

Universals in Law School Education

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As a late registrant to the conference, I had the advantage of being able to read 20 or 30 working papers posted on the meeting web site before beginning to draft my short submission. The situation seemed to place me at a good vantage point for attempting to work out some themes for the last session of the conference: universals in legal education.

Identifying universals is a project that requires focus on things that are so ubiquitous they generally do not seem worth mentioning. A television news reporter does not begin each report saying, "I'm standing on two feet and speaking to you out of my mouth." That goes without saying. Instead, the news reporter will focus on something that has just happened that is unusual, different, not at all universal. The strange is interesting. The "different" may bring danger, change or novelty; the "different" requires our conscious attention. The universal engenders a yawn.

The very pervasiveness of universals renders them invisible rather than obvious. Universals may fall so far from our focus that they become like the music played in the grocery store: Many people do not even hear it, but it induces them to stay longer in the store and buy more. When we go through the store without thinking about the music, we are unaware of its influence, but we are nevertheless subject to it. When we focus on the differences between our legal systems and systems of legal education, we may be blind to the background themes that tie us together. When we focus on universals, we become conscious of their music. Once aware, we may be able to understand and, to some extent, control the harmonies and rhythms that drive us.

Having read an impressive collection of eloquent essays addressing the purposes of legal education from every continent around the world, my short list of apparent "universals" in legal education includes (in no particular order) the following:

Law schools (1) educate human beings; (2) teach law (among other things); (3) train young people or legal novices to take up positions of relative power and privilege in society; (4) operate in a less-than-perfect legal order and aspire to improve it.

1. **Law schools educate human beings.** In spite of the advent (in some places) of animal law and animal rights, the only animals in law school are human animals. No chimpanzees, cows or dogs receive legal education. This is so obvious that none of the writers bothered to mention it. Indeed, the fact that law schools educate human beings hardly seems worth mentioning. But, on reflection, this fact implicates a set of "human universals",¹ qualities that are common to all human social groups. The list of human universals that has been identified by anthropologists is long and suggests that there is a great deal that binds us together as "humanity" in spite of our diverse cultures, particular histories, and variation in

¹ Donald E. Brown, *Human Universals* (1991).

phenotypes.² Our diversity, while it appears to be broad and deep, is a thin skin over our identity as people.

This realization changes our perspective on a wide variety of issues, from the theoretical to the pedagogical and practical.³ As we begin to examine ourselves and our systems in light of our common humanity, we see many common themes. Issues that at first glance appear to be restricted in time and place, turn out to be particular examples of larger phenomena.

For example, ethnocentrism – our tendency to identify ourselves as members of groups and to see our groups as different-from and better-than others – is a universal human trait.⁴ Human groups have historically given their own tribes names that mean “the people” or the “human beings”.⁵ In-group favouritism and out-group antagonism may have helped our ancestors protect limited resources and increase the survival rate of their own groups and families.⁶ Moreover, the tendency to dehumanize and discriminate against the out-group is not a phenomenon consigned to ancient history.⁷ Examples of dehumanization of the out-group abound in the present in all cultures, across all races and continents. Not so long ago the United States Supreme Court, in a case involving the citizenship of a man in Missouri, wrote:

They [black men] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.⁸

Notice that the inferiority of a specific group of people was considered “fixed and universal.” When the broad spectrum of human experience is considered, however, it

² An updated list of Brown’s “human universals” appears in Steven Pinker, *The Blank Slate* (2002) 435-439. The list includes a wide variety of developmental and psychological phenomena (such as childhood fear of strangers, abstract thinking, use of language) social phenomena (cooperation, mediation of conflict) and other aspects of culture (art, melody, use of personal names). It also includes a number of concepts that might be thought of as “legal” concepts, including “fairness” or “equity” and “sanctions for crimes against the collectivity”.

³ With regard to pedagogy, a recent movement in legal education toward “humanizing legal education” is noteworthy. This group of some 400 legal educators in the US advocates using human nature as a guide to the law school curriculum. See Lawrence S Krieger, ‘Human Nature as a New Guiding Philosophy for Legal Education and the Profession’ (2008) 47 *Washburn Law Journal* 247

⁴ See Pinker, *supra* note 2 at 436. The list includes collective identity, in-group distinguished from out-group(s), and bias in favour of the in-group.

⁵ See, e.g., Phil Constantin, ‘Tribal Name Meanings’ <http://www.americanindian.net/names.html> accessed 6 May 2009.

