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Lawyering Across Multiple Legal Orders— Rethinking Legal Education in Comparative and International Law

Katharina Pistor*

I appreciate the opportunity to briefly introduce a new course Columbia Law School is offering to first year students for the first time this spring semester. The course, which I will be co-teaching with my colleague George Bermann, is called “Lawyering in Multiple Legal Orders.” The title reflects the basic “philosophy” of the course, namely that legal practitioners today will invariably work in more than one legal order. This notion is not unfamiliar to lawyers practicing in federal systems, such as the United States. By the end of the first semester students have a basic understanding of the federalist system and can appreciate the need to understand whether state or federal law applies, and if state law, which one. Our new course develops this notion further and seeks to enable students to navigate an even more complex world, where different foreign legal jurisdictions may be relevant for resolving a particular case, or where international treaties and conventions need to be consulted.

Columbia Law School offers a very rich curriculum in international and comparative law to our students. However, so far there has not been a comparative or international law offering in the first year. A reform of the first year curriculum gave us the possibility to remedy this shortcoming and to follow the example of Michigan Law School in advancing international and comparative law to the core of the first year curriculum—at least on an optional basis.

Up to now, the first year curriculum at Columbia Law School consisted exclusively of mandatory courses. As part of a major first year

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curriculum reform fifteen years ago, Columbia Law School introduced two new, mandatory courses: Regulatory States, and Perspectives in Legal Thought. The first course introduced students to the notion that law and legal practice does not consist merely of common law and court decisions, but that regulatory agencies and their associated rules and regulations play a critical role as well. The second course gave first year students a perspective on legal history, legal philosophy, law and literature. We have now converted these mandatory offerings into electives and increased the number of electives students may choose from in the second semester of their first year. On the current menu of eight electives is our new course, "Lawyering in Multiple Legal Orders."

The genesis of this course indicates it was a response to curriculum reform at Columbia Law School. However, the aim of the course is much broader, namely to respond to the desire to broaden the curriculum of American law schools and to better integrate international and comparative law into our teaching. Moreover, the course reconceptualizes the way we teach comparative law today. As many of you know, comparative law is often used to introduce students to a select number of foreign legal systems, including France, Germany, and perhaps Japan. The focus tends to be on differences between legal families—the common law family on the one hand and the civil law family on the other—as exemplified by the leading countries in each of the families. In the globalized world we face today, this focus seems too narrow in several respects. We are witnessing the emergence of new markets—China, India, Russia, Brazil—to name only a few of the larger ones. We also observe that the lines between common law and civil law, as well as between comparative and international law are blurring. The challenge before us is to help students navigate this fascinating, but complex, and at times confusing, world.

The strategy we chose to address this challenge is to use first year subject areas—contracts, torts, property, civil procedure, constitutional law, criminal law, etc.—and place them into a comparative/international context. In other words, we build on the students' familiarity with the kind of legal issues that might arise in these areas, and introduce them to the diversity of solutions that legal systems around the world have developed. From our Torts unit for example, a tort action that inflicts damages on a U.S. citizen—a famous biker on his way to the Tour de France—occurs in France and the medical treatment, which unfortunately results in further injuries, occurs in Germany where a drug produced by a German pharmaceutical company is administered. Finally, the British tabloid press picks up the story and publishes statements about potential drug abuse by the same cyclist, who seeks legal remedies in a Houston court. You get the picture. The case offers

the opportunity to introduce students to the civil law systems of France and Germany, the tort remedies available in these countries, including remedies available in special statutes dealing with the pharmaceutical industry, and finally with differences between English and U.S. defamation law. We do not attempt comprehensive overview of these countries' legal systems, but use the case to introduce students to different legal systems. Some of the themes discussed in this section are taken up in later sections of the course.

In the unit on Contracts, a Russian state-owned company signs a long-term contract with an American corporation as the buyer, to supply a specified amount of aluminum. Within a year, the company stops delivery claiming that the now privatized company is not bound by the contract. Even if bound, the company asks the court to adjust the contract on good faith principles, as the price for aluminum dropped dramatically after the collapse of the Soviet Union, which led to a flooding of world markets by aluminum originating in the former Soviet Union. The American company, on the other hand, requires delivery of the goods according to the price stipulated in the contract, i.e., specific performance. As it turns out, the contract is governed by the 1980 Vienna Convention on the International Sales of Goods (CISG). Thus, this case allows us to explore not only questions of comparative law, but to introduce students to international conventions and their statutes in American law. It also offers a possibility to discuss, if only briefly, the transformation of the former socialist countries and their legal heritage.

Similarly, the Civil Procedure unit is both comparative and international in nature. Students are exposed to different traditions of litigation, the availability (or not) of pre-trial discovery, the different role of judges in civil law as opposed to common law systems. In addition, they learn about international conventions governing question of jurisdiction, such as the Brussels Convention on Jurisdiction and the Enforcement of Civil and Commercial Matters, which governs member states of the European Union, and the recent—and as of now, not effective—Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters. Consideration of the two instruments makes for interesting comparisons about the willingness of sovereign states to delegate or even cede jurisdiction to other countries.

These are only a few examples to illustrate the topics covered in this course and time constraints prevent me from adding more. But this short summary should give you a flavor of what the course does and does not do. The course certainly does not pretend to give full coverage of all aspects of contract, tort, or property law. Nor is it a substitute for upper year courses in international law or advanced comparative law courses. The only conventional course it replaces is the general introduction to

comparative law. We believe that after having taken this course, our students should be well equipped to take more specialized courses and will not need another introduction to comparative law. By contrast, the course is not a substitute for introductory courses in international public or private law (such as WTO or international litigation). While we cover some topics that would be covered in any such courses, we have to be highly selective and cannot do justice to the intricacies of international law doctrine or practice.

To summarize, the new course “Lawyering in Multiple Legal Orders” introduces students to international and comparative law. It is perspectival rather than comprehensive. At the end of the semester, students will be familiar with basic principles of international law and have a good sense of the range of legal solutions countries around the globe offer for similar legal problems. In other words, students should have acquired literacy in basic principles of comparative and international law and should be able to embark on a discovery process in areas not covered by this course even if they decide not to take advanced courses in their upper year curriculum.