

LL.M. Programs: The Frosting on the Cake of Legal Education?

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A. Introduction

It is the primary task of Law Schools around the world to educate young promising adults who choose the responsible profession of a lawyer, be it in the role of an attorney, a lawyer in administrative services, in industry, or a judge. Apparently, in almost all countries, admission to these important professional roles is highly regulated, be it by law, be it by professional tradition or be it by a mixture of both of these factors. It generally requires a university degree and/or the successful passing of an examination administered by the State¹ or a professional organization.² For a law school, which feels any responsibility towards its students, legal education must first of all aim to equip them with the methodological, theoretical and practical knowledge, insights and basic skills necessary to fulfill the requirements for these degrees and exams, hoping at the same time that these requirements are those that enable the former students to properly, conscientiously and ethically perform their important roles in their respective national societies. Accordingly, the law of my home state requires that “the aim of legal education is the enlightened lawyer who thinks critically and acts rationally and is aware of his or her responsibility as a guardian of a free, democratic, social state, governed by the rule of law, and is able to recognize his or her obligation to further develop the law.”³

Of course, we know that within the limited period we are allotted for basic academic legal education, we will never be able to reach all these aims to the point of perfection, but they are a good orientation point. For a few select young academics who passed their first legal academic exams with high honors, and who wish to devote several years of their young lives to do basically independent, but guided,

¹ E.g. the „Staatsexamen“ in Germany, a final law school exam administered by the state and the law school.

² E.g. the bar exam in the USA.

³ Introduction to „Gesetz über die juristische Ausbildung des Landes Hessen“, (Law pertaining to the legal training of the *Land* Hessen), printed in: *Gesetz- und Verordnungsblatt für das Land Hessen* (Official Bulletin of Laws and Regulations for the *Land* Hessen), I 1994, p. 74.

monitored intensive research on particular topics for a few years, we offer the doctor's degree.⁴

It is possible that there is a gap between the offer for the "regular" young lawyer with the relevant qualifications for admission to the profession on the one hand, and the highly demanding doctorate on the other hand. Shouldn't there be room at our law schools for the good young lawyer who, after receiving his or her first academic rites, wants to gain deeper insights or more specialized instruction, but does not - right away - plan an academic career and wants to invest just a predefined, limited period of time for this venture? And all our basic programs for legal education are aimed at the nationals of the perspective jurisdiction. In our era of globalization shouldn't there be a chance for young foreign lawyers to explore and get acquainted with the national⁵ legal system of another country within a limited period of time and receive an official stamp of approval for his or her successful efforts? It is the aim of this paper to explore whether the rapidly spreading programs offering an LL.M., an academic degree positioned between a basic legal qualification and the highly demanding doctorate, has the potential to fill this gap and possibly even some more gaps in legal education systems. My intention is to give a short survey of some basic features of LL.M. programs in some countries. I will limit my survey to some jurisdictions and programs which are possibly not representative, but are familiar to me: the US, where I took part in such a program many years ago, a few neighboring European countries, my home country Germany, and my own law school where, during my deanship, we introduced our 2nd and 3rd LL.M. course of study. This is a very personal and eclectic choice; still it might give some food for thought in a country, which as far as I know, has up till now not participated in the LL.M. global trend.

B. The Origin of the LL.M.

Let us first take a look at the United States of America, which is, to my knowledge, the country where apparently the modern *magister legum* (Master of Laws), the LL.M., was first introduced. The prestigious Yale Law School in New Haven, Connecticut, which does not even claim to be the inventor of the degree, awarded its first LL.M. in the year 1876.⁶ In the meantime the LL.M. has spread across the

⁴ The Doctor degree is not equivalent or comparable to the US-American JD degree which supplanted the traditional LL.B in the 2nd half of the 20th century and which now is the regular law school graduation degree; in the US the equivalent for the doctorates in most other countries would be the JSD or SJD.

⁵ And in countries which belong to supra-national unions like the European Union also: the supra-national rules.

⁶ <http://www.law.Yale.edu/outside/html/Admissions/admis-llmindex.htm> (this link and all following links were last visited on April 24, 2002).

