Legal Education as a Rule of Law Strategy - Problems and Opportunities with U.S.-Based Programs

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LEGAL EDUCATION AS A RULE OF LAW STRATEGY – PROBLEMS AND OPPORTUNITIES WITH U.S.-BASED PROGRAMS

David Pimentel*

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INTRODUCTION

Education can be a powerful force in building the rule of law in developing countries and transitional states—especially in light of its power to influence culture and its ability to sustain meaningful change. Building a more effective system of legal education is a long-term project, however, and a difficult sell given the way rule of law reform gets funded. Regrettably as it may be, legal education projects are often pushed to the back burner.

Shorter-term impacts are possible, however, through U.S.-based educational opportunities, which therefore present a compelling opportunity for rule of law promotion. Addressing short-term legal education deficiencies with U.S.-based education can contribute to a vision for the future of legal education in country, inspired by participants’ first-hand experience at a U.S. law school. It can make local actors, rather than foreign consultants or other outsiders, the agents of change. Also the networks the students build during their time in the U.S.—fellow students and faculty—can provide a resource base for future reform efforts.

Success with such programs depends, on these individuals (1) returning home, and (2) assuming positions of influence there. However, these goals may be difficult to achieve. Moreover, there is concern about the quality of the educational experience received in the U.S., as few programs are geared towards the needs of students from transitional democracies or the developing world.

Nonetheless, U.S.-based legal education—particularly the LL.M. programs that specifically address legal issues in the developing world—can be an effective strategy for promoting the rule of law, one with a comparatively high return on investment. In order to leverage such initiatives for maximum impact, however, implementers need to be responsive to the abovementioned factors likely to affect the outcomes.

I. RULE OF LAW REFORM CHALLENGES

A. Cultural Imperialism—Real and Perceived

The history of Rule of Law reform, both modern and ancient, is certainly a checkered one. It undoubtedly dates back to the earliest military occupations, where the law of the conqueror was applied to the vanquished, and legal “reform” was imposed under threat of military force.¹ However,

¹ There are examples as well, depicted in the New Testament, where Roman law superseded Hebrew law during the Roman occupation. See, e.g., David Pimentel, Legal Pluralism in Post-colonial Africa: Linking Statutory and Customary Adjudication in
the rhetoric and rationalizations have softened over the centuries. By the 19th century, European colonial powers were justifying their introduction of new concepts of law and justice in their respective colonies in terms of bringing Western enlightenment to primitive cultures, through what the French called \textit{la mission civilisatrice}\footnote{French statesman Jules Ferry defended colonialism as “a right [for the superior races,] because they have a duty. They have the duty to civilize the inferior races.” Jules Frangois Camille Ferry, \textit{Speech Before the French Chamber of Deputies, DISCOURS ET OPINIONS DE JULES FERRY}, March 1884, at 199-201, 210-11, 215-18 (Ruth Kleinman trans., Paul Robiquet ed., Paris: Armand Colin & Cie., 1897), available at \url{http://www.fordham.edu/halsall/mod/1884ferry.asp}.} and through the British enforcement of “repugnancy clauses.”\footnote{See, e.g., Laurence Juma, \textit{Reconciling African Customary Law and Human Rights in Kenya: Making a Case for Institutional Reformation and Revitalization of Customary Adjudication Processes}, 14 ST. THOMAS L. REV. 459, 477-78 (2001-2002). See also David Pimentel, \textit{Legal Pluralism in Post-colonial Africa: Linking Statutory and Customary Adjudication in Mozambique}, 14 YALE HUM. RTS. & DEV. L.J. 59, 73 (2011) (“To avoid offensive outcomes under the traditional regime, however, the [British] relied on ‘repugnancy clauses,’ which allowed a British Magistrate’s court to overrule customary laws or the local authorities’ judgments if they were ‘repugnant to justice and morality.’” (citing Juma, supra, at 477-78)).} These justifications are cringe-worthy by today’s standards, but certainly reflect the values of that era and betray a type of cultural imperialism that—perhaps inevitably—persists in the Rule of Law Reform efforts underway in the 21st century.\footnote{Rosa Brooks, \textit{The New Imperialism: Violence, Norms, and the “Rule of Law”} 101 MICH. L. REV. 2275, 2283, 2334-35 (2003).}

