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## Intercultural Perspectives for Lawyers and the Law New Possibilities for Legal Education and Assistance

**Abstract:** The essay envisages the new, possible professional perspectives that intercultural law seems to open up to young lawyers. At the crossroads between the necessity to supply legal assistance to foreigners and the current crisis that legal professionals undergo, a legal intercultural competence might provide both a way out of the dire straits currently experienced by the lawyers and the broadening on a global scale of national legal practices. Moreover, the text puts forward some suggestions to conjoin, in a practical key, legal intercultural assistance and IT systems. Such a proposal is designed to increase the rate of dissemination of basic legal education amongst the population and ease access to legal advice and to protection also for the have-nots.

**Keywords:** Intercultural Law, Legal Professionals, Information Technology.

### 1. Why an Intercultural Law?

All those who face a legal system find themselves with a “knowledge problem.” If the legal system at issue is that of the place where one grows up and learns to speak, the problem is solved by cultural transmission. Adult citizens of all societies know how to behave in order to avoid violating the law. And they know this even if they are unaware of the specific violations of the law to be avoided. This is because in childhood we learn a code of conduct that includes a folk legal education. Knowing how to behave “properly,” that is, in an ethically proper fashion, comes from possessing a kind of legal grammar diluted in the know-how of quotidian life. None of us knows all the laws of the States in which we are citizens. None of us knows all the rules that nevertheless continually direct our acts, even within the most intimate folds of our lives. And yet we are able, generally, to avoid infringing on legal imperatives, and to refrain from illegal conduct.

The complexity of contemporary societies, however, produces a profusion of legal statements, many of which are extraordinarily specific, technical, sectorial, and most importantly, continually changing. Confronted with the massive imperatives of these rules, legal folk knowledge becomes insufficient. To avoid violating laws people need legal assistance. The issue at stake—actually a kind of meta-legal problem—is that in their ‘not knowing,’ these same people are unable to take notice, or be aware of their need for expert assistance from, precisely, legal practitioners and lawyers. This lack of awareness engenders a sort of vicious circle, which inevitably results in judicial litigation.

That many people do not know how to adapt to the laws and how to benefit from the proper use of them is certainly a failure of the law itself. The lack of legal education necessary to ensure a full and active citizenship, in harmony with the possibilities offered by the legal system, is a grave obstacle to social justice. An obstacle extraordinarily aggravated by the absence of institutional figures responsible for assisting common people to use their own laws and articulate the grammar of their own citizenship. All this results in chasms of injustice and abuse in practices bereft of any court, without

any justice agencies consulted or even available. In other words, ignorance transforms into social vulnerability. The most grotesque, and at the same time dramatic circumstance is that it is the law itself which is responsible for generating this vulnerability.

It could be argued that lawyers and judges exist nevertheless. Except that assigning the overall effectiveness of the law's social function exclusively to the courts of justice or to the legal resolution of disputes that have already arisen would be completely inconsistent. And this is so *a fortiori* if disputes or litigations arise from ignorance and the difficulty of the common people to know the law. The law should ease the peaceful coexistence and the satisfaction of the needs of citizens rather than muddling up their lives. Lawyers and judges certainly work towards addressing the effects of such complications. However, it just so happens that access to justice or even to legal support in extra-judicial matters is not exactly free of charge. Procuring legal advice alone, to not speak of "obtaining justice," costs, and is slowly becoming the exclusive prerogative of the "haves." The have-nots, with fewer economic opportunities, are therefore more vulnerable, and often waive all claims for help from the law and its practitioners, hence incurring all the negative consequences (in terms of both damages and/or benefits lost) that this entails.

The situation just outlined constitutes the rather disheartening common framework of the state of access to justice for citizens of contemporary democratic countries (and in Italy the situation is certainly not among the best). This state of affairs is represented quite accurately by the tragic stalemate condition of the protagonist of Franz Kafka's story, "Before the Law." In the story, a fellow from the country, perhaps a foreigner, tries to enter walk through the gates to access the Law "open to all." For years he makes repeated attempts to enter the Law, but a futile wait is imposed on him by an intransigent gatekeeper/guard. The man dies without achieving his goal. Paradoxically and mockingly, we learn that the doors of the Law had remained open all those years only for him; after his death the guard closes them. The enigmatic plot woven by Kafka applies to many citizens and migrants of our times<sup>1</sup>. Its inspiration, however, drives the imagination towards the experience of German Jews in the early twentieth century, forced like most of European Jews to disguise their faith and customs, and to adapt themselves to the rules and the lifestyle of dominant groups. Their culture, their "different" identities, had not and would not have had access to the "factory of equality." Jews were doomed, therefore, to remain overwhelmed by a condition of equality under the law with a simultaneous lack of equality within it. In other words, that which served as a "guaranteed" equality was at the same time an inflicted one because of the imposition of a gag upon difference that silenced the legitimate aspirations of the "Others" in a law responsive to the connotations of their difference. The story of the Jewish minority in Germany, with its well-known and catastrophic outcomes, is the historical prototype of another form of marginalization, exactly that generated by the ignorance of law and the lack of folk education of foreigners and migrants of the host countries' legal systems. Living in a non-native social environment can make people's relationships with the law extraordinarily difficult. Those who come from elsewhere often bring with them an educational legal background that is culturally quite distant from that at the disposal of native citizens. Following his own directives, the foreigner will be prompted to act in ways that conflict fatefully with the imperatives of the host country's legal system. On the other hand, as is the case for the natives also, the "Other"

