

Globalizing the Law Curriculum for Twenty-First-Century Lawyering

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I. Introduction

In the current post-Trump political climate, the concept of globalization¹ has taken on a decidedly negative connotation. Nationalist and xenophobic movements in the United States and Europe have resurged as a reaction to what some view as the negative economic, social, and political effects of an increasingly interconnected world. Yet just as the momentum in technological advancement in the digital age cannot be slowed, avoiding the reality of an increasingly globalized world by insisting on looking inward is futile.² Historically, the United States has had a varied track record on international political engagement and harbors an inherent reluctance to take cues from other countries on important policy matters, even as some have consistently favored a globalist approach.³ The response of U.S. law schools to calls to

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1. Globalization has been defined as “the integration of countries and peoples brought about by deep reductions in the costs of transportation and communication, and the dismantling of barriers to the flow of goods, services, capital, knowledge, and people.” JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 9 (2002). A key contributing factor in the “dismantling of barriers” that has developed in recent years is the explosive growth of digital technology and trade in legal services.
2. See James E. Moliterno, Symposium, *The Future of Legal Education Reform*, 40 PEPP. L. REV. 423, 425 (2013) (arguing that economic change in the 2000s is real, and that “instead of resisting change, . . . the profession should adjust and become a player on how change is assimilated into established ways, and how established ways are replaced by more effective ones”); see generally Jose E. Alvarez, *The Internationalization of U.S. Law*, 47 COLUM. J. TRANSNAT’L L. 537 (2009) (positing that the growth of international legal jurisprudence, through the mission creep of the U.N. system, international financial institutions and the World Trade Organization, in addition to recent phenomena such as the global war on terrorism, has made U.S. resistance to international law unfeasible).
3. From a legal standpoint, the divergence in ideology can be simplified to one between “nationalist” and “transnationalist” views, in which the former faction prefers a strict separation between domestic and international law, and the latter sees the United States as a part of an interdependent legal world. See Harold Hongju Koh, Symposium, *Why Transnational*

internationalize⁴ the curriculum has taken an analogous path; the theory that law students need training to become solvers of global problems has not materialized into practice for the great majority of law schools. This failure arguably does a disservice to law students, whose almost exclusively domestic exposure to the law renders them unequipped to compete in the international legal marketplace or to serve domestic clients whose legal problems are taking on an increasingly global character.⁵ In this way, U.S. law schools are falling short of meeting the goal of preparing law students for the complexity and diversity of law practice in an “increasingly borderless profession.”⁶

While it is true that U.S. law schools have differing priorities based on size, reputation, location, and funding, most are unwilling or unable to prioritize internationalizing the curriculum within the context of what they perceive as their primary responsibility: to give students the foundational courses for bar passage. Thus, the core curriculum of most law schools remains tied to a model established over a century ago.⁷ Some notable exceptions merit a closer examination, but the response of the majority of institutions to the call to globalize will be the true measure of a meaningful shift in mindset. Without an accreditation mandate by the ABA to integrate a clearly defined learning outcome for global or international content into its curriculum and/or inclusion of international law on bar exams,⁸ the issue continues to occupy a lower position in the hierarchy of institutional priorities for most law schools.

Law Matters, 24 PENN. ST. INT’L L. REV. 745, 749-50 (2006). Notably, this difference in judicial philosophies is present among the Supreme Court justices and, as such, has an impact on the direction of the Court’s jurisprudence regarding international law. *Id.* at 750.

4. For purposes of this article, the term “internationalize” denotes the broadly defined process of purposefully infusing international, comparative, foreign, and/or transnational law into the curriculum in various ways and in varying degrees. This term will be used alternatively with the term “globalize” regarding curricular change to convey the same meaning.
5. See generally Moliterno, *supra* note 2; see also John B. Attanasio, Symposium, *Partnerships, Joint Ventures and Other Forms for Building Global Law Schools*, 18 DICK. J. INT’L L. 483, 484-85 (2000) (stating that globalization of legal education has lagged far behind business schools, and behind legal education in other parts of the world, and arguing that U.S. law schools need to work toward constructing global law schools); John A. Barrett, Jr., *International Legal Education in the United States: Being Educated for Domestic Practice While Living in a Global Society*, 12 AM. U. INT’L L. REV. 975, 979-83 (1997) (exploring the various reasons to study international law and the impact of changes in the modern world on its usefulness and value).
6. See Carole Silver, Symposium, *Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S.*, 24 STAN. L. & POL’Y REV. 457, 462 (2013) [hereinafter Silver, *Getting Real*] (discussing the need for global experiential learning at U.S. law schools to provide the intercultural competency needed to compete in a global legal environment).
7. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S (STUDIES IN LEGAL HISTORY)* 35-50 (1987); see also Moliterno, *supra* note 2, at 423 (“the legal profession is ponderous, backward-looking, and self-preservationist”).
8. To date, no states include international law content on the bar exam, though at least one state—Florida—offers certification in international law after a minimum of five years in practice. See *International Law Certification*, The Florida Bar, <https://www.floridabar.org/about/cert/cert-il/> (last visited Oct. 5, 2017).

The challenge, therefore, is to mobilize the globalization effort even in the absence of a mandate, to take a proactive, forward-looking approach.

Indeed, most legal academics agree in theory that the undeniably globalizing nature of legal discourse mandates some knowledge of, and familiarity with, legal systems different from our own—a type of basic global competency.⁹ Yet in a legal education climate dominated by the need to reduce administrative costs and at the same time prepare students more effectively for the practice of law, dedicating resources to the goal of internationalizing the law school curriculum on its own may seem nonessential, even luxurious. The convergence of these challenges for law schools raises two questions: First, how should the legal academy define global competency for purposes of setting objectives and outcomes? Second, how can these objectives and outcomes be implemented within the context of each law school's existing curriculum so that all law schools—not just the elite few—can achieve meaningful globalization? How law schools choose to answer these questions will determine how effectively lawyers will serve both an increasingly diverse domestic population and legal systems that “no longer respect the niceties of the political borders of nation-states.”¹⁰ In this regard, the new 2016-2017 ABA standards establishing outcome-based measures of professional competency are helpful in reframing the question of globalization in the context of assessing what it means to be an effective lawyer in the twenty-first century.

This article seeks to clarify the context giving rise to questions about globalizing the law curriculum, and to propose strategies that will, at the very least, spark serious dialogue about how to help law students foster a more global perspective on the law and legal practice. Part I lays the foundation for the argument that U.S. legal education should adopt a more global perspective by examining the globalization of legal practice, both domestically and internationally, and the trend toward globalization of legal education in other countries. Part II discusses the trajectory and challenges of globalization efforts in U.S. legal education and provides data regarding the current level of internationalization at the curricular and cocurricular levels. Part III reframes the question of globalization by suggesting that effective lawyering in the current environment, as defined by the new ABA learning-outcomes standards, should be interpreted to encompass global competency. Part IV

9. The term “basic global competency,” as used in this article, denotes a basic understanding of international law and awareness of fundamental differences in legal systems and cultures, rather than specific expertise in any particular aspect of international law or foreign legal system. Defining it for purposes of establishing a learning outcome is discussed *infra*, Section III.C.
10. See Larry Catá Backer, *Internationalizing the American Law School Curriculum (In Light of the Carnegie Foundation's Report)*, 2 IUS GENTIUM 49, 54 (2008). “Law schools that fail to conform their educational mission to the realities of law and the practices of the great global legal actors—merchants, immigrant communities, nongovernmental organizations, economic entities, banks and other users of legal services—will find themselves playing a limited role in the future of the development of law and the production of law and lawyers for the global marketplace.” *Id.*

offers a fresh perspective on globalizing legal education through a holistic and cost-effective four-pronged approach and emphasizes the need for faculty buy-in and administrative leadership.

II. The Need for Basic Global Competency

A typical initial reaction to the statement that law curricula should be internationalized is “why?” Aren’t U.S. law schools supposed to prepare students to become competent practitioners in the domestic, not international, legal market? After all, only a small percentage of U.S. lawyers are actually practicing international law. In reality, more and more U.S. lawyers are engaged in global practice as a result of the growth in trade of legal services spurred by a global economy. Moreover, domestic practice is including more and more cross-border—transnational—legal activity with an increasingly diverse population, such that competency in navigating these activities is becoming an integral aspect of the profession. Thus, some basic fluency with legal systems other than one’s own, as well as the ability to understand the broader context of complex issues, is necessary.¹¹ While the United States is a central player in the global economy and legal services market, and its legal education system is highly influential globally, its legal academy has been slow to adopt a global disposition. Understanding the current state of globalized legal practice and corresponding trends in legal education abroad will provide insight regarding the “why” and move the focus to the “how.”

A. Globalization of Legal Practice

It is a fact that the world has become more interconnected than ever through the ease of communication and transportation; this trend will continue, despite nationalist rhetoric and calls for erecting barriers.¹² Most significantly, the legal services market is globalizing due to increased economic activity among

11. Professor and former Indiana Supreme Court Justice Frank Sullivan, Jr. provides a vivid explanation: “There is no courtroom in this country into which international considerations do not enter, be they international child custody disputes or simply litigants from abroad bringing their different language and different understanding of law to the courtroom with them. There is no county recorder’s office that does not reflect foreign-owned real estate. There is no Chamber of Commerce without an internationally-owned member.” Frank Sullivan, Jr., *International LL.M. Students: A Great Resource for U.S. Law Schools*, 22 *IND. INT’L & COMP. L. REV.* 219, 234-35 (2012) (book review).
12. See, e.g., Or Rosenboim, *Globalism and Nationalism: Why Interconnectedness Does Not Threaten Sovereignty*, *FOREIGN AFFAIRS* (July 10, 2017), <https://www.foreignaffairs.com/articles/2017-07-10/globalism-and-nationalism> (positing that the historical basis for post-World War II globalization efforts was grounded in a recognition of the world’s interconnectedness and that “[g]lobalism challenges the idea that national, regional, or international political decisions can be detached from global implications and causes”); Barack Obama, *We Can’t ‘Build A Wall’ Around Globalization*, *MSNBC LIVE* (July 22, 2016), <http://www.msnbc.com/msnbc-news/watch/obama-we-can-t-build-a-wall-around-globalization-730429507825> (video recording) (stating, in a joint press conference with the president of Mexico, that globalization is a “fact” established by technology, integrated global supply chain and changes in transportation, and that the United States should look forward by shaping the process to benefit everyone).

nations, businesses, financial institutions, individuals, governments, and nongovernmental organizations.¹³ The United States' joining the World Trade Organization in 1994 and its participation in the General Agreement on Trade in Services facilitated this increase in trade of legal services.¹⁴ The growth in this market has been exponential during the past few decades, transforming many large U.S. firms into global firms.¹⁵ An expansion of cross-border legal disputes from this increased economic activity resulting in international arbitrations and litigation is therefore inevitable.¹⁶ In addition, intergovernmental activity triggered by such recent world phenomena as terrorism, environmental issues, and refugee and migrant crises has also reached a new height.¹⁷

Overall, the traditional view of international legal practice as being limited to a select few who work for elite law firms representing multinational corporations, the federal government, or international organizations is becoming outdated, as a growing percentage of all U.S. lawyers seem to be engaged in matters involving international or foreign law.¹⁸ Today, many

13. Carole Silver, *Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers*, 45 VA. J. INT'L L. 897, 897 (2005) [hereinafter Silver, *Winners and Losers*]. Professor Silver analyzes the impact of globalization of the U.S. legal services market on developments in legal education, including the expansion of LL.M. programs and the various ways in which this trend affects foreign students. *See generally id.*
14. *See* American Bar Association, Center for Professional Responsibility, *GATS/International Agreements: Materials About the GATS and Other International Agreements*, https://www.americanbar.org/groups/professional_responsibility/policy/gats_international_agreements.html (last visited Nov. 16, 2017). For a comprehensive discussion of GATS and other trade agreements in relation to trade of legal services, see generally Laurel S. Terry, *From GATS to APEC: The Impact of Trade Agreements on Legal Services*, 43 AKRON L. REV. 875 (2010).
15. *See* Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 24 GEO. J. LEGAL ETHICS 1, 2-3 (2011) [hereinafter Silver, *Variable Value*].
16. *See* James R. Maxeiner, *Learning from Others: Sustaining the Internationalization and Globalization of U.S. Law School Curriculums*, 32 FORDHAM INT'L L.J. 32, 46-47 (2008) (arguing that the need to internationalize the law curriculum is obvious because "[f]oreign and international law are important for American businesses and American private persons American lawyers need to know about the foreign legal systems that they encounter the Internet now puts even the smallest consumer into international transactions").
17. For example, the global terrorism and human rights crises have contributed to the internationalization of U.S. law by raising more legal issues in U.S. courts involving international and foreign law. *See* Alvarez, *supra* note 2, at 544-45.
18. This article's frequent references to "international law" are intended to carry a broad definition: the rules governing relations among nations. For other more nuanced definitions, see, e.g., <http://thelawdictionary.org/international-law/> ("the term given to the laws governing and determining the rights of independent nations during war or peace times"); Lassa Oppenheim, *INTERNATIONAL LAW: A TREATISE*, Vol. 1, at 3 (1912) ("the name for the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other"). The term "foreign law" as used in this article means the laws of a country or jurisdiction outside of the United States. For further clarification,

large law firms have offices abroad and international practice groups,¹⁹ but increasingly, smaller firms and solo practitioners also encounter international or foreign law issues, including commercial transactions such as drafting contracts or complaints against a foreign provider or manufacturer, family law matters such as custody and adoption involving foreign countries, or litigation matters such as drafting motions to dismiss based on *forum non conveniens* for foreign clients or conducting discovery in cross-border cases.²⁰

An overarching theme of increased globalization is that as legal services cross borders, there needs to be an awareness of differences not only in the legal cultures, but also in professional and ethical standards and practices; appreciating these differences could be critical to effective lawyering in cross-border or cross-jurisdiction contexts.²¹ This significant globalization trend in legal practice should be reflected in U.S. legal education if the academy is truly committed to preparing its students to practice competently in the current market. Yet skepticism and a reluctance to come to terms with the importance of global learning and its place in the law curriculum continue to pervade most U.S. law schools.

The basic argument against globalizing the law curriculum seems to be the belief that the vast majority of domestic lawyers will not need to know about laws and legal systems beyond U.S. borders. This argument is simply no longer viable. Two studies involving the nature of domestic law practice highlight the trend toward greater internationalization and provide some compelling data. First, a 2009 study by Professors Susan L. DeJarnatt and Mark C. Rahdert of Temple University Beasley School of Law found that 67.5% of the 1050 Philadelphia lawyers responding to a survey reported working on a legal matter that required them to have some knowledge of foreign and/or international

the term “transnational law” denotes a broader category of law than “international law” and encompasses “all law which regulates actions or events that transcend national frontiers,” including both public and private international law, and “other rules which do not wholly fit into such standard categories.” PHILLIP C. JESSUP, *TRANSNATIONAL LAW* 2 (1956).

