

The Globalization of Legal Education

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FAST FACTS

Law schools in Michigan account for three of the seven existing dual-degree programs between the continental U.S., Canada, and Mexico.

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It is not news to lawyers that globalization is increasingly affecting the legal profession.¹ As more people and goods flow across borders, foreign laws become more relevant for the resolution of “domestic” legal disputes. This is occurring beyond the domain of commercial transactions and is reflected in the growth of transnational practice areas such as arbitration. And it is no surprise that law schools have been called to globalize their curricula, starting as far back as the 1940s.²

A brief look at U.S. law schools today reveals that globalization has significantly influenced curricula, programs, faculty and staff, and student body, particularly over the past 20 years. Yet globalization has not challenged the notion that the U.S. legal education model remains fundamentally designed to train lawyers to operate in a single system. The core curriculum of most law schools is still strongly influenced by a template that was established in the late nineteenth³ century and a model of delivery that has been shaped by events in the U.S. since the 1920s.⁴ The pull toward expanding the educational model to a broader frame of reference lives in tension with the resource demands of the

traditional curriculum and other pedagogical goals such as experiential learning.

In addition to this tension within legal education, the legal profession, through admissions standards and requirements, remains wedded to national tradition. Lawyers in the U.S. must be admitted to each state in which they practice, and the majority of states—37, including Michigan—have resisted adopting a national bar exam.⁵ This approach has equal force in transnational practice. In most instances, lawyers who want to practice in more than one country must be trained extensively in each national system, usually by attending schools in those countries.

As a result, it is rare for U.S. lawyers to be admitted to practice in other countries, and foreign lawyers are not readily admitted to practice in the U.S.⁶ While 29 states report they will admit foreign-trained lawyers, they have significant restrictions (e.g., educational equivalency of the foreign degree to an ABA-approved law school degree).⁷ As the need for lawyers to provide services across borders continues to grow, there is increased tension regarding the legal profession’s restrictive tradition.

These competing forces of globalization and attorney regulation continue to prompt legal education toward greater innovation. This article briefly reviews how globalization has shaped legal education and how law schools are moving to overcome barriers to genuine transnational practice.

Globalization in the JD Curriculum

In 1948, only one-third of AALS member schools had a basic international law course, and half as many had a course in comparative law.⁸ Today, law schools routinely offer these courses in addition to many specialized international and comparative law classes. A current debate in legal education involves whether these subjects should be mandatory and whether they should be taught as standalone courses or integrated more pervasively into the curriculum.⁹ Some law schools require students to complete a minimum number of non-U.S. law course credits (e.g., University of Michigan and University of Detroit Mercy); other schools include international courses in their first-year curriculum.

In addition to these basic courses, study-abroad opportunities also have globalized the U.S. law curricula. Growth in this area has been astounding. In the mid-1990s, more than 90 law schools reported having study-abroad programs.¹⁰ Today, one can count more than 200 programs. An increasing number offer externship opportunities,¹¹ and others have expanded from intersession and summer programs to semester and full-year experiences. Law schools also have developed foreign-exchange programs for faculty as well as specialized legal institutes with an international or comparative focus.¹²

These courses and programs are aimed to help students develop an understanding of other legal systems as well as cultural competencies that enable them to work effectively with diverse clients. Such programs also help students develop a deeper understanding of U.S. law. These programs meet some of the needs that globalization has created for attorneys trained in U.S. law schools and may be sufficient for many practice areas. However, as the forces of globalization create more connections between people in different countries, programs that qualify students to engage in genuine transnational practice should be promoted.

The Development of Graduate Degree Programs

Another development reflecting the globalization of legal education—and taking a step closer to preparation for transnational practice—is the proliferation of LL.M. (master in laws) programs that attract students from other countries and expose U.S. law students to international and comparative law. In 1975, 35 law schools admitted almost 500 foreign students in general graduate law programs.¹³ These programs did not have defined courses of study or outcomes, other than to expose foreign students to U.S. substantive law and pedagogical methods.¹⁴ One source estimates that currently more than 6,000 students study in more than 100 LL.M. programs at U.S. law schools.¹⁵ As of 2013, there are approximately 75 law schools operating ABA-approved programs with a comparative, global, or international designation in the program title¹⁶ and

44 schools report having LL.M. programs devoted exclusively to teaching international students.¹⁷

As noted previously, some states will admit foreign-trained lawyers. In a few of those states, receiving an LL.M.¹⁸ from an ABA-accredited law school is one route to sitting for the bar exam, although most states have requirements in addition to the LL.M.¹⁹ However, a significant number of states refuse to admit graduates of foreign law schools, even if they have obtained an LL.M. The ABA Section on Legal Education and Admission to the Bar recently proposed a model rule for regular admission of foreign-trained lawyers and criteria for the ABA to certify an LL.M. for Practice of Law in the U.S. but decided not to pursue this after receiving feedback.²⁰

Dual-Degree Programs

A more recent step toward globalized legal practice is the development of collaborative programs among law schools in different countries in which each school awards a law degree. There are fewer programs of this type because of the challenges of distance, language, different legal traditions, and culture, yet they offer the greatest hope for preparing transnational practitioners. There are currently only seven dual-degree programs between Canada, Mexico, and the continental United States, and Michigan law schools are responsible for three of them.²¹ For example, the University of Detroit Mercy has the only three-year comparative Canadian-American program, was the first to create a dual U.S.-Mexican program, and is the only U.S. school to offer a program through which lawyers receive the degrees necessary to practice in the U.S., Canada, and Mexico.

