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Washington University School of Law's Global Trajectory

Leila Nadya Sadat*

As Washington University School of Law celebrates its 150th anniversary, this Essay considers how it—and the world of legal education—has changed, and evokes some challenges it may face as it transitions from a *national* to a *global* law school. The Essay discusses the evolution of international and comparative law teaching at Washington University, as situated within broader global trends in legal education and world affairs. I focus on globalization, aware that other important trends have influenced Washington University Law School over the years, not only because of my particular affinity for the topic, but with a view to honing in on one of the most important factors shaping the modern world. I have penned other short essays about globalization, focusing on the importance of American global leadership¹ and the legal challenges of globalization felt particularly keenly by citizens of what is sometimes called America's "heartland."² The current Essay offers both a reflection on the positive developments evinced by the Law School's growth in strength and reputation since I arrived here as a young Paris lawyer in

* James Carr Professor of International Criminal Law and Director, Whitney R. Harris World Law Institute, Washington University (in St. Louis) School of Law. This Essay represents the personal views of the author only and was not undertaken in her capacity as Special Adviser to the International Criminal Court Prosecutor. This Essay is dedicated to the wonderful deans I have served under at Washington University School of Law and the wonderful students I have had the privilege to teach and work with. Thanks to Kristin Smith, Harris Institute Fellow, for her help with this Essay.

1. Leila Nadya Sadat, *An American Vision for Global Justice: Taking the Rule of (International) Law Seriously*, 4 WASH. U. GLOBAL STUD. L. REV. 329 (2005) [hereinafter Sadat, *An American Vision for Global Justice*].

2. Leila Nadya Sadat, *The Legal Challenges of Globalization: A View from the Heartland*, 13 WASH. U. GLOBAL STUD. L. REV. 415 (2014) [hereinafter Sadat, *The Legal Challenges of Globalization*]. For a recent discussion of the "heartland" idea, see Emily Badger & Kevin Quealy, *Where Is the Heartland? Mostly in Our Heads*, N.Y. TIMES, Jan. 3, 2017, at A3.

the Summer of 1992, as well as some thoughts about how “Global Trumpism”³ and the possible disappearance of the *Pax Americana*⁴ may affect Washington University Law School, our law students, and the greater world.

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In 1867, the United States was emerging from the aftermath of a bloody civil war that had taken the lives of an estimated 750,000 persons.⁵ Missouri was the situs of many battles and sent soldiers to both the Union and the Confederacy, exhibiting a division between citizens having greater allegiance to the South and those with Northern leanings that still seems to influence its personality today. Just prior to the war, Washington University’s Board of Directors had begun to study the prospect of opening a law department⁶ and ultimately approved the Law School’s establishment on March 19, 1860.⁷ The decision was based on the likelihood that the department would attract students not only from the Midwest, but from all over, and therefore enhance the University’s reputation and financial solvency. They noted that “St. Louis has a reputation abroad for intelligence, business activity and promise of future greatness.”⁸ Although the first three faculty members were appointed soon thereafter, the growing specter of war caused the University to postpone the establishment of the law faculty for seven years.⁹

3. Mark Blyth, *Global Trumpism: Why Trump’s Victory Was Thirty Years in the Making and Why It Won’t Stop Here*, FOREIGN AFF. (Nov. 15, 2016), <https://www.foreignaffairs.com/articles/2016-11-15/global-trumpism>.

4. Christopher Layne, *The End of Pax Americana: How Western Decline Became Inevitable*, ATLANTIC (Apr. 26, 2012), <http://www.theatlantic.com/international/archive/2012/04/the-end-of-pax-americana-how-western-decline-became-inevitable/256388/>.

5. Guy Gugliotta, *New Estimate Raises Civil War Death Toll*, N.Y. TIMES (Apr. 12, 2012), <http://www.nytimes.com/2012/04/03/science/civil-war-toll-up-by-20-percent-in-new-estimate.html>.

6. Cartus Rhey Williams, *History of the Law Department of Washington University (the St. Louis Law School) 1867-1900, 17-18 (June 1942)* (unpublished M.A. Thesis) (on file with Washington University Library System).

7. *Id.* at 25.

8. *Id.* at 21.

9. *Id.* at 35.

There were a total of five faculty members when the Law School finally opened its doors as the “St. Louis Law School,” in a Washington University building at the corner of Seventh and Chestnut Streets in downtown St. Louis.¹⁰ The School’s founding dean was the capable and energetic Henry Hitchcock, who had served during the Civil War as the legal advisor to General Sherman during the latter’s famous “March to the Sea.”¹¹ Eleven students were enrolled. One of the first textbooks used by the students—in addition to books on evidence, contracts, equity, and Blackstone’s and Kent’s Commentaries—was Wheaton’s treatise on International Law.¹² Indeed, although the School was local in outlook, international law was a component of the curriculum from the very beginning.¹³ The Law School grew rapidly, and by the turn of the century, although Dean Hitchcock worried that the curriculum was insufficiently robust,¹⁴ the “St. Louis Law School” (as it was then known) had grown considerably, acquired a permanent faculty, increased the breadth and depth of the curriculum, and although still heavily regional in character, was drawing greater numbers of students from across the nation.¹⁵

It is unsurprising that the Law School’s beginnings were relatively cosmopolitan, for, as the devastation wrought by the war lessened with time, the City of St. Louis was becoming a major metropolitan center. Although the 2010 census listed the St. Louis Metropolitan area as the eighteenth largest in the United States,¹⁶ at the time of the 1904 World’s Fair, St. Louis was the fourth largest city in the

10. Ronald M. Levin, *The Beginning of Washington University of Law* (unpublished manuscript) (on file with Washington University Journal of Law & Policy).

