

GLOBALIZATION STRATEGIES FOR LEGAL EDUCATION

*David E. Van Zandt**

ANY law dean worth his or her salt will tell alumni and students that it is important for their school to be “international.” Unfortunately, it often sounds like a vacuous slogan. Even more unfortunately, many deans waste scarce resources on somewhat haphazard attempts to make their schools more “international.” These internationalization efforts are important, but they must be undertaken with a strong analysis of the appropriate strategy given the external environment. At Northwestern Law, we have undertaken such an analysis and have developed a responsive strategy.

I. EXTERNAL ENVIRONMENT

Globalization has driven dramatic changes in the international business and political environment. In the business world, these changes have challenged American businesses to become more competitive as their dominance of the domestic market weakens. For example, when the Japanese broke into the U.S. auto market in the 1980s, it was a wake-up call for the American industry, marking an acceleration of global competition that would ultimately also affect the way international legal transactions are conducted. At the same time, improved technology and reduction of trade barriers have increased businesses’ access to customers and suppliers no matter where they are located.

A good company seeks production and markets on a global scale. To accomplish this, businesses have adopted the latest management techniques that represent the best practices regardless of location. Economic principals are global, not dependent on local cultural variation. Thus, the ways in which transactions are valued and the types of effective strategies implemented are generally the same throughout the world. Likewise, the ways in which businesses of any scale resolve their disputes are converging. While local courts continue to provide dispute resolution services, there is a convergence on international arbitration as the preferred method. In general, good management practices, whether in human resources, project analysis, or strategic planning, are common throughout the world among businesses. Of course, such practices are sometimes skewed by local cultural differences or local government regulation, but the importance of the common features increasingly dwarfs any remaining differences.

Our generation has also seen a dramatic shift in political structures and governance. Again, improved technology has increased the flow of information at the grass roots level. Citizens’ abilities to receive and send information more easily makes poor governance vulnerable. The increase in cross-border commercial activity also exposes governments that under-perform and increases demands from

* Dean and professor of law, Northwestern University School of Law.

citizens for change. As in the business arena, we are seeing emerging international standards for political behavior and human rights. Since the fall of the Berlin wall, a common set of ideas about political governance, corruption, and human rights has emerged. Probably more importantly, many governments around the world are now willing to take the first steps toward implementing and enforcing these ideas. Though local variation both in the definition of these standards and in governance structures continues, we now see more acceptance of what is better or worse even in societies that continue to be torn apart by political conflict.

II. THE LEGAL SERVICES BUSINESS

Lawyers play an important role in these political and business developments. As businesses become more global, CEOs increasingly bring in savvy general counsel to find and manage firms and lawyers who will do a great job no matter where in the world they are located. Businesses look for service providers whose practices are in line with the company's philosophy regardless of nationality. We thus see a set of international conventions emerging with respect to the legal structuring of transactions and dispute resolution. The legal practices in capital market transactions have long been largely homogenized around the world given the pressure of highly mobile capital. More recently, mergers and acquisitions practices have coalesced around a common standard, as have other commercial dealings. Finally, the use of arbitration to resolve disputes between businesses has increased as a small set of similar rules and conventions has emerged.

Professional services firms have responded to these changes. Investment bankers and consultants were the first, followed by accountants and an increasing number of lawyers. Locally oriented service providers continue to exist and thrive in local niches, but as international business has grown, so have cross-border services firms. In the legal services world, we have seen a strong trend toward consolidation of firms both domestically and now internationally. So far English law firms lead the international consolidation, but U.S. firms are not far behind.

In terms of legal services, these changes have developed a standard set of practices that lawyers use in dealing with the needs of significant business clients whose operations have international scope. Whether a lawyer is working for a multinational client in Hong Kong, Frankfurt, London, Buenos Aires, or New York, the set of practices is largely the same. This enables a skilled lawyer to move effortlessly around the world. At core, these standard practices are based on the Anglo-American model of common law. Documentation of deals and contracts is fairly standard in terms of both structure and the types of business risks taken into consideration. Based on the Anglo-American contract model, such documentation is lengthier and more complex than the more cursory contracts drawn up in the past by local lawyers. At that time, much of the business was between local companies that relied less on legal documentation and more on social pressure to ensure proper performance. Arbitration also follows the Anglo-American model of litigation and dispute resolution as opposed to the more judge-focused civil law. Business English is the lingua franca of both international business and the accompanying legal practice. Finally, the role (and style) of the international lawyer has been an adaptation of that of the Anglo-American lawyer. It involves aggressive business

counseling that requires the lawyer to have a strong understanding of business and his or her clients' own businesses. Under this model, the lawyer is no longer the traditional distant technical advisor. In addition, this model includes a role for the lawyer as the aggressive negotiator.

