Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S.

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AND LEGAL EDUCATION: POTENTIAL AND
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Carole Silver*

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INTRODUCTION

Globalization’s influence permeates the economy, the state, and civil society, and is felt no less in law than in other fields.¹ For future lawyers, this influence is as significant as technological competence. Just as e-mail, texting, Fa-

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¹. On the influence of globalization, see Sherry E. Sullivan & Howard S. Tu, Developing Globally Competent Students: A Review and Recommendations, 19 J. MGMT. EDUC. 473, 473 (1995) (“Organizations throughout the world are finding foreign competitors invading their home markets. In their effort to achieve globalization, an increasing number of organizations are dispersing their manufacturing, marketing, and investments throughout the world . . . . [F]ew U.S. organizations and workers are not influenced by worldwide events.”). Cf. Ian S. Mutchnick, Cheryl A. Moyer & David T. Stern, Expanding the Boundaries of Medical Education: Evidence for Cross-Cultural Exchanges, 78 ACAD. MED. S1 (2003) (“We now live in a global society, and globalization is here to stay. It affects our economies, the way we exchange information, our language use, and the way we travel. Medicine has also become a global enterprise. Infectious diseases such as HIV, West Nile Virus, and hepatitis have spread globally. Yet mainstream medical education remains largely focused on national—as opposed to global—health issues.”).
facebook, and tweets are part of the lexicon and skill-set for the current generation of law graduates, and have remarkably changed patterns of work over the last twenty-five years, so will tomorrow’s lawyers be required to understand how to work in a globally diverse environment—whether based on relationships with clients, business executives, jurors, regulators, or other lawyers—as well as in contexts shaped by globalization.

For quite some time, U.S. law schools have acknowledged globalization while attempting to control its impact. Their approaches to addressing globalization have focused on creating additional courses and co-curricular activities such as journals and moot court opportunities on topics that deal with foreign, international, or transnational law. While these additions certainly help raise

2. This was no more obvious than when Jeffrey W. Carr, Senior Vice President, General Counsel, and Secretary for FMC Technologies, Inc., described the process of a request for proposals for hiring outside counsel as including a requirement to tweet a message addressing the questions of “What makes you different?” and “Why should we meet you?” Carr’s description was part of his presentation at the Georgetown University Law Center’s symposium on law firm evolution in 2010. See Jeffrey W. Carr, The Law 2.0 and Beyond: The Shape of Things to Come, Presentation at Center for the Study of the Legal Profession Symposium: Law Firm Evolution: Brave New World or Business as Usual? (March 21-23, 2010), presentation materials available at http://www.law.georgetown.edu/academics/centers-institutes/legal-profession/documents/upload/Conference-Papers-March-22-Carr_JeffShapeofthingscome2-Presentation.pdf.

3. See infra Parts III and IV (discussing the refusal to adapt to the international diversity of their student bodies as one mechanism of control).

4. See, e.g., N. William Hines, Ten Major Changes in Legal Education Over the Past 25 Years, AALS NEWSLETTER (Ass’n of Am. Law Schs.), Nov. 2005, http://www.aals.org/services_newsletter_presNov05.php (last visited Feb. 16, 2013) (“There are few law schools today that have not lifted their vision to the world legal scene through enriched curricular offerings in international, transnational and comparative law, recruitment of foreign faculty and students, overseas semester or summer programs, exchanges of students and teachers with foreign law schools, creation of graduate programs for foreign-trained lawyers, visiting teachers and speakers from foreign legal cultures, etc.”); J.D. Program Overview, BOSTON UNIV. SCH. OF LAW ADMISSIONS, http://www.bu.edu/law/prospective/jd (last visited Feb. 16, 2013) (“BU Law’s J.D. curriculum integrates the best of traditional legal education with a forward-looking perspective—. . . . You can design your own curriculum around courses that prepare you for work in specific areas of interest—here or abroad: . . . Globalize your classroom experience—J.D. classes often include foreign-trained LL.M. students who contribute a global perspective to class discussions.”); Why Harvard? HARVARD LAW SCH. J.D. ADMISSIONS, http://www.law.harvard.edu/prospective/jd/why/index.html (last visited Feb. 16, 2013) (“Harvard’s size is a great source of strength. It permits us to have a truly diverse student body drawn from across the nation and around the world. It also gives us a global alumni network . . . . .”); Kenneth Randall, A Message from the Dean, UNIV. ALA. SCH. OF LAW ADMISSIONS, http://www.law.ua.edu/admissions/a-message-from-the-dean/ (last visited Feb. 16, 2013) (“For more than 135 years, Alabama Law has produced attorneys who become leaders locally, nationally, and globally. Our alumni serve as the living proof of our success. Whether you decide to become corporate counsel at a Fortune 500 company, a transactional lawyer with an international law firm, or a public defender in a small town, you will be among the outstanding attorneys who are alumni of The University of Alabama School of Law.”).
consciousness and deepen an understanding of legal differences among jurisdictions, they are analogous to learning about the Internet from reading about it rather than from using it. Teaching about globalization, rather than experiencing its challenges directly, allows schools to control the influence exerted by global forces on their existing approaches and activities. At the same time, globalization has become another weapon in the competitive battles law schools undertake to buttress their reputations for purposes of attracting applicants, donors, faculty, and prospective employers of their graduates.5

Today’s students must learn to work in a global environment6 as well as learn about relevant law.7 This is crucial for domestic students,8 including

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6. The importance of learning to work in a global environment extends well beyond the field of law. See, e.g., Vitaliy Popov, Dine Brinkman, Harm J.A. Biemans, Martin Mulder, Andrei Kuznetsov & Omid Noroozi, Multicultural Student Group Work in Higher Education: An Explorative Case Study on Challenges as Perceived by Students, 36 INT’L J. INTERCULTURAL REL. 302, 302 (2012) (“[T]he ability to work effectively in culturally heterogeneous groups should be an integral part of a student’s competence.”); Karin Fischer, U.S. Will Make Broader Global Skills for College Students a New Priority, CHRON. HIGHER EDUC. (Aug. 7, 2012), http://chronicle.com/article/US-Will-Make-BroaderGlobal/133435/?cid(describing comments of Maureen McLaughlin, Director of International Affairs for the U.S. Department of Education, to the effect that it is ‘critical that all graduates of American high schools and colleges have certain ‘21st-century skills’ that will enable them to compete in a worldwide marketplace, such as understanding international perspectives and being able to work collaboratively with peers from different cultures and backgrounds’); Fernando Reimers, ‘Global Competency’ Is Imperative for Global Success, CHRON. HIGHER EDUC. (Jan. 30, 2009), http://chronicle.com/article/Global-Competency-Is/9742 (“Students need ‘global competency”—the knowledge and skills that help them cross disciplinary domains to comprehend global events and respond to them effectively.”).

7. See Adelaide Ferguson, Mapping Study Abroad in U.S. Law Schools: The Current Landscape & New Horizons 4 (2010) available at http://www.nafsa.org/uploadedFiles/NAFSA_Home/Resource_Library_Assets/Networks/CCB/MappingStudyAbroadLaw.pdf (“[T]he evidence tells us that legal educators should be teaching students theories of international and foreign legal systems that their students will surely use in practice, as well as the skills they need to effectively work on matters involving non-U.S. actors and international and foreign law.”).
those who may not anticipate a practice typically associated with global clients, as well as for international students whose presence in U.S. law schools itself is recognition of the importance of globally relevant professional capital and expertise. As one in-house counsel explained, “You can always learn technical details and applicable law but being able to work successfully with people from different countries, different cultures, with different world views, requires a skill set that is more people oriented than substantive oriented.” This contemplates an alternative focus from that typical of legal education. While a traditional approach might focus on variation among legal systems and substantive law—important topics in themselves—learning to work in an environment that is defined by a plurality of professional and business cultures and languages, the roles lawyers assume in society, and the ambiguity surrounding these factors, involves multi-dimensional learning. Put another way, intercultural competency can be understood as involving three elements: cognitive, which “refers to possessing knowledge about cultural norms, values, behaviors, and issues”; affective, which “relates to the flexibility to adapt to new situations and open-mindedness to encounter new values”; and behavioral, which includes “resourcefulness, problem-solving skills, and culturally appropriate people skills.” These factors are reflected in the challenges posed by globalization to lawyers’ responsibilities and roles.

8. “Domestic” is used here to indicate students who consider the U.S. their home country, and who have experienced all or most of their pre-law education in the U.S. See also infra notes 78-83 (regarding the assumption that domestic students generally pursue the JD degree).


11. See, e.g., J.D. Vermunt, Metacognitive, Cognitive and Affective Aspects of Learning Styles and Strategies: A Phenomenographic Analysis, 31 HIGHER EDUC. 25, 26 (1996) (“Cognitive processing activities are those thinking activities that people use to process learning content. They lead directly to learning results in terms of knowledge, understanding, skill and so on. Examples are: looking for relations among parts of the subject matter (relating), distinguishing main and minor points (selecting), thinking of examples (concretizing) and looking for applications (applying). Affective learning activities are directed at coping with the feelings that arise during learning, and lead to an emotional state that may positively, neutrally or negatively affect the progression of a learning process. Examples are motivating oneself, attributing learning results to causal factors, attaching subjective appraisals to learning tasks and getting blocking emotions under control.”).


13. Id.
Lawyers must be adept at developing working relationships with colleagues and clients; generally, the lawyer-to-lawyer relationship is eased by the shared commonality of legal education in the U.S., supported by the relatively standard approach and curriculum. This is missing in relationships with lawyers from other countries. At the same time, relationships with clients—particularly those from other cultures and/or countries—require sensitivity to ambiguity resulting from language and cultural differences; awareness of power and role issues including who has expertise and what sort of expertise is required to solve problems; diversity in legal systems and the role of law; and, in some instances, awareness of avenues for avoiding the law’s application. These goals are not unique to legal education: the U.S. Department of Education, among others, has described quite similar goals for high school and college graduates.

While distinctions among legal systems and in substantive law can be learned from reading and more traditional approaches to cognitive learning, in order to acquire the sensitivity necessary to function with expertise in a global environment, experiential learning activities may take precedence. “Intercultural competence 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.” According to Darla Deardorff, Executive Director of the Association of International Education Administrators, “Nearly all definitions of intercultural competence include more than knowledge of other cultures, since knowledge alone is not enough to constitute intercultural competence. Intercultural competence also involves the development of one’s skills and attitudes in successfully interacting with per-

14. Cf. Sherry E. Sullivan & Howard S. Tu, Developing Globally Competent Students: A Review and Recommendations, 19 J. MGMT. EDUC. 473, 483 (1995) (describing the need in business education for “[s]ynergistic learning[, which] occurs when individuals learn to simultaneously work with and learn from individuals from multiple cultures. Collaboration skills are developed when individuals learn to work with foreigners as equals.


