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THE LEGAL CHALLENGES OF GLOBALIZATION: A VIEW FROM THE HEARTLAND

INTRODUCTION

LEILA NADYA SADAT*

It is difficult not to worry about globalization. Global climate change is wreaking havoc with world weather, territorial disputes have arisen in and around Russia and China, the new transpacific trade pact is under fire and global income inequality is rising at an alarming rate. Lawyers are participating in many of the discussions involving these difficult foreign policy issues, and law schools are increasingly being asked to add, to their already burgeoning curricula, new and expanded courses in international and comparative law to help an increasingly sophisticated and global student body prepare for the challenges they are likely to face not only upon their graduation from law school, but during their lifetimes.

In September, 2013, the Whitney R. Harris World Law Institute hosted the Midwest meeting of the International Law Association, American Branch. The theme was *The Legal Challenges of Globalization: A View from the Heartland*. Among the 150 presenters and attendees at the three-day conference were leading scholars in public and private international law, several deans of Midwestern law schools, journalists, and legal practitioners. The participants came together to discuss issues from their various fields of expertise and brought a uniquely mid-western focus to much of the discussion. Indeed, the conference opened with a panel on

* Henry H. Oberschelp Professor of Law and Director, Whitney R. Harris World Law Institute, Washington University in St. Louis

International Law and Practice in Times of Change, including presentations by Anna Crosslin of the International Institute, Marcella David, of Iowa Law School (whose essay is in this collection), Richard Longworth, author of *Caught in the Middle: America's Heartland in the Age of Globalism*,¹ and Frank Steeves, General Counsel of Emerson Electric who is working with lawyers in more than 150 countries around the world. As Longworth observed, and his co-panelists echoed:

Globalization unites and divides. It cements ties across borders while weakening old ties at home. It celebrates the transnational at the expense of old loyalties. It brings people together from around the globe while stirring new xenophobia. It destroys old industries and economies and creates new ones—not always in the same places. It makes some people richer and other people poorer, and the gap is growing.²

Although much of the discussion in the opening session focused on regional issues relating to globalization, the articles in this volume address topics that affect all Americans, not just those in the Midwest. They include an essay by Professor Mary Ellen O'Connell, on *21st Century Arms Control Challenges*, the aforementioned essay by Professor Marcella David entitled *International Law and Practice in Times of Change*; an article on the procedural implications of the Alien Tort Statute by Professor John Drobak; Frank Steeves' presentation entitled *Globalization and U.S. Law Practice*; and two articles by Professor Kristen Boon, Admiral James Houck and First Lieutenant Nicole Anderson on issues relating to the territorial disputes in the South China Sea.

Each of these essays addresses, as did the conference where they were presented, a host of practical problems facing the international community: New weapons systems, territorial disputes, environmental protection, international trade, human rights and institutional responses to international problems. They evince a practical approach to these issues as well; not content merely to note the existence of problems, they propose solutions or proposed solutions to many of them.

Rather than analyze these excellent writings, which can be perused at your leisure, this *Foreword* takes up the more difficult question, raised by many of the contributions here, of how international law and international lawyers can help solve the problems posed by globalization and how

1. RICHARD C. LONGWORTH, *CAUGHT IN THE MIDDLE: AMERICA'S HEARTLAND IN THE AGE OF GLOBALISM* 5 (2008).

2. *Id.* at 6.

American legal education needs to respond to the changing needs of its students and the world around it given the challenges of this 21st century world.

Elizabeth Parker, Chair of the AALS Advisory Committee on Global Engagement, recently noted that China now has more than 600 law schools, and that its recent infrastructure development has included not only the building of roads, but the construction of a world class system of legal education.³ With the establishment of hundreds of law schools, the establishment of the Xiamen Academy of International Law in 2005,⁴ and the large numbers of Chinese students traveling to the United States to pursue legal education, it is clear that Chinese national policy has promoted training in international and comparative law as a way of preparing Chinese lawyers to be competitive in a global market. Can we say the same about the United States? Are U.S. law schools prepared to meet the challenges of globalization by preparing law students for the practice of law in the 21st century?⁵