11. *Id.* at 2.

12. Williams, *supra* note 6, at 97.

13. Williams notes that the Law School’s 1871 catalogue announced that the two-year course of study included instruction in the principles of “international, constitutional, and admiralty law,” as well as, *inter alia*, property, jurisprudence, pleading and practice, contracts, domestic relations, torts, and criminal jurisprudence. *Id.* at 146.

14. *Id.* at 184. Hitchcock felt that instruction in Roman Law and the Civil Law was particularly important. *Id.* at 257.

15. *Id.* at 342.

16. U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf>.

country,¹⁷ and its national—and international—reputation was boosted through its hosting of the 1904 World Exposition. That year, the Twelfth Congress of the Inter-parliamentary Union met in St. Louis with delegations—many of them substantial—attending from thirteen European countries as well as the United States. The Union had a working group dedicated to international arbitration which discussed important “acts of international justice” over the past year including arbitration treaties and the work of the newly established Permanent Court of Arbitration in The Hague.¹⁸ It also adopted a Resolution asking the President of the United States to convene a second Hague Peace Conference, in the name of “enlightened public opinion and the spirit of modern civilization [which] demand that differences between nations shall be settled in the same manner as controversies between individuals—that is, through courts of justice and in conformity with well-recognized principles of law”¹⁹ As is now well known, President Roosevelt followed up on the St. Louis Resolution by requesting the Tzar to issue the desired invitations to what subsequently became the Second Hague Peace Conference of 1907.²⁰

Dreams of peace were soon shattered by the guns of August²¹ and the First World War. Although the student body of the St. Louis Law School was considerably reduced, there is no evidence of curricular change in response to the conflict. International law and dreams of global co-existence were set aside as the carnage of the conflict engulfed the warring states. However, at the War’s end, the

17. Campbell Gibson, *Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990* tbl.13, U.S. CENSUS BUREAU (June 1998) (U.S. Census Bureau Population Div. Working Paper No. 27), <https://www.census.gov/population/www/documentation/twps0027/twps0027.html>.

18. UNION INTERPARLEMENTAIRE POUR L’ARBITRAGE INTERNATIONAL SESSION DU 1904: COMPTE RENDU DE LA XIIe CONFERENCE TENUE A SAINT LOUIS, MISSOURI, DU 12 AU 14 SEPTEMBRE 1904 74–75 (Wash. Imprimerie Nationale 1905).

19. SAMUEL L. BARROWS & U.S. DEP’T OF THE TREASURY, TOUR OF THE INTERPARLIAMENTARY UNION TENDERED BY THE GOVERNMENT OF THE UNITED STATES 114 (1905).

20. *The St. Louis Historic Connection*, WHITNEY R. HARRIS WORLD L. INST., https://law.wustl.edu/harris/crimesagainsthumanity/?page_id=505.

21. The term refers to BARBARA A. TUCHMAN, *THE GUNS OF AUGUST* (2004) (describing the first months of World War I).

movement towards the establishment of new international institutions to promote peace and the resolution of international disputes through adjudication again took hold with the establishment of the League of Nations and the Permanent Court of International Justice, which could adjudicate disputes between states. U.S. President Woodrow Wilson was instrumental in establishing the framework for the League, but partisan bickering in the Senate prevented the United States from ratifying the Treaty he had so carefully negotiated.²² Even though the United States was not a member of the League, an American jurist, Manley O. Hudson, himself hailing from St. Peters, Missouri, served as a member not only of the Permanent Court of Arbitration from 1933 to 1945, but as a Judge on the Permanent Court from 1936 to 1946.²³ Like many who had preceded him, and others who would succeed him, Hudson was, in his views about international law and world peace, a man “ahead of his times[,]” who “came out of the heart of America and made the world his stage.”²⁴ The same could not entirely be said of Washington University Law School at that time (it had been officially renamed as such in 1918),²⁵ which had rejected the use of the case method that Harvard Law School had inaugurated (and which was spreading quickly throughout the United States); was required to follow the University’s “whites-only policy” until it was officially abandoned in 1947; and saw its enrollment suffer during the First World War and the Great Depression.²⁶

Although the League of Nations accomplished many things,²⁷ it could not stop either Hitler’s rise to power or the Second World War.

