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Global Legal Skills Conference IV

Globalizing the Curriculum Through the Introduction of International,
Transnational And Comparative Law Issues into Traditionally
Domestically Oriented Required Courses

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My plan for this topic discussion is to describe briefly the experience at Pacific McGeorge in introducing international, transnational and comparative law issues [global issues] into required domestic law courses, to raise some questions and proffer some tentative answers, to solicit your ideas, and to discuss them.

In the summer of 2005 Pacific McGeorge sponsored a workshop attended by professors from thirty one U.S. and Canadian law schools to discuss how to introduce international, transnational and comparative law issues into the core curriculum.¹ The attendees divided into groups discussing civil procedure, constitutional law, contracts, corporations, criminal law and procedure, property, and torts. There was general agreement on the desirability of globalizing the curriculum. Broadly speaking, the goals of globalizing the curriculum are to prepare for the practice of law in an era of increasing globalization, improve understanding and application of domestic law, and provide leadership in the global community.

Workshop attendees discussed various models, but focused on what has sometimes been called the pervasive method.² Subsequently, Pacific McGeorge's Professor Franklin Gevurtz has edited a series of "Global Issues" books for West Publishing Company, which has grown to fifteen titles, covering most of the core curriculum and some other courses.³ While Pacific McGeorge School of Law has not generally required its professors to go global, many of us have been using these books in our required classes, and others have been incorporating international and comparative materials without assigning these books.

1. Our experience

We are now in a position to begin evaluating our experience. In the spring of 2008, when students evaluated my Constitutional Law class, I asked them to give comments on the use of the Global Issues in Constitutional Law book. Professor Frank

¹ See Franklin A. Gevurtz, et al, *Report Regarding the Pacific McGeorge Workshop on Globalizing the Law School Curriculum*, 19 Pacific McGeorge Global Business & Development Law Journal 267 (2006).

² For a helpful survey of methods, see James R. Maxeiner, *Learning from Others: Sustaining the Internationalization and Globalization of U.S. Law School Curriculums*, 32 Fordham Int'l L.J. 32 (2008).

³ I have co-authored two such titles, *Global Issues in Constitutional Law* [with Leslie Gielow Jacobs], and *Global Issues in Employment Discrimination Law* [with Samuel Estreicher].

Gevurtz received some comments from his Corporations class at U.C. Berkeley [Boalt Hall]. Results were mixed,⁴ and the informal and open-ended question did not yield a complete answer. Late in the 2008-09 we decided to pose a series of questions [see attachment] to first and second year students [and third year evening students] throughout the school. We received responses from 496 students.

⁴ In Constitutional Law five liked the book. Seven said to get rid of it. Three said we should get rid of it unless we were going to have more classroom discussion of it Here are the few comments I received [out of 46 responses]:

Can global issues book.

Don't like global issues

Global issues should be taken away

Like your book

Global book is good

Global issues reading was POINTLESS unless we are going to be tested on it by the bar

Spending a little more time with the "Global Issues" would be nice

The global issues book was X helpful

The global issues book was better [than the main text]

I only read the first few assignments from the global issues book. I didn't find it that helpful, honestly

Global issues reading is not helpful when not discussed in class

I liked the global issues book. I thought it brought some very interesting perspective.

Not assign global issues unless there is more intent on discussing it

We should get rid of the global issues book. Con Law is confusing and complicated as it is. No need to compare and contrast con law with foreign confusing constitutional cases.

I didn't think global issues was necessary

The global issues book added some interesting perspectives

In the U.C. Berkeley Corporations class seven of the 70 students made comments on the use of the Global Issues book. Two of the seven liked the addition of the global issues materials. A third agreed with the idea of covering global materials but wanted a hornbook approach to global issues. The comments appear below:

GI makes it interesting, comparative law.

I didn't like the global issues book. Not very reader friendly and useful. I much rather have a firm grasp on US law before reaching out to other countries. Also, the discussion in the global issues book is very superficial.

I didn't really see the relevance of the international materials. I know it is helpful for understanding policy issues, but I a lot of it was just a history lesson or a diversion from US corporate law.

The casebook was okay, but the Global Issues book was not helpful at al. I applaud the fact that there was an attempt to bring in material from outside the U.S., and I thought it was a great idea, but I think the book should have been closer to hornbook than a casebook in order for it to complement the other material.

The casebook was good and so was the global issues book. I liked that we compared US corporate law to foreign countries' corporate laws.

Would have liked to have stuck to mostly U.S. law and not International law.

I want less focus on non-US law.

