

# AMERICAN LAW SCHOOLS IN THE AGE OF GLOBALIZATION: A COMPARATIVE PERSPECTIVE

*David S. Clark\**

## I. INTRODUCTION

Rutgers School of Law, with humble beginnings in 1908 as New Jersey Law School, for over 100 years has trained students in the law.<sup>1</sup> Like many of America's law schools that have survived to hold a centennial symposium, it has prospered and grown into a complex institution that its founders could not have imagined. According to the official history, the school in the early years had a business-oriented curriculum that "attracted students eager for a practical legal education," with classes in the afternoon and evening.<sup>2</sup> By the mid-1920s, the school's enrollment of 2300 was the second largest in the United States, even larger than that today.<sup>3</sup> Many of those students were children of recent immigrants, which already demonstrated a role that served the position of the United States in the world and provided an avenue for social advancement in a country that promised opportunity.<sup>4</sup> This willingness to open enrollment to groups of culturally diverse students illustrates my theme here: American Law Schools in the Age of Globalization.

I propose to develop this theme as follows: First, I briefly describe the origins of organized international law and organized comparative law activities in the United States. Almost from the beginning, they found support from legal educators. Both the American Society of International Law (ASIL) and the American Society of Comparative Law (ASCL) recently celebrated their respective centenaries. Second, I review recent developments in legal

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\* © David S. Clark 2009. Maynard and Bertha Wilson Professor of Law and Director, Certificate Program in International and Comparative Law, Willamette University. I thank Willamette University College of Law for a summer research grant that facilitated completion of this article.

1. See Rutgers Sch. of Law-Newark, History of Rutgers School of Law-Newark, <http://law.newark.rutgers.edu/about-school/history-rutgers-school-law-newark> (last visited Sept. 15, 2009) [hereinafter History of Rutgers].

2. *Id.*

3. *Id.*; see also Rutgers Sch. of Law-Newark, Quick Facts, <http://law.newark.rutgers.edu/about-school/quick-facts> (last visited Sept. 15, 2009).

4. History of Rutgers, *supra* note 1.

education and the legal profession in the United States and their relationship to international and comparative law and foreign legal systems. This period, for convenience dated from 1990, is what I mean by the age of globalization. Third, I review the singularity of American legal education. Here I come to praise Caesar, rather than to bury him, to paraphrase Marcus Antonius. My perspective is rooted in the comparative method. Among several examples, I address the tension in American legal education between theory and practice and describe how most foreign training systems resolve this problem by providing both. Finally, I look at developments in foreign legal education, especially since 2000, that reveal the dominance of the American model and the worldwide pressure economic and cultural globalization puts on individual countries and their legal education systems.<sup>5</sup>

## II. THE CENTENARIES OF INTERNATIONAL LAW AND COMPARATIVE LAW IN THE UNITED STATES

A new era in American legal education began in 1900. The successful effort to establish scientific teaching and research at leading law schools, twenty-five of which in 1900 created the Association of American Law Schools (AALS), strongly supported sustained scholarly international and comparative law activities.<sup>6</sup>

### A. *International Law*

Frederic Kirgis has written the definitive history of the ASIL,<sup>7</sup> founded in 1906. He describes the expansionist strain in American foreign policy at the beginning of the twentieth century, which together with the peace movement promoted the belief that American values, economic dynamism, and experience with federalism could beneficially influence the ways nations interacted with each other.<sup>8</sup> These interests, shared by some leaders in legal education, led to the ASIL's formation.<sup>9</sup> Along with visionaries and world federalists, the legalists included academics who believed that formal dispute resolution mechanisms, whether arbitration or adjudication, could avoid war.<sup>10</sup> Central among these legal educators was James Brown Scott (1866-1943), dean of the law school at the University of Illinois

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5. See generally THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION (Jan Klabbbers & Mortimer Sellers eds., 2008).

6. See ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 96 (G. Edward White ed., 1983).

7. FREDERIC L. KIRGIS, THE AMERICAN SOCIETY OF INTERNATIONAL LAW'S FIRST CENTURY: 1906-2006 (2006).

8. *Id.* at 1-2.

9. *Id.*

10. *Id.*

(1899-1903), later professor of law at Columbia, who also taught at George Washington, Georgetown, and Johns Hopkins.<sup>11</sup> He published *Cases on International Law* for use by university and law students in 1902.<sup>12</sup> Another educator was George Kirchwey (1855-1942), law dean at Columbia University from 1901 to 1910, where he was instrumental in the introduction of the Harvard case method.<sup>13</sup> Scott and Kirchwey, together with a future secretary of state, conceived of the idea in 1905 to form an international law society that would publish a journal devoted to the subject.<sup>14</sup> This led to a committee of twenty-one, principally professors of international law and experienced diplomats, which drafted the constitution for the ASIL.<sup>15</sup>

Scott became the first chief editor of the *American Journal of International Law*, which began publication in 1907.<sup>16</sup> Other members of the editorial board included professors Charles Gregory (Iowa), John Bassett Moore (Columbia), Leo Rowe (Pennsylvania), George Wilson (Brown, later Harvard), and Theodore Woolsey (Yale).<sup>17</sup> By the 1914 annual meeting of the Society, forty-four international law teachers gathered for the first of seven Conferences of Teachers of International Law and Related Subjects.<sup>18</sup> As director of the Carnegie Endowment's Division of International Law, Scott had the financial support to implement his ideas and further the goals of international law. He had previously conducted a survey that showed that 180 colleges and universities and sixty-four law schools taught international law.<sup>19</sup> This helped him convince the Endowment's trustees to convene the 1914 Conference. The Endowment provided funds to the Society to establish a Standing Committee on the Study and Teaching of International Law.<sup>20</sup> Although the Society failed to support educational initiatives as much as Scott would have liked, Scott continued his efforts with the Endowment, such as authorizing 200 fellowships for a summer course on international law through 1936.<sup>21</sup>

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11. *Id.* at 4-9.

12. *Id.* at 7-8 n.34. Boston Book Co. published the first edition of the 961-page book in 1902, which West Publishing Co. reprinted in 1906. After graduation from Harvard College, Scott had studied international law in Berlin, Heidelberg, and Paris until 1894, which would naturally provide him a comparative perspective on law. *Id.* at 7-8.

13. *Id.* at 4-17.

14. *Id.*

15. *Id.*

16. *Id.* at 16, 24-27.

17. *Id.* at 16.

18. *Id.* at 39.

19. *Id.*

20. *Id.* at 41.

21. *Id.* at 43; see also CARNEGIE ENDOWMENT FOR INT'L PEACE, REPORT ON THE TEACHING OF INTERNATIONAL LAW IN THE EDUCATIONAL INSTITUTIONS OF THE UNITED

The Society held its centennial annual meeting in 2006. Of course, much had changed since the early years. The Society's 1906 constitution declared that one of its two objects was "to foster the study of International Law."<sup>22</sup> After World War I, when the United States failed to join the League of Nations or to become a party to the Statute of the Permanent Court of International Justice, the Society de-emphasized its mission to save the world from war and turned more scholarly.<sup>23</sup> Beginning in the late fifties, there were renewed efforts to support international law in America's law schools. Law professors Myres McDougal (Yale, 1934-1998), Society president (1958-1959) and president of the AALS (1966), and Hardy Dillard (Virginia, 1927-1963, dean 1963-1968), Society president (1962-1963) and judge on the International Court of Justice (1970-1979), provided new leadership.<sup>24</sup> Richard Baxter (Harvard, 1956-1960), Society president (1974-1976), led efforts to establish an international law moot court competition (first held in 1961) and to establish a formal relationship between the Society and the increasing number of student international law clubs.<sup>25</sup> In 1962, students from several law schools attending the Society's annual meeting organized the Association of Student International Law Societies, which named the moot court competition in 1963 after Philip Jessup, who had served as the Hamilton Fish Professor of International Law and Diplomacy at Columbia (1946-1961) and as judge on the International Court of Justice (1961-1970).<sup>26</sup> In 1987, the Association reconstituted itself as the International Law Students Association (ILSA).<sup>27</sup> Today ILSA administers the annual Jessup competition and "provides students with opportunities to study, research, and network in the international legal arena."<sup>28</sup> The Society maintains the Teaching International Law Interest Group, which supports law schools in developing innovative curricular reforms.<sup>29</sup>

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STATES (1913).

22. CONST. OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW art. II, *reprinted in* KIRGIS, *supra* note 7, at 585.

23. KIRGIS, *supra* note 7, at 581.

24. *Id.* at 582, 591.

25. *Id.* at 259, 291-92, 592.

26. *Id.* at 291-92, 302-03. In the 1960s, the Society also sponsored a series of conferences on teaching and research in international law. *Id.* at 305-06.

27. Int'l Law Students Ass'n, History, <http://www.ilsa.org/about/history.php> (last visited Sept. 15, 2009).

28. Int'l Law Students Ass'n, About ILSA, <http://www.ilsa.org/about/index.php> (last visited Sept. 15, 2009). The primary unit of ILSA is each participating law school's International Law Society. *Id.*

29. Am. Soc'y of Int'l Law, Teaching International Law, <http://www.asil.org/interest-groups-view.cfm?groupid=31> (last visited Sept. 15, 2009). The Group discusses pedagogies in both doctrinal and non-doctrinal courses and supports

### B. Comparative Law

The new field of comparative juristic inquiry emerged from both idealistic as well as practical concerns. Organized American comparative law began with the 1904 St. Louis Universal Congress of Lawyers and Jurists, the first international congress of comparative law in the United States.<sup>30</sup> In 1903, the American Bar Association (ABA) president had appointed Simeon Baldwin (1840-1927) of Yale University to the ABA's Executive Committee to implement the Congress.<sup>31</sup> Baldwin taught law at Yale from 1869 to 1919 and served as president of both the ABA and the AALS.<sup>32</sup> He and others followed the Congress with organizational efforts in 1905 to establish the Comparative Law Bureau, which led the ABA to create that entity as a section in 1907.<sup>33</sup> Bureau members met annually at the ABA's summer meeting and published a 200-page *Annual Bulletin* from 1908 until 1914, when World War I disrupted cross-Atlantic connections.<sup>34</sup> This was the first comparative law journal in the United States.<sup>35</sup>

The Bureau's director was Baldwin.<sup>36</sup> Its managers included law school deans James Barr Ames (1846-1910), dean at Harvard, George Kirchwey at Columbia, William Draper Lewis (1867-1949), dean at Pennsylvania, who later became the first director of the American Law Institute, and John Wigmore (1863-1943), dean at Northwestern.<sup>37</sup> In 1911, Roscoe Pound (1870-1964), then Story professor at Harvard Law School and one of America's great comparatists in the first half of the twentieth century, became a

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international law certificate programs within the J.D. curriculum and mandatory international law courses. The Group co-sponsors international workshops and conferences. *Id.*

30. David S. Clark, *Nothing New in 2000? Comparative Law in 1900 and Today*, 75 TUL. L. REV. 871, 888-90 (2001).

31. David S. Clark, *The Modern Development of American Comparative Law: 1904-1945*, 55 AM. J. COMP. L. 587, 594 (2007) [hereinafter Clark, *Modern Development*].

32. *Id.* at 594; see John H. Langbein, *Law School in a University: Yale's Distinctive Path in the Later Nineteenth Century*, in HISTORY OF THE YALE LAW SCHOOL: THE TERCENTENNIAL LECTURES 53, 59 (Anthony T. Kronman ed., 2004).

33. Clark, *Modern Development*, *supra* note 31, at 596-98.

34. *Id.* at 592.

35. *Id.* at 592, 598-99. The ABA, although organized in 1878, only started publishing the *Journal* in 1915. Established as a quarterly, the Bureau's editorial staff controlled the second issue each year, which was devoted primarily to the subjects previously handled in the Bureau's *Annual Bulletin*. Bureau members continued to meet annually, while the publishing arrangement with the ABA continued through 1929. *Id.* at 592.

36. *Id.* at 597.

37. *Id.*

manager.<sup>38</sup> Two of the Bureau's aims were to promote research in foreign law and to gather information on foreign law for the benefit of practicing lawyers, law teachers, and students.<sup>39</sup> Most of the *Bulletin* editors were professors at law schools.<sup>40</sup> In 1910, the Bureau had five law libraries and seventeen law schools as institutional members. By 1914, that number had grown to fourteen law libraries and twenty law school institutional members.<sup>41</sup>

Boston Book (and its successor, Macmillan Company) published twelve volumes in the Modern Legal Philosophy Series between 1911 and 1925, which an AALS committee, chaired by John Wigmore and dominated by law school comparatists, edited.<sup>42</sup> The volumes primarily consisted of civilian legal science books, articles, and excerpts translated into English. Besides making continental legal theory accessible in English, the editors (who sometimes also translated) and others wrote useful introductions and editorial prefaces.<sup>43</sup>

Dean Pound's teaching materials deserve recognition as the first published comparative law student textbook used in the United States. The 1914 Harvard University Press edition was entitled *Readings in Roman Law and the Civil Law and Modern Codes as Developments Thereof: An Introduction to Comparative Law*. In the preface, Pound explained his frustration when he first taught Roman law in 1899 by using Justinian's *Institutes* (following his own teacher's example). Likewise, reliance on English language treatment of Roman law included too much history and too little law for Pound's purpose. Consequently, in 1902, he collected excerpts from Roman texts (especially Justinian's *Digest*), modern (meaning mainly European) juristic scholarship, and civil codes (including the new German and Japanese codes).<sup>44</sup>

Between 1915 and 1918, Wigmore and Albert Kocourek (also at Northwestern) compiled and edited the three-volume *Evolution of Law*, bringing into one place English language excerpts and

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38. *Id.* at 597-98.

