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# Transnationalization of Legal Education: A Swiss (and Comparative) Perspective

Alexander H.E. Morawa\* and Xiaolu Zhang\*\*

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## I. Introduction

How does a law school cope with the ever pressing need to globalize? Even in traditionally domestic fields such as family law, the probability that law graduates will handle a case with transnational implications continues to rise, making knowledge of the laws of foreign countries and the rules that govern transnational legal interaction an undeniable facet of practice.<sup>1</sup> The question then arises as to how law schools should equip their graduates with the skills necessary to meet the

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1. Winston P. Nagan & Danie Visser, *The Global Challenge to Legal Education: Training Lawyers for a New Paradigm of Economic, Political, and Legal-Cultural Expectations in the 21<sup>st</sup> Century*, 11 ILSA J. INT'L & COMP. L. 9, 17 (2004) (noting the legal problems that cut across state and national lines suggest that the trajectories of law which confront a practitioner are no longer vertical or horizontal).

challenges of global practice. For a law school, these questions can mean an evaluation of its curriculum, the needs of its students, and its strategies employed to accomplish globalization while still maintaining a local identity.

The purpose of this Article is to chart the journey of a Swiss law school as it seeks to extend its reach beyond the territorial and intellectual boundaries of a traditional legal education that had been predominantly inward-looking, and to explore the possibilities of opening itself and its students to the opportunities, challenges, and demands of a global legal education.

First and foremost, it is crucial to recognize that the steps taken by this law school are by no means prescriptive. Law schools are as diverse as the legal cultures within which they operate. The most important part of internationalization is recognizing the individual needs of a school and its students. These needs are determined first by the markets, both currently prevailing and that which the prospective “new” brand of lawyers will seek to conquer. Needs are further determined by considerations of academic excellence. There is no set solution for every school, and the successful methods one school employs may not work well for another. This Article aims to delve into the more abstract concepts behind the need to expand the global experience of the University of Lucerne, and thereby serves as food for thought for those schools wishing to do the same.

This Article first examines what transnational law is and how it should be taught to students. This examination requires a disentangling of the legal concepts involved. Understanding these concepts can lead to a clearer understanding of what it is we wish to teach, and what a transnational lawyer needs to know. With a refined grasp of the subjects, we discuss curriculum development in the given climate where internationalization is largely understood as conforming to the style of legal education that prevails in North America. Next, we will discuss the strategies the University of Lucerne, a young Swiss law school, has developed to grow internationally while maintaining the values and the qualities which make it unique at the domestic level.

After exploring the broadening of horizons at the University of Lucerne, this Article progresses to an exploration of the methods the University of Lucerne seeks to utilize in opening its doors to international students as well as future plans for expansion in this respect. We will then briefly discuss the process of selecting and securing partnerships, considerations and concerns while choosing the specific forms of partnership that are suitable in certain contexts. Finally, we will look at how the University of Lucerne strives to meet the needs of its students as they go abroad, whether through one of its

bilateral partnership agreements or within the European ERASMUS<sup>2</sup> exchange scheme, or to pursue graduate degrees after they leave Lucerne.

## II. Transnationalization: What it Is, How to Incorporate it into Legal Education, and Where to Go from There

Initially, it is worth noting that “transnational law” can be a somewhat ambiguous term, and its uncritical use has been viewed with suspicion.<sup>3</sup> We at the University of Lucerne have not named our global venture the “transnational legal studies program” without reflection, and find the term fitting for various reasons.

“Transnational law” is customarily distinguished from “(public) international law” in that transnational law extends to legal norms governing individuals, corporations, and the like involved in private cross-border transactions.<sup>4</sup> Of course, this distinction is less significant today because public international law has lost its character as exclusively state-made rules for state conduct, and non-state actors frequently partake in its creation and application. Moreover, transnational law is not made up of a body of law distinct from either domestic or international law.<sup>5</sup> It is described as “no more than international and internal state law applied to cross-border interactions involving private parties,”<sup>6</sup> and in fact, both “transnational” and “global” law are merely “flashy labels”<sup>7</sup> for a mix of the two traditional areas of law: domestic, which becomes “foreign” if utilized in a comparative context, and international.

Transnationalization also encompasses several other processes. Regionalization, for one, can take a geographical form such as “Europeanization” by the European Union and other regional legal regimes,<sup>8</sup> as well as a thematic form such as the various regional human rights regimes that further develop the Universal Declaration of Human Rights-based global concept. Additionally, there are efforts at codification and uniformity-building (*Rechtsvereinheitlichung*) in certain

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2. See ERASMUS, [http://ec.europa.eu/education/programmes/llp/erasmus/erasmus\\_en.html](http://ec.europa.eu/education/programmes/llp/erasmus/erasmus_en.html) (last visited Feb. 8, 2008).

3. See Catherine Valcke, *Global Law Teaching*, 54 J. LEGAL EDUC. 160, 163 (2004) (finding it “more nebulous still” than “comparative law”).

4. *Id.* at 164.

5. See *id.* at 163.

6. *Id.* at 164.

7. *Id.*

8. See generally FLORENCE BENOÎT-ROHMER & HEINRICH KLEBES, COUNCIL OF EUROPE LAW—TOWARDS A PAN-EUROPEAN LEGAL AREA (Council of Eur. Publishing 2005).

areas of transnational law,<sup>9</sup> and nowadays, judge-made regime-proliferation, done by means of traditional, but creative comparative legal methods.<sup>10</sup> Together with the transformation of public international law and the adjustments made to domestic law in light of the realities of globalization in virtually all areas of governance, these relatively new processes help establish and expand a set of worldwide linkages, formal, substantive, and procedural, between all kinds of legal regimes.

