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GLOBALIZATION AND LEGAL EDUCATION: A VIEW FROM MEXICO*

José María SERNA DE LA GARZA**

*Para mi querido Boletín,
mismo que tuve el honor de dirigir
entre 2000 y 2006*

SUMARIO: I. *Globalization*. II. *Globalization and the Legal Field*. III. *Globalization and Legal Education*.

I. GLOBALIZATION

In recent times, both in the academic and the professional fields, there has been a kind of abuse of the concept of “Globalization”. Moreover, people see it from very different perspectives. For some, it is the source of disintegration, inequality and loss of identities at a world scale. For others, it is the basis of a new world order that opens opportunities of growth and development for all countries. However, seldom do the different approaches start from a sound analysis of what globalization is truly about. In fact, in the literature on globalization there is no agreement on what is the meaning of this concept. As Bartelson puts it: “Today few doubt the reality of globalization, yet no one seems to know with any certainty *what* makes globalization real. So while there is no agreement about what globalization *is*, the entire discourse on globalization is founded on a quite solid agreement *that* globalization *is*”.¹

* Este breve ensayo deriva de una ponencia que presenté en la Conferencia Anual de la Barra de Abogados, México-Estados Unidos, el 7 de noviembre de 2008.

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¹ Bartelson, Jens, “Three Concepts of Globalization”, *International Sociology*, vol. 15, núm. 2, junio de 2000, p. 180.

Having said that, and in order to avoid the above mentioned methodological problem, I would like to start my brief discussion on globalization and legal education with my own understanding of the meaning of this concept. In this way, I propose here that globalization is characterized by:

- a) The intensification of social relations at a world scale.
- b) The emergence of a specific type of organizing economic activities, with a transnational reach and scope.
- c) The emergence of new actors at the level of international politics.
- d) The formation of transnational networks for the generation, diffusion and exchange of cultural patterns and values.
- e) The emergence of issues and problems of planetary dimension.

To be true, all these characteristics are not precisely new in the world scenario. They form part of historic trends that have been developing for quite a long time. Yet, the novel element is that of intensity (mainly due to information and communication technologies of today). The intensity with which these trends develop today makes a difference with respect to the past. As Keohane y Nye put it, the current phase of globalization can be characterized by the following three terms: “faster, cheaper and deeper”.²

II. GLOBALIZATION AND THE LEGAL FIELD

The translation of the discourse and perspective of globalization studies into the legal field can be performed by the observation of certain empirical phenomena. Primarily, the intensification of social relations at a world scale and the emergence of a specific type of organizing economic activities, with a transnational reach and scope, has lead to an increasing need for legal services in support of international business and international dispute resolution. However, business is not the only field of human and legal activity that is increasingly global in scope. On the one hand, human rights litigation has

² Keohane, Robert O. y Nye, Joseph S., Jr., “Introduction”, en *id.* (eds.), *Governance in a Globalizing World*, Washington D. C., Brookings Institution Press, 2000, pp. 8 y 9.

also internationalized as well as other areas of the law, such as family law, criminal law, tax law, administrative law, environmental law, corporate law, and the law of bankruptcy. On the other hand, and beyond litigation and counsel, other branches of the legal profession are increasingly global in scope. Here I am referring to judges and law professors. With respect to the former, some authors have noticed an increasingly important “transjudicial communication”, “international traffic of ideas”, “cross-fertilization of decisions”.³ And concerning the latter, the legal academia is also increasingly exposed to global networks in which ideas, concepts and methods are proposed, discussed and criticized, thus forming truly global epistemic communities.

One has to recognize that this trends towards the internationalization of the practice of law is not affecting equally all the areas of law. However, as the current phase of globalization evolves in the future years and decades, it is foreseeable that lawyers will be increasingly pushed to work in situations in which they will be faced with dealing and understanding what the law is beyond their national and domestic background. As Drolshamer and Vogt put it, lawyers will be:

Not only required to deal with multiple legal regimes and cultures, but to relate successfully to people, be they clients, opposing counsel, or judges from socio-economic cultures other than their own. Understanding other cultures and an ability to relate comfortably to persons and institutions in terms of such cultures can be important to the success of an international endeavor. A successful international negotiator must have an appreciation of the deep-seated cultural and social values of all parties to the negotiation. The structuring of business entities and the creation of successful business relations requires a sensitivity to the cultural and social values of the participants and an ability to reflect these values in the international entity or relationship.⁴

³ Annus, Taavi, “Comparative Constitutional Reasoning: The Law and Strategy of Selecting the Right Arguments”, *Duke Journal of Comparative and International Law*, vol. 14, pp. 301-349; Slaughter, Anne Marie, “Transjudicial Communication”, *University of Richmond Law Review*, vol. 29, núm. 99, 1994.

⁴ Drolshammer, Jens y Vogt, Nedim Meter (eds.), *English as the Language of Law?*, The Neatherlands, Schulthess, 2003, pp. 4 y 5.

In my view, if all this is true at the global level, it is even more valid in the NAFTA area, where the interactions in so many fields, which go beyond the commercial and economic exchanges, have intensified significantly in the last 14 years.

III. GLOBALIZATION AND LEGAL EDUCATION

Legal education has to make an effort to adapt to all these developments and phenomena. Law schools should develop strategies to respond to these conditions that are becoming so prominent in the legal field. Therefore, it would be healthy for law schools to review the legal education process in its different elements and phases, from the perspective of introducing what we could call different kinds of “global” or “transnational” components into the process. In my view, this could be done at the level of the aims of legal education; the faculty; the students; and the curriculum of the law school. What follows is a series of ideas related to these issues, which I put forward in order to induce the discussion that may lead each law school to take the right decisions, according to its own conditions, general projects and traditions.

