

**BEYOND COLONIZATION – GLOBALIZATION AND
THE ESTABLISHMENT OF PROGRAMS OF U.S. LEGAL
EDUCATION ABROAD BY INDIGENOUS
INSTITUTIONS**

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ABSTRACT

This Article will look at globalization in the context of higher education and, in particular, higher legal education. The objective will be to think about the ways in which non-U.S.-based law schools are now offering American-style legal education to supply the U.S. legal market or produce U.S.-trained lawyers in the home-state market or for other legal markets outside the United States. Specifically, this Article will first discuss the history of higher education as a national project and more recent trends and efforts to globalize higher education. The conceptual framework is informed by cosmopolitan, imperial, or national aspirations. Starting from a definition of legal education globalization, this Article considers the history of legal education as a national and international project. It then examines recent efforts to globalize legal education as an exercise in American cosmopolitanism, internationalism, and nationalism. The Article will then critically assess arguments that, in light of certain characteristics of legal systems and legal education, globalization of legal education may implicate notions of cultural imperialism, in whatever form it takes. It then turns to an examination of one of the more interesting manifestations of globalization abroad – nationalist globalization in the form of developing American law schools outside the United States by non-U.S. educational entities – by concentrating on two examples, one from Spain and the other from China. Finally, after discussing the ways in which the globalization of American legal education may affect recipient cultures, this Article will take the reverse perspective and hypothesize on how the American legal education system may be affected by the same exportation.

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INTRODUCTION

On August 3, 2012, the governing council of the American Bar Association's (ABA) Section on Legal Education and Admissions to the Bar voted not to go forward with rules to accredit foreign law schools.¹ The Council did, however, acknowledge the need to establish standards for licensing foreign lawyers.² The Council stated:

The vote was in keeping with a recommendation by a special committee that has spent the past year surveying key stakeholder groups on the merits of the matter. The committee found little support for the idea among stakeholders, a majority of whom said doing so would divert the section's attention and resources at a time of significant strain on its finances and personnel. Stakeholders also said it would be difficult, if not impossible, to acculturate students in foreign law schools in the culture, values and ethics of the American legal system. And a decision to begin accrediting foreign law schools would require the section to engage in the difficult task of developing and implementing appropriate standards and processes, including the means of monitoring compliance with the accreditation standards' academic freedom and other U.S.-centric requirements, they said.³

The protectionist element of the decision was simple and powerful—foreign accreditation would result in increased competition among law schools for students, a drop in the lucrative post-JD market, and increased competition among U.S. lawyers as barriers to entry (qualification to sit for the bar exam) were lowered. The Peking University School of Transnational Law, one of the biggest proponents of foreign accreditation,⁴ sought to make the best of a bad decision by ensuring that the decision not to accredit would not permit discrimination against foreign law schools teaching U.S.-style legal education.⁵

The ABA's refusal to accredit law schools that might fully conform to its standards but are located outside of the United States (and which teach predominantly non-U.S. students) marks the end

1. Mark Hansen, *Legal Ed Section's Council Votes Not to Accredit Foreign Law Schools*, A.B.A. J. (Aug. 3, 2012, 5:29 PM), http://www.abajournal.com/news/article/legal_ed_sections_council_votes_not_to_accredit_foreign_law_schools/.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

of what had been a nearly four-year effort by foreign law schools to acquire the same right to produce students eligible for practice in the United States as identically qualified law schools operating within the United States.⁶ Yet it also evidences the strength of a new movement in internationalization – one that seeks to export, and, by exporting, internationalize a nationally based form of legal education.⁷ This movement does not merely internationalize a nationally based system of law and legal education, it produces a framework within which national law and education can be detached from its country of origin and, thus detached, globalized. For example, “[p]laces in Australia, China, Germany, India, and South Korea are following the Socratic Method in their programs, which generally follow the ABA standards.”⁸ The effects and consequences of this movement are both more profound and complex than simple competitive pressure or acculturation. This Article begins with an exploration of some of these complexities.

Foreign institutions are developing U.S.-style law schools, teaching U.S. law courses, and employing U.S. teaching methods outside the territorial borders of the United States. The impulse to export national education models or to import and apply foreign models has found a sympathetic friend in the ABA. The ABA’s rule of law project has long sought, at least indirectly, to reshape the discourse and premises of discussion of law and law frameworks in a model that is, for all intents and purposes, American.⁹ American universities have also shown a fondness for establishing physical outposts in a variety of places outside the United States.¹⁰ Most of these efforts are those of private U.S. educational institutions. What they have in

6. See Karen Dybis, *ABA Prepares to Accredit Schools Outside U.S.*, NAT’L JURIST, Nov. 2010, at 16.

7. *Id.*

8. *Id.* at 17; see also Lauren K. Robel, *President’s Message: Global Engagement in Uncertain Times*, AALS NEWS, Aug. 2012, at 1, 4. (“Indeed, many of the economically strongest countries, such as South Korea, have also developed JD degrees with the objective of providing domestic capacity for the kind of legal educational experience students have traditionally sought in the U.S.”).

9. *ABA Rule of Law Initiative: Our Origins and Principles*, A.B.A., http://www.americanbar.org/advocacy/rule_of_law/about/origin_principles.html (last visited Mar. 9, 2013) (“The ABA established the program in 2007 to consolidate its five overseas rule of law programs, including the Central European and Eurasian Law Initiative (CEELI), which it created in 1990 after the fall of the Berlin Wall.”). See generally *A.B.A. Rule of Law Initiative*, A.B.A., http://www.americanbar.org/advocacy/rule_of_law.html (last visited Apr. 6, 2013).

10. For a look at which American universities have established branch campuses in foreign countries, see *U.S. Colleges with Foreign Campuses*, NOW ON PBS (May 16, 2008), <http://www.pbs.org/now/shows/420/foreign-campuses.html> [hereinafter PBS].

common is the desire to exploit in foreign states a belief that the U.S. form of education delivery is, in some respects, superior to or more desirable than the indigenous form of education delivery, at least for some significant segment of the indigenous population.¹¹

The character of this nationalist globalization changes when foreign institutions establish U.S.-style law schools teaching aspects of U.S.-style law courses on U.S. law subjects outside the territorial borders of the United States.¹² While the efforts at internationalization of education, and especially legal education, are well-known and the subject of substantial study,¹³ the outbound projection of the study of national law and national educational pedagogies, much less the efforts by foreign education institutions to instruct in the law of a jurisdiction not their own, is much less well understood. This Article seeks to explore the efforts toward, and consequences of, a nationalist model of internationalizing legal education, one in which the educational systems of a particular state that are deemed desirable are exported to others and, once exported, achieve a multinational character that is national, rather than international, but with transnational effect. The specific focus is on efforts by foreign universities to teach U.S. law in a U.S.-style law school to their own students residing abroad, some of whom might seek to practice law in the United States.

11. See, e.g., Tamar Lewin, *U.S. Universities Rush to Set Up Outposts Abroad*, N.Y. TIMES, Feb. 10, 2008, at A1 (noting that the “the American system of higher education [has] long [been] the envy of the world” and that “[o]verseas programs can help American universities raise their profile”).

12. We have earlier suggested:

At the most general level, it can be argued that the expansion of ABA accreditation to foreign law schools is inapposite to the internationalization of law. Yet foreign accreditation fits well within a globalization model. The difference is between an effort to create a new common standard that represents a common position (internationalization) and an effort to universalize a dominant system of domestic law, transforming it from merely the expression of a domestic legal order to using it as a basis for global legal convergence.

Larry Catá Backer & Bret Stancil, *Escuelas de Derecho Global en los modelos de EE. UU: Modelos Emergentes de consenso basado en la internacionalización o Mercados de los modelos basados en la americanización de la Educación Global Legal* [Global Law Schools on U.S. Models: Emerging Models of Consensus-Based Internationalization or Markets-Based Americanization Models of Global Legal Education], 4 REVISTA DE EDUCACION Y DERECHO. [EDUC. & L. REV.] 1, 34 (2011) (Spain).

13. See, e.g., Philip G. Altbach & Jane Knight, *The Internationalization of Higher Education: Motivations and Realities*, 11 J. STUD. INT’L EDUC. 290 (2007); Francisco Marmolejo, *Internationalization of Higher Education: the Good, the Bad, and the Unexpected*, CHRON. HIGHER EDUC., Oct. 22, 2010, <http://chronicle.com/blogs/worldwise/internationalization-of-higher-education-the-good-the-bad-and-the-unexpected/27512>.

The thesis of this Article follows: foreign institutions' establishment of U.S.-style law schools is symptomatic of the power of a nationalist form of globalization, in which the law of a dominant state is meant to be globalized. The price of globalization of national law may be steep, but not obvious. The thrust of nationalist globalization creates incentives to detach national law from its sources, especially with respect to its interpretation and application by those who utilize it outside the formal jurisdictional boundaries of the United States. Globalizing American law and legal instruction can produce, in addition to more foreign-trained lawyers, a bifurcation of national law, one serving the domestic needs of the United States within its borders and the other becoming an element of transnational law. A globalized U.S. law may no longer be either national or "law" as understood in its traditional sense as the product of a domestic legal order.¹⁴

Part I provides a brief discussion of context, focusing on the globalization of legal education. Starting from a definition of legal education globalization, this Article considers the history of legal education as a national and international project. Part II then examines the typology of efforts to globalize legal education, distinguishing between internationalist and nationalist models of education globalization. It considers the issue of foreign accreditation in this context. Part III then turns to an examination of one of the more interesting manifestations of internationalization abroad – nationalist globalization where foreign law schools seek to develop an American legal education model in their home territory. This Article concentrates on two examples, one from Spain and the other from China.

Part IV then analyzes these efforts to globalize legal education as an exercise in American cosmopolitanism, internationalism, and nationalism. In light of certain characteristics of legal systems and legal education, globalization of legal education may implicate notions of cultural imperialism, in whatever form it takes.¹⁵ After discussing the ways in which the globalization of American legal education may affect recipient cultures, this Article ends with a consideration of the reverse perspective – hypothesizing how the American legal education system may be affected by the same export. The core ob-

14. See Marc Amstutz, *Global (Non-)Law: The Perspective of Evolutionary Jurisprudence*, 9 GERMAN L.J. 465, 465–66 (2008); see also Dinah Shelton, *Law, Non-Law and the Problem of 'Soft Law,'* in COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM 1, 13 (Dinah Shelton ed., 2000).

15. See John Flood, *Legal Education, Globalization and the New Imperialism*, in THE LAW SCHOOL – GLOBAL ISSUES, LOCAL QUESTIONS 143–44 (Fiona Cownie ed., 1999).

jective of this Article is to unpack the concepts of globalization and internationalization in the context of legal education. But this is no straightforward project. Our study suggests that the complex character of developing internationalized programs of study—contrasting the more usual efforts at creating a consensus-based program of non-state-based law study with the efforts to globalize national law, principally the law of the United States and its related frameworks of legal education, through its exportation to host states—cuts in a variety of directions. The issue becomes more complex when foreign institutions take control of U.S. law and education pedagogies to establish U.S.-style law schools in foreign (non-U.S.) jurisdictions, not all of the consequences of which are necessarily adverse to the importing state or of benefit to the exporting state. For some importing states, the effect is the transformation of U.S. law into something akin to Roman law before the seventeenth century (as a system of universalized legal principles).¹⁶ For others, the effect is the transplantation of U.S. national legal education systems (substance and form) as a formal system of global law with internal and external application. For the United States, it may well signal the loss of control over its domestic law as, by becoming international, it is no longer “owned” by the originating state.

I. THE GLOBALIZATION OF LEGAL EDUCATION

There is a difference between the traditional patterns of establishing educational institutions and the relatively more recent push for internationalization at the post-secondary level.¹⁷ Although the prior efforts at exportation had an instrumentally nationalist agenda—such as the desire to inculcate particular religious cultures¹⁸ or national cultures¹⁹—and included education at all levels of instruction, the object was cultural, ideological, and usually in the service of an empire.²⁰ The current drive to export national models of post-secondary education is grounded in the markets’ driving principles

16. See *id.* at 143.

17. Larry Catá Backer, *Internationalizing the American Law School Curriculum (in Light of the Carnegie Foundation’s Report)*, in *THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION* 49, 53 (Jan Klabbers & Mortimer Sellers eds., 2008).

18. For example, Saudi-financed madrasahs. FEBE ARMANIOS, CONG. RESEARCH SERV., RS21654, *ISLAMIC RELIGIOUS SCHOOLS, MADRASAS: BACKGROUND 3-4* (2003), available at <http://fpc.state.gov/documents/organization/26014.pdf>.

19. For example, the lycée français movement. See *Schools*, ASS’N FRENCH SCHOOLS N. AM., <http://www.aefa-afsa.org/schools.html> (last visited Apr. 6, 2013).

20. See Backer, *supra* note 17, at 52–53.

of economic globalization, both for the education pedagogy and for the substantive knowledge delivered through this pedagogy. Within that model, education is understood as a commodity—a set of actions or processes delivered in a particular way—whose value can be assessed by the success of its output.²¹ In this case, output includes two significant products. The first is educated students who are prepared to enter the workplace within industrial efforts favored in particular states. The second is the research output of faculty, measured in large part by the size of grants from third parties and the utility of the products of research (particular forms of knowledge production) favored by public policy in a particular place.²²

The logic of globalization would suggest that the most successful producers of product, and the producers of product with the greatest aggregate value, ought to markedly increase market share. That is, educational institutions whose courses of instruction and whose research apparatuses produce the greatest value (in terms of contribution to high-end labor markets and “useful” knowledge outputs) should tend to be more highly valued. Such valuation should also raise demand for similar product-producing institutions. The easiest way to acquire such institutions is to permit successful educational enterprises to establish ties with local institutions. The hope is to acquire expertise along the lines of technology-transfer ideologies of the 1970s.²³ And, indeed, the last decade or so has been marked by the rapid development of large networks of institutional cooperation.²⁴ These networks tend to mimic the webs of bilateral invest-

21. See generally George Psacharopoulos & Harry Anthony Patrinos, *Human Capital and Rates of Return*, in INTERNATIONAL HANDBOOK ON THE ECONOMICS OF EDUCATION 1 (Geraint Johnes & Jill Johnes eds., 2004) (discussing the relationship between economics and education and preserving education as an economic commodity).

22. See generally Tommaso Agasisti et al., *Evaluating the Performance of Academic Departments: An Analysis of Research-Related Output Efficiency*, 21 RES. EVALUATION 2 (2012) (discussing the relative trade-offs of research outputs in academic departments).