III. CURRENT RESPONSES IN LEGAL EDUCATION

The universal, Anglo-American based approach to legal services should guide a law school's response to the dramatic dynamics that have radically changed the worlds of law and business. Lawyers both at home and abroad need the same fundamental analytical skills to operate successfully in a global arena whose universal use of English as a business language has helped to standardize transactional practice.

Despite these changes, law schools throughout the world have remained very traditional. Part of the reason for this may be that legal education throughout the world remains highly regulated either by government restrictions on educational curriculum or by quasi-public entities such as bar authorities that continue to operate in guild-like fashion and sometimes with the intent to limit the entry of new lawyers into the profession. These features of lawyer regulation and education have combined to reduce innovation and create artificial shortages of lawyers, which in turn reduces the pressure from market forces.

Outside of the United States, most legal education is state-provided and insular, with students attending large lectures about the abstract technical details of substantive law. While some exceptions are emerging, particularly among newly formed private schools, law students are rarely exposed to the broader context of their future practice. The best students are often directed to positions as judges. Throughout most of the world, law is an undergraduate degree with a curriculum that is largely based on memorizing local regulations.

American legal education is more sophisticated in some respects, if for no other reason than because it confers a post-graduate degree. It has also been more innovative in terms of cross-disciplinary training and the use of clinical settings. Still, most law schools continue to think of lawyers as purveyors of priest-like legal advice and train students as if they will be professors or judges.

American law schools usually see international law as a discrete subject and either focus on international public law, the cases and emerging rules from decisions of courts such as the International Court of Justice or the European Court of Justice, or on comparative law, for example, comparing contract law in France and Germany or between the common law and civil systems.

The approach of American law schools to international law usually follows one of the dominant approaches or a combination of them.

- **International Faculty:** Some law schools try to be international by importing faculty from non-American law schools either for permanent, but more often for visiting positions on a regular basis. They then offer specialized courses (usually with sparse enrollments) on international legal topics. This is an extremely expensive option if conducted on a large scale.

- **International Courses:** Many law schools load up on public international law courses, comparative law courses, courses that study specific national legal systems, or courses that purport to address “international” issues.
- **Exchange Opportunities:** Schools also offer their students opportunities to study in a foreign law school as an exchange student for a semester. While a wonderful experience for the students who enroll, by nature exchange programs can accommodate only a very small number of students.
- **International Student Infusion:** A school can try to internationalize by increasing the number of international students pursuing general LL.M. degrees. This is effective if the non-U.S. students can be effectively integrated in the host U.S. law school’s curriculum and culture.
- **Summer Abroad Programs:** Finally, many U.S. law schools, particularly those below the top tier, run summer abroad programs in attractive foreign locations for their own and other law schools’ students. In most cases, their own faculty or visiting faculty from more prestigious law schools go with the students to the location. For the most part, this seems to be simply a venue change for continuing the conventional legal program, and its benefit is limited to giving faculty and students a pleasant summer in a different locale.

In addition to the specific problems noted, these approaches all evidence little apparent awareness of the emerging transnational conventions and practices I discuss in sections I and II. They tend to present to students global practice as arcane and different from domestic practice. While I agree that efforts to expand the cultural horizons of our students are positive, they are not sufficient. In reality, as determined by the analysis in sections I and II, the best preparation for the emerging global practice is to develop a strong foundation in the basic principles of Anglo-American law and to understand the underlying business objectives and practices that drive the legal services business. It is not enough simply to offer discrete courses that include the word “international” in the titles.

Frequently, students approach me and ask how to “become an international lawyer.” The answer I always give is to master the basics of Anglo-American law—contracts, corporations, financial regulation, and dispute resolution. Though they likely will start out in a firm working with domestic clients, soon enough, if they are effective, foreign clients will be seeking their services. While local regulation of specific jurisdictions cannot be ignored, what is driving legal practice today in the international sphere is this emerging set of conventions, and the greatest rewards will go to those who can manage these processes effectively for clients. Knowledge of specific local rules and regulations, while necessary, has become more of a commodity.

IV. GLOBAL TRENDS IN LEGAL EDUCATION

Though not perfect, an American legal education is still highly valued throughout the world for its relative creativity and its close tie to the emerging set of global conventions. There is tremendous demand from outside the United States for American or American-style legal training. This parallels international demand for other types of American professional training, most prominently M.B.A. and M.D.

educations. Because of the trends I identify above, the M.B.A. has become a global degree. There is strong international, as well as national, competition among business schools. In the top U.S. business schools, such as Northwestern's Kellogg School of Management, generally 30% of all students enrolled in the full-time M.B.A. programs are from abroad.

