The Reception in Honor of the 2032 Graduating Class of the Global Law Program of the University of Lucerne School of Law - Memories from the Future

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“I Have a Dream” ................................................................................................................................. 1
Preliminary Remarks ............................................................................................................................ 4
Academic Arguments for Global Legal Education .............................................................................. 5
Practical Arguments for Global Legal Education ................................................................................. 7
How to Design a Global Law School for Lucerne and Elsewhere for the Year 2032? ....................... 9
Concluding Remarks .......................................................................................................................... 13

“I Have a Dream”
A few weeks ago I had a dream. I want to share this dream with you today. I entirely agree with you that beginning a presentation at a distinguished conference such as this by recalling one’s imaginary nighttime adventures is unusual, if not inappropriate. You will see in a moment, however, that this particular dream had specific relevance for the topic addressed here today.

In my dream, I was attending the graduation of the 2032 class of the University of Lucerne’s global law program. After the graduation ceremony, which was conducted in its usual dignified manner, I was joined by a handful of recent graduates at the reception in their honor. All of them were getting ready to pass their bar exams, to clerk with various national or international courts,
to join different faculties of law as junior researchers, and the like. They came from different countries and continents, different societal backgrounds, and different walks of life. Their common feature was that they had converged in Lucerne to pursue and conclude their legal studies and that they were about to be released into the challenging life of recent graduates.

After some small talk our conversation turned to their experiences at the school of law. They all shared some stories about their successes, challenges and - inevitably - the program’s shortcomings. At some point I said: “I remember the graduation ceremony 20 years ago in 2012. Do you know that back then, students were required to study national Swiss law almost exclusively during the first three years of studies?” There was silence. At last somebody asked: “You’re kidding, Professor, right?” I replied: “I am not. It is true that in 2012 for the first three years students would study national civil law, criminal law, constitutional and public law, and various other aspects of domestic law at the undergraduate level. International and transnational law only appeared at the masters level.”

Somebody asked: “How is that possible? How could a law graduate survive in the real world if all he or she studied was national law?” I replied with a question: “Let me ask you this – I know that you are past your exams, but anyway – what is the legal status of international and transnational law? What is the legal validity of judgments of international and transnational courts?” They all replied unisono: “In our coordinated system of law, international and regional law is directly applicable and binding. And so are the judgments of international and regional courts; the jurisprudence of foreign courts serves as persuasive authority and must be duly considered.”

I explained: “In 2012, the answer to this question would have been different depending on where you came from. A lawyer from Europe, for instance, would refer to the jurisprudence of the European Court of Justice, in cases such as *Van Gend and Loos*¹ and *Costa v. ENEL*,² or the European Court of Human Rights in *Louizidou v. Turkey*³ and conclude that such judgments are in part binding and in part at least standard setting. One from the United States, quoting *Medellin v. Texas*,⁴ would probably say that national courts were not bound by international

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judicial decisions, but should respectfully consult and consider, before ignoring them. You may think of global law as a reality in 2032; in 2012, it was a mere vision.”

One of the graduates asked: “So what happened in the last 20 years? How did we get from a system that was essentially national to one that acknowledges that law requires consolidation and coordination at the regional and international level?”

“Well,” I replied, “this was a lengthy process. At the core of it was the realization, that it just made no sense from a purely practical point of view, to take national law as the starting point for the legal discourse. Such a conventional approach was probably politically feasible, but did not make sense in real life. With the globalization of societies, communications, trade and commerce, and last but not least, an inescapable right’s regime that spanned across national boundaries, sticking to the old would have been, for lack of a better term, surreal. But as you know, legal academe is not always at the forefront of innovation” – most of the graduates smiled politely but knowingly – “and thus we needed some external incentives.”

“Be that as it may, you know what we have now: We now only admit students to our law program that qualifies them to take the bar exam after they have completed an undergraduate bachelor’s degree in a program that is different from law. You know well that during your entire first year at law school, you hear not a single word about national law. What we teach is the global legal framework. This is not just public international law, but those principles of law that are common to societies, and to the degree that there are differences, we study those differences. After your first year of studies, you know exactly what a contract is; yet you could not draft one under Swiss law, Chinese law, Israeli law, or any other national law. You know what a court is and how it functions; yet you are probably pretty blank about the court structure of your home country. These are just examples. What we teach is to think like a lawyer, to grasp the core concepts and institutions, without the constraints of a particular national system. You also learn what the upper layer of the legal system is, the foundation for the coordinated system.”

