

THE INTERNATIONALIZATION OF LEGAL EDUCATION

THE JAMES P. WHITE LECTURE ON LEGAL EDUCATION

WYNNE COURTROOM, INDIANA UNIVERSITY
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Remarks by the President of the University of Puerto Rico

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I am deeply honored in coming here today as the fourth James P. White Lecturer. It is impossible to justly appraise contemporary legal education without factoring the work of James P. White. Dean White's role in the ABA accrediting project served as the platform from which he impacted every aspect of legal education in America. In matters related to infrastructure, curricula, clinical and interdisciplinary programs, the incorporation of emerging technologies to the life of law schools, rankings, and the interaction of the legal education system with government regulators, Dean White's leadership was a driving force throughout the latter part of the 20th century and continues to be in the challenging dawn of the 21st.

Of particular value to legal education and to higher education overall was Dean White's intuition in contextualizing the education and practice of Law within the new global cartography that followed the collapse of the Soviet Union. White recognized that the globalized world was becoming part and parcel of our everyday life; that our professional and institutional landscapes were being put into question by the new environment; and he called to action. The creation, during the 2000 ABA meeting in London, of the Out of the Box Committee to address "the training of lawyers in the next millennium," was prompted precisely by his acknowledgment that the pressing scenario of globalization was a challenge for legal education in the United States.

Two years ago, in his lecture to the Conference of Chief Justices here in Indianapolis, Dean White summarized key areas in which legal education has responded to the integrating forces of these times: law school curricula, cross-border practices, seasonal programs abroad, and dual degree offerings. These are indeed breakthroughs in legal education that describe how globalization is already a strategic vector that modifies traditional outlooks and

responses.

But just as the world grows increasingly interdependent, the challenges we face also grow to make sure that law is actually a tool to support, rather than to impair the new global community in its aspiration to create a better, more democratic and fair civilization.

THE WORLD AND THE LAW:

Throughout the history of the West, there have been pivotal moments in which Law has shined as the language of consensus rather than the language of domination; the language of compromises instead of the language of yielding. In the sixteenth century, amidst the complex process of the occupation of the New World by the European *conquistadores*, the Spanish legal scholar Francisco de Vittoria opened a new sphere for modern Law – *el derecho de gentes*, or international law. From his insights and proposals on the theme of diversity and basic rights, we derive many of the world's protocols and institutions that provide a viable model of global governance.

A second example brings us to a more recent historic event. In 1945 the world knew of the barbaric reality of the Holocaust. Arguably, Law could be considered a willing participant in this crime against humanity. But Law was also able to perform redemption. From the ashes of that terrible tragedy, the concept of human rights emerged as a cornerstone of contemporary international law and international justice.

In our times, globalization processes constitute yet another threshold in the international configuration that started five hundred years ago. Technological and economic transformations seem to have finally eroded temporal and spatial barriers. Assisted by media and telecommunication networks, we are more than ever world citizens. The internationalism that gave birth to the UN Charter and the Declaration of Human Rights in the postwar years is no longer a dream for privileged minorities but a practical reality for millions of human beings, more mobile than ever, never more interconnected. Poverty levels have been reduced dramatically; human ingenuity and productivity are on the rise.¹

CARTOGRAPHIES OF HOPE; CARTOGRAPHIES OF CONCERN

In the last decades, nearly three billion people have been integrated into the global economy. The rates of economic growth in China and India – in many years at double-digit percentages – supersede the outstanding rates presented by Western democracies during the second postwar period.² Globalization appears to be succeeding in overcoming what seemed the intractable problem of world poverty. However, the spectacular growth in the

1. J.D. SACHS, COMMON WEALTH: ECONOMICS FOR A CROWDED PLANET 17 (2008).

2. F. ZAKARIA, THE POST AMERICAN WORLD 86 et seq. (2008).

production of commodities and services is clouded by growing asymmetries. Dramatic inequalities signal the makings of the globalized world. They are disparities that arise from outdated public policies, unfair distribution systems, from corruption and other political vices, from political anachronisms and cultural constraints. But also, from the very same shift in the concept of wealth that puts a premium on the production and circulation of knowledge and information.