23. David Kucera, *Technology Transfer*, REFERENCE FOR BUS., <http://www.referenceforbusiness.com/encyclopedia/Str-The/Technology-Transfer.html#b> (last visited Apr. 6, 2013) (“Since the late 1970s, American universities have played an increasingly important role in the development and transfer of new technologies. This shift was strongly encouraged by the 1980 passage of the Bayh-Dole Technology Transfer Act, which allowed nongovernmental organizations (universities, companies, nonprofits) to use federal dollars for research and still retain the patents to their innovations. Before then, government agencies commonly claimed at least some of the rights to such inventions and proved lethargic and inefficient managers of the intellectual property, impeding technology transfer.”).

24. See COMMITTEE ON INSTITUTIONAL COOPERATION, <http://www.cic.net/home> (last visited Apr. 6, 2013).

ment and trade pacts that have arisen almost contemporaneously with these educational ventures.²⁵ But the bilateral investment treaty model suggests that more efficient than technology-transferring networked relationships among educational institutions are efforts to permit the establishment of branches by home state education institutions deemed superior to local ones. The last decade has seen an increase in efforts to establish branch campuses by U.S. and, to a lesser extent, European institutions abroad.²⁶

Yet the logic of globalization would also suggest that the most efficient means of capturing the value of successful educational innovation is to naturalize it. That would require indigenous institutions to embrace foreign educational culture. Over the past several years, there appear to be signs of movement in this direction. Both in Europe and in China, indigenous institutions have sought to remodel their efforts.²⁷ In its most benign form, one finds the proliferation of English language programs in European universities.²⁸ In its most advanced form, foreign institutions adopt the forms of U.S. education directly and seek accreditation as if they were U.S.-domesticated institutions.²⁹

This impulse operates against another great movement in legal education.³⁰ The outbound migration of national models of education is occurring even as most educational institutions also experience the need to internationalize their curricula and to substitute

25. See generally *Bilateral Investment Treaties and Related Agreements*, U.S. DEP'T. ST., <http://www.state.gov/e/eb/afd/bit/index.htm> (last visited May 30, 2013) (providing an overview of the U.S. Bilateral Investment Treaty Program).

26. See Lewin, *supra* note 11.

27. See Toni M. Fine, *Introduction and Overview – Working Together: Developing Cooperation in International Legal Education*, 20 PENN ST. INT'L L. REV. 1, 10 (2001); Zuo Haicong, *Legal Education in China: Present and Future*, 34 OKLA. CITY U. L. REV. 51, 53 (2009).

28. See, e.g., Sean Coughlan, *Italian University Switches to English*, BBC NEWS, (May 16, 2012), <http://www.bbc.co.uk/news/business-17958520> (“The waters of globalisation are rising around higher education – and the university believes that if it remains Italian-speaking it risks isolation and will be unable to compete as an international institution. ‘We strongly believe our classes should be international classes – and the only way to have international classes is to use the English language,’ says the university’s rector, Giovanni Azzone.”).

29. Thus, for example, the Central European University is organized as a U.S.-style university, with a board of trustees and a charter from the Board of Regents of the University of the State of New York on behalf of the New York State Department of Education. *Governance*, CENT. EUR. U., <http://www.ceu.hu/about/organization/governance> (last visited Apr. 6, 2013); see also discussion *infra* Part II.

30. See generally Backer, *supra* note 17 at 49–112.

transnational for national focus in education.³¹ Unlike legal globalization, legal internationalization seeks to develop a harmonized approach to the study of law and governance orders that exist outside of the domestic legal orders, which have traditionally supplied the bulk of the substance of legal education.³² It posits that although each state has its own, and sometimes peculiar, domestic legal order, it is possible to harmonize and coherently teach the law and governance systems that are developing outside the state and its law-making processes.³³ This is a consensus-based process involving the development of new fields of law and governance as well as networks of law schools well-versed in a common language of the international, supranational, and transnational.³⁴ This is particularly true of law schools. In part, this internationalization reflects recognition of fundamental changes in the organization and application of law and governance systems that have become apparent over the last two decades. It also reflects the natural tendency to harmonize education delivery between institutions that are heavily networked. Further, it reflects another tendency of globalization—one that provides incentives toward harmonization of standards and systems by a process of interaction and mutual accommodation, which reflects blended solutions to difference.³⁵

A. Globalization and Internationalization

As is often the case with complex ideas, the meaning of which is dependent on the perspective from which the idea is approached, the term globalization has proven difficult to define. Notwithstanding the inherent difficulty in defining it, the term has also garnered substantial and, in recent decades at least, consistent attention.³⁶

31. See, e.g., Jane Knight, *Internationalization: Concepts, Complexities and Challenges*, in INTERNATIONAL HANDBOOK OF HIGHER EDUCATION 211–12 (James J.F. Forest & Philip G. Altbach eds., 2006).

32. See Backer, *supra* note 17, at 112.

33. See Larry Catá Backer, *Human Rights and Legal Education in the Western Hemisphere: Legal Parochialism and Hollow Universalism*, 21 PENN ST. INT'L L. REV. 115, 130–36, 148–55 (2002).

34. Georgetown University's Center for Transnational Legal Studies provides a useful example. See *About CTLS*, CENTER FOR TRANSNAT'L LEGAL STUD. LONDON, <http://ctls.georgetown.edu/about.html> (last visited Feb. 26, 2013).

35. See generally Philip G. Altbach, *Globalization and the University: Realities in an Unequal World*, in INTERNATIONAL HANDBOOK OF HIGHER EDUCATION, *supra* note 31, at 121 (describing various aspects of globalization in the university setting and providing arguments for and against different models).

36. *Id.* at 121 (noting globalization as a central force for both society and higher education in the past two decades).

Though it does not seem fair to consider “globalization” a cliché, the combination of its increased popularity and the difficulty of defining it has led to its sometimes, but by no means always, use as a substanceless buzzword. The term “globalization” would not be the first broad concept to fall victim to this usage – terms like “synergy” come to mind. Notwithstanding these challenges, starting from the root and history of the term, attempts have been made to put into words the broad concepts globalization encompasses.

Recognizing that a generally accepted definition of globalization has proven elusive, the Geneva Centre for Security Policy conducted a study to examine and reconcile the varied definitions and concepts of globalization.³⁷ In particular, the Program on the Geopolitical Implications of Globalization and Transnational Security looked at more than one hundred definitions of globalization as provided by academics, theorists, sociologists, and politicians.³⁸ After attempting to identify patterns and similarities, the study proposed the following definition: “Globalization is a process that encompasses the causes, course, and consequences of transnational and transcultural integration of human and non-human activities.”³⁹

More important than the definition ultimately proposed, by reviewing the varied definitions that have been developed, the study proposed a set of characteristics belonging to or associated with globalization. Among them, the researchers noted that: “Globalization involves economic integration; the transfer of policies across borders; the transmission of knowledge; cultural stability; the reproduction, relations, and discourses of power; it is a global process, a concept, a revolution, and an establishment of the global market free from sociopolitical control.”⁴⁰

Notwithstanding the recent fashionable discussion of and attempts to define globalization, the broad concepts that would necessarily be included in any such definition are not new. Rather, globalization has existed in many forms, across many cultures, and throughout history. In its early forms, globalization existed during the expansion of the Persian and Roman empires, when trade exploded along the Silk Road, when the British colonized North Amer-

37. NAYEF R.F. AL-RODHAN & GÉRARD STOUDEMANN, GENEVA CTR. FOR SEC. POLICY, DEFINITIONS OF GLOBALIZATION: A COMPREHENSIVE OVERVIEW AND A PROPOSED DEFINITION (2006).

38. *Id.* at 4, 6.

39. *Id.* at 5.

40. *Id.* at 3 (citation omitted).

ica, and when the industrial revolution changed the national, and subsequently the global, economy.⁴¹

Though one can provide specific examples of globalization, as noted above, it is important to keep in mind the notion that: "Globalization is evolutionary; it is a fluid process that is constantly changing with the development of human society."⁴² The form globalization takes is just as varied as the definitions it has been given.⁴³ Notwithstanding the idea that globalization is not a process that starts and stops or even a process that has a beginning and an end, it is commonly accepted that globalization generally has progressed in three stages.⁴⁴ More importantly, these three stages are defined by the motivation behind globalization, and the medium through which these efforts were carried out.⁴⁵

	First Stage (1490)	Second Stage (1890)	Third Stage (1990)
Impulse	Nautical developments	Industrialization and its requirements	Multi-national companies in 1970s, communication reform in 1980s, disappearance of competitors of the West in 1990s
Process	Profit and then military occupation	Evangelists, then explorers, then companies, and finally occupation	Cultural-ideological effect, therefore countrywide spontaneous effect

41. MURAT ALI DULUPCU & ONUR DEMIREL, *SOCRATES COMENIUS 2.1: GLOBALIZATION AND INTERNATIONALIZATION* 5 (2003).

42. AL-RODHAN & STOUDMANN, *supra* note 37, at 6.

43. *See generally id.* (providing a comprehensive overview of definitions of globalization).

44. DULUPCU & DEMIREL, *supra* note 41, at 6 (citing SULEMAN YAMAN, *HISTORICAL DEFINITION OF GLOBALIZATION* (2001)).

45. *See id.*

Medium	To get the God's religion to the pagans	Burden of the white man, humane mission, racialist theories	Highest level of civilization, governance of international community, "invisible hand" of the market, globalization: for everyone's interest
Political Structure	Empires and colonization	Nation states	Regional and economic integrations
Result	Colonialism	Imperialism	Globalization

From these commonly accepted stages of globalization, it is important to recognize and keep in mind that the broad concepts encompassed by "globalization" are not motivation or process specific. That is, the "transfer of policies across borders, the transmission of knowledge," and the "reproduction, relations, and discourses of power"⁴⁶ achieved by globalization in the general sense may be the result of very different motivations and implementations. Just as currency, religion, or military occupation may act as the power driving globalization, knowledge and education can serve as a soft power, the trade or expansion of which may result in globalization.

It is also important to keep in mind that the third stage, globalization, can be understood in two forms. The first, markets-based globalization, is the best understood form of the phenomenon and is outlined above. The second, and operating simultaneously in many places, is something that might be usefully understood as internationalizing globalization. While markets-based globalization focuses on permeability of borders and the privatization of activity that de-centers the state,⁴⁷ internationalizing globalization tends to focus on the construction of law-based structures that keep the state, and formal legal structures, at the center. Some understand this internationalization project as an "internationalization of national law, i.e.,

46. AL-RODHAN & STODMANN, *supra* note 37, at 3.

47. Larry Catá Backer, *Multinational Corporations as Objects and Sources of Transnational Regulation*, 14 ILSA J. INT'L & COMP. L. 499, 504-05 (2008).

the increasing interaction between international and national law."⁴⁸ Some understand the project as grounding state power in international obligations.⁴⁹ Markets-based globalization would commodify national law and change its essential character from sitting outside the activities that it seeks to regulate to being a component of that very activity. Once it is reduced and internalized, the law can be adopted and adapted to suit the needs of its users. Internationalizing globalization, whether of law or legal education, "originates, and is accepted, and operates more widely than in one closed system, whether that be national or regional or state or culture based or traditional. It is rarely compelling or binding in terms of authority. It is 'other.'"⁵⁰ But otherness can assume substantial and important differences in form and function. The dual approaches to "internationalization" of education provide a very useful example.

B. Education as a National and International Project

As with globalization generally, the exchange of knowledge and education is not a product of recent times. Though education began and is often thought of as a national project, the fundamental features of many of the world's education systems have developed and been implemented as a result of exchanges among several educational systems, though traditionally such exchanges were meant to aid each state in its efforts to better deliver contextually national systems of education and training. What was common was a global discussion among elites of the objectives and methodologies of education provision for the children of elites and for everyone else, with the expectation that such universal principles would then be implemented to suit national goals and inculcate national values consistent with national self-consciousness and political need.⁵¹

Owing in part to the use of a common language, Latin, and mobility throughout Europe, globalization of education and knowledge typically begins with examples of academic pilgrimage in the Mid-

48. *International Law*, U. OSLO: FACULTY L., <http://www.jus.uio.no/english/research/areas/intrel/> (last visited Apr. 6, 2013).

49. Sara L. Seck, *Canadian Mining Internationally and the UN Guiding Principles for Business and Human Rights*, 49 CANADIAN Y.B. INT'L L. 51 (2011).

50. Mary Hiscock, *The Internationalisation of Law: Introductory and Personal Thoughts for the Symposium*, in THE INTERNATIONALISATION OF LAW: LEGISLATING, DECISION-MAKING, PRACTICE AND EDUCATION xviii, xx (Mary Hiscock & William van Caenegem eds., 2010).

51. See, e.g., David H. Kamens & Aaron Benavot, *Elite Knowledge for the Masses: The Origins and Spread of Mathematics and Science Education in National Curricula*, 99 AM. J. EDUC. 137, 141-42, 153-57 (1991).

dle Ages and Renaissance period. The next great period of educational expansion took place during the eighteenth century and up to World War II. Most notably, the expansion and later division of the British Empire had the effect of exporting the European model of education to the world at large. Indeed, “[h]igher education in India and other Asian, African, Caribbean, and Northern American countries belonging to the British Empire, was [modeled] on British higher education.”⁵² Notwithstanding the export of the British model of education, “much of the research in this period had a national focus and interest,”⁵³ perhaps due, in part, to the limited mobility and communication between continents for those other than the well-to-do.

The third period in the globalization of education is marked by the end of World War II and continues to the present day. Within this one period, several smaller phases of globalization occurred to mirror world events. One such event, taking place immediately following the end of the war, occurred when “the Soviet Union expanded its political, economic, social and academic control over Central and Eastern Europe . . . bringing academic freedom and autonomous cooperation and exchange almost to an end.”⁵⁴ This situation changed during the 1960s and 1970s, a period characterized by south-to-north mobility of students in which third world countries became “the main battlefield of international academic cooperation” when developed countries “moved large development funds into higher education in Asia, Latin America and Africa.”⁵⁵ Finally, following the end of the Cold War, there emerged a period of increased nationalism when “the [United States] was increasingly threatened as an economic superpower by Japan and the European Community.”⁵⁶ The result of this threat was a focus on economic globalization at the expense of efforts to globalize education.

Though often premised on or motivated by economics, several developments over the past two decades have promoted the globalization of education in particular. One of the most important of these developments resulted from the need to harmonize educational

52. Jane Knight & Hans de Wit, *Strategies for Internationalisation of Higher Education: Historical and Conceptual Perspectives*, in STRATEGIES FOR THE INTERNATIONALISATION OF HIGHER EDUCATION: A COMPARATIVE STUDY OF AUSTRALIA, CANADA, EUROPE, AND THE UNITED STATES OF AMERICA 7 (Hans de Wit ed., 1995).