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<sup>1</sup> On the relationships of Kafka's tale and legal-intercultural issues, see Ricca (2013: 36 ff).

knows neither the legislation of his native country nor that of the country where he currently is living. But, for the reasons elucidated above, this “ignorance” is hard to overcome. Regrettably, the direct reading of legal rules would still be insufficient, even in the case of precepts that are apparently “easy” to understand, and not characterized by technical features or language difficult to decode through the hermeneutical means supplied by a common cultural level. This is because the law does not articulate everything that it demands and requires. National normative statements are based on widespread knowledge—precisely, folk legal education—but are commonly known only by those who belong to a particular socio-cultural context. What the law provides implies a dense network of knowledge that is indispensable to understanding the meaning of legal utterances and the proper ways to implement them. These skills, however, are not available to those who are just *arriving*. For foreigners, the difficulty of understanding when, why and how one can fall into a legally problematic situation can be significantly more arduous than for native citizens. They need, therefore, far more attentive legal assistance to increase their awareness of the workings of the host country’s legal system. Hence the problem of the high cost associated with this assistance as well as that of access to court justice looks even thornier. Immigration is often propelled by conditions of discomfort in the homeland, which obviously are not usually accompanied by abundant financial resources.

The percentage of foreigners able to make use of the services routinely offered by legal professionals is presumably very low. And yet, their inability to afford legal advice does not in any way imply that the presence of law in their lives is less pervasive as a result. On the contrary, the ubiquity of the legal factor as a silent component of the daily conduct of each individual promises to be, particularly for foreigners, even more intense. All normative national systems cast a relentless monitoring activity upon migrants and foreigners that forces them to prove explicitly and continually the basic requirements needed to justify their presence in the country. From home to work, from residence permit data to any number of personal details requested, all of these and still more must be defined and declared as preconditions for a legitimate permanence in the country. In short, what is taken for granted by the citizen is instead under close scrutiny by public institutions in the case of foreigners. Whether or not these constraints are reasonably stated, the general approach towards foreigners is nevertheless a fixed and almost universal feature (albeit with differing degrees of severity) of all national legislation.

Those who come from outside must therefore learn to deal with the host state’s law in a much stricter way than is required of citizens. Naturally, their difficulties in understanding legal norms will be greater, not to mention the additional challenges that stem from any attempt to compose their own cultural codes alongside those underlying the legal system. What is more, the jurists foreigners might consult, apart from offering their assistance at a high financial cost, could themselves encounter serious problems in offering said assistance. Indeed, they face the challenge of identifying the conceptual schemes used by their clients, the horizons of ends they articulate, and the sense devices rooted in their cultural habits or religious beliefs and practices. If lacking the competence to attend to such matters, it will be very difficult for lawyers, notaries and other legal professionals to deliver quality assistance. Without developing the needed proficiency to operate an intercultural translation of requests put forward by foreign clients, it is hard to imagine that legal professionals can provide adequate services. In many cases, they could run the risk of superimposing legal schemes over the action plans of their clients that are unfit to realizing their actual purposes.

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Something similar could occur to those judges called upon to assess the alignment of behaviors adopted by non-citizens or national people of different cultures with the law. The consequence of such a lack of "intercultural training" can be a misapplication of the laws and, therefore, the heterogenesis of ends in the production of their effects. Being untrained to reconstruct the mental representations of clients or parties from different cultures means, in fact, not knowing the facts of the situation at hand, being unable to recognize the sense of what the foreign client has done or wanted to do. This kind of misunderstanding can lead to an incorrect or inappropriate application of legal rules that might result, in some cases, in a violation of human and/or fundamental rights, or at least, in outcomes which are neither fruitful nor in tune with the actual needs of the people. But doing so is likely to secure a real betrayal of the law, by confirming an application of laws that in many situations, conflicts with its own premises of legitimacy. That said, how might we overcome the intercultural unpreparedness of legal professionals in most countries of the world?

One option is certainly that of increasing the legal use of cultural expertise. To elaborate schemes of legal qualification regarding the behaviors or action plans of foreign clients, jurists could be assisted by anthropologists and specialists in various international legal traditions. The institutional place of cultural expertise and its potential use in the Italian legal system will be considered below. For now, it should be pointed out that the proposed intervention of an anthropologist would inevitably raise the costs of each legal case, further decreasing the possibility of access to legal assistance and legal protection for many foreigners and migrants.

The observations above seem to describe an almost paradoxical situation. The steps can be illustrated schematically. Many foreigners have an extraordinary need for legal assistance to avoid sanctions or to keep from losing the opportunity to benefit from the advantages available through a skillful use of legal devices. However, this need has to confront the high cost of professional legal services. On the other hand, many jurists are not actually prepared to deal with cultural differences, understand them and align normative praxis with the needs of the clients, that is, take an inclusive attitude towards them. Because of this lack of intercultural proficiency, the legal system finds itself in danger of becoming ineffective or worse, simply unjust with respect to foreigners. To overcome this circumstance, it would be essential to make widespread use of anthropological expertise. But this would increase the expenses incurred by legal professionals to provide their assistance. Eventually, in the name of intercultural receptiveness, almost mockingly, access to legal services, if not justice itself, could become prohibitively expensive and so out of reach for foreigners and migrants.

