

DESIGNING AN LL.M. CURRICULUM FOR NON-WESTERN-TRAINED LAWYERS

BY MARIAN DENT

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Brutal Choices in Curricular Design ... is a regular feature of Perspectives, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other "brutal choices" that should be considered in future issues. Please submit material to Helene Shapo, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611, phone: (312) 503-8454, fax: (312) 503-2035.

American law firms in Moscow look to American LL.M. programs to train lawyers they will hire. They find that legal training in Russia and the former Eastern Bloc nations does not prepare law students for the type of practice that they will encounter in their new legal environment. Instead, they often require an American LL.M. of their associates. Yet, they have been disappointed in many of those programs, especially their lack of training in writing.

¹ Pericles is a Moscow-based LL.M. program designed to educate Russian lawyers in Western legal thinking and Western standards of private law practice. Marian Dent canvassed expatriate lawyers in Moscow to determine what a graduate law program should include.

² This article is the first of a projected series on designing curriculum for non-Western-trained lawyers and for international law students studying in the United States.

The Eastern Bloc legal education system trained its lawyers well for Soviet-style practice. By Soviet-style practice, I mean a system in which very few complex cases arose and in which lawyers did not involve themselves in business planning. Without an extensive system of private property, most questions posed to lawyers were routine matters of applying a detailed law to a personal dispute that easily fit within that law. In fact, the lawyer's trade was not to research and write, but to listen to a client's problem and provide a correct solution, orally, and from memory. One Russian attorney, an academic who in the early days of perestroika had interned for a year in a Washington, D.C., law firm, related a tale of distress when, upon returning home and joining a Russian law office, the managing partner made her remove all her law books from her shelf. He told her that if a client thinks she has to look up the law, the client wouldn't trust her. Plus, if there was no law that squarely covered the client's problem, she was to tell the client that he or she didn't have a case. Another lawyer related an interview experience where, as a job applicant, she was given a test where she was expected to recite certain sections of the civil code verbatim.

Designed for this Soviet system of legal practice, the Eastern Bloc legal education system stressed oral abilities and memorization over written analysis. For the most part, this continues today. Exams are oral. Students are given a list of questions in advance—most of which ask for definitions or recitations of laws and regulations. Then exam questions are chosen at random from this list, and students show off their memorization skills by reciting their prepared answers back to their professors. The professor might ask some questions related to the student's prepared answer, but then again he or she might not.

Very little writing is required in Russian and former Eastern Bloc law schools. Most law schools, to this day, require only one written assignment: a thesis prepared in the final year of their five-year, undergraduate law program. This thesis most often merely summarizes the published opinions of law professors and other scholars on an area of law assigned by the thesis adviser. Advice given the

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thesis writers centers around recommendations of other experts to read, rather than help with analytical skills and writing.

Managing partners of the Moscow branches of several American law offices responded by demanding American LL.M. degrees from their entry-level Russian associates. The partners perceived that the LL.M. training would instill logical thinking and legal writing abilities. They have been disappointed in the results, however. “These days, an LL.M. just means that the associates expect a higher salary,” one partner told me. “I don’t see it as the guarantee of analytical skills that it should be.” Another expressed disappointment that an associate the firm had sponsored for an American LL.M. appeared to have completed the program without having taken any writing class, and having avoided all first-year U.S. law school courses. “What good is it,” I was told, “if the LL.M. only teaches some American law. The students won’t practice it when they come back here. I need to see skills taught.”

Clearly, LL.M. programs were not fulfilling law firm expectations for international students. The law firms were hoping for some kind of a shortened version of the J.D., particularly an exposure to American-style legal reasoning and writing. But that isn’t always what they got. The LL.M. degree faces the dilemma of the dual purpose. On the one hand, it’s a graduate law degree, providing in-depth knowledge in a particular aspect of American law. But on the other hand, the LL.M. is a first exposure degree or bar exam qualifier for international students. It’s this latter type of LL.M. that the foreign offices of Western law firms are seeking, and that non-Western-trained lawyers need.

Thus, I set out to determine, in detail, what foreign offices of Western law firms wanted to see in returning LL.M. students.

