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Indiana Journal of Global Legal Studies: An Introduction

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Bloomington

Indiana Journal of Global Legal Studies

An Introduction

ALFRED C. AMAN, JR.*

I. THE PURPOSE OF THE JOURNAL

The *Indiana Journal of Global Legal Studies* is a faculty-edited, peer-reviewed interdisciplinary journal focusing on the intersections of global and domestic legal regimes, markets, politics, technologies, and cultures.

“Globalization” means different things in different contexts, and we offer this journal as a forum for communication and exchange among the many research agendas that now involve this concept. In our view, “globalization” refers to complex, dynamic legal and social processes; it is not—or at least not necessarily—a synonym for “universality” or “homogeneity.” Nor is “global” necessarily a synonym for “world-wide.” Global processes can be intensely local or regional. They may result, for example, from economic or political forces that create markets for goods, capital, or labor that are beyond the control of any one nation-state. Similarly, global processes can be the result of problems such as ozone depletion, global warming or reductions in biodiversity that create issues transcending the boundaries of nation-states. Some of these transnational forces and issues generate transnational law and global legislation such as the Montreal Protocol on Substances That Deplete the Ozone Layer; however, different localities and different domestic legal regimes may and often do respond to such global forces in different ways.

Domestic law—local, state, or federal—may thus be affected significantly by a variety of forces outside the control of any of the local decision-makers involved. Global forces may encourage new forms of economic and legal integration or harmonization across local legal and economic systems. On the other hand, such global forces may also trigger local, domestic reactions that deepen tensions between multinational and

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local forces, resulting in legal regimes designed to resist globalization. In this sense, globalization also can help provide a framework for understanding difference. By focusing directly on globalization as involving not only a shift in the *scale* of law, but also (and especially) the *dynamics* of domestic legal processes, we hope to advance understanding of the ways in which law, politics, culture, and economics respond to and shape each other. The *Journal's* title thus signals our commitment to exploring and advancing some of the most pressing questions of our times.

We currently stand at a watershed in the public law history of the United States. We have moved from local and state common-law, regulatory regimes that dominated the 19th and early 20th centuries, to national regimes that dominated the public law of the 1930s to 1980s, to the present global era. In the present era, law formulated solely in terms of purely state or national entities, without taking into account the significant role played by transnational forces embodied in multinational corporations, global capital markets, and rapidly advancing technologies and new scientific discoveries, is likely to be not only ineffective, but counter productive. Today, the line between domestic and international is largely illusory. As a result, we need fresh assessments of issues such as the role and theory of the nation-state in the twenty-first century, the need for and development of new international and global institutions, and, in particular, the kinds of domestic legal reforms necessary to mesh with or respond to global economic and political forces.

There are numerous signs that a global era necessitating such analysis is well established: massive changes in the world's political economy such that no single nation can exert dominant control over global markets; the rise of global technologies, e.g., satellite communications, data processing, computer technology, creating a global reality in which communication and financial transactions occur regularly in a global context; advances in science that enable us to take our global "pulse" in areas such as the environment with much more accuracy and from a more global perspective than ever before.

This journal seeks to facilitate dialogue among international communities of scholars in law, politics, economics, anthropology, philosophy, and other disciplines with intersecting concerns bearing on new forms of global law in the United States and around the world. By its very nature, the globalization of law challenges the conventional boundaries among subject disciplines and professional research practices, as well as the

boundaries around sovereign state regulatory regimes. We hope the journal will be a forum for both ongoing research and interdisciplinary, international collaboration.

In brief, the long range goals of this journal are four-fold: (1) to establish collaborative relationships among scholars of different disciplines, especially law, political science, economics, philosophy, and anthropology; (2) to lay the foundations for new modes of interdisciplinary communication on an ongoing basis; (3) to advance scholarship in this area by encouraging the creation of new linkages across interdisciplinary theories of global change; and (4) to facilitate the development of reforms and new perspectives on domestic and international regulatory structures.

II. THE STRUCTURE OF THE JOURNAL

Readers who have been following recent developments in academic law will already know that the past several years have seen a proliferation of new law journals, most of them student-edited. The *Indiana Journal of Global Legal Studies* is distinctive in several respects. First, in terms of its substance, this journal combines domestic, international, and comparative law. Indeed, we view the journal as a context where these three subjects, traditionally defined as distinct fields, can enter into productive dialogue about current changes in world relationships.

Second, the journal is interdisciplinary in nature and seeks to explore the insights to be gained from economics, political science, philosophy, anthropology, and other disciplines as well. These varied perspectives on global issues will facilitate a more meaningful contextualization of law and legal change in a global world.

