

# Globalization of Judicial Education

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## I. INTRODUCTION

Up to this point, judicial education (and training) has largely been considered to be local and insular. The assumption has been that each country's judicial system is unique and therefore requires a unique type of judicial education. After consulting with judiciaries and judicial education institutions around the world, I have come to doubt that assumption. Much of the individuality among various countries' judicial education results from not being sufficiently exposed to other methods. Consequently, each country goes about "reinventing the wheel." With little or no cross-fertilization of ideas, individuality may well occur, but may be based upon a lack of knowledge rather than a perception of specific needs and an understanding of judicial training options.

I do not take the position that all judicial education must be or even ought to be the same from country to country. There are, however, more similarities than dissimilarities. In my view, to realize the broad potential of judicial education, we should establish a worldwide effort to globalize judicial education that supplements (not replaces) existing local and regional judicial education systems.

I must first clarify what I mean by "judicial education." Judicial education includes "judicial training," or instruction in judicial process, procedure, skills, and attitudes. Yet judicial education also includes teaching judges substantive law, such as new trends in international law.

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Second, I must clarify what I mean by “globalization.” One definition of globalization is to render something comprehensive and total. Under this definition, judicial education would be globalized if it addressed all topics relevant to judges’ education and training. While this is assuredly important and factors into my vision, this is not what I mean by globalizing judicial education.

Globalization of judicial education, as I use the phrase here, does not mean that all judges should be trained exactly the same way in each country. Indeed, each country has its own local customs and expectations with regards to its judiciary. Globalization should not mean uniformity. If that were our goal, failure would be the result. Globalization of judicial education also does not mean an undue focus on the process of quickly closing cases at the cost of not achieving a just result. Judges are not in the business of finalizing more and more cases on a conveyor belt, but on an artist’s easel, attempting to portray justice.

By “globalization” I mean attracting worldwide participation. Globalization, to me, connotes the widening of horizons, establishing synergistic relationships as countries explore and experiment together with education curricula and methodologies. The goal would be to enhance judicial education worldwide, resulting in improvement in court systems and eventually global establishment of the rule of law.

Before determining where to go, we must determine where we are. Thus, I begin this Article in Part I by summarizing how today’s judicial education systems operate. In Part II, I argue that principles of judicial education are generic in nature to refute the widely-held assumption that each country’s uniqueness requires unique judicial education systems. Next, I contend that judicial education must globalize to stay abreast of the increasingly globalizing legal community it is meant to govern. I then argue that globalizing judicial education would improve local or regional judicial education’s methods, results, and resources. Finally, in Part III, I present some thoughts and questions regarding how to implement my vision of globalized judicial education.

## II. JUDICIAL EDUCATION TODAY

Judicial education has been considered important by judges and others for many years. It is, however, usually thought of as education within a court or local geographical unit, be it state or country. I do not wish to minimize these individual efforts, nor do I propose replacing them. These judicial education and training programs are of vital importance in making judiciaries effective and in providing the structure for achieving the rule of law.

In some parts of the globe, judicial education programs are said to differ depending on whether the legal system is based on civil law or common law. For instance, Paul M. Li argues that in civil law countries, such as France and Spain, judicial education follows the traditional law school model where students enroll in a six- to twenty-seven-month program of lectures to prepare

them for judicial service.<sup>1</sup> In contrast, common law countries such as Australia, Canada, England, and some former British colonies in Asia and Africa train judges through the peer group educational model in a continuing legal education context, focusing on "learning by doing" in lieu of the lecture-style of the civil law countries.<sup>2</sup>

In the United States, Congress established the Federal Judicial Center to improve judicial administration in the federal courts.<sup>3</sup> The National Center for State Courts aims to serve the same function for the states.<sup>4</sup> Nearly every state has established an agency responsible for judicial education, though some do not require judges to participate in education programs.<sup>5</sup> American efforts at judicial education resemble the continuing education of the common law countries more than the law school approach of civil law countries.

