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Techniques Available to Incorporate Transnational Components Into Traditional Law School Courses: Integrated Sections; Experiential Learning; Dual J.D.s; Semester Abroad Programs; and Other Cooperative Agreements

Claudio Grossman*

Let me begin by thanking Louis Del Duca. Louis, through events like this, has created an important space for communication, where many people come together, and through conversation ideas emerge. Certainly, things do not happen just because there are positive conditions, such as a growing awareness of the importance of the “rest of the world.” Initiatives and imagination are required, and Louis has been at the center of many such important developments.

Louis asked me to speak about several topics: techniques available to incorporate transnational components into traditional law school courses, clinical legal education, semester abroad programs, and other cooperative agreements.

As the 20th century German philosopher Martin Heidegger said, what matters most is the question, because it defines the realm of possible alternatives. Louis’ question is a good starting point for my discussion, because it basically identifies the two ways in which we can go about this important issue of “globalization,” or engaging the world through meaningful legal education designed to prepare lawyers with an understanding of legal phenomena that go beyond national borders. This, in turn, provides students with the foundation required to be open to international and comparative issues that are increasingly relevant to practice law. A first way to achieve this goal involves tradition. The value of tradition lies in its ability to adapt and evolve in the face of

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dynamic conditions. So, Louis' question anticipates that we can do something with our tradition, as well as adopt initiatives and create special programs or approaches that reach beyond the realm of that tradition.

Allow me to analyze the two possibilities proposed by the question in the context of my law school, American University Washington College of Law (WCL). At WCL, we have started what we call Integrated Sections within the traditional first year of study. The challenges of integration, or of breaking down artificial barriers that separate individuals, genders and nations, arise in many contexts, for example, in the way we teach civil procedure, constitutional law, torts, and so forth, as isolated units, omitting the required practical and interconnected nature of legal phenomena, and in how we structure such teaching. Thus, at WCL, we approached the process of integration broadly and did not define "Integrated Sections" in a way that would have limited the endeavor - as would have been the case if we had incorporated only international law in the first year of law school, for example, while keeping the "rest" the same. Also, there is an "economic rationale" at play here, because there is a perception that no space is available for additional courses in the first year. To avoid then the issue of space and the danger of selling short the nature of the "integration endeavor," it is important to develop a broad theoretical approach, seeking interconnectedness between the different courses, and incorporating transnational issues as an integral part of the offerings—and not just as a simple appendix that would not take account of legal phenomena that increasingly defy clear borders—including transnational issues in property, torts, governance, crime, and practically every issue facing humankind.

Now, this ambitious project also requires the adoption of organizational measures. At WCL, from our four first-year sections, we have created three Integrated Sections and have appointed a coordinator for each section as well as one common "super coordinator." The coordinators—first year faculty themselves—bring together the other faculty teaching in the first year through a series of initiatives designed to prepare joint teaching materials, coordinate the sequence of topics, and develop common themes. As time is always an issue, we creatively resort to working luncheons (everyone has to devote some time for this) paid for by the dean's office, which also assigns dean's fellows or research assistants to assist with the common effort. In four years, we have seen the evolution of teaching methodologies in the Integrated Sections where you have, for example, teaching in the different courses on the basis of one case, including transnational elements.

This is an evolving process. I believe that change is easier when it

is declaratory of an existing situation. Twelve years ago we had a very polarizing situation on the reform of the first year curriculum. The way in which we proceeded this time was to create positive incentives, and ensure that people had access to materials and that possibilities and opportunities were kept open, while allowing those who want to continue to teach by themselves go on doing what they do very well. However, with incentives, you open possibilities to progress. In our case, we are now ready for our Curriculum Committee to move further—"officializing" the Integrated Sections by the faculty. Law schools are not the best place to give orders. While we all know that there are some implicit orders in the fact that we have structures in education that we need to follow (required courses, credits, etc.), it is better that those structures rest on consensus and, if possible, conviction and enthusiasm.

