

# Building the World Community: Challenges for Legal Education

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We are witnessing a dramatic transformation in the world today, caused by a combination of forces such as global trade; foreign investment; the advent of the Internet and other communications technologies; the breakdown of authoritarian political structures; the emergence of new nations; and expanded roles for individuals, multinational corporations, and non-governmental organizations in international activities. In this new, essentially borderless world, crucial problems that challenge humankind cannot be solved solely by individual states. Instead, the growing trend towards internationalization requires an ever greater degree of international cooperation. This is particularly the case for transboundary problems such as the proliferation of nuclear weapons, widespread poverty, corruption, environmental degradation, international terrorism, and war crimes. These developments highlight the emergence of a new world reality - and a new legal reality. What will be the effect of these changes on legal education? What challenges do we as legal educators face as we try to prepare our students and our institutions to confront this changing world?

## I. Challenges Faced By Legal Educators

### A. *Challenge #1: Defying National Sovereignty.*

Most law schools are still living in the age of the *S.S. Lotus*. As many of you will recall, the Permanent Court of International Justice (PCIJ) decided the *S.S. Lotus* case in 1927. In this case, the PCIJ confronted the issue of whether international law allowed Turkey to implement Turkish law in criminal proceedings against a French lieutenant, after a French steamboat, the *S.S. Lotus*, collided with a Turkish steamboat, the *Boz-Kourt*. The

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majority opinion in *S.S. Lotus* held that individual States could extend the application of their laws to persons and acts committed in the high seas since such undertakings were not prohibited by international law. *S.S. Lotus* appeared to espouse the state-centered view that “if it is not forbidden, you can do it.” In accordance with this belief, states retained absolute freedom of action in the absence of specific obligations. *Lotus* embodied a theoretical framework in which national sovereignty was viewed as the fundamental principle from which all international rules were derived. Limited constraints, if any, had to be agreed upon by the states. These constraints could limit a state’s freedom to act, resort to war, and assert colonial rule. Notwithstanding the presence of such restraints, however, few were ever applied.

Attuned to the isolationist global conditions and largely dissociated from the context of a “distant” world, American legal scholars of this era shaped the study of law primarily in accordance with domestic concerns. These early legal educators found it unnecessary to look to the outside world to teach U.S. law students. When Christopher Langdell became the Dean of Harvard Law School in 1870, he equated the study of law with the study of science. He felt that the creation of law derived from a logical set of objective principles that, in turn, were arrived at through appellate decisions. Langdell’s theory was articulated in much of his writing: law, considered as a science, consists of certain principles or doctrines and “to have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer.” This methodology, which narrowed the scope of legal education to solely studying American case law, was fundamentally tailored to accommodate a political culture where the practice of law was primarily confined to national borders.

With the reality of wanton destruction caused by two world wars and the development and use of even more lethal means of mass destruction, the principle of absolute sovereignty dramatically showed its inability to guarantee the well being and survival of humankind. The absence of international restrictions, and the use and threat of force in international relations could no longer be accepted in a world containing weapons of mass destruction. Equally, war crimes and genocide made the development of international norms and procedures imperative for the protection of individuals against governmental actions. In the aftermath of World War II, various states convened in an effort to regulate force, develop an international bill of rights, and create and

strengthen international organizations that would structure cooperation, peacefully resolve conflict, and provide states with a universal body of nascent civil administration.

If *S.S. Lotus* represented the era of absolute sovereignty, the 1969 decision on the *North Sea Continental Shelf* cases presented a new paradigm. Through the *North Sea* cases, the International Court of Justice (ICJ) rejected the principle that “if it is not forbidden, you can do it” and even introduced the basis for the possibility of “obligation without acceptance” upon states. In doing so, the ICJ challenged the notion of absolute national sovereignty. Indeed, the ICJ conceptualized new legal approaches more suited for an increasingly interdependent world order.

Despite the departure from *S.S. Lotus* signified by the *North Sea* cases, the curricula of law schools continue to be focused on a domestic agenda and continue to use the Socratic method as the primary methodology. International law is offered on a wider basis, but the full incorporation of the subject into legal training remains marginal. For example, there are still no questions on the bar exam concerning international law, no mandatory international law courses and, generally, no first-year exposure to the study of international law. Moreover, most American law students today are not exposed to a proper understanding of legal traditions other than common law - civil law, religious law, and traditional law - as well as how to resolve conflicts that arise in cases under different legal traditions.

#### *B. Challenge #2: Creating a New Concept of Diversity.*

As I noted earlier, the academic reliance on the Socratic method was consistent with the “scientific approach” to legal education where professors could direct students to analyze actual decisions in terms of doctrinal logic. This also meant that a whole array of other intangible issues relevant to practicing law in an international, multicultural environment - such as the interplay of culture and nationality in legal decision making - were conspicuously absent from the academic agenda. Lawyers interacting with individuals in and from other nations must understand the interplay of culture and nationality with legal decision-making. Implicit in this is also the necessity for an understanding of the relationship between gender and the law, since concepts of gender are intricately linked to culture.

