order to acquire the ability to provide a suitable legal strategy on a global scale, it is necessary to have the minimum knowledge of certain representative legal systems, such as the US, UK, Germany, France etc. This would also help to deal with other legal systems, for these can be understood, to a greater or less extent, as variants of the former ones. Such knowledge should be also provided by law schools.

Thirdly, as a prerequisite to the collaboration with foreign lawyers, the skill of communicating with foreign lawyers should be improved. In addition to the necessary training of English and possibly other foreign languages, to which the secondary education is primarily responsible, case study and simulation may be effective. In this regard, exchange of students with foreign law schools is also desirable.

b) Current Situation of the Legal Education in Japan

It is not true that current law schools in Japan, which are faculties of law at undergraduate level of university, have totally neglected to develop such ability that we have seen above. Many law schools provide a course of Anglo-American law and have specialists in that field, and some major law schools have also courses of French and German law. For example, the Faculty of Law, University of Tokyo provides every year lectures of Anglo-American, Ibero-American, French, German, Islamic law etc. Regarding the first aim above, our faculty provides a special lecture on certain aspects of procedure related to international issues, such as international jurisdiction, notification etc., although this is not the case in many other law schools.

Furthermore, new law schools at graduate level, which are organized after the model of US law schools, are now in course of preparation in Japan and will be opened very soon in April 2004. These law schools provide one course of three years for the students who have no legal knowledge and one course of two years for the students who have already a certain legal knowledge, mainly

⁶ However, division of these two functions among specialized lawyers is not excluded, if necessary collaboration is ensured.

through their study at undergraduate level⁷. This will be the most important reform of the legal education system in Japan since the World War II. One of the aims of this reform is to adapt the system to the need for multiplying international legal services. Thus, it is expected that a new and enriched curriculum will be provided in these new law schools.

Yet, regarding cooperation with foreign law schools, which would be particularly profitable for the aims above, we need some improvement. For instance, exchange of students and teachers should be facilitated. At the present time, this is left entirely to the hands of individual law schools, but it may be desirable that a certain scheme for such cooperation is prepared.

6. Conclusion

The considerations above remain a rough sketch about transnational curriculum, which is to be both detailed and enriched by the discussion in the conference.

To conclude this paper, it is to be noted that if the collaboration of lawyers on a global scale is necessary, the relationship of mutual trust among lawyers from all countries is an essential prerequisite for it. Cooperation among law schools may favor such a relationship, which means also a certain community of lawyers from all over the world. I hope this conference will be an occasion to establish the necessary basis for it.

⁷ Former faculties of law at the undergraduate level will continue to exist after this reform. This solution can be understood as a compromise between the US model and the former Japanese system.