Anglophone and Civilian Convergence:
Law, Values, Culture, and Learning in the Global Age

Joseph P Garske, BA
Havard University, USA
Chairman of The Global Conversation, USA

Abstract

This paper examines the question of what values might underlie a global regimen of law. It is concerned with the level of culture and learning that could prevail among a future global public. It begins by explaining how law is a central element in the project of globalization, and how legal influence touches on all areas of global order. The paper discusses the two predominant Western traditions of law, Anglophone and Civilian, the legal culture each represents, and the values implicit in their two different conceptions of legality. It reviews certain fundamental elements present in each tradition since their near simultaneous beginnings in the medieval world. It explores the relationship of both legal methods to the realm of public understanding, especially in their two differing versions of the university as a center of learning. In doing so, the paper also examines the contrasting roles of scholar and judge in each legal system. It then looks forward to probable difficulties in any attempt at combining the two traditions of law into a single global regime. The paper concludes by using America as a model to contemplate what values might shape an Anglophone legal culture, applicable to all peoples in all localities around the world. Finally, the paper summarizes the foregoing, and looks toward the possible redefinition of culture and learning in a global Rule of Law.

Keywords: Continental law; Anglophone law; culture; university; state; corporation; scholar; judge.

Introduction

A problem of values

The project of globalization is often understood in terms of economics, technology, and political relations; but it has an important underlying legal aspect as well. In fact, all its elements of finance and trade, travel and communication, oversight and governance take place against standards and procedures established by law. When examining this legal aspect of globalization, the focus naturally involves the matter of norms, the prescribed behaviors to be uniformly enforced upon a global public. There is also a concern with the just distribution of resources to supply human needs in a fair and adequate way. Perhaps even more often, attention turns to the ethical standards

by which those who administer the affairs of law will work to maintain such an order. (Slaughter 2004: 131)

However, the project of globalization raises other questions as well, especially questions about the scale of values that might underlie its regimen of law. With such an expansive authority—conceivably, a method of legal rule that would preside over all persons and all regions of the earth—there would necessarily be implications concerning the values on which that regime is constructed. One obvious way this kind of question presents itself is in terms of two broad categories: A question of human values as opposed to material values. Even though this generalized dichotomy may lack precision, it can help at least to frame an initial inquiry into what measure of value could be employed to unite a global public. Yet, when considering those two alternatives, subsidiary questions might also arise.

With regard to human values, there may be questions as to whether there are universally valid human capacities or potentials inherent to all persons, and whether these could provide the basis for establishing a set of global aspirations. At the same time, material considerations might emphasize matters of production and profit, of property and wealth, or how those benefits should be accumulated and how dispersed. There could be questions as to whether their appropriation would be done in a way to satisfy human needs equitably, or in a way to most efficiently increase aggregate wealth, in a mathematical economic sense. (Jackson 1998: 12)

Another concern might be in the realm of cultural values--that is, culture in the sense of cultivating personal traits that would help unify a diverse global population. What human qualities of thought, word, and deed should be engendered and by what means would they be instilled? Beyond that, would such habits and attitudes be grounded in the primacy of the individual, obligations to family, duty to the nation, or responsibility to humankind? Would such values arise from individual identity or from a collective commonality? Would they be manifested as abstract and universal, or concrete and personal, or both? By what standard would such personal traits be measured and evaluated? (Piketty 2017: 297)

The purpose here is neither to advance a thesis, to make judgements, nor to advocate for a certain position. Instead, the purpose here is to provide an alternative way of viewing these matters: to help bring another perspective on the question of values implicit in any regimen of global legality. Beyond that, there will be an attempt to examine how such questions would present themselves in the twenty-first century, by either of the two great Western traditions of law, Anglophone and Civilian. There will be an attempt here to explore how their respective approaches to governance in the era of globalization might influence such considerations—but there will be an additional dimension as well.

Today, many scholars and jurists share the hope and expectation that a means could be opened whereby these two disparate traditions of law will converge into one, creating a new legal synthesis on a global scale. Hence, the purpose here is not only to examine the two Western methods of legality separately, but beyond that, to question what values would prevail if these two systems came together in the globalizing process. If proponents of each set aside their historic differences in a spirit of comity and mutuality, how might the resulting legal amalgam shape a global order? What possible human or material purpose could underlie the work of such a combined legal stratum? Or, finally, in the expectation of such a transcending convergence of law, is there a basis on which conjecture about its future underlying values might be possible? (Kennedy 2016: 172)

Two legal cultures, two opposite basic assumptions

Every regimen of law is comprised of two parts--what may be called the adjudicative and the educative, or the coercive and the persuasive. Every legal regime necessarily undertakes, not only to order human life, but also to shape human thought. It is possible, in the short term, for a legal hierarchy to impose itself by shear brute force, *in terrorem*. But to maintain stability and continuity over the long term, the public must be taught the benefits of legal rule; they must be instilled with the habit of compliance. It is in the combining of these elements, the judicial and the educational, that a complete legal culture is formed. (Howe 2000: 39)

The two Western traditions of law approach the task of constructing a legal culture in very different ways. Although both Civilian and Anglophone traditions were born out of the same broad historical context, their origins were emphatically not the same, and their definitions of law and its purposes were often contradictory. Their respective methods of balancing the tandem of coercion and persuasion also reflect these contradictions. They each maintained equilibrium between the two elements at a different point and by a different means.

