Globalizing the U.S. Law Curriculum: The Saja Paradigm

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I. THE CHALLENGE OF GLOBAL LEGAL EDUCATION

A. Globalization

With nearly irreversible momentum, the global community has carved new, broad channels for the cross-border exchange of capital,[1] technology,[2] goods,[3] services,[4] information,[5] and people.[6] Because trade

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[1] *See* PAUL MASSON, GLOBALIZATION: FACTS AND FIGURES 2, 9-10 (2001) (reporting increased flow of capital); *see also* TATYANA P. SOUBBOTINA & KATHERINE A. SHERAM, THE WORLD BANK, BEYOND ECONOMIC GROWTH: MEETING THE CHALLENGES OF GLOBAL DEVELOPMENT 113 (2000), *available at* http://www.worldbank.org/depweb /beyond/beyondbw/begbw_all.pdf.; *FDI Inflows in Millions of Dollars, at* http://www.unctag.org (last visited Aug. 10, 2002) (estimating 18% increase in U.S. dollar value (USD) of inflows of foreign direct investment, from USD $1,075 billion in 1999 to $1,270 billion in 2000). *See generally* Sebastian Edwards, *Capital Mobility, Capital Controls, and Globalization in the Twenty-First Century*, 579 ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 261 (2002) (analyzing effects of economic openness and increasing capital mobility on economic growth).

[2] INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, METHODOLOGICAL AND TECHNOLOGICAL ISSUES IN TECHNOLOGY TRANSFER (Bert Metz et al. eds., 2001) (finding that total international financial flows supporting technology transfers across Organization for Economic Cooperation and Development (OECD) countries in 1998 exceeded USD $300 billion in 1998, compared to just slightly over USD $100 billion in 1990). Globalization appears to be both a cause and a consequence of cross-border technology transfers. *See* Lester C. Thurow, *Globalization: The Product of a Knowledge-Based Economy*, 570 ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 19 (2000) (arguing that globalization is one effect of new technological developments, for example, microelectronics, computers, robotics, telecommunication, new materials, and biotechnology).

[3] The value of world merchandise exports grew by 12.5%, reaching USD $6.2 trillion in 2000, which tripled the amount in 1999. Further, growth in trade volumes more than doubled for the major regions of the World Trade Organization (WTO). Asia and the transition economies recorded the highest export growth among the major regions and the largest increases in imports. In Western Europe, trade grew by 10%, double the amount of the preceding year, and in North America, the growth of imports exceeded that of exports for the fourth consecutive year. WORLD TRADE ORGANIZATION, INTERNATIONAL TRADE STATISTICS 2001 1-2, 19 tbl.I.2 (2001) [hereinafter WTO].

[4] By the mid-1990s services accounted for almost two-thirds of the world's gross domestic product (GDP), up from about half of the world's GDP in the 1980s. SOUBBOTINA & SHERAM, *supra* note 1, at 52. World exports of commercial services rose by 6% in 2000, reaching USD $1.4 trillion. WTO, *supra* note 3, at 2.

[5] Michael Mussa, Factors Driving Global Economic Integration, Address at the Global Opportunities and Challenges Symposium (Aug. 25, 2000) (transcript available at www.imf.org/external/np/speeches/2000/082500.htm) (asserting that important factor of international economic integration is communication of economically relevant information and technology, and that recent and continuing advances in communications will have

(theoretically) produces growth by maximizing the comparative advantages of different national communities,[7] many applaud the benefits of globalization.[8] Yet others complain that these cross-border vehicles also exploit comparative disadvantages[9] and suppress interests of the poorer nations.[10] According to this critical perspective,

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profound effects on innovations and be strong force driving future global economic integration in future); *see* Tomas A. Lipinski, *The Developing Legal Infrastructure and the Globalization of Information: Constructing a Framework for Critical Choices in the New Millennium Internet — Character, Content and Confusion*, 6 RICH. J.L. & TECH. 19, 28 (1999) (arguing that "commodification" of information has jettisoned policy issues of right to control and access information into dynamics of marketplace).

[6] With each decade beginning 1931-40, immigration to and emigration from the United States have both steadily increased. Immigration increased from 528,000 during the period 1931-40 to 7,338,000 from 1981-1990. U.S. DEP'T OF JUSTICE, 1999 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 239 (2002), *available at* http://www.uscis.gov/graphics/shared/aboutus/statistics/FY99Yearbook.pdf (last visited Nov. 26, 2003). Emigration increased during those two periods, respectively, from 649,000 to 1,600,000. *Id.* Between 2001 and 2005, approximately 300,000 people are expected to emigrate annually from the U.S. *Id.* at 240. From April 1, 2000 to July 1, 2001, approximately 1,340,000 people immigrated to the United States from other countries. *Popular Table: Estimated State Demographic Components of Change: April 1, 2000 to July 1, 2001*, *available at* http://eire.census.gov/popest/data/states/populartables/table02.php (last visited Aug. 10, 2002).