53. *Id.*

54. *Id.* at 8.

55. *Id.* at 8-9.

56. *Id.* at 9.

standards within the European Union. The Bologna Process,⁵⁷ for example, has resulted in uniform standards of higher education and degree recognition between European countries. Beyond making mobility between European countries more feasible, the Bologna Process aims to make European education more practical and desirable to attract foreign students to become educated in, and eventually contribute to, the European community.

Similarly, the General Agreement on Trade in Services (GATS),⁵⁸ enforceable as of 1995, has brought traditionally domestic activities and service industries into the realm of international trade.⁵⁹ Aiming to remove barriers to international trade, the GATS is a treaty between World Trade Organization members by which four modes of supply in and out of a member country are agreed upon or exempted.⁶⁰ One such activity covered by the GATS is that of education, wherein member countries may agree upon terms opening up and regulating trade of education in and out of their respective countries.⁶¹ Negotiations with respect to education trade may include substantive terms such as when and how international students may enroll in a country's universities, ownership rights of universities for noncitizens, and immigration rights for students wishing to study abroad.⁶²

57. See generally BOLOGNA PROCESS, <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/about/> (last updated June 2010) ("The overarching aim of the Bologna Process is to create a European Higher Education Area (EHEA) based on international cooperation and academic exchange that is attractive to European students and staff as well as to students and staff from other parts of the world.").

58. See generally General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1125, 1167 (1994) http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm. (GATS is a framework agreement containing basic obligations and commitments which will be the subject of a continuing process of liberalization.)

59. *The GATS: Objectives, Coverage and Disciplines*, WORLD TRADE ORG., http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm (last visited Mar. 10, 2013).

60. *Id.*

61. *Id.*; see also JANE KNIGHT, OBSERVATORY OF BORDERLESS HIGHER EDUC., TRADE IN HIGHER EDUCATION SERVICES: THE IMPLICATIONS OF GATS, 9 (2002), http://www.unesco.org/education/studyingabroad/highlights/global_forum/gats_he/jk_trade_he_gats_implications.pdf (noting that GATS exempts "services supplied in the exercise of governmental authority" but whether that phrase encompasses government-funded education has been widely debated).

62. See, e.g., Communication from Australia to Council for Trade in Services, *Negotiating Proposal for Education Services*, S/CSS/W/110 (Oct. 1, 2001), available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_5009-1.aspx?language=E&CatalogueIdList=65822,80137,63094,22564,82732,62871,82731,45607,65789,102314&CurrentCatalogueIdIn dex=5&FullTextSearch= (explaining the visa requirements, limits on foreign ownership, and use of educational materials in negotiating education services with Australia).

Indeed, as universities establish internationalizing communities,⁶³ the culture of internationalization begins to take better shape, and an institutional voice is created for its development. One of its tools for that effort, the Global Survey on Internationalization of Higher Education,⁶⁴ which periodically reports on the state of internationalization, provides a glimpse at the state of internationalization and, more importantly, its rationales. What is striking are both the contextual differences based on geography and the state of development on the one hand, and the uniformity of principles on the other. As one commentator noted:

Worldwide, the majority of institutions give a high importance to internationalization, with Europe topping the list in this regard, followed by North America. The Middle East and Latin America and the Caribbean are at the bottom . . . Worldwide, the top five reasons for internationalizing an institution are, in order of importance, to improve student preparedness; internationalize the curriculum; enhance the international profile of the institution; strengthen research and knowledge production; and diversify its faculty and staff.⁶⁵

Yet what emerges is the idea that there is a particular set of knowledge and techniques that maximizes educational effectiveness, though the objectives for such maximization may differ depending on the context.⁶⁶ Another tool for internationalization is the offering of technical advice and capacity building, such as those undertaken by bodies like the Internationalization Strategies Advisory

63. Among them is the International Association of Universities. Its mission provides that the "IAU, founded in 1950, is the UNESCO-based worldwide association of higher education institutions. It brings together institutions and organisations from some 120 countries for reflection and action on common concerns and collaborates with various international, regional and national bodies active in higher education." INT'L ASS'N U. (Jan. 9, 2013), <http://www.iau-aiu.net/content/mission>.

64. *Global Surveys*, INT'L ASS'N U., (Apr. 18, 2012), <http://www.iau-aiu.net/content/global-surveys>.

65. Marmolejo, *supra* note 13.

66. *Id.* Marmolejo also notes that:

[W]hen the information is analyzed by regions, interesting variations are found. For instance, both North America and Latin America give much more importance to international preparedness of students than Europe. Interestingly, institutions in Africa consider as the more important internationalization rationale, to strengthen research and knowledge production. The Middle East gives the highest importance equally to improving student preparedness and also strengthening research.

Id.

Service—an arm of the International Association of Universities (IAU).⁶⁷ The object is “to offer new mobility opportunities for faculty and staff, to review their curriculum for improved internationalization ‘at home[.]’ to strengthen their strategic research alliances or to develop marketing approaches to attract more exchange or fee paying international students”⁶⁸ Together, these efforts suggest internationalization as a means of developing common-knowledge structures grounded in international and other forms of non-national governance regimes and developing the capacity to exploit opportunities in this area. This is the essence of an internationalization approach in which all participants contribute and the resulting knowledge production does not reflect the values or law of a particular state.

These trends and influences on the globalization of higher education have had a strong effect at American law schools. The internationalist approach to globalization seeks to embed American legal education within a broad effort of international legal education generally. This aligns U.S. law schools with global elite universities elsewhere. But it also reduces the singular influence of the U.S. legal system and the values it is meant to inculcate, as the U.S. approach becomes one of many to be blended into a coherent, but not necessarily U.S.-law privileging, whole.⁶⁹ But the trends of globalization have also produced another approach, one incompatible with the globalization of legal education. This other nationalist approach seeks to embed U.S.-style legal education within institutions abroad.⁷⁰ The idea here is to privilege the goals, values, and methods of U.S. legal education in the training and education of non-U.S. students. This produces an internationalism of sorts, but one in which the U.S. approach to legal education becomes universalized. It is taught, then, as if the foreign institution was a U.S. school, or the values and objectives of U.S. legal education and law are naturalized within the indigenous legal education context. The next section discusses the consequences of adopting either of these two tracks.

67. See INT’L ASS’N OF UNIVS., INTERNATIONALIZATION STRATEGIES ADVISORY SERVICE, 1 (2012), available at <http://www.iau-aiu.net/sites/all/files/ISAS.pdf>.

68. *Id.*

69. See, e.g., Dean Claudio Grossman, *Building the World Community: Challenges for Legal Education*, 18 DICK. J. INT’L L. 441, 446–47 (2000) (describing some of the international programs and opportunities at American University Washington College of Law).

70. See Backer & Stancil, *supra* note 12, at 11.

II. TYPOLOGY OF EFFORTS TO GLOBALIZE LEGAL EDUCATION

In a previous article, we discussed the globalization of legal education in the context of the two approaches mentioned above—the internationalist and nationalist models of globalization.⁷¹ The first approach, the internationalist model,⁷² “seeks to transform legal education by blending legal studies from a variety of jurisdictions and creating a curriculum that starts as essentially transnational.”⁷³ The other approach, the nationalist model, “approaches internationalization as a market driven competition for influence among dominant domestic legal orders.”⁷⁴ As briefly discussed in that article and expanded upon here, “the choice of model could have profound effects on the legal cultures of target states, and the course of internationalization.”⁷⁵ As such, this Part will briefly discuss both approaches to the globalization of legal education in order to provide a fuller discussion and analysis of the nationalist model in Part III. In reading this Part, it is important to keep in mind that both the internationalist and the nationalist model, despite the latter’s name, are models of globalization, albeit by different means and to different degrees.

A. *Internationalist Model*

The internationalist model of globalization is premised on cooperation between legal education institutions and departments within those institutions. The model looks largely outward and focuses on the integration of international, comparative, foreign, and transnational elements into the existing traditional curriculum.⁷⁶ By way of example, one such program, Georgetown’s Center for Transnational Legal Studies,

provides [a] model for networked education, in which a number of law faculties from across the globe come together in a place not connected to any of them for the purpose of bringing selected numbers of each of their students and faculty together for instruction in a curriculum liberated from the structures of any of the domestic legal orders of any of

71. *Id.* at 10–11. Much of this Part comes from that article.

72. *See, e.g.,* Knight, *supra* note 31, at 207–08.

73. Backer & Stancil, *supra* note 12, at 9.

74. *Id.* at 11.

75. *Id.* at 12.

76. Knight, *supra* note 31, at 213–14.

the participating schools.⁷⁷

U.S. law schools have accomplished the internationalist model of globalization by using one of the following five models:⁷⁸

1. *Integration*

This is an approach being attempted by a few institutions, most of which consider themselves (or might be considered by others) as those law schools at the higher reputation levels of the legal academy. It is marked, at least in theory, by an attempt to refocus the educational and research hub of the law school from the national to the transnational to the greatest extent feasible. The object is to produce generalists.⁷⁹

This more or less comprehensive approach is complicated and requires a large institutional commitment in terms of resources and a willingness to change traditional academic culture.⁸⁰ At its limit, this approach requires the entire faculty to change their approach to teaching and perhaps even to research. Just as the focus of research at elite institutions shifted from state to national issues and from technical to theoretical discourse, the focus of research under this new approach may require a shift from the national to the cross- or multi-jurisdictional.⁸¹

2. *Aggregation*

The second, and most popular, model of internationalist globalization, is based on the “field of law” or aggregation model, by which international and transnational issues are segregated and privileged as one among equals of areas of study of law — like labor, corporate, or tax law.⁸² The strength of this approach lies in its abil-

77. Backer & Stancil, *supra* note 12, at 9. The London-based Center for Transnational Legal Studies, launched in 2008 and administered by Georgetown University Law Center staff, is a global partnership currently encompassing over 20 schools from five continents. The initiative is premised on a belief that, as legal practice becomes increasingly “transnational,” the best legal education must include exposure to ideas, faculty, and fellow students from many different legal systems. GEORGETOWN LAW, CENTER FOR TRANSNATIONAL LEGAL STUDIES LONDON 3 (2012), http://ctls.georgetown.edu/documents/CTLS_2012_.pdf.

78. The following description of the five models framework has largely been reproduced from Backer & Stancil, *supra* note 12, at 10.

79. *Id.* at 16; see, e.g., Sébastien Lebel-Grenier, *What is a Transnational Legal Education?*, 56 J. LEGAL EDUC. 190, 195–96 (2006).

80. Backer & Stancil, *supra* note 12, at 15–16.

81. *Id.*

82. *Id.* at 16.

ity to leverage conventional approaches to law teaching.⁸³ The great danger of this approach is that it will reinforce the conventional framework that privileges a strictly delimited territorial approach to legal education.⁸⁴

Under this model, international and transnational law (however understood) is consolidated in a number of courses, the extent and number of which will vary with the tastes of a faculty, its resources, capacities, and the perceived interests of its local markets. This method involves virtually no changes to the structure of a law school's programs. It reduces the issue to one of resource allocation.⁸⁵ The law school identifies a number of courses, develops those courses, and finds faculty members to teach them.⁸⁶ Perhaps the school establishes additional programs, ad hoc or more institutionalized in nature, and encourages students to take advantage of the "value added" of such programs in the same way it would encourage students to take advantage of other institutional resources that might be good for them.⁸⁷

3. Segregation

The third model is the segregation model. There are two basic approaches under this model. The first is to migrate all internationalization efforts—pedagogical and research oriented—into a center within the law school, usually under the direction of a faculty member. These suggest small aggregate efforts. The second is more ambitious. Under this approach, a law school creates an administrative device that serves as the institutional base from which all international and transnational programs can be developed, offered, assessed, and integrated into the education and research mission of the law school. This method is powerful. It can avoid the issue of systemic integration and the training of faculty across disciplines. It respects more or less traditional disciplinary boundaries within the conventional law school. It can provide an easy way to monitor resource allocation and the performance of the programs, now gathered together within a single subunit. It can also be combined with a certificate or other specialized program in legal education offered to willing law students. On the other hand, such a model can serve as a

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

gateway to greater integration. But the resources required for this sort of program may be beyond the reach of all but a few schools. On the other hand, the administrative separation of non-domestic law programs can keep this area apart from other law school educational functions. It segregates internationalization not merely at the student level, but also at the faculty level. For faculty and students who have no interest in internationalization, the centers make it possible to continue to operate as if they did not exist.⁸⁸

4. *Immersion*

It is possible to construct, out of very recent developments, the skeleton of an alternative model that one might call the immersion model. The immersion model starts from the idea that law of other jurisdictions is best learned in those jurisdictions, with their students, and in their language. It suggests that international and transnational law may require sensitivity to context that makes collaborative efforts essential to understand all sides of any transaction involving the application of the law of multiple jurisdictions. As a consequence, a truly transnational program requires the participation of educational institutions in multiple jurisdictions. It accepts that beyond some level of generality, the transnational element of legal education must always be partial. Students must choose: language, system, and perspective. There can be no such thing, at a level of specificity necessary for practice, as the possibility of an acquisition of a generalist's knowledge. And the object of such education, in the most developed case, ought to be licensing in the multiple jurisdictions studied. In either case, the bulk of law school resources would not be used on "retooling" or otherwise requiring faculty trained in the municipal law of the state in which they might be licensed to learn something else. That education would come *in situ* abroad, to the extent that it is otherwise not attainable within the domestic institution. The greatest expenditure would be focused on the cultivation and maintenance of webs of relationships with other institutions in other states. In addition, the barrier of language, especially for American law students, may become a great impediment to the growth of these programs beyond a small group of universities.⁸⁹

88. *Id.* at 17.

89. *Id.* at 17-18.