19. See Giles Rubens & Lisa Smith, *Do You Need an International Footprint?*, *LAW PRACTICE TODAY* (Apr. 15, 2014), <http://www.lawpracticetoday.org/article/do-you-need-an-international-footprint/> (reporting that since 1992, the number of U.S. firms with international offices has grown from 243 firms with 4,000 total lawyers, to 766 firms with 20,000 lawyers); Diane Penneys Edelman, *A Global Approach to Legal Writing and Legal Research: An Evolutionary Process*, 5 *DREXEL L. REV.* 497, app. D at 527-30 (2013) [hereinafter Edelman, *A Global Approach*] (listing a sampling of offices abroad for New York and Philadelphia firms, many with multiple offices throughout Europe, Asia, and the Middle East).
20. See Edelman, *A Global Approach*, *supra* note 19, at 500-01.
21. See generally Laurel S. Terry, *U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives*, 4 *WASH. U. GLOBAL STUD. L. REV.* 463 (2005) (providing a comprehensive overview of the history of comparative ethics, highlighting the specific events and developments that influenced the growth of this endeavor, including the expansion of international trade of goods and services, cultural diversification of the U.S. population, and changes in legal academia).

law.²² The respondents worked in the public and private sectors in a wide range of settings, from large law firms to solo practices, demonstrating that a substantial percentage of lawyers who would traditionally fall into the category of domestic practitioners need some knowledge of international and/or foreign law.²³ Respondents' descriptions of the kinds of international or foreign law issues they encountered indicated a broad range of topics, including family law, environmental, intellectual property, trade, tax, property, and personal injury, as well as procedural issues such as forum non conveniens.²⁴ The survey results confirmed the authors' premise that American law is becoming globalized and that international and foreign law issues are becoming increasingly integral to domestic practice.²⁵ Indeed, they are stark evidence of the globalization of U.S. law practice.

In a second study, a National Association for Law Placement survey of a nationally representative sample of J.D. graduates of the class of 2000 in their seventh year of practice revealed that forty-four percent of the respondents reported having dealt with matters involving non-U.S. clients or cross-border matters in the preceding year.²⁶ Not surprisingly, the percentages were higher for those working in large firms (sixty-five percent) and in-house (sixty-six percent), but even a majority of public defenders and legal services attorneys (sixty-one percent) reported having done international law work.²⁷ The results

22. Susan L. DeJarnatt & Mark C. Rahdert, *Preparing for Globalized Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum*, 17 J. LEGAL WRITING INST. 3, 20 (2011). The authors chose Philadelphia for the study because it is Temple's main legal market, but also because it represented a city not known for international legal work and thus more representative of U.S. law practice generally. *Id.* at 19. The authors argue that the legal curriculum should be globalized to reflect the reality of modern law practice, and that research and writing pedagogy including international or foreign legal issues can help prepare students for this reality. *See id.* at 24-32.

23. *See id.* at 20-21; *see also* Edelman, *A Global Approach*, *supra* note 19, at 507-09 (summarizing survey results of Villanova alumni who had taken Professor Edelman's first-year elective legal writing course on international advocacy showing that two-thirds of the respondents had been involved in some type of international legal work since graduation). *See infra*, Section IV.B. for further discussion of the benefits of including international law in legal writing and skills courses.

24. DeJarnatt & Rahdert, *supra* note 22, at 22-23, app. F at 54.

25. *Id.* at 23.

26. *See* Ronit Dinovitzer et al., *After the JD II: Second Results of a National Study of Legal Careers*, Joint Publication of the American Bar Foundation and the NALP Foundation for Law Career Research and Education 35 (2009), <http://www.law.du.edu/documents/directory/publications/sterling/AJD2.pdf> [hereinafter *After the JD II*]. The original *After the JD* study, published in 2002, reported on graduates in their third year of practice and did not contain data on international law work. *See* Ronit Dinovitzer et al., *After the JD: First Results of a National Study of Legal Careers*, Joint Publication of the NALP Foundation for Law Career Research and Education and the American Bar Foundation (2002), <http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf>.

27. *See After the JD II*, *supra* note 26. International work in large corporate firms mainly consisted of serving foreign corporate clients while legal services attorneys were likely engaged in immigration issues. *Id.*

of both studies affirm the reality that domestic practice has become globalized and that U.S. legal education must expand its definition of “practice-readiness” to include basic global competency.

B. Globalization of Legal Education Worldwide

Outside the United States, legal education has evolved to keep better pace with economic and cultural globalization trends, particularly in Europe and Asia. In Europe, several key initiatives beginning in the 1980s sought to create a more cooperative and uniform system of education overall, and legal education in particular.²⁸ An emerging trend brought about by globalization in Europe is the role of large law firms in educating associates through firm-specific training programs, often including multijurisdictional practice elements.²⁹ Legal education reform has also taken place in a number of countries in the Eastern hemisphere,³⁰ signaling a shift in favor of globalization consistent with trends in internationalization of markets. For example, China, Japan, and Korea have all instituted major changes to their legal education systems in the past decade to better prepare students for practice in a global market.³¹ In Canada, McGill University Law School has transnationalized its curriculum, reflecting a unique combination of globalization and cultural forces.³²

28. See David S. Clark, Symposium, *American Law Schools in the Age of Globalization: A Comparative Perspective*, 61 RUTGERS L. REV. 1037, 1063-68 (2009) (discussing the European Union’s Erasmus and Socrates programs designed primarily to facilitate student and faculty exchanges and mutual recognition of credits, diploma recognition policies that facilitated multijurisdictional practice, and the Bologna Process reforming higher education to be more uniform in structure across countries).
29. See James R. Faulconbridge & Daniel Muzio, Symposium, *Legal Education, Globalization, and Cultures of Professional Practice*, 22 GEO. J. LEGAL ETHICS 1335, 1349-52 (2009). Thus, legal education in Europe is becoming more focused on interests that align with large firm activity, *i.e.*, commercial law. *Id.*
30. For discussions of the status of legal education in Asian countries, including China, Korea, Japan, India, Taiwan, Thailand, and Vietnam, see LEGAL EDUCATION IN ASIA (Shuvro Sarker ed., 2013). For articles regarding various legal education reform efforts in China, Japan, Russia, Australia, Singapore and Hong Kong, see the Winter 2017 volume of the Journal of Legal Education, 66 J. LEGAL EDUC. 209 (2017).
31. See generally, *e.g.*, Rosa Kim, *The “Americanization” of Legal Education in South Korea: Challenges and Opportunities*, 38 BROOK. J. INT’L. L. 49 (2012) (discussing the legal education reform process in Korea toward an American-style graduate education system); Carl F. Minzner, *The Rise and Fall of Chinese Legal Education*, 36 FORDHAM INT’L L.J. 334 (2013) (discussing the trajectory of legal education reform in China and arguing that it is headed for a downturn similar to the crisis in U.S. legal education); James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional into Legal Education*, 13 PAC. RIM L. & POL’Y J. 303 (2004) (describing Japan’s legal education reform and recommending greater emphasis on teaching legal reasoning).
32. See, *e.g.*, Rosalie Jukier, Symposium, *Challenging the Existing Paradigm: How to Transnationalize the Legal Curriculum*, 24 PENN ST. INT’L L. REV. 775, 775 (2006) (describing the “transsystemic” approach by Canada’s McGill University that integrates transnationalism into the curriculum by “freeing the study of law from jurisdictional or systemic boundaries and [to] thereby . . . broaden the perspectives to that legal education”); Harry W. Arthurs, *Law and*

For legal academicians outside the United States, the need for globalization of legal education tends to be viewed more as an inevitability requiring appropriate adjustments in the respective legal education regimes than as a probability requiring only discussion and consideration, as in many U.S. legal academic circles.³³ For example, Professor Simon Chesterman of the National University of Singapore views the transformation of legal education as dictated by changes in the practice and profession across jurisdictions.³⁴ Thus, Professor Chesterman posits that the paradigm shift has gone from international (“archipelago” of jurisdictions) to transnational (“patchwork” of jurisdictions) to global (“web” of jurisdictions).³⁵ Legal practice is now immersed in the global paradigm, in which lawyers—albeit an elite group mostly from select schools—need to be comfortable working in multiple jurisdictions.³⁶ The future of legal education, therefore, must include the goal of producing graduates who are both “intellectually and culturally flexible” and are exposed to comparative and international perspectives to a wider range of law subjects.³⁷

An integral aspect of this shift worldwide, and in some cases a contributing impetus for the reform, has been the education of lawyers and law students

Learning in an Era of Globalization, 10 GERMAN L.J. 629, 636-39 (2009) (characterizing McGill’s transsystemic program as challenging the idea that “law’s logic is bounded, its values fixed, its processes ascertainable, and its outcomes predictable”).

33. For a comparative discussion of the need to globalize legal education from non-U.S. perspectives, see, e.g., Faulconbridge & Muzio, *supra* note 29, at 1349-52 (providing British perspective on the impact of globalization on legal education structures and the legal profession); Csilla Kollonay Lehoczky, Symposium, *Preparing Students for International Legal Practice and Improvement of their Legal Systems*, 18 DICK. J. INT’L L. 473 (2000) (discussing the need to “harmonize” disparate legal systems and the role of legal education in that effort from the Hungarian perspective).
34. See Simon Chesterman, *The Evolution of Legal Education: Internationalization, Transnationalization, Globalization*, 10 GERMAN L.J. 877, 879 (2009) (examining the new global paradigm of legal education prompted by changes in the legal profession through such influences as advances in transportation and communication, growth of mobility and numbers of students, and a new appreciation of trans-jurisdictional and comparative analysis).
35. *Id.* at 880-83.
36. See *id.* at 883. Accordingly, exchange programs have developed into double-degree programs between schools in different jurisdictions. *Id.* at 886-87. Most U.S. schools engaged in these programs tend to be elite or globally focused, fueling the critique that global lawyers are an elite cohort and that global legal education is a “discourse of the rich.” See *id.* at 885-86.
37. See *id.* at 887-88. See generally Irene Calboli, Symposium, *A Call for Strengthening the Role of Comparative Legal Analysis in the United States*, 90 ST. JOHN’S L. REV. 609 (2016) (arguing that comparative legal analysis in the field of intellectual property is especially beneficial in enriching the scholarly discussion of the values to be promoted).

in U.S. programs.³⁸ Indeed, a critique of globalization in legal education is the notion that “globalization” is actually “Americanization,” given U.S. dominance in the practice of law as well as the influence of its law school model.³⁹ Globalization has fueled interest in LL.M. and other degrees in the United States since the 1990s as a means to learn about U.S. law and legal system, and also to enhance one’s credentials.⁴⁰ For many U.S. law schools, LL.M. programs have become an important source of tuition revenue, in addition to diversifying the student population and bringing in global perspectives through the foreign student presence.⁴¹ The number of international students at U.S. law schools has grown steadily in the past three decades.⁴² A broader

38. Professor Carole Silver has written extensively on this subject, providing insights and critiques of the LL.M. “business.” See generally, e.g., Silver, *Variable Value*, *supra* note 16; Carole Silver et al., Symposium, *Globalization and the Business of Law: Lessons for Legal Education*, 28 NW. J. INT’L L. & BUS. 399 (2008); Silver, *Winners and Losers*, *supra* note 13.
39. See Chesterman, *supra* note 34, at 886-87. In addition to Japan and Korea, discussed *supra* note 31, Australia, Hong Kong and the Philippines have all considered integrating at least some aspects of the U.S. legal education model. See *id.* For a critique of the “American nationalist model of educational globalization” in which U.S. law serves as the common foundation of global transactions and English serves as the common language, see Larry Catá Backer & Bret Stancil, *Beyond Colonization-Globalization and the Establishment of Programs of U.S. Legal Education Abroad by Indigenous Institutions*, 5 DREXEL L. REV. 317, 348-51 (2013).
40. See generally Silver, *Variable Value*, *supra* note 15 (examining the value of the U.S. LL.M. degree for foreign lawyers in providing local expertise to U.S. law firms abroad as a means to understand the requisite qualities of a “global lawyer” in the private legal services market). A U.S. graduate law degree provides such benefits as professional networking, credibility, and status, in addition to legal English skills. Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARDOZO J. INT’L & COMP. L. 143, 144 (2006) [hereinafter Silver, *Report on Transnational Lawyers*]. However, as Professor Silver notes in *Winners and Losers*, *supra* note 13, at 914-26, the actual value of these degrees in securing jobs with U.S. firms abroad may be diminished given the firms’ current tendency to hire locally. Moreover, international students face a barrier to becoming bar-eligible in the U.S. despite a potential equivalency in qualifications, due to the ABA’s reluctance to embrace a global framework for regulating bar membership; see also Carole Silver, *White Paper: What We Know and Need to Know About Global Lawyer Regulation*, 67 S.C. L. REV. 461 (2016) (discussing the foundational aspects of global lawyer regulations, including their potential impact on the legal education sector).
41. Another aspect of making U.S. legal education available to a global audience is the role of information technology and the advent and growth of online LL.M. and other degree programs. See, e.g., Catherine Dunham & Steven I. Friedland, *Portable Learning for the 21st Century Law School: Designing a New Pedagogy for the Modern Global Context*, 26 J. MARSHALL J. COMPUTER & INFO. L. 371, 376-79 (2009) (suggesting that a more portable, technology-enabled pedagogy in law teaching suits the modern globalized legal environment); Jeffrey A. Van Detta, *A Bridge to the Practicing Bar of Foreign Nations: Online American Legal Studies Programs as Forums for the Rule of Law and as Pipelines to Bar-Qualifying LL.M. Programs in the U.S.*, 10 S.C. J. INT’L L. & BUS. 63, 94-96 (2013) (discussing the benefits of online LL.M. programs for foreign-educated lawyers generally, and as a vehicle for facilitating an open global dialogue about the rule-of-law concept).
42. See Silver, *Winners and Losers*, *supra* note 13, at 906-07. In 2004, 3200 students enrolled in post-J.D. programs, representing a fifty percent increase since 1998, according to the ABA Section of Legal Education and Admission to the Bar. *Id.* at 906. On the J.D. side, in 2016, 986

view of students worldwide who choose to pursue tertiary education in other countries reflects the growth in globalized education generally, as well as the proliferation of foreign travel and pervasive importance of English as a de facto global language.⁴³

For some countries, globalization of legal education is synonymous with obtaining a graduate degree in an English-speaking country, not just the United States.⁴⁴ This trend reflects the primacy of English, as much of the legal work in diverse locations, such as Europe, Asia, and Latin America, is conducted in English.⁴⁵ Indeed, several countries have foreign language proficiency requirements, including an English language requirement on the bar exam.⁴⁶ In one author's view, Americans' lack of foreign language proficiency, in such languages as Chinese, German, Japanese, Korean, or Russian, represents a clear disadvantage in competing for transnational lawyering positions.⁴⁷ While highly improbable, some focus on foreign language proficiency for law school admissions considerations, as well as credit awarded for foreign language study, could enhance a school's international or comparative law program while also enhancing diversity.⁴⁸

The influx of foreign lawyers who seek English language graduate law training in the United States is perhaps also a function of the uniqueness of the

degrees were awarded by ABA-accredited law schools to nonresident aliens, compared with 714 degrees awarded in 2011. See American Bar Association, Section of Legal Education and Admissions to the Bar, *Statistics*, https://www.americanbar.org/groups/legal_education/resources/statistics.html (last visited Nov. 16, 2017).

