

The Export of Legal Education

Its Promise and Impact in
Transition Countries

Edited by
Ronald A. Brand and D. Wes Rist

THE EXPORT OF LEGAL EDUCATION

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Its Promise and Impact in Transition Countries

Edited by

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Contents

Notes on Contributors

vii

1	The Export of Legal Education: Its Promise and Impact in Transition Countries <i>Ronald A. Brand</i>	1
2	Making a Difference: The Role of the LL.M. in Policy Formulation and Reform <i>Wade Channell</i>	13
3	A Kenyan Experience with LL.M. Education <i>Maurice Oduor</i>	23
4	The Socratic Method, Clinical Legal Education, and Mediation: Serving the Promotion of the Rule of Law in Serbia <i>Jelena Arsic</i>	37
5	Fighting Dragons of the Past: The Internationalization of Legal Education at Donetsk National University <i>Daniil E. Fedorchuk</i>	45
6	The Export of American Legal Education and Its Impact in Serbia <i>Milena Đorđević</i>	61
7	Damnum iniuria datum and the Law of Torts: From Cases to Rules <i>Marco Gardini</i>	83
8	Teaching in Mexico <i>Luz María Cárdenas Arenas</i>	95
9	The Big Impact of a Small Program in the Development of Rule of Law in Kosovo <i>Vjosa Osmani</i>	99

10	Designing and Implementing a Legal English Course to Develop the Rule of Law in the Context of Transition in Pakistani Society <i>Naveed Ahmad</i>	103
11	The Impact of the U.S. Legal System on Peruvian Administrative Law <i>Adolfo Céspedes Zavaleta</i>	123
12	Working with Precedents to Develop the Rule of Brazilian Commercial Law in a Global Scenario <i>Daniela Ballão Ernlund</i>	131
13	Western Education and Eastern Development: Ensuring Effective Development Assistance in East Asia Through Capacity Building <i>Jose Luis C. Syquia</i>	141
14	Comparative Analysis in the Area of Development of Informational and Communicational Technologies: Contemporary U.S. and Uzbek Legislation <i>Timur Arifdjanov</i>	183
	<i>Index</i>	201

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Chapter 1

The Export of Legal Education: Its Promise and Impact in Transition Countries

Ronald A. Brand¹

I. Introduction

Legal education has seldom been studied as an export. One is hard pressed to find statistics on education exports in general, let alone on legal education in particular.² Even in the ever-growing data on services trade, there is little attention paid to the broader impact of the transmission of education across borders.³ Despite the fact that the education of foreign students clearly fits within Mode II of services trade under the General Agreement on Trade in Services (delivery of services to a consumer from one Member State within the territory of another Member State),⁴ few efforts have been made to catalogue the extent and impact of this component of services trade.

The tie between legal systems and legal education systems is undeniable. Most often this is thought of in terms of a country's legal system determining the structure and approach of the legal education that will train the lawyers of that country—civil law systems generally employ a “scientific” lecture model of instruction focused on learning statutory rules, while common law systems tend

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2 Examples of such statistics which do exist focus on the economic impact of education exports. *See, e.g., Export Education in New Zealand: A Strategic Approach to Developing the Sector—An Overview*, available at http://www.educationcounts.govt.nz/publications/international/export_education_in_new_zealand_a_strategic_approach_to_developing_the_sector_-_an_overview (28 June 2006) (“estimates are that the export education industry contributed \$700 million to the [New Zealand] economy in 2000 and has the potential to realise \$1 billion per annum within two years”); *The Value of International Education in Australia*, available at http://www.idp.com/research/statistics/education_export_statistics.aspx (“In 2007/08, international education contributed \$13.7 billion to the Australian economy”); *America's Hot New Export: Higher Education*, available at <http://chronicle.com/weekly/v52/i24/24a04401.htm>.

