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# Global Legal Education and Human Rights

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# Global Legal Education and Human Rights

by Claudio Grossman

**A**MRICAN UNIVERSITY WASHINGTON COLLEGE of Law's *Human Rights Brief* is an important educational tool for all of us and is a tremendous source for those involved in human rights work around the world. The *Brief* promotes the development of human rights by providing both analysis and information about cutting edge cases involving human rights violations today. On the occasion of the tenth anniversary of the *Brief*, I will reflect on what I perceive to be the changes necessary for legal education and discuss the role of human rights in that process.

Law schools play a vital role in establishing legitimate expectations for behavior in societies. Therefore, human rights education is crucial for the promotion of important values. A dramatic transformation is taking place in the world today. The processes that have led to this situation have resulted in increased transnational trade and investment, dramatic growth in the scope and speed of communications across the globe, and unprecedented exposure to foreign cultures and values. The internet, with its ability to transcend borders and allow for decentralized communication, is both a metaphor and a powerful engine that is increasingly contributing to a world without barriers. New challenges have emerged, concerning security, the environment, health, labor protection, and governance. National states are no longer the single most important actors in effectively addressing many of these challenges.

A more complex reality has replaced the clear dichotomy between domestic and international issues, and the distinction between the domestic and international is losing its meaning. This situation affects all states in different degrees. Some states can bear greater political, economic, military, or ideological weight to face the new challenges, but no state can ignore them. The impact of this new world reality, and its effect on domestic jurisdiction, has resulted in serious conflicts and debates concerning its benefits for societies and individuals.

What should remain of cultural and religious traditions, and the power of national states vis-à-vis international trends, which now more than ever affect the way we eat, dress, and think? Security is a significant part of these concerns. The development of weapons of mass destruction, increasing the danger of their use by states or non-state actors, challenges the traditional doctrines of territorial sovereignty and the self-defense use of force in situations where armed attack has occurred or is imminent. These new issues also arise in a world where the institutions and procedures needed to address and solve the numerous challenges posed are not fully in place.

It is difficult and certainly adventurous to anticipate the way in which this situation will evolve. Belonging to a generation that could not anticipate the most fundamental events that changed our lives, (it would suffice to mention the demise of the Soviet Union and

September 11, 2001), it is not my purpose here to participate in the exciting but risky endeavor of forecasting the future. For those who care about human rights, the task is to question what we can do in terms of legal education, knowing the impact that legal education has or can have in many countries of the world.

## CHALLENGES FACING LEGAL EDUCATION

### DEFYING NATIONAL SOVEREIGNTY

Early legal educators found it unnecessary to look to the outside world to teach law students. For example, when Christopher Langdell became the Dean of Harvard Law School in 1870, he equated the study of law with the study of science. He felt that the creation of law derived from a logical set of objective principles that, in turn, were arrived at through appellate decisions. This methodology, which narrowed the scope of legal education to solely studying American case law, was fundamentally tailored to accommodate a political culture where the practice of law was primarily confined to national borders.

With the wanton destruction caused by two world wars and the development and use of even more lethal means of mass destruction, the principle of absolute sovereignty demonstrated an inability to guarantee the well-being and survival of humankind. The absence of international restrictions and the use and threat of force in international relations could not be accepted in a world containing weapons of mass destruction. Equally, war crimes and genocide made the development of international norms and procedures imperative for the protection of individuals against governmental action. In the aftermath of World War II, various states convened in an effort to regulate force, develop an international bill of rights, and create and strengthen international organizations that would structure cooperation, peacefully resolve conflict, and provide states with a universal body of nascent civil administration.

