Bilingual Legal Education in the United States: The Deficient Status Quo and a Call for More Action

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"The limits of my language are the limits of my world."—Ludwig Wittgenstein, Tractatus Logico-Philosophicus (Proposition 5.6 (1922))

1 Introduction: The American Problem with English as a Global Legal Language

It is a truism that law is inextricably tied to language since it operates largely through (written or spoken) words. To understand law, one must understand its language. As a result, it is crucial in which language law is expressed.

On a global level, today this language is predominantly English. Its predominance is mainly the result of three consecutive historical developments. Through the vast expansion of the British Empire, a large segment of the world's jurisdictions adopted English as their primary official language.[1] Since the middle of the twentieth century, US-American capital and business came to dominate the world economy. And since the late twentieth century, US-American and British law firms have shaped global legal practice.[2]

This Report focuses on the United States proper and thus excludes Puerto Rico. There, the main language of instruction is of course Spanish. Most lawyers, however, speak English as well and can thus be considered bilingual, albeit to varying degrees.

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[1] This is true for nearly 90 countries, i.e., almost half of the world's jurisdictions, Strong et al. (2016) 5 (fn. 8).

[2] See Reimann (2014).

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For US-American lawyers, this creates a peculiar situation. On the one hand, the global predominance of legal English gives them a significant professional advantage: their native language is the lingua franca of the world today.[3] On the other hand, it dramatically diminishes their need to master any other tongue since they can get away with English much, if not most, of the time. Thus, as Judge Posner noted (in a case turning on potentially different meanings in French and English), "most Americans, even when otherwise educated, make little investment in acquiring even a reading knowledge of a foreign language."[4]

Posner's statement also describes, by and large, the status quo in US-American legal education. As we will see, efforts to train students in foreign legal languages play a decidedly marginal role (infra. Sect. 2).[5] This is true despite the fact that acquisition of foreign language capabilities does actually have significant professional and educational benefits (Sect. 3). If US law schools wanted to make greater efforts in foreign language training, they could draw on a significant talent pool, both among their faculty and their student population (Sect. 4). As the Conclusion (Sect. 5) postulates, US law schools actually *should* make greater efforts, albeit within reasonable limits - not only to let more students reap the benefits of exposure to foreign languages, but also to counter the current political trend towards nationalism and isolationism.

At the outset, a clarification is in order. "Bilingual legal education" can be understood in various ways. Strictly speaking, it means teaching full fluency in two legal languages. Yet, this is so difficult to accomplish that it remains beyond the reach of the vast majority of students. This Report construes the term more broadly. It also includes the teaching of modest foreign language skills which most of students can acquire with reasonable effort.

2 The Status Quo: The Marginal Role of Foreign Language Training

Assessing the status quo of foreign language teaching in US-American legal education is difficult because comprehensive data are hard to come by. There are over 200 accredited law schools in the United States. They are not part of the federal system of government. Some are chartered under the laws of the various states and thus public, many are operated as private organizations. Thus, they function in a largely decentralized fashion. They are, however, connected through two nationwide organizations. First, the American Bar Association (ABA) supervises their

[3] Of course, there are many varieties of English, particularly in the law; even in English, legal terms often have somewhat different meaning.

[4] Bodum v. La Cafetière, Inc., 621 F.3d 623, 633 (7th Cir. 2010) (Posner, J., concurring).

[5] For a collection of essays on bilingual legal education in countries where the population speaks more than one language, see Arzoz (2012), reviewed by Strong (2014), pp. 358–360.

compliance with its accreditation standards; yet, since foreign language teaching is not a requirement, the ABA does not collect information about it. Second, the majority of schools are members of the Association of American Law Schools (AALS); that organization, however, does not systematically gather data about foreign language teaching either. As a result, the following descriptions are based on information obtained primarily from the individual law schools' websites by the research staff of the University of Michigan Law Library; these data were gathered in July of 2017. While this information is thus not necessarily fully comprehensive, it does provide a fairly reliable picture of the situation.[6]

This picture shows that foreign language teaching in US law schools is currently quite rare. To be sure, it is no longer true that, as Gloria Sanchez wrote over 20 years ago, there are no foreign language courses.[7] Today, there are a variety of curricular offerings introducing US law students to law in a foreign language, and a few law schools have made serious efforts in that direction.[8] Still, on the whole, exposure to law in a language other than English plays a distinctly marginal role.

The existing offerings can be divided into three groups: dual degree programs (1), individual foreign language courses at US law schools (2), and opportunities to study or work abroad (3).

2.1 Dual Degree Programs: True Bilingualism?

More than 30 law schools claim to offer joint degree programs with foreign institutions, sometimes in several countries. In most of these programs, US law students obtain the basic law degree in the respective foreign jurisdiction in addition to their home institution's JD; in some, they spent a year abroad and receive the more limited LLM degree. The total number of these law schools - about one in seven of those accredited by the ABA—looks more impressive than it really is in the context of foreign language teaching. While almost all these joint programs are with institutions in non-English speaking countries, many do not require full fluency in, and some not even significant command of, the partner country's vernacular. In addition, while enrolment numbers are hard to come by, indications are that only a very small number of students actually pursue a joint degree with a foreign university.[9] As a result, these programs immerse only a tiny fraction of US law students in a foreign language.

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[6] A list of schools offering courses in foreign languages is also provided by Strong (2014), p. 355 (fn. 6) though it is not, and does not claim to be, complete.

[7] Sanchez (1997), p. 639.

[8] See Rathod (2013), p. 866 (fn. 2).

[9] Again, concrete data are difficult to find. The only information that Columbia Law School, which has dual degree programs both with the University of Paris I (Sorbonne) and the Paris Institute of Political Studies (Sciences Po), could provide was that "at least a few students are going to the Sorbonne every year" (telephone conversation between Virginia Neisler, University of Michigan

Still, where they do require fluency, these programs provide significant exposure to the law of another country in the vernacular. This does not necessarily lead to full-fledged bilingualism in the sense that students become as capable in the foreign tongue as they are in English, especially in the legal and business context. But they can be expected to reach a level of proficiency that enables them to perform professional work in at least one foreign language.

