

2010

Legal Education Reform

Claudio Grossman

American University Washington College of Law, cgrossman@wcl.american.edu

Follow this and additional works at: http://digitalcommons.wcl.american.edu/facsch_lawrev



Part of the [Legal Education Commons](#)

Recommended Citation

Claudio Grossman, Legal Education Reform, 32 HARVARD INT'L R. 4 (Fall 2010).

This Article is brought to you for free and open access by the Scholarship & Research at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Articles in Law Reviews & Other Academic Journals by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

HARVARD INTERNATIONAL Review

Vol. XXXII, No. 3 • Fall 2010

EDITORS-IN-CHIEF	Collin Galster, Y. Gloria Park
PRINT MANAGING EDITOR	Anna Hopper
WEB MANAGING EDITOR	Kurt Tsuo
CHIEF MEDIA EDITOR	Idriss Fofana
CHIEF BUSINESS DIRECTOR	Brandon Asberry
PRINT DEPUTY MANAGING EDITOR	Aditya Balasubramanian
FEATURES EDITORS	Keshava Guha, Catherine Yang
PERSPECTIVES EDITOR	Huma Shah
SPOTLIGHT EDITOR	Brendan Fogarty
WORLD IN REVIEW EDITOR	Alice Underwood
GLOBAL NOTEBOOK EDITOR	Aaron Mattis
INTERVIEW/ENDPAPER EDITOR	Erika Lee
WEB DEPUTY MANAGING EDITOR	Ian Kumekawa
WEB FEATURES EDITOR	Alex Palmer
WEB PERSPECTIVES/PULPIT EDITOR	Sarah Akhtar
WEBMASTER	Rares Pamfil
DEPUTY MEDIA EDITOR	Afker Daniel
PHOTO EDITOR	Danielle Kijewski
VISUALS EDITOR	Kimberly Herrmann
DEPUTY BUSINESS DIRECTOR	Tracy Vo
MARKETING AND OUTREACH	Varun Bansal
DISTRIBUTION AND STRATEGY	Valentin Fernandez
FINANCE AND OPERATIONS	Amy (Qian) Huang
ASSOCIATE STAFF	
Alexandra Bradbury • Elizabeth Cowan • Rodolfo Dlaz • Elizabeth Eze	
Nyamagaga Gondwe • Laura Guggenheimer • Meher Iqbal	
Jan van der Kuip • Insup Lee • Abdul Ly • Nancy Xie • Min Yu	
ADVISORY BOARD	
Jorge Domínguez • H.D.S. Greenway • Sohail Hashmi	
J. Bryan Hehir • Stanley Hoffmann • Bill Kovach	
Roderick MacFarquhar • Joseph Weiler • Jennifer Widner	
The Harvard International Review is published quarterly by the	
Harvard International Relations Council, Inc.	
Copyright 2010 (ISSN 0739-1854) Harvard International Relations Council.	
No material appearing in this publication may be reproduced without permis-	
sion of the publisher. The opinions expressed in this magazine are those of the	
contributors and are not necessarily shared by the editors. All editorial rights	
reserved. The Harvard International Review is indexed in the PAIS Bulletin, the	
Political Science Abstracts, and the International Bibliography of the Social Sci-	
ences. Microform and CD-ROM copies are available through	
Proquest Information and Learning, 300 N. Zeeb Road, Ann Arbor, MI 48106-	
1346. Tel. (800) 521-0600. http://www.il.proquest.com	

The Harvard International Review can be accessed online at
<http://hir.harvard.edu>.

ADVERTISING

For Advertising inquiries, please contact us at advertising@hir.harvard.edu
or by mail at 59 Shepard St #205, Cambridge, MA 02138

PERMISSIONS

Reprint requests should be addressed to the Executive Editor,
59 Shepard St #205, Cambridge, MA 02138 or sent by email to
distribution@hir.harvard.edu. Authorization to photocopy individual articles is
granted, provided a fee of \$.25 per page is paid to Copyright Clearance Center,
222 Rosewood Drive, Danvers, MA 01923. The fee code for users of the CCC
Transactional Reporting Service is [0739-1854/93 \$00.00 + \$00.25].

OFFICES

59 Shepard St #205, Cambridge, MA 02138. Tel: (617) 495-9607.
Fax: (617) 496-4472. E-mail: contact@hir.harvard.edu
Newsstand distribution: Comag Marketing Group, Inc., 250 West 55th Street,
New York, NY 10019. Tel: (212) 649-4484.

SUBSCRIPTION RATES

Individuals: one year (US\$22), two years (US\$40), three years (US\$60). Institu-
tions and foreign subscribers: please add US\$10 per year of subscription. Checks
must be drawn against a US bank. To subscribe, write to Harvard International
Review, Subscription Services Department, P.O. Box 465, Hanover, PA 17331,
or call (717) 632-3535, or log on to www.hir.harvard.edu/subscribe. Claims for
missing issues must be made within six months of the date of publication.

Cover Photo Courtesy Reuters

Legal Education Reform

In his article, "Exporting Legal Education: Lessons Learned From Efforts in Transition Countries" (Harvard International Review, Summer 2010), Ronald Brand recommends that the current discussion regarding the reform of US legal education take into account the impact that any such changes would have outside of the United States, in particular to those nations he refers to as "transition countries." It is valuable to consider the impact of US legal education reforms on foreign lawyers and legal systems but for reasons that go beyond those identified by Brand, which lead to different conclusions about the value of legal education reforms.

Based on his conversations with students involved, Brand relates that what the foreign Master of Laws (LL.M.) students value the most from their US education, and more-over what is indeed the hallmark of US legal education, is its ability to teach universally applicable problem-solving skills. He argues that the traditional system in place today, including case method instruction, provides necessary skills training, and that further vocational training may actually be undesirable.

