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Cooperation in Legal Education and Legal Reform

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K. Cooperation in Legal Education and Legal Reform

Ronald A. Brand*

1. A New Situation and Recurring Issues

Discussing “Kosovo after the ICJ Opinion,” allows us to consider a situation that has no historical precedent: the process of fulfilling the aspirations of a declaration of independence that has been considered by the International Court of Justice. This discussion also allows us to consider issues that have been considered by many transition states over the past two and a half decades, as well as common elements faced in the process of state-building. This section focuses on one such common element: legal education and its role in the legal reform process. In particular, this section addresses the benefits of cooperation in legal education between the University of Pittsburgh School of Law (Pitt) and the transition State of Kosovo.

The comments here draw on my writings about the export of legal education and the importance to U.S. law schools considering the external, international influences of implementing changes in the traditional structure of U.S. legal education¹⁸⁰ and about how teaching methods distinguish differing legal systems and require cross-system consideration of pedagogical style and methodology. More importantly, these comments leverage my experience in the administration of the LL.M. Program at the University of Pittsburgh School of Law as a fulcrum for educating future lawyers, government officials, and law professors from both the United States and Kosovo in a cooperative process that has had a very real effect. There are lessons in that cooperation for both legal educators in the United States and for legal educators and government officials in Kosovo.

2. Foundations of Cooperation—U.S. Department of State Funding

In 2002, the University of Pittsburgh—in an internal partnership between the School of Law’s Center for International Legal Education (CILE) and the Center for Russian and East European Studies (REES)—and the University of Pristina Faculty of Law received funding from the Bureau of Educational and Cultural

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¹⁸⁰ THE EXPORT OF LEGAL EDUCATION: ITS PROMISE AND IMPACT IN TRANSITION COUNTRIES (Ronald A. Brand & D. Wes Rist eds., 2009) [hereinafter EXPORT].

Affairs of the U.S. Department of State. This partnership was part of a network of projects undertaken by CILE and REES in Ukraine, Serbia, and Kosovo.¹⁸¹ Each project focused on assisting a law faculty in a transition country with the issues it faced during the transition process.

In Prishtina, over four years of grant-funded activities, the partnership opened a jointly-administered International Law Resource Center; graduated three outstanding Kosovar academics from the LL.M. program (with generous grants of tuition from Pitt's University Center for International Studies (UCIS) and from the Muskie Fellowship Program); executed three summer academic programs in Prishtina; prepared and accompanied four teams of students and faculty coaches from Prishtina to Vienna for the Willem C. Vis International Arbitration Moot Competition (Vis Moot); and provided extensive library materials, curricular advice, and faculty training in Prishtina. We were able to leverage the State Department funds by providing support from other sources in a manner that created a sustainable and lasting process.

3. Sustained Cooperation—Kosovo LL.M. Students at Pitt Law

This process of cooperation continued after the termination of State Department funding in 2006. CILE has continued to work with REES, and with other parts of UCIS, to provide funding to support critical elements of cooperation—especially tuition and other support for Kosovar students attending the University of Pittsburgh School of Law's LL.M. program. In Kosovo, the process of cooperation has been an organic one. Kosovars who studied in Pitt's LL.M. program have returned to Kosovo and maintained the contacts and relationships established during their time in Pittsburgh. The result is a very strong network of relationships upon which additional cooperation has continued to be built. Additional young Kosovar lawyers have come for LL.M. degrees at the University of Pittsburgh. Scholars returning to Kosovo have continued sending a Vis Moot team to Vienna each year from the University of Prishtina, and, in 2013, they helped initiate the first Vis Moot team from the American University in Kosovo.

Nine Kosovo lawyers have received, or are receiving, a LL.M. education from the University of Pittsburgh School of Law in the past nine years. This

¹⁸¹ CILE and REES also received similar Department of State grants for cooperation with Kyiv National Taras Shevchenko University (Ukraine), the University of Belgrade (Serbia & Montenegro), and Donetsk national University (Ukraine).

demonstrates both the sustainability of the original program of cooperation and the commitment of Pitt Law and CILE to not only continue, but to strengthen the Pittsburgh-Prishtina relationship. These lawyers have had, and will continue to have, significant influence on legal practice and legal reform in Kosovo.