5. *Multi-disciplinary department models*

Finally, law schools have begun to consider the value of establishing schools or departments of international transactions or international affairs (DIAs). It is based on the development of a self-contained, but porous, unit of the law school devoted to a particular focus of law-related education, as a basis for the reconstruction of law school pedagogy. Alternatively, the department could be kept free of direct law school faculty participation (or affiliation) and serve merely as an organizing center for the interdisciplinary focus of teaching the international and transnational elements of law.⁹⁰

Such an approach would permit a law school not only to segregate international and transnational legal education within its institutional matrix, but also to use the segregation as a means of focusing on building bridges to related disciplines that would enrich any study of legal issues across borders. A DIA can also serve as a space within which all of the international and transnational energies of a law school can be focused. This approach is essentially the conceptual opposite of the immersion model. Instead of incorporating the transnational element within the curriculum and research and service of a substantial portion of the faculty, the multi-disciplinary department model starts with the assumption that the most efficient means of bringing the transnational element of law into law schools is to segregate the efforts. Once segregated, the transnational elements can be extracted and privileged within an environment in which they can be amplified by other related disciplines—international relations, politics, economics, and business, for example. This extraction and recombination points to the great synergies possible with this approach, putting together lawyers and academics from related fields working in an increasingly unified and powerful academic discipline (global law(s)) with many sub-disciplines (international law, international relations, comparative law, political theory, etc.). It provides efficiency and convenience, making international and transnational issues easy to place, maintain, and resource.⁹¹

90. *Id.* at 18.

91. *Id.*

B. Nationalist Model

The nationalist model, on the other hand, is characterized by the export and corresponding reception of a particular system of law or curriculum of law.⁹² In the nationalist context, globalization “is understood as the extension of the influence of national law outside of the national territory.”⁹³ In this respect, the nationalist model is “domestic and inward looking in its construction, and aggressively outward looking in its quest to dominate markets for the provision of legal education.”⁹⁴

Though the implementation of a nationalist model of globalization may resemble one or more of the internationalist models discussed above (and in particular the segregation model), the defining factor of a nationalist model is the focus on a particular source of law rather than a curriculum that seeks to understand law from an inclusive and truly global perspective. For example, although an approach to globalization that creates a segregated transnational department within a foreign law school may follow the internationalist model, the same transnational program, if only teaching American law, would be better characterized as globalization by way of the nationalist model. This subtle distinction is a crucial understanding in light of the remainder of this Article.

1. Foreign accreditation as a vehicle for nationalist globalization

As we discussed at length in a previous article, one such method of facilitating, encouraging, or otherwise implementing globalization under the nationalist model was considered by the ABA over several years, beginning in 2008 when the Association’s Section of Legal Education and Admissions to the Bar considered the accreditation of foreign law schools.⁹⁵ Motivated to “develop a plan to ensure participation in discussions relating to international trade in legal services,” the Section appointed a Special Committee to consider all international issues that may affect the Legal Education Section.⁹⁶

92. *Id.* at 20–21.

93. *Id.* at 11.

94. *Id.*; see also Judith Welch Wegner, *Reframing Legal Education’s “Wicked Problems,”* 61 RUTGERS L. REV. 867 (2009) (footnote omitted).

95. See Backer & Stancil, *supra* note 12, at 39.

96. Honorable Elizabeth B. Lacy et al., *Report of the Special Committee on International Issues, 2009 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR 3* [hereinafter *Lacy Report*] (quoting *Strategic Plan, 2006 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR*), available at <http://www.abajournal.com/files/FINAL.pdf> (internal quotation marks omitted).

One such international issue considered was the application of foreign law schools for ABA accreditation.⁹⁷

Headed by the Honorable Elizabeth B. Lacy, the Special Committee on International Issues (the Lacy Committee) rationalized that because “overwhelmingly in the United States” a JD degree from an ABA accredited law school “satisfies the educational prerequisite established to qualify an applicant to sit for the bar examination,”⁹⁸ an expansion of accreditation to foreign law schools may assist state supreme courts in determining the qualification of foreign attorneys wishing to practice in the United States.

The Lacy Committee rejected the idea of accreditation for foreign law schools that did not model their curricula on current ABA standards.⁹⁹ In particular, “the Committee determined that ABA accreditation [for such schools] would require the development of extensive standards to account for the variation in the system of law taught and the level of education required of applicants.”¹⁰⁰ Considering foreign law schools that *did* model their curriculum in accordance with ABA standards, however, the Committee recommended that the Section “abandon any notion of territorial restrictions in accreditation”¹⁰¹ and that, “[a]lthough meeting current standards may be difficult,” foreign law schools meeting ABA standards for curriculum should not be denied accreditation.¹⁰² Ultimately, this initial Committee recommended that the Section continue with its consideration of the possibility of accrediting foreign law schools.¹⁰³

Following the Lacy Committee’s analysis and recommendations, a Special Committee on Foreign Law Schools Seeking Approval Under ABA Standards (the Kane Committee) was assembled to consider, *inter alia*, “whether special bar-admissions consideration also is merited for graduates in common law countries that follow a graduate law school model similar to that used in the United States.”¹⁰⁴ In

97. *Id.* at 25–29.

98. *Id.* at 25.

99. *Id.* at 29.

100. Backer & Stancil, *supra* note 12, at 25. Concerns regarding an applicant’s level of education refer to the fact that, unlike legal education in the United States, legal education in foreign countries is rarely a post-graduate program requiring students to have attained an undergraduate degree.

101. Lacy Report, *supra* note 96, at 28.

102. *Id.* at 30.

103. *Id.*

104. See Mary K. Kane et al., *Report of Special Committee on Foreign Law Schools Seeking Approval Under ABA Standards*, 2010 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR 1 n.1, available at <http://www.abajournal.com/files/kanereportinternational.pdf>.

ultimately recommending that the project to accredit foreign law schools proceed, the Kane Committee stated:

Expanding accreditation to schools outside U.S. borders that focus on U.S. law will allow these schools to be in a position potentially to develop cutting-edge curricula. . . and the Section thus will be in a position to be an active player in the dialogue about how to develop high quality legal training for the global economy.¹⁰⁵

Hesitant to suggest *carte blanche* expansion of accreditation, the Kane Committee recommended that the ABA Accreditation Standards be revised to make explicit the assumptions upon which the Committee was willing to support accreditation for non-U.S. law schools.¹⁰⁶ Chief among these is the requirement that the law taught be predominantly American law and that the faculty be “predominantly U.S. trained” and hold a JD degree from an ABA-accredited U.S. law school.¹⁰⁷ Further, the Kane Committee recommended that the ABA Standards be revised to ensure that the American curriculum was also taught primarily in English and that students receive some sort of preliminary training in the American government system before diving into learning substantive American law.¹⁰⁸

For several reasons, the ABA’s consideration of foreign accreditation received mixed and mostly negative reviews from the American legal community.¹⁰⁹ As a result, after much debate and a public comment period, the Section decided to postpone further consideration of foreign accreditation until “the Council has fully vetted the issue as to whether to expand the accreditation role of the Section to encompass law schools located outside of the [United States] and its territories.”¹¹⁰

Finally, three years after the Lacy Committee first considered the issue, and after a year-and-a-half-long “vetting” period since the

105. *Id.* at 4.

106. *Id.* at 5–6.

107. *Id.*

108. *Id.* at 6.

109. See, e.g., STEVEN R. SMITH, REPORT ON TO THE COUNCIL ACCREDITATION OF FOREIGN-BASED LAW SCHOOLS: LEGAL EDUCATION 1 (2012), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/August/2012_august_e2_executive_summary_and_reports_foreign_law_school_accreditation.authcheckdam.pdf.

110. Press Release, American Bar Association, ABA Legal Education Section Delays Decision on Accrediting Foreign Law Schools (Dec. 4, 2010), available at <http://www.abanow.org/2010/12/aba-legal-education-section-decides-to-continue-consideration-of-whether-to-accredit-foreign-law-schools/>.

Kane Committee's initial recommendation to proceed, the ABA has officially rejected the idea of accrediting foreign law schools.¹¹¹ Indeed, at its 2012 annual meeting, the "Council on Legal Education and Admissions to the Bar overwhelmingly voted . . . to withhold accreditation from law schools outside the United States."¹¹² Moreover, this rejection came on the heels of a letter from Jeffrey Lehman, founding Chancellor of the Peking University School of Transnational Law, extolling the benefits of accreditation for foreign law schools.¹¹³ Indeed, the school had been very vocal throughout the three-year consideration of foreign accreditation, claiming to be "the only law school located outside the United States that clearly meets . . . [ABA Accreditation] standards,"¹¹⁴ and proudly claiming a student body that "live[s] and breathe[s] American law."¹¹⁵ Notwithstanding the school's efforts and, notably, the support of several academics, practitioners, and judicial officials,¹¹⁶ the ABA's decision will not likely be reversed anytime in the near future. Yet left unanswered is the larger question: despite an inability to acquire direct accreditation, might these efforts to nationalize U.S. law and legal education forms abroad otherwise bear fruit?

III. IMPLEMENTING THE NATIONALIST MODEL IN CHINA AND SPAIN

Notwithstanding the ABA's denial of accreditation for foreign law schools, the fluid process of globalization continues. Indeed, as mentioned earlier, globalization can be, and is, achieved by a variety of vehicles and, as one would expect, globalization presses on despite the stalling of U.S. accreditation of foreign law schools as one such vehicle. Namely, foreign law schools are teaching American law ei-

111. *Id.*

112. Karen Sloan, *ABA Panel Votes No on Accrediting Foreign Law Schools*, NAT'L L. J. (Aug. 6, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202566272348&ABA_panel_votes_no_on_accrediting_overseas_law_schools&slreturn=20120901192048.

113. *Id.* at 3-7.

114. See THE PEKING UNIV. SCH. OF TRANSNAT'L LAW, SUBMISSION OF THE PEKING UNIVERSITY SCHOOL OF TRANSNATIONAL LAW TO THE COUNCIL OF THE ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR 9 (2012), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/August%202012%20Council%20Open%20Session%20Materials/2012_lehman_accreditation_of_foreign_law_schools.authcheckdam.pdf.

115. *Id.* at 1.

116. STL's submission to the ABA included nine attachment letters in support of STL's application for accreditation. See *id.* at A3-A20.

ther exclusively or as one aspect of a particular curriculum. The programs outlined below provide examples of a nationalist model of globalization.

A. *The Peking University School of Transnational Law*

One of the driving forces of the ABA's recent activity with respect to accreditation is the Peking University School of Transnational Law (STL), located outside of Hong Kong in Shenzhen and opened in 2008. STL is "the first law school in mainland China to provide its students with an educational program modeled on the form of legal education prevalent in the United States, the 'Juris Doctor' or JD."¹¹⁷ Founded by Jeffrey Lehman, former President of Cornell and Dean of Michigan Law, STL aims to "prepare students to be transnational lawyers,"¹¹⁸ by offering a four-year dual-degree program in which students earn an American Juris Doctorate and a Chinese Juris Master degree.¹¹⁹ This project appears to represent a sort of culmination of efforts to transport and naturalize U.S. pedagogy and substantive law study in ways that might have a profound effect both within the host state (China) and the home state (the United States) – by permitting Chinese students to learn and acculturate to U.S. law and also by permitting them to sit for the bar examination in at least some U.S. states.¹²⁰

Notably, STL requires that applicants either sit for the LSAT, a tenant of the American legal education system, or the LSAT-STL, a similar examination adapted for non-native English speakers.¹²¹ Once admitted, students are exposed to a first-year curriculum that largely mirrors that of a first-year American law student. Specifically:

First-year students concentrate on the core courses of a

117. *The Peking University School of Transnational Law*, INST. FOR CHINA-U.S. L. & POL'Y STUD., http://www.china-us-law.org/institute/the_peking_university_school.html (last visited Mar. 9, 2013).

118. Jeffrey Lehman, *Message from the Chancellor*, PEKING SCH. TRANSNAT'L L., <http://stl.pku.edu.cn/en/Content.aspx?NodeCode=925002001001> (last visited Apr. 6, 2013).

119. See *Academics: JD and JM Program*, PEKING SCH. TRANSNAT'L L., <http://stl.pku.edu.cn/en/Content.aspx?NodeCode=925005001> (last visited Apr. 6, 2013) [hereinafter *Academics*].

120. See generally Anne M. Burr, *Law and Harmony: An In-Depth Look at China's First American-Style Law School*, 28 UCLA PAC. BASIN L.J. 25 (2010) (examining STL and exploring ways in which this model can improve U.S. legal education).

121. *JD Admissions, International Admission FAQ*, PEKING SCH. TRANSNAT'L L., <http://stl.pku.edu.cn/en/admission-FAQ> (last visited Apr. 6, 2013).

common-law JD education: Contracts, Property, Torts, Criminal Law, Civil Procedure—but with a “transnational twist.” These courses, all taught in English, put a greater emphasis on comparative law: how core legal doctrines are treated in different nations. First-year students also enroll in a required program in transnational legal practice and professional responsibility for lawyers.¹²²

Moreover, the American curriculum at STL is taught in English and in accordance with the American case method, wherein students are taught to extract substantive law from judicial opinions and class discussions which utilize the Socratic method.¹²³ As expected, a list of courses and course materials reveal texts familiar to an American law student.¹²⁴ Despite this emulation, and notwithstanding STL’s hope that its curriculum “ensure[s] that graduates will be qualified to pursue ‘dual qualification’ – membership in both the national Chinese bar and the bar of American state jurisdictions,”¹²⁵ neither the ABA nor any state supreme court has recognized STL’s JD degree for purposes of qualification to sit for the bar examination.¹²⁶

Dean Lehman was quite explicit about the relationship between the host state and American legal education and its value within foreign systems. Lehman remarked:

I view it less in economics and more in cultural. What we’re seeing is the spread and development worldwide of a transnational legal culture where features of different legal cultures and systems are being shared. I think it is good for American society; for American economy if those ideas and principles and systems become part of a shared worldwide vocabulary. The more lawyers everywhere speak American law as well as their own country’s law, the better it is for America.¹²⁷

122. See *Academics*, *supra* note 119.

123. Burr, *supra* note 120, at 58.

124. For example, students are required to read JESSE DUKEMINIER ET AL., PROPERTY (7th ed. 2010) and RICHARD A. BREALEY ET AL., FUNDAMENTALS OF CORPORATE FINANCE (6th ed. 2010).

125. *Academics*, *supra* note 119.

126. Sloan, *supra* note 112.

127. Jaime Mendoza, *China Legal*, US-CHINA TODAY (July 31, 2009), http://www.uschina.usc.edu/article@usct?china_legal_14050.aspx.

These ideas are similar in form to those held by other influential officials within the U.S. legal academy.¹²⁸ Effectively, knowledge of U.S. law promotes globalization in foreign jurisdictions. But, it promotes the globalization of U.S. law as the basis and the language for global transactions. The political objectives of this model were quite explicit as well.¹²⁹ This is the essence of a nationalist model of globalization. Indeed, the development of U.S.-style law schools teaching U.S. law abroad “will aid in the project of making U.S./U.K.-style lawyering the world model, and make English the language of lawyers.”¹³⁰

Despite his recent stepping down as dean of the school,¹³¹ Jeffrey Lehman remains confident that the denial of accreditation will not deter Peking graduates who want to practice in the United States. Indeed, Mr. Lehman notes that the school will seek alternative accreditation options and, at any rate, its students may complete an LLM program to qualify for admission to the bar in select U.S. jurisdictions.¹³² Finally, because, at the time of this writing, STL has just held commencement for its inaugural class of students, not to mention the ABA’s rejection of accreditation, employment prospects for STL graduates, regardless of jurisdiction, are unclear.

