

THE INTERNATIONALISATION OF LEGAL EDUCATION

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Introduction

It makes very little difference where a future architect or future doctor attends school. The subject matter that is studied is essentially the same, regardless of the country where the person is educated. Law, on the other hand, is very different, and at least until recently, a person who studied law in one country was limited in his or her future practice location to that particular place. In the United States, in fact, a law graduate must decide which state's bar exam to take, and, having done so, can generally only practice in that state. Moving from one state to another requires either another bar exam or, in some cases, sufficient practice in one state to be admitted in another without the exam. Even though Britain and the United States share the same common law tradition, lawyers who are admitted to practice in one of those countries cannot be admitted in the other without repeating some or all of their education.

To some extent, this has changed in recent years. As legal practice has become more transnational, legal education has changed as well. Within Europe, there is greater emphasis on European legal education, not limited to the laws of a particular country, and even in the United States and Great Britain, there is an increased recognition of the need for a broad understanding of the laws of other cultures along with that of the nation in which the student lives and plans to practice. By the term internationalisation of legal education, I mean two somewhat different but interrelated concepts. First, legal education has become more similar from one place to another. Second, but to a degree as part of that increasing similarity, it includes more in the way of international law and practice. The purpose of this essay is to look at the changes in legal education in the United States, Britain, and the Netherlands, with a view toward demonstrating the increasing internationalisation of legal education.¹

I. The United States

In the United States, unlike Europe and Britain, law is taught as a post-graduate degree. Students generally attend university and receive a B.A. before beginning the three-year programme in law that leads to a Juris Doctor (J.D.) degree. There is no required course of undergraduate studies, although many students who intend to go on to law school specialise in

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¹ I chose those three countries in particular because I have studied law in the United States and Great Britain, and I have taught law in both the United States and the Netherlands.

history or political science. While the majority of American law schools are affiliated with universities, there are a number that are independent, or free standing. Having completed the J.D., American students sit for the bar exam in the state in which they choose to practice, and if they pass the exam (the pass rates vary from one state to another), they are admitted with no further education or internship required, although some states (but not all) have mandatory continuing legal education.²

When I was in law school, some thirty-five years ago, most of the classes dealt with the law of the United States. In the first year, all of our courses were required: contracts, torts, property, civil procedure, criminal law, and constitutional law. After that, we had choices, but the bulk of them dealt with specialised areas of American law. As I recall, there was one course on offer in (American) legal history and one in comparative law. I also took “Conflict of Laws”, and while a small portion of the class dealt with the enforcement of foreign judgments in the United States, the majority of the course dealt with jurisdiction and choice of laws issues in interstate cases.

In recent years, I taught at the same law school where I was a student. Among the courses I taught were “English legal history” and “Comparative constitutional law”. Other faculty taught a variety of courses in public and private international law, the law of the European Union, and a history of Greek and Roman law, with a total of something like twenty offerings in the areas of comparative or international law. And the total does not include those domestic courses in which faculty have chosen to add a comparative perspective. For example, in the course I taught called “Child, Family & State,” which deals with ways of forming families, the rights of minors, and the role of the state in family disputes, the last two weeks of the class were spent on the law regulating the rights of parents and children in the United Kingdom.

In addition, the school has recently added a new required course in the first year entitled “The Regulatory State” which is described as follows:

“This course introduces students to statutes and agency decisions and the central role they play in modern government. The course covers the nature of statutes and agency regulations, how they are generated, and how they are interpreted and applied. It will consider the justifications for modern regulation, the modern administrative state, the incentives that influence the behaviour of the various actors, and the legal rules that help structure the relationships among legislatures, agencies and courts.”³

While this class deals with domestic law, it is vastly different from the kind of course I had in law school and arguably better prepares students for the study of, among other things, modern European law.

² The state of Wisconsin allows graduates of accredited law schools within the state to practice without taking a bar exam, but I believe that is the only state that does so.

³ See the Wayne State web site: <http://www.law.wayne.edu/current/requiredfirstyear.php>.

Finally, Wayne State University Law School has recently established a Programme for International Legal Studies to combine the courses, lectures, and study abroad programmes under one umbrella. The school now has a systematic way to deal with student and faculty exchanges, fellowships for study abroad, international internships, and visiting scholars.

Similarly, the University of Michigan Law School has a Centre for International and Comparative Law, a European Legal Studies Programme, and has fairly recently added a required course in Transnational Law. New York University Law School (NYU) has been known for some time for the quality of its international programs, including having a number of faculty members with affiliations at both NYU and European law schools. The University of Buffalo Law School has a graduate programme geared toward lawyers who were educated outside the United States, with the goal of providing them with sufficient background in the law of the United States to sit for the New York bar exam after a year at Buffalo. These are just a few examples of the way in which American law schools are increasing the study of international law and providing opportunities for foreign lawyers.

In addition to the increased number of courses in international and comparative law, almost every law school in the United States either sponsors one or more study abroad programmes during the summer or allows (and often encourages) students to participate in study abroad programmes run by other schools and receive credits at the home school. There are also programmes at many American law schools through which students can spend a year or a semester studying at a foreign law school while still receiving credit for their work at their own institution.

