

Book Review

Stacey Steele and Kathryn Taylor, eds., *Legal Education in Asia: Globalization, Change and Contexts*. New York: Routledge, 2011, pp. 334, paperback \$44.95.

Reviewed by Carole Silver

U.S. legal education is under fire from all sides. Critics charge that law school is too expensive, that the three years required to earn the typical J.D. degree is too long, and that schools are admitting too many students in light of changing demand in the labor market for new graduates. Quality, too, is decried: Among corporate law firms and business clients, the common refrain is that law schools fail to prepare students to “hit the ground running” as “practice-ready” lawyers upon graduation, that new graduates’ writing ability is unsatisfactory and their understanding of business concepts lacking, and that they do not have a service-industry mentality. Speculation is that the turmoil swirling around U.S. legal education will result in schools closing and in the reform of internal and external regulation of law schools. Given the negative press attention to U.S. legal education, one might characterize the current state of affairs as one in which nothing much is going well.

Travel outside of the U.S., however, and the analysis is completely different. There, the U.S. is a model for reform efforts, even the standard against which legal education programs in much of the rest of the world measure themselves. In many cases, U.S. legal education is considered a structural model for graduate-level professional education in which law school is a mandatory element for lawyer licensing and a norm of faculty and students committing full time to their law school work. In other cases, it is U.S. lawyers—the product of U.S. legal education—who serve as the model for reform. Emphasis often is placed on English language skills, familiarity with the common law as well as with the sorts of problems facing corporate clients, and a broadly conceived notion of a lawyer’s job and importance in society.

This external perspective is a critical element in assessing how globalization matters for legal education and it is thoughtfully—if secondarily—pursued in the book, *Legal Education in Asia*, edited by Stacey Steele and Kathryn Taylor. While the U.S. and its system of legal education is neither the focus of the book nor of a single one of its chapters, its influence is felt in multiple ways and places throughout the book. In this way, the book provides a useful lens

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through which to consider the various strengths and weaknesses of the current method of producing lawyers in the U.S.¹ As a result of its outsider vision of U.S. legal education, *Legal Education in Asia* might productively be added to the reading list of those responsible for reform in the U.S., including regulators, law school deans, employers and critics, to allow them to see the strength and influence of the current system through the eyes of others who operate, at times, in its shadow.²

My emphasis on this ancillary lesson of *Legal Education in Asia* is not to devalue its two primary purposes.³ These are first, to honor Professor Malcolm Smith, the late founder of the Asian Law Centre at the University of Melbourne Law School (among other things), and second, to investigate reform of legal education in eleven countries in the Asia-Pacific region. Steele and Taylor, along with more than half of the contributing authors, have professional ties to Australia, with the largest group hailing from the Asian Law Centre. They describe Malcolm Smith as embodying a global approach to legal education. In addition to creating the Asian Law Centre, he taught Australian law students about the Japanese legal system and Japanese law students about the Australian legal system. In teaching about another country's legal system, Smith developed paths of interaction and influence that today often are described as part of a process of globalization. As *Legal Education in Asia* makes clear, in most of the countries highlighted, globalization's influence has sharpened the peripheral vision of reformers by encouraging them to consider the approaches followed elsewhere to educating lawyers as well as the role lawyers play in society.

The core of *Legal Education in Asia* investigates national efforts to rethink and reconstruct legal education by contextualizing reform within the political, social and economic framework of each of the countries addressed. It establishes a comparative framework by setting forth, one after another, chapters focused on particular countries. Earlier-published reviews have concentrated on the substance of these country-specific chapters,⁴ and the book is well-worth reading if only for information on the state of legal education in these countries. The countries included in the book comprise most of the