128. For example, Lauren Robel, speaking as President of the Association of American Law Schools, recently noted:

The global engagement these students and international partners and colleagues make possible is important. It is important for our own students, who need to develop global practice networks and cross-cultural competencies. It is important for the domestic legal market, which needs the global legal talent It is important for the development of knowledge about legal systems with which we are increasingly entwined and on which we are interdependent. And it is important for our long-term national interest. . . .

Robel *supra* note 8, at 4. Professor Robel, though, speaks more from an internationalist than a nationalist globalization perspective.

129. Dean Lehman explained “it is in our national interest to see other countries emulate [the U.S. law schools’] approach to legal education, and the vision of professional dedication it promotes.” Dybis, *supra* note 6.

130. *Id.* (quoting William Henderson, law professor at Indiana University, Bloomington).

131. Mr. Lehman will remain Chancellor of the school while assuming a Vice Chancellor position at NYU’s new Shanghai campus for liberal arts and sciences. See Jeffrey S. Lehman, *Former Cornell President, to Lead NYU Shanghai*, NYU (Apr. 5, 2012), <http://www.nyu.edu/about/news-publications/news/2012/04/05/jeffrey-s-lehman-former-cornell-president-to-lead-nyu-shanghai.html>.

132. Katherine Mangan, *U.S.-Style Law School in China Won’t be Considered for ABA Accreditation*, CHRON. HIGHER EDUC., Aug. 6, 2012, <http://chronicle.com/article/ABA-Says-It-Wont-Accredit-Law/133387/>.

*B. University of Navarra Anglo-American Law Program
and Global Law Program*

Another example of nationalist model globalization, the University of Navarra School of Law, located in Navarra, Spain and founded in 1952, offers students the Licentiate in Law, the officially recognized and government-regulated law degree of Spain.¹³³ In addition to core classes focusing on Spanish law, students must earn forty-four credits from the completion of elective courses covering a variety of topics.¹³⁴ A student may use his or her required electives to take courses that satisfy requirements for the award of a specialized diploma to accompany the Licentiate.¹³⁵ That is, a student interested in business may select elective courses that satisfy requirements for the diploma in International Business Law.¹³⁶ On the other hand, a student interested in environmental law may allocate his or her elective credits to those courses satisfying requirements for the diploma in Environmental Law.¹³⁷ In addition to business and environmental law diplomas, students may take courses and pursue a diploma from the school's Anglo-American Law Program (AALP).¹³⁸ The University of Navarra School of Law offers seven such "Licentiate + Diploma" tracks.¹³⁹

Claiming that "Anglo-American Law plays a vital role not only in the United States but in all countries throughout the [w]orld" and that "it is essential for European law students to be familiar with common law,"¹⁴⁰ the AALP focuses on American law. Particularly, the program's curriculum is derived from the notion that "legal institutions and law firms need lawyers who have working knowledge of both civil and common law systems"¹⁴¹ and includes an Introduction to Anglo-American Law, Constitutional Law, Criminal Law, Contract Law, Dispute Resolution, Tort Law, Business

133. See *The School*, U. NAVARRA SCH. L., <http://www.unav.es/derecho/english/> (last visited Apr. 6, 2013).

134. *Licentiate*, U. NAVARRA SCH. L., <http://www.unav.es/derecho/english/academics/licentiate.html> (last visited Apr. 6, 2013).

135. *Id.*

136. *Licentiate + Diplomas*, U. NAVARRA SCH. L., <http://www.unav.es/derecho/english/academics/diplomas.html> (last visited Apr. 6, 2013).

137. *Id.*

138. *Id.*

139. *Id.*

140. *The Anglo American Law Program*, U. NAVARRA SCH. L., <http://www.unav.es/derecho/english/academics/aalp.html> (last visited Apr. 6, 2013).

141. *Id.*

Law, and Tax Law. Further, the AALP is taught entirely in English by visiting professors from American law schools.

Although the AALP is compatible with the University of Navarra's broader Global Law Studies Licentiate + Diploma, the Global Law Studies (GLS) program provides a much more diverse curriculum than the AALP program.¹⁴² Indeed, in providing students with the "global legal education needed by lawyers in the 21st century," the GLS program "will provide law students with a basic knowledge of the legal systems of Japan, China, India and Latin American countries, as well as of Islamic Law."¹⁴³ In addition to a broader curriculum, the GLS program requires students to spend at least two months working or researching abroad and, unlike the more narrowly tailored AALP, the GLS program is taught by visiting professors from a variety of different countries and with unique areas of expertise.¹⁴⁴

The distinction between the AALP and the GLS program, and moreover the GLS program and STL's program, is the focus of study. While students in the GLS program study a variety of legal systems, students in both the AALP and STL programs focus on Anglo-American law. Although in both the AALP and the GLS program, special diplomas are pursued while a student earns the official Licentiate of Law, it is clear that the GLS program more closely follows the internationalist model of globalization than does the AALP course of study. This is an important distinction, highlighting both the objectives and construction of the nationalist export. More importantly, it suggests that even within models of nationalist imports and internationalization, there are important distinctions that shape the nature of the U.S. law that is being imported and then absorbed. In the case of the Chinese effort, that importation is more consciously formal, preserving the distinct and systemic character of the import and treating it as both foreign and complete. In the case of the Spanish effort, the approach to American law is more like that of medieval jurists' approach to Roman law.¹⁴⁵ That is, U.S. law is

142. Compare *The Global Law Program*, U. NAVARRA SCH. L., <http://www.unav.es/derecho/english/academics/glp.html> (last visited Apr. 9, 2013) with *The Anglo American Law Program*, *supra* note 140 (adding additional curriculum such as study abroad, arbitration, international trade, and study of the world trade organization).

143. *The Global Law Program*, *supra* note 142.

144. *Id.*; see also *Biography*, FRANK E. VOGEL, <http://frankevogel.net/home.html> (last visited Apr. 6, 2013) ("Frank E. Vogel is an independent contractor and legal consultant on Islamic law. . .").

145. Cf. PAUL VINOGRADOFF, *ROMAN LAW IN MEDIEVAL EUROPE* 94 (F. de Zulueta ed., Oxford Univ. Press 2d ed. 1929) (describing how practitioners or judges selected a doctrine, "not

understood to stand for a set of internationalized principles that may be recognized as informing customary law and governance practice at the international/transnational level, and could be valuable both in its own right within that regulatory space and otherwise to inform domestic law. The next Part discusses this idea.

IV. CRITICAL ANALYSIS OF THE NATIONALIST MODEL

As we discussed in a previous article,¹⁴⁶ although nationalist models of globalization may be better than no globalization at all (isolationism), such models may be inapposite to what some may consider true globalization. The American internationalist model of educational globalization appears to embrace the form and function of internationalization. Globalization in the internationalist form is understood as organizing and developing a body of law that is not the domain of the domestic legal order of any state. It includes, of course, international law, but also a variety of other governance frameworks and structures that might affect individuals or transactions, especially those that cross borders.¹⁴⁷ The grounding is managerial, in the sense that emerging systems of law that cross borders are best developed as a joint project among all affected states and that this product ought to represent the consensus of those states grounded in consensus-based framing principles.¹⁴⁸ States are de-centered in the sense that the principal source of law is that which exists outside of the state. To extract and teach that law, communities of educational institutions may work together to craft a plausible organization of these governance systems, then each institution agrees to apply this system consistently within its borders. The process, then, mimics inter-governmentalism in form and effect, but one

in its proper and logical sense, but in order to confirm or to prove some opinion of their own, which possibly did not fit in exactly with the concrete rule brought forward to support it.”).

146. See Backer & Stancil, *supra* note 12.

147. But not entirely; it also includes the mandatory domestication obligations of states under international public and private law. See, e.g., Statute of the International Court of Justice art. 38(1), Jun. 26, 1945, 59 Stat. 1055, T.S. No. 993 (describing the forms of public and private international law).

148. This describes the project of legal internationalization among national elites. For example, in 2000, the Association of American Law Schools convened a “watershed conference, believed to be the first of its kind ever held, [to highlight] the world’s diverse systems of law and legal education and explore the desirability and feasibility of greater global cooperation among legal educators.” John Sexton & Carl C. Monk, *Papers from the La Pietra Conference of International Legal Educators*, 51 J. LEGAL EDUC. 313, 313 (2001).

that does not necessarily involve states.¹⁴⁹ In place of markets there is management, and in place of competition there is consensus.

In contrast, the American nationalist model of educational globalization appears to embrace the *form* of globalization even as it subverts its *function*, when globalization is understood to embrace both the substance of what is taught and the organization of its delivery. Nationalist models of globalization universalize the substantive and pedagogical approaches of a single state, one whose law is hegemonic, and then export that system globally.¹⁵⁰ The grounding is market-oriented. The core assumption is that a global market has arisen for law, one in which states compete for increasingly mobile “customers.” The most successful states will attract the most valuable adherent—wealthy individuals and enterprises—and will serve as the legal home for transactional rules and the resolution of transactional disputes.¹⁵¹ As states become more successful in attracting customers, other states will seek to emulate the winning formula by adopting some or all of the features that make the law system of a particular state attractive. This effect is well-known in U.S. corporate regulation as the “Delaware effect.”¹⁵² It has been criticized as producing a race to the bottom—incentives to pander to the most attractive adherents to the detriment of sound public policy.¹⁵³ But the system has its supporters and has also been praised for creating a race to the top.¹⁵⁴ In any case, for the purposes of this Article, every-

149. See generally DOREEN ALLERKAMP, INTERGOVERNMENTALISM, RELOADED: THE TRANSFORMATIVE POWER OF ‘INTERGOVERNMENTAL’ COUNCIL POLICY-MAKING, (2009), available at http://www.euce.org/eusa2009/papers/allerkamp_05D.pdf (demonstrating how the intergovernmental and community institutions of the European Union have begun to overlap and arguing that the intergovernmental label falls short of capturing the political dynamics of the European Union and hides those institutions’ transformative potential).

150. Backer & Stancil, *supra* note 12, at 11.

151. See William L. Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 YALE L.J. 663, 668–69 (1974) (discussing how Delaware’s favorable corporate climate has attracted companies and helped to generate revenue for the state).

152. See Leslie Wayne, *How Delaware Thrives as a Corporate Tax Haven*, N.Y. TIMES, June 30, 2012, <http://www.nytimes.com/2012/07/01/business/how-delaware-thrives-as-a-corporate-tax-haven.html> (“Of course, business—the legal kind—has been the business of Delaware since 1792, when the state established its Court of Chancery to handle business affairs. By the early 20th century, the state was writing friendly corporate and tax laws to lure companies from New York, New Jersey and elsewhere.”).

153. In the context of contests for corporate chartering among states, see Cary, *supra* note 151, at 663–68.

154. The Cary-Winter debate concerns itself with Cary’s contention that states seeking to attract corporations will enact less restrictive corporate codes favoring managers to the detriment of shareholders (inciting a “race to the bottom”). *Id.* at 671–72, 705. Winter, on the other hand, contends that if Delaware law was not satisfactory to managers and shareholders, cor-

one tends to agree about the existence of legal commoditization and the establishment of markets for legal regulatory systems.¹⁵⁵ If there are global markets for legal education, it follows that these systems also compete, and the most successful ones are emulated or copied in whole or in part.¹⁵⁶ Lastly, this market model tends to decenter any focus on “blended” or transnational/international instruction. Nationalist globalization tends to assume that the domestic legal order of states is still the most important element of law systems, that public law is still something in the nature of contract among states, and that international law can be understood as the domestic transposition of political obligations into the domestic law of states.

The subversion of globalization inherent in nationalist or markets-oriented globalization can be understood as a form of imperialism. In this form, nationalist models can create significant pressure for systems to conform to the imported legal regime, changing the indigenous regime in the process. More pernicious, and following the model of Westernization in East Asia a century ago and globalization today, this pressure can produce a horizontal division of law, resulting in the application of indigenous law in purely local matters and globalized or imported law among national groups with interstate relationships. In addition to effects on the receiving regime, this Article considers the effect of nationalist globalization on the exporting state. That is, it is possible to understand exportation as producing a potentially substantial backflow effect in which new practitioners from outside the exporting jurisdiction will add to and change the course and tone of the legal discourse in the exporting “metropolis.”

A. Cultural Imperialism

Although nationalist models of globalization may be better than no globalization at all (isolationism), such models may be inapposite to internationalizing globalization.¹⁵⁷ Rather, efforts such as those

porations would fail and managers would have no incentive to incorporate in Delaware (thus, Delaware’s superior law incites a race to the top as other states attempt to attract corporations). Ralph K. Winter, Jr., *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 J. LEGAL STUD. 251, 254–58 (1977).

155. See, e.g., Joel P. Trachtman, *International Regulatory Competition, Externalization, and Jurisdiction*, 34 HARV. INT’L L.J. 47, 52–53 (1993).

156. See Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARDOZO J. INT’L & COMP. L. 143, 158–72 (2006) (discussing competition prevalent among U.S.-based law schools in attracting foreign graduate students).

157. See Backer & Stancil, *supra* note 12, at 20–21.

considered by the ABA and implemented in STL and, to some extent, in the AALP course of study at the University of Navarra, might serve not to globalize legal education but to “globalize (and perhaps universalize) the frameworks of a particularly dominant national legal order.”¹⁵⁸ By no means limited to discussions of legal education, the fear of homogenization, colonialism, or, worse yet, cultural imperialism has long been a criticism of globalization generally and may be particularly applicable in the context of nationalist models of legal education globalization.

Globalization based on the nationalist model seeks to “project the reach of domestic law, and the education in the domestic law and legal culture of the United States on a global scale.”¹⁵⁹ Further, “some of these powerful incentives to move forward with [nationalist globalization] . . . might provide a caution to those on the receiving end of the transaction.”¹⁶⁰ After all, “[i]t is not too long a path from harmonization to subordination and from guidance to domination.”¹⁶¹ This section will briefly discuss the idea of cultural imperialism and, in particular, why the globalization of legal education is particularly vulnerable to criticisms rooted in that notion. Finally, this section will conclude by positing that concerns of cultural imperialism or colonialism may be overstated and that the nationalist model of globalization may not be as one-sided as it first appears.