16. See Fischer, supra note 6 (“[T]he [D]epartment [of Education] is less focused on stand-alone international efforts than on ensuring that international perspectives are included in all the work that it does. ‘International engagement needs to be infused into our domestic-education agenda,’ Ms. McLaughlin said. ‘That’s the world we need to prepare our students to operate in.’”); see also Arne Duncan, Back to School: Enhancing U.S. Education and Competitiveness, 89 FOREIGN AFF. 65, 65 (2010) (“[T]o succeed in today’s knowledge economy, the United States will have to become both more economically competitive and more collaborative.”).

sons of diverse backgrounds.  Experience is important for developing sensitivity and awareness of differences, and experience in one jurisdiction that offers a deep understanding of these issues provides an important learning opportunity. At the same time, exposure to a single jurisdiction is not necessarily sufficient. Instead, broad exposure to the variations characteristic of other jurisdictions, legal systems, and professional norms and roles is required.

How, then, can U.S. law schools facilitate this learning and offer a sufficiently international environment to provide opportunities for each student? While an overseas immersion experience is a popular option, it cannot reach all domestic law students because of cost concerns, if not for other reasons. But many U.S. law schools have a treasure trove of these lessons already available to them: their own students whose backgrounds and experiences are deeply rooted in another country and culture. Tuning into these experts will enable U.S. law schools to provide opportunities for all of their existing law students to learn to work in a global environment.

But it will take some reorientation for U.S. law schools to capitalize on these opportunities. Their challenge comes both from the substantive difficulty of choreographing meaningful interaction as well as from the need to reframe their message to domestic students about the importance of acquiring globally relevant skills. Thus far, schools generally have protected their JD students from the difficulties and complexities that result from a globally integrated student body by refusing to require meaningful interaction between JD students, who typically are domestic students, and international graduate students, who typically enroll in non-JD degree programs. This approach has been pursued through no malice on the part of the law schools, and it is consistent with the accrediting regulations and the incentives framed by ranking considerations. But it risks leaving domestic students without the preparation they will need to compete effectively in an increasingly borderless profession, while these very law schools serve as training grounds for international law students who will become mighty competitors to U.S. domestic students in their future careers.


19. See Mary M. Dwyer, More Is Better: The Impact of Study Abroad Program Duration, 10 FRONTIERS: INTERDISC. J. STUDY ABROAD 151, 158 (2004), available at http://www.frontiersjournal.com/issues/vol10/vol10-09_Dwyer.pdf (reporting on research regarding long-term learning from study abroad of varying duration and noting “that studying in one culture and language has led a significant number of respondents to learn more about another culture or learn another language”).


21. See infra Part III.
The Article proceeds as follows: Part I considers the significance of globalization for legal education, drawing on research exploring its influence on legal practice as well as on higher education. While law schools share a relationship to globalization with higher education generally, they may have a heightened responsibility as a result of the role of globalization in commerce and finance, among other factors, and the increasing role of internationally linked problems that lawyers may experience regardless of their practice area or setting. Acknowledging this importance, however, does not necessarily lead to effective preparation of students. Interaction between international and domestic students provides an opportunity to help students acquire intercultural skills. Nevertheless, despite increasing numbers of international students studying in U.S. colleges, universities, and law schools, their presence does not necessarily transform these institutions into global learning environments. Part II considers possible settings and opportunities for learning to work in a global environment. For the vast majority of students whose learning must occur in their home country, the presence of international students on their campus offers the potential for creating a global learning environment. Meaningful interaction between international and domestic students does not follow automatically from presence, however. Research on intergroup contact theory provides a framework for considering the barriers to interaction in the context of higher education. In Part III, the focus is on the law school environment. Using data from the Law School Survey of Student Engagement, it is possible to explore the quality and quantity of interaction between students in JD programs—generally U.S. nationals—and international graduate students. Generally, the story is one of lost opportunity. In order to address this void, schools must design interaction rather than leave it to chance. As explored in Part IV, the conditions for meaningful interaction present particular challenges for law schools. At the same time, they offer opportunities to reconceive legal education in ways that have the potential to support U.S. law schools in weathering the current controversy that is so richly described by Bryant Garth, while simultaneously preparing students without international experience to meet the competition that their globally mobile classmates are sure to present. Part V takes another look at globalization as a mechanism of competition by law schools and suggests several models, each offering slightly different opportunities and challenges. These models suggest that globalization’s lessons will be differently available

22. On what constitutes interaction, see generally Rona Tamiko Halualani, How Do Multicultural University Students Define and Make Sense of Intercultural Contact?, A Qualitative Study, 32 Int’l J. Intercultural Rel. 1, 2 (2008) (study of students’ interpretations of interaction with culturally diverse students).

depending on a law school’s specific assets and characteristics. The Article concludes by returning to the message of globalization’s importance in legal education and emphasizing that for all law schools, developing environments that facilitate learning to manage globalization’s opportunities and challenges will require intentional choreography.

I. DOES GLOBALIZATION MATTER FOR LEGAL EDUCATION?

Much has been written about the importance of globalization, and its significance is widely acknowledged in many fields, including technology, business and finance, politics and trade, and higher education. With regard to the legal profession and legal education, however, there remains some skepticism in the U.S. about globalization’s significance and relevance. 24 This Part considers the ways in which globalization affects legal practice and legal education, and then briefly outlines steps taken by U.S. law schools to address globalization’s influence in their curricula.

Skepticism about globalization’s importance for legal education and practice stems from several sources. Some view its significance as limited to those serving multinational clients, for whom the importance of the global context is obvious. For others, globalization is more of a complication, particularly because of the crucial role of language in legal education and law. As one lawyer remarked years ago, “Numbers are numbers, discounted cash flow analysis is the same worldwide, but the law is different.” 25 This highlights another reason sometimes offered for limiting the importance of globalization in legal education: the source of law—still national, by and large—frames much of the law school curriculum, which typically relegates globalization to a secondary role in legal studies. Even for those willing to consider that globalization may be more than a marginal force on the profession, there is remarkable distrust of the effect of its influence. Consider, for example, the response to the American Bar Association’s attempt to reflect the influences of globalization and technology in reviewing and potentially revising its model rules regulating lawyers, which was the assignment of its Commission on Ethics 20/20 when it was organized in 2009. 26 While ultimately successful in passing the House of Delegates, the Commission’s proposals were resisted by longtime practitioners and prominent members of the ABA who asserted that considering the influence of globaliza-

24. For a nice review of the arguments surrounding the importance of globalization with regard to legal education and practice, see 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. 1, 7-9 (2011).


tion on legal practice would lead to a race to the bottom in regulating lawyer conduct.27

In the U.S., globalization’s influence on lawyers’ work typically has been recognized as relating most directly to those who serve multinational business clients. To be sure, multinational businesses consider global skills crucial.28 According to Harvard Professor of Management William George:

Ultimately, a global organization is measured by how well the diversity of its leadership reflects the diversity of its customer base and how well that leadership can leverage the skills of teams working around the world . . . . [We’re looking to companies to create a global cadre of people who are comfortable operating anywhere in the world.]29

George describes six characteristics of successful global leaders, including gaining an “intellectual understanding of the global business context,” as well as the ability to create partnerships and networks that span boundaries. Also crucial is “the capacity to simultaneously develop a global and local perspective.”30 In-house lawyer David Susler echoed this in his remarks regarding the role of globalization for business lawyers:

We live in a global economy—one needs to look no further than the current U.S. economic turmoil, fueled at least as much by economic troubles in Europe as here in the U.S. This means that all businesses and their lawyers must think globally, even if they operate only domestically.31

27. Leading the charge was Lawrence Fox, partner and former managing partner of Drinker Biddle itself, ostensibly a participant in the global market for legal services, see International, DRINKER BIDDLE, http://www.drinkerbiddle.com/services/practices/international (last visited Feb. 16, 2013), lecturer at Harvard and Yale Law Schools. See Lawrence J. Fox, DRINKER BIDDLE, http://www.drinkerbiddle.com/people/attorneys/fox-lawrence-j (last visited Feb. 16, 2013). Fox’s comments in an open letter titled “Ethics 20/20: I Can See Too Clearly,” are illustrative: “I also read the proposed issue list as directing the Commission to address some recent international developments in the profession overseas. The issue outline even endorses the idea that large American firms somehow cannot compete with their international counterparts because other countries do not impute conflicts the way we do, that it is essential for the United States to participate in a race to the bottom on client protections because what could be more important than staying competitive with these firms that are not shackled with our ‘stringent’ rules that so inconveniently put the client first. Of course, the rhetoric will be lofty; but the result—as with screening the side-switching lawyer—will be the same: a reduction in client protection in the name of law firm economics.” Letter from Lawrence Fox to Ethics 20/20 Commission 3 (Jan. 2010) (on file with author).

28. Charles M. Vance, The Personal Quest for Building Global Competence: A Taxonomy of Self-Initiating Career Path Strategies for Gaining Business Experience Abroad, 40 J. WORLD BUS. 374, 374 (2005) (“Several researchers point to the importance of international business skill development and foreign work experience for securing ongoing career success. Many organizations are now placing a premium on job candidates’ global competencies as these organizations strive to compete in an increasingly globally-integrated marketplace.”) (citations omitted).


30. Id. (emphasis omitted).

Business education reflects the importance of globalization. The student bodies of business schools are substantially more international than those of law schools, and a common curricular element of graduate-level business education is a global experiential course that provides students with the opportunity to work on problems of a particular business or industry situated outside of the U.S., in which global issues often are a central element. Careers, also, may be more likely to cross jurisdictional boundaries for business graduates than for lawyers. The barrier of licensing presents a special challenge for lawyers; in certain countries, admission to practice is conditioned on citizenship, while in other jurisdictions the refusal to recognize home country legal education as partial preparation for practice and bar eligibility renders it too costly.