These linkages, more than the changes in the existing legal systems as such, are what make up transnational law. We at the University of Lucerne had these linkages in mind when we named our program “transnational legal studies.” When taught in law school, they transform into educational and ultimately personal linkages. Professor Lebel-Grenier explains:

[T]ransnational law . . . reflects the changing nature of human interaction in an age of globalization. It is quite normal that law should adapt and transform in light of this new reality since, to my mind, law is but a tool that is used to make sense of and render operational the reality of human exchange. This does not mean that law as it has been taught up to now is now good for the recycling bin. Arguably . . . a strong basic legal education is more important than ever. However . . . basic legal training should be increasingly considered as insufficient if one is to have a successful legal practice. In this sense, a transnational legal training is an invaluable complement.<sup>11</sup>

While the idea is easy enough to conceptualize, the ease or difficulty with which these linkages are implemented into a law school curriculum is not clear at first glance. First, what does a transnational lawyer do exactly, and how does one teach that? Professor Toniatti explains that “transnational challenges may be regarded as all those problems requiring legal counseling that need to make informed and

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9. See generally Wolfgang Wiegand, *Europäisierung, Globalisierung und/oder Amerikanisierung des Rechts?*, in KODIFIKATION UND DEKODIFIKATION DES PRIVATRECHTS IN DER HEUTIGEN RECHTSENTWICKLUNG 217-38, 232 (Karel V. Malý & Pio Caroni eds., 1998).

10. Although this creative use of traditional comparative law methods is commonplace around the world, by and large it is absent from practice in the U.S. Compare, e.g., H CJ 2056/04 *Beit Sourik Village Council v. Israel* [2004] IsrSC 58(5) 807, and *S. v. Makwanyane and Another* 1995 (3) SA 391 (CC) (S. Afr.), with *Lawrence v. Texas*, 539 U.S. 558, 598 (2003) (Scalia, J., dissenting) (“The Court’s discussion of . . . foreign views . . . is . . . meaningless dicta. Dangerous dicta, however, since ‘this Court . . . should not impose foreign moods, fads, or fashions on Americans’”), and the analysis of the practice in Sir Basil Markesinis, *Judicial Mentality: Mental Disposition or Outlook as a Factor Impeding Recourse to Foreign Law*, 80 TUL. L. REV. 1325 (2006).

11. Sébastien Lebel-Grenier, *What is a Transnational Legal Education?*, <http://www.aals.org/international2004/Papers/grenier.pdf> (last visited March 2, 2008).

skilful use of any source of law beyond the borders of the attorney's own national legal system."<sup>12</sup> Others suggest that a transnational lawyer is "a lawyer who is adequately qualified to work in a *global context*, not just one who is qualified to work in international organizations and across jurisdictional lines."<sup>13</sup>

If transnational law is viewed as a method to navigate between the legal systems of the world, irrespective of their source or origin, along the linkages defined *supra*, a transnational lawyer, then, is more than a jurisdiction-hopper. Transnational lawyering requires skills that must be taught in a different setting from a traditional European or American style law school. Recognizing that one's current curriculum is lacking can be a monumental step in the direction of globalization. The next step is to develop a strategy to not only successfully acquire and send out exchange students, but to implement a curriculum which will uphold a university's standard for excellence and effectively educate students to understand the intricacies of transnational law. Whether a law school decides to approach its curriculum design from a practice point of view or an academic point of view, the commitment it shows to its roots, its students, and the excellence for which it is renowned is crucial to the program's success.

### III. Considerations of Globalization and the Lucerne Approach

#### A. *The Basic Facts: The University of Lucerne School of Law*

The University of Lucerne School of Law first opened its doors and began offering classes in 2000. It took the unusual step of immediately embracing and fully implementing the Bologna-model of legal education by offering a streamlined Bachelor-Masters-Doctorate series of legal degrees in line with what is supposed to become the European standard by 2010.<sup>14</sup> In contrast, elsewhere in Switzerland, the transformation

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12. Roberto Toniatti, *Educating Lawyers for Transnational Challenges: a View from Europe*, <http://www.aals.org/international2004/Papers/Toniatti.pdf> (last visited March 2, 2008).

13. Chuma Himonga, *Is there [a] Curricular Core for the Transnational Lawyer?*, <http://www.aals.org/international2004/Papers/Himonga.pdf> (last visited March 2, 2008) (emphasis added).

14. The Bologna model of education suggests a three/five/eight year division as a general scheme. Under this scheme, three years are dedicated to undergraduate studies. After completing three years of undergraduate study, students begin a two-year Master's program followed or paralleled by a legal internship. Finally, students have the option of completing three years of doctoral studies. See, e.g., Norbert Reich & Linda Freimane, *Preparing for the European Future of Law Studies in the Baltic Countries*, 22 PENN ST. INT'L. L. REV. 101, 128 (2003); The Bologna Declaration, available at <http://www.bologna-bergen2005.no/> (last visited Mar. 2, 2008).

from the traditional to the Bologna-model of education began, at the Bachelors level, in 2005 and is still underway at the more advanced levels of education.<sup>15</sup> The University itself consists of three colleges, and is distinguished for its small size<sup>16</sup> and excellent faculty.