United States, and there hardly seems to be a law school of better standing without an LL.M. program. The *Legal Studies Abroad Headquarters* offers more than a hundred links to US (and Canadian) Law Schools on its LL.M. page⁷ to students interested in such a program. And the online legal education magazine *Jurist* names more than sixty LL.M. institutions, ranging from A to Z and from the West to the East, from the University of California at Berkeley, Boalt Hall School of Law to Yeshiva Cardozo School of Law,⁸ just in the categories "General" and "General Programs." Where, if not here in the US, should we find the authentic definition of what an LL.M. program really is.

However, if we search for clear contours and definite rules for the LL.M. degree in the U.S. we might be disappointed. There simply are no federal or - as far as I know - State laws or even uniform standards about the students the program wants to reach, about admission requirements, about required and/or elective courses or papers or about the credits required for graduation. Even the American Bar Association (ABA), the powerful professional organization which exercises a tight quality control regime over the primary law degree programs, the former LL.B., now the J.D., expressly does not accredit or supervise LL.M.-programs.⁹ Lacking such legal and professional rules, we have to look at the reality of the LL.M. as it is offered in the U.S. The picture that opens up before our eyes is complex and dazzling: Most LL.M.-programs for many decades were designed for *foreign law graduates* who wished to gain an insight into U.S. law. U.S. nationals were not excluded from the LL.M., but were a clear minority. In my LL.M. class of 1968 at the University of California's Boalt Hall there were just 2 U.S. citizens among approximately 30 students from all around the globe. This is still true of many LL.M.-programs today. Some are even stricter. For example, Whittier offers its LL.M. degree in U.S. legal studies for foreign lawyers only.¹⁰ The University of Wisconsin steers foreigners towards its M.L.I. (Master of Legal Institutions), while it reserves its LL.M.-program for very exceptional U.S. and - also - foreign applicants.¹¹ Many LL.M.-programs give the students the chance to pursue his or her own interests freely. Harvard states: "The philosophy of the LL.M.-program is to offer our students a broad plat-

⁷ <http://www.studylaw.com/usllm.html>.

⁸ <http://jurist.pitt.edu/gradprogs.htm>.

⁹ See, Letter from ABA Chair Person Shepard regarding post-J.D.-programs, http://www.abanet.org/legaled/postjdprograms/postjd_letter.html. The ABA does indeed take a look at LL.M. programs of law schools, but only to secure that they do not endanger the J.D. programs the ABA accredited.

¹⁰ http://www.law.whittier.edu/academic_program/llm_degree.htm.

¹¹ <http://www.law.wisc.edu/grad/llm-sjd.htm>.

form to design their own course of study within parameters set by the Harvard Law School faculty. Those parameters include some exposure to U.S. law, some writing experience, and ... [for U.S. students] some exposure to legal theory."¹² Other law schools direct their attention mainly to U.S. graduate students who wish to specialize in certain areas of the law. The range of these special areas is overwhelming. They reach - in alphabetical order - from Advocacy and Agricultural Law through Estate Planning, Health Law to Taxation and Urban Affairs.¹³

Most LL.M.-programs require both course work and a thesis. Some differentiate between a "course track" and a "thesis track" requirement. The University of Pennsylvania, for example, requires 20 semester-hours of courses and seminars of a "course track" student with a little research and teaching project, combined with a seminar, while the "thesis track" student just has to attend a minimum of 13 semester-hours of courses and seminars, but must prepare a highly qualified, publishable thesis.¹⁴ Harvard, while not formally distinguishing between "course track" and "thesis track" studies, offers a wide variety of writing requirements ranging from a respectable extensive LL.M. thesis over a 75 to 100 page LL.M. paper to a paper of 25 or more pages, involving independent reflection, formulation of a sustained argument and ... outside research.¹⁵ While some law schools address their LL.M. offers only to the very top graduates, the future scholars and law teachers,¹⁶ many others, mainly those offering an LL.M. in specialized areas, are satisfied with applicants who are ("just") good. Most programs run for one academic year, while others¹⁷ allow - but do not require - the students to study for a third semester.

Are there some unifying elements in this chaos or is the picture so confusing that one should rather give up the LL.M. degree at least in its country of origin? There are at least some basic features which we can find at - almost - all LL.M.-programs:

- they are postgraduate programs,
- they are designed for native and/or foreign elite students who wish to pursue a carrier in legal scholarship or in a highly specialized field of the law.

¹² <http://www.law.harvard.edu/Admissions/Graduate-programs/index>.

