

INTERNATIONAL DEVELOPMENT LAW: A NEW MULTI-DISCIPLINARY, MULTI- DIMENSIONAL, AND MULTI-CULTURAL LEGAL SUBJECT

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ABSTRACT

The international law universe is inexorably shifting from civil law to common law, from deductive reasoning to inductive reasoning, to the use of clinical and experiential learning, and to the undisputed use of the English language as the lingua franca.

Keywords: International • Development • Law

I was deeply honored to be selected as a Fulbright Specialist to lecture at the John Paul II Catholic University, School of Law in Lublin, Poland. For two weeks, I taught over 80 Polish law students (in English, as I do not speak a word of Polish!) about the importance of emerging capital markets in the international development process. Gaining access to global capital markets is key in terms of financing development in countries in the Global South. However, there is an implicit danger if the development equation fails, resulting in failing and failed states.

These collapsed states may give rise to ungoverned and ungovernable territories which, in turn, may become the host to all manner of criminal activities. With this introduction, I then chose to teach a very complex series of lectures dealing with emerging economies and the disruption of capital markets through three intertwined factors: (1) transnational organized crime; (2) Islamic-based terrorism; and, (3) corruption in the domestic and international banking sectors. The lectures (and the subject matter at large which I have written on extensively) were multi-disciplinary in nature. International development law crosses over from law into political theory, colonial and post-colonial history, and philosophy. It is not a subject that is strictly defined by law alone as its philosophical antecedents straddle all of these other disciplines. Accordingly, it makes the study more difficult to absorb and fully grasp—it is a challenge for unwary law students!

I divided my 80+ Polish advanced law students into groups to negotiate hypothetical fact patterns that I had created. The groups were expected to negotiate within their teams and come up with legal solutions to extremely difficult problems—and present their findings on a stage (and in English). This “clinical” or “experiential” method of teaching law was very different from what my Polish law students were used to. But it gave me a chance to introduce the clinical method of legal education, very prevalent in the US, to a strictly civil law-based system of legal pedagogy where the law professor lectures but there is not much, if any, student input. Taking a clinical approach to teaching law in Poland was an experiment for me and my law students.

To my amazement, my students created PowerPoint slide decks and engaged in the rigorous analysis of three separate negotiation exercises in less than two short weeks. At the end, each law student was given a certificate for completing an advanced English-language law course. Afterwards, all my students stood up at the same time and started clapping. That is strange, I thought. It was only until two of my male law students came up to the stage with two bunches of flowers for me that I realized that I was being given a standing ovation! I promptly burst into tears, and could only blurt out, “My mother tells me I cry too much!” I never dreamed that as a law professor, I would one day feel like a prima ballerina. This remains a seminal professional teaching experience for me, and one that has led to certain important insights that I am sharing now.

COMMON LAW AND THE CLINICAL METHOD

To my surprise, (Professor) Father Broński, my Fulbright sponsor, requested me to also teach US constitutional law as part of my seminar. This startled me as I am by no means a constitutional law scholar! However, I realized that the foundational principles of our democracy are also ingrained in other societies. I opted to give an overview of the First, Fourth, Fifth and Fourteenth amendments to the US Constitution. But the fact that a Polish law school was interested in our Constitution was quite an unexpected discovery.

Further, I was teaching from a complex thicket of laws using US “common law” based jurisprudence. A summary of the differences between common law systems and civil law ones may be described as:

“In legal systems, ‘inductive reasoning’ is primarily associated with common law, where judges develop legal principles by analyzing specific cases and precedents, while ‘deductive reasoning’ is more prevalent in civil law, where judges apply general legal codes to specific cases, essentially reasoning from a general rule to a specific conclusion; meaning common law relies more on inductive reasoning by building up rules from case law, while civil law utilizes deductive reasoning by applying established legal codes to specific situations.”

I changed the lens of legal analysis by using the common law “inductive reasoning” approach, thus moving away from the civil law deductive tradition as found in the Napoleonic Code and other sources dating back to *Lex Romana* (ancient Roman law). As Poland is a civil law jurisdiction, this may have been a shock to my students.

Additionally, I was using a radically different legal pedagogy by using a clinical method or an “experiential” basis for teaching by using hypothetical legal questions and asking my law students to “solve” a legal problem among themselves—and fast! I also required my students to ask me questions during my lectures and respond to questions I asked of them. Moreover, I realized that Polish students start watching American cartoons at a very young age, and continue to watch American TV and movies throughout their adult lives. So, to make the complex idea of “money laundering” more accessible to them, I showed them an episode about it from the original *Law & Order* TV series. This interactive model of using negotiation exercises and watching how money laundering crimes are prosecuted (fake TV crimes, to be sure!) was a very different approach from what they were used to. But judging by their reaction, my Polish law students apparently found it to be a memorable one.