2.2 *Courses at US Law Schools: Degrees of Immersion*

Foreign language courses in US law schools have a surprisingly long history. The Louisiana Law Center offered a course in Legal French as early as in 1930s and 1940s[10] (and does so again today); at the University of Michigan, Konrad Zweigert taught an introductory course in German in 1956/57 on an ad hoc basis;[11] Vanderbilt University Law School began a course in Legal (and Business) Spanish in 1976[12] which, however, seems to have been discontinued; and Herbert Bernstein taught a course in legal German at Duke in the 1990s. Still, for the time being such courses were extremely rare exceptions. They became somewhat more frequent only around the turn of the century in the wake of globalization.

Today, of the accredited law schools in the United States, more than 40 claim on their websites to offer courses in one or more foreign languages—about one in five institutions. This is a significant number, although one must be careful not to overrate it. First, it is still a distinct (ca. 20%) minority. Second, it is unclear how many of the courses advertised are actually taught on a regular basis. Third, as with dual degree programs, the number of participating students seems to be quite small.[13] On the whole, it is fair to assume that, at the very most, a few hundred out of more than 100,000 US law students in the United States ever take a course in a foreign legal language.

The design and coverage of the courses varies. Most of them focus directly on foreign (legal) *language* training for American lawyers; these courses may or may not require preexisting language competence. Where they introduce students also to aspects of the respective foreign legal systems, they do so more or less incidentally

Law School Library, and Columbia representative of the dual degree programs, December 14, 2017). As director of the University of Pittsburgh Law School's dual degree program with the University of Paris I, Vivian Grosswald Curran reported that is not easy to find students able and willing to participate; e-mail from Vivian Grosswald Curran, October 9, 2017.

[10] Ward (1996), p. 1314.

[11] Conard and Stein (1957).

[12] Lacey and Garcia Reyes (1981).

[13] The number of students enrolled in the various foreign language courses at the University of Pittsburgh, for example, has ranged from 3 to 13; statistics provided by Vivian Curran to the author per e-mail, October 9, 2017; see also Crank and Loughrin-Sacco (2001), p. 203 (Boise State University; never more than 12 students).

and in order to provide a cultural context.[14] A few courses, however, are designed as introductions to the basic features of foreign *legal systems* in a foreign language.[15] Here, students can acquire a deeper understanding of the context and culture from which the (legal) language derives its meaning. In addition, there are a few specialized subjects taught in foreign languages.[16] Occasionally, instructors have also combined courses about domestic subjects with a foreign language component. Examples include teaching a regular course in immigration law or criminal justice in English with the option of taking an additional credit in Spanish; this allows students to prepare for working with clients who cannot effectively communicate in English.[17]

2.3 *Going Overseas: Studying and Working Abroad*

Many US law schools run summer programs abroad, usually in attractive locations and often in non-English speaking environments, sometimes providing more touristic than educational value. The majority of these programs are taught exclusively to US law students and entirely in English. A notable exception is the Inter-American Summer Program offered by the University of the Pacific McGeorge School of Law since 2009 (jointly with the Denver Sturm School of Law since 2011) in Guatemala: students come from both the United States and the host country, and instruction is in both English and Spanish.

A large number of American law schools also offer semester abroad programs in partnership with foreign universities, often in multiple venues (Columbia Law School lists 20).[18] This provides US students with plenty of opportunity to study in a non-English speaking country. Yet, it does not necessarily involve foreign legal language training either. In many of these semester abroad programs, the local coursework is all in English. In others, however, students are required to take classes, in whole or in part, in the local language. They must therefore be generally fluent

[14] See, e.g., Curran (1993).

[15] E.g., the Introduction to the Continental Legal Systems taught in Spanish at the Washington College of Law at American University, see Rathod (2013), p. 899 (fn. 137).

[16] An example is Vivian Grosswald Curran's course *L'arbitrage international* which is taught in French at the University of Pittsburgh Law School; e-mail from Vivian Grosswald Curran, October 9, 2017.

[17] Rathod (2014) (course at American University Washington College of Law); Crank. Loughrin (2001). See also Dutton et al. (2013), p. 43. Law clinics also sometimes conduct meetings in the clients' language, especially in Spanish, see Rathod (2013).

[18] According to the various websites of US law schools, students can spend a semester abroad in a very broad of range of countries, including Argentina, Belgium, Brazil, China, France, Guatemala, Germany, Israel, Italy, Japan, Mexico, the Netherlands, Norway, Sweden, Spain, Taiwan as well as (at least linguistically foreign) Puerto Rico.

when they arrive and can then acquire knowledge of the respective *legal* terminology.

Finally, there are many opportunities for externships in foreign countries. But again, in many cases they do not require fluency in the local language, either because the placement is an English-speaking jurisdiction or because the host institution works in English, as is true for most international governmental or non-governmental organizations. Yet, where US students do work in a foreign language, externships provide valuable opportunities to acquire legal language fluency and, at the same time, to gain an understanding of the respective foreign legal culture.

Of course, if a student has mastered a foreign language, and especially the legal terminology, his or her options for study or externships in other countries are much increased. An ideal combination is thus to study a foreign legal language at home and then to perfect it by immersing oneself in it abroad.

2.4 Languages Covered: Towards a More Global Range

The scope of languages covered by courses in US law schools remains somewhat Euro-centric but there is a trend towards a more global range.

By far the most frequently taught foreign (legal) language in US law schools and programs is Spanish, a global language in its own right. This is unsurprising. By now, Hispanics comprise nearly one fifth of the US population; the United States borders on a country with nearly 130 million Spanish speakers; and business ties with Latin America are extremely important.

Language instruction is also offered in the other two most prominent Western European languages, i.e., French and German, and sometimes in Italian, In addition, today some law schools have classes in languages from other regions of the world, including Arabic, Chinese (Mandarin), and Hebrew.