¹³ http://www.nationaljurist-com/lawschool_program.asp?id=l_l_m_programs.

¹⁴ <http://www.law.upenn.edu/adms/REQUIRE.html>.

¹⁵ http://www.law.harvard.edu/Admissions/Graduate_programs/programs.

¹⁶ See e.g. the Harvard, Wisconsin, and Yale links *supra*.

¹⁷ E.g. the University of Pennsylvania <http://www.law.upenn.edu/adms/REQUIRE.html>.

- they are limited in time to a year (or a little more), therefore time-wise much less demanding than the JSD/SJD.

And unfortunately there is another common feature in the U.S.: the LL.M.-programs are costly. At the top private law schools tuition (excluding room and board) runs around \$30,000.¹⁸

What at first glance appears to be chaos and disorder may, however, be regarded as a wonderful opportunity for the law schools to freely develop programs which *they*, unhindered by governmental or organizational restrictions, think are the best; they can utilize their strengths, develop their own profile, thereby allowing for the unfolding of in fact a wide range of differing and competing programs. Consequently, for the (foreign) student not planning to enter the professional world after the first law degree, the participation in an LL.M. program offers a rich choice for his or her academic (and personal) development.

C. The LL.M. in Europe

Postgraduate legal studies which lead to an LL.M.-degree have spread across the Atlantic and the Channel to many European countries.¹⁹ Some countries do not use exclusively the term LL.M., but stick to their national language. For example, the Netherlands have the *Master in de Rechten*, francophone countries grant the *Diplôme d'études approfondies* (D.E.A.) and the *Diplôme d'étude supérieures spécialisées* (D.E.S.S.), while Spain confers the *Máster en Derecho* and Portugal the *Mestrado em Direito*.²⁰ Most of these degrees are, at least in parts, functionally equivalent with the LL.M. so that we may have a look at some of them, too, in our context.

I. The United Kingdom

It is not surprising that in the United Kingdom which - eventual Scottish protests notwithstanding - belongs to the Anglo-American legal sphere, the LL.M. seems to

¹⁸ Eee *e.g.* for Yale <http://www.law.yale.edu/outside/html/Admissions/admis-llmindex.htm>.

¹⁹ See the rich and well done overview in: Karsten/Wirtz, *Der LL.M. in der Europäischen Union* (2nd Ed. Luchterhand) (<http://www.luchterhand.de/as400co.nsf/artnr/05220000?opendocument>) 2002, ISBN 3-472-05220-1); see the review by Reidenbach, 4 *German Law Journal* No. 4 (1 April 2003), available at: <http://www.germanlawjournal.com> (direct link: http://www.glj-pdf.de/Vol04No04/PDF_vol_04_no_04_419-420_legal_culture_Reidenbach.pdf).

²⁰ Karsten/Wirtz, *Der LL.M. in der Europäischen Union* (1st Ed. 1998), 11.

be as wide spread as in the United States. Practically all English²¹ and most other law schools in the British Isles offer at least one such program, often called "General Legal Studies", some three to five special programs focusing on specific areas of the law²². Not only in this respect do we recognize strong parallels to the U.S. The normal duration of the LL.M.-programs also is one academic year, and most law schools seem to *require* the combination of course work and a dissertation, a paper containing approximately 15,000, in some universities 20,000 words. Some schools deny the LL.M. without this dissertation and offer students who choose not to write one a plain "Diploma" instead.²³ A few universities give a *choice* between a dissertation or taught courses, for example, the University of London in its joint LL.M.-program.²⁴ But there is also a pure "research LL.M." or "LL.M. by research," at Kent²⁵ and at the University of Bristol.²⁶

The difference to most offers in the United States seems to be that a good minority of institutions offer part-time studies for the LL.M. which prolong the study period from one to two years as a rule, in exceptional cases, even longer. The champion in this respect seems to be the University of Bristol which allows up to eight years.²⁷ A few universities offer remote studies such as the University of Strathclyde, fittingly in the LL.M.-program specializing in IT and Telecommunications Law.²⁸ One apparent difference between the U.S. and the UK is that most UK programs are clearly intended for the native student although foreigners are welcome.

²¹ A notable exception seems to be famous Oxford University, see Jura in UK, in: AZUR Winter 2001/2002, 48.