Law schools are experiencing similar demand with the increasing number of international students interested in earning LL.M. degrees. The number of students with first degrees in law from foreign institutions increased dramatically in the late 1980s and early 1990s, which parallels the development of the market changes noted above. Many non-U.S. firms and businesses realize that in order to provide value for their clients, their young attorneys need a basic understanding of Anglo-American law, the strong analytic training provided by common law education, and exposure to the American business and legal culture that is at the heart of the emerging global conventions. Obtaining an LL.M. degree has become important and sometimes necessary for a young foreign lawyer to advance at his or her firm and practice. Because today's LL.M. programs are adaptations of the original LL.M. programs, aimed at providing U.S. students with an enhancement of their J.D. degree or training for an academic career, they remain general in nature.

American law schools are seeing increasing competition from U.K. and Australian law schools. In the 2003-04 admissions year, there was a 10% to 15% decrease in applications by international students to general LL.M. courses at U.S. law schools. This is likely due both to security concerns (including applicant concern about the ability to obtain a U.S. visa) and cost differentials, as most U.K. and other international law schools are subsidized by the government and charge lower tuitions than U.S. law schools.

In addition, the general LL.M. degree actually may become a commodity. Many young lawyers now have an LL.M. degree, and some are looking for ways to differentiate themselves from the pack. One way to do that is to enroll in a more tailored program. For example, Northwestern Law offers a 12-month graduate program in law and business (LL.M./Kellogg), in which the student earns both an LL.M. and a certificate in business administration from Kellogg. Another differentiation device is to earn a J.D. degree and become fully qualified in the United States. At Northwestern Law, we have seen an increase in the number of foreign students enrolling in our core J.D. and J.D.-M.B.A. programs, as well as our two-year J.D. program (for non-U.S. lawyers with a first degree in law and substantial post-first degree work experience). In any given year, up to 5% of our J.D. and J.D.-M.B.A. student body is composed of international students.

V. THE FUTURE

We are still far from 30% of foreign students enrolled in the leading M.B.A. programs (not to mention the 50% enrolled in many U.S. Ph.D. programs). But based on the trends I have described, I predict that in 20 to 25 years we will see 20% to 25% of our core J.D. programs composed of international students. A corollary to this is that general LL.M. programs targeted at foreign students will slowly decline as more and more of those students seek out J.D. or similar degrees.

I also believe that there will be a set of law degrees that will emerge and be recognized as global degrees. They will be offered by strong universities around the world. J.D. degrees from a small number of American universities will be among those premier global degrees. These degrees will be recognized by the market (if not the regulators) as providing the professional educational base for success in the new international practice. Many of these degrees will be graduate or post-first degrees as the trend in that direction accelerates as it has in countries such as Australia, Japan, Korea, and China. But strong first degrees in law can compete as well, as can LL.B.s from some of the strongest English and Australian universities.

In this anticipated world, students will choose law schools based on the quality of the degree and the education behind it rather than on geography or jurisdiction. (Talent is distributed pretty evenly around the world, so my 20% to 25% prediction refers to demographics). The best degrees will attract the best students as well as faculty. There will be borderless competition among law schools. Likewise, employers will seek out the best graduates with these degrees. As the number and size of global law firms continues to grow, the demand for competitive degree holders will grow similarly, as has happened with the M.B.A. and Ph.D. Of course, demand for more local or national degrees also will continue in order to provide lawyers for local regulatory and litigation practice as well as to serve purely local clients.

I recognize that the regulatory barriers to cross-border trade in legal services and legal education remain high. As in other sectors including the services sectors, however, the economic pressures will be too great to resist, and those barriers will come down. In just a few short years, we have already seen the regulatory barriers in Europe fall with respect to legal services. To me, this is all very exciting even if some fear this change. For our students, however, the opportunities presented by the changes going on in the world and in the legal services market are great and growing everyday.

VI. NORTHWESTERN LAW STRATEGY

Our goal at Northwestern Law is to be a leader in this development. We will have met our goal when 25% to 30% of the students in our core J.D. and J.D.-M.B.A. programs come from abroad. In achieving this goal, we have undertaken already and must continue to institute a number of changes in our programs, including admissions and curricular criteria.