“In your second year we move on and study the various regional systems of integration. As you know, we are a European law school, so we focus on Europe; but we discuss the greater concepts and principles underlying regional integration, so that you have the basis for also maneuvering in the other regional integration systems.”

“Only in your third year of law studies will we embark on an exploration of domestic law. Nobody needs to explain to you any more what a court is or what a contract is. You have
grasped the common core, and are ready to learn what a Swiss contract is, or a Chinese one, or a South-African.”

“We don’t teach you that everything is the same. There are hundreds if not thousands of different equally legitimate solutions to a legal problem in different locations in the world. We want you to grasp that there is a communality in the legal profession, present both in legal methodology and legal institutions, which unites enough so that the fact that the law is still particular and different in different places does not mean that we cannot talk to each other.”

“And last but not least we teach you to reason, to articulate and to communicate.”

“But enough of that, enjoy your meal.”

I remember they served a delicious looking soup at that moment. Unfortunately, that’s when I woke up.

I do not know whether in 2032 we will have a system of legal education that resembles the one I dreamt of. I do hope that at least some features of a global law will be in place, for the benefit of the legal profession and society as a whole, but especially for the benefit of those young people, who walk into our classrooms each year expecting that we will turn them into qualified lawyers.

Preliminary Remarks

Legal education, as Jukier puts it, is supposed to be “undermining the fallacious notion that there is one structure of reality.”5 A modern law school’s curriculum is thus supposed to challenge “the notion that law’s logic is bounded, its values fixed, its processes ascertainable, and its outcomes predictable”,6 as Arthurs assures us. If we speak of global law, then, it must still not be a random mixture of variable rules leading to an uncertain outcome that is in the eye of the beholder; rather, the “bi-polarity of the national and the international”7 is defined by “an interlocking network of public powers that regulate and guide action in a relatively consistent

way. The state may no longer be sovereign in [the] old sense, … but it will [continue to] define the scope of legitimate authority and legitimate action.”

Academic Arguments for Global Legal Education

It has been said that the contemporary agenda for international legal education has been driven by two distinct shortcomings and corresponding needs: (a) a demand in legal practice for lawyers who are capable of performing services for global commerce and, (b) a more principled and strategy-minded cohort of critics of the status quo of law school education. This straightforward distinction seems oversimplified to the present author, but it is true that there are both academic and practical reasons for urgently looking into models for a reformed law school. Let us take a look at some academic arguments in favor of a global legal education first, before turning to the equally important, practical reasons therefore.

Friel argues that “[t]he aim of transnational legal education is not to create individuals who can practice in a number of diverse jurisdictions … but lawyers who are comfortable and skilled in dealing with the differing legal systems and cultures that make up our global community.” If Smits is right that law students should “learn to think through the consequences of choices made in different societies, to understand why these choices were made, and to argue why they think one choice is better than the other”, it is inevitable that law schools must offer such students an environment where they can “learn to use the law not only as an instrument, but also to think about law in an intellectual way.” Valcke says that “the ultimate objective of legal education ought to be not so much the absorption of legal information as the development of the ability to think in law.” Valcke thus logically distinguishes between global law teaching as an instrument, and as an end in itself. If our goal is to educate young lawyers to think globally, and we want that education to be not only an instrument but a goal in itself, it is quite logical that we would want to raise global lawyers, rather than raise them as domestic lawyers and

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13 See Valcke, “Global Law Teaching”, at 168.
expose them to transnational and global thinking only in the periphery. To the present author, there is an urgent need not to make the mistake that seems to still dominate European legal culture: despite the prevalence of ‘European’ law – which includes not only EU law proper, but also other transnationally created and realized realms of law, such as the human rights regime of the Council of Europe\textsuperscript{14} – the European law school curricula have not yet shown a comprehensive trend towards Europeanization of the entire learning experience. Of course, courses in EU law are offered, and so are courses in European human rights law. But the individual modules introducing students to the particular substantive legal topics as well as procedures remain by and large nationally-focused and are Europeanized only in the periphery.

As Poiares Maduro reminds us, “[i]t will not be sufficient .. to increase the importance attached to EU law in the curricula of European law schools. A first step will be to ‘Europeanise’ the teaching of the other legal subjects. However, simply to account for EU law sources won't be sufficient. In fact, EU law does not simply bring with it new rules. Such rules can only be properly interpreted and applied in the light of the particular nature of its system of law, its general principles of law and its own methods of interpretation,”\textsuperscript{15} or in other words, that law’s living character.

