

DOMESTIC AND INTERNATIONAL LEGAL CHALLENGES

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I want to visit with you about global ethics in a manner which involves a story. Let's say we have a minister of justice who appears at the Texas Tech School of Law from a country that has been war-torn. I know that's hard for you all to imagine, that there is a country that may have some trouble with a war going on, but country is looking at rebuilding their entire judicial system and the minister comes here to find out, because Texas Tech School of law is a top ethics school, she wants to know how we do things here. She wants to learn about the structure and regulation of the legal profession in the United States because in her country there really are no lawyers and therefore there is no system for educating and regulating lawyers. Any disputes that they may have in the rural areas, they discuss them in village councils and if you're in the urban areas, they're settled by political officials who are sometimes influenced by bribes.

Unfortunately, this situation is not limited to war-torn countries, it's everywhere. But this country's contracts and other legal documents are often drafted by college graduates with no legal training in criminal law, it's based on custom and the police have the authority to impose jail sentences. So, she has questions for us when she arrives here. Her first question is, 'should my country even have lawyers?' She notices that American lawyers are much criticized and people say they're greedy and stir up trouble. What are the reasons it might be good to have lawyers? Well, one response might be, 'ma'am you're probably right, we don't need lawyers' and you could say, 'the government's too big in this country and it's over-regulated and lawyers promote a lot of that regulation, because they make money from drawing up regulations, enforcing regulations.' You could also tell the minister that lawyers are too expensive, nobody can really afford a lawyer anyway. So why would you?

I like to tell folks all the time that you get more justice being wealthy and guilty than you do being innocent and poor. If you can't afford a lawyer, (people used to need lawyers to find out information, to draft up documents) now, with the internet, you can find a lot of that stuff online. Whether or not it's accurate, that's another story. But you can certainly gather information and educate yourself if you have access to the internet. Then there's the argument that maybe it would just be better if people made their own claims against other folks, and they

responded to claims that people made against them themselves as opposed to getting lawyers involved, because when lawyers get involved, things get much more complicated. You take a very simple situation and two people might be able to work it out. You involve lawyers, it becomes much more convoluted, and it takes a much greater amount of time to get that resolved. So yes there's an argument that we don't need lawyers. But the response to that is, you really can't have a justice system without lawyers because it's too complex for folks to navigate through by themselves. They don't understand the ramifications.

I'll give you an example. Here in the U.S. we could have someone who may have been charged with possession of marijuana. Without a lawyer they could say "yes, I'll take my one day in jail and move on," never thinking that it'll have any ramifications later. That young person then comes back to go to school at Texas Tech University and applies for financial aid. Well because they now have a conviction for possession of marijuana they're not eligible to receive any federal financial aid. Because they're not a lawyer, they're not trained in those things. They don't realize that just pleading guilty for that day carries greater ramifications. So yes they would need someone who was trained to be able to explain to them, someone to say "no, you don't need to do that, because it will hamper you later on."

People in businesses need lawyers to give them advice and help them comply with the law. It's not self-executing. You have to actually know how to navigate through these things. Legislatures have made the law, but if no one reads it, or has helped people understand it, then the law doesn't have any effect. So you have no law if you don't understand what the law is and are able to comply with it. You just have what people thought was going to be a good idea. And because you don't know what it is, it really is ineffective. People need lawyers to be able to assert their legal rights and challenge behavior by other people. Without access to interpretations of legal rights, there'd be less accountability. Landlords, merchants, police - no one would be held accountable. People could do whatever they wanted to do and there would be no way to have or seek redress against those folks. Nobody would have any oversight over what's going on.

So, you're talking to that minister, explaining to her that this system that we have here holds people accountable for their actions. And in holding people accountable, you then have a system that has some credibility. And that credibility feeds up from the lowest person, all the way up to the highest minister. Everybody is treated the same under this system. Lawyers play a fundamental part in constitutional

democracy. For people to trust the government, they have to have access to justice. In order for your government to have credibility, people have to believe that your government is just. If your justice system is not on point, people will have questions about your justice system which in turn will cause them to have questions about your entire government.

