

THE VALUE OF COMPARATIVE AND LEGAL CULTURAL ANALYSES OF INTERNATIONAL ECONOMIC LAW

By Colin B. Picker

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I. Introduction

The effective development and operation of the law faces many obstacles. **Among the more intractable yet hidden barriers to the law are legal cultural disconnects and discontinuities. These occur when opposing legal cultural characteristics from different legal cultures are forced to interact as part of the implementation of the law across two different legal cultures. That conflictual interaction can impede or block the success of that law.** While present in domestic legal systems, those conflicts are more likely and the conflicts may be deeper between the many different legal cultures involved in the international legal order. For example, **a successful interaction between traditional knowledge and the international intellectual property regimes may be frustrated by the disconnect between the individualism present within the legal culture of international intellectual property and the collectivism within many indigenous legal cultures.**¹ **Identification of such legal cultural disconnects and discontinuities is the first step towards developing strategies to ameliorate potential conflicts between opposing legal cultural characteristics.** That identification requires examination of the relevant legal systems with legal culture in mind—a legal cultural analysis. But, that methodology is rarely employed. To the extent we do see legal cultural analyses, they are applied almost exclusively in the domestic arena. When it is applied across legal systems it becomes a part of comparative law methodology. **This merger of comparative law and legal cultural approaches is unusual, indeed almost unheard of in the international economic law (—IEL) context.** This dissertation, the body of the PhD, will undertake just such a task to show it is possible and valuable, through the use of case-studies employing the methodology to identify such legal cultural conflicts.

(p.1)

... VII. Conclusion

While a comparative legal cultural analysis is a difficult task, involving numerous factors and pitfalls, the insights it can provide will be of great help in understanding IOs as they develop and mature. More concretely, identification of an IO's legal culture is important because knowledge of a system's legal culture allows one to understand the underlying fit of that IO with other legal systems—be they IOs or domestic, regional or international legal systems. It is then possible to identify which legal systems are similar or different to the IO, or which parts of different systems

may be similar or different to specific aspects of the IO. Crucially, that knowledge then permits the organization the capability to import legal devices from those legal cultures that are similar, with a correspondingly better chance that the importation would work well within the organization. Indeed, that knowledge might even permit successful importation from dissimilar legal systems with different cultures, as the knowledge of the differences allows possible identification of any “fit” issues that can then be ameliorated.

The importance of identification of legal cultural characteristics within international legal systems is further accentuated when a system is a blend or mixture of different and sometimes competing systems, a situation that is all too common within the international legal order.¹⁰⁴ Additionally, understanding the legal cultural characteristics of a mixed system IO permits a better understanding of how or whether the system fits together within itself. In other words, whether different parts of the system have legal cultural characteristics that may be discordant or work in harmony together. Furthermore, if there are internal fit issues, or parts that are known not to work well, a knowledge of the legal culture may assist in determining whether and what replacement legal devices, including safeguards, should be imported and from which legal systems.

(pp. 46-47)

Another source of “mixity” comes from the fact that IOs comprise individuals from numerous and different legal cultural backgrounds. The resultant “Tower of legal Babel” will invariably result in miscommunication and misunderstandings.¹⁰⁵ **But, an awareness of the issues of legal culture within an IO would facilitate better internal communications between the different legal cultures of the organization’s officials and civil servants. It would also help communications between the IO and NGOs and state members’ delegations, and between the different state members as they interact within the context of their IO obligations.**¹⁰⁶ Additionally, the more IOs that understand legal cultural issues, then the better the communication between different IOs. All that improved communication should assist in the reduction in conflict that may be caused by legal cultural disconnects.

In conclusion, as international law becomes ever more “real”, as international organizations take on more responsibility for the governance of the international legal order, the role of legal culture becomes ever more vital. Understanding an IO’s legal culture and those of competing legal systems, be they of other IOs or state legal cultures, should be an essential requirement for IO officials, practitioners and IO scholars. As such, the methods and approaches and the issues and questions raised here are ones that should be studied and further developed, in general and for specific international organizations and fields of international law.

¹⁰⁵ Interviews with officials from IOs repeatedly turned up the constant miscommunication and misunderstandings that took place. *See also*, Patricia M. Wald, *The International Criminal Tribunal for the Former Yugoslavia Comes of Age: Some Observations on Day-To-Day Dilemmas of an International Court*, 5 WASH. U. J.L. & POL’Y 87, 91 (2001).

¹⁰⁶ See, Lawrence A. Kogan, *The Extra-WTO Precautionary Principle: One European "Fashion" Export the United States Can Do Without*, 17 TEMP. POL. & CIV. RTS. L. REV. 491, 521 (2008) (discussing the legal cultural clash between European and U.S. view on the precautionary principle).

(p. 47)