Over time, there has been a departure from Langdell's theory. This departure continues, even over the last ten years, and is especially evident at the Washington College of Law (WCL). WCL now offers more than 100 courses and seminars in international law each year. Despite these changes, the curricula of most law schools continue to focus on a domestic agenda and to use teaching methodologies, such as the case method, or class lectures that do not promote intercultural skills. While international law is offered on a wider basis, the full incorporation of international law, and in this case human rights law, into legal training remains marginal. Moreover, most law students today are not exposed to a proper understanding of legal traditions other than their own, such as common law, civil law, religious law, and traditional law, nor how to resolve conflicts that arise in cases under different legal traditions. Providing this exposure promotes tolerance, a crucial value in the protection of human rights.

### CREATING A NEW CONCEPT OF DIVERSITY

Utilizing only the case system or conferences as teaching methodologies does not contribute to the development of important

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values and relevant skills required to practice law in an international, multicultural environment. Aspects of international practice, such as the interplay of culture and nationality in legal decision making, highlight the need for a new approach to legal education. Also, understanding of the relationship between gender and the law is implicitly necessary, since concepts of gender are intricately linked to culture.

This is not to advocate a position of cultural relativism, which allows societies to make their own rules, based on culture, with respect to the rights afforded to individuals. We have developed a universal concept of human rights under the International Bill of Human Rights, which includes such universally ratified treaties and conventions as the International Covenant on Civil and Political Rights. The human dignity of men and women must be respected in every culture, but culture must be respected and understood in order to allow lawyers to communicate effectively with clients and with each other.

U.S. law schools, which have been more open to diversity than other schools in the world, have long focused on a concept of diversity that is domestic in nature, to ensure a more balanced representation of various minority groups in the United States. Now, however, there is a need for a more multinational concept of diversity. Law schools must also reflect this new diversity, so that graduates can interact with and be prepared to work in a world that is multinational and pluralistic.

#### ADDRESSING NEW ETHICAL AND MORAL CHALLENGES

Globalization has created new social problems, such as increased international crime and environmental degradation. It has also brought the effects of problems that were once “far away” closer to home. For example, increased interaction among nations means that domestic financial crises may have international effects. Contagious diseases are also easily spread from country to country. Other perennial problems such as child labor and unfair labor standards are exacerbated by growing export markets for goods. Not only is there a moral and ethical obligation to address these issues, but it is also in our own self-interest to do so. The terrorist attacks of September 11, 2001, show the need to adopt policies that prevent terrorism and increase our knowledge of other societies.

Consider the following global statistics regarding “human development” from the 2003 Human Development Report, produced by the United Nations Development Program:

- **Health:** From 1990 to 2002, the number of people infected with HIV/AIDS more than quadrupled, from 10 million to more than 42 million. In 2000, at least 1.1 billion of the world’s population—about one in five—did not have access to safe water. Twice as many (2.4 billion) lacked access to proper sanitation.
- **Women and Children:** About one-half of adult HIV/AIDS cases are women. Every day, more than 30,000 of the world’s children die from preventable causes—dehydration, hunger, and disease.
- **Education:** Of the 680 million children of primary school age in developing countries, 115 million do not attend school. There are 897 million illiterate adults in the world, two-thirds of whom are women.
- **Food and Nutrition:** Every day, 799 million people in

developing countries go hungry. This is almost 18% of the world’s population. More than three-quarters of hungry people are in rural areas of developing countries. Urban poor people now account for more than one-fifth of hungry people in developing countries.

- **Income and Poverty:** More than 1.2 billion people—one in every five on Earth—survive on less than one dollar a day. More than twice as many, 2.8 billion are struggling to survive on less than two dollars a day. More than 500 million people in developing countries lack ownership rights or owner-like rights to the land they farm.
- **Environment:** About 1.7 billion people live in countries facing water stress. If current trends continue, this number could increase to 5.0 billion people by 2025. More than 2 billion people lack access to electricity and the services it provides, including lighting, refrigeration, telecommunications, and mechanical power.

In addition to these serious issues, fundamentalist ideologies, attempting to justify terrorism on the basis of perceived or real grievances, impose barriers between cultures and peoples, and deny traditional distinctions between military and non-military targets. Many causes are perceived as valid in this world. If we accept that those causes can meet their ends with total disregard for the means they employ, we are denying the basic tenets of human rights and civilization.