Studies are arranged according to a three-step system. The Bachelors degree ("BLaw") is awarded after six semesters. Following another three to four semesters,<sup>17</sup> students can acquire a Masters degree ("MLaw"). Subject to appropriate qualifications, students can then take up Doctoral studies. All three colleges have implemented this system. The convenient size of the University and the personal attention given provides students with a great degree of freedom and choice in their studies.

Last but not least, according to the 2006 swissUp rankings,<sup>18</sup> the University of Lucerne School of Law is now considered the top ranked law school in Switzerland.<sup>19</sup> The University is ranked first in four out of five of the following categories: course offerings, practice-oriented teaching, external funding for research, and overall quality of studies. While this particular rankings model is not as comprehensive as the rankings used in the United States, it demonstrates that Lucerne is at the very least a contender for a position as one of the best law schools in Switzerland. It also shows the degree of satisfaction our student body has which, of course, while still a reason for celebration, is more an incentive for maintaining and improving our standards.

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15. See Silvia Studinger, *Bologna Process Swiss National Report 2004-5*, available at [http://www.bologna-bergen2005.no/EN/national\\_impl/00\\_Nat-rep-05/National\\_Reports-Switzerland\\_050118.pdf](http://www.bologna-bergen2005.no/EN/national_impl/00_Nat-rep-05/National_Reports-Switzerland_050118.pdf) (last visited Mar. 2, 2008); *2005/6 Status Report on the Status of the Modifications of University Education as Part of the Bologna Process of the Rectors' Conference of Swiss Universities*, available at <http://www.crus.ch/dms.php?id=2257> (last visited April 6, 2008).

16. The total student population of the law school is about 1,100.

17. Four semesters in particular if students spend one year as opposed to one semester abroad.

18. The swissUp ranking is an official comprehensive ranking process involving universities in Switzerland, Germany and Austria. See *SwissUp*, available at <http://www.swissupranking.com/ranking-result.php?field=1&display=ranking&stats=1> (last visited March 2, 2008).

19. The University of Lucerne School of Law tops the list of universities in four out of five categories: course offerings (rank: 1), practice-oriented teaching (rank: 1, *en par* with the University of St. Gallen), external funding for research (rank: 1), and overall quality of studies (rank: 1, *en par* with the University of Neuenburg). The remaining category, student-faculty ratio, is considered average due to extensive growth in recent years. The swissUp ranking does not award a formal overall rank, but bases its evaluation on the categorized rankings described above.

B. *How Does a Global Law School Operate—And How is The University of Lucerne Becoming One of Them?*

Legal scholars and instructors have been discussing the concept of a global law school for years. A global law school is envisioned as a center of thought, where a broader range of opinion is found than in local law schools, with a multinational faculty and student body, and a program to produce lawyers capable of success worldwide.<sup>20</sup> It is the Platonic ideal for a law school. What the University of Lucerne wants, and what every law school wants to varying degrees, is to achieve some form of this ideal, but each school has its own approaches. The choices made in pursuit of becoming a global law school can vary from the addition of a few classes to a complete overhaul of a law program.<sup>21</sup>

There are numerous law schools, particularly in the United States, that have successfully transitioned from traditional law schools to either internationally-minded or truly global ones. The University of Lucerne did not hesitate to study their examples. While it is not possible to recapitulate all of the various approaches found in detail, some truly stand out. New York University (“NYU”), for instance, has incorporated a very dramatic rethinking of its basic three year law program.<sup>22</sup> A global law school, NYU has at its heart international faculty exchange and cooperation.<sup>23</sup> Each year, eighteen foreign teachers, including judges and practitioners, are invited to New York to teach courses or seminars at the law school.<sup>24</sup> These foreign teachers are identified through an elaborate system of personal connection, word of mouth, recommendation, and observation.<sup>25</sup> In almost every case, these teachers are invited back for a second visit, and in a few instances are offered more.<sup>26</sup> The addition of such a large group of foreign thinkers results in a multitude of new courses, seminars, and enormous contributions to workshops and colloquia.<sup>27</sup> Then, each semester, two judges are appointed to serve as Distinguished Global Fellows to deliver lectures to classes.<sup>28</sup> While ensuring the highest quality of talent is imported into the school, NYU also serves to strike a balance in geography, content,

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20. See David S. Clark, *Transnational Legal Practice: The Need for Global Law Schools*, 46 AM. J. COMP. L. SUPP. 261, 262 (1998).

21. See *id.* at 272.

22. See Norman Dorsen, *Achieving International Cooperation: NYU's Global Law School Program*, 51 J. LEGAL EDUC. 332, 332-37 (2001).

23. See *id.*

24. See *id.* at 333.

25. See *id.*

26. See *id.*

27. See Dorsen, *supra* note 22, at 334.

28. See *id.*



age, and ethnicity.<sup>29</sup> Alongside the import of foreign teachers, the school also strives to bring in a large number of foreign students. In total, the law school enrolls 350 foreign students, including those in the J.D. and LL.M. programs, as well as having several exchange programs with other law schools.<sup>30</sup>

NYU strongly believes that at every law school a discussion of what constitutes the optimal curriculum for its students, and how transnational law fits into that curriculum, is crucial to its future. David Van Zandt, Dean of Northwestern University School of Law in Chicago, agrees. Dean Van Zandt states that, unfortunately, “many deans waste scarce resources on somewhat haphazard attempts to make their schools more ‘international.’”<sup>31</sup>