2.5 Teaching Materials: The Predominance of Spanish

The published teaching materials both reflect and fortify the primacy of Spanish in the language programs of US law schools. In recent years, three books were published for use by teachers of Spanish as a foreign legal language. They vary in objective and character. Victoria Ortiz, Espanol para Abogados (2013), is written in Spanish and aims primarily at the acquisition of Spanish legal terminology. Katia Fach Gómez, El Derecho en Espanol, Terminologia y Habilidades Juridicas para un Ejercicio Legal Exitoso (2014), is also written exclusively in Spanish but proffers more of an introduction to the study and practice of law in Spanish speaking countries as well as to several substantive areas of law. Finally, S.I. Strong, Katia Fach Gómez and Laura Carballo Piñeiro, Comparative Law for Spanish-English

Speaking Lawyers, Derecho Comparado para abogados anglo- e hispanoparlantes (2016), provides a bi-lingual and comparative perspective on key aspects of the Anglo-American and civil law systems in the Hispanic tradition, such as the legal, business, and social cultures, sources of law, select topics of substantive and procedural law, and various "practical issues."

There is also a textbook for teaching legal French: Vivian Curran, Learning French through the Law, A Comparative Treatment of Terms in a Legal Context (1996). Its goal is to make students rapidly reach considerable fluency but also to convey cultural information and to introduce students to aspects of French society.

Beyond these four books covering Spanish and French there are no pertinent publications. The market for teaching materials involving other languages, it seems, is just too small. Thus instructors of legal Arabic, Chinese, German, Italian or Hebrew are on their own. This is in stark contrast to the abundance of teaching materials in English designed for instruction in non-English speaking countries; the market for such materials is essentially global and thus huge.

3 The Benefits: Three Reasons to Teach Law in a Foreign Language

In the last 25 years, the benefits of studying law in a foreign language have been explored quite extensively in US-American legal scholarship.[19] They can be grouped in three categories. The advantage that most immediately comes to mind is directly professional: a lawyer who can work in a foreign language can better attract and communicate with non-English speaking clients—of which there are many not only abroad but also in the United States themselves (1). Beyond that, learning law in a foreign language is an opportunity to acquire sensitivity to foreign cultures—an important professional asset in its own right, particularly in a global environment (2). Finally, there is reason to believe that studying foreign languages is generally good brain training—especially for lawyers (3).[20]

[19] The most thorough discussion is Rathod (2013). This section draws heavily on that article.

[20] To these benefits for US-American law students as individuals, Rathod adds a systemic dimension: bilingual lawyers "will transform and invigorate interactions between attorneys and limited English proficiency (LEP) clients and, more broadly, among attorneys, the parties to a proceeding, and the legal decision makers," Rathod (2013), p. 863. He then explores this systemic dimension in greater detail, id. 890–898.

3.1 Working in a Foreign Language: Clients with Insufficient English

Being able to work in a foreign language generates career advantages (Sect. 3.1.1), avoids misunderstandings (Sect. 3.1.2), and helps to provide access to justice, to protect client dignity, and arguably even to fulfill ethical obligations (Sect. 3.1.3).

3.1.1 Career Advantages

For an American lawyer, the ability to work in a foreign language is, to put it bluntly, good for his or her career and business. It is easy to see why: today, a growing number of attorneys have to represent clients whose native language is not English. This is most obvious in the international context: many US lawyers now work across international boundaries and thus with clients or colleagues from non-English speaking jurisdictions.[21] But it is also true on the purely domestic level: American society has long been, and remains, multilingual, and almost 10% of the US population does not "speak English well."[22]

It is true, of course, that many of these clients, both abroad and at home, will have some command of English. Where that command extends to the legal and business context, as in the case of many Western European lawyers and business people, the American lawyer will be able to work in English without much trouble. Even in that case, however, an understanding of the respective foreign language will help to avoid misunderstandings (see infra. Sect. 3.1.2). Where the foreign party's command is poor, the American lawyer will have to communicate at least in part in the respective foreign tongue. Of course, he or she can, and may even have to, employ a translator, but that is merely a second best, especially if he or she is not versed in the respective legal and business terminology. In either case, command of the foreign parties' language is a distinct professional advantage, even if only because "[c]lients *like* it when their lawyer speaks [their] language."[23]

It is therefore not surprising that in the United States, lawyers with foreign language skills appear to be in growing demand.[24] To be sure, the strength of their market advantage depends on their field of work. It is especially great in international

[21] Note that here, they compete with foreign lawyers whose command of English is usually very good—and often better than the American lawyers' command of the respective foreign language.

[22] According to a 2011 census, that is estimated to be true for 8.7% of the US population, see Language Spoke at Home, U.S. Census Bureau (2011), quoted by Rathod (2013), p. 869. That amounts to about 30 million people—almost equivalent to the population of all of Canada.

[23] Acello (2013).

[24] Anon (2009); Volkert (2013); see Crank and Loughrin-Sacco (2001) (for the special context of criminal justice work); Curran (1993), p. 605.

practice,[25] particularly with Asia and Latin America, as well as in immigration and other public interest work[26] but much smaller, e.g., in the purely domestic commercial context. On the whole, attorneys with foreign language capabilities help firms to attract clients who are not native English speakers, and these clients constitute a very sizeable pool.

For academics, command of a foreign language and its legal terminology opens up avenues of comparative research. It is true that a lot of foreign legal material is now available in English, but serious, in-depth, comparative study still requires access to foreign law in the vernacular.

3.1.2 Avoiding Misunderstandings

As every international lawyer (and every comparative law scholar) knows, legal terms often have very specific meanings which may differ from one language to another.[27] Thus working across linguistic boundaries is rife with opportunities for misunderstanding which are mildly embarrassing at best and catastrophic for client interests at worst. Avoiding them requires understanding the languages involved. How deep that understanding must be depends on the problem.

Sometimes the problem is simply that literal translations are badly misleading, even among Western languages: *jurisprudence* means case law in France but (something like) legal theory in England; a *notario* is a highly qualified legal professional with a quasi-public office in Mexico (similar to a *notaire* in France, a *Notar* in Germany, etc.) but a legally untrained person performing essentially clerical functions in the United States; and a *regulation* under EU law denotes legislation directly applicable in the member states while it is an administrative rule in many domestic legal systems.[28] To avoid such—rather obvious—pitfalls, it is normally sufficient to master the respective legal *terminologies* which can be accomplished in a foreign legal language course.