For example, the Continental approach to legal order has emphasized cultivation and learning among the public, and a broad comprehension by the public regarding the *Universal* principles that were the basis of governing authority. The assumption was that a cultivated public, sufficiently educated, will naturally conduce to a more orderly way of life. Its members will readily acquiesce to a power that operates rationally, and in a way that comports with their sense of justice. In this approach, based on widely embraced philosophic ideals, balance in the Civilian method has been weighted toward the side of instruction—with the coercive potential of the courts held in reserve, primarily as a supplement to the educative influence. It could be said that the entire edifice was based on values implicit in a broad paradigm of ideology: clarity, not obscurity, has always been more representative of its workings. Its ideal was that

knowledge concerning the framework of principles and assumptions on which the law rested, was shared by all persons. (Bellomo 1995: 55)

By contrast, the foundations of Common law were built upon an elevated and *Transcendent* mechanism of oversight that existed beyond the realm of public understanding. This allowed the level of public culture and learning to be of less significance for purposes of legal stability. Within its legally defined atmosphere, dissemination of legal learning, as contrasted with public learning, took place in a highly restricted way. Culture, in terms of personal cultivation of thought, word, and deed of the private citizen, was not crucially important—except within the ruling stratum. Among the broader public the purpose was to emphasize freedom of action, speech and manner—a prized individuality in matters of personal affect. But this latitude of behavior existed within the strict bounds of an unquestioned legal authority. In such a regimen, neither extensive public understanding of an obscure legal method nor individual instruction in manner and speech was deemed essential to its proper functioning. The only real requirement was that members of the public understood their limits set by the retributive authority that presided over them.

Differences in the two legal atmospheres—explicit versus inexplicit, apparent versus opaque, principled versus pragmatic—had other implications for the shaping of public attitudes as well. For example, the Continental approach viewed the public more in socially connected terms, while the Anglophone method viewed each person as an individuated legal isolate. To an extent, it could be said that, in many Civil law countries, the legal hierarchy might effectively disappear; yet, on the basis of familial connection, or of communal custom, society would continue to function. By contrast, the situation of Anglophone law countries was very different. Although the English-speaking legal regimen had little necessarily to do with public culture and learning, it had much more to do with an instilled belief in the importance of obedience to law. Support for the Anglophone paradigm, often expressed as a generalized faith in its efficacy, held a critical importance for social order. Public institutions were dependent on this authority—without its oversight, society would disintegrate into chaos and violence.

The difference in these approaches to constructing a complete legal culture presents an obstacle for converging the two Western legal traditions in the project of globalization. Nonetheless, an attempt to reconcile or combine the two legalities is viewed as important, not only because it would conclude a deep historic rift; there is also a widely held belief that such a union would be beneficial, because each tradition has unique properties and advantages--especially the predictable rationality of the Civilian and the malleable adaptability of the Anglophone. As attempts are made to reconcile the two legal cultures, the obstacles become clearer, including possible difficulty in the realm of values, and matters of public cultivation and learning. To better understand

these potential problems, it is useful to return to the historic beginning of the two legal traditions. (Lesaffer 2010: 235)

Medieval origins of the traditions of law

Much of the difference between the two systems of law can be explained by examining their origins in the medieval era. Both have undergone dramatic changes since that time, especially brought about by technological advances of the modern period, beginning in the sixteenth and seventeenth centuries. Both are now undergoing profound changes in the twenty-first century age of technology. However, certain fundamental elements of each has remained surprisingly consistent. Historians mark their near simultaneous beginnings during the climacteric Gregorian, or Cluniac Reformation of law and religion that took place in the medieval world, almost exactly one thousand years ago.

The birth of the Civil law tradition is usually charted from the founding of the University at Bologna, Italy, in 1088. That institution, originally a place for the study of law, came under the direction of the great scholars Irnerius and Accursius. Those juridic doctors attempted to adapt the highly sophisticated provisions of an ancient Roman Code to the circumstances of a rather backward and agrarian way of life. The result was a regimen of law combining both religious and secular spheres, the *Jus Commune*. It was a common or general law for the entire realm of Latin Christendom, and would eventually be taught at numerous institutions—including Paris, Lyon, Oxford, and Cambridge—all patterned on the example of Bologna. (Radding 1988: 113)