Northwestern sees the biggest trend in global legal education as coming from a merger of Masters in Business Administration (“M.B.A”) and LL.M. philosophies.<sup>32</sup> M.B.A. degree programs already seem able to accomplish the goals that a global law school wishes to achieve: a large foreign student population, international demand and transferability, and a forum for the exchange of ideas between different countries. Given this, Northwestern offers a joint degree program (LL.M/M.B.A) with their Kellogg School of Business in order to attract the large number of foreign students interested in business to also contribute to the LL.M. student population.<sup>33</sup> Northwestern’s goal is to match the Business School’s thirty percent foreign student population in the law school. Their strategy centers around two philosophies: the globalization of business and international human rights.<sup>34</sup> By collaborating with Kellogg, Northwestern can offer their students not only a strong basis in Anglo-American law, but also in several business growth areas that will allow the student to operate efficiently and flexibly in the international arena.<sup>35</sup> Expertise in human rights is cultivated through their Center for International Human Rights. Northwestern also offers an international curricular concentration in its degree program as well as exchange opportunities with non-U.S. law schools,<sup>36</sup> of which the University of Lucerne is one.

Additionally, the school has developed an intensive exchange

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29. *See id.*

30. *See id.* at 335.

31. David E. Van Zandt, *Globalization Strategies for Legal Education*, 36 U. TOL. L. REV. 213, 213 (2004-2005).

32. *See id.* at 217.

33. *See id.*

34. *See id.* at 218.

35. *See id.*

36. *See Van Zandt, supra* note 31, at 218-19.

program with their International Team Project (“ITP”).<sup>37</sup> The ITP allows up to one hundred students to participate in a semester-long research project combined with a two-week field study abroad, ultimately leading to a group project.<sup>38</sup> The project’s purpose is to generate interest in a particular country and immerse the student in the legal tradition of that country. It is also meant to encourage teamwork and cooperation, two qualities which are essential to competing in global business.<sup>39</sup>

We cannot mention internationalization without also mentioning the efforts of European law schools, particularly Bucerius Law School in Hamburg, Germany. Bucerius, like the University of Lucerne, is also a young school, but was established solely as a law school and operates privately.<sup>40</sup> Bucerius runs its program with international legal education in mind. Its students, which are generally subject to rigorous selection criteria, are required to spend one semester abroad during their third year at one of Bucerius’s many partner schools.<sup>41</sup> In exchange, students from these partner schools are invited to participate in a semester long international program on business law.<sup>42</sup> The combination of student ambassadors abroad and the foreign students in Hamburg gives Bucerius a huge opportunity to enhance its reputation and create connections for future employment opportunities and collaboration. With several corporate donors and a partnership list that reads like a Who’s Who of prestigious law schools, Bucerius has many resources to promote its vision of advancing international legal education and understanding diverse legal cultures.<sup>43</sup>

Like these schools, Lucerne finds itself not in a vacuum, but influenced by a broad range of traditions, teaching styles, learning styles, attitudes, and suggested long-term goals. Therefore, in order to develop an appropriate strategy, it is necessary to define what makes for a global law school, and what this means for the University of Lucerne. We address three core aspects of transnationalization: teaching philosophies and concepts, curriculum development, and program and partnership building.

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37. *See id.* at 219.

38. *See id.*

39. *See id.*

40. *See* Peter Murray & Jens Drolshammer, *The Education and Training of a New International Lawyer*, 2 EUR. J.L. REFORM 505, 523 (2000) (describing Bucerius Law School as a private law school with a decidedly international orientation).

41. *See id.*

42. *See* Bucerius Law School, <http://www.law-school.de> (last visited Mar. 2, 2008).

43. *See id.*

## 1. Global Law School Teaching Philosophies and Concepts

Transnational legal studies involve more than just program administration. They also involve developing a “common transnational legal science.”<sup>44</sup> This development begins with the premise that a single country cannot be a subject of study, but that in order to understand legal traditions, one must first look at a nation’s laws in the context of other nations. For instance, during the birth of American common law, the country’s judges and lawmakers borrowed heavily from England and other countries, which at that time were well-established and where there existed a “vast resource of empirical ideas and concepts that had already been tested and pondered by others.”<sup>45</sup> Conceptual borrowing is also not a thing of the past. Justice Ackerman of the South African Constitutional Court, one of the most entrepreneurial courts when it comes to accepting or rejecting foreign thoughts in light of the country’s own constitutional order and historical realities, explains the reason why jurists would look at the incidence of a legal question in another country in the following way:

In construing and applying our Constitution, we are dealing with fundamental legal norms which are steadily becoming more universal in character. When, for example, the United States Supreme Court finds that a statutory provision is or is not in accordance with the “due process of law” or when the Canadian Supreme Court decides that a deprivation of liberty is not “in accordance with the principles of fundamental justice” . . . we have regard to these findings, not in order to draw direct analogies, but to identify the underlying reasoning with a view to establishing the norms that apply in other open and democratic societies based on freedom and equality.<sup>46</sup>

Despite the utopian view that countries can learn from each other, there is still a danger in many minds that internationalizing may inadvertently produce a myopic view of the world. For instance,

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44. Clark, *supra* note 20, at 273 (citing James Gordley, *Comparative Legal Research: Its Function in the Development of Harmonized Law*, 43 AM. J. COMP. L. 555, 560-61, 566-67 (1995)).

