

Teaching U.S. Legal Cultures and Legal Systems Outside the U.S.

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Most of the papers submitted in conjunction with this theme will address the issue of teaching within U.S. law school classrooms about non-U.S. cultures and legal systems. In the spirit of broadening the discussion and also linking it with other themes discussed in this Educational Program, this paper considers the converse: teaching about U.S. legal systems and legal cultures in non-U.S. environments. The following short essay reflects on this particular model of “transnational teaching.”

The Internationalization of Legal Education

Increasingly, United States law schools and law professors are building partnerships with law schools in other countries – precisely what makes this General Assembly meeting, and the initiative to create an International Association of Law Schools, such a welcome development.

Transnational law teaching, of course, has been around for quite some time. The most traditional model is the summer-abroad program, well-established with over 200 such programs offered by ABA-accredited law schools.¹ Though a valuable experience for faculty and students alike, the transnational aspect of such endeavors is often limited to location, because the programs are administered entirely according to U.S. requirements, and students come from U.S. law schools.

Another example which requires greater institutional involvement is the exchange program in which students and faculty from law schools may be in residence at each other’s institution for a semester or longer. The exchange program model as such is nothing particularly new – though there has been a proliferation of such programs in recent years, with more than 50 now offered by ABA-accredited law schools.² Recently, U.S. law schools have begun to initiate the most extensive form of transnational

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¹ American Bar Association, Section of Legal Education and Admissions to the Bar, List of Foreign Study Programs, <http://www.abanet.org/legaled/studyabroad/foreign.html>.

² American Bar Association, Section of Legal Education and Admissions to the Bar, List of Foreign Study Programs, <http://www.abanet.org/legaled/studyabroad/coop.html>.

collaboration in legal education yet, the joint or dual degree program, though there are still relatively few of these.

What, exactly, are the reasons that U.S. law schools increasingly expend energies in such efforts? On a perhaps relatively superficial level, law schools may see these programs as helpful to their marketing and recruitment efforts, as they seek students and donors who might be interested in these educational networks. .

Looking at the “market” of legal practice in both private and public sectors, U.S. law schools also enjoy a comparative advantage in an international environment often heavily influenced by U.S. legal norms and practices.

Notwithstanding U.S. influence, however, today’s successful legal professionals will be those most able to adapt to shifting geographies, and most able to work with parties from diverse legal systems and sociolinguistic contexts.

This hybridized space -- influenced by U.S. legal cultures and norms, yet shifting in place and space – presents one facet of globalization. And viewed from that perspective, initiatives by U.S. law schools to form partnerships with their counterparts from other countries make a lot of sense. Conversely, foreign law schools and law students are often eager to gain both the institutional connections and the educational perspectives and expertise offered by such partnerships.

Of course, there is another impulse behind these ventures, at least for the faculty members who pursue them on behalf of their institutions – and that has to do something with the ideal of internationalism as such, of transcending borders to exchange knowledge.

But if we can agree that teaching U.S. laws and legal cultures in other countries might be a good thing, the question is how to do it?

Towards the Ethical Exportation of U.S. Legal Education

In recent years, much commentary on economic development policy has rejected the “one-size-fits-all” approach. Several considerations arise for the U.S. law professor seeking to teach in foreign classrooms and institutions. This paper can do no more than list them briefly, but they are worth considering. They are:

Legal materials

First, the cost of U.S. law books may well be prohibitive for students abroad, and particularly for those in developing countries. U.S. law school tuition is probably the highest in the world, and attracts students who can support associated books and materials costs that are relatively high as well. Assigning a U.S. casebook, however, may not be feasible in another socioeconomic context. Law professors may find the need to create their own materials.

Second, it will come as no surprise that the best courses will include a comparative dimension. The students in such classrooms are interested in transnational practice, and comparative presentations of the legal themes of the course will be especially useful and interesting to them.

Pedagogical Style

In countries where legal education tends to be delivered in the form of large lecture halls – national universities in civil law countries often share these features – students may have had relatively little ability to interact in the classroom. “Socratic” dialogue in class can therefore come as a bit of a shock. Most students will quickly adapt, but it can be important to find ways to introduce a more interactive approach in a way that is sensitive to the pedagogical experiences of students.

Similarly, in countries where the large lecture hall is the featured component of legal education, the opportunities to conduct written research may be relatively minimal for students. Consequently, a pedagogical approach that focuses heavily on writing and research may provide particularly useful opportunities for foreign students. At the same time, these students may be familiarizing themselves with research methods for the first time, with the associated difficulties in transition.

Legal Culture

This is one of the more fascinating elements of teaching in a foreign country. For example, legal systems differ in their conceptualization of institutional competence. The respective roles of the judiciary and the legislature may be viewed quite differently. A common law system may be more likely to view judges as rightly retaining a greater degree of discretion in matters of legal interpretation – though of course it is much more complicated than that. Nevertheless, teaching subjects with a heavy focus on case law may not only tax students not used to reading common-law style lengthy judicial opinions, but may also perplex students who might be accustomed to thinking of the legislature as the more appropriate source of law. A similar perplexity may arise when attempting to convey the effects of a federal system on the interpretation of legal principles.

Conclusion

The foregoing only sketches a few examples of the challenges that can arise in teaching U.S. laws, or in a U.S. law school style, in a foreign institution. Needless to say, the discomforts associated with such challenges are greatly outweighed by the opportunities for learning across boundaries – not only by the students in such settings, but by the teacher.