

# INTERNATIONALIZING LEGAL EDUCATION: A COOPERATIVE TOOL IN A GLOBALIZED WORLD

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## Abstract

*The term “globalization” has been applied to everything from economics and technology to social media and market trends. Its use has become somewhat of a cliché<sup>1</sup>, and it is almost impossible to read a treatment of globalization that does not acknowledge the ambivalence and hyperbole surrounding the term. The phrase “globalization of legal education” has the power to conjure visions of sophisticated lawyers-in-the-making jockeying for positions in transnational mega firms, or interning at international courts and dreaming of combating injustice on an international scale. It has been posited that a working knowledge of the global legal landscape is as indispensable to today’s legal graduate as a working knowledge of digital technological advances.<sup>2</sup> Can law really be taught at a global scale, or is it still the province of domestic authority? A global lawyer may work in numerous jurisdictions, or at least one different from where they were taught. How does their education prepare them for that possibility? Can a global lawyer work in foreign jurisdictions in matters of private law? Is the “globalization of legal education” just a marketing equivocation for classes conducted in a common language, or about the international legal regime – or is there something substantively and pedagogically distinctive about the endeavor? How should global legal education translate into practice in 2015? This paper endeavors to explore the intersection between globalization of law and globalization of legal education.*

**Keywords:** *Legal education, globalization, cooperation*

## I. INTRODUCTION: GLOBALIZATION OF LAW

Invoking the term “globalization” reminds us that, in today’s world where barriers to goods, services, capital and knowledge are increasingly dismantled,<sup>3</sup> global turns local and local turns global. Globalization may be said to reflect movement in a “perpetual circular motion... [a cycle of] global practice leading to local impact, adaptation, and ex-

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<sup>1</sup> Carol Silver, *Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S.* 24 Stan. L. & Pol’y Rev 457, 458, 463 (2013). Silver observes that law schools may have a “heightened responsibility” among higher education disciplines in the era of globalization.

<sup>2</sup> Simon Chesterma, *The Globalization of Legal Education*, *Thailand Journal of Law and Policy*, Spring Issue 1, Vol 13, n28 (2010)

<sup>3</sup> David Kinley, *Human Rights, Globalization And The Rule Of Law: Friends, Foes Or Family?* 7 UCLA J. Int’l L. & For. Aff. 239, 242 (2003). (analyzing and critiquing the globalization theories of Boaventura de Sousa Santos).

port which leads to global impact, adaptation, and practice.”<sup>4</sup> But can this conception of globalization fit together with the mechanisms of the law, as it has traditionally been defined? Can domestic law withstand a dismantling of its barriers, or are barriers the very thing that identifies domestic law?

One of the chief obstacles to a globalized legal education is the fact that, at first blush, globalization may seem functionally incompatible with the parochial, jurisdiction-dependent legal scheme of tradition. Although “globalization” has come to mean more than merely “international” in scope – reflecting a merging of the global and local into a connected whole, rather than a more narrowly defined transnationalism<sup>5</sup> – there is typically less trouble “globalizing” public international law than private domestic law. This is so for the obvious reason that public international law operates “globally,” involving a unified regime of law (despite particular differences in national application).

In some academic programs, global legal education has come to mean an increased number of public international law class offerings, including human rights and international criminal law topics. Students are exposed to the advent of organizational influence on the international stage, as well as the increasing role of treaty and customary international law in all legal regimes.<sup>6</sup> This is a step in the right direction. Emphasizing public international law introduces students to the concept of hard versus soft law, and illustrates the notion that the authority of law is not as immutable as once imagined.<sup>7</sup> It also exposes students to international human rights standards and ethics, which ultimately find their expression in local circumstances outside of the strictly “international” legal realm. Additionally, international private law subjects, such as

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<sup>4</sup> See Chesterman, *supra* note 3.

<sup>5</sup> Silver, *supra* note 2 at 458.

<sup>6</sup> “Globalization has the effect of making it unclear what, actually, the law is. There’s uncertainty as to whether law can only emanate from public authority or also from private authority; there’s uncertainty about whether law will only be...hard law, or whether soft law is also an option.” Professor Jan Klabbbers of the University of Helsinki, video on the Global Dialogue on the Future of Legal Education, part of the Global Legal Education Forum, March 23 – 25, 2012, at Harvard Law School. Available at: <http://youtu.be/q2BkUzXIUOw>.