Finally, the use of the English language also meant that my students were compelled to be fluent in not just English but also in “legal English” in order to survive this complex advanced law seminar. It should be noted that I was not required to learn Polish (thankfully, as it is a truly difficult language). The shift from using the French language in the 19th century to the unquestioned dominance of English as the language of law and diplomacy in the 20th century is quite notable as it marks the ascendancy of the use of English in international law. Indeed, I began noting the shift from civil law to common law and towards English (rather than French, Spanish, or any other language) during the course of my early work as an attorney-advisor with the Office of the General Counsel, U.S. Agency for International Development (USAID). This shift was obvious to me from my professional USAID-related travels, even in such far-away places as Chile, the Philippines, and more recently, Ethiopia.

Ethiopia transitioned from a Marxist regime from 1974-1991 when it became a federal republic in 1991, but was still led by authoritarian rule. (Eritrea gained its independence from Ethiopia in 1993, after a decades-long war.) Currently, Ethiopia primarily operates under a hybrid system of a civil law framework that incorporates certain common law principles and practices. However, the dialectic leap from Marxist governance to the selective use of common law principles is astonishing. Indeed, Ethiopia has gone a step further by creating Community Justice Centres (CJCs) modeled on customary courts which allow communities to resolve disputes locally while also aligning with international human rights standards. Thus, CJCs offer a bridge between the formal and informal systems by creating pathways to make justice more

accessible and familiar to the people. This initiative is truly a vanguard of creating legal solutions to everyday problems within a familiar cultural context thus ensuring, to a greater degree, that these mutually agreed approaches to conflict resolution will be more meaningful and enduring.

However, the way in which I discovered that Ethiopia had such a strong common law framework emerged from my role as the former general counsel of a private consulting firm specializing in rule of law reform in Eastern Europe and Africa. The firm primarily enters into contracts with USAID in support of USAID's initiatives. Pursuant to one such contract, and for reasons that lie outside the parameters of this discussion, the firm was required to vacate its office in Addis Ababa, Ethiopia, and move its operations to a different building. Although the landlord had agreed to lease the new office space, he requested the firm to draft the lease—a task that fell to me.

The contractor requested me to model the new lease on its Virginia office lease. I willingly obliged, but was unsure if the subrogation clause in the US lease could be replicated in Ethiopia. To my astonishment, Ethiopia's Civil Code did contain a subrogation clause, namely Art. 1944. As subrogation is an equitable remedy that was first developed in the English Court of Chancery, naturally I was skeptical that it would make an appearance in Ethiopia. Indeed, it's not as though Ethiopia had a colonial past with England that would explain the use of the English language or of common law concepts in its official legal documents. (Moreover, while Italy struggled to colonize Ethiopia during World War II, it failed in this effort.)

Another feature of Ethiopian law is the required publication of its legislated laws in the Federal Negarit Gazette, a two-columned newsletter that publishes the English and Amharic versions of Ethiopian laws side by side. This small example illustrates the ascendancy of common law and the English language. While it is tempting and perhaps overly simplistic to view this as a natural, expected, and positive progression in standardizing and homogenizing international law and practice, there is an implicit danger in making this assumption.

Creating a global “legal” culture may help facilitate a mutually shared understanding of legal concepts, and standardize the use of legal documentation, practices, and methods of dispute resolution. So, superficially, this may seem like a “win-win” scenario as it reduces the possibilities of misunderstandings and complications. However, this view is highly problematic as the creation of a global legal culture necessarily means that the specificity and the richness of local traditions, cultures, languages, myths, and customs are sacrificed in the process. Indeed, what we are witnessing is the erosion or even the crumbling of civil law systems and (Indigenous) traditional legal practices which are all succumbing to the unbearable pressure being exerted by the legal hegemony of Anglo-American jurisprudence. This is especially apparent in the domain of international development law which is the confluence of the Global South interfacing with advanced nations in law, finance, and human rights.

British imperialism and American hegemony spanning the 20th century helped to create the foundation for this jurisprudence. Indeed, it may be argued that British empire building provided the geographic breath while American hegemony provided the cultural depth of shared cultural norms. These norms ultimately became the historical antecedents leading to the ascendancy of the Anglo-American legal framework. But if we may turn back to the extraordinary example of Ethiopia, it has apparently found a way to “thread the needle,” so to speak. Ethiopians have embraced common law traditions and the English language while simultaneously energizing, integrating, and legitimizing their own Indigenous legal traditions by institutionalizing CJs—a truly remarkable and laudable achievement. It may provide a real-time example of how to maintain the complexity of Indigenous cultures while adapting to the practices of the global community—and becoming a vibrant member thereof.

