

A FLAT EARTH FOR LAWYERS WITHOUT BORDERS? RETHINKING CURRENT APPROACHES TO THE GLOBALIZATION OF LEGAL EDUCATION

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ABSTRACT

A powerful assemblage of forces seems to be ensuring that the transnational colonizes the hearts and ambitions of emerging cadres of law graduates. Over the last twenty-five years, the legal academy has been shifting alongside, and in reaction to, the movement of people, capital, and goods across borders and the legal regimes that enable and regulate such movement. Thus, the structure and curricula of law schools are being revised in navigating a dizzyingly polycentric world. Yet the current trajectory seems fraught with tensions. On the one hand, the accent is on diversity; on the other, the cumulative effect seems to engender convergence and empower standardization. On the one hand, the reforms have been aimed at revitalizing legal education; on the other, educational goals seem to be downsized to the needs of legal practice. On the one hand, the focus is on responding to social needs; on the other, there seems to be a heightened disconnect from the need of marginalized populations. This Article maps the current debate on globalizing legal education, highlights its stakes, and explores how we may change the terms of the debate. It urges that a core challenge and promise of globalized legal education is to foster critical experimentation and intellectual heterodoxy so that we are better able to problematize received professional conceits and productively disorient our conceptual frontiers. To address this challenge and realize this promise, we will be aided by further research on the relationship between the current trajectory of the globalization of legal education and the structures of global governance – research that studies the political economy of current trends and maps the legal consciousness that accompanies it in order to better

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understand the complex and multi-directional processes through which legal knowledge gets disseminated, translated, and transformed. If we take legal education as an already-globalized terrain, then the debate is not about whether to globalize but about the direction of globalization, i.e., the multiple contested visions of global legal architecture that are at stake. Thus, globalization should not be measured by the number of transnational law school partnerships or study-away sites, but by whether the globalization of legal education has better equipped us to productively unsettle received ideas while boldly imagining alternative institutional arrangements in shaping the zeitgeist in which we teach, research, and study.

INTRODUCTION: MAPPING THE DEBATE

From trade agreements to war crimes prosecutions, the world that our students are entering is one that has already escaped the trappings of national boundaries and local jurisdiction. We find ourselves negotiating a market where transaction costs are also transnational costs, where legal personality is mobile and jurisdiction universalized. Over the last twenty-five years, the legal academy has been shifting alongside, and in reaction to, the movement of people, capital, and goods across borders and the legal regimes that enable and regulate such movement.¹

The “globalization of legal education” is not only a description of the ways in which global dynamics play out on the terrain of legal academia, often it is also a proposal for the direction that legal education could take. Across the country, in fact, across the world, deans and leadership teams have been launching special initiatives aimed at positioning their law schools in ways that are more globally competitive.² For advocates of the globalization of legal education, ensuring that law school curricula reflect that transna-

1. See, e.g., Simon Chesterman, *The Globalisation of Legal Education*, 2008 SINGAPORE J. LEGAL STUD. 58 (discussing the impact of globalization on legal education internationally, with respect to practice, pedagogy, and research); James P. White, *A Look at Legal Education: The Globalization of American Legal Education*, 82 IND. L.J. 1285 (2007) (exploring relationship between globalized legal practice and American legal education). In March 2012, Harvard Law School convened a “Global Legal Education Forum,” drawing participants from around the world to examine the impact of globalization on legal practice and legal education. Dick Dahl, *HLS Forum Examines the Impact of Globalization on Legal Education*, HARV. L. SCH. (APR. 4, 2012) <http://law.harvard.edu/news/spotlight/ils/global-legal-education-forum-2012.html>.

2. See, e.g., Christopher J. Gearon, *Law Schools Go Global*, U.S. NEWS & WORLD REP., Mar. 29, 2011, <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2011/03/29/law-schools-go-global>.

tional dynamism in a way that prepares students to navigate a dizzyingly polycentric world is crucial. In that race around the world, for many, the question is how to do more, how to do it faster, and how to do it with greater intensity. It is no longer about offering a class in international commercial arbitration or a class providing an introduction to the International Criminal Court. The curriculum as a whole, including those classes that are not labeled “international” or “comparative,” has been reoriented to prepare students for a global future. In fact, many schools that describe themselves as “global” use that term not to describe enhanced offerings in international and comparative law, but to describe a mainstreaming of a globally oriented pedagogy throughout the curriculum. For instance, Portugal’s Católica Global School of Law proudly advertises that it “seeks not to focus on local law teaching and research, but to prepare students to practice in the global legal world. Its classes and seminars equip students with the skills and knowledge that are essential for a successful transnational law practice.”³ Increasingly, there is a focus on helping students develop the intellectual agility and technocratic mobility to cross boundaries and make skills learned in their home countries relevant abroad.

Studying abroad used to be an unlikely part of legal education; after all—for law—jurisdiction was everything. Typically, even legal academics stayed put as their anthropology colleagues packed their bags to go to the field or their political science colleagues jetted off to do comparative research. There were notable exceptions,⁴ but typically it was only elite lawyers from the periphery who traveled to London or New York to earn Masters of Laws (LLMs) and Doctors of Juridical Science (SJDs) as they became a conduit for the wider dissemination of metropolitan legalism. In contrast, today both New York University (NYU) and Yale University are in hot pursuit of Singapore—i.e., law students from the global North are seeking opportunities in the global South.⁵ NYU Law School’s global web

3. *Católica Global School of Law*, UNIVERSIDADE CATÓLICA PORTUGUESA: FACULDADE DE DIREITO [PORTUGUESE CATHOLIC UNIV. FAC. L.], <http://www.fd.lisboa.ucp.pt/site/custom/template/ucptplfac.asp?sspageID=3293&lang=2> (last visited May 4, 2013).

4. Indeed, tellingly, the exceptions were typically those who did interdisciplinary research—who had stepped out of the world of law to flirt with sociologists, development experts, political scientists, and such. See Harry T. Edwards, *The Growing Distinction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 36 (1992) (criticizing early interdisciplinary legal scholarship as “impractical”).

