

Teaching Transnational Law: A View from the Heartland

When I made the decision two years ago to put myself on the market for a job teaching law, I had a sobering conversation with one of my old international law professors. He warned me that I might receive a chilly reception from some hiring committees and from faculty audiences attending my job talk. Unfortunately, he added, Most American law professors view law as stopping at the water's edge. His view was quickly confirmed in my next call to a former professor (who does not teach international law) who expressed his inability to understand "what it is exactly that international law professors teach or do." After contacting a third former professor, my spirits were somewhat buoyed by the comment that, despite the fact that internationalism had languished for years in the backwater of the legal academy, All the law schools are looking to hire international law professors now. It seemed that comparative and international law scholars were in demand in a post-September 11 America struggling to understand how the terrible events of that day could have occurred.

As a first-year law professor whose experience outside the academy included stints as an American diplomat and as a lawyer at a global law firm, I was anxious about what challenges lay ahead. And despite learning that international law was a "hot topic," those conversations with my former professors confirmed what I had feared about choosing to enter the legal academy as an international law specialist and raised many troubling questions. If my colleagues do not treat the goals of a transnational legal education seriously, how can I expect to generate enthusiasm among students? Would I be marginalized within the faculty and the curriculum? After it became clear that I would be teaching not in a cosmopolitan city on one of the coasts but in a Midwestern university town, my concern about the traditional parochialism of U.S. law schools on questions of transnational was only heightened.

Less than a year into my academic career, I have some limited observations about

the state of transnational law at a traditional state law school – several of which confirm the “water’s edge” limitation endemic at many U.S. law schools and several of which have come as pleasant discoveries about the seriousness with which students and universities treat global challenges. My experience is at best anecdotal and highly subjective, but it may be representative of the experience of other international law professors who, like me, do not teach at a law school with an extensive transnational law curriculum or a large and diverse international faculty.

In the process of looking back over this year, I have refined the questions that I believe are relevant to a discussion about how best to train students for future global challenges and to produce scholarship that serves both to develop international law doctrine and contribute to the integration of international legal norms into American legal culture: Does the location of a law school matter in its approach to a transnational curriculum? Should it? Do the backgrounds of the students matter? Should they? How much does the regional legal market play a role in transnational legal education? Should the market determine the scope of the international curriculum, or does the law school have a role in influencing or expanding norms of the practice? These questions have particular salience at state law schools like the one at which I teach, whose mission to a large degree is influenced by political goals of the state legislature, and the desire to train “home grown” lawyers to serve the people of the state.

Measured by population, Missouri is the 17th largest state in the United States and is well known as a political bellwether for the rest of the country. The voters in Missouri have voted for the winner of the U.S. presidential election in all but one election in the past century.¹ (I make this observation because understanding political views in this part of the United States is enormously informative in understanding dominant approaches to foreign relations and international legal regimes in the current administration and in Congress.) Located almost at the geographical center of the country, it contains two medium-sized legal markets -- Saint Louis and Kansas City – which each include a handful of firms with global practices.² Economically, it also falls in the middle of the

map, with strengths in a variety of sectors including transportation manufacturing, financial services and agribusiness. Much of the state remains rural: it ranks second in the country for the number of individual farms. But it is also home to the multinational corporations Anheuser-Busch, Monsanto, and Ralcorp.³ If the GDP of each state were measured independently and compared to other national GDPs, Missouri would rank as the 50th largest economy in the world, with a total economy slightly larger than that of Poland.⁴ Judged from these statistics, Missouri is a global player.

But if the economy of Missouri has “gone global,” demographically Missouri looks more like the America of the 1960s than the increasingly multi-racial, multi-ethnic, multi-lingual coasts and sun-belt states.⁵ The lack of diversity is reflected at the two public and two private law schools in the state.⁶ Where I teach, the University of Missouri-Columbia, the numbers reflect even less diversity than the state as a whole.⁷ The small number of law schools reflects the relatively weak regional market demand for attorneys: there are only 8,400 lawyers in the entire state of Missouri.⁸ (By way of contrast, Chicago has over 25,000 lawyers, New York City over 80,000, and Washington D.C. over 40,000.)⁹

The vast majority of students at the law school are drawn from Missouri and most have not spent significant time outside the state -- much less outside the United States. Even among the self-selected group of students who enrolled in my elective international law class this past fall, one-quarter had never been outside the United States. Yet despite this lack of exposure to a truly internationalized environment, students entering law school have an understanding – developed through prior education, experiences within the state or from other outside influences – that they *should* be concerned about globalization. Some students reach the intuition from growing up on a farm: as I have learned from my students, the average Missouri farm cannot survive today without foreign (predominantly Mexican) labor and cannot be profitable without sales to other countries. For others it is the reality of technology that knows no borders: watching BBC news is as easy as catching the Missouri-Kansas football game; pulling up an

Australian website is as easy as checking the bulletin board in the student lounge.

Given the contrast between students' limited experience of globalization and their intuition that globalization *should* mean something to them and their legal training, what is the relevance of transnational legal education at a state law school like Missouri? How will globalization affect the practice of law for the vast majority of our graduates? Appropriate answers to these questions require developing a transnational curriculum that trains the students who go into small to medium sized, state-based practices as well as the students who will join large multi-national firms, while at the same time opening the world of transnational practice opportunities to students who may only have an interest practice outside the state, but no clue how to get there.