22. Leila Nadya Sadat, *The Nuremberg Paradox*, 58 AM. J. COMP. L. 164–65 (2010) (and sources cited).

23. Erwin N. Griswold, *In Memoriam: Manley Ottmer Hudson*, 74 HARV. L. REV. 209, 209–10 (1960).

24. *Id.*

25. CANDACE O’CONNOR, WASHINGTON UNIVERSITY SCHOOL OF LAW 1867-2000 A PROUD HERITAGE 6 (2000).

26. *Id.* at 6–7. Although the Law School admitted both women and African Americans in the nineteenth century, women remained a very small percentage of the Law School’s class (three of fifty-four in the class of 1929, for example), and the University became “whites-only” soon after the turn of the century. *Id.*

27. See generally Eduard Beneš, *The League of Nations: Successes and Failures*, 11 FOREIGN AFF. 66 (1932).

The War impacted Law School enrollment again, which had risen to 168 but declined dramatically as most of its students entered the armed services. The Law School at that time was considered a “streetcar school,” drawing its students largely from the region,²⁸ that began to slowly desegregate during the 1950s and begin its first forays in the direction of internationalization when Professor William Catron Jones, serving as acting dean for a semester, participated in a program bringing Latin American students to campus for an introduction to American law and American life.²⁹

The law faculty grew as the city did, moving ever-westward from building to building, until it arrived in its new home(s) in Anheuser-Busch Hall and Seigle Hall where it remains today. Reading the early history of the School, several themes emerge: the need for adequate funding and an endowment to assure its future; concern that the curriculum be as good as possible to provide the best possible foundation for the practice of law, including the teaching of practical skills; and, at the same time, a preoccupation that the curriculum—and the School’s admission requirements—ensure that its graduates were broadly learned not only in the nuts and bolts of legal practice, but in jurisprudence and international and comparative legal traditions. In 1964, the Law School began to take on a more national character by recruiting students from across the United States. It subsequently became more international in orientation and embraced interdisciplinary studies and technological change under the leadership of Dorsey D. Ellis, Jr., who became dean in 1987, and even more so during the tenure of Joel Seligman, who took over as the law school dean in 1999.³⁰ The student body grew from 11 in 1867 to 1116 today.³¹

Space does not permit a full chronicle of the Law School’s growth and its programs in international and comparative law during the past 150 years. Suffice it to say, when I arrived in 1992, there was a group of distinguished faculty working on international or comparative law

28. O’CONNOR, *supra* note 25, at 10.

29. The program was sponsored by the U.S. Department of State. *Id.* at 14.

30. *Id.* at 33.

31. WASHINGTON UNIVERSITY IN ST. LOUIS – 2016 STANDARD 509 INFORMATION REPORT, <http://law.wustl.edu/admissions/documents/Std509InfoReport2016.pdf>.

research and teaching courses in the international field. Professor M. Peter Mutharika (now President of Malawi)³² was teaching international law, international trade, and international organizations. Professor William Catron Jones was teaching comparative law as well as Chinese law and first year courses;³³ and Professor Gray Dorsey was finishing his work on Jurisculture.³⁴ Professor Frances Foster had just been hired as another China and Socialist country specialist (in addition to property and trusts and estates), and other colleagues were enthusiastic about developing a curriculum in the international and comparative law area including Professors John Drobak, Steve Legomsky, Charles McManis, Stanley Paulson, and Karen Tokarz. There were a small number of students interested in international law, but it had not yet “taken off” as a major focus of interest for either the students or the faculty. There was no LL.M. in U.S. Law for international students, no center for the study or teaching or research in international law, and no real administrative support either for J.D.s hoping for transnational careers or foreign students adjusting to American life.

As the Law School embarked upon an ambitious Strategic Plan to take it from being a strong regional player to a highly-ranked national institution, then-Dean Dorsey D. Ellis, Jr. saw the increasing globalization of international commerce as an important growth area. New faculty were taken on (including myself) to cover additional

32. Nancy Cambria, *New President of Malawi Taught at Washington University Law School for Nearly 40 Years*, ST. LOUIS POST-DISPATCH (June 2, 2014), http://www.stltoday.com/news/local/education/new-president-of-malawi-taught-at-washington-university-law-school/article_295d73e8-3438-5e73-acca-c5fdd9fa575c.html.

33. Like so many faculty at Washington University Law School, Professor Jones’s story is quite amazing. He studied under Karl Llewellyn at Chicago and was a consummate commercial law teacher. His interest in comparative law originated with German and French law, and expanded to Asia. China had law without lawyers for more than thirty years until after the Cultural Revolution in 1976. Shortly thereafter, in 1979, the United States recognized the People’s Republic of China and Bill began bringing Chinese students to the Law School to study. Bill understood China’s legal education needs and designed a program to help train Chinese law teachers. Dean Ellis granted these students full scholarships enabling these early Chinese students to study at Washington University Law School and to then return to China where they began training Chinese lawyers.