3 Education is not listed as an export category in standard U.S. export statistics. *See, e.g.,* U.S. Census Bureau, Foreign Trade Statistics, December 2008, available at <http://www.census.gov/foreign-trade/Press-Release/2008pr/12/>.

4 General Agreement on Trade in Services, Art. I(2)(b).

to employ more active learning methodologies focused on analysis of judicial decisions. Just as important, however, may be the impact a legal education system has on its country's legal system. Intuitively at least, it would seem that the manner in which lawyers are trained is likely to have an impact on the way in which they practice their profession, both in private and governmental roles.

When students cross borders to become consumers of legal education, a new dimension is added. If a lawyer from one legal system studies in a different legal system, he or she takes home something more than a simple transplant understanding of law and legal education. The "export" in this arrangement is knowledge and understanding of host country systems that can generate further influence on the student's home country legal system and legal education system.

Education affects a country's level of democracy,⁵ and legal education, in particular, should affect the rule of law component of a democratic society.⁶ Social, economic, and political opportunity in any culture is determined at least in part by legal rights and the ability to realize them. Thus unless a state presents an environment in which the rule of law is part of the social, economic, and political culture, opportunity is necessarily restricted and may exist only through what would in more developed countries be considered to be improper channels for influencing decisions.⁷

The chapters that follow are part of an effort to explore the extent to which the export of legal education from the United States has an impact on both legal education and legal developments in other states. They tell the stories of persons who have received legal education in the United States and returned to their home countries. In the process, they confirm intuitive and empirical evidence of the impact of such education, and provide a foundation from which to continue a discussion of the export of U.S. legal education.

5 See, e.g., Robert J. Barro, *The Determinants of Democracy*, 107 J. POL. ECON. S158 (1997); Seymour M. Lipset, *Some Social Requisites of Democracy: Economic Development and Economic Legitimacy*, 53 AM. POL. SCI. REV. 69 (1959).

6 See, e.g., Antonio Spilimbergo, *Democracy and Foreign Education*, IMF Working Paper AP/07/51 (Mar. 2007) (finding "a very strong correlation between the lagged average indices of democracy in host countries and the current level of democracy in the origin country" as a result of foreign education).

7 See, e.g., Thomas Carothers, *The Rule of Law Revival*, in *PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE* 3, 5–6 (Thomas Carothers ed., 2006). ("For states grappling with democratic consolidation, fortifying usually weak rule of law appears to be a way of pushing patronage-ridden government institutions to better performance, reining in elected but still only haphazardly law-abiding politicians, and curbing the continued violation of human rights that has characterized many new democracies. For backsliding systems, strengthening the rule of law seems an appealing bulwark against creeping authoritarianism and the ever-present threat of sabotage of constitutional order.")

II. The Impact of the Export of Education

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.”⁸ The same study noted that in 2007, 46 heads of government were products of U.S. higher education, 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-educated individuals do play an overwhelming role in their own home countries.⁹

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 impact.¹⁰ 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.¹¹

According to Gocha Lordkipanidze, a foreign policy adviser to the Georgian prime minister and Harvard LL.M. graduate, a U.S. LL.M. education “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.”¹²

The anecdotal approach of the *American Lawyer* article indicates the importance of a U.S. legal education to its recipient, while the IMF Working Paper noted above indicates that education in a democratic country has a much broader impact on the home country of the returning scholar. These are parts of what should be a much larger discussion of the export of U.S. legal education.

8 *Id.* at 20.

9 *Id.* at 21.

10 Michael D. Goldhaber, *They Rule the World*, THE AMERICAN LAWYER, Sept. 14, 2005.

11 *Id.*

12 *Id.*

Few if any other exports can have similar impact. While exports through a GATS Mode II provision of services are in general difficult to compare with the export of goods or even of services such as those of the banking and insurance industries, that should not prevent consideration of their effect, particularly when that effect can be so important to the goals of our nation. For those of us involved in legal education who have observed the export of legal education both in the provision of legal education services in the United States and in its impact abroad, it is difficult not to conclude that one of the United States' most important exports is education, and that, within that more general category, the most important export is legal education.

