

## DEVELOPING NATIONS, WORLD LAWYERS

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This note will introduce what I believe to be an important challenge for legal education in developing countries in teaching about other legal cultures. I do not have any good solutions, yet, but I think this note identifies a problem worth focusing on.

Imagine that you were placed under arrest for crimes against humanity arising out of conflict in the Democratic Republic of Congo. You were then transferred to the International Criminal Court in the Hague. Who do you want defending you?

The answer that clients usually give to this question is, quite literally, “Someone who speaks my language.” And not just that, “Someone who understands the society I come from.”

Though many of those arrested do not know it to begin with, this is not enough. The accused also needs someone who understand the international legal system—the system that pours millions of dollars (or, in the ICC, euros) into developing a case involving thousands of documents and hundreds of witnesses, along with legal research to document the relevant aspects of international criminal law, international humanitarian law, international procedure, and international human rights law back to Nuremberg, if not beyond.

As a result, the defense bar at the international criminal tribunals—such as the ICTY, ICTR and ICC—has a peculiar structure. On the one hand, most do have a lawyer who speaks one of their languages (though in some cases, a second language). And almost everyone accused in an international criminal court or tribunal also has a lawyer from a developed country, usually from the West. These are also mostly the lawyers who plan the litigation strategy and write the briefs on the large legal issues. But they very frequently do not speak the language of their clients.

Similar questions could be asked concerning the desires and needs of prospective clients in developing countries looking to make a major deal with a large company from the developed world. And in those cases, a similar interesting structure might emerge. That is, such a client obviously wants a lawyer who speaks her language and understands her company’s business environment. On the other hand, the outside company will have access to much greater legal resources from large Western law firms or in-house counsel. Local law firms in developing countries often do not have the sheer size or other resources to provide equal bargaining power to local clients.<sup>1</sup> Thus, local clients and law firms may want to retain international firms as legal counsel, in order to be able to bargain fairly on legal issues. If this proves impractical or impossible, there may well be asymmetries in the bargaining relationship between the parties. If this asymmetry is repeated frequently in the dealings between local and international businesses,

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<sup>1</sup> For a recent discussion, see “Legally Barred,” *The Economist*, 24 April 2008 (on law firms and foreign competition in India).

the problem can become a general political and economic issue for the less developed country involved.

Here is one way of phrasing the problem for legal educators: How do those of us from developing countries structure our educational system so that our graduates will be prepared to work and compete on equal terms in the international legal market?

Now if this were the only question, at least one way forward would be relatively clear, though not easy. One would look for the resources to build at least one elite law school nationally (or regionally, in the case of small countries), where all the resources of the school would be of international standard, and talented students would compete for admission, and international-level opportunities would be provided for graduates. Within a generation, with the normal course of professional development, a cadre of international standard lawyers would arise.

Of course, nothing is ever that simple. India has done something similar, with the Indian Institutes of Technology (IITs), for science and engineering. It has led to a great deal of progress in India, but also to a great brain drain, as many of the brightest graduates leave for careers elsewhere in the developed world.

Moreover, at the same time that developing countries wish to develop a cadre of international lawyers, they also need to develop the human infrastructure to strengthen law and justice within their countries—providing law to the poor and disenfranchised, as well as the elite. In many cases, this may include a social justice mission for law schools.

There can be very little question that the economics of this mission are very different for graduates. It is hard to imagine that the levels of remuneration for graduates who pursue this sort of position will be much different from those of a civil servant in a developing country. And yet the dedication, training and skill required of these lawyers are as great as the dedication, training, and skill required of lawyers for the international interests. The economics of building and maintaining the quality of these and other law schools in a country will be much different as well. The international school may be able to obtain international funding to begin, and will, it is hoped, develop support from its prosperous cadre of graduates. The school with the social justice mission, and other law schools, will not in general have the same access to resources, either at the beginning or down the line.

One example of a start at what might be done again comes from India. About two decades ago, the National Law School of India University was set up in Bangalore, with national, local, and some international support, and with strong leadership from Dr. N.R. Madhava Menon. It had a social justice mission for India, as well as a mission to be a laboratory for reform of legal education. As it turned out, it attracted many of the best law students from around India. Highly qualified teachers were recruited. Even though, library resources remained an issue for some time, a great deal was done to prepare students for high level work in both national and international environments. Early on, many of its graduates began to enter the international legal market, but some of them continued to work locally on legal infrastructure

and social justice. The National Law School model has now been replicated in a number of Indian states. Its work has led to curriculum reform throughout the system.

How sustainable this model will be remains in question. It is not clear whether the economic discrepancies between the international sphere and other spheres of legal work will pull an ever-increasing number of graduates away from providing justice to the majority of the population. It is not clear that they will be able to achieve the sort of donation levels from graduates that will allow them to carry forward their missions without a great deal of support from international NGO's. Finally, these law schools remain—and are intended to remain—a small segment of India's legal education sector. How other law schools respond will be vital to the ultimate success of legal education.

So, in this very brief note, there are no answers. The questions and experiences set out here do, however, suggest that law schools will have an important role to play in the internationalization—and fair treatment—of the economies and societies of developing countries.