43. According to an Organisation for Economic Cooperation and Development (OECD) study on students studying abroad worldwide, patterns of student mobility have shifted in the past two decades. See *Education Indicators in Focus 2013/05 (July)*, OECD 2013, [https://www.oecd.org/education/skills-beyond-school/EDIF%202013--N%C2%BD14%20\(eng\)-Final.pdf](https://www.oecd.org/education/skills-beyond-school/EDIF%202013--N%C2%BD14%20(eng)-Final.pdf) [hereinafter *OECD Report*]. For example, the number of students studying abroad for tertiary education, i.e., undergraduate and graduate studies, tripled from 1.3 million in 1990 to almost 4.3 million in 2011. In 2011, the largest numbers of international students were from Asia (China, India, Korea), who accounted for fifty-three percent of all students studying abroad. *Id.* English-speaking countries accounted for more than thirty percent of all foreign students studying law in those countries. *Id.*
44. The top destinations for graduate law degrees are the U.S., U.K., and Australia. *Id.*
45. See Silver, *Report on Transnational Lawyers*, *supra* note 40, at 156 (citing testimonials from foreign law graduates who reported that knowledge of legal English was essential for home practice).
46. For example, Korea requires English proficiency for passage of the new bar exam, as well as for admission to the new law schools. See Kim, *supra* note 31, at 65. In other countries, such as Germany, one may choose among several languages to meet the language requirement. See Clark, *supra* note 28, at 1075-76.
47. See Clark, *supra* note 28, at 1077-78. Indeed, a key distinction between U.S. students and their foreign counterparts is language ability, but the prevalence of English worldwide is continuing to create the perception, not surprisingly, that foreign language proficiency is unnecessary.
48. See *id.* at 1077. An example of such a program is the international certificate program at the University of Pittsburgh School of Law, which includes several language electives. *Id.* at 1077-78.

U.S. legal education system. Unlike the vast majority of other countries, where law is taught at the undergraduate level in conjunction with an apprenticeship requirement, the United States requires a three-year graduate degree program with no required apprenticeship.⁴⁹ The U.S. model is likely perceived as offering more opportunities to specialize in a legal field. Notwithstanding the popularity of U.S. law schools for foreign lawyers, competition for legal education is increasing worldwide,⁵⁰ and U.S. law schools should consider providing value in the form of training in cross-jurisdictional, cross-cultural matters.⁵¹

Law schools in other countries seem to have a stronger appreciation of the fact that learning about legal systems other than one's own carries an inherent pedagogical benefit and often enables a stronger understanding of one's own systems.⁵² Studying foreign and international law "flourishes best when it is valued for the insights it brings to domestic law."⁵³ It can also "enrich the repertoire of legal argument" and "challenge expertise in productive ways."⁵⁴ U.S. legal education is behind much of the world in this regard, even as it

49. Recent changes instituted in Korea and Japan, where the legal education system was transformed from one entailing an undergraduate program, national bar exam with a single-digit pass rate, followed by mandatory training at a government-run judicial training institute, to three-year graduate law programs signaled a significant change in the legal profession and reflected a resolve to create competitive lawyers in the global market. See, e.g., Kim, *supra* note 31, at 58-63; Setsuo Miyazawa et al., *The Reform of Legal Education in East Asia*, 4 ANN. REV. L. & SOC. SCI. 333 (2008) (discussing legal education reform and the influence of the U.S. education model in Japan, Korea, and China).
50. Greater competition for international students has led to the emergence of new host countries, such as Australia, New Zealand, Spain, Russian Federation, and Korea. *OECD Report*, *supra* note 43.
51. See Justin W. Evans & Anthony L. Gabel, *Preparing Legal Entrepreneurs as Global Strategists: The Case for Entrepreneurial Legal Education*, 32 ARIZ. J. INT'L & COMP. LAW 727, 730-31 (2015) (proposing that U.S. law schools include entrepreneurial pedagogy and experiential education in a multicultural context to maximize the opportunity to prepare the type of lawyers most likely to be in future demand).
52. See Franklin A. Gevurtz et al., *Report Regarding the Pacific McGeorge Workshop on Globalizing the Law School Curriculum*, 19 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 267, 274-75 (2006) [hereinafter Gevurtz, *Workshop Report*] (explaining that introducing global law into the curriculum affords insight and perspective that aid in analysis and understanding of domestic legal issues); Margaret Y.K. Woo, *Reflections on International Legal Education and Exchanges*, 51 J. LEGAL EDUC. 449, 449 (2001) (discussing the benefit of international legal exchanges in particular and international legal education in general, especially as a means to learn the skills, values, and culture of other systems, but also as a way to enhance understanding of domestic law).
53. Maxeiner, *supra* note 16, at 48 (citing the European Union as an example of countries benefiting from learning other systems).
54. Vasuki Nesiiah, *A Flat Earth for Lawyers Without Borders? Rethinking Current Approaches to the Globalization of Legal Education*, 5 DREXEL L. REV. 371, 379-80 (2013). Professor Nesiiah challenges the way of thinking about globalization of legal education beyond the practical value and favors further study of the structures of global governance and how global legal education fosters intellectual heterodoxy. See generally *id.*

provides global–American–perspective to a significant number of foreign LL.M. and other degree students at its schools.

The net effect of this expansion in foreign lawyers being trained at U.S. law schools is that they are gaining important knowledge and skills about the U.S. common-law system and global practice generally,⁵⁵ while their U.S. counterparts are learning about non-U.S. systems on a smaller scale, creating an imbalance in their respective preparedness for global practice and putting U.S. graduates at a disadvantage. Moreover, international students typically already have a grounding in international law as a part of their required curriculum and come to the United States with a more global orientation.⁵⁶ U.S. law schools “risk educating a cadre of globally savvy competitors that domestic students cannot possibly match” in the ability to navigate the landscape of global practice.⁵⁷ Indeed, the globalization trajectory of U.S. legal education has been erratic, reflecting the lack of uniformity in perceptions of the need to globalize.

III. U.S. Legal Education’s Path to Globalization

To provide context for the current discussion of internationalizing the law school curriculum, it is useful to consider a brief history. While a detailed and nuanced consideration of this history is the subject of substantial scholarship, and is outside the scope of this article, some common themes emerge. First, international law remains an elusive and poorly understood subject for many U.S. lawyers and law professors, despite the ever-globalizing nature of domestic law practice.⁵⁸ Ironically, the reason lies in the lack of required instruction in

55. The heightened interest in pursuing an LL.M. degree in the United States and other English-speaking countries stems from the desire to specialize in a specific area, to gain exposure to the host country’s legal system, and to otherwise gain a competitive edge in the global legal marketplace. See *Why More International Students are Studying LLM Law Degrees*, ASIAN CORRESPONDENT (Oct. 27, 2015), <https://asiancorrespondent.com/2015/10/why-more-international-students-are-studying-llm-law-degrees/#Ai32fDcG6Z8pM5Sr.99>.
56. See generally Luz Estella Nagle, *Maximizing Legal Education: The International Component*, 29 STETSON L. REV. 1091, 1103 (2000). Professor Nagle compares her educational experience in both the continental and U.S. law systems and suggests that the U.S. system could borrow elements from the continental system to better prepare students for global practice. Specifically, she declares that a “mandatory panoramic view of law, placed alongside the parochial view of American legal education, would result in better trained lawyers who are more ethically and morally responsible to themselves, their clients, and their profession, and, as international borders continue to blur, to the international arena.” *Id.*
57. Silver, *Getting Real*, *supra* note 6, at 494 (discussing how U.S. law schools can provide meaningful intercultural and global experiences to their students).
58. To be clear, the term “international law” in the context of law school courses is broad and includes public international law (laws governing relations among nations), private international law (laws governing relations among citizens of different nations or between a nation and citizens of a different state), comparative law (study of the differences, similarities, and interrelationships of different systems of law), and foreign law (study of the laws of a foreign legal system or part of the legal system). Though the meanings are distinct, the term “comparative law” is generally understood to include foreign law in the U.S. law school

law school, hence the vicious cycle is perpetuated. Second, while most law schools offer international law courses and programs, only a minority of self-selected students participate in them. Thus, a majority of U.S. law students are not exposed to other legal systems. Third, each law school's ability to invest and focus on this goal depends on the particular characteristics of the school, thus efforts to globalize have been varied and uneven across the legal academy. Given these themes, examining the history and current state of globalization efforts at U.S. law schools is essential to developing successful strategies going forward.

A.A Brief History

Legal education with an international or transnational dimension poses a great challenge because the focus of U.S. legal education thus far has been on the national legal system; the task then is to contextualize this learning and to “nest it in a wider range of normativity.”⁵⁹ While international and comparative law have been present in American law schools for over a century, the dominant view of law has been law promulgated by the national state.⁶⁰ The gradually increasing focus on globalization in U.S. law schools tracks the basic trends in international relations in the post-World War II era. After World War II and the formation of the United Nations, and later the European Economic Community, and the collapse of the Soviet Union created an international environment with greater transnational legal relations.⁶¹ In the 1990s, calls arose in academia to internationalize the curriculum and to create global American law schools.⁶² The impetus for these calls was the realization that global legal markets were opening up and lawyers trained in foreign, comparative, and international law would become dominant in these markets.⁶³ U.S. law firms were already at the forefront of this trend, yet legal education had not kept up in providing proper training to law students.⁶⁴ The legal academy was “on board” with this view, with many prominent voices advocating for globalizing the law curriculum during this period.⁶⁵

context. In addition, courses focused on legal practice with an international component would also be included.

59. Louis F. Del Duca, Symposium, *Continuing Progress in Internationalizing Legal Education—21st Century Global Challenges*, 21 PENN. ST. INT’L L. REV. 1, 2 (2002) (quoting Patrick Glenn) [hereinafter Del Duca, 2002 Symposium].

60. For a comprehensive overview of the history of international law as a discipline, see generally Clark, *supra* note 28.

61. *Id.*

62. *Id.* at 1045.

63. *Id.*

64. *See id.*

65. *See id.* at 1046. For example, at its annual meeting the ABA president suggested that lawyers must become fluent in a foreign language to practice international law effectively. *Id.* Additionally, the 1998 annual meeting theme was “Thinking and Teaching About Law in a Global Context as an Exercise in Common Enterprise.” *Id.*; *see also* Barrett, *supra* note 5, at

The 2000s saw enhanced interest and focus on globalization within the U.S. legal academy, evident through the proliferation of international legal education conferences and symposia,⁶⁶ the uptick in foreign enrollment in U.S. LL.M. programs, and the expansion of study-abroad programs offered by law schools.⁶⁷ Several schools launched global programs or curricula that sought to internationalize the scope of study.⁶⁸

However, in recent years the overall momentum toward more globalized U.S. law schools has stalled, most significantly because of what most perceive as a crisis in legal education.⁶⁹ A drop in law school applications, combined with poor student employment rates after graduation, despite high debts, have created a sense of urgency among many law school administrations to take actions dictated by budget constraints and bar passage targets.⁷⁰ Interestingly, one response to the budget crisis has been to increase the enrollment of foreign LL.M. students to garner more revenue without incurring significant new

979-83. Notably, Professor Barrett's call to accelerate the internationalization process came in 1997, when the state of international legal relations was relatively less globalized; yet in many ways the call has yet to be heeded twenty years later by most U.S. law schools.

66. See generally, e.g., Louis F. Del Duca, Symposium, *The Role of Law Schools and Law School Leadership in a Changing World*, 29 PENN ST. INT'L L. REV. 95 (2010) [hereinafter Del Duca, 2010 Symposium]; Clark, *supra* note 28; Louis F. Del Duca, Symposium, *Enriching the Law School Curriculum in an Increasingly Interrelated World—Learning from Each Other*, 26 PENN ST. INT'L L. REV. 831 (2008) [hereinafter Del Duca, 2008 Symposium]; Katharina Pistor, Symposium, *Internationalizing the First Year Curriculum—A Symposium from the Association of American Law Schools Annual Meeting January 3-7, 2006*, 24 PENN ST. INT'L L. REV. 809 (2006); Gevurtz, *Workshop Report*, *supra* note 52; Elizabeth Rindskopf Parker, Symposium, *Globalizing Legal Education*, 23 PENN ST. INT'L L. REV. 753 (2005); Del Duca, 2002 Symposium, *supra* note 59; Michael P. Scharf, Symposium, *Working Together: Developing Cooperation in International Legal Education*, 20 PENN ST. INT'L L. R. 29 (2001); Louis F. Del Duca, Symposium, *Emerging Worldwide Strategies in Internationalizing Legal Education*, 18 DICK. J. INT'L L. 411 (2000).
67. Clark, *supra* note 28, at 1047-54.
68. Most notably, NYU established the first global law school program in the 1990s. *Id.* Others, including Columbia, Northwestern, Michigan, and Georgetown, expanded their international programs during this period to provide robust curricula, in addition to degree programs, student and faculty exchanges, and study-abroad opportunities. See *id.* at 1055.
69. Frank K. Upham, *The Internationalization of Legal Education: National Report for the United States of America*, 62 AM. J. COMP. L. 97, 101 (2014). For critiques of the current state of legal education and its failure to adapt to the dynamics of the evolving profession and practice, see generally BRIAN A. TAMANAHA, *FAILING LAW SCHOOLS* (2011); Steven J. Harper, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* (2013); see also American Bar Association, *Report and Recommendations, American Bar Association Task Force on the Future of Legal Education* (Jan. 2014), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf (addressing primarily the problem of law school costs and financing); American Bar Association, *Report and Recommendations, American Bar Association Task Force on the Financing of Legal Education* (June 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.authcheckdam.pdf (addressing falling enrollment, rising tuition and debt, and employment challenges).
70. See Upham, *supra* note 69, at 101.

costs.⁷¹ Public critique of the current law school model has included a call to make law school two years,⁷² and class-action suits have attacked law schools for misleading employment data after graduation.⁷³ The role of the tenure system on faculty productivity, combined with critique of the current state of legal scholarship as being obscure and impractical, have added to the crisis narrative.⁷⁴ These issues have largely overshadowed the conversation regarding internationalization, even as the challenge to improve legal education will necessarily include preparing students for practice in a global market.