5. NYU Law School has partnered with the National University of Singapore to offer an LLM program that qualifies students to sit for the New York Bar exam. *NYU@NU—A Dual Master’s Program for Global Business Lawyers*, NYU L. <http://www.law.nyu.edu/>

page advertises not only study abroad opportunities in England and Germany, but also locations such as Argentina and China.⁶ In fact, just as American LLM programs were developed to draw on international students, today, institutions such as Shanghai's Fudan University Law School have LLM programs aimed at Americans and other English-speaking students.⁷ Indeed, law schools across the country are fast developing programs to give students opportunities to immerse themselves in foreign legal systems—so they become native experts rather than visiting tourists. In the United States, more than 100 law schools offer more than 250 such programs.⁸ However, the United States is hardly alone. A range of different programs within the European Union enable students to complete their basic law degrees through study in two or more countries.⁹ The National University of Singapore Law School once securely dubbed itself “Asia's Global Law School,” but today, globalized law schools have been established in both China and India, and the trend is expanding across Asia.¹⁰ These programs are advertised as not only globalizing what is in the textbook, but also globalizing the classroom experience—relating to peers from different cultures and to teachers

llmjsd/llmsingapore/index.htm (last visited May 4, 2013). For a recent discussion of Yale's relationship with the National University of Singapore, see Jim Sleeper, *Yale Has Gone to Singapore, But Can It Come Back?*, HUFF POST COLLEGE: THE BLOG (May 4, 2012, 9:32 AM), http://www.huffingtonpost.com/jim-sleeper/yale-has-gone-to-singapor_b_1476532.html.

6. *Bringing the World to NYU and NYU to the World*, NYU L. GLOBAL, <http://www.law.nyu.edu/global/index.htm> (last visited May 4, 2013) [hereinafter *Bringing the World to NYU*].

7. See L.L.M. Program in Chinese Business Law: General Introduction, FUDAN UNIV. SCH. L., <http://www.ilaw.fudan.edu.cn/s/86/t/306/p/1/c/3660/d/3666/list.htm> (last visited May 4, 2013) (describing Fudan University School of Law's LLM program for foreign lawyers).

8. Gearon, *supra* note 2.

9. See, e.g., *Exchange Programs*, THE HAGUE UNIV. APPLIED SCI. BACHELOR STUD., <http://www.thehagueuniversity.com/bachelor-studies/bachelor-degree-programmes/international-and-european-law/exchange-programmes> (last visited May 4, 2013) (describing more than 150 partner institutions around the globe to which Bachelor of Law students have access); *Bachelor of Laws*, IE U. GRADO EN DERECHO [IE UNIV. L. DEGREE], <http://www.ie.edu/university/studies/academic-programs/bachelor-laws> (last visited May 4, 2013) (describing exchange opportunities for students with international partners in countries such as the Netherlands and Germany).

10. See, e.g., *Message from Dean Simon Chesterman*, NUS L. GRADUATE PROGRAMS, http://www.law.nus.edu.sg/admissions/grad_prog.html (last visited May 4, 2013) (describing the National University of Singapore as “Asia's Global Law School”); see also *Message from the Chancellor*, PEKING U. SCH. TRANSNAT'L L., <http://stl.pku.edu.cn/en/DeanMessage> (last visited May 4, 2013); *About JGLS*, JINDAL GLOBAL L. SCH., <http://www.jgls.edu.in/content/about-jgls> (last visited May 4, 2013).

who were shaped by different pedagogical traditions.¹¹ On the one hand, the accent is on diversity; on the other, the cumulative effect is also one that contributes to centrifugal currents. Indeed, such forces may have already converged in colonizing the curricula and pedagogical ambitions of the legal academy to engender more uniformity and standardization across the world. From the classroom to the courtroom, the legal field is drawing on a universally recognizable set of canonical textbooks, a transnationally recognizable body of case law, and an accompanying repertoire of legal principles.¹² Lawyers are developing and drawing from transnational professional networks from San Francisco to Shanghai and New York to New Delhi. A flat earth for lawyers without borders.

These broader trends in legal education are not without their critics.¹³ Champions of these initiatives may see the globalization of legal education as a salubrious platform, indeed a proposal for the path that we should embrace and extend. For critics it is a lament—a complaint about the pressures the legal academy needs to fend off. For many, globalization deepens the corporatization of the university and the commodification of education.¹⁴ As handmaiden to the forces of neo-liberalism, it reorients the curriculum towards the priorities of the market—or, as Jindal Global Law School coyly describes its approach to its curriculum, “[i]t has taken into account the context of globalization and market economy.”¹⁵ Less coyly, it also situates this approach in India’s anticipated role on the global economic stage: “India, which is on the verge of becoming an economic superpower must produce world-class professionals, scholars, and academics to compete globally.”¹⁶ This effort to sync legal education to the logic of capital becomes the benchmark for

11. See, e.g., *Message from the Chancellor*, *supra* note 10 (describing law school’s mission as educating the “transnational lawyer”); *About JGLS*, *supra* note 10 (explaining that the school’s goal is to provide students “exposure to new ideas, international perspectives, and innovative teaching in an encouraging and open academic environment”).

12. See, e.g., Larry Bakken, *AALS Panel - Global Legal Education - Can American Law Schools Respond to the Opportunities?*, 5 *GER. L.J.* 335, 338 (2004) (noting convergence in use of Socratic method and American case law methodology and advocating for increased flexibility and ingenuity in legal teaching methods in response to globalization).

13. See, e.g., *Chesterman*, *supra* note 1, at 65–66 (cataloging and responding to critiques of global legal education as a phenomenon).

14. See, e.g., Rodney Arambewela, *Student Experience in the Globalized Higher Education Market: Challenges and Research Imperatives*, in *GLOBALIZATION AND INTERNATIONALIZATION IN HIGHER EDUCATION* 155, 164–65 (Felix Maringe & Nick Foskett eds., 2010).

15. *Vision*, JINDAL GLOBAL L. SCH., <http://www.jgls.edu.in/content/vision> (last visited May 4, 2013).