39. *Id.* at 598.

40. *See id.* at 598-99.

41. *Id.* at 599.

42. *Id.*

43. *Id.* at 600. Wigmore's committee also oversaw the publication of the extremely useful ten-volume Continental Legal History Series. The other committee members were usually the same persons who organized and edited the Modern Legal Philosophy Series. The history volumes provided translated excerpts from books and articles and some original material on important aspects of European legal history and jurists. There were separate volumes on French, German, and Italian law as well as on civil procedure and criminal law and procedure. *Id.* at 608.

44. *Id.* at 606. The first edition of *Readings* was published in 1906. *Id.*

translated foreign writing about ancient and primitive legal systems, the rules themselves, and the physical, biological, and social factors influencing legal development. The authors intended the first volume, carrying the specific title "Sources of Ancient and Primitive Law," to be used as a book of materials to accompany the case method of teaching originally developed at Harvard. Consequently, *Sources* (1915) was the world's first published comparative law "casebook."<sup>45</sup>

In 1933, the ABA merged the Comparative Law Bureau with the International Law Section, whose first chair was John Wigmore.<sup>46</sup> After World War II, law school professors believed they needed their own organization to support comparative law teaching and scholarship.<sup>47</sup> The American Association for the Comparative Study of Law held its first meeting in 1951 during the ABA annual meeting. Representatives of twenty law schools met in New York to discuss joining the Association, which changed its name in 1992 to the American Society of Comparative Law (ASCL).<sup>48</sup> Primary membership is by law schools as institutions, which then facilitate the attendance of their professors at annual and special meetings. The ASCL began publishing a journal in 1952 and today has over 100 law school members, some of which are from foreign countries.<sup>49</sup> The Society celebrated its centennial in 2004.<sup>50</sup>

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45. *Id.* at 608-09.

46. *Id.* at 610. Today the ABA maintains an International Liaison Office, which coordinates with legal organizations around the world and facilitates foreign judge and lawyer visits in the United States. Am. Bar Ass'n, International Liaison Office, <http://www.abanet.org/liaison/home.html> (last visited Sept. 15, 2009). In 1983, the ABA House of Delegates adopted Goal VIII to "advance the rule of law in the world." *Id.* Since 1990, the ABA dramatically augmented its rule of law program, with NGO and government funding, which in 2007 became a worldwide mission. *Id.*; see also About the ABA Rule of Law Initiative, <http://www.abanet.org/rol/about.shtml> (last visited Sept. 15, 2009).

47. David S. Clark, *Development of Comparative Law in the United States*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 175, 206 (Mathias Reimann & Reinhard Zimmermann eds., 2006) [hereinafter Clark, *Development of Comparative Law*].

48. *Id.* at 206-07.

49. David S. Clark, *Establishing Comparative Law in the United States: The First Fifty Years*, 4 WASH. U. GLOBAL STUD. L. REV. 583, 583 (2005) [hereinafter Clark, *Establishing*]; see Centennial Universal Cong. of Lawyers Conference, *Lawyers and Jurists in the 21st Century*, 4 WASH. U. GLOBAL STUD. L. REV. 535, 674 (2005).

50. See Clark, *Establishing*, *supra* note 49, at 584 (explaining that the centennial represents the first meeting of the 1904 St. Louis Universal Congress of Lawyers and Jurists).

## III. AMERICAN LEGAL EDUCATION AND GLOBALIZATION

A. *From Nativism to Globalism*

International and comparative law research and teaching have been present in American law schools for over 100 years. This cannot hide the fact that the dominant view of law worldwide, certainly from the nineteenth century, has focused on the law promulgated by the state and, in particular, the national state.<sup>51</sup> By the nineteenth century, the civil law countries of Europe had replaced the university study of Roman-canon *jus commune* (in Latin) with the study of national law in the vernacular.<sup>52</sup> In common law countries, such as the United States, law study through apprenticeship and law office training began to diverge from the English common law as Americanized versions of William Blackstone's *Commentaries on the Laws of England* (four volumes, 1765-1769) became available and American jurists wrote their own commentaries on law.<sup>53</sup> In the second half of the nineteenth century, more legal scholars abandoned natural law and embraced the genius revealed in their local positive law.<sup>54</sup>

After World War II, some legal educators realized that this nativist perspective had been harmful and began to make efforts to find wisdom in universal law, foreign examples, or increased transnational contact.<sup>55</sup> The victorious countries founded the United Nations in 1945.<sup>56</sup> In Europe, the European Economic Community, formed in 1958, showed another approach.<sup>57</sup> By 1990, the collapse of the former Soviet Union opened the possibility of even greater transnational legal relations than had existed in the bipolar world of

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51. See generally JOHN HENRY MERRYMAN ET AL., *THE CIVIL LAW TRADITION: EUROPE, LATIN AMERICA, AND EAST ASIA* 435-76 (1994) (describing the influence of the intellectual revolution on the modern nation-state).

52. See *id.* at 853.

53. David S. Clark, *Legal Education and the Legal Profession*, in *INTRODUCTION TO THE LAW OF THE UNITED STATES* 13-14 (David S. Clark ed., 2d ed. 2002). James Kent (1763-1847) and Joseph Story (1779-1845) are important examples. Kent, a lecturer in law at Columbia and chancellor of New York, published his four-volume *Commentaries on American Law* between 1826 and 1830. Story, a professor at Harvard and United States Supreme Court justice, published nine *Commentaries* on various aspects of American law between 1832 and 1845. *Id.*

54. Roscoe Pound, *What May We Expect from Comparative Law?*, 22 A.B.A. J. 56, 57-58 (1936), reprinted in MERRYMAN ET AL., *supra* note 51, at 15-16.

55. Clark, *Development of Comparative Law*, *supra* note 47, at 204-05.

56. United Nations, UN at a Glance, <http://www.un.org/en/aboutun/index.shtml> (last visited Sept. 15, 2009).

57. Europa: Summaries of EU Legislation, Treaty Establishing the European Economic Community, EEC Treaty, [http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/treaties\\_eec\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm) (last visited Sept. 15, 2009).



communism and capitalism, totalitarianism and democracy. What impact have these and similar events had on the practice of law and legal education?

*B. The 1990s*

To say that the impact of economic and cultural globalization has been transformative almost seems an understatement.<sup>58</sup> Already in the 1990s, there were calls to organize global American law schools.<sup>59</sup> The Europeans in 1995 built on the successful Erasmus support program to encourage student study (including law students) in another European Union (EU) member state by extending it also to include professors.<sup>60</sup> Besides this initiative (Socrates), the EU in the 1990s broadened its support to include non-member East European universities and to foster foreign language fluency (Lingua).<sup>61</sup>

At the 1995 ABA annual meeting, the Section of Legal Education and the Section of International Law and Practice co-sponsored a program entitled "The Globalization of the American Law School." Panel members noted that globalization was opening up new legal markets. Lawyers trained in foreign, comparative, and international law would come to dominate these markets. Already American law firms were in the vanguard of participating in these developments, but new methods for training lawyers and practicing law will be necessary.<sup>62</sup>

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58. See Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARDOZO J. INT'L & COMP. L. 143, 145-46 (2006); David E. Van Zandt, *Globalization Strategies for Legal Education*, 36 U. TOL. L. REV. 213, 213-15 (2004-2005).

One should not underestimate nativist sentiments in many countries, including the United States. For instance, failed US efforts officially to adopt the metric system for measurements places it in the company of Liberia and Myanmar. Nevertheless, US business and science have largely made the adjustment to reduce the burden of transnational relations and communication. In the EU, the 1979 Units of Measure Directive, as amended, largely achieved a uniform metric system of weights and measures, although there has been some resistance in the United Kingdom illustrated by the Metric Martyrs case. U.S. Metric Ass'n, Metric Usage and Metrication in Other Countries, <http://lamar.colostate.edu/~hillger/internat.htm> (last visited Sept. 15, 2009); see Council Directive 80/181/EEC, 1980 O.J. (L 39) 40 (EC), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31980L0181:EN:html> (last visited Sept. 15, 2009); see also *Thoburn v. Sunderland City Council*, (2003) Q.B. 151.

59. See David S. Clark, *Transnational Legal Practice: The Need for Global Law Schools*, 46 AM. J. COMP. L. 261, 268-69 (Supp. 1998) [hereinafter Clark, *Transnational*].

60. See *id.* at 265.

61. *Id.*; see European Comm'n Educ. & Training, The Erasmus Programme, [http://ec.europa.eu/education/lifelong-learning-programme/doc80\\_en.htm](http://ec.europa.eu/education/lifelong-learning-programme/doc80_en.htm) (last visited Sept. 15, 2009).

62. Clark, *Transnational*, *supra* note 59, at 268.

The ABA president suggested that lawyers must become fluent in second languages to practice law effectively internationally. Others recommended that more professors teach the international aspects of their subjects, or that law schools undertake to educate the judiciary and the bar about these new global legal developments. The AALS continued this emphasis by making globalism the topic of its 1998 annual meeting: "Thinking and Teaching about Law in a Global Context as an Exercise in Common Enterprise."<sup>63</sup>

In 1994, New York University announced the creation of the world's first global law school program. Supported by a large endowment, the initiative intended to invite foreign law professors (most to teach for a full or half semester), foreign scholars (professors, judges, and government officials for one to six months), and foreign graduate students to NYU to interact and collaborate with resident professors and students. Some of the funds would generate innovations in the curriculum and finance conferences that reflect the impact of an emerging global economy. In 1997, NYU School of Law had almost 225 foreign citizens—representing over fifty countries—enrolled out of 1500 students. At this level of commitment, as foreign and American faculty and students spend time together, they will both learn about the international legal order in a more denationalized manner as well as gain new perspectives on American law.<sup>64</sup>

### C. *The Current Situation*

The challenge of the 1990s was to develop various alternatives in response to economic and cultural globalization and then to assess which approaches work best. American law schools can be more or less global depending on their resources, setting, and commitment to competing missions. However, there are certain facts worth keeping in mind. First, international law firms and increasingly any law firm will want graduates conversant in comparative and international law.<sup>65</sup> Second, foreign law students are increasingly interested in studying in the United States.<sup>66</sup> In 1995, about 3500 attended

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63. *Id.* at 268-69. The AALS in 1996 extended the benefits of its long-standing relationship with Canadian law schools to those in Mexico. *Id.* at 269. In 1998, thirteen law schools in Canada, Mexico, and the U.S. created the North American Consortium on Legal Education. See North American Consortium on Legal Education, About NACLE, <http://www.nacle.org> (last visited Sept. 14, 2009).

64. Clark, *Transnational*, *supra* note 59, at 268-69.

65. *Id.*; see, e.g., William D. Henderson, *The Globalization of the Legal Profession*, *The Symposium: Globalization of the Legal Profession*, 14 *IND. J. GLOBAL LEGAL STUD.* 1, 1-3 (2007) (including symposium papers); Laurel S. Terry, *Foreword*, 22 *PENN ST. INT'L L. REV.* 527, 527-29 (2004) (including Global Legal Practice Symposium papers).

66. Clark, *Transnational*, *supra* note 59, at 269.

American law schools, primarily in LL.M. programs.<sup>67</sup> Third, between 2004 and 2008, there was a drop of 17,000 in domestic law applicants to ABA law schools; it is a matter of good business sense to look abroad.<sup>68</sup>

In 2000, the AALS sponsored the Conference of International Legal Educators, held in Florence.<sup>69</sup> NYU provided the forum.<sup>70</sup> Participants attended from twenty-seven countries.<sup>71</sup> Panelists discussed topics such as cooperation among different systems of law and legal education, faculty and student exchange, curricular enrichment through international cooperation, and development of global curricula and “educational outcomes.”<sup>72</sup> This led to a second AALS event in 2004 held in Hawaii, the Conference on Educating Lawyers for Transnational Challenges.<sup>73</sup> Legal educators from forty-seven countries attended.<sup>74</sup> Sessions covered issues relevant to lawyers in business transactions, governmental organizations, and non-governmental organizations (NGOs), identifying a curricular core for the transnational lawyer, and special methods for educating that lawyer using clinics, exchanges, or technology.<sup>75</sup> The participants agreed to form a new organization, the International Association of Law Schools, created in 2005.<sup>76</sup> Its mission serves to

67. *Id.* at 269-70.

68. *Id.* at 270-71; Law Sch. Admission Council, LSAC Volume Summary, <http://members.lsac.org/Public/MainPage.aspx?ReturnUrl=%2fPrivate%2fMainPage2.aspx> (last visited Sept. 14, 2009).

69. ASS'N OF AM. LAW SCHS., CONFERENCE OF INTERNATIONAL LEGAL EDUCATORS: THE LA PIETRA CONFERENCE i-iv (2000); John Sexton & Carl C. Monk, *Papers From the La Pietra Conference of International Educators: Introduction*, 51 J. LEGAL EDUC. 313, 313 (2001) (most conference papers are at 51 J. LEGAL EDUC. 315-468 (2001)); *IALS Newsletter* (Int'l Ass'n of Law Schs, Washington, D.C.), Aug. 2006, <http://www.ialsnet.org/newsletter/internationalIALSnewsletteraugust2006.pdf>.