4. Sustained Cooperation—Pitt Law Internships in Kosovo

The Pittsburgh-Prishtina relationship is not a one-way street. Not long after the partnership was formed in 2002, Pitt J.D. students began traveling to Kosovo to do internships in various offices and organizations. These internships have included placements in Pristina at: the Center for Human Rights, the ABA-CEELI (Rule of Law Initiative), the Criminal Defense Resource Center, the United Nations Mission in Kosovo Department of Justice, Legal Office, the Assembly of Kosovo, the Office of the Legal Advisor to the President of Kosovo, the Foreign Affairs Office of Kosovo, the Kosovo Ministry of European Integration, the Kosovo Ministry of Justice, and the International Foundation for Electoral Systems in Northern Mitrovice.

5. Sustained Cooperation—The Pitt Law Consortium at the Vis Moot

Another aspect of the sustained cooperation has been the Pitt Law Consortium at the annual Vis Moot in Vienna each spring. Under the original State Department grants, CILE helped expand the international commercial law and arbitration curriculum at Donetsk National University and Kyiv Taras Shevchenko University in Ukraine, at the University of Belgrade in Serbia, and at the University of Prishtina in Kosovo. Each of those schools continues to send a team to the Vis Moot competition in each year, without CILE support. These teams cooperate with one another by arriving early and engaging in practice arguments before the formal competition begins. In 2012, a second Kosovar Vis Moot team was added to the consortium when Pitt Law graduate Vjosa Osmani, helped arrange funding and served as faculty adviser for the American University in Prishtina. The consortium has been further enhanced by CILE's recent contracts with the U.S. Department of Commerce Commercial Law Development Program (CLDP) to do similar curricular development in the Middle East, with Vis Moot teams from Bahrain, Iraq, Jordan, Oman, Qatar, and the UAE joining the Consortium at the beginning of the Moot in Vienna. In each instance, initial efforts by CILE and financial assistance through CLDP have turned to self-sustaining participation by each Middle East law school. Thus, the consortium continues to build on the model that exists in Kosovo.

6. Specific Results—Continued Pittsburgh-Prishtina Cooperation in Legal Education

The lives of the nine Kosovar lawyers who have received LL.M. degrees from the University of Pittsburgh School of Law, and of the more than twenty Pitt Law students who have engaged in legal internships in Kosovo, are a testimony to the impact of legal education in a multi-system environment. While a sophisticated empirical study of that impact is beyond the scope of this section, the accomplishments of those LL.M. graduates from Kosovo are a clear indication of this impact on the legal system and legal education system of Kosovo. These graduates have affected the Office of the President and the Assembly of the Republic of Kosovo. Moreover, they have established new law firms, taught in several universities (both inside and outside of Kosovo), worked for human rights organizations and development projects, drafted proposed legislation, and studied legal system needs.

The stories of the Pitt J.D. graduates who have interned in Kosovo reveal a similar impact. These individuals have become employed by the United Nations, the U.S. Department of State, the U.S. Department of Commerce, and major law firms and corporations. They have also performed human rights and development work in many countries. All of these students have been influenced by their Kosovo experiences.

7. General Impact—The Export of Legal Education¹⁸²

A 2007 Working Paper of the International Monetary Fund concluded that, when students study outside their home countries, there is “a very strong correlation between the lagged average indices of democracy in host countries and the current level of democracy in the origin country.”¹⁸³ The same study noted that in 2007, 46 heads of government were products of higher education in the United States, and that in 1990:

Out of 115 world leaders, 66 studied abroad at a certain point; the percentage of foreign-education leaders' increases to more than two-thirds if one is considering only developing nations. These numbers show clearly that foreign-

¹⁸² This portion of the paper is taken from the author's work in EXPORT, *supra* note 180.

¹⁸³ Thomas Carothers, *The Rule of Law Revival*, in PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE 20 (Thomas Carothers ed., 2006).

educated individuals do play an overwhelming role in their own home countries.¹⁸⁴

In a 2005 article in *The American Lawyer* titled, "They Rule the World," Michael D. Goldhaber considered the importance of an LL.M. degree from a U.S. law school to government and business relations throughout the world. Mikhail Saakashvili is an example of that influence.¹⁸⁵ Saakashvili returned to the former Soviet Republic of Georgia after obtaining his LL.M. degree at Columbia Law School to lead a democratic revolt and be elected President of a new state. Once in office, he appointed other U.S. LL.M. graduates to be his Foreign Minister and his Deputy Justice Minister. Says Goldhaber in his article:

Lawyers like these are unstoppable when armed with another degree. Former LL.M.'s Giuliano Amato of Italy and Mary Robinson of Ireland rose to become heads of state. A third of the judges on the International Court of Justice hold graduate degrees from U.S. law schools. And in Taiwan, which rivals Georgia for LL.M. power, U.S. alumni include the vice president, the mayor of Taipei, and at least two grand justices.¹⁸⁶

