

Teaching Amidst Transformation: Integrating Global Perspectives on the Financial Crisis into the Classroom

Shruti Rana
shrutirana@yahoo.com

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Teaching Amidst Transformation: Integrating Global Perspectives on the Financial Crisis into the Classroom

ONE OF THE MOST STRIKING FEATURES OF THE CURRENT FINANCIAL CRISIS has been the extent to which it has ushered in a national sense of self-reckoning over the past and future of financial regulation.¹ As the national dialogue on reform has grown, it has also been marked by increasing attention to alternative approaches to regulation and commercial systems emerging in other areas of the world.² This moment of transformation provides a key opportunity for sparking creativity and critical analysis in the classroom as well as for introducing a broader array of international and comparative law topics and course materials into commercial law courses.³ In this essay, I discuss how I introduced themes and examples from the

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* Associate Professor, University of Maryland Francis King Carey School of Law. I would like to thank the participants in the University of Maryland Carey School of Law's Business Law Roundtable, "Early Reflections on the Financial Crisis," for their helpful comments. I would also like to thank the staff and editors of the *Journal of Business & Technology Law*, Eric Kunimoto, Dhanya John, and Jennifer Thompson for their excellent work on this essay.

1. See Zachary J. Gubler, *Regulating in the Shadows: Systemic Moral Hazard and the Problem of the Twenty-First Century Bank Run*, 63 ALA. L. REV. 221, 253 (2012) (hypothesizing there will be a "day of reckoning" caused by the increased risk-taking due to the deposit insurance regime for securitized banking); Jeff Zeleny, *Obama Vows, 'We Will Rebuild' and 'Recover'*, N.Y. TIMES, Feb. 25, 2009, at A1 (discussing the financial crisis and quoting the President's statement that "[the] day of reckoning has arrived, . . . and the time to take charge of our future is here"); Mark Whitehouse, *Beyond the Bubble — America's New Economy: Crisis Compels Economists to Reach for New Paradigm*, WALL ST. J., Nov. 3, 2009, at A1 (discussing attempts to understand and prevent repeats of the current financial crisis, noting that "[w]e could be looking at a paradigm shift" regarding financial and economic models); Peter S. Goodman, *Casino America in Play*, N.Y. TIMES, Sept. 20, 2009, at WK1 (questioning whether, due to the financial crisis, "something deeper has shifted in the American psyche, leaving us shaken in a lasting way").

2. See, e.g., Jing Men, *Will the Financial Crisis Make China a Superpower?* NATO REV., 2009, <http://www.nato.int/docu/review/2009/FinancialCrisis/Financial-Crisis-China/EN/index.htm> (discussing how the financial crisis has weakened American power and created an opportunity for countries such as China to present alternatives for financial and commercial reform); see also Andrew Batson, *China Seeks an End to U.S. Trade Spat*, WALL ST. J., Sept. 16, 2009, at A5 (highlighting the increased attention that China is receiving nationally with respect to its economic and decision-making processes).

3. See Michael C. Macchiarola, *Beware of Risk Everywhere: An Important Lesson from the Current Credit Crisis*, 5 HASTINGS BUS. L.J. 267, 267 (2009) (noting that the financial crisis provides "a real 'teaching moment'" for law school courses dealing with financial issues as well as broader curricular reform).

rapidly unfolding financial crisis into the classroom as a way to further develop students' comparative perspectives and to engage in substantive dialogue regarding alternatives to and reforms of the U.S. system for regulating business and financial transactions in the wake of this crisis. While the examples I draw upon stem from my experiences teaching a comparative business and commercial law seminar, I hope that this discussion can contribute to the broader dialogue over integrating global perspectives into U.S. legal education.⁴

I. HOW COMPARATIVE LAW PERSPECTIVES CAN CONTRIBUTE TO COMMERCIAL LAW

The seminar I teach, Comparative Commercial and Business Law, is designed to introduce students to the primary theories and methodologies of comparative law, anchoring the comparative analyses in an examination of specific business law topics (such as corporate insolvency) across several jurisdictions.⁵ In doing so, I seek to challenge students to go beyond a superficial analysis of business law rules, and instead to delve deeply into the theoretical, ethical, and cultural underpinnings of these rules and the larger cultural and legal contexts in which they arise.