Other terms translate more directly but their meaning is still highly context specific—they sound alike but still do not mean exactly the same. An Italian *contratto* does not require consideration while an English *contract* normally does;

[25] Various international governmental organizations have expressed their interest in a greater number of bilingual lawyers, see Strong (2014), p. 354 (with further references).

[26] See Volkert (2013); Anon (2008).

[27] Of course, this is often true with non-legal terms as well, as illustrated by the well-known contract case of Frigaliment Importing Co. v. B.N.S. International Sales Corp., 190 F.Supp. 116 (S.D.N.Y. 1960); see the discussion by Sanchez (1997), pp. 663–664.

[28] For another striking example (English *investment* v. Spanish *inversion*), see Sanchez (1997), pp. 662–663. Terms can have different meanings even where legal systems share a common language: "judicial review" in the United States usually means constitutional scrutiny of legislation, in England, it commonly means review of administrative action. In Germany, *Verfügung* means a legal act affecting private property rights; in Switzerland, it can also mean an administrative decision (for which the term in German is *Verwaltungsakt*).

the office of the Argentine *Presidente (de la Nacion)* is very different from that of the German *(Bundes)Präsident*; and in France, labor law (*droit du travail*) encompasses individual employment relationships while in the United States, it does not. In fact, some terms are so particular to certain legal environments that they cannot be effectively translated at all, as is the case for *amparo*, *Obligation* or *Conseil d'Etat*. Handling these kinds of difficulties presupposes more than just knowledge of legal terminology. It requires an understanding of the respective foreign *legal system* and can thus only be acquired in an introduction to that system, preferably in the vernacular.

Finally, some terms are so deeply rooted in culture—think of *due process* in Anglo-American English, *Rechtsstaat* in German or *li* in Chinese—that they can be grasped only by someone with a thorough understanding of the respective tradition. Such an understanding requires deep immersion in the foreign legal and social environment. This, in turn, almost invariably requires studying, working or even living in the respective foreign country for a substantial period of time.

3.1.3 Access to Justice, Client Dignity, and Professional Obligations

The ability to communicate with clients who do not have a full command of English is not only a career advantage and a tool to avoid misunderstandings, it also promotes access to justice. It is a widely recognized problem that the nearly 10% of the American population with little or no command of English face particularly great difficulties in a legal system operating overwhelmingly in that language.[29] As a result, they are in dire need of legal assistance and thus of American lawyers with whom they can effectively communicate. This is especially true because limited English capability is strongly related to recent immigrant status and low socioeconomic position as well as to race. The majority of people in this category are poor and poorly educated; thus they already have extremely limited access to justice. As a result, the need for American lawyers with foreign language skills is particularly great in areas like immigration, employment, poverty, and criminal law.[30]

American scholars have also justly pointed out that communicating with a client in his or her own (native) language creates a human connection and avoids degradation. It is a sign of "respect for the individuality of the interlocutor and an acknowledgment of her basic human dignity."[31] A person's language is an important part of his or her identity. Ignoring it "threatens a client's autonomy."[32] In particular,

[29] See Standing Committee on Legal Aid (2012); Dutton et al. (2013), pp. 22–23 (also noting that there is a considerable body of constitutional, statutory and regulatory law on access to courts in the United States); Uyehara (2003), pp. 544–557.

[30] For a fuller discussion of these issues, see Ahmed (2007).

[31] Rathod (2013), p. 885.

[32] Ahmed (2007), p. 1024.

it can severely diminish the client's power to make decisions, to enforce rights or invoke defenses.

There is even an argument that lawyers have a legal duty effectively to address language difficulties of clients without a full command of English. Such a duty can arguably be found in the Rules of Professional Conduct that govern lawyer-client relationships in the United States.[33] While these rules do not specifically address language issues, they do require lawyers to represent their clients competently, i.e., with the requisite skill and diligence, as well as to ensure reasonable communication with their clients.[34] From these duties, several scholars have convincingly derived an obligation for lawyers to bridge the gap between English and their client's language.[35] To be sure, this does not require that the lawyer command the client's (foreign) language, though it will greatly help if he or she does. But it does require that the lawyer be aware of translation and communication pitfalls so that he or she can take the necessary steps to avoid them. That, in turn, is much easier for someone who has experience with a foreign language.

3.2 Acquiring Cultural Awareness: Foreign Mindsets

The intimate connection between language, law, and culture has been well-known at least since Friedrich Carl von Savigny propagated it as a foundational idea for his Historical School of Law two centuries ago.[36] It is not only a standard topic in comparative law[37] but has also been much discussed by advocates of multilingual legal education in the United States.[38] The cultural awareness students can acquire by experiencing law in a foreign language has three main dimensions: access to a particular foreign (legal) culture (infra. Sect. 3.2.1), sensitivity regarding cultural differences generally (Sect. 3.2.2), and, as a beneficial side-effect, better understanding of one's own legal culture (Sect. 3.2.3.)[39]

[33] While each state has its own set of rules, they are largely based on the American Bar Association's Model Rules of Professional Conduct (1983). In the United States, such rules are known as "professional ethics." The term is somewhat misleading because the rules are actually legal in character; they are enforced by the respective bar associations through a variety of sanctions including disbarment.

[34] See American Bar Association (1983), Rules 1.1., 1.3., and 1.4.

[35] Ahmed (2007), pp. 1019–1024; Rathod (2013), pp. 886–889; Sanchez (1997), p. 641.

[36] von Savigny (1814), pp. 8–16; von Savigny (1831), pp. 24–31. Of course, the intimate connection between law and culture had already been discussed by Montesqieu (1748); and the intimate connection between language, thought, and culture had been pointed out by Herder (1784–1790).

[37] See Curran (2019), pp. 681–709.

[38] See, e.g., Curran (2019); Sanchez (1997), pp. 658–660.