16. *Id.*

evaluating the value of teaching and scholarship and determining the extent to which an institution meets its educational mission. In her work examining how the emergence of an “audit culture” in assessing educational goals in Britain impacted academic practice, Marilyn Strathern pointed to how such goals were increasingly oriented toward market-based criteria for success.¹⁷ Arguably much the same dynamic is giving momentum to global legal education. This is partly because legal education itself is seen as a fungible commodity aimed at feeding the market rather than interrogating market logics. Transnational corporations seek to hire lawyers who function as, what Sally Merry has called, “knowledge brokers” – translating legal rules and norms in both directions.¹⁸ Schools are globalizing curricula, providing study abroad opportunities, inviting international faculty, and undertaking a range of initiatives to acculturate students into global legal mobility in an attempt to position their students for this transnational market flexibility.¹⁹ Some express the concern that brokering the mission of global market forces threatens the pedagogical mission of legal education – that we are witnessing a heightened disconnect between what society needs and what law schools supply.²⁰

As more and more lawyers set their eyes on the global legal market, they are even more disconnected from local justice struggles. For instance, many law students committed to gender justice issues find that working in The Hague on a sexual violence case from the Democratic Republic of the Congo could be more attractive than fighting an equal pay case in Scranton, Pennsylvania.²¹ This is

17. Marilyn Strathern, *Introduction: New Accountabilities*, in *AUDIT CULTURES: ANTHROPOLOGICAL STUDIES IN ACCOUNTABILITY, ETHICS AND THE ACADEMY* 1–5 (Marilyn Strathern ed., 2000).

18. Sally Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108 *AM. ANTHROPOLOGIST* 38, 38, 40, 43 (2006).

19. See, e.g., 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, 7–15 (2011) (discussing arguments for globalizing law school curricula and the “transnational character” of modern legal transactions); James R. Mareiner, *Learning from Others, Sustaining the Internationalization and Globalization of U.S. Law School Curriculums*, 32 *FORDHAM INT’L L.J.* 32, 35–37 (2008) (discussing trends in the internationalization of the legal curriculum).

20. See, e.g., BOAVENTURA DE SOUSA SANTOS, *TOWARD A NEW LEGAL COMMON SENSE: LAW, GLOBALIZATION, AND EMANCIPATION* (2d ed. 2002); Martin Shapiro, *The Globalization of Law*, 1 *IND. J. GLOBAL LEGAL STUD.* 37, 61–64 (1993); 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 (1998).

21. Indeed the locale is not just overshadowed by the allure of the global; it is also actively displaced and despised. For instance, Sunalini Kumar, an Indian academic, laments a higher

not a condemnation but an observation that even where there are unmet local legal needs, legal education may be prepping students for careers with passports attached.²²

A powerful assemblage of forces seems to be ensuring that the sheer sexiness of the transnational colonizes the hearts and ambitions of the emerging cadres of the legal profession. These forces may also be exacerbating inequalities within legal academia. This is perhaps most noticeable in the relationship between legal education in the global North and legal education in the global South. The relationship between private universities and public universities only compounds this dynamic. In many countries, public law schools are not going to have the resources to compete with private law schools in the provision of such globalized educational opportunities. Indeed, in many parts of the global South, once-storied public universities in countries like Uganda and Sri Lanka have been grappling with the long-term impact of structural adjustment and the defunding of public institutions.²³ Over the past several decades, institutions like the World Bank have conducted concerted

education report by the Indian government announcing plans for "Autonomous Institutions" aimed at "higher global excellence (whatever that means!)." She notes that, remarkably, the report seeks to "pave the way for appointment of foreign faculty, instead of for instance, investing in faculty development for those living and teaching here. . . . [They] have been deemed worthless in the brave new world. Our teaching smells of rice and dal." Sunalini Kumar, *It's Here, The Privatisation of Higher Education in India*, KAFILA (Mar. 22, 2011), <http://kafila.org/2011/03/22/its-here-the-privatisation-of-higher-education-in-india/> (last visited May 4, 2013).

22. The transnational brain drain problem has even more far-reaching consequences when qualified lawyers and other professionals from the global South leave for more lucrative careers in the global North. "According to the International Organization for Migration (IOM), Africa has already lost one third of its human capital and is continuing to lose its skilled personnel at an increasing rate, with an estimated 20,000 doctors, university lecturers, engineers and other professionals leaving the continent annually since 1990." See AFRICAN RENAISSANCE AMBASSADOR CORPORATION, *BRAIN DRAIN IN AFRICA 1*, available at <http://www.aracorporation.org/files/factsandfigures.pdf>.

23. Mahmood Mamdani and others have shown that there was a concerted assault on African universities by the World Bank in the name of efficiency and cost cutting. Mamdani's focus is Makerere University, but he uses that as a lens into the World Bank's impact on higher education more generally, arguing that "the Makerere case epitomizes the fate of public universities globally in a market-oriented and capital-friendly era. When the reforms unfolded in the early 1990s, they were guided by the World Bank's then-held conviction that higher education is more of a private than a public good." MAHMOOD MAMDANI, *SCHOLARS IN THE MARKETPLACE: THE DILEMMAS OF NEO-LIBERAL REFORM AT MAKERERE UNIVERSITY, 1989-2005*, vii (2007); see also Silvia Federici & George Caffentzis, *Chronology of African University Students' Struggles: 1985-1998*, in *A THOUSAND FLOWERS: SOCIAL STRUGGLES AGAINST STRUCTURAL ADJUSTMENT IN AFRICAN UNIVERSITIES* 115, 121 (Silvia Federici et al. eds., 2000); George Caffentzis, *The World Bank and Education in Africa*, in *A THOUSAND FLOWERS: SOCIAL STRUGGLES AGAINST STRUCTURAL ADJUSTMENT IN AFRICAN UNIVERSITIES*, *supra* at 3, 5.

campaigns to claw back educational budgets in the name of efficiency and a more trim and svelte state.²⁴ In fact, in addressing these budget deficits, many law schools across the world have had to turn to private funding sources and increased tuition to be able to survive, let alone provide creative new globalized opportunities.²⁵ Many primarily public universities have to struggle just to remain in the education game. This has negatively affected the distribution of resources to higher education, including law schools. Increasingly there exists a two-tier educational experience—globalized and privatized for the privileged, and localized and nationalized for those who are not.