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MULTI-CULTURAL ASPECTS OF MY FULBRIGHT JOURNEY

One of the pillars of the Fulbright program is multi-culturalism. It is fundamentally based on sharing experiences in person and exploring new, unknown places, and suddenly finding yourself at home. So, when I was invited to visit Poland for my Fulbright adventure, I was a bit unsure of how my ambitious teaching agenda would be met or on how I would be received in delivering it. Much to my surprise, I felt like a “rock star” and believe me, I am as far away from that profile as possible! My sponsors, law students, and everyday people on the street were so warm and accepting.

In fact, I changed the cultural frame of reference for my law students based on a random observation. I noticed that Polish cell phones and WiFi connections were extremely well-managed. So I created a fact pattern whereby an imaginary African country requested assistance in creating the same system in its country. This was not based on any foreign assistance program or policy that Poland may have had, but was simply a request for help in establishing a reliable telecommunications system in a foreign (and fictional) country. Frankly, I did not know if my law students would say, “Yes, we will help,” but they did! My law students far surpassed any expectations that I may have had for them. In fact, I told them that the seminar they had participated in was far more difficult than the ones I taught at Georgetown University Law Center.

And, the fact that they so joyously accepted and celebrated me as an Indian-American woman was an experience that I shall treasure for as long as I shall live.

LESSONS LEARNED

My Fulbright experience was a springboard to another seminal teaching experience for me. Through the many Fulbright events held in Washington, DC (pre-COVID), I met another Fulbrighter, a medical doctor, who was teaching at the Uniformed Services University of the Health Sciences. This is the Pentagon's medical school for active-duty doctors and global health specialists, and is co-located with Walter Reed Hospital in Bethesda, Maryland. He introduced me to the Air Force Colonel who directed the global distance learning program and before I knew it, I became an Assistant Professor in the Division of Global Health, School of Medicine (2019-2024). I lectured on global health and international development, public-private partnerships in the global health sector, and international humanitarian law. To my amazement, I was teaching International Development Law to medical professionals, not to law students or lawyers!

My Fulbright experience has taught me that my particular subject matter of international development law is an undertaking that is multi-disciplinary (straddling law, philosophy, history, and political theory); multi-dimensional (by crossing over from law to medicine); and multi-cultural (in reaching out to other legal systems in other parts of the globe). It is a complex philosophical and legal inquiry that has sustained my professional and academic careers with constant new and exciting challenges. I am deeply grateful for the new insights that my Fulbright experience gave me.

FURTHER READING

1. Google A1, "Inductive vs Deductive Reasoning in Common Law vs Civil Law," accessed on Oct. 16, 2024.
2. INTERNATIONAL DEVELOPMENT LAW: Rule of Law, Human Rights & Global Finance, 3d ed. (student edition) (Springer), forthcoming in Spring 2025; (2d ed., 2020)(Springer); 1st ed., 2009 (Oxford University Press).
3. "Ethiopia's journey towards people-centred justice," HiL Newsletter (September 25, 2024).
4. Ethiopia Civil Code, art. 1944, et. seq. N.B. Subrogation is a legal doctrine that allows one party to take on the legal rights of another party. It is often used in insurance and other contracts whereby an insurance company pays a policyholder for damages and then takes on the policyholder's right to sue the responsible party.
5. For a recording of Dr. Sarkar's lecture for the Fulbright Specialist Program's Information Session & Alumni Speaker Panel (2023), please visit <https://www.bradboetig.net/sarkar/sarkar.html>.



Professor Rumu Sarkar with (Professor) Father
Włodzimierz Broński at her standing ovation on April
14, 2016.

BIOGRAPHY

Dr. Rumu Sarkar was awarded a Fulbright (Specialist) Scholarship (2013-2018), lecturing at the John Paul II Catholic University, School of Law in Lublin, Poland, where she received a standing ovation from her Polish law students. Professor Sarkar is an Adjunct Law Professor at Case Western Reserve University School of Law, where she teaches International Development Law and has launched the IDL Lab focused on social impact investing in Africa and Asia. Professor Sarkar was awarded her B.A. at Barnard College, Columbia University; her J.D. from the Antioch School of Law; her Master of Laws (LL.M.), and her Ph.D. in Philosophy (Law) from Newnham College, Cambridge University. She may be reached at rxs1200@case.edu.
