A Comment on the Use of Foreign Professors in the German Council of Science and Humanities Report

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The main issue I wish to focus on in this Comment relates to the German Council of Science and Humanities' recommendation that German law schools should aim to encourage more involvement of foreign professors in teaching at German law schools, as part of a sustained attempt to stimulate more engagement with comparative, international and transnational legal developments. Since I have seen attempts at first hand to do something similar in Michigan and Oxford (and more distantly at New York University), I thought it might be helpful to intervene on this aspect of the Report's recommendations.

As background to the points I make in this brief intervention, I should say that I have for most of my academic career taught comparative human rights at the graduate level (among other subjects) at the University of Oxford, before taking up a Chair at Queen's University, Belfast. I have never taught at a German Law school but in Oxford (and Michigan, where I also teach) I have been fortunate to have counted German law students, usually at least two or three each year, among those who participated in my seminars. These German students have overwhelmingly been of the highest intellectual quality and were a credit to German legal education in the rigour and clarity of their analysis.

They frequently commented, however, on what they perceived to be the relative *absence* of contextual analysis, critical perspective, small-group discussion, and interdisciplinary engagement in their German legal education, compared to what they were being exposed to in Oxford or Michigan. Obviously, I have no evidence whether this is a valid criticism, but given these comments, the core recommendations of this Report by the German Council of Science and Humanities (to introduce contextual materials to a greater extent, and to have fewer lectures and more small group discussions, for example) came as little surprise. In the main, these recommendations seem to me to be admirable.

The one area where I would advocate a little more thought relates to the use of foreign professors. Perhaps paradoxically, given its enthusiasm for a comparative approach being adopted in legal research and teaching, a detailed look at how law schools in other countries tackle this issue is noticeably absent from the Council's analysis in this regard, although the inclusion of foreign experts in drawing up the Report's recommendations means that they are likely to have been significantly shaped in practice by foreign comparisons.

At the risk of over-simplification, there are two rather different models of the involvement of foreign academics in law teaching in those countries with which I am most familiar.

On the one hand, United Kingdom university law schools have, in general (there are notable exceptions, of course), favoured the practice of significantly opening the full-time, regular, academic teaching profession to those trained outside the UK. Currently, the Oxford Law Faculty has full-time faculty members from Israel, Greece, Italy, Sweden, France, Canada, Australia, Czech Republic, Ireland, South Africa, Austria, and the Netherlands).

Impressionistically, there is now a significant number of non-UK trained academics teaching at UK universities. This includes German-trained professors at several of the best university law schools, including Oxford (for example, Stefan Vogenauer, one of four German nationals on the Oxford Law Faculty). One of my Oxford doctoral students (Kai Möller) began in Humboldt and is now teaching at the London School of Economics; my successor at my College at Oxford (Stefan Enchelmaier) habilitated at Munich.

The UK has had experience of recruiting foreign-born legal academics at least since the 1930s (think of Otto Kahn-Freund, for example). In part, the move to integrate European Union law into the curriculum in the 1980s may also have driven this greater openness because of the need to recruit scholars with expertise in that area, although it has now gone far beyond that in practice.

In the main, these more recent professors began their legal education in Germany, then undertook some graduate degree in the UK, and at some point later joined a UK law faculty. My impression is that this involvement of foreign professors in UK legal education grew without any central planning, and involved appointments in which the foreign professor was appointed after a merits-based competition in which they competed with UK professors for full-time positions teaching regular subjects. Whether planned or not, the multi-national nature of UK legal teaching has undoubtedly contributed to the development of a more cosmopolitan legal education.

Again with notable exceptions, that open-market approach seems much less significantly developed in the United States: my impression is that the American academic law teaching market is a significantly more closed one than that in the UK. The Council's report indicates that something similar occurs in Germany. In both countries, the criteria used as the basis for recruiting permanent, full-time legal academics have, directly (Germany) or indirectly (the United States), erected significant barriers to the recruitment of permanent, full-time foreign legal academics.

Several elite US law schools have, rather than changing their criteria, focused more on establishing regular programmes of visiting faculty from abroad, an approach that is much less common in UK law schools (although even that may be changing, with visiting professorships recently introduced in Oxford). The Council recommends that a similar approach to that existing in the US should be adopted in Germany (although it doesn't explicitly mention the US precedent in that context), and that a significant shift away from existing appointment criteria is not on the cards.

It may be worth pausing at this point to ask whether, even if the Council does not consider the UK model to be a feasible approach in Germany in the short term, the aim of recruiting more full-time permanent foreign faculty might not be desirable, at least in the longer-term. The major advantage seems to me to be the much greater extent of integration that occurs as a result. The danger in going down the 'visiting faculty' model is that the visitors are never really fully integrated, and that the signal is sent to students that comparative approaches are a dispensable luxury rather than a necessity.

Assuming that the 'visiting faculty' approach is preferable (or the only pragmatically possible approach to adopt in Germany), how should such a programme of visiting faculty be organized? In particular, how can the greatest integration of such visitors be created and sustained?