[7] *See* SOUBBOTINA & SHERAM, *supra* note 1, at 66-68 (discussing benefits of unrestricted foreign trade).

[8] *See* MASSON, *supra* note 1, at 4 (positing that technological change is major force for increasing interdependences among countries and that, conversely, by spreading information across borders, globalization has allowed greater number of people to share in benefits of technological innovations); HELMUT WAGNER, IMPLICATIONS OF GLOBALIZATION FOR MONETARY POLICY (2001) (arguing that by strengthening process of global economic integration, globalization increases international competition, thereby forcing market players to make structural adjustments or reforms that change conditions or constraints under which monetary policy is implemented); Tim Shorrack, *Nobel Laureate Encourages Global Justice Movement*, INTER-PRESS SERVICE, Oct. 16, 2001 *available at* www.wfa.org/issues/globalization/stiglitz.html (last visited Nov. 26, 2003) (stating belief of Joseph Stiglitz, former chief economist of World Bank and winner of 2001 Nobel Prize for economics, that global justice movement is beneficial to all world's markets and that world's developed countries should continue to open their markets to least developing countries).

[9] *See* Interview with Ralph Nader, Consumer Advocate (Mar. 1998), *at* www.globalvision.org/program/globalization/nader.html (arguing that essence of globalization is subordination of human rights, labor rights, consumer and environmental rights, and democracy rights to imperatives of global trade and investment because globalization means control of world economies by giant corporations that do not have allegiance to community or particular county); *cf.* ARUNDHATI ROY, POWER POLITICS 14 (2001) ("Is globalization about 'eradication of world poverty,' or is it a mutant variety of colonialism, remote controlled and digitally operated?").

[10] *See* JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 5 (2002) (asserting that "[a] growing divide between the haves and have-nots has left increasing numbers in the Third World in dire poverty. Despite repeated promises of poverty reduction made over

globalization makes it easier to launder money,[11] pollute the environment,[12] traffic in drugs,[13] prostitution,[14] and forced labor,[15] infect the food supply,[16] defraud consumers,[17] invade privacy,[18] and sadly, effectuate the plots of terrorists.[19]

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the last decade of the twentieth century, the actual number of people living in poverty has increased by 100 million.").

[11] The International Monetary Fund (IMF), for example, has stated that the aggregated amount of money laundering in the world falls in the range of 2% to 5% of the world's GDP. Using 1996 statistics, these percentages indicate that money laundering ranged between USD $590 billion to $1.5 trillion. The lower figure is roughly equivalent to the value of the total output of a country the size of Spain. FINANCIAL ACTION TASK FORCE, MONEY LAUNDERING 2 (1999), *available at* http://www1.oecd.org/fatf/pdf/PB9906_en.pdf.

[12] *See* Stefano Nespor, *Environmentalism and the Disaster Strategy*, 19 UCLA J. ENVTL. L. & POL'Y 211 (2000/2001) (analyzing changing strategy of environmentalism and environmental policy in context of seemingly growing interdependence between states); *see also* COMMISSION FOR ENVIRONMENTAL COOPERATION OF NORTH AMERICA, THE ENVIRONMENTAL EFFECTS OF FREE TRADE: PAPERS PRESENTED AT THE NORTH AMERICAN SYMPOSIUM ON ASSESSING THE LINKAGES BETWEEN TRADE AND ENVIRONMENT OCTOBER 2000 (2002), *available at* http://www.cec.org/files/pdf/economy/symposium-e.pdf (arguing for more popular engagement in environmental assessments of impact of free trade).

[13] According to statistics released by the World Customs Organization, the WTO and Interpol, the combined results of the world's narcotic drug enforcement services (such as police, *gendarmerie*, customs officials, and others) show a measurable increase in the quantities of drugs seized. Interpol data alone indicates that a total of 4,250 tons of drugs were intercepted in 1999, as compared to 3,830 tons seized during the previous year. Press Release, World Customs Organization, *Drugs Seizures Rise Sharply in 1999*, *at* http://www.wcoomd.org/ie/En/Press/wco_interpol.html (last visited Nov. 26, 2003).

[14] *See* HUMAN RIGHTS WATCH, OWED JUSTICE: THAI WOMEN TRAFFICKED INTO DEBT BONDAGE IN JAPAN (2000).