<sup>7</sup> John Sexton, *Dialogue: Legal Education, Today and Tomorrow*, 3 Green Bag 2d 417, 417 (2000).

private trade and conflict of laws courses, create natural linkages between national and international regimes. These linkages help students envision the kind of cyclical merging of legal authority promised by the “globalization of law,” providing clear examples of the decision-making process used to determine which law holds authority in a particular matter – or, in other words, where the case falls on the global-local legal cycle of authority.

When it comes to topics of traditionally jurisdictionally-based law, however – the private domestic law topics of contracts, torts, law of obligations, family law, bankruptcy, sales, banking, corporate law, and the like – national rule usually holds sway. Many authors credit Christopher Langdell, Dean of Harvard Law School in 1870, with the inception of modern legal education, which proposed to derive legal principles from jurisdictionally-based appellate court decisions.<sup>8</sup> Under this formulation, law and legal education need look no further than national borders for their complete expression.<sup>9</sup> Although general theory classes (for example, on the philosophy of law or political theory) add a broader doctrinal component, and skills classes such as legal writing and research prepare students to apply and communicate their substantive knowledge, the bulk of most students’ legal education has generally consisted of the codes, rules, cases, and history embedded in the domestic law of their home jurisdiction.<sup>10</sup> Is there any room for “globalization” to contextualize the teaching and practice of private domestic law?

## **II. STATE SOVEREIGNTY AS THE BASIS OF LEGAL AUTHORITY**

The basis of domestic legal authority is often traced to the sovereign power of the state;<sup>11</sup> an entity neither required nor inclined to take

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<sup>8</sup> Claudio Grossman, *A Decade in Human Rights Law: Global Legal Education and Human Rights*, 11 Hum. Rts. Br. 20, 20 (2004).

<sup>9</sup> Carol Silver notes, “As one lawyer remarked years ago, ‘Numbers are numbers, discounted cash flow analysis is the same worldwide, but the law is different.’” *Supra* note 2 at 464. Quoting “So You Want To Make a Deal,” Corp. Legal Times, September 1999, at 61.

<sup>10</sup> See generally, John Austin, *The Province of Jurisprudence Determined*, 1832. Note challenges to Austin’s concept of the command theory of law, maintaining a positivist framework, in H.L.A. Hart’s *The Concept of Law*, 1961.

<sup>11</sup> See generally, *Jurisdictional Immunities of the State* (Ger. v. Italy), Judgment (Feb.

heed of external pressures.<sup>12</sup> Whether law is credited with a positive or natural origin, its implementation and enforcement, at least, have typically resided with the sovereign.<sup>13</sup> States have historically guarded their dominion over law, and modern concerns abound regarding the conservation of sovereign legal power in the wake of globalization.

This concern is reflected in debates about the use of foreign law as persuasive jurisprudence in domestic cases,<sup>14</sup> the delegation of sovereign governance powers to international organizations, and the adjudicatory and other enforceability mechanisms under multilateral treaties,<sup>15</sup> all which can be viewed as depriving the sovereign state of its legal power. Arguably, however, a narrow, rigid definition of sovereignty is no longer relevant in today's interconnected world. As the tide of globalization has rolled in, traditional state sovereignty has experi-

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3, 2012) (International Court of Justice case confirming sovereign jurisdictional immunity even in light of *jus cogens* allegations.)

<sup>12</sup> Legal positivism holds that law is created by and derives its authority from a human source with enforcement power. Natural law tenants state that law can be discovered by humans, but has its ultimate origins in the divine or (immutable) theoretical. Whether the sovereign as a legal authority represents a positive or natural law source depends on the legal philosopher, but the point here is that ultimately in today's society, the law is functionally carried out through state mechanisms: courts, police, executive administrative bodies, etc.