My survey of judicial education and training in Asia and the Pacific indicates that those countries with small judicial systems (less than 150 judges) tend to conduct little judicial education and generally produce no written resources to help judges.<sup>6</sup> Nations with larger judicial systems generally have established organized judicial education systems. These training programs appear to range from well-established, such as those of Australia, Korea, and Thailand, to still-developing, such as those of Lao PDR, to those programs in a state of transition, such as that of Nepal.<sup>7</sup> Nations with larger judicial systems typically have reserved permanent facilities for the education programs and have produced written judicial aids and recorded education seminars for the judges' use.<sup>8</sup>

### III. GLOBALIZATION OF JUDICIAL EDUCATION

Although existing education systems have been indispensable in educating judges, these localized efforts should be supplemented by increased dialogue with courts from other states, countries, and continents to enhance and continually enrich what and how judges learn. For instance, Vermont has done much to establish and to improve its state-wide efforts at judicial education.<sup>9</sup> To encourage even more success, Vermont collaborated with Maine and New Hampshire to encourage new ideas and consolidate resources.<sup>10</sup> As another example, the Mekong Delta Judicial Training Institute

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1. Paul M. Li, *How Our Judicial Schools Compare to the Rest of the World*, JUDGES J., Winter 1995, at 17.

2. *Id.* at 17-18, 47.

3. 28 U.S.C. § 620 (2003).

4. See National Center for State Courts, *Welcome to NCSC*, <http://www.ncsconline.org> (last visited Apr. 29, 2003).

5. Li, *supra* note 1, at 49.

6. J. Clifford Wallace, *Judicial Education and Training in Asia and the Pacific*, 21 MICH. J. INT'L L. 849, 852 (2000).

7. *Id.*

8. *Id.* at 852-53.

9. See James L. Morse, et al., *The Vermont Experience: A Small State's Story in Educating Judges*, VT. B.J. & L. DIG. 35, Apr. 1997, at 35.

10. The three states formed the Tri-State Judicial Education Committee, composed of a judge and a judicial educator from each state. The first tri-state program was held in 1994 for more than 150

has joined Laos, Cambodia, Vietnam, and Thailand together to provide judicial education at one center. While Thailand has a strong judicial education program, there were few resources in the other three countries. Through the existence of the Asia Foundation, a regional approach to judicial education became a reality.

Globalization, as I see it, would attempt neither to amalgamate all judicial education nor even to define a "right way" to train judges. A globalized judicial education would supplement, not replace, existing local education efforts. Despite countries' differences, judicial education principles are generic, and a globalized judicial education system based on those universal principles will improve and enhance court systems, irrespective of the country's legal system, size, wealth, or age. Further, globalizing judicial education is a necessary response to the increasing globalization of the legal community as a whole. Courts must keep up with those they mean to govern. Finally, globalization of judicial education offers the three distinct benefits of improving the method, results, and resources of existing education systems.

#### A. *Principles of Judicial Education Are Generic in Nature*

The educational approaches of today's courts differ profoundly. The civil law systems place faith in the traditional law school educational model, while the common law systems prefer the peer group educational model of continuing legal education.<sup>11</sup> Several American judicial education systems have focused on educating the judge as a person, improving the judge's physical and emotional health to prevent burnout.<sup>12</sup> However, all of these approaches are simply different means to the same end: to assist judges in acquiring the knowledge, skills, and attitudes necessary to perform their judicial responsibilities fairly, correctly, and efficiently.<sup>13</sup> How best to achieve this end is largely unknown. Through the globalization of judicial education, countries may share their hypotheses, and, through experimentation, ascertain and develop some of the better methods.

The distinctions between civil law and common law jurisdictions are decreasing or disappearing altogether as countries adopt effective principles of judicial education, regardless of their underlying legal system. My position is supported by data from the survey I conducted in Asia and the Pacific.<sup>14</sup> Based on this research, it is evident to me that general principles of effective judicial education are the same everywhere. These principles include, for example:

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judges, including three Russian judges. *Id.* at 37.

11. Li, *supra* note 1, at 17-18.

12. James G. Apple, *Judicial Education Changes Direction; Humanities, Ethics and Values, Works of Literature, and Science Are Additions to Traditional Curricula*, STATE-FED. JUDICIAL OBSERVER, Mar. 1994, at 4 (summarizing new programs that offer education for the "judge's whole person"); Charles S. Claxton, *Characteristics of Effective Judicial Education Programs*, JUDICATURE, June/July, 1992, at 11-12 ("Good judicial education starts with the realization that, fundamentally, we are dealing with a person."); Morse et al., *supra* note 9, at 35.

13. NAT'L ASS'N OF STATE JUDICIAL EDUCATORS, PRINCIPLES AND STANDARDS OF CONTINUING JUDICIAL EDUCATION 6 (1991), at <http://jeritt.msu.edu/pdf/standardsforweb2.pdf>.