I. CHANGING THE CONVERSATION

One striking dimension of the debate as it has unfolded is that the merits and demerits of the globalization of legal education have been discussed almost exclusively in relation to the needs of legal practice.²⁶ This has been the case for both advocates and critics of current trends. Just as advocates have highlighted the need for law students to be trained in ways that allow them to guide increasingly complex transnational legal transactions,²⁷ critics have highlighted the fact that law schools may be failing to encourage more lawyers to focus their careers on less lucrative local public interest priorities.²⁸

24. Significantly, the World Bank has rethought its policies regarding higher education, but its legacy lives on. Thus, Mamdani describes that “[u]nfortunately for Makerere, the Museveni government in Uganda embraced the World Bank’s perspective with the uncritical enthusiasm of a convert, so much so that even when the Bank began to rethink its romance with the market, Uganda’s political leadership held on to the dogma with the tenacity of an ideologue.” MAMDANI, *supra* note 23.

25. See, e.g., *Vision*, *supra* note 15. Jindal Global Law School, located on the outskirts of Delhi, in its core vision, notes the problems with the funding architecture of higher education: “Public funds are scarcely available for higher education in India. Private funds are therefore required in the current educational scenario. The gap between the availability and the need for funds in higher education could be met only by corporate and individual philanthropy.” *Id.*

26. One influential touchstone for those advocating a reorienting of legal education to focus on practice was the Carnegie Council Report: 25 WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

27. See, e.g., Karen Sloan, *Law Schools Get Serious About Globalization*, NAT’L L.J., Nov. 30, 2010, <http://www.law.com/jsp/article.jsp?id=1202475430394> (describing development of programs like “Law Without Walls” to better equip students for interaction with international business people and to increase job prospects).

28. See, e.g., Menachem Wecker, *Law Students Relieved ABA Won’t Accredited Foreign Schools*, U.S. NEWS & WORLD REP., Aug. 10, 2012, <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/08/10/law-students-relieved-aba-wont->

While both sides are persuasive, both miss the elephant in the room. The primary responsibility of law schools is education and, accordingly, law schools need to focus on educational goals that include, but are not reducible to, the needs of legal practice.²⁹ As noted earlier, one impact of orienting legal education toward global professionalism has been a push toward convergence and standardization—this is equally true of the intellectual culture of the legal academy. The use of LSATs for admission testing by law schools outside of the United States is one indicator of this push for homogeneity.³⁰ Another indicator is the citation practices of courts in different jurisdictions.³¹ For instance, as Brake and Katzenstein note, “foreign courts . . . are paying increasing attention not only to the rulings of the U.S. Supreme Court but also to relevant federal district and state courts” in ways that clearly indicate convergence via the “[t]he transnational spread of American law.”³² However, to the extent that the forces of globalization push toward standardization and uniformity across jurisdictions, it defeats the potential of globalization for experimentation and intellectual diversity. Indeed, it engenders complacency rather than the productive provocation of “scholars in self-estrangement.”³³

Concomitantly, one way to think about the potential of globalizing legal education is to look at how the global perspective could disrupt and disorient how we approach legal studies. It could challenge settled approaches to laws and norms, to legal actors and legal theories. It could incite what Roberto Unger calls “deviationist doctrine” in ways that disrupt jurisdiction and discipline, to expand

accredit-foreign-schools (suggesting that law students fear ABA accreditation of foreign schools will increase competition in the legal job market); Scott L. Cummings, *The Future of Public Interest Law*, 33 U. ARK. LITTLE ROCK L. REV. 355, 371-74 (exploring impact of globalization on effectiveness of public interest work).

29. This Symposium is titled *Building Global Professionalism: Emerging Trends in International and Transnational Legal Education*—I am concerned that the dominant trend is to focus on building global professionalism at the expense of legal education.

30. See *Services Required or Recommended by Law Schools*, LAW SCH. ADMISSION COUNCIL, <http://www.lsac.org/jd/apply/services-required-by-ls.asp#other> (last visited May 4, 2013) (identifying Canadian, Australian, Chinese, and Armenian law schools that require an LSAT score for admission consideration).

31. Benjamin Brake & Peter J. Katzenstein, *The Transnational Spread of American Law: Legalization as Soft Power*, 67 INT’L ORG. (forthcoming 2013).

32. *Id.*

33. See generally David Trubek & Mark Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062 (1974) (discussing American legal scholars’ reaction to and disillusionment with the impact that exportation of U.S. legal structures has had on developing countries).

and enrich our repertoire of legal argument in directions that trouble and problematize the dominant professional conceits.³⁴ Thus, rather than look at how globalized legal education can make us better professionals, one may want to look at how it could undo and challenge expertise in productive ways. Rather than producing students who are more self-assured about what they bring to a problem, one may want to make students better positioned for disruptive learning and more attentive to the politics of knowledge. This is perhaps an effort to go back to old-fashioned 'Freirean' ideas about critical pedagogy³⁵ – indeed to “unlearn . . . privilege.”³⁶ Thus, as an engagement with the debate on globalized legal education, the goal here is to advocate for a broader and richer conception of educational goals – rather than more immediate practice goals – to frame and identify the stakes of that debate. The former includes the latter but is not reducible to them – in fact, there may even be some tension between the two; where at first blush, practice goals may seek to consolidate knowledge and establish expertise, educational goals may include efforts to challenge our conceptual frontiers and think outside the box of received assumptions. Indeed, engendering heterodoxy is not merely a by-product but the core challenge for education. As Edward Said argues, “it ought to be the role of education to foster a spirit not of conformity but of resistance . . . quite apart from giving us methods and skills[,] . . . [education] gives us the opportunity to see things differently.”³⁷

34. Roberto M. Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561, 576–77 (1983).

35. See Ira Shore, *Education is Politics: Paulo Friere's Critical Pedagogy*, in PAULO FRIERE: A CRITICAL ENCOUNTER 24, 25 (Peter McLaren & Peter Leonard eds., 1993) (“To learn is to recreate the way we see ourselves, our education, and our society.”).

