Global Legal Education and Comparative Visa Regulations

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I. INTRODUCTION

Unum nescsse esse ius, cum unum sit imperium

Legal education is not yet global, but it is highly probable that it will reach this status by the end of this century. By 2100, many law schools will be devoted to the training and preparation of global attorneys.

In the past, Roman Law was taught in rhetorical schools. Roman jurists were simply orators and rhetoricians, yet Roman law (and Canon law) influenced both the common law and civil law families. The first contemporary-style western law school was initiated by Pepo (or Pepone), *Quidam Dominus Pepo cepit auctoritates sua legere in legibus*, in Bologna in 1088. According to historians, the revival of Roman law was due to the commercial and social expansion of Europe. Afterwards, Lucerna Iuris

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1 “The law needs to be one, as one is the empire.” The *brocardo* is probably attributable to the *magister* Pepo (or Pepone). It is considered to be a statement that assesses the beginning of the creation of the *studium* (1088 A.D.) in Bologna, a university in modern terms for the study of Roman law after the fall of the Roman Empire (476 AD) and the beginning of the Middle Ages.


3 Hastings Rashdall, *The Universities of Europe in the Middle Ages: Salerno, Bologna*, Paris 112 (1895) (reporting Odofredus, who referred to Pepo as “A man of no name” in 1 Jus Civile, Dig. Vet., De Justitia et Jure (1550, T. f. l. 7)).

Irnerio founded the Bologna law school in about 1100 A.D.\(^5\) A European student willing to become a *juris consulti* had to travel across Europe, become a student in an alma mater, and learn Latin.\(^6\) The confluence of students of different nationalities in few *universitates* favored the development and establishment of a structured *studium iuris*.\(^7\) Overtime, law schools lost this sense of cross-border training.

Many years after the first law school in Europe, Professor Langdell developed what would become the standard form of legal education at Harvard Law School in the 1870s.\(^8\) This program did not have any international component. It wasn’t until the 1960s and 1970s that the first waves of international education began to spring up in American education.\(^9\) Exchange programs in the United States precipitated the arrival of more educated and skilled students and professional workers, who came mainly from Europe. Expansion of international education has continued, and, at the beginning of the new millennium, law schools are ready to become global players.

This Article is divided into two parts. Part I will analyze some features of the globalization process of U.S. legal education. In order to become global, law schools willing to expand overseas need to deal with the regulations of foreign jurisdictions. Part II analyzes the visa and host country regulations of those countries most visited by U.S. students in 2006 and 2007.\(^10\) In addition, special attention is devoted to the leading destinations for short-term study programs, demonstrating how visa regulation is able to affect the decisions of students whether to relocate and the success of universities planning study programs abroad. Lastly, this Article will assess how the most effective visa regulation—and the related job market—is able to determine whether a country will be able to attract new generations of researchers and how a country’s visa regulation could affect the economy and the community at large.

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\(^5\) Id. at 112, *“Lucerna iuris qui coepit per se studere . . . et studendo coepit docere in legibus.”* FREDERICH KARL VON SAVIGNY, GESCHICHTE DES RÖMISCHEN RECHTS IM MITTELALTER Vol. II, 246–51 (1851); HERMANN FITTING, DIE ANFANGE DER RECHTSSHULE ZU BOLOGNA 79 (1888).

\(^6\) Id. at 126–27.


II. GLOBAL LEGAL EDUCATION

At the beginning of the new millennium, U.S. law schools are ready to expand globally and influence the way in which law is taught internationally. Approximately two centuries after their establishment, U.S. law schools are today facing the challenge of using the methodology of their legal education to educate international students overseas and export the main features of American law.

There is a close similarity between the first expansion of Roman law and post-Roman legal education across Europe around the beginning of the 10th Century, and the current spreading influence of U.S. legal education across the globe begun during the 20th Century. Yet, legal education today can benefit from the new technology which has shortened the distances for gathering and diffusing legal information.

Contemporary western law has been heavily influenced by Roman law, Canon law, feudal law, lex mercatoria, as well as several combinations of other customary and tribal traditions. Civil and common law systems share the same Roman roots. Indeed, U.S. law today certainly influences the transnational legal order. The establishment of any law school is evidence that the legal teaching and a pedagogic methodology of teaching the law has been established. There is not only a corpus iuris—namely, an object to study, explore, research, learn, master and finally teach—but also a formation of a pedagogic methodology employed to spread this corpus.

Legal education evolved from the training of orators in Rome, to the training of social scientists in the current time. This training eventually evolved into the education of king’s counselors and attorneys trained in philosophy and literature with the aim of eliminating apprenticeships and

11 See David M. Schizer, Dean, Columbia Law Sch., Remarks to the Entering Class (Fall 2008), available at http://www.law.columbia.edu/null?&exclusive=filemgr.download&file_id=16545&art contentdisposition=filename%3DToTheEnteringClass_F08.pdf (last visited Nov. 10, 2008) (“Yet I know the past few days have been tinged with sadness because of the recent events in Georgia. As you probably know, Mikheil Saakashvili, the President of Georgia, earned his LL.M. at Columbia Law School in 1994.”).


14 WILLIAM LIVESY BURDICK, THE PRINCIPLES OF ROMAN LAW AND THEIR RELATIONS TO MODERN LAW 56 (2004); see JAMES MACKINTOSH, ROMAN LAW IN MODERN PRACTICE (1995).

15 Claudio Grossman, Building the World Community Through Legal Education, in THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION 21, 30 (Jan Klabbers & Mortimer Sellers eds., 2008) (stressing the importance of innovating the curriculum of law schools with the introduction of mandatory topics, among which are international law, foreign law, cultural issues, and interdisciplinary issues).
creating a pseudo holy, self-governed entity that is isolated from lay society.\textsuperscript{16} All Roman citizens were jurists and the Forum was the place where jurists gave legal advice. No fee was involved, nor was there a need to create “a legal profession” separate from other professions because jurists dominated the Roman culture.\textsuperscript{17} In general, all Romans were educated legislators, politicians, military strategists, writers, and policymakers.\textsuperscript{18} The quality of Roman legislation left a legacy for Western legal cultures. Only Roman orators were able to reach the climax of the then dominant legal profession when they publicly accused or defended other famous Roman citizens.\textsuperscript{19}

In Middle Age Europe, jurists worked at the service of kings, emperors, nobles, and the ecclesiastical establishment.\textsuperscript{20} This gave them a heightened awareness of their social status and intellectual power, because they were able to mold norms for the benefit of restricted elites.\textsuperscript{21} They were able to draw rules aimed at protecting selected interests. Kings, through their armies, could guarantee the implementation of those rules.\textsuperscript{22} The creation of rules and regulations was a powerful tool.\textsuperscript{23} If Roman law was symbolized as the triumph of the reason of law, then the Middle Age was the time for the establishment of privileges and well protected territorial legal enclaves.\textsuperscript{24}

Currently, in the process of globalizing legal education, the issues at hand are: (1) reconciling the past evolution of law and envisaging its future development; (2) understanding whether global education, as it encounters global actors and systems, will be contaminated by those collisions with other legal systems; and (3) determining whether local regulations (like visa regulations) will affect the path or velocity of the expansion of legal

\textsuperscript{16} JAMES A. BRUNDAGE, THE MEDIEVAL ORIGINS OF THE LEGAL PROFESSION: CANONIST, CIVILIANS AND COURTS 489–90 (2008). If we look today at the complex regulations surrounding the acquisition of a law degree and access to the practice of law in many jurisdictions, we can acquire an idea of the evolution and the “holiness” of the legal profession due to the capability of trained attorneys to introduce protective rules surrounding and defending virtually any interest.

\textsuperscript{17} ARTHUR SCHILLER, ROMAN LAW: MECHANISMS OF DEVELOPMENT 269–71 (1978).

\textsuperscript{18} PIETRO BONFANTE, STORIA DEL DIRITTO ROMANO [HISTORY OF ROMAN LAW] 142–43 (1903); MARCUS TULLIUS CICERONIS [CICERO], DE REPUBLICA 414 (1826).

\textsuperscript{19} Among the numerous examples, see Selected Orations by Marcus Tullius Cicero, in E.A. JOHNSON, L. CATILINAM [CATILINE] 9 (1857).

\textsuperscript{20} For the powerful consequences of the application and development of Roman law and Canon law by the Ecclesiastical establishment (through, for example, the suppression of heresy or the introduction of legislation on prosecution), see ELPHÈGE VACANDARD, THE INQUISITION: A CRITICAL AND HISTORICAL STUDY OF THE COERCIVE POWER OF THE CHURCH viii, 50 (1908).


\textsuperscript{23} Id. at 44, 213.

\textsuperscript{24} Id.
education. In other words, the understanding of local entry regulations is a prerequisite for law schools that wish to enter into new legal markets and to render their globalization goals effective.

The 1990s was a time of absolute globalization explosion. Almost two decades have passed since law schools officially became aware that the global phenomenon was affecting legal education too.\(^{25}\) Therefore, it is reasonable to expect that, within the next 100 years, U.S. law schools will be among the few academies leading the process of educating global jurists.

To do so, U.S. law schools will likely take the form of corporations who educate an increasing number of international students in foreign jurisdictions. This also explains why the strategy that faculty and administrators are planning today will be paramount in determining whether law schools in the next 100 years obtain a global presence. Additionally, it is reasonable to expect that the only law schools that will be primary actors in the field of legal education in the 22nd Century will be the ones that invest in the globalization of their curricula and hire faculty with diverse skills.

In the meantime, the global legal education process must overcome the obstacles of teaching within the context of the different regulations in foreign jurisdictions. The initial step is to become familiar with the regulations governing the entrance of U.S. students and scholars into foreign law schools and foreign jurisdictions. The next step is to understand those regulations governing the entrance of international students and scholars into U.S. legal institutions.

A variety of factors contribute to the globalization of legal education.\(^{26}\) The following Parts are merely illustrative and are by no means exhaustive. This analysis intends to scan the horizon and contemplates the possible evolutionary paths that this unstoppable advancement of legal education may take.


A. The Worldwide Diffusion of U.S. Law Firms

The worldwide diffusion of U.S. law firms is a process that began in the 1950s. As Martin Wolf, associate editor and chief economic commentator of The Financial Times has explained, the Cold War was the best moment for international law firms to expand into Western and Eastern Europe. Today, virtually all Wall Street and Main Street law firms have at least one branch overseas, and the number of U.S. attorneys working overseas is constantly increasing. The explanation for the internationalization of U.S. law firms is readily available. Multinational enterprises (“MNEs”), multinational banks (“MNBs”), institutional investors, and governments conduct business globally and require the support of professionals trained in cross-border transactions.

Historically, in exploring overseas ventures, MNEs sought the advice of legal professionals and attorneys, who have undoubtedly supported the planning of these ventures. However, the decision by U.S. corporations to expand was not driven by law firms. While prospective clients consulted law firms for their independent judgment about the legal environment of certain foreign markets, ultimately, law firms did not lead the globalization process. Instead, they simply catered to the economic needs of MNEs and MNBs. As entrepreneurs themselves, law firms immediately realized that MNEs needed the support of attorneys with specialized knowledge and skills and grasped the opportunity that the expanding projections offered. At that point, a new generation of attorneys developed: those practicing cross-border transactions.


28 See John Flood, Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions, 14 Ind. J. Global Legal Stud. 35, 45–47 (2007) (emphasizing that the Cold War was the optimal time for law firms to enter the international market).


31 See Martin Shapiro, The Globalization of Law, 1 Ind. J. Global Legal Stud. 37, 38–41 (1993) (analyzing the path of the global Americanization of commercial law and how American businesses have become a kind of jus commune through the roles that corporate conglomerates and lawyers play).

32 Id.; Jens Drolshammer, The Future Legal Structure of International Law Firms—Is the Experience of the Big Five in Structuring, Auditing and Consulting Organizations Relevant?, in...
Accordingly, law schools have followed what the law firms are doing to become more available on the international market. Law schools began training attorneys with cross-border skills. The circumstances giving rise to this evolution are traced below.

(a) MNEs, MNBs, and governments began transacting business overseas. The legal service market—especially in cross-border practices—changed rapidly from traditional, domestic, long-term attorney-client relationships to a new cross-border relationships that involve multi-law-firm, transactional, investment, corporate, or government related work.

(b) These cross-border transactions have expanded and increased in number and volume over time, creating foreign ventures, joint ventures, foreign holdings, subsidiaries, and substantially enhancing investment overseas. Law firms in the United States decided to open branches overseas and hire attorneys licensed to practice in the foreign jurisdiction as soon as that region’s potential stream of income justified an investment. The international environment for attorneys flourished with the development of highly deregulated capital markets like New York, London, Tokyo, and Hong Kong, all of which provided a massive export of financial services by setting up global transactions for the benefit of global corporate and government clients.

(c) Together with various international, comparative, and global educational projects, law schools eventually cultivated the ability to work on cross-border transactions.

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36 See Yves Dezalay & Bryant G. Garth, Law, Lawyers, and Empire, in THE CAMBRIDGE HISTORY OF LAW IN AMERICA VOL. 3 720–21 (Michael Grossberg & Christopher Tomlins eds., 2008).

37 See Saskia Sassen, Global Financial Centers, FOREIGN AFF., Feb. 1999, at 76–80 (discussing the reasons behind the success of a few cities in becoming global financial players).

At the beginning, law schools did not consider themselves effective actors in the international business arena because international law firms had been, and still are, the natural ambassadors of the common law business culture around the world.\textsuperscript{39} Law schools received secondhand information about the cross-border practice of law.\textsuperscript{40} By hiring young associates with direct experience in cross-border transactions and an interest in learning the legal culture of foreign legal systems, law schools closed the geographical and intellectual gap between global MNEs and international law firms.\textsuperscript{41} This evolutionary model has been consolidated for the last 50 years.\textsuperscript{42} As for why law schools did not lead the way in this process, this Article traces a few of the main reasons.

(1) During the 1959–60 academic year, American universities hosted approximately 50,000 international students and scholars, most of which were from Europe.\textsuperscript{43} At that time, the trend of importing highly educated people and the foundation of the knowledge-based economy was just beginning.\textsuperscript{44} In 1985–86, approximately 50,000 U.S. students and scholars went overseas,\textsuperscript{45} while approximately 350,000 international scholars arrived in the United States.\textsuperscript{46} During the 1980s, the globalization of the markets was underway, with the universities lagging behind. Most importantly, aside from a few exceptions, U.S. universities were at least twenty years behind MNEs and law firms in terms of laying the foundation for the globalization process.\textsuperscript{47} In any case, law schools were unable to prepare the young generation of attorneys for the practice of the globalized MNEs and MNBs.

\textsuperscript{39} Larry Catá Backer, Internationalizing the American Law School Curriculum (in Light of the Carnegie Foundation’s Report), in The Internationalization of Law and Legal Education 52–54 (Jan Klabbers & Mortimer Sellers eds., 2008).

\textsuperscript{40} Id.

\textsuperscript{41} Id. 54–57.

\textsuperscript{42} Id.


\textsuperscript{47} Backer, supra note 39, at 52–55.
that were (and still are) at the forefront of the development of the transnational legal profession.48

Universities that have been cautious in taking the opportunity to learn from the market, economic trends, multinational players, data, and history should study, analyze, debate, and seek to anticipate or predict the directions and needs of the legal profession and legal education outside of the fifty U.S. states. Today, MNEs, MNBs, and international law firms still lead the way in the globalization process because the open global market needs actors who are capable of playing an active role in business in several jurisdictions simultaneously. More importantly, to be global players, they must be at least economically competitive.

Law schools did not initiate attempts to globalize at the same speed as MNEs.49 As a consequence, today, only an extremely restricted group of law schools and scholars are able to envision the development of global legal education, while also playing an active role in its realization and leading the global competition.50


50 See JONATHAN R. COLE, THE GREAT AMERICAN UNIVERSITY 451–54 (2009). Within this evolution process and the objective resonance of U.S. law as a successful working instrument used by U.S.-based international law firms overseas for their cross-border business transactions, few scholars deduced swiftly that the common law system was successfully dominating overseas over the civil law systems due to certain intrinsic features, like its flexibility and adaptability. However, even if—from a mere comparative and academic perspective—we could in part agree on that statement (even if it remains to be proved scientifically), it is important to add that, when international law firms expanded overseas, they brought with them their legal culture, namely the common law one. In other words, the U.S. legal culture was exported thanks to the business community who hauled international law firms (and its legal culture) with them. As a result, they could not bring with them a different legal culture and practical legal skills than a distinctly American one (the use and replacement of English, rather than French, as the language of international businesspeople is a clear example). The U.S. legal culture is globally successful primarily because the business community (namely U.S. MNEs and MNBs) used international U.S. law firms as their legal professional providers. Not taken into the right perspective, one risks interpreting the success of U.S. law and common law cultures abroad as legitimizing a new form of legal global colonialism. See W.J. MOMMSEN & J.A. DE MOOR, EUROPEAN EXPANSION AND LAW (1992). Notably, since the globalization process began, the international business community has always been well aware of the limitation of certain features of the common law system within cross-border transactions such as the jury trial, the discovery system, hearsay, punitive damages, the lack of ratification by the U.S. of several international treaties, and the hierarchical rule according to which international treaties and domestic federal statutes are on the same footing. LAUREN BENTON, LAW AND COLONIAL CULTURES (2002).
In order to become global players, law schools need to reframe their missions and academic structures. Law schools will require an infusion of people with multinational corporate experience and skills to plan a stable expansion with the support of global legal and business experts. The current business form of the American university is weak. The current nonprofit structure limits the faculty’s capability to obtain resources to expand, conduct research, and innovate.