70. Sexton & Monk, *supra* note 69, at 314.

71. ASS'N OF AM. LAW SCHS., *supra* note 69.

72. Sexton & Monk, *supra* note 69, at 314. Some schools put the emphasis on curricular expansion or development. See generally Symposium, *Enriching the Law School Curriculum in an Increasingly Interrelated World—Learning from Each Other*, 26 PENN. ST. INT'L L. REV. 831 (2008) (including AALS annual meeting papers); Mark Tushnet, *Integrating Transnational Legal Perspectives into the First Year Curriculum—Introduction*, 24 PENN. ST. INT'L L. REV. 735 (2006) (including AALS annual meeting symposium papers); Catherine Valcke, *Global Law Teaching*, 54 J. LEGAL EDUC. 160 (2004).

73. ASS'N OF AM. LAW SCHS., CONFERENCE ON EDUCATING LAWYERS FOR TRANSNATIONAL CHALLENGES 2-8 (2004), <http://www.aals.org/international2004/2004international.pdf>.

74. *Id.*

75. *Id.* The major financial sponsors were New York University (\$50,000), American University (\$25,000), and South Texas College of Law (\$10,000). *Id.* at 2.

76. Int'l Ass'n of Law Schs., International Association of Law Schools Global Legal Education Faculty Worldwide IALS, <http://www.ialsnet.org/index.html> (last visited

“strengthen the role of law in the development of societies” through the improvement of legal education and especially to prepare lawyers as they increasingly practice globally, including those in government and the non-profit and corporate sectors.<sup>77</sup>

In addition, both the Law School Admission Council (LSAC) and the ABA Section of Legal Education and Admissions to the Bar have responded to the effects of globalization. In 2008, the LSAC amended its bylaws to permit membership beyond U.S. and Canadian law schools to those in Australia.<sup>78</sup> The first of these members from outside North America is Melbourne Law School, which transformed its undergraduate LL.B. degree program into a graduate curriculum with a J.D. degree.<sup>79</sup> Enrolling students in the J.D. program since 2008, the Law School offers this justification: “The shift to graduate law at Melbourne is part of a worldwide trend responding to the challenge of providing the best legal education to support the increasingly international profession of law.”<sup>80</sup> The LSAC also offers an LL.M. credential assembly service for international students, costing \$185, which reflects the increasing interest of foreign lawyers in pursuing a master’s degree at an American law school.<sup>81</sup>

The Section of Legal Education, part of the non-profit ABA organization, accredits American law schools and their basic J.D. program if they meet certain standards, which then permits J.D. graduates of approved law schools to take an American bar examination in any state.<sup>82</sup> However, with international or comparative law programs, this Section does not “approve” foreign summer (or semester abroad) programs or LL.M. degree programs open to, or specifically designed for, foreign law students and

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Sept. 15, 2009).

77. Int’l Ass’n of Law Schs., Charter, <http://www.ialsnet.org/charter/index.html> (last visited Sept. 15, 2009) (explaining that voting members will be primarily law faculties and law schools).

78. See Law Sch. Admission Council, Applying for the JD in Australia, <http://lsac.org/australia.asp> (last visited Sept. 15, 2009); MELBOURNE LAW SCH., THE MELBOURNE JD 1 (2008), <http://jd.law.unimelb.edu.au/go/about-us/about-the-melbourne-jd> (follow “Melbourne JD Brochure”).

79. See MELBOURNE LAW SCH., *supra* note 78, at 1. LSAC officials have also discussed using its application test, suitably adapted, for admission to law schools in the United Kingdom and to the new graduate law schools in Japan.

80. *Id.*

81. Law Sch. Admission Council, Law School Admission Council LL.M. Credential Assembly Service for International Applicants, <https://llm.lsac.org/llm/logon/splash.aspx> (last visited Sept. 14, 2009).

82. See ABA SECTION OF LEGAL ED. AND ADMISSIONS TO THE BAR, THE LAW SCHOOL ACCREDITATION PROCESS (2009-2010), <http://www.abanet.org/legaled/standards/standards.html>.

lawyers.<sup>83</sup> Rather, the Section inspects and, assuming the program meets defined standards, “acquiesces” to it.<sup>84</sup> In the past two decades, with the growth in these transborder activities, the ABA has improved data collection to follow these developments.<sup>85</sup> In 1952, the ABA created the American Bar Foundation (ABF), which today is independent and the preeminent institution for empirical research about legal institutions and legal processes.<sup>86</sup> In partnership with the University of Illinois, the ABF runs the Center on Law and Globalization, which advances the “social scientific understanding of global law, global legal institutions, and global legal behavior.”<sup>87</sup>

In 2009, there are 191 fully-approved ABA law schools within the United States, plus another nine with provisional accreditation.<sup>88</sup> Of these, 112 schools have one or more ABA-inspected summer programs abroad, with some institutions making this an important offering that would permit most of their students to find something to meet their interests.<sup>89</sup> Notable examples are Santa Clara (fourteen locations), American (eleven), and Pennsylvania State, San Diego, and Tulane (each with seven).<sup>90</sup> Ten schools have semester abroad programs that they administer, typically including mainly American students.<sup>91</sup> Thirty-three schools have ABA-inspected cooperative

83. See ABA Section of Legal Ed. and Admissions to the Bar, Foreign Study Abroad Law Schools, <http://www.abanet.org/legaled/studyabroad/foreignstudyhome.html> (last visited Sept. 15, 2009).

84. See *id.*

85. *Id.*; see also ABA Section of Legal Ed. and Admissions to the Bar, Legal Education Statistics, <http://www.abanet.org/legaled/statistics/stats.html> (last visited Sept. 15, 2009).

86. Am. Bar Foundation, Historical Timeline, <http://www.americanbarfoundation.org/about/historical-timeline.html> (last visited Sept. 15, 2009). The ABF sets its own research agenda, but it still is affiliated with the ABA and receives most of its funding from the American Bar Endowment.

87. Am. Bar Foundation, Mission, [http://www.americanbarfoundation.org/research/Center\\_on\\_Law\\_and\\_Globalization.html](http://www.americanbarfoundation.org/research/Center_on_Law_and_Globalization.html) (last visited Sept. 15, 2009).

88. ABA Section of Legal Educ. and Admissions to the Bar, ABA Approved Law Schools, <http://www.abanet.org/legaled/approvedlawschools/approved.htm> (last visited Sept. 15, 2009). Provisional schools do not usually have the resources or experience to participate significantly in the trans-border activities discussed here. One of the fully accredited schools, the US Army Judge Advocate General's School, does not offer a J.D., but rather an officer's resident graduate course.

89. ABA Section of Legal Educ. and Admissions to the Bar, Foreign Study Programs, <http://www.abanet.org/legaled/studyabroad/foreign.htm> (last visited Sept. 15, 2009).

90. *Id.*

91. ABA Section of Legal Educ. and Admissions to the Bar, Foreign Study Abroad Semester, <http://www.abanet.org/legaled/studyabroad/semester.htm> (last visited Sept. 15, 2009). Iowa administers one of these for a consortium of six schools.

programs abroad with a foreign law school, usually for a semester.<sup>92</sup> These programs are part of a pre-existing foreign course of law study, in which a few American students participate with local law students. Some U.S. schools emphasize this approach, such as North Carolina, with five locations, and Columbia, Connecticut, Cornell, and New Mexico, each with three partner schools.<sup>93</sup>

Based on information from the ABA and the Institute of International Education, about 4600 foreign law school graduates and lawyers in 2008 enrolled in LL.M. degree programs in the United States.<sup>94</sup> Overall, there were 8312 students enrolled in programs other than for the J.D. (primarily LL.M.) degree, which represented 5.5 percent of the total student enrollment.<sup>95</sup> This was a 59 percent increase over the 5227 non-J.D. students in 1990, which at that time was 4 percent of total enrollment.<sup>96</sup> Foreigners in 2008, consequently, made up 55 percent of the post-J.D. group.<sup>97</sup> Fifty U.S. law schools have a special LL.M. program for foreign lawyers.<sup>98</sup> In addition, there are many LL.M. programs in some aspect of international or comparative law, in which many American J.D. students are enrolled along with some foreign students. For instance, there are thirty-three programs classified under international law (and/or comparative law), eighteen under comparative law, eleven under international business, trade, or tax law, and three in human rights law.<sup>99</sup> In 2006-

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92. ABA Section of Legal Educ. and Admissions to the Bar, Foreign Study Abroad Cooperative Programs, <http://www.abanet.org/legaled/studyabroad/coop.html> (last visited Sept. 15, 2009).

93. *Id.* Many law schools send fewer than six students over a three-year period to a cooperating program abroad. Although this requires a report to the ABA, it does not entail ABA inspection and acquiescence. See, e.g., Rutgers Sch. of Law–Newark, Study Abroad at Leiden University, <http://law.newark.rutgers.edu/Academics/study-abroad-leiden-university> (last visited Sept. 15, 2009).

94. See Inst. of Int'l Educ., Fields of Study, International Students, <http://opendoors.iienetwork.org/?p=131537> (last visited Sept. 15, 2009) (the Legal Professions and Studies figure is 6600, which from a variety of ABA sources I calculated to include about 4600 post-J.D. and 2000 J.D. foreign students); *infra* text accompanying note 104.

95. ABA Section of Legal Educ. and Admissions to the Bar, Post J.D. Programs by Category, <http://www.abanet.org/legaled/postjdprograms/postjdc.html> [hereinafter ABA Section, Post J.D. Programs].

96. Clark, *Transnational*, *supra* note 59, at 270-71.

97. ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS: 2009 EDITION 76-854 (2008) [hereinafter ABA-LSAC OFFICIAL GUIDE].

98. ABA Section, Post J.D. Programs, *supra* note 95. There are a few additional schools that have an LL.M. in American Law or American Legal Studies, which must be primarily for foreign lawyers. *Id.* For reflection on the challenges of teaching foreign students, see Julie M. Spanbauer, *Lost in Translation in the Law School Classroom: Assessing Required Coursework in LL.M. Programs for International Students*, 35 INT'L J. LEGAL INFO. 396 (2007).

99. Furthermore, there is one program in Latin American law, one in Asian and

2007, the average tuition required for a foreign student at a public law school was \$25,227; that charge was \$30,520 at a private law school.<sup>100</sup> Making a rough calculation for the approximately 4600 foreign students in non-J.D. programs, the total law school revenue from that source would be about \$128 million.<sup>101</sup>

Although the number of American law school LL.M. programs specifically for foreign lawyers has more than doubled since 1997,<sup>102</sup> another important development is the increase in foreign students and lawyers who enroll in the J.D. degree program. In 2008, 2017 foreign nationals were enrolled in U.S. law school J.D. programs with 582 earning J.D. degrees.<sup>103</sup> Some law schools have a foreign lawyer program that permits one who has earned her law degree abroad to complete the J.D. degree in two years.<sup>104</sup>

**Table 1: Foreign Nationals in U.S. Law School J.D. Degree Programs, by School (2008)<sup>105</sup>**

Law School	Foreign Nationals
Boston University	29
Cardozo	29
Columbia	113
Cornell	28
Detroit Mercy	117

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comparative law, and one in democratic governance and rule of law. ABA Section, Post J.D. Programs, *supra* note 95.

100. ABA Section of Legal Educ. & Admissions to the Bar, Legal Education Statistics, Law School Tuition, <http://www.abanet.org/legaled/statistics/charts/stats%20-%205.pdf> (last visited Sept. 15, 2009).

101. *Id.* This estimate assumes no financial aid and that half the foreign students attend public schools and half attend private schools. Although some financial aid is provided by law schools to foreigners, it would probably be offset by the higher tuition and fees elite private schools charge (e.g., \$47,000 at Columbia and \$46,000 at NYU for 2008-2009).

102. Compare Clark, *Transnational*, *supra* note 59, at 271 (finding twenty-three schools with LL.M. programs for foreigners in U.S. law in 1997), with Am. Bar Ass'n, ABA Post JD/Non JD Programs at Law Schools, <http://www.abanet.org/legal1postjdprograms/postjdc.htm> (last visited Sept. 15, 2009). For a thorough analysis of LL.M. programs today in which foreign law graduates may enroll, see Silver, *supra* note 58, at 146-65.

103. ABA-LSAC OFFICIAL GUIDE, *supra* note 97.

104. See, e.g., Rutgers Sch. of Law-Newark, International Applicants/Foreign Lawyer Program 2009, <http://165.230.71.92/admissions-financial-aid/international-applicants-foreign-lawyer-program> (last visited Sept. 14, 2009).

105. ABA-LSAC OFFICIAL GUIDE, *supra* note 97, at 136, 180, 224, 232, 252, 272, 300, 304, 316, 340, 356, 364, 372, 448, 452, 456, 532, 576, 708, 740, 804.