The Law and Development Movement (LDM) of the 1960s was aimed at helping developing nations, including the newly independent African states, reform their legal systems in a way that would promote economic development.\footnote{\textit{Law and Development Movement, Law and Justice Institutions}, \url{http://web.worldbank.org/WEBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:23103515~menuPK:1989584~pagePK:148956~piPK:216618~theSitePK:1974062~isCUR L:Y,00.html} (last updated Nov. 14, 2015).} But the essence of the reforms were much the same as the colonial agenda—to replicate in the developing world, the concepts, principles, and practices of the legal systems of the donor nations: overwhelmingly developed Western powers.\footnote{Kevin E. Davis & Mariana Mota Prado, \textit{Law, Regulation, and Development, in INTERNATIONAL DEVELOPMENT: IDEAS, EXPERIENCE, AND PROSPECTS} 206 (Bruce Currie-Alder et al. eds., 2014), \url{http://iilj.org/courses/documents/KevinDavisandMarianaPrado.pdf}.} Critics condemned the LDM as ill-conceived and/or clumsily executed, and it foundered quickly. By the mid-1970s, the movement was “declared dead.”\footnote{“The law and development movement did not endure, and shortly after its inauguration it was declared dead by two of its key figures, David Trubek and Marc Galanter.” \textit{Id.} (citing David M. Trubek & Marc Galanter, \textit{Scholars in Self-Estrangement: Some Reflections on the Mozambique}, 14 YALE HUM. RTS. & DEV. L.J. 59, 67 n. 33 (2011).)
introduce “better” legal structures from the West came across as a new colonialism, merely repackaged to make it saleable in the late 20th century.  

When this type of help and aid made a comeback at the end of the Cold War, now dubbed Rule of Law Reform, the same problematic perceptions emerged—that the West was engaged in ethnocentric efforts to export its own values and culture.

B. Ineffectiveness of the Enterprise in General

At the same time, critics began to poke holes in the narrative, observing that even the modern efforts to implement Rule of Law reforms were remarkably ineffective. Those who invested in it had some kind of faith, unsupported by any particular evidence, that their efforts would bear fruit. Tom Carothers made it a theme in his 2006 book, Promoting the Rule of Law Abroad: In Search of Knowledge, featuring a series of incisive essays lamenting the fact that those engaged in the “Rule-of-Law Revival” didn’t really know what they were doing, and had no particular reason to believe that any of their approaches would be effective.

C. Top-down v. Bottom-up Reform

Stephen Golub, an early critic of this modern Rule of Law orthodoxy, noted that cooperating with governments to reform their legal systems was unlikely to produce meaningful change. This is largely because those in power have an investment in the status quo. A leader who achieved and maintained his power through corruption may give lip-service to anti-corruption initiatives—and talking the talk may bring in foreign aid money—but any commitment to fighting corruption would be fleeting. Once the foreigners leave and the foreign money dries up, even the rhetoric is likely to stop.

Stephen Golub advocated instead the “legal empowerment alternative,” which involves educating, mobilizing, and empowering people, at a grassroots level, to demand accountability and the rule of law from their

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8 Id. (referencing “ethnocentrism”).
9 Brooks, supra note 4.
11 Id.
government. Golub and others have argued that this approach to reform, dubbed “bottom-up” reform by Rachel Kleinfeld, is far more likely to produce lasting results than the conventional “top-down” approaches that depend on the goodwill and good faith of people in power.14

D. Institution-based Reform v. Ends-based Reform

Rachel Kleinfeld, both in her 2005 article,15 and in her 2012 book,16 has argued that Rule of Law needs to be defined in terms of “ends” rather than in terms of the institutions being reformed.17 She attempts to redirect attention on what really matters, particularly as what she decries as “first generation” Rule of Law reform became so focused on “fixing” institutions—courts, police forces, etc.—that it overlooked the more meaningful concepts or “ends,” such as equality before the law and citizen “access to effective and efficient dispute-solving mechanisms.”18 Whether these more abstract ends can be practical and meaningful objectives in a rule of law project—particularly because it is so difficult to measure whether, when, or to what degree such objectives have been achieved—is, however, a subject for further discussion.19

II. LEGAL EDUCATION AS A RULE OF LAW INITIATIVE

A. Legal Education as an Overlooked Institution

Legal education has ended up on the sidelines of most of this debate over the effectiveness of and the competing visions for Rule of Law reform. As noted above, the efforts of the 1990s and early 2000s tended to focus on institutional reforms, implemented “top-down” in cooperation with Ministry officials in the affected country. But legal education reforms—the law schools and universities—are virtually an afterthought in most of the

13 Id.; Amartya Sen is also identified as a pioneer in the field of legal empowerment, although Sen is an economist and more interested in economic development than in justice reform per se. See LINN A. HAMMERSHAW, JUSTICE REFORM AND DEVELOPMENT: RETHINKING DONOR ASSISTANCE TO DEVELOPING AND TRANSITION COUNTRIES 190 (2014).
16 KLEINFELD, supra note 14.
17 Id.; Kleinfeld, supra note 15.
18 KLEINFELD, supra note 14, at 14-15.
countries targeted for Rule of Law reform.