As the universities of Europe and England grew and developed over generations and centuries, however, their course of study came to include not only law, but also, all the arts and sciences. In fact, the university became, in effect, the custodian of the ancient heritage of the West, including not only Christian theology, but also the teachings of both the ancient Greeks and Romans. In this tradition of culture and learning, law was an honored discipline, but it was viewed as being integral to a single great unity of all knowledge. Law and the legal scholar were an essential part of the wider academic tradition, and the scholar was the heart of the Civil law. (Brundage 2010)

In contrast with the university tradition, the Anglophone strand of legal development began in a very different way. Historians mark its beginning from the time of the Norman Conquest of England in 1066, the great turning point of English history. During that climacteric event, tens of thousands of innocent victims were killed as entire regions were depopulated. The British Isles, one of the most important repositories of classical manuscripts and literary study until that time, was ravaged, its art, architecture, and centers of scholarship systematically destroyed. England was reduced to servile status under a highly centralized Norman Kingship, mostly ruled by absentee monarchs. (Hogue 1986: 33)

After resistance had subsided, and a kind of martial law imposed, the arable land was seized and redistributed among the invaders, who would comprise a privileged nobility. Soon three Royal Courts of Justice were established in London, wielding a broad authority under royal mandate. Particularly, in the confused aftermath of the invasion, their primary purpose came to be resolving disputes of title and possession between noble landholders. During that era, land was the primary form of wealth, and was also the main source of revenue for the royal treasury. Hence, disputes concerning possession and title to land were of vital importance to the king.

Initially, the courts were presided over by learned jurists who had been trained in the *Jus Commune* at Bologna. Those royal justices were assisted in their work by a retinue of functionaries--messengers, scribes, escorts, and sergeants--who engaged the mundane tasks of litigation. Very soon, in the fashion of the time, these functionaries organized themselves into guilds of trade, to advance their lucrative practice and to exclude unwanted competition. However, in 1166, when King Henry II disputed the operation of the courts, he banished the scholarly jurists and granted a monopoly of trade in adjudication to the guild members. This arrangement was an improvement for the monarch, because the courts not only operated at his pleasure, but, also, at no direct expense to him. Instead, the law guildsmen supported themselves by the fees and gratuities they extracted from the litigants, and the King was insured a continual income of fines, bails, and forfeitures imposed on the rich nobility. From the outset, the disposition of the law guildsmen toward the law doctors at the university was one of hostile rivalry, and teachings of the Romanist law were anathema within their Royal Courts of Justice. (Potter 2015: 46)

Thus, from their near simultaneous beginnings in the medieval era, the two forms of law, English and Continental, were separate and different--although the *Jus Commune* survived in England in various forms, including Heraldry, Ecclesiastical, and Chancery (Chancellery) procedures. What came to be known as the Common law of England was profoundly unlike its academic counterpart. The guiding premise of each legal method was inimical to that of the other. The learned jurists were integral to the work of the university, and assimilated to the learning of the broader population. Their vantage place was from within the continuum of knowledge that shaped the mind of the educated public, and through them, the public generally. The scholar would remain the center of Continental legal practice, even into the modern age. (Tiger 1977)

The English court guildsmen, by contrast, followed the manner of commerce, employing their proprietary methods, including an obscure legal dialect, *Law French*, and an elaborate technique known only by members of their fraternal order. Over time, as the guildsmen acted with royal imprimatur and without close oversight by the absentee kings, they accrued both enormous wealth and wide independence. Following the pattern of Norman Kingship, their judge wielded an unquestioned royal

authority; like the king, his word was law because he had spoken it and could enforce it. In English practice, the judge came to be a living embodiment of law, exercising a derivative type of sovereign autonomy. Most of all, the guild lawyers stood at a point where three elements--knowledge of the law, royal authority, and concentrations of wealth—came together. As the prosperity of the Kingdom increased, and changed to a modern monetary form of riches, the methods of its legal fellowship also widened. Eventually, the law guildsmen would expand their authority over the criminal courts, predominate within the High Court of Parliament, and become integral even to the Monarchy itself. (Hudson 1996:86)

Philosophical and collegial principles of law

Because of the very different origins of the two traditions of law, and their different understandings of what was called law, their techniques for dispensing justice also developed in dissimilar ways. The Civil law, for example, was a philosophically based system of law. On the Continent, the legal culture had begun under religious auspices and therefore had framed its workings to fit within the prevailing theological principles of the time. Later, as church and government separated, the Civil law became avowedly secular. Yet, its philosophical principles still resembled the old theological framework--both took a wide view of the whole of human experience, expressed in ultimate terms. Of course, the modern purge of the religious dimension of human personality from matters of law and governance came at a cost. But the bitter experience of sectarian conflict had made separation of the civil from the religious an unavoidable premise. The result was intended to be an equitable regimen of legal authority free of religious divisiveness.