32. Consider, for example, that at Northwestern University’s Kellogg School of Management, “[a]bout 30 percent of Kellogg students are citizens of nations other than the United States, and more than 50 percent of U.S. students have lived or worked abroad at least three months.” Global Experience KELLOGG SCH. MGMT., http://www.kellogg.northwestern.edu/jdmba/academics/globalexperience.htm (last visited Feb. 16, 2013). In contrast, Northwestern University Law School’s entering 2012 classes of JD and JD-MBA classes included approximately 6% international students. See Traditional 3-Year JD Class Profile, NW. UNIV. LAW SCH., http://www.law.northwestern.edu/admissions/profile/jdprofile.html (last visited Feb. 16, 2013); Accelerated JD Class Profile, NW. UNIV. LAW SCH., http://www.law.northwestern.edu/admissions/profile/AJDprofile.html (last visited Feb. 16, 2013); JD-MBA Class Profile, NW. UNIV. LAW SCH., http://www.law.northwestern.edu/admissions/profile/jdmbaprofile.html (last visited Feb. 16, 2013). At Northwestern Law School, like nearly all U.S. law schools, international students generally enroll in post-JD degree programs. See LLM Programs, NW. UNIV. LAW SCH., https://www.law.northwestern.edu/llm (last visited Feb. 16, 2013). Compare information provided by Columbia University Law School regarding international JD enrollment, International Student FAQ, http://web.law.columbia.edu/admissions.jd/apply/faq/international (last visited May 8, 2013) (“In the entering Class of 2011, approximately 12 percent of the J.D. program was comprised of international students, and across the entire J.D. program, Columbia Law School students currently hail from 43 countries around the world.”); Stanford Law School reported awarding slightly fewer than 3% of its JD degrees to students classified as “nonresident aliens,” Consumer Information, Enrollment Data, Attrition and Graduation Rates, http://www.law.stanford.edu/facts/enrollment-data-attrition-and-graduation-rates (last visited May 8, 2013). Similar information is not publicly available on the website of every law school.


34. 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, 2419 n.114 (2012).
for many foreign-educated law graduates to satisfy local qualification requirements.35

But it is a mistake to think that globalization’s influence is limited to lawyers in multinational firms or those serving business clients; even practices once considered “purely domestic” are being infiltrated by globalization.36 According to the “After the JD” study, a longitudinal study of law graduates who were admitted to practice in the U.S. in the year 2000, 44% of its 4160 respondents had engaged in at least some work that comes under the “international” umbrella approximately seven years after passing the bar.37 This includes work performed on behalf of foreign corporate and individual clients, work for domestic clients with overseas activities, and work involving foreign or international law. More than 60% of the responding lawyers who practice in three settings—the largest private firms, in-house for corporations, and legal services and public defense lawyers—reported that their work involves these sorts of cross-border matters. Another survey found a similar influence of globalization on the work of practitioners in a wide variety of practice settings. According to research conducted in 2009 of members of the Philadelphia Bar, 67.5% of the 1050 respondents to a survey of Bar members about their practices indicated that “they had worked on a legal matter that required them to know something about foreign and/or international law . . . . The respondents, moreover, represent a fairly wide array of practitioners in terms of demographics.”38

35. Many U.S. jurisdictions exemplify this approach, as do other jurisdictions. See American Bar Ass’n Section of Legal Educ. and Admissions to the Bar, Chart 4: Eligibility to Take the Bar Examination: Foreign Law School Graduates, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2012, at 14 (2012).

36. Leigh Jones, Divorce Lawyers Without Borders, NAT’L L. J. (Jan 21, 2013), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202585055687, (“Family lawyers . . . increasingly find themselves representing clients splitting from spouses in foreign lands. It is a complicated business, involving clashing cultures, inconsistent legal systems and scant guidance about which country’s laws control. Most practitioners work in small firms or as solos.”).

37. RONIT DINOVITZER ET AL., THE AM. BAR FOUND. & THE NALP FOUND. FOR LAW CAREER RESEARCH AND EDUC., AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 35 (2009), available at http://www.law.du.edu/documents/directory/publications/sterling/AJD2.pdf (“A large minority of attorneys were doing at least some work that involved clients from outside the United States or cross-border matters. Forty-four percent (44%) of attorneys reported such work. The lawyers most likely to report doing international legal work were those in the largest law firms, where two thirds reported doing it, and inside counsel, where almost as many (65%) reported work that involved non-U.S. clients or cross-border matters. Among legal services and public defense lawyers, work that involved non-U.S. clients or non-U.S. law was also common, with 61% of attorneys reporting they had done some such work during the past year. The international work in large corporate firms mainly serves foreign corporate clients, while the work of legal services and public defense lawyers likely involves individual clients who are facing immigration issues.”). For information on the sample and response rates, see id. at 12.

38. DeJarnatt & Rahdert, supra note 24, at 20 (footnotes omitted); see also id. (“This response [to the survey] supports our original thesis that international and comparative legal issues have become part of the general practice of law.”) (internal cross-reference omitted).
According to this study, practitioners typically do not experience a steady stream of matters with a global twist; rather:

[T]he bulk of . . . respondents encounter foreign and international law occasionally and unexpectedly, in the course of representing fairly “ordinary” clients on apparently “ordinary” matters that primarily involve domestic United States law. They undertake work on what seems initially to be a fairly routine business, property, tax, personal injury, or domestic relations matter, only to discover that it contains a foreign or international component they may not have initially anticipated.39

That is, these matters arise even in the practice of those who are not seeking international clients, business clients, or foreign language clients. Globalization, instead, is a more routine aspect of being a U.S.-based lawyer.40

In part, the importance of globalization across such a wide variety of practice settings is explained by the increasingly international population in the U.S. “The foreign-born population in the United States tripled in the past four decades and currently totals about 37 million, or nearly 12 percent of the total population.”41 Moreover, the effect of this growth goes beyond the states that have received substantial foreign-born populations in the past.42 “From 1990 to 2000, the foreign-born population grew by 145 percent in 22 ‘new growth’ states, compared to 57 percent average growth nationwide.”43 At the same time, the proliferation of technology enables much activity to occur regardless of borders that in years past would have complicated, if not barred, such conduct. Cross-border investment, for example, is greatly facilitated by technology that enables direct contact between investors in one country and investment vehicles

39. Id. at 23.


42. GRANTMAKERS, Immigration, supra note 41 (“In 2000, two-thirds of all the foreign-born lived in the traditional ‘big six’ immigrant states (California, New York, Texas, Florida, Illinois, and New Jersey), down from three-quarters in the decades before 1995.”) (citation omitted).

43. GRANTMAKERS, Immigration, supra note 41; see also Randolph Capps, Michael E. Fix & Jeffrey S. Passel, The Dispersal of Immigrants in the 1990s, 2 URB. INST. IMMIGRANT FAMILIES AND WORKERS FACTS AND PERSPS. 2 (Nov. 2002), available at http://www.urban.org/publications/410589.html (“The 22 states that absorbed these largely labor-driven flows form a broad band across the middle of the country, with the highest growth levels occurring in North Carolina, Georgia, Nevada, and Arkansas . . . .”).
and opportunities elsewhere. Together, these growth trends render globalization relevant to lawyers who practice well beyond the context of business clients and multinational corporations.

Overall, the wider spread of globalization’s influence on the work of lawyers should motivate schools to prepare students to work in environments in which crossing borders, literally and virtually, vacillates between a routine and an occasional part of practice. Several steps already are underway. A number of law schools require a course relevant to globalization’s influence, and, according to a recent study by the American Bar Association’s Section of Legal Education and Admissions to the Bar, the topic of international and comparative law topped the list of subject areas in which a significant increase in course offerings was found at U.S. law schools. Globalization’s influence also is reflected in the publication of a series of books that address global dimensions of typical law school subjects. From family law to corporations and ethics, these books offer faculty a streamlined approach to adding international and comparative material and issues to their courses. These steps, however, still approach learning about globalization as an intellectual matter rather than as an experiential matter—a way of working.

A broader view by the leadership of the legal academy was reflected in the focus of the 2013 annual meeting of the Association of American Law Schools. In announcing its theme of “Global Engagement and the Legal Academy,” the organizers recognized the challenges of teaching students to interact with lawyers educated in other countries and to “develop cultural competencies for practice.”

44. See J. WILLIAM HICKS, INTERNATIONAL DIMENSIONS OF US SECURITIES LAW §1.11 (2013) (“Significant advances in information, transportation, and telecommunications technologies have transformed global capital markets. The technology revolution, which is ongoing, has facilitated instantaneous world-wide access to information about trading conditions, including prices and volume, through computer screens. Markets which were previously separated by time and distance are now electronically linked.”).


46. Carpenter, supra note 45, at 74.


48. 2013 AALS Annual Meeting Theme, Ass’n of Am. Law Schs., https://memberaccess.aals.org/eweb//DynamicPage.aspx?webcode=2013amwhy&Reg_event_key=a931e6c6-e043-4c5d-9af6-491599393238&RegPath=EventRegFees (last visited Feb. 17, 2013) (“At this annual meeting, the Association of American Law Schools goes global. As the legal academy’s learned society, AALS invites engagement with the intellectual, theoretical, pedagogical, professional, and collegial opportunities and challenges that globalization
As law schools join other disciplines in recognizing the importance of globalization, they must turn to the task of addressing its challenges. As Betty Leask, an expert in international education at the University of South Australia explained, globalization has

Propel[led] local institutions, their staff, students and their graduates irreversibly into the world-wide environment. . . . Intercultural competence or intercultural literacy, the understandings, competencies, attitudes, language proficiencies, participation and identities necessary for successful cross-cultural engagement, is an important graduate outcome in such a world. As the world has become increasingly more connected and more divided, it becomes more important than ever before to build “bridges of tolerance and respect for other cultures.”

This Part has considered the reticence of the legal profession to recognize the need for the attitudes and interpersonal skills described by Leask and others, despite the growing importance of globalization in much of legal practice. Thus far, law schools have followed suit, while also benefiting from the presence of increasing numbers of international students. More detailed evidence of the current approaches of law schools is set out in Part III. Before exploring these data, Part II considers the challenge of educating students for a global environment.

II. CHALLENGES TO EDUCATING FOR GLOBALIZATION

In order to prepare students to work in a global environment, schools must consider effectiveness with regard to their curricular choices, and efficiency with regard to ensuring the broad availability of the opportunities they develop. This Part explores these challenges and draws on studies of higher education generally to provide a context for the focus on law schools in Part III.

Perhaps the classic approach to learning to work in a global environment is to do just that—spend time outside of one’s home country. Research confirms presents. Theoretically, those challenges include, among many others, the limits of sovereignty and the reach of regulation in a globalized economy; the effects of supranational organizations on national enforcement regimes; the increasingly strategic interactions between individuals and nongovernmental organizations and the supranational; the impact of proliferating sources of law; and the development of new fields of legal knowledge that address all of these issues. Pedagogically, our challenges include how to prepare our students to recognize and analyze transnational legal issues; how to build the global into the curriculum; how to teach effectively to globally diverse student bodies; how to develop cultural competencies for practice; how to provide cross-boundary professional opportunities; and how to do all of this in a time of cost constraints. Professionally and collegially, we face questions of how best to build effective and respectful relationships and collaborations with legal academics, institutions, and scholarly organizations in other countries and how to determine what ethical engagement with the traditions in other countries entails.”

that study abroad furthers at least certain aspects of the development of intercultural competency. Many consider spending some period living overseas to be a crucial element in developing cross-cultural sensitivity and communication skills. Whether as students or in the workforce, the experience of living in another country stretches individuals in obvious and subtle ways.

