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Structuring Global Law Schools

Dean John Sexton*

I. Introduction

When we structured this program we decided that Bob Clark would provide, as he has quite eloquently, a foundational presentation, and Claudio Grossman would present a paradigm of how to construct that foundation. It's left to me to talk to you about how one goes about structuring various approaches across a range of law schools with various asset bases.

II. The Next 10 to 15 Years

When we look ten years out or fifteen years out, the enterprise of legal education in the United States will be fundamentally different from the way it is today. During that period, we will more and more see a need to justify what is the aberrational model of legal education in the world—the three-year graduate model of legal education in the world. I think what will result will be something that will look very, very different from the composite of law schools we see today. An irresistible trend will produce between 20 and 50 law schools that will provide three year graduate models of legal education—though there will be 500 American law schools accredited by the ABA, half of which will exist in cyberspace at a quarter of the tuition the traditional schools will charge. In short, the changes will be cataclysmic.

III. “Global” Law School Approaches

In this context, the topic for today. The first question to ask, of course, is: what is a global law school? There is a whole range of possible answers to that question.

One answer is: that a global law school is defined by an accentuation of international law, public and private. Surely a

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global law school will have this feature; nonetheless, I believe that increased attention to international law will be only a small part of what the global law schools of the future will be.

A second way of defining a global law school is as the incubator for an Esperanto of law. On this view, at least in selected areas, legal research and teaching would focus on a search for the single right answer—the *Swift v. Tyson* of our Century. In my view, there can be no doubt there will be certain areas where this search for uniform rules will attract the attention of the global law schools we will be creating; but this too will define only a small part of the enterprise.

Another view of the global law school is defined by the globalization of law practice. As both Bob and Claudio have demonstrated aptly, our students increasingly are going to be involved in practices that cannot avoid transnational questions, whether they be on the enforcement of judgements, or on structuring deals, or on choice of law, or on criminal liability, or on human rights, or on other subjects. We recognize this and, of course, that cuts into the research of our faculty.

Still another way of defining the global law school (and one I find congenial) is to define it as a perspective—as a heuristic approach. In this regard, an essential feature of the defining perspective embraced by the global law school is intellectual humility. It is understanding that there is wisdom outside of our narrow world—and delighting in being asked the question that you would never asked inside your own thought system. Such shifts in perspective—and the humility about answers which (hopefully) they produce—may indeed be an important part of the essence of the global law schools we are creating.

I believe that, in the end, no law school will truly be a global law school unless it aggressively insinuates into its core—the core of its teaching and its research—all four of the elements I have described. There will be many half-hearted efforts and many false claims. Still, if schools embrace fully the four elements I have described, I believe it will lead to the most important curriculum reform of our time.

IV. Structuring a Program

Let me now give a sense of how one could structure a modest program which embraces the elements I have just stated.

Start with an analogy. On various levels, from five to five hundred, the schools in the association now give funding to our

students to work in “public Interest” placements. One could view the enterprise of globalization along a similar spectrum. One could give modest funding to students for summer projects. One could develop exchange programs in an almost revenue neutral way. One could bring in a series of speakers or visitors in a low budget way. Or, we could turn up the dial on every one of those dimensions (and several others), with the resulting much higher expenditure levels.

V. Expanding Faculty and Curriculum

When you move to having distinguished visiting professors like Richard Goldstone come to talk about the problem of the globalization of criminal law, or Professor Sang Hyun Song come to talk about international commercial transactions in Asia, the process can become more expensive. At NYU, we have created a faculty of 20 such folks. But, this too can be developed at the modest level or at the advanced level. What will happen, I think, is that the more you see the results of the process, the more you invest.

In the fully developed form, a curriculum begins to develop which displays itself along three different lines. On the first line, someone like Song comes to teach a course on Korean law; he does that himself and its content is familiar to all of us. But then, in addition, Song comes and teaches a course, with a colleague who is at the law school all the time (in this case at NYU, Jerry Cohen or Frank Upham) on international commercial transactions in Asia. I guarantee, as much as Jerry Cohen knows about international commercial transactions in Asia, it is a different course when he is teaching with Song.