45. Xiaolu Zhang, *A Decent Respect for the Opinions of Mankind: Citing Foreign Law to Protect Constitutional Rights in Light of Roper v. Simmons*, 10 (unpublished seminar paper, University of Colorado, 2005) (on file with author) (citing Paul Finkelman, *The Ten Commandments on the Courthouse Lawn and Elsewhere*, 73 FORDHAM L. REV. 1477 (2005) (“The sources of law for the American colonies, and later the United States, are broad and varied. The principal early source is the common and statutory law of England, including the Magna Carta. Also influential was the law coming out of the non-common law courts of England, such as equity, chancery, admiralty, orphans, and ecclesiastical.”)).

46. Ferreira v. Levin 1996 (1) BCLR 1 (CC) (S. Afr.).

commentators have argued that the internationalization of legal education abroad is equivalent, or similar to, Americanization.<sup>47</sup> Soogeun Oh, for example, advances the argument that because the English language “is evidently the predominant language,” the political and economic potency of the United States is undeniable, and there is a strong “accumulation of experiences” that forms the foundation of its legal principles.<sup>48</sup> American law is thus given enough weight to turn it into a significant focal point in comparative legal research and the origin, in some respects, of an “international standard.”<sup>49</sup> This does not mean every law school going through the process of internationalization does so with the goal of Americanizing, but given the fact that a common language must be chosen, and the language chosen is in most cases English, and that American law figures prominently in a lot of comparative and transnational legal studies, the process precipitates an effect similar to Americanization.<sup>50</sup> This is also not to say that studying American law in Europe is undesirable in any way, but that institutional biases may prevent internationalization of a school if the ultimate goal of that process is seen to be Americanization. The roots of these biases are not unfounded, as with any law school, the people in charge would not want to change the fundamental character of the school. Continental European law, which Swiss law and traditional legal education firmly belong to, has historically been the predominant source of conceptual and practical knowledge borrowed by other nations to model their legal systems upon, including places such as Northeastern Asia.<sup>51</sup> It has also had considerable influence on newly independent or newly democratic states such as South Africa,<sup>52</sup> and in Central and Eastern Europe.<sup>53</sup> There is a large amount of deference to be paid to this legal tradition, and that is why, with any changes we intend to make, we must give due respect and

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47. Some have noted that Americanization can also take the form of adopting the American law school model, as in the case of the Japanese legal education system, by implementing case method lectures, and the hiring of practitioners for practical legal instruction. See generally Saito Takahiro, *The Tragedy of Japanese Legal Education: Japanese “American” Law Schools*, 24 WIS. INT’L L.J. 197 (2006).

48. Soogeun Oh, *Globalization in Legal Education of Korea*, 55 J. LEGAL EDUC. 525, 527 (2005).

49. *Id.*

50. *See id.*

51. See Sang-Hyun Song, *Legal Education in Korea and the Asian Region*, 51 J. LEG. EDUC. 398, 401 (2001).

52. See, e.g., Francois du Bois & Daniel Visser, *The Influence of Foreign Law in South Africa*, 13 TRANSNAT’L L. & CONTEMP. PROBS. 593 (2003).

53. See, e.g., Maria Ilcheva, *Preparing for the New Minorities in Europe: The EU Influence on National Minority Protection in Romania and Slovakia*, JEAN MONNET/ROBERT SCHUMANN PAPER SERIES vol. 5 no. 25 (Jean Monnet Chair/Eur. Union Center at the University of Miami, Miami, FL), Aug. 2005.

preserve the elements which bring this tradition great prestige.

The pitfall the University of Lucerne wishes to avoid is the implementation of a law school model that is incompatible with its host. For instance, wholesale implementation of an American law school model in a European law school could have disastrous consequences if cultural considerations and the needs of the local market, to name but two essential factors, are not taken into account.<sup>54</sup> However, internationalization does not need to limit itself to being predominantly of a single culture. If anything, the most desirable result is that it takes the best of all cultures to produce an education that transcends the typical law school experience. It is possible to infuse traditional European legal education with elements of Anglo-American law such that a school maintains its core identity while continuing to offer its students the tools they need to become truly global lawyers.

### *The Lucerne Approach to Global Law School Teaching*

Our suggestion is not to abandon the traditions, methods and concepts, be they of European, American, or of some other origin, altogether—not now, and not in the future—but to *infuse* them with the new, challenging, and out-of-the-proverbial-box legal thinking and lawyering that has already become a reality in legal practice. That is also a precondition for the mutually beneficial process of instilling in other legal systems what is worthwhile about the concepts of the “Old Continent” that have so thoroughly influenced the global legal profession; the culture, the way public affairs are being managed, and the everyday life of ordinary people who happen to be governed by the rules lawyers make. In law, particularly in the human rights field, we refer to the notions of “conceptual borrowing” and “cross-fertilization” to describe the process by which international tribunals influence each other in a beneficial way and thereby procure dynamic development of the fields of law they apply and interpret.<sup>55</sup> We propose a somewhat broader use of these terms in the present context: that legal education and lawyering concepts of the various legal traditions can well cross-fertilize each other. The proper forum where that cross-fertilization can take place is the law school.

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54. See Takahiro, *supra* note 47, at 206 (explaining that the Japanese government ignored the differences between the legal educational systems of Japan and the United States, resulting in the failure of the reform).

55. See Alexander H. E. Morawa, *Conceptual Borrowing and Cross-Fertilization: How International Human Rights Bodies Interact* (Dissertation, George Washington University, 1999) (on file with author).