1. *Aims of Legal Education*

Following the idea of Friel, I do not think that the aim of a transnational legal education should be, as a matter of principle, “to create individuals who can *practice* law in a number of diverse jurisdictions.” Though this may be an incidental result, but not an objective in itself. “The aim of any such program should be to create lawyers who are comfortable and skilled in *dealing* with the differing legal systems and cultures that make up our global community”.⁵

However, this general statement should not be taken as an absolute, since some law schools could take the decision to walk in the direction of “joint degree programs”, whose graduates end up holding two law degrees of two different countries.

⁵ Friel, Raymond, “Special Methods for Educating the Transnational Lawyer”, *Journal of Legal Education*, vol. 55, núm. 4, diciembre de 2005, pp. 507 y 508.

In turn, to achieve the above mentioned general aim, legal education should promote exposure to different legal systems and to cross-cultural perspectives, through different mechanisms that involve the faculty, students and the curriculum.

2. *The Faculty*

The traditional mechanisms to encourage exposure of law professors to “external” influences are exchange programs for teaching and doing research abroad (during sabbaticals, for example); and for inviting visiting professors to teach regular or special courses, or giving conferences at home. This requires money, flexibility, and cultivating good and strong academic relationships between law schools of different countries.

In my experience, when a law professor is truly interested in having an academic experience abroad, he or she can find different sources of financing. For example, some public and private institutions in Mexico do have programs for the “superación académica” of the faculty, which means scholarships for professors, in addition to their salary, that would allow them to travel and work in a university abroad. Other Mexican institutions like Conacyt (Consejo Nacional de Ciencia y Tecnología) also has resources for these purposes. Besides, some US universities do have funds for inviting professors from other countries to do research, to teach or to do both things (for example, the University of Texas at Austin, and NYU, and in Canada the University of Montreal).

Some measure of flexibility in law school teaching programs is required, to adjust to the situation, needs and finances of professors who would like to engage in exchange programs. For example, it is possible that a law professor could not be able to spend one year or one semester teaching a course abroad, but may be he or she would be able to do it for shorter periods of time. Flexibility would be required to design short or mini-courses, or to allow visiting professors to teach during some sessions or segments of on-going seminars that are being taught by the permanent faculty. It would be interesting to explore what kind of “special faculty arrangements” are allowed in each law school to promote this kind of exchange programs.

However, nothing of this works if law schools have not developed good and strong academic relationships between them. And here I am not referring to having a formal agreement signed by two institutions (something which is really easy to do), but having created and developed a relation of trust, of common interests, of personal knowledge, which in my experience is the soundest basis for successful exchange programmes. In creating this kind of relationships, of this type of networks of trust, organizations like the USMBA are certainly destined to play a major role.

Another mechanism that has to be mentioned is the use of technology for allowing access to comparative, international and global legal information and for having contact with law professors from abroad. Law schools may have different priorities in using their scarce resources, but I think that they will always play on the safe side if they decide to invest in advanced information and communication resources. And here I am referring both to advanced systems for having access to national, international, and global legal materials, “hard” and “soft” law included, as well as to the technology required to organize video conferences and seminars. This technology already exists in a good number of Mexico’s universities but my impression is that it is not being fully used.

3. *The Students*

There are different mechanisms to promote exposure of law students to other legal systems and cultures. The most traditional ones are summer abroad programs for taking different sorts of mini-courses in another university. Others are also regular or summer programs at home, with courses taught by visiting professors from other countries.

Beyond that, another mechanism which has a lot of potential to make a real impact in the formation of students, and in the construction of long-term relations and alliances between Mexican and American law firms, are the so called “Foreign internships”. And here I am referring, for example, to one-week internships, of Mexican students working during one week in an American law firm; and American students working during one week in a Mexican law firm.

In this point, the USMBA can play a major role, serving as a bridge between Mexican and American law firms and law schools, for the benefit of students, but also for the firms themselves, in the mid and long term.

Of course, money is a problem here. But let me put forward here a couple of questions to provoke a discussion:

Is it or is it not a good investment for a law firm, to work with law schools to detect talented students, one or two per year, in order to support them and give them the opportunity of experiencing an internship in a law firm abroad?

Is it or is it not a good investment for a law school, to detect its most talented students, and support them to have this kind of experience in a law firm abroad?

If the answer is yes, the USMBA could serve as a forum to help create the proper connections, to help putting the proper things together to make that happen, let me put a death-line, by the summer of 2009.

4. *The Curriculum*

The curriculum of the law school should be revised in order to introduce what could be called a “sense of globality”.⁶ For example, on the substantive side, a course on comparative law could be introduced at some point of the program; or a comparative law perspective could be encouraged within traditional law courses in the different areas.

Moreover, law schools could design a course devoted exclusively to the examination of NAFTA. In this, the USMBA could be of tremendous help, since some of its members have been teaching courses with that focus for years.

Besides, one has to take also into account that the English language has become the lingua franca of the legal profession at the global level, and this cannot be underestimated. Therefore, ways should be explored in order to integrate training in legal English into the law

⁶ Drolshammer y Vogt, *op. cit.*, nota 4, p. 6.

school curriculum, in order to create the proper foundations before practical self-teaching takes over.⁷ I am aware that this would mean to make a tremendous effort for most Mexican law schools, including faculty and students. However, not doing it will imply loss of competitiveness and eventual marginalization.

⁷ *Ibidem*, p. 44.