34. See, e.g., GRAY L. DORSEY, *JURISCULTURE: LAW AND SOCIAL CHANGE* (1972); GRAY L. DORSEY, *1 JURISCULTURE: GREECE AND ROME* (1988); GRAY L. DORSEY, *2 JURISCULTURE: INDIA* (1990); GRAY L. DORSEY, *3 JURISCULTURE: CHINA* (1993).

subjects—European Union Law, Japanese Law, Transnational Litigation, courses and seminars in Foreign Affairs, International Business Transactions, International Criminal Law, International Human Rights, a variety of other seminars, and, eventually, short courses were added to the School's growing curriculum. When Dean Ellis stepped down in 1998, Interim Dean Daniel Keating approved creating an LL.M. program in U.S. Law for international students and brought Dr. Michele Shoresman on board to fill a newly created position as the first director of graduate and joint-degree programs.³⁵

The increase in the Law School's focus on international and comparative law was largely a response to world events. The 1990s was a period of tremendous growth in international law and institution building, following the collapse of the Soviet Union as symbolized by the fall of the Berlin Wall. The European Economic Community was strengthened by the adoption of the Single European Act and the Treaty of Maastricht, which introduced the idea of a "European Union," and the Euro as a single currency for Europe.³⁶ In this new international environment, although the invasion of Kuwait by Saddam Hussein in 1990, the war in the former Yugoslavia beginning in 1991, and the Rwandan genocide in 1994 were accompanied by the commission of atrocity crimes, the United Nations was no longer prevented from responding, as it had been during the Cold War. Building upon the Nuremberg precedent, a newly empowered United Nations Security Council adopted important resolutions permitting Member States to use "all necessary means" (i.e., the use of force) to repel the invasion of Kuwait³⁷ and establishing two international criminal tribunals for the former

35. O'CONNOR, *supra* note 25, at 30–31.

36. The Treaty on European Union was signed at Maastricht, The Netherlands, on February 7, 1992. One of its most significant chapters was on monetary union and the introduction of a new single currency for Europe. The Law School held a symposium on October 30, 1997, to discuss the possible entry into force of monetary union and the establishment of a single currency for the EU. See Leila Sadat, *The Euro: A New Single Currency for Europe? Introduction to the Symposium*, 4 COLUM. J. EUR. L. 219 (1998) (formerly Wexler).

37. S.C. RES. 678, U.N. DOC. S/RES/678 27–28 (Nov. 29, 1990).

Yugoslavia and Rwanda.³⁸ These important legal and political developments ultimately led to the establishment of a new international institution—the International Criminal Court—the last international institution of the twentieth century.³⁹

The increased robustness of international law and institutions combined with an explosion in global trade and global legal regimes and international adjudication made it critical for law students at top law schools to receive training in comparative law, international law, and related fields, and Washington University School of Law, like others around the country, responded. The Law School expanded its student exchange programs, and in 2000, then-Dean Joel Seligman established a new Institute, headed by Professor Stephen Legomsky, that would conduct research in and education about international law and international legal issues. This new academic center was subsequently endowed and re-named the “Whitney R. Harris World Law Institute,” after former Nuremberg Prosecutor Whitney Harris⁴⁰ which gave the Institute the ability to run conferences, invite speakers, sponsor programs for students and the larger St. Louis community,⁴¹ and, more recently, embark upon major research and publication projects such as the *Crimes Against Humanity Initiative*.⁴² The Law School also established a summer program in

38. Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, Annex, U.N. Doc. S/RES/827. 1–2 (May 25, 1993); Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, Annex, U.N. Doc. S/RES/955. 1–2 (Nov. 6, 1994).

39. See Leila Nadya Sadat & S. Richard Carden, *The New International Criminal Court: an Uneasy Revolution*, 88 GEO. L.J. 381 (2000).

40. For a firsthand account of Harris’s participation in the Nuremberg Trials, see WHITNEY R. HARRIS, *TYRANNY ON TRIAL* (1999). For more on his professional legacy, see *Memorial Service Held for Whitney R. Harris, Nazi War Prosecutor, Institute Namesake*, WASH. U. L., <http://law.wustl.edu/news/pages.aspx?id=7913>. The Institute was initially named the “Institute for Global Legal Studies,” renamed again in 2001 when the Harris’s endowed it, and renamed again in 2007 when the author assumed the position of Director and the Harris’ made a subsequent gift. Whitney took a keen interest in the Institute and its doings, and remained active in its activities until his death in April of 2010. Anna Harris, his widow, continues to be active in Institute affairs as of this writing.

41. John O. Haley served as the Institute’s second director. He brought a focus on Japanese law and comparative law more broadly to the Institute’s work.

42. *Crimes Against Humanity Initiative*, WHITNEY R. HARRIS WORLD L. INST., <http://law.wustl.edu/harris/crimesagainsthumanity/>.