In addressing these questions, I believe there are four commitments that would be helpful for law schools with narrow, less developed transnational course offering to undertake. First, students need to be educated about the global context of lawyering. It is not enough to exhort that "we are all international lawyers now." Students view that as empty rhetoric, particularly if they are planning to hang out a shingle in small-town Missouri. International legal developments need to be made relevant to their past experiences and future plans. For example, how does trade law affect agribusiness? How do international IP rules affect bio-tech research? How does international treaty law bear on the representation of a Mexican migrant worker in a criminal case? Helping them answer these questions puts transnational legal questions at least on par with other legal doctrines they are struggling to master.

Second, as has been repeatedly recommended at prior AALS meetings on this subject, the transnational law curriculum needs to be taken out of the "niche" and placed at the center of the curriculum. This is accomplished first and foremost by introducing to first year JD students the notion that contracts, torts and civil and criminal litigation crosses borders. In upper-level courses, the transnational aspects of every area of the law -- intellectual property, tax, antitrust, securities, sales -- need to be viewed as an

essential element to a more complete understanding of a specialty. Unless some recognition of transnational legal process is made in other classes, international law teaching will continue to be viewed as “separate” from the rest of the curriculum.

Third, international law professors need to acknowledge and address head-on the twin ideologies of Arealism@ and AAmerican exceptionalism@ that students bring with them to the classroom. The mark of the realist ideology is the oft-uttered comment Abut of course there is no such thing as international law@, which takes a valuable political science perspective on the relations between nation states and applies it to all realms of transnational interactions. Realism is engrained in students by their undergraduate experiences (e.g., political science) and by family members and others they know in legal practice who view international law as encompassing soft principals and aspirational notions of peace and harmony. American exceptionalism, the idea that whatever international rules do exist should not apply to the behavior of the United States, is more deeply seated in many students, and is frequently intertwined with deeply held moral, religious and political views. It is reinforced by the focus in the first-year curriculum on law that “stops at the water=s edge.” And because students at public law schools in the heartland are generally much less likely to have traveled or studied abroad than their counterparts at private schools on the coasts, they may never have been challenged in their assumption of American exceptionalism. Assigning cases decided by foreign courts and the work of non-American international law scholars can go a long way to opening their eyes to alternative perspectives on the nature of law.

Fourth, law schools need to make a real effort to recruit law professors who have actual experience outside the United States -- whether in practice, government service or academia – and to ensure that professors continue to work and travel internationally once they are on the faculty. (Missouri has instituted a new study abroad program in South Africa in partnership with the University of the Western Cape that will offer ongoing opportunities for professors to teach classes in South Africa.) This effort should not be confined to those professors who teach and research in international law, although it

should be a minimum requirement for those who teach international law that they have spent some part of their professional or academic lives outside the United States. In the classroom, I have found in my international law class that the best examples are frequently those that bring to life complex diplomatic negotiations or simply the differences in everyday commercial transactions that one encounters abroad.

Endnotes

¹ See Jo Mannies, “Candidates: Bush Must Go,” St. Louis Post-Dispatch, Jan. 29, 2004.

² To cite two prominent Missouri-based firms, Shook, Hardy & Bacon of Kansas City has 575 lawyers in 11 offices, including two offices in Europe, see <http://www.shb.com>, downloaded Mar. 9, 2004; Bryan Cave of Saint Louis has over 800 lawyers in 15 offices around the world, including one in Europe, three in the Middle East, and two in Asia, see <http://www.bryancave.com>, downloaded Mar. 8, 2004.

³ See ST. LOUIS TODAY, <http://www.stltoday.com/stltoday/business/special/pdtop5003.nsf/>, downloaded Mar. 9, 2004.

⁴ See Minn. Economic Trends, 2001, <http://www.mnwfc.org>, downloaded Aug. 17, 2003.

⁵ The population of the state is 83.8% white (compared with 75.1% nationally); only 2.7% of the population is foreign born (compared with 11.1% nationally)⁵; Asian represent 1.1% of the population 3.6 % nationally); Hispanic/Latinos represent 2.1% (12.5% nationally); and African-Americans 11.1% (compared with 12.3% nationally); See OFFICIAL MANUAL FOR THE STATE OF MISSOURI, <http://www.sos.mo.gov/BlueBook/default.aspx>, downloaded Mar. 9, 2004; United States Census 2000, <http://factfinder.census.gov>, downloaded Mar. 9, 2004.

⁶ According to the US News and World Report “Diversity Index,” all four law schools in Missouri are below the median score for student diversity. Schools were scored on a scale of 0 to 1.0; the closer a school is to 1.0 the more diverse – measured by presence of racial and ethnic minorities in the student body. The median score was .31. Washington University St. Louis earned a .30, St. Louis University a .21, University of Missouri – Kansas City a .20 and University of Missouri – Columbia a .19. See http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawdiv_brief.php, downloaded Mar. 8, 2004.

⁷ According to the 2002-2003 figures reported to NALP by the University of Missouri-Columbia (which were based on student self-reporting), student diversity at the Law School is as follows: 91% white; 4.56% African-American; 3.42 % Asian; 0% Hispanic/Latino; 0.95% Native American; and 0.38% foreign students.

⁸ See OFFICIAL MANUAL FOR THE STATE OF MISSOURI, <http://www.sos.mo.gov/BlueBook/default.aspx>, downloaded Mar. 9, 2004.

⁹ See <http://censtats.census.gov/cbpnaic/cbpnaic.shtml>, downloaded Mar. 9, 2004.

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