36. Geoffrey Hawthorn et al., *The Post-Modern Condition: The End of Politics?*, in THE POST-COLONIAL CRITIC 17, 30 (Sarah Harasym ed., 1990). For a more extended discussion of the challenges and possibilities of teaching and learning in ways that engage with, but exceed the logic of, global injustice, see Spivak's more recent publication on the potential role of imagination and education in the humanities, GAYATRI CHAKRAVORTY SPIVAK, AN AESTHETIC EDUCATION IN THE ERA OF GLOBALIZATION (2012).

37. Edward Said, *Bridge Across the Abyss*, AL-AHRAM (Cairo), Sept. 16, 1998, <http://weekly.ahram.org.eg/1998/394/foc1.htm>. Said invokes a story about da Vinci to describe his inspiration about the task of education:

There is a line that has haunted me for many years in an essay on Leonardo da Vinci by the great early-20th-century French poet Paul Valéry. Describing Leonardo's mind in its power and elegance, Valéry says that the Italian artist could not but think of a bridge whenever he thought of an abyss. Metaphorically speaking, an abyss is the equivalent of what is presented to us as immutable, definitive, impossible to go beyond. No matter how deep and problematic the scene that presented itself to him,

A second issue to highlight in terms of the current debate on globalized legal education is the overwhelming focus on private law rather than public international law.³⁸ A good deal of the discussion on the need for globalizing legal education has focused on imperatives from the world of private international law.³⁹ This again is apparent with both advocates and critics of current trends. From the advocate's perspective, transnational trade, the role of multinational corporations, and globalized financial markets are all different markers of the changing ends of legal practice that a globalized legal education aims to address. For critics, these same imperatives are evidence of the problematic priorities that are guiding the development of globalized legal practice.⁴⁰ However, with all eyes on multinationals and the global market, we may pay insufficient critical attention to the implications of changes in areas like human rights education on the legal academy.⁴¹ Even if there is attention to public international law, it is not *critical* attention; instead, the proliferation of human rights education is treated as if it were a carbon offset to the proliferation of classes in international corporate law.⁴² Yet these disciplines have the potential to be allied rather than competing elements of current trends in globalized legal education.⁴³

Leonardo always had the capacity to think of some alternative to it, some way of solving the problem, some gift for not passively accepting what was given to him

Id.

38. See e.g., Rosalie Jukier, *Transnationalizing the Legal Curriculum: How to Teach What We Live*, 56 J. LEGAL EDUC. 172, 177 n.20 (2006) (acknowledging that McGill University's integration of transnational material into its curriculum had thus far focused predominantly on private law).

39. See generally David P. Stewart, *Private International Law: A Dynamic and Developing Field*, 30 U. PA. J. INT'L L. 1121 (2009) (discussing the importance of private international law and arguing for its inclusion in law school curriculum).

40. See, e.g., Harry W. Arthurs, *Law and Learning in an Era of Globalization*, 10 GER. L.J. 629, 623-35 (2009) (discussing the implications of economically driven globalization).

41. See generally Richard J. Wilson, *Clinical Legal Education for Human Rights Advocates*, in HUMAN RIGHTS EDUCATION FOR THE TWENTY-FIRST CENTURY 261, 261-77 (George J. Andreopoulos & Richard Pierre Claude eds., 1997) (describing the trend toward integrating clinics in international human rights and the implications for legal pedagogy).

42. See e.g., Jukier, *supra* note 38, at 177 n.20 ("It should be pointed out that currently . . . the primary focus of the transsystemic approach to legal education occurs in the private law sphere. The Faculty [at McGill University] recognizes that the next challenge is to adopt a similar approach in its public law curriculum.").

43. Jindal Global Law School offers a striking example of this symbiosis, or what Arundhati Roy has called "cross-ownership" in reference to Jindal Law School convening conferences about critique and dissent, while the Jindal corporate entity retains major interests in mining and metals and is itself the target of much protest from indigenous groups, the Maoists, and others for mining operations that have dispossessed and exploited them. "The

Over the last two decades, international human rights, international humanitarian law, and the allied field of international criminal law have expanded their presence in the legal academy. More schools are expanding their offerings in these areas and graduating vast numbers of law students with legal careers that pivot on developments in The Hague.⁴⁴ In fact, the NYU School of Law's description of global internships on its webpage does not list multinational companies but multi-lateral institutions engaged with public international law including "organizations such as the World Health Organization, the World Bank, and the U.N. High Commissioner for Refugees."⁴⁵

This turn has extended beyond law schools to the academy as a whole, as more and more programs—undergraduate arts and science programs as well as graduate programs in international affairs—have majors, minors, concentrations, diplomas, and a host of other tracks that are focused on the human rights and conflict field.⁴⁶ Causes, organizations, and activist networks have crossed borders alongside capital, goods, and labor to reshape the terrain of legal engagement. The dominant focus of these initiatives, to paraphrase Gayatri Spivak, is not about unlearning privilege but affirming it by defining career trajectories as aimed at finding solutions to other people's problems.⁴⁷ Trends in legal education contribute to the enabling conditions and (intended and unintended) consequences of this turn to transnational activism. At a minimum, around the world, many students interested in human rights are now focused primarily on international criminal law.

Jindals, with a major stake in mining, metals and power, run the Jindal Global Law School, which recently had a workshop on how to hold protests." Deeptiman Tiwary, *Mukesh Ambani, the Biggest Ghost of Capitalism, Says Arundhati Roy*, MUMBAI MIRROR.COM, Jan. 21, 2012, <http://mumbaimirror.com/article/2/20120121201210203447652d0b42ca/Mukesh-Ambani-the-biggest-ghost-of-capitalism-says-Arundhati-Roy.html>, *quoted in Capitalism: The Big Ghost, says Arundhati Roy*, ARUNDHATI ROY GROUPIES (Jan. 21, 2012, 4:38 PM), <http://arundhatiroy.says.blogspot.com/2012/01/capitalism-big-ghost-says-arundhati-roy.html>.

