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Know Thy Student

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Know Thy Student, by Juli Campagna

Know thy student. Do you know where your students come from and what their reasonable expectations of legal education might be? International students in American law schools – and in your class!



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**“What do law
schools know
about these
students?”**

Introduction

The theme of the 2015 AALS Annual Meeting was *Legal Education at a Crossroads*. One indisputable feature of this theme is decline in law school enrollment all over the country. It is unlikely that student enrollment will pick up substantially any time soon, if ever, for reasons of which we are all keenly aware. In an effort to meet payroll and budgets, law schools all over the country are increasing their enrollment of non-U.S. students. These students come from all over the globe, with all levels of expertise and experience in their own legal systems. International law students are a major growth industry for law schools at a time when domestic law students are in serious decline.

In 2000, non-JD enrollment in U.S. law schools was around 4 to 5%. Ten years later, in the academic year 2010-2011, 6.2% of law students were non-J.D. students. By the 2012-2013 academic year, 7.4% of law school enrollment in the U.S. was “non-J.D.” The vast majority of these students are international students. Most do LL.M.s. Some do SJD programs; others come here to spend a semester abroad. They rarely take “separate” courses. Instead, they take the same courses as the J.D.s, and almost certainly take legal writing.

International Law Students

What do law schools know about these students? What do American law professors know about their students’ legal education experience before they walk into their class? What are the classroom and assessment expectations of foreign students?

Unlike the “traditional” 1L J.D.s, international students are not blank slates in terms of law or legal education. Many or most are finishing, and not starting their legal education. Some have already finished their legal studies in their home country. Typically, they will have completed an undergraduate degree where they majored in law the way we major in sociology or accounting. The concept of law “school,” as separate and distinct from the university, is unknown in most countries. Law is a department, like the history department.

Some of the foreign law graduates in American law school classes have practiced law in their home countries; others have not. Some of these foreign law graduates have passed the bar or equivalent in their home countries; others come from countries that have no bar exam. Thus, while international law students are not similarly situated to American law students, they are not a monolith, either. Their skills and education vary widely, based on individual traits and worldwide trends. One thing is certain: these students come with experience of legal education, and expectations as to what a legal classroom and a legal final examination will be.

Many American law professors see the foreign law students as imperfect American law students. They tend to think that the international law students’ *problem* is weak English. Actually, the international students tend to see themselves in the same light: weak on English. While this assumption may appear reasonable, it is flawed and uninformed. While there will be students whose English language skills are not quite “up to par” for the rigors of reading and writing at the level required of a law school experience, there is so much more at play than “mere” English language skills when international students attempt to analyze a problem in an American law school setting.

Goals and Limitations

The goal of my presentation, whose materials are summarized below, is to provide my colleagues with an idea of the assessment experience and expectations of the international law students in their classes. I have been teaching international law students in the United

Know Thy Student, continued

States and abroad for almost ten years. Before that, I worked in international practice and spent a third or more of my time each year abroad, working with attorneys from many different countries. Before going to law school, I had worked in international corporate training, spending most of my time abroad. I got a master's degree in teaching English as a foreign/second language years before I ever thought I would go to law school. I practiced law for years before I ever thought I would teach it. Based on all these experiences, I thought I was well prepared to teach foreign law students. Like most faculty and students, I too believed that it was all about their English and knew that I could help them in that regard.

At Hofstra, we have two legal writing courses dedicated specifically to international law students. At John Marshall, where I first taught this audience, we had one. I designed all these courses, weaving together (second) law and (second) language and the so-called "standard" legal analysis. While I am certainly no scholar of the civil law legal system, I had studied it in my own LL.M. and had worked with a substantial number of lawyers whose countries' legal systems are based on some version of the Roman or Napoleonic code. I thought I had it down, and could take willing, dedicated students where they needed to go. What happened consistently, however, is that even the top students in my writing classes had modest or poor results on their substantive law exams – particularly at the end of the first semester. I was particularly amazed and dismayed to see seasoned attorneys, with excellent English language skills and significant international experience, getting modest grades on their substantive law exams at the end of the first semester. During the spring semester, these seasoned lawyers told me that they used their "lawyers' heads" and not their "law student heads" when taking their exams. With their "lawyers' heads," they greatly improved. This is what finally led me to inquire into law school examinations in my students' countries of origin.