(2) Comparative law has played a critical role in shaping American law. At the very beginning, English, French, and German laws contributed to the formation of U.S. law. After a period spanning from the Civil War and lasting until World War II, U.S. law was in flux, attempting to find its property identity. U.S. scholars again looked at foreign legal systems to establish this identity, this time not by transplanting foreign legal doctrines but by assessing and measuring the quality of their own legal institutions and doctrines. At first, comparative law was an unavoidable learning source. However, comparative law has since then transformed into an antagonistic source.

(3) U.S. law schools were never able to count on investment banks to support their nonprofit global expansion. This also explains why international law firms, MNEs, and MNBs are still at the center of the global diffusion of the common law culture. Law schools and legal education will be at the forefront of the globalization phenomenon only if they agree to change their predominant structure and business characteristics.

(4) Law is still deeply rooted in single jurisdictions. Law is profoundly rooted in the cultural soil of any society and manifests proof of its identity.

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53 Aside from tuition, law schools are linked, for good or bad, with the (often) capricious directions of alumni or other actors. Sometimes the interest of the financing groups may end up not being aligned with university goals. See Tamar Lewin, *After Victory Over Disney, Group Loses Its Lease*, N.Y. TIMES, Mar. 9, 2010, available at http://www.nytimes.com/2010/03/10/education/10baby.html?scp=1&sq=disneyharvard&st=cse.


There is a constant tension between national legal systems (allegedly a place where identity can be acquired) and international regulations (allegedly a place where this identity can be lost).\(^{56}\) International law and the few examples of micro legal systems existing across borders still must be nurtured and developed in order to look less like the Augé “non-places.” In this sense, transnational legal fora will tend to become more popular and crowded in the future (as the growing airports, train stations, or bigger means of transportations) and render possible a wider connection of humanity through globalization. However, they are also solitary spaces, because “a social life” has some difficulty in blossoming there compared to the domestic vitality of the law.\(^{57}\)

(5) Because law is rooted locally, law schools cannot ignore or avoid complying with the regulations of the various U.S. Courts of Appeals establishing the eligibility requirements to practice law in a certain jurisdiction; this is a key factor that U.S. law schools need to consider in their global planning strategy.\(^{58}\) Presenting the J.D. students with the option of spending a summer or semester abroad (currently allowed), or even longer terms abroad (currently not allowed because of residency requirements),\(^{59}\) is

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\(^{56}\) On the issue of identity, constitutionalism, and the tensions between diversity and identity, see Michel Rosenfeld, *Modern Constitutionalism as Interplay Between Identity and Diversity*, in *Constitutionalism, Identity, Difference and Legitimacy, Theoretical Perspectives* 4–5 (Michel Rosenfeld ed., 1994).


\(^{59}\) For example, in New York the Residency Requirement establishes that:

> [A]ll applicants seeking to qualify for the New York bar examination on the basis of graduation with a first degree in law from an ABA approved law school or graduation from an unapproved law school or foreign legal study must demonstrate that the program of study which they pursued fully complies with the residency requirements of either a full time program under Section 520(d) Court Rules for Admission of Attorneys and Counselors at Law or a part time program under Section 520(e). The rule sets forth minimum and maximum number of calendar weeks in which the applicant may be in residence in the law school program. The rule prevents an applicant from completing their law school program of study in either too short or too long of a period of time.

Rule 520.3(d) of the Court Rules for Admission of Attorneys and Counselors at Law requires “a full-time program shall consist of at least 75 and no more than 105 calendar weeks in residence, including reading periods not to exceed one week per semester and examinations, of at least 10 classroom periods per week, scheduled principally between the hours of 8 a.m. and 6 p.m., totaling not less than the equivalent of 1,120 hours of classroom study, exclusive of examination time. A calendar week shall include four days of scheduled classes; however, no more than three three-day weeks per semester may be
critical. So, for example, a proposal to open a law school abroad with the approval of the American Bar Association (“ABA”) which would offer a J.D. degree to foreign students in order for them to gain eligibility to sit for the bar of a certain U.S. state, could be a real trauma for the entire body of practicing attorneys in the United States. When the economy is affecting the business and wealth of the members of the U.S. bar,\textsuperscript{60} injecting a greater number of young attorneys into the workplace, critically affecting the law school rankings, is a significant economic issue.\textsuperscript{61} The power to adjust to the entering regulation (or cyclically adapt, to anticipate these issues, or to manipulate them with sound provisions) is a key factor. However, this further slows down the expansion process of law schools, while rendering the legal market both less competitive and poorer.\textsuperscript{62} A possible solution to this problem could be to allow some law school deans to participate in the process of fine tuning and adjusting these regulations. In the end, only certain characteristics and features of business regulation have worked in favor of the localization of investment opportunities in a few cities, the critical export of financial services, and the flow of capital and wealth (necessary to develop new business ventures),\textsuperscript{63} while localizing labor elsewhere.\textsuperscript{64}

**B. International Prestige of U.S. Law Schools**

Prestige, used here to signify public esteem and standing, is an intangible asset that is difficult to acquire, maintain, administer, and ultimately evaluate. However, prestige can be measured using different indicators, including but not limited to:

\begin{itemize}
  \item counted toward the 75-week minimum. A semester which includes successful completion of at least 10 credit hours per week of study shall be counted as 15 full-time weeks in residence toward the residency weeks requirement of this subdivision. As allowed under subdivision (h) of this section, a summer session which includes successful completion of at least 5 credit hours per week of study shall be counted as 7.5 full-time calendar weeks in residence toward the residency weeks requirement of this subdivision.
\end{itemize}


\textsuperscript{62} As immigration economists have proved, newly skilled immigrants have historically brought wealth and knowledge to their destination countries. The opposite belief is based on an irrational assumption that wealth is limited in time and space, and men are not capable of multiplying it and enhancing the social welfare of their descendants and the society at large. See Vivek Wadiwa et al., \textit{Duke Univ. Sch. of Engr. & Univ. of Cal, Berkeley Sch. of Info., America’s New Immigrant Entrepreneurs} (2007), available at http://people.ischool.berkeley.edu/~anno/Papers/Americas_new_immigrant_entrepreneurs.pdf (last visited Feb. 19, 2010).


Success acquired through multiple scientific or social breakthroughs;

- Economic support and investment from outside academia for innovative research projects that have had an impact on the society;
- National and international recognition, in the sense of direct or indirect awareness, as well as acknowledgment and mentions by other academies and intellectual or professional institutions;
- Intellectual credibility, in terms of determinant success in the scientific or professional fields of society at large;
- Amount, quality, and resonance of awards, prizes, and scholarships obtained by faculty, scholars, and students;
- Capability of the students to contribute to and influence the faculty or administrative leadership;
- Beneficial and continued exchange between the scientific and research environment and society at large.

These indicators, among others, resonated at the international level. Since the 1960s, U.S. law schools have attracted an increasing number of foreign graduate school professionals willing to pursue a U.S. legal education. Therefore, the globalization of U.S. legal education and the resulting export of legal culture and services are recent phenomena.

The initial fifty year period from World War II until the end of the 20th Century can be defined as the passive prestige. During the passive prestige, prestige spread overseas through traditional means: publications (books and law reviews were even translated into other languages), exchanges of scholars, conferences, and symposia. The rate at which international

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students are attracted in this first phase is directly related to the spreading of international prestige among international students and scholars. This is because prestige or reputation, an intangible good like goodwill, requires time to build and diffuse. This is confirmed by the number of international students that have travelled to the United States. Since 1954, the number of international students has increased steadily by 6 percent per year. The only negative academic year was 2003–04. This negative year was evidently a reflection of the effects of the introduction of the Patriot Act on October 26, 2001 and the implementation of the new visa regulations. In spite of these regulations, there are currently more international students coming to the United States to study and research than U.S. students who are willing to travel abroad.

After the turn of the millennium, the Internet and international law firms contributed—directly or indirectly—to the exponential multiplication of the presence, reputation, core value, and mission of certain law schools, consolidating their prestige overseas. The level of prestige acquired overseas rendered a few U.S. law schools more aware of their international standing and increased their confidence as they planned to enter into a new phase. This new phase can be defined as active prestige. Universities—and later on law schools—looked to acquire a physical presence overseas in order to improve the diffusion of global education methodology, attract more students, and enter directly into foreign markets. At this point, globalization became evident, was not simply a theoretical phenomenon studied in books, or practiced solely by the elite international law firms. International, comparative, and global programs have the support of real connections and foreign counterparts. This active prestige phase is not yet at its peak and will need additional accurate planning. The analysis of the visa regulations of a certain number of countries is the logical next step to the implementation of this expansion.

67 JOSEPH STORY, COMMENTARIES ON THE LAW OF PARTNERSHIP § 99 (1841).
68 See OPEN DOORS, supra note 10, at 9.
69 Id.
71 In 2005–06, 223,534 U.S. students studied abroad, with an increase of 8 percent over the prior academic year. Id. In the same academic year, 582,984 international students studied in the U.S. with an increase of 3.2 percent over the prior academic year. Id.
72 See OPEN DOORS, supra note 10, at 29–32.
73 The international diffusion of the prestige of U.S. law schools resembles the European prestige acquired by the several Bologna Studia born during the X and XI Centuries. The teaching of Roman law and its methodology rapidly spread thanks to students coming from every corner of
During these two major phases, the international prestige of American law schools has taken shape due to several factors, including:

(1) At the beginning of the 20th Century, immigrants played an important role in the United States when they entered into the legal services market. Immigrants enriched the American legal profession by establishing part-time programs, the creation of new law school curricula, and even the foundation of entirely new law schools (including Brooklyn Law School, Marquette Law School, University of Minnesota Law School, St. Paul College of Law, and Minneapolis College of Law). Immigrants entered various law schools and slowly helped to build a global legal profession. As critics have failed to point out, history shows that the wave of immigration within the legal profession helped the U.S. economy to flourish and establish the roots for globalization.

(2) Similar to the experience of earlier immigrants, the current U.S. legal services market for new foreign attorneys continues to be appealing for business reasons. New York is one of the financial centers of the world, and the American legal services market also continues to be a place for “social advancement and economic improvement.” In addition, another recent component of this development is the increased placement of either U.S. J.D. graduates or foreign trained attorneys who have studied in the United States in the offices of U.S. based law firms throughout the world.

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74 ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 79 (1983). The Minneapolis College of Law was founded in 1912. For the history of this law school, see Over a Century of Distinction, http://www.wmitchell.edu/about/history.html (last visited Feb. 19, 2010). Around the 1950s it merged with the other three law schools in Minneapolis. Id. Today it is known as the William Mitchell College of Law. Id. For the incredible impact of immigrants on the legal profession in New York, see LOUIS ANTHES, LAWYERS AND IMMIGRANTS 1870–1940: A CULTURAL HISTORY 2–5, 173 (2003).

75 ANTHES, supra note 74, at 185.

76 See JEROLD AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGES IN MODERN AMERICA (1976); AM. BAR ASS’N [ABA], HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS (1913).

77 AUERBACH, supra note 76, at 75.

(3) Since World War II, the U.S. economy has been leading the world, and the legal profession has grown with it. At the beginning of its rise, the U.S. market grew internally, consolidated, and then expanded overseas.\textsuperscript{79} The homogeneity of language, business, and legal culture, as well as the advantage of free interstate commerce, all contributed to fortify this market. When U.S. law firms expanded overseas, they were already economic giants compared to their counterparts in Europe or Asia. The U.S. MNEs and law firms, in the process of serving U.S. MNEs abroad, found feeble economic resistance and very few competitors that were able to compete with them.\textsuperscript{80} Aside from the exceptions of a few countries like the United Kingdom, the Netherlands, and France during the 1960s and 1970s, European law firms were traditionally small in size.\textsuperscript{81} In southern Europe, law firms were conducted as family businesses.\textsuperscript{82} Often, national regulations did not conceive of the legal profession as a business venture.\textsuperscript{83} European harmonization forced EU Member States to cooperate and create a common market for legal services.\textsuperscript{84}

(4) Some U.S. states allow foreign educated attorneys to sit for their state bar exam\textsuperscript{85} (New York, California, Connecticut, Massachusetts).

\textsuperscript{79} Detlev F. Vagts, \textit{The Impact of Globalization on the Legal Profession}, in \textit{The Internationalization of the Practice of Law} 36 (Jens Drolshammer & Michael Pfeiffer eds., 2001) (stressing how American attorneys had a head start because they had the opportunity to develop certain commercial activities and markets in the United States and then export them worldwide, examples include derivatives, hybrid securities, and securitization).


\textsuperscript{81} Id.

\textsuperscript{82} Id.

\textsuperscript{83} Id.


\textsuperscript{85} Generally, this occurs after a preliminary evaluation procedure. See Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law in the State of New York, N.Y. COMP. CODES R. & REGS. tit. 22, § 5 (providing the eligibility requirements for applicants to the New York State bar examination based on the study of law in a foreign country).
Virginia and Rhode Island are among them.\textsuperscript{86} A reciprocal and similar opportunity has not yet been afforded by foreign jurisdictions in Europe (with the exception of the United Kingdom).\textsuperscript{87} There is a substantially higher demand for foreign trained attorneys as active members of the U.S. bars than there is a demand for U.S. attorneys to become involved in foreign bars. American attorneys continue to serve their corporate clients overseas without the need to obtain a license in a foreign jurisdiction.\textsuperscript{88}

(5) Finally, the overseas presence of international law firms and MNEs became, in many jurisdictions, a working model for foreign businesses to replicate.\textsuperscript{89} International students of law, finance, or economics looked for a way to complete and improve their local education.\textsuperscript{90}

C. The Challenge of Comparative Law and Knowledge of Foreign Legal Systems

The study of foreign legal systems is a way to find creative responses to problems in our legal system. In brief, globalization forced different legal systems to face (and deal with) their legal differences as comparative scholars were always interested in investigating how certain legal issues were treated and solved in other legal systems.\textsuperscript{91}


\textsuperscript{87}For the United Kingdom, see Solicitors Regulation Authority [SRA], Qualified Lawyers Transfer Regulations 2009, http://www.sra.org.uk/sra/regulatory-framework/qualified-lawyers-transfer-regulations-2009.page (last visited Feb. 21, 2010) (providing the requirements imposed on “Certain Overseas Attorneys” in Rule 10). In Europe, the Directive 98/5 established guidelines to facilitate the practice of law on a permanent basis in a Member State other than that in which the license was obtained. Council Directive 98/5, 1998 O.J. (L 77/36) (EC), available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:077:0036:0043:EN:PDF. After having been licensed in one Member State, a European citizen may relocate to another Member State and practice law without having to take the bar examination if the citizen gives evidence that of spending at least three years there. Id. In brief, aside from the United Kingdom, there is still no possibility for a U.S. attorney to be qualified for the bar of one of the Member States even after a short period of study in one of them. Id.

\textsuperscript{88}See Pamela Stiebs Hollenhorst, Options For Foreign-Trained Attorneys: FLC Licensing or Bar Admission, BAR EXAMINER, Aug. 1999, at 7.


\textsuperscript{90}See Trubek et al., supra note 54.

Less than one hundred years after the end of the Civil War, the U.S. legal system evolved from an importer of legal knowledge to become the world’s biggest exporter of mature doctrines and legal models. The offering of comparative law courses and programs (along with the diffusion of the subject) developed steadily in U.S. law schools when international students and scholars started to arrive in the United States in the late 1950s and early 1960s to learn from an already mature legal system. For example, at the beginning of the 1970s, comparative tax law was at that time an unexplored topic. As Arthur T. Von Mehren pointed out in 1969, “The realities of legal practice in a shrinking world may ultimately render obsolete the lawyer trained to practice only within a single legal system.”

On the other hand, adapting certain legal doctrines to a different environment is an increasingly challenging endeavor. As a matter of fact, the study of comparative law and the presence of a stable foreign body of students and researchers are not only fundamental for the improvement of the quality of legal education but also demonstrate the prestige of that particular legal academy worldwide and its capability for expansion and investment in reputation.

Comparative legal scholarship and methodology supported U.S. law schools in academically backing the most appropriate strategic global spread of U.S. international law firms. For these firms, dealing with foreign legal systems has become their daily routine. As a consequence, the global influence and fusion of different legal systems will become more evident in a truly global, connected world.

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92 See Eric Stein, Uses, Misuses and Non-Uses of Comparative Law, 72 NW. U. L. REV. 198, 209 (1977). Stein points out that the Uniform Commercial Code, the Model Corporation Act, and the Model Penal Code all represent examples of projects led by the ABA that contributed to the worldwide spread and influence of U.S. legal scholarship. Id. at 210–11.

93 See Hugh J. Ault & Mary Ann Glendon, The Importance of Comparative Law in Legal Education: United States Goals and Methods of Legal Comparison, 27 J. L. Ed. 599, 600, 601, 607 (1975) (on a proposed methodology for their comparative law course also covering tax law).


95 See Pound, supra note 52.


D. Are Foreign Visa and Entry Regulations Real Barriers to the Expansion of U.S. Law Schools and the Globalization of Legal Education? Distinguishing Between Legal and Economic Globalization

The globalization of the legal profession will continue because law has (and will continue to have) a local component. For law schools dedicated to globalizing their intellectual horizon, global competition for securing the best international students, while enhancing their educational programs, will certainly shape their ambitions. For them, national entry regulations in foreign countries will determine their strategy.

