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## Exporting Legal Education: Lessons Learned from Efforts in Transition Countries

Ronald A. Brand

*University of Pittsburgh School of Law*, [rbrand@pitt.edu](mailto:rbrand@pitt.edu)

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## **Exporting Legal Education: Lessons Learned From Efforts in Transition Countries**

Ronald A. Brand, Professor of Law and Director, Center for International Legal Education,  
University of Pittsburgh School of Law

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A convergence of inward and outward-looking processes in US law schools creates both risk and potential reward in the development of legal education. How each law faculty succeeds or fails in coordinating those processes will affect not just US law schools, but legal education across the globe. These processes should not produce changes without proper consideration of their impact on developments outside the United States. Otherwise the result may be both the abdication of US leadership in legal education and a significant negative impact on the way in which US legal education can be and has been a catalyst for positive change in transition countries.

The current fancy of US legal education is demonstrated in a myriad of changes to a curriculum that has been the foundation of the development of legal minds for more than a century. Law schools find themselves pressed to keep up with the crowd by adding international courses to the first year curriculum, by creating curricular “pathways” with courses designed to add sequential layers of “skills” and by reconfiguring curricular focus in order to prove responsive to the need to spin out graduates ready to practice law without further training. What was taught as “Civil Procedure” became taught as “Legal Process” in order to consider more than just dispute resolution in courts and now becomes “Legislation/Regulation/Cases” so our course list will advertise that we really do understand all about how law is made.

This process allows faculty committees to spend large amounts of time exchanging resident legal curriculum “experts” (i.e. administrators and committee chairs at law schools that have made changes to the time-worn curriculum), and drafting proposals to be subjected to endless debate at faculty meetings. Like much in academic life, it is a wonderful academic experience. And we don’t know how far it will go—or whether it will take us up the mountain or off the cliff.

As an observer of this process from the inside, I find myself looking not to other US law schools for examples of how mine should change, but to law schools around the globe—especially in transition countries—for examples of what we should consider before we engage in such change. I am persuaded that we should evaluate what we do in US law schools not only by the impact we have on our graduates who will practice law in the United States, but also by the impact we have on the rest of the world and, in particular, on transition countries. The resulting standard is not how far US legal education takes the US student, but rather how far US legal education takes the world.

### **Looking Outward During Inward Change**

Such an outward focus for US legal education offers a number of benefits. First, it addresses the global reality of personal, social, and economic (and thus legal) relationships. Second, as

described below, an outward focus tests the benefits to US law students through their direct involvement in an educational process that (interestingly, like traditional US legal education) exposes the student to necessary content, skills, and critical thinking processes. It does this by making education happen for the student, rather than announcing that education is being provided to the student. Third, it can be accomplished in a manner that both immerses the US student in the larger world of legal relationships and brings home special individual opportunities to students who are open to and are prepared for those opportunities. Finally, the entire process can serve as a foundation for supporting legal education development in transition countries around the globe.

At the point of contact with the global environment, a center for legal education enters the equation and, I believe, can affect the educational outcome. My own experience has been with the University of Pittsburgh's Center for International Legal Education (CILE), where I have served as Director for the past 15 years. Thus, this discussion necessarily relies on that experience and the conclusions and opinions I have drawn from it.

Legal education centers that focus on international matters are necessarily engaged in the export of legal education. Like any other export, this can be either a good or a bad thing, depending on the quality of the product. The impact of exporting US legal education is the result of a number of specific factors that make legal education in the United States unique. First, the United States is one of the few nations in which a law degree is a professional degree. US law students must obtain a bachelor's degree in some (other) discipline prior to being admitted to law school. This differs substantially from the rest of the world where the standard legal education involves a bachelor's degree completed in four (or, in many countries under the European "Bologna Process," three) years. The standard US law degree is received at the termination of seven years of university-level education, and, very often, after some experience outside of formal legal education (the average US law student starts law school at the age of 23).

The common law tradition also sets the United States apart from most of the rest of the world (with the exception of those other nations that draw their legal heritage from the English system). This means that most lawyers have been trained in a civil law system that places the primary focus on statutes and codes and that considers courts to be (at best) secondary sources of law. This different legal system implies differences in the systems of legal education. Civil law education relies heavily on a straight lecture model in which the student plays a very passive role by absorbing the law. Common law education is a more active learning process. Nowhere is this active learning process emphasized more than in the United States, dating from Christopher Columbus Langdell's introduction of the case method of study of law at Harvard Law School in the late nineteenth century. This approach led law schools to turn at the beginning of the 20th century from a focus on local (state) law to national law, educating students for practice across the country. Today, schools are encouraged to educate students for practice across the globe. This requires sensitivity to differences across legal systems and legal education systems alike throughout the world.