Modern Civilian legal principles were embedded in the premise that existence was explainable in rational terms, that all human beings shared in certain commonalities of capacity and potential, and that a mode of equitable existence could be established on the faculty of reason, a faculty all humans shared. Following on Suarez and Descartes, Spinoza and Leibnitz, Montesquieu and Wolff, the Continental tradition of law developed at the university was integral to what was considered the advancement of human knowledge generally. A turning point in its development had occurred in the seventeenth century, with the formation of the nation-state. An emerging Civil law was both the source, and an inherent part, of this new structure of governance. Then, by the eighteenth century, Continental law had become scientific in its outlook, and because its operation was intended to match the *Universal* capacities inherent to every person in every locality, the law was thought to be universally valid as well. Throughout its historical development, the scholar continued to be the central figure of the legal regimen, and now more than ever, since philosophy had replaced theology as the grounding for European legal culture as a whole.

On the Continent, the philosopher, like the artist and poet, very often became a person of wide public acclaim and important public influence.

By contrast, the Anglophone tradition of law was collegial in nature. It operated as a fellowship of trade, organic in its makeup and unimpeded by strict logic or rigid principle. Its distinctive makeup--a circle of men pledged to a strictly enforced unity among its members--helped it proudly retain an essentially medieval guild form into the modern world. Its close assimilation to aggregates of wealth, whether in the form of medieval land holdings or modern financial holdings, was another source of its longevity. In fact, its great virtue was the ability to adapt itself to changing circumstance and to pursue the arising opportunity each change presented. Its combination of unity and adaptability allowed the *Transcendent* brotherhood to, not only survive, but to flourish into a modern age that was inconceivably different from the medieval time of its origin.

The law guilds had been from the beginning enclosed bodies, their inner workings concealed from the larger public, self-existent and self-regulating in their operation. Initially they had existed within the institutions of a Norman Monarchy, elevated in their work above the population—but their ethos was that of commercial trade. For this reason, even though guild members were officers of the King, and could invoke the fearsome power of the Monarchy, they acted with a certain independent detachment. Not until later, during the seventeenth century, when the powerful guildsmen became foundational to the monarchy itself, were they compelled to establish and expound their own basis of legitimacy in the public mind. This necessarily required appealing to a source of understanding external to their own inner doctrines. In the situation, religion quite naturally provided a convincing rationale for their workings, as their rituals of adjudication took on a clerical aspect. Thus, ironically, during the eighteenth century, when the Civil law was becoming completely secularized, the Anglophone legal realm was coming to embrace public religiosity as the most reliable groundwork of its legal culture. The minister, together with the magistrate, provided the anchor of legal order. (Colley 2012: 19)

Because of their marked differences in composition, the two methods of law, Civilian and Anglophone, came to manifest themselves in the mechanisms of governance in two different ways—one as integral, the other as independent. The modern civil law tradition wielded its authority through the state. Its judicial officers were officers of the state, much like any other government official. The purpose of the judiciary was to apply laws that had been enacted through the deliberative process of legislation. Both the work of the judicial officer and the authority of the state existed within the same outline of principles and assumptions. These principles also informed the educative function of school and university and were instructed to the public generally. (Ong 1988)

By contrast, in the Anglophone approach, when members of the legal fellowship held judicial office, they held it independently, elevated above the state. They wielded the coercive power of government, but did so according to the discipline and doctrines of a separate body. The judge was guided in his decisions by the consensus existing among members of the legal fellowship. Moreover, because the fraternity of law operated in a realm of proprietary learning removed from the public, it necessarily relied on a separate, internal tradition of understanding, for its claim to legitimacy. In fact, the encouragement of a public religiosity, especially in the form of the Judeo-Christian tradition, became an important factor in the progress of Anglophone law. Freedom of religion, and the importance of religious influence as a basis of public order, became a major theme in the Anglophone world. (Nelson 2010)

The two laws—Civilian and Anglophone, philosophical and collegial--based their legitimacy among the public on two very different foundations; one relied on its inherent rationality, the other relied on the sanctity of tradition. These differences in development would be of great importance in any attempt at joining the two legal methods in a project of globalization. The founding principles and assumptions of Civil law comprised a self-sufficient and self-sustaining completeness; it did not need to rely on any external or supernatural additions as a supplement. Viewed this way, its legal order was not merely grounded in the ethics and expertise of legal practitioners and judges. More than that, it was founded on an inclusive framework of understanding that united the entire populace of every rank and status. By contrast, the Anglophone approach rested on a continually evolving internal consensus with which public understanding had no direct connection. (Lambropoulos: 1993: 215)

The work of convergence

In the age of globalization, the fundamental differences existing between the two approaches to legal order, Civilian and Anglophone, still present themselves as they have in the past. One is anchored in principles, ideals, and the scientific outlook of the modern university--the source from which it attempts to propound a rational system of law. The other is grounded in the oracular judicial voice, embedded within an organic fellowship--from which it maintains a pragmatic atmosphere of legality. These differences of method and purpose at the most elemental level represent a possibly contentious incompatibility, and may thwart any attempt to merge them into a single unified global order in the future. As alternative modes for establishing legal order and shaping human thought, they seem only to be mutually exclusive, with any convergence of the two requiring the submerging of one to the other.