Because global competition is linked to the U.S. national economy, law schools need to expand their customer base. Schools must venture overseas to find new markets where they can look for talented international students while serving the needs of MNEs and international law firms, who ultimately control and benefit from the globalization trend. Only a restricted number of U.S. law schools are in the process of exporting their educational model and attempting to shape the legal education of this century on a global scale.

Since the 1960s and 1970s, MNEs and international law firms have created and exported their legal models, which the international business community has increasingly used. Law schools are now trying to export U.S. legal education as a byproduct of those legal models. The logical formulation was that if well educated lawyers could take advantage of legal markets via powerful MNEs and international law firms, law schools should take on the responsibility of the successful education of these attorneys. This formulation, however, fails to consider that a new legal hegemony has developed due to economic (and not legal) globalization, in which trade and capital are the primary elements fueling globalization.

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100 For a more complete picture with data about U.S. law schools with foreign programs, mixed or double law degrees, see Luca C.M. Melchionna, Transnational Study Program and the Global Law School 30 (Columbia Univ. Italian Acad. for Advanced Studies in Am., St. John's Legal Studies Research Paper No. 09-0164, 2009).

101 See Clark, supra note 51.

102 This specific aspect of legal globalization goes outside of the object of this paper.
In practical terms, visa restrictions and host country regulations may create economic gaps among jurisdictions while creating legal and economic obstacles to the expansion of those law schools willing to export their educational methods. Indeed, visa regulation (namely, legal globalization) is just one component of a complex frame that influences the capability of universities to expand and take on the extraordinary economic opportunity of the globalization phenomenon. The quality of the legal educational system, flexibility of the job market, national security concerns, and the need to protect the rights of individuals are all fundamental components that come into play when universities plan their strategies to expand abroad.

In 2002, educational services generated more than $30 billion. In 2005, the study abroad industry alone generated more than $13.5 billion, making it the fifth-largest service export in the nation. International educational ventures produced $13.5 billion in 2005–06, $14.4 billion in 2006–07.

103 With the term “host country regulation,” this Article refers to the local/foreign regulations (generally statutes) that U.S. academies have to comply with once they decide to send students, teachers, or researchers abroad or plan to open branches overseas in order to offer local educational programs to U.S., foreign, or local students.


and $15.5 billion in 2007–08. \textsuperscript{110} International students and researchers continue to contribute to the enrichment of the U.S. economy.\textsuperscript{111}

In order to maintain the economic flow of international students and researchers that are advancing the U.S. economy, as well as to address the phenomenon of U.S. universities going abroad to relocate and open offices in a new legal environment, U.S. law schools must face various foreign regulations. Such regulations could affect the economic and academic outcome of the globalization process of many U.S. academies.\textsuperscript{112}

Statistics show that for the period between 1980 and 2001, the number of students relocating to another country and wanting to study in countries belonging to the Organization for Economic Co-operation and Development (“OECD”) doubled to 1.6 million people.\textsuperscript{113} In 2005, that number rose to 2,728,480.\textsuperscript{114} During that period, Asian countries sent the highest number of students abroad (43 percent of those were from China alone).\textsuperscript{115}

III. FOREIGN REGULATION: COMPARISON

A. Developing a Foreign Branch Offering (Legal) Education

When American universities plan to enter into a foreign market with a new study abroad or international program, they generally encounter a four-step process. First, all of the logistical requirements must be established domestically (e.g., length of the programs, locations, classes and credits offered, faculty and administrative support, standards, and quality of

\textsuperscript{110} Id.

\textsuperscript{111} Id.

\textsuperscript{112} See Michael R. Traven, Restricting Innovation: How Restrictive U.S. Visa Policies Have the Potential to Deplete Our Innovative Economy, 34 CAP. U. L. REV. 693, 721–22 (noting that U.S. visa policies are too restrictive, causing international students to drop their applications, and ultimately negatively affecting the U.S. economy). The author shows the economic importance of international students for the United States and explains the reasons for the application decline. Id. In the end, he suggests a method to revise the Visa Mantis Check by providing Guidelines to Consular Offices and setting predictable timely standards. Id. at 737–39.


\textsuperscript{114} Id.

\textsuperscript{115} Id. at 135–43.
teaching) by complying with institutional policies and/or the ABA’s requirements.\footnote{116}

The second step is for American universities to comply with existing legal and tax regulations in the targeted foreign market in order to offer a degree to the local, U.S., or other international student. This compliance could happen in two ways: (1) through a “soft” presence (such as a joint program with a local institution); or (2) through a “stable” presence in the foreign jurisdiction with, for example, the purchase of a building or the creation of a complete campus with annexed facilities. In this latter case, the U.S. university would be competing with local educational institutions. Competition would increase if U.S. universities were to offer degrees recognized in that particular jurisdiction. During this second stage, U.S. universities would need to meet local visa requirements for U.S. students and faculty.

The third step of the process involves an assessment of the administration of the study abroad program. A study abroad experience in a developing country could be difficult to plan, primarily because students and faculty would face logistical challenges. Such challenges could influence the quality of teaching and, more generally, the study abroad program itself.\footnote{117} A primary concern would be the ability of the developing country to offer at least administrative and organizational standards, comparable to the standards to which U.S. students have become accustomed. The final result depends on the kind of program that a student will attend (i.e., whether it is related to environmental issues, law, art, etc.). Sometimes, the “soft” presence is the most challenging for U.S. universities because foreign institutions might not have similar educational standards and might not offer, for example, reliable computer networks, printers, LexisNexis or Westlaw research databases, electronic boards, chat rooms, air conditioning, comfortable classrooms, or luxurious apartments/dormitories.\footnote{118} These logistical issues could severely influence short-term summer programs.\footnote{119}

\footnote{116} As for examples of establishing foreign law school programs, see Standard 307 of the ABA Standards of the Approval of Law School, regulating the granting of credit for studies or activities in a foreign country. American Bar Association, Foreign Study, http://www.abanet.org/legaled/studyabroad/foreignstudyhome.html (last visited Feb. 21, 2010).

\footnote{117} For instance, in certain developing countries, the search of laws, statutes, and secondary authorities could represent a real issue, whereas in a Western jurisdiction, the search is part of the educational path of law students in improving their legal knowledge. See, e.g., Stanley Lubman, Looking for Law in China, 20 Colum. J. Asian L. 1, 33 (2006).

\footnote{118} Donald E. Hall, Why Professors Should Teach Abroad, Chron. of Higher Educ., Oct. 5, 2007, available at http://chronicle.com/free/v54/i06/06b02001.htm (reporting the relevance of small details in a foreign experience like housing, bedding, linens, classroom availability, scheduling assignments, and technology).

\footnote{119} Id.
Indeed, this supplementary aspect of modern teaching and learning could lead one to think that the study of the law consists primarily of these external pedagogic tools or instrumentalities. That conclusion, however, would be incorrect. A foreign teaching or learning experience is, first of all, a cultural experience. Overall, in a “soft” form presence, U.S. students and faculty could have the opportunity to fully interact with educational methods, local students, faculty, cultures, and more importantly, local laws. Indeed, U.S. methods of teaching and learning could be enriched by foreign ones, and vice versa.\textsuperscript{120}

Moreover, there is no doubt that technology has fundamentally improved the way that lawyers research, collect, transmit, and secure legal information. This technological framework, however, could partially affect the ability of any jurist to persuade others\textsuperscript{121} and, therefore, enhance the quality of legal reasoning.\textsuperscript{122} Despite current technological advances, the law is still an analytical process.\textsuperscript{123}

Lastly, the presence of local teachers who are unfamiliar with the Socratic method could surprise foreign students and affect the quality of the program, the response of the students, and the ultimate success of the study abroad program. This is because the Socratic method is utilized only in a few countries.

\textsuperscript{120} For example, many summer study abroad programs are run in collaboration with local law schools or with the participation and involvement of local faculties, students, and professionals working with U.S. or local law firms. See American Bar Association, Foreign Summer Programs, http://www.abanet.org/legaled/studyabroad/foreign.html (last visited Jan. 27, 2010).

\textsuperscript{121} Ubi societas ibi ius; ubi ius, ibi societas [“Where there is a society, there will be law.”].

\textsuperscript{122} Our legal founders lacked our technological possibilities, but they were able to pass on superb legal works (e.g., Gaius, Justinian, or Irnerius) simply through reading, analyzing, and reasoning in legal terms. Indeed, scholars consider Vacarius one of the first examples of a study abroad instructor, especially in Bologna. FRANCESCO CALASSO, MEDIO EVO DEL Diritto 37 (1954). Vacarius’ teaching radically changed the tradition of Common Law. Id. Bologna was the first example of an academy offering law programs for foreign students; students of different countries formed the Nationes, conglomerations of compatriots sharing the same values and cultures. Id. The Bologna law school grew in popularity for two main reasons: student population and Nationes tended to organize in structured bodies as Universitas, and, most importantly, these students encountered difficulties in funding their education in Bologna. Id. Emperor Frederick I needed civilian jurists for his government and so he issued a decree (Habita) under which he gave civilian students the same privileges that clerical students had at that time, namely the possibility to travel to Bologna without any worries about the funding. Such a decree was later inserted into many Universities’ constitutions. See also WALTER ULLMAN, LAW AND POLITICS IN THE MIDDLE AGE (1975).

\textsuperscript{123} See John A. Sexton, “Out of the Box”: Thinking about the Training of Lawyers in the Next Millennium, 43 S. TEX. L. REV. 623, 631 (2002) (“American law schools have sought to produce graduates capable and worthy of serving the ideals Jefferson and Wythe personified . . . . In service of this goal, our school have [sic] sought to instill a respect for the rule of law and a sense that law is a product of reason, not power.”).
A study abroad program is a hybrid experience and should give the students and the school the opportunity to realize and acquire cultural and legal differences in constructive terms.124 The need to meet the requirements can sometimes limit the educational experience. A study abroad experience should offer a full immersion in a new legal environment where the teaching methodology mirrors the challenges of the experience.125 A study abroad experience educates future attorneys while it simultaneously explains the past, current, and future conditions of the law.

B. Basic Entry Regulations in the Leading Destination Countries for Short-Term Study Programs

The objective of visa regulations (and/or permit policies) is to facilitate the entry and movement of foreigners into the host country while trying to minimize the risks associated with public safety, terrorism, international crimes, health, public order, and illegal immigration. Visa regulation, if used rationally and effectively, is also a means to foster cultural understanding, tourism, commerce, cross-cultural links, and educational activities.126

Traditionally, a visa is a discretionary permit, not a right. International law generally does not recognize the human right to immigrate into or freely enter a foreign space.127 Currently certain countries, like the United States,

124 A comparative law scholar should be able to point out the similarities and equality, rather than the differences, of any legal system. See TITO RAVA, INTRODUZIONE AL DIRITTO DELLA CIVILTA’ EUROPEA 17, 207–08 (1982).
127 RAINER BAUBÖCK, TRANSNATIONAL CITIZENSHIP: MEMBERSHIP AND RIGHTS IN INTERNATIONAL MIGRATION 321 (1994); Michael Blake & Matthias Risse, Is There a Human Right to Free Movement? Immigration and Original Ownership of the Earth 12 (John F. Kennedy School of
have decided to enter into agreements such as the Visa Waiver Program ("VWP") to facilitate the entrance of desirable or low-risk visitors. The VWP saw the light in the mid 1980s when the Congress aimed to reach three goals: (1) to improve the relationships with third countries; (2) to promote tourism in the U.S. for the benefit of the GDP; and (3) to reduce the administrative burden of the Consular offices overseas. It was initially conceived as a pilot program (Visa Waiver Pilot Program) and then transformed into a stable one as stated in Section 313 of the Immigration and Reform Control Act, 1986 ("IRCA"). After 9/11, Congress, under the threat of shutting down the VWP entirely, required tighter visa control and strict procedure overall to European counterparts.

The synopsis that follows details the fifteen countries most visited by U.S. students in 2006–2007. For each jurisdiction, the proper regulation will be broken down into a discussion of both the short-term and long-term study abroad program legislation. The final subsection analyzes the legislation that universities need to comply with when creating a program in a particular foreign jurisdiction.

1. United Kingdom

   a) Short-Term Study (Less Than Six Months)

   Since September 1, 2007, U.S. students entering the United Kingdom for a study period of less than six months are classified as "student visitors" and do not need to apply for a visa, provided that they meet certain requirements: (a) the student plans to stay less than six months with the genuine intention of pursuing a study program; (b) the student intends to leave the United

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Kingdom at the end of their visit; (c) the student does not intend to take employment or engage in any business activity while in the United Kingdom; (d) the student maintains and accommodates themselves and any dependants adequately without recourse to public funds; (e) and the student is accepted to a course of study which is provided by an overseas higher education institution, that holds national accreditation, and offers only part of their programs in the United Kingdom. The status of a “student” is the same as that of a visitor. Upon entry, a student must demonstrate to the immigration officer that he has been accepted for a course of study offered by an educational institution registered with the Department for Education and Skills’ Register and Training Providers; that he is able to follow a fulltime degree of a fulltime course of not less than fifteen hours per week; and that he is not under the age of eighteen (otherwise another set of rules, not discussed here, will apply).

U.S. students are allowed to extend their stay for more than six months only if they hold a student visa and comply with the requirements set forth in the amended immigration regulations. Students who enter into the United Kingdom must meet four requirements: (a) demonstrate a genuine and realistic intention of undertaking, within six months of the date of entry for a course of study that would meet the requirements for an extension of stay as a student under paragraphs 245ZX or 245ZZC; (b) intend to leave the United Kingdom on completion of their studies or on the expiry of their leave to enter if they are not able to meet the requirements for an extension of stay; (c) and are able without working or recourse to public funds, to meet the costs of their intended course and accommodation and the maintenance of themselves and any dependants while making arrangements to study, and during the course of their studies; (d) hold a valid United Kingdom entry clearance for entry in this capacity.

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131 Consolidated Immigration Rules §§ 56K(i)–M, available at http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules (This consolidated version includes the Immigration Act 1977, the Borders, Immigration and Citizen Act 2009, and later amendments.).


134 Immigration Rules, 2010, HC 251 (amended 2010), Part 3, ¶6 (U.K.), available at http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules. In addition, certain requirements that prospective students must meet have changed. A list of them has been set out in paragraph 245ZX and paragraph 245ZZC of Part 6A of the new U.K. immigration regulations. Id. ¶¶ 245ZX, 245ZZC.

135 Id. ¶6 (“Under Part 6A of these Rules, ‘Student’ means a migrant who is granted leave under paragraphs 57 to 62 of these Rules.”).
b) Long-Term Study (More Than Six Months)

Foreign students need to apply for a visa if they want to pursue a period of study of more than six months. For immigration purposes, the status conferred on them will be either “student” or “prospective student.” The visa application procedure is conducted online. Beginning February 2010, visa letters will be fully replaced by Confirmations of Acceptance for Studies (“CAS”). A CAS is an electronic reference number. Tier 4 institutional sponsors will need all the same information that is currently in a visa letter to assign a CAS. The CAS is not an actual certificate but a virtual document similar to a database record. Each CAS has a unique reference number, contains information about the course of study, and the student’s personal data. For U.S. students, there are two main advantages to a study program in the U.K. First, there is not language barrier, and second, the U.K. has an easy entrance regime for students.

c) Academies

Entities in the United Kingdom wishing to offer education in a more permanent manner have to comply with the Education Reform Act of 1988 and Higher Education Act of 2004. In addition, for international education, universities need to provide a certificate stating that the university is an accredited body. Among the many accrediting bodies, a few are worthy of mention: the City and Guilds, the National Open College Network, the Membership of Association of American Study Abroad Programme, and Edexcel. Universities may register with the Registry of Education and Training Providers in the United Kingdom. The registration is voluntary and no sanctions are imposed upon those providers who choose not to register with this body. However, because international students run the risk of

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138 Id.
being denied entry if the school is not registered, foreign universities are effectively forced to register.\textsuperscript{144} The Registration Body aims to capture the details of all the educational institutions operating in the United Kingdom and help the U.K. Home Office (namely the Department of Internal Affairs) to track immigration abuse in the education sector.\textsuperscript{145}

2. Italy

\textit{a) Short-Term Study: Students}

The Immigration Code establishes that as a general rule foreigners may enter Italian territory upon presentation of a valid passport and a visa, unless special exemptions apply.\textsuperscript{146} Among them, U.S. visitors wishing to stay in Italy less than ninety days may do so with a valid passport and without a visa under the VWP plan.\textsuperscript{147} Under art. 4(1) of the same Legislative Decree,\textsuperscript{148} U.S. students pursuing a study program, regardless of the length with a U.S. (or non-Italian) educational institution, are required to apply for a student visa\textsuperscript{149}. For students entering Italy, it is defined as "Visto C".\textsuperscript{150} U.S. students pursuing a short study program with a U.S. educational institution based in Italy must apply for a visa. Italian law refers only to the case of foreign (or U.S.) students willing to study with an Italian academic institution. There is no regulation for U.S. students willing to study with an American educational institution located in Italy (see infra). As stated, Italian immigration laws

\textsuperscript{144} Id.


\textsuperscript{148} Id. art. 4.1.