A third element that makes the US legal education uniquely exportable is the ultra-significant role of the US constitution in both US legal practice and education. Few, if any, courses in a US law school are not infused with constitutional elements of the law being studied. From the heavy

role of the Due Process Clauses in determining jurisdiction in US courts (something unheard of in other legal systems) to Constitutional protections in property and criminal law, to Constitutional grants of and limitations on intellectual property rights, there are few areas of law that escape the sweep of the Constitution. Adding this to the vagueness of one of the world's shortest written constitutions means that the already policy-oriented nature of common law legal argument is leveraged to a much higher level.

A fourth element that distinguishes US legal education derives from the first. The focus on training professionals (as opposed to the traditional continental European model of transferring scientific knowledge) has resulted in a greater emphasis on practical skills training. This is most evident in the clinic movement that originated in the late 1970s and saw rapid expansion in the 1990s—with its acceptance and development on a global basis in the early 21st century. Clinical legal education has been joined by an increasing emphasis on teaching skills in other courses (practicums and problem-oriented offerings).

Even without the more recent focus on specific skills training, the professional school model of legal education, combined with a common law legal system and a heavy dose of constitutional intervention in everyday matters, has long resulted in an emphasis on analytical and deductive reasoning that is conducive to active class participation in which students consider specific cases and their application to future fact patterns. It brings with it a reasonable dose of uncertainty in terms of doctrine, setting up a significant role for policy analysis in making legal arguments addressed to both legislative and judicial settings. This all results in a focus on problem-solving that is not found in civil law legal education in which the larger goal is to understand the substantive rules of law and their sources.

This focus on problem-solving provides a significant contribution in particular to the education of law students (primarily LL.M. students) from transition countries. US legal education is uniquely suited to training those who must engage in the critical analysis required to solve the problems of transition countries.

### **A Two-Way Street**

The first step to understanding how US law schools can assist the legal education process in transition countries is to recognize that the process is not a one-way street. Too often “aid” programs are built on the paternalistic assumption that “we” have it all right, “they” either have it wrong or simply don’t have “it,” and the key to development is for “them” to do it our way. Any good teacher understands that the one person most likely to engage in real learning is the one standing in front of the students; so it is with assistance to transition countries. “We” who are trying to help the development of legal education in transition countries have an enormous amount to learn from the experience in those countries. Unless we learn this, our attempts to help will be ineffective or even harmful. The sooner one recognizes this, the more effective the education process can be in both directions.

The second step is understanding that providing support to legal education in transition countries is a long-term endeavor rather than a short-term one. This makes one of the most important factors very difficult—funding for such endeavors is usually available only for short-term

projects and only for accomplishing short-term goals. While this reflects a common short-sightedness about development generally, short-term funding may still be used to establish programs that can be self-sustaining and support long-term goals.

Let me provide one example from our Center for International Legal Education. In the late 1990s, we received funding from the US Department of State to partner with law faculties in Ukraine, Serbia, and Kosovo in order to help develop the curriculum at each partner institution. We provided special summer school courses for their students, including English for Lawyers programs that increased the number of students who could engage in an international curriculum in a second language. We established research centers where students could engage in activities such as preparation for international moot competitions, jointly initiated and administered by local practitioner-oriented conferences that engaged the practicing bar. Finally, we consulted with faculty on matters including teaching methodology in standard courses as well as support for new curricular initiatives. But the most important part of our outreach was an effort not always covered by our State Department funding. For each three to five year funded partnership, we brought at least three young scholars from the partner institution to Pittsburgh to study in our Master of Laws (LL.M.) program.

Those students who came to our LL.M. program were given the opportunity to experience a new culture, a new legal system, and a new legal education system—all in a second (or third) language. Rather than short-term training sessions in which they were told how to do it, they were given a one-year program in which they could each choose their own curricular focus, and in which they could experience and compare US law and legal education with their more familiar home country system. They were also given the opportunity to engage in practical experience through an internship in a law firm, corporate legal department, or other legal institution in the summer months after graduation. Each of them returned to his or her home country able to choose which pieces from this new experience would fit best into the process of initiating and supporting legal education initiatives at home.