For example, if the Civil law is made subordinate, it would have to relinquish its basis of principle and reset the foundation of its law to the person of the judge. In doing so, the judge, as oracle of law, would assume a status separate from and superior

to all institutions and persons, including the university, the scholar, and the state. He or she would take on the independent authority to enforce rulings, rulings that may turn on collegial factors that have no necessary connection with public standards of justice and fairness. The scholar, in a conventional academic sense, would have only a subordinate place in the legal regime. The realm of university academics would be effectively redefined in a way that would insulate the work of advocates and jurists from its critical examination. Conventional scholarship would be strictly segregated from the inner transactions of the legal fellowship.

Taken the opposite way, if the Anglophone method is subsumed under Civilian practice, its judges would be required to account for and be held responsible for decisions they had made. Along with that, judges would be expected to make known any personal and subjective basis by which they deciphered legislative intent. They would be compelled to allow the inner workings of the law to be examined and evaluated by those outside their fellowship. They would be expected to issue decisions that matched the general principles of reason and fairness that are part of the unifying basis of public norms and values. Practitioners would lose their exemption from accountability, their privileged status over all persons and things. Their work would be examined and overseen from a perspective of wide learning, including from the perspective of an educated public. (Habermas 2008: 115)

Nonetheless, apart from these two highly unlikely alternative patterns of convergence, there are lessons from the historical past which can provide a basis of conjecture about how such a joining of the two divergent traditions might actually take place. Especially, because one is philosophical and principled in its method and the other is collegial and pragmatic, they are in certain ways complimentary to one another. In fact, over the centuries, there has been a substantial amount of borrowing and copying between the two traditions. Both their parallel development and periodic exchanges can be instructive for the current situation—because most of the borrowing and adaptation has been in one direction.

Within the mundane practical workings of law, both traditions are able to perform many of the same transactions: they are both equally able to form corporations, enforce the terms of a contract, punish criminal behavior, as well as oversee transactions of marriage or divorce. But it is in the larger realm of means and purpose—how and why they do these things—that barriers to convergence become clear. Yet, an approach to overcoming such obstacles can be seen in consistent patterns of the past. From that perspective, the probable manner of successfully joining the two laws is by means that have been employed repeatedly over centuries--that is, a retaining of judicial independence and organic fellowship on the Anglophone side. But beneath its collegial authority, the adoption of doctrines and instruments made available by Civilian scholars. From the medieval guild of trade, to the modern state and corporation, to

the postmodern modes of ethic and the text, from Irnerius and Bracton, Gentili and Selden, Thibaut and Austin, Savigny and Holmes, Kelsen and Dworkin, to Derrida and Cover, the Anglophone fellowship of law has borrowed from its Continental opposite. In other words, just as has occurred repeatedly in the past, the conceptual instruments developed by university scholarship would be employed by a pragmatic collegiality, and its independent judiciary. (Dworkin 1986: 151)

However, such questions of convergence are concerned only with the adjudicative aspect of the two legal cultures. A problem would still remain as to how their educative features could be merged. There would necessarily be an adjustment in the basis of legitimacy propounded to the public. Moreover, in the balance between legal authority and legal understanding among a global population, another difficulty would emerge: such a change in authority would require a commensurate adjustment in the public atmosphere of cultivation and learning. To answer these questions, there is also an abundance of evidence that could provide a basis of conjecture about how a workable educative regime could be assembled. (Habermas 2001: 58)

Globalization as Americanization

Any global convergence of Civilian and Anglophone legal methods would inevitably bring a change in the living circumstance among members of the global public as well. Immediate questions would arise, including whether culture and learning would be an essential element of the new legal atmosphere, whether such influences might be diminished, or if perhaps a redefinition of culture and learning might be required. Along with that would be questions about how the understanding of the public might be subordinated beneath and behind a veil of ignorance in relation to law. Questions would arise as to how an attitude of willing compliance might be engendered on a global scale, and what measure of value could determine the way of life in a legal realm extending across all regions and peoples of the world. (Goldstein 2001)(Rawls 2005) (Williams 1983)

Some indication about the possible shape of relations between members of a transcendent legal authority and the heterogeneous members of a global public can be seen in the example of America. It is the nation most emphatically under the version of Anglophone legal method that is being widely promulgated at the present time. Moreover, because America has been both harbinger and hegemon of the global project, that country is useful as a template for conjecture about a future legal regime. It provides an instructive example of relations between the jurist and the scholar, as well as, specifically, the strict segregation of learning between the judicial fellowship and the public at large—and it does so over a broad territory with a population of widely varied ethnicities. (Kennedy 2016:108)