The numbers were mixed and internally inconsistent⁵, but most of our students reported that international and comparative law materials had been introduced into their required courses to some extent. This was particularly true of our first year students: 84% reported that international materials had been introduced into their Legal Process course, 80% in Property, 79% in Contracts and Civil Procedure, 67% in Torts, and 36% in Criminal Law. Of required courses taken in the second year [or third year evening] results were more varied. While 81% reported the use of global materials in Appellate and International Advocacy, 72% in Constitutional Law, and 62% in Business Associations, most reported no use of global materials in Evidence, Community Property, Professional Responsibility, Remedies, or Wills and Trusts. It may be that the non-use of global materials in five of those six courses is attributable to the fact that the Global Issues series does not yet include books for them.

A majority of the students reported that they found the materials interesting, including 10% who found them very interesting. About half the students even said the materials were more interesting than their domestic law materials, and about half also said that their exposure to global materials made them more likely to take international electives. A slight majority also said that the materials aided their understanding of law, and three quarters of the students said that the global materials helped them to see alternate approaches to legal problems, and three quarters also felt more alert to issues that may arise in an era of increased globalization.

Students made liberal use of the “suggestion” question on the survey, treating it as a “comment” section and providing both negative and positive feedback.

Student criticisms of the global materials focused on two issues: the utility of the materials and the ways in which the materials were used. Some students thought the materials were not useful, because they would not be tested in their classes, would not be tested on the bar, or because the student felt that their future law practice would be purely domestic. Some students felt the materials were not discussed enough in class, were a confusing distraction, or that the professors needed to cut back on readings of domestic materials if they were adding global materials.

Positive comments tended to note the way that global materials helped put domestic law into perspective, asked for even more exposure to international materials, and noted the globalization of economies and work forces.

We also asked professors in required courses to complete a similar survey. Of the seventeen who responded fifteen reported that they used global materials in one or more

⁵ For example, students in one section of Contracts gave widely disparate answers. Seven reported that global materials were not introduced at all, 27 said they had been given short readings in global materials but no class discussion, 40 said there had been short readings with class discussion, 4 reported extensive readings with little class discussion, and one reported extensive readings with extensive class discussion.

required classes.⁶ Of the fifteen who used global materials, five thought they made the class slightly more interesting, six more interesting, and four much more interesting. Most thought the global materials significantly aided their students' understanding of the law, helped students see alternate approaches to legal problems, and made their students more alert to issues that may arise in an era of increased globalization. Although only two reported testing on the global materials [using multiple choice questions], teachers of appellate advocacy pointed out that the simulation required briefing and argument of foreign law as well as domestic law, and a legal process teacher reported requiring treaty research, explanation and application in a legal writing assignment. One professor reported testing on the materials directly only once, "but good answers will invoke those materials indirectly and the model answers I distribute demonstrate that. Another said: "Have tested on policy questions in which knowledge of foreign law would be an advantage; also essay questions have sometimes involved situations taken from foreign cases that were assigned; and I have tested on the application of foreign law when I supplied the relevant foreign law."

2. Some questions

- a. What is the best way to meet the need for global materials in domestic law courses?

In order to incorporate global perspectives into the curriculum it is necessary to have suitable materials, no matter which model one chooses. If you opt for the pervasive method, you are met at the outset with the narrow domestic focus of almost all core curriculum case books. For example, even though the United States Constitution lists treaties as part of the supreme law of the land, Constitutional Law casebooks presently include only the most minimal coverage of international and foreign law. My survey of seven leading texts reveals a few unsystematic mentions, at most, of international and foreign law. Casebooks with more than 1600 pages devote three or seven pages to global issues. Similarly, a practitioner recently complained that "U.S. practitioners have been found to be particularly ignorant of CISG [Convention on Contracts for the International Sale of Goods], primarily because of a pervasive failure to teach CISG in contract courses."⁷ This omission of global materials represents a step backwards from practices of sixty years ago. In 1940 Jerome Michael and Herbert Wechsler published their groundbreaking casebook, *Criminal Law and its Administration*. They stated in their introduction:

"We shall also devote attention to reform movements here and in England, and we shall not ignore the extensive activity in other countries in debating basic issues and in drafting new penal codes."⁸

⁶ One who did not use global materials in required classes did use them in family law, an elective. The other acknowledged "I probably should supplement my coursebook with some such materials."

⁷ Nicholas G. Karambelas, *United Nations Convention on International Sale of Goods*, Washington Lawyer 27 (April 2009).

⁸ Jerome Michael and Herbert Wechsler, *Criminal Law and its Administration*, 10 (Foundation Press 1940).

True to their word, the authors included not only generous coverage of English, Canadian, and Indian cases and statutes, but interlaces material from Italy and the Soviet Union. The current exclusion of foreign materials no doubt stems from the pressures of coverage and the diminution of units for core domestic law courses.

The Global Issues series is meant to supplement domestic law case books. The need for such materials is highlighted by the fact that students are much more likely to be exposed to global materials when a Global Issues book has been published. However, the Global Issues series is not the ideal. While every case book is drafted as a unitary resource, Global Issues books must be written for use with a wide variety of domestic texts. I believe the overall quality of the series is high, but it is no substitute for incorporating global materials into the domestic law case books. Ultimately, we, as the persons who are selecting what books to use in our domestic law courses must exert pressure on authors and publishers to add global materials to their books.