## 2. Curriculum Development

Jan Klabbers notes that “the practice of telling students to memorize a lot of rules and a handful of cases in the hope that this will produce good lawyers is still very much ingrained in legal education, at least in continental Europe.”<sup>56</sup> This is still partly true to this day and, to educators, is a bit of a conundrum. It seems that European legal practice is to a large degree a different entity than legal education.<sup>57</sup> Global practice, which is the ostensible goal of many European law graduates, is disparate to an even higher degree. From a legal education standpoint, any young European lawyer who considers advanced studies anywhere else but in Europe will inevitably encounter a tradition that pays less attention to rules and demands much more contextual thinking and creativity. With a domestic educational training that is solely rule-based, that student is obliged to either change rapidly or fail. To successfully place a European law school in the marketplace of global legal education requires curriculum development that is sensitive to both the existing educational traditions, which will, after all, continue to shape a young lawyer during the first few semesters of his or her undergraduate education, and the new demands of global practice.

To properly lay the foundation in the minds of students for utilizing the best elements of several legal traditions, a school must start with determining what subjects it must teach and how to teach those courses. Undoubtedly, a law student must know his or her own domestic legal issues. In these domestic classes, could the professors implement a section on international issues, or could the students study the international aspects of a subject in a separate class? This is a question that many law schools must ask themselves—something which Mathias Reimann of the University of Michigan refers to as the integration or separation models of education.<sup>58</sup>

In the integration model, comparative and transnational perspectives are presented along with domestic legal issues. The benefits of this model are the relative ease of implementation<sup>59</sup> and the fact that incorporating these international concepts compels a larger number of

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56. Jan Klabbers, *Legal Education in the Balance: Accommodating Flexibility*, <http://www.aals.org/international2004/Papers/Klabbers.pdf> (last visited May 1, 2004).

57. See Gerard J. Tanja, *The Teaching of “International Law”: the Need for Curriculum Change*, 4 INT’L. L.F.D. INT’L. 199 (2002) (noting that “the approach to such teaching in continental Europe is still based on a rather static educational model . . . [that does not meet] the demands of an increasingly complex and integrated globalised political, cultural, business and financial system”).

58. See Mathias W. Reimann, *Two Approaches to Internationalizing the Curriculum: Some Comments*, 24 PENN ST. INT’L L. REV. 805 (2006).

59. See *id.*

students to analyze the issues in a cross-border context, stimulating interest in the field, and bringing more ideas and discussion to the classroom. On the downside, it requires faculty to have knowledge, or acquire knowledge, of these concepts, and to bring in new sets of materials. These are tasks which are often impossible to accomplish without a cooperative faculty and constant vigilance.<sup>60</sup> Furthermore, this method of presentation does not provide an overall picture of foreign legal systems or the international order.<sup>61</sup>

In the separation model, a separate class is created to focus solely on transnational aspects of the law. The University of Michigan chose this approach because it allows students to see the larger picture, giving a deeper understanding of the international issues with more time devoted to a wider range of topics. Instruction can be accomplished by using the members of the faculty who already have the requisite knowledge, creating less strife amongst faculty who are reluctant to change their established course structure.<sup>62</sup> The downside with having a separate class would be that a majority of students, when choosing courses for the next semester, may opt out of the separate course because they do not anticipate ever having to deal with the transnational implications of the law. Moreover, the course would still have to be broad in some ways to avoid over-specialization.

Along with redesigning fundamental substantive courses, new classes can be added which will cover the growing set of international subjects. For a European law school, a course on foreign legal thought is a good place to start. From here, the students can get acquainted with both the terminology and case methods used in other legal traditions, including English, American, French, German, Chinese, and Islamic.<sup>63</sup> Courses in human rights, international commercial arbitration, international business, comparative law, conflicts of law, and even the domestic law of countries close by in geography and structure, are also good places to begin supplementing course offerings. In European law schools, these courses are often found as part of the mandatory curriculum. Due to the length and nature of American law schools, it is difficult to make these courses mandatory. However, they remain attractive options for elective classes.<sup>64</sup> Which courses, and the extent to which they are implemented, is a choice each school must make, paying ample consideration to its needs and the needs of its students.

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60. *See id.*

61. *See id.*

62. *See id.* at 806.

63. *See Michael Bogdan, Is There a Curricular Core for the Transnational Lawyer?*, 55 J. LEG. EDUC. 484, 486 (2005).

64. *See id.* at 484.

The addition of new courses may or may not be necessary depending on the steps a school has already taken towards internationalizing. Furthermore, an even greater step can be taken in that direction by simply reworking the way current classes are taught. For example, to the extent it is feasible, turning a normally rule based class into a seminar or a workshop where students can interact with clients and obtain hands-on experience can transform a basic course into an exercise in transnational law practice. The advantage of hands-on application for a European law school is that it can pave the way for greater participation and a greater comfort with the varied forms of teaching students may find if they pursue advanced degrees in other countries. If these courses are done in English, the value added to domestic and international students who are able to participate in discourse and become comfortable in English is immense.

Aside from these options, there are several other initiatives a global law school can establish. Such initiatives include teaching foreign languages, establishing international research and teaching centers and journals, forming an international practice clinic, incorporating summer schools and shorter courses that include a practical component, and ultimately the creation of international LL.M. programs. In addition to adding a new dimension to international law classes, these programs give incoming students an attractive array of options and current students an advantage if they decide to further pursue their studies later.