Those who remain outside the door of the law, however, by no means cease to exist. Indeed, they will have to go about their lives, achieve their goals and interests, even if at the margins of social public circuits or, otherwise in a condition of subalternity. The tendency to escape the control of the law in an attempt to gain some emancipation from the grasp of a national legal system that is not responsive to their need will be, inevitably, a one-way path for foreigners or people of other cultures, one that is only apparently and contingently advantageous. In any case, when the trend of eluding legal constraints assumes—as frequently occurs—significant proportions, the failures of the law will be in evidence far beyond the level of consistency between the ends and their means, the institutional values and the corresponding methods of implementation, the premises of legitimacy and social effects. Indeed, the legal system will have ultimately lost its ability to exercise social control, to anticipate dysfunctions and to remedy the inefficiencies/ineffectiveness of the current normative options. To answer the question posed by the title of this section of the essay we could therefore

assert that an intercultural law is required to ensure that national law can work in accordance with itself and be capable of maintaining such coherence even when it confronts cultural differences as integral parts of the social ground.

The intercultural use of law has to be gauged by taking due account of people's needs. Without dwelling excessively on the methodological aspects of the legal-intercultural approach<sup>2</sup>, we must here briefly explain what the professional or the law operator involved is called upon to do. From the first, the legal care of intercultural people's needs cannot be confined to a survey conducted according to the principle of private international law and/or comparative law. As mentioned above, few if any foreigners, or native citizens for that matter, know the formal rules of their national legal systems. Such a consideration, moreover, also applies to circuits other than States, for example religious legal traditions. The believers of different faiths are aware of the behavioral habits and the key ethical and pragmatic normative apparatuses produced by the religious institutions to which they belong, but they do not usually know the specific correspondent individual precepts in their formal consistency. This means that the foreigner or the person of another culture who appeals to a host country's national law and asks for legal assistance does not necessarily demand the formal reception of a specific provision enacted by and in force in his state of origin. In most cases molded by intercultural dynamics, the kind of pluralism truly useful to meet the needs of the people is not inter-normative or formalistically inter-systemic. Frequently, reading things only in terms of formal legal rules belongs to the domain of legal academics and bureaucrats rather than the actual purposes of the people. He who emigrates has no interest in displacing "portions" of other legal systems into the national legal system of the host country. His main needs are to know the law of the host country, and to be able to inscribe within legal utterances and categories his own cultural difference—which is not the same as legal/normative otherness or diversity—and, above all, thereby receive due protection. Rather than transplanting outside legal norms, foreigners are interested in availing themselves of culturally pluralistic interpretations of both human and/or fundamental rights and the basic values of individual democratic systems as defined by their universalist-cosmopolitan protension, as well as legal categories shaped through current laws. And all of these possibilities of inclusion are by no means beyond the reach of both the state legal systems and their interpreters. Moving along the lines of an axiological and cultural pluralism rather than only an inter-normative one, however, requires different skills from those which law schools routinely provide to students worldwide. Still, the ability to grasp the needs of foreign customers in an intercultural key requires intellectual tools and dispositions that go beyond the purely positivistic-textual approach such as is taught in academic law courses<sup>3</sup>. In this regard, it would be useful to outline some specific considerations.

## **2. Intercultural Skills and Training Programs for Legal Practitioners. Possible Solutions for the Current Crisis of the Legal Professions**

Students of degree courses in law, in Italy as in the rest of the world, ordinarily receive a kind of training primarily focused on the use of legal texts (laws, judgments, administrative acts, contracts,

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<sup>2</sup> With regard to these methodological insights, see Ricca (2008, 2013, 2014).

<sup>3</sup> See Miller *et al.* (2008), Lynch (2010), Moran (2014-2015).

wills, etc.). These young people, tomorrow called upon to interface with individuals in the flesh, are given very little in terms of sociological, psychological, anthropological knowledge. And yet, in order to apply legal statements effectively, an understanding of what legal subjects do and pursue is indispensable. In their professional activity, through the practice of “living law” or the so-called *law in action*, jurists are continually called upon to translate from common language into legal technical language or, in other words, from the social events universe to the normative universe. Nonetheless, improving jurists’ ability to understand client purposes and needs so as to develop their ability to mold legal responses to client insights is in no way the primary object or the paramount concern of law courses. Students are requested, on average, to acquire knowledge of notions upon notions, often mnemonically, and to learn to connect in a systematic way the normative utterances of legal systems. All of this is undertaken as if the broad task of connecting society with its laws had been already accomplished, a matter definitively concluded and packaged upon the enactment of any given legislation.

The idea that the legal normative weave constitutes in and of itself a sort of condensed epitomizing of social dynamics and the plots of sense drawn by people through their quotidian actions is longstanding and firmly placed at the roots of the positivist approach. Somehow, this idea presumes that those who are still learning the law are able to recognize facts, actions, and social events unerringly, and provide unequivocal and culturally shared categorizations of them. But this presumption must also include the notion that the world of social events is structured as a sort of repertoire, within which each event is marked by invisible labels that people—even if not realizing why—are ready to recognize. The person-jurist, then, would be required to transfer the label corresponding to common sense into the catalogue of legal forms, to conclude the game; the effectiveness of the laws would therefore be mechanically guaranteed.

The mere possibility of an unambiguous and relatively immediate recognition of the significance of gestures, words, and events even just as a hypothesis, appears to be epistemologically untenable. The law, however, includes a kind of knowledge sized to the practices and common problems of coexistence. What matters for the purposes of its efficiency is that there be general cultural consent about the meaning of social events and, therefore, the methods of their qualification in axiological, political and deontic terms. And it is a fact that *ordinarily*, within different social contexts, people understand what is happening and converge, at least on average, about the meaning that should be understood, even when that precise meaning may lead to conflict. But allowing such a phenomenon is endemic to culture. What happens, instead, when the background knowledge, paradigms of interpretation and practice held by a portion of the social ground prove to be culturally distant? In these situations, who can be sure that the people understand them, and are in agreement about the way facts, gestures, and words are categorized? Who can be sure that a jurist, not having any particular socio-anthropological competence, would be able to capture what a client or a judicial party from another culture does, what he says, what he means?

