REFORMING KNOWLEDGE?
THE GLOBAL TURN OF LEGAL EDUCATION IN JAPAN

- Research Project -

Outline

For law teachers and law students, the link between law and globalization remains a challenge and creates both anxieties and aspirations: how does globalization impact on legal education? Can legal education itself influence the way globalization is regulated? The issue is stunningly controversial, with divergent understandings of law’s relationship to globalization phenomena, legal education and ‘global legal education’. Entitled ‘REFORMING KNOWLEDGE? THE GLOBAL TURN OF LEGAL EDUCATION IN JAPAN’, this research questions the interface between globalization and legal education from the perspective of various countries in Asia, where legal education and the legal profession are undergoing rapid and unprecedented changes without necessarily converging towards the supposedly familiar and predictable ‘American-style’ legal education. Focusing more particularly on the experience of Japan, it addresses a wide range of case studies (among which the law school reform, the creation of new cross-border programs by several Japanese universities, and the so-called ‘legal education assistance’ conducted by Japanese legal scholars and practitioners in different Asian countries). ‘Actors-oriented’ and ‘practices-based’, it questions the related experiments from the perspective of a plurality of stakeholders. Allowing for a third way between those who claim that the nature of law is predominantly local and legal education does not converge around a uniform standard, and those who assert that law schools need to converge around Western models, this research sheds light on the emergence of a distinctive model of law teaching, based on a new approach to legal globalization and tending towards both: 1) an ideal symbiosis between legal theory and practice in the legal education content; 2) a more integrated approach of various norms generating processes, legal practices, and traditions of legal thought (Civil Law, Common Law, ‘Asian Law’). Drawing on ten years’ experience in teaching law in Japan as a foreign scholar, the researcher herself will engage in conceptual analysis as both an insider to and critical observer of the legal education practices within which the concepts in question are invoked: ‘transsystemia’ and ‘transnational law, ‘mixed legal systems (traditions)’, ‘legal transplants’, and so forth.
Detailed Summary

THE GLOBAL TURN OF LEGAL EDUCATION: AN ANALYSIS FROM JAPAN

Globalization has become a prominent new feature of legal education, with the emergence in several jurisdictions of so-called ‘global law schools’, research centers on ‘global law’, courses on law and globalization or on global lawyering, amongst other ‘global’ offerings. In the name of responsiveness to globalization, faculty exchanges, transnational recruitment of faculty and students, international students initiatives (such as mooting), transnational collaborative research projects, and many other attempts to move beyond domestic law, are multiplying rapidly around the world. However, at the moment, a global campus is still at evolutionary stage and “this frenzy has yet to congeal into coherent institutional strategies” (Valcke 2004): in fact, still too little attention is being paid to whether and how such initiatives might fit into some overall, consistent pedagogical vision, and the literature on the general theme of globalization and legal education rarely explores specific questions of teaching tools and curriculum design. Misused by some law schools that want to obtain international visibility, prestige and recognition, the concept of ‘global law’ is still unexplored and has not yet been thoroughly studied by legal scholars. Generally speaking, the complex and dynamic connection between globalization and legal education has only recently begun to be investigated (German Law Journal 2009), and the field remains stunningly controversial, with divergent understandings of law’s relationship to globalization phenomena, legal education and ‘global legal education’.

In addition, the broader literature dealing with legal education and the legal profession generally focuses on North American and European experiences. Although there have been journal issues dedicated to the subject in Asia as well as a number of journal articles published about certain jurisdictions (e.g. Wisconsin International Law Journal 2006, 2007; Australian Journal of Asian Law 2005; Journal of Japanese Law 2005), only two monographs published in English address legal education in Asia (Alford 2007; Steele & Taylor 2010).