I foresee that, at WCL, this process will lead to all Integrated Sections in the first and second semesters with the likely addition of some electives, including international law, in the second semester. (Author's postscript: Subsequent to this presentation, the faculty at WCL approved this new approach).

That addresses the first aspect of my discussion today. The second aspect concerns special techniques, programs, and courses in addition to integration. First, curricular opportunities: at WCL, we offer more than 40 courses and seminars per semester in international and comparative law. A second feature: we have summer programs in different regions of the world. Third, we offer semester abroad programs. Fourth, we have experiential learning through clinics and externships. We offer externships only through seminars, so we have students in different countries around the world and, thanks to technology, they "meet" with an instructor and go through a typical experiential learning enterprise, which involves comparing, analyzing, and drawing conclusions guided by faculty. I will add that this endeavor raises logistical issues of great importance to young people, such as who will get up at 7 o'clock in the morning on any given day—due to time differences—but, nonetheless, the enterprise is manageable.

In addition to curricular opportunities, we have special extracurricular opportunities at WCL. The extracurricular opportunities include, for example, moot court competitions. Our students participate in the French language Rene Cassin Moot Competition in France. Also, every year we host the trilingual Inter-American Moot Court Competition, which is conducted in English, Portuguese and Spanish. In addition, WCL has an Academy on Human Rights and Humanitarian Law, which offers some of its courses for credit. This summer, the Academy will offer seven courses in Spanish and nine courses in English. WCL also has *pro bono* impact litigation. I will mention one

example in which I am involved. Several WCL students and myself have brought a case against Cuba for the summary execution of three individuals. The victims did not have the right to choose their lawyers and less than one week passed between the time they were apprehended by Cuban authorities and the time that they were executed. That case, which is being conducted in Spanish, is before the Inter-American Commission on Human Rights. We also have impact litigation before the United Nations Committee Against Torture.

Service is crucial. It would be enough to say that we live in a world where 1.2 billion people make less than \$1 per day, and where there are serious deprivations of rights because of authoritarianism and the lack of democracy. It is not our vision to dictate answers to our students, but it is legitimate to present the issues and ask the questions. You can answer the question as you wish, and contribute from your perspective. At WCL, we have the Center for Human Rights and Humanitarian Law, grants totaling nearly \$3 million per year, the War Crimes Research Office, gender programs in India, in Guatemala, in Mexico, etc. Our students contribute to these programs as dean's fellows and as volunteers. Let's remember that there is a tremendous idealism in this country. For example, 60 percent of the students at WCL claim that they study law to contribute to a better world. Now, after three years of legal education, I don't know what their exit interviews will show, but we have opportunities to offer them and options that build on their original motivation and commitments.

The third component at WCL is our expanded dual degree programs: dual LL.M.s, dual J.D.s with Spain, Canada, and France, and so forth. What are the underlying principles here? A new concept of national sovereignty, addressing new ethical and moral challenges, creating links between the study of domestic and international law, studying different legal systems including cultural and gender issues within the academic agenda, and promoting social change and international awareness (for further related discussion, please see my article "Building the World Community: Challenges for Legal Education," as published in the Pennsylvania State University's *Dickinson Journal of International Law*, vol. 18, no. 3, page 441 (Spring 2000)). Naturally, this is a process in the making. We have not seen the end of it. But it is manageable and exciting. Thank you very much.

[BREAK]

Editor's note: Following the conclusion of Dean Grossman's remarks, he responded to various questions from the audience. The following represent those responses.

This will look like a set-up. She's from WCL, so everything "stays in the family." I will answer the question although someone else

probably should. Well, that is a very important point because faculties drive law schools. So, we can say whatever we want to but if we have not convinced our colleagues that they need to incorporate international, comparative, and transnational perspectives, our plans will remain on paper only. Now let us talk about the bar exam, and the need to have questions about international law. We always talk about it. It's tempting, as a powerful instrument of coercion—"an order backed by threats." We solve the problem—or so we think—without a need to rethink legal education. But again, it's not that simple, because the Bar is not convinced, so we should consider other alternatives.