44. See Arthurs, *supra* note 40 at 630–31.

45. See *Bringing the World to NYU*, *supra* note 6.

46. In fact, my own teaching career exemplifies this trend—The Gallatin School at NYU hired me to teach human rights to students who focus primarily on the humanities and social sciences. I have also taught in the Human Rights Program at the School for International and Public Affairs at Columbia University, one of the earliest human rights programs outside of a law school.

47. Spivak speaks of the need to unlearn privilege in the context of global injustice; concomitantly, she critiques directing education to solving problems that are reproduced by that injustice. See SPIVAK, *supra* note 36.

There is less and less attention on areas such as economic and social rights, domestic civil rights, and poverty law.⁴⁸ These shifts are obviously ones with important and sometimes troubling effects, but they have taken place under the radar because globalized legal education has been overwhelmingly equated with developments in private international law and market action.

II. AN AGENDA FOR RESEARCH

This Article thus far has sought to provide a symptomatic mapping of the current debate on globalized legal education and has sought to highlight some key issues that are troubling elements of the current debate. It has been a mapping exercise aimed at highlighting the issues at stake in how the debate is framed. Much of the elaboration of these issues has been exploratory and even impressionistic. Thus, in its final Part, this Article advocates for a research agenda that helps us better understand those stakes. First, this Article suggests that we need to better understand the political economy of current trends. Second, we need to better understand current trends in relation to the terrain of political imagination—i.e., looking at how different approaches to legal education mobilize and challenge different systems, actors, causes, and alternative imaginings of “the global”—what has sometimes been called—“legal consciousness.”⁴⁹

Let’s begin with the relationship between current trends in the globalization of legal education and the structures of global governance. More is needed to understand these developments and the relationship between how legal education is structured and the shaping of the terms of trade and aid. It is not enough to simply collapse current trends of global legal education into the logics of neoliberalism. Undoubtedly there is a pronounced compatibility between neoliberal agendas and these trends, but these trends also include curricular directions that stand against neoliberal projects.⁵⁰ Much of the early work on anti-colonial projects, then subsequently

48. See, e.g., Kenneth Anderson, *The Rise of International Criminal Law: Intended and Unintended Consequences*, 20 EUR. J. INT’L L. 331, 356–57 (2009).

49. See Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. & SOC. SCI. 323, 323–24 (2005).

50. Duncan Kennedy’s brilliant study of the relationship between legal conceptual change and institutional change is a particularly illuminating framing text in thinking about the history of legal ideas. See Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850–2000*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* (David Trubek & Alvaro Santos, eds., 2006).

on the New International Economic Order, and then later still on the extension of critical legal studies, was part of the globalization of legal education, with ideas spreading in multiple directions and engendering intellectual and political projects that contested the dominant global order.⁵¹

Along the same lines, Richard Wilson has argued that the global spread of clinical legal education cannot be reduced to evidence of a neoliberal project aimed at the dissemination of American models of legal pedagogy; he notes that clinical legal education was also pivotal in the spread of law and development—a field that has been not only allied with neoliberal agendas, but also one that has spawned radical challenges to those agendas.⁵² In other words, the dynamics of how legal knowledge gets disseminated, translated, and transformed are complex and multi-directional.⁵³

We cannot reduce the field of global legal education to a super-structural response to the structural needs of the market. At the same time, the globalization of legal education has not taken place in a vacuum, and we need to assess and analyze the consequences of dominant trends.

One important feature of these trends that we have already flagged is the process of consolidation.⁵⁴ Pedagogical methods are increasingly similar with the spread of an American-style Socratic method; there is an evolving, globally recognizable “canon” of textbooks and law review articles in many fields of law. Students are

51. An earlier and partial draft of Duncan Kennedy's *Three Globalizations* article, *supra* note 50, seeks to respond to a query about the relevance of critical legal studies for the global periphery. Duncan Kennedy, *Two Globalizations of Law and Legal Thought: 1850-1968*, 36 SUFFOLK U. L. REV. 631 (2003).

52. Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN ST. INT'L L. REV. 421, 428-31 (2004).

53. See, e.g., *International Legal Education*, A.B.A., http://www.americanbar.org/groups/legal_education/committees/intl_education.html (last visited May 4, 2013) (“This committee reviews and disseminates information regarding international developments and initiatives . . .”).

54. In a few instances, even practice-oriented international law may resist convergence—for instance, a notable example may be “TWAIL”-oriented pedagogical efforts that teach international law with a focus on how third world lawyers could advance the policy goals of the global South. See generally B.S. Chimni, *A Just World Under Law: A View from the South*, 22 AM. U. INT'L L. REV. 199, 200, 216-17 (2007) (arguing that third world peoples must not be denied economics policy options that the developed world has exercised or is exercising). But see Phillip Alston, *Remarks on Professor B.S. Chimni's A Just World Under Law: A View from the South*, 22 AM. U. INT'L L. REV. 221, 228-30 (2007) (responding that B.S. Chimni's “argument or analog is unsustainable when it amounts to defending practices now deemed inhumane and unacceptable under international law on the grounds that they were once acceptable in an earlier era”). For a brief overview of TWAIL, see *infra* note 71.

increasingly likely to be nudged toward internalizing a disciplinary orthodoxy to better assimilate into their professional habitus.⁵⁵ It is a feature that has far-reaching consequences. As this core gets transmitted into classrooms across the world, from London to Mexico to New Delhi, these legal curricula may help normalize, legitimize, and further entrench the system.⁵⁶ Those same students, perhaps particularly those from countries ill served by the dominant rules of the game, may be better served if they develop analytical tools that will allow them not only to navigate the system, but also find its loopholes and challenge its boundaries.⁵⁷ Therefore, we need a better understanding of how the disciplinary orthodoxy helps reproduce the architecture of global governance in areas like trade. Thus far, the research agenda for the relationship between global political economy and global legal education has focused on the substance of the curricula. Arguably however, we should pay equal attention to the structure of global legal education.