<sup>13</sup> Austen L. Parrish, *Storm In A Teacup: The U.S. Supreme Court's Use Of Foreign Law*, 2007 U. Ill. L. Rev. 637 (2007). (documenting the backlash in America resulting from the use of foreign law as persuasive guidance by US Supreme Court Justices, and encouraging citation to foreign law in American domestic cases as a transparent, legitimate, and pragmatic practice grounded in tradition.) <sup>15</sup> See Jeremy Rabkin's Interview in "A Defense of Sovereignty," National Review Online, March 10, 2005. Available at: <http://www.nationalreview.com/articles/213873/defense-sovereignty-interview>

<sup>14</sup> See Abram Chayes & Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements*, Harvard UP, 1998 (promoting a managerial rather than enforcement model of treaty compliance, based on an ongoing relational dialogue among states.) <sup>17</sup> "State sovereignty [is] being redefined by the forces of globalization and international cooperation." United Nations Secretary-General Kofi Annan in 1999, quoted in Stacy Humes-Schulz, *Limiting Sovereign Immunity in the Age of Human Rights*, 21 Harv. Hum. Rts. J. 105, 111. (2008). See generally, John Alan Cohan, *Sovereignty in a Postsovereign World*, 18 Fla. J. Int'l L. 907 (2006). See also, Philip Alston, *The Myopia of the Handmaidens: International Lawyers and Globalization*, 3 European Journal of International Law 435 (1997).

<sup>15</sup> Chayes, *supra* note 16, at 61, quoted by Cohan, *supra* note 17, at 939.

enced an ebb, though whether this changing character of sovereignty is a cause or effect of a new global reality is debatable. Chayes and Chayes observe that sovereignty today is best defined through connectedness with the international community, rather than autonomy from it:

*“Where the defining features of the international system are connection rather than separation, interaction rather than isolation, and institutions rather than free space, sovereignty as autonomy makes no sense. The new sovereignty is status, membership, ‘connection to the rest of the world and the political ability to be an actor within it.’ ...the measure of state capacity to act as an independent unit within the international system...depends on the breadth and depth of its links to other states.”<sup>16</sup>*

John Alan Cohan describes the shift away from traditional Westphalian (autonomous state) sovereignty in both vertical and horizontal dimensions.<sup>17</sup> This framework can help describe the ways in which the globalization of law affects global legal education. State sovereignty is ceded vertically when international norms are imposed “from without,” in a “top-down” manner by the international community, regardless of sovereign governmental will. This shift manifests in customary international law, most often in the forms of human rights and humanitarian law. The vertical shift reflects a standardized regime of ethical considerations overlaying the traditional business of the state, applying indiscriminately not only to sovereigns, but to individuals, and reinforced by the international community at large. It is within this vertical shift that public international law has come to the fore, creating a clear pathway toward the connection between global standards and local implementation. States’ monopoly over the law is challenged<sup>20</sup> and the line between the “hard” law of sovereign states and “soft” law of organizations and aspirational treaties is blurred.<sup>18</sup>

Horizontally, states cede some of their sovereignty when they share or delegate power, whether internally (within state systems through

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<sup>16</sup> Cohan, *supra* note 17, at 936. For a description of traditional Westphalian sovereignty, see p. 914: “Westphalian sovereignty means political autonomy or the right to be left alone, so that no outsider may intermeddle, speak for the sovereign or otherwise intervene in the internal or external affairs of the state without its permission.”

<sup>17</sup> Jean-Philippe Robé. “Multinational Enterprises: The Constitution of a Pluralistic Legal Order” *Global Law Without a State*. Ed. Gunther Teubner. Dartmouth, 1997.

<sup>18</sup> Klabbers, *supra* note 7.

the demise of autocracy and the increase of democracy) or externally (in power-sharing arrangements with international and regional organizations).<sup>19</sup> This horizontal shift away from the traditional notion of sovereignty as autonomy reflects a heterogeneous characterization of legal globalization: multiple sovereign states can be seen as equals, standing side-by-side, yet with the (legal) borders between them increasingly permeable.

The horizontal sovereignty shift has significant consequences for the globalization of domestic private law. First: the field of comparative law seeks to analyze the distinctions among various domestic regimes and promote the identification of best practices.<sup>20</sup> Such studies facilitate globalized legal education in private domestic law subjects, as they simultaneously expose students to a diversity of national systems while maintaining the authority of the home jurisdiction. In the comparative study of law, the exclusive orientation toward the national system is replaced by a merits-based consideration of other legal regimes, thus typifying the horizontal shift away from strict sovereignty and toward a more interconnected sense of legal authority.