The educational establishment, the universities educating the legal professionals of the future, is not one of the "institutions" typically addressed by Rule of Law practitioners. The Department of Defense's Rule of Law Handbook, for example, addresses "Legal Institutions" with subheadings for (1) Legislatures, (2) Courts, (3) Police, (4) Detention and Corrections, and (5) Military Justice, but makes only passing mention of legal education.\(^\text{20}\)

Per Bergling, in his 2009 book *Rule of Law on the International Agenda*, under the heading of "Developing professional skills and knowledge," observes that while donors acknowledge education deficits, they have *not* focused on universities or formal legal education. They have focused instead on in-service trainings, many of them ad hoc: "While it is in the universities that the quantity and quality of the resource-base is ultimately determined, most donors are directing the support to address the enormous need for complimentary [sic] training for already practicing judges, prosecutors, and law enforcement officers."\(^\text{21}\)

\(^{20}\) U.S. Army, Center for Law and Military Operations. *Rule of Law Handbook: A Practitioner’s Guide for Judge Advocates*. Charlottesville, VA: The Judge Advocate General’s Legal Center and School, 2011, available at https://www.loc.gov/rr/frd/Military_Law/pdf/rule-of-law_2011.pdf (last accessed Nov. 14, 2015). There is a single, four-word bullet point—"Law school curriculum reform"—in a list of "lines of effort" for "[s]ustainable ROL operations." *Id.* at 154. Beyond that, the scant references to "legal education" in that volume are limited to (1) the observation that in Afghanistan, the Department of State’s Bureau for International Narcotics and Law Enforcement Affairs (INL) "supports ... scholarship programs, clinical legal education, text book writing, and curriculum and teaching reform in law schools," *id.* at 30 & 199, (2) a couple of scattered references to continuing legal education for those already licensed to practice, *id.* at 28 & 184, (3) a caution that "[w]hen hiring a local attorney, it should be noted that many attorneys in Iraq and Afghanistan have no legal education," *id.* at 145, and (4) a reference to a one-week training course offered by the U.S. Defense Institute of International Legal Studies. *Id.* at 295. "Law schools" are referenced only a few more times, including (1) references to the fact that USAID supports "working with" them, *id.* at 41 & 213, (2) noting that they are a "critical element of civil society infrastructure," *id.* at 116, (3) observing that they may be a source of resources in terms of libraries, conference sponsorship, interns, etc., *id.* at 146, 148-49, 159, 168, and (4) acknowledging that "the rebuilding of ... courthouses, prisons, and law schools ... has begun," in Afghanistan. *Id.* at 218. The DOD's *Rule of Law Handbook*, therefore, perfunctorily acknowledges the relevance of legal education, but fails to devote a heading, a chapter, or even a full paragraph to the topic. *Id.*

\(^{21}\) PER BERGLING, RULE OF LAW ON THE INTERNATIONAL AGENDA, 92 (2009). Bergling devotes much of the rest of the chapter to a discussion of short-term, ad hoc trainings, donors have favored, mostly for training judges, but not engaging with the academic or educational sector. "Most Commonwealth countries have adopted as a first precept that the overall control and direction of judicial training should be in the hands of the judiciary, while the majority of civil law countries have favoured constructions where training is provided by a separate entity established specifically for this purpose, such a judicial training centre or institute." *Id.* at 93
Bergling does observe an increase of interest in legal education, but laments the practical impact:

"A number of new law-schools of varying quality [are] springing up. Many of these are in fact technical schools, for example in fishing or engineering, that have added law to the curricula to attract tuition-paying students. This development is problematic because there are rarely sufficient physical and human resources to sustain these schools. . . . Another issue is that students may gain entry and take grades not on merit, but by paying bribes or relying on contacts. This form of corruption is problematic because it introduces a culture of corruption in the legal system for the very beginning and thus undercuts advances made in other parts of the legal and judicial sector."

Thus the changes to legal education in these transitional states are not necessarily improvements, and certainly not helpful in the larger effort to promote the rule of law. At the same time, legal education has garnered relatively little attention from internationally-funded efforts at rule of law reform.

B. Why Legal Education is Overlooked

Legal education has received lower priority in rule of law programming for multiple reasons, including: (1) the lack of an immediate payoff from the investment, and (2) the difficulty of measuring, or even observing that impact.

The political realities of the funding mechanisms, including the requirements of donors who choose to fund rule of law initiatives, favor projects that can demonstrate impact by the time the project is complete. Only if impact is shown can the funder justify the expenditure. Accordingly, investments that promise only long-term impact—such as legal education initiatives—get bumped down the priority list. A legal education system that trains up a new generation of lawyers, giving them a vision of justice and the rule of law, equipping them to be "agents of social change," may have a huge long-term impact, but it is unlikely to make any kind of visible impact in the early years. Donors, looking for results and perhaps under pressure to demonstrate them, may not have the patience to invest in reform initiatives that will be slow to bring a return, particularly if there are other quick impact projects competing for their investment dollar.

(citing Legal and Judicial Reform: Strategic Directions, 41 (2003)).