Emory	25
Fordham	31
Franklin Pierce	28
Georgetown	55
Harvard	72
Howard	35
Illinois	35
Indiana-Indianapolis	42
Miami	59
Michigan	46
Michigan State	59
New York University	51
Northwestern	31
Pennsylvania	28
Suffolk	33
Thomas Cooley	157
Washington University	53

It is notable to observe the variety of law schools represented in Table 1, which includes all schools enrolling at least twenty-five foreign citizens. Although this suggests that the twenty-two listed schools are making a significant effort to attract foreigners into their main program, most other law schools have some participation in this cultural mixing. In addition, the large percentage of law schools with LL.M. programs that enroll foreign lawyers typically allow these students to enroll in some classes also attended by J.D. students. American University's Washington College of Law illustrates this approach. Although not listed in Table 1, its International Legal Studies Program, founded in 1980, coordinated the enrollment of 137 foreign lawyers from fifty-three countries in 2009.<sup>106</sup> Most were LL.M. students, but others were visiting scholars, fellows, and exchange students.<sup>107</sup> Overall, coupled with the increased number of ethnic minority students at US law schools, the classroom experience—compared with the 1970s—is dramatically more interesting and diverse if instructors encourage student perspectives on the material under discussion.

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106. Am. Univ. Washington Coll. of Law, International Legal Studies Program, <http://www.wcl.american.edu/ilsp> (last visited Sept. 15, 2009).

107. Am. Univ. Washington Coll. of Law, Meet our ILSP Students—The International Legal Studies Program, [http://www.wcl.american.edu/ilsp/meet\\_students.cfm](http://www.wcl.american.edu/ilsp/meet_students.cfm) (last visited Sept. 15, 2009) (citing that ninety-eight were LL.M. students, thirteen were scholars, eleven were fellows, and fifteen were exchange students).



Of the four largest law schools in the United States by full-time J.D. enrollment, three appear in Table 1: Harvard (1734 J.D. students), Georgetown (1605), and NYU (1424).<sup>108</sup> They all enroll over fifty foreigners. However, the three schools with over 100 foreigners are diverse institutions. Columbia, located in New York City with a long tradition of involvement in international and comparative law and with its prestigious Parker School of Foreign and Comparative Law,<sup>109</sup> must have been surprised by NYU's announcement as the world's first global law school in 1994.<sup>110</sup> It appears to be in competition with NYU for the "global law school" crown; Columbia's 113 foreign nationals make up over 9 percent of the J.D. population.<sup>111</sup> The other two schools are located in Michigan. Thomas Cooley, unaffiliated with any university, has four campuses and predominantly a part-time J.D. program.<sup>112</sup> It illustrates the great diversity that exists among U.S. law schools, and one way of exhibiting that diversity is by its commitment to enroll foreign nationals.<sup>113</sup> Of its 157 foreign J.D. students, only thirty were full-time.<sup>114</sup> The other institution is a Catholic law school, Detroit Mercy, which the Jesuits and the Sisters of Mercy of the Americas sponsor.<sup>115</sup> The 117 foreign nationals represent almost 16 percent of its J.D. enrollment.<sup>116</sup> Smaller law schools in which foreign student enrollment exceeds 5 percent of the J.D. class are Howard (8 percent), Illinois (6 percent), Michigan State (6 percent), and Washington University (7 percent).<sup>117</sup>

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108. George Washington (1412 J.D. students) enrolled fewer than twenty-five foreign J.D. students as full-time students. See ABA-LSAC OFFICIAL GUIDE, *supra* note 97, at 312.

109. Columbia Law Sch., The Parker School of Foreign and Comparative Law, [http://www.law.columbia.edu/center\\_program/parker](http://www.law.columbia.edu/center_program/parker) (last visited Sept. 15, 2009).

110. NYU Law, Message from the Director, <http://www.law.nyu.edu/global/about/hauser/directormessage/index.htm> (last visited Sept. 15, 2009).

111. ABA-LSAC OFFICIAL GUIDE, *supra* note 97, at 224.

112. *Id.* at 740-43; Thomas M. Cooley Law Sch., Cooley Facts-at-a-Glance, <http://www.cooley.edu/overview/factsataglace.htm> (last visited Sept. 15, 2009).

113. Another notable feature is the school's commitment to educate African Americans (and ethnic minorities in general) to become lawyers. Thomas Cooley enrolled more African Americans in 2008 than Howard, the leading predominantly African American law school in the United States. ABA-LSAC OFFICIAL GUIDE, *supra* note 97, at 356, 740.

114. *Id.* at 740.

115. Univ. of Detroit Mercy Sch. of Law, About University of Detroit Mercy School of Law, <http://www.law.udmercy.edu/mootcourt/pressrelease.php> (last visited Sept. 15, 2009).

116. ABA-LSAC OFFICIAL GUIDE, *supra* note 97, at 252.

117. *Id.* at 356, 364, 456, 804.

*D. Illustrative US Law School Programs in International and Comparative Law*

There are many excellent international and comparative law centers and programs at American law schools, some referred to elsewhere in this article.<sup>118</sup> Two law school examples will have to suffice as illustration. How has NYU, which declared itself in the mid-1990s the world's first global law school program, developed? In 1997, its School of Law enrolled 225 foreigners from fifty countries out of 1500 students.<sup>119</sup> Today's operations are coordinated through the Hauser Global Law School Program. "The goal has been to transform legal education and make NYU Law a 'global' rather than merely a national law school."<sup>120</sup> The program supports up to twenty foreign professors and judges each year who teach at the law school and it enrolls more than 300 foreign students from fifty countries, including those with special Hauser global fellowships, out of about 1700 students.<sup>121</sup> This major commitment represents about 18 percent of the student body, up from 15 percent foreign students in 1997.<sup>122</sup> The program has also introduced global material into first-year courses and "with the largest international student body among American law schools, lively, informed global discussions are a staple in both academic and social spheres."<sup>123</sup>

Traveling uptown in Manhattan, there is Columbia University School of Law. Its commitment to international and comparative law is older than that at NYU,<sup>124</sup> but the two schools have strongly competed since the mid-1990s to distinguish themselves among American law schools as to that commitment.<sup>125</sup> Columbia states that the law school has been "internationalizing" American legal education from its beginning before the American Civil War.<sup>126</sup> "Long

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118. See Van Zandt, *supra* note 58, at 215-16.

119. See Clark, *Transnational*, *supra* note 59, at 268-69.

120. NYU Law, Global, <http://www.law.nyu.edu/global/index.htm> (last visited Sept. 15, 2009).

121. See NYU Law, International Programs for Students, <http://www.law.nyu.edu/global/intlprograms/index.htm> (last visited Sept. 15, 2009).

122. See *supra* note 83 and accompanying text.

123. *Id.*; NYU Law, International Programs for Students, <http://www.law.nyu.edu/global/intlprograms/index.htm> (last visited Sept. 15, 2009).

124. Columbia Law Sch., History of International Law at Columbia, [http://www.law.columbia.edu/center\\_program/intl\\_progs/History](http://www.law.columbia.edu/center_program/intl_progs/History) (last visited Sept. 15, 2009).

125. The national rankings of the two schools have been close in this new century: Columbia and NYU ranked fourth and fifth respectively in 2001 and the same today. *Schools of Law*, U.S. NEWS & WORLD REPORT, Apr. 9, 2001, at 78, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/rankings>.

126. Columbia Law Sch., International Programs, <http://www.law.columbia.edu/>

before global markets and instant worldwide communications forced U.S. practicing lawyers to become aware of laws outside the territory of the United States, Columbia faculty and its students were developing the precepts and principles of public international law, international economic law, and comparative law.”<sup>127</sup> Especially over the past ten years, the law school’s programs in international and comparative law have grown, for instance with double-degree offerings, semester study abroad, international internships, and video conferencing that provides international contact for courses and symposia.<sup>128</sup> Columbia enrolls about 200 foreign lawyers and students from fifty countries in its LL.M. program, which together with the J.D. foreign participation gives the law school over 300 foreigners.<sup>129</sup> With a student body of around 1450, this constitutes about 21 percent of the total.<sup>130</sup> There are also many opportunities for visiting foreign scholars in the school’s seven centers and institutes that specialize by country, region, or topic in dealing with global legal issues.<sup>131</sup>

Dean David Van Zandt of Northwestern University School of Law predicts that in another twenty years, many American law schools will have 20 to 25 percent of their J.D. enrollment from foreign countries and LL.M. programs targeted to foreign lawyers will decline in importance.<sup>132</sup> We have not seen the latter phenomenon, but some schools are approaching the 20 percent figure for all their degree programs.<sup>133</sup> Much will depend on how responsive legal education is in other countries to compete and meet the demands of globalization.<sup>134</sup>

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center\_program/intl\_progs (last visited Sept. 15, 2009).

127. *Id.*

128. *Id.*

129. Columbia Law Sch., Graduate Legal Studies, [http://www.law.columbia.edu/center\\_program/intl\\_progs/GLS](http://www.law.columbia.edu/center_program/intl_progs/GLS) (last visited Sept. 15, 2009).

130. ABA-LSAC OFFICIAL GUIDE, *supra* note 97, at 224.

131. These include Europe, Japan, China, and Korea as well as global legal problems, human rights, and the Parker School for Foreign and Comparative Law. Columbia Law Sch., Regional & International Centers, [http://www.law.columbia.edu/center\\_program/intl\\_progs/Centers](http://www.law.columbia.edu/center_program/intl_progs/Centers) (last visited Sept. 15, 2009).

132. Van Zandt, *supra* note 58, at 217-18.

133. *Id.* at 218.

134. See, e.g., Louis F. Del Duca, *Symposium on Continuing Progress in Internationalizing Legal Education—21<sup>st</sup> Century Global Challenges, Introduction*, 21 PENN. ST. INT’L L. REV. 1, 1 (2002) (discussing global competition for law students); see also Symposium, *Developing Mechanisms to Enhance Internationalization of Legal Education*, 22 PENN. ST. INT’L L. REV. 393, 394-95 (2004). Both of these journal issues include the symposia papers.

## IV. THE SINGULARITY OF AMERICAN LEGAL EDUCATION

American legal education is unusual in several respects. First, the basic program to train lawyers is a graduate degree course, which requires prior study, usually for four years, at a university or college to obtain a bachelor's degree. Second, there is no national ministry of justice that oversees the major elements in legal education: admission of students, hiring instructors, setting tuition and fees, designing a curriculum and mandating certain courses, or even forming a new law school. Third, among more economically developed nations, the United States is virtually alone in not requiring a significant apprenticeship period before a person becomes a fully authorized lawyer. Elsewhere, apprenticeship is not normally the task of a university. Fourth, American law schools lead the world in the use of electronic technology both in teaching and accessing legal materials. Finally, in the aggregate, and especially for the leading law schools, American legal education has a reputation, largely deserved, as the best in the world. It is also the most costly calculated on a per student basis.

A. *A Graduate Degree Program*

American legal education in the nineteenth century grew out of an apprenticeship and law office training system (analogous to the English approach, but without inns of court) into a university program more like that in civil law countries, especially Germany.<sup>135</sup> In the 1870s, Harvard first developed the idea of making law more scientific and thus more prestigious as a discipline.<sup>136</sup> Charles Eliot, president at Harvard University from 1869 to 1909, favored a classroom laboratory method, with its inductive reasoning process, to replace the lecture and recitation methods used in law-office type law schools.<sup>137</sup> He hired Christopher Langdell as law dean in 1870.<sup>138</sup> Over the next fifteen years, the two men worked together to institutionalize several measures that made the study of law more rigorous: an entrance examination, a progressive curriculum ending with a bachelor of laws degree (LL.B.), annual examinations, and a research function.<sup>139</sup> Langdell's most significant innovation was the introduction of an instructional method that utilized Socratic

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135. See David S. Clark, *Tracing the Roots of American Legal Education—A Nineteenth Century German Connection*, 51 *RABELS ZEITSCHRIFT FÜR AUSLÄNDISCHES UND INTERNATIONALES PRIVATRECHT* 313, 317-18 (1987), *reprinted in* 1 *THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES* 495, 496-97 (Steve Sheppard ed., 1999) [hereinafter Clark, *Tracing*].

136. *Id.* at 501.

137. *Id.* at 501, 503.

138. *Id.* at 501.

139. *Id.*

dialogue to discuss appellate cases and encouraged the compilation of the materials into casebooks.<sup>140</sup>

Harvard's success stimulated the spread of this approach to other universities.<sup>141</sup> Prior to the end of World War I, only Harvard and Pennsylvania had decided to make an undergraduate degree a serious requirement for admission to their law schools.<sup>142</sup> However, with the help of the ABA and its accreditation process, this idea prospered. There were over one hundred ABA-approved law schools just prior to World War II, and the large majority of states then required at least two years of college education prior to law school before one would be able to take the state bar examination.<sup>143</sup> By the 1960s, most law schools recognized the shift toward law as a graduate curriculum and began to offer the J.D. degree (juris doctor) in place of the LL.B. Until recently, the only country to transplant this American innovation of law as a graduate program had been Canada.<sup>144</sup>

### *B. Flexible Regulation by a Non-Governmental Organization*

Most countries regulate university legal education through a central ministry of education.<sup>145</sup> In other countries, regulation comes in whole or in part from the ministry of justice, given the subject matter of law.<sup>146</sup> This regulation typically occurs within a nationwide system of public universities, although it might also apply in some respects to private institutions.<sup>147</sup> In the public sector, decisions about budgets, professor salaries, student admissions, buildings, mandatory curricula, and so on are centralized.<sup>148</sup> Complaints about underfunding, overcrowding, stale lecturing, out-of-date curricula, inadequate technology and libraries, and general inefficiencies are common.<sup>149</sup>

However, neither the United States Secretary of Education, nor state departments of education, takes a direct interest in American

140. *Id.*

141. *Id.* at 502.