1. See Richard L. Abel, *Revisioning Lawyers*, in Richard L. Abel & Philip Lewis, *Lawyers in Society: An Overview* 6 (Univ. of California Press 1995) (discussing Magali Larson, *The Rise of Professionalism: A Sociological Analysis* (Univ. of California Press 1977)).
2. See Veronica Taylor's chapter, *Legal education as development*, at 216 (noting that one of the "current developments" in legal education reform is that "the shadow of Western (usually American) legal education models loom large").
3. Nor is this to suggest that the U.S. is the only foreign influence. See, e.g., chapter 5, by Harold Baum, *Teaching and researching Japanese law: A German perspective*, at 89; see also Taylor, *supra* note 2, at 224 (describing Italy, Iran and India as destinations for advanced degree law students from Afghanistan).
4. Luke R. Nottage, *Education in Asia: Globalization, Change and Contexts—In Review*, 30 *J. Japanese Law* 255 (2010); Jean Ho, *Review of Legal Education in Asia*, 5 *Asian J. of Comparative Law* (2010).

economic powerhouses represented in the region.⁵ If the book disappoints, it is only in failing to mandate that the authors of the individual chapters respond explicitly to one another to capture the interaction among the countries in the region. For the most part, the reader must draw these conclusions herself. Nevertheless, the book offers much to work with in this regard, and it is a notable addition to existing scholarship offering a comparative approach on the legal profession.

One of the highlights of the book is Carol Jones's chapter on Hong Kong. As Jones explains, "each jurisdiction has its own story to tell. The precise design of legal education in each society emerges from a complex mix of local and global forces, including the complicated politics of identity and nation building. The differences are...a critical part of the story" (128). In Hong Kong, the influence of globalization was due in large part to competition from global U.S.- and U.K.-based law firms that defined talent in terms of English-speaking, business focused, and Western notions of professionalism. The importance of international business lawyers to the Hong Kong legal market compounded Hong Kong's desire to "rebrand [itself] as a 'world city', a 'global financial centre' and a 'regional hub' for high tech industries" (108) and resulted in a contest with the traditional Hong Kong "gentlemanly elite" (127). Corporate lawyers, corporate clients and global common law firms combined to threaten "legal education. . .[with] abandon[ing] its civic and justice values, and devised curricula in which only those subjects that serve the market and the global economy are deemed worth keeping" (126). Jones describes an accommodation that tries to preserve the old while also pursuing the new: "In the end, a compromise was reached, in which elements of a traditional liberal education combined with some 'Americanization' of the curricula, the specific balance between the two reflecting the relative strengths of Hong Kong's competing elites" (126).

If history matters, as Jones explains, so does globalization. The relationship of national experiences to the region and beyond is a central notion of the book. The interaction goes both ways, as does the influence exerted both by and on local legal markets and economies. While the importance of local forces is no longer exclusive—counterparties are not local, governing law may not be local, negotiating style and drafting conventions also are changing—local influences continue to exert themselves.

5. A significant omission in terms of coverage is India, where reform of legal education is substantial. See Kian Ganz, Jindal law school to redraw map of legal education, *Legally India*, Aug. 11, 2009, available at <http://www.legallyindia.com/2009081129/Interviews/jindal-law-school-to-redraw-map-of-legal-education>. Indian law graduates also are a significant competitive force for lawyers in other countries through the outsourcing field. See, e.g., Caroline Hill, Direct buy-in—how clients are giving personal encouragement to advisers to improve efficiency, *Legal Week*, June 30, 2001, available at <http://www.legalweek.com/legal-week/feature/2082356/direct-clients-are-insisting-advisers-innovate-costs>; Mary Daly & Carole Silver, Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal Services, 38 *Geo. J. Int'l L.* 401 (2007).

Veronica Taylor elaborates on this point in her chapter, “Legal education as development,” which contextualizes reform efforts in Afghanistan within those in Asia generally. She argues that it is a mistake to analyze “national systems’ of legal education in Asia...as isolated from regional and global flows of people, ideas and information” (234). For example, a shift towards graduate legal education and an emphasis on business law, corporate and multinational clients, and English language skills are common iterations of reform in many of the countries chronicled in the book. In each of these, there is a notable influence of U.S. legal education, but it is a mistake to construe this as uniformity. Rather, the shape of reform takes from and reflects the local image.