Study abroad opportunities are available in most U.S. law schools, but data are ambiguous regarding participation. According to Adelaide Ferguson, an expert on international higher education, “[i]t is not unreasonable to speculate that as many as 10% of the students in the national cohort of first-year law students of approximately 49,000—or 4,900 law students—go abroad sometime during their law school career.” Despite its advantages, however, studying abroad is

50. See Mark Hungerford Salisbury, The Effect of Study Abroad on Intercultural Competence Among Undergraduate College Students 92 (May 2011) (unpublished Ph.D. dissertation, University of Iowa), available at http://ir.uiowa.edu/etd/1073 (describing research findings that “studying abroad significantly affects the positive development of intercultural competence . . . . [and] provides an educational benefit regardless of the student’s pre-college background, educational aspirations, or college experiences”) (citation omitted).

51. See Vance, supra note 27 at 375 (“As individuals consider how to begin to develop key competencies for a career in a global economy, they may do well to consider consistent findings of the expatriate literature that recommend foreign on-site experiential learning of a significant duration. Therefore, individuals should seriously consider extended work experience in a foreign business environment as very productive ‘field learning’ for building important global competencies.”) (references omitted); Hanna, supra note 29 (“One of [Harvard Professor of Management Practice William] George’s first recommendations for would-be global leaders is to live in a country where the language spoken is different from that in one’s home country.”). On overseas immersion experiences in higher education, see H. Tyronne Black & David L. Duhon, Assessing the Impact of Business Study Abroad Programs on Cultural Awareness and Personal Development, 81 J. EDUC. FOR BUS. 140, 142 (2006) (reporting that students made significant gains with regard to “cross-cultural tolerance and empathy and self-confidence and independence” from a month-long study abroad program); Rebecca Lindsey Parsons, The Effects of the Internationalisation of Universities on Domestic Students 41 (June 2007) (unpublished Ph.D. dissertation, Griffith University) (on file with author), available at https://www120.secure.griffith.edu.au/rch/items/54db4022-d0e0-4c4c-828f-97f4525e1b1/1 (“[S]ome theorists believe that truly learning about other cultures (and by extension, the skills learned through those experiences) is so complex that it cannot be done without extensive time abroad.”) (citation omitted); see also Ian S. Mutchnick, Cheryl A. Moyer & David T. Stern, Expanding the Boundaries of Medical Education: Evidence for Cross-Cultural Exchanges, 78 ACAD. MED. S1, S4 (2003) (reviewing studies assessing the effect of cross-cultural experiences in medical education and finding that “increased cultural competence and a deeper understanding of professional practice through comparative experience appear to be the most frequently cited professional outcomes”).

52. Note, however, that Salisbury’s research “suggests that while study abroad participation increases one’s inclination toward diverse contact, it has no statistically significant effect on one’s comfort with diverse interactions or one’s relativistic appreciation of cultural differences.” Salisbury, supra note 50, at 93.

53. Ferguson, supra note 7, at 6–7 (footnote omitted); see also Enrollment and Degrees Awarded, AM. BAR ASS’N, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf (last visited Feb. 17, 2013) (presenting statistics on number of graduating students per year).
expensive, and in light of the current financial conditions and their effect on legal education in the U.S., it is unrealistic to rely on it as the means of educating all law students with regard to intercultural competency. In addition, certain students may not sufficiently understand the relevance of such an experience to motivate them to spend time overseas. Instead, some effort must be made to provide meaningful opportunities to students who cannot afford to leave the U.S. for an extended period of overseas study, as well as to those who do not recognize the importance of venturing abroad.

This dilemma is not unique to law schools. Generally in higher education, while studying abroad is an important path for students to develop cross-cultural skills and experiences, schools also aim to create a global climate on their U.S. campuses, where they host international students. Administrators and researchers alike recognize that “[w]hile a relatively small number of students have the opportunity to study abroad, . . . in a university in which there is a large number of international students, all students can in theory benefit from their presence.” At least one element of transforming theory into reality relates to ensuring that international and domestic students interact in meaningful ways.

Research on intergroup contact theory suggests that meaningful interaction is both possible and is correlated with a reduction in prejudice. Social psychologists explain that contact between members of different social groups helps to alleviate prejudice:

Positive intergroup contact alleviates anxiety over interacting with outgroup members. This decrease in anxiety in turn relates to decreased prejudice . . . Positive contact also enhances empathy for the outgroup and adoption of the

54. See FERGUSON, supra note 7, at 10 (“[A]n imperfect survey reveals the range to be less than $500 per credit to more than $1,500 per credit, which may or may not include housing, fees, and other expenses. Most law students are likely to use student loans or their own funds to finance study abroad.”).

55. On short-term study abroad and its outcomes for learning, see Dwyer, supra note 19 (assessing effect of duration of overseas experience).

56. On costs of studying abroad in law school, see, e.g., Richard C. Sutton & Donald L. Rubin, THE GLOSSARI PROJECT: INITIAL FINDINGS FROM A SYSTEM-WIDE RESEARCH INITIATIVE ON STUDY ABROAD LEARNING OUTCOMES, 10 FRONTIERS INTERDISC. J. STUDY ABROAD 65, 77 (2004) (One learning outcome of study abroad, “functional knowledge, captures the knowledge base needed for efficacy in navigating daily routines within a new environment. Many study abroad participants regard functional knowledge as an especially empowering and transformative outcome of their experience, for it instills confidence that one can achieve goals even in unfamiliar settings. Students who had studied abroad reported a higher level of functional knowledge than did their peers who lacked this horizon-broadening experience. This was the largest effect that we found in this study; over 30% of the variance in this outcome could be attributed to studying abroad. One would expect that functional knowledge—such as how to make a phone call from abroad, how to locate a safe night spot, or how to pacify an angry merchant— is particularly enhanced by programs that provide participants with large amounts of time during which they fend for themselves.”) (citations omitted).

57. Parsons, supra note 51, at 38.
outgroup’s perspective. One begins to sense how outgroup members feel and view the world. This increase in empathy and perspective taking diminishes prejudice. 58

Several studies investigating the relationship between domestic and international college students confirm the relevance of intergroup contact theory with regard to international diversity, finding positive effects related to interaction. In one, education researchers Sharma and Jung tested students at several U.S. universities and concluded that interaction with international students led to gains in seven aspects of intercultural sensitivity and awareness. 59 Their research indicated that more interaction led to greater gains. 60 Another study found that college students “who had participated in group projects with international students scored significantly higher than those who had not” with regard to several aspects of cognitive and affective learning related to international matters. 61 The findings of other research are consistent. 62

A substantial challenge in turning the theory of intergroup contact into reality with regard to international and domestic students is to ensure that the contact among students, both qualitatively and quantitatively, is appropriate to facilitate learning. A number of studies have found that contact does not necessarily follow from presence in the same school. Rather, meaningful interaction requires intentional choreography. 63 “Experience suggests that simply bringing [domestic] and international students together in class and on campus does not necessarily result in meaningful interaction between them or the development

59. Madhav P. Sharma & Loren B. Jung, How Cross-Cultural Social Participation Affects the International Attitudes of U.S. Students, 9 INT’L J. INTERCULTURAL REL. 377, 381-82 (1985) (“[The seven areas are:] a. The development of a cosmopolitan world outlook . . . ; b. The acceptance of cultural pluralism . . . ; c. . . . worldmindedness . . . ; d. . . . understanding of their own cultural patterns . . . ; e. . . . support [for international] exchange . . . ; f. . . . career aspirations to include international dimensions; g. . . . political liberalism.”) (emphasis omitted).
60. Id. at 383 (“In all cases the higher the interaction level the more positive the attitude of U.S. students to these postulated dimensions of outcome for international education.”).
61. Parsons, supra note 51, at 131-32 (noting that the factors that were influenced by group projects were knowledge of a specific region or country, international knowledge, global interdependence and cooperation, intercultural communication and teamwork, intercultural friendship, behavioral flexibility, intercultural curiosity and involvement, and political involvement).
62. See Parsons, supra note 51, at 38-41 (presenting an extensive literature review).
of valuable intercultural communication skills and international perspectives."  

Leask identified several reasons for the lack of interaction, including language, social skills, and past experiences of home and international students to the nature and structure of the learning environment and individual assessment tasks; the opportunities provided for interaction in and out of the classroom; and the intrinsic and extrinsic motivation and reward for that interaction for both home and international students.  

These and similar influences were confirmed in a study conducted by an interdisciplinary team of scholars, Kondakci, Van den Broeck, and Yildirim, who investigated students enrolled at the Vlerick Leuven-Ghent Management School in Flanders, Belgium. The authors found that bringing students together does not guarantee meaningful exchange. Rather, they described the social interaction of international and domestic students as “bounded”—meaning that “foreign and local students create their social territories and each group of students tends to homogenize in these social territories.” The study identified differences in goals of domestic and international students that resulted in barriers to interaction. Domestic students were focused on efficiently completing their academic work. Some lived far from campus, for example, which interfered with easy interaction with international students, who generally were more likely to be physically tied to the campus. At the same time, many domestic students felt challenged by having to interact with international students in


65. Leask, supra note 49, at 207 (drawing on studies conducted by others cited in Leask).


67. Id. at 455-56 (“In this study the respondents pointed to the bounded nature of social interaction between foreign and local students. . . . The interviewees suggested several common underlying reasons behind bounded social interaction. First of all, local students’ lifestyle emerged as a reason behind lack of interaction between foreign and local students. . . . Secondly, local students are academically oriented. Their primary concern is accomplishing academic tasks rather than forming social relations with foreign students. Their priority focuses on coping with the intensive and challenging nature of the program. . . . Third, local students claimed that foreign students go through adaptation problems. They claimed that these problems limit foreign students’ ability to integrate into life in Belgium including the School context. Consequently, social interaction between foreign and local students is hindered. . . . Fourth, the students indicated English language skills as another issue behind bounded social interaction. . . . Finally, foreign students indicated a lack of managerial support for improving social interaction between local and foreign students. Typical initiatives and practices in international [higher education organizations] were at their infancy at that time in the School.”) (citations omitted).

68. Id. at 455 (“[L]ocal students live in other cities in Belgium and in their free time (i.e., vacations, weekends) they go home. Therefore, they miss the chance of meeting foreign students for a free time activity.”).
English rather than their native Flemish or French. On top of the difficulty resulting from differences in language were challenges from limited cultural knowledge. Kondakci and his colleagues found that local students have a fear of humiliating foreign students in conversations because they do not know friendship patterns of different cultures. For example, they do not know which jokes are acceptable, and which are not for foreign students. Hence, they try to avoid this risk by interacting with home-country peers only.