For example, in its method of social ordering, America is characterized by generally atomized families, in which any survival of ancestral ties and loyalties is highly exceptional. The population is made up of individuated persons, each of whom, for legal purposes, is regarded as an autonomous aggregate of rights. In this famously litigious society, those individual persons are further defined by categories of identity, and segmented according to such commonalities as race, gender, gender orientation, levels of income, and patterns of consumption. The result is often a social cacophony of tumult and conflict—yet, at the same time, a general stability is easily maintained within legal limits. (Honneth 2014)

All affairs, public and private, are overseen by a discrete profession acting as a cohesive body. Against the ephemera of persons and things it exists continuously from generation to generation. Its impartial judicial oversight is basic to national existence, and basic to the role of America in the world. Through its elevated procedures, the fellowship of law oversees the myriad interactions between individuated subjects as it maintains legal order. The ultimate basis of civility among the American population rests, neither with cultivated abilities to govern the self, nor with unified families. Rather, it is established in the overarching and unquestioned authority of law. That presiding fellowship has its own requirements of conformity, its own strict discipline, separate and distinct from the default behaviors and attitudes prevailing among the public multitude. (Kimball 2015: 470)

Despite its division of knowledge, however, America could claim in several ways to be the world leader in culture and learning—but in a particular way. For example, what is defined as culture has come primarily to mean the typical and ordinary manifestations of a particular way of life. America is indisputably the global center of entertainment and theatric production, especially of a commercial variety. A ubiquitous media broadcasts with an enormous reach, depth of penetration, and range of content--including music, sporting events, and cinema--a spectator product marketed on all continents. Equally, in the realm of learning, twenty-first century America may also be the forerunner and exemplar in the project of educating all peoples everywhere; it has numerous universities which are considered to be among the best in the world. In fact, hundreds of thousands of foreign students, journey at great expense and great effort to partake of the educational opportunities offered there. Those elite universities have become, in effect, global in their outlook and purpose, further enhancing American influence in the new Millennium. (Lumann 2000)(Williams 1983)

Nonetheless, for purposes of domestic governance across the broad spectrum of the American population, the university is in a period of transition—many would say crisis—regarding its role in society. One aspect of this crisis is that, for purposes of legal rule, the importance of educational institutions in shaping the public mind has been greatly superseded by electronic inculcation. Antiquated methods of rote learning in

brick and mortar schools are, by comparison, vastly inefficient; conventional methods of the university are unable to compete with the influence of an omnipresent media. (Readings 1996)

A legal environment that once depended on permanent structures of knowledge, learned from books, can now rely on a continuous flow of disseminated information to produce what Foucault called *Governmentality.* The old laborious mode of instruction has been displaced by means that require no concentrated effort for either teaching or learning. Instead, the ephemera required to navigate an ever-changing economic and political reality, are naturally absorbed by the public in the course of daily life. At the same time, the practical domestic utility of the university is now becoming more confined to the STEM disciplines: science, technology, engineering, and mathematics, which remain centrally important for productive purposes. (Menand 2010)(Foucault 2005: 44)

The separated approach for legal education becomes especially important as the emphasis of American law has moved from oversight within national borders, to constructing a fellowship of Anglophone practitioners reaching around the globe. At the same time, the old inculcated national history, literary studies, political ideals, and idea of of Western Civilization, former staples of the American university, are now rendered quaint and out of place. The education once offered that instilled a standardized set of understandings and attitudes--the former basis of a united citizenry--has been abandoned, as obviously inappropriate for a borderless legality in the project of globalization. The result has been what might be called a value-free or standard-free environment of American enculturation. While the popular mind is shaped by an electronically mediated reality of journalism and marketing, a widening range of personal behaviors are tolerated so long as they do not exceed strictly defined legal limits. But the insulated law school continues its work undisturbed. (Giddens 1991: 70)

Because the American public is separated by a division of knowledge, a veil of ignorance, from understanding the legal method by which it is ruled, it lacks an outer framework or perspective from which the law can be examined and evaluated. In other words, there is not an encompassing humanistic, universalistic, or holistic premise by which the public may understand the effectual basis of the American way of life. Instead, the legitimacy of the legal stratum rests upon a casual *Pragmatism*, the philosophical ethos of its juridic atmosphere, and especially an amorphous Judeo-Christian religiosity. When the rudiments of practicality are combined with a simplified piety they result in an attitude of faith in American legal institutions. (Sutton 2014: 47)(Rose 1990)

Unlike peoples who have lived a traditional mode of existence, where ties to family and community were paramount, and where harmony among them has rested on deeply instilled manner and custom, Americans live under few such constraints and few expectations in terms of demeanor, personal affect, or familial obligation, with

a relative lack of social obligation. They are united instead by a ubiquitous media influence that celebrates disruption, innovation, and the absence of societal norms. Nonetheless, a wide degree of political and economic stability exists in America as patterns of behavior are shaped by the immersive stream of transmitted sound and image. This electronic mode of acculturation could prove equally sufficient as a transcending influence across all national borders, to homogenize a global public, especially when it is correlated with the limits of behavior enforced by law. But a question remains as to whether the world population can be taught a unifying credo upon which it can be organized. (Breyer 2015: 15)