The Netherlands⁴³ and created internships and externships, particularly in Africa, allowing students to do global public interest work.⁴⁴ The *Global Studies Law Review* was established, and the School's international moot court teams became increasingly successful.⁴⁵

The eleven students that made up the School's first class in 1867—all of whom were from the United States—would probably be startled to know that the entering class of 2016 hailed from 24 countries, spoke 30 languages in addition to English, and in addition to the 228 J.D. students in the class, included 25 exchange and visiting students from abroad, 167 international J.S.D., LL.M. and M.L.S. students in residence, and 105 international LL.M. and M.L.S. students pursuing online degrees.⁴⁶ They would also be astonished at the new curricular offerings that are available to today's graduates. Even as late as the 1960s, the curriculum was relatively narrow, much sparser than the School's current offerings, with “one required course and no elective courses in constitutional law, one required course in international law, and one elective course in comparative law.”⁴⁷ Washington University School of Law now has alumni across the globe, including former students working in major international institutions, private practice, the foreign service, as Ambassadors and with NGOs, and has begun to carve out for itself a global, as well as national, reputation.

Yet even with its recent successes, there is no doubt that maintaining a focus on global legal education, not just at Washington University School of Law, but in the larger United States, remains a challenging task. This seems paradoxical—after all, the United States

43. The Summer Institute for Global Justice ran from 2005 to 2013 and was co-sponsored by Case Western Reserve School of Law and the University of Utrecht.

44. *Global Public Interest Law Internships: Africa Public Interest Law & Conflict Resolution Initiative*, WASH. U. L., <http://law.wustl.edu/clinicaled/pages.aspx?id=1426>.

45. Following Dan Keating's interim deanship, Kent Syverud assumed the deanship of the Law School. He hired additional faculty in the international and comparative law area, and created a new deanship for international programs that for several years was held by Michael Peil, former Executive Director of the International Law Students Association. That position is now held by Associate Dean Michael Koby, who is assisted in that endeavor by Assistant Dean Peter Cramer.

46. O'CONNOR, *supra* note 25.

47. *Id.* at 16. The curriculum would be restructured in the mid-1960s.

with only 5% of the world's population⁴⁸ consumes 25% of its resources⁴⁹ and accounts for approximately 16% of global GDP.⁵⁰ International trade accounts for somewhere between 16 and 28% of U.S. GDP,⁵¹ and more than 40% of U.S. lawyers report that their business has a transnational dimension.⁵² There has also been an explosion in the number of international courts and tribunals adjudicating international disputes⁵³ and a significant increase in the docket of the U.S. Supreme Court in terms of international and transnational cases each term.⁵⁴ This suggests that, as a practical matter, U.S. law schools need to embrace globalization to thrive, and even to survive.⁵⁵ Although some law schools have recognized this,

48. *U.S. and World Population Clock*, U.S. CENSUS BUREAU, <http://www.census.gov/popclock/>.

49. *The State of Consumption Today*, WORLDWATCH INST., <http://www.worldwatch.org/node/810>.

50. *United States' Share of Global Gross Domestic Product (GDP) Adjusted for Purchasing Power Parity (PPP) from 2010 to 2020*, STATISTA, <https://www.statista.com/statistics/270267/united-states-share-of-global-gross-domestic-product-gdp/>. See also INT'L MONETARY FUND, *WORLD ECONOMIC OUTLOOK: OCTOBER 2016* app., at 207 (2016), <http://www.imf.org/external/pubs/ft/weo/2016/02/pdf/text.pdf>.

51. *Compare Trade (% of GDP)*, WORLD BANK, <http://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?end=2015&start=2015&view=map> (trade as 28% of U.S. GDP in 2015), with *United States Trade Profile*, WORLD TRADE ORG., <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=US> (trade as 14.5% of U.S. GDP from 2013 to 2015).

52. One study reported that:

A large minority of attorneys were doing at least some work that involved clients from outside the United States or cross-border matters. Forty-four percent (44%) of attorneys reported such work. The lawyers most likely to report doing international legal work were those in the largest law firms, where two thirds reported doing it, and inside counsel, where almost as many (65%) reported work that involved non-U.S. clients or cross-border matters. Among legal services and public defense lawyers, work that involved non-U.S. clients or non-U.S. law was also common, with 61% of attorneys reporting they had done some such work during the past year.

RONIT DINOVITZER ET AL., *AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS* 35 (2009), <http://www.law.du.edu/documents/directory/publications/sterling/AJD2.pdf>.

53. See, e.g., PROJECT ON INTERNATIONAL COURTS AND TRIBUNALS, <http://www.picti.org/index.html>.

54. Sadat, *An American Vision for Global Justice*, *supra* note 1, at 341. See also STEPHEN BREYER, *THE COURT AND THE WORLD* (2016).

55. See Carrie Menkel-Meadow, *Why and How to Study "Transnational" Law*, 1 U.C. IRVINE L. REV. 97, 106-09 (2011) (on the importance of studying transnational law, including its educational potential for teaching students about pluralism, different sources of authority,

generally speaking law schools have been reluctant to welcome perspectives from beyond U.S. borders to the same extent as departments and schools in other parts of their universities.⁵⁶ This seems particularly odd as international law, in particular, is a global legal system that applies in and to every country in the world, including the United States.⁵⁷

Given the recent financial difficulties experienced by many law schools,⁵⁸ including Washington University, law schools have understood the revenue-raising potential of global education, taking in ever-increasing numbers of international students. However, integrating U.S. J.D.s with their foreign counterparts has often been challenging.⁵⁹ In contrast to the large number of international students studying in U.S. law schools, the prevalence of American law students studying abroad is much lower than their foreign counterparts. As Carole Silver notes, the United States is:

