

THIRD NATIONAL CONFERENCE ON EXCHANGE OF PERSONS

January 28-31, 1959, Washington D. C.

Report of Workshop #I-8: Law

Chairman:

Arthur Dean
Sullivan and Cromwell

Rapporteur:

Eli M. Spark
Catholic University of America School of Law

The initial presentation of views by the panelists showed considerable agreement in certain areas and diversity of opinion in others. All agreed with the discussion memorandum that foreign student's inadequate English language competence presented a real problem. On the other hand, all felt that the theoretical differences between the civil and common law systems were exaggerated and over-emphasized in the discussion memorandum, and that the supposed problem was greatly lessened when the actual similarities of the two systems were recognized and stressed.

One panelist felt that the major problem was to get more American lawyers to study abroad, and that exchanges in both directions in law would be fruitful only on the post-graduate level. Conversely, another panelist cited instances of the desirable results from under-graduate law study here of men who later returned to practice in their own countries. He thought it would be unwise to limit law study by foreign lawyers here to the graduate level only. Another panelist urged that there was much need for a year's training in the United States for mature, seasoned foreign lawyers already well-established in their own countries and perhaps holding high positions there. The greater extent of their subsequent influence in their home countries was obvious, and regarding their capacity for study at that stage of life, he cited specific instances of remarkable scholastic accomplishment by such individuals.

A panelist suggested that different considerations applied to, and therefore different methods should be used with those foreign lawyers coming to study here from other common law countries and from civil law countries in Western Europe, Latin America, Asia and Africa. He pointed out that a few were now also beginning to come from Eastern Europe, as from Poland.

Another panelist also argued for the development of greater interest by Americans in the study of foreign law, and commended the programs of this kind which have been started in several American law schools with foundation support. The greater reciprocal understanding and appreciation of the respective legal systems and respective national values which results from more American law teachers lecturing abroad and American law students

studying abroad was noted, and its contribution to greater international understanding.

The significant position which lawyers hold in the official life of their respective countries was noted, and the consequent great importance for international understanding of informed views and attitudes on their part. The emphasis which will fall upon the role of international law to help keep the world's peace also points up the importance of lawyer exchanges.

One panelist who had checked with a group of foreign lawyers working in the United States reported their special interest in adequate training here in our law of Evidence and Procedure, and the law relating to our federal system. They also observed that generalization about study by foreign lawyers here was difficult because of the quite different kinds of training previously received by them in differing groups of home countries.

Difficulties in the selection of foreign law students and lawyers to study here were discussed at some length. Several suggestions were made. It was pointed out that to some degree there has been an unfortunate over-emphasis on the foreign student or lawyer's language facility to the exclusion of other qualifications and perhaps also on his personal congeniality. Demonstrated intellectual ability should have greater significance. To balance this view, however, there was a suggestion that, for broadest ultimate influence, the wide range of abilities which may be found in the bar of any country should perhaps be reflected in the selections instead.

It was suggested also that more of the selection processes might profitably be left to the host institutions, or at least that the group making the selections should avail itself more fully of the previous experiences which each host institution has had with its foreign law students, as well as of the recommendations made to the host institutions by their fairly numerous and well-informed foreign law alumni.

Another point requiring attention is the careful advance planning of particular programs and activities for distinguished foreign lawyers and judges, so that invitations to them may be fully correlated with the facilities, schedule and time factors in the particular institutions to be visited, to assure that their time and effort would be most effectively utilized and that the results would be most rewarding.

An effort was made to formulate concrete views with respect to the questions for consideration posed by the discussion memorandum. The general feeling was that a central preliminary summer orientation program would be more beneficial in economics or other similar fields. Its purpose would be primarily that of preliminary language training, including technical language and concepts, but the diversity of programs for foreign lawyers in the various American host institutions would tend to make its successful operation difficult. It was also suggested that many foreign students could not arrange to come to this country sufficiently beforehand. Assigning more responsibility in the selection process to the American host institutions was suggested as helpful in lieu of this, as was also some preliminary reading by the visitors in their own countries

of good introductory materials about the common law system, such as the recent Tunc volume.

