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# Preparing Students for International Legal Practice and Improvement of Their Legal Systems

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I initially would like to emphasize one particular aspect of international legal education. Our task as international educators is not only to prepare students for international legal practice, but also to prepare them to have an impact on shaping of their legal systems by facilitating cross-culture legal study experiences and by sensitizing them to contributing towards improving their legal systems.

## I. Historic and Current Need for Harmonization

It is currently fashionable to look back and estimate the developments we made in comparative study of legal systems. Students and scholars should also be inquiring about how their legal systems would look 100 years from now.

Using historic perspectives, we find that from the beginnings of law one phenomenon is clearly recognizable and confronts lawyers and lawmakers repeatedly with the same question. This is the question of legal harmonization that runs through the history of law from its ancient beginnings to the present. In the Law Book of Hammurabi there were forces shaping laws differently, accompanied simultaneously by persistent efforts to overcome the particularism of laws in varying degrees.

Should law develop toward universalism or particularism, i.e., developing uniformly or develop differently? The response to this question seems obvious, proved by two thousands years of history. Although the difficulties caused by the multitude of local laws brought about an obvious need for the decrease of particularism, already in the early Middle Ages efforts for harmonization had limited results before the industrial age. Voltaire's famous

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complaint at the end of the 18th century—if you travel you have to change at every station not only horses but also the law—remained a famous memento of the painful medieval disintegration and anarchy of the law.

As a result of harmonization developments through the centuries, two basic legal systems (the common law and the civil law (or roman law) systems) are peacefully co-existing and prevailing territorially and culturally. This co-existence includes, however, collision and competition - which is increasingly emerging with the globalization of the world economy.

To what extent can various legal systems be harmonized? Can the cultural differences between the common law inductive case law tradition and the civil law deductive conceptualizing tradition be lessened? The process toward approximation and harmonization is supported not only by requirements of global commerce but also by the process of legal harmonization within the European Union that clearly necessitates approximation between the Anglo-Saxon and continental law.

## II. The Role of Education in Harmonization

I think the movement in the direction of achieving approximation of differing legal systems will be tremendously advanced if international legal education is used to penetrate the minds of students in their formative years.

A look into history clearly demonstrates the role of students in the process of approximation or unification. *Peregrini*, the wandering students of the Middle Ages, traveled to foreign lands and studied at foreign institutions as a mandatory part of their education before becoming a master of their trade or profession. They had a particular role in the reception of Roman law in Europe that modernized and harmonized the fragmented law of medieval Europe, creating a system of European continental law. The judges of the German *Reichskammergericht* (Judicial Chamber of the Empire), in 1495, referred for the first time to the Roman law and gave it a subsidiary character to the fragmented, multiple, particular German territorial laws. These judges were alumni of Italian universities who took this first step. Looking into the educational background of this judiciary leads back to medieval Italy, where they acquired comparative knowledge based on Roman law at the famous historic Italian universities.

When we work on the promotion of international education, the primary purpose is, of course, to enable students to engage in international practice that will in all probability be an indispensable part of their legal careers. But this involves more than just getting acquainted with some norms, institutions, and procedures of a foreign law. Exposing students to other legal cultures in order to help them speak other legal languages comfortably and confidently is another important function.

If you have a babysitter who is a foreign speaking person, the child will more easily master not only the language of the babysitter but also other languages in the future.' The same is true for other intellectual fields: lawyers whose education is based on a multi-system basis will live in any of those regimes - and be a carrier of mutual penetration (i.e. approximation) - more easily than those who familiarized themselves with the foreign systems at a later phase.

### III. Revolutionary Changes and Difficulties of Legal Transplantation.

The significance of modernization and harmonization through comparative legal scholarship increases dramatically in times of dramatic changes of a society. This is particularly true for the transformation democracies of Central and Eastern Europe.

Revolutions always create an *ex-lex* status by necessarily abolishing a part or all of the norms of the previous political regime. The depth and extent of removal depends primarily on the magnitude of the changes, but to some extent, it is a *sine qua non* of all revolutionary changes. However, just like air in space, a vacuum cannot exist in the law (unless you are in the galactic space). The legal vacuum created by this transition was immediately saturated with massive export and importation of all types of proposed legislation - confronting lawmakers with the pressing need to make quick and good choices of replacement norms.

One pole of the possible responses is the German unification in 1990 that was practically an annexation in the field of law, with all of its advantages and disadvantages. The German process certainly did not expose East-German lawmakers to the dilemmas of choosing among foreign legal rules and institutions. The opposite pole could result in anarchy if reconstruction is too fast without the presence of a German-style, entirely replacing working regime, anarchy could develop. Rules may be arbitrarily

set and applied by those who can exercise any kind of power (some former-Soviet Union countries got close to such a situation). However, when the change is from dictatorship to democracy, that is, from lawlessness towards the rule of law, the content of what fills the vacuum after the fall of the previous political power is of vital importance.

Most of the CEE countries avoided the two extremes, and went through a gradual replacing process, whereby the rules of the no-law countries have been replaced by laws typical of market economies and democratic states under the rule of law.