The foundation of our strategy is a substantive focus on two areas: globalization of business and international human rights. To us, these seem to be the important growth areas in the global environment. We provide our students with opportunities for significant training in these two areas. Our students develop a strong foundation in Anglo-law and business practice through our core common law courses and a strong range of business courses, including extensive cross training through Kellogg. Through our admissions process and curricular and co-curricular opportunities, we place a strong emphasis on the interpersonal, teamwork, and communication skills necessary to operate flexibly in the global arena. We also focus on international human rights through our Center for International Human

Rights, a part of the Bluhm Legal Clinic. Both the center and the clinic are dedicated to educating and exposing our students to the range of issues related to human rights in general, and in many cases to human rights in the international context. Like other law schools, we continue to offer traditional exchange opportunities for our students through partnerships with non-U.S. law schools around the world. We also offer an international curricular concentration.

Additionally, we try to expose our U.S. students to the international environment. Each year, our International Team Project (ITP) courses provide international legal and cultural exposure for up to 100 students, a far higher number than possible through traditional exchange programs. ITP combines semester-long research, an intense two-week field study abroad, and a final group project. Students are encouraged to organize an ITP class by generating interest in a particular country and identifying a faculty member with experience or interest in that country. During the beginning of the spring semester, they read secondary material and bring in speakers with expertise on their chosen country. Within the class, they divide into teams of three to five members and develop a research project on a particular aspect of the chosen country's legal and social system. During spring break, they then travel with the faculty member to that country and conduct interviews and other forms of firsthand research. Upon their return, they prepare team reports and presentations on which they are graded as a team.

An additional focus of our strategy is to make our programs more attractive to foreign students to meet and increase the demand for a Northwestern Law education. Like those at other U.S. and U.K. law schools, our general 9-month LL.M. program has grown in size. To meet the market demand more effectively and to differentiate our offerings from those of other top law schools, we added the 12-month LL.M./Kellogg program in 1997. One of the great advantages of the LL.M. and LL.M./Kellogg programs is that they bring to our law school a tremendously talented and accomplished group of students who interact with our J.D. and J.D.-M.B.A. students both in the classroom and through extracurricular activities and events, which in and of itself makes the outlook of all our degree students more global. To enhance the LL.M. and LL.M./Kellogg programs, we partner with a variety of employers, including international and U.S. law firms and companies, as well as government agencies to ensure that we are meeting their needs for the students they sponsor in our programs. Consequently, students increasingly are being sponsored by their employers. We also have developed an Executive LL.M. Program for students who wish to seek an Anglo-American training in law and business while continuing their work commitments as seniors or executives in their firms and companies. Currently in Seoul, Korea, we are investigating creating additional programs to serve students in China, Europe, and Latin America.

In terms of the core J.D. and J.D.-M.B.A. programs, we began the two-year J.D. program several years ago to attract strong candidates who might be considering an LL.M. degree, but who want the further differentiation provided by a full J.D. degree. These students make a sensible decision to invest an extra year at Northwestern Law, and earn full U.S. qualification, thus making themselves that much more valuable to their employers. Finally, we are seeing and strongly encourage an increase in the number of foreign students enrolling in the traditional

three-year J.D. and J.D.-M.B.A. programs. We seek to provide appropriate financial aid to such students on a non-discriminatory basis.

Overall, our students in all programs are fully integrated consistent with Northwestern Law's overall strategy and model of legal education.¹ In our admissions process for all our degree programs, we seek students who have excellent academic ability and promise, strong interpersonal teamwork, communication skills, including strong ability in business English, which we judge through admissions interviews, and substantial post-first degree work experience. From day one, all of our students learn team-based communication, counseling, and analytical skills that are critical to satisfying clients and managing multi-job careers. In many courses, our law students interact with M.B.A. students at Kellogg and work in teams in courses such as Corporations, Finance, Accounting, Mergers and Acquisitions, and Negotiations. They also gain real-world experience through our Small Business Opportunity Clinic, a transactional law clinic that provides clients with advice on matters such as incorporation, trademark registration, copyright protection, and commercial licenses. These experiences reflect how law and business students will interact in the global market.

CONCLUSION

The public international law paradigm that has dominated the thinking of law schools since World War II has been surpassed by actual changes in the global economic and political environment. Both the business world and the legal services business have undergone radical changes over the past 20 years. Today good business, government, and the concomitant legal practices are not geographically or culturally bounded; they are universal. Law schools must adjust to the realities of this new environment and look beyond the traditional view of international law as a discrete subject. Just as businesses and law firms can no longer take a strictly local or even regional perspective in terms of competition, neither can law schools. American law schools are better positioned than any other institutions to prepare students, both domestic and foreign, to move seamlessly from domestic to international practice in today's competitive global economy.

1. See David E. Van Zandt, [strategic planning article] (unpublished manuscript on file with author).