22 Id. at 91-92.
23 Golub, supra note 12.
24 Quick impact Project (QiP) is a term-of-art coined by the United Nations to describe
Furthermore, legal education reform is an investment in the hearts and minds of the next generation of legal professionals, and even in the long term, its impact will be hard, if not impossible, to measure. While critics of the first generation reform\textsuperscript{25} (the "rule of law orthodoxy\textsuperscript{26}") may laud the shift of attention to shaping culture, the inability to demonstrate impact may make it a tough sell to those who fund reform. The problem is complicated by the world of multiple funders, with no one taking responsibility to ensure that overall resource allocation makes sense. One donor will opt to fund one project (say, court reform), leaving the other issues (such as legal education reform) for other funders to pick up. Presumably, no one thinks legal education should be ignored entirely, but if no one is volunteering to fund it, it is likely to slip through the cracks.

C. Why Legal Education Should Get Higher Priority

Much of the criticism of past rule of law reform efforts has focused on the problem of form versus substance. A new constitution may be written, and new procedure laws may be passed, but unless the new legal order is enforced and applied, the reforms are only "on paper." Shiny new courthouses may be built, and computerized case management systems may be installed, but if these are utilized by the same corrupt individuals who presided over the regime in the past, still pursuing their own corrupt agendas, then the reform efforts and expenditures have accomplished little if anything. In fact, they may ultimately have the impact of legitimizing and strengthening the corrupt regime, through improved resourcing and through the appearance of cooperation with international reform efforts.

For these reasons, Rachel Kleinfeld—consistent with the views of Stephen Golub and others—argues for "second generation" reforms that focus on changing the culture, and even the power structure.\textsuperscript{27} Consensus is emerging that cultural change may be the only reform that really matters, or at least that without it, none of the other reforms are likely to take root.

The means of bringing about cultural change are limited, but education is a major one. A functional, effective educational system has the potential to inculcate values in the next generation, to inspire cultural shifts, and to embolden the public to expect and demand a more responsive government.

\textsuperscript{25} Kleinfeld, supra note 14, at 14-15.


\textsuperscript{27} Kleinfeld, supra note 14, at 98-107.
Arguably, therefore, education in general, and education for legal professionals in particular, should be getting much higher priority on rule of law reform agendas around the world.

III. U.S. BASED LEGAL EDUCATION INITIATIVES

Given the preference for short-term, high-impact projects, one possible approach is to bring students to a developed nation—one like the U.S. with a comparatively sound and effective legal education system in operation—and allow the students to enroll in that program before returning to their home country. This has been the approach of the Public-Private Partnership for Justice Reform in Afghanistan, established by and with the State Department, which for the last several years has been bringing Afghan lawyers to the United States for a year to earn an LL.M. degree, on condition that they return to Afghanistan upon the completion of their program. They have placed students at a wide variety of law schools, including Ohio Northern University, which has had, for the past nine years, an LL.M. program specifically dedicated to “Democratic Governance and Rule of Law.” The State Department has also funded a program for Afghan legal educators, bringing law professors to the University of Washington to earn an LL.M. and pursue topics of particular importance to Afghanistan’s evolving legal system.

Such approaches have a number of obvious advantages over other legal education initiatives, and over other approaches to rule-of-law reform. But they also carry risks and drawbacks.

A. Establishing a Reference Point for Future Legal Education Reform

Students who are given the chance to study in the United States are likely to return to their home countries with a new perspective on, perhaps even a vision for, legal education. Seeing how it is done elsewhere can inspire returning students to be agents for change back home. In some ways this is no different from the various “study tours” that have been arranged.


29 See ONULAW: LL.M. in Democratic Governance and Rule of Law, www.llm.onu.edu (last visited Nov. 14, 2015). In the interest of full disclosure, the author served as the Interim Director of Ohio Northern’s LL.M. program for the 2014-15 academic year.

for legal professionals, often judges, to come to the U.S. to meet their American counterparts and to see how the legal system functions elsewhere.

Rachel Kleinfeld’s taxonomy of rule of law approaches classifies these study tours as “enmeshment,” because they attempt to enmesh the relevant actors into the larger world, including the standards, values, and practices of other countries and cultures.31 The hope, again, is to inspire them to aspire to higher standards both systemically and behaviorally. One of the key problems is that visitors are impressed more by the resources available in the visited countries, going home not so much inspired to follow this example as much as discouraged by hopelessness, tinged with envy, based on the impossibility of achieving such standards in their own severely impoverished, corrupted, and conflict-ridden states.32

But unlike study tours, which are usually short term, and which typically involve mere observation and discussion, a program that allows students to enroll in, and earn a degree from, a U.S. institution demands both commitment and involvement from the participant. The graduate of a U.S. program is invested in that system, “enmeshed” in its values (as Dr. Kleinfeld would put it), and unlikely to shrug it off so quickly. The student who bears the U.S. credential will be more likely to defend the value of that education, and embrace the positives.