Comparative law perspectives provide useful methodologies for challenging traditional views of law as well as a starting point for unraveling some of the complexities of commercial and business law topics. First, developing comparative law perspectives provides a way to help students develop a critical, outsider's perspective on U.S. law, that is, a way to help students begin to see some of the lenses that non-U.S. lawyers may apply to U.S. law and become more comfortable shifting between local or national and global perspectives on specific topics such as corporate insolvency.⁶ Secondly, comparative law concepts provide critical tools

4. See, e.g., John A. Sexton, "Out of the Box": *Thinking About the Training of Lawyers in the Next Millennium*, 43 S. TEX. L. REV. 623, 625–26 (2002) (discussing some of the ways that globalization may challenge and transform the structure of American legal education); Toni M. Fine, *Reflections on U.S. Law Curricular Reform*, 10 GERMAN L.J. 717, 734–37 (2009) (discussing the ways and reasons U.S. law schools are increasingly offering courses on international and transnational topics).

5. Specifically, the course aims to "explore major trends and areas of harmonization and conflict in international commercial law, and introduce students to the primary commercial law systems in three regions of the world: the European Union, the Middle East, and China." See *Spring 2013 Course Catalog*, UNIV. OF MD. FRANCIS KING CAREY SCH. OF LAW, http://www.law.umaryland.edu/academics/program/curriculum/catalog/course_details.html?coursenum=583K (last visited Oct. 15, 2012). It examines and compares how these systems approach specific commercial law topics such as corporate insolvency and sales, and consider some of the historical, cultural, and economic influences that have shaped these systems. *Id.*

6. See Matthias Reimann, *Stepping Out of the European Shadow: Why Comparative Law in the United States Must Develop Its Own Agenda*, 46 AM. J. COMP. L. 637, 645 (1998) ("Comparative law can help students understand their own legal system better by providing an outside perspective on it. . . . [It demonstrates] that there are plausible alternatives to the American way. And it can foster cultural tolerance as well as communication across boundaries by showing why these alternatives might make sense in their own right.").

that lawyers may utilize to substantively analyze and learn from other legal systems, no matter how inscrutable other laws or systems initially appear.⁷

In this light, the financial crisis presented many provocative and engaging examples for sparking critical evaluations of the U.S. business law system as well as discussing the approaches of other systems as viable alternatives to the U.S. system.⁸ It further proved to be a fruitful way of encouraging students to analyze and discuss the underlying structural, ethical, or cultural goals or influences driving the development and application of business law rules in the U.S. and abroad. In the next section, I present two examples stemming from the financial crisis which served as challenging and productive starting points for integrating these themes into the classroom.⁹

II. INCORPORATING CRITICAL PERSPECTIVES INTO THE CLASSROOM

The financial crisis provided an ideal opportunity for generating critical analysis and debate over the larger goals and structure of the U.S. market system. In my courses, I introduce the premise that in the U.S., “market capitalism has been nurtured on the concept that the common good is maximized when individuals and, by implication, organizations pursue their parochial self-interest.”¹⁰ This concept is a familiar one, and is often attributed to Adam Smith.¹¹ What is less well-known, however, are the arguments that some have made that the focus on the pursuit of self-interest is an overly narrow reading of Smith’s philosophy: that rather, Smith’s overall message was that individual well-being can only occur where there exists an underlying recognition of the common good, in other words, that individuals and entities must also act cooperatively and within a larger ethical and social framework.¹²

The financial crisis vividly highlighted the debate over what this larger ethical and social framework should be. For instance, as the financial crisis deepened towards the winter of 2008 and the spring of 2009, and has continued to the present, the leaders of developing countries became increasingly critical and vocal about the weaknesses in U.S. financial markets which they believed had precipitated

7. See George Winterton, *Comparative Law Teaching*, 23 AM. J. COMP. L. 69, 76 (1975) (noting that comparative law is “invaluable in framing legal policy and law reform measures”); Matthias Reimann, *The End of Comparative Law as an Autonomous Subject*, 11 TUL. EUR. & CIV. L.F. 49, 60 (1996) (discussing how comparative law provides students with the tools to analyze “different doctrinal methods, underlying assumptions, socioeconomic environments, and policy choices”).

8. Robert B. Ahdieh, *Imperfect Alternatives: Networks, Salience, and Institutional Design in Financial Crises*, 79 U. CIN. L. REV. 527, 529 (2010) (considering multiple aspects of alternative solutions that could together potentially create the most salient market system in the United States).

9. See *infra* text accompanying notes 14–16.

10. Edwin Epstein, *The Good Company: Rhetoric or Reality? Corporate Social Responsibility and Business Ethics Redux*, 44 AM. BUS. L.J. 207, 216 (2007).