[39] The concept of a "legal culture" is complex and contested. This Report is not the place to delve into the debate. For an overview, see Cotterrell (2019), pp. 710–733.

3.2.1 Access to a Particular Foreign Legal Culture

"[K]nowing a second language allows entry into another world."[40] This is true in a dual sense. First, understanding a foreign (legal) language not only opens up the meaning of its terms and texts, it can also provide access to the way lawyers in the respective legal culture *think*—how they structure legal material, analyze problems, and argue positions—in short: it provides access to their legal mentality and style. Note that this does not require full fluency.[41] Much can be learned about foreign legal mentalities by way of carefully picked illustrations.[42] Second, mastering a foreign (legal) language also allows "entry into another world" in a more literal sense, i.e., by enabling students to go abroad and expose themselves to another legal culture. There, they can experience the foreign mentality from close-up. Such on-the-ground exposure, however, does require fluency because without it, the student cannot to immerse him- or herself in the foreign environment.

In addition, understanding one particular legal culture facilitates access to closely related ones, e.g., those shaped by the strong Spanish influence in Latin America. Understanding Mexican law from a Spanish perspective is much easier than from an US-American point of view. Still, one must resist the assumption that since two legal cultures share a language, they are also otherwise the same. A US-American lawyer need only look to England to recognize how wrong that assumption can be.[43]

Understanding a foreign legal culture is not a mere educational luxury but a significant professional asset. It enables a US-American lawyer to work effectively with colleagues and clients from the respective legal system. He or she will be able not only to avoid linguistic misunderstandings but also to bridge the gap between his or her own and the foreign parties' styles and habits of negotiation, drafting, interpretation, and dispute resolution.[44]

3.2.2 General Cultural Sensitivity

Experiencing the differences between their own and a particular foreign legal environment also makes students more sensitive to cultural differences in general. At minimum they will be aware that lawyers and clients in other countries often make assumptions, have predilections, and cultivate habits that differ significantly, if

[40] Curran (2019), p. 680.

[41] This is pointed out by Curran (2005), pp. 779–780, 782.

[42] It is interesting to note, for example, that many (especially civil law) systems define legal concepts much more clearly, precisely, and uniformly than is common in the United States. This shows a much greater preference for clear demarcations of legal concepts and categories and a concomitantly greater discomfort with ambiguous terminology. In the mind of a French, German, or Mexican jurist, law is a precise "science"—at least as a theoretical ideal, even if that ideal cannot always be reached in practice.

[43] 5 See Atiyah and Summers (1987).

[44] For an illustration in the US-Mexican context, see Sanchez (1997), pp. 672–673.

not radically, from the students' own mentality. Even if a lawyer, confronted with an alien culture, does not understand exactly *how* its members' minds operate, he or she will be more attentive to differences, observe more carefully, and hold back with his or her own assumptions. This not only helps to avoid embarrassing blunders, it also increases the speed and efficiency of learning about the other culture.

Such general cultural awareness is an important professional benefit as well. This is especially true in international legal practice where US-American lawyers often have to deal with colleagues and clients from many different systems. Having acquired at least *some* understanding of at least *one* foreign legal culture helps them to navigate even between unknown ones. For these reasons, intercultural skills are high on many employers' lists of job qualifications for lawyers they seek to hire.[45]

3.2.3 Understanding One's Own Culture

About two centuries ago, Goethe famously wrote that "[h]e who does not know foreign languages knows nothing of his own."[46] The same can be said (with equal exaggeration) about law and legal culture. As comparative lawyers have touted for many decades in advertising their discipline, experiencing a foreign legal system and culture almost inevitably entails a much better understanding of our own. It opens our eyes to features of the domestic environment that we did not notice before because we took them for granted. Once we recognize these features, however, it is but a small step to wonder about their underlying reasons, and only a slightly bigger step to reflect upon their advantages and disadvantages. When Americans taking a law course in a foreign language learn that the French and Italians address their lawyers by academic titles ("maitre", "dottore"), they suddenly realize that this is not done in the United States, may think about what explains the difference, and consider the consequences. When they learn that the Spanish term "codigo" has different implications than the Anglo-American word "code", they will realize that in Mexico, more law than in the United States is written down in systematically organized blackletter rules; then they may, again, begin to wonder why Americans tolerate that much of their law remains a more disorganized state.[47] And if they experience that in many other cultures, constitutional law does not play an overwhelming role at all, they will see more clearly how pervasive that role is at home;

[45] See Slaughter, The International Dimension of the Law School Curriculum (2004), pp. 417–418.

[46] "Wer fremde Sprachen nicht kennt, weiß nichts von seiner eigenen." Goethe (1907, orig. 1838), p. 18 As was quite common for the educated upper middle class in 18th century Germany, Goethe had studied the classical languages, i.e., Greek, Latin and Hebrew, as well as the most important modern ones, i.e., French and English.

[47] In a similar vein, Sanchez (1997), p. 665, points out the different significance of categorization of legal material in the civil and common law traditions. Modes of categorization, in turn, determine conceptions of reason and reasoning processes, see Lakoff (1987).

then, they can ask why Americans seek so much judicial control of political processes and decisions.

It must be admitted that the immediate professional utility of these reflections upon one's own legal culture is very limited. But they do broaden the students' views, improve their acumen, and stimulate their imagination.