The author makes a valid point on the importance of the impact of legal education on others. Along with the moral imperative of considering the impact of our actions on "the other," pragmatic considerations deserve exploration. US legal education attracts thousands of foreign lawyers, result-ing in educational opportunities as well as important profes-sional networking possibilities. In addition, this educational experience helps develop a common language supporting the rule of law. From this perspective, impact on others is a legitimate consideration in discussions concerning legal education reform.

Assessing the impact on others is a positive step. But the data regarding why foreign lawyers enroll in LL.M. programs in the United States reveal more reasons than just learning "how to solve problems." While a transformation that will destroy the ability to "solve problems" must be rejected, Brand does not provide sufficient information as to why adding transnational components to the curriculum, including integrating skills with doctrinal courses during the first year of legal education, or educating future lawyers using materials not restricted to judicial decisions, are detrimental to the development of vital problem-solving skills. To the contrary, it would appear that these valuable initiatives would enrich the development of these important skills. Equally, Brand does not specifically identify the needs of transition countries and the related skills and values required by their legal profession.

Brand's analysis suffers from other limitations. Competi-tion from Europe in their dedicated reassessment of legal education in an internationalized setting invites our own re-examination. The domains of ethics and global legal re-sponsibility regrettably suffer from insufficient consideration in US legal education, despite their seminal importance to

law. Also, the United States needs to expand on its strength in teaching classes with full-time faculty by offering more such courses to foreign law students. Finally, more needs to be done to create collaborative programs between law schools to allow meaningful cross-border interaction. Wallowing into complacency is not an option. ■

To read more from Claudio Grossman, please turn to page 16.

CLAUDIO GROSSMAN
Dean, Washington College of Law,
American University

Indigenous and State Law

David Pimentel's essay, "Can Indigenous Justice Survive? Legal Pluralism and the Rule of Law" (Summer 2010), offers a trenchant account of the challenges of legal pluralism. Pimentel correctly observes that accommodating the co-existence of indigenous and Western concepts of justice in post-colonial settings leads frequently to cultural conflict—for example, when indigenous traditions and values affront Western concepts of the rule of law or human rights. He further rightly notes that the burden of rectifying such conflicts typically goes only one way. Indigenous justice must adapt to survive. For legal pluralism unwittingly carries forth the not-so-bygone mindset of colonialism.

The United States provides a case in point. Nationwide, over 200 Indian tribes administer formal tribal justice systems. Many blend tribal customs and traditional methods of dispute resolution with elements of Anglo-American law. The resulting hybrid tribal jurisprudences generally model Western law augmented by customary remedies and procedures.

The Supreme Court acknowledged in *Williams v. Lee* (1958) that the power of Indian tribes to "make their own laws and to be ruled them" is a necessary incident of tribal sovereignty. Nonetheless, the tribal justice systems exist subject to the oversight of Congress and the federal courts. Self-governance may well be an inherent aspect of tribal sovereignty. But the authority to create tribal legal systems came from Congress. Before the 1930s, the United States followed a policy of Indian assimilation, expressly seeking to extinguish tribal customs and concepts of justice.

This policy changed in 1934 with the Indian Reorganization Act. In this legislation as well as in subsequent statutes, Congress encouraged tribes to enact their own laws and establish court systems. Tribal lawmaking power and court jurisdiction remain circumscribed, however, and are subject to federal court review.

The US regime of legal pluralism thus reveals paradigmatically the uneven status of Western law and indigenous justice. Indian tribes may include indigenous practices in

their justice systems so long as they first satisfy the paramount principles of Anglo-American law. Tribal jurisprudence thus can be hybrid. But the dominant federal and state components of US legal pluralism suffer no adaptation. The accommodation falls strictly on the tribes and stays on the reservation.

Legal pluralism, however, does not exhaust the possibilities for accommodating Western law and indigenous justice. Some post-colonial societies have begun to scuttle the stratification of legal pluralism in favor of reciprocal integration of indigenous principles into Western law.

New Zealand in 1975 established the Waitangi Tribunal to hear claims by Maori founded on alleged breaches of the Waitangi Treaty (1840). Unlike the United States, where Indian claims founded on treaty violations are adjudicated wholly under Anglo-American law, the Waitangi Tribunal renders settlement recommendations based on Maori justice and customs, as well as Western law. The Tribunal rejects the simple idea that the only goal in resolving historical claims of colonial injustice is to pay off the past. Rather, it seeks to resolve cultural tension through reconciliation and reciprocal respect.

Australia also has adopted an innovative approach toward integrating Western law and indigenous justice. The Koori Court division within the County Court of Victoria gives Aboriginal offenders who plead guilty the opportunity for community participation in determining punishment. A "sentencing conversation" takes place at an oval table. Participants include Aboriginal Elders or Respected Persons and community members. The Koori Court encourages offenders to talk about their behavior and accept responsibility. It aims to craft sentences that take into account kinship connections, cultural perspectives on punishment, and the crime's impact on the indigenous community.

The coexistence of Western law and indigenous justice thus need not require unilateral adaptation. Indigenous justice can survive and prosper when the accommodation is respectful and reciprocal. ■

DOUGLAS LIND
Chair, Department of Philosophy,
University of Idaho

The Correspondence section of the Harvard International Review welcomes reader submissions. Articles are 500 to 600 words and usually respond to articles in the Features and Perspectives sections. Submissions may be edited. We accept submissions on a rolling basis. Email them to editorial@hir.harvard.edu. Include your affiliation (if any) and contact information. Please note that you will be contacted only if your article has been selected for publication.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.