Taylor stresses the commonalities in the reform of legal education within the region while discussing her experience in Afghanistan. She explains that “[t]he need to create more and better-educated lawyers is perceived as a necessary element in national economic growth and perhaps geo-political power. What kind of law, development and legal system within what kind of state are all contestable issues” (221). Reform reflects its drivers and may be as much about image as reality. In Afghanistan, for example, where reform efforts are focused on training “a new generation of legal professionals” (222) and have substantial support from the United States and Italy, it is no surprise that legal education outside of Afghanistan is an important developmental component. Relying heavily on foreign legal education may sacrifice—at least temporarily—attention to the domestic educational system, but it has the benefit of offering a quick “solution.” A foreign graduate level law degree—the U.S. LL.M., for example—takes only nine months, compared to the uncertain and much slower process of reforming an entire domestic legal education regime (223). The number of lawyers who earn a law degree from a foreign institution can also be tracked by objective and verifiable evidence for assessment purposes (224). Both of these factors may be important to external funding sources (224).

Foreign legal education also is an element of legal education reform in China. It is one of the means of producing lawyers for China who can effectively compete in an open and global legal market. But in China, foreign legal education occupies a more complex role than in Afghanistan, serving as both supplement and substitute to domestic legal education. One group of Chinese nationals pursues graduate level legal education as an add-on to their Chinese education and qualification, and another group has opted out of Chinese legal education entirely in favor of foreign legal education, the latter re-entering the Chinese legal market as foreign-qualified lawyers rather than Chinese lawyers (226). Taylor characterizes legal education in China as a “cross-border phenomenon” (227).

Taylor argues that it is important to see distinctions as well as commonalities between countries; focusing only on similarities among countries in the region risks “under-describ[ing] the more complex dynamics at work in shaping the elements of national legal education systems within Asia” (234). These more complex dynamics include competition within Asia for the role of financial hub, from which banking and related legal services are coordinated and

delivered. Such competition is an important reason why no legal system in any vibrant economic system can ignore global influences—that is, it justifies the role of peripheral vision.

Hong Kong and Singapore historically were the principal contenders for dominance as financial centers, although Shanghai joined the contest, too, at least since the book's publication if not earlier. The two chapters focused on Hong Kong and Singapore provide insight into the role of legal education in this regional relationship. Jones's chapter, as noted above, chronicles the tension within Hong Kong for control over legal education. She describes the

oligarchy of big business interests . . . [as] necessitat[ing] graduates fit for the purposes of international commerce. This meant graduates with trilingual language skills (English, Putonghua and Cantonese), knowledge of the common law system, of the Mainland legal system, of business culture(s), with good communication skills . . . and a sound knowledge of the areas of substantive law relevant to a propertied, commercial and global clientele (123).

The eventual compromise in Hong Kong between the corporate interests and those of the more traditional factions of the bar left a vacuum in the region with regard to leadership in producing commercial lawyers. Singapore was only too happy to try to fill this space through creation of its new Singapore Management University School of Law. According to Kee Yang Low's account of SMU Law's origins, it was developed to "produce commercially-oriented lawyers" (161), and in support of the judgment that "commercial and corporate practice [is] . . . the fastest-growing area of legal practice in Singapore and its surrounding region" (158). Low's discussion does not offer an explicit analysis of the relationship between legal education institutions in these two great cities, nor does he examine the ways in which external forces shaped the development of Singapore's newest law school.

