

# Training Lawyers for a Globalized World in Economic Crisis

Bertrand du Marais

## I. Globalization, Economic Crisis, and Lawyers

What is the appropriate training for lawyers in a globalized world, especially considering the current economic crisis?

Since the 1990s, in France, the areas of public economic law, public utility and market regulation, and competition law as applied by the public sector have been strongly influenced by European law (E.U.) law. That influence has been so pervasive that, to a certain extent, national legislation largely involves state transposition of E.U. directives. But this adaptation of domestic law to E.U. law has not been easy.

In these fields, there are not really specific courses on E.U. substantive law (except for the E.U. state aid regime). Mainly, E.U. law in France is taught through E.U. procedural law, for example, the competition procedure of the E.U. Commission or the adjudication process of the European Court of Justice (ECJ).<sup>1</sup> Any specific issues in the field of civil and criminal law may require application of a combination of domestic laws and E.U. law. In fact, E.U. jurisdictions and the influence of E.U. substantive law is a new phenomenon only in civil and criminal law.

Experience in teaching and practice cautions that legal training should not be addressed only from the practical standpoint. Following Nicholas Kasirer,<sup>2</sup> the dimension and the goal of legal training should expand beyond a strictly means-to-ends approach; in other words, there is a pressing need for a broader perspective. Legal training also means training future creators of law. Even

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1. *See, e.g.*, the curriculum of the Masters degree (2nd year) in competition and market regulation at Paris West Nanterre University.
2. Nicholas Kasirer, *Bijuralism in Law's Empire and in Law's Cosmos*, 52 *J. Legal Educ.* 29, (2002) 29-41.

if very few of our students will have a chance to become lawmakers, others will influence the lawmaking process while pleading in courts, adjudicating cases, or even drafting internal bylaws for private corporations. Hence, legal education is also a matter of educating young citizens about how institutions function and the diversity of international legal and institutional cultures.

Therefore, we should locate discussions of the globalization of law in the context of the economic crisis which started in 2007, asking how this period may affect legal education and even the definition of legal globalization. Innovations implemented at Paris West University at Nanterre in the 1980s have since spread to all French law schools.<sup>3</sup>

Globalization as a whole is distinct from economic, cultural, and social globalization and from the globalization of law. To put it briefly, economic and social globalization appears at the junction of four factors which develop autonomously, but interact with each other:

- The accelerated circulation of goods, services (including legal services) and ideas, leading to a unique global market for goods and services.
- What we call the era of “second derivative”: the fact that markets are trading not only real goods, but also their evolutions and their perceptions, if not promises and premises. The key factor is not accumulation of capital and wealth, but its second derivative.
- The era of “abstraction,” of complexity and of interdependency: these two factors lead to dematerialization and also to more intermediation by actors who are interconnected.
- The era of commoditization of common goods, values and cultures.

Thus defined, economic and social globalization interact with legal globalization because legal rules influence each interaction. Economic and cultural globalization lead to what Karim Benyekhlef calls a “new emerging normativity,”<sup>4</sup> not only new legal content, and new ways of drafting law, but a new conception of law itself. This last trend implies that globalized lawyers should develop both the ability to be innovative and to identify the stable elements on which to ground this new normativity.

How will the current crisis affect globalization as a whole and the globalization of law in particular? It is of course rather early to assess the effects of the current crisis, however, we can identify several trends since the September 2008 default of Lehman Brothers.

3. *See infra* Section III.

4. *See* Karim Benyekhlef, *Une possible histoire de la norme: Les normativités émergentes de la mondialisation* (Éds. Thémis 2008). *See also* Antoine Garapon, *La raison du moindre Etat* (Odile Jacob 2011).

The current crisis will not dramatically alter the circulation of scientific information and scientific progress. And while the recession has clearly been felt by the French legal industry,<sup>5</sup> globalization will continue and the trend towards more complexity, in particular, will continue to increase the demand for lawyers and for harmonized law.

## II. What Should a Global Lawyer be Taught?

What should we expect from a globalized lawyer? Two principles seem key. First is an acknowledgment that legal globalization is mostly driven by economic globalization. The economy's influence over law is the consequence of globalized trade, investment, financial markets, and the like. At the same time, many legal and institutional reforms are driven by economic theory. Public utility regulation, for instance, undoubtedly demonstrates this pressure as does corporate governance, tax law, and intellectual property.