Let us look at this phenomenon not through the lens of legal education, but of language learning. My daughters, now 5 ½ and almost 3 years old, grow up in Europe and the United States, and spend about equal time in each culture. They are fully bilingual (English and German) and are so naturally, not by plan or design. They are quite capable of sensing which culture they are in at any given time. Beyond that, they are able to translate not only the different languages but the different cultures to those they encounter in the other culture and who are not familiar with them. They learn those skills through exposure, not because of a curriculum or an educational design. Were they to grow up in only one culture and be exposed to the other only occasionally and without the element of full immersion, they may be capable of intellectually grasping the non-dominant culture, but they would not live it. With that, they would be at home in one, and visiting the other. This is essentially the kind of legal training we expose our students to today and even that only in those schools that have a transnational focus.


How does legal practice today influence our program and curriculum design, then?

In 1956, Jessup famously defined transnational law as “all law which regulates actions or events that transcend national frontiers.” Our contemporary globalization of law, which is of course embedded in the broader process of globalization, is a much larger societal phenomenon and is defined differently, depending on the observer’s particular field of specialization. From an information technology point of view, it may be defined as “a condition of inter-connected, overlapping legal regimes, a proliferation of information technology which mediates and engineers an awareness of this condition.” A business lawyer would probably refer to a proliferation of international and multi-lateral legal regimes in response to the recent and ongoing increase in international commercial transactions and foreign investment. Yet another definition would emerge from comparative constitutional law, where both the proliferation of constitutional design ideas across national and cultural boundaries and the global dialogue of courts in the Slaughterian sense, are relevant factors to consider. In any event, it is well known that legal practice is subject to a market trend of globalization and there is an “increasing convergence of procedural and substantive legal norms.”

Global law firms, whether created by transplant or merger, tend to be full service firms, simply because their global clients “need experts to advise them on how to comply with laws of different jurisdictions, to structure cutting-edge deals, and to engage in litigation, arbitration and other types of dispute settlement proceedings,” but also, in the public law realm, on regulatory schemes, international law compliance, and comparative and transnational constitutional design. This requires offices featuring lawyers trained in varying jurisdictions and having been exposed

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22 Crawshaw, “Globalization …”, at 165.
to ‘non-parochial’ legal studies; Sullivan & Cromwell, for instance, has a professional workforce consisting of approximately 25% of lawyers who have a non-US law degree. A more modest, but comparable trend is identifiable in regional contexts, such as Europe. And, very importantly, it is no longer only larger, but also mid-size law firms that view and present themselves as working in a distinctly international environment.

This in turn informs a re-thinking of the hiring processes even in the traditional legal occupation, legal practice. But think for a moment for other legal professions, employers who are at this time not yet ‘principal consumers’ of law schools. This is not to speak of transnational courts, all of which operate on a sui generis or hybrid framework of procedures; the work of lawyers in transnational corporations, government agencies, international diplomacy or international non-governmental organizations is exposed to global realities on a daily basis. Legal academe, I dare say, will catch up in the future. While I cannot claim that my department is typical for a Swiss or European law school in 2012, its composition - my staff holding PhD or equivalent degrees hails from the US, China, the Netherlands, and Greece, but not Switzerland, and more junior and support staff is even more diverse - may well be commonplace in the global law schools of the future.

The bar is not necessarily the most progressive institution when it comes to globalizing legal practice, and law schools unfortunately tend to cater to their needs - be it because of a regulatory authority or simple peer pressure. Whether or not specific bar associations are yet aware of the needs of globalization, it seems likely that transnational lawyering, including extra-judicial practice of foreign trained lawyers will increasingly be demanded by the industry and its clients. Recent jurisprudence from the European Court of Justice in the 2011 case of Koller, European Court of Justice, Case C-118/09, Robert Koller v. Oberste Berufungs- und Disziplinarkommission (Austria), judgment of December 22, 2011. The Chamber ruled in full: “With a view to gaining access, subject to passing an aptitude test, to the regulated profession of lawyer in a Member State, the provisions of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years’ duration, as amended by