Values in the global age

In a global regimen of governance built on converged legal methods--methods that combine the principled ingenuity of the Civilian scholar with the collegial adaptability of the Anglophone jurist; what would such a legal future portend? There have been many instances of such accretion throughout their parallel histories, and all indicators point to an adaptation of Civil concepts and techniques beneath the enclosed discipline of Anglophone practice. Employing this combination of elements, the principled and the pragmatic, how will a future global authority be constructed that is equally applicable to every locality and population? By what level of understanding will a vast population of legal subjects be brought to acquiesce in the workings of its authority? What all-inclusive values will underlie such an all-competent mode of legality? (Benhabib 2006: 147)

There is, of course, no way to answer such questions with finality, but patterns from the past, and the example of modern America, are highly suggestive. They point to a means of legal rule elevated beyond the limits of public understanding, operating by its own artificial lexicon, and its hermeneutic inventiveness. By its nature, that law will be inexplicit in its composition, guarded in its immanence, and obscure in its reasoning. Rather than being precisely defined in overt and public ways, its main contours will take shape as a fellowship, through initiatives, associations, networks, and councils. These will exist mostly beyond public awareness, yet their combined influence will ultimately come to bear upon a global population through its judicial fora. (Cutler 2003)

Precisely because of its transcendence as a professional caste, existing mostly out of public view, it might easily adapt itself as a global regimen of law to all regions and peoples of the earth. Because the English-speaking method would be equally detached from any form of culture and learning outside itself, it is by its very nature equipped to preside impartially over every variety of human existence. In such a regime, a high level of cultivation and a wide breadth of learning among the public would no longer be of essential importance—potentially, quite the opposite. After all, close ties of family and custom can become obstacles to public compliance, while a population that lacks a stable basis of unity becomes more dependent on some type

of oversight to maintain its cohesion. In any case, whatever the level of cultivation among its multitude of subjects, there is still the question of what scale of values would underlie this Anglophone paradigm, what aspiration would provide the motive ingredient to unify a global population beneath its regimen of authority. (Cable 1999)

From its historical beginnings in the eleventh century, the underlying values that shaped the work of English law have been unwaveringly constant. As a guild of trade, engaged in the commerce of legal transaction, its fundamental purpose was the enrichment of its members. Its collegial values were determined from the outset and continued as the fellowship progressed from the medieval to the modern, and--during the seventeenth century--from landed to monetized forms of wealth. When it took a foundational role within the newly constituted British Monarchy, in 1688, the fellowship of law not only became assimilated to modern institutions of finance and trade, with their large concentration of capital asset, but also became a fundamental constituent of governance. (Negri 2000: 22)

If the development of global law follows the historic course of Anglophone precedent, it will remain reliably consistent and stable, especially in terms of its underlying values. Its fundamental premise as a fellowship of trade requires continuity of purpose—the aggregation of wealth. Hence, there is little likelihood the collegium of law will be distracted by philosophical enthusiasms or utopian experiments. In this conservative sense, it will provide a very reliable structure of oversight. However, the stable continuity it provides can only be assured if there is monetary means available to support its independent mechanism of legal rule. This fundamental wealth requirement determines the overriding value that the ruling strata must instill among the population residing within its authority and under its educative influence. (Koopmans 2004)

Historically, measures were taken to ensure that, particularly, wealth in excess, or above subsistence, needed to be created by the population as a whole. Thus, as a central aspect of its educative function, Anglophone legal culture needed to instill in the consciousness of its public the virtue of productive labor. Unsurprisingly, England was the birthplace of Capitalism, just as America became the epitome of a Capitalist nation. The Anglophone tradition has long and successful experience, a proven ability to sustain an environment of material production consistently, over time, and among many peoples around the world. In the global era, the motive of wealth creation could easily be fostered by an immersive electronic atmosphere of created appetites, artificial needs, incentives of private gain, as well as an increased demand for entertainments and diversions—all of which, when taken together, might be called the process of Americanization. (Buzan 2006) (Wendt 1999)

But beyond those inducements, no motivation to labor and production has proven more reliable than the strictly enforced obligations of contracted debt.

The technologies of electronic dissemination offer an unprecedented opportunity to create an atmosphere fixed on earning, spending, and consumption. Each step in the cycle of labor, acquisition, and debt results in an effective increase of aggregate wealth among those who preside. As the global population works to alleviate its orchestrated necessities and fulfill its inculcated wants, it will become more engaged in the pursuit of monetary means. The end result may not be self-sufficiency, but will certainly be the mobilization of a vast interdependent network of individuated laborers around the world. Conceivably, the entire population of the earth mobilized for labor and consumption, would be lifted to a level of material productivity unknown in human history. (Slobodian 2018: 182)