III. Beyond Anecdotal Evidence: The Importance of More Detailed Stories

At the University of Pittsburgh School of Law's Center for International Legal Education (CILE), we consistently hear from our LL.M. graduates about the influence of their U.S. legal education, both on their own lives and on the legal and educational communities to which they return. This book is the result of an effort to gain more specific information about this influence by presenting the stories of some of those consumers in this export process. When we consider the impact of education taken home, however, it becomes clear that the storytellers are more than just consumers of educational services, they are also very much involved in the dissemination of the results of their education in their home countries. As law professors, government officials, institution builders, and private lawyers, they can have important impact not only on individual circumstances, but also on the structure, application, and effect of national and international legal systems.

A 2004 OECD Policy Brief on the *Internationalisation of Higher Education* noted four "different, but not mutually exclusive, approaches to cross-border higher education."¹³ 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.

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

This book is focused almost entirely on the fourth of these policy rationales for cross-border education. In the stories that follow, the reader will become familiar with how LL.M. graduates used their U.S. legal education to improve law school curricula at home, become better teachers, encourage the rule of law and ethical conduct of lawyers, design and implement new legislation, encourage language skills for the use of law on a multinational level, and assist in the administration of international development programs. All of these involve capacity building for nations and regions in transition.

The 2007 IMF Working Paper on *Democracy and Foreign Education* went beyond consideration of the rationale for individual offerings of cross-border education to consideration of the available hypotheses for how foreign-educated individuals bring about changes in levels of democracy in their home countries.¹⁴ The hypotheses considered in the IMF Working Paper included the following:

1. “foreign-educated technocrats are such a scarce resource in many countries that they can impose their own preferences in favor of democratic regimes”;¹⁵
2. “foreign-educated leaders seem to be extremely motivated to introduce democracy and to keep up with the more developed countries where they studied”;¹⁶
3. “foreign-educated individuals make it more difficult for the dictatorial regimes to maintain repression by spreading new ideas at home”;¹⁷
4. “foreign-educated individuals can make repressive activities more costly for a dictatorial regime since they have easier access to external media”;¹⁸ and
5. “education abroad may inculcate a sense of common identity with the international democratic community.”¹⁹

Each of these hypotheses can be applied as well to explain how U.S.-educated law professors and lawyers in transition countries serve the advancement of the rule of law. These lawyers return to their home countries 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.

The stories of the LL.M. graduates found in this book provide dramatic indication of the level of motivation exhibited by many returning legal scholars. They also provide clear evidence of a presence that would make divergence from the rule of law more difficult, both by spreading new ideas and by monitoring

14 Spilimbergo, *supra* note 6, at 22.

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

institutional conduct. Few sectors of society can serve to make repressive activities that are inconsistent with the rule of law more costly than lawyers trained in the traditions of the U.S. legal system. Finally, the following chapters demonstrate a clear sense of common identity, not only with U.S. legal institutions and legal education systems, but also with those from other transition countries around the world with whom graduates studied while in the United States.

IV. Lessons for the Future

It may be that all education affects social, economic, and political opportunity, but U.S. legal education of foreign lawyers who return to important positions in their home countries has a special impact. Social, economic, and political opportunity is in most instances connected to legal rights and the ability of individuals to realize those rights. The realization of those rights will not occur without a system that respects the rule of law, and cannot occur without lawyers capable of providing assistance to individuals and law professors to train those lawyers to function at the highest level. While U.S.-trained lawyers have had a notable impact on the governments and people they have returned to serve in their home countries, a more pervasive impact may well occur through the efforts of those who return to teach the future lawyers of those countries. These new professors will reach hundreds of law students per year in each law school, and will, over time, have a significant influence on the understanding of rule of law and the role of law in the development of their nations.²⁰

With the exception of Chapter 2, the chapters that follow catalogue the personal stories of LL.M. graduates who returned to their home countries to make a difference. All of them are graduates of the University of Pittsburgh School of Law, but that is not the important factor in their stories. The important factor is the way in which each of them describes the combination of the influence of the LL.M. education process on himself or herself, and the way in which that influence on an individual has led to broader impact in the home countries of these graduates. While those of us who participate in the education of these individuals have held intuitive beliefs about the benefits of the LL.M. experience, and about the impact of graduates on their home countries, their stories provide clear confirmation of those beliefs, as well as explicit demonstration of how that impact has occurred.