The answer is “sort of.” U.S. law schools face declining student bodies and more competition for scarcer resources. Some farsighted institutions have seen globalization as energy and a resource to be harnessed in order to expand their global footprints and enhance the career prospects of their graduates. They have created new programs that incorporate international and comparative law teaching into the curriculum, increased their student exchange programs and degree programs and enhanced their clinical programs with new clinics focused upon international or global issues.⁶ New York University pioneered this through the Hauser Global law school program, and others have followed suit. Other schools—including many of those located in the Midwest—while being willing to open to incoming foreign students, have been deeply resistant—even hostile—to curricular changes that teach U.S. lawyers global skills. Cross-border transactions require cross-border legal skills and cross-cultural sensitivity—they may require foreign language skills as well. Yet even amongst elite law schools, these courses are not always offered, nor are faculty modifying traditional offerings to include these components.

3. Elizabeth R. Parker, *The Global Importance of a Strong Future Relationship Between Chinese and U.S. Law Schools*, AALS NEWS, Apr. 2014, at 1.

4. On the Xiamen Academy, see *Introduction*, XIAMEN ACADEMY, <http://www.xiamenacademy.org/introduction>.

5. Parker, *supra* note 3, at 8.

6. Examples include American University Law School, Harvard Law School, Michigan Law School, NYU Law School and Washington and Lee School of Law.

The United States is a party to thousands of treaties, covering subjects ranging from telecommunications and aviation to the laws of war and world trade.⁷ Yet it is a fact that even in the 21st century, with the exception of a certain number of law schools like Michigan, where a course in transnational legal process is required in the first year, American law students can spend three years in class and graduate without taking a single course in international or comparative law to graduate. As Supreme Court Justice Sandra Day O'Connor observed in her plenary address to the American Society of International Law meeting in 2002, international and foreign law is being raised in U.S. courts more than ever, and judges need help understanding them more than ever. Justice O'Connor concluded that law schools must do more and ensure that all students receive training in international law.⁸

Despite the slow pace of change in many U.S. law schools, students often eagerly seek out courses in international and foreign law and opportunities for study abroad have increased in recent years. Yet many fewer U.S. law students avail themselves of those opportunities than their international counterparts. Conversely, in many countries, students not only study abroad in large numbers—think of the Erasmus program in Europe, for example, or the large numbers of international LLM and exchange students in U.S. law schools—but are required to take international law in order to complete their legal education. One study suggested that not only were they required to take at least one course in international law, but several law schools required two or three such courses.⁹

This is a critical problem facing U.S. law schools, and more importantly, U.S. law students. Without the skills they need to compete not just locally and regionally but nationally and globally, students will find themselves—especially students in regions like the Midwest which has been more on the losing than the winning end of globalization—increasingly left out in the cold. Conversely, were Midwestern law schools to work together to meet the challenges of globalization by modernizing their curricula and offering more opportunities to study abroad to U.S. law

7. U.S. DEP'T OF STATE, TREATIES IN FORCE AS OF JANUARY 1, 2013, *available at* <http://www.state.gov/documents/organization/218912.pdf>.

8. Notes on file with author.

9. Ryan Scoville, *A Global Survey on the Study of International Law*, MARQ. U. L. SCH. FAC. BLOG (Sept. 8, 2014), law.marquette.edu/facultyblog/2014/09/08/a-global-survey-on-the-study-of-international-law/. See also Toni M. Fine, *Reflections on U.S. Law Curricular Reform*, 10 GERMAN L.J. 717, 734–37 (2009).

students, the region as a whole could be buoyed up and become more competitive.

As Richard Longworth notes, globalization has wrought difficult changes in the Midwest—a region that prizes stability—including the loss of manufacturing jobs, the disappearance of the family farm and a declining and aging population. The challenge is to meet those changes head on, to “seize the future,” rather than mourn the past by adapting our educational system as well as our physical infrastructure. This conference, and the papers in this volume stemming from them, was one small effort to do just that, but much more remains to be done. Washington University School of Law was proud to be the host of this distinguished gathering, and is grateful to the American Branch of the International Law Association and the International Association of Penal Law (American Branch) for *meeting us in St. Louis* for three days of terrific conversation and dialogue. We hope that this was the first step in what is sure to be a long and exciting journey.