The “information density” of modern societies has increased the capacity to produce, select, adapt and commercialize knowledge. Knowledge acquired originally by basic research, and applied by scientists and engineers, is now the raw material and provides the tools for economic growth and well-being. It must be noticed that currently only 12-13% of US production is in manufacturing, with approximately 68% production in the service and information sectors.³

While specific figures may change by the minute, there is no doubt that sustained economic growth travels the same path of investment in research and development. In recent years, universities serve as key partners to attract high-power competitive research and have become the foundation of 21st century economic growth.

The American public has benefited greatly from its tax-based investment in research. For instance, the gains inherent to public health that might be attributable directly to institute-funded research are certainly many times the annual appropriation of tax-funded dollars.⁴

The transformation in the concept and production of wealth, exemplified by research and development’s protagonist role in economic growth, is not only an aspiration of the developed world. As globalization compresses temporal and spatial coordinates and modifies the understanding of the economic underpinnings, the rest of the world adopts the same paradigms and strives to compete in a new playing field. However, investment in research and development allocation can be unfair for developing countries and resurfaces the specter of old world maps with specific roles for countries and continents.

Like in college football, rankings in the document citation and research production are a graphic instrument to provide an instant assessment of proficiency and achievement in a competitive environment. Recent data regarding research power by countries present a dismal picture of asymmetrical

3. USA Economy in Brief: A Service Economy, *2006 GDP Value Added by Industry*, fig. 1, <http://usinfo.state.gov/products/pubs/economy-in-brief/page3.html> (last visited Nov. 14, 2008). See also Bureau of Economic Analysis, *Gross-Domestic-Product-by-Industry Accounts*, http://222.bea.gov/industry/gpotables/gpo_action.cfm?anon=82589&table_id=23492&format_type=0 (last visited Nov. 14, 2008), and CIA World Fact Book, United States, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html#Econ> (last visited Nov. 14, 2008).

4. NAT’L INST. OF HEALTH, NIH RESPONSE TO THE CONFERENCE REPORT REQUEST FOR A PLAN TO ENSURE TAXPAYERS’ INTERESTS ARE PROTECTED, EXECUTIVE SUMMARY, *available at* <http://www.nih.gov/news/070101wyden.htm>.

distribution among the countries of the world. Keeping with the sports analogy, the Big Ten rankings in research power is almost identical with the economic power rankings. The United States is the front-runner with a mammoth production of 3.5 million documents and almost the same amount of citable documents. Japan, the United Kingdom, Germany and China occupy the next positions.⁵

Among the Spanish-speaking countries, only Spain ranks in the first ten. The first Latin American country, Brazil, is number eighteen and Mexico, twenty-eight. Overall, only five Hispanic countries – Spain, Brazil, Mexico, Portugal and Chile – find themselves in the first fifty and only eleven in the first hundred. Puerto Rico, for instance, ranks 69th, with 5,000 documents published in the last decade among 228 countries polled.⁶

If the information economy is the production paradigm for the foreseeable future, this gap is unsustainable not only for the countries that lag far behind but also to the front runners. A world of growing inequalities in research power and international visibility of intelligence goods no longer strictly attached to material production, circulation and consumption, recycles the concept of poverty and poses threats for world peace and stability. A dangerous new layer is added that can overshadow and mute the evident achievements of globalization in bringing millions of people out of deprivation.

Although bibliometrical rankings are powerful indicators, they cannot deliver the behind the scenes factors that foster the uneven competition in the economy of knowledge arena. We must move to another set of indicators such as access to higher education figures, public policy patterns, educational systems, university agendas and other cultural and political considerations. Law, as one of the main social and cultural frameworks for individual and collective behaviors, must also be reexamined, not just to assist in a more holistic evaluation of contemporary asymmetries, but also to assess its potentialities in modifying them.

MOBILITY AS THE GRAMMAR OF THE GLOBAL EXPERIENCE

Today's world is marked by the increasing demands of mobility. The knowledge-based economy, the flux between public and private realms, the interdisciplinary approaches in academia and the relationship between research and development are some of the instances in which mobility asserts its preeminence over the compartmentalization that characterized the

5. SCImago Journal & Country Rank, Country Indicators, <http://www.scimagojr.com/countryrank.php> (last visited Nov. 14, 2008). Since delivery of this speech, the U.S. has increased to roughly 3.9 million documents, and the United Kingdom has surpassed Japan to take second in the ranks. *Id.* (last visited Nov. 14, 2008).