[15] *See* Symposium, *Post-Cold War International Security Threats: Terrorism, Drugs, and Organized Crime*, 21 MICH. J. INT'L L. 527 (1999).

[16] *See* James Robert Burke, *Warning: The Imported Food You Are About to Consume May (Or May Not) Be Harmful to Your Health*, 15 J. CONTEMP. HEALTH L. & POL'Y 183, 183-85 (1998) (arguing that protecting consumers against risk of food-borne diseases in imported foods is increasingly important because of rapid increase in food imports in last five years and growing reliance of American consumers on imported foods).

[17] *See* John Goldring, *Consumer Protection, Globalization and Democracy*, 6 CARDOZO J. INT'L & COMP. L. 1, 1 (1998) (arguing that "global economy may bring many advantages, but it may also deprive people of considerable benefits").

[18] *See* Gregory Shaffer, *Globalization and Social Protection: The Impact of EU and International Rules in the Ratcheting Up of U.S. Privacy Standards*, 25 YALE J. INT'L L. 1 (2000) (arguing that for privacy advocates globalization is both opportunity and threat).

[19] *See generally* M. Cherif Bassiouni, *Assessing "Terrorism" Into the New Millennium*, 12 DEPAUL BUS. L.J. 1 (1999) (assessing threats international community faces as result of current era of expanding globalization).

B. Globalization of Law

In response to the consequences of these interactions, the international community is rapidly constructing a new condominium of laws, processes, and institutions[20] that seeks to maximize the benefits and minimize the detriments of globalization.[21] The specific design and implementation of legal regimes to reach these shared aims, however, remain elusive. How should we *simultaneously* encourage the liberal transfer of capital and restrict the financing of organized crime and terrorism?[22] How should we spread the venues for industrial production without violating basic protections of laborers and the environments in which they work and live?[23] How should we take advantage of the Internet's low cost of information-sharing without violating privacy interests, creating new markets for child pornography and illegal gambling, or deepening the digital divide?[24] How can we alleviate hunger through the use of new genetic technologies without unwittingly

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[20] *See* Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, art. I, 60 Stat. 1401, T.I.A.S. No. 1501 at 2 U.N.T.S. 39, *available at* http://www.imf.org/external/pubs/ft/aa/aa01.htm; Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945, art. 1, 60 Stat. 1440, 2 U.N.T.S. 134 (outlining purpose of International Bank for Reconstruction and Development). *See generally* INTERNATIONAL MONETARY FUND, FINANCIAL ORGANIZATION AND OPERATIONS OF THE IMF (6th ed. 2001), *available at* http://www.imf.org/external/pubs/ft/pam/pam45/contents.htm (giving overview of IMF, its purposes and policies, and current financial structure).

[21] *See* SHOGO ISHII ET AL., CAPITAL ACCOUNT LIBERALIZATION AND FINANCIAL SECTOR STABILITY 1 (Int'l Monetary Fund, Occasional Paper No. 211, 2002) ("A fundamental issue in undertaking capital account liberalization is how to reap the benefits from capital market access while coping with international capital flows."); Horst Kohler, Working for a Better Globalization, Address at the United States Conference of Catholic Bishops (Jan. 28, 2002) (transcript available at www.imf.org/external/np/speeches/2002/012802.htm) (viewing globalization as necessary to improve living standards in developing world, with international financial stability and other international financial assistance as equally important to mitigate globalization's negative effects); *see, e.g.*, Press Release, International Monetary Fund, IMF Approves US $750 million PRGF Arrangement for the Democratic Republic of the Congo (June 13, 2002), *available at* http://www.imf.org/external/np/sec/pr/2002/PR0227.htm.

[22] Edgardo Rotman, *The Globalization of Criminal Violence*, 10 CORNELL J.L. & PUB. POL'Y 1, 26 (2000) (exploring connections between globalization of markets, transformation of structures of employment, distribution of wealth, and consumption through modernization, development, and urbanization, and significant global changes of societal norms and values, which influence scope and nature of local crime, especially violent crime).

[23] *See* MATTHEW J. SLAUGHTER & PHILLIP SWAGEL, DOES GLOBALIZATION LOWER WAGES AND EXPORT JOBS? (1997) *available at* http://www.imf.org/external/pubs/ft/issues11 (analyzing effects of globalization and import competition on wages).

[24] *See* PAULA UIMONEN, TRANSNATIONAL.DYNAMICS@DEVELOPMENT.NET: INTERNET, MODERNIZATION AND GLOBALIZATION, 220-22 (2001).

producing patent monopolies over the food supply or irreversible harm to the ecosystem?[25] These are critical issues of our day.