Globalized legal education has accompanied broader trends toward privatization of higher education in areas as diverse as the United Kingdom and India.⁵⁸ Private universities, sometimes funded by multinational corporations, seek to pull away the best professors from already-embattled public universities with the promise of globally competitive salaries, just as they seek to attract the best students with the promise of an education that opens doors to the globe.⁵⁹ In addition to weakening public law schools and exacerbating the inter-institutional inequalities, globalized legal education can also exacerbate inequalities among students. Only wealthier students can afford a semester abroad or an international summer internship because tuition at such institutions is expen-

55. Arthurs, *supra* note 40, at 630–32.

56. *Id.*

57. *Id.* at 632 (describing the ways globalization changes laws and ways of thinking about law in society).

58. See, e.g., Michael Chessum, *Students Must Act or Watch University Privatization Become Irreversible*, THE GUARDIAN, Feb. 11, 2013, <http://www.guardian.co.uk/commentisfree/2013/feb/11/students-act-university-privatisation-education>; Mayank Maheshwari, *India Journal: The Privatization of Indian Education*, Blog Post on *IndiaRealTime*, WALL ST. J. INDIA (May 21, 2010, 9:27 AM), <http://blogs.wsj.com/indiarealtime/2010/05/21/the-privatization-of-indian-education/>; Nigel Thrift, *Across the World: The Privatization of Higher Education*, Blog Post on *WorldWise*, CHRON. HIGHER EDU. (June 30, 2010, 2:13 PM), <http://chronicle.com/blogs/worldwise/across-the-world-the-privatization-of-higher-education/25189>.

59. Again, the strategy of Jindal Global Law School in India provides a telling illustration of this trend. See *supra* note 15 and accompanying text.

sive.⁶⁰ Indeed in many cases, legal training is a critical instance of brain drain from the global South to the global North—where lawyers obtain their basic legal training from their countries and then LL.M.s or other graduate degrees from the global North.⁶¹ More empirical research is needed to determine how access to education has been impacted by the current trend of globalized legal education.

If understanding the political economy of global legal education is one part of the proposed research agenda, the other part relates to the global imagination of legal education. This refers to how the international terrain is constructed, inhabited, and created in law school corridors as they globalize. For instance, it may well be useful to develop a better understanding of how international human rights law is taught in different parts of the world and how this focus has changed over time. Perhaps, forty years ago, human rights classes studied cases where human rights were the language of dissidence.⁶² Today, human rights emerge as the language of global governance.⁶³ What conception of international accountability accompanies this approach to human rights? What priorities emerge as salient with this shift of focus? Studying the conceptions that emerge in globalized legal education will provide insight into the current global order. It may help us better understand how global legal education reproduces global hierarchies.

This would not be the first time globalization has been accompanied by an educational program that explicitly and implicitly privileged a worldview that also legitimized global hierarchies. Historically, missionary schools accompanied

60. See, e.g., ADELAIDE FERGUSON, NAFA: ASS'N OF INT'L EDUCATORS, MAPPING STUDY ABROAD IN U.S. LAW SCHOOLS: THE CURRENT LANDSCAPE AND NEW HORIZONS 21–22 (2010) (noting that it is difficult to generalize costs of such programs but all costs are typically borne by the student).

61. See Carole Silver, *States Side Story: Career Paths of International LL.M. Students, or "I Like to be in America"*, 80 FORDHAM L. REV. 2383, 2393–2413 (2012).

62. For instance, where class discussion examined what strategies were open to Stephen Bantu Biko fighting the apartheid state. For a discussion about Stephen Bantu Biko, see *Stephen Bantu Biko*, SOUTH AFRICAN HISTORY ONLINE, <http://www.sahistory.org.za/people/stephen-bantu-biko> (last visited May 4, 2013).

63. For example, see the Security Council's involvement in Libya. See Press Release, Security Council, Security Council Approves 'No-Fly Zone' Over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions, U.N. Press Release SC/10200 (Mar. 17, 2011), available at <http://www.un.org/News/Press/docs/2011/sc10200.doc.htm>.

colonialism⁶⁴—often not as an official colonial delegation, but merely as what we may describe as independent accomplices to colonial missions.⁶⁵ Yet even then, just as those missionary schools did much to consolidate the empire, many cadres of anti-colonial nationalists also emerged from such schools.⁶⁶ Thus, unexpected consequences could arise from these new conjunctures and we cannot have a purely instrumental conception of how law relates to the dominant world order. Today's frontiers of global education may serve a similar dual function—both as cosmopolitan institutional paeans to liberal internationalism and as hotbeds of resistance. They may produce global legal actors who cannot help but think of themselves as rights-avenging cosmopolitans. For others, it may mean invoking human rights to fight big dams, big pharma, and big miners.

In a sense, global legal education is also then about producing a particular kind of subjectivity—a sense of what it means to be a human, a citizen, a legal actor, and so on—in ways that cohere with particular transnational networks and global forces.⁶⁷ Just as missionary education may have produced a particular conception about what it meant to be civilized and modern, today's globalized education sentiments parallel what it means to be cosmopolitan and modern. Just as those notions of civilized modernity were saturated with the interests, desires, and aversions of the colonial enterprise, we need to better understand the dynamics animating contemporary notions of cosmopolitan modernity. We need research that looks at how global legal education connects these dots and shapes the new “normal” in legal consciousness. Such research may include, for instance, studying the relationship between technolo-

64. VINCENT B. KHAPOYA, *THE AFRICAN EXPERIENCE* 156–60 (4th ed. 2012), available at http://www.pearsonhighered.com/assets/hip/us/hip_us_pearsonhighered/samplechapter/0130918431.pdf.

65. In fact, Católica Global School of Law situates its mission in relation to that colonial legacy by noting that Lisbon provides a particularly salubrious location for a global law school because of these historical antecedents: “[T]he Lisbon location provides the additional historical benefits of being in the place where the first step toward globalization was taken centuries ago, with the beginning of the European exploration of the new world.” See *Católica Global School of Law*, *supra* note 3.