B. Creating the Internal Agents of Change

The student who returns has not only observed what a more effective legal education system *can* do to enhance the vision and abilities of legal professionals back home; this student has had his own vision and abilities enhanced by modeled system. This generates two desirable outcomes. First, the student can promote legal education reform back home not merely through rhetoric, *i.e.* through explaining to others how it can be done, but by example, as he or she is a living advertisement for the value of such education. Second, with the capacity boost obtained in the educational program, he or she may *be* a more effective agent of change, not just for the legal education system, but for a wide range of legal system reforms about which she studied.

One of the persistent difficulties with rule of law reform efforts in developing countries is that the agents of change are international interveners. Local officials and leaders may participate, and may appreciate the reforms being promoted, but as long as they are reacting to an international initiative, rather than proactively pushing the reform, the

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31 KLEINFELD, *supra* note 14, at 134-44.
32 *Id.* at 137-38; the author has heard these reactions from “study tour” participants, mostly from Eastern and Central Europe to the U.S, on many occasions.
longevity of any reform is at risk. At some point, the international funding dries up and the internationals go home. And, all too often, things revert to how they were before.

A cadre of young legal professionals, native to the developing country but educated in the U.S., is unlikely to settle for reversion to a status quo ante. Inculcated with the values that underlie the rule of law and democratic governance, and schooled in adversarial advocacy through the Socratic method, these young lawyers are likely to agitate for change and apply pressure to maintain and continue reform trajectories throughout their careers, long after the internationals have packed up their consultants and aid funding and gone home.

C. Establishing Networks

Another advantage of U.S. based educational programs is the opportunity to establish networks with individuals from other countries, including not only U.S. students, but also their professors, as well as international students from other countries. Networks outside the home country can be critical for a legal professional who is up against a corrupted and dysfunctional system at home. Old classmates may be grappling with similar issues in their own countries, or may be willing to share successes that can encourage and empower the young legal professional who is advocating change.

IV. Issues and Problems with U.S. Based Legal Education

Notwithstanding the upside potential of U.S. based legal education as a rule of law initiative, the enterprise is fraught with challenges and potential difficulties.

A. Cultural Imperialism Again

Of course, the initiative is rooted in the ethnocentric assumption that the students will benefit from being exposed to a “better” approach to legal education, as well as a “better” legal system, as they study in the U.S. It is not at all obvious, however, that U.S. approaches, such as the Socratic method and the “case” method, are superior approaches to legal education. The “case” method for studying the law is meaningful primarily in common law systems, where court opinions have the force of law. However, learning how to find the legal doctrine in a court decision may have little relevance in a legal system based on the civil law tradition, where cases have no

33 Id. at 32.
34 Id. at 62-63.
precedential value.

But rigorous thinking, and the interplay between legal rules and public policy objectives, should be important tools for any lawyer advocating for rule of law. Moreover, adversarial advocacy—something U.S. law schools are structured to teach and reward—may be an important element in the skill set needed to be an effective agent of change.

Moreover, the value of exposure to the U.S. legal system is not limited to those aspects of U.S. law and practice that may be superior (to the extent that word is even meaningful in this context) to that of the home country. Simply learning about alternatives—appreciating that in other parts of the world, people think differently about these issues—is itself a valuable education. Students of the U.S. legal system are as likely to learn from the U.S.’s more less-admired principles and practices (e.g. an extremely retributive criminal justice system that results in disproportionately high incarceration rates, or a system, in various states, of selecting judges in partisan elections) as from its more obvious successes.

Nonetheless, there is something inherently condescending in inviting and funding lawyers from developing countries to study in the U.S. To the extent it is perceived as an indoctrination in American values and culture, specifically with the intent of spreading those values and that culture, it can perceived as an offensive attempt at neo-colonialism.35

B. Expense

While it is not at all clear that the American legal education system is among the best in the world, it is certainly one of the most expensive. Lawyers from developing nations are unlikely to be able to afford even one year at a U.S. law school. The dramatic shift in American higher education away from public funding—in favor of providing loans to students36—has left even public schools no choice but to hike tuition rates,37 placing American legal education out of reach for most foreigners who, after all, are not entitled to participate in the American student loan programs.38

35 Id. at 60-61.
36 Lawrence E. Gladieux, Federal Student Aid Policy: A History and an Assessment (Oct. 1995), https://www2.ed.gov/offices/OPE/PPI/FinPostSecEd/gladieux.html (referencing “the drift toward a system that relies primarily on student debt to finance higher tuition.”).
This problem is exacerbated by the fact that the primary model U.S. law schools have adopted for accommodating foreign students is one that treats those students as a source of revenue more than anything else. The LL.M. degree has long been marketed to foreign students as an opportunity to spend one year in the U.S., enrolled in a U.S. law school. These programs, and their potential as a cash cow for otherwise financially-strapped law schools, are for the most part very inexpensive to administer, and have the potential to generate large amounts of tuition revenue. Most of these programs simply take advantage of the J.D. curriculum they already offer:

Administrators point out that per-student costs tend to be lower for advanced law degree programs because the curriculum largely consists of classes already offered to J.D. students—meaning there is little need to hire additional faculty. "Are these programs a cash cow? Yes and no," said Indiana University Maurer School of Law - Bloomington professor Carole Silver. "The school gets a year of tuition and the LL.M. students fill in the seats in classes that would otherwise be empty."