The minister asks, "If we have lawyers, how should we train them?" She's travelled to other countries. She's seen that in other countries they have apprenticeships. Here we have universities that educate lawyers, so she's trying to figure out which is going to be better for her country. If you have an apprenticeship, the benefit is that it actually gets you practicing law initially, right off the bat. You apprentice with someone who is licensed or a professional and you learn the profession from that individual. Folks who want to go to university or who are opposed to legal education say that that education takes too long and is expensive. Then there's the question about whether or not you can learn how to practice law at a university. A university teaches us to think critically, which is what you want as a lawyer. You want someone who thinks critically about the issues you present them with. University training also helps students develop skills through experiential learning. Here at the Texas Tech School of Law, we have clinics that students can participate in and they get hands-on experience, much like you would in an apprenticeship. You get experience representing clients which will help you be prepared to practice law when you leave. The other benefit to a university education is that at the end of this fine, three-year time period that you spent here, you get to take an exam to determine whether or not you have the minimal, basic skills to be able to practice law. There's a standard that you have to meet, as opposed to an apprenticeship where there may or may not be a standard. You don't want to just unleash folks onto the public who may not be qualified.

Next the minister asks, "Should we have a licensing system?" She's been to some places where lawyers have to have a license. She's also been to some countries where you apprentice for a certain amount of time and you're licensed or you are brought into that profession. And, if we're going to have a licensing system, what should we require? This brings in the argument that there should be a licensing system. The public needs protection from dishonest, greedy or incompetent people who would pretend to be experts. You need to protect the public by making sure that the folks who are going to be representing the general public are licensed. If you're going to take someone's money, you want to give your money to someone who has

actually demonstrated the minimum, basic standards in order to go forward and represent you properly. By requiring a license, you then require a gatekeeper to make sure there is a certain level of knowledge and skill that this person has attained in order to move forward.

People can say that the system in the US doesn't do a very good job of quality control because this same system that requires a license also has encountered many lawyers who are greedy, dishonest and incompetent. The difference is, if you have a licensing agency, when you run across those people, you can deal with them, and if they continue in that behavior, there are punishments available. If you don't have a licensing system, what do you do with someone who is greedy, dishonest and cheating the public? If you use that licensing system, who should be barred from being licensed to practice law? There are places where if you commit certain crimes, you're automatically disqualified from being able to seek a license. For other crimes you can actually have a hearing, request an opportunity to explain the situation and still possibly be allowed to practice. Should you disallow people who show evidence of dishonesty? Should it be on a graded scale or a curve? If you are very dishonest, you don't get to practice, but if you're just a little dishonest you do? If you're not intelligent enough to get through law school and pass the exam, should we license you anyway?

Those are questions the minister is going to have to answer when she returns home. Should your country license everybody? There's one argument that says you should license everybody because there's no reason to limit the number of attorneys that you have. This way you make sure that there's plenty of availability and options for the public. Another argument says that you should limit licensing because it means that you're going to have quality control and only the best will get through and get limited or get licensed. There's only so much legal business, you don't want to overflow the market with attorneys.

And the last thing, how should you have judges selected? Most judges in the US are selected by an election process whereby the judge has to campaign and solicit funds from the very people that will then appear in his or her court as an attorney. Some people have an issue with that. How fair or unbiased can you be when the person you're having a discussion with, that you're going to be making a ruling on their case, is the person who donated money to your campaign? Federal judges and other judges in others states are actually appointed for a lifetime, which removes that onus of having

to go out every year or every four years and campaign and raise money. Those folks are appointed, they're away from the influence and they can then just focus on being fair and impartial. These are some of the things you should consider when looking to establish a new judicial system in the country where the minister is from.