6. *Id.* (last visited Nov 14, 2008). Since delivery of this speech, Brazil has moved to number seventeen in the ranks, and Puerto Rico is currently at number seventy with 5,867 documents published; furthermore, 233 countries have now been polled. *Id.* (last visited Nov. 14, 2008).

modernization process.

Only six decades separate us from the devastation of the Second World War. Fueled by the Marshall Plan, the rebirth of Europe was an admirable achievement of international cooperation. But the reconstruction had a more lasting effect than the rebuilding of the material foundations of the historic West. It provided the spirit and the opportunity to bring about a new sense of collective identity, a quantum leap from the Europe of nations conceived at Westphalia.

The project, which is one of the war's most fruitful lessons, rested on the ideas of a unified market and currency, a European parliament, protocols for the settlement of regional disputes and other structural and legal standardizing procedures. Among them I would like to underscore the foresightedness of its educational components, one of them so appropriately called Erasmus for the 16th century Dutch thinker who, in an age marked by religious wars, viewed a well-rounded education as an antidote to oppression.

Erasmus brings about important lessons for educators all over the world because it highlights mobility as one of the keys for a successful learning and socialization experience attuned to our times. Education within a mobility framework provides the sensibility, the openness, and the appreciation of diversity, networking, and international cooperation that allows for a more efficient management of global issues and to address its plaguing asymmetries. What is the role for Law in this complex scenario that presents enormous opportunities but still defies us with great divides and unbearable inequalities? What is the role of legal education in fomenting new sensibilities and socializations, in fashioning a new legal professional in our countries?

In a world that seems closely-knit, thanks mainly to the global market, Law lags frequently behind, affected by parochialisms, bound by national idiosyncrasies and traditions. Unlike science, which thrives in the global scenario, Law and legal education in America and in many other countries seem reticent to assume a global outlook. I propose that true cosmopolitanism, which is not synonymous with mere economic and technological exchanges, requires the commitment and agency of Law.

Early in the nineteenth century, in a later work, Immanuel Kant, the German philosopher, espoused a cosmopolitan vision of the idea of progress. More than an international government, an idea that Kant rejected as impractical, what humanity needed was international cooperation, transparency, and above all, international law in order to achieve Perpetual Peace. As morality is reason internalized, Law, he argued, is reason externalized. Law as an enabler of peace is one of Kant's greatest concepts.⁷ Today, as two centuries ago, Law stands inextricably related to Peace as humanity's project. I may add, it is also related to the mitigation of the great schisms fostered by old and new disparities.

7. IMMANUEL KANT, PERPETUAL PEACE: A PHILOSOPHICAL SKETCH (1795).

The Conquest of America, the French Revolution, and the Holocaust demanded that Law and legal scholars address issues of fundamental nature for humanity. Globalization makes the same demand today. It is evident that the rule of law is beginning to make its force felt in international trade and globalization now. Increasingly, the powerful are now being held accountable for the effects their behaviors have on others and two to three billion new people are being integrated into the global economy. Democracy and free markets have made dramatic inroads in creating a fair global civilization, but barriers set up by legal parochialisms still preclude its full bloom.

TOWARDS A NEW LEGAL SOCIALIZATION

I would like to elaborate on the intersections of legal education and global inequalities from a vantage frontier between the planet's North and South. As President of the University of Puerto Rico since 2001 and Law School Dean for many years before that, I have witnessed the emergence of global transformations, the opportunities and the challenges they pose, but also their shortcomings. As a legal educator, I propose a renewed cosmopolitanism that positions Law as an enabler of global changes and as an active actor in the mitigation of the new disparities posed by a vertiginous and often unfair globalization process.

This is not a simple enterprise. How can Law and legal educators, all of us, commit to this task?

First, by questioning and then breaking away from nationalistic constraints that hinder a comprehensive and open view of the world we live in. I am not speaking of the deep-rooted allegiances to one's country that give us an immediate and comforting sense of place and identity. I refer to the narrow and chauvinistic attitudes and frames that limit our understanding and judgment. Nationalistic idiosyncrasies work against the grain of mobility, against the grain of contemporary reality.

Second, by questioning and breaking away from the gremial disposition to coalesce with economic and political interests under protectionist and local banners. In many occasions, Law is more prone to erect fences and jurisdictions instead of bridges and common grounds. Law has to recover fully its focus as an agent of change.