[A] more important receiving country for law students than it is a sending country, and as a result, we risk educating a cadre of globally savvy competitors that domestic students cannot possibly match in terms of experience and expertise relevant to navigating the challenges of a global practice environment.⁶⁰

I have observed this for some time in the Jessup International Moot Court Competition. For at least the past fifteen years, U.S. teams

and creative analysis); Carole Silver, *Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S.*, 24 STAN. L. & POL'Y REV. 457, 496 (2013) ("the ways in which globalization exerts its force will be interpreted and positioned differently by law schools in their competition for students, faculty, additional resources, and prestige. The fact that globalization matters, however, is the constant, and requires law schools to rethink their approaches to offering environments that create opportunities for learning relevant lessons.").

56. David Fontana, *American Law Schools, Meet the World*, CHRON. HIGHER EDU. (May 26, 2006), http://www.chronicle.com/article/American-Law-Schools-Meet-the/9496/jobs_topjobs-slider. At the time of this writing, Washington University Law School does not require a course in either international, transnational, or comparative law to graduate.

57. Stephen H. Legomsky, *Globalization and the Legal Educator: Building a Curriculum for a Brave New World*, 43 S. TEX. L. REV. 479, 488 (2001).

58. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012).

59. Silver, *supra* note 55, at 479–86. As Silver notes, this is not only a negative for the international students, but for the U.S. J.D.s, who do not benefit from the cultural enrichment and opportunity for global networking that the international students provide.

60. *Id.* at 494.

have been underrepresented amongst the top seeded teams (out of the more than 100 teams that make it to the final rounds of the competition every year), and often those U.S. teams that do make it have recruited foreign lawyers to their teams from “powerhouse” Jessup countries such as Singapore or Australia. For U.S. lawyers to become competitive, they need better skills at competing in a global, not just a national market. U.S. law school is already so expensive, however, that many students are daunted by the prospect of studying abroad; and many professors and career service professionals have yet to understand the critical skills that study abroad programs and courses in transnational, comparative, and international law can provide to U.S. law students.

Finally, the globalization of law schools in terms of increasing numbers of international students and even international faculty may be seen as threatening the distinctive qualities of U.S. legal education. It is not uncommon to hear faculty complain that international students can’t “keep up” with the rigors of the Socratic method, or require them to change their teaching style in ways they find worrying. And while many find the increasing cosmopolitanism of U.S. law schools interesting and exciting, others find it disturbing.

This is not surprising. For most people, globalization is a worrisome phenomenon.⁶¹ Lawyers, law students, and law professors are no exception, although they are probably more often than not the beneficiaries of the complexities wrought by the overlapping rules state, local, federal, and international rules that now apply to modern commerce and even to private law matters such as marriage, divorce, and property rights.⁶² The “world may be flat,” as *New York Times* correspondent Thomas Friedman writes,⁶³ but human beings are still very much creatures tied to specific geographic communities.⁶⁴ As individuals, particularly if one is well-educated or reasonably well-off, one may have experienced the positive side of globalization: freedom to travel and explore, increased standards of living, being

61. Sadat, *The Legal Challenges of Globalization*, *supra* note 2, at 415.

62. Menkel-Meadow, *supra* note 55, at 104–05.

63. THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY* (2007).

64. MARIA MONTESSORI, *THE ABSORBENT MIND* 62–62 (Owl Books, 1995).

enriched by exposure to a new language or a foreign culture, and, of course, instantaneous connections to friends and colleagues around the world through email, social media, and the internet. But there is also a dark side to globalization—crippling poverty for those left behind, job loss, fear of global terrorism, the spread of infectious diseases, global warming, and even war and the human migration caused by war—dangerous and upsetting events that are difficult to hide from, even given the relative geographic isolation of the United States. This may be particularly true in America’s “Heartland,” as Richard Longworth has observed:

Globalization unites and divides. It cements ties across borders while weakening old ties at home. It celebrates the transnational at the expense of old loyalties. It brings people together from around the globe while stirring new xenophobia. It destroys old industries and economies and creates new ones—not always in the same places. It makes some people richer and other people poorer, and the gap is growing.⁶⁵

In addition to worry, the other elements that make internationalization of the curriculum at U.S. law schools counterintuitively difficult are a long-standing disdain in the United States for international law as “real” law, a belief that international legal scholarship is weak or not important, and a lack of knowledge about what international law and comparative law actually are due to their absence from the course of study that many law professors followed. H.L.A. Hart, writing in the 1960s, opined that the “formal analogies” between international law and municipal law were “thin and even delusive” in analyzing the legal status of treaties as sources of law.⁶⁶ Although Hart’s understanding of international treaty law (and customary international law) was itself rather thin, his skepticism about the *quality* of international law *as law* continues to be evoked in the academy by influential authors such as Jack Goldsmith and Eric Posner.⁶⁷ Interestingly, although international