My answer is laconic, and is, quite simply, “no one.”

The problem of a lawyer who fails to understand the conduct of his clients—and this is first and foremost a predicament concerning the law itself—is that he could single out and apply the rules

incorrectly, without any consistency with their ends, and inappropriately to the needs of the people<sup>4</sup>. To evidence the gravity of such an eventuality, I would like to briefly summarize the previous argument.

An enormous barrier working against the integration of migrants is their lack of knowledge about the law of the country of new residence. Those who migrate aspire, above all, to reposition themselves in the society of destination. This repositioning requires, however, having the possibility of translating one's own needs, mental schemes, and patterns of behavior into the public and, importantly, legal languages. This task is complicated, however, by the cultural distance extant between the mentality of those who arrive and that of citizens, "the natives." Natives prove able to enforce the law, even without knowing it, because the national legislation corresponds in its outlines to their customs, habits of behavior learned from childhood. The same process is instead almost impossible for foreigners. On the contrary, it is precisely their customs and their knowledge, often unconscious, which raise serious obstacles to the everyday life of the "aliens."

Beside and beyond the symbolic aspects and somewhat exotic cultural conflicts described by the media, the problems of foreigners actually nestle in the conduct of quotidian life. How to conclude a contract? How to behave according to "good faith"? What are the obligations of a tenant? What are the behaviors liable to disciplinary action in the workplace? How does one draw up a will? These and many other questions are real conundrums for foreigners. The problem is increased by the circumstance that national legal practitioners do not understand the different cultural variables. That is, they do not know the purposes, conceptual schemes, and culturally influenced needs that move foreigners. Similar deficits of knowledge make such practitioners substantially unprepared to set the national law to listen to diversity and, in the end, to provide authentic protection for the "Others." As a consequence, often the lawyer, the notary or other legal operators end up applying the national rules to situations that they do not understand. This produces a sort of heterogenesis of ends, that is to say that those same rules give rise to effects that are contrary to the purposes and reasons for which they have been originally enacted and applied. Such distortions, in turn, provide results that are not only inconsistent with the national law but also curve its use in a way that is totally opposed to intercultural inclusion. The subsequent medium-to-long term effect is that foreigners and their communities—partly as a consequence of well-known word of mouth circuits—eventually move away from the law, its institutions, and the related professionals who could make the protection potentially offered them by the national legal system fruitful. Combining anthropological knowledge and legal skills would instead promote the dissemination of genuine intercultural solutions. These could meet the daily needs of foreigners or people of other cultures by integrating them, fine-grained, into the weave of legal guarantees. At last, the work of intercultural jurists would turn into "possible rights" and make actionable the needs of cultural integration and intercultural translation concerning both foreigners and all Italians who come into contact with them. On the other hand, arguing about "possible rights" means recalling implicitly the actuality of a widespread need for legal assistance. Assistance for which, national jurists are today generally unprepared. This is the situation. So, what to do?

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<sup>4</sup> See Bryant and Peters (2004), Ahmad (2007), Blasi (2008).

In the last years, degree courses in law strived, in Italy as elsewhere, to encourage the alleged professionalization of legal education. This trend engendered a decrease of the attention paid to the general and speculative pillars of legal culture. The most general theoretical categories underlying the various institutes have been increasingly neglected in favor of the accumulation of technical-positive notions regarding both statutory texts and jurisprudence trends in each of the legal areas. The primary aim of such educational choices seems to have been to facilitate student access to the three classic legal professions: lawyer, judge and notary. Despite all the proclamations, however, little has been done to teach students how to act as professional jurists. The opening of post-graduate specialization schools in the legal profession has not been nearly enough to endow participants with the necessary training to become professionals who can be immediately efficient. Mostly, these schools function as training courses for passing the national exams required in order to become lawyers, judges or notaries. What has been excluded and completely disregarded is, instead, the key know-how of professionals, namely the ability to interact with people, to act as an interface between the potentialities supplied by the legal system and the interests of possible clients or judiciary parties, not to mention the socio-anthropological skills indispensable for lawyers, judges or notaries who must move through the meshes of a society which is becoming increasingly multicultural.

The overall result, especially if contextualized in the current general situation of economic crisis, is fairly defective. The legal profession is experiencing hard times. Law firm revenues are steadily decreasing in the face of the massive presence of lawyers throughout every country, decidedly exorbitant relative to the capacity for absorption by the national market. Young graduates, as well as junior lawyers, struggle endlessly to enter the traditional circuits of the legal profession offering the typical lawyer's services. On the other hand, the costs of justice are soaring, and a huge number of proceedings are bogged down awaiting their never-arriving conclusion. This situation primarily results in seemingly endless delays within the courts of justice. In addition, the lack of financial resources urges institutional agencies to address the problem by reducing the number of judges. This timely strategy, in a stifling spiral, then causes a drastic decrease of the chances of becoming a judge, the result of ever-thinning public selections for judicial hearing officers (*uditore giudiziario*).