II. Great Britain

Legal education in Britain has an interesting history, very different from that on the Continent. Until the eighteenth century, British universities did not offer classes in the common law. Young men who studied law at the universities learned only civil law and were qualified to practice in the church courts or specialised courts based on civil law (such as admiralty), but not in the common law courts. Men who intended to become barristers became members of the Inns of Court and learned the law by attending court and observing lectures and moots at the Inns. Future solicitors might attend one of the lesser Inns but generally learned their craft through working as a clerk in a solicitor's office. Even when the universities introduced classes in the common law (starting with Blackstone's lectures at Oxford), it was neither customary nor required that future lawyers attend university. And those that did, continued to receive the bulk of their education through practical training. It was not until the twentieth century that legal education became based in the universities and they began to concentrate on teaching the common law. Today, most future lawyers in Britain spend three years

studying law at a university, though it is possible to qualify if the initial degree is in another subject. After receiving a B.A. or L.L.B. (the title of the degree varies from one university to another), those who intend to become solicitors spend a year studying at a law school (longer if the initial degree is not in law) before taking the qualifying exam, while those planning to become barristers attend the Inns of Court Law School. After that, both branches of the profession serve an internship of sorts before fully qualifying; depending again on the branch of the profession they wish to enter.⁴

If I remember correctly, when I was applying to do a post-graduate course at a British university, the undergraduate programmes consisted entirely of courses in the common law, at least in terms of required courses. Oxford had a post-graduate degree available in civil law, and there were presumably optional courses in civil law and international law, but it was certainly possible to become a practicing lawyer in Britain, as in the United States, with no exposure to the law of any other jurisdiction.

Today, both Cambridge and Oxford have required courses for first year students in civil law, called “A Roman Introduction to Private Law” at Oxford and “Civil Law I” at Cambridge University. At the London School of Economics, on the other hand, the required courses in the first year are all based on the common law, although optional courses taken in the second or third years include the law and institutions of the European Union, an introduction to civil law, and various aspects of international law.

Both Oxford and Cambridge offer undergraduates the option of the traditional three-year degree or an optional fourth year spent at a European law school studying either the law of a particular European country or the law of the European Union or international law. Similarly, the University of Warwick offers an optional four-year degree in law in which the student can spend a year studying abroad in English at one of a number of European universities that offer English-language programmes or studying at a French or German university in the language of that country, for those with sufficient language skills to do so. Generally, those doing the four-year degrees spend two years at their home institution, the third at a European school, and the fourth year back in the U.K.

III. Europe

As in Britain, legal education in Europe is provided as an undergraduate programme, within the university setting. There are no law schools in Europe in the sense that they exist in the United States, but instead the faculty of law will be situated within a research university. In France, the prospective lawyer studies for three years for a licence (comparable to the British or American

⁴ Future barristers do a pupillage for a year, unpaid, in which they essentially shadow a practicing barrister, while future solicitors work as paid articled clerks in an existing practice.

B.A. degree), and then a further two years for the Master of Law. During the first year of the Master's programme, the student specialises in a particular area of law, such as public law, private law, or international law, and then in the second year the student chooses between a work-oriented programme and a research programme. In Germany, law students spend at least four years at the university, followed by two years of internship.

Two factors are working towards making European legal education more similar from one country to another. First, pursuant to the Bologna Process, there has been an attempt to harmonise university education, including legal education, throughout Europe. Created at a conference at the University of Bologna in 1999, there have been a series of conferences and agreements aimed at creating common educational standards throughout European universities.⁵ Initially joined by twenty-nine countries, there are now forty-seven participants. The goal is to create easily understandable and transferable degrees in three-year cycles (bachelor, master, doctorate), and the participating countries are currently working at complying with the standards established in Bologna and thereafter.

In addition to the increasing similarity of their programmes, European universities are increasingly hospitable to students from other countries. Maastricht University, for example, has a standard legal education, taught in Dutch, for students who are presumably preparing to practice law in the Netherlands. However, it also has a European Law School track, taught in English, that emphasises the law of the European Union and international law, rather than merely the law of one country. Although primarily aimed at students from within the European Union, it also attracts others, including Americans, either as visiting students or full-time participants. Utrecht University has two different B.A. programmes taught in English and aimed at international students, one in Utrecht and one in Middleburg.

Finally, the Erasmus Programme, which was established by the European Union in 1987, encourages exchanges for students and faculty members within Europe, by providing some funding and also assuring that the work that students do at universities in countries other than their own will be recognised by their home institution. The Erasmus Mundus Programme is similar to the Erasmus Programme but is aimed at exchanges between students at European universities and those outside the European Union.

Conclusion

Legal education has changed enormously in the last twenty or thirty years in Britain, the United States, and within Europe. The number of courses in comparative and international law has increased, students are increasingly encouraged to spend a portion of their legal education in another country,

⁵ See the official website of the Bologna Process at www.ond.vlaanderen.be/hogeronderwijs/bologna/about/.

and, at least in Europe, programmes have been developed to provide a common education for students from many different countries.

In the autumn of 2009, I taught a course in Maastricht, in the European legal education programme, as part of an on-going exchange with Wayne State University. I am an American, educated in the United States and Great Britain. The course was a History of the Common Law, taught, in English, to students from a variety of EU countries, and even one student from the United States. That example exemplifies for me the changes that have taken place in legal education and which will, I believe, not only continue but will accelerate in the future.