This is not to advocate a position of cultural relativism, which allows societies to make their own rules, based on culture, with

respect to the rights afforded to individuals. We have developed a universal concept of human rights under the “International Bill of Human Rights,” which includes such universally ratified treaties and conventions as the International Covenant on Civil and Political Rights. The human dignity of men and women must be respected in every culture, but culture must be respected and understood in order to allow lawyers to communicate effectively with clients and with each other.

U.S. law schools have long focused on a concept of diversity that is domestic in nature - ensuring that there is a more balanced representation of various minority groups found in the U.S. population - but now there is a need for a more multinational concept of diversity. Law schools must anticipate in their own composition the composition of the world that their graduates will interact with - a world that is multinational and pluralistic.

*C. Challenge #3: Addressing New Ethical and Moral Challenges.*

Globalization has created new social problems—such as increased international crime and environmental degradation from increased economic activity related to trade. It has also brought the effects of problems that were once “far away” closer to home. For example, increased interaction among nations means that a domestic financial crisis in one country can now more easily spread to another country. Contagious diseases are also easily spread from country to country. Other perennial problems like child labor and unfair labor standards are exacerbated by growing export markets for goods. It is both a moral/ethical obligation to address these issues, as well as something that is in our own self-interest to do.

Consider the following global statistics regarding “human development” from the 1999 Human Development Report, produced by the UN Development Programme:

**Health** – From 1990-97 the number of people infected with HIV/AIDS more than doubled, from less than 15 million to more than 33 million. Around 1.5 billion people are not expected to survive to age 60. More than 880 million people lack access to health services, and 2.6 billion lack access to basic sanitation.

**Education** – In 1997 more than 850 million adults were illiterate. In industrialized countries, more than 100 million were functionally illiterate. More than 260 million children do not attend school at the primary and secondary levels.

**Food and Nutrition** – About 840 million people worldwide are malnourished. The overall consumption of the richest fifth of the world's people is 16 times that of the poorest fifth.

**Income and Poverty** – Nearly 1.3 billion people live on less than one dollar per day and close to 1 billion cannot meet their basic consumption needs. The share in the global income of the richest fifth of the world's population is 74 times that of the poorest fifth.

**Women** – Nearly 340 million women are not expected to survive to age 40. A quarter to half of all women have suffered physical abuse by an intimate partner.

**Children** – Nearly 160 million children are malnourished. More than 250 million children are working as child laborers throughout the world.

**Environment** – Every year, 3 million people die from air pollution - more than 80% from indoor air pollution - and more than 5 million die from diseases caused by water pollution.

**Human Security** – At the end of 1997, there were nearly 12 million refugees.

Clearly these are not problems that can be solved by lawyers alone, and certainly not by lawyers whose vision is limited by national borders. But we as lawyers can play an important role in addressing them because, to a certain extent, every issue is a legal issue. After all, we play an important part in the definition of legitimate expectations of behavior and we should use this position of influence to promote important values of human dignity.

## II. Strategies

How do we address these challenges? How do we move away from a self-centered approach to legal education? How do we promote a new, international concept of diversity in our law schools? And how do we instill in our students both the ethical convictions and the means to address the social problems of our globalized world? There are differing schools of thought on these questions, but for rhetorical purposes, we could identify two major camps.

The first group, the "translators," contend that the global changes taking place are of minimal concern since lawyers deal primarily with domestic issues. Proponents assert that the practice of law primarily deals with domestic interests and issues that are confined to one nation's borders. They further allege that the

modification of legal education is unnecessary because the global issue is “only a matter of translation.” For example, a real estate lawyer in Iowa who engages in the development of agricultural land will simply need a translator if a foreign party is part of the transaction. Therefore, according to this group, the traditional concept of a legal education should remain intact.

The second group goes beyond translation. Indeed, the “modernizers” would argue that much more is required to prepare lawyers for the seismic changes currently taking place. They view translation on its own as an ineffective means of establishing a continuous relationship with a client; they believe that for such purposes knowledge of the client’s cultural values is also of great importance. The modernizers’ approach to legal education is to increase global exposure by adding courses, hiring more international faculty, sponsoring more international academic programs, opening research centers with global labels, and augmenting the number of formal international linkages. Except for this quantitative increase, the law school experience would require no basic transformation.

It is becoming increasingly clear that neither of these approaches is sufficient to produce the type of fundamental changes that are necessary. I would like to outline briefly some of the strategies that may lead to such a fundamental change in legal education. These strategies are being proposed and implemented at the Washington College of Law (WCL) and other schools around the country.

*A. Strategy #1: Creating Linkages Between the Study of Domestic and International Law.*

We need to create such linkages because in our new global reality even “domestic” lawyers will at some point in their careers have to address issues of international law. At WCL we have made revisions to the first year curriculum to incorporate international law issues into traditional first year “domestic” law courses. For example, a first year torts class studies the *Paquete Habana* case, a case decided by the U.S. Supreme Court in 1900 on the basis of customary international law. The students also study cases brought by foreign nationals in U.S. Courts under the Alien Tort Claims Act. These cases help students understand the outer limits of the application of U.S. laws abroad as well as the application of treaty law and customary international law within

the U.S. First year students are also exposed to international legal research in their Legal Methods course.

