POSTGRADUATE PROGRAMS

Teaching foreign LLM students about US legal scholarship
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In recent years US law schools have welcomed an ever-increasing number of foreign-trained lawyers into their graduate law programs, enriching our communities and altering our conception of legal education. This influx has created responsibilities for those who teach foreign LLM students. In addition to the substantive subjects covered, we also have an obligation to let them know what is expected of them if they are to succeed in US law schools. Typically law schools respond to these needs by giving guided tours of the library and holding panel discussions or presentations on basic matters like exam preparations, outlining, case briefing, the Socratic method and the utility of study groups.

Unfortunately, we often neglect to address the most challenging task that faces these students. Soon after they arrive, many will be asked to write lengthy seminar papers that must meet the minimum standards of original legal scholarship. But foreign students, who come from a wide range of political, social, and educational backgrounds, may not understand the dominant forms of discourse between scholars and others in the US legal profession. Hence, many foreign students' papers are overly descriptive and insufficiently prescriptive. And nothing frustrates a teacher more than reading papers that spend an inordinate amount of time summarising vast areas of doctrine, and too little time proposing convincing solutions to the problems presented by incoherent or unjust doctrine.

There are three essential points about US legal scholarship that we should try to impart to foreign LLM students. First, most legal scholarship aims to be prescriptive and original. Second, there is disagreement within the legal community about current trends in legal scholarship. Third, student-scholars will explicitly or implicitly take a stand in the debates over legal scholarship.

Teachers should also be sensitive to the fact that the prescriptive stance demanded by US legal scholarship might make some foreign students uncomfortable. Students state that they do not feel qualified to criticise the judiciary's approach to a problem, or expert enough to propose how legal decision-makers should resolve a problem. They should be encouraged to overcome this feeling, whether it is rooted in modesty, insecurity or deference to authority.

An ongoing debate about the value, objectives, style and methodology of good scholarship exists in law school literature. A teacher need not summarise every aspect of the debate. It is sufficient to inform foreign students that the profession is deeply divided about what legal scholars should do and what should count as legal scholarship for the purposes of hiring and tenure decisions. One can then highlight the persistent complaints that much legal scholarship is not useful for practitioners and judges because it is impractical and too theoretical. Reviewing these common criticisms encourages students to look at their own work with a more critical eye and to question whether their work would incur the wrath of critics of legal scholarship.

A carefully guided discussion on an interesting legal issue may be a convenient vehicle to address the basics of legal scholarship. The authors next discuss whether the work is primarily prescriptive or descriptive. Finally, we explore the level of respect afforded different forms of legal writing within academic circles. The in-class legal scholarship demonstration does not present a complete survey of all types of legal writing, or create consensus on a definition of legal scholarship. But the demonstration has a more modest goal: to encourage foreign law students to think about the possible forms and purposes of US legal scholarship and to write better seminar papers.

There are only two possible objections to a session on legal scholarship for foreign LLM students. First, a school might be completely satisfied with its foreign students seminar papers. If your foreign students seem to be fully grasping the point of US legal scholarship without a special lecture on the subject, then no special session is necessary. The second objection is practical and depends on how a school's LLM programs are organised. It may not be clear where within the curriculum this type of lecture should be placed. A school may also have no occasion when an instructor is addressing only foreign LLM students.

There are two responses to this dilemma. First, the suggestions in this essay are appropriate for any seminar that requires a paper, whether the students are foreign or American. The second response is more critical. US law schools seem eager to compete with each other over the significant revenue that foreign LLM students generate. Such thinking is antithetical to the aims of higher education. Schools that require foreign students to write significant research papers have an obligation to teach them what is expected of such a project. At a minimum, we must educate foreign students about the prevalent forms of discourse in the legal academy. This entails instruction in the nature of US legal scholarship and unambiguous guidance as to what is expected of student-scholars. With such guidance, they will produce richer and more valuable scholarship and we will come closer to fulfilling the promise of global legal education.