

WORKSHOP

LAW SCHOOLS WITHOUT BORDERS?

**THE CASE OF TRANSATLANTIC COOPERATION
IN LAW EDUCATION**

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LEGAL EDUCATION IN A GLOBALIZED WORLD

JAMES P. WHITE

When I reflect on the changes of the past thirty years relating to legal education and the legal profession, it is clear that globalization is perhaps the most significant development that has taken place. Demands of human freedom and a growing economic prosperity are an attribute of globalization. With the growth of the European Union, now comprising twenty-seven countries, and the free movement of members of the legal profession within the Union, transcending different languages and both civil and common law, it is clear that free movement of legal professionals and corresponding reciprocity of ability to engage in the practice law is a result of globalization.

Globalization of law includes global connections, global interdependence, global information, global finance, global governance and global rights.

A discussion of the legal profession in the 21st Century must focus on the rapid changes in legal education and the legal

profession that are taking place not only in the United States but throughout the world, the phenomenon that is often referred to as the globalization of legal profession. Lawyers in every country now are involved in the whole range of legal practice with their counterparts throughout the world. Increasingly we see multinational law firms with offices and partners throughout the world.

As John Sexton, then dean of New York University Law School and now the University President observed in his 2000 remarks to the London meeting of the American Bar Association.

“....today clients are represented in the same transaction by lawyers from American law firms who are graduates of American law schools and by lawyers from European firms who are products of a much more typical legal education consisting of five years of education after secondary school. These clients report that the American trained lawyers and those trained elsewhere bring comparable skills to the table. This observation, if true,

will become more palpable as the American firms and the European firms begin to hire lawyers from each other's pools – and these lawyers begin to practice side by side as associates and partners.”

The vast development of means of communication facilitates the globalization of law practice and the cooperation and exchange among law schools. The freer flow of students between recognized institutions in various countries, the recognition of legal studies undertaken outside of one's own country, procedures for recognizing degrees, greater integration of institutions and joint research projects all assume mutual trust. We as legal educators must foster mutual trust. The Internet is but a tool that must be used wisely to foster cooperation and exchange.

We must consider certain issues affecting the globalization of legal education. First, the level of resources of the institutions of different communities may be different. Efforts at internationalization are expensive. They demand investment, which may not yield fruit immediately. The

institutions of the various communities do not necessarily have equal resources for undertaking the task.

Second, the indirect resources for supporting the educational task are likewise not similar. In terms of internationalization initiatives, the funds allocated for education, which are channeled through students, may be especially significant. A student who has state-supported financing his or her participating in an international program will be much better prepared to benefit from such programs than a student who has to pay the cost of participation out of family assets.

Third, the forces favoring the internationalization of legal education sometimes clash with forces seeking to protect specifically national level interests that may also have a valid space in the life of some institutions. For example, universities in some countries feel strongly identified with the national character of the lectureships. They see the lecturer as a government employee who, barring extraordinary circumstances, by that very fact ought to be a citizen of the

country. As valid as such perceptions may be they do not encourage the internationalization of faculties. Initiatives such as those promoting joint appointment of professors between institutions in different countries as a linking mechanism, may run up against obstacles of this nature.

Fourth, the differences in the organization arrangements of law schools and departments of the different traditions also tend to impede interrelations. A North American style institution, which operates as a whole without subject-based departments, may take a long time to understand that in relating to their counterparts in another tradition they must communicate with an academic department, not simply the law school as a whole.

These are the issues that, in my judgment, influence our efforts to speed our cooperation transnationally. The manner in which we deal with them can greatly affect the success of our efforts.

Changes in legal education are taking place throughout the world. The free transfer of students in countries of the

European community, such as the Erasmus Program, demonstrates the rapid globalization of legal education. Erasmus seeks to enhance the quality and reinforce the dimension of higher education by encouraging transnational cooperation between universities and improving the transparency and full academic recognition of studies and qualifications throughout the European Union. We need to develop mechanisms, which will remove barriers and create a climate, which will foster and facilitate exchange of students and faculty, joint research, and free exchange of teaching and learning methods. The 1999 Bologna Declaration of the Confederation of European Union Rectors Conference, and the Association of European Universities was a pledge by twenty-nine countries to reform the structure of their higher education systems in a convergent way.