Teaching methodologies, such as moot court competitions, which have been traditionally used to develop advocacy skills in the domestic sphere, are now being used to expose students to the interplay between domestic and international law and to promote advocacy skills in international fora. For example, WCL's Inter-American Human Rights Moot Court Competition brings together students from 22 schools in 13 Western Hemisphere nations to argue cases that involve issues of domestic civil or common law and issues of the international human rights law of the Inter-American system. The competition is conducted in English and Spanish. Another competition, the Rene Cassin Human Rights Competition in France, allows students to submit briefs and argue in French, on a case that addresses domestic civil or common law and issues and their relationship to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The creative use of simulations involving a combination of domestic and international law issues is also important. For example, one professor at WCL has his class conduct a simulation of an international joint venture negotiation with students at the University of Dundee, Scotland. The negotiations, which take place primarily over the Internet, require students to consider business laws and concepts from the U.S., the U.K., and international law.

Providing opportunities for experiential learning - clinics and externships - in settings that provide hands-on experience in cases which involve both domestic and international issues is also essential to preparing students for the reality of an interconnected world. For example, WCL's International Human Rights Law Clinic takes cases on international human rights issues. Some cases undertaken by the Clinic, such as political asylum cases, are in U.S. domestic courts. Therefore, students must address a combination of international law and domestic law issues.

#### B. Strategy #2: Studying Different Legal Systems.

Law schools must offer courses in comparative law and international conflicts of laws in order to give students an understanding of types of legal traditions other than common law - civil law, religious law, customary law, and mixed systems. We must also recognize the limitations of the case method in teaching

other legal traditions, and use a variety of teaching methods, including simulations and experiential learning. We need to allow our students the opportunity to study abroad in countries with different legal systems - and not just to take U.S. courses in these programs. For this reason, WCL has programs in France, Chile, Switzerland, Mexico (all civil law countries), Hong Kong (common law), Canada (mixed common/civil law), and Israel (mixed civil, common, and religious law). It is important to provide opportunities for both summer and semester study abroad.

Those students who do participate in study abroad programs should be encouraged to supplement their classroom experience with an externship in a local law firm, court, or NGO. We can also bring the experience home by creating a community of lawyers from other legal traditions - which WCL has done with its International Legal Studies Program - and bringing visiting scholars and faculty from other countries to the law school.

*C. Strategy #3: Including Cultural and Gender Issues in the Academic Agenda.*

This can be done by adding courses to the curriculum that address these issues. It is also addressed by allowing students the opportunity to work with people of other cultures - for example, as student attorneys in clinics like WCL's International Human Rights Law Clinic, as externs in organizations that represent foreign clients, or in organizations abroad. These experiences achieve maximum impact when students are able to reflect upon them afterwards in a classroom setting.

Another component of promoting cultural understanding is providing students opportunities to develop their foreign language skills as lawyers. At WCL, we offer a special course on international law taught in Spanish, available only to non-native Spanish speakers.

Again, study abroad programs and externships abroad are also valuable, and equally valuable is the presence of students, faculty, and visitors from other countries in the law school.

*D. Strategy #4: Including the Perspectives of Other Academic Disciplines in the Study of the Law.*

The primary way to do this is through joint degree programs, such as WCL's joint JD/MA in International Relations and joint JD/MBA. This can also be achieved through faculty exchanges



with professors from other academic disciplines, integrating other points of view into regular law school courses, and allowing law students to take a limited number of credits in other academic departments.

*E. Strategy #5: Promoting Social Change and International Awareness Through Purpose-oriented Programs Outside the Curriculum.*

Law schools can be vehicles for meaningful social change in the international sphere, while at the same time providing valuable experience for their students. An example is WCL's Center for Human Rights and Humanitarian Law, which provides opportunities for students to do research, writing, and advocacy on human rights issues through the Inter-American Digest Project, the War Crimes Tribunal Research Project, and the Human Rights Brief. At the same time these students are gaining experience, they are providing essential services to thousands of lawyers who need to stay up-to-date on the latest human rights developments, or lawyers who are helping to prosecute war criminals before one of the international tribunals.

### III. Conclusion

We, as lawyers, have the opportunity to shape the legal institutions that will govern the future. As legal educators, we have the responsibility of preparing students to continue this process. And I want to stress the idea that changing legal education, like institution building, is also a process in which we are engaged. We do not yet know the end result, we simply know that participating in this process is essential to solving the global problems facing today's world. What we also know is that our approach cannot simply be one of translating or modernizing. Standing alone, neither the approach taken by the "translators" nor the "modernizers" produces the paradigmatic shift required to educate lawyers in the new world reality. Both schools of thought appear to underestimate the breadth of the changes currently taking place. What is needed, instead, is a profoundly different approach: one that advocates a *qualitative* rather than a *quantitative* change in legal education. Following the strategies I have outlined - and others yet to be developed by schools around the country - we can move towards a real reconceptualization of legal education in accordance with the new world reality.