65. RICHARD C. LONGWORTH, *CAUGHT IN THE MIDDLE: AMERICA’S HEARTLAND IN THE AGE OF GLOBALISM* 6 (2008).

66. H.L.A. HART, *THE CONCEPT OF LAW* 231 (1961).

67. JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005).

law was clearly part of the regular law curriculum throughout Washington University Law School's existence, and was a mandatory subject for much of the Law School's history, it seems to have become optional during the curricular reform undertaken during the 1960s. Thus, lawyers—and law professors—graduating after that time had the option to take it, but anecdotal evidence suggests that many—maybe most—students did not.⁶⁸ Although many top law schools now require their students to take a course in international law (or some related course such as transnational law) before their graduation, others, including Washington University, do not. Interestingly, around the world, the United States is unusual in this—as Ryan Scoville's work has shown, most countries require law students to study international law as part of their general course of legal studies.⁶⁹

Pushing aside critiques of international law based upon its characteristics as “law,” much of the debate about the utility and applicability of international law—and international institutions—is tinged with political views about the world and the place of the United States in it and perceptions of international law as “foreign” and inimical to U.S. values. The United States often does not ratify international agreements—especially human rights treaties⁷⁰—and asserts even when it does that the agreements are “non-self-executing,” meaning that they do not create justiciable rights for individuals in U.S. courts.⁷¹ The tendency to opt out of the rules of the international game feeds the United States' view of itself as “exceptional” and entitled to impose rules on others it need not follow itself. The September 11, 2001 attacks exacerbated this long-

68. Legomsky, *supra* note 57, at 483–84. It would be possible, but difficult, to ascertain this through surveys and law school data bases, but, to my knowledge, no one has yet done so.

69. Ryan Scoville, *A Global Survey on the Study of International Law*, WASH. U. ST. LOUIS SCH. LAW: WHITNEY R. HARRIS WORLD LAW INST. (Mar. 5, 2015), <http://law.wustl.edu/harris/lexlata/?p=404>.

70. Harold Hongju Koh, *On American Exceptionalism*, 55 STAN. L. REV. 1479, 1484 (2003). See also Curtis A. Bradley, *The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism*, 9 CHINESE J. INT'L L. 321 (2010); see generally *United States Ratification of International Human Rights Treaties*, HUM. RTS. WATCH (July 24, 2009, 12:24 PM), <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>.

71. *Medellin v. Texas*, 552 U.S. 491, 504–06, 506 n.3 (2008).

standing tendency in U.S. political discourse. In recent years, particularly as regards the conduct of war, U.S. officials during the Bush Administration in particular expressly stated that international treaties, such as the Geneva Conventions, were either not applicable to a particular conflict,⁷² or, more broadly, did not constrain executive action.⁷³ Although President Obama returned to a more multilateral approach during his eight years in office, negotiating important agreements on disarmament as well as signing and ratifying the Paris Climate Change Agreement, in the area of national security the United States continued to challenge the international legal regime established by the United Nations Charter regarding the use of force as well as human rights and humanitarian law in its drone campaign against alleged terrorists abroad.⁷⁴

In November 2016, a businessman named Donald J. Trump was elected President of the United States, amassing more than the 270 electoral college votes needed to win the election.⁷⁵ Although he lost the popular vote by a large margin, many of the states he won (which gave him the electoral college votes he needed), were states—and counties—hit hard by the transformations wrought by globalization and the technological revolution.⁷⁶ Trump ran on a platform

72. Memorandum from Alberto R. Gonzales, Counsel to the President, to President George W. Bush (Jan. 25, 2002), <http://nsarchive.gwu.edu/NSAEBB/NSAEBB127/02.01.25.pdf>.

73. Memorandum from John Yoo & Robert J. Delahunty, Office of Legal Counsel, U.S. Dep't of Justice, to William R. Haynes III, General Counsel of U.S. Dep't of Defense, on the Application of Treaties and Laws to Al Qaeda and Taliban Detainees (Jan. 9, 2002) (arguing that the Geneva Conventions do not apply to the detention and trial by military commission of Al Qaeda and Taliban prisoners). For a critique of the Gonzales, Yoo & Delahunty memos, as well as the Bush Administration's approach to the conduct of hostilities after the 9/11 attacks, see Leila Nadya Sadat, *Terrorism and the Rule of Law*, 3 WASH. U. GLOBAL STUD. L. REV. 135 (2004).

74. Leila Nadya Sadat, *America's Drone Wars*, 45 CASE W. RES. J. INT'L L. 215 (2012). See also *United States of America: 'Targeted Killing' Policies Violate the Right to Life*, AMNESTY INT'L (2012), http://www.amnestyusa.org/sites/default/files/usa_targeted_killing.pdf; Charlie Savage & Scott Shane, *U.S. Reveals Death Toll from Airstrikes Outside War Zones*, N.Y. TIMES (July 1, 2016), <http://www.nytimes.com/2016/07/02/world/us-reveals-death-toll-from-airstrikes-outside-of-war-zones.html>.