Proponents of internationalizing the law curriculum, some of whom hail from globally minded institutions, have argued that internationalization will produce more sophisticated lawyers and citizens, as well as better practitioners.⁷⁵ As with any significant advancement in law school teaching policy, be it integrating more formative assessments or creating online courses, the resolve to internationalize the curriculum requires agreement based on strong evidence that it is the correct course to take, and the rest will be up to the efforts of a core group dedicated to effecting the change, both at the national level and at each school. Law school leaders have a duty to “counter insular perspectives”⁷⁶ and to take charge of efforts to sustain the rule of law, understand the multicultural nature of human interaction, and consciously prepare law students to become “global citizens.”⁷⁷ Indeed, there is much to learn from the experiences of law schools that have successfully led the effort to globalize their own law curricula.

B. Current State of Globalization at U.S. Law Schools

Various approaches have been taken to bring global perspective to the law curriculum, reflecting the differences among U.S. law schools and

71. See Silver, *Report on Transnational Lawyers*, *supra* note 40, at 155. Another key benefit of expanding the LL.M. programs is reputational; they help to internationalize the student body and legitimize the moniker of “global” or “international” for marketing purposes. *Id.* at 154-55. Ironically, the global label is often designed to attract J.D., not foreign, law students. See *id.*
72. See Peter Lattman, *Obama Says Law School Should be Two, Not Three, Years*, N.Y. TIMES (Aug. 23, 2013), <https://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/>.
73. See, e.g., Sara Randazzo, *Jobless Graduates Who Sued Law Schools Find Little Success in Court*, WALL ST. J. (Oct. 15, 2015), <https://www.wsj.com/articles/jobless-graduates-who-sued-law-schools-find-little-success-in-court-1444936032>; Maura Dolan, *Class Action: Law School Grads Claim Misleading Reports of Success*, L.A. TIMES (Apr. 2, 2013), <http://articles.latimes.com/2013/apr/02/local/la-me-ln-class-action-law-school-grads-claim-misleading-reports-of-success-20130402>.
74. See Upham, *supra* note 69, at 101-02.
75. See *id.* at 125; Barrett, *supra* note 5, at 979-81.
76. See Anthony A. Tarr, *Legal Education in a Global Context*, 36 U. TOL. L. REV. 199, 199, 205 (2004) (advocating that law school deans have a responsibility to establish strong international programs to respond to the reality of an increasingly global legal environment).
77. See Upham, *supra* note 69, at 105 (quoting Dean Christopher Edley of the University of California at Berkeley’s Boalt Hall).

their respective proclivities to globalize.⁷⁸ Understanding these approaches provides valuable insight about their benefits and deficiencies, enabling a more informed perspective on globalizing the curriculum.

Law schools that have globalized their law programs have generally expanded their curricula, created study-abroad programs, and, in smaller measure, sought to integrate international law issues across traditional required courses. These approaches to globalization can be described as additive, immersive, and integrative, respectively.⁷⁹ The additive approach is to include more international or comparative courses and concentrations to the law school's offerings.⁸⁰ While this is the least disruptive option and can lead to greater interest and awareness of global perspectives generally, the biggest downside is that it still reaches a small percentage of students.⁸¹ The immersive approach involves having students experience foreign and international law by studying abroad in summer, semester, or dual-degree programs.⁸² While allowing for hands-on engagement with the culture, this approach is again limited to the self-selected few already inclined to pursue learning international law. Moreover, the language barrier for U.S. students limits their ability to immerse themselves fully in the foreign environment.⁸³ The integrative approach seeks to teach domestic and international law together by incorporating international components into traditional courses.⁸⁴ While this approach ensures that all students receive exposure to international or comparative law, the institutional demands on faculty to include international law components to existing courses, as well as on students to absorb this material in the first-year curriculum, are substantial.⁸⁵

The additive approach has obvious benefits in that expanded course offerings in international, comparative, or foreign law, both required and elective, provide more academic opportunities for students to learn about systems beyond the U.S. borders. Most ABA-approved law schools offer

78. See Del Duca, 2010 Symposium, *supra* note 66 (summarizing the content of symposium on "Role of Law Schools and Law School Leadership in a Changing World" on various steps taken by schools that have implemented a globalization plan).

79. See Maxeiner, *supra* note 16, at 37-45; see also William M. Sullivan et al., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, 189-92 (2007) ("Carnegie Report") for discussion of the benefits of "integrative" rather than "additive" approaches to curricular reform.

80. See Maxeiner, *supra* note 16, at 37-38.

81. See *id.* at 38.

82. See *id.* at 42-44.

83. Consequently, most immersive experiences for U.S. law students studying abroad lack the language component.

84. See *id.* at 39-40; see also Stephen H. Legomsky, Symposium, *Globalization and the Legal Educator: Building a Curriculum for a Brave New World*, 43 S. TEX. L. REV. 479 (2002) (articulating the need for, and difficulty of, integrating international law into the law curriculum, and suggesting that the use of supplements containing international law modules may be the best option).

85. See *id.* at 40.

international law electives, though the richness of offerings varies greatly.⁸⁶ Having an international law concentration or certificate program allows students with a deeper interest to develop a marketable specialization that can help them stand out in the job market.⁸⁷ Clinics focused on human rights, immigration law, or other international law topics provide a blend of academic and experiential exposure to international or foreign law.⁸⁸ While these curricular offerings are an essential ingredient to internationalizing any law curriculum, they share the common weakness of placing global learning in discrete, specialized silos, resulting in a small minority of students who engage in them.⁸⁹

The immersive approach entails having students live, study and/or work abroad through summer or semester-abroad programs. Courses in international or comparative law offered in study-abroad programs, which have expanded significantly in the past few decades,⁹⁰ are prime opportunities for academic and experiential learning for both students and faculty.⁹¹ Currently over 150 summer programs are offered at ninety-one schools,⁹² compared with 115 programs at sixty-one schools in 1995.⁹³ While this growth indicates greater

86. The numbers range from one to over eighty international law courses. See Table 3, *infra* p. 928.
87. See Larry Catá Backer, *Toward General Principles of Academic Specialization by Means of Certificate or Concentration Programs: Creating a Certificate Program in International, Comparative and Foreign Law at Penn State*, 20 PENN ST. INT'L L. REV. 67 (2001) (discussing Pennsylvania State University Dickinson School of Law's creation of a certificate program in international, comparative, and foreign law prompted by the globalization of legal practice).
88. More than 110 schools offer at least one clinical offering involving international human rights or immigration law. See Table 4, *infra* p. 928. In fact, the effort to improve access to justice underlying clinical legal education is a clear example of a shared goal and value that can serve as the basis for a global clinical movement. See Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASH. U. J.L. & POL'Y 111, 117-21 (2008).
89. One 1996 ABA study indicated that while international courses and cocurricular activities were flourishing, at most thirty-seven percent of law students took a course in international law. See Barrett, *supra* note 5, at 994.
90. See generally Adelaide Ferguson, *Mapping Study Abroad in U.S. Law Schools: The Current Landscape and New Horizons*, NAFSA: ASSOCIATION OF INTERNATIONAL EDUCATORS (May 2010), http://www.nafsa.org/uploadedFiles/NAFSA_Home/Resource_Library_Assets/Networks/CCB/MappingStudyAbroadLaw.pdf.
91. Studying and living in a different country builds "cultural intelligence" in a way unmatched by other types of learning; both law students and faculty can benefit greatly. See Louise Harmon & Eileen Kaufman, *Innocents Abroad: Reflections on Summer Abroad Law Programs*, 30 T. JEFFERSON L. REV. 69, 76-78 (2007) (discussing in detail the authors' experience teaching in summer programs in India and China and providing nuts-and-bolts insight into running and teaching in such a program).
92. See American Bar Association, Section of Legal Education and Admissions to the Bar, *Foreign Summer and Intersession Programs*, https://www.americanbar.org/groups/legal_education/resources/foreign_study/foreign_summer_winter_programs.html (last visited Oct. 16, 2017). Also, eight schools run ten different intersession programs abroad. *Id.*
93. Barrett, *supra* note 5, at 992.

interest from students, and also more faculty members teaching abroad and improving their own global perspective on the law,⁹⁴ participation in study-abroad programs continues to be small scale, and schools should consider doing more to enhance student participation and capitalize on their existing programs.

In addition, another aspect of the immersive method of globalization is international dual-degree programs that allow students to earn J.D.s or advanced degrees in two or more jurisdictions.⁹⁵ An expansion of such programs, together with study abroad programs, could have a significant impact on the overall effort to globalize legal education. The ABA's Section on Legal Education and Admissions to the Bar regulates study-abroad programs and provides clear rules for awarding credit.⁹⁶ The ABA now permits J.D. students to earn up to one-third of the total credits required for the United States in programs abroad.⁹⁷ The ABA requires summer and semester-abroad course offerings to include international or comparative law content relevant to the host country.⁹⁸

94. *Id.*

95. For example, the law schools at Columbia, Cornell, NYU, University of Detroit-Mercy, USC, Harvard, Michigan State, Vermont, University of Colorado, University of Texas, Duke, University of Virginia, and University of Houston are among those that offer at least one foreign degree program. The foreign institutions are located primarily in Canada, Mexico, Europe, Australia, and Asia; *see also* Andrew Moore et al., *The Globalization of Legal Education*, 92-NOV MICH. B.J. 40, 41 (2013) (describing the role of dual-degree programs in the globalization of legal education, including the University of Detroit-Mercy's unique comparative dual-degree program allowing law students to receive Canadian and U.S. degrees in three years).

96. *See* American Bar Association, Section of Legal Education and Admissions to the Bar, *ABA Standards 2017-2018 Standards and Rules of Procedure for Approval of Law Schools*, https://www.americanbar.org/groups/legal_education/resources/standards.html (last visited May 15, 2018).

97. ABA Standard 307 Studies, Activities, and Field Placements Outside the United States (b), American Bar Association Standards and Rules of Procedure for Approval of Law Schools 2017-2018, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf (last visited May 15, 2018).

98. *See* American Bar Association, Standards and Rules of Procedure for Approval of Law Schools 2017-2018, *Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States, 2017-2018*, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_criteria_foreign_summer_intersession.authcheckdam.pdf (last visited May 15, 2018). The Academic Requirements provide, in pertinent part: "A substantial portion of the educational program must relate to the socio-legal environment of the host country or have an international or comparative focus." Intersessions, a more recent addition to the menu of study-abroad programs, are one- or two-week international trips that are part of a domestically taught course, and that typically take place during winter or spring break. They are less disruptive to a student's law school course plan and could potentially expand student participation. *See* Ferguson, *supra* note 90, at 14-15, 17-18, for a fuller discussion of these programs, including specific examples at different law schools.

The growth of immersive programs notwithstanding, the number of law students participating in such programs is comparatively low – about ten percent, according to a 2010 estimate.⁹⁹ This is not surprising, since spending a summer abroad in lieu of summer employment or internships is not a common option for law students, who must gain legal experience and build resumes to prepare for the post-J.D. job market. A semester abroad is even less attractive or feasible for most law students, as being away for a semester can interfere with participation in clinics, law reviews, and other on-campus activities. Yet it is clear that the immersive nature of a study-abroad experience would be highly beneficial for giving students a global perspective on the law and cultures. The reality is that while study-abroad programs and the “global” moniker make school admissions literature appealing, the vast majority of law students will not opt to partake in the experience.

In contrast to the additive and immersive approaches, which tend to reach a small, self-selected percentage of the law school population, the integrative approach seeks to infuse international law aspects into domestic law subjects across the required curriculum. This approach is the most effective way to ensure universal exposure to international law, and avoids the compartmentalization of disciplines.¹⁰⁰ For instance, each first-year doctrinal course would include a unit or module covering international issues within the topic, supplemented by a minicourse to cover basic international law doctrine and other fundamentals.¹⁰¹ This “module” approach would remove the compartmentalization of international law as a separate discipline and essentially render it an extension or dimension of the core subject.¹⁰² While on the positive side this approach would signal the importance of international law to the core subjects and provide a limited amount of instruction and coverage to all, on the negative side it would be difficult to gain consensus and buy-in from all faculty teaching required courses, as some would not be inclined to make such a significant modification to their syllabus and allocation of class time without a mandate to do so. Moreover, it is questionable whether this

99. See Ferguson, *supra* note 90, at 6-7.

100. The Carnegie Report is clear in its endorsement of the integrative approach to curricular reform. See Carnegie Report, *supra* note 79, at 191-92.

101. See John F. Murphy & Jeffrey Atik, *International Legal Education*, 37 INT’L LAW. 623, 624 (2003) (citing Phillip R. Trimble, *What’s Wrong with International Law Scholarship? The Plight of Academic International Law*, 1 CHI. J. INT’L. L. 117, 119 (2000)) (advocating that proper training in international law would require integration across the curriculum); Janet Koven Levit, *Sanchez-Llamas v. Oregon: The Glass Is Half Full*, 11 LEWIS & CLARK L. REV. 29, 36-37 (2007) (arguing that legal educators should treat transnational law issues as integral to the law curriculum, so that lawyers can properly argue and, in the case of state courts, educate the judiciary on international law issues that are increasingly common, such as the Vienna Convention on Consular Relations); see also Hiram E. Chodosh, *Globalizing the U.S. Law Curriculum: The Saja Paradigm*, 37 U.C. DAVIS L. REV. 843 (2004) (proposing a “complement” series of textbooks based on a simple paradigm designed to cover key international legal issues to accompany first-year courses, to facilitate globalizing the curriculum).

102. See Murphy & Atik, *supra* note 101, at n. 4.

type of approach would be sufficient to expose students to a “broader view of the international legal order,”¹⁰³ though it would certainly be a significant shift toward globalization of the curriculum.

While full integration of international law into traditional courses is difficult to achieve, a handful of law schools have implemented a more systematic approach to globalizing or internationalizing the law school culture.¹⁰⁴ A review of international curricular requirements of ABA-approved law schools illustrates the various ways in which schools are engaged in international law and highlights the overall lack of emphasis on it as an integral aspect of the curriculum.¹⁰⁵

C. Study of U.S. Law Schools and Global Engagement

Regarding international law content within the curriculum, U.S. law schools are engaged to varying degrees and in different ways. The data are

103. See *id.* at 627.

104. At NYU, for example, the approach to internationalization has been an “attempt to bring global ideas, methodologies, and individuals into the quotidian life of the students and faculty” rather than to require specific courses or foreign study. See Upham, *supra* note 69, at 124-26. For an in-depth discussion of various curricular efforts to internationalize across jurisdictions, including specific examples and hypotheticals illustrating comparative law teaching, see generally Del Duca, 2008 Symposium, *supra* note 66. Notably, Pacific McGeorge’s leading effort on this approach has produced important resources—casebook materials that outline global issues for traditional law subjects—for faculty looking to integrate international components into traditional courses. See Franklin A. Gevurtz, Symposium, *Incorporating Transnational Materials into Traditional Courses*, 24 PENN. ST. INT’L L. REV. 813 (2006) (describing Pacific McGeorge’s program to internationalize traditional first-year courses by including an international component and by developing casebooks that cover international aspects of the core subjects). Starting in 2005, Thompson West has published the “Global Issues” series of books, which at the time of writing this article includes volumes dedicated to corporate, constitutional, legal ethics, torts, civil procedure, family, environmental, contract, criminal procedure, copyright, labor, intellectual property, securities, patent, employment, employee benefits, freedom of speech and religion, antitrust and competition, employment discrimination, criminal, commercial, property, income taxation, and immigration law. See <http://store.westacademic.com/Store/?search=global+issues>. For discussions on techniques to internationalize particular subjects, see, e.g., Helen Hershkoff, *Integrating Transnational Legal Perspectives into the First Year Civil Procedure Curriculum*, 56 J. LEGAL EDUC. 479 (2006); M.C. Mirow, *Globalizing Property: Incorporating Comparative and International Law into First-Year Property Classes*, 54 J. LEGAL EDUC. 183 (2004).