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28 See Silver, Van Zandt & De Bruin, “Globalization …”.
29 Gerald A. Sumida, “Some Comments on the Goals of Transnational Legal Education Programs”, 23 Penn St. Int’l Rev. 791, 792 (2005), for instance contends that “bar examiners and other regulatory gate keepers who control access to the practice of law in many jurisdictions often are unaware of, and do not understand, the implications of globalization for the practice of law especially in coming years.”
31 European Court of Justice, Case C-118/09, Robert Koller v. Oberste Berufungs- und Disziplinarkommission (Austria), judgment of December 22, 2011.
which expanded the access to the national legal profession for transnationally trained lawyers, will in the opinion of some lead to a degree of “regulatory competition” on the European continent, or a continuation of a gradual process of “regulatory rescaling” – “the nation-state operating alongside sub- and supra-national governance agents” when regulating the legal profession – as identified by Faulconbridge and Muzio. Thus, jurisdiction-hopping when seeking a marketable legal education will, if anything, increase.

How to Design a Global Law School for Lucerne and Elsewhere for the Year 2032?

Literature to date conceptualizes internationalization of higher education in a variety of manners, from isolated international ventures to a "holistic, integrative process." We should proceed under the assumption that the concept encompasses both (a) exchanges of students and faculty, foreign language training, interactions at a pan-campus level, and the like and (b) "a process of integrating an international perspective into the curriculum." Bhandari and Blumenthal view the "advent of cross-border or transnational education" as the most significant step towards developing alternative forms of higher education, and list "brick-and-mortar branch campuses as well as joint- and dual-degree programs" as the most pertinent means of achieving such goals.

There is no doubt that the various well-documented initiatives taken by illustrious law schools in Europe, North America, China, and elsewhere in recent years to devise new curricula and programs that correspond to current needs of legal education merit praise. Nothing that is and

Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 may be relied upon by a person who holds a degree issued in that Member State on completion of a cycle of post-secondary studies lasting more than three years, and who also holds an equivalent degree issued in another Member State after additional training of less than three years and enabling him, in that latter State, to have access to the regulated profession of lawyer, which he was actually practising in the latter State on the date on which he applied for admission to the aptitude test” and that “Directive 89/48, as amended by Directive 2001/19, must be interpreted as precluding the competent authorities of the host Member State from denying to a person in a situation such as that of the applicant in the main proceedings authorisation to take the aptitude test for the profession of lawyer without proof of completion of the period of practical experience required by the legislation of that Member State.”

34 Lisa K. Childress, The Twenty-first Century University 9 (New York, Peter Lang, 2010).
35 Ibid.
37 Ibid.
will be said here should be read as criticizing, let alone disparaging those attempts. The one thing that is common to these efforts, however, is that they start from the particular – the national legal order – and contemplate how to go beyond it by looking at common issues, problems, and principles. I could tell countless episodes where faculty as well as students reiterated quite passionately that any legal education that is purposeful requires that students first develop a firm grasp of their national legal system – they say that comparison (not immersion which is not a topic) requires, no mandates first a thorough understanding of one legal system. However, as Poiares Maduro rightly asserts, “[a] European and international law degree can only be properly developed where there is a law school with a European and international culture.” The proposal of a truly global law school advocated here turns the traditional thinking on its head or, as Grossman would probably phrase it, passionately advocates for “a qualitative rather than a quantitative change in legal education.”

A combination of certain elements of problem-based learning (PBL), as practiced by and large successfully in Maastricht, with an approach described by Rakoff and Minow – I would call it the supra-authority approach – is a promising venture. The PBL system - to use Maastricht's own simple explanation, “is based on the principle that you independently analyse and research complex issues based on real practice and discuss your findings in small groups. In this way you learn self-discipline, argumentation techniques and communication skills under the expert guidance of a tutor.” This learning scenario bears a striking resemblance to the challenges facing law graduates in particular, but nor exclusively, in legal practice. PBL does not ignore the substance of knowledge, but it “does deny that content is best acquired in the abstract, in vast quantities, and memorized in a purely propositional form, to be brought out and ‘applied’ (much) later to problems.” The transnational component is added by Rakoff and Minow's theory, which is to present law students with complex problems that give them a “choice that challenges them to identify options and that permits multiple resolutions.” This approach is supra-authoritative in the sense that it takes what are authoritative statements of the legislature or judiciary at the national plane as mere empirical evidence for resolving practical problems.