Their study also revealed negative assumptions on the part of domestic students about the abilities of foreign students. Domestic students reported “that foreign students are accepted to the School through a biased enrollment process because of the desire to improve the international character of the School and to get international accreditations.” Not surprisingly, these beliefs led domestic students to prefer to collaborate with other domestic students based on their “beliefs about the low academic skills and capacity of foreign students.”

The hallmark of the research findings described in this Part is the absence of interaction. Scholars investigating student interaction in colleges and business schools outside of the United States found that interaction does not spring from presence. Rather, differences in interests, among other factors, explain the tendency of students to avoid those in other groups. In Part III, the focus shifts to consider whether the U.S. law school context is comparable.

III. THE LAW SCHOOL CONTEXT FOR INTERACTION

Perhaps interaction between international and domestic students in U.S. law schools does not follow patterns found in other settings of higher education. This Part investigates the law school context, beginning with a brief description of international students’ enrollment in the U.S. It then draws on survey research to gain a nuanced understanding of patterns of engagement between international and domestic law students.

The potential for meaningful engagement between international and domestic students in U.S. law schools is shaped in the first instance by enrollment patterns for the two groups. By and large, domestic students pursue the three-year JD degree in law school, which is required in order to sit for the bar in

69. Id. ("[F]oreign and local students highlighted different dimensions of the language issue. Local students indicated that the low mastery level of the common language by foreign students as one of the reasons behind bounded social interaction. Local students claimed that foreign students from particular national backgrounds have low mastery levels of the common language and they feel more comfortable in socializing with each other rather than interacting with other students. Whereas, foreign students claimed that language preferences of local students is the reason behind bounded social interaction.").

70. Id. at 459.

71. Id. at 454.

72. Id.
most U.S. jurisdictions. Their curriculum is somewhat standardized, particularly with regard to a set of required courses for first-year students; after the first year, students have greater freedom to select their courses. Experiential courses, particularly clinics and externships, are common and popular offerings for upper-level students. According to a recent survey, approximately three-quarters of third-year students participated in either clinics or externships during their final year of law school.

In contrast, the most common degree program for international students is a post-JD degree. Typically, this is a one-year curriculum often leading to an LL.M. International students interested in studying law in the U.S. generally have enrolled in a U.S. law school after completing a first degree in law in their home countries. Under these circumstances, an additional three years of study, particularly at U.S. law school tuition rates, is more of an investment of resources and time than many feel is warranted. International law graduates may enroll in JD programs, of course, and there is at least anecdotal evidence that this is occurring more frequently. But the common pattern has been for them to pursue the LL.M. or a similar one-year post-JD degree. As a consequence, international and domestic students typically enroll in different degree programs in U.S. law schools.

To some extent, this difference in degree program shapes interactions between international and domestic students in law school. For example, it is quite common for law schools to provide a multi-day orientation program for first-year JD students that is separate from the orientation offered to international students. At many law schools, separation occurs in courses, too. Certain law schools exclude international students from first-year JD courses, or permit only a limited number of international students to join in parts of the first-year curriculum. Both of these experiences—orientation and first-year courses—

73. See Carpenter, supra note 45, at 55 (reporting that only 21% of law schools responding to a survey about curriculum allow first-year students to select an elective course).


76. In addition, JD programs include international students who have not have studied law in their home country as well as those whose undergraduate degree was earned in the U.S. These students are referred to below in Part V.

77. See, e.g., LL.M. Program, COLUMBIA LAW SCH. http://web.law.columbia.edu/admissions/graduate-legal-studies/llm-program (last visited Feb. 17, 2013) (“The courses and seminars open to LL.M. students are generally those open to J.D. students in the second and third years. Additionally, all LL.M. candidates except those who hold a J.D. from a U.S. law school are required to take an introductory course on
are central sites for law students to establish relationships with their classmates. To the extent that international and domestic students do not share these experiences, opportunities for interaction are limited.

While accurate information regarding the number of U.S. law schools that offer particular degree programs aimed at international law graduates is not easily available, in earlier research I analyzed law school websites to learn about the variety and availability of these programs. My research, conducted in 2005-2006, identified 102 ABA accredited law schools as offering graduate degree programs for international law graduates. Some of these schools offered multiple programs, often focused on specific fields of law. There is no reason to think that the number of schools with such programs has decreased in the intervening years; in fact, it is quite the opposite based on the growth of the international student population in the U.S. generally. Consequently, at a minimum, the presence of international students in more than half of all ABA-

the common law and the American legal system as well as a course on legal research and writing offered uniquely for LL.M. candidates during the month of August.\). Georgetown Law Center’s description for its Graduate Legal Studies program is similar. Academic Opportunities, GEORGETOWN LAW, http://www.law.georgetown.edu/admissions-financial-aid/graduate-admissions/quick-facts/Academic-Opportunities.cfm (last visited Feb. 17, 2013) (“Close to 140 lecture classes and 90 seminars are specifically for graduate students; graduate students may also take most upper-level courses with J.D. students.”). But see Curriculum, BOST. UNIV. LAW SCH., http://www.bu.edu/law/prospective/llm/american/courses.html (last visited Feb. 17, 2013) (“You can pursue studies in a range of fundamental American law topics, including any of the first-year classes in civil procedure, torts, contracts, constitutional law, legislation, property and criminal law.”).

78. The American Bar Association’s Section of Legal Education and Admissions to the Bar includes a list of law schools offering post-JD programs on its website. The category “Programs for Foreign Lawyers” includes programs at 154 law schools. Post JD Programs by School, AM. BAR ASS’N, http://www.americanbar.org/groups/legal_education/resources/llm_degrees_post_jd_non_jd_programs_by_category.html (last visited Feb. 17, 2013). It is not clear, however, whether this list also includes programs open only to JD graduates; see, for example, Loyola LL.M. Program in Trial Advocacy, Appellate Advocacy, and Alternative Dispute Resolution, which is included on the ABA’s list but indicates in its description that it is aimed only at JD graduates. LLM Program in Trial Advocacy, Appellate Advocacy, and Alternative Dispute Resolution, LOYOLA UNIV. CHI. SCH. OF LAW, http://www.luc.edu/law/academics/special_center/adv_llm.html (last visited Feb. 17, 2013).


approved law schools offers opportunities to provide the kind of interaction that will facilitate both domestic and international students in developing intercultural competencies that, in turn, will prepare them for practice in a global environment.  

But is meaningful interaction between international and domestic students occurring in U.S. law schools? Evidence regarding interaction is available from data collected in 2011 by the Law School Survey of Student Engagement (LSSSE). The LSSSE survey is administered each year to law students at participating law schools. Generally, the survey asks students about their activities during law school as well as about their perceptions regarding their learning and development. It is administered only to JD students. Each year, several sets of experimental questions on particular themes also are administered to students at certain of the participating schools. In 2011, experimental questions explored the relationships between domestic and international students by asking JD students about their interactions with international law graduates enrolled in degree programs other than the JD degree at their schools. The difference in degree programs was used as a means of comparison because, as described earlier, most international students enroll in one-year post-JD programs. The data described below reveal that law schools resemble the college and business school settings described in Part II, with very limited interaction between international and domestic students. The difference in degree programs that facilitated the LSSSE questions also may contribute to limiting interaction.

These experimental questions were submitted to students at twenty-one U.S. law schools, and responses were received from 6893 JD students. The twenty-one schools that received these questions included schools located in urban and non-urban areas, on the East and West Coasts, in the Midwest and in the South. Certain of the schools had very large international graduate programs, while others hosted small numbers of students in their international graduate programs. Both private and public law schools were included. LSSSE

81. See Part V for a discussion of alternative models for globalizing law schools, including schools without graduate programs for international law graduates.

82. From 2004 through 2013, 187 law schools in the U.S., Canada, and, beginning in 2012, Australia, have participated in LSSSE, yielding more than 255,000 responses. In 2012, 81 law schools participated in LSSSE, and in 2013, 97 law schools participated; more than 25,000 students responded to the survey in each of these years with an average institutional response rate was slightly below 50%. In order to participate, schools pay participation fees of between $3,000 and $5,000 per year based on the size of their student body. In return, they receive anonymized data as well as comparative information about a group of peer law schools (selected by them) and other comparison groups. See LSSSE RESULTS, supra note 73; Administering LSSSE, LAW SCH. SURVEY OF STUDENT ENGAGEMENT, http://lssse.iub.edu/administering.cfm (last visited Feb. 17, 2013).

83. The results reported here are a subgroup of the original experimental dataset. One school was excluded from the data for purposes of the analysis presented here because its program is organized in a way that minimizes interaction.
selected only schools that offered at least one graduate program for international law graduates (such as an LL.M.) for participation in this set of experimental questions, and each of the surveyed schools in fact enrolled international law graduates in its program. Approximately half of the schools indicate on their websites that they permit JD graduates as well as graduates of foreign law schools to enroll in their LL.M. or other graduate degree programs, although particular LL.M. degree programs at certain of the schools are open only to international law graduates.

The questions, set out in Appendix A, inquired about the frequency of interaction with international graduate students, the nature of that interaction, and students’ perceptions regarding their school’s views on the importance of their interaction. The responses provide insight into the extent and nature of interaction between JD students and international students, and they are consistent with my earlier research on the experience of international students enrolled in U.S. law schools.

In some respects, the survey findings are startling in their revelation of the peripheral role held by international student programs in the eyes of JD students. For example, 30% of the responding JD students indicated that they were not sure whether their school offered a graduate program in which foreign law school graduates could enroll. By the time they answered these questions, even first-year students had completed nearly an entire academic year in law school. Uncertainty about other students and degree programs offered by the law school signals that these students and programs are not central to the work of JD students. It is hard to imagine that students who are unaware of international students studying in their law school will make time to seek them out.

The survey investigated activities that might be sites of interaction with international students (also referred to as ILSs—international law students). These included classes, social activities, study groups and working together on class-related assignments, and programs intentionally aimed at generating interaction through pairing JD students and ILSs. The absence of interaction is perhaps the strongest takeaway of the findings. As shown in Figure 1, more than half of the responding first-year JD students never interacted with ILSs in any of the possible settings. For second and third-year students, more than half of the respondents never interacted in any setting other than class and socializing. For all JD students, the most common site of interaction is in class.

84. See Halualani, supra note 22, at 2 (exploring the students’ reporting about their intercultural interactions).
85. See Silver, supra note 34, at 2407.
86. Cf. Infra Appendix A, Question 1; LSSSE RESULTS, supra note 74. Nor were all of these first-year students; only 40.5% of the students who responded “I don’t know” were 1Ls.
FIGURE 1:  JD students who never interacted with ILSs in selected setting, by class level

Overall, nearly 20% of responding JD students reported interacting with ILSs frequently in class (14% of 1Ls, 21% of 2Ls, and 24% of 3Ls); “frequently” is a result of combining response options “often” and “very often.” But not all courses are identical with regard to the likelihood of interaction. Despite clinics being popular with JD students, and their significant role in U.S. legal education, it is unusual for clinics to be a meeting place for JD students and ILSs. Of the students who reported having at least one class with an ILS, only 2.5% identified a clinical class as the place of meeting.