105. At the time of writing, the ABA reports a total of 205 schools; however, one is the U.S. Army Judge Advocate General Program, which confers a degree different from a J.D., three schools are provisionally approved (Concordia, Lincoln Memorial, UNT Dallas), one school has closed as of 2017 (Charlotte), one will close in 2019 (Whittier), and three had insufficient published data for inclusion in the study (Arizona Summit, Interamerican University of Puerto Rico School of Law, Pontifical Catholic University of Puerto Rico School of Law). These schools were omitted from the data. See *ABA-Approved Law Schools*, American Bar Association: Section of Legal Education and Admissions to the Bar, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited Nov. 1, 2017). Thus, the total number of schools included in the study is 196. The data were collected by reviewing each institution’s website or contacting the institution directly.

clear that schools are much more engaged in cocurricular activities that involve international or global themes than in curricular integration of international law.¹⁰⁶ Regarding curricular requirements and offerings, Table 1 shows the anemic numbers and percentages of schools that have international law requirements or first-year electives.

Table 1

International Law in the Curriculum	Number of Schools	Percentage of All Schools
Schools that have a 1L requirement	13	6.6%
Schools that have a distribution requirement	7	3.5%
Schools that offer 1L elective(s)	17	8.6%

At one end of the spectrum, thirteen schools currently require first-year comparative law.¹⁰⁷ Table 2 lists the schools and titles of these first-year required courses.¹⁰⁸ The next group of schools—Detroit Mercy, Florida A&M, Florida International, University of Pittsburgh, St. Louis University, University of Tulsa, and University of Michigan—requires a course or seminar, chosen from a menu of options, of international, comparative, or transnational law as a distribution requirement.¹⁰⁹ Combined, law schools that have any curricular requirement of international law total nineteen schools, representing a mere 9.5% of all ABA-accredited schools.

106. For purposes of this article and study, “cocurricular” refers to activities that complement the academic curriculum, including moot court programs, journals, clinics, and study-abroad programs. While most cocurricular activities are credit bearing, they typically fall outside of the main menu of curricular offerings.

107. Seventeen others offer or have offered an international law-themed course or courses as doctrinal or legal writing electives in the spring semester of first year, including American, University of Arizona, University of Baltimore, Brooklyn, Columbia, Drexel, Georgetown, University of Minnesota, New York University, Northwestern, Notre Dame, University of Pennsylvania, Stetson, Southwestern, Temple, Villanova, and University of Wisconsin.

108. Some of the information in Table 2 was gleaned from a draft Year in Review 2018 of the American Bar Association Section on International Legal Education and Specialist Certification, furnished to the author by Section co-chair Professor Diane Penneys Edelman. For a final published version, see Diane Penneys Edelman, *International Legal Education and Specialist Certification* chapter (with M. Moran), American Bar Association Year in Review, 52 ABA/SIL YIR 497 (2018).

109. See websites of each listed law school.

Table 2

Schools Requiring First-Year International Law Course	Title of Course
University of California Irvine	International Legal Analysis
University of Chicago	Foreign Relations Law
Florida International	Introduction to International and Comparative Law
University of Washington	Transnational Law
Harvard	International and Comparative Law ¹¹⁰
Penn. State	Practicing Law in a Global World: Contexts and Competencies
University of Nebraska	International Perspectives in the U.S. Legal System: Practicing Law in a Global Legal Environment
Washington & Lee	Transnational Law
Pacific McGeorge	Global Lawyering Skills ¹¹¹
Louisiana State	Western Legal Traditions: Louisiana Impact, Civil Law Obligations, Civil Law Property
University of Puerto Rico	Public International Law (Derecho Internacional Público)
Southern	Civil Law Property, Civil Law Obligations
Stanford	Federal Litigation in a Global Context

All law schools include international, comparative, and/or foreign law courses in their curricula, but the range in the number of international or comparative elective courses offered is broad, as illustrated in Table 3. The number of elective courses ranges from single digits to over eighty,¹¹² with two-thirds of all schools offering between one and twenty courses.¹¹³

110. Harvard provides a menu of spring courses involving international law themes, from which students must select one. For a description of the foundational concepts these first year electives are intended to provide, see Harvard Law School website, <https://hls.harvard.edu/dept/academics/programs-of-study/international-and-comparative-law/academic-offerings-international-and-comparative-law/> (last visited June 26, 2018).
111. The Global Lawyering Skills course is a unique two-year legal research and writing requirement that includes a first-year spring term unit on international or comparative law.
112. University of Denver Sturm College of Law, which offers an International Law Certificate Program, offers approximately eighty-seven courses, the most of any law school.
113. See Table 3. Schools offering forty-one or more international law courses are American, Boston University, University of California Hastings, University of California Los Angeles, University of Chicago, Columbia, University of Denver, Fordham, George Washington, Harvard, University of Michigan, New York University, University of Pennsylvania, University of Pittsburgh, St. John's, and Yale.

Table 3¹¹⁴

Number of International Law Courses Offered	Number of Schools	Percentage of All Schools
1-20	123	66.4%
21-40	45	24.3%
41-60	9	4.8%
61-80	7	3.7%
80-100	1	.5%

In terms of cocurricular offerings, 78% of all law schools participate in at least one international law-themed moot court competition¹¹⁵ and about 43% house at least one comparative or international law journal.¹¹⁶ Fifty-six percent of law schools offer a clinic devoted to an international law theme, such as human rights and immigration, while ABA-approved summer study-abroad programs are offered at about 46% of law schools. Additionally, LL.M. programs open to international students, or with international law themes, are offered at almost half of the schools.¹¹⁷ Some schools also engage in global learning through international law concentrations, certificate programs, joint-degree programs with law schools outside of the United States, and research institutes. While all of these cocurricular programs contribute to globalization in valuable ways, they typically capture students who already have an interest in international law and are generally not sufficient on their own to create a global law school culture.¹¹⁸ As discussed in Section V, a more coherent approach is needed to maximize the impact of both curricular and cocurricular offerings.

Table 4

Cocurricular Activities with International Law Theme	Number of Schools	Percentage of All Schools
Moot court(s)	153	78%
Journal(s)	86	43%
Clinic(s)	111	56%
Study-abroad program(s)	92	46%

114. These data are from the schools that published their course offerings on their websites at the time of writing, totaling 185 schools.

115. See Table 4. Currently 153 law schools participate in at least one international competition, including 137 that participate in the Jessup Competition.

116. More than eighty-six ABA-approved law schools have at least one journal with an international theme. See Table 4.

117. See American Bar Association, Section of International Law, *LL.M. International Law Programs*, https://www.americanbar.org/groups/international_law/students/llm.html (last visited Nov. 30, 2017).

118. See Barrett, *supra* note 5, at 991.

Notwithstanding the growth of curricular and cocurricular programming focused on international and comparative law, the problem still lies in the lack of wide exposure, as it remains an area of specialization rather than foundational learning. To achieve universal exposure, the concept of “thinking like a lawyer” must be redefined to include awareness and sensitivity to global and multicultural perspectives. A key step in that direction is to follow the lead of the group of schools that have instituted a curricular requirement in international, comparative, or transnational law.¹¹⁹ Some have advocated for requiring a course specifically in public international law so that students can get exposure to the fundamental concepts that govern intercountry relations.¹²⁰ Regardless of the type of international law course, a curricular requirement would shift international law away from the realm of electives and specializations to a foundational subject. Taking on the challenge of creating a new curricular requirement requires careful analysis of the learning objectives involved and must now occur within the framework of the ABA’s new learning-outcomes standards. A close examination of these standards reveals the key ways in which they support the inclusion of basic global competency as a lawyering skill.

IV. Effective Lawyering and Global Competency

Any consideration of curricular change raises fundamental questions about the objectives of legal education and by extension, the role lawyers play in society. Understanding the evolving nature of what the legal market demands is critical to ensuring that law schools maintain curricula that aim to meet

119. See *infra* p. 34. The University of Michigan’s experience with creating the first curricular requirement in transnational law, “Transnational Law,” in 2001, is particularly instructive in understanding the rationale that drove the decision. See Murphy & Atik, *supra* note 101, at 624-26. The course was designed to “provide an introduction to the international dimensions of law . . . including the foundations of public as well as private international law with a particular view to the professional needs of current and future lawyers, both in government and in private practice . . .” and to “teach every student the minimum every lawyer should know about the law beyond the domestic (American) orbit in order to be qualified for practice in an age in which virtually every area of law is being affected by international aspects.” *Id.* at 625 (quoting the University of Michigan Law School Curriculum Committee’s memorandum to the Michigan faculty explaining the format and objective of the course). See *id.* at 625-67 for a detailed discussion of the topics covered in Michigan’s Transnational Law course, and an interview with faculty who taught the course. In 2015, the requirement of “Transnational Law” was modified; University of Michigan Law School currently requires any one international or comparative law course for graduation. See The University of Michigan Law School, *Academic Regulations for J.D. Students* (“Michigan’s Academic Policies”), <http://www.law.umich.edu/currentstudents/registration/Documents/JD%20Regulations%20-%20Current.pdf> (last visited May 15, 2018).

120. See Koh, *supra* note 3, at 750-51 (arguing that law schools should teach more transnational public law topics such as the law of global democracy, global governance, transnational crime, transnational injury and redress, regulation of transnational markets, and transnational dispute resolution). *But see* David E. Van Zandt, *Globalization Strategies for Legal Education*, 36 U. TOL. L. REV. 213, 213-16 (2004) (suggesting that the focus of global law teaching should be consistent with the current political and economic environment, namely with a greater emphasis on business law and less on public international law).

those demands. Where the evidence indicates a deficiency in the training, or a gap between the curriculum and professional practice, the ABA has stepped in to require adjustments. A prime example of this dynamic was the push to include more experiential and practice-focused content into the curriculum, spurred by the findings of the 1992 MacCrate Report.¹²¹ The requirement that law schools teach skills and values in addition to knowledge, as articulated by the ABA,¹²² raises the important question of which professional skills should be taught. While a similar ABA requirement of global and cross-cultural learning in the law curriculum would be the most effective means to achieve uniform advances in this area, the inclusion of cultural competency as a professional lawyering skill is an important step in the right direction. This development supports the conclusion that law schools ought to focus on delivering the knowledge, skills, and values needed to navigate problems that involve systems and cultures other than one's own.¹²³ Thus, institutional alignment with cultural competency as a learning outcome can become further legitimized.

A. ABA Learning-Outcomes Standards

In June 2015, the ABA Section of Legal Education and Admissions published new and amended Standards and Rules of Procedure for Approval of Law Schools relating to learning outcomes and assessment programs, Standards 301, 302, 314, and 315.¹²⁴ These standards were “designed to assure that the outcome measures and assessment methodologies that schools develop will improve their legal education programs and better serve the needs of students during their legal educations and in their professional careers.”¹²⁵ Though not explicitly, the standards bring to light the relevance of global competency to current legal education standards as well as the demands of the profession.

121. See American Bar Association, Section of Legal Education and Admissions to the Bar, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development—An Educational Continuum* (Chicago, 1992).
122. American Bar Association, Section of Legal Education and Admissions to the Bar, *Managing Director's Guidance Memo, Standards 301, 302, 314, and 315* [hereinafter *Guidance Memo*], Guidance, Standard 302, Interpretations 302-1 and 302-2, 4 (June 15, 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf.
123. For a thorough treatment of how law schools can implement this learning-outcomes directive, see generally Anthony Niedwiecki, *Law Schools and Learning Outcomes: Developing a Coherent, Cohesive, and Comprehensive Law School Curriculum*, 64 CLEV. ST. L. REV. 661 (2016).
124. See ABA Standards and Rules of Procedure for Approval of Law Schools 2017-2018, *Chapter 3: Program of Legal Education*, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf (last visited May 15, 2018).
125. *Guidance Memo*, *supra* note 122, at 1. Standard 314 addresses Assessment of Student Learning and Standard 315 addresses Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods. *Id.* at 2.

The relevant language of standards 301 and 302 of the guidance memo is as follows, with emphasis added:

Standard 301. Objectives of Program of Legal Education

(a) A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for *effective, ethical, and responsible* participation as members of the legal profession.

(b) A law school shall establish and publish learning outcomes designed to achieve these objectives.

Standard 302. Learning Outcomes

A law school shall establish learning outcomes that shall, at a minimum, include *competency* in the following:

(a) Knowledge and understanding of substantive and procedural law;

(b) Legal analysis and reasoning, legal research, *problem-solving*, and written and oral communication in the legal context;

(c) Exercise of proper *professional and ethical responsibilities* to clients and the legal system; and

(d) Other professional skills needed for *competent and ethical* participation as a member of the legal profession.¹²⁶

A quick deconstruction of these standards focusing on the emphasized words makes clear that the ABA is intent on guiding law schools to provide knowledge, skills, and values needed for effective practice in the current environment. Standard 301 articulates that the objective of law schools ought to be to produce “effective, ethical, and responsible” lawyers. Standard 302 articulates “problem-solving” as a skill in which students must achieve competency. Solving problems and upholding the ethical obligation of representing a client zealously could easily involve navigating foreign or international law. For instance, to effectively serve a client who has a contract dispute for the sale of goods with a foreign corporation or wants to engage in a joint business venture with a multinational firm, or is injured while traveling abroad, or wants to carry out a foreign adoption, the lawyer will need to navigate international or foreign laws and procedures, even in a preliminary or basic fashion. Indeed, if the premise holds true that effective lawyering in the twenty-first century requires a basic understanding of international law, then these outcomes standards encompass global competency by definition.

126. *Id.* at 1 (emphasis added).