Second, the globalized lawyer is keenly aware of laws applicable to international transactions (either from international corporations or migrants, for example). Yet, the opportunity to directly apply foreign law in a specific case remains rather limited. Except for the happy few working in major international law firms and involved in international arbitration, international finance, or international trade, the overwhelming majority of young attorneys continue to deal with parochial legal issues. However, since most litigation is adjudicated by local courts, we must teach global issues with an emphasis on local enforcement; in other words, "think globally, but practice locally." This paradox imposes an enormous pressure on the cultural identity of the globalized lawyer.

This tension is unavoidable when devising a curriculum for the globalized lawyer. Modern legal training should help lawyers move easily in different

5. In 2009, the top hundred French law firms experienced a decrease of 3 percent of their staff for an increase of 0.25 percent in revenues. The small law firms (ten to thirty practicing lawyers) experienced a dramatic reduction of their turnover of 9.5 percent, but they did not adjust their staffs accordingly. At the same time, major law firms made substantial productivity gains. The top ten French firms, while experiencing a 7 percent decrease in their turnover, have increased their turnover per capita (per practicing lawyer) by 2.77 percent. Despite this crisis, the globalization of French legal services has continued. More international law firms (meaning those with more than five offices outside France) are among the top 100, which incidentally, shows that Paris is still an attractive place for law firms. At the same time, these international firms were also hit by the crisis. Their staffs decreased by 3.39 percent, their revenues by 4.74 percent. In this cluster, several law firms were the most aggressive to adjust their resources to the economic downturn. Among the top fifty law firms which experienced a two-digit shrinkage in their staffs, six out of eight had a global practice. *See* La radiographie 2010 des cabinets d'avocats, July–Sept. 2010 (Caura Barszcz ed., La lettre juristes associés).

legal cultures. The globalized lawyer should draw specific attention to the Anglo-American legal system, all the more so if he/she is a transaction lawyer involved in international practice. But at the same time, legal training should strengthen ties to his/her own legal culture. This is why modern legal training should be respectful of what we call "jurisdiversity." This concept means that very deep differences remain between national legal systems, especially in the realm of enforcement and even if harmonization of law exists as in the E.U.

In this context, two major patterns can determine the design of law curricula. The first is to reinforce the cultural identity of national lawyers. This requires each to have in-depth knowledge of his/her national legal system, its history and tradition. The second pattern requires education that helps students adapt to another legal culture. Rather than pedagogically teaching comparative legal methodology, law schools should aim to train students in this different legal system by giving them the same minimum background as native lawyers of foreign legal systems. Coupled with a solid understanding of the student's own national legal system, this is the only way of making real comparisons between international laws.

### **III. Educating the Future Transnational Lawyer: The Case of Nanterre**

The University of Paris West at Nanterre in France retains the revolutionary reputation acquired when the French student riots of 1968 occurred on campus. Today, however, Nanterre is a laboratory for educational innovations and as it celebrates its fortieth anniversary as an autonomous university, its influence on the academic scene could be summarized by the motto: "Nanterre—one month of revolution, forty years of innovation." Many major pedagogical innovations in legal education were initiated at Nanterre, especially innovations that adapt new lawyers to globalization.

#### *A. Bilingual and Bijuralism Training*

As early as 1987, Nanterre launched a combined law and foreign language program, pairing a traditional curriculum in domestic law with an intensive program in several foreign languages. More recently, Nanterre has adopted a more intense bilingual and bijuralism program. Students are now selected after high school on the basis of a competitive foreign language examination. The law school at Nanterre offers a bi-national curriculum with Essex University in the U.K. Twenty French students spend their first two years at Essex and finish two more years at the Nanterre campus. They receive a full LL.B. in the U.K. and a full Master 1 in France, which allows them to compete for jobs in the U.K. and to prepare for the French Bar admission exams.

Another program is the *Licences bilingue mention droits de l'Europe* (LBDE—Bilingual Bachelor in European Law). This is a fully bilingual program (offered with the U.K., U.S., Germany, Italy, Spain and Russia), specially designed to train lawyers for global practice. The LBDE in Anglo-American Law, for example, requires that during the first two years, students take half their courses in French on French law; the other half is in English on U.S. and British law and institutions. More than technical legal subjects, this part of the program is devoted to an introduction to common law legal culture and civilization. In the third year, students deepen their knowledge of French law and learn the “core subjects” necessary to get a LL.B. These “foundations of English law” courses are taught by British law professors (largely from Reading, Glasgow, and Leicester) and by French law professors teaching in English.