Comparative legal studies embrace the analysis not only of individual countries' laws, but of entire legal systems. By way of example, the Faculty of Law of McGill University, Canada engages in transsystemic legal studies, blending the common law and civil law heritages found in bijural Canada in classes such as Contracts, Civil Procedure, Evidence, and Sales.<sup>21</sup> Rosalie Jukier, a professor at McGill, notes that the transsystemic approach "seeks to incorporate transnationalism into the curriculum by freeing the study of law from jurisdictional or systemic boundaries."<sup>22</sup> These horizontal linkages among domestic legal spheres challenge what David Kinley has called legal theory's "orthodox fixation with the binary of national and international law,"<sup>23</sup> and promote

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<sup>19</sup> See generally, Annelise Riles, *Wigmore's Treasure Box: Comparative Law in the Era of Information*, 40 Harv. Int'l L.J. 221 (1999).

<sup>20</sup> Rosalie Jukier, *Transnationalizing the Legal Curriculum: How to Teach What We Live*, 56 J. Legal Educ. 172, 177 (2006).

<sup>21</sup> Jukier, *supra* note 24, at 174.

<sup>22</sup> Kinley, *supra* note 4, at 242.

<sup>23</sup> See generally Hartmut Hillgenburg, *A Fresh Look at Soft Law*, European Journal of International Law, Vol. 10 No. 3, 499-515 (1999).

the globalization of private domestic law.

Second: the proliferation of non-binding guidelines, lists of principles, international organizational statements, model laws, and framework treaties – in other words, soft law<sup>24</sup> – has also affected the development of private domestic law toward a more global perspective.<sup>25</sup> Though soft law does not technically create enforceable rules for sovereign states, its influence is significant on the hard law that states do create and enforce, sometimes serving as a precursor to hard law.<sup>26</sup> Henry Deeb Gabriel has posited that the creation of soft law on private law subjects promotes substantive harmonization by avoiding the difficulties presented by attempting consensus and commitment to hard law conventions<sup>27</sup>. Jan Klabbbers rejects the binary delineation of “hard” and “soft” law, calling for a more nuanced understanding of the norm cre-

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<sup>24</sup> See Klabbbers, *supra* note 7.

<sup>25</sup> Harri Kalimo and Tim Staal, “Softness” in *International Instruments - The Case of Transnational Corporations*, 41 *Syracuse J. Int’l L. & Com.* 257, 274 (2014).

<sup>26</sup> Henry Deeb Gabriel, *The Advantages of Soft Law in International Commercial Law: The Role of Unidroit, Uncitral, and The Hague Conference*, 34 *Brooklyn J. Int’l L.* 655, 660 (2009).

<sup>27</sup> the emergence of legal principles and norms regarding the environment from diverse sources, instituting “global environmental law,” see Tseming Yang and Robert V. Percival, *The Emergence of Global Environmental Law*, 36 *Ecology L.Q.* 615 (2009). On the substantive convergence of national security law after 9/11, see Kim Lane Scheppele, *The International Standardization of National Security Law*, 4 *J. Nat’l Security L. & Pol’y* 437 (2010). On the harmonization of CISG trade law generally, see Loukas Mistelis, *Is Harmonisation a Necessary Evil? The Future of Harmonisation and New Sources of International Trade Law*. Extract from Ian Fletcher, Loukas Mistelis, Marise Cremona eds., *Foundations and Perspectives of International Trade Law*, London: Sweet & Maxwell (2001) 3-27. On similarities between Shari’a law and the Convention on Contracts for the International Sale of Goods, see Fatima Akaddaf, *Application Of The United Nations Convention On Contracts For The International Sale Of Goods (Cisg) To Arab Islamic Countries: Is The Cisg Compatible With Islamic Law Principles?* 13 *Pace Int’l L. Rev.* 1 (2001). On the issue of harmonizing international bankruptcies, see Liza Perkins, *A Defense of Pure Universalism in Cross-border Corporate Insolvencies*, 32 *N.Y.U. J. Int’l L. & Pol.* 787 (2000). For a view rejecting the notion of substantive harmonization of anti-trust law, see Joseph P. Griffin, *When Sovereignties May Collide: In the Antitrust Area*, 20 *Can.-U.S. L.J.* 91 (1994). On transnational dialogue “tending towards” harmonization of labor law, see Bruno Caruso, *Comparative Approaches and Responses to Globalization: Changes in the Workplace and the Dialogue of Labor Scholars in the “Global Village”*, 28 *Comp. Lab. L. & Pol’y J.* 501 (2007).

