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This short paper discusses the following two questions. (1) What are the transnational challenges for tomorrow's lawyers? (2) What can law schools do to meet such challenges? The two questions will be discussed from the perspective of a tax lawyer teaching at a law school in Japan.

(1) What are the transnational challenges for tomorrow's lawyers?

Globalization has significant impacts both for governments and for legal practitioners.

Impact for governments:

For governments, one of the central issues is whether it is possible to agree on a set of minimum standards on the manner in which they raise state revenue.

Money flows to where tax is lowest. It is becoming difficult to tax income from capital because capital is mobile and flees from taxation like shifting sands. One example is the taxation of cross-border flow of portfolio interest. In the 1980s, an increasing number of countries started to exempt interests that were paid to nonresidents (erosion of source-based taxation). In the 1990s, it became apparent that governments are not sufficiently equipped with enforcement measures to capture the interest income earned abroad by their residents (erosion of residence-based taxation). Portfolio interest is merely one example. Income from capital generally is becoming harder to tax in a global environment. As a result, relatively heavier tax burden will be imposed on labor and consumption that are less mobile than capital. An obvious consequence is that the rich pays less tax. To reverse the trend and to safeguard the income tax base, it is necessary for governments to agree on a manner how to tax capital income in a global economy.

In a global competitive environment, some governments intentionally reduce their taxes to attract foreign capital that would otherwise have flown into their neighboring countries. When more governments adopt such practices, the overall result may be the race to the bottom. In the end, there will be no state budgets for education and Medicare. The challenge for tax policymakers around the world is how to curb "harmful tax competition."

Impact for practitioners:

In a global setting, lawyers need to have a worldwide network to give effective advice to their clients. As global competition grows fierce, business lawyers must equip themselves with reliable sources of information regarding the legal systems in other parts of the world. This explains the recent trend towards international mergers and alliances among major legal firms, often in close partnership with big accounting firms.

Of course it is not necessary for every lawyer to know the exact details of foreign law in question. But a transnational lawyer must at least understand how to pose appropriate questions. For this purpose a broad comparative outlook is of great help. A lawyer who is sensitive to differences in legal rules definitely has a better chance to avoid pitfalls inherent in dealing with more than two legal systems.

Even when lawyers successfully establish their networks, the challenge does not end here. One ethical issue is the extent to which lawyers may utilize their expertise in an aggressive manner. For example, some clever lawyers may try to maximize after-tax returns for their clients by exploiting mismatches in different tax systems ("international tax arbitrage"). Suppose that the same transaction is considered as a sale in the U.S., while it is deemed as a lease in Japan. The mismatch may give rise to double depreciation deductions for the same property in relation to domestic tax laws of both the U.S. and Japan. Is paying no tax for either country considered to be unethical? Is giving advice to exploit mismatches against the spirit, if not the letter, of law? Some may argue that this example of double depreciation is without problems. As planning techniques become more aggressive, however, lawyers must find where to stop. Drawing the line is a real challenge for practitioners given the fact a large amount of fee is involved.

(2) What can law schools do to meet such challenges?

Since I am teaching at a law school in Japan, most of my points are relevant in a Japanese context. But some themes are universal, and are valid for law schools in the U.S. and other countries.

Agenda for law schools:

The impact of globalization, described above, justifies the emphasis on comparative study in law schools. Educational institutions can motivate future lawyers to look beyond the geographical border, and help them acquire skills needed to communicate with people in other countries. Moreover, learning other systems helps students to better reflect on the domestic system of their own.

Legal transplants from the beginning:

To put the matter in a Japanese context, using the modern legal system itself has been a transnational challenge. This is because Japan started to introduce the Western idea of law in the late 19th century. Legal concepts were translated into Japanese. University courses included foreign law (meaning legal systems in a few European countries) from the beginning. Researchers were encouraged to study law from a comparative perspective. Students must adapt themselves to legal concepts borrowed from foreign countries.

Exchange programs:

For the students studying in Japanese law schools, collaboration with the U.S. law schools continues to be essential. For the students studying in the U.S., it may be beneficial to have a chance to look at a different legal system with rapid economic success. Therefore, the existing exchange programs need be strengthened.

Sharing research outputs:

In addition, it is necessary to consider how to share research outputs bilaterally. Currently, the flow of information is overwhelmingly in one direction. The U.S. Law Reviews are widely available (and frequently read!) in Japanese law schools, while less U.S. law libraries subscribe to Japanese journals. This should have good reasons including academic interests, size of audience, and language barrier. Unlike some fields in natural science, the study of law has had a somewhat autonomous character. It would be inconceivable for all legal academic journals to be written in English and for their publishers to concentrate all in the U.S. But we could do better by the use of electronic means.

Global vision:

At the same time, the Law School curriculum may need to have a more global vision to look beyond a few European and the U.S. legal systems. Such expansion has started in our law school. For example, we invite distinguished professors from Korea and ask them to give courses. A course on Brazilian law has been offered for more than a decade. A few faculty members visit Cambodia to set up a Civil Code. The International Center for Comparative Law and Politics is a host to visiting professors and researchers. The newly established Business Law Center is a connector to outside institutions including OECD, IMF and Japanese Ministry of Finance that have training programs for tax officials especially in the Asian regions. Such effort need to be continued.