Third, in view of our substantive themes and the interdisciplinary nature of the journal, our editorial structure must also be distinctive. As noted above, the *Indiana Journal of Global Legal Studies* is a faculty-edited, peer-reviewed journal. Our commitment to peer review is consistent with our aim of serving as a forum for exchange among scholars in the law and other disciplines. While peer review is relatively rare in law publications, it is the norm among the other disciplines that will be in conversation in our pages. Furthermore, peer review reflects our assessment that the interdisciplinary nature of global legal studies has reached a new level of maturity.

Students are integrally involved in the creative tasks necessary for the production of the journal. Students have primary editorial responsibility for

student contributions and, more generally, are central participants in the collaborative environment of the *Journal's* editorial meetings. Student editors work closely with faculty editors in helping prepare faculty manuscripts for publication, as well as in helping identify topics and themes for future journal symposia.

Our hope is that the special features of the *Journal* will not only advance scholarship in the law and other disciplines around the broad topic of global legal studies, but that it will also facilitate exchanges of ideas between law schools and other units on university campuses. The symposium that was the basis for this first issue was just such an exchange, involving scholars and policymakers from a number of institutions, including various units on the Bloomington campus of Indiana University. We view this as an important feature of global legal studies, that is, the way in which the changing shape of the world challenges academe to reconsider its own topography, or at the very least, the location and durability of its internal bridges.

III. THE SYMPOSIUM ISSUE

The articles in this inaugural volume were first presented at a conference entitled "The Globalization of Law, Politics, and Markets: New Perspectives on Domestic Law Reform." This conference was held on March 4-7, 1993, at the Indiana University School of Law, Bloomington, as part of its sesquicentennial celebrations. The goal of the conference was to bring together scholars from various disciplines who could identify, assess, and analyze global issues in the areas of law, politics, markets, and culture. These articles represent an interdisciplinary approach to globalization and provide what we hope will be the beginning of a new research agenda and interdisciplinary dialogue devoted to global issues.

The first set of papers deals with the themes of the globalization of law, politics, markets, and culture in their broadest form. Professor Jost Delbruck's paper sets forth one possible conceptualization of the meaning of globalization, differentiating it from international processes and international law. With this conceptualization in mind, he identifies a variety of global issues, such as migration, underdevelopment, arms control, and the global environment. All of these areas will undoubtedly generate topics for future issues of this journal. In addition, Professor Delbruck takes a close look at the processes of globalization as they play out within such

legal frameworks as the General Agreement of Tariffs and Trade (GATT), the Organization for Economic Cooperation and Development (OECD), and, in particular, the European Community (EC).

Professor Martin Shapiro then looks at the globalization of law, noting the various ways in which this can occur. Quite apart from global legislation such as the Montreal Protocol and other such collective attempts to take a global approach to certain issues, there are a variety of essentially private law mechanisms that are likely to spread as companies increasingly do business around the world and simultaneously become less vertically integrated. This, he believes, leads to the globalization of lawyers as well as the globalization of law, and, perhaps more specifically, the "Americanization of law."

Professors Peter Katzenstein, Tamir Cavusgil, and Davydd Greenwood examine the globalization of politics, markets, and culture, respectively. Professor Katzenstein develops the concept of regionalization, noting that the twenty-first century is likely to see several regions in which law, politics, and culture interact to create various regional responses to global issues. Indeed, he envisions at least three such regions: East Asia, with Japan playing a leading role; Europe, Western Europe in particular, with Germany playing a leading role; and North America, with the United States playing a leading role. Whether these regimes will erect barriers to trade or learn to work more closely with one another remains to be seen, but the twenty-first century promises to be a century that "belongs to no one," when it comes to economic domination.

The globalization of markets seems to be occurring both more easily and more comprehensively than the globalization of law or politics. But as Professor Cavusgil notes, the globalization of markets raises a number of issues which require legal responses to ensure this process occurs efficiently. His paper concludes with a number of issues that global professionals and, in particular, global lawyers will have to resolve.

Professor Greenwood examines various cultural issues through a global lens, pointing out how our domestic approaches to issues involving race, for example, affect our global responses to similar issues. His paper, perhaps more than others, sees a declining number of distinctions between domestic and international issues. Indeed, for Professor Greenwood, the line between the domestic and the international is blurry at best and, in reality, usually nonexistent. Like other papers in this inaugural volume, his article raises as

a crucial question—just what the role of the nation-state presently is or likely will be in the twenty-first century.

This first set of papers concludes with the keynote address given at this conference by Professor Benjamin Barber. Professor Barber is critical of any notion of law leading the forces of globalization. At best, he sees law as following in the wake of other forces, some global and some local. His paper focuses primarily on local reactions to globalization forces, as well as highlighting globalizing forces that have little to do with democracy, public participation, or human rights. These include such globalizing agents as multinational corporations' marketing efforts and Islam. He deals with the dark side of human kind's failed efforts to deal with differences, but holds out democracy and democratic principles as our best hope and a necessary precedent to global law.