66. Bob W. White, *Talk About School: Education and the Colonial Project in French and British Africa (1860–1960)*, 32 *COMP. EDUC.* 9, 10–13 (1996).

67. The discipline of law is part of the enabling infrastructure for this production—a shaping, disciplining of subjectivity—not through an oppressive apparatus, but “an increasingly better-invgilated process of adjustment has been sought after . . . between productive activities, resources of communication, and the play of power relations.” Michel Foucault, *The Subject and Power*, in 8 *CRITICAL INQUIRY* 777, 788 (1982).

gies of global governance and the dominant conceptions of the rule of law that have become mainstreamed into curricula across the world. For instance, Daniel Kelemen argues that “[t]he American legal system has become the most influential national legal system in the world and many U.S. legal norms have spread to other jurisdictions through a variety of diffusion processes.”⁶⁸ Research may include examining how comparative constitutionalism is taught in different places, which legal architectures get posited as the norm, and which as the exception. It may include studying whether curricular convergence or divergence exist in relation to how property rights are conceptualized.

Indeed, classification as “global” and as “national” in demarcating disciplinary and curricular distinctions is itself an important dimension of the political imagination;⁶⁹ this dimension has import for how we understand the relationship with global governance, and it warrants further research. Describing a research agenda, in essence, calls for a diagnostic of how contemporary legal academia instantiates global dynamics.⁷⁰

CONCLUSION

If we take legal education as an already-globalized terrain, then the debate is not about whether to globalize—that plane has already left the hangar—rather, the framing question is about the direction of globalization. This is the question to which we respond

68. R. DANIEL KELEMEN, *EUROLEGALISM: THE TRANSFORMATION OF LAW AND REGULATION IN THE EUROPEAN UNION* 10 (2011).

69. See DIPESH CHAKRABARTY, *PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE* 109–13 (2000), (arguing that there is a need for the universalized European thought to be reconnected to its concrete history rather than to be treated as a transhistorical form of an idea). The most telling and significant areas of globalization are precisely those that are globalized without being flagged as such—for instance, for the “possessive individualist” model of property rights to be treated as the default model for property claims, rather than as one of multiple models. See, e.g., Nestor M. Davidson & Rashmi Dyal-Chand, *Crisis and the Public-Private Divide in Property*, in *THE PUBLIC NATURE OF PRIVATE PROPERTY* 65, 86 (Robin Paul Malloy & Michael Diamond, eds. 2011) (discussing how the pendulum may swing back to the “possessive individualist vision” when advocates “react hyperbolically” to changes in the structure of property rights).

70. Thus, rather than a philosophy of legal education, the interest is in a diagnostic in the Foucauldian sense of the word. For an example of the Foucauldian diagnostic and a discussion of whether it should apply to future education see Mark Murphy, *What Can Foucault Tell Us About the Future of the University?*, *SOC. THEORY APPLIED* (Jan. 23, 2013), <http://socialtheoryapplied.com/2013/01/23/what-can-foucault-tell-us-about-the-future-of-the-university/>.

in the two-part research agenda outlined above.⁷¹ What are the political stakes of the relative emphasis on the responsibility to protect, rather than the crime of aggression in public international law? What does it mean if American students are learning about Indonesian law in their anthropology classrooms and Indonesian students are learning about American law in their law classrooms? Does a class on law and economics draw on heterodox economists? Does a law school that encourages research on the colonial history of international human rights laws provide a different kind of environment for globalized legal education than a law school that encourages research on how corporate social responsibility standards promote human rights law? These are all questions about the direction of globalization rather than whether we should globalize. It is not about euphoric cosmopolitanisms versus nationalist educa-

71. I have argued for a two-part research agenda into the political economy and political imagination of global legal education. The project that is known under the moniker of Third World Approaches to International Law, or more commonly, TWAIL, may provide a window into what such a research agenda would like. TWAIL is a loose network of legal academics approaching international law in ways that foreground colonial histories and postcolonial realities. TWAIL was not focused on education, although it was attentive to genealogies of knowledge about international law and their conditions of knowledge production. For instance, in highlighting the category of the third world, TWAIL was also contesting the unified category of the global and foregrounding questions of distribution and division that fragmented and challenged the global. There were at least three critical ways in which TWAIL drew the dots connecting global governance to “knowledge” about international law. First, it took on histories of international law and deconstructed those historical narratives to tell alternative stories about international law’s development. For instance, Tony Anghie’s work on international legal history is exemplary here in making the connections between the categories of historical analysis, the historical claims that mobilize them, and the colonial projects within which they are embedded. See generally ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005). Second, it looked at the conditions of intellectual production and how this impacted the development of the discipline. In this context, Bhupinder Chimni, Professor of International Law at Jawaharlal Nehru University in New Delhi, played a pivotal role in drawing attention to the structural biases built into the discipline (including the multiple issues that were part and parcel of quotidian academic life, including publication venues, research resources, tenure modalities, and so on) that rendered much scholarship produced in the global South inaudible or, at best, marginalized in transnational venues. For his outline of how a TWAIL perspective may approach international law see B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT’L COMM. L. REV. 3, 3–27 (2006). Finally, there is the work of many TWAIL scholars, such as James Thuo Gathii and Rajagopal Balakrishnan, that have looked at the distributive implications of the norms and doctrines of international law for the structure of global governance. See INTERNATIONAL LAW AND THE THIRD WORLD: RESHAPING JUSTICE (Richard Falk et al. eds., 2008). TWAIL is a complex and dynamic project and this very condensed citation does not capture the internal diversity within TWAIL; however, hopefully even this capsule description helps illustrate the kind of research project that is needed for a critical engagement with globalizing legal education today. Critically, TWAIL examines the legal field not as a terrain to be globalized, but as a terrain where we could study globalization.

tion, but about the multiple contested visions of global legal architecture that are at stake in national and transnational law. Thus, globalization should not be measured by the number of transnational law school partnerships or study-away sites, but by whether the globalization of legal education has better equipped us to productively unsettle received ideas while boldly imagining alternative institutional arrangements in shaping the zeitgeist in which we teach, research, and study.