142. STEVENS, *supra* note 6, at 37.

143. *Id.* at 179-80.

144. See Law Sch. Admission Council, Legal Education in Canada, <http://www.lsac.org/canadiancfc/template2.asp?url=LegalEdCanada.htm> (last visited Sept. 15, 2009).

145. See MERRYMAN ET AL., *supra* note 51, at 848.

146. *Id.*

147. See, e.g., Kyong-Whan Ahn, *Law Reform in Korea and the Agenda of "Graduate Law Schools,"* 24 WIS. INT'L L.J. 223, 224 (2006).

148. See *id.* at 236-37; see, e.g., Norbert Reich, *Recent Trends in European Legal Education: The Place of European Law Faculties Association*, 21 PENN ST. INT'L L. REV. 21, 23 (2002).

149. See Ahn, *supra* note 147, at 233.

legal education either as to admission standards, curricula, or degrees offered.<sup>150</sup> Alternatively the ABA's Section of Legal Education, a private NGO, has developed standards for these matters (and others, such as finances and administration, faculty, library, and building facilities) that it uses to decide, periodically, whether first to accredit and later to reaccredit an American law school.<sup>151</sup> Although some law school administrators complain about the ABA's regulation of their operations, or the undue influence of state bar examinations on their curricula, by comparison, the diversity and high quality of American law school programs is remarkable.<sup>152</sup>

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150. The U.S. Department of Education may accredit (and reaccredit at five-year intervals) an entity to supervise an area of higher education. The ABA's Section of Legal Education is that entity for law. Hulett H. Askew, *Accreditation Update: U.S. Department of Education Rerecognition Process*, 40 SYLLABUS (A.B.A. Section of Legal Educ. and Admissions to the Bar), Winter 2009, at 1.

151. See Charlotte Stretch, *Section Council Begins Comprehensive Review of the ABA Standards for the Approval of Law Schools*, 40 SYLLABUS (A.B.A. Section of Legal Education and Admissions to the Bar), Winter 2009, at 2.

152. Consider this report. In 2005, the ABA Section's Council filed its petition for recognition in 2006 to continue as the Department of Education's (DOE) official accrediting agency for legal education. The DOE scheduled a public hearing for December 2005 with its National Advisory Committee on Institutional Quality and Integrity (NACIQI). The DOE reported to the Section that, due to a large number of third-party comments, its staff would have to postpone the hearing to June 2006. The DOE then rescheduled the meeting to December 2006. Apparently, DOE had received further comments about a change in the Section's diversity standard. The DOE gave the Section an opportunity to respond and some meetings occurred between DOE and the Section. The DOE's staff issued its draft analysis that found the Section in noncompliance on its diversity standard and its supervision of bar passage rates at particular law schools. The Section agreed to issue an Interpretation on bar passage, but disagreed on diversity. The DOE's assistant general counsel informed the Section that DOE staff would recommend to NACIQI an eighteen-month re-recognition. After the December hearing, NACIQI voted to recommend the eighteen months, but to remove the diversity issue from the staff report and to send it the Secretary of Education.

In June 2007, the Secretary approved the eighteen months, but required the Section to file a compliance report by December on the diversity issue, along with specific documents involving 145 law schools and 40,000 pages of materials. In February 2008, the Section informed the 145 schools that it had submitted confidential material, but that the Section had asked DOE to maintain that confidentiality, followed up by letters from the ABA's general counsel emphasizing that request. Sometime in 2008, the *New York Times* and the *Wall Street Journal* requested the DOE to release some of the confidential material under the Freedom of Information Act. The DOE then informed the Section that it had decided to postpone a May 2008 meeting to December since the Section had filed so many pages. In October, the DOE's general counsel informed the Section that it would release the materials in a redacted form to remove school-identifying information. The DOE canceled the December 2008 meeting, a new U.S. president took office in January 2009, and DOE scheduled a meeting with NACIQI for June 2009. Askew, *supra* note 150, at 1, 12-13.

It is fully imaginable that the U.S. Government, or perhaps individual states, might consider it in the national or local interest to regulate legal education more directly. Because of the periodic and widespread nativist political sentiment expressed, not unlike that in other nations, the consequence would probably be harmful for further globalization of legal education. One should see current efforts to globalize American legal education primarily as a decentralized reaction to market forces.

*C. Clinics and Professional Skills Training, but No Apprenticeship*

In the 1950s and 1960s, disenchantment with the predominant emphasis on the Socratic case method of instruction in American legal education, as useful as it might be to teach analytical skills, led to curricular reform that began to consider other skills that lawyers use.<sup>153</sup> In addition to document drafting, seminar research, moot court, and interdisciplinary courses, some advocated teaching professional and practical skills through courses, clinics, externships, or simulations on counseling, negotiation, mediation, advocacy, and later, values and ethics.<sup>154</sup> By the 1990s, when the *MacCrate Report* embraced professional skills education with the active support of practicing lawyers and judges who sometimes felt academic lawyers had left the law, clinics and professional skills had found a home in most law schools.<sup>155</sup>

However, tension between the place of theory and the place of practice in legal education was not resolved. Prior to 1870, of course, there was no tension since American legal education was entirely practical, as it was in most common law countries.<sup>156</sup> It was only the introduction of the civil law, scientific university education at Harvard Law School, motivated to bring prestige to the discipline of law, which introduced the seeds for the problem.<sup>157</sup>

Since a foreign transplant created the problem, perhaps the comparative law method of examining how other countries deal with the issue of practical training for young lawyers can provide an alternative response to American use of in-house practical training.

153. STEVENS, *supra* note 6, at 211-12.

154. *Id.* at 212-16.

155. THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM (Joan S. Howland & William H. Linberg, eds., 1994). Over a decade later, this found support in the Carnegie Foundation's two-year study of legal education, with results and recommendations reported in WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) and ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007).

156. See Clark, *Tracing*, *supra* note 135, at 497-98.

157. *Id.* at 501-02.

The approach in most economically developed civil law countries (and common law nations as well) is apprenticeship independent of the university.<sup>158</sup> The leading examples are France, Germany, Italy, Japan, and Korea for the civil law and Australia, Canada, and the United Kingdom for the common law.<sup>159</sup> Their programs range from six months to three years in length and may include a single area of practice or a rotation among several law jobs.<sup>160</sup> In all of these countries, established lawyers consider it irresponsible to permit an unsupervised university law graduate to practice law on an unsuspecting public.<sup>161</sup> Furthermore, their experience is that academic jurists, as scholars, are simply incapable of providing sufficient practical instruction.<sup>162</sup> Bifurcation benefits everyone.

#### D. Teaching and Information Technology

The use of electronic technology for teaching and research is pervasive in American law schools today, with schools generally extending wireless connections to students in law buildings and their environs.<sup>163</sup> A leading example as it relates to international and comparative law is the Cornell Law School Legal Information Institute (LII), founded in 1992. In addition to instruction in how to find and use electronic information, LII organizes law material by topic and source. The LII world legal materials collection gathers by country and by continent the Internet-accessible primary sources of constitutions, statutes, and judicial opinions and other legal materials from and about legal institutions worldwide as well as international law resources and document collections.<sup>164</sup>

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158. Compare to the U.S. program for first-year medical residents. The 2008 mean annual stipend was \$46,000, paid since 1965 by American workers through their federal Medicare taxes. See MD Salaries, Residency Salaries in United States, <http://mdsalaries.blogspot.com/2005/10/residency-salaries.html> (last visited Sept. 15, 2009); see also Medicare Direct Graduate Medical Education (DGME) Payments, <http://www.aamc.org/advocacy/library/gme/gme0001.htm> (last visited Sept. 14, 2009).

159. David S. Clark, *Comparing the Work and Organization of Lawyers Worldwide: The Persistence of Legal Traditions*, in LAWYERS' PRACTICE AND IDEALS: A COMPARATIVE VIEW 9, 29-33 (John J. Barceló III & Roger C. Cramton eds., 1999) [hereinafter Clark, *Comparing*]; see MERRYMAN ET AL., *supra* note 51, at 854-91; see also GEORGINA WOLFE & ALEXANDER ROBSON, *THE PATH TO PUPILLAGE: A GUIDE FOR THE ASPIRING BARRISTER* (2008) (United Kingdom); Patti Ryan, *The Future of Articling*, LAW STUDENT, Sept. 2008, at 16-23 (Canada); Law Inst. of Victoria, Supervised Workplace Training, at <http://www.careers.liv.asn.au/content.asp?contentid=94> (Victoria, Australia) (last visited Sept. 15, 2009).

160. Clark, *Comparing*, *supra* note 159, at 29-33.

161. *Id.*

162. *Id.*

163. See DAVID I.C. THOMSON, LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE 76-92 (2009).

164. Legal Info. Inst., Law by Source: Global, <http://www.law.cornell.edu/world> (last



### E. Prestige Ranking Worldwide

American legal education, especially among the top tier of fifty schools, has the highest prestige of any legal education in the world.<sup>165</sup> It certainly is the most expensive.<sup>166</sup> The evidence that supports this assertion includes the decision of a large number of foreign lawyers who enroll for further education in the United States, more than those who study in any other foreign country.<sup>167</sup> However, these foreign nationals are as likely to enroll at schools outside the top fifty as with elite schools,<sup>168</sup> which should broaden the prestige among more American schools. In addition, several countries, reacting to the forces of globalization, are transplanting some features of American legal education. These include graduate law schools for the primary law degree in Australia, Japan, and Korea.<sup>169</sup> Finally, international academic ranking systems recognize the quality of American university education, which usually matches with the *U.S. News & World Report* ranking of elite law schools.<sup>170</sup> An example is the ranking, used by *The Economist*,<sup>171</sup> conducted annually by Shanghai Jiao Tong University's Center for World-Class

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visited Sept. 15, 2009). Search engines and Web-ranking systems, such as Google, have identified LII as the most important Web resource by links in the legal field. Legal Info. Inst., The Legal Information Institute: A Quick Overview, <http://www.law.cornell.edu/lii.html> (last visited Sept. 15, 2009).

165. See Van Zandt, *supra* note 58, at 216-18. By comparison, German legal education had this position during most of the nineteenth century until World War I. Clark, *Tracing*, *supra* note 135, at 498-500. Of the 2.9 million international students in 2006, the U.S. hosted 20 percent, the United Kingdom 13 percent, and France and Germany 8 percent each. RAJIKA BHANDARI & PATRICIA CHOW, OPEN DOORS 2008: REPORT ON INTERNATIONAL EDUCATIONAL EXCHANGE 30 (2008).

166. See Van Zandt, *supra* note 58, at 217; see also Silver, *supra* note 58, at 146-48.

167. See Van Zandt, *supra* note 58, at 217; see also Silver, *supra* note 58, at 146-48.

168. Silver, *supra* note 58, at 146-48.

169. See *infra*, part V. The People's Republic of China provides another example, but its adoption of an American J.D.-style three-year professional degree program (called J.M., for juris master) has significant indigenous variation. See Matthew S. Erie, *Legal Education Reform in China through U.S.-Inspired Transplants*, 59 J. LEG. EDUC. 60 (2009). More typical is the creation of a graduate law school that offers masters' degrees in law, often with a specialization. See, e.g., the Riga Graduate School of Law, an autonomous unit of the University of Latvia, created in 1998 with funding from the Soros Foundation. It offers programs in European and International Law, Law and Finance, and Legal Linguistics, all taught exclusively in English. Riga Graduate Sch. of Law, About RGSL, [http://www.rgsl.edu.lv/index.php?option=com\\_content&task=view&id=54&Itemid=107](http://www.rgsl.edu.lv/index.php?option=com_content&task=view&id=54&Itemid=107) (last visited Sept. 15, 2009).

170. U.S. News & World Report, Best Law Schools (Ranked in 2009), <http://grad-schools.usnews.rankingsandreviews.com/grad/law/search> (last visited Sept. 15, 2009).

171. See, e.g., Higher Education: The Future Is Another Country, THE ECONOMIST, Dec. 30, 2008, [http://www.economist.com/world/international/displaystory.cfm?story\\_id=12863408](http://www.economist.com/world/international/displaystory.cfm?story_id=12863408).