Over the course of two years, my Pericles staff members and I surveyed more than 50 partners and senior associates from 18 Western law firms operating in Moscow, as well as about a dozen lawyers working on rule-of-law development for international and foreign nonprofit organizations. This was not designed as a scientific survey for an article, but merely to learn what it would take to convince law firms and organizations to support

our program and hire our graduates (thus keeping us in business). Although the survey covered only Moscow lawyers, many of the lawyers I interviewed had practiced in several international offices, and expressed the same feelings about LL.M.s in former Soviet and other non-Western countries where they had worked.³

We found three needs with which there was almost universal agreement:

- (1) the need for writing courses that stress analysis;
- (2) the need for first-year Socratic method courses; and,
- (3) the need for a grading system on a par with that of J.D. students.

“Writing, writing, and more writing” was the comment I heard from a former managing partner of one large firm’s Moscow office in response to a question about what LL.M. programs should include. This was the most frequently expressed idea among all the attorneys interviewed. They mean, particularly, analytical writing and the ability to put together memoranda and client letters explaining complex nuances of law.

³ We interviewed some lawyers orally, and requested a written survey only of those who seemed like they had the time or would be amenable to completing it. We skewed our interviews and surveys toward managing partners and those making hiring decisions over other lawyers in their firms or organizations. Because most of the Western firms here have an American or English lawyer in charge, the purpose of our survey meant that we spoke more to expats than to Russian lawyers. We also talked to more people at bigger law offices (those more likely to have openings for our graduates) than at those with smaller Moscow operations (which in turn skewed the results more to commercial than nonprofit practices). And because we were proposing an American LL.M., we dealt more with American firms and firms from England than with firms and organizations from civil law countries. In interviewing people, we either proceeded from the simple question of what courses the lawyers thought would be important for an LL.M. program (especially for one in business law) or we presented a list of suggested courses and asked the lawyers to mark which were most and least important, and to add in anything we had missed. Then we asked for open-ended advice about what knowledge they sought in LL.M. graduates/employment candidates, and how they would structure an LL.M. program for such candidates. As we progressed, we began to vet suggestions from earlier interviewed attorneys through our interviews with other attorneys, discarding suggestions with which most people disagreed. Occasionally we went back to the same lawyers to vet the comments of the later interviewees.

Writing is a skill often ignored in LL.M. programs. The partners and associates I interviewed said that they would structure an LL.M. program with a greater emphasis on analytical writing skills. Those who had taken the trouble to look at applicant transcripts were chagrined that many LL.M. graduates had no writing courses on their transcripts, or had only an “Intro to American Law” course, in which the students had touched on writing and analysis in the context of writing for law school exams, rather than in the context of professional work. The interviewees commented favorably on the few LL.M. programs that contained strong writing components.

English language was not considered a major problem in LL.M. graduates’ writing styles. The lawyers I spoke with emphasized logical analysis in writing more than grammar or syntax. This was more so in bigger firms than in smaller ones, as the bigger law firms have professional translators and English language editors who review associates’ work before it appears on the partners’ desks. But even in the smaller firms and public organizations I spoke with, the perception was that language usage works itself out over time. Moreover, associates with weaker language skills were simply given more writing tasks in their native language, whereas the analytical skills taught in good legal writing classes benefited even students who were writing in Russian.

Opinion was somewhat divided, however, on the value of a thesis, required for many LL.M. programs. While all agreed that legal writing classes were needed whether or not the LL.M. program had a thesis requirement, some felt that the thesis benefited students by requiring them to apply their newly learned writing skills in depth, under the guidance of a professor accustomed to Western standards of legal analysis and attribution.

Opinion was also divided on the value of “paper courses” over “exam courses” in developing writing skills. Because course papers often require students to analyze the law in the abstract, several lawyers felt that the exercise of writing law school exams on hypothetical legal situations was more beneficial for LL.M. students. Some commented that doctrinal course papers were not subject to the same type of evaluation that legal writing

course papers received, and so were not nearly as valuable. Others, however, felt that the time pressure of exams was not helpful for LL.M. students, as it created artificial conditions that foreign students would not meet again in practice unless they decided to take a bar exam. Most felt that the optimal requirement would be courses with take-home exams or papers based on hypothetical legal problems. But again, the response was uniform in holding these to be no substitute for legal writing courses.