Given that legal education and the legal profession are undergoing rapid and unprecedented changes in several East-Asian countries without necessarily converging towards some supposedly familiar and predictable ‘American-style’ legal education or ‘American model’ of lawyering, it is regrettable that such changes have yet to be a topic for serious scholarly inquiry, either inside the region or outside. Considering that the changes underway have become a prime focal point for some of the most significant political, social and economic challenges confronting East-Asia, there is indeed a pressing need to examine further both the processes by which globalization impacts on legal education in a wider range of countries and the processes by which legal education in those countries may impact on the regulation of globalization itself.
Entitled ‘REFORMING KNOWLEDGE? THE GLOBAL TURN OF LEGAL EDUCATION IN JAPAN’, this comparative research questions for the first time the progressive emergence of a new model of legal education based on the application and development in several Asian countries of some of the most innovative teaching methods (including the so-called ‘transsystemic approach’, the case studies method, transnational law exercises, and so forth). It explores the interface between globalization and legal education with particular reference to the experience of Japan, whose system for producing legal professionals has recently undergone fundamental transformations (reform of the bar examination, legal education and training, and the development of graduate professional law schools; but also the creation of innovative programs available to non-Japanese students and focusing on some ‘new fields’ of law, as well as the progressive application of original teaching methods). Linked to the new fields of ‘Law and Globalization’ and ‘Law and Education’, this research analyzes the patterns following which legal education (curricula, syllabi, pedagogies, staffing strategies and academic research agendas) in Japan tends to move through international, transnational, and global paradigms. It examines more particularly how legal education in Japan, as a pedagogical model, tends towards both a more balanced approach to the relationship between practice and theory, and a more integrated approach of various jurisdictions and traditions of legal thought (Civil Law, Common Law, ‘Asian Law’), taught not side-by-side, in a sequential manner, but in their complex interactions.

While the literature concerning Japan’s legal education reforms has, to date, focused on the most visible change (namely the repositioning of its graduate law schools, or hōka daigakuin, as the central institution for the training of Japan’s legal profession in the narrow sense of judges, attorneys and prosecutors), this comparative research project, on the contrary, questions the transformation of legal education in Japan at different scales and from various perspectives. In order to better grasp the complex processes shaping legal education in Japan, this research not only reassesses the overall graduate law school experiment, but it also addresses specific programs which have been largely unexplored so far.

Allowing for a broad scope of comparison between both Asian and non-Asian countries, it examines new experiments in Comparative Law education, in Japanese Law education, in Asian Law education, in Business Law education, in Alternative Dispute Resolution Teaching, and in ‘New Fields’ of Law education, as well as a wide range of related case studies (including the ‘cross-border’ programs created recently by some Japanese universities; the so-called ‘Transpacific’ seminars or similar initiatives, based on a collaboration between one university in Japan and one university overseas; or the Centers for Research and Education in Japanese Law, operated in several Asian countries by the Center for Asian Legal Exchange).
Mirroring both practical and academic orientations, and encompassing both global and local dimensions, these fields of legal education have been selected for the following reasons: their strong ties with legal practice in the globalization era (new experiments in Business Law education, in ADR teaching, and in the ‘New Fields’ of Law education), their regional scope (new experiments in both Japanese Law education in Asia and Asian Law education in Japan), and their specific relevance from a methodological and epistemological point of view (new experiments in Comparative Law education).

**FROM PRAXIS TO THEORY**

Based on empirical observation, this research focuses on the actors of legal education in Japan and concentrates on their teaching practices. In so doing, it sheds further light on how legal education in Japan (its content and methods) both is transformed by globalization and contributes to a new understanding of teaching law in the global context (i.e. across, through, and beyond classically defined legal systems, subject matters divides, and distinct traditions of legal thought). By questioning such experiments from the perspective of a plurality of stakeholders (reformers, educators, the market, the legal profession itself, legal assistance experts, and so forth), or ‘stakeholder framework’, this research also illuminates a legal education system which tends towards some ideal symbiosis between legal theory and practice in legal education and addresses the need for both ‘scholarly practitioners’ and ‘practical scholars’. Additionally drawing on discourse analysis, this research allows us to approach in a more refined way the tensions and uncertainties surrounding Japan’s new experiments in the field of legal education, as well as the conflicts over visions for both legal education and the globalization of law itself.

