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Blitz Survey of the Challenges for Legal Education In Europe

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I. Introduction

Summarizing in a few minutes (a) the impact of the Erasmus and Socrates programs and (b) the foundation of the European Law Faculties Association (ELFA) on legal education in Europe, as well as (c) the perspectives for the next century following from the Sorbonne Bologna declaration of 1999 would be a formidable challenge even for great telecommunicators like the educational networks of CNN or BBC—so don't expect too much from a professor of taxation.

II. The Impact of the Erasmus-Socrates Program

A. *The Concept of the Erasmus-Socrates Program:*

The Erasmus–Socrates Program is a massive program for educational exchange at university level in all disciplines of science including law. It was initiated by the European commission in 1989 and has spawned ever since dozens of university networks for educational exchange in Europe. One of the most prestigious networks is the “Coimbra” network involving between 30 and 40 “historic” universities in Europe. K.U. Leuven on its own has not less than 75 agreements in various networks with other European law faculties.

The Program consists of the very simple concept that European law faculties will accept each other's students at no additional charge on a basis of rough equivalence in numbers of students exchanged either for one semester or for one full academic year. Students receive credit at their home university for lectures taken at and examined by the host university.

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Students have also the obligation to take a training course in the national language of the host country.

B. The Implementation of the Erasmus–Socrates Program:

Most law schools have simply opened up most of their courses to other European students without changing too much their curriculum. Also, a majority of the law schools only grant credits for optional courses taken at other universities and not for mandatory courses.

A limited number of law schools, particularly in countries with small language groups (Belgium, Denmark, Finland, Greece, the Netherlands and Sweden) have been taking a more active role: they encourage students to leave for a full academic year, preferably during one of the last two years of the curriculum. They also give credits for the equivalent of mandatory courses taken at other universities and they introduced a substantial curriculum in English focused on European, international and comparative law in order to attract students from other, more important language groups. K.U. Leuven for example has introduced 30 courses in English. As a result, one quarter of the K.U. Leuven students have studied at least one semester abroad during their curriculum. We are host every year to approximately 250 foreign students, where we had almost none before 1989. Over the duration of the Erasmus–Socrates Program we have now more than 2.000 alumni all over Europe.

C. The Problems With the Erasmus–Socrates Program:

The Erasmus–Socrates Program has been very popular with students in Europe, but many problems have yet to be solved. One major problem is the total lack of selection of students. Once there is an agreement with a partner university all students from the home university have to be accepted by the host university. In Europe, there are considerable differences in quality levels of universities and in admission standards for students. The Erasmus program does not recognize these differences and puts all programs and all students on par. Since there is no officially agreed ranking for European law schools, it is very difficult to find criteria for selection. The only way to be selective for students is to be selective for universities as, for instance, Oxford and Cambridge have done at the beginning of the program. As a result, the exchange opportunities for the own students are severely restricted. The other way is to take the risks of extending

the network and to boot out the unworthy candidates on a basis of trial and error. One of the side-benefits of ten year of Erasmus experience is that we have come to know the good universities and the bad ones.

Another major problem is the lack of comparability in two respects: (a) the weight and contents of courses and (b) the criteria for grading. This results in a constant struggle to adjust programs taken by the student in the host university so as to satisfy the minimal curriculum requirements of the home university and endless debates to establish whether a "sobresaliente" in Barcelona is the equivalent of "gut" or "sehr gut" in Berlin or a 7 or 8 out of 10 in Amsterdam. The European commission has been proposing to introduce a uniform European Credit Transfer System (ECTS), but in view of the variety of curricula and grading criteria this system is certainly not to be imposed in a uniform way.

D. The Saving Grace of the Program:

In spite of all these problems and criticisms, the over-all experience of the Erasmus-Socrates Program has been very positive. Students have broadened beyond recognition their cultural and human horizons. They have enhanced their language skills. But above all, they have had the opportunity to build up a European wide human relations network, which will enable them in later professional life to operate effectively at a European level.

The major impact however has been the increasing awareness that most legal problems are not unique to a specific national legal system, but are really common problems shared by many different societies, which may be solved in many different ways, very much like traditional areas of law under state jurisdiction in the U.S. This has led to a search for generic courses in which problems are solved by comparing various legal systems.

A limited number of law schools are aiming at creating a curriculum for those lawyers and leaders in business and politics who will be operating on a European, not to say a world wide basis. In this curriculum, the most important question is not what the right solution is to a specific problem, but rather what the right problem is and how the solution has to be brought about regardless of the legal system in which you are operating.

III. The Sorbonne–Bologna Declaration

A. *The Goals of the Declaration:*

Erasmus and Socrates have been the experience of the past ten years; the Sorbonne–Bologna Declaration of 1999 contains the challenges for the future. Bologna and the Sorbonne in Paris are, together with Oxford, the cradles of Western university education. It is symbolic that at the location of the oldest universities in Europe, the chancellors of the universities and the ministers of education should address the future of university education in general. In doing so they also have established the foundation for the structure of European legal education. The lofty goals of the joint declaration are “to establish the European area of higher education and to promote the European system of higher education world-wide.”