\textsuperscript{150} This is stated in the Preamble of the July 12, 2000 Interdepartmental Decree on Visas. Ministerial Decree No. 286, 12 luglio 2000 (Italy), available at http://www.esteri.it/MAE/normative/dmae12.7.00.pdf (last visited Mar. 16, 2010).
only regulate non-EU students enrolling in Italian schools and universities.\textsuperscript{151} As said, the law conferred on the Italian Ministry of Foreign Affairs the power\textsuperscript{152} to establish by decree different types of visas.\textsuperscript{153} Under this regulation, the Ministry has created four categories of visas to be used for study programs within Italian education institutions: (a) enrollment into Italian universities; (b) scholarships; (c) religious studies; and (d) technical and professional studies.\textsuperscript{154} In addition, the same Ministry establishes the maximum number of visas that will be issued annually to foreign students enrolling in Italian universities.\textsuperscript{155} The Decree of Ministry of Foreign Affairs of October 11, 2006, established that:

For the academic year 2006/2007, a number of 47,128 visas . . . can be released in favor of foreign citizens . . . for enrollment into programs offered by national [namely, Italian] universities . . . or national institutions of music and art, whether public or private . . . authorized to release a degree with legal value.\textsuperscript{156}

This Immigration regulation and its connected decrees do not regulate U.S. students attending foreign programs organized and managed by U.S. law schools. Because Italian immigration law does not take this category of students into consideration, they fall under the general rule that all foreign students entering Italy must apply for a visa. The reasons for this oversight by the Italian legislator can be summarized as follows. First, when the Immigration Code was enacted in 1998, the Italian legislature neglected to draft a provision regulating non-EU students coming to Italy for programs affiliated with non-Italian institutions that release credits or degrees not recognized by the Italian legal (education) system.\textsuperscript{157} Second, the Italian legislature was unaware of the economic and cultural impact of such


\textsuperscript{153} Presidential Decree No. 394, Arts. 5.2, 5.3. For a list of the different types of visas, see the Preamble to Interministerial Decree, 12 luglio 2000, Gazz. Uff. No. 178, 8 gennaio 2000 (Italy), \textit{available at} http://gazzette.comune.jesi.an.it/2000/178/4.htm (last visited Apr. 14, 2010).

\textsuperscript{154} Id. art. 5.2 C.c.

\textsuperscript{155} Id. art. 44 bis. 6 (establishing the annual maximum cap of foreign students entering Italy).


\textsuperscript{157} Id.
industry.\textsuperscript{158} Third, there are no programs allowing U.S. students to study at an Italian law school (not including programs organized by U.S. law schools) for academic credit from their U.S. law school.\textsuperscript{159} Forth, the Italian treasury derived lucrative revenue from visa application fees until 2007. In 2008, however, student visas became free of charge.\textsuperscript{160} Fifth, the number of foreign law students studying at Italian universities is insignificant, averaging around 2 percent of the entire Italian student population.\textsuperscript{161} This was due

\textsuperscript{158} In 1998, there were more than 100 universities in Italy offering study programs to non-Italian students. For additional information, including a list and the current number of American Universities with branch campuses or programs in Italy, see Ass'n of Am. Coll. & Univ. Programs in Italy, http://www.aacupi.org/home-frameset.htm (last visited Feb. 22, 2010).

\textsuperscript{159} This Part refers to two different reciprocity systems. Under the first system, U.S. law students may obtain credits towards graduation if they take classes overseas in programs of study organized by U.S. law schools located abroad (and, in this case, in Italy). The second system allows U.S. law students to theoretically obtain credits for classes taken in Italian law schools. Importantly, this second system is only theoretical, because the two education systems are extremely different and classes and credits taken in one country could be transferred in the other only after a complex equalization procedure. According to this Article’s findings, this is a rare occurrence. So far, only Boston University School of Law and the University of Firenze Law School have in place a yearly exchange system allowing 1 or 2 students per year to take classes in the other institution and vice versa with a complex system of credit recognition. See Universita Delgi Studi di Firenze, Scambio di Studenti tra la Facolta di Giurisprudenza dell’ Universita delgi Studi la Boston University School of Law: Bando di Partecipazione, http://www.giuris.unifi.it/upload/sub/RelazInternz0809/Bando0910Boston.pdf (last visited Mar. 16, 2010). In addition, there is an increasing trend between law schools based in Common and Civil law jurisdictions to create dual degree programs, namely programs allowing students to obtain two law degrees in two different jurisdictions. Among those, Nova Southeastern University, School of Law has signed an agreement with the University of Venice “Ca Foscari” to create a dual degree program so students will be able to obtain a degree valid in the U.S. (for bar purposes) and a Laurea Magistrale (an Italian law degree) for bar purposes in Italy and in the EU countries. Further information see Nova Se. Univ., International Programs, available at http://nsulaw.nova.edu/international/index.cfm (last visited Apr. 17, 2010). The University of Rome III, “Tor Vergata” has signed a similar agreements with Washington University School of Law and Nova Southeastern University, see Univ. of Rome III, Other Opportunities, available at http://www.giur.uniroma3.it/studying_law/opportunities.php (last visited Apr. 17, 2010). See Melchionna, Transnational Study Program and the Global Law School, supra note 99, at 29–32.

\textsuperscript{160} Every year, approximately 25,000 U.S. students enter Italy. In 2007, each visa application fee was $80.35, resulting in an approximately $2 million revenue for the Italian Treasury, solely from U.S. students (and I am not counting students from other countries). This was due to the fact that E.U. Member States are free to decide whether to charge a fee for the issuance of student visas. See Council Decision 440/2006, 2006 O.J. (L 175/77) (EC). But if a Member State elects to charge a fee, the amount should be the same between Member States. Id. In 2006, EU Member States raised the administrative cost associated with the issuance of a visa to Euro 60.00. Id. Then in 2007, the cost for the issuance of a student visa was $80.35. Id. In 2008, Italy decided not to charge a fee to issue student visas, reasoning that students are comparable to holders of diplomatic passports. Ministero degli Affari Esteri, Visa for Italy, available at http://www.esteri.it/MAE/Templates/GenericTemplate.aspx?NRMODE=Published&NNODEGU ID=%7b941C22ED-1AFD-4B75-AA85-771E54F0FB80%7d&NRORINIALURL=%2fMAE%2fIT%2fMinistero%2fServizi%2fImprese%2fSportello_Info%2fDomandeFrequenti%2fVisto_per_Italia%2f&NRCACHEHINT=Guest#11 (last visited Feb. 22, 2010).

\textsuperscript{161} In 2006, the number of foreign students enrolled in Italian universities was around 38,000. Press Release, ADUC Immigrazione, Growing Number of Foreign Graduates, Medicine the
mostly to an extremely rigid Italian job market for law graduates. The number of visas that the Italian Government made available for foreign students in 2006 was 47,128.\textsuperscript{162} However, these caps are rarely reached. No decrees were issued in 2007, 2008, and 2009. For the academic year 2009–2010, the proposed decree—still under discussion before the Italian Parliament—puts at disposal 51,420 visas.\textsuperscript{163} However, as has been the case for the past three years, it is unlikely that the proposed decree will be enacted.\textsuperscript{164}

As a consequence, the Italian immigration statute implies that U.S. students studying with U.S. universities in Italy for less than ninety days are to be treated as foreign students entering Italian territory to enroll with an Italian university for a study program.

The immigration statute should distinguish between students studying in Italy for less than ninety days, those studying for more than six months, and those studying with a non-Italian institution of higher education. Since the immigration regulations lack this critical distinction, U.S. students are treated as long-term students enrolled in an Italian study program for immigration purposes. For the above reasons, this Article argues that the current Italian immigration regulation, in still requiring U.S. students to apply for student visas, is in error.

However, the Italian government is wise to continue exempting U.S. students from any visa requirements when they plan to study with a U.S. or


\textsuperscript{163} This is the case for many reasons that go beyond the principle aim of this Article. The proposed bill is the \textit{Schema di decreto ministeriale per la fissazione del numero massimo di visti di ingresso per l’accesso all’istruzione universitaria e di alta formazione artistica, musicale e coreutica degli studenti stranieri per l’anno accademico 2009–2010}. [Minister of Foreign Affairs, Draft Ministerial Decree for Establishing the Maximum Number of Entry Visas for Access to University Education and High-Level Art, Music and Dance of Foreign Students for the Academic Year 2009–2010] (No. 161), http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=00448514&part=doc_dc-sedetit_iscsadg-genbl_sddmplfdnmvdvdiplaniu&parse=no (last visited Apr. 14, 2010).

\textsuperscript{164} Id.
non-Italian university. This is because such students are not part of the Italian educational system and will not gain benefits, such as university credits or degrees, from an Italian institution. In fact, the Italian government does not recognize the legal value of courses, credits, and degrees from U.S. law schools operating in Italy. In other words, there is no educational justification for the Italian Government to require a visa from U.S. (and other foreign) students going to study in Italy with an American education institution. Currently, the two entities (the Italian government on one side and American universities on the other) largely ignore one another from a legal, economic and social perspective (more infra).

More importantly, Italian Consulates could save precious administrative costs by simply relying on the information provided by the heads of the universities or study abroad programs (namely, they could simply check the institution’s list of students). They could also cut costs by verifying the entry of U.S. students through travel documentation issued by airlines. These possible solutions would better respect the unique nature and status of U.S. universities in Italy.

Finally, the Italian government requires U.S. students, specifically non-EU citizens, to apply for a permesso di soggiorno at any police station or post office within eight days of their arrival in Italy. Beginning June 2, 2007, however, students participating in a short-term study program of less than ninety days may enter Italy without subsequently having to request a permit to stay. The new law requires students to declare their presence to the border police (if they come from a non-Schengen area, like the United States) or fill out a form with the hosting institution (if they come from within the Schengen area).

b) Long-Term Study

In order to pursue a study program organized by a foreign or Italian educational institution for more than ninety days, a student must apply both for a visa (defined as “Visto D”) at the Italian consulate, and for a permit to stay, within eight days of arrival in Italy under Articles 4 and 5 of the

165 Moreover, if the rationale for visa issuance relies on illegal immigration control, it cannot be justified with respect to U.S. students who spend thousands of dollars to acquire law degrees in the United States, and overall and more importantly, fall under the VWP.


168 On the Schengen agreement, see infra Part III.B.16.
Immigration Law. Applicants must provide evidence of travel documentation, economic autonomy, and insurance coverage.

c) Academies

U.S. universities that are willing to enter into Italian territory and its educational market to provide an education program for their students must obtain authorization from the Italian Ministry of Education, known as Ministero dell’Università e della Ricerca Scientifica (“MIUR”). Branches of U.S. universities are defined as filiazioni in Italia di università aventi sede all’estero, provided that they are classified as nonprofit organizations in the United States. Once classified as filiazioni, such branches can benefit from the same treatment in Italy as nonprofit Italian universities (in accord with the reciprocity principle), if the programs that they offer programs in Italy were designed in their home countries and they only offer credit to students admitted and enrolled in their home institutions.

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170 Even here, there is nonsense in the legislation. The health system in Italy is public and in many cases available at no charge (or small fee) for anyone regardless of race, religion or citizenship. Even illegal immigrants can obtain medical assistance in medical emergency situations. However, the Immigration Code establishes that, unless there is an agreement between the two states involved, foreign students must show proof of medical coverage. Id. Art. 39; Italian Ministry of Foreign Nationals, Consular Services, http://www.esteri.it/MAE/EN/Ministero/Servizi/Stranieri/ServReteConsolare.htm (last visited Apr. 14, 2010).


172 Id. art. 4. Interestingly enough, Italian law does not account for the fact that the criteria used to determine the nonprofit status of an educational institution could be very different from one jurisdiction to another. Often, U.S. universities are organized as trusts, something quite unknown under Italian law.

173 This is the status of all public universities in Italy. Royal Decree No. 1592, 31 agosto 1933, Suppl. Ordinario alla Gazz. Uff. No. 283, 7 december 1933 (Italy), available at http://www.italgiure.giustizia.it/nir/1933/lexs_17487.html. Italian public universities are entirely funded by the Italian Government and subject to its supervision. So, for example, the University of Rome, founded in 1303, bans profit-earning in its bylaws. Universita Delgi Studi di Roma “La Sapienza”, Statuto, art. 2(1), http://www.uniroma1.it/documenti/regolamenti/statuto.pdf (last visited Apr. 14, 2010).

174 Law No. 4, 14 gennaio 1999, art. 2(1), Gazz. Uff. No. 14, 19 gennaio 1999 (Italy), available at http://www.italgiure.giustizia.it/nir/1999/lexs_173061.html. Thus, logically, U.S. programs cannot offer their credits to Italian students. What are the consequences? Aside from the fact that Italian students probably will not be able to use the credits for pursuing their curriculum with an Italian university (and this is more practical nonsense considering that currently there are numerous exchange programs with credit recognition in place among U.S. and Italian law schools), no sanctions are established. The worse scenario could be that U.S. universities lose their nonprofit (filiazioni) status.
In order to set up a branch, non-Italian universities must submit documents showing the intention of their establishment, the bylaws of the university, and other translated and legalized documents to the Italian Department of Education. If the Department does not respond within ninety days, the U.S. (or other foreign) university is authorized to enter Italian territory. However, the law does not distinguish between “soft” and “stable” forms of presence in Italy.

Before 1988, foreign educational institutions that were entering Italy and providing programs for foreign students were unregulated; Italian legislation ignored the situation because such foreign institutions were not in any sort of direct competition with Italian universities (or with Italian degrees). The situation caught the public’s attention in 1988 when the Italian Tax Police conducted a thorough investigation of several American educational institutions and discovered that they had never complied with the tax code. The Italian Tax Police imposed severe fines. U.S. political institutions lobbied the Italian Parliament to resolve the situation. With Law n. 154 of April 29, 1989, the Italian Parliament introduced specific laws for such branches of foreign universities, retroactively recharacterizing them as nonprofit institutions rather than as businesses. The most recent official regulation came about 10 years later, defining U.S. universities as nonprofit entities (“filiations”) and outlining the procedure to be followed, giving it a hint of recognition within the Italian legal system.

3. Spain

a) Short-Term Study

U.S. students do not need a student visa for study purposes if they want to go to Spain for less than ninety days according to EU Council Regulation 539/2001, regardless of whether the institution that is organizing the study abroad program is Spanish. Thus, U.S. students pursuing a short-term plan of study do not fall into the classification requiring student visas. U.S.

176 Telephone interview with the Italian Tax Police in Rome, Italy (Oct. 2007) (requesting to remain anonymous). For the laws pertaining to the taxation of foreign executives, see Presidential Decree No. 917, 22 dicembre 1986 (Italy).
178 Namely, the fines were annulled and the unpaid taxes were declared not reimbursable. See Law No. 154, 27 aprile 1989, art. 34, § 8, Gazz. Uff. No. 99, 29 aprile 1989 (Italy), available at http://www.italgiure.giustizia.it/nir/1989/lexs_122484.html.
students willing to stay for more than three months, however, must apply for a visa.\textsuperscript{180}

\textit{b) Long-Term Study}

U.S. citizens seeking to study in Spain for more than ninety days must provide Schengen application forms, a passport, passport size photos, a letter of acceptance as a fulltime student from the Spanish school, university, or U.S. program, proof of health insurance, proof of financial means, and a letter from the school in Spain or the U.S. that will assume full financial responsibility.\textsuperscript{181} Proof of financial means includes proof of financial aid or scholarship for at least $1,000 per month for room and board, bank account statements showing at least $1,000 per month of stay, plus additional documentation.\textsuperscript{182}

\textit{c) Academies}

U.S. universities seeking to set up a Spanish branch must refer to the \textit{Ley Orgánica}.\textsuperscript{183} The law dictates the requirements for the establishment of public universities and recognizes private ones. In both cases, universities must comply with the local regulations of the Autonomous Communities in the district where their institution is located and with the regulations of the General Court of the same territorial district; compliance with the agreement of the local Executive of the Autonomous Community is also required.\textsuperscript{184}

Public universities are created only after obtaining an opinion from the \textit{Consejo de Coordinación Universitaria} [Coordination Universities Council] ("CUC"). In any case, in order to guarantee the quality of teaching and research for both public and private universities, the Executive along with the CUC determine the basic requirements, means, and the like for the creation and recognition of academic institutions.\textsuperscript{185}

\begin{itemize}
\item \textsuperscript{181} Id.
\item \textsuperscript{182} Id.
\item \textsuperscript{186} Id. art. 4.3.
\end{itemize}
Private universities or private university centers, formed by individual or legal entities for profit, are recognized under the same legislative framework. The statute also establishes the procedure and requirements for the transfer of ownership and change of a university status from a private to a public institution.186 The local Autonomous Community makes the final decision on this change of status.187 Private university centers must form an integral part of private universities.188

Public universities are also organized according to the local statutes and bylaws previously approved by the Executive Council of the Autonomous Community. If the Council does not respond within three months, the proposed by-laws are deemed to have been approved.189 The internal organization of public universities must be representative of all the different sectors of the university. In addition, a decision of the Dean and covenants of the Social Council and of the Executive University Council can be challenged before the administrative court. Similarly, private universities are organized under local statutes and bylaws. Private universities are regulated by rules and laws according to their specific nature (whether for-profit or nonprofit).190

4. France

a) Short-Term Study191

As a general rule, under Article L211-1(1) of the current Code for the Entrance and Stay of Foreigners and Refugees, any foreigner entering France needs a valid passport and a visa,192 even if he/she intends to stay for less than ninety days.193 Exceptions to this rule are laid down in Articles L211-3, L212-1, and R212-1 of the same Code.194

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186 Id. art. 5.3.
187 Id.
188 See id. art. 5.4.
189 See id. art. 6.2.
191 Interview with French General Consulate officer in New York City (Mar. 18, 2010) (requesting to remain anonymous). The interviewed official also confirmed the prior regulation, which differed in requiring a student visa even for short-term study programs.
193 Nationals of the Schengen area can stay in France up to ninety days with the presentation of an accommodation document (justificatif d’hebergement) showing that the foreigner has a place to reside. Code de l’entrée et du sejour des etrangers et du droit d’asile, Version consolidée au 11 mars 2010, arts. L211-3, R211-2, available at http://www.legifrance.gouv.fr/affichCode.dojse
U.S. students entering France for a short term study program are dispensed to apply for a visa under the Programme d’Exemption de Visa (“VWP”). In addition to a valid passport, Article L211-3 of the Code requires foreigners dispensed by the visa obligation to provide a document showing that they have an accommodation in France.