⁶ Peter J. Wilson, *The Domestication of the Human Species* (1988).

⁷ Roger Brown, *Social Psychology* (Second Edition ed, 1986); Shelley E. Taylor, Letitia Anne Peplau and David O. Sears, *Social Psychology* (12th ed, 2006).

⁸ *Dred Scott v. Sandford* (1856) 60 U.S. 393, 407.

becomes immediately apparent that it is the *belief that some group is inferior* that has been a universal feature of human societies. The specific group changes – it may be Dalits, Indigenous Australians, Romani peoples, Uyghur, or African Americans – but the dehumanization and discrimination remain.

Does this mean that, as humans, we are fated to repeat the stereotyping, dehumanization, enslavement, and discriminatory practices of the past ad infinitum? I do not think so. In spite of our human tendency toward ethnocentrism, a major trend in contemporary law and legal education pushes us to redefine our human group to include all people. The law, which may function as a tool to reinforce group identity and formalise boundaries around social groups, is highly sensitive to practical pressure and the need to support peaceful social interaction. Just as the Roman *jus gentium* developed to facilitate ancient interactions among groups, contemporary law develops in response to travel, technology and the pressure of problems that affect the very existence of humanity on a fragile planet. As we find ourselves now crowded onto an increasingly small planet, the diminishing value of in-group loyalty and out-group antagonism is apparent and the law gains value as a tool for developing ways to diffuse intergroup conflict and forge inclusive group identities. Building a concept of “common humanity” might be seen as the core task of the internationalist legal agenda.

Law schools now educate women, members of minority ethnic groups, and some students from other countries. A universal of today’s legal education is that its education is for “humans” and its educators are participants in the law’s project to expand the definition of that group.

2. Law schools teach law (among other things). Without exception, the law schools represented at the conference today teach the law of the country where they are situated. They must teach the parochial rules of the legal systems where they operate because their graduates must be qualified to function within the legal context of their own countries. Although many law graduates will not practise law at all (in China, for example, the number who will enter law practice may be as low as 20%)⁹, every law school acknowledges a responsibility to educate their students in the law of their home country.

While there is universal agreement that the local law must be taught, the substance of this education cannot be universal. Unlike the laws of physics or the rules of mathematics, which operate exactly the same way from Australia to Iceland, the domestic law of each country is the idiosyncratic product of a particular history, of politics and culture. Law is a jurisdictional endeavour. Its rules are applicable within the society that created the rules. The law embodies many of the law-making group’s most important values and generally operates to their advantage. Its forms, processes and institutions are shaped by the values and experiences of the law-making group. The diversity of legal systems and legal rules we find represented at this conference is a result of multiple human social groups simultaneously creating rules to govern the interactions of their own members. In this sense, domestic law is like language: It develops in related families, but distant groups may see very little overlap in their vocabularies.

⁹Francis SL Wang, ‘Goals and Objectives of Law Schools: A Brief Discussion of Universals and Differences China and the United States’ [http://www.ialsnet.org/meetings/role/papers/WangFrancisSL\(China\).pdf](http://www.ialsnet.org/meetings/role/papers/WangFrancisSL(China).pdf) accessed 7 May 2009.

Without exception, however, law schools also recognise that they operate in a globalising society where international norms and connections are increasingly important. Just as the boundaries of who we consider to be human are expanding, the boundaries of our legal systems are expanding. Legal interactions now take place in a global context. Although, as Dr. Himonga of South Africa points out, “globalization does not minimize the importance of the local,”¹⁰ it does require law schools to prepare their students for an interconnected legal world. The structure, institutions and understandings necessary to build these interconnections are not the exclusive domain of politics or governments. To the contrary, the insights and ideas that will form the intellectual basis for future development of international legal activity will find their basis in today’s legal education. Moreover, just as communication among distant tribes introduces new words into a language, communication among international legal educators will yield new insights for domestic legal education and domestic law reform.

3. Law schools train young people or legal novices to take up positions of relative power and privilege in society. No law school is dedicated to educating the elderly. While we do have some older students, our stock and trade is in inducting neophytes into a specialized field of knowledge. We lecture, mentor, guide, shape, provide resources to, and attempt to open, fill or challenge the minds of the next generation of lawyers, judges, law makers, leaders and legal theorists. Collectively, our students will hold positions of power and influence that will be disproportionate to their numbers. They will shape the future of the law.