²² See *e.g.* for the University of East Anglia, Norwich http://www.uea.ac.uk/law/post_grade/post-grade2.htm which offers the general degree and specialties in Employment Law, International Trade Law, Family Law and Policy, Family Justice Studies or International and Commercial Business Law or the University of Exeter, <http://www.ex.ac.uk/admin/exeter/tgp/law.htm> which offers programs in European Law, International Business Law, and International and Comparative Public Law; the University of Glasgow <http://www.law.gla.ac.uk/index.htm> offers the General LL.M. plus specialised LL.M.s in Commercial Law, European Legal Studies, International Law, Legal History, Medical Law, Criminal Justice; the University of Nottingham even offers seven specialised LL.M.s from European Law to International Law and Armed Conflict (Karsten/Wirtz, *supra* note 19).

²³ See *e.g.*: <http://www.law.strath.ac.uk/cpls/Cumlaw.html>.

²⁴ <http://www.laws.qmw.ac.uk/postgraduate.htm>.

²⁵ <http://www.ukc.ac.uk/law/postgraduate/research.htm>.

²⁶ <http://www.law.bris.ac.uk/courses/llmr.html>.

²⁷ <http://www.law.bris.ac.uk/courses/llmr.html>.

²⁸ <http://etlaw.law.strath.ac.uk/distlearn/>.

As in the U.S., all UK LL.M.-programs charge tuition, ranging from 2800 - 3500 pounds for EU-citizens and approximately 6900 - 7400 pounds for citizens of non-EU countries.

Again, we can see that the the UK, like the U.S.A., used the LL.M. to develop a wide variety of different instructional programs.

II. Continental European Countries

1. France

As already mentioned above, French universities rarely offer the LL.M. degree. France's approach to postgraduate education differs from that of the countries mentioned above. After students finish the four year study of their basic first and second "cycles," required for basic legal professional work, they may continue one year of further qualifications. They can, as a third cycle, choose the *diplôme d'études approfondies* (D.E.A.) or the *diplôme d'études supérieures spécialisées* (D.E.S.S.). The D.E.A. is required for graduates wishing to later go on to work for their doctorate; the D.E.S.S., as a rule, is intended to provide the student with special qualifications in a particular field of the law. There are numerous such programs offered by almost all universities and *grandes écoles*. There are programs with a general and a special focus; they also are one year courses. Because of all these many parallels to the LL.M. one can claim that these French degrees are widely equivalent to the functions of an LL.M. in other countries. It must be noted, however, that these degrees, although they are open to qualified foreigners, are primarily geared towards French students and apparently are seen as regular third steps in legal education for the very best graduates and not as something unusual, as the LL.M. seems to be regarded in the UK and the U.S..

2. Austria, Italy and Switzerland

Very recently, a private IMADEC University in Vienna started the first LL.M. program offered in Austria; it is remarkable insofar as not the native German language, but English was chosen as the instructional language.

Both neighbouring Italy and Switzerland have been active in this field for quite a while. Both countries offer some specialties which are worth mentioning. Italy offers several postgraduate "Diploma di specializzazione in diritto,"²⁹ which require

²⁹ E.g. at the Università degli studi di Milano and the Università degli studi di Roma „La Sapienza“; see Karsten/Wirtz, *Der LL.M. in der Europäischen Union* (1998), 64/65.

two years of full time attendance. About a decade ago, Switzerland introduced LL.M. programs with a general focus, mainly intended for foreign graduates in the German speaking Universities of Basel³⁰ and Bern,³¹ and a highly specialized LL.M. for International Business Law at the University of Zürich.³² The latter program lasts for four semesters and is organized as a work study program allowing students to continue their professional activities.³³ In the francophone part of the country, the D.E.A. is offered by the Universities of Lausanne and Geneva; in addition to this, both institutions have combined their forces and resources to offer a joint LL.M. in European Law. Tuition fees range from 6,000 sfr. (Basel) to 24,800 sfr. (Zürich).

3. *Transnational and Pan-European LL.M. Programs*

The rules for the first law degrees are highly detailed and differ strongly from country to country even within the European Union. It is close to impossible to establish transnational law degrees on this level.