3.3 Enhancing Cognitive Abilities: Brain-Training for Lawyers

Studies suggest that individuals with advanced skills in more than one language acquire mental abilities that go way beyond understanding the languages themselves. Such individuals are not inherently more intelligent than their monolingual colleagues, but there is a strong argument that they better develop particular cognitive functions. This argument is based on vast and complex research in cognitive psychology and psycholinguistics the results of which can be presented here only in very rough outline.[48] Legal scholars have added the—highly plausible—argument that there is a "striking consonance between these advantages and the core skills needed for effective law practice."[49]

To begin with, bilingual persons are particularly apt at "divergent thinking." Operating in just one language "imprisons thought and understanding" but operating in "many languages liberate[s] them."[50] Bilingualism opens the lawyer's mind to multiple options and solutions; it also makes him or her comfortable with a multitude of competing or complementary meanings. For lawyers, this is directly helpful in working through client problems and in interpreting texts. Furthermore, bilingual individuals are often better at "executive control" of information. Switching back and forth between languages, their brains have learned to sort and rank information according to its current relevance. This arguably helps lawyers to distinguish facts or arguments pertinent to their case from less relevant or unimportant matter; is also aids them in focusing on the former without being distracted by the latter. In addition, experience with multiple languages teaches individuals better analytical and critical skills in dealing with verbal information. They are more open to varying grammatical structures and more attentive to nuances of meaning. Finally, using multiple languages entails generally greater sensitivity in communication; this is especially true when it is combined with the experience of living in multiple cultural environments. The results are better ability to detect verbal and non-verbal cues and greater attention to the (often unexpressed) intents and needs of others.

[48] For a much fuller discussion, see Rathod (2013), pp. 871–883.

[49] Rathod (2013), p. 878; see also Curran (2019), pp. 686–687.

[50] Curran (2019), p. 687. As Umberto Eco put it: "A language always is a prison. . .because it imposes a certain vision of the world." quoted after id., fn. 19.

To be sure, the picture is complicated. The degree to which bilinguals really develop these skills is contested in the scientific literature, and it has been shown to depend on a multitude of variables.[51] Some studies also suggest that bilingualism has its downsides, like lower semantic and verbal fluency.[52] On the whole, however, there are strong reasons to believe that studying law in a foreign language enhances a lawyer's "social intelligence"[53] and "communicative sensitivity"[54] Both are highly useful mental assets - even when dealing with domestic clients in English.

3.4 The Varying Scope of Benefits: Language Skills and Beyond

In order properly to gauge the educational value of studying law in a foreign language one must recognize that the benefits we have discussed vary in scope and character.

The direct practical benefit of being able to work with clients and colleagues without a full command of English is largely limited to the language studied: having taken a law class in Spanish does not enable a lawyer to work with a speaker of Russian or Japanese. Yet, even on this purely operational level, *to some extent* the understanding gained by studying in one foreign language is useful with regard to others as well: an American student who has experienced the translation pitfalls, varying meanings, and cultural contingency of terms with regard to Spanish, will also be aware of these difficulties with regard to Russian or Chinese. As a lawyer, he or she will no longer easily trust literal translations from or into any language but rather seek a contextual and culturally informed understanding of terms or texts, if need be with the help of a foreign colleague.

The benefit of understanding foreign cultures is broader than that of mere linguistic skills. Of course, it is also strongest with regard to the particular language and culture studied: a course on Spanish law taught in Spanish and with the requisite attention to the cultural context provides access particularly to the way Spanish jurists think about their law, and perhaps more broadly, to how Spanish people think about their legal system, state, and society. It helps a student less with regard to the (legal) culture of other countries. Yet, as we have seen, it helps even there. It facilitates access to related legal cultures. And it alerts students generally to law's cultural contingency. It thus makes them aware that even if the foreign rules or institutions look similar to their home-grown counterparts, they may function very differently and generate very different outcomes. This will protect even a student

[51] Rathod (2013), pp. 880–882.
[52] Id., 882–883.
[53] Id., 880.
[54] Id., 879.

who took an introduction to Spanish law against the facile assumption that the law in Japan works pretty much like the law at home.

Finally, the benefits of the brain training derived from dealing with law in a foreign language have the broadest scope. It is true that they are not entirely independent of the particular language studied: the more it differs from the student's baseline language, the harder the mental workout and, presumably, the greater the benefits. On the whole, however, the cognitive abilities that can be acquired by studying law in a foreign language are essentially generic: enhanced mental creativity, productive imagination, and social intelligence are generally useful in the practice of law.

As a result of these variations, the choice exactly which foreign language to study is also of varying importance. It is crucial when the student's primary goal is to work with particular foreign countries or segments of the domestic population. In this regard, Spanish must be the top contender in a US law school. The choice of language is somewhat less important when the primary goal is to acquire general cultural sensitivity. In that case, a student may want to pick a language and culture that is not easily experienced close by, but that is still accessible to a Western mind, such as French or German. If the primary goal is brain training, i.e., the acquisition of general cognitive skills, the choice of language is least important. For a maximum workout, the brave can tackle a non-Western language that forces them to think in radically different ways.

4 The Possibilities: Talent Pools and Teaching Options

We have found that when it comes to teaching in a foreign language, US law schools currently do fairly little, but we have also recognized that there are good reasons to do more. It is now time to look at the possibilities. What do American law schools have to work with in terms of student and faculty talent pools, and what are the realistic teaching options?

4.1 Foreign Language Skills Among Students

An important consideration is the existing language talent pool among law students. Of course, law schools can teach a course in a foreign language without requiring any previous knowledge of it. Yet, a course can introduce students to the foreign legal terminology much more quickly and easily if they already have at least a basic knowledge of the respective language. Moreover, an introduction to a foreign legal system in the vernacular requires (at least conversational) fluency.

Americans students (and Americans in general) have the reputation, especially abroad, of being hopelessly monolingual.[55] This reputation is not entirely undeserved when they are compared to students in many other countries where foreign languages are taught and thus spoken much more commonly. Still, there is reason to believe that the problem of American monolingualism is exaggerated. After all, the United States continues to be a country of immigrants with about a million new arrivals per year. By far most immigrants come from non-English speaking jurisdictions (especially Mexico and other Latin American countries as well as China and other Asian nations), bringing foreign languages with them. As a result, about 20% of people living in the United States today speak a language other than English at home.[56] Thus, a substantial percentage of students should know a foreign language at least on the conversational level.[57]

Exactly what percentage of US-American J.D. students[58] have a sufficient command to take a course in a foreign language is almost impossible to determine because nobody seems to keep any statistics.[59] I thus conducted a survey of the J.D. students at my own law school (the University of Michigan) in the fall term of 2017. I asked all students (per e-mail) whether they had the language skills to take an introductory course to a foreign legal system in the vernacular.[60] Of the 196 respondents, 100 said they did. They listed a total of 26 languages, most prominently Spanish (42), Chinese (Mandarin) (16), French (16), and German (14).[61] Of course, these data have to be taken with a huge grain of salt. With a response rate of ca. 20% (196 out of 929), the answers are not necessarily representative for the Law School's whole J.D. population; this is especially true since students with language skills were

[55] See supra note 4 and text.