Global governance would be anchored at the point where its adjudicative authority is combined with its educative influence. Elevated above the reach and realm of publics and states, a fellowship of law directing the instruments of finance and trade will encourage the increase of monetary wealth among the global populace—as first priority among all other values. More than that, the work of the legal overseers to protect this way of life based on production and consumption, will serve as a confirmation of its legitimacy in the public mind. The result will be a meeting of professional and public purpose devoted to both material gain and legal order, the historic equilibrium of the Anglophone legal tradition. By this means, an ordering of human action and shaping of human thought may be established with continuity and stability. Balancing the two elements will provide for all peoples, in all regions of the earth, a new understanding of culture and learning, together with the instilled values of its legal culture, as it will establish a stabilizing basis for the global Rule of Law in the twenty-first century. (Slaughter 2004: 216) (Domingo 2010)

Bibliography

1. Bellomo, Manlio 1995: *The Common Legal Past of Europe 1000-1800*, Catholic University Press
2. Benhabib, Seyla 2006: *Another Cosmopolitanism*, Oxford University
3. Breyer, Stephen 2015: *The Court and the World*, Knopf
4. Brundage, James 2010: *The Medieval Origins of the Legal Profession*, University of Chicago
5. Buzan, Barry 2006: *From International to World Society*, Cambridge University
6. Cable, Vincent 1999: *Globalization and Global Governance*, Royal Institute of International Affairs
7. Colley, Linda 2012: *Britons: Forging the nation 1707-1837*, Yale University
8. Cosgrove, Richard 1987: *Our Lady the Common Law*, New York University

9. Cutler, A. Claire 2003: *Private Power and Global Authority: Transnational merchant law in the global political economy*, Cambridge University
10. Domingo, Rafael 2010: *The New Global Law*, Cambridge University
11. Dupuy, Jean-Pierre 2000: *The Mechanization of the Mind: On the origins of cognitive science*, Princeton
12. Dworkin, Ronald 1986: *Law's Empire*, Harvard University
13. Foucault, Michel 2005: *The Hermeneutics of the Subject: Lectures at the College de France*, Palgrave
14. Giddens, Anthony 1991: *Modernity and Self-Identity*, Stanford University
15. Garske, Joseph 2018. *Anglophone and Civilian Legal Cultures: Two understandings of human trust for the global age.* Academicus International Scientific Journal, 9(18), 34-41.
16. Goldstein, Judith 2001: *Legalization and World Politics*, MIT Press
17. Habermas, Jurgen 2001: *The Postnational Constellation*, MIT Press
18. Habermas, Jurgen 2008: *The Divided West*, Polity
19. Honneth, Axel 2014: *Freedom's Right: The social foundations of democratic life*, Columbia University
20. Howe, Leslie 2000: *On Habermas*, Wadsworth/Thompson
21. Hudson, John 1996: *The Formation of the English Common Law*, Longman Publishing
22. Jackson, John 1998: *The World Trade Organization: Constitution and jurisprudence*, Royal Institute
23. Iovan, Martian 2019. *Current Meanings of the Legal Culture Concept and the Question of Truth Regarding its Elements.* Academicus International Scientific Journal, 10(19), 49-64.
24. Kennedy, David 2016: *A World of Struggle*, Princeton University
25. Kimball, Bruce 2015: *On the Battlefield of Merit: Harvard Law School, first century*, Harvard University
26. Koopmans, Tim 2003: *Courts and Political Institutions: A comparative view*, Cambridge University
27. Lambropoulos, Vassilis 1993: *The Rise of Eurocentrism*, Princeton University
28. Lesaffer, Randall 2010: *European Legal History*, Cambridge University
29. Lumann, Niklas 2000: *The Reality of the Mass Media*, Stanford University
30. Menand, Louis 2010: *The Marketplace of Ideas: Reform in the American University*, W.W. Norton
31. Negri, Antonio 2000: *Empire*, Harvard University

32. Nelson, Eric: *The Hebrew Republic*, Harvard University, 2010
33. Ong, Walter: *Orality and Literacy*, Routledge, 1988
34. Piketty, Thomas 2017: *Capital in the Twenty-First Century*, Harvard University
35. Potter, Harry 2015: *Law, Liberty and the Constitution: A brief history of Common law*, Boydell Press
36. Radding, Charles 1988: *The Origins of Medieval Jurisprudence*, Yale University
37. Readings, Bill 1996: *The University in Ruins*, Harvard University
38. Rose, Nikolas 1990: *Governing the Soul: The shaping of the private self*, Routledge
39. Slaughter, Anne-Marie 2004: *A New World Order*, Princeton University
40. Slobodian, Quinn 2018: *Globalists: The end of empire and the birth of neoliberalism*, Harvard University
41. Sutton, Matthew 2014: *American Apocalypse: A history of modern evangelicalism*, Harvard University
42. Tiger, Michael 1977: *Law and the Rise of Capitalism*, Monthly Review Press
43. Wendt, Alexander 1999: *Social Theory of International Relations*, Cambridge University
44. Williams, Raymond 1983: *Culture and Society: 1780-1950*, Columbia University