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41 Maastricht University, Problem-based Learning, at: http://www.maastrichtuniversity.nl/web/Faculties/FL/TargetGroup/ProspectiveStudents/BachelorsProgrammes/DutchLaw/ProgrammeInformation/ProblemBasedLearning.htm.
Rakoff and Minow continue by saying that “[t]he problems ought not to be situated in one doctrinal area, but should present opportunities for mental maneuvering around the legal universe. Teaching should emphasize generating alternative solutions as well as appropriate grounds for choosing among them. And criteria for resolution should include legal, normative, and practical considerations.”

These and other academics say that skills training and exercises open possibilities for a global discourse, as do clinics, international moots, teaching using new technologies, workshops and conference linked classes, externships and communication skills training, transnational simulations, as well as communication-based legal exercises, to name a few.

Those law schools that follow the integrative model – as Smits calls it - and expose their students to legal systems that are being examined and contrasted simultaneously from the beginning of their law school career, take a quantum leap towards a global law school. Besides a comparative look at legal systems, or judge-made comparative law, a transnational look at jurisdictions and remedies and an inter-systemic look at national and international legal norms, is a wise and progressively globalizing curriculum choice.

From the program design angle, this involves the full integration of domestic and foreign law students, including the admission of foreign law students to national programs, and a comprehensive mentoring program supported by dedicated student advisors, which is also a prominent feature at the University of Lucerne School of Law. Schools have progressed beyond that by embarking on extensive and well-organized faculty exchanges and bi-lateral and multi-lateral cooperative ventures adapting NYU’s global law program.

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44 Ibid., at 604.
46 See generally Freeland, “Educating Lawyers …”, at 505.
47 See Smits, “European Legal Education …”.
Yet another step towards global legal education are double-degree programs, especially if they pave the way for bar admission in two jurisdictions.

On these precedents of clever global-minded design I dare base my proposal of a law school curriculum that goes fully, not just partly global first. While this may sound radical at first sight, upon closer inspection I would deem it a logical and timely next step in designing sustainable legal education.

Let us begin by stipulating that we all want our graduates to understand principles and concepts that transcend transnational jurisdictions. If so, we need to go beyond merely comparing, but also beyond crossing jurisdictions in our legal studies. Instead, we must begin with a program of true *immersion* in the world of global legal problems with its similar or different solutions the moment we first encounter our new students. This means we must catch them – and I understand that this may be perceived as politically incorrect by some – before they are tainted by any particular national understanding of what the law is presumed to be or ‘always has been’. Professor Bogdan of the University of Lund in Sweden calls these students the “prisoner[s]”\(^{54}\) of their own legal systems. It is understandable that once students are exposed to too much of a particular national approach to legal issues, and view these solutions as inherently coherent and agreeable, it is inevitable that they will frown upon foreign solutions as being at odds with their perception of what is the ‘right’ solution.

If we dare to go fully global, it is as if we place our students in the midst of the most multicultural city in the world and let them explore. Of course, we remain at hand and nearby as tour guides and mediators so that they learn with structure - excellent facilitators and tutors are of the essence in the PBL approach. But the crucial element is the full immersion in the diversity of the law, rather than the limited exposure to one particular system’s view of the law.

Such a far-reaching reconsideration of law teaching goes well beyond even far reaching curriculum reforms; rather, deep structural changes are needed which have serious effects not only on academe, but on the bar and states. Or rather, these changes must go hand in hand with the ongoing process of changes in legal reality, and must not fall behind those changes.

One absolute pre-condition for achieving the goal of such a global law school would be that the student body has to be truly diverse. This, again, goes beyond mere exchanges, beyond LL.M. programs, and also beyond dual law degrees, and instead means the full transferability of legal

degrees between the jurisdictions of this world. This is a pre-condition for establishing a student body that is not bi-lateral or multi-lateral, but truly global. Of course national jurisdictions are and will remain entitled to require certain further studies in domestic law prior to passing such global graduates on to their national bar examiners. But such additional studies must be limited in duration and scope so as to not be prohibitive for schools going global.

Taking the idea of mentoring, a very successful concept, to the next level in such a global setting would also be of the essence. Here, given that the student body is *per definitionem* diverse, every student and every faculty member would be both a mentor and a mentee given there is no prevailing culture, but instead a global dialogue where the local and the foreign stand side by side.

**Concluding Remarks**

This is not the place for expounding on more aspects of the dream that I have of a global legal education. It needs to be seen where the forces of innovative thinkers, on the one hand, and of the markets, on the other hand, will lead us in the next twenty years. I do hope, however, that the real graduates of the Lucerne class of 2032 will resemble those I dreamt of to a considerable degree.

I encourage everyone involved to keep dreaming.