- b. Is it reasonable and feasible to expect teachers of domestic law courses to incorporate global materials into their teaching?

Teachers of domestic law courses may feel inadequate to incorporate global material into their teaching. We have found, however, that with help from good teacher manuals and the ability to consult with the internationalists and comparativists on the faculty, this inadequacy can be overcome. Moreover, if we believe that it is important that our students be exposed to global materials we have an obligation to acquire the skills and knowledge that enable us to provide that exposure.

One issue with the pervasive method is that some domestic law professors may simply choose not to incorporate global materials into their courses. At Pacific McGeorge there is no effort to require professors to do so; even if there were such a requirement it would be difficult to enforce. As a result, some students are exposed to global issues in Torts, while students in other sections may not have this exposure. However, the odds are that every student will have exposure to global issues in one or more courses. We think that as a culture of globalism grows in the law school the use of global materials will continue to grow as well.

It may make sense to devote part of the next Global Legal Skills Conference to in depth discussion of the use of global materials in domestic law classes. Perhaps faculty members who have used these materials could give subject matter oriented sessions. I believe that several of my colleagues would be willing to present such sessions.

- c. How can we encourage student interest in the global issues material?

The student surveys reveal that we have not completely succeeded in convincing students of the worth of global materials. One could conclude that since some students express a lack of interest in global materials in required domestic courses, we should not force the materials on them. However, many other students are interested in the materials, and, more important, we believe they are an important part of every student's

legal education today. Rather than abandon the materials we need to explain why we are using them. It also seems probable that as the use of global materials becomes the norm students will increasingly accept their relevance. Moreover, if, as suggested in a. above, the materials appeared in the main casebook rather than as supplemental material, students would be more likely to treat them as a normal part of the course.

We also need to test on the materials, so that students understand we are serious about them. Professor Brannon Denning at Samford University's Cumberland School of Law includes an international problem among the three problems he gives his Constitutional Law Class each semester and also asks a question in his midterm about international materials.

At Pacific McGeorge School of Law we are expanding our global curriculum and will be introducing global material as part of our first year legal process class, which will be called Global Lawyering Skills I. Global Lawyering Skills II will continue in the second year with trial and appellate simulations that include international/transnational issues. We are hopeful that this change will make the students more comfortable with and committed to the study of global materials in other courses.

d. How can we best integrate global materials into domestic courses?

The hardest issue has been how to integrate global materials in a meaningful way. The most successful effort at Pacific McGeorge comes from a professor of Business Associations, who substitutes some global materials for domestic materials, where the global materials can be used to teach the same lesson. More typical is the experience of a Contracts professor whose first case of the semester was a French case, which provided an instructive contrast to an American case. The professor thought students found this relevant and helpful. However, as the course proceeded "with CISG and UNIDROIT, it became too much. Students couldn't differentiate between those tools, UCC, common law." This echoes remarks of some students, such as "it is frustrating to have it crammed in to the substantive classes." While one might respond that the CISG is U.S. law, since the states are "bound by the Supremacy Clause to the treaties of the United States,"⁹ we do need to recognize the trade-offs involved in adding global materials to domestic law courses with ever-shrinking units. Realistically, if one is to add global materials, it will be necessary to subtract some domestic materials.

Students who complain that their class discussions did not include the global materials have a valid point. Professors should ensure that the global readings are given the same attention as the domestic readings. Frankly, this seems to be the most challenging issue for those of us who try to incorporate global materials into our classes. One response may be to pick one area each semester for bringing a comparative perspective, and cover the comparative materials in that one area in depth. It may be unrealistic to try to do so in every area of the course.

⁹ *Asante Technologies v. PMC-Sierra, Inc.*, 164 F.Supp.2d 1142, 1150 (N.D. Cal. 2001).

- e. Does the pervasive technique send the right signals regarding international, transnational and comparative law?

One possible criticism of the pervasive technique is that it necessarily oversimplifies global issues. Occasional reading and discussion of international, transnational, or comparative cases and materials fails to put them into context. A second criticism is that these materials are irrelevant to the future law practice of many graduates. Both critiques suggest that students who are interested in global issues should take global courses and that students who are not interested in them need not take them. I believe that these critiques misconceive the purposes of introducing global materials into domestic courses. They are not a substitute for classes in international, transnational or comparative law. They serve separate pedagogical and utilitarian purposes: to enhance understanding of domestic law and to prepare students for the globalization of legal practice.

- f. Should professors who use global materials in their domestic law classes test on those materials?

Yes. Failure to test on the materials undermines the students' perception of the seriousness of the enterprise.