In order to achieve these lofty goals the universities and the ministers of education want to achieve something that may seem self-evident in the United States, but that will be revolutionary in 21st century Europe: full academic transparency. The academic landscape in Europe is probably more diverse than in the rest of the world. There is a panoply of academic titles and degrees, a wide variety of academic programs and curricula and more than a dozen different grading systems, access to the university with and without various shades of selection and many different academic calendars dictated by climatic and weather conditions and different traditions of winter and summer holidays.

This charming diversity is a severe obstacle to free access to the European labor market enshrined in the Treaty of Rome as the freedom of movement for workers and the freedom of establishment for entrepreneurs. This adverse effect of academic diversity for the European labor market is the economic handle allowing the European Union to intervene in this area. Otherwise, culture and education belong to the competence of the Member States, not of the Union.

B. *The Specific Proposals:*

This academic transparency is to be achieved through three separate measures: (a) comparability in academic degrees, (b) a uniform structure of the university curriculum in all disciplines and (c) a common system of transfers for course credits.

C. Comparability in Academic Degrees:

The comparability of degrees through a uniform name for university degrees is not a solution to a real problem. What's in a name? Whether a person with a law degree is called a master, a magister, un licencié, a bachelor, or a doctor is of no importance. The potential employer will rather look to the duration of the study, the titles and contents of the courses and the reputation of the law faculty. There was a time when most lawyers in the U.S. were LL.B.'s - now they are J.D.'s - but it is basically still the same three-year law curriculum. Personally, I would prefer to maintain the colorful diversity in titles, which reflects in a harmless way academic diversity in Europe. A uniform English title of "Master" to be used in all disciplines, including law, does not do justice to the diversity of European academic tradition.

More important is the proposal of a "Diploma supplement," listing all the courses taken and the examination scores. This proposal will make European degrees more readable and comparable. This is the basic information which employers and academic institutions need to select candidates from various Member States on the basis of comparable criteria. The great majority of European law schools already use such diploma supplement, but a uniform structure and presentation of this type of information is a significant step forward.

D. A Uniform Framework for University Studies:

A second and more controversial proposal in the declaration is the adoption of a uniform structure for all university studies divided in two cycles: an undergraduate and a graduate study. The first cycle of undergraduate studies should consist of minimum three years with a degree that is relevant to the European labor market. The second cycle of minimum two years of graduate studies should result in a master and/or a doctorate degree.

This proposal may look very much like the U.S. model with three years of undergraduate college education, followed by some years of graduate study. The purpose however of this proposal is to solve a specific European problem to wit the dichotomy between higher technical and vocational education on the one hand and university education on the other. This dichotomy still persists and raises problems in several European countries.

In Australia and the United Kingdom, an end has been put to this problem by integrating the polytechnics into the university

system. The judgment on the benefits of this reform, even now several years later, is far from unanimous. It is clear that most technical and vocational institutions of higher learning in Europe are aiming for a similar solution. The uniform structure for all university studies proposed in the Sorbonne-Bologna Declaration is considered by most observers as a step in the direction of integrating technical and vocational studies into the university system. Universities however may explain this proposal as a step in the direction of a three year model for technical or vocational schools with a specific non-university degree, recognized as such and granting direct access to the labor market.

This whole debate may not seem very relevant to the organization of legal education, because in most Member States of the European Union, there are not that many vocational schools of higher learning in law claiming parity with universities. The dichotomy between university education and vocational training in law institutions of higher learning is not a major problem. For the law faculties the proposal of the Sorbonne-Bologna Declaration comes as a solution that solves a problem that may not exist. At the same time however the proposal would create a major problems to existing law faculties, when it would be implemented *ne varietur* in all Member States.

The most obvious problem is that of the over-all duration of legal studies. At present the duration of legal education is three years in Ireland and the U.K.; in most other countries the duration of legal studies is four to five years. The Sorbonne-Bologna proposal would oblige all future lawyers in Europe to study at least five years.

Other aspects of the proposal need clarification. There is the question whether the first cycle of undergraduate studies is completely disconnected from the graduate law curriculum like in the U.S., or whether the first cycle may already contain some elements of legal education like in Australia where a combined degree with a major or minor (law-science, law-economics) has been the model now for some years.

If some elements of legal training are introduced in the undergraduate cycle of legal education, as is the situation now in many European countries, a new law degree would be created which, in the words of the declaration, should provide an appropriate level for qualification in the labor market. The question then is for which professions, short of solicitors, barristers, advocates or a court's magistrates, would this new degree be useful.

Another more insidious question is what would be the use of an undergraduate training in law with a real outlet into some legal professions for students intending to take the graduate law courses. Or should the latter follow the U.S. model of three years of college education before taking on legal studies at a higher level?

If formal legal education is to be limited to the second cycle of graduate higher education, there is the question of how to finish this job in a two-year curriculum. Most law curricula in the world extend legal training to a minimum period of three years. This would bring the nominal over-all duration of legal studies to up to six years, which would be an increase of one to two years compared to the situation in most E.U. Member States outside Ireland and the U.K.