The export and import of education is not a new phenomenon. Indeed, the Bologna Process and the GATS envision international trade in education.¹⁶² Moreover, long before the Bologna Process or the GATS, thousands of students received education outside of their home country.¹⁶³ Notwithstanding this observation, when discussing globalization of legal education in particular, one must remember that the rule of law is developed in accordance with and as a result of a society’s norms and values. Unlike medical education,¹⁶⁴

158. *Id.* at 35.

159. *Id.* at 20.

160. *Id.*

161. *Id.*

162. See *supra* notes 57–62 and accompanying text.

163. See, e.g., Louise Harmon & Eileen Kaufman, *Innocents Abroad: Reflections on Summer Abroad Law Programs*, 30 T. JEFFERSON L. REV. 69, 95–104 (2007) (describing early study abroad programs of the University of Delaware and Smith College in the 1920s, followed by a rapid expansion of study abroad programs after World War II).

164. We do not propose that medical education does not vary by jurisdiction or culture, or that medical education does not reflect societal norms and values. Rather, we use medical education merely as an example of a more objective-based education that may more easily be exported or transcend jurisdictional boundaries.

law varies from jurisdiction to jurisdiction and reflects variations in cultures and societal norms of a population. As such, legal education is rooted in subjective societal norms, making globalization of legal education particularly vulnerable to criticisms based on cultural imperialism.

Cultural imperialism has been defined as:

[T]he sum of the processes by which a society is brought into the modern world system and how its dominating stratum is attracted, pressured, forced, and sometimes bribed into shaping social institutions to correspond to, or even promote, the values and structures of the dominating center of the system.¹⁶⁵

A popular modern example of this phenomenon might be the rapid expansion and global presence of the American fast-food restaurant McDonald's. Indeed, "the ubiquitous golden arches of McDonald's are now . . . 'more widely recognized than the Christian cross.'"¹⁶⁶ Applying the notion of cultural imperialism, one might argue that the globalization of McDonald's and American fast food in general has altered the dietary culture and customs of foreign countries. More likely, the argument would be that the influence of American fast-food chains like McDonald's has altered the economy for local farmers and other food service workers in foreign countries.

It is not surprising that claims of cultural imperialism may more frequently be alleged in the context of the globalization of legal education, as opposed to other efforts in educational globalization such as medical education. In *Legal Colonialism—Americanization of Legal Education in Israel*,¹⁶⁷ Haim Sandberg discusses the influence of American-trained faculty on legal education in Israel. Generally, Sandberg analyzes the trend for law faculty members in Israel to receive a post-graduate education (a master's or doctorate degree) in the United States.¹⁶⁸ In fact, Sandberg contends that as many as 65% of all Israeli legal faculty members have working relationships with

165. HERBERT I. SCHILLER, COMMUNICATION AND CULTURAL DOMINATION 9 (1976).

166. Julia Galeota, Cultural Imperialism: An American Tradition, HUMANIST, May-June 2004, at 22 (quoting ERIC SCHLOSSER, FAST FOOD NATION 4 (2001)).

167. Haim Sandberg, *Legal Colonialism—Americanization of Legal Education in Israel*, 10 GLOBAL JURIST TOPICS 1, 1 (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2034386.

168. *Id.*

universities in the United States.¹⁶⁹ He further argues that “the importation of both American legal orientation and American values may have a deep influence on the nature of Israel as a Jewish state and hence, if not properly adjusted, may influence its very existence.”¹⁷⁰ More specifically, Sandberg notes structural effects of this so-called Americanization and a rising preference for the “theoretical, philosophical, value-based” curriculum over doctrine-based legal research.¹⁷¹ To this end, Sandberg writes, “[t]he weight of the positive and local analysis of laws and judgments has decreased.”¹⁷² Although on the surface this might seem like a slight change in pedagogy, the end result may drastically affect the day-to-day operation of Israel’s legal system.

First, Sandberg notes that the increased emphasis on theory has changed the target population of Israeli law schools’ research, noting “[t]he lengthy and theoretical writing has reduced the value of the legal article as an article which could be of assistance to a practitioner, judge or attorney seeking to learn the positive local law.”¹⁷³ Aside from effects felt on the structure of Israeli legal education, Sandberg also notes the ideological difficulty of applying American law to Israeli culture.¹⁷⁴

In particular, Sandberg describes the recent Israeli case *Ka’adan v. Israel Land Administration*,¹⁷⁵ involving the state’s authority to build settlements to be exclusively occupied by Jews. The High Court’s judgment rejecting “separate but equal” treatment for the Jews, says Sandberg, is fundamentally at odds with Zionism and the Jewish nature of Israel.¹⁷⁶ Commenting on the application of the American rejection of the “separate but equal” doctrine to Israeli land allocation, Sandberg writes:

The need for a Jewish state is one of the ‘fundamental beliefs’ of Zionism, for all of its various streams. It is the consequence of the assumption that a solution to the problem of the Jews, both at an existential level and at a national and

169. *Id.*

170. *Id.* at 2.

171. *Id.* at 7; see also WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 56–58 (2007) (describing the “shadow pedagogy” of discounting substantive fairness and justice in traditional legal education).

172. Sandberg, *supra* note 167, at 8.

173. *Id.*

174. *Id.* at 12–13.

175. HCJ 6698/95 *Ka’adan v. Israel Land Admin.* 54(1) PD 258 [2000].

176. Sandberg, *supra* note 167, at 14–16.

cultural level, would be found only in a state for Jews.¹⁷⁷

Sandberg's observations demonstrate the potential complications of globalizing a system of law that is developed from and based on societal norms and customs. Notwithstanding these observations, globalization efforts through the export of education are not intended to and likely will not unilaterally commandeer entire cultures. Rather, arguments can be made that, as a profit-generating venture, the substantive content of exported education will change and adjust based on consumers' reception of it and, as such, take on a form that is less than purely American.

Still, it is worth asking whether the nature of that cultural imperialism model changes when a legal culture itself adapts its own practices and cultures to conform to those of another state.¹⁷⁸ When the manifestation of cultural imperialism is produced from within, it might be understood better as a species of neo-colonialism. The logic of globalization makes it possible to produce the effects of neo-colonialism through the competitive effects of markets for law and legal cultures described above.¹⁷⁹ The question, noted but not explored in greater depth here, remains: Does globalization change the nature and character of neo-colonialism such that it may not be understood as a formal project but, instead, as a functional one? That, certainly, is the position of some, as best expressed in the last generation outside the academic sphere in the many speeches and books of Fidel Castro, the former leader of Cuba.¹⁸⁰ Even the well-meaning internationalists among us may sometimes appear to fall into this pattern: "We seek to remedy the inequities of U.S.-style globalization by offering more of our favored brand of U.S.-style globalization."¹⁸¹ But that requires understanding globalization as a national,

177. *Id.* at 14.

178. Cf. PIERRE BOURDIEU, *The Market of Symbolic Goods*, in 14 *POETICS* 13 (R. Swyer trans., 1985), reprinted in *THE FIELD OF CULTURAL PRODUCTION* 112, 141 (Randal Johnson ed., 1993) ("[C]ultural legitimacy appears to be the 'fundamental norm[.]' to employ the language of Kelsen, of the field of restricted production. But this 'fundamental norm[.]' as Jean Piaget has noted, 'is nothing other than the abstract expression of the fact that society 'recognizes' the normative value of this order' in such a way that it 'corresponds to the social reality of the exercise of some power and of the 'recognition' of this power or of the system of rules emanating from it.'" *Id.* (quoting J. PIAGET, 3 *INTRODUCTION À L'ÉPISTÉMOLOGIE GÉNÉTIQUE* [THE GENETIC EPISTEMOLOGY] 239 (1950)).

179. See *supra* Part I.A.

180. Cf. *Interview by Spanish news agency with Fidel Castro, President*, in *FIDEL CASTRO: SPEECHES 1984-85: WAR AND CRISIS IN THE AMERICAS* 184-94 (Michael Taber ed., 1985).

181. Bryant G. Garth, *Law and Society as Law and Development*, 37 *LAW & SOC'Y REV.* 305, 313 (2003); see also Alvaro Santos, *The World Bank's Uses of the "Rule of Law" Promise in Economic*

rather than a markets-based, project.¹⁸² With the emergence of China, Brazil, and other states, it is no longer as easy to maintain the old conflation of U.S. political and economic aims with the control of globalization.

B. The Supply and Demand Argument Against Cultural Imperialism Concerns

Thinking of foreign law schools and their students as consumers of legal education, the cultural imperialism argument can be rebutted by supply and demand rationales.¹⁸³ That is, “critics of the theory of American cultural imperialism argue that foreign consumers don’t passively absorb the images America bombards upon them.”¹⁸⁴ Rather, those critics may point out that a foreign law school or foreign student’s choice of curriculum may negate the possibility of cultural imperialism.

Critics of the cultural imperialism argument in the globalization of education context would argue that students at the University of Navarra have the choice to participate in the AALP or, rather, to take only those courses focusing on the law of their home jurisdiction. As was noted earlier, the University of Navarra’s School of Law offers seven Licentiate + Diploma programs, only one of which has a heavy focus on the law of one foreign jurisdiction.¹⁸⁵ Similarly, STL is not the only choice for Chinese students wishing to study law; rather, students may choose to study at a Chinese law school that has decided not to teach American law.¹⁸⁶ In this way, critics would argue that any cultural shifts resulting from the teaching of American law overseas are a product of the market and, in particular, students’ taste for a particular curriculum and not any sort of co-

Development, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 253 (David M. Trubeck & Alvaro Santos eds., 2006).

182. See generally Larry Catá Backer, *Ideologies of Globalization and Sovereign Debt: Cuba and the IMF*, 24 PENN ST. INT’L L. REV. 497 (2006) (contrasting the IMF’s vision of an integrated global economy built on liberalized trade with Cuban response that its regime subordinates developing countries).

183. Galeota, *supra* note 166, at 23.

184. *Id.*

185. The University of Navarra School of Law offers Licentiate + Diploma tracks in Economic Law, Anglo-American Law, International Business Law, Global Law, Environmental Law, the Law of Navarra, and Urban Planning. See *Licentiate + Diplomas, supra* note 136.

186. See Burr, *supra* note 120, at 49 (describing Peking University School of Transnational Law as “unique among China’s 600 plus law schools”).

lonialism or imperialism in the classic sense.¹⁸⁷ Indeed, this market-driven cultural exchange can be analogized to the foreign acceptance, rejection, and modification of various items from the menu of American company McDonald's for menus overseas.¹⁸⁸

Foreign students' and law schools' choice to participate in a curriculum embracing a foreign jurisdiction's system of law, and the form that curriculum ultimately takes, may depend on the marketability of said curriculum and the value it is given by potential employers. Stateside, for example, the legal market and hiring practice have led to the distinction between national and regional law schools in which "[g]enuinely 'national' law schools draw prospective employers to campus from around the nation, not just from the immediate area in which the school is located; more 'regional' law schools mainly draw employers to campus from the immediate region."¹⁸⁹ As a consequence, "[m]any [regional] schools, sensitive to the needs of the markets into which their students are likely to obtain employment, have opted for regionalization, localization or nationalization of their curricula,"¹⁹⁰ as opposed to nationalization or internationalization. This same principle may be true for foreign law schools considering an expansion of their curricula to include the law of a particular jurisdiction. That is, the choice to include another jurisdiction's substantive law is likely to depend on the market for knowledge of the foreign jurisdiction's law.

Similarly, even after a foreign law school has determined to supplement its curriculum with the law of a foreign system, the substance and completeness of the foreign law system's role in the curriculum may vary based on supply and demand. For example, a student wishing to practice global transactions is unlikely to focus on American First Amendment law, and a law school catering to foreign employers with a heavy hand in American business transactions will likely structure its curriculum to favor instruction in U.S. corporate law and mergers and acquisitions over other areas of U.S. law like tort or property law.

187. Cf. David S. Clark, *Transnational Legal Practice: The Need for Global Law Schools*, 46 AM. J. COMP. L. 261, 273-74 (1998) (discussing the rising market demand and opportunities for global lawyers).

188. For an interesting look at some items from international McDonald's menus, see *McDonald's Food You Can't Get Here*, CHI. TRIB., Mar. 21, 2012, <http://www.chicagotribune.com/business/ct-biz-mcdonalds-food-around-the-world,0,5168632.photogallery>.

189. Brian Leiter, "National" and "Regional" Law Schools, BRIAN LEITER'S L. SCH. REP. (Feb. 6, 2006), http://leiterlawschool.typepad.com/leiter/2006/02/national_and_re.html.

190. Backer & Stancil, *supra* note 12, at 11.

As with the choice to participate in a curriculum embracing another jurisdiction's law at all, students' choices of courses may also turn on principles of demand within the market and ultimately shape the extent to which a foreign system of law is included in a particular curriculum. This does not seem to be an unreasonable assumption, as the same supply and demand principles affect students' choices with respect to which courses of their home jurisdiction's law they take. For example, in the United States, students who may have entered law school with little interest in tax law may pursue a post-graduate LLM degree in tax law with the hopes of finding lucrative employment in a large law firm.¹⁹¹

Finally, it is important to acknowledge that foreign entities may adopt the pedagogy of U.S. law schools without teaching the substance of U.S. law. Indeed, there has been a move toward the use of U.S.-style teaching techniques, even among institutions that may have no interest in teaching U.S. law.¹⁹² This might be one way to understand the spread of clinical education outside the United States.¹⁹³ And, indeed, technique and the choice of focus on particular styles and orientations of techniques can be as readily used to expand the boundaries of national law or to reinforce existing regimes.¹⁹⁴ Indeed, in authoritarian regimes, there is a sense that sometimes internationalization might be used to co-opt the legal products imported.¹⁹⁵

191. See, e.g., Kashmir Hill, *Can't Find Work? Get an LLM*, ABOVE THE LAW (May 5, 2009, 12:06 PM), <http://abovethelaw.com/2009/05/cant-find-work-get-an-llm/> (inviting readers to comment on the value of pursuing a tax LLM after being laid off or while job searching). See generally Ashby Jones, *Will a Tax LL.M. Cleanse a 4th Tier, Bottom of the Class J.D.?*, WALL ST. J. L. BLOG (Mar. 30, 2010, 2:22 PM), <http://blogs.wsj.com/law/2010/03/30/will-a-tax-llm-cleanse-a-4th-tier-bottom-of-the-class-jd/> (quoting a New York Law Journal advice column, in which a reader who graduated at the bottom of a class from a fourth-tier law school asks if it is worth it to get an LLM to improve job prospects).