ation and significant influence that non-hard-law instruments have upon legal actors.<sup>28</sup> To what degree such soft law principles serve as guideposts and affect a substantive convergence of discreet fields of domestic law could be the subject of an entire treatise. Considerable research has been done to chart the progressive homogeneity of particular fields of private law and multiple international organizations and soft law instruments are dedicated to just such propositions.<sup>29</sup> Problemetizing soft law as a panacea, authors Harri Kalimo and Tim Staal note that reliance on soft law in place of hard law governance can often lead to unacceptable gaps in enforcement.<sup>30</sup>

As the characteristics of state sovereignty have changed, including both vertical and horizontal shifts away from autonomy as the defining feature of statehood, so has the notion of what constitutes legitimate basis for the law. This fact has opened up new possibilities for a shared, yet individualized, conception of legality. The increasing authority of international public law and use of soft law in the private legal realm, as well as the prevalence of comparative law as a normative lens through which to view domestic private law, all contribute to the concept of “globalization of law.” This globalization shapes legal education by affecting the substance of course material and the kind of law taught to tomorrow’s global lawyers. Rather than focus on jurisdictionally-specific rules, legal educators can and should focus on the theory undergirding both public and private law, in both the international and domestic realms.<sup>31</sup>

### **III. WHERE IS THE GLOBAL LAWYER?**

Foreign legal study, once a rarity, has become increasingly common for those pursuing globalized legal careers.<sup>32</sup> From undergraduate study-

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<sup>28</sup> See generally, International Law Commission, <http://legal.un.org/ilc/ilcintro.htm>, dedicated to the “progressive development of international law and its codification.” UNIDROIT: International Institute for the Unification of Private Law, [www.unidroit.org](http://www.unidroit.org).

<sup>29</sup> Kalimo, *supra* note 29 at 276.

<sup>30</sup> See Stephen A. Rosenbaum, *Beyond The Fakultas’ Four Walls: Linking Education, Practice, And The Legal Profession*, 23 *Pac. Rim L. & Pol’y J.* 395, 406 (2014) and Hikmahanto Juwana, *Legal Education Reform in Indonesia*, 1 *Asian J. Comp. L.* 1 (2006).

<sup>31</sup> Vasuki Nesiah, *A Flat Earth for Lawyers Without Borders? Rethinking Current Approaches to the Globalization of Legal Education*. 5 *Drexel L. Rev.* 371, 373 (2013).

<sup>32</sup> Luca C.M. Melchionna, *Global Legal Education and Comparative Visa Regula-*

abroad programs,<sup>33</sup> to dual-degree or certification options resulting from international institutional partnerships,<sup>34</sup> to foreign post-graduate legal study, law students now have access to unprecedented options in foreign study.<sup>35</sup> A trend toward legal degree programs physically situated in one country, but actively marketing preparatory studies for American legal qualification, has been noted in countries including China and Korea,<sup>36</sup> exemplifying a cross-pollinated form of “foreign legal study.” Luca Melchionna’s study on short- and long-term student visa requirements for legal study concludes that expanding student visa options will increase the flow of global legal knowledge.

After foreign study options, where does the global lawyer practice? Other than public international lawyer positions, the parochial jurisdictionality of private law once made foreign practice functionally unfeasible for most lawyers, due to the lack of crossover law and the focus on domestic practice. In addition, restrictive licensing eligibility requirements such as local citizenship, as well as a certain xenophobia regarding foreign education and imported legal services, rendered moving out of one’s home jurisdiction a rarity.<sup>37</sup> In America, states have mixed rules regarding admission of foreign-educated lawyers, and require at least some American education in order to sit for an American bar license.<sup>38</sup> For other countries that do not permit the licensing of foreign lawyers

*tions*, 19 *Transnat’l L. & Contemp. Probs.* 515, 597 (2010). (stating that short-term legal study abroad (foreign) programs are in “exponential demand.”)

<sup>33</sup> Chesterman, *supra* note 4, notes the transition from “transnationalism,” in which exchange programs were more common, to “globalization,” in which dual-degree programs across multiple jurisdictions began to appear, reflecting the perceived value of holding qualifications in multiple jurisdictions.

<sup>34</sup> See Melchionna, *supra* note 37, for a detailed discussion of student visa requirements as a gateway to foreign legal study.