Law frequently is sluggish in its response to political, social, economic, and cultural change.[26] Globalization, however, has been both a cause and consequence of a monumental project of rapid legal reform: from trade and capital flow liberalization[27] to new freedoms emerging from the process of democratization,[28] to recent restrictions on cross-border exchange imposed by heightened security laws.[29]

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[25] *See* Sarah Sabaratnam, *Food or Fiend?*, NEW STRAITS TIMES (Kuala Lumpur, Malay), May 21, 2001, at 1, *available at* 2002 WL 3487381 (noting concerns that companies that market patented transgenic foods, such as Monsanto, are taking increased control of food seed market to detriment of farmers, and that new foods will destroy entire species of insects, allow for evolution of more resistant insects, and endanger animal health).

[26] This appears to be true of law practice as well. *See, e.g.*, Patricia Hernandez-Esparza, *Accounting Services for the 21st Century*, 8 U.S.-MEX. L.J. 11 (2000) (arguing that globalization has increased need for multi-disciplinary practice approach with complex and sophisticated services, and that few traditional legal practices have global reach necessary to adequately meet needs of rapidly expanding multinational companies).

[27] *See* Horst Kohler, The Role of the IMF in the Global Economy, Address Before the High-Level Meeting of the United Nations Economic and Social Council (July 1, 2002), (transcript available at http://www.imf.org/external/np/speeches/2002/070102.htm) (advocating for trade liberalization); *see also* Paul Lewis, *Global Lenders Use Leverage to Combat Corruption*, N.Y. TIMES, Aug. 11, 1997, at A4 (reporting that World Bank and International Monetary Fund plan to "use their leverage with poorer nations to stamp out corruption and to promote better governance").

[28] As of January 2000, out of the 191 countries in the world, 120 countries have electoral democracies. *List of Electoral Democracies, available at* http://www.fordemocracy.net/electoral.shtml (last visited June 11, 2002); *see also, e.g.*, ANGL. CONST. (Constitutional Law of the Republic of Angola, 1992) pt. I, art. 2 ("The Republic of Angola shall be a democratic State based on the rule of law, national unity, the dignity of the individual, pluralism of expression and political organizations, respecting and guaranteeing the basic rights and freedoms of persons, both as individuals and as members of organized social groups."); *id.*, pt. I, art. 3, § 2 ("The Angolan people shall exercise political power through periodic universal suffrage to choose their representatives, by means of referendums and other forms of democratic participation in national life."); RUSS. CONST. (Constitution of the Russian Federation, 1993) § I, ch. 1, art. 1 ("The Russian Federation — Russia shall be a democratic federal rule-of-law state with the republican form of government."), art. 3(3) ("The referendum and free elections are the supreme direct manifestation of the power of the people."); S. AFR. CONST. (1996) ch. I, § 1 ("The Republic of South Africa is one sovereign democratic state founded on the following values: . . . Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.").

[29] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot) Act of 2001 §§ 101-106, 28 U.S.C. § 504 (2001) (Enhancing Domestic Security Against Terrorism); *id.* §§ 201-203 (codified as amended in scattered sections of 18 U.S.C., 50 U.S.C., and FED. R. CRIM. P. 6) (Enhanced Surveillance Procedures); *id.* §§ 411-418 (codified as amended in scattered sections of 8 U.S.C.) (Enhanced Immigration Provisions).

Despite these rapid legal developments, the U.S. legal curriculum[30] (in contrast to scholarship)[31] has been slow to respond. Many advanced courses in international economic and human rights law have been added.[32] Notwithstanding New York University's ambitious efforts and University of Michigan's first-year requirement in transnational law, however, the basic U.S. law curriculum (especially the first year program) remains nearly untouched.[33] Most leading textbooks in criminal law[34] and procedure,[35] torts,[36] contracts,[37] property,[38]

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[30] The United States is hardly alone in this challenge. For a thoughtful essay on the challenges facing Latin America, see, for example, Alfredo Fuentes-Hernández, *Globalization and Legal Education in Latin America: Issues for Law and Development in the 21st Century*, 21 PENN. ST. INT'L L. REV. 39, 57 (2002) ("[T]he complexities of globalization in the 21st Century make it advisable to establish a core curriculum in law schools so that they might serve as a genuine tool of contemporary civilization.").

[31] *See, e.g.*, LEGALIZATION AND WORLD POLITICS (Judith Goldstein et al. eds., 2001).

[32] This includes clinics. *See, e.g.*, Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT'L L. 505, 509 (2003) ("[L]aw schools must respond [to globalization] by redesigning their curricula to meet the challenges of a transnational public order and legal practice.").