14. Wallace, *supra* note 6, at 853.

- an organized education structure separate from the education systems for prosecutors, attorneys, and court support staff;
- an effective curriculum, considering the experience of the judge and the relevant subject matter;
- control vested in the judicial branch and managed by a committed administrative leader;
- an effective teaching method and teaching resources; qualified faculty, relying primarily on experienced judges;
- adequate financial resources;
- active and frequent self-evaluation and needs assessment; and
- a willingness to develop and experiment with new methods and technologies.<sup>15</sup>

These principles do not depend on a particular type of underlying legal system to be effective. Rather, judicial administration principles, and hence judicial education, largely function independently of the type of legal system.

Many principles of judicial education are generic in nature. The more one sets aside teaching local substantive law to judges and focuses more on processes, procedures, and administrative matters, the more generic judicial education becomes. For example, in the great majority of countries, the most pressing problems are decreasing the court backlog, developing the ability to process cases promptly, instituting alternative dispute resolution processes, and maintaining or establishing the independence of the judiciary. There are far more similarities than differences in the education requirements for these common problems.

Except for those civil law countries that begin a judge's education with substantive law training, judicial education is primarily provided in the areas of process and procedure, augmented by substantive law training when needed, such as when new statutes are adopted. This procedural and process education includes, but is not limited to, case management, pre-trial process, alternate dispute resolution, pre-trial orders, control of discovery, service of summons, enforcement of judgments, minimization of continuances or adjournments, limitations on interim appeals, use of automation by judges and in clerks' or registrars' offices, development of an adequate case reporting system, supervision of judges, and training of staff. Analogous to this type of training are issues dealing with judicial independence, judicial correction, budget development and control, and methods of presiding as a Chief Judge. Curriculum development in these areas can be shared if there is a means to do so.

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15. *Id.* at 856-64 (further discussing many of these principles).

### B. *Responding to the Globalization of the Legal Community*

The legal community is globalizing. With the United States as perhaps the most notable exception,<sup>16</sup> judges increasingly look to foreign law in interpreting their law and solving new problems.<sup>17</sup> For instance, a recent Namibian case relied on decisions from India, the United States, Canada, England, Malaysia, South Africa, and the European Court of Human Rights to interpret its constitutional guarantee of equality.<sup>18</sup> A South African death penalty decision considered the law of the United States, Canada, Germany, India, Hungary, and Tanzania, as well as California and Massachusetts.<sup>19</sup> A New Zealand case gave considerable attention to Canadian law,<sup>20</sup> and other examples abound.<sup>21</sup>

This heightened realization of globalization has begun to infect legal education. In the past few years, academics clamored for the globalization of law school, recommending more courses in international law and a heightened cultural awareness that would enable the budding professionals to practice in the increasingly globalized legal terrain.<sup>22</sup>

Globalization in legal systems has many causes. It is due in part to the fact that similar issues confront courts around the world.<sup>23</sup> Another cause is the global emphasis on human rights that has developed since World War II.<sup>24</sup> Global communication broadcasts the political and legal debate and renders the law of the different nations increasingly accessible to those on the other side of the globe.<sup>25</sup> The Cold War has died, and fledgling democracies are born, striving to emulate their established neighbors. Compounding these trends are the increase in foreign student enrollment in law schools, the rapid globalization of the legal profession,<sup>27</sup> and the increasing international presence of corporations.<sup>28</sup>

The globalization of the legal landscape requires a complementary globalization of judicial education. The globalizing legal rules cannot operate automatically, nor can problems with international repercussions solve themselves. By globalizing judicial education, for example, an American judge will better understand China's law by interacting with judges from

16. Claire L'Heureux-Dube, *Globalization and the International Impact of the Rehnquist Court*, 34 TULSA L.J. 15, 38-40 (1998); Anne-Marie Slaughter, *Judicial Globalization*, 40 VA. J. INT'L L. 1103, 1117-18 (2000).

17. L'Heureux-Dube, *supra* note 16, at 21-23.

18. *Mwellie v. Ministry of Works*, 4 L.R.C. 184 (Namib. 1995); *see also* L'Heureux-Dube, *supra* note 16, at 21 n.33.

19. *State v. Makwanyane*, 1995 (6) BCLR 665 (CC).