The model advocated in the Report seems to be one based on three elements: on the establishment of *institutional* links between German law schools and law schools abroad, on the costs of visitors being met by funding from *outside* the German law schools themselves, and on visitors teaching a limited *range* of 'foundation' subjects (such as legal theory) or explicitly transnational subjects (such as European law).

May I suggest that this may not be the most appropriate model? In addition to that identified by the Council report, there are at least two other models that it might be worth contemplating.

There is, on the one hand, what we might call the New York University (NYU) Global Law School model, in which a large panel of foreign professors is assembled to form NYU's Global Law School (currently consisting of 29 professors). Professors on this panel are invited to teach an intensive course over a short five to six week period (teaching semesters at US law schools typically last for up to 15 weeks, ordinarily). The bulk of these visiting professors typically only visit infrequently, and retain only loose connections.

On the other hand, there is what we can call the Michigan model. (Full disclosure: I have been a long-term visiting professor at the University of Michigan Law School since the late 1990s). This involves the appointment of a much smaller panel of Global Professors – there are currently six. The aim is for them typically to have a more intensive relationship with their US law school, to teach a wider range of courses and seminars over time, and to return more often and over many more years than in the NYU model.

I taught at Michigan for part of the Fall Semester every year from 1998 to 2011, co-supervised graduate students, examined doctorates, etc). In addition to Comparative Human Rights, I also taught seminars on Comparative Anti-Discrimination Theory, Globalization and Labour Rights, International and Comparative Affirmative Action, and Human Dignity.

There are some common elements to both these programmes. By the 1990s, the foreign legal scholars who had come to the US from Europe to escape the Holocaust and who had so enriched the comparative study of law in the US were dead or

retiring. (Fortunately for Michigan, the beloved Eric Stein remained active until his death at the age of 98 in 2011, but he was exceptional, in this as in so much else.) The 1990s also saw an explosion of interest in some elite law schools in issues of globalization, and with that came a perceived need to be in the forefront of the scholarly study of global developments. Many schools rethought their curriculum (Michigan introduced a compulsory course on Transnational Law, for example, the first elite law school to do so), and their involvement with legal scholarship abroad.

There are other features in common. Neither the NYU nor the Michigan models depend on the existence of an *institutional* relationship with a foreign law school – the relationships are based rather on the individual professor. This seems to me to be preferable. In the one case that I know where there is such an institutionally based relationship of the type that the Council Report seems to contemplate (not at Michigan), it has not worked well, *because* the relationship was institutional rather than personal, was more bureaucratic, and gave the US law school considerably less flexibility in choosing whom it wanted as a visitor.

The establishment of these global professorships has probably also resulted in the increased recruitment of full-time foreign faculty in both Law Schools. Over the years, several of the global professors at NYU have been recruited as full-time professors (for example Sujit Choudhry). Soo too, as with NYU, members of the Michigan panel have sometimes been recruited to be full-time professors (for example, Bruno Simma).

In neither of these models are the visiting professors restricted to teaching the limited range of subjects that are the focus of the Council's recommendations. Indeed, I would suggest that some of the most productive relationships have arisen outside these subject areas: in constitutional law, or in the (private) law of obligations, or in commercial law, for example. Nor are the costs of such professors provided from outside the regular budget of the Law Schools.

As between the Michigan and NYU models, the key difference concerns the different degrees of integration that result from each model. Michigan's global professors seem (this is a highly subjective assessment) considerably more integrated than global professors at NYU, although it is difficult to tell how far that is because of the fewer number of such professors at Michigan and the longer-term regular nature of the relationship, as opposed to the sheer difference in the relative size of the permanent faculty at each (with NYU's regular full-time faculty being about twice the size of Michigan — 115 full-time NYU faculty, 56 at Michigan).

I know which of the two *I* think is the preferable model (*Go Blue!*), but that is beside the point. I want only to suggest that there are real differences in current approaches as to how best to recruit and integrate visiting foreign faculty in the US, and that German law schools may want to think a little harder before they adopt the model suggested in the Council's Report.

I've said that my unease is based on my own observations, and my own experience of being such a visitor. I am unaware of whether a more systematic assessment of the use of foreign law faculty has been undertaken in the US or the UK, but I doubt

that it has. One of the useful lessons that can be drawn from the Council's report is the need for a comparable empirical assessment of this issue in other jurisdictions, such as the UK and the US.

To conclude: those of us interested in legal education and legal scholarship, wherever we live and work, should welcome the recent publication in English of this impressive report. Congratulations are due to the Council and to the *Rechtskulturen* programme (an initiative of the *Recht im Kontext* project at the *Wissenschaftskolleg zu Berlin)* for the work that went into the original German-language report and for this excellent translation.

Not only does the Report give those outside Germany an extraordinary insight into German legal education at the present time, it also provides an attractive model for similar explorations into the state of legal education in other countries. This is because of the Report's clear methodological structure and practical orientation, one informed by a deep theoretical sensitivity and understanding. It is a truly impressive outcome of an ambitious project, and it deserves to be widely read outside, as much as inside, Germany.

I welcome this opportunity to reflect on it, as a contribution to a global debate about the future of law and legal education. The one area where I think greater thought might be given is with regard to the integration of foreign professors – not whether, simply how! What do other professors who have taught in foreign law schools as visitors think?