As a matter of fact, until the full entry into force of the VWP, the law required all students (U.S. students included) to apply for a student visa, valid for three months, called an étudiant-concours, for those willing to pursue a study abroad program in France (without distinguishing between French or American universities offering the program). Therefore, French Consular officers were obligated to require U.S. students going to France even for a short study period (less than ninety days) to apply for a visa.

The situation changed recently when the French government allowed only U.S. students to enter France and stay there up to ninety days under the VWP. Interestingly enough, no other foreign students receive this treatment.

The recent change of the legislative framework was mainly due to the importance of the policy behind the VWP, the need to foster U.S. students’ mobility toward France and the recognition that students not interacting with the French education system can be more appropriately classified as “visitors” rather than “students” from the perspective of the French educational system. Currently, French consular authorities do not require a visa for study period of less than ninety days, so U.S. students going to France dispens...
France for a study program with an American university need only a valid passport.\footnote{201}

\textbf{b) Long-Term Study}

U.S. students must apply for a student visa only if they are registered with a U.S. school and going on an exchange program or are going to France for study or research related to prior studies.\footnote{202} Students must submit an application form, passport size photos, a passport, proof of student status, letter of admission (from a French university), and a financial guarantee (proof of personal income of at least $600 per month).\footnote{203} Proof of medical insurance is also required. The visa fee is $155.\footnote{204}

\textbf{c) Academies}

Universities are established by a ministerial decree upon the advice of \textit{Conseil National de l’Enseignement Supérieur et de la Recherche} (National Council for Higher Education and Research).\footnote{205} The French state has a monopoly over the conferring of grades and degrees to students.\footnote{206} The State establishes the list of degrees to be conferred according to the advice of the National Council.\footnote{207} The Ministry of Education, upon advice of the National Council, issues rules regarding how to obtain such degrees.\footnote{208}

\footnote{203} Id.
\footnote{204} Id.
\footnote{207} Id.
\footnote{208} Id.
universities willing to offer higher education in France must comply with the requirements established in the Code de l'éducation.209

5. Australia

a) Short-Term Study

U.S. students going to Australia for a short-term study program offered by a U.S. law school do not need to secure a visa under VWP.210 Instead, students entering Australia for a short study period need to secure an Electronically Stored Authority (“ETA”).211 Since the consular authority is not involved and there is no stamp or sticker attached to the passport, an ETA is not a visa, but rather a permit to travel. The permit involves a number connected to the passport number of the visitor.212 The ETA process is faster than that for obtaining a visa, as it does not require the traditional administrative and financial efforts required to obtain a visa.213

Classified as visitors, students can enroll in informal studies or training and remain on Australian soil for up to ninety days for each visit within a twelve month period from the granting date.214 The ETA entitles any U.S. student to remain in Australia for study purposes regardless of whether the study program provider is an Australian or foreign institution. Foreign students travelling on an ETA are normally not allowed to work, but are able to apply for limited volunteer work.215 Health insurance coverage is


212 Id.


215 Id. Each foreign student is required to have an x-ray of his/her chest if he/she stays in class for more than four weeks and cannot enter into Australia if he/she is affected by tuberculosis. Id.
recommended but not required. Students can apply online to obtain their ETA for a service charge of $20.\textsuperscript{216}

Alternatively, U.S. students can decide to enter Australia with a tourist visa.\textsuperscript{217} This visa is for those who want to visit Australia for study or other purposes, but not for work, for up to three months.\textsuperscript{218} There is a fee of $105 for applications logged outside of Australia.\textsuperscript{219}

\textbf{b) Long-Term Study}

A student visa is required for periods longer than three months. Australia issues different visas according to the type of education that the student is pursuing. Visa options include: English Language Intensive Courses for Overseas Students program (“ELICOS”); primary or secondary school courses; vocational education and training for a diploma or advanced diploma; higher education, such as a bachelor’s degree, associate’s degree, graduate certificate, or graduate diploma; postgraduate research, such as a Master’s or Ph.D.; and non-award courses, that is, courses not leading to any Australian award or degree.\textsuperscript{220} Beginning January 1, 2008 the Australian migration regulation for student to demonstrate their ability to pay for their living costs increased to $18,000.\textsuperscript{221}

The duration of the visa issued will depend on the length of the course. Visas are issued by the Department of Immigration and Citizenship (“DIAC”).\textsuperscript{222} The student and his/her family members will be able to work in Australia provided that they obtain a permit.\textsuperscript{223} For example, the spouse of a Master’s student can work without any limitation. Australia issues visas for study programs that last for one year, and the visa is generally valid for the length of the program plus one or two additional months. To obtain a visa, applicants must be accepted to a fulltime study program in a registered

\textsuperscript{219} Id.
\textsuperscript{220} Id.
course, or be part of a registered course. 224 A registered course is an educational or training course offered by an Australian education provider registered on the Commonwealth Register of Institutions and Courses for Overseas Students (“CRICOS”).225

c) Academies

U.S. law schools interested in opening a branch in Australia must comply with complex regulations. The Australian Department of Education, Science and Training governs this field via the legislative framework of the Education Services for Overseas Students (“ESOS”).226 This framework sets minimum standards for the education of international students and regulates tuition and financial assurance.227

This legislative framework requires all institutional providers offering educational programs in Australia to register. The ESOS regulation is comprised of ESOS Act of 2000,228 the Education Services for Overseas Students Regulations of 2001,229 the National Code of Practice for Registration Authorities, Providers of Education and Training to Overseas Students (“National Code”),230 the Education Services for Overseas Students (“Registration Charges”) Act of 1997,231 and the ESOS Assurance Fund Act.232 The goal of such regulations is to set out clear rules and responsibilities for academic institutions involved in the education of international students.

Section 9 of the ESOS Act of 2000 establishes that a state’s designated authority may recommend that a state’s approved provider be registered to provide a specified course for that state to international students.233

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224 Id.
227 Id. § 4A.
228 Id.
229 Id.
234 Id. § 9.
registration occurs with the Secretary of the Registrar.\textsuperscript{234} The Secretary must register the provider if the provider is a resident of Australia and has paid the associated initial registration charge and first annual fund contribution, or if it is a member of a tuition assurance scheme as described in the law.\textsuperscript{235}

Section 10 of the ESOS Act of 2000 allows the Secretary to make the contents of CRICOS publicly available.\textsuperscript{236} The Secretary registers the approved provider by entering the name of the provider, the course, and the state into the Registrar.\textsuperscript{237}

6. Mexico

a) Short- or Long-Term Study

U.S. students wishing to travel to Mexico and to study at a Mexican university need to secure a visa, namely a FM3 Nonimmigrant Student Visa. The student must submit an application form (FM1), passport, admission letter from the education institution, passport size photos, and proof of financial independence (the minimum required is $300 per month besides tuition).\textsuperscript{238} The General Law on Population stipulates that U.S. students entering Mexico are considered nonresidents that have legally entered Mexico on a temporary basis.\textsuperscript{239}

b) Academies

The General Law on Education\textsuperscript{240} and the Law for the Coordination of Higher Education establish the legal framework for universities.\textsuperscript{241} The
system is overly centralized and bureaucratic. Government-funded universities are more numerous than private universities. In the Mexican federal government, certain responsibilities rest with the federal government while others rest with the states. The federal government is responsible for maintaining a national register of all the academic institutions and developing the curriculum for the national education system. Any institution intending to offer education must comply with federal as well as state regulations and obtain an authorization in advance. The government will grant authorization and recognition for study programs only when the institutions offer assurances that suitable personnel will provide education in appropriate facilities and through study programs previously verified by the federal and state governments.

7. Germany

a) Short-Term Study

U.S. students travelling to Germany to take part in a short-term study program offered by a U.S. law school do not need to secure a visa. U.S. citizens do not need to obtain a student visa for study programs lasting less than ninety days. Germany is an EU Member State and signatory of the Schengen Agreement. Nationals of countries not a party of the VWP must apply for a Schengen visa. Additionally, students of other countries listed in the EU Regulation, those who are not citizens of the countries party to the Schengen agreement, and U.S. students wanting to stay for more than three months must apply for a visa. Also, residence title requirement is excluded by German law according to Regulation 539/2001.

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242 Ley General de Educación art. 12 § IX.
243 Id. art. 54.
244 Id. art. 55.
245 Interview with German General Consulate representatives in New York City (Oct. 1, 2007).
247 Id.
248 See discussion, infra Part III.B.3.a.
249 Aufenthaltsgesetz [Ordinance Governing Residence] Nov. 25, 2004, BGBl. I at 2945, § 15 (establishing that: “Exemptions from the requirement for a residence title for entry into the federal territory and short stays by foreigners shall be based on the law of the European Union, in particular the Convention Implementing the Schengen Agreement and Regulation (EC) no. 539/2001 in conjunction with the following provisions.”).
b) **Long-Term Study**

U.S. students intending to enroll in a study program in Germany lasting for a period of more than ninety days need to secure a “residence permit.” Visa applications must be submitted in person and must include the following documents: an application form, a signed declaration, a passport, passport size photographs, an admission letter from a German university, evidence of sufficient funding during the period of study, and proof of insurance coverage.


c) **Academies**

In accord with the Framework Act for Higher Education of 1999, institutions of higher education are considered corporate entities under public law and state institutions. Universities may also take another legal form but have the right of self-administration. The state determines management and organization through the approval of an internal constitution approved by the relevant land that has supervisory power. An academic establishment willing to obtain recognition by a land must comply with its land law and satisfy the many requirements, which assure that the purpose of teaching and study is to prepare students for a field of professional activity. That establishment must impart the requisite specialized knowledge, skills, and methods in a way appropriate to each course, so as to ensure students to perform scientific or artistic work. The applicants must fulfill the requirements for admission to a corresponding state institution of higher education and, similarly, the full-time teaching must comply with the requirements for appointment to a corresponding position with a state institution of higher education.

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251 Id.; See also German Missions in the United States, Studying Germany, http://www.germany.info/Vertretung/usa/en/04_Legal/02_Directory__Services/01_Visa/__Study__Visa.html (last visited Jan. 27, 2010).


253 Id.

254 For more information about higher education in Germany see JEROEN HUISMAN, CHEPS CENTER FOR HIGHER EDUCATION POLICY STUDIES, COUNTRY REPORT, HIGHER EDUCATION IN GERMANY (2003), available at http://www.utwente.nl/cheps/documenten/germany.pdf.

8. China

a) Short-Term Study

Under the Law of the People’s Republic of China on Control of Entry and Exit of Aliens of 1986, U.S. students willing to travel to China for a period of study, short-term advanced study, or intern practice for less than six months should apply for an F visa. For study programs, advanced study, or intern practice programs which last for more than six months, students need to apply for an X visa.

China issues an F visa to foreign students, but also to foreigners invited for a visit, investigation, lecture, business, or for scientific, technological and cultural exchanges. Students must present the following documents to the Chinese Consulate: a passport (which must be valid for at least another six months), an application form, a passport size picture, and an invitation letter from a host company or business unit in China. To apply, students need to appear before the consulate or embassy, supply all the documentation required within the appropriate consular jurisdiction, and pay the visa fee of $130. The holder of an F visa, which is valid for ninety days, can enter China no later than 90 days or 180 days from the date of issuance. A visa expires after this time and is considered null and void.

b) Long-Term Study

U.S. students willing to pursue a study program with a duration of more than six months need to appear before the appropriate embassy or consulate general to present an application for an X visa. Students must submit the following documents to obtain an X visa: a passport, visa application form,
photo, a foreign student visa application form, and the admission letter from the Chinese academic institution.\textsuperscript{264} In addition, students wanting to remain for more than one year need to submit a physical examination.\textsuperscript{265} The visa fee is $130.\textsuperscript{266} Once on Chinese soil, the holder of an X visa must appear before the local public security department within thirty days of entry to define residential formalities.\textsuperscript{267}

c) Academies

Universities wanting to establish a branch in China need to comply with the regulations set forth by the 1998 Higher Education Law,\textsuperscript{268} and will acquire the status of a legal entity from the date of approval.\textsuperscript{269}

Article 24 states that the “[e]stablishment of an institution of higher learning should conform to the state higher education development planning accord with state” and public interests.\textsuperscript{270} The institution may not make a profit.\textsuperscript{271} Requirements are that the university or independently established college or school should have a “strong teaching and scientific research staff” and be in a position to provide undergraduate and post-undergraduate education.\textsuperscript{272} The university also must have departments dedicated to the disciplines “prescribed by the state as major disciplines.”\textsuperscript{273} The State Council formulates specific standards for institutions of higher learning.\textsuperscript{274}

Article 27 lists the documentation that institutions must submit in order to obtain establishment approval, among which are a report on the establishment application, articles of association, and other materials required by the examining body.\textsuperscript{275}

\textsuperscript{264} Id.
\textsuperscript{267} Id.
\textsuperscript{268} Id.
\textsuperscript{269} Id. art. 25.
\textsuperscript{270} Id. art 24.
\textsuperscript{271} Id.
\textsuperscript{272} Id.
\textsuperscript{273} Id.
\textsuperscript{274} Higher Education Law of the People’s Republic of China, art. 24.
\textsuperscript{275} Id. art. 27.
Article 29 states that the “[e]stablishment of institutions of higher education shall be subject to the examination and approval of the department of education administration under the State Council.” Schools applying specialty education may be subject to the examination and approval of the Peoples’ Governments of the provinces, which are autonomous regions and municipalities directly under the Central Government upon authorization by the State Council. However, the Department of Education has the power at any time to withdraw approval when the above mentioned conditions are not met.

9. Ireland

a) Short-Term Study

Under Article 3 of the Immigration Act of 2004, U.S. citizens, EU citizens, and other citizens of specifically indicated countries do not need a student visa for study programs of less than ninety days. However, Ireland requires a visitor going to Ireland for a short-term period of study to give evidence of all the documentation relating to the study program upon their arrival on Irish soil. Students should have the application and acceptance letter from the school or academic institution ready for inspection by the immigration officer. Students studying in Dublin must present their application to the Garda National Immigration Bureau. Students studying outside of Dublin must present the same documentation to the Garda District Headquarters and the Registration Officer.

b) Long-Term Study

To study in Ireland with an Irish education institution, U.S. students must provide a series of documents, including an application form to be filled out and signed, a valid passport, two recent passport-quality color...
photographs, an acceptance letter from the school/college, and evidence of payment of tuition.\footnote{Irish Naturalization and Immigration Service, supra note 279.} Also, the student must show evidence of economic autonomy for the duration of his or her stay (a minimum of €7,000 per year is required—this includes travel, accommodation, and living expenses), original bank statements covering the last six months (or an affidavit of support), proof of accommodation, proof of medical insurance, and for a minor, a letter from a parent or guarantor.\footnote{Id.} The visa application fee is €60. Students enrolled with an Irish academic institution may work, but not for more than twenty hours per week.\footnote{See also Protection of Employees (Part-time Work) Act, 2001 (Act No. 45/2001) (Ir.), http://www.irishstatutebook.ie/2001/en/act/pub/0045/index.html (last visited Jan. 27, 2010).}

c) Academies

U.S. law schools wanting to establish a study program in Ireland for American, Irish, or international students must comply with the regulations set forth in the Qualification (Education and Training) Act of 1999.\footnote{Qualifications (Education and Training) Act, 1999 (Act No. 26/1999), http://www.oireachtas.ie/documents/bills28/acts/1999/a2699.pdf (last visited Jan. 27, 2010).} Under Article 5, the Act establishes the National Qualification Authority of Ireland (“NQAI”) as competent to perform the functions established in the Act and, in particular, stated in Article 4.\footnote{Id. § 5.} The 1999 Act established three bodies responsible for recognizing third-level qualifications for universities, institutes of technology, and colleges of education. They are the NQAI,\footnote{See National Framework of Qualifications, http://www.nfq.ie/nfq/en/provider.html (last visited Feb. 26, 2010).} the Further Education and Training Awards Council (“FETAC”),\footnote{See FETAC, Further Education and Training Awards Council, homepage, http://www.fetac.ie/ (last visited Jan. 27, 2010).} and the Higher Education and Training Awards Council (“HETAC”).\footnote{See HETAC: Higher Education and Training Awards Council, homepage, http://www.hetac.ie/ (last visited Jan. 27, 2010).} The NQAI has among its many objectives “the establishment and maintenance of a framework for the development, recognition and award of qualifications based on standards of knowledge, skill or competence to be acquired by learners,” regardless of where they were acquired.\footnote{Qualifications (Education and Training) Act, § 7.} NQAI is also responsible for establishing and maintaining the National Framework of Qualifications,\footnote{Id.} establishing procedures for the Councils and deciding on
procedures to be implemented by the education providers in relation to access to education, transfer, and progression.\textsuperscript{293}

The other two awarding entities, FETAC and HETAC, are comprised of the certification bodies of all the education and training bodies in the state other than those relating to primary and post-primary education.\textsuperscript{294} Among their principal functions are the establishment of policies and criteria for the making of awards, the validation of programs in higher education and further training, and the setting of standards of knowledge, skill, or competence which students must be acquire before the Councils may make an award.\textsuperscript{295}

10. Costa Rica

\textit{a) Short-Term Study}

U.S. students who enter Costa Rica for study purposes for a period of less than ninety days do not need to apply for a visa.\textsuperscript{296} At the port of entry, the presentation of a valid passport and travel documentation showing that the applicant will leave the country within ninety days are sufficient.\textsuperscript{297} Effective May 23, 2007, even holders of U.S. visas or EU visas can enter Costa Rica and remain up to thirty days without needing to apply for a visa.