However, this replacement process is much more complex and harder than it looks on first sight. Two elementary problems emerged from the beginning.

The first was the dilemma of which model to follow. Which legal system should be used as a resource? Being a continental country and drawing on German legal and cultural traditions - at the same time having the desire to approach the extent of political and economic freedom attributed to the American model makes it difficult to find the right way to build up the new legal environment for the society.

We realized, after a few years, that it had become very fashionable to import slogans and concepts regarding democracy, human rights, human freedom, privacy, etc. These concepts which had produced democracy and well being in most western countries were exported to countries experiencing total devastation, often through foreign experts who had no idea or knowledge about the legal systems of the importing country. Local people from the importing countries were learning overnight about the ideas of the western legal systems. They experienced a confusion of values in determining whether everything was to be abandoned from their past heritage or what could be retained in the emerging new legal systems. Where does freedom and entrepreneurship end and where does unscrupulousness and adventurism that should not be celebrated as virtues begin? They were confronted with many new believers (some overzealous, over-enthusiastic new believers) who did not recognize the utility and wisdom of merging the past traditions with the new systems and values.

This confusion is connected to the second difficulty the shapers of the new regimes had to overcome. This is that changes of law affecting lives, habits, and relationships of people cannot be automatically implemented. Change of norms requires the change of minds - not only among everyday people but also and foremost legal minds. The enthusiastic transplantation of Western style

institutions in the transition countries of Central and Eastern Europe like freedoms of press, opinion, religion, information, organization, movement, property or competition, the (nearly) unlimited access to judicial revision, ombudsman, constitutional court, the enforceable prohibition of discrimination, etc. frequently could not bring about the same result as in the model countries. Such transplants sometimes merely resulted in a distorted mutation of what developed organically in the Western societies.

In response to this situation, our legal education has adjusted by incorporating a very strong exposure to foreign legal systems. In this historically unique situation, international legal education has a tremendously important role. Adequate strategies need to be undertaken in accord with the principles mentioned above. New legal cultures, like new cultures need time. They require a new generation who grow up inside that culture, and are therefore inside (intrinsic) of them. Lawyers who have been exposed to a variety of legal cultures and environments at the earliest childhood (that is at the period of learning what law is) will have an easier and more reliable compass. They will have the good sense and knowledge to avoid mechanical copying. They can navigate these societies towards freedom and democracy and the rule of (real) law.

#### IV. The Effect of Internationalizing Post-Socialist Legal Education After the Political Shift.

The desperate need for having rapid cross fertilization in legal education has risen in countries where formerly iron curtain and prohibition - in earlier decades even the threat of criminal law punishment - was intended to prevent citizens, primarily intellectuals, from communicating with the West.

The acknowledgment of the elevated importance of fast and steady internationalization of legal education by governments, the international environment, as well as the educational institutions, has shown itself in several ways. At the starting phase of the non-communist era, international developments in the education were based on financial aid.

##### *A. Forms and Resources*

We should first note the large European network programs that were intended to assist the upgrading of university education in the transition countries. TEMPUS, a Trans-European scheme

for modernizing the university systems of the ex-socialist countries, starting in 1990, was clearly an aid program under the PHARE program (first assisting only Poland and Hungary, later extended to the other applicant countries). Fulfilling its goal, it gradually is replaced by the Erasmus and Socrates programs that are European Union student mobility programs extended now to the applicant countries. The TACIS program, too, has been a parallel program assisting the CIS countries of the former Soviet Union also should be noted.

Further, tremendous funding was provided in the form of loans by the World Bank (Higher Education Development Project) to upgrade higher education. Within this process, legal education has received special attention. The CEELI program (Central East European Law Initiative) launched by the ABA was explicitly targeted at legal developments, including assistance to higher education. Through various direct bilateral or network programs, a large number of American and European universities connected their resources to this process.

The most common, most simple, as well as most efficient strategy was student exchange. However, as soon as the hundreds of law students from the Central and East European countries started their semesters at Western universities, the problem of nation-bound as well as system-bound character (that is particulars) of law and legal education came up. European student grants to cover the studying abroad were conditioned upon the obligation undertaken in written form by their home universities to credit the foreign studies towards the degree of the grant holders.

Change was also badly needed on the other end of the student exchange. Without modern, comparative studies, providing international knowledge at international standards - it was difficult to attract exchange students from abroad, even if there were always quite a few whose peculiar interest brought them to study the exotic law of the ex-communist countries. After a few years of one-way assistance, student exchange had to become reciprocal and self-sustaining.

#### *B. Multiple Effect of Internationalizing Education.*

The credit transfer requirement under the EU mobility schemes contributed to the revolutionization of the curriculum of the law schools of the Central and Eastern European region.

Although the law degree in each country has been based primarily on knowledge of the national law, the curricula has started to duplicate or multiply the number of international, supranational, and comparative law courses. (Comparative Constitutional Law, Human Rights, Law of the European Union, Environmental law, International Business Law, European Company Law etc.). Correspondingly, broad recognition has been given to courses in international and comparative studies. Furthermore, schools who wanted to comply with the requirements in order to get financial support also had to break up the former rigid system of legal education based on a uniform mandatory menu prescribing even the sequence of the subjects from the first year to the last and leaving minimal or no room for optional courses to be filled with the studies undertaken abroad. This system, at least in some Central and Eastern European countries, has now been gradually replaced by a credit system where students have a set of mandatory subjects to complete but also have increased room for optional courses.