At most, one or two special classes are designed for the international students (usually an introduction to the legal system of the U.S., and sometimes a legal research and writing class). Otherwise, the students are free to enroll in whatever classes they want, usually in consultation with an advisor, and are awarded the LL.M. at the end of a single academic year of such classes.

As J.D. applications have fallen off dramatically in recent years, law schools have begun offering J.D. students scholarships at unprecedented levels, in an effort to attract candidates and fill the seats of their entering foreign students. Students studying in the U.S. are required to purchase health insurance as term of their J1 visa. See J1 Visa Exchange Visitor Program, U.S. DEPARTMENT OF STATE (citing 22 CFR 62.14) http://j1visa.state.gov/sponsors/how-to-administer-a-program/. This can add thousands of dollars per year to the student's expenses.

39 Howard Fenton, The American LL.M. for Foreign Lawyers: Real Value or More Over-priced Low-utility Legal Education? INT'L LAW NEWS (Spring 2014), http://www.americanbar.org/publications/international_law_news/2014/spring/the_us_llm_for eign_lawyers_real_valueor_overpriced_lowutility_legal_education.html. I do not mean to suggest that the financial benefits of an international LL.M. program are the only motivation for the law schools that offer one. "There are other, less tangible benefits to American law schools, including increased diversity, enhanced global perspective, and a certain amount of prestige." Id.

40 Karen Sloan, "Cash cow" or valuable credential? Law schools add LL.M. programs, but their value may be limited, NAT'L L.J. (Sept 20, 2010), http://www.nationallawjournal.com /id=1202472170557/Cash-cow-or-valuable-credential--#ixzz3hxN3goFj.

41 Fenton, supra note 39.
Compensating for this, international LL.M. candidates are recruited without offering scholarship assistance, generating substantial net revenue for the school.\textsuperscript{43} Because of this approach, the LL.M. programs in the U.S. are largely inaccessible to students from the developing world. Why should a U.S. law school waive tuition for a student from South Sudan if there are Chinese or Saudi Arabian applicants who will pay full tuition for the same privilege?\textsuperscript{44}

The Public-Private Partnership for Justice Reform in Afghanistan has succeeded in persuading a number of law schools to waive LL.M. tuition for one or two Afghan students each year, mostly through the personal connections of the members of the Partnership’s Executive Board, which includes a number of high-powered lawyers at high-powered firms.\textsuperscript{45} It is possible that more schools can be persuaded to make this type of pro bono commitment to the rule of law, waiving LL.M. tuition for students from impoverished countries, particularly as it contributes to diversity of the student body and may generate good publicity for the school.

\textbf{C. Curriculum Issues}

Because the law schools are attempting to leverage their existing course offering, they may have little incentive to develop a curriculum that caters to the needs of lawyers from failed states, post-conflict states, or developing countries. Very few law schools offer courses in Rule of Law, Post-conflict Justice, the Law of Non-Governmental Organizations, Comparative Administrative Law, or even Anti-corruption, the type of coursework that would be relevant and meaningful in developing a young legal professional into an agent of change, promoting rule of law reform in his or her home country. Even a topic like Legal Ethics, something with potential for application in a society fraught with self-serving corruption, is usually taught in American law schools with emphasis on the arcane rules for the handling of


\textsuperscript{43} Sloan, \textit{supra} note 40.

\textsuperscript{44} Unlike most American law schools, Ohio Northern does not consider its LL.M. program—which is aimed at students from the developing world—to be a profit center, and provides generous scholarships to students from the developing world, sometimes waiving tuition completely, for particularly strong candidates from countries with critical needs. Anecdotal reports from contacts at other schools suggest that this is an exception, and that very few American law schools are willing to devote much if any scholarship assistance to international LL.M. students.

of client funds, preparing students to take the MPRE. The focus is not on what would be relevant for the foreign lawyer from a corrupted system.