\textit{b) Long-Term Study}

U.S. students intending to study in Costa Rica for more than three months must apply for a temporary permit instead of a student visa.\textsuperscript{298} Applicants must be enrolled in a public or private university recognized by Costa Rica.\textsuperscript{299} The temporary permit does not grant permission to work.\textsuperscript{300} In order to obtain a temporary permit, U.S. students must provide to the Costa Rican Immigration Department the following documentation: a passport, an admission letter from the Costa Rican university, forms provided by the Immigration Department, a guarantee letter from a Costa Rican resident.\textsuperscript{301}

\textsuperscript{293} Id.


\textsuperscript{295} FETAC, supra note 294; HETAC, supra note 294.


\textsuperscript{297} Id.


\textsuperscript{299} Id.

\textsuperscript{300} Id.

\textsuperscript{301} Id.
assuming liability on behalf of the student during his/her entire stay, proof of funds, pictures, a “guarantee deposit” of $100 fee, and a criminal record.  

c) Academies

Law N.2160 (Ley Fundamental de Educación) regulates the education system in Costa Rica. Article 9 of Law N.2160 establishes that the Supreme Council on Education (Consejo Superior de Educación) is responsible for the authorization of study programs and student curricula. The same statute, in Articles 19 through 21, also regulates the establishment of the University of Costa Rica, adding that its degrees are valid for employees intending to work for the state or entering into private practice. Detailed regulation in the education field is provided in the Código de Educación. American universities willing to open a branch in Costa Rica can do so through the establishment of a private education entity.

11. Japan

a) Short-Term Study

In April 2006, Japan entered into a waiver agreement program with sixty-two countries, including the United States, to facilitate entrance into Japan for short stays by amending the Immigration Control and Refugee Recognition Act Law of 1999. U.S. students wanting to study for less than ninety days in either a Japanese university, language school, or foreign university can enter Japan without a visa, provided that the American student neither looks for nor accepts work. Students from countries not party to the waiver agreement program, and enrolled in a study program, must apply for a temporary visitor’s visa (or general visa) and obtain a certificate of eligibility.

301 Id.
304 Ley Fundamental de Educación, arts. 19–21.
**Long-Term Study**

U.S. students intending to study for a period exceeding three months need to apply for a general visa. Applicants must submit to the proper consulate an application, a passport, a passport size photograph, and a certificate of eligibility. The certificate of eligibility is issued before the visa and represents evidence that the applicant meets the requirements of the Immigration Act, including those certifying that the activity in which the foreigner wishes to engage while in Japan is valid and comes under a status of residence.

**Academies**

The establishment of a new higher education institution in Japan is regulated by several sources, among which are the Fundamental Law on Education No. 25 of March 31, 1947 (also known as the Constitution of Education) and its amendments (the most recent one was made on December 15, 2006). Universities are regulated by the Standard for Establishing Universities defined by the Ministry of Education, Culture, Sports, Science, and Technology (“MEXT”) Ordinance No. 28 of October 22, 1956, amended with Ordinance of MEXT No. 40 of December 25, 2007. Under these regulations, in order to establish a branch in Japan, any university has to apply for the approval of the MEXT in accordance with the decision of the Council for University Establishment and School Corporation. The Council is comprised of personalities with academic experience. Universities are responsible for assuring that quality of education will be the top priority. Once the application has been submitted, there will be a consultation with the MEXT and the Council to define the curriculum, organization of professors, facilities, and financial situation. The Ministry ultimately decides to approve or reject the application.

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312 Id.


316 Id.

317 Id.

318 Id.

319 Id.
12. Austria

a) Short-Term Study (Up to Three Months)

A U.S. student wanting to study in Austria is allowed to study for up to three months under the VWP without obtaining a visa. As long as the student does not look for employment, they will not have to file for a student visa. The three-month time period begins when the student or visitor enters a Schengen country. If the student wants to stay more than three months, he or she must apply for a visa.

b) Long-Term (Three Months Up to Six Months)

U.S. students who plan to study in Austria at an Austrian university or to apply for an internship for more than three but less than six months must apply for a student visa (class D). The following documents are necessary when applying for a visa: an application form, a passport that is valid for three more months beyond the date of leaving Austria and the Schengen zone, two identical passport-size photos, a copy of roundtrip ticket information, proof of sufficient funds for the length of the stay, admission letter from an Austrian or U.S. university (or Fulbright grant), proof of accommodation, and proof of insurance. Again, this visa does not allow a student to work in Austria. If, however, the student applies for a visa C in addition to the D, the student may obtain temporary work authorization.

c) Longer-Term (More Than Six Months)

If the U.S. student plans to study in Austria, or to work as a researcher for more than six months, he or she must apply for a residence permit. Among the necessary documents are: an application form, passport, two identical regular size passport photos, a copy of roundtrip ticket information, a nonrefundable visa fee, proof of funds, and proof of health insurance. Students or researchers may stay in Austria by applying for the

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320 Embassy of Austria, Do I Need a Visa, http://www.austria.org/content/view/38/64/ (last visited Mar. 6, 2010).
321 Id.
322 Id.
323 Id.
325 Id.
326 Id.
327 Id.
Aufenthaltsbewilligung as a student or Forscher as a researcher.\textsuperscript{328} Once on Austrian soil, all individuals must report their presence to the local authorities within three days.\textsuperscript{329}

d) Academies

The legal framework in Austria is the Federal Act on the Organization of the Universities and their Studies of 2002.\textsuperscript{330} The goal of the statute was to facilitate the creation of independent entrepreneurial bodies that would have access to private funding in association with current federal funding.\textsuperscript{331} Per Article 3 of the University Act of 2002, universities have among their various duties that of academic, artistic, pedagogical and critical training for occupations requiring the application of academic knowledge and methods, as well as training in artistic and academic abilities to the highest levels.\textsuperscript{332} They also must perform their duties under the regulations established in the University Organization Act of 1993 and Universities of the Arts Organization Act, without restriction by ministerial directions.\textsuperscript{333} The same statute regulates the operation of new universities.\textsuperscript{334} Under this statute, universities are public entities and regulated by Austrian public law.\textsuperscript{335} Universities are subject to supervision by the Federal Government, which requires them to comply with relevant federal law, ministerial orders, and university statutes. Ultimately, the Minister of Education is responsible for the recognition and supervision of universities.\textsuperscript{336}

13. New Zealand

a) Short-Term Study

The basic entry regulation in New Zealand is provided by the Immigration Act of 1987 and the Immigration Regulation of 1991. U.S. students who want to study in New Zealand do not need to secure a student visa in accordance with the VWP. Under this VWP, the Immigration Act of 1987, Sections 26 and 126, the Immigration Regulations of 1999, Regulation 12, and Section E4.50 of the Immigration New Zealand Operational Manual, U.S. students entering New Zealand without a visa can stay up to three months.

When passing through customs in New Zealand, U.S. students may need to provide evidence to the immigration officer of meeting the immigration policy requirements and thus show that they are bona fide applicants (meaning that they can enter New Zealand only for a lawful purpose and intend to leave at the end of their trip). The lawful purpose test is met if they are entering New Zealand for vacationing, sightseeing, family or social visits, amateur sport, business consultation, medical treatment, marriage or, finally, for enrolling and taking a single course of study that lasts no more than three calendar months. Under Section 5 of the Immigration Act, no employment is permissible.

If the course of study is at a private institution, it must meet the criteria set forth in Sections 232 and 233 of the Education Act of 1989. These criteria state that the private institution must permit a foreign student to begin or undertake only approved courses of study or training which the academic institution is accredited to provide. Furthermore, the course must last less than three months or must be exempt from the immigration requirements. The New Zealand Qualification Authority may exempt

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340 Immigration Act 1987, 1987 S.R. No. 74 § 14D.

341 Id. § 24.

342 Id. § 5.


344 Id. § 4.

345 Id. § 232.
courses of study. A foreign student is defined in Section 159 of the 1989 Act as a person who at any time is not a domestic student.

b) Long-Term Study

American students willing to study for more than three months at a New Zealand university have to apply for a visa and comply with the following regulations: they must provide a completed, signed, and dated student visa application; a recent passport size photograph; together with their passport; a letter of acceptance from an educational institution in New Zealand in a course which meets foreign student policy requirements and specifying the name of course and the minimum time required for completion; and finally, proof that the fee for the full course and the annual fee for the course, if it is longer than one year, has been fully paid or guaranteed by a U.S. university.

In addition, students undertaking courses lasting less than thirty-six weeks must demonstrate that they have at least NZ$1,000 available per month for maintenance and accommodation, or NZ$400 per month if the accommodation is prepaid. Students undertaking courses lasting thirty-six weeks or longer must demonstrate that they have at least NZ$10,000 available to them per year.

c) Academies

U.S. law schools willing to establish a branch in New Zealand must comply with the requirements and regulations set forth in the Education Act of 1989. A university or law school intending to enter into this market must register as a Private Training Establishment (“PTE”), as well as comply with the requirements of Section 236 of the Act and also with the Quality Assurance (“QA”) Standard One established by the New Zealand Qualification Authority.

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347 Education Act 1989, §233.
350 New Zealand: Applying for a Student Visa, supra note 348. Students intending to spend more than six months in New Zealand may be asked to provide a chest X-ray report. Students intending to spend more than twelve months in New Zealand are required to provide a New Zealand Immigration Service, Medical and Chest X-ray Certificate. Id.
Qualifications Authority ("NZQA"). The NZQA is required to establish policies and criteria for the registration of private training establishments. The QA Standard One consists of policies and criteria that the NZQA has established for the registration of PTEs. Once registered, in order to maintain good standing status, the branch must comply at all times with the relevant policies and criteria established by NZQA. Section 236 establishes that the NZQA may grant an application for registration of a PTE if it satisfies the requirements and meets the goals and purposes set out in the application statement. The NZQA examines the adequacy of educational staff, equipment, and premises to provide its proposed courses of study or training. The school branch also needs to provide every prospective student with a written statement of the total course costs and other financial commitments associated with each course of study or training before accepting that student's enrollment.

14. Greece

a) Short-Term Study (Less Than Ninety Days)

Greece, like many of the countries listed above, is a member of VWP. Under the VWP, U.S. citizens may stay in Greece without a visa for a maximum of three months. If a student (including U.S. students) wishes to stay longer than three months, they must then file a student visa.

b) Long-Term Study (More Than Ninety Days)

U.S. students wishing to study or conduct research for more than three months in a Greek university or a foreign university established in Greece must comply with the requirements established by Law N. 3386/2005. In

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355 Id.
356 Id.
357 Id.
358 Id.
such a case, a student must apply for and obtain a visa prior to entering Greece and apply for and obtain a residence permit once in Greece.\footnote{Ministry of Foreign Affairs: Greece in the World, General Information on Visas, http://www.mfa.gr/www.mfa.gr/en-US/Services/Visas/General+Information/ (last visited Mar. 7, 2010).}

Before the study period begins, a U.S. student must apply, in person, at the nearest Greek Consulate or Embassy.\footnote{Embassy of Greece, Washington D.C.: Student Visa, http://www.mfa.gr/AuthoritiesAbroad/North-America/USA/EmbassyWashington/en-US/Consular+Services/Visa+Section/Student+Visa (last visited Mar. 7, 2010).} The student must present a valid passport, a completed application form, a letter from the accepting university, a health certificate, an official document stating that he or she has no criminal record, and four passport size photos.\footnote{Id.} In addition, at any Greek port of entry the student must complete a financial declaration stating his or her financial independence for the entire study period.\footnote{Id.}

Once a foreign student obtains a visa and enters Greece, he or she can claim the right of residence in Greece only if he or she applies, within a few days of arrival, for a residence permit. Article 10 of the Law N. 3386 stipulates that a student may obtain a residence permit if he or she holds a valid passport or other travel document recognized by international agreements (like a visa) and demonstrates that he or she is not a threat of Greek public order, health, or security.\footnote{Nomos (2005:3396) D: art.10.} At the end of each month, the competent regional Agency for Aliens and Migration is obliged to send the local precinct of the Hellenic Police Force records that contain the non-national student’s accurate personal data and list the residence permits that have been issued or renewed to him.\footnote{Id. D: art. 10.b.} Additionally, students must show that they are fully insured and prove that they have sufficient financial resources to cover express return to their country of origin.\footnote{Id. D: art. 10, G: art. 28.7.}

c) Academies

The U.S. Universities wishing to operate a university in Greece must comply with local regulations establishing the minimal application requirements to be sent to the Department of Education. Greek law requires applicants to submit a translated and notarized copy of the university’s bylaws and to supply the dates when it intends to begin operating and its purposed projects.\footnote{See Approval Teaching in Foreign Teachers, http://www.ypepth.gr/el_ec_page692.htm (last visited Dec. 18, 2008).}
15. Argentina

a) Short-Term Study (Up to Ninety Days)

The U.S. and MERCOSUR students who want to travel to Argentina for a short study period can enter the country without a visa and are treated as tourists, in accordance with Resolutions N. 1523/90 and N. 20.699. Any period of study longer than ninety days will require that the student obtain a travel visa.

b) Long-Term Study (More Than Ninety Days)

U.S. students that want to enter Argentina for a study program of more than ninety days may either apply for a visa or enter as tourists but then must adjust their immigration status accordingly. Within thirty days of enrollment, students must submit to the Dirección Nacional de Migraciones a set of documents, including the official letter of admission/enrollment from a recognized school/educational institution in Argentina, an application form, and a certificate showing a clean criminal record from each country or city where the applicant has resided during the last five years. In addition, the applicant must provide a criminal record certificate issued by the Argentine Federal Police Department or the Registro Nacional de Reincidencia. Finally, the student must provide a birth certificate with an apostille that is duly legalized by the consular authority of Argentina in the student’s country.

c) Academies

A foreign university interested in creating a program or establishing a physical presence through a branch in Argentina must comply with the Ley Nacional De Educación Superior, N. 24.521 (“Ley National”).

370 Id.
371 Id.
372 Id.
373 Id.
374 Requirements to Enter and Stay in Argentina, supra note 369; see also Ministerio de Justicia, Seguridad y Derechos Humanos, Registro Nacional de Reincidencia, http://www.dnrec.jus.gov.ar (last visited Jan. 27, 2010).
To establish a program or open an educational branch in Argentina, a private university should apply to the Ministerio de Cultura y Educación to obtain official recognition after obtaining a favorable report from the Comisión Nacional de Evaluacion y Acreditacion Universitaria ("CONEAU"), an agency of the Ministerio de la Cultura y Educación. The CONEAU has several functions, including the improvement of education in Argentina, the evaluation of projects submitted by new public and private universities, the granting of accreditation to government-regulated undergraduate programs, and the granting of accreditation to graduate programs. The CONEAU also has the duty of running periodic checks (every six years) regarding the academic quality of all higher education institutions operating in Argentina.

Article 62 of the Ley Nacional establishes that a private university must be a nonprofit venture. Its academic activity, previously assessed by CONEAU, will be provisionally authorized by the Ministerio of Educación for six years. During this time, the Department of Education and CONEAU will gather information and assess the quality of the academic curricula. Under Article 65 of the Ley Nacional, after the six years period, the higher education institution may apply to obtain the final recognition that will be issued with a decree of the Executive, along with the previous report issued by the CONEAU.

16. The European Union, Schengen Agreement, and VWP: A Delicate Interaction

During the last decade, visa regulation in Europe has become a complex field due to the overlapping of different international agreements, among them the Schengen Agreement and the Visa Waiver Program, all interacting with the reciprocity principle.


377 Id.

378 Id.

379 Id.

380 Law No. 24.521 art. 62.

381 Id. art. 65.

Article 18 of the Treaty of the European Community (“TEC”), now Article 21 of the Treaty of Lisbon (“ToL”), established that every EU citizen has the right to move and reside freely within the territory of the Member States: no restrictions can be imposed by Member States. Moreover, Article 62(2) of the TEC, now Articles 77(2)(a) and 77(2)(c) of the ToL, gave the Council the authority to determine the conditions for allowing third country nationals to enter the European Union for short stays.

On June 14, 1985, certain European states signed the Schengen Agreement with the intention of allowing European citizens free movement within European borders. Having come into effect in 1995, the Agreement today includes Austria, Belgium, Denmark, Finland, France, Germany, Italy, Greece, Luxembourg, Netherlands, Portugal, Spain, Sweden, Norway, and Iceland. The agreement abolished checks at the internal borders of the signatory states and created a single external border where admissions for the Schengen area are carried out uniformly. Common visa rules were adopted and implemented for this purpose.