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Clearly, these challenges cannot be solved by lawyers alone, and certainly not by lawyers whose vision is limited by national borders. As lawyers, however, we can play an important role in addressing them because, to a certain extent, every issue is a legal issue. After all, lawyers play a significant part in defining legitimate expectations of behavior, and we should use this position to promote important values of human dignity.

## STRATEGIES

HOW DO WE ADDRESS THESE CHALLENGES? How do we move away from a self-centered approach to legal education? How do we promote a new, international concept of diversity in our law schools? And how do we instill in our students both the ethical convictions and the means to address the social problems of our globalized world? How do we continue to promote fundamental values of dignity shared by all human beings, and uphold the distinction between valid and invalid means and targets of warfare? There are differing schools of thought on these questions, but for rhetorical purposes, we can identify two major camps.

broader protections, particularly during emergency situations. At WCL, we revised the first year curriculum to incorporate international law issues into traditional first year “domestic” law courses. For example, a first year torts class studies the *Paquete Habana* case, decided by the U.S. Supreme Court in 1900 on the basis of customary international law. Students also study cases brought by foreign nationals in U.S. courts under the Alien Tort Claims Act. These cases help students understand the outer limits of the application of U.S. laws abroad, and the application of treaty law and customary international law within the United States. First year students are also exposed to international legal research in their Legal Methods course.

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The first group, the “translators,” contends that the global changes taking place are of minimal concern since lawyers deal primarily with domestic issues. Translators assert that the practice of law primarily deals with domestic interests and issues that are confined to one nation’s borders. According to this group, the traditional concept of legal education should remain intact.

The second group goes beyond translation. Indeed, the “modernizers” would argue that much more is required to prepare lawyers for the seismic changes currently taking place. The modernizers’ approach to legal education is to increase global exposure by adding courses, hiring additional international faculty, sponsoring more international academic programs, opening research centers with global labels, and augmenting the number of formal international linkages. Except for this quantitative increase, the law school experience would undergo no transformation.

It is becoming increasingly clear that neither of these approaches is sufficient to produce the type of fundamental changes that are necessary. I would like to outline briefly some of the strategies that may lead to such a fundamental change in legal education. These strategies are being proposed and implemented at WCL and other schools around the country. Over the last ten years, the implementation of these strategies has had a significant impact on the shape of legal education at WCL.

#### CREATING LINKS BETWEEN THE STUDY OF DOMESTIC AND INTERNATIONAL LAW

Creating links between the study of domestic and international law is necessary for legal education because in our new global reality even “domestic” lawyers will need to address issues of international law. In numerous instances, domestic law offers fewer protections than those established by international human rights law, which provides

Teaching methodologies, such as moot court competitions, which have been traditionally used to develop advocacy skills in the domestic sphere, are now being used to expose students to the interplay between domestic and international law and to promote advocacy skills in international fora. For example, WCL’s Inter-American Human Rights Moot Court Competition brings together students from 45 schools in fifteen Western Hemisphere nations to argue cases that involve issues of domestic, civil, or common law and issues of the international human rights law of the Inter-American system. The competition is conducted in English, Spanish, and Portuguese. The René Cassin Human Rights Competition in France also allows students to submit briefs and argue in French, on cases that addresses domestic civil or common law and the relationship of these laws to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The creative use of simulations involving a combination of domestic and international law issues is also important. Currently, WCL students participate in a joint program with students at the University of Ottawa. Video conferencing facilities at each school allows students to interact as if they were in the same classroom.

Providing opportunities for experiential learning, such as clinics and externships, which offer hands-on experience in cases involving both domestic and international issues, are also essential to preparing students for the reality of an interconnected world. For example, WCL’s International Human Rights Law Clinic takes cases involving international human rights violations. Some clinic cases, such as political asylum cases, are in U.S. domestic courts. Therefore, students must address a combination of international law and domestic law issues.