Well, there are many ways to creative incentives for the faculty. One is through summer abroad programs. They participate and they learn. Another is through semester abroad programs, when faculty members have sabbaticals. A third avenue is available because of international students. At WCL, we have approximately 200 foreign lawyers per year studying at our institution. This creates a system whereby faculty may have foreign lawyers as dean's fellows or research assistants who then, in turn, offer a comparative perspective to faculty projects. In an increasingly interconnected world, faculty may feel that they have an interest in having access to varying perspectives. A fourth avenue is through the Faculty Speakers Series. Interesting speakers are invited to share their perspectives on a variety of topics. Law schools are communities of scholars, and people are open to ideas. There is a big misconception that our colleagues are self-centered, self-righteous people who do not want to know anything about the world. That's simply not the case. It does not capture the reality and the creativity of our faculty. Most of our colleagues are exciting and engaged. Finally, there is an underlying reality going on here: globalization. Some people say it is good or bad. I do not know. It is good for some, bad for others. But, there are real issues of security, threats, poverty, governance, democracy, law, etc., and so increasingly this phenomenon is also creating conditions and changing the reality in which we operate. Thank you.

[BREAK]

A few comments. First, I think whatever functions is good. If using mandatory courses as a steppingstone for further integration functions for an institution, then that is fine, even if that is not our preferred course of action. Our model at WCL has been different. We offer more than 40 international courses per term. I would venture to say that the vast majority of our student body takes at least two or three such courses before graduation. In addition, with the many other opportunities and the Integrated Sections during the first year, we have not found a need for mandatory courses.

A second point that I would like to make is that I believe law

schools may face the issue of stratification. By that I mean the development of schools where you learn about the world, languages, and so forth, and others where you learn how to bring landlord and tenant cases or about another specific practice area. I believe that we should resist stratification. First of all, educators should take responsibility for the legal education of everyone. Students learn to think and to act in the legal tradition, and we all would benefit from graduates who are open to new ideas and different perspectives, and who have a well-rounded education for the challenges of the 21st century. The rule of law could suffer if we loosen the defining and cohesive elements of a legal education valid for all.

Now, again, is there a possibility that every law school graduate will face international law issues? Absolutely. More than ever, every area of the law, directly or indirectly, is facing and will be facing international, transnational and comparative issues.

I would like to conclude my remarks by saying two things. First, we do not know the end result of all of these efforts. For example, whether dual J.D. programs, dual LL.M. programs, different languages, etc., will be commonplace. Besides, many of us who have, on prior occasion, proclaimed to know the end result of a work-in-progress have often been wrong. Indeed, most of the important challenges faced by our generation were not anticipated by anyone. In this respect it would suffice to mention the fall of the Berlin Wall and the attacks of September 11, 2001. Faced with uncertainty, what we need to do is identify trends, develop processes, promote creativity and flexibility, and address the issue of governance of our institutions to allow for change and adaptability. We are not the only ones who engage in research, and we are not the only ones who educate. Accordingly, that structure of governance should give voices to NGOs, civil society, and professional organizations so that we open ourselves to greater consideration of the rich and evolving dynamics of life and of our profession.

Finally, I would like to extend an invitation to all of you. On Thursday, January 13th at 4:00 p.m. Eastern standard time, U.S. Supreme Court Justices Stephen Breyer and Antonin Scalia will visit WCL in a program with the U.S. Association of Constitutional Law for a "conversation" on the relevance of foreign law for U.S. constitutional adjudication. The justices do not intend to give lengthy opening statements, but rather will be exchanging views among themselves. Both justices have agreed to full publicity, so we will make the event accessible on the internet, and C-SPAN will be there. I think that the fact that two sitting justices of the United States Supreme Court have agreed to do this shows that, irrespective of how we conceptualize these issues, progress is being made. Thank you.