Dual-degree programs offer both law schools and law students a unique opportunity. Law students, especially in programs that are comparative but even in those where students



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study at one institution and then transfer to the second institution, are immersed in the study and culture of the countries' legal traditions. These programs prepare students for multijurisdictional practice by awarding the degrees necessary to be licensed in both jurisdictions. Law schools have a tremendous opportunity to expand resources and benefit from cross-border collaborations. Courses in dual programs can range from truly comparative to hybrid courses (core course relates to one jurisdiction with a comparative module covering the second jurisdiction) to stand-alone, single-jurisdiction courses. The key is making the content as comparative as possible and teaching the doctrine in context (i.e., the law's social, economic, political, and historical underpinnings).²² Technology and distance learning should foster greater collaboration between faculty in different countries and might promote the creation of additional programs even when the geographic distance is great.²³

Conclusion

U.S. law schools have had to balance the tension between greater integration with foreign and international legal systems and a traditional educational model that trains for a profession that reinforces single jurisdictional practice. The legal education adaptations briefly described in this article show that this challenge can be an enriching experience for students and faculty, producing better practitioners for an increasingly globalized legal system. ■



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ENDNOTES

1. We refer to globalization as the increasing interconnectedness between people otherwise separated by nationality, distance, language, culture, religion, legal traditions, etc.
2. Thayer, *The teaching of international and comparative law*, 1 J Legal Educ 449, 450 (1949).
3. Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: University of North Carolina Press, 1983), pp 35–50.
4. Standardization began in the 1920s, with legal education becoming a three- or four-year, post-undergraduate program; attending law school became a requirement for sitting for the Bar; and passing the Bar became a requirement to practice. *Id.* at 172–174.
5. Terry, *Transnational legal practice (United States)*, 47 Int'l Law 499, 504 (2013).
6. Silver, *Regulatory mismatch in the international market for legal services*, 23 NW J Int'l L & B 487, 549 (2003).
7. NCBCE, *Comprehensive Guide to Bar Admission Requirements 2013* (2013), pp 12–16, available at <http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf> [accessed October 8, 2013].
8. Thayer, n 2 *supra* at 449.
9. DeJarnett & Rahdert, *Preparing for globalized law practice: The need to include international and comparative law in the legal writing curriculum*, 17 J Leg Writing Inst 3, 9–14 (2011).
10. Daly, *Thinking globally: Will national borders matter to lawyers a century from now?* 1 J Inst Study Leg Eth 297, 307 (1996).
11. Weyenberg, *Study abroad, work abroad*, 22 Nat'l Jurist 32 (January 2013).
12. See DeJarnett & Rahdert, n 9 *supra* at 10.
13. Trakman, *The need for legal training in international, comparative and foreign law: Foreign lawyers at American law schools*, 27 J Leg Ed 509, 520 (1975).
14. *Id.* at 524–527.
15. Edwards, *LL.M. Roadmap: An International Student's Guide to U.S. Law School Programs*, Preface (New York: Wolters Kluwer Law & Business, 2011).
16. ABA-LSAC Official Guide to ABA-Approved Law Schools: 2013 Edition (Newtown: LSAC, 2012), available at <http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_official_guide_aba_approved_schools.authcheckdam.pdf> [accessed October 8, 2013].
17. *Id.*
18. For a listing of jurisdictions accepting an LL.M. degree to sit for the Bar, see NCBCE, n 7 *supra* at 12–16. Only California, New York, and Wisconsin consider the LL.M. degree alone to be sufficient.
19. Twenty-two states report they will not admit graduates of foreign law schools. See NCBCE, n 7 *supra*. Kentucky recently rejected a foreign-trained applicant who received an LL.M. Terry, n 5 *supra* at 508.
20. Terry, n 5 *supra* at 506.
21. There are five continental U.S.-Canadian programs: University of Detroit Mercy (UDM)/University of Windsor (UW); Michigan State University/University of Ottawa; American University/University of Ottawa; University of Colorado/University of Alberta; and University of Houston/University of Calgary. There are two U.S.-Mexican programs: University of Detroit Mercy/Instituto Tecnológico y de Estudios Superiores de Monterrey (Monterrey, Mexico) and University of Texas Austin/ITAM (Mexico City).
22. For example, roughly two-thirds of the required courses in the UDM/UW program are team taught by Canadian and American professors (e.g., Canadian courses with American components (or vice versa) or completely integrated, comparative courses).
23. Another program seeking to integrate U.S. and Canadian law was announced by Arizona State University and is called the North American JD. This program is not offered in conjunction with a Canadian law school but is designed to prepare students for admission in Canada. It is unclear whether any students have been admitted into the program, and it will be interesting to observe its development.