<sup>35</sup> <sup>40</sup> Samuel J. Levine and Russell G. Pearce, *Rethinking The Legal Reform Agenda: Will Raising the Standards for Bar Admission Promote or Undermine Democracy, Human Rights, and Rule Of Law?* 77 *Fordham L. Rev.* 1635, 1640 (2009).

<sup>36</sup> See Carol Silver, *States Side Story: Career Paths of International LL.M. Students, or ‘I Like to Be in America,’* 80 *Fordham L. Rev.* 2383, 2419 (2012).

<sup>37</sup> Michele Gilligan, *Another Effect Of Globalization: Role Of Foreign Educated Lawyers In Maryland Legal Practice*, 37 *U. Balt. L.F.* 1, 7 (2006).

<sup>38</sup> See, for example, Indonesia. Tony Budijaja, “(Don’t) Kill Foreign Lawyers,” *The Jakarta Globe*, March 11, 2014, discussing the need for Indonesian lawmakers to provide clear guidance on foreign legal services. Available at: <http://m.thejakartapost.com/news/2014/03/11/don-t-kill-foreign-lawyers.html>

under the national regime, working in an advisory capacity alongside national lawyers has proven effective.<sup>39</sup> The ASEAN region is in process to liberalize cross-border legal services under the 2015 ASEAN Economic Community.<sup>40</sup> This trend will continue to provide increased mobility for new attorneys, enabling them to choose work in jurisdictions other than the one in which they were schooled, and to practice in more than one jurisdiction over the course of their legal career.

Global law firms have also affected the multi-jurisdictional opportunities for lawyers. The growth of global law firms has been well-documented: large, multi-national firms hire thousands of lawyers and employ them in countries around the world.<sup>41</sup> While some scholars comment that law firms have been late to globalize, due to the strict and nationally specific regulation of practice, they have now successfully joined the globalization trend.<sup>42</sup> Most commentators credit the rise of global law firms with the rise of global business, or multi-national enterprises (MNEs), with law firms developing international branches to service cross-border business transactions.<sup>43</sup> While most “mega firms” originate in America or the United Kingdom, other countries such as China, Australia, and Singapore are conducting legal mergers that position them as top global legal services contenders.<sup>44</sup> Of the Asian region, it

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<sup>39</sup> See Chew Seng Kok and Yeap Suan Hong, *Liberalization Of Legal Services— Embracing A World Of Opportunities In The ASEAN Region*. 141 *US-China Law Review*, Vol. 10 (2013).

<sup>40</sup> See *The 2012 Global 100: Most Attorneys*, American Lawyer, Available at: [http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202571229481&The\\_2012\\_Global\\_100\\_Most\\_Attorneys](http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202571229481&The_2012_Global_100_Most_Attorneys), cited by Kath Hall, *Educating Global Lawyers*, 5 *Drexel L. Rev.* 391, 395 (2013). For updated online information about the world’s largest global law firms, see: Law360, Top 20 Rankings, Available at: <https://www.law360.com/rankings/global-20>. For an assessment of the top global law firms from 1998 – 2014, see Drew Combs, “The Global Legal Market: By the Numbers,” *The American Lawyer*. September 29, 2014.

<sup>41</sup> David B. Wilkins and Mihaela Papa, *Legal Practice And The Legal Profession In The Global World: The Rise Of The Corporate Legal Elite In The BRICS: Implications For Global Governance* 36 *B.C. Int’l & Comp. L. Rev.* 1149, 1156 (2013).

<sup>42</sup> Melchionna, *supra* note 37, at 524.

<sup>43</sup> Wilkins, *supra* note 46, at 1156.

<sup>44</sup> Wong Siew Ching and Chitra Kumar, “Legal Firms Link Up in Singapore to Meet Growing Demand,” *Channel NewsAsia*, August 21, 2014, quoting Deputy Prime Minister and Finance Minister of Singapore Tharman Shanmugaratnam. Available at: <http://www.channelnewsasia.com/news/business/legal-firms-link-up-in/1323898.html>

has been remarked that, “the flow of people in businesses across borders is in fact expanding much faster than the business growth within domestic economies. And that means that domestic firms have to respond and international firms will respond.”<sup>45</sup> All signs point toward significant growth in the cross-border legal services sector in Asia.<sup>46</sup> Regarding the vast influence of global law firms on transnational law, John Flood has remarked that “No global transaction--contract, distribution agreement, securitization, franchise--can be engineered without them.”<sup>47</sup> “Big Law” has a significant impact on the way that cross-border legal activity takes place, and the attorneys staffing these firms gain international legal experience through inter-firm exposure or physical relocation to a branch in another country.