Third, by creating a legal education program that generates law professionals and scholars with a global profile. It does not matter if a lawyer sets up his practice in his hometown in Indiana or in a city of southern Puerto Rico and only handles the legal affairs of his small demarcation. Increasingly, local matters are global matters and vice versa: immigration, international contracts, international commerce, and internet business. McLuhan's global village concept is no longer an oddity but a daily occurrence.⁸

8. MARSHALL McLUHAN, *THE GUTENBERG GALAXY: THE MAKING OF TYPOGRAPHIC MAN*, (1962); MARSHALL McLUHAN & BRUCE R. POWERS, *THE GLOBAL VILLAGE: TRANSFORMATIONS*

We must ask ourselves why we advance ever so slowly in this direction. Why, even after so many summer internships and exchange programs, are we still placing obstacles in the globalization of our law students? Why, for instance, just as double degree programs emerged for law schools in Europe and America, Standard 507 for Approval of Law Schools, contrary to James White's ideas, was amended to reduce to one-third – half of what it was – the credits that American JD students could take abroad?

One may argue that these limitations are of a technical nature and could be overcome by appropriate modifications. A reference to international bodies whose mission is to harmonize legal languages may come in handy.

As many of you know, The United Nations Commission on International Trade Law (UNCITRAL) was established by the General Assembly in 1966. In establishing the Commission, the General Assembly recognized that disparities in national laws governing international trade created obstacles to the flow of trade, and it regarded the Commission as the vehicle by which the international community could play a more active role in reducing or removing these obstacles. Similarly, the International Institute for the Unification of Private Law (UNIDROIT), an independent intergovernmental organization with its seat in Rome, was founded to study needs and methods for modernizing, harmonizing, and coordinating private and, in particular, commercial law as between States and groups of States. Both organizations have made commendable progress in their homologation endeavors, but not at the pace that a globalized world needs. Political, cultural and professional resistances framed by nationalistic claims remain the most important barriers. The gap between current legal education and global outlooks and profiles for our law students and professionals is more than a technical matter, as the limitations experienced by UNIDROIT and UNCITRAL show.

Subtle, but far more insidious, are the effects of the socialization process prevalent in most of our law schools. Lack of interest in the issues of homologation and mobility between diverse law cultures and dispositions are direct consequences of socialization processes that ignore these international imperatives.⁹ The promotion of global attitudes that shy away from parochialism in legal education is an urgent matter if Law is to play a significant role in mapping a more symmetrical and mobile knowledge-based economy.

Law is never neutral to changes. It can nurture transformation but can also be an obstacle in achieving the necessary modifications. Today, Law is in the unique position of reconfiguring much of the unevenness that permeates global processes.

Law can have a major role in improving the securitization of global transactions. Law can procure more efficient arbitration mechanisms for

IN WORLD LIFE AND MEDIA IN THE 21ST CENTURY, (1992).

9. Even if late, the Supreme Court's emerging willingness to recognize formally the developments of legal standards and expectations in the rest of the world will have a positive impact in the socialization of lawyers. See *Lawrence v. Texas*, 539 U.S. 558 (2003).

commercial disputes, border issues and migration protocols. Law can produce more accessible and understandable protocols for the emergent knowledge economy in aspects such as technology transfer, patents, copyright legislation, international research agreements and the like. And legal education reform is of paramount importance in repositioning Law as an international player. It is a new attitude that we must help create.¹⁰

The voyage is one of the favorite metaphors of Western civilization. Many of the great narratives in classic and contemporary literature center upon the experience of the voyage. The voyage always allegorizes human vocation for knowledge of other peoples, of other cultures.

I view the globalization of legal education as a series of voyages through which our students can develop a better understanding of themselves, their communities and the broader panorama of the world. A series of voyages experienced by incorporating more international references to our academic bibliographies, by attending international conferences, by engaging in research projects with universities and research centers all around the world, by contributing to the urgent discussion of the role of Law in expanding networks of solidarity and international cooperation and in reducing the asymmetries that cast a shadow over the otherwise welcome effects of globalization.

Just think for a moment about the graduating Class of 2020: composed of students, all of which have spent at least one semester studying abroad, well-trained in the legal principles, governing statutes and codes adopted all around the world, studying for a national bar, recognized in reciprocity by the European Union and other leading jurisdictions, committed to the enhancement of the well-being of the global village as true agents of change and solidarity.

We must invite Jim White to address them with the commencement speech.

Thanks so much for the invitation.

10. F. ZAKARIA, *supra* note 2, at 41.