

I am naturally all for Gary Horlick's argument. As you will know, I am very much in favour of an almost mandatory requirement of foreign languages, comparative law (and comparative living) for serious participation and a cosmopolitan approach in international dispute resolution (and there is a useful discussion by Nabil Antaki on Cultural Diversity and ADR practices in the world) in the new book on ADR in Business by Goldsmith et.al.). And that requires most of all to large countries, dominant or defensive and self-enclosed legal cultures where there is usually a surprise, often hostile, that international law is thought and practised differently from the way it is done back home. I have been dealing practically in such contexts and it is truly surprising to what extent "international law" is sometimes - in practice - played as if it were nothing else but a domestic law issue.

But Judge Guillaume's of the infusion of interdisciplinarity into the study of international law has made me think further of the issue of a rather formal, positivistic as compared to a "broad" interdisciplinary approach.

First, I am very much in favour in terms of understanding and explaining the way law - the legal process (in US and Rosalyn Higgins' terms) works by relying on a (necessarily less deep and specialist) use of other disciplines. It also makes the study of law more interesting - more fun if I am allowed to inject such a not altogether acceptable term - than if it is only taught as a quite dry play of normative texts. It helps communication with the non-legal users and addresses of legal rules. That is what I would call the descriptive and explanatory part of the study of international law. Law fulfills a number of social and economic function - both as regulatory and as transactional law. If one lives in complete isolation (as I always so Kelsen's world) from the way law works with and on its context, law sooner or later loses in reality and falls into desuetude - and societies dominated by exclusively formalistic approaches fall back in competitiveness, do not understand how law works and they lose the political legitimacy for the application of law (recent example: A French cour d'appel's language in a judgment that : they don't understand how making firing more easy can generate more jobs.

Second, and on the other hand, lawyers' work is not only descriptive and explanatory, but it is also "normative", i.e. a constant process of looking at authoritative legal-normative language to propose how in a given situation the law should be applied, usually, in all more difficult situations, with quite some difficulty, controversy and ambiguity. It is this process which Judge Guillaume presumably had in mind when he was criticising US international law approaches for "diluting" the normative function (and thus competence-skill) of the legal process. It is indeed not easy to understand rapidly how an explanation that a treaty or legislation is a result of an unsavoury political deal, how treaties are negotiated and then submitted with often not really truthful and transparent explanation to legislatures, how crude political and economic pressure plays a role would have an impact on the "normative" process of interpretation and application to the facts considered relevant for the application. This is why lawyers have always created distinctions "de lege ferenda": and "de lege lata" and tried to distinguish policy, moral and political arguments from purely "legal" arguments that are accepted in the legal process, e.g. arbitration, adjudication.

It seems to me that these distinctions are not easy; there is always an element of moral and political argumentation present; in terms of advocacy, I have always believed you need to persuade the right and left side of the brain: Propose a legal solution that is technically correct but before a background that highlights also the "justice" of the case. Arguing just justice appears professionally un-persuasive, but few tribunals and courts will be happy in making a decision that appears technically correct but leaves them with a bitter case. It seems to me also that there is an element of "fiction" that is necessary for the proper functioning of the legal process - e.g. that law is "found" and not "created".

There are two 1960s/70s books by a German scholar - Josef Esser - which I have found most persuasive, one on the development and evolution of law by gradual judicial jurisprudence from a comparative perspective, and one on the "Vorverstaendnis" - a pre-understanding close to bias with which legal texts are approached and applied. Regrettably, both books seem no longer available and not translated - which I think they would merit.

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