According to Gocha Lordkipanidze, a foreign policy adviser to the Georgian Prime Minister and Harvard LL.M. graduate:

It definitely has an impact on our careers and our lives. It's ingrained in every piece of paper I'm writing or action I'm taking for the government of Georgia. After Harvard, I'm neither European nor American, but at peace with both ways of thinking.¹⁸⁷

This anecdotal approach indicates the importance of a U.S. legal education not only to its recipient, but also on the home country of the returning scholar. This importance is part of what should be a much larger discussion of the export of U.S. legal education. Few, if any, other exports can have similar impact. For those of us

¹⁸⁴ *Id.* at 21.

¹⁸⁵ Michael D. Goldhaber, "They Rule the World," *THE AM. LAW.*, Sept. 14, 2005.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

involved in legal education, and in particular for those of us who have followed students involved in the Pittsburgh-Prishtina partnership, it is difficult not to believe in the value of the export of legal education.

A 2004 Organisation for Economic Co-operation and Development Policy Brief noted four “different, but not mutually exclusive, approaches to cross-border higher education.”¹⁸⁸ They are:

- 1) the mutual understanding approach, focused on encouraging the mobility of both domestic and foreign students;
- 2) the skilled migration approach, emphasizing the recruitment of skilled foreign students to remain in the host country after completing their education;
- 3) the revenue-generating approach, focused on the presence of foreign students to add to the income of the educational institution; and
- 4) the capacity-building approach, encouraging cross-border education as a tool in assisting the student’s home country upon return after the completion of the educational stay.

The U.S. LL.M. process for foreign lawyers exemplifies the fourth of these approaches to cross-border education. Kosovar LL.M. graduates from the University of Pittsburgh School of Law have improved law school curricula at home, become better teachers, encouraged the rule of law and ethical conduct of lawyers, designed and implemented new legislation, assisted in the administration of international development programs, and participated in the preparation of the case for the Kosovo declaration of independence at the International Court of Justice.

This capacity-building for Kosovo also promotes the rule of law. The 2007 IMF Working Paper on *Democracy and Foreign Education* offered hypotheses for how foreign-educated individuals bring about changes in levels of democracy in their home countries.¹⁸⁹ The hypotheses considered in the IMF Working Paper included the following:

¹⁸⁸ OECD Policy Brief, *Internationalisation of Higher Education* 4 (2004).

¹⁸⁹ Antonio Spilimbergo, *Democracy and Foreign Education*, IMF Working Paper AP/07/51, at 22 (Mar. 2007).

- 1) “foreign-educated technocrats are such a scarce resource in many countries that they can impose their own preferences in favor of democratic regimes;”¹⁹⁰
- 2) “foreign-educated leaders seem to be extremely motivated to introduce democracy and to keep up with the more developed countries where they studied;”¹⁹¹
- 3) “foreign-educated individuals make it more difficult for the dictatorial regimes to maintain repression by spreading new ideas at home;”¹⁹²
- 4) “foreign-educated individuals can make repressive activities more costly for a dictatorial regime since they have easier access to external media;”¹⁹³ and
- 5) “education abroad may inculcate a sense of common identity with the international democratic community.”¹⁹⁴

Each of these hypotheses can be applied as well to explain how U.S. educated law professors and lawyers in Kosovo can serve to advance the rule of law. These lawyers return to Kosovo as scarce resources to be relied upon for advice and expertise in the development and application of the law, as well as in leading the reform of legal education.

8. Concluding Thoughts

Wade Channell, Senior International Trade Advisor at the U.S. Agency for International Development (USAID) has called U.S.-trained LL.M. graduates who return to their home countries “agents of understanding, agents of change, and agents of hope.”¹⁹⁵ These graduates provide a bridge that facilitates positive legal reform that both understands other legal systems and filters the process of change in their home countries through a native sensitivity to local cultural needs. While many at the University of Pittsburgh School of Law have benefited from the presence of Kosovar lawyers in the LL.M. program, the greatest benefit from their

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Wade Channell, *Making a Difference, the Role of the LL.M. in Policy Formulation and Reform, in EXPORT*, *supra* note 180, at 13–22.

time in Pittsburgh will be felt in Kosovo. Those lawyers have much to contribute and will affect legal reform in Kosovo in a positive way for years to come.