Regulation of legal education in the United States is unique among all nations. Under the doctrine of separation of power, authority for bar admissions principally resides in the highest court of each bar or admitting jurisdiction. The role the

ABA plays as a central accrediting body has allowed accreditation to become national in scope, other than fragmented among the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. The interest of the states and the various admitting jurisdictions in a competent bar is obviously great. Without a nationally recognized accrediting agency , such as that provided by the ABA, ensuring a competent bar would place upon each state or admitting jurisdiction the annual burden of assessing the merits of each applicant's educational qualifications and he merits of his or her law school. Since the 1920', the vast majority of jurisdictions have obviated this burden by relying upon the ABA's admission process.

In the past twenty years law schools in the United States have developed programs of summer study abroad, semester abroad study, individual study abroad, joint degree programs, including Sister Law School Programs. All of these programs are reviewed under a process to ensure program quality and that the program of study is comparative and international in

its nature. The American Bar Association has encouraged the development of these programs as part of its accreditation program and has derived criteria to accommodate these credit granting programs.

The theme of conferences, agreements and programs has been to review legal education in each country with a goal towards greater compatibility among the legal education systems of the world. While there is great diversity in legal education through the world, there is a commonality, which must be accentuated for all lawyers from all countries who must practice effectively in our global world of the 21st Century.

Over fifteen years ago, the ABA Section of Legal Education endorsed the adoption by states of the Foreign Legal Consultant Rule. This rule reflects the globalization of legal practice and the increasing pressure to permit cross-border practice while acknowledging the authority of each U.S. jurisdiction to control its bar admissions. It reflects the fact that consent must be obtained when crossing national borders to engage in legal representation. However, we have found that

this effort to provide legal advice in the various states has been used rarely in those jurisdictions that have adopted the rule.

Some eight years ago, NCBE President Erica Moeser and I attended a conference in Paris sponsored by the Bar Councils of Europe, the Japanese Bar Association, and the American Bar Association. The conference discussion as it related to the United States focused on the authority of the highest courts of each state and their respective boards of bar examiners to regulate bar admissions. Most participants from other countries could not understand a system in which this authority resides in each individual state with the highest court and the state board of bar examiners. The Law Society of England and Wales particularly questioned this authority of the highest courts of the individual states and has since engaged in ongoing dialogue with the ABA and the NCBE.

I believe that globalization is causing and will continue to cause the United States to rethink its system of bar admissions.

If we are now living in an independent world, how will local and national rules on bar admissions change? The

retention of bar admissions authority in each admitting jurisdiction is historic and important. If only some U. S. jurisdictions permit graduates of Canadian law schools or graduates of foreign law schools who have secured an LL.M. degree from an American law school to sit for the bar exam, the question then is the harmonization of the American bar admission process. As we have moved toward the use of a multistate bar examination and discussion of a national bar examination, how do we facilitate cross-world law practice? This is now a crucial question for the legal professions throughout the world to exam.

Cross-border commerce is a manifestation of globalization. International Treaties affect the practice of law worldwide and indeed may supersede certain local rules with regard to legal practice.

There are some clouds regulating the application and enforcement of international treaties. In late March, 2008 the United States Supreme Court said that the United States ratification of certain treaties is not enforceable in American

courts unless Congress takes additional steps to make it so.

(Madellen v. Texas)

Chief Justice Roberts stated that “No one dispute that (the world court’s decision) constitutes an international law obligation of the United States, but the protocol signed by the United States does not itself commit the signatories to comply.”

In a dissent, Justice Breyer wrote “In a world where commerce, trade, and travel have become ever more international, that is a step in the wrong direction.”

This workshop is an example of the kind of global conversation that must take place. Legal educators must harmonize legal education programs of study so that the law trained graduate is able to practice worldwide in an increasingly globalized world.