[56] Dutton et al. (2013), p. 9.

[57] Also, most graduate students in the United States have almost surely been exposed to some foreign language teaching. They all have college degrees, and most colleges still impose a language requirement for graduation. Unfortunately, however, college study of foreign languages rarely results in fluency.

[58] We leave students in the various masters (LLM) programs aside here. It is true that most of them come from foreign, and indeed from non-English speaking, jurisdictions and thus have a native knowledge of a foreign language. Yet, they are obviously not the audience for foreign language courses at a US law school. The domestic students in LLM programs have a obtained a J.D. degree and are thus part of the J.D. language talent pool.

[59] We know the number of J.D. students coming from foreign countries, but it remains small (the ca. 3500 foreign J.D. students amount to less than 3% of the ca. 124,000 students enrolled in US law schools in 2016), and at least some of them come from English-speaking countries like the United Kingdom or Australia. The percentage of Hispanic or Asian students could provide some indication of existing language skills but their overall number is difficult to assess because existing statistics lump all minority students together and because not all of the students from these regions count as minorities. Also, not all of them still speak the language of their family origin.

[60] Note that this is a higher threshold than may be required for a course merely on foreign legal terminology.

[61] Other languages listed by multiple students were Arabic, Japanese, Russian, Hindi, and Korean, Cantonese, and Italian.

probably much more likely to respond than those without, much as I tried to work against that.[62] Assuming that they were twice as likely to do so, the survey would still indicate that almost a quarter of all J.D. students are capable of taking a law course in a foreign language, including about 10% in Spanish.[63] Of course, there is also the question of how representative the student population at the University of Michigan is with regard to all J.D. students in the United States. On the one hand, perhaps students at an elite ("top ten") law school have more language skills than the average; on the other hand, perhaps a law school with very high admission standards does not enroll as many recent immigrants from Latin America and Asia or other regions.

At minimum, the data support the claim that even in US law schools, there is a significant potential audience for classes taught in foreign languages. Unsurprisingly, this is mainly true for Spanish—which also happens to be the language with the greatest practical utility at least in the domestic context. As immigration from Asia continues apace, it will be increasingly true for Chinese as well.

4.2 Foreign Language Skills Among Faculty

Even if a significant number of students have the skills to take classes in a foreign language, law schools still need faculty to teach them. Is there a sufficient number of instructors to perform that task?

Again, there are no statistics about the foreign language capabilities of American law faculty members. Extrapolation from existing data (e.g., about minority membership, non-resident alien instructors or visiting professors) is impossible because these data do not show the respective individuals' countries of origin, and they do not tell us anything at all about the language skills of anyone not in these groups.

In order to get at least one impression, I, again, conducted a survey at my law school, this time among my colleagues. In particular, I asked them whether they feel linguistically competent to teach a law course in a foreign language. Of 81 respondents 18 said yes. They listed mostly French (6) and German (4) but also Spanish (2) and Hebrew (2) as well Chinese (Mandarin), Hindi, Japanese, Lithuanian, and Portuguese (1 each).[64] This time, the response rate was 80% (81 out or 101) so that the data are roughly representative for the faculty. Even assuming that none of the 20 non-respondents could be added to this group, the result still means that almost one in five members of the Michigan law faculty considers him- or herself highly

[62] The instructions specifically encouraged the students without such language skills to check the box for "none," and the questionnaire put that box at the very top of the list of options.

[63] For what it is worth, my experience with our law students suggests that this is entirely plausible.

[64] This count does not include the foreign instructors who come and teach on a regular basis (Cook Global Law Professors). Including them adds one Korean and two German native speakers.

fluent in at least one language other than English.[65] Again, it is difficult to tell to what extent this picture is typical for US law faculties generally. On the one hand, the Michigan Law School is much more internationally oriented than the majority of American law schools; on the other hand, it has very few Hispanic or Asian minority members, nor is it located in area with a strong presence of Hispanics or Asians, unlike law schools in Florida, the Southwest and on the West Coast.

The data is in line with the impressions one gets from interacting with law school teachers in the United States more generally, e.g., at conference or workshops. Like their students, US law faculties are not as multilingual as their counterparts in many other countries, especially in Europe, but, also like their students, they are by no means entirely monolingual either.

4.3 A Dose of Realism

If it is true that a substantial percentage of US law students are linguistically prepared to take, and of law faculty to teach, a course in a foreign language, it is tempting to conclude that most American law schools could easily staff and fill such courses, at least for the languages most important in legal practice. Yet, the possibilities must be assessed with a dose of realism. Four particular caveats are in order.

First, student capability is not the same as student interest, not to mention student enrolment. To be sure, most American law schools will enroll students "who have studied foreign languages in the past and want to continue language acquisition," as well as students "whose goal is to enhance their practical skills for a life abroad or for international practice."[66] But that does not necessarily mean that "[f]oreign language courses in a legal context will find an enthusiastic reception from both [these] kinds of law students."[67] The enrolment numbers we have for such courses suggest that student interest is modest.[68] This is not surprising: law students are often so focused on other subjects, extracurricular activities, and their job search that they are loath to invest time and energy in courses that not only look exotic but are also entirely irrelevant for the bar exam. Yet, one must also consider that the level of student interest is not cast in stone. It is determined in part by a school's educational message and by the courses actually offered. If law schools explain, or even emphasize, the benefits of language training, and if they regularly offer classes in foreign languages, more students will become motivated to take them. This is especially likely if law schools advertise such courses in their promotional materials and thus attract

[65] I also asked who feels sufficiently competent to *take* a law course in a foreign language. 33 of the respondents said yes, i.e., about one third of the faculty. Beyond the languages mentioned in the text, they listed Guarati, Italian, and Russian.