Charting the rise of MNEs and the legal services that developed to serve them, one school of thought has positioned the economic market at the center of law’s relationship to the globalized world. This view orients the outcome of legal education to the priorities of the market,<sup>48</sup> and emphasizes “the open global market[’s need for] actors who are capable of playing an active role in business in several jurisdictions simultaneously.”<sup>49</sup> Legal education is often fashioned to meet the needs of employers who place “a premium on job candidates’ global competencies as these organizations strive to compete in an increasingly globally- integrated marketplace.”<sup>50</sup> Legal education programs frequently stress these “global competencies” and include internships, legal clinics, or other practice- focused components that improve students’ job readiness upon graduation.<sup>51</sup>

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<sup>45</sup> Pasha L. Hsieh, *ASEAN’s Liberalization of Legal Services: The Singapore Case*. *Asian Journal of WTO and International Health Law and Policy*, Vol. 8, No. 2, p. 475 (2013).

<sup>46</sup> Flood goes on to say that large global law firms “have colonized the world of global law.” *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*. 14 *Ind. J. Global Leg. Stud.* 35, 38 (2007).

<sup>47</sup> Nesiah, *supra* note 36, at 375 (noting criticisms of the market orientation in globalized legal ed.)

<sup>48</sup> Melchionna, *supra* note 37, at 526.

<sup>49</sup> Charles M. Vance, *The Personal Quest for Building Global Competence: A Taxonomy of Self-Initiating Career Path Strategies for Gaining Business Experience Abroad*, 40 *J. World Bus.* 374, 374 (2005)

<sup>50</sup> Rosenbaum, *supra* note 35, at 409.

<sup>51</sup> Neisah, *Supra* note 36, at 380.

Alternately, Vasuki Nesiiah contends that global education should not only serve a practice focus, but should actively “challenge settled approaches” to the law as-is. “[R]ather than look at how globalized legal education can make us better professionals, one may want to look at how it could undo and challenge expertise in productive ways,” she notes, creating global lawyers who are “more attentive to the politics of knowledge.”<sup>52</sup> This view of legal education encourages implementing programmatic objectives that equip and expect lawyers to question existing regimes that may violate human rights or other ethical standards. programmatic objectives that equip and expect lawyers to question existing regimes that may violate human rights or other ethical standards.<sup>53</sup>

One does not have to work for “Big Law” or work in public international law to obtain global exposure. Even lawyers who practice private law in the domestic sphere can be seen to operate within the context of globalized law. Carol Silver notes that “lawyers must think globally, even if they operate only domestically.”<sup>54</sup> Even “ordinary” lawyers working on “ordinary” matters are now likely to encounter foreign and international law as a result of their domestic practice. This phenomenon, wherein “business, property, tax, personal injury, or domestic relations matters...may contain a foreign or international component [domestic lawyers] may not have initially anticipated” can be traced to a multiplicity of factors, including increased migration and foreign populations, as well as a proliferation of technology that increases the possibility and ease of foreign transactions.<sup>55</sup>

#### **IV. GLOBALIZATION OF LEGAL EDUCATION: A DESCRIPTIVE FRAMEWORK**

The following is a descriptive outline of 10 key focus areas for globalized legal education programs, culled and synthesized from legal educational research sources:

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<sup>52</sup> For an example of challenging existing legal knowledge regimes, see B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 Int’l Comm. L. Rev. 3 (2006). Cited in Nesiiah, supra note 36, at n.71.

<sup>53</sup> Silver, supra note 2, at 465.

<sup>54</sup> Ibid., at 469.

<sup>55</sup> Ibid., at 469.