The second set of articles begins with Professor Richard Rosecrance's treatment of global trade, particularly trade with Japan. He highlights an approach to global issues which, he suggests, may ultimately replace the balance of power approach to international relations that typified the 19th and 20th centuries, with a more strategic investment approach. Mutual interlocking and interdependent investments made by various countries in other countries can, Professor Rosecrance contends, be more effective in creating a peaceful world than the classical balance of power approaches that have been tried and found wanting in the past. Professor Rosecrance takes issue with Professor Barber's view of the globalization impact of markets, suggesting that a modicum of economic success may be necessary *before* democracy can take hold in a meaningful way.

Professor William Davey takes a focused look at the European Community both as a legal system and as a trading region whose own problems, goals, and issues will likely affect the way it interacts with both third world and other trading regions of which the United States and Japan are a part. Professor Davey's concentric circle analysis provides an important conceptual framework for looking at transnational issues—be they regional or more global. Professor Frederick Abbott's paper then focuses on many of the issues surrounding the North American Free Trade Agreement. His paper shows how domestic courts may affect the international effectiveness of this and similar agreements.

Issue two of this inaugural volume (forthcoming in April 1994) begins with two additional and related global issues: the environment and the disparity in wealth among the countries of the world. Issue two concludes

with specific examples of what we hope will become a major theme of this journal: the domestic law reforms necessary to adapt legal systems to the global age of which they now must be a part.

Professor Philippe Sand's paper canvasses a variety of global environmental issues that now confront us and will continue to require innovative global responses. Professor Mary Ellen O'Connell points out the need for enforcement if global responses to environmental issues are to be meaningful. In so doing, she explores the need for, on occasion, unilateral responses to certain environmental violations. Mr. Richard Benedick brings his ambassadorial expertise to bear in assessing the Montreal Protocol and the lessons we can learn from it for use in the passage of future global legislative efforts.

Global environments raise, in stark relief, issues having to do with differences in wealth among the nation-states of the world today. North/South differences in wealth and the ability to industrialize in ways that minimize future environmental harm is one of the crucial issues for the coming decades. Justice Pathak carefully sets forth these issues and lays the groundwork for a variety of important sustainable development approaches. Professor Henry Shue sets forth the philosophical basis for an equitable approach to environmental issues that suggests a framework for cooperation among rich and poor countries. Professors June Nash and Emilio Moran bring their anthropological perspectives to bare, pointing out how important local issues and concerns are to the resolution of global concerns. Specifically, Professor Nash's paper focuses on Mexico, highlighting how important specific indigenous groups can be in a global environmental dialogue. Similarly, Professor Moran emphasizes the importance of taking seriously the local concerns and local approaches of indigenous populations in attempting to solve global environmental issues.

Finally, this inaugural volume concludes with what we hope will be an important focus for future volumes of this journal: Professors Bill Hicks, Fred Cate, and Diane Wood focusing on three major areas of U.S. law and pointing out how the global context in which laws now operate demand domestic reforms. Professor Wood focuses on U.S. antitrust laws and points out some of the procedural reforms that are necessary if this area of the law is to function effectively in the evolving global economy. Professor Hicks analyzes similar questions, focusing on U.S. securities laws. Finally, Professor Cate looks at the major revolution going on in telecommunications today and points out the extent to which U.S. domestic telecommunications

and information law must change if we are effectively to link up with and harmonize with new, global developments.

These papers raise a number of questions and set forth a future research agenda for this journal. Issues involving the nature of the nation-state for the 21st century are very much a part of the debate that these papers trigger. Moreover, the tremendous number of environmental issues whose solution necessitates mutual cooperation will generate a series of questions and issues for many years to come, including the need for new global institutions, effective enforcement of international law, the obligations of the developed world to the underdeveloped world, the ability to pursue sustainable developmental approaches, technology sharing, and the like. Similarly, the interplay between and among different legal regimes at the international, domestic, and global levels, will create new perspectives on the way we conceptualize law, as well as the domestic law reforms deemed necessary. No longer is it possible simply to analyze regulatory law only in terms of state or national law politics or markets. The global backdrop against which all of these legal, political, economic, and cultural questions now takes place must be factored in as an important analytical component to any serious analyses of what once may have been purely domestic concerns. It is our hope that the *Indiana Journal of Global Legal Studies* will be instrumental in creating a new and important body of scholarship to deal with such issues, helping to stimulate debate in these areas as well as create new, analytical frameworks that will enhance our understanding of the nature of law and society in the global era in which we now live.