Finally, I noted a distinct lack of enthusiasm for having LL.M. students learn American legal research skills. One interviewee went so far as to suggest that LL.M. students only be required to write closed universe memoranda in their legal writing courses. This opinion was an extreme. Others would de-emphasize research in comparison to analysis, but would stress computer-based research over book research. One former managing partner explained it in practical terms: the firms expect associates with American LL.M.s to know the basics of American legal research and to be able to do it in a pinch, but not much more. Foreign associates are employed to write about their home country’s law in terms that Western clients will understand. If a U.S. research problem arises, the most efficient solution is to use an American J.D. (if one is available in the country) or to farm the work out to a U.S. branch office. Sometimes the exigencies of a particular case, the needs of a particular client, or a firm’s billing practices require that LL.M.s are assigned to do U.S. legal research, but it isn’t a very frequent occurrence. Even if a foreign lawyer has passed a U.S. bar, everyone understands that his U.S. research skills won’t be as honed or up-to-date as those of a U.S.-based associate or those of a J.D. earned in the United States.

On those occasions when a Russian associate does research U.S. law, he or she will use the Internet. Foreign offices have neither the space nor the need for an extensive library of U.S. legal materials. Keeping an extensive U.S. law library in foreign offices is a costly and inefficient proposition.

In sum, the firms want to see LL.M. students take writing courses that emphasize analysis over language and over research. To the extent that

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research is taught, they want computerized research emphasized. A master's thesis is not considered an adequate substitute for good legal writing courses.

The second mandate of the attorneys we interviewed was that LL.M.s should be required to take at least one first-year, Socratic-style course. Again, this harks back to the emphasis on analytical skills. The lawyers with whom I spoke unanimously agreed that the Socratic teaching method of American law schools was what made them value an American LL.M. degree over a European or even a British equivalent.

Just behind the lack of writing courses in the expat lawyers' complaints about American LL.M.s was the phenomenon of LL.M. students who take only advanced courses. An LL.M. student thus can conceivably avoid any courses that develop analytical skills.

Frankly, writing courses can teach foreign LL.M. students only a small portion of the analytics they need. While legal writing teaches how to express analysis to a client, the first-year curriculum's game of daily being forced to pick apart three or four cases and to respond to a professor's hypothetical variants of those cases etches the brain with the skills that the writing courses study more formally. When no first-year doctrinal courses are required, LL.M.s don't necessarily develop the first-year skills that the mythical Professor Kingsfield called "thinking like a lawyer."

The lawyers completing the survey generally agreed that LL.M. students should be graded on a par with J.D. students. They want to see a criterion by which they can evaluate an applicant's credentials against a standard that they know. When an LL.M. program puts its non-Western students on a separate curve it does those students a disservice.

Employers need this criterion because Russian law schools don't provide it. Russian law schools have no strict curve that professors follow: most students get 5's and 4's (the equivalent of A's and B's). In addition, exam retakes are possible. If a student gets a 3 or 2 (C or D) chances are he or she will ask the professor to retake the exam. Some law schools even have a set fee that they charge a

student for a retake. Moreover, in a Russian oral exam, the result is often based more on whether the professor likes you (or whether you gave him a bottle of vodka on Veterans' Day) than on whether you know the material. So, in short, it's rare to see a Russian law student with low grades. (That's something to think about when admitting students to your LL.M. program.)

This leaves the employers trying to choose between five or six candidates, all from top law schools, and all with top grades. The human resources coordinator of one top firm was asked to compile a list of which top 20 LL.M.s had separate grading and which did not. She was told to ignore the LL.M. transcripts from schools with separate grading in evaluating the applicants' credentials. Naturally, the expat lawyers look to LL.M. grades as their salvation, recalling the strict curve and class ranking that they worried about so much when they were students.

A related factor is that international law firms want to see LL.M. graduates who have studied together with J.D. students, rather than in separate courses or separate sections. We heard, time and time again, that half the value of hiring an LL.M. graduate is the firm's ability to compare that graduate with American or European law school graduates. In sum, employers want to see competitive grades from regular law school courses. Such programs will give non-Western students studying in the United States the most value for their degree when they return home.

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