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385 Article 77 of the Treaty of Lisbon provides:

1. The Union shall develop a policy with a view to:
   
   (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
   
   (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
   
   (c) the gradual introduction of an integrated management system for external borders.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

   (a) the common policy on visas and other short-stay residence permits;
   
   (b) the checks to which persons crossing external borders are subject;
   
   (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
   
   (d) any measure necessary for the gradual establishment of an integrated management system for external borders;
   
   (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

388 Id.
The Schengen Agreement was incorporated within the EU framework in 1997. This happened with various statutory documents. The protocol attached to the Treaty of Amsterdam was the first step.\(^{389}\) Then the Council enacted several decisions to clarify the protocol.\(^{390}\) Since these first steps, the Schengen Agreement—now firmly part of the EU framework—has been amended through numerous EU acts.\(^{391}\) As a result, the European Union adopted uniform visa provisions for non-EU citizens entering into the Schengen area for less than ninety days.\(^{392}\) The Council drew up a list of countries whose citizens would not require a visa for a stay of less than three months (including the United States),\(^{393}\) and a list of countries whose citizens


\(^{391}\) 1999 O.J. (L 119/49); 1999 O.J. (L 176/1); 2000 O.J. (L 131/43).

\(^{392}\) Schengen Area and Cooperation, supra note 246. With a Schengen visa, U.S. students may travel throughout the Schengen zone. U.S. Dep’t of State, Schengen Fact Sheet, http://travel.state.gov/travel/cis_pa_tw/cis/cis_4361.html (last visited Apr. 20, 2010). Once a student has obtained a visa from one Member State, they can travel freely in other member jurisdiction without another visa. Id.

\(^{393}\) Citizens of the following countries do not require a visa for visits lasting less than three months: Andorra, Argentina, Australia, Bolivia, Brazil, Brunei, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Ecuador, Estonia, Guatemala, Holy See, Honduras, Hungary, Israel, Japan, Latvia, Lithuania, Malaysia, Malta, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, Poland, Romania, Salvador, San Marino, Singapore, Slovakia, Slovenia, South Korea, Switzerland, United States, Uruguay, Venezuela, Hong Kong SAR, and Macao. Council Regulation 539/2001, Annex 2, O.J. (L 81), available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001R0539:20070119:EN:PDF.
would need a visa. The rationale behind this was to pursue harmonization among the Member States through the application of the reciprocity rule.

In 1986, the U.S. Congress enacted the Visa Waiver Pilot Program ("VWPP"), which became effective in 1988. The VWPP became permanent on October 30, 2000, renamed as the Visa Waiver Program ("VWP"). Only countries that meet certain qualifications can obtain the VWP status. These requirements include a low (between 2.5 and 3 percent) refusal rate of non-immigrant visa nationals in the U.S. from that particular country and the issuance of machine-readable passports. Under the VWP, nationals of member countries can circulate freely up to ninety days with an e-passport with biometric identifiers and without the need to apply for a visa. The Enhanced Border Security and Visa Reform Security Act of 2002 (signed into law on May 14, 2002) mandated that the governments of each member of the VWP issue e-passports for those nationals willing to travel to the U.S. by October 26, 2004. Interestingly enough, the deadline for the capability to

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398 Id.

399 Id.


402 Id.
issue biometric passports was extended by the Patriot Act to October 27, 2005 because Italy and France were unable to meet the earlier deadline. Currently, the VWP includes thirty-six countries but only twenty-three of the twenty-seven EU member states (Cyprus, Poland, Romania and Bulgaria are excluded), and three of the Schengen area (Iceland, Switzerland and Norway). The wealthy Liechtenstein is a member of the VWP but only cooperates with the European Union.

The reciprocity mechanism of the VWP and U.S. national security concerns prompted the European Union to revise and enhance its visa policies. On February 21, 2006, the Council adopted certain conclusions on the visa waiver reciprocity mechanism, recognizing full visa waiver reciprocity as an essential element of the EU common visa policy for facilitating travel without a short-stay visa to all third countries (U.S. included) whose nationals can travel to the European Union without a visa. Indeed, the deadline imposed by the VWP forced the EU institutions to revise its visa policy. With Recommendation 2005/71/EC, the European Parliament and the Council of September 28, 2005 recognized the importance of establishing a uniform visa procedure to allow for short stays by researchers.

Before the VWP, the European Union already regulated short stays with Article 1(2) of Regulation 539/2001 (consolidated on January 19, 2007), which established that nationals of certain non-EU countries are exempt from the visa requirement for stays of no more than three months. The Council drew

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404 SISKIN, supra note 398, at 10.


409 Council Regulation 539/2001, 2001 O.J. (L 81) 1, 1 (EC); Schengen Area and Cooperation supra note 246. With a Schengen visa, U.S. students may travel throughout the Schengen zone. U.S. Department of State, Schengen Fact Sheet, http://travel.state.gov/travel/cis_pa_tw/cis/cis_4361.html. Once a student has obtained a visa from one Member State, they can travel freely in other member jurisdiction without another visa. Id.
up the list of countries (including the United States),\textsuperscript{410} and a list of countries whose citizens would need a visa.\textsuperscript{411} The rationale behind this was to pursue harmonization among the member states through the application of the reciprocity rule.\textsuperscript{412} In brief, the EU is not a signatory itself of the VWP, but recognized that many of its member states are signatories of the VWP. The EU legislative framework has been recently completed with the adoption of Regulation 810/2009, establishing a Community Code on Visas (or Visa Code).\textsuperscript{413} The Code, however, does not change the legislative framework of the short stay.\textsuperscript{414}

In March 1999 and June 2000, respectively, the United Kingdom and Ireland sought participation in certain aspects of Schengen cooperation, other than visa regulations.\textsuperscript{415} The Schengen Agreement represented progress toward cooperation between countries, particularly in facilitating the free movement of European citizens within Europe. In other words, EU Member States agreed on the list of countries whose citizens would have lesser entry requirements, and states wanting to enter into the European Union had to

\textsuperscript{410} Citizens of the following countries do not require a visa for visits lasting less than three months: Andorra, Armenia, Austria, Australia, Bolivia, Brazil, Brunei, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Estonia, Guatemalan, Holy See, Honduras, Hungary, Israel, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, Poland, Romania, Salvador, San Marino, Singapore, Slovakia, Slovenia, South Korea, Switzerland, United States, Uruguay, Venezuela, Hong Kong SAR, and Macao. Council Regulation 539/2001, Annex 2, 2001 O.J. (L 81), available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001R0539:20070119:EN:PDF.


\textsuperscript{412} Council Regulation 539/2001, 2001 O.J. (L 81) 5.

\textsuperscript{413} Council Regulation 810/2009, 2009 O.J. (L 243) 1.

\textsuperscript{414} Id.

\textsuperscript{415} Schengen Area and Cooperation, supra note 246.
agree to, and make accommodations for, this list before entering into the European Union.416

Most recently, Italy has adopted the European Directive 2004/114/CE on student visas. 417 Under this regulation, a new Article 39-bis has been introduced into the Italian Immigration Code, stating that “foreigners are permitted to enter and stay for study purposes, in accordance with administrative regulations: (a) to pursue study programs with institutions of higher education; and training and technical programs of higher education.”418 The rationale of this new regulation is to promote the mobility of students entering Italy and Europe. The law, however, does not say anything about non-Italian students enrolled in study programs at non-Italian universities.

Internal cohesion and harmonization of EU entry regulations among EU Member States is still an issue. Spain, Austria, and Germany immediately adapted to the new regulation, introducing the simplified entry procedure for short-term students.419 Similarly, other Member States have complied with the EU regulations, including the Netherlands420 (where a visa is not necessary even if a U.S. student declares that he or she wishes to ‘reside’ there), Belgium,421 Denmark,422 Sweden,423 Norway,424 Iceland,425 Portugal,426 and finally and most recently, France.427

419 See discussion, infra Parts III(B)(3), (7), (12).
424 Regarding university summer schools, the Norwegian Directorate of Immigration website states, “A residence permit is not required for attending a summer school lasting up to three months. In such a case, students can stay in Norway on the basis of a valid visa or with no visa requirement, whichever is applicable.” Norwegian Directorate of Immigration, What Studies Can a Residence Permit Be Granted For?, http://www.udi.no/templates/Tema.aspx?id=7418#summer (last visited Jan. 27, 2010).
425 At the border, the student may be required to prove the trip’s purpose and demonstrate proof of a hotel reservation, return ticket, or proof of adequate means of subsistence, namely, €800.00 per month. UTL, Visa, http://www.utl.is/english/visas/no-visa/ (last visited Jan. 27, 2010).
On the contrary, Italy has adopted visa practices not completely in line with the EU regulations. What could be the consequences of this practice? In primis, any Member State that is a party to the Schengen Agreement could bring this case to the attention of the Joint Supervisory Authority of Schengen, claiming that the Schengen Agreement has not been properly implemented. Aside from internal administrative checks, no other effective sanction exists.

In secundis, under the Treaty on the Functioning of the European Union, particularly Articles 62(2)(b) and 63(3), if the Commission finds that a Member State has failed to fulfill its obligation under the treaty, it could deliver a reasoned opinion after having given the Member State the opportunity to submit its observations (Article 226). If the Member State does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the European Court of Justice (“ECJ”). Alternatively, under Article 227, any Member State may bring the issue before the ECJ. However, before submitting the matter to the ECJ, the state must invest in the issue about which the Commission will deliver its reasoned opinion.

The European Union adopted these principles with Council Regulation CE N.539/2001, which established a list of third country nationals who may cross the European border and stay for up to three months without needing

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427 See discussion, infra Part III.B.2.
428 Id.
431 Id. art. 62(2)(b). The Treaty establishes that:

The Council, . . . shall, . . . adopt: (2) measures on the crossing of the external borders of the Member States which shall establish: (b) rules on visas for intended stays of no more than three months, including: (i) the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement; (ii) the procedures and conditions for issuing visas by Member States; (iii) a uniform format for visas; (iv) rules on a uniform visa.

Id.
432 Id. art. 63(3) (according to which, the Council adopts “measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.”).
433 Id.
434 Treaty on the Functioning of the European Union art. 227.
435 Id.
to apply for a visa. In addition, the Council enacted the Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts ("CCI") and the Common Manual ("CM"). These established the uniform European visa procedure. That is, visas for visits exceeding three months will be considered national visas for citizens of third countries, provided that they are not nationals of countries that are exempt from such uniform visa requirements. This Council Communication has been submitted to all the consular offices and embassies of all the Member States, and must be uniformly applied. A uniform application of the EU regulations can greatly benefit the economies of the "brain exporter" countries.

Finally, another legal consequence could occur under the international law principle of noncompliance with the reciprocity rule. Article 4 of Regulation 539/2001 states that when a third country that is listed in the special list of states which are exempted from the visa requirements introduces a visa requirement for EU nationals, that same Member State may reintroduce the visa requirements for nationals of the first listed state.

437 Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts (CCI).
440 In addition, the European Court of Justice ("ECJ") intervened on a related matter when a dispute arose regarding states' rights to implement visa regulation powers under two European regulations. Council Regulation 789/2001, 2001 O.J. (L116) 2; Council Regulation 790/2001, 2001 O.J. (L116) 5. The regulations concern the practical procedures for carrying out border checks and surveillance, and for examining visa applications. See id. The Commission initiated two lawsuits against the Council affirming that the Council was infringing Article 202 of the E.C. Treaty because the Council failed to give adequate reasons of its implementing powers, and because the regulation of certain visa aspects was the responsibility of its Member States. Case C-27/01, Comm'n v. Grand Duchy of Luxembrough, 2001 E.C.R. 11. The Council responded by affirming that the implementation power is limited to the amendments of two documents: the CCI and the MC. These documents are hybrid in nature as they contain provisions that are legislative, executive, and factual. See CC1, 2002 O.J. (C313). The ECJ rejected and dismissed the actions of the Commission. Comm'n v. Grand Duchy, 2001 E.C.R. 11. The decision to reserve the right to exercise implementing powers is the exception and not the rule, because the Commission generally has these powers; however, the Council may reserve the right to implement such powers directly on specific cases. Case 16-88, Comm'n v. Council, 1989 E.C.R. 3457, available at http://www.ena.lu/judgment_court_justice_commission_council_case_16-88_24_october_1989-020002435.html.
441 Council Regulation, 539/2001, pmbl. (12), 2001 O.J. (L 81) ("This Regulation provides for full harmonisation as regards the third countries whose nationals are subject to the visa requirement for the crossing of Member States' external borders and those whose nationals are exempt from that requirement.").
442 See id. art. 4, annex II.
443 See id. art. 4, annex II.
In its preamble, Directive 2004/114/CE says that the Council is dedicated to the harmonization of the legislation of the Member States in order to standardize the conditions and procedures for admitting non-EU citizens into the European Union.\textsuperscript{444} The harmonization of regulations also involves the entry and stay of non-EU citizens, including students.\textsuperscript{445} Most importantly, the European Union wants to accelerate admission procedures for students (so called “fast-track admissions”).\textsuperscript{446} The European Union also hopes to be able to influence, in accordance with article 5 of the establishment Treaty of the European Union,\textsuperscript{447} the determination of admission and stay regulations for non-EU citizens entering for study purposes.\textsuperscript{448}


(3): At its special meeting at Tampere on 15 and 16 October 1999, the European Council acknowledged the need for approximation of national legislation on the conditions for admission and residence of third-country nationals and asked the Council to rapidly adopt decisions on the basis of proposals by the Commission.

(6): One of the objectives of Community action in the field of education is to promote Europe as a whole as a world centre of excellence for studies and vocational training. Promoting the mobility of third-country nationals to the Community for the purpose of studies is a key factor in that strategy. The approximation of the Member States’ national legislation on conditions of entry and residence is part of this.

(7): Migration for the purposes set out in this Directive, which is by definition temporary and does not depend on the labour-market situation in the host country, constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity among cultures.

\textit{Id.}

\textsuperscript{445} \textit{Id.}


(24) Since the objective of this Directive, namely to determine the conditions of admission of third-country nationals for the purposes of study, pupil exchange, unremunerated training or voluntary service, cannot be sufficiently achieved by the Member States and can, by reason of its scale or effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as
The EU regulation is directed at both public and private academic institutions recognized in the host Member State whose courses of study are recognized in accordance with national legislation or administrative practices for the purposes set out in Article 2(e) of the Directive.\textsuperscript{449} Even if this regulation completely ignores U.S. institutions with programs overseas that are not recognized by any Italian administrative office or agency,\textsuperscript{450} it does not solve the issue of the currently different application of EU entry regulations among the Schengen countries.

Ultimately, the practice of not allowing students to freely travel the VWP countries for short stays (under ninety days) completely undermines the spirit of both the VWP Agreement and EU regulations because it jeopardizes the effort to foster cultural and economic exchange between the United States and Europe.

C. Students Entering the United States for a Short Period of Study: Defining “Courses of Study” and “Degrees or Certificates”

The United States has special rules that affect business or pleasure visas obtained in order to pursue short or casual study programs which are not considered “courses of study” leading to “degrees or certificates.” Because of the distinction between casual study programs and courses of study, the lines between a short-term student and a long-term student are blurred. The Immigration and Nationality Act (“INA”) in the U.S. Code distinguishes between non-immigrants entering the United States for study,\textsuperscript{451} non-immigrants visiting for business or pleasure,\textsuperscript{452} and non-immigrants with similar study or visit purposes coming from countries participating in the VWP.\textsuperscript{453}

\begin{footnotes}
\item[449] Id. at 13.

Article 2(e) “establishment” means a public or private establishment recognised by the host Member State and/or whose courses of study are recognised in accordance with its national legislation or administrative practice for the purposes set out in this Directive.

\item[451] This means that if the U.S. study abroad program grants student credits or a degree upon completion, they are not recognized under Italian law.
\item[452] See 8 C.F.R. § 214.2(f) (2009); 8 C.F.R. § 214.2(m) (2009).
\item[453] See 8 C.F.R. § 214.2(f) (2009); 8 C.F.R. § 214.2(m) (2009).
\end{footnotes}
Under the current law, non-immigrant aliens planning to pursue a “course of study” in the United States have to apply for an F-1 or M-1 visa.\footnote{8 C.F.R. § 214.2(b)(7) (2009).} Visitors for business or pleasure who wish to undertake a specific course of study cannot do so in B-1 or B-2 status.\footnote{Id. The regulation states: Enrollment in a course of study prohibited. An alien who is admitted as, or changes status to, a B-1 or B-2 nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay in B-1 or B-2 nonimmigrant status on or after such date, violates the conditions of his or her B-1 or B-2 status if the alien enrolls in a course of study. Such an alien who desires to enroll in a course of study must either obtain an F-1 or M-1 nonimmigrant visa from a consular officer abroad and seek readmission to the United States, or apply for and obtain a change of status under section 248 of the Act and 8 CFR part 248. The alien may not enroll in the course of study until the Service has admitted the alien as an F-1 or M-1 nonimmigrant or has approved the alien’s application under part 248 of this chapter and changed the alien’s status to that of an F-1 or M-1 nonimmigrant. Id; see also 8 C.F.R. § 248.1(c) (2009).} If the business or pleasure visitor desires to undertake a casual educational program, such as an English class, the visitor could legitimately do so in B-1 or B-2 status,\footnote{8 U.S.C. § 1101(a)(15) (2007).} provided that attendance is for less than eighteen hours per week.\footnote{See U.S. Dep’t of State, Student Visas, http://travel.state.gov/visa/temp/types/types_1268.html (last visited Jan. 27, 2010).} Visitors for business or pleasure from VWP countries may enter the United States with their machine-readable passport.\footnote{Immigration and Nationality Act, 8 U.S.C. § 1187(a)(3) (2006).} Such visitors may remain in the United States for a maximum of ninety days without the need for an extension.\footnote{8 C.F.R. § 248.2(f); 8 C.F.R. § 214.1(c)(3)(i) (2007).} The non-immigrant visitor for business or pleasure, therefore, is restricted in terms of study options as well as in terms of employment and receipt of payment.\footnote{8 U.S.C. § 1182(q).} However, the extent of this limitation is still not fully clarified as the definition of course of study is central in determining the possibility to trigger the most appropriate visa regulation.