International law was cited as an especially good field of study here for foreign lawyers. They are generally well-trained in it, and, more than their American or British counterparts, consider it a most important area of law. Our teaching of it as a common law course, by common law techniques, gives them a new approach to it, and also acquaints them with the method of our law. With a large common body of material, it provides them, as well as our own students, with a good field for the recognition and evaluation of our differing background assumptions and methodology. Much benefit is thus received by the American students who study international law together with our foreign visitors. In other subjects, such as tax, insurance, and labor law, little generalization would be profitable. We should simply try to help the foreign student to make a choice suited to his own interests and to his future work in his own country.

A great deal of interest is shown by foreign law students and lawyers in the study of our constitutional law and administrative law. These furnish good vehicles for their understanding and appreciation of our federal system and of our notions of the democratic values.

It was also pointed out that sometimes foreign students come to American law schools for study in fields such as tax or labor law, when their needs would be better served by study in our schools of Public Administration. The curricula of their own law schools include many broad social science courses, studied for cultural rather than narrow professional utility. If they seek such further study of these fields here, the technical and highly professional approach of our law schools in such courses will not meet their needs.

Another question raised was whether foreign students could be useful as assistants in the teaching of comparative law to American students. This has on occasions been found a useful device, but there was some doubt of its overall effectiveness. On the other hand, it was noted that there was great value in bringing to the United States mature foreign law teachers to teach comparative law in American law schools.

With respect to encouraging Americans to take post-graduate legal studies abroad, it was observed that relatively few countries are really attractive for such study. Specific professional activities and interests of particular lawyers make such study obviously desirable for them in some instances. Foreign law study by mature American law teachers, on the other hand, was regarded as very desirable, with the objectives of enriching their background, broadening their scholarship and making sounder their insights. In addition, the contacts which they would make while studying abroad, as well as those of the small number of American law teachers who have had the opportunity to teach abroad, will provide a valuable medium for continuing communication and understanding on the professional as well as personal level which should have lasting and beneficial results.

By way of improving and increasing cooperation between American and foreign legal organizations, there were cited the activities of such groups as the Inter-American Bar Association, which will meet in Miami next April, and of other international professional groups, and such educational programs as that of the Inter-American Academy of Comparative and International Law in Havana.

Another topic discussed was the possible introduction of area specialization by each of the small number of American law schools who are doing substantial work in the foreign law field and with foreign students. It was felt that such a development would be neither desirable nor feasible. Also discussed were the difficulties encountered in efforts to combine, or to make reciprocally available, the foreign law library materials of geographically close groups of institutions. Some occasional and partial success was noted; joint procurement service for foreign law library materials by different institutions has evidently been undertaken.

Worthy of note in specific connection with Latin America are two additional items: It was pointed out that the Pan American Union has available 160 scholarships for Latin America in a variety of fields under the Inter-American Cultural Convention, apart from the exchange opportunities afforded by the Fulbright and Smith-Mundt programs. Mention was also made of the new special program which has been set up at the University of Nicaragua whereby American law graduates can, in one year's study, cover at least the essentials of the civil law system and of the professional legal training normally given to local students. This may be a forerunner of similar programs elsewhere which could serve as an incentive for greater American study of law abroad.

It was also pointed out that some law schools are beginning to offer law school for study in fields such as law or law and business, when their students would be better served by study in one of the fields of Public Administration, the study of their own law schools include many broad social science courses, studies of cultural rather than narrow professional matters. It may be that such a study of these fields here, the technical and highly professional approach of our law schools in such courses will not meet their needs.

Another question raised was whether foreign students could be helpful in maintaining the teaching of comparative law to American students. This has on occasions been found a useful device, and there was some doubt of its value in the future. In the other hand, it was noted that there was great value in bringing to the United States foreign law teachers to help cooperative law in American law schools.

With respect to encouraging Americans to take post-graduate law studies abroad, it was observed that relatively few countries are really attractive for such study. Specific professional activities and interests of individual lawyers make such study obviously desirable for that in some instances. Foreign law study by native American law students, on the other hand, was regarded as very desirable, with the object of enabling their backgrounds, knowledge and scholarship and better teacher-teacher relations. In addition, the countries they would visit while studying abroad, as well as those of the small number of American law teachers who have had the opportunity to teach abroad, will provide a valuable medium for continuing communication and understanding of the practice abroad as well as general level which should have teaching and research activities.

By way of approving and supporting cooperative teaching and research activities, it was noted that the activities of such groups as the American Law Association, which has been in existence since 1911, and the American International Professional Program, and such educational programs as the Inter-American Academy of Jurisprudence and International Law, are of great value.