192. See Leigh Jones, *Foreign Law Schools Follow the U.S. Playbook*, NAT'L L.J. (Sept. 9, 2008), http://www.law.com/jsp/law/international/LawArticleIntl.jsp?id=1202424363465&Foreign_Law_Schools_Follow_the_US_Playbook&slreturn=20130024151809 (describing the Peking University School of Transnational Law as evidence of the growing trend of foreign law schools adopting U.S.-style programs).

193. For a comprehensive review of international clinical legal education and its social justice mission, see THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (Frank S. Bloch ed., 2011).

194. See, e.g., David McQuoid-Mason, Ernest Ojukwu & George Mukundi Wachira, *Clinical Legal Education in Africa: Legal Education and Community Service*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE, *supra* note 193, at 23 (describing the types of law clinic training used to prepare African students to provide country- and region-specific legal services).

195. See Matthew Stephenson, *A Trojan Horse in China?*, in PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE 191, 203-06 (Thomas Carothers ed., 2006) (describing

If one assumes that concerns of cultural imperialism are correlated with the extent to which a foreign school's curriculum has been saturated with the law of a foreign jurisdiction, then students' taste for the curriculum and pedagogy, institutional decisions to offer American curriculum, employer recognition of the value of such curriculum (or the lack thereof), and the distinction between a choice to import pedagogy and substantive law together or separately may very well minimize the concerns of cultural imperialism. That is, market principles will prevent the passive absorption and acceptance of American legal theory in the absence of some substantive demand for the curriculum, and, as a consequence, mitigate the "Americanization" cultural imperialism fears. Indeed, even if it is definitively true that globalization efforts in legal education favor the exchange of one system of law and culture, such dominance of that particular legal system may merely reflect world economics (supply and demand) and not motives of cultural imperialism. That is:

[I]t can be argued that it is undesirable to seek to achieve globalization that is an equal blend of all systems of law merely for the sake of equality. Rather, it can be argued that globalization should seek to maximize trade and stimulate the global economy and, as such, the markets and nations with the strongest influence on global trade will necessarily be those that are most strongly represented in globalization efforts. Following from that argument, because "global" law firms are predominantly extensions and branch campuses of American law firms and America is a major (if not the most major) player in the international business world, it is not surprising that the American legal system would be central to efforts to globalize the legal profession. Thus, when speaking of globalization of law, the trends in legal education are going to mirror those of the industry.¹⁹⁶

Thus, even if it is conceded that globalization of legal education has the effect of homogenizing culture, there is something to be said for the argument that a country's legal education regime should reflect the state of the industry. Indeed, it may in fact be irresponsible

practices in certain authoritarian host states of cordoning off politically salient sections of imported law, while adopting reforms with commercial and economic advantages).

196. Backer & Stancil, *supra* note 12, at 37 (footnote omitted).

not to teach a particular jurisdiction's law.¹⁹⁷ This idea is similar to that articulated by David Rothkopf contending that the Americanization of cultures is beneficial to the world at large as it reflects the supremacy of the "best model for the future" over lesser models.¹⁹⁸

Yet this process of exportation can also produce substantial resistance in the exporting country. The exporting country tends to understand the price of increasing markets for law outside its jurisdiction—greater competition for jobs and a loss of control of the development of the legal system itself. Resistance of this sort was at the heart of the foreign law school accreditation debate.¹⁹⁹ "The main complaint seems to be a concern that having additional law schools receiving accreditation will water down an already teeming pool of young lawyers."²⁰⁰ But the fear of losing control of the project of U.S. lawyering, and secondarily of the direction of U.S. law, is not far from the center of concern. This has been expressed as a fear of "watering down" programs at international law schools teaching U.S.-style law and lawyering.²⁰¹ Those sentiments work in reverse within the host state, which also fears the political agenda of the introduction of foreign national models within the nationalist globalization project.²⁰²

Finally, despite the arguments for and against both the possibility of homogenization of culture and the merits of globalization, any cultural exchange resulting from globalization may not be completely unilateral. That is, as will be discussed below, it is conceivable that the introduction of one jurisdiction's law into the curriculum of a foreign law school will result in some mixing of the ideas and legal cultures of both export and recipient jurisdiction and, as such, a two-way cultural exchange (even if admittedly skewed in one direction) may naturally result. Indeed, critics of the cultural imperialism theory stress that exported ideas and concepts become "domesticated" by being interpreted and incorporated according to local val-

197. One can make an analogous argument with respect to the teaching of Delaware law in American law schools. Although a California law school may have to forgo teaching the particular nuances of California law, it would be difficult to deem sufficient a corporate law class that did not mention the Delaware General Corporation Law.

198. Galeota, *supra* note 166, at 24 (quoting David Rothkopf, *In Praise of Cultural Imperialism?*, 107 FOREIGN POL'Y 38, 49 (1997), available at <http://www.polsci.wvu.edu/faculty/hauser/PS103/readings/rothkopCulturalImperialismForPolSummer1997.pdf>).

199. See Dybis, *supra* note 6.

200. *Id.*

201. *Id.*

202. See, e.g., Stephenson, *supra* note 195, at 205.

ues.”²⁰³ This idea, the notion of a natural backwash of culture from recipient to exporting jurisdiction, will be explored in the sections that follow.

*C. Nationalist Globalization and Multiple Law Systems
Within States*

The logic of globalization has already exhibited a strong tendency to fracture law and the boundaries of law space.²⁰⁴ “To a large extent, the horse is already out of the barn,” said William Henderson, Professor of Law at Indiana University Bloomington, because “[t]he effect of globalization on the legal services industry is already gaining considerable momentum. The accreditation of foreign law firms is less a cause than an effect of globalization.”²⁰⁵ The law of states now competes with international law systems, international dispute resolution mechanisms, and the private law systems of global networks of manufacture organized through supply and value chains.²⁰⁶ Structures for governing these activities include public, private, and soft-law efforts.²⁰⁷ The issue of the character of these structures, whether they are even considered law, remains lively. Fracture does not exist in the abstract; rather, it is becoming a reality of legal practice within states.²⁰⁸ A corporation, for example, may be subject to (1) the national laws of the state in which it operates, (2) the laws of the state in which it is chartered, (3) the laws of the state in which it has its principal offices, (4) the requirements of stock exchanges on which its shares are traded, (5) the terms of bilateral trade agreements through which it has invested in other states, (6) international soft-law frameworks governing the behavior of multi-

203. Bob Lingard & Fazal Rizvi, *Globalisation and the Fear of Homogenisation in Education*, 1 CHANGE: TRANSFORMATIONS IN EDUC. 62, 68 (1998) (quoting ISLAM, GLOBALIZATION AND POSTMODERNITY 3 (Akbar S. Ahmed & Hastings Donnan eds., 1994)).

204. See Larry Catá Backer, *Harmonizing Law in an Era of Globalization—Convergence, Divergence, and Resistance: An Introduction and Analysis*, in HARMONIZING LAW IN AN ERA OF GLOBALIZATION: CONVERGENCE, DIVERGENCE, AND RESISTANCE 3 (Larry Catá Backer ed., 2007).

205. Dybis, *supra* note 6 (quoting William Henderson, a professor of law at Indiana University Bloomington).

206. See Hannah L. Buxbaum, *Territory, Territoriality, and the Resolution of Jurisdictional Conflict*, 57 AM. J. COMP. L. 631, 632–34 (2009) (discussing the complexities inherent in the relationship between territorial boundaries, sovereignty, and jurisdiction in the global economy).

207. See Kenneth W. Abbott & Duncan Snidal, *Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit*, 42 VAND. J. TRANSNAT’L L. 501, 508–10 (2009).

208. See Buxbaum, *supra* note 206, at 643–47, 653–54.

national corporations and the adverse human rights effects of its operations, (7) dispute resolution structures grounded in contract, and (8) its own internal operating rules, including rules for the relationship between the enterprise and its supply chain partners.

The fractures inherent in globalization are much in evidence within the movement to internationalize legal education. As demonstrated, nationalist globalization is itself impossible, even at this early stage, to be understood as a single approach. The Chinese variant evidences most clearly a markets-driven, law-as-commodity approach.²⁰⁹ U.S. law is preserved as a distinct system, the framework and structures of which may be learned and absorbed, but always remains as a distinct and self-contained system.²¹⁰ That may make U.S. law less likely to permeate host-state law systems easily. But it also serves host-state students most directly by providing them with what they need to practice and be absorbed within the home state. It also embodies a strong concession—the formal role of U.S. law as a medium for global transactions. The Spanish variant, on the other hand, emphasizes the concession of U.S. law as a medium of cross-border transactions, but in the process detaches U.S. law from its roots in its home state.²¹¹ Instead, it treats U.S. law the way that medieval jurists tended to treat Roman law—as a set of principles illustrating normatively powerful legal concepts that underlie transactions and might find expression within host-state law, but only in the context of the absorption of principle.²¹² U.S. law, legal principles, and methods become more ubiquitous, but less directly invasive, except through the filter of local law and culture as U.S. law is received.

Training in elements of this fractured-governance universe is an essential part of the internationalist approach to legal education.²¹³ The movement toward instruction in international and transnational law provides a method by which educational institutions acknowledge the existence and importance of multiple legal regimes that may affect law in any particular territory and with respect to which its students might, as practicing lawyers, have to deal for the advancement of their clients' interests. But it also evidences the way in which it is no longer possible to practice a "single" law even with-

209. See discussion *supra* Part III.A.

210. See *supra* p. 348.

211. See discussion *supra* Part III.B.

212. See *supra* p. 338.

213. See Backer & Stancil, *supra* note 12, at 46–47.

in a single jurisdiction. With multiple law systems operating within a jurisdiction, legal specialization now extends beyond the traditional divisions between a litigation or corporate practice, to divisions between a state-law-based practice or one of several non-state-law- or governance-based practices.

The introduction of instruction in the domestic law of another jurisdiction adds another layer to the multi-jurisdictional matrix that lawyers in a particular jurisdiction might have to navigate. But more importantly, it also suggests the elaboration of polycentricism in legal practice within a jurisdiction. Spanish nationals, for example, may now practice Spanish or U.S. law in Spain, and they may practice non-state-based governance elements as well. As a consequence, the legal education landscape of states becomes more complex.²¹⁴ For part of the population, the legal landscape continues to exist within traditional boundaries and substantially subject to domestic law. The projects of globalization and internationalization of governance tend to focus on those with the means to cross borders or to affect relationships across the boundaries of the jurisdictional authority of states. For the rest, the results might be felt secondarily, but the focus remains traditionally centered on the local. Neither the efforts described, nor the revolutions in internationalization, is likely to directly and significantly affect these groups. Likewise, these groups will tend to have little engagement and even less voice in the process of internationalization. At this level, one speaks only of consequential functional effects and the reaction to these effects.

For enterprises, the legal situation becomes more complex, producing a movement toward multi-jurisdictionality.²¹⁵ For elites, the legal landscape is almost the reverse of that at the other end of spectrum. Law here is polycentric and transnational.²¹⁶ There is a greater connection between counterparts in other states than with members

214. An essay about the complexities of education in China noted that the focus of transplantation necessarily was colored by the realities of the political culture of the receiving state, even at the highest levels of transmission. See Titi Liu, *Transmission of Public Interest Law: A Chinese Case Study*, 13 *UCLA J. INT'L L. & FOREIGN AFF.* 263, 281-84 (2008) (discussing competing interests of professional preparation for capitalist a market versus recognition of social injustice of that market).

215. See César A. Rodríguez-Garavito, *Nike's Law: The Anti-Sweatshop Movement, Transnational Corporations, and the Struggle over International Labor Rights in the Americas*, in *LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY* 64, 65 (Boaventura de Sousa Santos & César A. Rodríguez-Garavito eds., 2005).

216. The focus here is on the amalgamation of traditionally distinct national and global practice. See, e.g., Lauren K. Robel, *Association of American Law Schools Presidential Address 2012*, *AALS NEWS*, Feb. 2012, No. 2012-1, at 1, 6-7.

of lower and more domestically centered social and economic classes within one's state of citizenship.²¹⁷ Domestic law is one, but not necessarily the only, governance regime affecting behavior. The function of the lawyer at one level of the social structure of the state is very different from that of the lawyer at the other. For example, the nationalist export of a particular jurisdiction's legal education complicates this situation by adding a new set of legal norms—jurisdictionally unique ways of approaching law and legal problems—within a jurisdiction in which such law is foreign. As the next section will demonstrate, however, nationalist export does not complicate the situation only for the export's recipient; rather, a backwash of cultural and legal exchange may result in changes to the exporting jurisdiction's legal regime as well.

D. The Empire Strikes Back

The enrichment of the legal landscape that results from the addition of foreign legal training in a state can produce effects different from imperialism (the displacement of local law) or polycentricism (the addition of normative rule systems to a multi-jurisdictional landscape). The export of national models of legal education can have effects on the shape of national law in both the home and host states.²¹⁸ This can be understood in four aspects. The first is that nationalist exportation may be imperfect.²¹⁹ The second is that nationalist exportation may produce new challenges for the legitimacy of the globalized national law.²²⁰ The third is that nationalist globalization may produce substantial resistance and the revival of indigenous law (or a return to internationalist models of globalization as resistance).²²¹ Finally, the resulting exportation of legal education—in form and substance—is not necessarily a one-way street. Nation-

217. This seems to be a characteristic of globalization in each of its stages. Thus,

[I]like many cosmopolitan aristocracies—like the dynasts of late feudal Europe or the aristocrats of the Austro-Hungarian empire—men of the same class and culture, in any part of the Roman world, found themselves far closer to each other than to the vast majority of their neighbours, the “underdeveloped” peasantry on their doorstep.

PETER BROWN, *THE WORLD OF LATE ANTIQUITY: AD 150–750*, at 14 (1971).

218. See generally Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 J. LEGAL EDUC. 60 (2009) (discussing transplants of legal education in the context of China).

219. See, e.g., *id.*

220. This concept is used in this Article to describe the issue of transplanting legal education. See discussion *supra* Part III.