20. *Police v. Smith* [1994] 2 N.Z.L.R. 306, 312.

21. L'Heureux-Dube, *supra* note 16, at 21-23; Slaughter, *supra* note 16, at 1116-19.

22. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001); Robert C. Clark, *Bases and Prospects for Internationalization of Legal Education in the United States*, 18 DICK. J. INT'L L. 429 (2000); Claudio Grossman, *Building the World Community: Challenges for Legal Education*, 18 DICK. J. INT'L L. 441 (2000).

23. L'Heureux-Dube, *supra* note 16, at 23.

24. *Id.* at 24; *See* Slaughter, *supra* note 16, at 1109-12, 1116-17.

25. L'Heureux-Dube, *supra* note 16, at 25.

27. Clark, *supra* note 22, at 432-34.

28. *See* Slaughter, *supra* note 16, at 1112-13.

China. An Australian judge will better understand the international implications of a decision by interacting with judges from across the globe. Judicial education must also globalize to address and stay abreast of international changes. With its increased international interaction and cross-fertilization of ideas, globalized judicial education would allow judges to have greater understanding of international contexts in an increasingly globalizing world.

### C. *Benefits of Globalizing Judicial Education*

The globalization of judicial education offers three distinct benefits. First, it enables courts to share and improve on the most effective methodology for judicial education and training. Second, it enables courts to share judicial skills, and perhaps even some substantive law, to improve continually. Third, it provides an invaluable resource for judicial education programs that are beginning or attempting to improve.

#### 1. *Improving Education Methods*

Globalization can develop and improve judicial education methodologies. A worldwide organization could be a catalyst for developing regional and local organizations devoted to judicial education. Indeed, by pooling prior experiences, a central organization could provide useful data and information, recommend judicial instructors, courses, and more. Gathered experience can develop sound curriculum suggestions, and a central body can assist the judiciary in establishing and maintaining judicial control of judicial education. A central organization would have a greater selection of educators and writers. Cross-fertilization of ideas and resources from outside can enhance the educators' ability to be effective. A central organization could secure the expertise for proper evaluation.

#### 2. *Improving Education Results*

Not only can globalization improve the methodology of existing judicial education systems, but it can also improve the substantive output that judicial education is intended to improve. For example, there are certain issues that, in my experience, continue to arise throughout the world and for which there seem to be fairly unified approaches for resolution. Case management and mediation come to mind as examples. Although both case management and mediation have been universally effective for judiciaries worldwide, their application differs from country to country depending on local legal cultures. My work in Thailand to establish a mediation program demonstrated this point. I taught the basic principle of mediation to chief judges in the different parts of the country. The chief judges then experimented with implementing the principle. The result was one adaptation of mediation in Chiang Mai in the North, a second in Phuket in the South, and a third in Bangkok in central Thailand. The principle of mediation worked for all three, but they applied it

honoring their own local culture and needs. All three, however, were adaptations of the same principle.

The experience demonstrated to me that principles like case management and mediation are generic enough that globalization of teaching is effective. The various styles and adaptations in Thailand were even beneficial: synergy resulted from the experiment. Judges from various parts of the country interacted and learned from each other's experience. By learning more about foreign courts, judges may discover more about their own courts. Judges may discover, for instance, why a particular legal rule may be wise in Canada but not in Taiwan, or why the case management system of France will be ineffective in Italy. Learning what does not work, and why, helps the court discover what does work.

Expanding this principle of dialogue into a worldwide context allows the exciting possibility of learning from other judiciaries around the globe. With the resource of various models, each country would create its own unique application of a basic global principle. A country could observe other successes and determine if its country could adapt the successful method to improve its own judiciary.

### 3. *Improving Education Resources*

Aside from the obvious benefit of forming a worldwide database of ideas, models, and methods used or proposed in courts around the world, globalized judicial education can help provide the financial resources necessary to develop or improve existing judicial education systems. Some judicial systems, especially smaller judicial systems, can achieve far more together than what they could achieve alone. Evidence of this benefit of globalization can be observed by its smaller-scale cousin, regional judicial education efforts. Regional training has provided the opportunity for training in areas where countries could not have afforded to have separate institutions. For instance, the Pacific Judicial Education Program, a regional training program housed in Suva, Fiji, services several Pacific island jurisdictions.<sup>29</sup> Its unique training capability allows basic overarching principles common to many of the island jurisdictions to be taught. As the educators go from island to island, they find successful applications of principles that in turn can be shared with other countries.