Things don't get any better when one turns the gaze toward notaries. The current criteria for the distribution of notaries throughout the country make the number of locations available, to put it mildly, scarce. To put it hyperbolically, the graduates of a single law school in Italy would probably suffice to provide an ample number of applicants to compete and succeed in the national exams for notaries, without even considering the number of positions actually available. The overall scene seems to show, in short, that the investment in the professionalization of teaching so far operated by law degree courses is failing, and there is a dramatic shortage of prospects for future graduates. *Inter alia*, this so-called professionalization has induced students to anchor their knowledge to piles of data rather than aiming at developing broad skills. As a result, the knowledge obtained at university looks likely to become quickly obsolete. Whereas, on the contrary, what should be taught is the method, the theoretical profiles, the ability to deal with a concrete environment brimming with unexpected events to be faced with the appropriate skills, all of which is decidedly less oxidizable by ongoing societal change, and thus the ideal pedagogical horizon towards which a university education should be pointed.

To face up to the crisis, even the Bar Association, operating the levers of politics, has undertaken the struggle to obtain some shrinkage in the access to and permanence of the national Rolls. Most recent

is the new enactment ruling the practice of law, dangerously inclined to create oases of oligopoly, which has been duly censured as illegitimate both by the Anti-trust Italian Authority and the courts, as well as by EU institutions. Nevertheless, the warning seems to have reached the social plane. The number of students enrolling in law school is currently in free fall. It is doubtful, however, that this can be welcomed as good news. The decrease in the number of future lawyers does not in any way reflect a symmetrical decrease in the social need for legal assistance. How and why things are going this way, however, does not seem to be understood by the institutional agencies or within academic and professional circuits.

The situation is disheartening. If on the one hand, citizens and foreigners are discouraged in their aspirations for justice because of the increasing costs of legal assistance, on the other hand, lawyers and notaries are unable to cope with the constraints imposed by the economic crisis. On one side, people demand lower costs, merely to have access to justice; on the other, professionals need more revenue. The economic plight is desperate not only financially but also socially.

I think that intercultural law and the need for legal assistance outside the traditional channels of judicial review could represent a suitable ground for creating new frontiers for both social progress and the prospects of legal professionals. What has been observed thus far unveils a very relevant data point: the need for legal assistance is not decreasing, just the opposite. The injections of intercultural difference into our societies have instead increased the quest for legal knowledge and educational tools enormously. What seems to fall down, rather, is the traditional template for legal assistance. In the case of foreigners, there is something that is valid, albeit in different ways and to a lesser degree, also for all the subjects of society. I'm referring to the need for preventive and timely assistance, namely legal advice that avoids litigation, prevents legal errors, averts the loss of benefits, does away with the barriers that keep people from being able to realize their interests, removes hindrances to access to legal protection, and so on: overall effects resulting precisely from a deficit of knowledge about the law and the possibilities concretely afforded by its skilled use, in accord with the client's intercultural exigencies. Lacking any possibility to take advantage of preventive legal assistance, however, all the mentioned deficiencies will turn into a fatal shortage of freedom. Indeed, that which remains unknown cannot be included within the range of peoples' options. Shrinking the scope of alternatives at our disposal inevitably reduces the very possibility of making free choices. Knowledge and freedom are two sides of the same coin, the possibility of self-determination.

The most urgent problem to be solved, therefore, concerns the necessity of devising paths for providing information, training and legal assistance to both clients and professionals, an effort that must be well coordinated with the current structure of professional firms (of lawyers as well as notaries). Such an enterprise, considering the current state of affairs, might seem almost impossible. The main hurdle, among many, is represented by the high cost of fees associated with professional assistance. Currently, it is almost inconceivable that lawyers could service the entire host of clients, who would have extraordinary need, with the preventive and timely legal advice that the current social situation requires.

From one point of view, traditional lawyers may also perceive a sort of counter-interest in supplying this kind of assistance. If people, in their ignorance, come into conflict with the law—many of them might have said—sooner or later they will end up in court and, therefore, will have to bring their business to us, the lawyers. Besides, apart from the egotistical cynicism of such calculations and their social dysfunctionality, this argument does not prove to be very reliable today. In general, it is not a

given that a “misuse” of the law necessarily leads to a lawsuit or trial. Quite the opposite, experience is teeming with situations that are normatively unlawful and yet—once again, because of ignorance or lack of financial means for legal assistance—are doomed to remain unknown by any court or lawyer. To this general fact we should add the effects of the current economic crisis and the multicultural composition of our populations. Many people do not turn to lawyers for any services, and if problems arise, they tend to avoid going to court, even when they might succeed in obtaining satisfaction of their legitimate expectations.

As for the notaries, apart from the scenarios in which their presence is an absolute requirement of the law, people are inclined to avoid the involvement of these professionals, often perceived as only a source of unnecessary expenses. However, in this way people deprive themselves not only of the guarantee the notary’s assistance provides, but also the anti-litigation function resulting from his intervention as a third party and public official; as such, he is able to mediate between the various parties involved, while remaining simultaneously objective toward each of them and toward the legal system as well. In fact, the drafting of public documents can ensure generally higher levels of legal protection, useful as deterrents with respect to the infringement of obligations assumed by subjects (contracting parties, heirs, etc.).