221. See Dybis, *supra* note 6.

alist globalization of legal education may also substantially affect the domestic law of the exporting states in the same way that language is changed when used by expanding communities of speakers.²²²

First, nationalist exportation may be imperfect, in part, because of the imperfections of the U.S. model itself. This Article has already identified one of the consequences of imperfection – that foreign law may not be received in the same way it was sent.²²³ That reception might be limited or may be corrupted by the needs of the receiving groups. This issue of reception, of course, is a fundamental insight of comparative law.²²⁴ Less well-understood is the problem in reverse. Where, as here, there is no direction to the exportation, the quality and scope of the exported materials may be varied. That variation would, at its limit, resemble the variation in quality and content within the United States itself. This is not merely a reference to variation in rankings of law programs in the United States²²⁵ and what that variation might mean in terms of the form and content of legal education actually delivered, but also to the emphasis on the distinct sub-national law taught in a particular law school.²²⁶ This reference also equally emphasizes that particular fields of law may be significant.²²⁷ Beyond that, pedagogical styles will vary tremen-

222. See discussion *infra* pp. 368-69.

223. See discussion *supra* Part IV.A.

224. For example, in the context of legal education, see Erie, *supra* note 218.

225. See, e.g., *Best Law Schools*, U.S. NEWS & WORLD REP., <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited Apr. 6, 2013).

226. Schools in New York State might emphasize the law of New York (or surrounding states) in teaching everything from contracts to criminal and family law, even as they focus on general principles that cut across state jurisdictions. Outside the United States, the local law component might be abandoned in favor of a “principles only” approach—but that would tend to increase the effect of pedagogy on the transformation of U.S. law from a specific set of rules governing a domestic legal order, to a set of principles of law that more resemble a set of universal general principles of law and legal reasoning than does the framework of a legal system precisely applicable in a state. See *supra* Part II.B.

227. Thus, for example, Pace Law School emphasizes its offerings in environmental law, international law, criminal justice, public interest, clinical training, and skills courses and programs. See PACE L. SCH., <http://www.law.pace.edu/> (last visited Apr. 6, 2013). Some law schools tend to emphasize what they sometimes label “fields of excellence.” These can be bundled together with institutes or other sub-groupings of faculty, as for example the University of Minnesota’s Corporate Institute. See, e.g., *Corporate Institute*, U. OF MINN. L. SCH., <http://www.law.umn.edu/corporateinstitute.html> (last visited Apr. 6, 2013). (“Building upon the strength of an internationally recognized business law faculty, the newly established Corporate Institute combines new programs and current business-oriented activities to establish an area of excellence at the University of Minnesota Law School . . .”). These categories are themselves then subject to ranking by entities such as U.S. News and World Report. See, e.g.,

dously, from the more academically and classically oriented program at Vanderbilt²²⁸ to the more experiential learning model at Washington and Lee.²²⁹ Recent trends include the establishment of quasi-law practices to help students transition to a working environment.²³⁰ Indeed, recent analyses of U.S. legal education suggest the breadth of its scope as well as a critique of the direction it appears to be taking.²³¹

This variation in U.S. approaches may well permeate the globalization of U.S. legal education. While it is unlikely that internal battles over the discourse and consensus of that education within the United States will be exported, it is likely that foreign efforts to replicate U.S. education will tend to show the variations, at least to some degree, exhibited in the United States.²³² The effort to seek accreditation of foreign law schools, then, could be understood as a disciplinary technique. It might well have served to create a uniformity that would have served to validate the programs and to ensure that the basic premises and approaches of U.S. legal education would be followed—at least within the permitted variation already incorporated into the accreditation process. The refusal to accredit makes it more difficult for foreign schools to assert their educational equivalence with U.S.-based and accredited schools.

Second, nationalist exportation may produce new challenges for the legitimacy of the globalized national law. This presents the issue of legal legitimacy. Legitimacy here focuses on the control of the de-

Top Law Schools, U.S. NEWS & WORLD REP., <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools> (last visited Apr. 6, 2013).

228. See *Academics at Vanderbilt Law School*, VAND. L. SCH., <http://law.vanderbilt.edu/academics/index.aspx> (last visited Apr. 6, 2013).

229. See *Washington and Lee Law School Announces Dramatic Third Year Reform*, WASH. & LEE SCH. L. (Mar. 10, 2008), <http://law.wlu.edu/news/storydetail.asp?id=376>.

230. See, e.g., Elise Young, *A Residency Program for Lawyers*, INSIDE HIGHER EDUC. (June 26, 2012 3:00 AM), <http://www.insidehighered.com/news/2012/06/26/arizona-state-plans-create-law-firm-hire-and-train-recent-graduates> (“Arizona State University plans to launch a non-profit teaching law firm next summer to hire some of its recent graduates and provide on-the-job training—a move the law school’s dean said is motivated by a desire to serve students, not to boost the employment data frequently used in law school rankings.”).

231. See generally HERBERT PACKER & THOMAS EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* (1972) (presenting research on problems of legal education and alternatives to the then-current pedagogical methods for teaching law); ERNEST BOYER, *SCHOLARSHIP RECONSIDERED: PRIORITIES OF THE PROFESSORiate* (1990) (discussing the need for more creativity in the professoriate in American higher education and the need to redefine scholarship); WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION* (2007) (describing legal education in general with discussions of the strengths and weaknesses of pedagogical methods).

232. See *supra* Part III.

velopment of law itself. If U.S. law is a product of a democratically constituted government, the sovereign expression of which is represented in part through law, then law that developed beyond the structures of democratic engagement might be deemed illegitimate. That is a notion that underlies traditionalist attacks on even the most benign forms of extra-jurisdictional rule applications within the United States without the express adoption by instruments of the American state.²³³ But once U.S. law becomes internationalized, that is, once it is taught and utilized outside the United States, it can acquire a life of its own. Even if rejected within the governmental apparatus of the United States, that new life can produce a basis for international common law to which U.S. actors may have to accede. That produces irony—having globalized U.S. law and legal education, the United States may no longer control its development and may be subject to interpretations and developments that arise, not within the traditional production centers of U.S. law, but elsewhere. This would produce both the likelihood of resistance within the United States, and the likelihood of fracture between the domestic application of U.S. law and its possible international application. Globalization of a nationalist model, then, might produce both an internal U.S. law and law school method and an external one. The move to accreditation of foreign schools was, again, meant in part to forestall this by injecting a disciplinary element into the teaching of U.S. law with the consequential incentive to seek licensure in the United States.

The third way in which a jurisdiction's legal system may feel the effects of its law's exportation results from recipient resistance. That is, nationalist globalization may produce substantial resistance and the revival of indigenous law (or a return to an internationalist model of globalization as resistance). Major stakeholders within the metropolis may resist the extension of U.S. legal education abroad.²³⁴ That, in part, explained the substantial opposition to the extension of ABA accreditation to foreign law schools—it was not merely a question of the production of students but the diminution of U.S.-

233. That, perhaps, suggests the application of the "self-executing treaty" doctrine in the United States. See Carlos Manuel Vázquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT'L L. 695, 695-97 (1995) (arguing that judicial confusion over self-executing treaties arises because the four doctrines are actually one); David L. Sloss, *Executing Foster v. Neilson: The Two-Step Approach to Analyzing Self-Executing Treaties*, 53 HARV. INT'L L.J. 135, 137 (2012) (arguing that debate about self-executing treaties makes two false assumptions and reframing the analysis to correct these false assumptions).

234. See Dybis, *supra* note 6, at 16.

based institutions in the development of domestic law.²³⁵ More importantly, the risk increases where nationalist globalization includes settings for meetings of students from home and host states. There is significant concern that exposure to the “other” will result in a negative rather than a positive reaction, unless the encounters are carefully controlled (and even then there is no guarantee).²³⁶

But host-state institutions might also resist these U.S.-style exportations. Beyond the problem of imperialism discussed above, the establishment of U.S.-style legal education could serve as a site against which indigenous law might be developed.²³⁷ Alternatively, it might produce a rejection of a nationalist model in favor of the internationalist model. There is complexity here that may be highly contextual. As Scott Cummings and Louise Trubeck noted:

[T]he motivations of funding institutions or government officials may diverge from those of lawyers and activists on the ground. And it also implicates questions of national autonomy and identity: while some lawyers may embrace public interest law as a way to contest governmental and corporate abuse, others might view it as an unwanted American export, a tool of social control that dissipates political conflict through legalization or displaces more emancipatory forms of legal resistance.²³⁸

These cross-cutting motives and incentives toward resistance and co-optation, and of naturalization and transformation, mark the vectors of the reception of legal education in its process and substantive forms as well. More empirical work is necessary to determine the extent of this effect.

The last aspect of nationalist globalization that may result in exporting jurisdictions feeling effects of exportation is that the exporta-

235. See Hansen, *supra* note 1.

236. Raquel Aldana, Professor of Law, Director, Inter-American Program, University of the Pacific, McGeorge School of Law, A Reflection on the Meaning of Cross-Cultural Legal Competence and Its Implication for Teaching Methodologies, Presentation at the Drexel Law Review Symposium: Building Global Professionalism: Emerging Trends in International and Transnational Legal Education (Oct. 12, 2012). The potential for negative encounters is one of the great insights of Aldana’s work with cross-cultural learning in Central America. For example, she describes the way that progressive U.S. students became more anti-Sandinista after encounters in a program with a Sandinista cooperative in Nicaragua. *Id.*

237. See, e.g., Balakrishnan Rajagopal, *Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle*, in LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY, *supra* note 215, at 183.

238. Scott L. Cummings & Louise G. Trubeck, *Globalizing Public Interest Law*, 13 UCLA J. INT’L L. & FOREIGN AFF. 1, 4 (2008).

tion of legal education—in form and substance—is not necessarily a one-way street. But the trick here is that, having exported nationalist models to foreign jurisdictions, the United States may also be losing control of national legal education. When foreign enterprises essentially produce American practitioners who may practice both within and outside the United States, they become part of the discourse that applies and ultimately produces U.S. law. This is the old imperial problem—if a country exports culture or norms to other places and they embrace it and then start living it, they will also participate in its development and it will no longer entirely belong to the exporting country.²³⁹ If that is the case, the culture is no longer national but international, and the original owners now are only part owners. They continue to assert some control from the metropolis, acting as a mediator of legitimacy (that was, in effect, the point of seeking ABA accreditation in the context of U.S.-style law schools located abroad),²⁴⁰ but are no longer the sole driving force. The result is internationalization but grounded in American models and to some extent, at least at the beginning, controlled by American accrediting agencies.

Thus, nationalist globalization of legal education may also substantially affect the domestic law of the exporting states in the same way that language is changed when used by expanding communities of speakers.²⁴¹ It is significant, for example, that some schools are developed precisely to promote innovation that might be taken back to the exporting “metropolis.” Jeffrey Lehman, for example, explained:

[W]e have made curricular innovations that some of our U.S. based visitors have said they hope might be copied at their home schools. Indeed, if foreign law schools are able to join the community of schools that demonstrate their ability to prepare American lawyers at the highest level, they are likely to be a fertile source of such innovations over time.²⁴²

239. The Roman world had this experience. See generally KEVIN BUTCHER, *ROMAN SYRIA AND THE NEAR EAST* (2003) (describing how the Syrians made the Roman culture their own).

240. See *supra* note 9 and accompanying text.

241. See James Milroy & Lesley Milroy, *Linguistic Change, Social Network and Speaker Innovation*, 21 J. LINGUISTICS 339, 341–43 (1985) (describing the effect of social conditions and characteristics of social groups on linguistic change).

242. Dybis, *supra* note 6, at 17 (quoting Jeffrey Lehman).

CONCLUSION

It has become commonplace for states to project cultural power through national educational institutions. Look virtually anywhere on Earth and you are likely to encounter a lycée français,²⁴³ a Saudi Wahhabi madrasa,²⁴⁴ or an American school.²⁴⁵ These schools are open both to expatriates and to others who seek the benefits of a particular national or religious educational culture for their children. They are designed to export a particular culture and its educational apparatus into the territory of other states. Until recently, the effort to export or globalize national models of legal education has been less commonplace.

This Article explored the ways in which globalization of legal education, in particular, has begun to take two quite distinct forms. The first, internationalist globalization, is an aggregating project. Internationalist globalization posits the existence of law, or at least of governance regimes, beyond the state and looks to grow curricular models that seek to develop a taxonomy of such emerging governance systems and a pedagogy to train students in its practice. It also focuses, to the extent it wishes, on comparisons between national law systems within the context of this internationalizing and supra- and extra-national governance environment. This form of globalization is fundamentally managerial in character. It seeks to organize and administer the development of common systems marked by processes of cooperation and consultation to achieve common ends.

The second form of globalization, which this Article has dubbed nationalist globalization, is a disaggregating project. Nationalist globalization posits that national systems compete for influence in global behavior.²⁴⁶ As a consequence, national systems compete for market share. Supra-national and extra-national elements are viewed as complementary to, but not a central element of, law systems. The objective of nationalist globalization is to broaden the use and relevance of national law outside of the national territory of the

243. See *Les établissements d'enseignement français [French Schools]*, AGENCY FOR FRENCH TEACHING ABROAD, <http://www.aefe.fr/tous-publics/le-reseau-scolaire-mondial/les-etablissements/les-etablissements-denseignement-francais> (last visited Apr. 6, 2013) (providing a complete list of accredited institutions globally). See generally AGENCY FOR FRENCH TEACHING ABROAD, <http://www.aefe.fr> (last visited Apr. 6, 2013) (offering general insight into the structure and pedagogy of lycée français).

244. See ARMANIOS, *supra* note 18.

245. See PBS, *supra* note 10 (examining which American universities have established branch campuses in foreign countries).

246. See *supra* Part IV.

exporting state. This form of globalization is premised on competition and the universalization of the most successful competitor among domestic legal orders seeking to serve as the foundation for governing global transactions.

U.S. law schools have engaged in both forms of globalization.²⁴⁷ One would expect U.S. schools to export their operations in pursuance of either model. More interesting has been the emergence of a willingness of foreign educational institutions to develop U.S.-style law programs outside the United States. This Article has examined two important examples, one from China and the other from Spain.²⁴⁸ The Article offered a view of the way that the globalization of American legal education may affect recipient cultures and hypothesized how the American legal education system may be affected by the same export.²⁴⁹ Nationalist globalization serves U.S. interests in quite direct ways. Like the use of English as the common language of globalized commercial and social transactions, the use of U.S. law as the common foundation of global transactions globalizes the national law of a dominant jurisdiction and elevates it into a supra-national legal system. But this transformation of U.S. law into an international domestic legal system has a cost. On the one hand, it will necessarily affect those legal cultures into which it is injected — to a degree that has been debated in this Article. On the other, it will substantially broaden the group of people practicing and using the system so that the further development of U.S. law, at least as applied within the global community, could itself become internationalized. There is irony here — as national law is internationalized, it will loosen its connection with the polity from which it emerges — an internationalized U.S. law, then, may not remain U.S. law for long.

247. *See supra* Part I.B.

248. *See supra* Part III.

249. *See supra* Part IV.A.-C.