#### STUDYING DIFFERENT LEGAL SYSTEMS

Law schools must offer courses in comparative law and interna-



tional conflicts of law in order to give students an understanding of types of legal traditions other than common law, such as civil law, religious law, customary law, and mixed legal systems. We must also recognize the limitations of the case method in teaching other legal traditions, and use a variety of teaching methods, including simulations and experiential learning. We need to allow our students to have the opportunity to study abroad, either during the semester or the summer, in countries with different legal systems. For this reason, WCL offers programs in France, Chile, Spain, Mexico (all civil law countries), Hong Kong (common law), Canada (mixed common/civil law), and Israel (mixed civil, common, and religious law). In addition to these study abroad opportunities, WCL recently launched two J.D. dual-degree programs allowing students to obtain the J.D. and J.D. equivalent degrees in Spain and Canada in a total of four years.

Students who participate in these programs should be encouraged to supplement their classroom experience with an externship in a local law firm, court, or non-governmental organization. Legal educators may also bring these experiences “closer” by creating a community of lawyers from other legal traditions—which WCL does with its International Legal Studies Program—and by bringing visiting scholars and faculty from other countries to the law school.

#### **INCLUDING CULTURAL AND GENDER ISSUES IN THE ACADEMIC AGENDA**

Including cultural and gender issues in the academic agenda may be achieved by adding courses to the curriculum that address these issues or allowing students to work with people of other cultures. For example, student attorneys in clinics such as WCL’s International Human Rights Law Clinic, serve as externs in organizations that represent foreign clients or in organizations abroad. These experiences achieve maximum impact when students are able to reflect upon them afterwards in a classroom setting. Another way to promote cultural understanding is to provide students with opportunities to develop their foreign language skills as lawyers. At WCL, we offer a special course on international law taught in Spanish, available only to non-native Spanish speakers.

#### **INCLUDING THE PERSPECTIVES OF OTHER ACADEMIC DISCIPLINES IN THE STUDY OF THE LAW**

The primary way to include the perspectives of other academic disciplines in the study of law is through joint degree programs, such as WCL’s joint J.D./M.A. program in International Relations and the joint J.D./M.B.A. program. This can also be achieved through faculty exchanges with professors from other academic disciplines, integrating other points of view into regular law school courses, and allowing law students to take a limited number of credits in other academic departments.

#### **PROMOTING SOCIAL CHANGE AND INTERNATIONAL AWARENESS THROUGH PURPOSE-ORIENTED PROGRAMS OUTSIDE THE CURRICULUM**

Law schools can be vehicles for meaningful social change in the international sphere, while at the same time providing valuable experience for their students. For example, WCL’s Center for Human Rights and Humanitarian Law provides opportunities for students to

do research, writing, and advocacy on human rights issues through the Inter-American Digest Project, the War Crimes Research Office, and the *Human Rights Brief*. While students involved in these organizations gain experience, they provide essential services to thousands of lawyers who need current information on the latest human rights developments and those helping to prosecute war criminals before international tribunals. Participation in these organizations strengthens an important value: no matter how valid your perspective or how legitimate your goals, the principles of international human rights and international humanitarian law need to be respected.

#### **LOOKING FORWARD**

WE, AS LAWYERS, HAVE THE OPPORTUNITY to contribute to shaping the legal institutions that will govern the future. As legal educators, we have the responsibility to prepare students to continue this process. We do not yet know the end result of our efforts, but we do know that participating in this process is essential to help solve the global problems facing today’s world. What we also know is that our approach cannot simply be one of translating or modernizing. Standing alone, neither approach produces the paradigmatic shift required to educate lawyers in the new world reality, including teaching human rights law. Both schools of thought appear to underestimate the breadth of the changes currently taking place. What is needed, instead, is a profoundly different approach: one that advocates a *qualitative* rather than a *quantitative* change in legal education. *HRB*