The “new” LL.M. degree, as we have seen, with its soft normative contours obviously allows for great flexibility. It is hardly surprising that it has proved to be a perfect instrument for cooperation across national borders. Just two examples shall be mentioned, the LL.M. of the European University Institute in Florence, Italy, and the joint “LL.M.-European Master in Law and Economics (EMLE).”

The European University Institute is not an Italian institution, but one belonging to all of Europe. It was established by the six founding members of the EEC by special treaty of 4 April 1972, in order to promote high quality European scientific cooperation *inter alia* in law and jurisprudence. Teaching languages are English and French, the LL.M. is research oriented, highly prestigious, and for EU citizens (and those of some applicant countries) free of tuition.³⁴ The European Master in Law and Economics (EMLE) is very special in two respects: It is interdisciplinary, combining elements of law and economics; it is a one-year international inter-university post-graduate degree. This organizational masterpiece combines no less than 10 universities in 10 countries, *i.e.* Aix-en-Provence (France), Bologna (Italy), Ghent

³⁰ For details see <http://www.unibas.ch/ius/studium.htm>.

³¹ For details see <http://www.rechtswissenschaft.unibe.ch/nachdiplom.html>.

³² For details see <http://www.unizh.ch/nds/d/flash.html>.

³³ Another detail might be worth mentioning in the Capital of China: the program includes excursions to universities in Shanghai and Hongkong.

³⁴ See www.iue.it.

(Belgium), Haifa (Israel), Hamburg (Germany), Linköping (Sweden), Madrid (Spain), Manchester (UK), Rotterdam (Netherlands) and Vienna (Austria) in one single teaching venture.³⁵ After a first trimester in Hamburg or Rotterdam³⁶ the students have their choice to spend the second and/ or third trimester at any one of the other universities.

IV. The German LL.M. experience

Let me finish the European sketch with a few observations about how German law schools as a whole, and my law school in particular, have made use of this innovative, flexible new degree. I think it correct to say that they have used almost all the options demonstrated by the examples in other countries:

1. The Overall Picture

Many law teachers of the post-nazi generation in the western part of Germany, which became the Federal Republic, received their first contacts with and were deeply impressed by foreign legal methods, principles and thought in U.S. LL.M. programs. Therefore, it is hardly surprising that after slow beginnings in the Seventies by now almost all³⁷ of our State University Law Schools, ranging from Augsburg to Würzburg in alphabetical order, have introduced LL.M. *programs for graduates of foreign universities*. The only private German law School intends to introduce one soon. There is flexibility as far as the necessary *time* is concerned. At the vast majority of universities these LL.M. programs last one academic year, some institutions, Cologne and Leipzig for example,³⁸ require three semesters. These LL.M. programs basically follow the "*thesis track*" model. The *course load* varies but is often around 20 credit hours for the year; in most of these general programs for the student must attend a special Introductory Seminar or Tutorial, but otherwise - advised by his or her tutor - can freely choose from the *subjects* offered by the law school. The *thesis* as a rule has no set page or word number limits and has to be defended in a disputation.

³⁵ See www.emle-hamburg.de.

³⁶ It is planned that Bologna is going to become a first trimester choice soon.

³⁷ This fact and the following facts in this section are, unless otherwise stated, based on the unpublished „Fortführende Gesamtstatistik, June 2001“ of the „Deutscher Juristen-Fakultätentag“, the German Law School Association (on file with the author); for a good, but not quite current survey see DAAD (ed.), *Aufbaustudiengänge an Hochschulen in Deutschland* (1999).

³⁸ DAAD *supra* (note 36) at 28, 29.

Recently, *specialized Magister/Magistra Legum* have been introduced. They are mainly intended for *German graduates* who wish to gain expertise and expert skills in particular areas of the law, but do not exclude foreign applicants. Offers are particularly frequent in European Law and in Economic Law; some universities, like Frankfurt and Munich, combine both aspects in an LL.M. for European and International Business Law. Single programs cover many aspects of the law from Intellectual Property to the Law of Finance. A common feature of all these specialized LL.M. programs is that they are meant for an elite pool of applicants and have *high admission standards*.

Most of them are intended for *law school graduates*; but some, like Wuerzburg,³⁹ admit economists, too. As a rule, the *language of instruction* is German; but in some programs, like the Saarbrücken LL.M.Eur., English and French are required, too. English is the sole teaching language for the European Master of Law and Economics and the newly developed LL.M. in Law and Finance at Frankfurt.⁴⁰ Both last mentioned degrees show how helpful the LL.M. can be for the organization of *interdisciplinary* graduate programs.