87. The lower figure for first-year students is consistent with the policy in many law schools of discouraging ILSs from enrolling in first-year mandatory courses. See OPEN DOORS 2007, supra note 80; OPEN DOORS 2012, supra note 80.

88. See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 159 (2007), (“Both faculty and students described clinics as an essential balance for the often abstract and depersonalized nature of legal analysis.”); AM. BAR ASS’N, SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATION CONTINUUM 238 (July 1992) (“Clinics have made, and continue to make, an invaluable contribution to the entire legal education enterprise. They are a key component in the development and advancement of skills and values throughout the profession. Their role in the curricular mix of courses is vital.”); Carole Silver, Amy Garver & Lindsay Watkins, Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement, 17 J. LEGAL WRITING INST. 373 (2011).

89. At certain law schools, international graduate students are not permitted to enroll in clinics. See Graduate Admissions, GEORGETOWN LAW CENTER, http://www.law.georgetown.edu/admissions-financial-aid/graduate-admissions/quick-facts/Academic-Opportunities.cfm (last visited Feb. 17, 2013) (“[O]ur clinical programs are...
Apart from class, JD students are most likely to meet ILSs in social contexts. Nearly 17% of respondents indicated that they frequently interact socially with international students, but slightly more than 45% reported never interacting socially. These data are consistent with research on internationalization of higher education generally, which finds that social interaction between international and domestic students often is limited. In the law school context, social interaction also may be constrained by the separate tracks of student enrollment.

Most U.S. law schools with ILSs organize formal programs that are intended to bring JD students into contact with ILSs, designed explicitly for the purpose of helping ILSs become integrated into the law school community. These programs may partner individual JD students and ILSs, or provide a JD student as a mentor for a group of ILSs, for example. However, these programs reach very few JD students and were the least likely setting for interaction of all those investigated in the survey (Figure 1).

One of the more troubling aspects of the data relates to the infrequency of academic-related interaction outside of class. JD students reported an absence of frequent interaction with ILSs in the settings that typically draw them together with peers to work on coursework, whether in formal study groups (3.7% of responding JD students reported frequently interacting with ILSs in formal study groups), informal study activities (5.5% reported frequently interacting), or in completing assignments outside of class (5.5% reported frequently interacting). One might think these data are explained by the isolated nature of JD students’ study habits and the absence of frequent collaborative assignments in law school. That is, perhaps the low levels of interaction among JD students and ILSs in these settings reflect the fact that JD students simply do not work frequently with any classmate, whether international or domestic, in the JD program or in a graduate program. But approximately 30% of the JD students responding to this set of experimental questions reported frequently interacting with other JD students outside of class for the purpose of working on class assignments; for the sake of simplicity, these students are called “frequent interactors” here. Yet even for these frequent interactors, interaction with international students is limited. Only 9% of frequent interactors reported interacting frequently outside of class with ILSs in order to work on class assign-
ments (Figure 2). Two-thirds of the frequent interactors reported never working with ILSs in this setting.

While the reason for the absence of assignment-related interaction is not available from the survey data, the overall finding of an absence of interaction, particularly among frequent interactors, suggests that the same barriers to meaningful interaction identified by Leask and Kondakci and colleagues also may present challenges for law students in the United States.

Because the classroom is the most common meeting point for ILSs and JD students, the nature of their interaction in class may support the development of relationships outside of class, too. Thus, the nature of their classroom interaction is a useful area of inquiry. Half of the responding JD students indicated that international students had participated in class in order to explain the law or practice in their home country. But there was substantial variation among the schools, and the proportion of responding JD students who indicated that ILSs had commented on their home country law or practice ranged from a low of 16% at one school to a high of 73% at another. Fewer than half of the students at eleven schools indicated that their interaction in class related to such a comment. There was substantial variation in students’ remarks regarding frequency, relevance, or interest in the comments of ILSs. For example, responding JD students described the contributions of ILSs as common (“Almost every class
with a foreign graduate student had one explaining the difference/similarity to his/her home country. It is a common occurrence.”), uncommon (“Once there was a discussion of torts in the Netherlands.”), positive (“France has very interesting international law and arbitration law that the student told us about. As well as their law school curriculum. Which was interesting.”), and negative (“Professors often ask and sometimes the foreign students know the answer. Oftentimes they do not. Depends on the subject matter and the student. Many international students do not contribute.”; “Various students in Corporations felt it was their job to explain the law in their country. This did not aid the class discussion. Instead, it was quite annoying to the JD students.”).92

Certain JD students are more likely than others to interact with ILSs. JD students with some international connection, whether through interest in law school and membership in an international law society, or through prior experience such as studying abroad before law school, reported interacting more frequently than those without these connections. Nevertheless, even the proportion of students in the internationally-minded group93 who interact frequently with ILSs still is very small (Figure 3). Interaction in class remains the setting that attracts the largest proportion of frequent interaction, even for internationally-minded respondents; but still interaction levels reached only 21.5%.

92. See Kondakci et al., supra note 66, at 453. Negative reactions are consistent with feelings expressed by international students to Kondakci and colleagues. International students reported a reluctance to offer the perspective of their home countries, particularly when they were in the minority in the class. A Taiwanese student, for example, recounted that “because 30 people are Belgian, and they feel like ‘ok here she comes again’. For me it is something I want to express . . . to make them know that there are other realities and other ways of working and thinking. That’s a bit hard.” *Id.* The “here she comes again” sense of this student is an accurate assessment of the reaction of certain of the law students who offered comments in their LSSSE responses. *LSSSE Results, supra* note 74.

93. “Internationally-minded” is defined here as students who indicated being members of an international law society, speaking a foreign language sufficiently well to converse on a casual basis, completing at least one semester of study outside of the U.S. during college, or living outside the U.S. for at least three months when not a student; “non-internationally-minded” students had none of these experiences.
FIGURE 3: *JD students who frequently*[^94] *interact in selected settings, comparing internationally-minded students to non-internationally-minded students*[^95].

Taking the responses reported in Figures 1 and 3 together shows that most JD students proceed through school without regular interaction with international students in any setting, much less under the circumstances in which meaningful interaction is most likely. Moreover, even in class—the most common site of interaction for all JD students—interaction may be affected by the disproportionate representation of domestic students at certain law schools, where enrollment of international students is capped in particular classes so that the domestic students remain in the majority and constitute the “norm” for teaching purposes. This, too, of course, limits opportunities for intercultural exchange for domestic students.

Finally, in order to learn about the messages students receive from their schools about the importance of exchanges with ILSs, students were asked whether their school emphasized interaction between JD students and international graduate students. Overall, fewer than 10% of JD students felt that their school substantially emphasized interaction in most of the settings (Figure 4). Even in class and school sponsored activities, the percentage of students who

[^94]: “Frequently” is derived by combining response options “very often” and “often.”

[^95]: In this and subsequent figures, “Assignments outside class” is used as a shorthand for “Completing assignments outside class,” as used in Figure 1.
felt their school significantly emphasized interaction was only slightly greater than 10%. Generally, the responses reported in Figure 4 indicate either that the schools do not consider interaction between JD students and ILSs to be central to their mission, or they simply are failing to clearly communicate the importance of this interaction.

It is possible that internationally-minded JD students are more sensitive to their school’s messages regarding encouraging interaction with ILSs. Figure 5 compares the responses of internationally-minded and non-internationally-minded students with regard to their sense of their school’s emphasis on interaction and their reported interaction in the same setting, drawing the latter data from Figure 3. Generally, more internationally-minded students frequently interact with ILSs than perceived their school as emphasizing interaction. The only exception to this pattern was with regard to the formal networking programs, for which schools often recruit JD students to participate, thus communicating the importance of interacting. More non-internationally-minded students interact in class and in social settings than the proportion who consider their school to place substantial emphasis on interaction in these settings.

96. “Significantly” is derived by combining response options “very much” and “quite a bit.”
FIGURE 5: Comparing students’ interaction with their perception that their school emphasizes interaction in particular settings, internationally-minded and non-internationally-minded students

These results, gathered through the LSSSE survey, describe low levels of interaction between JD students and ILSs. In addition, the most common site of interaction is in class, where discussion is framed by faculty and the contributions of international students may be interpreted positively, neutrally, or negatively—often without the knowledge and outside the control of ILSs. These data suggest that much more can be done to promote interaction at every level and that schools are not capitalizing on the presence of international students in ways that offer opportunities for gaining intercultural skills.

IV. DESIGNING INTERACTION

Assuming that law schools want both to improve the amount of interaction between their JD and international students and to maximize opportunities for them to learn how to work in global contexts by developing their cross-cultural communication and related skills, what must they do differently? This Part begins by identifying the hallmarks of meaningful interaction and considers the challenges posed by the law school context. It then offers one example of how law schools might re-orient their approaches to teaching international and do-
mestic students to capitalize on the benefits of an internationalized student population.

Meaningful interaction is premised on several factors. A straightforward articulation of a framework of factors that shape interaction was developed by social psychologist Gordon Allport, who suggested that the presence of four conditions would result in reduced prejudice between different social groups. 97 These factors are “(1) equal status of the groups in the situation, (2) common goals, (3) intergroup cooperation, and (4) the support of authorities, law, or custom.” 98 Initially articulated with regard to interaction among racial groups, Allport’s theory also has been applied to the international student context. 99

For international and domestic law students studying in U.S. law schools under existing conditions, satisfying Allport’s conditions is challenging. Many law schools, for example, consider students in degree programs other than the J.D. as ancillary to the school’s focus. This attitude is reinforced by the ABA accreditation focus on J.D. students 100 as well as by the effects of rankings. 101 Combined, these factors undermine Allport’s first condition, that each group have equal status.

Nor is it clear that international and U.S. students have common goals, Allport’s second factor. For many international students, one important goal is

97. Gordon W. Allport, The Nature of Prejudice 281 (1954) (“Prejudice ... may be reduced by equal status contact between majority and minority groups in the pursuit of common goals. The effect is greatly enhanced if this contact is sanctioned by institutional supports (i.e., by law, custom or local atmosphere), and provided it is of a sort that leads to the perception of common interests and common humanity between members of the two groups.”); see also Nilanjana Dasgupta & Shaki Asgari, Seeing is Believing: Exposure to Counterstereotypic Women Leaders and its Effect on the Malleability of Automatic Gender Stereotyping, 40 J. Experimental Soc. Psychol. 642 (2004) (describing the role of experiences in reshaping gender stereotypes).