Law teaching is universally about the future. Further, it is about the future of a field that universally has practical and moral consequence. While its principles or rules can be studied in the abstract, law is not a purely philosophical endeavour. Law may be used to liberate or enslave. Whether its rules are obeyed or disobeyed, whether its judgments are enforced or ignored, the impact of the law – or absence of law – will be felt by real people.

As legal educators, what we do has consequences. Charles Hamilton Houston, a legal educator who taught and inspired the generation of lawyers who led the American Civil Rights movement, said famously, “A lawyer’s either a social engineer or he’s a parasite on society.”¹¹ As the educators of future lawyers, we are social engineers, whether we want to be or not. Whatever we teach – even if it is only the status quo – we will have shaped the justice systems and the societies of the future.

4. Law schools operate in a less-than-perfect legal order and aspire to improve it. None of the conference participants submitted a paper that claims that the legal system of his or her country is perfect. Far from it. The papers reflect a universal acknowledgement of the need to constantly review, reflect on and improve the law and legal institutions. We know that the law can oppress, harass, delay, and mete out unjust decisions. Instead of being a problem solver, the law can be part of the problem. Nevertheless, legal educators generally view law as a force for good, for order, justice and fairness. We teach it for its potential to smooth interactions, to solve problems, resolve disputes, to be a force for equity and peace.

How can legal education operate to shape the law and legal institutions in ways that will improve society rather than perpetuate or exacerbate social problems? What can law

¹⁰ Chuma C. Himonga, ‘The Goals and Objectives of Law Schools in their Primary Role of Educating Students’ [http://www.ialsnet.org/meetings/role/papers/HimongaChuma\(South%20Africa\).pdf](http://www.ialsnet.org/meetings/role/papers/HimongaChuma(South%20Africa).pdf), accessed 7 May 2009.

¹¹ Genna Rae McNiel, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (1983) 84.

teachers do? Perhaps part of the answer to that question may be found in our engagement with that question and with each other. As we lift our gaze from our jurisdictional feet to view the expanse of the legal landscape with legal educators from around the world, we may gain new perspectives on old issues and new reasons to interrogate the correctness of our local legal order and educational approaches.

In the fictional story of *Oliver Twist*, Mr. Bumble, the overseer of the parish workhouse, is told that he is considered to be guilty of a theft committed by his wife:

“[I]ndeed, [you] are the more guilty of the two, in the eye of the law; for the law supposes that your wife acts under your direction.”

“If the law supposes that,” said Mr Bumble, squeezing his hat emphatically in both hands, “the law is a ass -- a idiot. If that's the eye of the law, the law's a *bachelor*; and the worst I wish the law is that his eye may be opened by experience – by experience.”¹²

Mr. Bumble’s view is that the law will not understand his predicament until the law has a wife. The law does not know what he knows. Its rules make no sense to him. His perception that the law is “a idiot” rings true. He reminds us that in order to operate humanely, law must be constantly held up to the mirror of human experience and tested against the yardstick of our common humanity. Law requires “the balancing of justice and order in the light of experience.”¹³

Even the best legal system reflects the limited knowledge, experience and interests of its progenitors. That is why it is important for legal educators to exchange ideas, to travel, to find out how things are done in other parts of the world, to understand and share insights from around the globe. Thinking globally will not relieve us of the responsibility to take individual and local histories, politics and circumstances into account. It will, however, change our perspective and shed new light on our collective experience.

Conclusion

At first blush, “universals in legal education” appeared to me to be an oxymoron. Law schools teach law, after all. And law is a quintessentially particular and parochial subject. When I graduated from law school in 1986, for example, I did so without having undertaken a single course in international law and without having considered a legal opinion from another country on any issue. My legal education extended as far as the borders of my home nation.

On reflection, however, it appears that the quest for universals in legal education is nothing less than a quest for a universal human morality. As we expand our definition of who is human, as we reach past our parochial borders, we seek to learn justice from the vast experience of other cultures. The quest for universals is itself an acknowledgement of our connectedness and relatedness. The idea that our law schools may share common goals and aspirations is an acknowledgment of our common humanity and common destiny. That acknowledgment is a major insight in a field that has traditionally focused on the local and the parochial.

¹² Charles Dickens, *Oliver Twist* (1861) 277.

¹³ Harold J. Berman, *Toward an Integrative Jurisprudence: Politics, Morality, History*, (1988) 76 *California Law Review* 779, 788.