[66] Curran (1993), p. 607.

[67] Id.

[68] Supra notes 9, 13.

applicants with the requisite skills and interests.[69] In addition, organizations of Hispanic, Asian-American or other ethnic student groups can promote the study of foreign languages. Even then, however, courses in a foreign language will engage only a minority of students, although perhaps a much larger one than at present.

Second, the fact that a respectable percentage of faculty members *could* teach in a foreign language does not mean that they *want to*, not to mention actually *will*. Most professors are busy enough with their existing course load and not looking for more time in the classroom, especially since professional rewards tend to result more from publication than from teaching. In addition, fluency in a foreign language is merely a necessary, but not a sufficient, qualification for teaching a law class in it. The instructor must also have sufficient knowledge of the underlying foreign legal system and culture. Ideally, he or she should hold a law degree from the respective jurisdiction. That, however, would narrow the pool of qualified faculty members in the United States to the vanishing point. But even if one requires a merely basic knowledge of the foreign legal system, few current faculty members would qualify. Thus in most law schools, staffing courses in a foreign language would require hiring adjuncts or foreign visitors; in addition to being pedagogically risky, that costs money deans will not spend happily in times of fiscal constraint. In the literature, it has been suggested that courses could be taught by a language instructor without any law degree.[70] This is a dubious proposition because it entails a serious risk that such an instructor lacks a sufficient understanding of (not mention feel for) legal terms and texts so that he or she may do more harm than good. The suggestion to use foreign graduate students enrolled in LLM programs[71] seem to be a safer option, assuming that they have the requisite teaching skills.

Third, there is the issue of teaching materials. As we have seen, there are now a respectable number of quality publications for law courses taught in Spanish and one option for French.[72] Beyond that, however, instructors have to create their own material. As everyone teaching a class from his or her own course pack knows, this is enormously time- and energy-consuming—and not rewarded beyond one's own classroom (or, at best, law school). Chances ever to publish teaching materials in languages other than Spanish are slim; publishers are often reluctant to accept bi- or multilingual texts for fear of an insufficiently large market. The only way to keep the burden of creating foreign language teaching material within reasonable limits is to share the work with several others.

Finally, there is the overarching consideration that, like all other aspects of the curriculum, teaching law in a foreign language must be evaluated from a cost-benefit

[69] Former ABA President Roberta Cooper Ramo suggested that in the admissions process, law schools "give some preference" to applicants with foreign language skills; Cooper (1996), pp. 313–314. However, that really makes sense only if law schools then provide students with an opportunity to use their language skills; as we have seen, that is currently much the exception.

[70] Curran (1993), p. 604; Lacey and Garcia Reyes (1981), p. 659.

[71] Curran (1993), p. 604; Lacey and Garcia Reyes (1981), id.

[72] Supra Sect. 2.4.

perspective.[73] In one's enthusiasm for a particular topic, it is easy to forget that law school time, faculty resources, and student energy are limited. Teaching or taking a course in a foreign language means foregoing other options. Whether these opportunity costs are justified depends on the circumstances—such as whether a law school seeks to train students particularly for international practice or for work with domestic minority language clients; whether a significant percentage of its graduates will serve non-English speaking communities; whether it enrolls a particularly substantial number of students with foreign language capabilities and interests; and whether faculty members have both the necessary qualifications and interests to teach law classes in a foreign tongue.

5 Conclusion: A Question of Commitment

American law schools currently proffer very limited training in foreign (legal) languages (supra Sect. 2). This is true even though such training generates multiple professional and educational benefits which are generally recognized in the literature (Sect. 3). The potential for expanding such foreign language training, in particular the talent pool among students and faculty, is stronger than the American reputation for monolingualism intimates; yet, a realistic assessment of the possibilities and a sober cost-benefit analysis suggest that courses in foreign languages neither will nor should be offered by all law schools or taken by a majority of students (Sect. 4).

Still, the current situation is deficient. The vast majority of American law schools, including my own, offer virtually no opportunities to experience law in a language other than English. As a result, the vast majority of American law students do not even have a chance to take a course in a foreign language—no matter how strong their skills and how serious their interests. At least where law schools have a substantial language talent pool among their students as well as the requisite resources, they should provide *some* foreign language options. Not offering a class even in Spanish is difficult to justify for any major US law school today. In light of American law schools' virtually ubiquitous claims to promote diversity and to train students for practice in a globalized society, such disregard of the language dimension is nothing short of embarrassing.

How can American law schools move towards offering instruction in foreign languages more broadly and frequently? It would probably help if the American Bar Association as their accrediting body and the Association of American Law Schools as their professional organization pushed in that direction; this would be a particularly good fit with these organizations' recent push toward more skills training in law schools.[74] Ultimately, however, offering foreign language instruction on a more regular basis is a question of every law school's institutional commitment. Such

[73] See Maxeiner (1998), pp. 35–36.

[74] See Strong (2014), p. 357 (with further references).

commitment needs to be based on a more common appreciation of the professional and educational advantages of studying law in a foreign tongue.[75]

In conclusion, it must be admitted that the current political climate in the United States is not supportive of foreign language study. Nationalism is resurgent and hostility towards immigration and immigrants appears to be on the rise. Yet, not all parts of American society are turning inward. Its universities, and especially its law schools, continue to look beyond national borders, and its legal profession is more engaged than ever with global business as well as attentive to immigration issues.

In fact, it is exactly because the wind from Washington, and more generally from the political right, is blowing in a nationalist and isolationist direction, that law schools should do what they can to counter that trend. Showing their students that law has an existence in languages other than English, promoting their foreign language skills, and especially teaching them greater sensitivity towards other cultures, keeps their minds open towards what Americans often call, with at least a touch of chauvinism, "the rest of the world."

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[75] Upon the initiative of its current President, Vivian Grosswald Curran, the American Society of Comparative Law held a bilingual (French-English) conference before its annual meeting in October of 2017. The Society will include a foreign-language panel or component at its future meetings, beginning in 2019.

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