11. ADAM SMITH, *THE THEORY OF MORAL SENTIMENTS* 264–65 (William Clowes & Sons, 1875).

12. *Id.*

or contributed to the crisis.¹³ Framing these developments as attempts to offer alternative visions for business law and regulations allowed for lively and detailed classroom discussions regarding the development of more sustainable alternatives to current business law rules. It also provided a useful way of helping students develop more nuanced and substantive perspectives on non-U.S. systems.

China is an interesting example. The financial crisis led some of China's leaders to voice criticisms of American business law practices on almost a daily basis in the spring of 2009.¹⁴ As we discussed these unfolding developments in the classroom, we analyzed how Chinese leaders were both seeking to challenge the U.S.'s moral authority in the financial realm, and attempting to position China as presenting a more sustainable or more powerful alternative for business practices in the wake of the crisis.¹⁵ This was a starting point for discussions on topics such as whether China could draw upon other sources such as Confucian ideals, or different ways of structuring the relationship between the individual and society, in developing alternatives for structuring business transactions and regulatory systems.

Another example emerged when we discussed Islamic law finance principles in the classroom. Rather than just focus on technical aspect of Islamic finance concepts, such as prohibitions on interest, we discussed claims that modern invocations of Islamic law principles stem in part from a desire to infuse commercial law with social justice principles, what Haider Ala Hamoudi has characterized as a two-pronged approach:

*[O]n the one hand, a desire to articulate a form of political, economic, and social order that resists the dominant global paradigms and creates a separate, self-defined Islamic identity resting on unique ethical and moral bases, and on the other, the necessity of engaging the global community on a variety of levels in order to restore some level of political and economic power to the Muslim world.*¹⁶

These examples thus served as launching points for a deeper dialogue into the creation of a legal framework for commerce which may be more directly infused

13. See *Iran's President Blames West for Economic Crisis*, THE INDEPENDENT (United Kingdom) (Mar. 11, 2009), <http://www.independent.co.uk/news/world/middle-east/irans-president-blames-west-for-economic-crisis-1642612.html>; Edward Wong, *Booming, China Faults U.S. Policy on the Economy*, N.Y. TIMES, June 17, 2008, at A1.

14. See, e.g., Wong *supra* note 13.

15. Carter Dougherty & Katrin Bennhold, *In Davos, Russia and China Blame Capitalists for Crisis*, N.Y. TIMES, Jan. 29, 2009, at A12 ("The Chinese premier, Wen Jiabao, left little doubt that Beijing blamed the United States for the economic breakdown. 'Inappropriate macroeconomic policies,' an 'unsustainable model of development characterized by prolonged low savings and high consumption,' the 'blind pursuit of profit' and 'the failure of financial supervision' all contributed.").

16. Haider Ala Hamoudi, *The Muezzin's Call and the Dow Jones Bell: On the Necessity of Realism in the Study of Islamic Law*, 56 AM. J. COMP. L. 423, 425 (2008).

with social or ethical and moral principles, and a broader discussion of the sources for such principles.

III. BRINGING THE CLASSROOM TO INTERNATIONAL ARENAS

At the same time, the global financial crisis, and the rapidly changing global financial order, provided an unparalleled opportunity to look outside of the U.S. classroom to analyze both what the U.S. legal system could offer other countries and what other legal systems could offer to the U.S., as country after country sought ways to emerge from the global financial crisis.

Towards this end, I helped develop an innovative program for our law school to send exchange students and clinical students to China to study both Chinese culture and Chinese and American approaches to business law. Unlike traditional study abroad or clinical programs, the program we designed was intended to expose students to how business law operated in China, and to provide them with a glimpse of the roles that U.S. lawyers could play in the transformation of the Chinese system, as well as how lawyers from both countries could help shape the new global financial order.¹⁷ The students in these programs raved about the hands-on, inside perspectives they gained on some of the most critical financial and business legal issues of the day.

IV. CONCLUSION

The financial crisis provides a fascinating and fruitful entry point for far-ranging substantive discussions regarding the integration of global perspectives in the classroom, both in the U.S. and abroad. Drawing upon the national sense of self-reckoning — which arose in the wake of the financial crisis — enabled students to engage in a substantive dialogue not only about the structure of current commercial and business law rules, but also about how to evaluate, in concrete ways, alternatives for reform emerging around the world. Ultimately, this approach enhanced the broader pedagogical goal of preparing students to practice the profession of law in an increasingly interconnected and multi-polar world.

17. See *International Clinic Advances Justice Around the World*, UNIV. OF MD. FRANCIS KING CAREY SCH. OF LAW, <http://www.law.umaryland.edu/about/features/intlclinic.html> (last visited Mar. 14, 2012).