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Abi-Saab, G. M. (1960). Harvard and international law: foreign view. Bulletin of the Harvard International Law Club, 2(2), 57-60.

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George M. Abi-Saab\*

Situated in a truly international milieu, almost a United Nations in miniature, the Harvard Law School inevitably subjects a foreign student to a wide variety of experiences. Although such experiences and impressions are necessarily of a subjective nature, it is hoped that some of them will be sufficiently representative to be of some interest.

A recurrent remark by the United States students about foreign students who come to this law school is that they are too critical of American law and legal education. This is usually followed by a comparison between libraries, other facilities, and the average amount of study hours per week spent by students here and in other countries. Sometimes this critical attitude is characterized as ingratitude and is attributed to maladjustment, sour grapes, or sheer snobbishness.

I think this impression is rather unwarranted. It is true that foreign students are vocal in pointing out what they consider shortcomings, but this should not be taken to be their global judgment on the totality of their experience here. It is helpful to keep in mind that most of the foreign students have had intellectual rather than professional training. Intellectuals, by definition, suspect and criticize any status quo because they conceive as their role in society to seek and provide the necessary framework for improvement and progress rather than complimenting what has already been achieved. Thus, their criticism by no means indicates that they do not appreciate these achievements, or that they generalize their criticism of certain aspects of the system to the system as a whole. Taking this into consideration, foreign students' opinions, though critical, can be considered as a positive contribution toward the better understanding of the system by its insiders.

On the other hand, I think that most of the foreign students, at least the civilists, undergo a drastic and worthwhile change in their attitude toward the law as a result of their experience here though this may not be recognized by them until they return home. The piecemeal approach of the common law is not appealing to students trained in theory at first sight. However, slowly but surely, a very healthy degree of skepticism develops regarding sweeping generalizations and secondary

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sources of law. The resort to primary sources and matching doctrine with them becomes an integral part of their legal thinking process. Also, in the application of legal rules, instead of following their usual pattern of interpretation, going from the rule downward to the specific situation, they resort more and more to the process of characterization, defining the issues in a situation, then moving upward with them to the rule. Finally, the unquestioning and blind respect of the norms and the reasons given for them by the legislator dwindles under the influence of a system of legal education that emphasizes alternative solutions and then a pragmatic choice from among them. As a matter of fact, the very concept of the legislator, that abstract maker of the Law regardless of its real source, becomes too simple and divorced from real life in their minds. In a word, they are brought down to earth.

This impact is healthy, but there are other aspects of the American approach which, I feel, give grounds for criticism. I will not deal here with the study of municipal law because the subject is unfamiliar to me, and also because those who come to study American law are in no position to say how it should be communicated to them. In the field of international law it is a fact that the Harvard Law School has been, and still is, the leading institution in the United States. The new International Legal Studies Program cannot be described as anything less than impressive. The faculty, the library, and the building devoted to it, and the wide scope of courses and seminars, bear a clear testimony to that effect. As it is, it can be considered one of the best places in the world to study the subject. This does not mean that there is no room for improvement.

The grounds for criticism are, basically, the lack of an adequate theoretical approach and the presence of some provincial attitudes toward international law. The two are intimately related. The absence of a theoretical approach leads to a treatment of international law as if it were a branch of American municipal law. This might also lead to the identification of international law with municipal law to more than the desirable degree, sometimes to a misleading extent, and also to an unconscious attempt to use international law as a national policy-promoting rather than a harmonizing system between sovereign and independent states.

It is understandable that the system of legal education here is professional and empirical, but I think that the approach followed in any study should be adjusted, at least to some extent, to the subject matter of the study. International law from its inception (since Grotius), has been predominantly theoretical. This is basically a functional approach. Lacking the necessary physical organs of power, it tries to achieve by reasoning and logical construction what it is unable to do through its power of enforcement.

Moreover, in spite of the fact that any system of law has structural and functional aspects, structure could be neglected to some

extent in municipal systems in favor of function, as it is more or less similar in all municipal systems, at least as to its effect on the functional aspects. This is not the case in international law, however. Its structural aspects are very different from those of municipal systems, and, therefore, they have to be given more attention, even if we are interested in only the functional aspects. The reason is that the way a component part of a system functions in a certain situation is determined to a great extent by its position in the system as a whole, and by the structure of that system. This is why a rule of a municipal system might have completely different results in the international system.

Finally, international law, being a system that governs the relation between sovereign States, cannot be identified with any one municipal system of law. Simply having an image of it as being like one's own municipal system is not enough to make it function that way. The functioning of international law depends on the sum total of these national images and their interaction. This is the animus of international law. Most states have a distinct image of international law, that is not identical with their system of municipal law, but is predominantly influenced by doctrinal and historical patterns of international law. This means simply that one does not know international law until he knows the other presentations of it as well as his own. This is why foreign students come to the United States—to learn the American approach. But this is also why more of the theoretical approach should be offered here, especially to American students.

I am not trying to say that the approach adopted here should be changed, but that it should be broadened. Under the International Legal Studies Program twenty-five seminars and courses are offered. Surely it is possible to offer one more course or seminar on the general theory of international law. Much could be achieved in this respect if exchanges were to be extended from the student to the teacher level. Some law schools have a tradition of having a visiting professor teach every year. The Law School of the University of Michigan, for example, reserves the course on Comparative Law to the Visiting Professor. Thus it has benefitted from such distinguished jurists as Hamson, Gorla, and Ulmann. The Harvard Economics Department has the same tradition; in recent years it has invited Tinbergen, Harrod, and Theil. The Law School has had the tradition of having a professor from a British Commonwealth nation each year. This is very good; it would also be beneficial to have a Visiting Professor of International Law every year, if not for the whole academic year or for a semester, at least for a series of lectures. One need only mention the names of Kelsen and Kunz to realize the amount of good that can come from such an interchange between the American and continental internationalists.

I began with the idea of presenting some impressions of my experience here, but have ended with a critique. This, however, could not be avoided. It is very hard to separate description from evaluation. Moreover, criticism, after many years of legal study, almost comes

naturally. I proceeded on the assumption that discussion is always possible in a community of intelligent people, as long as the premisses are clear. This brings me to a very important aspect of the experience of foreign students here. The fact that a large number of highly intelligent people are placed in close contact both in and out of class has a very stimulating effect on each's intellectual development. Moreover, as the students come from the four corners of the world, one learns a lot about other countries and places in a direct way. But the most important aspect of this close contact is the understanding that ensues from it. One begins by evaluating the opinions of other people according to their appeal to him. But the more one knows the others and the more they reveal of their structure of values and system of thought, the more one understands their opinions and evaluates them according to their consistency with the initial doctrines and assumptions of the persons who maintain them. This understanding does not lead necessarily to agreement, but definitely leads the discussion to a higher level, to the level of basic doctrines and assumptions. It also makes for tolerance, for one learns that much of what he accepts is not as apparent as he thought it to be and depends largely on value judgment.

It is only in such an atmosphere, in an academy in the classic sense of the word, that it possible to reach not only understanding and mutual esteem, but also positive personal and intellectual camaraderie and friendship between the existentialist esthete, the liberal Christian, and the utilitarian socialist. If this were the only contribution of the International Legal Studies Program at Harvard, and it is by no means so, it still makes it a very worthwhile experience, and justifies the attachment and the pleasant memories that one treasures from it.