- A. *Theory versus rule orientation.* The changing basis of legal authority has broadened the scope of law applicable to a global lawyer. Global lawyers need increased access to the theory, doctrine, and policy of law from a variety of sources, so that they are better able to implement their knowledge across a broader base of particular applications. Theory may be demonstrated through the use of domestic and comparative law examples. Students should be aware of majority view theory as well as minority positions.
- B. *Analytical and persuasive skills.* In line with theory orientation, students must be taught analytical skills, including identification of appropriate legal bases, rather than memorization of a pre-determined outcome in particularized cases. They must be taught to communicate their analysis persuasively, both orally and in written form. These are transferrable skills that apply across the profession of law, despite jurisdiction or regime. These “soft skills” should be taught across the curriculum of other substantive courses.
- C. *Research focus.* Students must have access to current legal research that allows them to focus their analysis and application of theory on the applicable legal rules, as well as discover developments in their field of law. Students must develop skilled use of digital databases, including free internet sources, and be familiarized with law libraries and other legal resources, in order to become independent agents of knowledge and adapt to new jurisdictions and legal regimes quickly.
- D. *Foreign education opportunities and Global exposure at home.* While a globalized education does not necessarily include study abroad, an exchange program with an international partner school, or participation in international debate or moot court competitions, can significantly broaden a student’s appreciation for global legal possibilities. Even if a student does not attend a foreign study program, exposing the student to foreign speakers, professors, and student peers at the home institution can enhance international relationships and heighten awareness of global legal activity. All students, regardless of content focus, should be included in exposure to international elements.
- E. *Experiential education.* Student education in a clinical model has

been shown to improve attorney-client relationships as well as create more realistic expectations of legal practice. Additionally, student legal clinics help to emphasize human rights and other ethical foci that may be left out of other practice-oriented models. Students can also gain experiential education through extra-curricular activities such as debate, mock trial, and moot court. Internships as experiential education should be closely monitored and coordinated with faculty members to ensure reflection on lessons learned and assessment of learning objectives.

- F. *Maintain an ethical focus.* Although the substantive law and soft skills demands on a global legal education are significant, global lawyers must be equipped with a background in human rights and professional legal ethics. This foundation is perhaps equally – if not more – important to those global lawyers working in the private sector, not directly involved with human rights.
- G. *Pedagogical best practices.* Interactive teacher-student dynamics, such as the Socratic method, verbal feedback, role-playing, and outside-of-classroom experiences such as courtroom visits, as well as hypothetical problem responses and other non-objective assessment tools, encourage student engagement and active learning. Legal education should also make use of digital classroom programs, “flipped classroom,” and “wired classroom” methodologies. These teaching methods prepare students to embrace the legal profession with the full range of their skills as “digital natives” and employ the kind of creative problem solving called for in the practice of globalized law.
- 1) *Interdisciplinary exposure.* Lawyers in a global world must be able to appreciate global forces. This requires a more expansive view of the issues that shape the law, including politics, economics, management and accounting principles, scientific developments, social and psychological influences, linguistics, philosophy, etc. In other words, lawyers must be able to contextualize the legal matters before them.
  - 2) *Multicultural training.* In order to prevent cultural blunders and work effectively with colleagues and clients from other areas of the world, students must be trained to be aware of and appreciate cultural diversity.

- 3) *Language of legal discourse.* The meaning of “language” here is two-fold: Global lawyers must be able to “speak the language” of other global lawyers, which involves familiarization with (though not necessarily wholesale acceptance of) the evolving global legal canon of commentary, cases, and terminology. Additionally, global lawyers need literally to be able to speak the same language, which in many cases is English. This may change in the future due to the rise of Mandarin or another language, or other technological translation advances. Until that time, global lawyers must position themselves to interact with others from different linguistic backgrounds on a common plane, in the written and spoken word. Global lawyers must also be aware of the problematic nature of linguistic translation, which can result in altered meanings and miscommunications.

## **V. CONCLUSION: GLOBAL LEGAL EDUCATION AS COOPERATION**

The liberalization of legal services in the ASEAN region has the potential to significantly impact cooperation among ASEAN countries. By facilitating cross-border law firms and legal practice, previously domestic-only lawyers will develop expertise in multiple ASEAN jurisdictions. These pockets of expertise will provide the legal infrastructure necessary to conduct business more fluidly within the proposed ASEAN Economic Community. It is only by training up new attorneys in the ASEAN region with a global perspective on the law that such cross-border legal services can be provided by ASEAN lawyers. With a legal education that orients students toward the global plane, rather than only the domestic, those students will be better prepared to meet the legal challenges and realize the potential of an emerging international regional community.

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