The research then explores the implications of such findings for broader theoretical work about both legal education and the relationship between law and globalization. The expected achievements of this research are threefold:

- **A Theory of Global Legal Education:** We are still at a ‘proto-concept’ stage in the life of global legal education. Moreover, if there is any ‘theory’ to look for regarding legal education in the globalization era, it should not be understood as a grand, single and uniform theory, but rather as a theory addressing for the first time a range of common legal objects (resulting from globalization) and related new teaching methods. Cutting across the current debates, this research develops an approach to global legal education which is both practically and academically as well as globally and locally oriented.
Acting also as a test case for applying the epistemological and methodological lessons learned over the past decades via the so-called ‘Global Legal Studies’, it reexamines some major paradigmatic turns in legal theory in the 20th century and questions the very notion of ‘law’ itself, at least as traditionally understood as a system of posited norms within a given jurisdiction. As such, not only does it directly challenge skeptical approaches which doubt that we are experiencing a ‘paradigm shift’ in respect of primary legal education and training (Twining 2009). But it also shows that the interface between globalization and legal education represents a new and stimulating research frontier for scholars interested in the ‘Law and Globalization’ field of study, and that legal education studies should benefit from a greater integration into the mainstream globalization literature.

A Model for ‘Global Law’ Teaching: Globalization, which impacts on norms generating processes and the practice of law in many ways, also puts pressures on legal education: lawyers who are ‘comfortable outside their own milieu’ (Irish 2006: 14) and able ‘to think like global lawyers’ (Valcke 2004: 169) are also in great demand. This is obvious not only regarding the globalization of economic activities and business-related practices of law. Confronted to such transformations, should legal education in Japan progressively move from a ‘national law (practice)’ model to a ‘multi-jurisdictional (practice)’ model?

Building on research developments in the loosely defined area of ‘global law’ (commonly used as a reference to a mix of foreign, comparative, international and transnational law, even if a consolidated and precise definition is still not available), this research questions the value of such turn toward global law teaching and its concrete implications (in terms of curriculum design, teacher expertise, and teaching means). It explores in particular a set of framework structures for incorporating the crossborder (or transnational) component in the curriculum. It analyzes both traditional patterns (‘integration’, ‘aggregation’, ‘segregation’) as well as emerging ones (‘immersion’, ‘multi-disciplinary departments’), and compares a range of undergraduate and graduate legal pedagogy experiments (in the US, Canada, the EU, as well as in Asian countries).

This research focuses on those (Japanese) law teachers who confront their own ambivalence regarding their subjects of teaching, whether these be institutions, doctrines, or fields of study; and who view themselves as free to examine law and its sources ‘with a less preconceived sense of whether they need to dispense with, co-opt, or perhaps even support’ (Fakhri 2008) such subjects. To this regard, the recent approach of Japanese Law as a ‘mixed legal system’, which directly challenges the way to teach both Japanese Law and Comparative Law about Japan in the global context, offers very interesting perspectives, to be examined further in connection with the well-known transsystemic McGill Programme.
A New Understanding of Legal Transplants: Considering its historical experience in legal borrowings and its growing implication (mainly in Asia) in the field of legal cooperation, Japan is a good model to discuss legal education in relation to ‘transplants’. While most theorists discuss the cross-boundaries transfer of laws, legal institutions and concepts from North American and European perspectives, focusing on Japanese programs of international cooperation in the field of legal education may even help develop a ‘decentered analysis of legal transplants’ (Gillespie 2008). By focusing on particular case studies (including the Centers for Research and Education in Japanese Law operated in several Asian countries by the Center for Asian Legal Exchange of Nagoya University), this research allows for a third way between those who claim that the nature of law is predominantly local and legal education does not converge around a uniform standard, and those who assert that law schools need to converge around Western models. As such, this research helps demonstrate that the globalization of legal education comprises carefully negotiated and highly complex processes at the intersection of the local and global realms of legal activity and knowledge.