### *The Lucerne Approach to Curriculum Development*

Interestingly, internationalization of the curriculum at many schools, as well as at Lucerne, is not exclusively, or even primarily, a faculty-driven venture. Rather, it requires the combined collaborative efforts of both the student body and the faculty, with all the benefits of the regular give-and-take of classroom and out-of-the-classroom interaction. Of course faculty commitment to academic excellence and the outward expansion of those standards of excellence is crucial. This faculty commitment must be *real*, in that there can be no express or implicit objections that can easily lead to resistance later on. Faculty members must be willing to accept a process of transformation into a transnational law school, if not actively support such a venture.

We have found that traditional European law schools like the University of Lucerne stand the best chance of undergoing the character-changing venture of global exposure when a truly committed core faculty meets an interested and excited group of select students who, apart from partaking in an exchange program themselves, wish to see the character of the school transformed and its reputation enhanced. What is called for



is not the mere addition to the curriculum of courses that sound and, in the best of scenarios, actually are transnational. Instead, the concept of transnationalism must be imbued into the curriculum as a whole. The idea is to fundamentally change perceptions: if a scholar, be it professor or student, perceives it as odd *today* to have an international or comparative component included in a given course, the goal is to have the same scholar perceive it as distinctly odd *tomorrow* if he or she encounters a course that lacks that element. Integrating this perception into a school's curriculum requires truly committed teachers working together with truly interested students. Neither group could perform such a task on its own.

The University of Lucerne bases its globalized curriculum on three pillars, each of which is of equal importance:

(a) the import of *global scholarship* by inviting distinguished guest professors to teach classes and seminars to local, but also international students;

(b) the *intermingling* of local and international students within an expanding set of English-language courses offered by Lucerne and visiting faculty throughout the year; and

(c) a *four step-approach to studies abroad*, in that local students are first exposed to language, legal terminology, and "legal thinking" classes during their undergraduate studies. They then are encouraged to undertake what amounts to a "semester abroad at home" by selecting primarily those advanced Masters level courses that are offered in English. Thirdly, they are offered a semester or year abroad during their Masters studies at one of Lucerne's partner universities for which they receive credit based on a pre-approved course of studies abroad, in order not to "lose" a semester. Finally, while this may well be the "end" of their international study ventures, Lucerne's students will be actively supported in case they wish to embark on a full course of studies in order to earn a LL.M. degree or other postgraduate certification. In order to prepare students for their time abroad and to accommodate incoming students, it is important to offer a wide array of courses with which to design a curriculum that suits a student's educational goals.

With the considerations of the previous section in mind, we first developed a set of courses in English that are by definition transnational. For example, the University offers specialized Masters level courses in international arbitration, foreign relations law and diplomacy, transitional justice, world trade law, comparative dispute resolution, and European fair trial law. Next, the University brought in guest professors who teach health and human rights, comparative regulatory law, comparative free speech, European law from a foreign perspective, comparative tort law, and international business litigation. Like the professors invited to teach

at NYU, the guest professors invited to Lucerne bring their own unique experiences and panoply of legal courses that can be taught.

The classes mentioned *supra* are deliberately set within the core curriculum of the regular three-semester Masters program and, to a lesser extent, the later semesters of the Bachelor program. Lucerne thus intentionally chose not to set its transnational training apart as a distinct track. This is, in our opinion, a precondition for the interaction of the local and incoming foreign student populations, which we consider one of the foundations upon which a successful international program of studies rests. Plans are currently in the early implementation stages to offer an introductory course on foundations of Swiss law, in the European context, to visiting students. This class will be similar to the mandatory foundational courses in American legal thought and practice that are commonplace in U.S. LL.M. programs. This way, exchange students are fully integrated in the local course of studies, with all the positive effects of interaction.

The University also embarked upon a somewhat ambitious agenda of attending moot court competitions all over Europe and beyond, matching these offerings with in-house and local competitions. In addition, we established litigation and negotiation workshops, partially conducted in English, for students who wanted to avoid the hassles of the multi-semester commitment necessary for moot court teams. Both types of moots/workshops are open to incoming exchange students. Furthermore, plans are currently being developed jointly with international NGOs to establish at least one specialized clinic-type course for transnational students. This way, actual legal advice and case handling skills will be offered as part of training, and the NGO partners' work would benefit from the scholarly input our students would provide. Such courses are still scarce at European law schools.

Keeping in mind that a global campus here in Lucerne should have at least some "Babylonian" characteristics, we also considered how to create an attractive selection for incoming students who want to expand their pre-existing German language skills. We soon devised a unique feature that embraces the multilingual tradition of Switzerland: the mixed seminar. We began offering seminars that operate in two languages, generally in English and German. Students with at least sufficient passive knowledge of the other language can attend and, while participating and fulfilling grade requirements in their native language, expand their knowledge of the other language over the course of the seminar. This requires not only a high level of flexibility on the side of the lecturer, but also a new approach to teaching materials which, must be bilingual.