20 Thomas Carothers has stated that, “[a]lthough its wonderworking abilities have been exaggerated, the desirability of the rule of law is clear. The question is where to start.” Carothers, *supra* note 7, at 7. The proposition here is that the place to start is where the teachers learn, not by telling them how to do it, but by letting them experience legal education in a system that exhibits principal (if not always consistent) adherence to the rule of law, and then returning to their home countries to apply the lessons learned as they find it most valuable to do so.

The stories here elaborate upon this anecdotal information and these intuitive beliefs. They also confirm the limited empirical research on the effect of foreign education on democracy, supporting the capacity building approach to international education. These stories demonstrate that U.S. legal education can have an impact on democracy and rule of law in transition countries. In doing so, they demonstrate very clearly the value of the export of U.S. legal education. They also provide a framework for considering just how this precious export might be improved and enhanced in the future.

The following is a brief summary of the chapters that follow, indicating how they provide a package of stories that, taken together, sets a solid foundation for further consideration of the export of U.S. legal education. They begin with Wade Channell's eloquent presentation of the need for U.S.-trained local lawyers to aid U.S. development efforts. They then move to stories that relate the impact of an LL.M. education on the curricula and teaching methodologies at law schools in a number of countries. From legal education, they turn to impact on national administrative law systems, national and regional development efforts, and the specific area of information and communication technologies in Uzbekistan. Throughout, they demonstrate how individual graduates can make substantial contributions to the development of the rule of law.

Chapter 2: Making a Difference: The Role of the LL.M. in Policy Formulation and Reform, Wade Channell

Channell does an elegant job of setting the stage for the chapters that follow, explaining from the point of view of a development professional just why the LL.M. degree is so important to the consumers of the work of those who have that degree. He paints the picture of impact returning LL.M. scholars can and do have, demonstrating both the need for and the substantial benefit from the application of the education gained in the LL.M. experience. While his story is that of the development professional, and many of the stories that follow are those of new academics in transition lands, they fit well together. Channell's chapter is a must-read for anyone interested in the good U.S. development efforts can have around the world.

Chapter 3: A Kenyan Experience with LL.M. Education, Maurice Oduor

Oduor provides a review of the efforts of one law faculty in Kenya, a transition country that has the advantage of several returning scholars trained in the same U.S. LL.M. program, but suffers from the universal problem of limited resources. Like the other stories in this section, his demonstrates the high level of commitment and excitement found in many returning LL.M. graduates; attributes that contribute to overcoming at least some problems of insufficient resources.

Chapter 4: The Socratic Method, Clinical Legal Education, and Mediation: Serving the Promotion of the Rule of Law in Serbia, Jelena Arsic

Arsic describes the transfer of Socratic classroom methods and clinical legal study from the United States to Serbia. Like others here, she demonstrates the successful application of principles and methods from two legal education systems, using her education in the U.S. approach to improve upon legal education in Serbia. Moreover, she focuses specifically on the introduction of concepts and skills from U.S.-style mediation into the legal system of her home country.

Chapter 5: Fighting Dragons of the Past: The Internationalization of Legal Education at Donetsk National University, Daniil E. Fedorchuk

Fedorchuk describes the difficulties of bringing curriculum changes and new teaching methodologies to post-Soviet culture of eastern Ukraine. He illustrates the problems that exist when the lure of the private sector leaves academic life with few tangible rewards, while at the same time acknowledging the clear intangible benefits of making a difference in students' lives.