These exam questions, and the anticipated analysis of the questions, are as analogous to an American law school exam as a fish is to a bicycle. After receiving samples from 20 countries on three continents, I could see why my international students, including "the best and the brightest," had so much difficulty with American law school exams. None of the international students had any experience with or the slightest expectation of "issue spotters" or other fact-centered legal analyses. This goes far beyond the notion of "code v. case" or other critical distinctions between the foreign students' legal *systems* and our own. It is not just the legal systems that are so different from each other. The legal education methods and assessment are vastly different, too.

My empirical research has shown me that few international students have ever taken a written examination in their own legal education system. Oral exams are the norm in many countries. The content of these exams, whether oral or written, tends to be quite similar from country to country, and continent to continent. All are strikingly different from American law school exams, however.

Let me be clear about the limitations on and scope of my research. First of all, this is a start, and not the end. What I have gathered thus far are examination questions from professors at universities where I either taught or had a contact. Most of the questions below are from Europe or Latin America. This is not due to any cultural bias. It is due to financial constraints. I have no budget for this study at all. I was a licensed translator for years, and thus refuse to ask people to translate "as a favor." I also know the importance of skill and training in translation, and refuse to obtain translations from people who do not have the substantive knowledge (here, law) necessary to translate the text. I was able to translate the questions from French, Italian and Spanish myself. Colleagues were able to get me reliable English-language translations from Norway, Moldova and Czech Republic. I paid to translate the questions from Chinese.

I have divided the questions into two sections: Oral and Written. Some countries give both types. Many give only oral questions. At this early stage I found the content the most interesting thing of all.



***"Oral exams
are the norm in
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Know Thy Student, continued

Oral Questions

Italy

In Italy, law students take oral exams almost exclusively. Students have 15 minutes to answer a question, and are ordinarily given one to two questions per course. The student and the examiner interact during the process. The examiner may (and often does) give the student hints and tips to help the student keep going. The student receives her grade immediately, and can accept or reject it. If the student rejects the grade, the student will take the exam the next time it is offered. The student does not re-sit or re-take the course, however.

Following is an exam on *Statutes of Limitations*.

To pass (“sufficienza”), the student must be able to answer –

- What is a statute of limitations claim?
- What are the general criteria for determining the time period available to bring the suit?

To get a B (“voto intermedio”), the student must be able to answer the above questions, and also know –

- *that* the statutory time period may be interrupted or suspended; and
- the difference between *interruption* and *suspension*; and
- how the maximum time available – not to be extended even when interrupted – is determined in the first instance.

To get an A (“voto pieno”), the student must know everything included to pass, and to get a B, and must also be able to answer –

- How can various mitigating and aggravating circumstances affect the statute of limitations, both in the initial determination and in the fraction used to calculate the maximum length of time available?

France

French universities use a combination of oral and written questions to assess. Most questions are available (a sort of exam bank) for review in advance although the student will not know which question(s) the examiner will ask him at exam time. As in Italy, the student and examiner interact during the exam.

- Which of the following treaties is the last legally binding amendment to the founding treaties? Maastricht Treaty? Amsterdam Treaty? Treaty of Nice? Explain.
- Explain the jurisdiction doctrine and state at least three examples of how this doctrine influences arbitration proceedings.

Belgium

Belgian universities also use a combination of oral and written questions, with a preference for oral questions in the early years. Like the other European universities covered here, most questions are available in a sort of exam bank although the student will not know which question(s) the examiner will ask him at exam time. The student and examiner interact during the exam, which is so in all the European countries presented in this article.

- What is meant by the term “corporate nationality”? Describe in some depth.
- Define and describe what is meant by “free movement of goods” in EU law.

Norway

- How does international law define sovereign rights according to the Law of the Sea Treaty (1982)?
- A foreigner is stopped at the airport because the authenticity of his visa is challenged. Explain.



Know Thy Student, continued

The Norwegian law professor who provided me with these samples also told me that Norwegian law students' answers "must be objective." "Arguing for one side or the other," he added, is "neither appropriate nor appreciated." Instead, "the students must know the law."

Czech Republic

- What are the basic principles of civil procedure before national courts?
- What is meant by "direct effect" of the EC law? Provide examples.

Following is a "practical question" of the type asked in some, but not all Czech law schools, where "practical questions" are seen as lacking legal depth.

- A takings is sought, but not for the entire property. The government is only going to leave the owner a little strip of land that is of no use to him. What can you do? Theory on takings and arguments you can make.