The legal assistance of foreigners and migrants, as shown above, requires specific skills, which are not always those that jurists have been trained for during their years at university. If they were to attempt to immediately adopt an intercultural approach, both the lawyer and the notary would encounter serious difficulties in providing their advice. This opens the way for two possible alternatives. The first is to call for outside professional expertise or consulting, for example from anthropologists or cultural mediators: a viable option but—as already noted—quite expensive. Another solution could be to integrate specialized personnel able to provide similar contributions into legal firms and offices. Also in this case, however, the costs associated with the maintenance of fixed employees with multicultural competence would increase costs. We could imagine, for example, law firms where scholars and/or jurists specialized in cultural anthropology or religious legal traditions were part of the firm. Their wages would certainly be reflected in the subsequent fees charged to clients. Once again, therefore, the objective of providing multifaceted legal assistance targeted to more people and consequently at lower costs, would remain out of reach. What, then, are the possible solutions? And what prospects might they open up for young law graduates ready to acquire specialized know-how to proficiently address anthropological and legal-religious matters?

Many law firms or notarial offices could be interested in outsourcing the anthropological and religious know-how needed to deliver legal advice that is both responsive to cultural difference and inclusive in terms of social integration. Such exigencies could be satisfied by associations or societies of young jurists committed to field-work wherein they work with foreign communities residing in the national territory to gather information permitting them to create legal-intercultural schemes for translating their needs and interests. The eventual development of ‘cultural archives’ housing such information could help these young jurists to provide services at a relatively low cost to established law firms or notaries dealing with foreigners or migrants. In this way, of course, legal experts of intercultural law would have only an ancillary position with respect to legal professionals understood in the traditional sense, but in compensation, they would occupy an area not yet affected by ruthless competition. In this regard, it is to be noted that their activity would be differentiated from that of cultural anthropologists, already engaged in many European countries—even in Italy, although quite

rarely—to provide cultural expertise<sup>5</sup>. The expert in intercultural and/or inter-religious law would not merely report and explain the rules of the system to which people belong, or portray in descriptive terms the cultural habits enacted by individual subjects. Rather, by relying on experience previously acquired in the field, the intercultural legal consultant could support lawyers and notaries with interfaces of translation between cultural patterns and legal categories already shaped by the hosting state. This kind of advice is difficult if not impossible for anthropologists to supply precisely because of their lack of competence regarding the technicalities of the legal system and the related interpretative-applicative possibilities of using its rules to find legal solutions. In short, the heart of the matter is that anthropologists are not jurists, and moreover often prove extremely reluctant to acquire legal technical knowledge. This circumstance could turn out to be nothing short of catastrophic, particularly when they are employed to probe the cultural competence of migrants in elaborating their commissioned cultural expertise. The topic is, however, for another essay. It is hard to imagine that he who is unable to predict the direction in which people are going can understand what people should retain from their own past. But their direction is also impacted by the host country legal systems' reactions to gestures, words, and action plans employed by foreigners according to their cultural habits. Put differently and in the broadest sense, only by trying to forecast how people will be, also through their relationships with the law, is it possible to enlighten, for the subjects as well, who they were and who they are becoming. The cultural competence of individuals is always both situated and undergoing transformation, hanging as a bridge between past and future, between new environmental challenges and memory.

In any case, relying on associations, professional firms, and legal-intercultural consulting societies rather than upon the expertise of individual practitioners could reduce the cost of legal advices, tailoring them to the needs of a wider client base. In this sense, the communication possibilities supported by IT systems could allow a real qualitative leap in providing legal intercultural assistance, starting a very innovative circuit of activities for young graduates in law. At the same time, efforts of dissemination and facilitating access to low-cost legal information systems would heighten the overall degree of knowledge of the law, resulting in an improvement in the management of conflict and the promotion of social cohesion. It is precisely to these new possibilities that I now turn.

### **3. Web Platforms for information, training and legal-intercultural advice on demand**

As mentioned above, one of the main problems for foreigners is to realize when and how they should seek legal assistance. Being unaware of such situations may expose them to serious risks. Without any support from expert guides in the field of legal-intercultural transactions, people may: a) engage in acts effecting unforeseeable and unexpected legal consequences; b) commit unlawful acts; c) often miss the opportunity to enjoy the benefits derivable from a well-gauged cross-cultural use of the laws in force.

Everything the foreigner needs and ordinarily lacks could be labelled "Preventive Legal Assistance" and used as a basis for the development of computing platforms and networks aimed at providing

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<sup>5</sup> See L. Holden (2011).

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legal advice and data on-line. Activities that could be managed by legal-intercultural operators working on the web, be they lawyers or consultants<sup>6</sup>, to provide on-line assistance to foreigners or migrants will be identified below.

Potential solutions include:

- a) A database of cases could be created in which multiple legal situations are identified by labelled clusters that refer to common life situations and are described using the non-technical language spoken by the people of the various communities of foreigners within a certain territory. Intercultural legal solutions, if and when possible, would be described in terms easy to understand by foreigners and supported by corresponding on-line forms.
- b) In connection with these cases, the web platform could supply online legal forms supported by an interactive completion process. Help text would be available for all forms and for each required field. If required fields were not completed, it would be impossible to move forward to the next window, making the process designed to automatically ensure compliance with legal requirements.
- c) In all situations in which it was not possible to complete online legal forms independently, the foreign client would have the possibility of getting additional chat or phone support from a team of intercultural lawyers, supplied at a low cost. This “human support” must be considered as essential to the project. The use of modular forms for drafting documents is seriously limited, in fact, by the danger of serializing personal behaviors and interests. Standardization, unfortunately, risks becoming a means of stereotyping foreign subjectivities, also as a consequence of the impossibility for these people to find viable institutional communication channels, which are generally more easily secured by native citizens. On the other hand, already the mere possibility of taking the legal dimension of their lives into consideration can work as a cue, and therefore an aid, for foreigners to understand when they must seek legal assistance. Support for this type of platform, then, could become a very effective means of endorsing the social inclusion of foreigners and migrants through and in the law.
- d) The solutions defined in a), b) and c), are applicable to circumstances and situations classified according to recurrent patterns. In all cases in which the foreigner must confront more complex