The ABA has also identified cultural competency as a skill that schools may choose to establish as a learning outcome in Interpretation 302-1: “For the purposes of Standard 302(d), other professional skills are determined by the law school and may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, *cultural competency*, and self-evaluation.”¹²⁷ Although cultural competency¹²⁸ is not further defined in the ABA guidelines, the inclusion of this skill here indicates the ABA’s acknowledgment that the ability to interact with those of different cultures may be a required competency for effective lawyering, depending on the law school’s mission.¹²⁹ Interestingly, many of the other skills listed, such as interviewing, counseling, negotiation, conflict resolution, and collaboration, can require cultural competency to effectuate and as such render cultural competency a foundational skill, rather than a mission-dependent one.¹³⁰ Given this perspective, the relationship between cultural competency and global competency needs to be examined. Does one encompass the other, or are they parallel concepts? How does a law school go about articulating learning outcomes for cultural competency and/or global competency? These quandaries, while complex, raise interesting and important questions about how the legal academy can incorporate these critical skills into the curriculum.

B. Cultural Competency vs. Global Competency

Cultural competency as a professional lawyering skill has been a topic garnering much interest in the past two decades.¹³¹ In the context of an increasingly globalizing world, as well as a diversifying U.S. population,¹³² the ability to interact proficiently with people of different cultural backgrounds, particularly one’s own clients, is essential to effective lawyering.¹³³ Broadly

127. *Id.* at 1-2 (emphasis added).

128. The term “cultural competency” is used in legal academia interchangeably with “intercultural competency,” “multicultural competency,” and “cross-cultural competency.” The term “competency” in all of these expressions is used interchangeably with the term “competence.” This article will use “cultural competency” for consistency.

129. See *Guidance Memo*, *supra* note 122, at 4.

130. See Woo, *supra* note 52, at 450.

131. See, e.g., Annette Demers, *Cultural Competence and the Legal Profession: An Annotated Bibliography of Materials Published Between 2000 and 2011*, 39 INT’L J. LEGAL INFO. 22, 25-50 (2011) (listing articles and books on cultural competency as an emerging professional lawyering skill).

132. By 2044, more than half of the U.S. population will belong to a minority group, and by 2060, one in five of the total population will be foreign-born. Sandra L. Colby & Jennifer M. Ortman, *Projections of the Size and Composition of the U.S. Population: 2014 to 2060, Population Estimates and Projections*, Current Population Reports, U.S. CENSUS BUREAU (March 2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf>.

133. For discussions of the relevance of cultural competency to effective lawyering, see generally Cynthia M. Ward & Nelson P. Miller, *The Role of Law Schools in Shaping Culturally Competent Lawyers*, 89-JAN MICH. B.J. 16 (2010) (arguing that law schools should play an integral role in teaching cultural competence given the changing demographics); Heidi Frostestad

defined, cultural competency is the “personal ability needed to communicate and work efficiently in intercultural every-day and business situations with members of different cultural groups or in a foreign cultural environment.”¹³⁴ Just as knowledge of, and sensitivity to, cultural differences among domestic clients is important for effective lawyering, knowledge of cultural differences in professional and business settings and jurisdictions can greatly enhance one’s ability to interact more effectively with foreign entities.¹³⁵ Beyond the ability to understand a different set of rules and processes that may govern a particular problem, lawyers should “acquire a set of skills that allow them to navigate difference.”¹³⁶ Cultural competency, therefore, requires multidimensional learning, entailing not only knowledge of other cultures, but also the skills and attitudes needed to interact successfully with people of diverse backgrounds.¹³⁷

Under these definitions, cultural competency can be seen as the “umbrella” concept that includes both cultural sensitivities and skills when dealing with diverse domestic clients, and the ability to handle matters that involve non-U.S. legal and professional cultures—in short, the ability to “navigate difference.”¹³⁸ Indeed, the transformative nature of globalization and diversity on legal practice has created a greater need to teach cultural competency skills.¹³⁹ The next step, therefore, is to explore defining cultural competency as a learning outcome that encompasses global competency.

Kuehl, *Resources for Becoming Culturally Competent in a Multijurisdictional Practice: G20 Nations and Associated Legal Traditions*, 44 INT’L J. LEGAL INFO. 83 (2016) (arguing that cultural competency should be integrated in teaching across doctrinal, clinical, and seminar settings to better-prepare students for multijurisdictional practice in a global legal environment and provide resources for practice involving G-20 countries).

134. Verena Behrnd & Susanne Porzelt, *Intercultural Competence and Training Outcomes of Students with Experiences Abroad*, 36 INT’L J. INTERCULT. REL. 213, 214 (2012) (quoting Gunter J. Friesenhahn, Merkmale und Profil Interkultureller Kompetenz, in *Praxishandbuch Internationale Jugendarbeit* 65, 65 (Gunter Friesenhahn ed., 2001)).
135. See, e.g., Woo, *supra* note 52, at 453-54 (citing differences in legal writing styles between Chinese and Spanish writers and U.S. legal writers).
136. See Rachel Moran, *When Intercultural Competency Comes to Class: Navigating Difference in the Modern American Law School*, 26 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 109, 112 (2013) (commenting on the need to teach intercultural skills in law schools and noting the different approaches, including infusing them into the curriculum across the board, providing immersive opportunities for students to spend time living and working in the culture, and requiring cultural competency as a component of a concentration on global practice); see also Christina A. Zawisza, *Teaching Cross-Cultural Competence to Law Students: Understanding the “Self” As “Other”*, 17 FLA. COASTAL L. REV. 185 (2016) (suggesting that cultural competency teaching should focus on cultivating an understanding of one’s identity through the notions of “self” and “other”).
137. See Silver, *Getting Real*, *supra* note 6, at 460-62.
138. Moran, *supra* note 136, at 112.
139. See Raquel Aldana, *Intercultural Legal Sensibility as Transformation*, 25 S. CAL. INTERDISC. L.J. 1, 8 (2016) (suggesting that while all lawyering is cross-cultural, intercultural legal sensibility gained through self-reflection in an experiential setting, such as a summer program, can be transformative).

The ABA's guidance on Standard 302 states that "learning outcomes must consist of clear and concise statements of *knowledge* that students are expected to acquire, *skills* students are expected to develop, and *values* that they are expected to understand and integrate into their professional lives. The outcomes should identify the desired knowledge, skills, and values that a school believes that its students should master."¹⁴⁰ While cultural competency is an acknowledged dimension of experiential law teaching generally, the challenge even for those schools committed to including cultural competency as a learning outcome is that, with the exception of clinical and other skills-focused faculty, most faculty members are not equipped pedagogically to include it as an outcome in their teaching. This makes it challenging to include cultural competency as a basic learning outcome for all students.

In clinical teaching, the professional context of serving real clients and navigating real cases necessarily requires a level of skill and awareness of cultural differences. Robust scholarship on the issue of cultural competency in the clinical context, beyond the scope of this discussion, serves as an excellent resource for learning about cultural competency as a professional legal skill.¹⁴¹ Similarly useful scholarship also exists within the business school context, in which a soaring number of international students¹⁴² and globalization of business make cultural competency a prominent topic that garners more deliberate curricular integration and focus.¹⁴³ Cultural competency as a

140. *Guidance Memo*, *supra* note 122, at 4 (emphasis added). To further elucidate the essential aspects of a learning outcome, it should be 1) student-centered; 2) meaningful; 3) clear and focused; and 4) observable or quantifiable. See NAFSA Workshop Materials, *infra* note 147. Student-centered learning outcomes are framed in terms of what the student will be able to know, do, and feel, rather than what the professor teaches. *Id.* A meaningful outcome expresses knowledge, skills, or attitude that the student can take and use in life; it has enduring meaning. *Id.* A clear and focused outcome is expressed in simple language, targets a single big understanding, skill, or attitude, and is geared toward higher thinking. *Id.* Finally, there must be observable and quantifiable means to measure the outcome directly or indirectly. *Id.*
141. See generally, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001); Paulette J. Williams, *Cross-Cultural Teaching in the Business Law Clinic*, 76 TENN. L. REV. 437 (2009); Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J. L. & POL'Y 37 (2008). For a discussion of how best to teach intercultural competency for international experiential learning, rather than a domestic clinic setting, see Jeffrey Blumberg, *Sitting by the Well: The Case for Intercultural Competency Training in International Experiential Learning*, 43 U. BALT. L. REV. 395 (2014).
142. For example, forty-two percent of Columbia Business School and forty percent of Northwestern's Kellogg School Class of 2017 were international, up from twenty-seven percent and thirty-three percent, respectively, in 2003. See Matt Symonds, *MBA Students of 2017 Are More Diverse, More International and More Feminine. Are They Also Smarter?*, FORBES (Sept. 9, 2015), <https://www.forbes.com/sites/mattsymonds/2015/09/09/mba-students-of-2017-are-more-diverse-more-international-and-more-feminine-are-they-also-smarter/#895af2b55d45>.
143. See Moran, *supra* note 136, at 113, citing A.G. Cant, *Internationalizing the Business Curriculum: Developing Cultural Competence*, 5 J. AM. ACAD. BUS. 177, 181 (2004) (favoring an immersion approach rather than adding international content to business curriculum to let students realize the impact of culture on business transactions).

practical skill and value is also better-established in the medical education context.¹⁴⁴ Proponents of teaching cultural competency in law schools have articulated these outcomes from various perspectives, including one focused on global entrepreneurial skills, providing valuable context and insight.¹⁴⁵ While the legal academy has been slow to integrate cultural competency in the curriculum, the ABA's recent focus reflects its growing importance as a lawyering skill.

C. *Toward a Definition of Global Competency as a Learning Outcome*

As discussed in Section III.A., the ABA's Standard 302 and related guidance information contain terms that encompass global competency as a part of effective lawyering in the modern age. Specifically integrating global competency to a law school's set of learning outcomes, whether on its own or as part of a broader cultural competency outcome, can be challenging even for the most globally minded law schools. Yet this step is necessary to generate appropriate outcomes and assessments, as well as to signal to students and faculty alike that global competency is fundamental to effective lawyering.¹⁴⁶

A clear definition that conveys the breadth of the term "global" is essential to prevent misperceptions. For instance, if defined as practicing international law, "global lawyering" would describe the practice of a small minority of all U.S. lawyers and would require a specific and unrealistic set of outcomes,

144. See Beverly I. Moran, *Disappearing Act: The Lack of Values Training in Legal Education—A Case for Cultural Competency*, 38 S.U. L. REV. 1, 31-32 (2010). Professor Moran discusses the failure of law schools to integrate the teaching of cultural competency as a value and suggests ways to include gender, race, ethnic, and class issues in first-year courses. See generally *id.*

145. See generally, e.g., Evans & Gabel, *supra* note 51. Evans and Gabel argue that the lawyer of the future must have entrepreneurial legal skills to navigate the demands of global multicultural practice, and to add value to the strategic objectives of firms and businesses operating in this environment. Thus, they must be "culturally astute and 'globally literate.'" *Id.* at 743 (citing Justin W. Evans & Anthony L. Gabel, *Legal Competitive Advantage and Legal Entrepreneurship: A Preliminary International Framework*, 39 N.C. J. INT'L L. & COM. REG. 333, 409 (2014)).

146. The ABA's contemplation of global competency in connection with the learning-outcomes standards was the subject of the Global Learning Outcomes and Outcomes Assessment in Legal Education Colloquium held at the 2015 Annual Conference of NAFSA: Association of International Educators ("NAFSA Global Outcomes Workshop") on May 29, 2015, in Boston. See NAFSA, 2015 Global Learning Colloquia Presentations and Handouts, http://www.nafsa.org/Programs_and_Events/Global_Learning_Colloquia/2015_Global_Learning_Colloquia_Presentations_and_Handouts/ (last visited May 15, 2015). The author participated in a workshop with other faculty and administrators from the United States and abroad, including William E. Adams, deputy managing director of the ABA Section of Legal Education and Admissions to the Bar, on defining measurable global learning outcomes. The exercise highlighted both the importance of including these outcomes and the difficulty of capturing the appropriate language to convey a meaningful, but not overly burdensome or unrealistic, learning outcome. Examples of global competency outcomes drafted by the participants included "knowing the difference between common and civil law," "understanding and respecting differences in legal systems and legal cultures," "minimum competence in another language," "awareness of how international law intersects with domestic practice," and "ability to identify and appraise sources of applicable law in the context of a global legal problem."

including foreign language proficiency and preparation for practice in foreign jurisdictions.¹⁴⁷ Instead, global learning outcomes should be defined broadly to include, for example, the “ability to appreciate the increasingly global nature of legal obligations and relationships, and be prepared to practice in a culturally diverse global environment”¹⁴⁸ and/or “sensitivity to the possibility of trans-border issues.”¹⁴⁹ More specific or substantive iterations of global learning outcomes, while appropriate for individual courses and useful to identify the key ideas, are likely to garner weak faculty support at most law schools.¹⁵⁰

Global learning outcomes must be crafted broadly enough to encompass the extent of exposure most law schools can contemplate providing to their students while containing enough specificity to be meaningful.¹⁵¹ Looking to relevant language used in descriptions of published learning outcomes at four globally oriented law schools—Georgetown, NYU, Pacific McGeorge,

147. See Upham, *supra* note 69, at 126.

148. This definition of global learning outcome was included in a draft of learning outcomes generated by Suffolk law faculty in committee but was ultimately not included as an outcome based on faculty agreement that they were not teaching, or measuring, this skill in any meaningful way. This is most likely a view shared by many other law schools.

149. See Upham, *supra* note 69, at 126.

150. For example, a decade before the ABA’s learning-outcomes standards were announced, participating faculty at the Pacific McGeorge Workshop on Globalizing the Law School Curriculum, many of whom were international law professors or had an interest in globalizing the curriculum, discussed the international topics every law student should know. See Gevurtz, *Workshop Report*, *supra* note 52, at 277-78. Professor Matthias Reimann of University of Michigan Law School, who led the effort to create a Transnational Law requirement for all students, put forth a list of topics law students should know: actors on the international scene, sources of international law, basic principles of international law, resolution of disputes, and interplay between international and domestic law. *Id.* In addition, workshop participants also suggested the following items:

- (i) The basic differences between the civil- and common-law systems;
- (ii) How legal systems in other nations may differ in their views regarding the role of law;
- (iii) How different philosophies and ideas of justice affect the law in different nations;
- (iv) How world events affect legal systems;
- (v) The limits of their understanding and knowledge regarding international, transnational, and comparative law;
- (vi) The basic techniques and sources for conducting legal research and otherwise finding answers for legal problems in different nations; and
- (vii) The impact of culture on dealing with foreign laws, lawyers, and organizations.

Id. This is a broad range of complex topics that would be difficult to set as universal learning outcomes.