In some countries I have visited, there is no organized judicial education program. Those countries could use assistance in developing judicial education programs. Of those countries that have started, most are struggling. Providing a variety of models for individual consideration would assist judiciaries in focusing on the particular model that seems most relevant and adapting that model to meet the needs of that particular country. Still other countries are interested in improving their judicial education. These countries

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29. For more information, see United Nations Development Program, *UNDP's Governance for Livelihoods and Development in the Pacific (GOLD Program)*, <http://www.undp.org.fj/gold/juridical.htm> (last visited Mar. 25, 2003).

would also be well-assisted if they could have access to a variety of successful educational techniques and ideas. With increased technology and communication, globalization can widen educational possibilities so that countries can choose and adapt methods and models of judicial education that have been successful elsewhere.

#### IV. GLOBALIZING JUDICIAL EDUCATION

Can such a global resource be provided? Not too many years ago, globalization of judicial education would have been considered an interesting fairy tale, but without any hope or expectation of existing in reality. But technological advances have resulted in previously undreamed of methods for communication. In a short period of time, technology has developed powers that can destroy the world but, on the other hand, can provide an unmatched ability to advance the rule of law. It is plausible to discuss almost all legal topics in worldwide terms. Advances in computerization and travel have not only made this approach practical, but, in many instances, indispensable.

Once the generic nature of judicial education is accepted, awareness of the need for some method of cross-fertilization of ideas and mutual assistance will emerge. Primarily the need would focus in two areas: what is taught and the best ways to teach—in other words, curriculum and methodology. The curriculum, as I have suggested, typically focuses on procedural training or substantive international law—topics that transcend geographic boundaries. Curriculum development in these areas can be shared if there is a means to do so.

Although these topics can be taught, how will they be learned? What are the best methods to teach a particular topic? Even the best curriculum and most committed administrative leadership will not guarantee an effective judicial education program. The material must be presented to participants in a way that helps them retain what is taught and motivates them to apply it in their judicial capacity. Charles Claxton and Paul Li argue forcefully for promoting “active learning,” where experience and group participation drive learning, and the teacher is merely a facilitator, rather than an authority figure who is the repository of all wisdom.<sup>30</sup> Yet competing adult education techniques are still in use and may even be more effective for some purposes. The task and goal of globalized judicial education would be to present an international repository of ideas that would identify which learning techniques are most effective, and when. Cross-fertilization of ideas and resources from outside could thereby enhance the educators’ ability to be effective.

I do not mean to suggest that globalizing judicial education will be a simple task. Quite the contrary is true. If globalization of judicial education is to be implemented, there must be some structure or organization to make it possible. Consideration needs to be given to how and where this structure is to be developed, how it can be financed, how it will function, how it will be

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30. Claxton, *supra* note 12, at 13; Li, *supra* note 1, at 18-19.

directed, who will direct it, how language barriers may be overcome, how it will be evaluated, and how it can facilitate the exchange of models, ideas, and methods.<sup>31</sup>

The various forms of sharing information should be explored to find the most cost efficient method of pooling resources and providing information to all countries, especially to those with relatively fewer available resources. Any effort at globalization of judicial education must have a great deal of flexibility, keeping in mind the judiciaries with the greatest needs. While judicial training everywhere can be improved, the problems of the small jurisdiction must be identified and special attention provided to meet those needs.

## V. CONCLUSION

We have progressed from the practice of each country developing judicial education without outside resources to regional interaction and resource-sharing. We now have the opportunity to interact globally. When valuable ideals like justice and the rule of law are at stake, is it not worth considering whether globalization in this context is worth pursuing?

I have now studied and surveyed all of the judicial education programs in Asia and the Pacific. Over the last twenty-five years, I have visited and worked with judiciaries in some fifty countries. I conclude that it is time to share ideas and assistance in a broader context. The rule of law and the concept of justice are worldwide and fundamental principles. We have had enough experience now, in my judgment, to conclude that worldwide mutual assistance in judicial education can and should be developed. The goals of globalization—improving judicial education worldwide, thereby improving court systems and the global establishment of the rule of law—are goals worthy of our best efforts.

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31. See Wallace, *supra* note 6, at 856-64 (discussing some of these questions and suggesting some answers).