99. See, e.g., Vija G. Mendelson & Barbara Kappler Miks, Theory Reflections: Contact Theory / Contact Hypothesis / Intergroup Contact, NAFSA: Ass’n of Int’l Educators, http://www.nafsa.org/_/File/_/theory_connections_contact.pdf (last visited Apr. 29, 2013) (“[Allport’s] contact hypothesis research, combined with research on language acquisition and intercultural competency development, provides us with a clear direction on how to create the most impactful study abroad experiences.”).

100. See Am. Bar Ass’n, ABA Standards and Rules of Procedure for Approval of Law Schools 2012-2013, at 28 (2012), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf (“Standard 308. DEGREE PROGRAMS IN ADDITION TO J.D.: A law school may not establish a degree program other than its J.D. degree program without obtaining the Council’s prior acquiescence. A law school may not establish a degree program in addition to its J.D. degree program unless the school is fully approved. The additional degree program may not detract from a law school’s ability to maintain a J.D. degree program that meets the requirements of the Standards.”).

learning about U.S. law students and lawyers. Their motivations for enrolling in a U.S. graduate law program may stem from their interest in preparing to represent clients who either have ties to the U.S. or are working with or opposite parties with such ties, and for this purpose they may hope to learn about U.S. popular and professional culture, about how U.S. lawyers think and basics of the common law approach, as well as practice their English skills. Consequently, developing relationships with their U.S. classmates is important. By and large, however, U.S. JD students are not focused on developing relationships with international students; indeed, some might question whether developing relationships within the JD class is a common goal for law students. Rather, their energies appear typically to emphasize those factors relevant to obtaining marks of perceived prestige that are recognized in law schools and the job market for new lawyers, including law school grades and participation in activities such as law review and moot court. Earning high grades may not be as important to international law students, and at schools where different grading scales are used for international graduate students and JD students, grading is not comparable.

Allport’s third factor, intergroup cooperation, may not have obvious relevance in certain U.S. law schools. There may not be mechanisms facilitating or requiring group cooperation, aside from the formal networking programs described briefly above—and these reach few JD students.

Finally, while U.S. law schools support the presence of international students by inviting their enrollment, they often fail to provide support that promotes equal status between students in the two groups. For example, at many schools, international graduate students do not participate in on-campus interviewing along with JD students. Moreover, as discussed in Part III, most JD students do not perceive their schools to emphasize the importance of interacting with international students.

Simple accommodations to achieve the parity set out by Allport are not obvious. The current focus of most U.S. law faculty is on teaching U.S. law to prospective U.S. lawyers and includes hallmarks that in themselves may privilege domestic students compared to their international classmates. These include the enormous emphasis on language that stems from case and statutory analysis. Teaching methods, whether Socratic or an alternative that similarly relies on student participation, emphasize language in addition to implicating


103. Silver, *Internationalizing U.S. Legal Education*, supra note 79, at 171 (“According to one graduate director [of a U.S. law school international LL.M. program], ‘[G]rades are not important at all for finding work in the U.S. . . . Firms look at grades, but no big deal if the grades are not stellar.’ Another director reported, ‘Grades matter some, but usually other factors weigh in.’”).

104. See Silver, supra note 102, at 908-10.
cultural norms that relate to learning styles and classroom conduct. To create a culture in which international and domestic students are of “equal status” will require considerable re-orientation by law faculty in their classrooms. A useful way to describe the kind of change that might be necessary is offered by geographer Martin Haigh in the context of his analysis of the goal of internationalizing the curriculum in higher education:

The chief challenge is to remove the notion that ideas from non-Western traditions are ‘exotic’ and to establish them as normal. . . . [.,] to develop courses and curricula that embed and validate the thought of cultures other than the Western and present them to local learners without making them seem exhibits in a museum.

This is a complex problem for all of higher education, but it is perhaps especially difficult for law schools that must have as a central mission the teaching of U.S. law. In Haigh’s view, an internationalized curriculum “faces local learners with the problems currently faced by international learners.” This might be akin to teaching domestic law students in a second language, for ex-
ample, an unusual approach today in U.S. law schools and one for which many law faculty are ill-equipped.

At the same time, it is not clear that changing the essential process of teaching is necessary in order to achieve the goals set out by Allport. Nor is it obvious that all international students would find such a change appealing; many seek to experience U.S. legal education as much as they hope to learn U.S. substantive law. Rather, what may be required is more of a shift in mindset about the importance of teaching all students—including international students—and of identifying effective methods of instruction that address their capabilities and challenges.

Several studies from outside of the law school context offer possible ideas for pursuing a shift in the learning environment towards that described by Allport. Some of these address barriers related to diversity on campus, for example. Others are more directly focused on international education. One is particularly relevant here. In it, business professors Figueiredo and Mauri describe an experiential approach to teaching students in business school. What is remarkable about their approach is their appreciation of opportunities for learning that result from difference and, in particular, from the very language challenges that often are considered so problematic in law school. Their study organized domestic and international students into working teams assigned to tackle a problem that implicated the home country of the international students on the team. This connection to their home country had a potential flattening effect on the relationship between students, so that domestic students needed the expertise of the international students’ home country knowledge.


111. See, e.g., Gurin and Nagda, Getting to the What, How, and Why of Diversity on Campus, 35 EDUC. RESEARCHER 20, 22 (2006) (describing the “intergroup dialogue” method for campus diversity efforts, which addresses and supports the formation of identity groups among students and use of such groups to help students “explore their own and the other group’s identities, analyze how power and inequality affect their groups, and examine ways to bridge the intergroup differences,” in contrast to what is described as the more typical approach of encouraging students to bond individually and in spite of their different identities) (citation omitted).

Figueiredo and Mauri preferred that the international students not yet have full command of the English language, that is, that at most they be in the high intermediate level of English knowledge. This is important because there should be some level of difficulty in communication within each team so students need to overcome the challenge of imperfect exchange of ideas and work to extend the limit of their comfort zone.113

For law schools, this preference for nonfluency is nearly heresy; the absence of fluency is perhaps the central complaint among law faculty with regard to international students. Using this very characteristic as an asset provides a new lens for thinking about effective teaching. Many may complain that law is different than business and that the absence of fluency in law students works solely as a barrier. But law graduates must learn to work with clients, lawyers, regulators, and judges, among others, who, although highly educated and fluent in their home language, may lack the English language expertise regarded so highly by law faculty. If business students are being taught to overcome and collaborate despite language differences, one must consider whether law schools serve their students by encouraging reluctance in this regard.

V. COMPETING TO BE GLOBAL

In the discussion above, the unstated assumption is of a homogenous group of international students. Of course, this is unrealistic. Law schools attract students with different characteristics, backgrounds, and abilities, and this is true for international students as well as for domestic students. Certain schools may enroll more students from a particular home country or region, others may include more international students in particular degree programs—whether the JD, an SJD, or the mainstay LL.M. described above. Globalization is likely to emphasize these divisions and the hierarchies they suggest, and law schools may capitalize on the global identities informed by their students and these differences in competing for status, such as by portraying themselves as having the most global approach or a truly global student body.114

The assumed model of globalization discussed so far in this Article is that prevalent in many law schools today, with international law graduates enrolled in graduate-level, non-JD degree programs. But other models are possible and in place in some instances. In this Part, I consider three possible models in the context of exploring opportunities that a focus on globalization might offer.

113. Id. at 8.
114. See, e.g., New York University Law School’s statements regarding its global focus, Global, N.Y. Univ. Law, http://www.law.nyu.edu/global/index.htm (last visited Feb. 17, 2013) (“NYU Law is committed to preparing students to work in a global setting . . . . The Law School’s intellectual reach is global in scope . . . . Global faculty are joined by a diverse array of researchers, fellows and scholars from other countries, as well as more than 300 international students . . . .”).
The first model of globalization is that currently pursued by elite law schools, and generally consistent with the discussion so far. These schools recruit international law graduates primarily for their post-JD programs. They also may attract increased interest in the JD on the part of international students, who may or may not have studied law in their home countries before venturing overseas. Applicants to either degree program typically function at a very high level with regard to language skills. In fact, most elite schools presume that their international students are sufficiently expert with regard to English-language skills to enable them to slide into existing classes without adjustment by faculty. This, of course, is by no means a guarantee that the learning context offers either domestic or international students meaningful opportunities to engage in order to learn the skills necessary to effectively navigate a global practice environment. In order to develop relationships between international and domestic students, the schools would be required to offer direction and create opportunities.

The second model of globalization occurs at the other end of the law school prestige hierarchy, in law schools with student bodies whose global diversity stems from the multicultural backgrounds of students, particularly with regard to students from recent immigrant families. English may be the second language for certain of these students, and they may have reached varying levels of adjustment to the U.S. political and popular culture that informs much of law school class discussion and substance. Some may be temporarily based in the U.S. and may have earned their high school and college degrees here, perhaps specifically for the purpose of preparing for law school and a career that begins, at least, in the U.S. For those without this background, being a student in such a school may provide its own opportunities for intercultural learning. Faculty at such law schools may intuitively adjust to students whose first language is not English. What is not clear, however, is whether these schools actively use the diversity of their students to provide experiences to learn about intercultural communication and sensitivity. Without an intentional and affirmative effort to do this, it is possible that the opportunities for such learning will


116. See, e.g., Schoenberg, supra note 105, at 10 ("'Five or 10 years ago, going abroad was considered what dumb rich kids did, and now it’s considered what smart middle-class kids do,' said Xueqin Jiang, former director of the international division at Peking University High School . . . . The trend appears to be accelerating, Xueqin Jiang said, with Chinese students coming to America to prepare for college while in high school or even middle school.").
be lost. 117 This model of globalization is not equivalent in all respects to the first model, because knowledge about the legal profession in other countries that is innate to the international graduate law student population in the first model is missing here, where those students with international or intercultural characteristics may not have studied law in another country. Indeed, these international students may not have studied in another country at any level. Consequently, in this second model, which is characterized by the cultural, but non-legal, expertise of its participants, not only will some of the lessons differ, but also the mechanisms of bringing the two groups together for effective learning likely will vary and may not be as focused on the classroom as in the first model.