Chapter 6: The Export of American Legal Education and Its Impact in Serbia, Milena Đorđević

Đorđević provides a clear description of how two legal education cultures can be combined to incorporate the best of both systems. In describing that process at the University of Belgrade, she details how a young group of western-educated faculty members has made a real difference in curriculum, teaching methodology, and impact beyond the university.

Chapter 7: *Damnum iniuria datum* and the Law of Torts: From Cases to Rules, Marco Gardini

Gardini uses very specific examples of his experience teaching in Italy to challenge not only traditional comparisons of common law and civil law, but also of civil law and Roman law. Noting the traditional view that Roman law study involves a type of case-based approach, he compares the teaching of Roman law and common law, providing particular examples from his own experience introducing U.S. type instruction in his own Roman Law course. He even takes on the conclusions of Professor Pierre Legrand, providing a rather elegant discussion of maps and journeys after suggesting that some scholars have fallen into an "attractive illusion" that results in using rules in an inappropriate manner.

Chapter 8: Teaching in Mexico, Luz María Cárdenas Arenas

Cárdenas Arenas provides an instructive summary of how one LL.M. graduate has incorporated teaching techniques common in U.S. law school classrooms into courses in both a business school and a law school in Mexico. She demonstrates the ability to select useful pedagogical tools from different systems in order to increase the impact of the instructional process for the students involved.

Chapter 9: The Big Impact of a Small Program in the Development of Rule of Law in Kosovo, Vjosa Osmani

Osmani provides a very personal account of how her U.S. legal education has affected her work in Kosovo, both as a teacher at the University of Prishtina and as Legal Adviser to the president of Kosovo. In her warm words may be found the thread of individual impact the social and educational impact of an LL.M. program can have on an individual returning from study in the United States.

Chapter 10: Designing and Implementing a Legal English Course to Develop the Rule of Law in the Context of Transition in Pakistani Society, Naveed Ahmad

Ahmad provides the view of a Fulbright language scholar, not an LL.M. student. His story details the importance of the English language, and English legal terminology in particular, in a country with multiple languages but with English as the language of the law. Like other stories here, he takes on the importance of teaching the law both as a language of its own and in the language students will need in applying their education to productive careers. He demonstrates careful research and attention to detail in the design of a course tailored to work in his native Pakistan.

Chapter 11: The Impact of the U.S. Legal System on Peruvian Administrative Law, Adolfo Céspedes Zavaleta

Céspedes gives us the views of someone who has returned both to teach and to work as a government official in Perú. Like others in this collection, he finds the transfer of active teaching styles from his U.S. legal education to be valuable in the classroom in a civil law system. What he adds, in particular, is a clear example of how the results of deductive logic and the case method have also enhanced his work as an administrative lawyer in the Peruvian government.

Chapter 12: Working with Precedents to Develop the Rule of Brazilian Commercial Law in a Global Scenario, Daniela Ballão Ernlund

Ernlund establishes how her U.S. legal education has made a difference in teaching students in Brazil. Tracing commercial law from Roman roots to current-day civil law systems, she provides particular focus on two Brazilian cases that demonstrate common law development of legal rules in a civil law system. From this she extrapolates the need to improve legal education in Brazil so that students will be ready to understand and participate in such developments.

Chapter 13: Western Education and Eastern Development: Ensuring Effective Development Assistance in East Asia through Capacity Building, Jose Luis C. Syquia

Syquia uses examples from his home country of the Philippines, and from other Asian countries in which he has worked, to demonstrate the connection between classroom and practice in the development agenda. Focusing on the topic of corruption in the development process, his story personalizes and brings to life the type of impact on the development agenda that Channell discusses more globally in Chapter 2. In the process of telling this story, he usefully projects the Socratic method beyond academia to its impact on “real-world” events and examples, providing not only evidence that the LL.M. education prepares its recipient for making a practical difference, but a clear tie between legal education and legal system developments; a tie that both pervades the stories in this book and demonstrates the exponential value of the export of LL.M. education.