An “F or M” visa is required for foreign students who intend to go to the United States for a “course of study” with an American institution for more than eighteen hours per week.\footnote{See U.S. Diplomatic Mission to Italy, Visa Waiver Program, http://italy.usembassy.gov/visa/vis/VIS-4-it.asp (last visited Jan. 27, 2010).} Visiting the United States for less than ninety days and taking a more relaxed program of study not related to any degree or certification is allowed under the VWP, provided that the student...

On April 12, 2002, the Department of Justice issued a memorandum confirming that B-1 and B-2 non-immigrant visitors may not participate in a course of study, and explained that a course of study means a program of classes leading to a degree or a certification for a vocational student.\footnote{See Memorandum for Regional Directors of INS (Apr. 12, 2002), available at http://www.nafsa.org/uploadedFiles/ins_memo_on_restrictions.pdf?n=5781.} For example, an English class is not a course of study, but courses with more substance on the teaching or training for a potential vocation (like a flight training class) invoke the requirements of the F-1 and M-1 visa application.\footnote{Id.}

Despite the current law, several issues concerning the course of study need to be resolved in the U.S. student visa system. First, which visa regulation is triggered when a student takes an English program to prepare for an English proficiency tests such as the Test of English as a Foreign Language (“TOEFL”)? Second, what standard should apply to a school that is awarding a certificate of completion or conducting an introductory program in U.S. law?; Third, how should current U.S. law treat an introductory U.S. law course that eventually awards credits for a future full course of study?

First, under the course of study test, an English course not granting a degree is proper under the B-1 visa.\footnote{Memorandum for Regional Directors of INS, supra note 464.} On the other hand, according to a strict interpretation of the test, only students with an F-1 visa should be permitted to participate in the preparatory classes for the TOEFL test. If the course leads to a final test like the TOEFL, there could be issues with the intensity of the program, the hours of the classes, and the certificate of completion granted. Any of these issues could take the English preparatory class out of a casual study program and make it course of study requiring an F-1 visa.
Second, a legal studies program organized by a law school and tailored to foreign professionals visiting the United States for business or pleasure could be placed in a grey area. Student taking a program that granted a certificate of completion would be required to obtain an F-1 visa. However, if the program is conducted for less than eighteen hours a week, does not award any certification, and does not effectively lead to instruction in a potential vocation, the program should be in the category governed by the B-1 visa regulations. If these strict limitations were placed on the program, then the program will not appear to fit within the definition of a course of study. The downside to this type of program is that students who take a short-term program of study will not be eligible to sit for the bar or to practice law in the U.S.

However, if the teaching of that particular program is part of a broader learning program, then the B-1 visa seems insufficient. For example, if the legal studies course grants credits towards a law degree, such as a postgraduate degree like an LL.M., J.S.D. or Ph.D. equivalent program, students should not be allowed to participate in such a course while on a B-1 visa. However, it is unlikely an introductory course in U.S. law would respect certain specific requirements in terms of length, hours spent in class, rigor, and intensity to justify an advanced degree.

In practical terms, only aliens coming from VWP countries have a real administrative and economic advantage. For the others, there is not a real distinction between the application for an F-1 visa and a B-1 visa. Even if the administrative requirements are different between the F-1 and B-1, they will still need to apply for a visa. The economic advantage for the universities and administrative advantage for the U.S. government is determined by whether students are dispensed to apply for a visa.

In brief, the issue is whether the United States still wants and needs a visa regulation for short-term students. Avoiding certain administrative burdens is a critical part of the decision of certain visitors, not only in whether to travel to the United States, but also whether to invest money in introductory or preparatory education. Economic interest calls for an expedited system in which visitors pursuing short-term study can do so with a visitor’s visa. In the end, allowing foreign professionals to learn

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467 Id.
468 Id.; 8 C.F.R. § 214.2(0)(6)(i)(D).
469 8 C.F.R. § 214.2(b)(7).
470 Neumayer, supra note 128.
introductory and preparatory aspects of U.S. legal culture will render the United States globally more competitive in selling short term programs to aliens willing to spend their business or pleasure time in the United States.\footnote{Karin Fischer, Recession Could Push U.S. Further Behind in Education Goals, Compared with Other Nations, CHRON. HIGHER EDUC., Feb. 24, 2010, available at http://chronicle.com/article/Recession-Could-Push-US-F/64341/ (last visited Mar. 20, 2010); JONATHAN COLE, THE GREAT AMERICAN UNIVERSITY 451, 452 (2009); ADLER, supra note 471, at 212 (stressing how the international flow of students has moved from the United States to other countries with less strict visa regulation, sharpening the competition for higher education).}

Foreign professionals are at a disadvantage in that they must apply for a B-1 visa to participate in a short-term legal studies program organized by a U.S. law school for the duration of two to four weeks.\footnote{See USA Student Visa, Online Information Center, http://www.usastudentvisa.org (last visited Mar. 20, 2010).} In the global competition of short-term education programs, the capability of the U.S. legal education market and short-term law programs to attract skilled professionals from abroad is inevitably affected by the simplicity and efficiency of the existing administrative procedures.\footnote{See Carole Silver, The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession, 25 FORDHAM INT’L L.J. 1039, 1041 (2000–2001).} Finally, if under the reciprocity principle and the VWP, U.S. student are allowed to enter many European countries without a visa and can legitimately take a short-term course of study for credits, similarly, students from those countries should be allowed to enter the United States for a short-term study program without applying for a B-1 visa.

D. Comparison: “Brain Importers” v. “Brain Exporters”

There is a growing awareness among certain countries of the relationship between the importance of investing in a knowledge-based economy and the potential for national immigration regulations—namely restrictive visa and work permit requirements—to negatively affect national economies. Simultaneously, the same countries are aware that a good interplay of their entry regulations creates a competitive advantage.\footnote{JONATHAN COLE, THE GREAT AMERICAN UNIVERSITY 403, 404 (2009).} From a regulatory and economic standpoint, the world is divided into two macro-regions. On one side, there are “brain importers,” countries offering education and jobs related to the needs of their knowledge-based economy.\footnote{Geoff Brumfiel & Heidi Ledford, Safe Passage, 443 NATURE 6 (2006).} These countries stand in contrast to the “brain exporters,” countries which are unable to keep their highly skilled students and researchers, and who are
thus forced to attract them with tax or economic benefits.477 These two macro-regions are shaping countries’ national legislations, economies, and welfare. Brain Importers are leaders in the knowledge economy, innovation, research, and educational programs.478 Brain exporters are not only losing a huge competitive advantage to other countries (and thus suffering a new form of colonization), but also risk falling behind in the education race, as well as in research and innovation, which are fundamental pillars of the global knowledge-based economy.479

1. In-Bound Flow of Students: “Brain Importers”

Countries like the United States, the United Kingdom, Australia, Ireland, and New Zealand have always shared similar cultural traditions. When their citizens travel between these destinations for short-term programs, the travel has always been a facile task.480 This first group of countries can be classified as “brain importers.” Entry regulations tend to be more favorable among citizens of this group of countries. Among them, Australia, New Zealand, and Ireland are the countries with the most effective and efficient entry regulations.481 The United States and the United Kingdom do not have similarly simplified entry procedures; their procedures for people not belonging to this group of countries is less favorable, even if still competitive in terms of administrative and timeframe concerns.482

International students gravitate toward this first group of countries because of a better educational system and a more flexible, open and fluid job market. Long-term study programs are generally preferred mostly in the United States and United Kingdom.483 From a geographical perspective, the countries forming this block have also agreed to share their territorial influence. The U.S. entry regulations play a fundamental role in attracting


478 COLE, supra note 475, at 193.

479 Id. at 456, 460, 463 (discussing the education and research situation of France, Germany and China).

480 See discussion, infra Parts III(B)(1), (5), (9), (13).

481 See discussion, infra Parts III(B)(5), (9), (13).

482 See discussion, infra Parts III(B)(1), (C).

mainly Asian and European students. The United Kingdom is an attractive educational hub for European and Asian students. Australia plays a similar role primarily for many Asian students.

It is vital for brain importer countries to have well balanced and efficient entry regulations aimed at attracting foreign students and skilled workers because the structure of their knowledge-based economy requires a constant flow of foreign students and researchers. However, for the brain importers, the constant struggle with national security concerns has become an Achilles’ heel. The tension between security concerns and research has always been present in the history of U.S. legislation.

Japan, France, and Germany comprise a second block of countries, which may be considered partly as brain importers and partly as brain exporters. The entry regulations of this second group of countries tend to favor both the citizens of the first group of countries belonging to the VWP, the Schengen Agreement, or and EU regulations. However, these countries are selected mainly for short-term study programs. Fluency in one of the local languages of this group of countries is generally important, especially in the legal field, which deters many U.S. students or skilled workers, aside from a few exceptions, from long-term study programs and job opportunities.

Notwithstanding that this group of countries is aware that its native languages act as a barrier, Japan attracts mainly Korean and Chinese students, and its legislation, recently amended, fits perfectly in the trend of nations willing to compete globally to attracting skilled young students and professionals. France and Germany attract students from different regions: France from the African and Arab States and Germany from Eastern Europe (Turkey, Poland, Hungary, Russia, etc.). Their influence in attracting

484 Report of the U.S. Visa Office, supra note 483, at tbl.III.
487 Cole, supra note 475, at 505–06.
489 See discussion, infra Parts III(B)(4), (7), (11).
491 See id.
students and researchers is more limited in terms of geography and their legislative systems are still adjusting to the needs of the knowledge-based economy.


Europe presents a mixed environment where there are a few leading countries that are defined as brain importers: the United Kingdom, Germany, and France. The rest are defined as brain exporters. However, Europe still attracts the greatest number of U.S. students, mainly for short-term study programs. Only a few countries in the European Union are able to attract foreign students to the European Union for long-term study programs, namely the United Kingdom, Germany, and France. Indeed, in the European Union, the greater mobility is mainly internal, and the United Kingdom and Germany play a major role in attracting students from Italy, Spain, Greece, and Eastern Europe. As a matter of fact, universities’ patents in southern Europe and internal cohesion among Member States are still issues to resolve.

Lastly, China, Mexico, and Costa Rica can be defined as brain exporters. China, which is aware of the importance of skilled workers for its economy, is in the process of attracting its skilled workers to return through an adjustment of its entry regulations, and is increasingly investing in its knowledge-based economy. China’s new entry regulations may soon influence the flow of researchers and students that were previously directed towards the brain importers countries.

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493 Id.
496 Id.
497 Id.
498 See Fabrizio Cesaroni & Andrea Piccaluga, Universities and Intellectual Property Rights in Southern European Countries, 17 TECH. ANALYSIS & STRATEGIC MGMT. 497, 498 (2005) (noting that patents held by institutions in Portugal, Spain, France, Italy, and Greece have not increased during recent years. However, there are differences among those countries in terms of number of granted patents and regulative frameworks).
500 See discussion, infra Part III.B.8.
Table 2: List of Countries Requiring U.S. Students to Apply for a Student Visa for a Study Abroad Program

<table>
<thead>
<tr>
<th>Country</th>
<th>Short-Term Study Abroad Programs</th>
<th>Long-Term Study Abroad Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Up to 30 Days</td>
<td>More Than 30 Days, Up to 3 Months</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Italy</td>
<td>Yes(^{501})</td>
<td>Yes</td>
</tr>
<tr>
<td>France</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Spain</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Australia</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Mexico</td>
<td>Yes(^{502})</td>
<td>Yes</td>
</tr>
<tr>
<td>Germany</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>China</td>
<td>Yes(^{503})</td>
<td>Yes</td>
</tr>
<tr>
<td>Ireland</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Japan</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Austria</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>New Zealand</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Greece</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Argentina</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>United States</td>
<td>No for VWP citizens not obtaining a degree; Yes for the others(^{504})</td>
<td>Yes</td>
</tr>
</tbody>
</table>

\(^{501}\) Since 2008, no student fee is assessed.

\(^{502}\) Regular fee is assessed.

\(^{503}\) Regular fee is assessed.

\(^{504}\) Under the VWP, visitors in the United States for business or pleasure are not charged any fee. VWP, supra note 42.
Other EU countries not requiring U.S. students to apply for a visa for short-term study abroad programs include Belgium, Denmark, Sweden, Norway, Iceland, and Portugal.\footnote{See discussion, infra Part III.B.16.}

E. Economic Effects of Visa Regulation

Visa and work permits are an expression of state sovereignty\footnote{See Neumayer, supra note 128, at 3.} where states, despite their needs to invest in the knowledge-based economies, still patrol the flow of tourists and businesspersons.

Prior to 1913, visa and work permits were not required, and passports were only considered a means to prove identity and citizenship.\footnote{Id.} After their introduction, visa procedures and practices conveyed discrimination against citizens of certain countries and bureaucratic barriers for others, but increased revenue from taxes, fees, and insurance policies.\footnote{See Chi-Yung (Eric) Ng & John Whalley, Visas and Work Permits: Possible Global Negotiating Initiatives (CESifo Working Paper No. 1614, 2005), available at http://www.cesifo-group.de/portals/ifoHome/b-publ/b3pubwp/_wp_abstract?p_file_id=12199&category=TP (pointing out the negative economic impact of visa and work permit regulations in different countries and proposing a global negotiating forum inside the WTO or the creation of a new global entity to mitigate the effect of visa/work permits through the creation of a international standard application and administrative procedure).} The visa has become a way to control the movement of cross-border labor, and its regulations are shaping globalization.\footnote{Id.} Administrative costs in issuing visas or work permits are high, and delays and rejections are common.\footnote{Id. at 17.}

Visa regulation may be capable of influencing a nation’s economy. Studies have shown that visa and work permit regulations all around the world, if lifted, would be able to generally increase the long-term economic output, especially in labor and study markets.\footnote{Five months is the average wait time for foreign scientists. Id. at 10 n.8.} Theoretically, resources employed to enforce visa regulation could be used to improve labor or study markets; costs associated with visas and work permits around the world amounted to $88 billion in 2000.\footnote{Id. at 12–14.}

Even if studies show that movement of international workers is highly beneficial to receiving countries, visa and work permit regulations are strictly political, primarily because they involve the sovereignty of nations. Transparency among nations in this field is scarce, and agreements among certain countries play a central role. Bilateral or multilateral agreements are
seen as support for certain foreign policies when states or regional aggregation (such as the European Union or North America), decide to exclude certain countries from any VWP. As a consequence, there is no political incentive for governments to participate with certain groups of countries, like the OECD, to improve visa regulation. Only an economic reason can provide a real incentive.

Ultimately, visa regulation is the best way to influence the long-term outcome of any knowledge-based economy. Two goals must be considered in conjunction with visa regulation: (a) a strong educational system leading to scientific discoveries, economic, and legal innovations; and (b) a healthy job market capable of absorbing and employing researchers’ and skilled workers’ results. Thus, countries should strive to develop a legal and policy framework in which visa regulation, quality of education, and flexibility of the job market interact.

IV. Conclusion

Ubi lex voluit dixit, ubi noluit, tacuit.\(^{513}\) The diffusion and control of legal information is a key aspect in globalization. If globalization is not fully operative, but rather is limited to certain preferential avenues, the result is partial globalization. Only a few legal systems will benefit from the exchange of legal information and the effect will be a crawling globalization trend in which the head, namely the training legal system, pulls the least globalized systems behind it. In globalized societies and legal systems, the head needs the body and the tail, and they all should work together. Therefore, the most effective visa regulation is an important key to facilitate any legal education program successfully, while also enhancing the diffusion of legal information.

Visa regulation is the door, or filter, to provide access to legal information. If such points of access are not well maintained through the creation of adaptable regulations, the community living beyond that filter will suffer because there will not be any opportunities to evolve and adapt. Visa regulations are powerful tools, capable of shutting down one source of economic enrichment. Access to and management of information determines the competitive advantage of knowledge-based economies. Only flexible and sensitive regulations will result in helping certain economies flourish. Brain exporter economies enact regulations that are incapable of adapting to the needs of the globalized world, and therefore will lack information and continue to lag behind brain importer countries.

Efficient visa regulation is not only responsible for attracting skilled students and researchers, but is also a way to compete in the global arena with top quality educational programs that are geared towards flexible job

\(^{513}\) “When the law wished to govern a thing, it stated as much; when the law wished not to govern, it remained silent.”
markets. Achieving interplay between visa regulation, quality of education, and the job market is essential for successfully controlling the production of legal knowledge.

As the numbers show, short-term study programs are in exponential demand. This is true not only because legal education is a lifelong experience, but also because short-term study programs are the most precious, cautious, and wise starting points in this process. The target is to educate highly skilled professionals who want to carefully explore their future career opportunities before making a commitment to a long-term study program and possibly a career shift. In other words, short-term legal study programs are extraordinary showrooms where law schools can enhance their reputation by admitting new foreign students, while also leveraging new revenue and spreading their scholarships worldwide.

As for short-term study programs, some European countries and the European Union are not currently considering the importance of harmonizing, or exemplifying, their visa regulation. There should be a clear understating and commitment to this use. As for U.S. legislation on visa regulation for short-term study programs, two issues could be resolved: (1) the need to spread legal education overseas; and (2) the creation of the best conditions for supporting the reputations of law schools that are investing in international programs aimed at educating future generations of global attorneys.