Universities. Of the top fifty universities worldwide in 2008, thirty-six are in the United States.<sup>172</sup> Of these thirty-six, twenty-six have a law school.<sup>173</sup> Of the global top one hundred universities, 54 percent are in the United States, followed by 11 percent in the United Kingdom and 6 percent in Germany.<sup>174</sup>

Foreign nationals enroll in American law schools for many reasons.<sup>175</sup> Some may want to reside long term in the United States and hope they may take advantage of their foreign background in the practice of law.<sup>176</sup> Others may already be lawyers in another country, wish to add prestige to their credentials with an American law degree, and return home to practice law with an LL.M. on their letterhead.<sup>177</sup> The next step would be to pass an American state bar examination, with New York being a popular option among foreign LL.M. students, since the LL.M. credential is sufficient to qualify to take that exam.<sup>178</sup> Increasing numbers of foreign lawyers pass the New York test each year.<sup>179</sup> For the July 2008 administration, 2872 foreign-educated lawyers took the examination and 1290 or 45 percent were successful.<sup>180</sup> This further augments their prestige, since it allows the foreign lawyer to practice American law and makes the individual more attractive to a transnational law firm either in the United States or abroad.<sup>181</sup> Of course, a J.D. degree from an ABA-approved law school would make the graduate eligible to take the bar exam of any American state.<sup>182</sup>

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172. Ctr. for World-Class Univs., 2008 Academic Ranking of World Universities, [http://www.arwu.org/rank2008/ARWV2008\\_\(A\)EN.htm](http://www.arwu.org/rank2008/ARWV2008_(A)EN.htm) (last visited Sept. 15, 2009). The ranking methodology relies on the quality of a university faculty as measured by prizes won and articles cited. Nian Cai Liu and Ying Cheng, *Academic Ranking of World Universities—Methodologies and Problems*, 30 HIGHER EDUC. IN EUR. 17 (2005). See Ctr. for World-Class Univs., Ranking Methodology, [http://www.arwu.org/rank2008/ARWU2008Methodology\(EN\).htm](http://www.arwu.org/rank2008/ARWU2008Methodology(EN).htm) (last visited Sept. 15, 2009).

173. This was determined by the author. See also Am. Bar Ass'n, ABA Approved Law Schools Alphabetically, <http://www.abanet.org/legaled/approvedlawschools/alpha.html> (last visited Sept. 15, 2009).

174. Ctr. for World-Class Univs., Analysis, [http://www.arwu.org/rank2008/ARWU2008analysis\(EN\).htm](http://www.arwu.org/rank2008/ARWU2008analysis(EN).htm) (last visited Sept. 15, 2009).

175. See Silver, *supra* note 58, at 156-58.

176. See *id.* at 170-72.

177. See *id.* at 156-58.

178. N.Y. State Bd. of Law Exam'rs, Foreign Legal Education, <http://www.nybarexam.org/Foreign/ForeignLegalEducation.htm> (last visited Sept. 15, 2009).

179. Press Release, N.Y. State Bd. of Law Exam'rs (Nov. 13, 2008), <http://www.nybarexam.org/press/1108pressrelease.pdf>.

180. *Id.*

181. See Silver, *supra* note 58, at 165-67.

182. See, e.g., N.Y. State Bd. of Law Exam'rs, Juris Doctor Graduates of ABA

## V. GLOBALIZATION AND THE INFLUENCE OF AMERICAN LEGAL EDUCATION ABROAD

Legal education is experiencing significant reform in Europe and in the developed countries of East Asia, as well as in many other regions. These reforms are primarily a response to economic and cultural globalization as it has affected the practice of law. Some pejoratively call this process Americanization, perhaps to rally support in cultural defense, and it is clear that in some cases an American model is the starting point for national discussion.<sup>183</sup>

### A. *The Europeanization of Legal Education and the Bologna Process*

Pressures for the Europeanization of legal education have come from both the EU and national governments, and within the latter, from both universities and the legal profession.<sup>184</sup> First, the EU Erasmus and Socrates programs for student and teacher mobility have had a limited impact on legal education. The idea was that law schools would cooperate across borders among the now twenty-seven EU member states to facilitate student exchange and mutual recognition of credits through the ECTS (European Credit Transfer System).<sup>185</sup> The EU provided financial incentives not only to students but also to law faculties and professors to promote this process, but

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Approved Law Schools, <http://www.nybarexam.org/JD.html> (last visited Sept. 15, 2009).

183. See, e.g., Erie, *supra* note 169; Takahiro Saito, *The Tragedy of Japanese Legal Education: Japanese "American" Law Schools*, 24 WIS. INT'L L.J. 197, 202 (2006); see generally Wolfgang Wiegand, *The Reception of American Law in Europe*, 39 AM. J. COMP. L. 229 (1991). At times, the United States government, historically with poor results, directly or indirectly finances the transplant. Those who work in the agencies involved may have good intentions, but too often, local political and cultural realities unduly complicate the task and lead to unforeseen consequences or simply wasted resources. But see, e.g., Univ. of Washington Sch. of Law Asian Law Ctr., Afghan Legal Educators Project, <http://www.law.washington.edu/AsianLaw/Research/Projects/AfghanEducators.aspx> (last visited Sept. 14, 2009). Veronica Taylor, an academic comparatist who understands the cultural issues involved, is the project director. Univ. of Washington Sch. of Law Asian Law Ctr., Afghan Legal Educators Project (2005-2011), <http://www.law.washington.edu/AsianLaw/Research/Projects/AfghanLegalEducatorsProject.pdf> (comparing support for legal education of Afghans at the University of Washington with efforts to develop a "fair and transparent justice system and democratic state in Afghanistan").

184. See, e.g., Alexander H.E. Morawa & Xiaolu Zhang, *Transnationalization of Legal Education: A Swiss (and Comparative) Perspective*, 26 PENN ST. INT'L L. REV. 811 (2008).

185. Laurel S. Terry, *The Bologna Process and Its Impact in Europe: It's so Much More Than Degree Changes*, 41 VAND. J. TRANSNAT'L L. 107, 122 (2008) [hereinafter Terry, *The Bologna Process*].

did not become involved with curricular or accreditation reform.<sup>186</sup> Perhaps 5 percent of European law students participated in these programs.<sup>187</sup> The curricular effects were more indirect. For a law school to be more attractive, it had to develop European and comparative courses, frequently in English.<sup>188</sup> This weakened the traditional nationalistic approach to law.

Second, since the EU was committed to liberalize trade in services, which meant foreign access to the legal profession, it adopted, after protracted negotiations, diploma recognition directives.<sup>189</sup> These allow lawyers from one EU country to practice law in another EU country under their home titles, and after either an additional exam or three years of continuous legal practice, under the host country title.<sup>190</sup> This stimulated multi-jurisdiction practice, especially with neighboring countries that already had traditional academic and linguistic ties in legal education.<sup>191</sup>

What does the United States have to do with these developments? Norbert Reich, rector at the Riga Graduate Law School in 2002, law professor at University of Bremen, and formerly president of the European Law Faculties Association, provided this analysis in 2002:

The opening of the legal profession and legal academia to competition has probably been the most dramatic development in European legal education in the last ten to fifteen years, and it is here that the American model has had the greatest influence. The first such development concerned the type of studies themselves, especially the popularity of LL.M. programs offered by highly qualified U.S. law schools and which host some of the best European law students. Many European law faculties followed suit and have now developed their own post-graduate programs. These studies are much more open, competitive, and specialized than the traditional legal education. They are now an attractive and popular addition to what are still nationally oriented undergraduate law studies.

Another element of competition has been the expansion of the big U.S. law firms (mostly via mergers with British, Dutch, and German firms) which require a different type of lawyer: one who is proficient in both English and his or her native language, who

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186. Reich, *supra* note 148, at 24.

187. *Id.* In the academic year 2006-2007, 10,245 law students studied for at least three months in another EU country. European Commission Education & Training, *Erasmus Student Mobility 2006/07 (Subject Areas)*, <http://ec.europa.eu/education/erasmus/doc/stat/table207.pdf>.

188. Reich, *supra* note 148, at 24.

189. *Id.*

190. *Id.*

191. *Id.* at 24-25.

masters international transactions, and refers them back to national law (i.e., taxation, company, environmental, consumer law, and mergers and acquisitions), and who is aware of the European and global impact of his or her professional work. The traditional national model of legal education is much too narrow for this new profile of an internationally mobile lawyer.<sup>192</sup>

Reich concluded that national law schools would have to continue to graduate traditional “lawyers, judges, prosecutors, state officials, company executives, and interest group lobbyists,” educated in their national legal systems.<sup>193</sup> However, they must now co-exist with European and international lawyers. This requires that European legal education become more specialized, cooperative, comparative, and international.<sup>194</sup>

The Bologna Process to reform all of higher education, an initiative started in 1998 by European university rectors,<sup>195</sup> complemented these legal education concerns. After an initial meeting in Paris, the European ministers of higher education in 1999 assembled in Bologna. Their Bologna Declaration recommended the restructuring of tertiary education with a uniform three-five-eight-year sequence of degrees, modeled on the typical American university model that begins with a bachelor’s degree.<sup>196</sup> Since European students are better educated than Americans are after secondary education, that first degree would take only three years of studies.<sup>197</sup> For better students, a master’s program averaging two years might follow.<sup>198</sup> Finally, for those desiring an academic career, a doctoral degree would be available for three more years of study and research.<sup>199</sup> The goals were to increase the quality, transparency, and competitiveness of the European Higher Education Area (EHEA) and to shorten the length of studies that might reduce high dropout rates. Today, forty-six countries are participating in the Bologna Process and the EHEA.<sup>200</sup>

Relevant for legal education, Laurel Terry identified five goals of the Bologna Process as it has evolved through a series of biennial

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192. *Id.* at 25; see Laurel S. Terry et al., *Transnational Legal Practice*, 43 INT’L LAW. 943 (2009). The *National Law Journal* estimated that in the past twenty years, the growth of U.S. law firm overseas activity exceeded its domestic counterpart by a ratio of ten to one. The U.S. legal services export revenue figure in 2007 was \$6.4 billion. *Id.* at 943-44.

193. Reich, *supra* note 148, at 25-26.

194. *Id.* at 26.

195. See *id.* at 29.

196. *Id.*

197. *Id.*

198. *Id.* at 180-81.

199. *Id.*

200. *Id.* at 28.

meetings.<sup>201</sup> These are the development of:

- (1) European student "outcomes" or particular subject competence;
- (2) mechanisms to recognize students (and lawyers) who have studied outside their home country;
- (3) European-level quality-assurance standards;
- (4) higher education that is more responsive for business and industry needs to help Europe become "the most competitive knowledge-based economy in the world;" and
- (5) standardized curricular programs.<sup>202</sup>

This latter point is particularly important for American legal education. If forty-six European countries decide that European law students should master certain legal concepts, then Europe's size and the global nature of the American economy would require transnational lawyers also to be familiar with those concepts.<sup>203</sup>

In 1989, the EU introduced the European Credit Transfer System (ECTS) as part of the Erasmus program.<sup>204</sup> Initially it was a credit transfer system with the principle that sixty credits measure a full-time student's course load during an academic year.<sup>205</sup> This would provide an institution with a uniform basis for evaluating each course as it applied to foreign study. More recently, the ECTS has evolved to encompass an accumulation system that officials should implement at a variety of levels for an institution, region, nation, and Europe.<sup>206</sup> They now use ECTS to measure whether a student should receive a particular degree, regardless of studies abroad.<sup>207</sup>

The implementation of the Bologna Process for higher education within Europe as it relates to legal training is supposed to make it easier for those who have commenced law study to move from one country to another to further their studies, earn a degree or other credential, or successfully seek employment. Bologna proponents, moreover, argue that it will also make European higher education more attractive to non-Europeans who might come to study or work in Europe.<sup>208</sup>

For example, France implemented from 2003 to 2006 the LMD

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201. *Id.* at 29; see also Terry, *The Bologna Process*, *supra* note 185, at 112.

202. Terry, *The Bologna Process*, *supra* note 185, at 112.

203. *Id.*

204. *Id.* at 123.

205. *Id.*

206. *Id.*

207. *Id.*; see Convention on the Recognition of Qualifications concerning Higher Education in the European Region, Nov. 4, 1997, CETS No. 165, <http://conventions.coe.int/Treaty/en/Treaties/Html/165.htm> (last visited Sept. 15, 2009).

208. See Terry, *The Bologna Process*, *supra* note 185, at 124.

Reform (for *Licence-Master-Doctorat*) called for in the Bologna Process.<sup>209</sup> As of 2007, most university law departments used these three diplomas awarded after three years (*licence*), then two years (*master*, needed to enter legal apprenticeship training, replacing the former *maîtrise en droit*), and finally three years of study for the advanced *doctorat* degree.<sup>210</sup> The law departments also now use the ECTS credit system, for instance, requiring 180 ECTS for the *licence*.<sup>211</sup> France's oldest law faculty (from the twelfth century), today called the Université Paris 1, Panthéon-Sorbonne, has five departments in which law is taught: Administrative and Public Sector Law; Business Law; International and European Studies; Economics, Labor, and Social Law; and General Legal Studies.<sup>212</sup> The General Legal Studies Department works with the other four law departments and with the political science department.<sup>213</sup> All law students registered for their first degree (*licence*), as well as first and second year politics students, enroll in General Legal Studies.<sup>214</sup> Other university law faculties also usually combine with the political science or economics discipline and develop special curricula in addition to their core courses.<sup>215</sup>

Implementation of the Bologna Process in Germany has been more difficult for two major reasons. First, after years of debate, the federal government adopted changes in 2002 that were its response to the most pressing issues.<sup>216</sup> To reconsider those reforms so soon after their enactment would require substantial political pressure. Second, the Bologna Process itself is an initiative of ministers of education and is a university-wide reform.<sup>217</sup> The Federal Judge Act, however, controls legal education, and state-level ministers of justice administer the two state examinations required to become a judge or

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209. See generally Ministère de l'éducation nationale, Bureau des affaires communautaires, *Implementation of the "Sorbonne/Bologna" Process Objectives (1998-2003)*, Aug. 19, 2003, at 3, [http://www.bologna-berlin2003.de/pdf/France\\_report\\_eng.pdf](http://www.bologna-berlin2003.de/pdf/France_report_eng.pdf).

