Raising the Bar: US Legal Education in an International Setting

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Reforming legal education to best accommodate law schools and foreign students' interests is an excellent idea. This article, consequently, will concern itself with the reasons why the US legal education system needs reassessment and the channels by which this process may occur. This reform is particularly important because most foreign law students have been educated in the civil law tradition with methodologies that prioritize memorization of rules while generally excluding policy and ethical considerations from the learning process. In fact, the concept of what is "strictly legal" and, hence, belongs in the law school curriculum, is generally narrower in the civil law tradition than in the common law tradition.

Foreign Law Students in the United States

There is a rich variety of reasons that attract foreign lawyers to the practice-oriented LL.M. programs in the United States. After studying the motivations of foreign LL.M. students, law professors Carole Silver and Mayer Freed identified the most common reasons offered as the following: an expansion of professional opportunities in the home countries, an interest in a substantive area of law, and a desire to improve English language skills and experience US culture. For those international students who do not wish to remain in the United States upon conclusion of their studies, one of the most crucial considerations is that a US legal education is perceived as a valuable credential back in their home countries.

Needless to say, this perception is not based solely on an evaluation of US legal education. It also clearly includes consideration of the importance and impact of the United States relative to the rest of the world. In this respect, crucial changes are taking place, for example, in terms of trade relations. It would be enough to say that the European Union as a whole, and not the United States, has become South America's most important trading partner and, as an individual country, China has surpassed the United States in its position as the key trading partner of numerous countries within the region. These developments require special attention, considering that foreign students seek professional and personal experiences abroad which will be relevant to their future careers back home. As a result, the increasing relative weight of other countries in international relations

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will result in more competition in attracting foreign lawyers to LL.M. programs.

**Rising Status of Foreign Law Schools**

The economic importance of a country is not the only factor to be considered in determining the attractiveness of its educational system; the reforms of other countries also merit consideration. In particular, due to Europe’s development and legal culture, it is noteworthy to observe the processes currently taking place there. The Europeans have embarked upon an ambitious process to transform higher education, with the involvement of 46 countries, including 27 EU member countries and 19 non-EU countries.

In a symposium offered by the Association of American Law Schools (AALS) and summarizing the impact in Europe of the different initiatives to internationalize its legal education system, Julian Lonbay of the United Kingdom’s University of Birmingham gives a thorough account of the rich discussion concerning the transformation of legal education in Europe. These efforts, according to Lonbay, are for the purpose of creating a EU higher-education area, with the aim of making the European Union the world’s most dynamic knowledge-based economy in the world. This process has resulted in a profound reassessment of legal education with the participation of numerous actors in the discussion, including the legal profession itself. The United States would do well to make its own reassessments, especially in light of the challenge from Europe.

The Europeans are not the only ones who should worry the United States. Nations around the world are rising up to challenge US dominance in graduate education and research, which will affect the long-term prosperity of this country. Commenting on the initiatives in Europe, including the harmonization of legal studies and developing quality benchmark and learning outcomes, Laural S. Terry of Penn State’s Dickson School of Law argues that these developments will result in US legal markets’ demanding students capable of functioning in both national and international settings. Thus, law schools in the United States will have to improve their understanding of international legal training.

**US System Drawbacks**

The United States excels in the development of analytical skills, to which the case method so greatly contributes. However, practical skills lack integration with the doctrinal courses. As the Carnegie Report on Legal Education found, US legal education does not contribute in the development of professional integrity and ethical values. This report, and the preceding 1992 MacCrate Report, urge further integration between doctrinal courses and skills training, without disputing the value of analytical and problem-solving skills. Both reports attempt to enrich legal education, also taking into account the bedrock of legal education, namely, the first year, by identifying areas of concern.

Consistent with these reports, law schools have engaged in valuable efforts such as the introduction of electives in the first year. Because choice is an important skill for the practice of the profession, it should be promoted whenever possible. Other efforts have focused on the broadening of analytical skills, namely adding the study of legislative and administrative processes to the study of judicial decisions, considering the role that these processes play in the law. Equally, there are valid curricular efforts designed to educate students transnationally, demonstrating the interplay that exists between domestic and international matters. In a world where few issues remain purely domestic, it is difficult to characterize these developments as an attack against the analytical or problem-solving skills of lawyers. To the contrary, such reforms enhance the development of these skills.

**Impact of US Legal Education**

Returning to the issue of the impact of US legal education on transition countries, it seems to me that matters of ethics and professional responsibility are of paramount importance. Their absence in legal education is duly criticized by the Carnegie Report, and this author’s own experience as a member of the Inter-US Commission on Human Rights from 1994 to 2001, and as the current Chair of the United Nations Committee Against Torture (UN CAT), has further bolstered this view. It is indeed valuable to expose foreign students who have been primarily educated in the civil law
tradition to the broader tenets of the common law tradition. However, this process would be more valuable if matters of professional responsibility and ethics were further developed. An attorney with ability to solve problems but insufficient ethical grounding would not necessarily benefit transition countries. In this respect, note that a sizeable group of students coming to study law in the United States belong to the elites of their own countries, possessing the language skills and economic power that help make study abroad possible. While membership in an elite group does not mean that one cannot be an agent of modernization or change, it seems to me that serious opportunities are missed if these students are educated in an environment where professional identity and ethical considerations are not explored to their fullest extent. Consequently, US law schools should pay more attention to see how foreign LL.M. students can be further exposed to these matters.

Equally, J.D. education in the United States has had a tremendous influence abroad because its courses are largely taught by full-time professors who engage in doctrinal and theoretical research, as well as in skills training. Greater exposure to full-time faculty would result in greater benefits to foreign students, ensuring at the same time that their perspectives and insights enrich US legal education even more.

Together with the greater involvement of full-time professors, it is important to explicitly pursue interaction, communication, and integration between US and foreign LL.M. students. For example, at the Washington College of Law, many full-time faculty members teach US and foreign LL.M. students. Numerous joint courses between LL.M. and J.D. students in international law take place, accompanied by a series of programs designed to promote interaction outside the classroom. The school enjoys the unique presence of nearly 200 foreign lawyers each year in a student body of roughly 1,700 individuals.

**Continuing the Discussion**

The Carnegie Report provides a valuable starting point, expanding core competences with transnational and institution-building skills. Many foreign lawyers come to the United States because of the importance of this society, but the nation is facing increasing competition from other important actors who are rethinking their legal education systems, particularly the European Union. That competition requires a vigorous debate on the value of legal education as well as space for creativity. In that context, it seems that we need to welcome the discussion and consider, among other factors, that potential competitors are already stressing deontological values, integration between doctrinal and skills training, and transnational matters, in addition to traditional analytical skills. The needs of transition societies require stressing competences that are not just captured by the need to be able to solve problems. They require the promotion of institutions and procedures both at the macro-level that realize the full value of the rule of law, and at the level of client representation that allow for competency imbued with integrity.

Moving forward, the impact of US legal education on students worldwide should be a motivating force to contribute even further to their development, and not a deterrent to thoughtful action. Paralysis in a dynamic environment is as dangerous as unreflective change.