151. Indeed, the difficulty of striking this balance was the subject of much discussion among faculty and administrators participating in a Global Learning Outcomes Workshop at the NAFSA conference in 2015. See *supra* note 146.

and Florida International—is instructive in showing a range of possible iterations of global learning outcomes, reflecting each school’s approach and commitment to global and cultural competency. For example, Georgetown’s published learning outcomes make specific mention of cultural competency, though as a value, rather than a specific outcome.¹⁵² NYU takes a different approach by providing an “inventory” of learning outcomes for each legal subject, then giving a narrative, not a list, of what students ought to learn from each subject.¹⁵³

Pacific McGeorge states very specific global learning outcomes, consistent with its unique two-year Global Lawyering Skills curriculum.¹⁵⁴ Finally, Florida International’s published learning outcomes reflect the university’s strong focus on global perspectives and mission to foster global learning.¹⁵⁵ These

152. “Georgetown University Law Center is committed to providing all students an intellectually rich education that combines theory and practice, and embraces the values of cultural competence, social justice, serving the public good, and educating the whole person.” See Georgetown Law School website, <https://www.law.georgetown.edu/admissions-financial-aid/aba509/Learning-Outcomes.cfm>.

153. Reflecting its richness of course offerings in international law, NYU states separate outcomes for International Law, Comparative/Foreign Law, and Private International Law. The most relevant language appears in the opening paragraph of learning outcomes under International Law:

Over the past 50 years, the transnational regulation of persons, capital, markets, and power has progressed to such an extent that today practically every subject taught as part of the “domestic” legal curriculum has a transnational, international, or comparative legal dimension. Many of these sub-regimes are the subject of specialized courses or seminars. The basic survey course on international law reflects this “internationalization” of law, with the possibility of covering many topics once seen as subject only to “domestic jurisdiction.”

See New York University Law website, <http://www.law.nyu.edu/academics/learning/outcomes/international-law>.

154. The two relevant outcomes state: “Demonstrate the ability to identify and understand key concepts in substantive law, legal theory, and procedure in domestic and international law contexts” and “Demonstrate the ability to conduct domestic and international legal research.” See Pacific McGeorge Law website, http://www.mcgeorge.edu/Students/Academics/JD_Degree/Learning_Outcomes.htm.

155. FIU’s learning outcomes include the following: “Demonstrate the knowledge and skills for competent and ethical participation within the domestic and the global legal contexts” and “Demonstrate cultural literacy as a commitment to cultural diversity within the legal context.” See Florida International University Law School website, <https://law.fiu.edu/academics/mission-statement-learning-outcomes/> (last visited Nov. 1, 2017). Notably, the undergraduate program at Florida International has instituted a comprehensive curricular program called Global Learning for Global Citizenship Initiative to globalize learning in a systematic way. See Hilary Landorf & Stephanie Paul Doscher, *Defining Global Learning at Florida International University*, Vol. 18 Diversity & Democracy, Association of American Colleges and Universities (Summer 2015), <https://www.aacu.org/diversitydemocracy/2015/summer/landorf>. Landorf and Doscher define global learning as “the process of diverse people collaboratively analyzing and addressing complex problems that transcend borders.” *Id.*

representative schools and their respective learning-outcome descriptions reflect the various ways to conceptualize global and cultural competency and provide good examples of language conveying global learning outcomes.

On the whole, defining learning outcomes for cultural competency as a professional skill is a challenging task, but one that law schools need to tackle, especially in the current political climate in which diversity and “difference” are devalued and even maligned. Challenging times also foster momentum for positive change. For U.S. legal educators, this is an opportunity to take the lead in shaping the profession’s stance on the value it places on integrating multiculturalism and inclusiveness into the law curriculum. While this must occur in the context of each school’s mission and particular characteristics, developing a curriculum to teach cultural competency and defining the scope to include global competency—the ability to interact with constituents from different cultures, both individually and systemically—will be an important step in this effort.

V. A Coherent and Cost-Effective Strategy to Globalize the Law Curriculum

To effectuate a plan of globalizing the law school curriculum for most law schools, an approach that is coherent and cost-effective will have the greatest chance of success. Given the premise that students should develop global competency through knowledge, skills, and values, simply adding more doctrinal courses to the menu of international or comparative law courses alone, while still valuable, will not suffice. The depth and breadth of any school’s plan to teach global competency must be guided by the particular institutional circumstances and mission goals,¹⁵⁶ but making some strides in all aspects of the law school experience—curricular, cocurricular, and noncurricular—will help ensure that the outcome achieves the desired goal of including both intellectual and experiential components.¹⁵⁷ The guiding

FIU’s global learning outcomes have three components: 1) Global Awareness—knowledge of local, global, international, and intercultural issues, trends, and systems; 2) Global Perspective—ability to conduct a multiperspective analysis of local, global, international, and intercultural problems; and 3) Global Engagement—willingness to engage in local, global, international, and intercultural problem-solving. *Id.* FIU undergraduates must complete two courses that satisfy these global learning outcomes; requiring these courses, rather than making them elective, is critical to fully engaging students in a global learning experience. *See id.* For a full description of the Global Learning program, see Florida International University website at <https://goglobal.fiu.edu/about/>.

156. For example, top-ranked and historically global law schools, as well as law schools located in such states as Florida, California, New York, and Michigan, where cross-border and cross-cultural legal activity is commonplace, have a greater practical need to invest in globalizing the curriculum. In contrast, law schools that are tuition-driven and/or have a broader range of student abilities must typically invest their resources where it “counts,” *i.e.*, bar courses. The importance of preparing students for effective practice in a diverse environment should not be overlooked.
157. The internationalization effort at the School of Law at the University of Puerto Rico, an ABA-accredited law school, has included an integrated approach focusing on many aspects

principle, regardless of the global nature of the school, is to be intentional about how to achieve faculty and administrative buy-in. Since many law schools cannot avail themselves of significant new funding for a program to globalize, a focus must be placed on efficient ways to leverage and allocate resources.¹⁵⁸

Building on the experience of law schools that have taken steps to globalize, and working within the framework of the ABA's learning-outcome mandate of a knowledge-skills-values formula, four potential steps can lead to meaningful globalization of U.S. legal education: 1) require one international, comparative, or transnational law course or cocurricular activity for graduation; 2) expand the menu of skills-focused courses incorporating international law; 3) encourage faculty development and collaboration on globally focused teaching and scholarship; and 4) enhance student engagement with global perspectives in and out of the classroom. Implemented together as a cohesive strategy to globalize, this four-pronged approach can have a significant impact.

A. Require one Course Involving International, Comparative, or Transnational Law

Requiring a course in international or comparative law as a graduation requirement would allow each student to have some exposure to nondomestic legal systems and remove this subject from the silo of international law. All students, not just the self-selected ones interested in international law, would receive exposure to global perspectives, albeit not necessarily in a uniform manner. This would signal to students that global competency, like other curricular requirements, is important as a foundational aspect of lawyering. Such a requirement would require construction of a broad learning outcome relevant to the requirement, which itself would be an important way to engage the faculty in a dialogue about the importance of including global competency in the curriculum. It may also require an assessment and possible expansion of existing course offerings that would normally fall under international or comparative law or an international law concentration.

While creating a new requirement may seem like a bold step, it is the most direct way to bring a global perspective to each student's educational experience, and the process of having to formalize it institutionally would be extremely valuable for creating a normative value. Currently, Detroit Mercy, Florida A&M, Florida International, University of Pittsburgh, St. Louis

of law school life and capitalizing on the unique characteristics of the school, including international exchanges with countries in Europe and Latin America with which the school already has strong cultural ties. See Efrén Rivera-Ramos, *Educating the Transnational Lawyer: An Integrated Approach*, 55 J. LEGAL EDUC. 534, 536-41 (2005) (explaining that many components, including dual-degree programs, summer-abroad programs, student and faculty exchanges, clinical programs, and foreign externships, make up the overall effort to internationalize the program).

158. One way to create a coherent policy regarding globalization is to appoint an administrator, faculty, or committee to lead and coordinate all efforts. This approach would help maximize the benefits of the various curricular, cocurricular, and noncurricular international activities that each law school undertakes.

University, University of Tulsa, and University of Michigan have taken this important step, as discussed in Section II.D.¹⁵⁹ Other law schools that wish to create this type of distribution requirement should permit a broad spectrum of courses and cocurricular activities to satisfy this requirement, including both doctrinal and skills courses involving international, comparative, or transnational topics; study-abroad programs; clinics with a focus on human rights or immigration; participation on an international, comparative, or transnational journal; membership on Jessup or other international competition team; directed study; or internship/externship. Flexibility and ease in meeting this requirement will be key to its successful integration.

Faculty involved in teaching or advising these courses or cocurricular activities should ensure that students receive a basic overview of international law, either through direct instruction or provision of appropriate resources. As with any course, thoughtful and intentional curricular design is critical to achieving the learning objective of exposure to international law. Similar to the ABA-mandated upper-level writing requirement, some administrative coordination and articulation of the international requirement, including faculty responsibility, would be necessary. While no single course can deliver the full array of elements needed to gain global competency in a lawyering context, exposing students to international law can substantially enhance students' understanding and perception of it. As discussed in the next section, skills-focused courses that utilize international law issues are particularly effective pedagogically, as students are able to hone universally applicable practical skills while being exposed to international law as the framework.¹⁶⁰ Requiring one course could also spur interest in further learning of international and comparative law.

An additional way to include a global perspective to a required course that would reach each student is through the professional responsibility course requirement. Cultural competency as a professional skill is an important aspect of lawyering, as evidenced by the ABA's professional responsibility requirements and initiatives.¹⁶¹ Ethical and professional standards, as well

159. See Table 1, *supra*, 926 and Table 2, *supra*, 927.

160. The author tested this premise in 2015 through developing and teaching an advanced writing seminar using international law as the subject of the assignments, the first course of its kind at her institution, Suffolk Law. She conducted an anonymous survey before and after the course to gauge the impact of the course on students' perceptions of international law, including questions on the difference between domestic law and international law, the sources of international law, how disputes between nations may be resolved, and the extent to which international law can intersect with domestic practice. Though the class was a small sample—ten students—the results affirmed that one skills-focused course using international legal issues can be transformative in students' global perspective.

161. See Aastha Madaan, *Cultural Competency and the Practice of Law in the 21st Century*, (June 10, 2016), https://www.americanbar.org/publications/probate_property_magazine_2012/2016/march_april_2016/2016_aba_rpte_pp_v30_2_article_madaan_cultural_competency_and_the_practice_of_law_in_the_21st_century.html (citing Model Rule of Professional Responsibility Rules 1.1, 1.3 and ABA adoption of Goal III in 2008 as relevant examples).

as the role and status of lawyers in different countries, vary significantly. Understanding these differences can greatly facilitate a lawyer's ability to interact with counsel abroad, serving as a natural extension of the ethical and professional issues raised by the need to serve clients who have culturally diverse backgrounds. The impact of globalization on ethics standards and regulation is a topic the ABA has specifically addressed and has the potential to become a key focal point in strategies to globalize legal education. Thus, exploring ways to include global perspectives in the required professional responsibility course would be another way to expose every student to global lawyering perspectives.¹⁶²

B. Expand Menu of Skills-Focused Courses Integrating Global Issues

The most effective way to expand the scope of global perspectives in the curriculum may be to integrate international or transnational legal issues in more skills-focused courses, such as legal writing, legal drafting, trial and appellate advocacy, and negotiation. The parallel goals of providing more practical training and infusing a global perspective can be met through internationalizing skills-focused courses rather than doctrine-focused courses.¹⁶³

Incorporating international law into a writing, advocacy, or other skills-focused course has the additional benefit of giving students an experiential component, and it automatically raises issues regarding cultural differences in legal systems and peoples. This assertion has several bases: First, learning about substantive law through a skills course is efficient, in that the international law component can serve as the topic or issue through which lawyering skills are taught. This approach can be a superior alternative to adding international law content to traditional courses, which can be a difficult proposition in terms of faculty finding time and space in the span of one semester to incorporate new content, even where the desire to do so may be present. Indeed, a primary deterrent to teaching global perspectives as a separate unit in a traditional doctrinal course is the lack of time and opportunity.¹⁶⁴ An advanced writing

162. See Mary C. Daly, *The Ethical Implications of the Globalization of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the Twenty-First Century*, 21 *FORDHAM INT'L L. J.* 1239, 1251 (1998). Professor Daly discusses the need for expanding the teaching of professional responsibility to include an international perspective and details the author's own process of creating such a syllabus at Fordham University School of Law. See generally *id.* Her suggestions for why and how to incorporate global perspectives into professional responsibility courses are, two decades later, still an excellent resource for faculty embarking on this worthwhile endeavor. See *id.*

163. The use of the terms "doctrinal" and "skills" courses is meant to distinguish the primary learning objective of the course, rather than to categorize courses as necessarily falling under one or the other category. It is a given that traditional subjects are not devoid of skills, and skills courses are not devoid of doctrine. For a discussion of the importance of experiential education in teaching legal entrepreneurship skills, which include cross-cultural and cross-jurisdictional skills, see Evans & Gabel, *supra* note 51, at 752-55.

164. For example, Pacific McGeorge's plan to include global components for each course became difficult to sustain overall after a change in policy to semesterize courses. Telephone interview

course could use a problem involving an international treaty, for example, in place of a state or federal statute, to teach writing and advocacy. Acquiring knowledge of a discrete international law or rule for purposes of teaching the lawyering skills associated with the course is both more focused and more integrated than adding a module to an existing curriculum. Despite the relative ease of globalizing a skills-focused course, the number of law schools that offer skills-focused courses with international law content is remarkably low.¹⁶⁵

Second, a skills-focused course can better fulfill the pedagogical goal of providing knowledge, skills, and values that contribute to a certain aspect of law school learning, as students have the opportunity to practice skills through experiential and hands-on assignments in the context of international law. As discussed in Section III.A., the ABA's mandate that law schools design curricula whose objective is to create "competent" and "effective" lawyers encompasses—if not explicitly, then implicitly by definition—knowledge, values, and skills needed to navigate a rapidly globalizing legal market. Accordingly, an ideal approach to globalize the law curriculum should include both knowledge of substantive law and practical components.¹⁶⁶ For example, where a knowledge set of international law might include interpretation of international law and treaties, interpretation of foreign law and procedure, and integration of foreign and domestic law, the skill set might include, respectively, effective professional communication with non-U.S. actors, finding and applying foreign law, and understanding and navigating foreign legal systems and cultures.¹⁶⁷ A skills course that develops important lawyering skills while examining an international law accomplishes both goals and may be easier to implement.¹⁶⁸ The benefit of including international or transnational issues in courses designed to develop legal skills is that students can hone essential lawyering skills while learning substantive and procedural law within a different system.¹⁶⁹

with Professor Mary-Beth Moylan, Director of the Global Lawyering Skills Program, Pacific McGeorge School of Law (Oct. 3, 2017).