E. Extending the Credit System to Forms of Non-full Time Academic Education:

The third proposal consists in an extension of the present European Credit Transfer System (ECTS) to other forms than full-time academic education such as continuing professional education and lifelong learning. Fortunately, the declaration has put in a condition that these forms of education be recognized by the receiving universities. As we have indicated above the present ECTS system does not work flawlessly in well established forms of comparable academic education, so there is still some homework to do to make them work for other forms of yet not recognized forms of education.

These are only some of the questions which European law schools will have to discuss, if they ever will implement the Sorbonne–Bologna Declaration. As usual, in European decision making the time frame is flexible and the proponents of the reform take a very long-term view. The whole system must be put into place in a period of ten years. This means there is ample time for discussion, maneuvering, and amendments.

IV. The European Law Faculties Association

It is a measure of the enormous progress of European integration that, less than five years ago, European law schools would have been unable to address all the above questions in an orderly fashion, whereas today they have a European wide forum for discussion and an adequate instrument for the defense of their interests. In December 1995, approximately 80 European law

faculties gathered in Leuven (Belgium) for the foundation of the European Law Faculties Association (ELFA). The first annual meeting was held in 1997 in Fribourg (Switzerland) with the director of the Association of American Law Schools Mr. Carl Monk being present. In the beginning, there was some opposition, mainly from the national associations of law schools in France, Germany, and Italy. These national associations which had a long tradition but a weak European agenda wanted to keep the European debate within the national framework. Very quickly, however the faculties took over and created a truly European forum with now approximately 150 law schools from all Member States of the Union and beyond. The purpose of the association was to establish an organization which could act as a forum for debate on European questions of legal education, and as a legitimate representative of all European law schools vis à vis the European Union, international organizations and sister organizations in other regions of the world such as the Association of American Law Schools. The subsequent agenda of European higher education has shown that its foundation came just in time.

ELFA will certainly address the questions raised above at its next general meeting to be held this year in Amsterdam. From these questions, it is clear that the European Law Schools may have to take positions that do not fully coincide with the positions taken by the chancellors of the European universities and the ministers of education. It would not be the first time however that a law school would take a different position from that taken by the university as a whole.

ELFA has been active so far in strengthening research networks in all Member States on the conditions of academic legal education in Europe, and the exercise of legal professions with the general purpose of integrating curricula and liberalizing professions. This is a bottom up approach rather than the top down approach taken by the Sorbonne-Bologna Declaration.

One other project that has already been presented at the annual ELFA meeting last year and will be presented again this year is the common European year in legal education. This project wants to address the specific problems of the Erasmus-Socrates exchange programs. In order to facilitate exchange of students, all European law schools should undertake to elaborate a common program of one academic year consisting of courses in European law, international law, the law of conflicts, and comparative law. The duration and the format of these courses would be the same in all law faculties as well as the method of

examination and the grading scale. Students willing to study at another university could take this common European year, with guaranteed uniformity doing away with the necessity to transfer credits and to compare grading scales. Needless to say that such program may also be of great interest to non-European students wanting to study for one year or one semester in Europe. This common year would still leave open the possibility to study other courses at other European law schools within the classical Erasmus–Socrates exchange framework.

It should also be mentioned that there is an increasing interest in joint degrees to facilitate free access to the European labor market. Some joint degrees between British, French and German universities do already exist, such as the joint degree programs between the Cornell law school and the law faculties of Paris Sorbonne and Berlin Humboldt. The problem with these programs is full access to the local bar. Now Belgian and Dutch law faculties (K.U. Nijmegen, K.U. Leuven) are negotiating the possibility to establish a common curriculum, which would allow students to obtain two law degrees at once, one in the Netherlands, and one in Belgium, giving immediate access to the bar. In order to appreciate the importance of this joint degree one should know that there is no pre-entrance exam at the bar and that law graduates may undertake immediately an apprenticeship at the bar and plead in courts.

Finally, there is the ever-extending list of post-graduate master of laws programs in English, at English speaking universities, but also in many small language countries (Belgium; Denmark, Finland, Sweden) and in the major national languages in other countries. Those non-European students who want to take a sample of European community law after their law studies are well advised to study one year in Europe. The variety and the choice of programs is almost endless. The secret is to look for quality and opportunity. In the absence of any ranking, the alumni of the existing programs are often the best source of information.

V. Conclusions

Since the introduction of the Erasmus and Socrates Programs, legal education will never be the same in Europe. Legal education is on the move in Europe not only in respect to the structure and the contents of the curricula, but also in respect to teaching and grading methods. Because of ever increasing exchanges, teachers

and students are learning a lot from each other and best methods and procedures are rapidly gaining ground. The alumni of 1985 of most European law schools would not recognize their curriculum today and it is my strong conviction that the alumni of 2000 will not recognize their school in 2015. The beauty is that these rapid changes also are in the large majority a substantial improvement. I hope that many alumni elsewhere in the world could say the same thing of their law schools, because it would mean that lawyers all over the world will understand each other much better than in the past.