210. *Id.*

211. *Id.* at 4.

212. Université Paris 1 Panthéon-Sorbonne, Bienvenue-Welcome, <http://www.univ-paris1.fr> (use drop down menu for Composantes to find the UFR departments, i.e., UFRs 01, 05, 07, 12, and 26) (last visited Sept. 15, 2009).

213. Université Paris 1 Panthéon-Sorbonne, Etudes Juridiques Générales, <http://www.univ-paris1.fr/ufr/ufr26-etudes-juridiques-generales> (last visited Sept. 15, 2009) [hereinafter Université Paris 1 Panthéon-Sorbonne, Etudes].

214. *Id.*

215. Université Paris 1 Panthéon-Sorbonne, Etudes, *supra* note 213.

216. See Stefan Koriath, *International Conference on Legal Education Reform: Legal Education in Germany Today*, 24 WIS. INT'L L.J. 85, 102 (2006) (discussing the change in federal law replacing the Habilitation with the Junior professor).

217. See Terry, *The Bologna Process*, *supra* note 185, at 113-14.

a lawyer.<sup>218</sup> Nevertheless, some German law faculties and state ministers of education have tried to reach a compromise position, which the programs and curriculum at the University of Hamburg Law Faculty illustrate.<sup>219</sup>

In 2003, the Hamburg Law Faculty instituted two new programs to satisfy the obligations of the Bologna Process: the *Baccalaureus Juris* (six semesters) and *Magister Juris* (eight semesters) degrees.<sup>220</sup> A student can now get a university degree in law without taking the First State Exam, which the Judges Law requires to enter the apprenticeship program to become a judge or lawyer.<sup>221</sup> Time will tell whether the *Baccalaureus Juris* degree is useful for a law-related job or other job in government or commerce. The degree does not prohibit students from continuing their studies and then taking the state examination. A student must enroll at Hamburg for a full year before making application for either degree.<sup>222</sup> A person who receives the *Magister Juris* degree will also satisfy the admission requirements for the First State Exam.<sup>223</sup>

### B. Japan: Training "Doctors for the People's Social Life"

In 1999, the Japanese government established the Justice System Reform Council (JSRC) to study and recommend to the prime minister reforms to improve the national justice system.<sup>224</sup> The JSRC's report recommended less trial delay, lay judges for serious criminal cases, legal aid to persons immediately after arrest instead of only after indictment, full-time civil and criminal legal aid staff lawyers, an alternative dispute resolution (ADR) program accreditation system, and the deregulation of practicing attorneys (*bengoshi*).<sup>225</sup>

The JSRC found that a larger number of lawyers, particularly *bengoshi*, would be required to implement these reforms and set a goal to triple the number of new lawyers by 2010.<sup>226</sup> To accomplish this, it recommended establishing postgraduate law schools by

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218. Korioto, *supra* note 216, at 91-93.

219. Univ. of Hamburg, Faculty of Law, Studies, Baccalaureus and Magister, <http://english.jura.uni-hamburg.de/studies/BaccMag.php> (last visited Sept. 15, 2009).

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. Setsuo Miyazawa, Kay-Wah Chan & Ilhyung Lee, *The Reform of Legal Education in East Asia*, 4 ANN. REV. L. & SOC. SCI. 334, 339-40 (2008), <http://arjournals.annualreviews.org/doi/abs/10.1146/annurev.lawsocsci.3.081806.112713>.

225. *Id.* at 340.

226. *Id.*



2004.<sup>227</sup> The traditional Japanese system of legal education and lawyer training consisted of earning a degree at an undergraduate four-year law faculty, passing the Justice Ministry's national bar examination, and completing the Supreme Court's apprenticeship program run by the Legal Training and Research Institute (LTRI).<sup>228</sup>

Since the late nineteenth century, when Japan transplanted the European civil law system, Japan's legal system has included the typical European undergraduate law faculties.<sup>229</sup> However, it established these not primarily to educate future practicing lawyers, but rather to educate government bureaucrats and judges.<sup>230</sup> Even after World War II, law faculties continued primarily to function as general education programs that produced employees for business and government.<sup>231</sup> Although a law faculty is the only place where students can receive a comprehensive legal education, they do not need an undergraduate law degree (LL.B.) to take the national bar examination.<sup>232</sup> The current 100-plus undergraduate law faculties, with approximately 200,000 students, train more law students than the number who study in the United States.<sup>233</sup>

A large number of university graduates take the national bar examination.<sup>234</sup> Nevertheless, until 1990, only about 500 per year passed, since the LTRI had set a pass rate of about 2 percent.<sup>235</sup> Due to pressure from outside the legal profession, that number increased steadily during the 1990s to reach 1000 in 1999, a pass rate of 3 percent.<sup>236</sup> Those who passed the exam then spent two years in apprenticeship (reduced recently to eighteen months) as judicial trainees with government-paid stipends.<sup>237</sup> LTRI faculty provided practical instruction at the beginning and end of this period.<sup>238</sup> For the remainder of the time, trainees received field experience at courts, prosecutor offices, and *bengoshi* law offices in assigned regions throughout the country.<sup>239</sup> After completing the apprenticeship, trainees could choose the judiciary, prosecution, or

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227. *Id.*

228. *Id.* at 340-41.

229. *Id.* at 340.

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.* at 340-41.

235. *Id.* at 341.

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

the bar (the legal profession's three branches), for their career.<sup>240</sup>

The old system resulted in an extremely small number of *bengoshi*, about 15,000 attorneys in the 1990s, for Japan's 120 million people. In addition, the distribution of attorneys ill-served most of Japan, with 60 percent in Tokyo and Osaka. Many jurisdictions (called zero-one districts) had either no attorney or one attorney.<sup>241</sup>

Hideo Tanaka, an Anglo-American law professor at the University of Tokyo and Harvard Law School, criticized this system.<sup>242</sup> He argued for the transformation of university legal education to professional education.<sup>243</sup> Since the LTRI was the major impediment in the training of more lawyers, which moreover resulted in an unduly conservative judiciary, Setsuo Miyazawa, who taught law at Harvard and other North American universities, proposed the establishment of law schools. These law schools would provide professional legal education at a postgraduate level and replace the LTRI with clinical programs.<sup>244</sup>

The political dynamic in Japan changed in the 1980s. At this time, large corporations began to see the justice system as out of date.<sup>245</sup> They first sought business deregulation with fewer government regulations as a means to revitalize the Japanese economy. Political slogans supported transparency in administrative processes and citizen responsibility to protect their own interests with less government paternalism. The government responded with a series of deregulation and other administrative reforms.<sup>246</sup> By the late 1990s, the business community's focus had turned to the judicial system and legal profession. These they saw as alternatives to protect their interests instead of the government bureaucracy.<sup>247</sup>

The JSRC was able to build on this business support with an argument that the rule of law needed improvement through the development of more popular support for an accessible court system.<sup>248</sup> It was unusual that a government committee (such as the JSRC) would announce so clearly the need to change a major segment of the legal system, given how deeply entrenched the existing justice system was in Japanese legal culture.<sup>249</sup> The agenda

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240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.* at 339-42.

245. *Id.* at 342.

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

called for the government to establish professional law schools to produce many more and better-educated lawyers as “doctors for the people’s social life.”<sup>250</sup>

The JSRC’s final recommendations in 2001 set in motion efforts to create graduate law schools that would in the beginning supplement undergraduate legal education, but might come to replace it for students wishing to become judges, prosecutors, and attorneys.<sup>251</sup> The JSRC wanted to:

- (1) increase the number of successful bar examination takers from 1000 in 1999 to 1500 by 2004;
- (2) create a new system of *graduate* law schools (*hoka daigakuin*) to train lawyers with a process that would organically connect legal education, the bar exam, and apprenticeship;
- (3) introduce these graduate law schools in 2004; and
- (4) introduce a new bar examination for these law school graduates that would produce 3000 new lawyers per year by 2010.<sup>252</sup>

The JSRC predicted that by 2018 the total number of practicing attorneys would reach 50,000, an enormous increase from the 20,000 in 1997.<sup>253</sup>

One can see the parallel between the new Japanese graduate law schools and the American system of legal education.<sup>254</sup> The JSRC decided not to turn undergraduate law faculties into professional schools for two main reasons: (1) they had never provided the new kind of teaching envisioned and changing their culture would be too difficult; and (2) it would be impractical to transform all of the undergraduate law faculties into professional schools, since they had so many students.<sup>255</sup> The JSRC wanted to graduate a larger number of practicing attorneys with an education more relevant to its social goals and to the globalized business world that preferred the transnational talent found in large law firms.<sup>256</sup> It also desired to

250. *Id.* at 342-43.

251. *Id.* Considering only *bengoshi* (15,500) as lawyers is very misleading. In 1995, the total number of legal service providers was 141,675. Besides judges (2740) and prosecutors (2000), whom the LTRI also trains, other “lawyers” or legal service providers are typically educated at university law faculties. Their division and numbers were tax agents (*zeiri-shi*) (62,000), administrative scriveners (*gyōsei shoshi*) (35,000), legal scriveners (*shihō shoshi*) (17,360), patent agents (*benri-shi*) (3500), notaries (*kōshō-nin*) (534), and business legal staff (3000). Dan Fenno Henderson, *The Role of Lawyers in Japan*, in JAPAN: ECONOMIC SUCCESS AND LEGAL SYSTEM 27, 38-39 (Harald Baum ed., 1997).

252. Miyazawa et al., *supra* note 224, at 343.

253. *Id.*

254. *Id.*

255. *Id.* at 343-44.

256. *See id.* at 344.

educate attorneys with diverse academic and social backgrounds and reduce applicant numbers for the new bar examination. The latter would likely generate a concomitant higher passage rate closer to that in the United States. The JSRC hoped that students would devote themselves to law studies in the new schools rather than depend on exam cram schools.<sup>257</sup>

By 2005, Japan had seventy-four new law schools with about 5800 students in the entering class.<sup>258</sup> The admission process requires an LSAT-type aptitude test.<sup>259</sup> About 60 percent of the new students were law faculty graduates, with the remainder from other undergraduate fields and a significant group that had "life experience."<sup>260</sup> Tuition is substantially higher than at undergraduate law faculties, ranging from \$7000 at public law schools to between \$10,000 and \$18,000 at private law schools.<sup>261</sup> These schools, which have now formed the Japan Law School Association, will award the J.D. degree (*Homu Hakushi*).<sup>262</sup> The education ministry has delegated the accreditation and reaccreditation process (at five-year intervals).<sup>263</sup> At least a fifth of the full-time faculty should have practical experience, often as judges or prosecutors. The maximum student-faculty ratio should be fifteen to one. Besides basic doctrinal courses, schools have introduced new subjects, such as international human rights, and added practical skills classes, clinics, and simulations.<sup>264</sup> Interested professors formed the Japan Clinical Legal Education Association in 2008.<sup>265</sup>

Speed bumps appeared almost from the beginning. The justice ministry, which controls the LTRI examination, refused to accelerate the passage rate to 70 percent, as the JSRC had recommended.<sup>266</sup> For the new exam's first round in 2006, which emphasized the reform curriculum, the passage rate was 48 percent, which then declined in 2007 to 40 percent and in 2008 further to 33 percent.<sup>267</sup> This led to a substantial reduction in graduate law school applicants, with only 30 percent applying without an undergraduate law degree.<sup>268</sup> The cram

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257. *Id.*

258. *Id.* at 346.

259. *Id.*

260. *Id.* at 346-47.

261. *Id.*

262. *Id.*

263. *Id.*; see, e.g., Japan Univ. Accreditation Ass'n, Law School, [http://www.juaa.or.jp/en/accreditation/law\\_school.html](http://www.juaa.or.jp/en/accreditation/law_school.html) (last visited Sept. 15, 2009).

264. Miyazawa et al., *supra* note 224, at 347.

265. *See id.*

266. *Id.* at 343-46.

267. *Id.* at 348-49.

268. *Id.* at 348.

schools have increased their enrollment again with new products aimed at the reformed bar exam.<sup>269</sup> Commentators expect that several of the new law schools will soon close.<sup>270</sup>

### C. New Graduate Law Schools in Korea

Japanese influence on Korea's modern legal institutions, beginning at the end of the nineteenth century and increasing during Japan's colonial occupation from 1910 to 1945, continues in the twenty-first century.<sup>271</sup> When Japan reformed legal education in 2004, Korean jurists and business people monitored the situation.<sup>272</sup> For years, Korean jurists had considered changes in their own legal education system, following criticism that it failed to meet the needs of contemporary society.<sup>273</sup>

In 2007, Korea's National Assembly enacted legislation to implement American-style professional law schools.<sup>274</sup> The Act on the Establishment and Management of the Law School was the final formal impediment after much contentious debate.<sup>275</sup> Korea's current legal education system is remarkably similar to that in Japan prior

269. *Id.* at 349.