Students enter the two-year Masters program in their fourth year. The first of those years (M1) is half in French law, half in English and U.S. law. Students also have to become proficient in legal translation, choosing between specialties in business law or international and European law. Because international faculty come to Nanterre, students are spared the cost of attending foreign institutions and British and American colleagues always seem happy to teach a few weeks in Paris.

In the second Masters year, students may choose the academic track, in which they spend a year abroad at a partner university. Anglo American MBDE students may choose between many different destinations, as long as these universities are located in common law countries (including Hong Kong, India, etc.). Nanterre’s partner universities offer up to a 50 percent discount in their tuition<sup>6</sup> and students earn the French M2 degree and, usually, an LL.M. They also have the possibility to qualify and prepare for the New York bar exam and are exempt from the entrance examination for the French bar associations’ special schools. The other approach available to students is the practitioner track, which includes a six-month internship at international organizations or corporations. In both cases, students who are abroad are tutored by professors through a dedicated Internet platform.

This curriculum is a Nanterre innovation. Around 500 students participate in the Anglo-American section and roughly 300 take part in the German section. Altogether, including the Spanish, Italian and Russian sections, over 1,000 students are involved.

This highly competitive training, while successful, faces a major obstacle in the form of high tuition fees at the partner universities, especially those in the U.S. This is clearly a burden for many good students, since law schools are almost free of charge in France.

6. For example, the Washington Law School at American University in Washington, D.C. offers thirteen places, including four positions for free (as compared to the approximately \$30,000-plus tuition).

*B. Bi-disciplinary Training in Law—Economics*

About five years ago, the Nanterre faculty, having recognized the growing influence in law of economic analysis, launched the first law and economics Masters program in France. Students take half of their courses in each discipline. On the legal side, the aim is to develop a thorough knowledge of French law within the first three years. Then, at the Masters level, students specialize in realms of law that are most impacted by economics, especially competition, financial and public utility regulation, private contract and public procurement. On the economics side, in addition to learning the basis of economic reasoning and microeconomics, they learn quantitative techniques (for example, statistics and basic econometrics) and focus on industrial economics, law and economics, institutional economics, and finance economics, among other subjects.

For the second year, selected students may choose between the M2 practitioner track (in competition law, markets and utility regulation) or the M2 academic track (economic legal analysis). The difference is not only in the curriculum but also in the students' vocational target. The practitioner track directs students toward private law firms, regulatory agencies, legal departments of large industrial corporations (especially in the network industries), and public agencies. The academic track targets academic research, private research and strategy, consultancy, and government agencies, all of which are now involved in the new regulatory impact assessment process. Several courses at each level are taught in English, by French or visiting professors. This elite curriculum now involves around 300 students altogether.

**IV. A Final Concern**

A fairly new and more problematic issue has recently arisen, namely that all French law schools are experiencing a dramatic decline in the number of students interested in an academic career and the aptitude level of those who do enroll is also declining, though less dramatically. Some reasons for this are common to all Ph.D. programs: the uncertainty of academic employment, the length of the program and the comparative difference in salary with the private sector. Some reasons are specific to legal training, including the length of the recitation preparation (at least three years and more commonly between five and seven years) and, above all, the difference in compensation compared to a practicing attorney.

These difficulties are magnified in the legal field, since the best LL.M. students can easily foresee a quick appointment in a law firm and, with hard work, a bright career and a good salary. However, since wages in law firms far outstrip a law professor's salary,<sup>7</sup> the investment in a legal doctorate degree has

7. For example, and by personal experience, a top law professor at the conclusion of his career

a low financial return. This trend raises the following question: Will French law schools soon have to import foreign law professors to train legal students in totally domestic legal subjects? Certainly, demographics and other statistical analysis raise some worrisome possibilities.

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will earn half the salary of a member of the judiciary, who, in turn, earns one-fifth that of a business lawyer partner in a good French law firm, who earns half the salary of a partner in the Paris office of a major U.S. law firm. The U.S. law firm partner may earn as much as twenty times the lifetime salary of the law professor.