VI. Complete Integration

The third line entails the complete integration of the global initiative throughout the three year cursus curriculum. Here, I see an analogue to the nineteenth century. The more and more I look at the work of Christopher Columbus Langdell, the more and more I understand that the paradigm shift we see now in sovereignty, technology and information distribution was occurring then. For them, it was not a paradigm shift involving nation states but a paradigm shift involving states after the Civil War. It was not technology involving computers, but it was technology involving increased literacy and newspapers, the dissemination of information. For them, it was not the inter-

nationalization of markets but the nationalization of markets. I am now beginning to re-understand what Langdell did in those terms. I guarantee you that, when he developed his method, he did not only teach Massachusetts cases.

This involves a serious institutional adjustment. It can be done. Claudio and Bob began to suggest how it can be. It all starts with the faculty to have an epiphany: “Ah yes, Goldman Sachs may wonder whether they can enforce a judgement of the Southern District in a Chinese court. This might make a difference in commercial law.

I do not have to multiply the examples, but I believe that radical change is more than doable. If you want to move the farthest on the dial from the simple summer experience or the occasional distinguished visiting professor or professors, you must create fundamental change at the core of traditional legal education—the first year experience. A year and a half ago, at NYU, under the leadership of Norman Dorsen, we enlisted four volunteers, one in each first year section who would retool their materials so as to reform their first year courses to make them appropriate for a global law school. We got those four volunteers and this year for the first time, those materials are being used in four different courses. Dick Stewart is doing it in Torts and Larry Kramer is doing it in Procedure. The key, it seems, is to stimulate collective action. Because this is a retooling, we must share thoughts. Accordingly, we will put this material on the Internet to share and to obtain the reactions of others. With cooperation, this can begin a process which makes even major curriculum change less expensive for all of us.

VII. Development of a Community Ethos

A key to building towards this more globalized law school is that one should not underestimate the importance of development of a community ethos. In this regard, I emphasize the importance of little things—like making sure that your foreign students and your domestic students arrive at the same time—providing social venues for them and making sure that foreign students, especially Japanese students, are assigned to roommates in your residence halls that are from different nations.

It is particularly hard to get the American students to understand the value of the foreign students in this regard. It is critical to encourage students to make friends from different cultures and spend time together. The same can be true of faculty.

This can be addressed by conferences, and by getting your people abroad. It ultimately comes down to integration—full integration into the heart of the school.

For me the enterprise of the globalization of legal education is deeply connected to the school's *ratio studiorum*. It is deeply connected to the justification of what we do. Our mission is to educate and to research about the most sacred instrument that civil society has created to effect change in people's lives. We are doing this at a point in time when the rule of law is being conceptualized for the first time in a great part of the world and when, thank God, we in America have come to understand we do not have it right completely. We Americans are more humble than we were 10 or 20 years ago on that issue.

As we enter this period we have to be very careful to observe the real danger that we can become too messianic about the content.

Prof. Vanistandall:

Q: I heard twice a word that is very un-American and that is the word "humility." I think that is a real problem if we talk about global law schools and globalization of the legal education.

One of the problems we face in Europe is that when you really want to understand a legal system and a legal culture, you have to know the language. Of course, in Europe that is manageable. Most European languages we are able to master. But if you really get into different legal cultures like Chinese, Japanese, or Islamic cultures, my experience (I have been dealing with Chinese many times) is that you lose about 60% of your possibilities if you really do not know what the language is. In Europe, we have been looking for strategies for entry to these more far-flung legal cultures like Russia, China, and Islamic cultures. I wonder how would you do that in the United States.

Dean Sexton:

A: Let me take one cut and then turn it over to a truly multicultural dean, Claudio, to answer this. I think it's good to embarrass very smart people for being disabled in this area. I think we have to do some embarrassing of our very smart American students. They are in the classroom with, in some of our institutions, hundreds of students who speak English beautifully and for whom English is a second language, as it is for you Franz. One way to embarrass them is to seize the pedagogical advantage that is available in multilingual courses. For example, my colleague Frank Upham teaches a course that requires bilingualism in English and Japanese. He breaks the students into

five teams of four students each. He gives them a complex document in one language or another. All five teams are to translate the document from language A to language B. They are not allowed to consult the course groups. They come in with wildly different translations. That starts a conversation not so much about language, because it is not a translation course, but about what is different in these languages and legal systems. What are the lacuna and so forth? It is for me almost the paradigmatic global course. There is a wonderful pedagogical move to be made there. I know many of our institutions are starting bilingual courses, and I think that is the thing to keep your eye on. Do not view them as courses in translation but as course that challenge the epistemology of the various legal systems.