165. To illustrate, of the approximately 130 international law courses offered at three globally oriented law schools—Georgetown, Columbia and the University of Michigan—approximately thirteen (ten percent) focus primarily on skills. These courses include international research, international litigation, and international legal practice.
166. See Ferguson, *supra* note 90, at 16. Some proponents of this approach go even further, advocating that cross-cultural topics be taught primarily through experiential means to achieve the goal of combining doctrinal learning with real-world skills. See also Evans & Gabel, *supra* note 51, at 774-75.
167. See Ferguson, *supra* note 90, at 16.
168. For example, a problem involving a commercial contract dispute with a foreign party or a procedural issue involving a forum non conveniens motion based on the foreign locus of the action would naturally raise both legal and cultural questions that students would have to navigate.
169. See generally Edelman, *A Global Approach*, *supra* note 19; see also John B. Mitchell, *Using Global Law to Teach Domestic Advocacy*, 9 T.M. COOLEY J. PRAC. & CLINICAL L. 63 (2007) (suggesting the use

Third, exposing students to international law through a legal writing or skills-focused course is an excellent vehicle for internationalizing the curriculum without significant cost or additional resources.¹⁷⁰ For example, in the legal writing field, some faculty have taken initiative to incorporate global issues in writing and advocacy courses at their institutions, and have been integral to leading the overall effort to globalize the law curriculum.¹⁷¹ This effort has produced scholarship providing excellent resources for faculty interested in globalizing a legal writing and advocacy course.¹⁷² Drawing from the experiences of faculty who have developed such courses is particularly useful in anticipating the particular challenges of globalizing a course.¹⁷³ Encouraging faculty to develop and teach skills-focused courses with international topics would be essential to expanding these offerings.

C. Encourage Faculty Development and Collaboration on Globally Focused Teaching and Scholarship

The faculty play a vital role in any law school's effort to globalize and are integral to successfully broadening the perspective of students.¹⁷⁴ Encouraging

of specific aspects of foreign law as a vehicle to teach domestic advocacy skills primarily to challenge students to learn and apply new rules, but acknowledging that a secondary benefit is gaining broader perspectives of legal systems).

170. See Edelman, *A Global Approach*, *supra* note 19, at 503-07.
171. A number of schools has offered, or currently offer, optional first-year legal writing sections with an international law focus; among them are Brooklyn, Villanova, University of Washington, and Syracuse. See DeJarnatt & Rahdert, *supra* note 22, at 29-31; see also Diane Penneys Edelman, *It Began at Brooklyn: Expanding Boundaries for First-Year Law Students by Internationalizing the Legal Writing Curriculum*, 27 BROOK J. INT'L L. 415, 417 (2002) (describing Brooklyn's innovative offering of a first-year, second-semester option of international law-focused legal writing as early as the 1970s). Writing programs at the University of Pittsburgh and Pacific McGeorge have incorporated international law issues outright in the first-year legal writing program. See DeJarnatt & Rahdert, *supra* note 22, at 31. Legal writing faculty at other schools, including Stetson, St. John's, and Suffolk, have integrated international and/or foreign law subjects into the upper-level or study-abroad course curriculum.
172. See, e.g., DeJarnatt & Rahdert, *supra* note 22, at 32-42 (suggesting three areas of law particularly amenable to globalization: family law, commercial law, and procedural issues). *Id.* at 41-46; Edelman, *A Global Approach*, *supra* note 19, at 503-07 (indicating that adoption, product liability, and discovery are examples of real-life topics that involve international laws).
173. The Legal Writing Institute, a nearly 3000-member national association of legal writing faculty, has a Global Legal Writing Skills Committee dedicated to generating a robust database of teaching and scholarship resources and materials for teaching international students, as well as resources for teaching global and cultural skills to U.S. law students. See <https://www.lwionline.org> for a description of the committee's charge and links to resources. The committee has also archived materials from a series of webinars aimed at providing resources for teaching international students and for teaching global skills to U.S. students. The materials are currently available at <http://law.msu.edu/glws/>.
174. Altering faculty hiring practices to diversify the faculty in terms of educational backgrounds can help to enrich the dialogue on global issues and give students a broader perspective. See Tarr, *supra* note 76, at 204. Moreover, the key to successful globalization of legal education can be the network created by faculty members and alumni with global experience and

faculty to engage in teaching and scholarship activities that will develop their knowledge of, and facility with, international and comparative law is key. Faculty are more likely to include comparative and global perspectives in their teaching once they have been exposed to those perspectives themselves.¹⁷⁵ Thus, providing opportunities for faculty to teach abroad in a school-sponsored or external summer or semester program can be an excellent way to encourage them to inculcate a global or comparative perspective, and to enhance their own cultural competency skills.¹⁷⁶

In spite of low student enrollment, study-abroad programs can impart an equally important benefit in that faculty teaching these courses must engage in the study of international or foreign law simply by virtue of having to craft a syllabus that includes that component. Faculty exchange agreements between U.S. law schools and foreign institutions provide an additional avenue for faculty exposure to teaching international students. Institutions can support faculty in these efforts by allowing a leave or sabbatical for the purpose of teaching non-U.S. students abroad through an outside program,¹⁷⁷ which can reap additional benefits in terms of marketing the law school's brand and international degree programs.

Finally, technology has created a host of possibilities for faculty to gain experience with teaching on a global scale, as many law schools have developed online LL.M. and other degree programs and course offerings.¹⁷⁸ As such, faculty participation in opportunities to teach globally should be encouraged and incentivized as part of a comprehensive effort to globalize legal education.

relationships. See Attanasio, *supra* note 5, at 485-87.

175. See, e.g., Jonathan D. Cahn, Symposium, *The Global Legal Professional and the Challenges to Legal Education*, 20 PENN ST. INT'L L. REV. 55, 60-61 (2001) (describing his practice experience in Kazakhstan and the core global lawyering competencies he identified, including multidisciplinary and multijurisdictional problem-solving skills).
176. Pacific McGeorge's former Dean Elizabeth Rindskopf Parker credits the school's Salzburg summer program, which requires participating faculty to teach courses that have international, comparative, or transnational content, for helping to convert the faculty to the value of international, comparative, or transnational perspectives. See Elizabeth Rindskopf Parker, Symposium, *Globalizing the Law School Curriculum: Affirming the Ends and Recognizing the Need for Divergent Means*, 23 PENN ST. INT'L L. REV. 753, 755 (2005).
177. For example, the U.S. State Department sponsors various Fulbright programs that allow faculty to teach or conduct research in their areas of expertise at a host institution located abroad. For a full listing of programs for academics and teachers, see [https://exchanges.state.gov/us/search/solr?f\[o\]=bundle%3Aexchange_program&f\[1\]=im_field_program_participant_typ%3A403&f\[2\]=im_field_program_participant_typ%3A47&from_redirect=1](https://exchanges.state.gov/us/search/solr?f[o]=bundle%3Aexchange_program&f[1]=im_field_program_participant_typ%3A403&f[2]=im_field_program_participant_typ%3A47&from_redirect=1) (last visited Oct. 17, 2017).
178. Currently thirty-five U.S. law schools offer LL.M. programs through distance learning. See <https://llm-guide.com/search/result?keyword=&area=15&spec=&language=&program=10&intake=&tuition=0;150000&duration=6;48> (last visited Oct. 17, 2017). Legal education has been "global" for the past decade in the form of MOOCs ("massive open online courses") and other free educational platforms and recordings available on the Internet. Law MOOCs are now offered on such websites as Coursera, FutureLearn, and edX.

Offering scholarship grants specifically designated for academic work on global topics is another way to motivate faculty to develop more global perspectives. Establishing such grants would send a signal to the faculty community that fostering a global perspective is a priority. Partnering with other institutional entities such as a university teaching center or international program office may facilitate alternative sources of funding for such grants. Faculty members who have an interest in teaching global perspectives, either in a program abroad or at their home school, should be supported and encouraged with ideas, time, resources, and materials that could aid in the process.¹⁷⁹ Overall, faculty development can translate to students fostering a broader, more global perspective on the law and legal problem-solving.

Another way to support faculty development and to leverage the expertise of existing faculty and alumni is to encourage collaboration with a faculty member who can bring global perspective to the course subject, or to encourage guest lectures by faculty with expertise on global or cultural aspects of the course. For example, partnering with a clinical faculty member with expertise in cultural competency, or a doctrinal faculty member with expertise in international or comparative law, would provide a special component to an otherwise traditional course. Along similar lines, inviting alumni or local practitioners to share their real-world perspective on the globalization of law could be a very effective tool as well,¹⁸⁰ offering another cost-effective way to share global perspectives and to engage alumni in a dynamic way. While all of these ideas need administrative resolve and faculty buy-in to realize, they are relatively low-cost methods that could have a meaningful impact on faculty, and in turn, on students.

D. Facilitate Student Engagement with Global Perspectives In and Out of the Classroom

Having exposure to global perspectives would not only enhance students' competency in matters that may very well affect their eventual practice, but very likely would enhance their marketability, as the demand for law graduates who have some ability to navigate cross-border and international issues will only continue to grow. Schools can facilitate greater student engagement through activities in and out of the classroom. Almost every law school has untapped resources to help students develop intercultural and global skills,

179. One step in this direction could be to create an internal resource bank of materials and information to help faculty get started on a global law project. Another idea is to facilitate identifying mentors for those faculty who are unfamiliar with comparative or international law.

180. For an excellent discussion of the benefits and logistics of inviting guest speakers who can bring an international law perspective to the law classroom, see generally Diane Penney Edelman, *Making it Real: Hosting an International Law Speaker Series in the Legal Writing (or Any Law School) Classroom*, INTERNATIONAL LAW NEWS (Spring 2014), https://www.americanbar.org/publications/international_law_news/2014/spring/making_it_real_hosting_international_law_speaker_series_the_legal_writing.html. For students, seeing graduates of their own law schools working in international law jobs can be inspiring and impactful. *See id.*

given the growing presence of international LL.M., J.D., and S.J.D. students. Yet interaction among international students and U.S. J.D. students tends to be minimal, often amounting to merely attending the same elective courses together or participating in the occasional function or event planned by student organizations. Finding concrete ways to enhance the quantity and quality of opportunities for interaction among these groups would be an important addition to a school's effort to bring more global awareness to the student body.¹⁸¹

For example, a mentoring program that connects international students with upper-level U.S. students and faculty members, or a regularly convened LL.M. student colloquium program, could have a meaningful impact.¹⁸² Creating classroom opportunities for LL.M. students to interact with J.D. students on a shared project, or to present on a topic of shared interest, could build connections and opportunities for global learning.¹⁸³ This could also serve as a means of networking for those students who may be interested in working or even just visiting abroad. The precise manner in which this interaction can best occur will depend on the type of law school, its international degree programs, and its student population. The key is to formalize opportunities for meaningful interaction through various personal connections.

Most law schools have cocurricular and noncurricular activities that are international or global, such as study-abroad programs; international, transnational, or comparative journals; Jessup and/or other international moot court competitions; student International Law organizations; and various affinity groups. Students engaged in these activities should have

181. See Silver, *Getting Real*, *supra* note 6, at 475-86. Professor Silver argues that schools should act intentionally to promote student interaction by creating a culture in which the U.S. and international students have equal status, common goals, intergroup cooperation, and the support of the administration. See *id.* at 486-91. Law schools cannot afford to waste the resource of international LL.M. students for preparing U.S. students for global practice; they should be valued as more than just "revenue generators." Sullivan, Jr., *supra* note 11, at 235-36. LL.M. program administrators should implement opportunities for U.S. and international students to work together, such as assigning group projects or even arranging seat and housing assignments to mix U.S. and international students. *Id.* at 235; see also Mary C. Daly, *The Structure of Legal Education and the Legal Profession, Multidisciplinary Practice, Competition, and Globalization*, 52 J. LEGAL EDUC. 480, 488 (2002) (stating that LL.M. students should not be marginalized but should be "put on boards of visitors, invited to give talks, given career guidance, and promoted in law firms on grounds of diversity").

182. See Nagle, *supra* note 56, at 1114-16.

183. For example, at Pacific McGeorge, LL.M. students are invited to J.D. legal writing classes to present on their home legal systems and answer questions from J.D. students. Telephone interview with Mary-Beth Moylan, Director of Pacific McGeorge's Global Lawyering Skills Program (Oct. 3, 2017). Legal writing faculty are often tapped to teach legal writing and other courses designed exclusively for international LL.M. students and can serve as a great resource for bringing J.D. and international students together in a pedagogically enriching context. They are among the faculty at most law schools who have unique insight into the cultural differences in legal practice in other countries, as many have been integrally involved in shaping curricula for legal writing, analysis, and research geared for non-U.S. audiences and get firsthand information from the students they teach.

opportunities to share their knowledge and experiences with the broader law school community. For example, students who participate in study-abroad programs should be required, or encouraged, to reflect on their experiences by presenting colloquia on a global law topic to a broader audience. A coordinated effort involving these student groups to engage the law school community on global topics of interest can have a greater impact in creating awareness. Ultimately, a law school's goal should be to normalize the importance of global perspectives and to integrate them as a fundamental component of a student's U.S. legal education.

VI. Conclusion

Globalization and global citizenship have taken on a pejorative meaning, especially in the current political climate. This trend is at odds with the ABA's growing concern about the importance of cultural competency to effective lawyering. Thus, it is more important than ever for the legal academy to promote global and cultural competency among lawyers, who play a pivotal role in ensuring a democratic and responsive legal system. U.S. law schools must take concrete steps to properly train students and future lawyers so they can be effective and competitive in the global marketplace. Just as the legal academy took action in the past few decades to include more experiential education to prepare students for practice, it must next address global competency to close the gap between the reality of legal practice and education. The ABA's learning-outcomes-based standards support, both implicitly and explicitly, the expanded integration of global learning in the law curriculum.

While some elite law schools boast robust global programs, the majority of law schools do not have the means or the mission to create global law schools, or to achieve consensus for comprehensive integration of international components into traditional courses. But several practical steps can lead to meaningful globalization. Each law school can do all or a combination of the following: 1) require one course on international, comparative, or transnational law or cocurricular activity for graduation; 2) expand the menu of skills-focused courses integrating global issues; 3) encourage faculty development and collaboration on globally focused teaching and scholarship; and 4) facilitate student engagement with global perspectives in and out of the classroom. These methods reflect the lessons and realities of previous efforts to globalize legal education, and they build on the tenets of the ABA's learning-outcomes-based curriculum that will best-prepare students for modern legal practice. They are also relatively low-cost methods that all schools can pursue.

Ultimately, a focused, coherent, and intentional approach to globalization that expands upon a law school's strengths and leverages existing resources is most likely to be successful and to garner support among faculty and students. Strong leadership is critical in achieving consensus in this regard, and it should start with educating the faculty. Fortifying our law students by exposing them to the knowledge, skills, and values to navigate a complex environment with global or cross-border problems will make them more competent and

competitive. U.S. law schools should seize the opportunity and responsibility to help students to foster a more global, inclusive perspective to contribute positively to the changing dynamic of human interaction.