In Germany, it was also noticed how helpful the LL.M. can be in the development of *international joint law degrees*. The daring enterprise of the 10 country/10 university European Master of Law and Economics described above, when we looked at the transnational and pan-European ventures in postgraduate legal education,⁴¹ would have been doomed for failure had it been forced into the encrusted structures of the strongly differing established and long grown traditional programs for first national law degrees. The German University of Hamburg, which was instrumental in this development, was wise enough to see and take the LL.M. opportunity.⁴²

In almost all⁴³ German LL.M. programs tuition is free or the fee is negligible. The students generally have to pay a student government and insurance contribution of a few hundred Euro per year.

³⁹ For Frankfurt LL.M.s see below.

⁴⁰ See <http://www.ilf-frankfurt.de>.

⁴¹ *supra* at c)

⁴² The same is true for some other international degree programs like the International Intellectual Property Law LL.M. of the University of Exeter (England), Robert Schumann University Strassbourg (France), Charles University of Prague (Czech Republic), and the TU Dresden (Germany); see <http://www.tu-dresden.de/erasjur/Welcome.htm>

2. *The Frankfurt Example*

I am a simple lawyer and not an expert in educational matters. I am not really equipped to scientifically prove the benefits of these LL.M. options. But I can illustrate my convictions by a description of my personal views and activities.

When, two decades ago, our *LL.M. for foreign graduates* was introduced I was happy that students from other countries could, practically free of charge, receive such a wonderful broadening of their horizons as I was privileged to experience in the US in the late sixties of the last century. In recent years, during my term as Dean of the Frankfurt Law School, I strongly supported the introduction of an *LL.M. Eur.*, which gave our top graduates a chance to gain and document to the outside world superior skills and insights into European and International Business Law. Of course, we would have been able to offer the same instruction and supervision without such program. But without the structured documentation of such efforts by means of a university degree, there would have been no incentive to the students to seek this instruction, and no justification for the law school to “waste” public resources for such purposes. An LL.M. was most helpful to define the effort for both students, the State and the public.

It proved even more important in the process of establishing a graduate program for Law and Finance. In Frankfurt, continental Europe’s private and central banking center, there is a definite demand for top level graduate studies in these areas. The university funds, provided exclusively by the State, would not have allowed the introduction of such program. Furthermore, within the legal boundaries of the State Exam, our first law degree, there was no room for such an endeavor. The wide frame of the relatively unstructured LL.M., however, allowed for a public-private venture, combining the resources of the Johann Wolfgang Goethe University with the financial support and intellectual know-how of the potential beneficiaries, the financial institutions. In this master’s program, it was no problem to introduce English as sole language for instruction and research work. And - in Germany almost a political taboo - the LL.M. permitted the introduction of a substantial tuition fee.⁴⁴ The benefits are mutual. The financial community receives the graduates with the high level academic education it needs and pays - part of the - bill. The students receive a highly specialized training which, if and when they enter the working world, will in the long run more than repay their investments easily. Without the LL.M., these daring steps into new directions could not have been taken.

⁴³ for a notable exception see below at bb.

⁴⁴ 15 000 € p.a.

D. Conclusion

I can not venture to say whether or not the introduction of the LL.M. is helpful in China. But I can report that in my country and apparently in some others in the West, the LL.M. offers the fascinating chance to activate energies otherwise buried, to let the fantasies grow into reality and to secure a fairly safe play-ground for the actors concerned. We can try out new interdisciplinary projects, we can find new forms for continuing legal education and for a wide variety of specializations in certain limited areas of the law and for deeper reflection. We can find room for cooperation across national borders and we can help to let those first law degree graduates prosper who are not certain yet that they are qualified to pursue a doctorate.

As I mentioned in the beginning: The main task of law schools is the education of the first degree law students. But I don't hesitate to say - and now without a question mark - that the postgraduate LL.M. with all its innovative opportunities might well be the frosting on the cake of legal education in Germany and all of Europe.

If there should be similar gaps between the basic law degree and the doctorate in China as they exist in the West, then it might be well worth to continue a discussion among Chinese educators whether this frosting should be applied here, too.