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<sup>6</sup> The possibility of delivering on-line advice to provide direct legal assistance outside the courts is inferable from the Italian legal system also through a reading of the new legislation on the legal profession. The necessity of inscription in the Rolls is established by this law as a precondition only with regard to judicial activities and/or tied to a particular case. Even the Court of Cassation (*Corte di Cassazione*), in an extensive series of decisions, has noted thus far, and again recently (Cass. Civ., Sez. Un., 3 december 2008, n. 28658), that legal consulting is to be considered not included in the list of activities reserved to lawyers according to the conditions required for the exercise of their profession. With respect to the attempts directed towards expanding the “reservation” on behalf of the category of lawyers to work within the whole legal framework, in some way tied to the new legislation on legal professions, the Italian Antitrust Authority has also recently intervened (AS 1137/2014), pointing out the need to maintain a trajectory of “self-restraint.” Appeals to the EU Court of Justice are already pending against the new legislation in an attempt to denounce the oligopolistic temptations of the forensic class, that seem to look precisely to that law for possible support. Some more general suggestions regarding the possibile connections between IT Systems and legal work can be found in Susskind (2013).

situations, it would be necessary to provide him the opportunity to get low cost on-line advice, so as to ensure equitable access to knowledge of the law and also decrease the risk of judiciary action (with consequent further costs). For the purpose, the platform might supply some questionnaires with broad contents, that is, which cast a wide net in an attempt to help foreigners understand if, when, and how they need legal assistance.

- e) Additional online resources might include a monitoring/assistance service concerned with the activities carried out by foreigners in the various areas of social and legal experience such as work contracts, family relationships, property and other rights *in rem*, the provision of inheritance schemes to entrepreneurial activities, etc.
- f) The platform could also be used to manage the settlement of conflicts on-line (online dispute resolutions) taken in their pre-litigation stages.
- g) An important aspect of online services is their potential for benefitting legal service providers as well as clients. Content could be reworked, for example, to provide advice to all ranks of national legal operators, in order to promote an inclusive and intercultural use of legislation based on the understanding of the needs and expectations of clients from different cultures. This could serve not only to improve the effective and widespread intercultural use of law circuits, but also to build relationships between foreign individuals and professionals. The objectives of this service would be:

1. Promoting the use of legal instruments by foreigners so as to provide a concrete accomplishment of their interests.
2. Overcoming cultural barriers arising from different and divergent legal folk educations
3. Allowing access to justice or the legal protection facilitated and mediated by a class of professionals trained and experienced in dealing with multicultural practice
4. Increasing social control and the deterrence of phenomena of social deviance as an indirect effect of a prudent, empowered, and aware use of legal instruments summarized by the idea that: "the best interests of the foreigner would coincide with the best interests of legal system" (if mediated precisely by the expertise of intercultural professionals).

- h) In the cases brought to the attention of professionals, the platform could be utilized to supply complementary assistance concerned with the cultural features of the situations experienced by clients. In these cases, the staff dedicated to work on the platform could provide para-legal types of advice that the professionals, in turn, could integrate into the services offered to their clients.

Most significantly, the contents of the platform could be disseminated among foreign communities throughout Italy and Europe in order to ease, via the use of intercultural law, the overcoming of cultural identity struggles caused largely by the difficulties of self-positioning of migrants in the public sphere of host countries. This, *inter alia*, to great advantage for policies of social inclusion and cohesion. Because of their ability to override spatial distances and to significantly reduce the costs associated with legal advice, digital tools are the optimal way to ensure that the legitimate interests of migrants and foreigners can rise to the level of "possible rights," rights guaranteed by instruments of protection that the law ought to provide to the entire population, regardless of their culture and provenance.

Legal intercultural consulting either on-line or managed by associations of young lawyers should be considered from yet another perspective; these services might have potential beyond helping subjects engulfed by difficulties of integration and in adverse economic conditions. Problems of legal-

intercultural translation and the need to make use of intercultural law also arise in other situations, which have nothing to do with migration.

The area of business activities related to investments in Italy is also concerned with the problems of coordination between different cultural perspectives. Entrepreneurs are certainly in a good position to be assisted by their lawyers. They are not therefore in the same position of unintended "*ignorantia legis*" as that which distresses the have-nots' existence. However, doing business abroad also includes the activity of negotiations and the related need to transfuse into the foreign legal system interests and expectations rooted in the cultural background of each entrepreneur. Moreover, it cannot be assured that inter-normative coordination (considered in terms of international private law and international trade law) is always appropriate to meet such exigencies. In many cases, indeed, the entrepreneur could have a strong interest in assessing to what extent the foreign national law would be prepared to include and make room for his culturally engrained interests.

Once more, it should be noted that, unlike the rules of the country of origin and the corresponding institutions and patterns of conduct, cultural habits are much more flexible and, above all, are manageable according to the intentions of the individual transnational actor (in the last case supposed as an entrepreneur). It is precisely this possibility to manage cultural schemes which must be supported by experts who are able to understand and translate foreign customs and find ways to adapt them to Italian legal-patterns. In this way, new intercultural legal solutions could be shaped so as to endow Italian law with a cosmopolitan openness. This particular feature could attract foreign business and capital to the benefit of the national economy and, therefore, the prospects of young intercultural jurists.