Thus, the students who, through various special programs, scholarships, exchange programs, successfully completed studies in the countries of the European Union or in the United States could bring home their experience and knowledge to their countries of origin as well as forwarding European credits towards their degree.

I would like to emphasize at this point the importance of library development, as a further result of the internationalizing process. It has been indispensable to have the literature (i.e. the library of each state's legal culture) in hard copy or electronically directly accessible for use of students to enrich their knowledge of other legal systems. Simply by necessity, law libraries have concentrated their efforts and financial means to catch up to the international experience of law students and to the need of incoming exchange students, thereby providing to everybody, traveling or non traveling, an unusually new access to foreign literature, familiarizing faculty and students with new journals, databases as well as modifying radically the language ratio in favor of English and other foreign language literature within the overall library stock.

As a result, we now have a generation of new lawyers who are differently trained to be builders of the new legal system and have spread into governmental offices, law firms or judicial positions, or have become law teachers themselves transmitting the knowledge

substance, methodology and practice with high tech information gathering - they have obtained abroad.

A new generation of law teachers also has to be mentioned. This is not only based on the new hirings from the fresh graduates with international background. As parallel developing faculty exchange within the abovementioned schemes and generous scholarship programs (Fulbright and Humboldt scholarship as well as the Civic Education Project [CEP] importing teachers to CEE universities) has helped the intensive upgrading of the academic knowledge and teaching skills of the available portion of the legal academia in the CEE region. Unfortunately a good number of faculty members were unavailable because of lack of language skill and any experience with foreign laws in the West. In this context, the two-way flow of mobility had a major significance from the beginning, different from the student mobility where reciprocity could develop only after a certain period. Professors teaching foreign subject material and methodology brought a new spirit of competitive teaching, by use of the method of interactive, analytical, and later clinical teaching and high technology and new university management methods. The impact of the imported faculty, combined with that of those indigenous professors who could upgrade their knowledge and skill by shorter or longer periods spent at Western universities has resulted in a gradual change in the teaching (and to some extent also administrative) staff of the CEE universities. However, the change was rather the development of a group of teachers ready and able to adopt new knowledge and skills and carry out changes than an overall change of the whole faculty. The slight frictions and tensions caused by this division within the faculty between new teachers actively involved in the international programs and old teachers being only observers of the developments will certainly disappear in the course of the time and be mitigated by the obvious advantages for everyone brought about by the changes.

#### V. Central European University

I would like to close with a few words about the Central European University. This is an intensively international institution. It was in fact born international. It is the first private university in the region. It was established in 1989 in order to educate the intellectually elite of Central Europe and the former Soviet Union and thereby fulfill its mission of promoting social development and academic improvement of the countries of the

region. Its Legal Studies Department has been operating since 1992. It is by definition a place of international education. Ninety percent of its student body, of which one hundred are top law graduates from the 28 countries of the CEE and f/SU region, is without any decisive national group. Approximately ten per cent come every year from the United States or Western Europe, and occasionally from the Asian continent.<sup>1</sup>

Students studying for their first law degree, even if they are preparing for an international practice, have to obtain knowledge and skill primarily within the field of the national law of their country. This limits the possibilities of including international elements in the individual curriculum of each student. On the other hand, postgraduate education offers unlimited opportunities for international education. Teaching postgraduate courses is an innate strategy of CEU Legal Studies. It offers an LL.M. Program in International Business Law and in Comparative Constitutional Law, an M.A. Program in Human Rights, and an S.J.D. program in the fields of International Business Law and Comparative Constitutional Law. The New York Board of Regents accredits each program.

The international and comparative curriculum is taught by a core group of permanent faculty members and by a large number of visiting professors. The vast majority of the visiting professors are recurrent professors who, with a few incidental exceptions, come every year in the same semester, teaching the same subject thereby allowing the department and the programs to function with a constant, permanent character, in spite of working with a very international faculty. Actually, most of them are from the United States and, as I look next to me on the panel, I note that we have faculty from Penn State Dickinson Law School, New York University, Cornell, and I apologize if I have omitted any others.

An important part of this program is the operation of well-developed clinical, legal education programs. We currently have over forty legal clinics in Hungary. They are operating primarily in the field of criminal justice, public, and family law. We are also providing opportunities to our students for clinical work to enable them to pragmatically approach issues of the United States legal system.

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1. In the academic year of 1999/2000 there were 75 scholarship (regional) students for the LL.M. degree, 10 paying (Western) students and 24 SJD students enrolled to the Legal Studies Department.

In conclusion, I would like to note the opportunities, which the Central European University makes available to its graduates to serve in various international and governmental organizations. These opportunities enable the students to have a direct influence on our legal systems and facilitate the effort of the various institutions to provide creative input into the transformation of the legal systems of the countries of Eastern Europe.