The U.S. figures significantly in the influence exerted by globalization in the region. In Korea (173-75) and Japan (189-96), for example, the shift from undergraduate-level to graduate-level legal education is investigated in the particular context of the various forces comprising the profession in each country. This shift is patterned after the U.S. model, although the authors make clear that adopting a graduate structure for legal education does not by itself assure reproduction of the U.S. framework. The missing element of the licensing regime—a partnership of sorts in the U.S.—continues to be a distinguishing factor. The relationship with licensing authorities is evolving in Korea (172) and Japan (56), and the tensions between them and those responsible for legal education are thoughtfully investigated while also serving as a frame for students' responses to their new law schools.

English language skills also are a fundamental element in many of the reform efforts described in the book. In Hong Kong (119, 121), Japan (192) and South Korea (174, 176), for example, English has found its way into the local educational regimes. In Korea, an English test is part of the entering examinations for law school and is used as a signal of credibility. According

to Simon Spencer Reyner Lee, “The purpose of the English test was, in part, to obtain recognition for the Korean J.D. from outside of Korea. The lack of universal credibility was one of the major downfalls of the [former] Judicial Research and Training Institute structure” (176).

One mechanism for obtaining English fluency is to pursue graduate level study in an English-speaking country. As discussed earlier, the U.S. has become a common destination for this purpose, with U.S. law schools expanding and even designing new one year graduate programs for international law school graduates. The importance of graduate legal education—particularly in the U.S.—is a common thread among several countries, but many of the authors are quick to point out that this experience and credential is important for reasons related to local hierarchies and goals. That is, a U.S. LL.M. degree has different meanings in different contexts. In Afghanistan (224) and Cambodia (288), for example, the LL.M.’s primary service is to train law professors, although Cambodian law graduates also use foreign legal education to signal prestige and distinguish themselves in the local market for lawyers. In China (270), Hong Kong (111), South Korea and Japan (227), a U.S. law degree is highly valued among practicing lawyers, judges and prosecutors. According to international law graduates who have earned a U.S. law school graduate degree, English fluency is a valuable take-away and one of the most common motivations for undertaking U.S. graduate legal studies.⁶

Thus, in addition to its two central themes, *Legal Education in Asia* demonstrates the influence of U.S. legal education as a shaper of reform efforts in Asia. This comes about in part because of the importance that the U.S. and its legal system have occupied in the world economy, but also because of the influence of corporate clients on legal practice generally and consequently on legal education, too (see Jones, ch. 6). In the U.S., this corporate and financial orientation has been a dominant element in rethinking legal education for quite some time. Two other factors strengthen the role of the U.S. as a model for reformers: the emergence of English as a common working language for commercial and corporate lawyers, and the significance of the U.S. as a go-to site for graduate legal education for law graduates from other countries.

But while other countries, including those highlighted in *Legal Education in Asia*, have integrated lessons from abroad into their national legal education regimes both directly and indirectly through the re-absorption of graduates who study abroad and return with new ideas and status, the U.S. has by and large resisted a similar broadening of its vision. Discussions of reforming legal education in the U.S. are nearly entirely bounded by influences exerted within national borders.⁷ Although globalization often is mentioned in such

6. See, e.g., Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 24 *Geo. J. Leg. Eth.* 1 (2010).

7. The Future Ed conference organized by New York Law School and Harvard Law School is a notable exception. See http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed for information on the programs and speakers.

conversations, it has not engendered substantial curiosity about how countries outside of the U.S. are reimagining their approach to educating lawyers, much less about how such reforms may influence the U.S.

Moreover, most U.S. law graduates will not have the same experience of studying law overseas that their overseas counterparts are encouraged to undertake, and U.S. law schools are not filling this gap. Generally, law school in the U.S. ignores the personal element of globalization, failing to help students appreciate that working with lawyers trained outside of the U.S., or with individuals from different countries acting as clients, business partners or regulators, for example, may require something more than what is necessary to work effectively in an entirely domestic setting. Addressing the issue requires not only educating students about different legal systems, but also exposing them to the cultural and societal factors that will influence their interaction with lawyers and others from abroad. U.S. law schools have not yet fully recognized the need to design collaborative or team-based learning frameworks to help U.S. students and international law graduates work together. In fact, many U.S. law schools have not yet developed meaningful opportunities for their U.S. J.D. students to work with their domestic peers.⁸ Adding international diversity to the mix only complicates the challenge of devising such a curriculum.