The legal templates devised and elaborated by the overall work of legal interculturalization developed for services provided to migrants and foreigners may in turn work as resources for legal transnational coordination at large. As a result, Italian intercultural jurists might find themselves to be a valued resource for Italian entrepreneurs seeking to expand their business abroad.

#### **4. Observations on cultural expertise in Italy**

Another viable area of professional activity for intercultural jurists could be that of judicial examination. In many European countries, cultural examination or cultural expertise is widespread in judicial contexts. Currently it is practiced mainly in the courts, but is almost absent in pre-litigation or extra-litigation contexts. It is typically performed by cultural anthropologists and especially by those experienced in traditional or religious laws or in ethical normative systems with ethnic relevance. To date, there does not appear to exist an acknowledged and autonomous order of intercultural jurists able to unify into a single professional both anthropological and technical legal skills, in either Europe or in the United States,

With regard to the Italian experience, it should be noted that cultural expertise in legal matters is also practiced in pre-litigation contexts. Those who require this kind of assistance are mainly lawyers and notaries. In many cases, however, the service is not performed by professional anthropologists (also because in Italy there is no official Roll of anthropologists) but rather by cultural mediators, unfortunately often with unsatisfactory results as to the interfacing between culture and law. Lawyers and notaries ask for the support of cultural experts primarily because they are becoming increasingly

aware of the necessity of understanding the exigencies of their foreign clients. Nonetheless, seeking this support is not a common practice. Often, when facing difficulties perceived as insurmountable, legal professionals default to one of two options: a) they refuse to assist the foreign client; b) they lay on the foreigner's life situation, with an almost paternalistic attitude, Italian legal schemes and categories, underestimating the salience of what they do not understand; otherwise, and when it is appropriate, they make use of the resources and technical devices provided by private international law.

In the courts, even Italy knows that cultural expertise can be required, although it is not usually defined in these terms since it falls within the general category of the official technical examination (CTU: *Consulenza Tecnica d'Ufficio*). In civil lawsuits it may be used without limitation, as long as the judge requests such assistance. Problems could arise, instead, in criminal trials. Article. 220, second paragraph, in the Code of Criminal Procedure, provides that, "except as stated for enforcement of the penalty or security measure, examinations are not permitted to establish the habitual inclination or professionalism in the crime, the tendency to commit crimes, the character and personality of the individual defendant, and generally the psychic qualities independent from pathological causes."<sup>7</sup> Perhaps due to historical aversions against Lombroso's physiognomic and empirical approach to criminal anthropology—aversions in many respects decidedly persuasive—in the Italian courts legislators tend to exclude the possibility of using expert analysis to establish objectively and externally whether the accused is mentally "defective," unless pathological determinants (i.e., mental competence) is to be ascertained. The issue that arises here is whether cultural expertise falls within the constraints of Article 220 CPP. The *Cassazione Penale*, by judgment *Cass. pen. sect. I, n. 30402/2006*, has stated that cultural expertise cannot be considered equivalent to psychological examination. Therefore cultural habits and psychological determinants of behavior are not assumed to be coextensive. Of course, such a decision constitutes a welcome development for the legal-intercultural approach, although the theoretical premises underpinning the distinction still remain rather obscure. Over time, the surmised difference between psyche and culture could, however, prove to be a counterproductive factor in assessing the legal relevance of representational schemes employed by foreigners and migrants when they determine and plan their behaviors within new social contexts. The Italian legal system requires that the Technical Consultant (*Consulente Tecnico d'Ufficio*) be enrolled in an official register kept at the jurisdictional territorial district offices. Judges may appoint a CTU if they consider it necessary towards the ascertainment of facts in a case. In fact, the Rolls of the Italian courts include experts from other disciplines, even anthropologists. This is not however a widespread occurrence.

Currently in the courts similar considerations, although substantially devoid of problematic aspects, are also valid for the so-called "Technical Consultancy of the Part" (CTP). Every lawyer may commission and present in court reports containing the results of a technical examination, whenever he considers its contents relevant to the definition of the facts of the case and the court's decision. Moreover, within a criminal trial, lawyers are granted the possibility of asking for advice in the form

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<sup>7</sup> Art 220 c.p.c.: «Salvo quanto previsto ai fini dell'esecuzione della pena o della misura di sicurezza, non sono ammesse perizie per stabilire l'abitudine o la professionalità del reato, la tendenza a delinquere, il carattere e la personalità dell'imputato e in genere le qualità psichiche indipendenti da cause patologiche».

of investigations, as stated by law n. 7.12.2000, n. 397. Among the technical consultants made available, there are of course, also cultural anthropologists with their cultural expertise.

However, the activation of post-graduate courses, in addition to specific teachings in intercultural law inserted into the curricula of academic institutions, could produce a “contingent” of jurists trained to deliver advice within legal proceedings, so as to enhance and integrate the consulting services currently supplied, in many jurisdictions of the world, by cultural anthropologists.

The overall framework outlined thus far shows glimpses of how intercultural law and lawyers can serve, together, as both promoting factors of social cohesion within the multicultural and multi-religious societies and, at the same time, essential vehicles for the effective implementation of legislation. The long view, tied to their societal diffusion, would involve the transformation of legal experience in a chrysalis of legal-anthropological patterns adaptable to the varied mesh of transnational relations constantly woven by subjectivities that are increasingly on the move across the contemporary global scene. All this, however, lies beyond the frontiers of the imminent future and, of course, outside the limits of this brief essay.

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