270. *See id.* at 349. One school lost its accreditation "for being too much like a cram school," and the same fate may befall other schools. *Id.* Additionally, the advent of a "bypass route" in 2011, whereby a student who passes the Preliminary Examination may sit for the bar exam without attending law school, may "kill the whole system." *Id.* For more detail about the Japanese legal education reform, see Masako Kamiya, *Structural and Institutional Arrangements of Legal Education: Japan*, 24 WIS. INT'L L.J. 153 (2006); Mark A. Levin, *Japan's New Law Schools: Elite, Cautious, Regional and Idealist*, 62 JAPANESE J.L. & SOC'Y 139 (2005); James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Profession into Legal Education*, 13 PAC. RIM L. & POL'Y J. 303 (2004); Setsuo Miyazawa, *The Politics of Judicial Reform in Japan: The Rule of Law at Last?*, in RAISING THE BAR: THE EMERGING LEGAL PROFESSION IN EAST ASIA 107, 107-15, 136-62 (William P. Alford ed., 2007); Luke Nottage, *Build Postgraduate Law Schools in Kyoto, and Will They Come—Sooner and Later?*, 7 AUSTRALIAN J. ASIAN L. 241 (2006); Kahei Rokumoto, *Legal Education*, in LAW IN JAPAN: A TURNING POINT 190 (Daniel H. Foote ed., 2007); Hidetoshi Hashimoto, *Legal Reform in Japan: The Establishment of American Style Law Schools and Reinstitution of Jury System* (2007), [http://www.allacademic.com/meta/p178567\\_index.html](http://www.allacademic.com/meta/p178567_index.html) (last visited Sept. 15, 2009) (unpublished paper presented at the annual meeting of the International Studies Association, Chicago, Feb. 28, 2007); Mayumi Saegusa, *Why the Japanese Law School System Was Established: The Mechanisms of Institutional Creation* (2006), [http://www.allacademic.com/meta/p103976\\_index.html](http://www.allacademic.com/meta/p103976_index.html) (last visited Sept. 15, 2009) (unpublished paper presented at the annual meeting of the American Sociological Association, Montreal, Canada, Aug. 11, 2006).

271. Miyazawa et al., *supra* note 224, at 351.

272. *See id.*

273. *Id.*

274. *Id.*

275. *Id.*

to 2004, beginning with taking the national judicial service examination, which, like Japan's national bar exam, does not require an undergraduate law degree as a prerequisite.<sup>276</sup> The reality is that students enroll in cram schools, often for years, to prepare for the exam and only 1000 (or approximately 5 percent) are successful each year.<sup>277</sup> Those who pass the examination attend the Judicial Research and Training Institute (JRTI), under the Korean Supreme Court's supervision, for a two-year apprenticeship program.<sup>278</sup>

In 2008, the education ministry issued regulations under the 2007 Act and selected twenty-five universities to house the new law schools.<sup>279</sup> Fifteen are in Seoul and the largest school, at Seoul National University, will admit 150 students for each class in a three-year curriculum.<sup>280</sup> The nationwide law school enrollment is set at 2000 per class, and operations began in March 2009.<sup>281</sup> Thus, unlike Japan, where a substantial gap between the number of law school graduates and those permitted to pass the national bar exam already endangers many law schools, the enrollment size in Korean graduate law schools should be kept close to the expected number of students the JRTI will allow to pass the examination.

Although one might contend that this illustrates a Japanese legal transplant in Korea, another perspective is that the Korean solution is a reaction to the same economic and cultural globalization that has affected the practice of law in developed countries worldwide.<sup>282</sup> Its reality is represented by the huge transnational law firms, now even in Tokyo and soon to be in Seoul, and the pervasive presence of global NGOs. "The influence of U.S. law on the Korean counterpart may be best evidenced by the number of government officials, judges, prosecutors, academics, and practitioners obtaining advanced degrees or visiting scholar positions in law schools in the United States."<sup>283</sup> Since 2000, Korean law faculties have increasingly adopted certain American law school elements, such as clinics, legal ethics, and specialized courses on subjects such as international

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276. *Id.* at 340-41, 351-52. However, in both countries, the overwhelming majority who pass the examination do possess undergraduate degrees. *Id.*

277. The Korean government establishes a quota on the number of examinees who may pass each year. *Id.* at 351 (the current quota is 1000).

278. *Id.* at 351-52.

279. *Id.* at 353.

280. *Id.* at 353-54. Korea will not offer the two-year alternative program that some Japanese law schools have. *Id.* at 354. In addition, in Korea, those universities with the new law schools must drop their undergraduate legal programs. *Id.*

281. *Id.* at 351, 354.

282. *Id.* at 354-55; see Ahn, *supra* note 147, at 228-31..

283. Miyazawa et al., *supra* note 224, at 354.

business transactions.<sup>284</sup> In 2004, authorities made English a required subject on the Korean bar exam and the JRTI added international contracts and other international subjects to its curriculum.<sup>285</sup>

## VI. CONCLUSION

What can one learn about the status and improvement of American law schools in light of this brief survey? First, U.S. legal education taken together is already the best in the world. This does not mean that it is perfect, or even that it is adequate for the needs of American society. Rather, it is a costly product that in some dimensions others find useful—more useful than what other countries offer their own students or others.

Second, the situation is dynamic in response to worldwide pressures of economic and cultural globalization. Foreign legal education systems, public and private, are striving to catch up with the United States, and perhaps to even surpass it. In particular, European regional associations, including the EU, are engaged in a full-scale effort to produce transnational and global lawyers. The EU primarily promotes these activities as an economic issue, that is, as competition for legal service fees.

Third, most countries recognize the importance of lawyers learning a foreign language as the principal method to better understand another culture and to become less parochial. Sometimes an entire national legal educational and training system mandates a specific language, occasionally English, as in Korea,<sup>286</sup> but more often a choice of several languages, as in Germany.<sup>287</sup> Other times, a particular educational institution mandates the foreign language, such as English at the Bucerius Law School in Germany,<sup>288</sup> or the

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284. *Id.* at 355.

285. *Id.* at 354-55. For more detail about Korean legal education and reform efforts, see Sang-Hyun Song, *The Education and Training of the Legal Profession in Korea: Problems and Perspectives for Reform*, in *RAISING THE BAR: THE EMERGING LEGAL PROFESSION IN EAST ASIA* 21 (William P. Alford ed., 2007). The next East Asian country to attempt legal education reform may be Taiwan. See Chang-Fa Lo, *Possible Reform for Legal Education in Taiwan: A Refined "J.D. System?"* 1 *ASIAN J. COMP. L.* 1 (2006), <http://www.bepress.com/asjcl/vol1/iss1/art7>.

286. Miyazawa et al., *supra* note 224, at 354-55.

287. See Britannica Online Encyclopedia, Secondary Education <http://www.britannica.com/EBchecked/topic/531682/secondary-education> (last visited Sept. 15, 2009). An example of the equivalent foreign language requirement at the high school level in the United States would be the diploma offered in the International Baccalaureate Program. See Int'l Baccalaureate Org., Diploma Programme Curriculum, <http://www.ibo.org/diploma/curriculum> (last visited Sept. 15, 2009).

288. See Bucerius Law Sch., Legal Studies, <http://www.law-school.de/20.html?&L=1>

option of English as part of the foreign language requirement at the National Autonomous University of Mexico Faculty of Law.<sup>289</sup>

Accordingly, those American law schools that decide to devote substantial resources to international and comparative law should continue to be in an enviable position. Of course, this is not the only way for a school to distinguish itself in competition for law students. Nevertheless, it does serve the interests of many students, including those who are not American citizens, who desire to enter a career in which they will work to solve social problems that have a multinational or even global dimension, including issues involving the environment, war and peace, human rights, population migration, or economic development. Lawyers involved in these causes work for governments, businesses, or NGOs. American transnational lawyers may live in the United States or abroad.

The single greatest deficiency that most American-born law students have in competition with foreign law students is the failure to have even moderate fluency in a foreign language. Although it is possible to learn much about a foreign culture by studying its history, politics, or literature in translation, deeper knowledge comes only with living in a foreign land and learning to speak and read its language. Unfortunately, total enrollment in modern foreign languages in American colleges and universities has been weak and even declining since 1968, although there was an increase of 12.5 percent between 1998 and 2002.<sup>290</sup> The percentage of higher education students taking language courses has fallen from 16.1 per hundred in 1960, to 14.3 in 1968, to 8.6 in 2002, so that currently only about 9 percent of students study one of the twelve most common modern foreign languages.<sup>291</sup> Moreover, Spanish has come to dominate instruction, representing 56 percent of the language enrollment in 2002 compared to 30 percent in 1960.<sup>292</sup> Only 16 percent of language students in 2002 studied Chinese, German, Japanese, Korean, or Russian that could provide an important

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(last visited Sept. 15, 2009).

289. UNAM Facultad de Derecho, Planes de Estudio, <http://v880.derecho.unam.mx/web2/modules.php?name=facultad&file=plan1342> (Idioma) (last visited Sept. 15, 2009); see UNAM Facultad de Derecho, Los Cursos de Idioma "Ingles," [http://www.derecho.unam.mx/web2/descargas/horarios/IDIOMA\\_INGLES1138.pdf](http://www.derecho.unam.mx/web2/descargas/horarios/IDIOMA_INGLES1138.pdf) (last visited Sept. 15, 2009). The other two options are French or Italian. *Id.*

290. Elizabeth B. Welles, *Foreign Language Enrollments in United States Institutions of Higher Education, Fall 2002*, 35 ADFL BULLETIN 7, 8-9 (2004), <http://www.adfl.org/resources/enrollments.pdf>. The modern language enrollments compared between 1998 and 2002 excluded ancient languages and American Sign Language. *Id.* at 9.

291. *Id.* at 12.

292. *Id.* at 13.



advantage in transnational legal practice.<sup>293</sup>

What could American law schools do to remedy this deficiency? A school could make one or more easy adjustments. First, it could offer law school credit toward graduation for up to six or eight credits of foreign language study. Unlike proficiency in written English, which all law students must demonstrate, a school might supervise foreign language study and permit it only when a student demonstrates its relevance to future career plans. Since most law schools are part of universities that offer foreign language courses, this solution would be simple. Second, a school could advise applicants that in its admission decisions it provides favorable treatment toward those who demonstrate fluency in a foreign language. This would serve to promote diversity in yet another way at American law schools. Either or both of these approaches would fit well with a school's specialization in comparative and international law, such as those that provide a certificate program.

A more costly solution would be for a law school to offer foreign language courses emphasizing legal problems within the law school curriculum. A commendable example is the University of Pittsburgh School of Law, which offers an international and comparative law certificate. Besides the courses required for the certificate, a student must enroll in at least nine credits of elective courses, which include: Chinese for Lawyers I and II, French for Lawyers I and II, German for Lawyers I and II, Japanese for Lawyers I and II, and Spanish for Lawyers I and II.<sup>294</sup> Attorneys may also enroll in these language courses.<sup>295</sup> In addition, using the advantage of being part of a university, the law school permits its students to earn an area studies certificate for global studies or for one of several regions: Asia, Latin America, Russia and Eastern Europe, or Western Europe. These certificate programs require proficiency in one of the region's

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293. *Id.*

294. Univ. of Pittsburgh Sch. of Law, International & Comparative Law Certificate, <http://www.law.pitt.edu/academics/cile/jdprogram/intcertificate> (last visited Sept. 15, 2009); Univ. of Pittsburgh Sch. of Law, International Law Courses, <http://www.law.pitt.edu/academics/cile/courses> (last visited Sept. 15, 2009). Vivian Curran created the Languages for Lawyers Program, in which students study foreign languages in a legal context. See Univ. of Pittsburgh Sch. of Law, Vivian Curran, <http://www.law.pitt.edu/faculty/profiles/curranv> (last visited Sept. 15, 2009). Her course book, *Comparative Law: An Introduction* (2002), takes a cultural view of comparative law, emphasizing the importance of language. It has chapters on, for example, comparative law as translation and comparison by cultural immersion.

295. Univ. of Pittsburgh Sch. of Law, Languages for Lawyers Program, <http://www.law.pitt.edu/academics/cile/jdprogram/languages> (last visited Sept. 15, 2009). Program leaders have designed the Languages for Lawyers courses to facilitate communication among American lawyers and their foreign clients. Moreover, they can transmit a sense of foreign legal cultures to American practitioners. *Id.*

languages, plus the completion of six courses and an interdisciplinary research paper. One may take three of these courses in the law school, with the other three in at least two other university departments (for which two of those courses count toward the eighty-eight credits needed for the J.D. degree).<sup>296</sup> The law school's Center for International Legal Education coordinates these innovative programs, study abroad opportunities, and the LL.M. for foreign lawyers.<sup>297</sup>

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296. Univ. of Pittsburgh Sch. Of Law, Ctr. for Int'l Legal Educ., Area Studies Certificates, <http://www.law.pitt.edu/academics/cile/jdprogram/areastudies> (last visited Sept. 15, 2009); Univ. of Pittsburgh Sch. of Law, Area Studies: Latin America, <http://www.law.pitt.edu/academics/cile/jdprogram/areastudies/latin> (last visited Sept. 15, 2009).

297. Univ. of Pittsburgh Sch. Of Law, Center for International Legal Education, <http://www.law.pitt.edu/academics/cile> (last visited Sept. 15, 2009); see Univ. of Pittsburgh Sch. of Law, International Programs for JD Students, <http://www.law.pitt.edu/academics/cile/jdprogram> (last visited Sept. 15, 2009).