The third model includes schools which are neither elite enough to attract international students with the most advanced English skills nor in a position to draw from a richly multicultural applicant pool. This model may experience the more significant challenge with regard to offering students opportunities to learn to work in a global environment. The international students attracted to schools represented by this third model may be less practiced in speaking and reading in English, particularly in a law setting. Their acculturation to Western norms also may be insufficient to prepare them to adjust quickly to the demands of a U.S. law school classroom. But schools in this third model may develop a global learning environment by looking outside of the formal law classroom to an alternative setting for learning. Avoiding the classroom by organizing experiential activities might offer a mechanism for interaction between international and domestic students in a context that challenges each in ways that create parity. The activities described by Figueiredo and Mauri may be adaptable, for example. Alternatively, the third model might bring domestic students into contact with multicultural clients through clinical courses on immigration or asylum issues, for example, or through international internships. 118

These models suggest cleaner, mutually exclusive versions of law school approaches to hosting students who may contribute to a global learning community. The reality is messier, and each school likely includes elements of each of the models. Nevertheless, they suggest ways in which globalization offers schools opportunities to distinguish themselves, while at the same time recognizing that their particular constellation of students may require a tailored and flexible approach.

117. See Gurin & Nagda, supra note 111, stating that the traditional approach to diversity is one that essentially ignores group differences, favoring instead development of commonalities.

118. See, e.g., Center on the Global Legal Profession, IND. UNIV., http://globalprofession.law.indiana.edu (last visited Feb. 17, 2013) (describing Indiana University Maurer School of Law’s international externship program); see also Dwyer, supra note 19 (describing the effect of duration of overseas study).
It is likely that each of these models of a global learning environment will be used in the competition for students, particularly in the current climate of declining law school enrollment. One model is not necessarily more effective than the others, nor are they equivalent in all respects. Rather, globalization presents opportunities for law schools to use the assets they have and can attract, and certain models may be more appealing to particular groups of prospective students, employers, and other stakeholders. The challenge is to use those assets, rather than simply amassing them in what is equivalent to a non-interest bearing account, where the divisions between international and domestic students inure to the benefit of neither group. To make the most of a global student body, regardless of its nature, requires intentional, affirmative strategy and implementation. Necessarily, this threatens to transform the experience of JD students, and likely will raise anxiety about diluting educational opportunities. But as the data presented in Part III and the research from other fields describes, the mere presence of international students, without more, is insufficient to provide students with ways to learn how to work in a global environment.

The strategies schools take and their justifications for different choices inevitably will reflect their status and characteristics. But rather than simply reinforcing existing hierarchies, the goal of providing students with a global learning environment may focus attention on the different meanings of diversity that the global frame offers. And re-orienting legal education to include the personal aspect of working in a global environment offers a new lens for evaluating the assets of U.S. law schools.

CONCLUSION

Globalization and the related mobility of students have reshaped the student population in U.S. law schools. Many schools welcome substantial numbers of international law graduates each year into their graduate programs, if not also into their JD programs. At the same time, it has become a well-accepted part of legal education to recognize the importance of the world beyond U.S. borders through courses, journals, and moot court opportunities, at a minimum. But the U.S. is a more important receiving country for law students than it is a sending country, and as a result, we risk educating a cadre of globally savvy competitors that domestic students cannot possibly match in terms of experience and expertise relevant to navigating the challenges of a global practice environment. The international students who enroll in U.S. law schools understand the importance of obtaining a global experience, and in large part this

motivates their decision to come to the U.S. for further study. But so far, the message that these forces also affect domestic students has been shielded by the law schools’ ambivalence towards globalization, resulting more in marginalizing the message and messengers than embracing its opportunities.

As described in this Article, U.S. law schools generally have allowed international and domestic students to remain isolated from one another. This effectively prevents domestic students from experiencing the very challenges that await them in their future careers. This approach serves neither the international nor the domestic students’ interests. It deprives international students of opportunities to develop close working and personal relationships with U.S. students and prevents domestic students from recognizing the need to develop crucial skills, much less relationships. While it is possible that certain law faculty are content with the current divisive approach because they prefer to continue to teach to an ideal U.S. student, this likely undersells the sense of responsibility of the vast majority of law school faculty.

One option, explored in this Article, is to reconceive the work of U.S. law schools to specifically include a mission of teaching to prepare students to work in global environments. Just like the law schools they attend, these environments will not be identical. For one lawyer, globalization may require understanding how best to communicate with colleagues in another office of the same organization. For another, client needs are the shaping factor. A third may need to develop resources for learning about legal processes in other countries. Despite the differences, in each case lawyers must acquire intercultural skills that allow them to develop relationships, strategies for effective communication, and approaches to managing uncertainty that characterize global encounters.

In creating opportunities for international students, U.S. law schools may heighten their experiences while also offering important lessons for domestic students. For purposes of teaching to the challenges of globalization, effective integration of these two groups in terms of increased quality and quantity of interaction will benefit both. As the data and research described in this Article suggest, merely housing international students does not necessarily lead to the creation of global learning environments that facilitate students’ development of intercultural competencies. Studies in higher education have shown that having international students in the building is not enough. Instead, students


121. Anne Harrigan & Virginia Vincenti, Developing Higher-Order Thinking Through an Intercultural Assignment: A Scholarship of Teaching Inquiry Project, 52 C. TEACHING 113, 114 (2004) (“There are fewer examples of more easily acquired cross-cultural learning experiences here in the United States, even though the growing population of international students on U.S. campuses has been described as ‘a resource full of possibilities.’”) (citation omitted); Fasheh, supra note 91, at 313 (“There is nothing new in saying that the presence of
gain cross-cultural skills by engaging with international students, and that engagement must be choreographed. This challenges the current balance of power among students as well as the focus of many law schools and their faculty. 

Data from the Law School Survey of Student Engagement indicate that interaction among JD students and international graduate law students is relatively insubstantial; this suggests that schools that identify with the first or third models described in Part V must attend to interaction in order for it to occur. While discouraging, these data provide a starting point going forward. Interaction may be facilitated through coursework, including those with experiential components, as well as through other academic and student life activities.

Transforming law school learning environments to capitalize on globalization is not a one-size-fits-all process. Certain schools may work in a single class or experience, while others may overhaul their curriculum and use this to guide faculty and staff hiring, student recruitment, and the development of their reputation among potential employers of their graduates. Put differently, the ways in which globalization exerts its force will be interpreted and positioned differently by law schools in their competition for students, faculty, additional resources, and prestige. The fact that globalization matters, however, is the constant, and requires law schools to rethink their approaches to offering environments that create opportunities for learning relevant lessons. The message of the research explored in this Article is that the status quo in most U.S. law schools leaves the opportunity to prepare students for globalization’s challenges on the floor.

a large and diverse body of foreign students in the United States could be an enriching experience for both. Also there is nothing new in saying that, so far, this has not been the case.

122. Parsons, supra note 51 (finding a relationship between gains in multicultural awareness and sophistication and exposure to international students, among other factors); Sharma & Jung, supra note 59 (finding in a sampling of college students that “[i]nteraction between student cultures does facilitate and encourage an international outlook”).

123. Leask, supra note 49, at 206 (arguing that schools must recognize “international students [as] valuable contributors of diverse cultural perspectives and experiences, who have the potential to transform the campus and the classroom into a vibrant microcosm of the world”) (citation omitted).
APPENDIX A

Experimental question set administered by the Law School Survey of Student Engagement:

Your school has requested that you answer some additional questions regarding your law school experience. These questions take about 8-10 minutes to answer. Your continued participation is voluntary.

The term “foreign graduate student” is used in the following questions to refer to graduates of foreign (non-US) law schools who are studying in a graduate program at your law school (LLM, MCL, SJD, etc.).

1) Does your school have one or more graduate degree programs in which graduates of foreign (non-US) law schools might enroll?
   <2> Yes
   <1> No
   <8> I don’t know

2) Have foreign graduate students been in one or more of your classes this year?
   <2> Yes
   <1> No
   <8> I don’t know

If yes:

3a) How many of your classes have included at least one foreign graduate student?
   <1> At least 1
   <2> At least 2
   <3> More than 2
   <6> All
   <8> I don’t know

3b) Which classes have included at least one foreign graduate student? (Select all that apply).
   - Contracts, property, torts, criminal law, civil procedure, constitutional law
   - Legal research and writing
   - Business law class (e.g., corporations, business associations, securities regulation, business planning, intellectual property, banking, bankruptcy, international business transactions)
   - Tax law class (e.g., income tax, corporate tax, estates and trusts)
• Litigation-related class (e.g., evidence, trial advocacy)
• Clinical class
• Negotiations, alternative dispute resolution, mediation class
• Individual and human rights (e.g., criminal procedure, advanced constitutional law, human rights)
• Professional responsibility or legal ethics class
• Seminar
• International law class (e.g., public international law, international trade)
• Other, please specify:

3c) Has discussion in any class involved an explanation by a foreign graduate student of the law and/or practice of his/her home country?
  <2> Yes (Feel free to describe):
  <1> No

4) Have you engaged in discussions with any foreign graduate student about the following:

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<thead>
<tr>
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<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>His/her home country law</td>
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<tr>
<td>His/her home country legal education</td>
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<tr>
<td>His/her home country legal profession</td>
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<tr>
<td>His/her motivations for studying in your law school</td>
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<tr>
<td>His/her plans for where s/he will work after studying law in your law school?</td>
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5) In your experience at your law school during the current school year, about how often have you interacted with foreign graduate students in the following settings:

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<thead>
<tr>
<th>Setting</th>
<th>Very Often</th>
<th>Often</th>
<th>Sometimes</th>
<th>Never</th>
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<tbody>
<tr>
<td>In class?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Completing assignments outside of class?</td>
<td></td>
<td></td>
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<tr>
<td>Study groups?</td>
<td></td>
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<tr>
<td>Informal study activities?</td>
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<tr>
<td>School sponsored activities (lectures, etc.)</td>
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<tr>
<td>Formal networking program intended to pair a JD student with a foreign graduate student?</td>
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<tr>
<td>Social contexts?</td>
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</tbody>
</table>
6) To what extent has your law school emphasized interaction with foreign graduate students in the following settings during the current academic year:

<table>
<thead>
<tr>
<th></th>
<th>Very Much</th>
<th>Quite a bit</th>
<th>Some</th>
<th>Very Little</th>
</tr>
</thead>
<tbody>
<tr>
<td>In class?</td>
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<tr>
<td>Completing assignments outside of class?</td>
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<tr>
<td>Study groups?</td>
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<tr>
<td>Informal study activities?</td>
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<tr>
<td>School sponsored activities (lectures, etc.)</td>
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<tr>
<td>Formal networking program intended to pair a JD student with a foreign graduate student?</td>
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<tr>
<td>Social contexts?</td>
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</tbody>
</table>

7) Are you a member of the international law society or an international student group at your school?

<2> Yes
<1> No

8) Do you speak a foreign language sufficiently well to converse on a casual basis?

<2> Yes
<1> No

9) Did you complete a semester or more of study outside of the US in college?

<2> Yes
<1> No
10) Have you lived outside of the U.S. for 3 months or longer during a time when you were not a student?

<2> Yes
<1> No