75. Richard Pérez-Peña, *Donald Trump Completes Final Lap, Electoral College, to White House*, N.Y. TIMES (Dec. 19, 2016), http://www.nytimes.com/2016/12/19/us/politics/electoral-college-vote.html?_r=0.

76. *Id.*

subsequently dubbed *Global Trumpism*—anti-trade, anti-immigrant, nationalistic, and isolationist.⁷⁷ Trump as a phenomenon is not isolated—the Brexit vote earlier in the summer, which stunned the British public by deciding to terminate Britain’s membership in the European Union, was similar in tone and in kind.⁷⁸ It represents a repudiation of the last seventy years of building international institutions and international law that have taken place since World War II. Economists generally agree that neither Brexit nor Trumpism are likely to produce the kinds of financial benefits their supporters were promised; but perhaps voters in both countries were responding to a *feeling* that they were on the losing end of the globalization revolution which is why fact-based argumentation on the part of the “Stay” (in the United Kingdom) and “Clinton” (in the United States) campaigns seemed beside the point and were ultimately unsuccessful.

Given the likely fall out from Brexit and Global Trumpism, which many believe will undermine the *Pax Americana* that has ensured the relative peace and stability of the world since 1946, law schools around the country may be tempted to follow the electorate and retreat from the globalization agenda—cutting courses, decreasing the number of international students, and declining to replace international and comparative law faculty as they depart or retire.⁷⁹ They might save money by doing so, but would be doing their students, the United States, and even the world a terrible disservice. As Gloria Steinem remarked right after the U.S. presidential election, the vote for Trump was a vote “against the future,”⁸⁰ a future, she

77. Blyth, *supra* note 3.

78. Steven Erlanger, ‘Brexit’ Proved to be Sign of Things to Come in U.S., N.Y. TIMES (Nov. 9, 2016), <http://www.nytimes.com/2016/11/10/world/europe/for-us-brexit-was-a-sign-of-things-to-come.html>; John Curtice, *US Election 2016: The Trump-Brexit Voter Revolt*, BBC NEWS (Nov. 11, 2016), <http://www.bbc.com/news/election-us-2016-37943072>.

79. See Noam Scheiber, *An Expensive Law Degree and No Place to Use It*, N.Y. TIMES (June 17, 2016), http://www.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html?_r=0 (on the post-recession economic pressures of law schools and resulting decrease in faculty generally); James R. Maxeiner, *Learning from Others: Sustaining the Internationalization and Globalization of U.S. Law School Curriculums*, 32 FORDHAM INT’L L.J. 32, 51–52 (2008).

80. Gloria Steinem: *Donald Trump Is Not My President*, PUB. RADIO INT’L (Nov. 9, 2016), <http://www.wnyc.org/story/gloria-steinem-first-woman-president/>.

added, that is “going to happen anyway.”⁸¹ The internet, immigrant flows, technological advances, and climate change are simply not reversible by shutting a border, especially not a large border in a country that benefits from—and depends upon—international trade. As an educational institution, Washington University School of Law has to decide what curriculum will best serve its students and prepare them for their future in an ever-changing and increasingly technological and global environment. U.S.-trained lawyers bring astonishing skills to the solution of some of the complexities and inequities of the global trading system and international institutions.⁸² The great challenge of the twenty-first century will be to respond to the concerns of those left behind and create a world order that is fair; that is transparent; that promotes equality; and that provides peace, justice, and stability. If humanity fails to achieve these goals, the likely outcome will be war, global warming, poverty, and increased terrorism. These are perilous times, as the *Pax Americana* is weakened, and new alliances, political structures, threats, and challenges emerge. International law is one of the most important tools we have as a global community to promote peace and prosperity and prevent the destabilization of the current world order. It would be unfortunate if U.S. law schools retreated from the challenges posed by globalization just at the moment when the world needs their knowledge, talent, and skills the most.

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As Washington University School of Law celebrates its 150th anniversary, it can be proud of the role it has had in educating the lawyers of today and tomorrow, individuals who have acquired the tools needed to bring about the kind of peaceful changes required for humanity’s survival. As the Law School contemplates its future direction, it should continue to provide the kind of education and skills to its graduates that will enable them to improve their communities and the world. Rather than hiding from the challenges

81. *Id.* (“I feel as if this is a vote against the future, and the future’s going to happen anyway.”).

82. Sadat, *An American Vision for Global Justice*, *supra* note 1, at 340.

of globalization, the United States—and American lawyers—need to be better educated, more creative, and more skilled than ever—as negotiators, as diplomats, as practitioners, and as policy-makers both in and outside government. Dean Henry Hitchcock would undoubtedly be thrilled to see the exciting careers our students and alumni have embarked upon; and proud of the curriculum, global student body, and international outlook of the “St. Louis School of Law.” The value of a broad-based education, skills training, hard work, and emphasis on quality that the University began with in 1860 have stood the Law School in good stead as it evolved from Streetcar law school, to national player, to global powerhouse. Thanks to hard work and strong leadership, Washington University School of Law may be located in the heartland—but it has undoubtedly made its mark on the world stage.