### 3. Program and Partnership Building

Since the inception of the ERASMUS program,<sup>65</sup> European universities have benefited significantly from a formalized and unified system of student and faculty exchanges without the hassles of complex applications and difficult credit transfers. Lucerne has been heavily involved in this scheme from the beginning, and the law school alone currently has ERASMUS partnership agreements with at least twenty-five European schools that offer approximately fifty exchange opportunities for our students.<sup>66</sup> All the benefits of a close-knit network notwithstanding, it is not truly global to have programs on one continent alone. Aside from offering students options in a variety of locations, it is important that the partnership be meaningful, not just mere “paper statements of understanding.”<sup>67</sup> Law schools can utilize these partnerships to facilitate guest professorships, research opportunities, and joint ventures, all of which will eventually benefit the student. Of course, it is not possible to have a close relationship with every partner, but at the outset of the negotiation, a school should consider how they can benefit from welcoming students from the partner school and how their own students can benefit from the partner school. Factors to examine include prestige, location, reputation, student size, specializations, and required languages. Prestige, while undeniably a factor, should not be determinative in searching for or establishing partnership relationships. A partnership with a school that is a “match,” in that it offers programs that students are interested in and realistic opportunities for faculty collaboration through personal contacts, will benefit a school over the long term.

#### *The Lucerne Approach to Program and Partnership Building*

The University of Lucerne’s approach from the outset was (a) distinctly global; (b) focused on exploring partnerships that offer mutual benefits, and accordingly are flexible and expandable; and (c) aimed at establishing personal rather than merely institutional linkages.

While we remain firmly grounded in the European network of universities and seek to extend this network beyond disciplines by cooperating with the other faculties here at the University of Lucerne, we

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65. See ERASMUS, *supra* note 2.

66. See *Partneruniversitäten im Bereich der Rechtswissenschaften*, [http://www.unilu.ch/files/liste\\_erasmus\\_studaustausch\\_rf\\_071115.doc](http://www.unilu.ch/files/liste_erasmus_studaustausch_rf_071115.doc) (last visited Apr. 10, 2008) (listing the University of Lucerne’s ERASMUS partners).

67. Louis F. Del Duca, *Symposium on Emerging Worldwide Strategies in Internationalizing Legal Education*, 18 DICK. J. INT’L L. 411, 425-26 (2000).

chose to become global as well. This is reflected in the recent additions to our network of partners including schools in India (NALSAR) and Turkey (Yeditepe and Bilkent Universities). In addition, our negotiations and pilot projects with potential partners in “new” regions—for instance, Japan, China, Canada, and South Africa—and our expansions in already “covered” areas such as the U.S., Australia and, of course, EU-Europe reflects our global goals. Our student body is eager to embody the roles of ambassadors and explorers, thus contributing to the identification and evaluation of potential network partners and the transformation of newly concluded agreements into working relationships. Last but not least, Lucerne’s junior researchers, who support our faculty in their teaching and research agendas, are being actively recruited to visit partner universities for short term stays.

The extension of partnerships as a vehicle for the benefit of Lucerne and the partner school’s professors, up-and-coming academics, and students at all levels is only possible as long as we tailor the partnerships to be flexible and adaptable to different situations. Therefore, we seek to build on existing networks of professional relationships already cultivated by our permanent and visiting faculty. This has the additional benefit of basing the expansion of research or student exchange-based partnerships on substantive, rather than merely formal, associations. Thus, the students, junior researchers, and faculty who embark on an exchange or a joint project with a partner school have meaningful personal contacts, and, in turn, bring an expanded network back to Lucerne. Our willingness to be creative is shown in the way we tailor our cooperative ventures to match the identified joint strengths and visions of those academics we meet at prospective partner institutions.

#### IV. The Road Ahead

The University of Lucerne’s goals for the future are quite concrete. We aim to develop our existing transnational legal studies program into something that is as homegrown as it is globally focused. For that, we must consider the practical desires of our local students who may want to stay local or internationalize without penalty. We are currently developing a special track of studies that will allow Masters students, based on academic merit in the Bachelors program and a clear and convincingly established purpose, to specialize in transnational studies. These students will select more of our English language courses than the average students who go abroad during their Masters studies and interact with the incoming students from our partner schools at the outset. This is what we call our “global campus, step one.” Establishing a sustainable culture of internationalization hinges upon the efforts of both the

incoming and outgoing student populations. The former will have an established presence on campus and attract more local students to the ranks of those vying for international placements. Fundamentally, they will also introduce a distinctly international viewpoint into each and every class they will attend. The group of students who go abroad will spread the news of the merits and virtues of internationalization amongst the general student body and act as public relations executives on behalf of both our initiatives and the schools they have visited during their course of studies.

Yes, we intend to be global but not indiscriminately so, given the size and resources of our school. This is not the place to state where our networking initiatives will or will not take us in the future. However, we have a clear intention to focus our resources as conscientiously as possible in order to avoid the pitfalls of unnecessary duplication and to prevent hasty selection of partner schools and/or programs. We have also chosen to globalize by using the English language as our intermediate language. The Anglo-American, English language choice and transnational foci are by no means contradictory. For the foreseeable future, there will be a valid emphasis on networking in places that have traditionally or more recently embraced a similar transnational approach, and English promises to remain the predominant language of studies and practice in these regions and fields.

When soliciting new international partnerships, we will follow the tested and proven course of being flexible and creative. While the establishment of a joint Masters program, LL.M. style, with select partner universities remains the mid-term goal, we are currently discussing bilateral agreements that would create short-term programs of a distinctively multi-(legal)-cultural character, with an integrated practical element (field placements and internships). We also continue to discuss both traditional and innovative student and faculty exchange programs that are tailored to the academic realities and market conditions of our prospective partners.

Last, but by no means least, we intend to firmly cling to the essence of what makes Lucerne a top law school and beloved by its students: impeccable scholarship and teaching, openness to modernization while fostering traditional values, and a student-centered learning environment that attracts future legal professionals and scholars to Lucerne.