The most common LL.M. programs aimed at international students are those designed to introduce the lawyers to the American legal system and, not incidentally, prepare them to take an American bar exam. Howard Fenton questions the value of such programs, notwithstanding their popularity:

Since these programs—which provide an overview of American law and promise qualification for taking an American bar exam—are so popular, there must be perceived value in becoming knowledgeable in American law and a member of an American bar. Presuming that most students are not planning to stay in the United States (and likely not eligible under current immigration laws), . . . [t]he question of value . . . arises . . . for their practice in their own legal system and work in the government and judicial sectors of their home countries where the content of their course of study has little relevancy. Many young lawyers describe the prestige of having an American LL.M. and membership in an American bar as career enhancing even for endeavors exclusively within their own legal culture. While this may be true, it is difficult to assess a value of the degree in this context, especially against the cost of study at a U.S. law school. Indeed, the ongoing debate over legal education in the U.S., the value of a law degree—"prestige" or otherwise—for J.D. holders who end up in jobs that do not require the degree has been widely questioned.

There are very few universities that offer LL.M. programs specifically designed to address issues of law in developing countries. Ohio Northern University has had an LL.M. program in "Democratic Governance and Rule of Law" for the past nine years, including required coursework in a range of topics relevant to the developing world. In 2013, Tulane University began

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47 Fenton, supra note 39.

48 Students are required to take, inter alia, Rule of Law, Public Law Issues in Transitional Democracies, Private Law Issues in Transitional Democracies, the Law of Non-Governmental Organizations, Comparative Administrative Law, Comparative Constitutional Law, and an Anti-corruption course. This allows the students, virtually all of whom are from the developing, post-communist, and post-conflict world, an opportunity to take only one or two electives, but they earn a degree that has great relevance in the careers they will lead back in
offering an interdisciplinary LL.M. degree in "Development," which includes coursework in sustainability and development, comparative law, and applied economic analysis. Loyola University of Chicago runs a program they call PROLAW, which offers a one-year LL.M. in "Rule of Law for Development." This program, however, is not available in the United States, but rather is offered on the school's Italian campus in Rome, so it is not actually a program involving U.S.-based study. Beyond these three programs, it does not appear that there are any others dedicated to the type of curriculum that would be tailored toward rule of law promotion.

D. Integration with the Rest of the Law School

To give international students the greatest enmeshment experience while studying in a U.S.-based legal education program, those students need to engage deeply with their fellow law students, particularly the American students and those from cultures other than their own. Some law schools are more successful than others in building a social integration between their international students and their regular J.D. students. Obviously, if the social connections are never made, it compromises not just the enmeshment, but also the networking aspect of the experience in an American law school.

E. Declining to Go Home

Of course, U.S.-based legal education contributes to the rule of law in the students' home country only if the student actually returns home when the education is done. Once in the United States, however, the temptation may be strong for the students to stay, either jumping their visas or applying for asylum. A few students have come to Ohio Northern's program only to disappear within the first couple of weeks, never completing the educational program. In 2013-14, several Afghan women were brought to the U.S. to participate in LL.M. programs at various schools, at the State Department's expense. Upon completion of their degrees, however, at least two of them opted to stay in the U.S. and apply for asylum, despite the specific terms of the program requiring their return at the end of the year.

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51 See discussion of the Public-Private Partnership for Justice Reform in Afghanistan supra text accompanying note 28.

52 Email from the Executive Director, Friends of the Public-Private Partnership for
To be fair, these students had legitimate fear of danger if they had returned to their home countries. At least one of the Afghan women feared that after her exposure to the West, during the year-long program, she would be a target for violence, perhaps even an honor killing, based on a variety of threats she had received from back home during her time in the U.S. A couple of Ethiopians who came to Ohio Northern's program in 2012 were certainly made uneasy by the unexpected death of longtime Prime Minister Meles Zenawi, uncertain what that would mean for the stability in their home country, and the safety of their families and themselves; their disappearance from the LL.M. program shortly after Zenawi’s death may be attributable to such fears.54

Furthermore, the effectiveness of these U.S.-based legal education programs has been frustrated by romantic entanglements. This should come as no surprise. When I was on a Fulbright during the 2010-11 academic year, I was asked by the U.S. Embassy to speak at the University of Sarajevo about opportunities for Bosnian students to study in the United States. I opened my remarks by asking, “Why should you want to study in the U.S.?” at which point a voice in the back blurted out “To marry a rich American!” The crack drew an appreciative response from the audience, and may have carried elements of truth, as it is not uncommon for students to become romantically attached during their year in the U.S.

Indeed, last year Ohio Northern had two students from a former Soviet republic marry Americans shortly after completing their LL.M. degrees. Unlike the wag in Sarajevo, these students gave no indication that their purpose in coming to the U.S. was to find a spouse, but these things do happen, by design or otherwise. Both students had been on scholarships conditioned on their returning to their home country for two years after completing the degree, but such obligations are of little effect against the force of true love, it would appear. It is not clear if or when these students will return to their home countries, and if they do not, the funder of the scholarship will need to determine how and whether to pursue recovery of scholarship monies provided. However the scholarship issues may be

Justice Reform in Afghanistan (Jul 10, 2014) (on file with the author).

Telephone conversation with Sundus Barakzai, Nov. 25, 2015.