This has led to significant long-term relationships with law faculties in each country. While formal funding has long since ended, personal relationships have not. Through those relationships we have continued to work together, to share experiences, and to build programs. One example of continuing programs is our effort to use the Vis International Commercial Arbitration Moot competition to continue relationships and to focus on curriculum development in the areas of international commercial law and arbitration. Each year, we monitor the establishment and training of Vis moot teams at a consortium of three law faculties in Ukraine, as well as at the Universities of Belgrade and Prishtina. At the competition, we all arrive early, engage in a friendly pre-moot, and follow each others' progress throughout the week-long competition. This provides an opportunity to reconnect with our LL.M graduates who are now Vis Moot coaches, enhance institutional relationships through the common experience, and seek opportunities to bring the best new crop of students from these schools to the University of Pittsburgh LL.M. program. When that new crop of students arrives in Pittsburgh, the cycle begins anew. New personal relationships are established and existing institutional relationships are strengthened. The result, over more than a decade, is a network of LL.M. graduates who have made significant impact at home institutions as well as participated in sharing their success and lessons learned with their colleagues from other countries.

In some cases, the students have become the teachers. At the University of Belgrade, a Pittsburgh LL.M. graduate and her colleagues have established one of the premier Vis pre-moot competitions and combined it with a world-class annual arbitration conference that highlights the strengths of a young faculty destined to have significant impact both at home and abroad. Pittsburgh students (and professors) are able to attend those events, sharpening their legal skills, enhancing their understanding of the law, and engaging in important cultural exchange.

The return benefits have not stopped with the opportunity to engage in new programs at the transition country law schools. LL.M. graduates have found placement for Pittsburgh J.D. students in summer internships in each of the countries with which we have worked. Other LL.M. graduates have returned to teach concentrated special courses to J.D. and LL.M. students at the University of Pittsburgh.

With contracts from the US Department of Commerce, CILE has more recently trained Vis Moot teams at the University of Bahrain, Sultan Qaboos University in Oman, and the United Arab Emirates University. Those teams are now part of the Pittsburgh consortium at the annual competition in Vienna. We have used third-year Pittsburgh J.D. students who are Vis Moot alumni to help train and support the Gulf Region teams. Those trainers have, as can be expected, benefitted from their own exposure to new cultures, legal systems, and legal education systems—as well as by the chance to learn by teaching. The two-way street continues. In fact, we have found that, the more mutual the benefit, the greater that benefit is on both sides.

### **Lessons Learned from Transition Countries**

Beyond the tangible return benefits from supporting legal education in transition countries, there have been intangible gains through the lessons learned. One of the most important lessons has come in discussing with LL.M. graduates who have returned to teach, assist their governments, and practice law. Almost without exception, when we ask an LL.M. graduate the most notable thing he or she gained from the LL.M. experience, the answer is some variation of “I learned how to solve problems.” This answer has important implications for our internal decision-making regarding curriculum—a decision-making process that will be important to both J.D. and LL.M. students in the future.

While it is important to add opportunities for law students to have a larger menu of “hands-on” experiences during their law school careers, it also is important to realize that our traditional approach to legal education does provide skills training, even when that is not the overt emphasis of a course. Case method instruction necessarily requires and teaches problem-solving skills. That is not a common process in law schools in much of the world where civil law code-based legal systems predominate. Any changes to the traditional US legal education model must take into account the non-syllabus benefits of the current system—particularly in the first year of law school.

We often describe the principal purpose of the first year of law school in the United States as training each student to “think like a lawyer.” This is no small task. It defines the success of each student completing the first year of a J.D. program, or the single year of an LL.M. program. As

we make changes to the curriculum in US law schools, we should avoid allowing those changes to reduce the valuable effects of the traditional US legal education model. Too little attention to what US law schools have been good at for more than a century risks replacing professional training with vocational training. Vocational training is important, but US professional legal education is and should remain at the forefront of our efforts to provide positive change throughout the world, and especially in transition countries. We owe it not only to US J.D. students, but also to our foreign LL.M. and J.D. students, to avoid diluting the quality of problem-solving education that has been the hallmark of US legal education for more than a century.