Chapter 14: Comparative Analysis in the Area of Development of Informational and Communicational Technologies: Contemporary U.S. and Uzbek Legislation, Timur Arifdjanov

Arifdjanov provides a detailed explanation of one area of the law (information and communication technologies) and how examples and experiences from the United States have been used to affect the development of laws relevant to that area in Uzbekistan. While his is less a personal story than a review of the need for application of newly-discovered skills and understanding of the law, it nicely rounds out the set of stories in this book, providing one more view of the impact a returning LL.M. scholar may have the development of rule of law in his or her homeland.

V. A Final Note: The Resource, the Problem, and the Opportunity

If the stories in this book confirm the belief that U.S. legal education can and does have a positive impact in other countries, then legal educators must address the question of whether we are providing that education in a manner that best serves the process that creates that impact. We must ask whether we are making the best use of an important resource. A resource that can have dramatic effect on the development and application of the rule of law throughout the world must be carefully considered and properly administered.

As a starting point, LL.M. programs at U.S. law schools must be something more than sources of revenue that improve budgets and help skew rankings for J.D. programs. They must be designed with an eye to the greater impact they can have. The many pressures on LL.M. programs (budgetary, curricular, and otherwise) too often may bring with them a lack of understanding of the impact of the export of legal education. Moreover, that impact cannot be fully realized if the relationship with the student ends at graduation. The stories below demonstrate the need for relationships that continue between the graduate and the legal education program.

Like other problems, the problem of failure to realize the impact of legal education exports brings with it opportunities. Here it is the opportunity to have an even more dramatic impact on legal systems around the globe. This will not occur simply by sending more LL.M. graduates back to their home countries, though that is a start. The real opportunity lies in legal education for foreign lawyers that is designed with the potential impact in mind and thus structured to serve the purpose of greater impact. This must be carefully addressed so as not to turn the process into a propaganda regime. Students must be free to choose their courses and they must be open to deciding for themselves what elements of the system they study are most beneficially applied upon their return home. The stories that follow demonstrate how individual graduates can and have made those decisions in the application of their U.S. legal education upon their return home. Our hope is that they may serve as a starting point for a broader discussion of how the process can be improved.

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Chapter 2

Making a Difference: The Role of the LL.M. in Policy Formulation and Reform

Wade Channell¹

The field of international legal reform has experienced a period of sustained growth since the fall of the Iron Curtain. Beginning in the early 1990s, international experts from developed Western economies descended on virtually every newly independent state to offer advice on adjusting the legal system to solidify democratic trends and enhance economic growth. Today, experts from Germany, France, England, the United States, Norway, and even Italy compete and collaborate to refashion the legal frameworks of former command economies in Europe and Eurasia, as well as developing countries from Africa, Asia, and Latin America. Legal reform has become an industry, with hundreds of specialists addressing hundreds of laws.

For those who work in the field of international legal and regulatory reform, one of the most valuable partners imaginable is the local legal professional who has studied or worked abroad. Such counterparts improve the efficiency and effectiveness of the reform process by infusing it with a greater understanding of the policy implications under consideration and enhancing acceptance of change based on local values and priorities. In short, the cross-cultural legal professional serves as an irreplaceable bridge between what is and what can be. This reality is founded on a greater reality: law is not simply a system of rules and regulations; it is a policy tool for changing or maintaining certain aspects of socio-economic behavior. As such, policies—and the legislative acts that flow from policies—embody the norms and values of the cultures in which they are adopted, and cannot be properly understood outside of that context. Consequently, local legal professionals with cross-cultural understanding and local sensitivities play a crucial role in reforming local policies in accordance with international standards.

I. Effective Policy Reform and the LL.M.

Competent international policy reform professionals rely heavily on local counterparts to understand, fashion, and implement reforms. (This is true even

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