This lesson is not lost on those responsible for legal education reform in the Asian-Pacific countries included in *Legal Education in Asia*, or for that matter, in much of the rest of the world. Rather, the importance of preparing students to work in a diverse, global environment is brought home repeatedly: Sending students overseas for graduate legal education, including English in the law school curricula or application processes, and teaching foreign law as Malcolm Smith did, all convey the message that students must learn to work with those from outside of their home jurisdictions. The divide between messages of globalization's importance also is echoed in the experiences of international LL.M students in U.S. law schools, who complain that they have difficulty getting acquainted with U.S. law students, while their relationships with their international peers are deep and strong.⁹

In order to help students gain insight into this personal aspect of working with their counterparts in other countries, providing a roadmap of the system

8. See generally Allan Chen, Collaboration: The Next/Previous Big/Small (No) Thing, Law School Ed Tech, May 20, 2011, available at <http://lawschooledtech.classcaster.net/2011/05/20/collaboration-the-nextprevious-bigsmall-nothing/> (noting that "it's still valid to say that a truly collaborative atmosphere is not how one would characterize the law school classroom experience.").
9. See Carole Silver, Educating Lawyers for the Global Economy: National Challenges, 44 Kyung Hee L. J. 419 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1519387.

that produces them is crucial.¹⁰ This is where *Legal Education in Asia* adds value as a current and thoughtful resource. Ideally, it would include more from the vantage point of students, but in this respect the book is no more wanting than most scholarship about U.S. legal education.¹¹ The book is an important contribution for students, practitioners and others interested in learning about their counterparts from Asian-Pacific countries, and it should be part of any collection supporting this inquiry, along with classics such as Abel and Lewis's *Lawyers in Society*¹² and Felstiner's *Reorganisation and Resistance*.¹³ Just as U.S. law students need these and more to prepare for working in a global environment, those involved in reforming U.S. legal education will find the book a valuable resource for honing their peripheral vision.¹⁴

10. See John Henry Merryman, *Legal Education There and Here: A Comparison*, 27 *Stan. L. Rev.* 859, 859 (1974) ("The examination of legal education in a society provides a window on its legal system. Here one sees the expression of basic attitudes about the law: what law is, what lawyers do, how the system operates or how it should operate. Through legal education the legal culture is transferred....").
11. There are notable exceptions of course, including, among others, Elizabeth Mertz, *The Language of Law School: Learning to "Think" Like a Lawyer* (Oxford Univ. Press 2007); Vivien Holmes, Tony Foley, Margie Rowe & Stephen Tang, *Learning to Lawyer—Empirical Insights into New Lawyers in Small to Medium Law Practice*, paper presented at the International Legal Ethics Conference, summer 2010 (on file with author); and much of the writing generated by the After-the-JD project, see http://www.americanbarfoundation.org/publications/AftertheJD/AJD_Publications.html. See also the Law School Survey of Student Engagement (of which I am the director), available at www.lssse.iub.edu, which gathers information on the activities of law students as well as their perceptions of educational gains. Drawing on LSSSE data, see Carole Silver, Amy Garver & Lindsay Watkins, *Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement*, 17 *J. of the Legal Writing Inst.* 373 (2011).
12. See Abel & Lewis, *supra* note 1, along with their original three-volume work, *Lawyers in Society* (Univ. of California Press 1988).
13. William L.F. Felstiner, *Reorganisation and Resistance*, *Legal Professions Confront a Changing World* (Hart Pub. 2005).
14. See Taylor, *supra* note 2, at 217 (noting the "interdependency" of "Asian" legal education institutions with their Western counterparts") and 219 (regarding individual national forces relevant to the market for foreign law students).