Written Questions

People's Republic of China

Directions: Please finish all these questions within two hours. Your answer to each question should be no less than 400 words.

1. What are the types of punishment in the P.R.C.?
2. What are the theories of retribution adopted by the government?
3. Discuss and analyze the elements of self-defense and the circumstances when it is justified under P.R.C. criminal law.

Republic of China (Taiwan)

- What is the proper substantive law that governs proprietary questions relating to dispositions of securities of the Taiwan investor? Please elaborate your answer and reasoning

Moldova

1. Explain the importance of judicial practice as it relates to labor law.
2. Describe the process of how individual labor contracts are suspended.
 - (a) Explain from the employer's viewpoint;
 - (b) Explain from the employee's viewpoint.

Mexico

All three of the following questions are from one of the top law schools of Mexico, the *Facultad Libre de Derecho de Monterrey*, where the students must study law through the medium of Spanish, French and English.

- In 300 words, discuss and respond to the following idea of Harvard Law Professor Todd D. Rakoff: "(...) ordinarily legal problems admit of many solutions, which may be equally functional, and, in context, culturally appropriate. Accordingly, our students need to understand that the particular solution they are taught as applicable in their own legal system may well not be the solution which lies in the minds of the lawyers around the world with whom they will deal in the course of their working lives. Or, in other words, they will constantly need to – and therefore, we also need to – learn from each other."
- Do a comparative analysis of the legal structure required to finance a corporation in Spanish law and Mexican law. Evaluate each system, highlighting the advantages and disadvantages of each one.
- Decide what the dominating principal with regard to conflict of laws in the Civil Code of Nuevo León is. Give your opinion on this, in a complete and organized manner; half page minimum and full page maximum. Use exact and correct terminology. Write legibly, and do not make any spelling mistakes.



**“One in ten seats
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Know Thy Student, continued

Conclusion

As stated earlier, I have only started this study. Already it is clear to me that we need to do much more to support our international students' ability to do well on exams. Many or most come on scholarships from their countries, their bar associations or even law firms. Waiting to improve on second-semester exams, when they have only two semesters of study for the LL.M., is unacceptable.

In addition to offering them specialized legal writing courses, which they certainly need, law schools should give these students opportunities to take practice exams in their substantive law classes. For many or most, who are already accustomed to hard work and who study diligently, it is not the “knowledge” of the law that presents the challenge, but the way in which they are accustomed to demonstrating what they know.

One in ten seats will be taken by an international law student by the end of this decade - if not sooner. We owe our international students much more than we are currently delivering.

- Juli is an Associate Professor of Legal Writing at the Maurice A. Deane School of Law at Hofstra University where she teaches “traditional” first-year law students and also teaches specially designed legal writing courses to international law students. She is also the Assistant Faculty Director of International Programs.

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***Need Ideas for Effective Student Conferences?
Check out these Essays!***

Tips for a Successful Student Conference, by Erin A. Donelon



Erin A. Donelon
Director of Legal Research and Writing,
Tulane

(1) Adjust Your Expectations: If you are transitioning from a high-level practice to teaching, you may expect near-complete drafts, probing questions, and fully engaged students. The reality is that you can expect a wide variety of abilities and work product. Some will be far along. The majority will be in the early stages and will require several rewrites. In my experience, no matter how much we advise students to “start early,” the real heavy lifting may begin after that first individual conference. Be prepared to provide strategies and timelines for those students who are in the early stages of the writing process.

(2) Be Sure That Every Student Leaves with a To-do List: I conclude every conference by jotting down a to-do list on the back of the student's draft. Students leave with a tangible list of tasks, I've clearly identified the most pressing issues, and we both have documentation that the conference was productive. The to-do list also generates goodwill among students. No matter how

much they have struggled with a topic, they know where to turn to get started. This simple technique helps students break down even the most daunting assignment into manageable tasks and is essential to overcoming procrastination.

(3) Save Time to Check in: Legal writing professors are often the first (and sometimes only) faculty members to meet individually with first-year students during the first semester. We often are the only faculty members who have a sense of how students are adjusting to law school. Because of this, I usually begin or end every conference with a simple “how is everything going?” This opens the door for students to share, vent, or decompress about their experience in law school. If students share specific personal problems, I can direct them to the appropriate university resource. In light of the epidemic of stress and depression among law students, I now view “checking in” as a core component of my individual student conferences.