

Implications of Globalization for Legal Education

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Technological innovation, increased communication, common markets facilitate interactions among citizens of different nations as well as among countries. International trade, international investment and monetary flows increase rapidly, business people in growing numbers travel abroad. Even ordinary people live temporarily or permanently outside their native countries. Integration of markets and cross border movement of people and corporations affect the work of lawyers and legal profession. They need to work in a world where different legal systems increasingly affect each other. This is internationalization or globalization.

Internationalization has led to establishment of international and supranational organizations such as International Institute for the Unification of Private Law (UNIDROIT), World Trade Organization (WTO), Organization for Economic Co-operation and Development (OECD), and the European Economic Community (now European Union) which promote building a bridge between different legal systems by issuing Principles and Rules, codes or even enacting laws. The aim of Principles and Rules or codes issued by international organizations is to harmonize¹, but not to unify, laws of different legal systems so as to respond to the growing needs for legal certainty in a world where different legal systems may apply to cross border transactions. Indeed, given that law exists in different social, economic conditions and cultures, and historical development of countries, it may not be possible to change laws of different legal systems so as to achieve unification of laws of different countries. Nevertheless, approximation of laws of different legal traditions can be attained by issuing Principles and Rules and leaving their implementation and application to the national legal systems.

Such developments stemming from internationalization or globalization have substantial influence on the legal education. Law faculties have begun to add courses, such as international sales transactions,² international commercial litigation,³ EU law,⁴ European company law,⁵ international corporate governance and transnational corporations⁶, to their

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¹ The terms “harmonization” and “approximation” are used interchangeably in this paper.

² International sales transactions course is offered at the University of Leicester Faculty of Law at postgraduate level. See <http://www.le.ac.uk/law/pg/llmmodules.html#lw7152>

³ International commercial litigation course is offered to the students by the University of Cambridge Faculty of Law at postgraduate level. See <http://www.law.cam.ac.uk/faculty-resources/courses-and-subjects/llm/papers>

⁴ EU law is taught at graduate level in European universities.

⁵ The University of Ankara Faculty of Law in Turkey provides their students with European company law course at postgraduate level.

⁶ Advanced Legal Studies in London offers international corporate governance and transnational corporations course at postgraduate level. See http://ials.sas.ac.uk/postgrad/courses/LLM_ICGFR.htm

curricula at either graduate or post-graduate level.⁷ Professors and lecturers teaching courses such as international corporate governance and international commercial litigation explain to their students Principles and Rules issued by international organizations. The focus of Principles and Rules issued by international organizations is on establishing convergence between different legal systems, namely the civil law and common law systems. Principles and Rules have been developed as the general structure aiming at reducing differences between the systems of civil law and common law.⁸ Principles are drafted in general terms while Rules are expressed with specific and detailed words. Detailed and specific Rules make it possible for Principles to be interpreted and applied in a similar way in different legal traditions. This structure of the basic Principles accompanied by specific Rules enables to take into consideration the cultural diversity and allows its incorporation into different legal systems in a more harmonious way.⁹ Since Principles and Rules are drawn on the fundamental features of the civil law and common law systems, they introduce concepts and notions of the common law system into the civil law system or vice versa. Nevertheless, there are some basic characteristics of the Continental law system that cannot be adopted by the common law system or vice versa since such characteristics have been evolved in historical, sociological, economic and political conditions of countries and then they are embedded in the legal cultures and practices of countries. Even, it has been argued that, there are differences between American legal system and the British legal system within the common law system.¹⁰

The recognition and identification of cultural distinctions between different legal systems, however, induce legislatures to create means and methods so as to build interactions between these different legal systems, such as the creation of structure of Principles and Rules. Indeed, as a result of globalization the increased attention paid to the ideas outside the legal system where the lawyer or legal profession practices leads to openness to different legal traditions and therefore to universal movements of harmonization. Further, one may also argue that there are similarities between the systems of Continental law and civil law stemming from the fact that in the evolution of legal traditions there were interactions between these legal systems. It has been stated that prior to the 19th century absolute barriers between the Continental law and the common law did not exist and there was much influence of the civil law on the common law system. The common lawyer incorporated the civil law traditions into their domestic laws.¹¹ In the first part of the 19th century the American judges utilized Continental sources of law which was contributed to the development of the common law system. Many common citations of

⁷ In one American commentator argued that law schools should not just introduce courses with international dimensions, but should in fact internationalize the entire curriculum because internationalization had begun to infuse all aspects of life, see Flood, John, " Legal Education, Globalization, and the New Imperialism" , *The Law School - Global Issues, Local Questions*, p. 140.

⁸ The structure of Principles and Rules has been used by ALI and UNIDROIT in issuing the Principles of Transnational Civil Procedure, see ALI/UNIDROIT Principles of Transnational Civil Procedure, Cambridge University Press, 2006. The same approach had been adopted by the OECD in issuing OECD Principles of Corporate Governance 2004, available at <http://www.oecd.org/dataoecd/32/18/31557724/pdf>

⁹ See, ALI/UNIDROIT Principles of Transnational Civil Procedure, Cambridge University Press, 2006, p. xxxv.

¹⁰ See ALI/UNIDROIT Principles of Transnational Civil Procedure, Cambridge University Press, 2006, p. xxxvi.

¹¹ See Helmholtz, R. H. "Continental Law and Common Law: Historical Strangers or Companions?" (1990), 6 *Duke Law Journal*, p. 1208, 1223.

Continental sources existed in English reports of the same period.¹² These are only some examples for the evidence of influence of foreign law on national legislation in other countries. Given the fact that influences between different legal systems is not unprecedented¹³ the division between the common law system and the civil law system is not insurmountable.

Teaching concepts and notions of different legal systems to law students enable them to distinguish similarities as well as differences of foreign legal systems and allow them to compare foreign legal traditions to their domestic legal system. The comparison between the different legal systems helps law students understand the rationale behind laws of different legal traditions. Principles and Rules, together with their rationale, deserve to be explained in the relevant courses in law faculties. Given the fact that as a result of globalization the laws of countries are endeavoring to solve similar problems, the laws of different legal systems can be applied in a similar way to the situations through Principles and Rules issued by international organizations. Hence, it may be possible to overcome difficulties stemming from the differences between Continental and common law traditions.

¹² See, Helmholz, p. 1224, 1226.

¹³ See, Helmholz, p. 1209.