By shedding light on such transformations and underscoring the importance of institutional reflection on curriculum design in the global context, this research may offer valuable insights on a still understudied issue. Hopefully, in a rapidly changing and increasingly competitive context, and while Japanese universities are struggling to develop successful internationalization strategies, this research could be of concrete interest for both institutional and private entities which, in Japan as well as in other countries, are engaged in the ongoing process of legal education innovation. By exploring a range of different models and comparing various experiments (mainly in the US, Canada, Australia, England, Germany, France, Singapore, and Hong Kong), it may also help ‘de-center both East and West’ (Ruskola 2011) and construct a middle way through this very controversial field, where globalization is generally perceived as exerting pressure towards convergence around a uniform standard, and where global legal education appears so promising to some (the supposed ‘globalizers’) and so threatening from the perspective of others (the supposedly ‘globalized’).

Drawing on ten years’ experience in teaching law at several Japanese universities, the researcher herself will engage in analysis as both an insider to and critical observer of the legal education practices within which the concepts in question are invoked: ‘transsystemia’ and ‘transnational law’, ‘mixed legal systems’, ‘legal transplants’, and so forth.

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1 Mainly French Public Law, Environmental Law, Introduction to Japanese Constitutional Law, Public International Law (Human Rights Law), Introduction to Comparative Legal Studies, and Legal French. Principally at Niigata University, Hosei University, Tohoku University and Nagoya University.
This project also directly draws on a research conducted between 2008 and 2012 at the French Research Institute on Contemporary Japan (Tokyo)².

- First, and to analyze further the role played by Japanese legal scholars and practicing lawyers regarding the globalization of law and the elaboration of new norms and ‘principles’ (Giraudou 2012, 2013), this research builds on original doctrinal developments, such as the unifying concept of ‘normative spaces’ (as initially elaborated by G. Lhuilier, and discussed over the past years through several workshops in Tokyo; Lhuilier 2013, Hasegawa 2013, Sutter 2013, Giraudou 2013).

- Second, and to explore further the possibility of an alternative approach to ‘legal transplants’, this research builds on a preliminary study dealing with the Japanese programs in the field of legal cooperation towards Asian countries (Giraudou 2009).

Finally, this research is closely linked to a number of other scientific initiatives, in particular to the new Consortium of Research ‘Global Legal Studies between Asia and Europe’³ which, precisely, involves Nagoya University-CALE, the Shanghai Jiao Tong University, ESSEC Paris-Singapore, among other founding members; and whose purposes include the creation of both a watch unit on higher education in Global Law and a Chair in Global Law (based on three seminars, respectively dealing with Global Law ‘Practices’, ‘Theory’, and ‘Teaching’).

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² Research entitled “Le Japon et l’émergence en Asie de nouveaux espaces de régulation de la mondialisation” (in English: Law and Globalization – Understanding from Japan the Emergence in Asia of new ‘normative spaces’); summary on line (www.mfj.gr.jp/recherche/equipe/chercheurs/isabelle_giraudou_2013/).

³ In French, ‘Groupement de recherche scientifique’ (GIS); for further information concerning the creation of this Consortium, see: www.glsn.eu
Works Cited


Information concerning the new Consortium of Research ‘Global Legal Studies between Asia and Europe’ is available on line; see www.glsn.eu (‘GLSN news’).
Information concerning the international conference (June 2011) and the workshop (June 2012) co-organized by I. Giraudou and G. Lhuilier on ‘Law and Globalization’ is available on Maison franco-japonaise website (see: www.mfj.gr.jp/agenda).