Olga Khazan, Meles Zenawi: 5 things to know about the Ethiopian leader’s death and legacy, WASHINGTON POST (Aug. 21, 2012) https://www.washingtonpost.com /blogs/bloggedpost/post/meles-zenawi-5-things-to-know-about-the-ethiopian-leaders-death-and-legacy/2012/08/21/e4bdbe12-eb96-11e1-b811-09036bcb182b_blog.html (“He leaves behind somewhat of a power vacuum. ... Meles’s passing could lead to instability in the region.”). The two Ethiopian students did not announce their departure, or otherwise discuss the context of their decision to leave with anyone at the university, but the author was their professor at the time, and aware that they had concerns about the state of affairs, and the welfare and security of family members, in the aftermath of Zenawi’s unexpected death.
resolved, the rule of law reform purpose behind bringing these students to the U.S. will be entirely frustrated if they do not return home.

F. Getting the Right Students

It is not enough, of course, that the students return to their home countries. The U.S.-based legal education experience will be effective in promoting the rule of law back home only if these students are successful in assuming positions of influence or leadership in their home countries.

The experience with exchange programs raises concerns along these lines. Rachel Kleinfeld observes that “changing hearts and minds requires picking the right people who have the power to leverage change now or in the future. But often, embassies wish to use these programs as rewards or junkets, obviating this purposeFalse”55 She cites another example of the United States’s IMET military training program, designed to instill American rule-of-law norms into foreign militaries:

Romania was an active IMET participant, sending around 150 officers each year to the program and engaging in more than 40 joint programs. However, a report on NATO enlargement found that Romania, which chose its own participants, used these trainings as patronage opportunities, undermining their worth for teaching rule-of-law norms.56

G. Dangers for Those Who Do Return

Some of the Ohio Northem students who have returned have found themselves in danger as a result of their studies in the U.S. One Afghan man contacted the State Department last year, complaining that threats had forced him indoors—and he was unable to go out to find work or otherwise leave his apartment for fear of the Taliban.57 He believed that his participation in the U.S.-funded LL.M. Program is what caused them to target him.

Ohio Northem has had other alumni get cross-wise with their governments after completing the LL.M. program in Democratic Governance and Rule of Law. One was threatened when soldiers appeared on her doorstep asking for her (she declined to identify herself and told them

55 KLEINFELD, supra note 14, at 139.
57 Email exchange between the student and the author (Sep. 2014) (on file with the author).
that the person they were seeking was not there). Another was forced to flee the country, and was granted political asylum in the U.S. In these cases, both of which occurred in African states, participation in the LL.M. program was not the direct cause of the targeting. Rather, the students, emboldened by their experience in the U.S., had made public statements critical of their governments, and suffered predictable reprisals. Nonetheless, these are examples of how preparing students to be agents of change may well place them in harm’s way.

V. CONCLUSION

While the role of education deserves more focus as a long-term rule of law strategy, it is difficult to fund and implement education reform projects, given the bias in favor of projects that provide short-term, quick-impact, and easily measurable results. A promising alternative is to send young legal professionals to the U.S. to study law, earn an LL.M. degree, and return to their home countries to promote the rule of law. Such students get not only the legal education, but also a cultural enmeshment experience that can contribute to an elevated vision for the legal system, including the legal education system, back home. Graduates of these programs are likely to become agents of change, with a personal investment in reform that will endure long after the foreign money and international consultants disappear.

The benefit of sending of students to U.S.-based LL.M. programs, which has been pursued with some success by the State Department and its Public Private Partnership for Justice Reform in Afghanistan, depends on a number of factors. For the program to be effective, it is essential that the students return to their home countries afterward, and that they assume the role of change-agent there, ideally throughout the rest of their careers. Of course, there is a possibility that sending the students back after exposure to America and American values will only put them in harm’s way. They may be viewed as a threat and targeted by a variety of forces both inside and outside the government. Moreover, fears of such consequences may prompt these students to overstay their student visas and file for asylum in the U.S., rather than return at the end of their U.S. studies. Such outcomes could frustrate any potential for them to be agents of change back home.

Notwithstanding these problems, if someone will fund the experience, there should be no shortage of applicants—the challenge then becomes one of screening for those most likely to fit the above requirements. The curriculum they get in the U.S. can be important, however, and relatively few schools are focused on providing a curriculum focused on rule of law promotion. Indeed American law schools’ pattern of viewing foreign

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58 Email from the student to the author (Jul. 4, 2014) (on file with the author).
students primarily as sources of revenue is sobering, as the students from developing countries, dependent on what limited donor support they may be able to find, are unlikely to look like attractive recruits to cash-strapped law schools in the U.S.

Hopefully, those funding rule of law reform will recognize the potential in funding students who can benefit from an American LL.M. and who can then leverage that education and experience in their home countries. The long-term potential is great, if funders can be persuaded to take the long view, if the right students can be recruited, and if an appropriate curriculum can be offered.