[33] A growing number of textbooks internationalize domestic disciplines as full courses; however, they are still few and far between, and none advance an approach that integrates comparative, transnational, international, and international institutional aspects of the chosen topic. Notable examples of recent books include: REUVEN S. AVI-YONAH, INTERNATIONAL TAXATION: CASES AND MATERIALS (2001); VICKIE C. JACKSON & MARK TUSHNET, COMPARATIVE CONSTITUTIONAL LAW (1999); ANTHONY D'AMATO & DORIS ESTELLE LONG, INTERNATIONAL INTELLECTUAL PROPERTY (2002); DAVID HUNTER, JAMES SALZMAN, & DURWOOD ZAELKE, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY (2d ed. 2002).

[34] *See, e.g.*, JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW (2d ed. 1999) (lacking global content); ANDRE A. MOENSSENS ET AL., CRIMINAL LAW: CASES AND COMMENTS (6th ed. 1998) (lacking global content); SANFORD H. KADISH & STEPHEN J. SCHULHOFER, CRIMINAL LAW AND ITS PROCESSES 726, 827-30 (7th ed. 2001) (discussing only some treatment of Foreign Corrupt Practices Act and Israeli law on torture).

[35] *See, e.g.*, JAMES B. HADDAD ET AL., CRIMINAL PROCEDURE: CASES AND COMMENTS 325 n.2, 519-20 n.2 (5th ed. 1998) (providing brief treatment of Canada's utilization of exclusionary rule and Foreign Intelligence Surveillance Act); YALE KAMISAR ET AL., BASIC CRIMINAL PROCEDURE (9th ed. 1999) (lacking global content); MARC L. MILLER & RONALD F. WRIGHT, CRIMINAL PROCEDURES: CASES, STATUTES, AND EXECUTIVE MATERIALS 1539-46 (1998) (describing briefly European Convention for Protection of Human Rights and Fundamental Freedoms).

[36] *See, e.g.*, GEORGE C. CHRISTIE ET AL., CASES AND MATERIALS ON THE LAW OF TORTS 730-32, 803-04, 948-50 (3d ed. 1997) (including section on Products Liability Statutes in European Community and Japan, section on punitive damages in England, and contains treatment of New Zealand no-fault compensation rule); RICHARD A. EPSTEIN, CASES AND MATERIALS ON TORTS 1018-26 (7th ed. 2000) (also discussing New Zealand no-fault rule); MARC A. FRANKLIN & ROBERT L. RABIN, TORT LAW AND ALTERNATIVES: CASES AND MATERIALS 795-98 (6th ed. 1996) (also discussing New Zealand no-fault rule).

[37] *See, e.g.*, STEVEN J. BURTON, PRINCIPLES OF CONTRACT LAW 22-25 (2d ed. 2001) (including brief section on conflict of laws and international law); THOMAS D. CRANDALL &

constitutional law,[39] and civil procedure[40] contain, at best, minimal materials of a comparative, transnational, or international nature. None appears to make any attempt at comprehensively integrating an appreciation of national differences, conflicts arising from these differences in cross-border exchanges, and the international strategies designed to manage these conflicts.

C. Impediments to the Globalization of U.S. Legal Education

Legal educators, particularly deans, directors of special programs, chairs of curriculum committees, and classroom teachers (especially in the traditional domestic curricula) are struggling to keep pace with the new demands of globalization. Even international legal educators must focus on the increasingly domestic dimensions of their international interests.

Why is this game of catch up so difficult? Several factors obstruct the path to a programmatic response. On the supply side, most law faculty have limited training in comparative, transnational, or international law. Few internationalists have sufficient breadth in each of these areas or the necessary range to handle both public and private law topics. Even fewer teach a heavy load of domestic courses. Curricula in particular courses are determined mainly by specific faculty interest and capability.

DOUGLAS J. WHALEY, CASES, PROBLEMS, AND MATERIALS ON CONTRACTS at xxxi-xxxii, 133 (3d ed. 1999) (containing treatment of United Nations Convention for the International Sale of Goods); EDWARD J. MURPHY ET AL., STUDIES IN CONTRACT LAW (5th ed. 1997) (lacking global content).

[38] JON W. BRUCE & JAMES W. ELY, JR., CASES AND MATERIALS ON MODERN PROPERTY LAW (4th ed. 1999) (lacking global treatment); JOHN E. CRIBBET ET AL., PROPERTY: CASES AND MATERIALS (8th ed. 2002) (covering Russian property law); JOSEPH W. SINGER, PROPERTY LAW: RULES, POLICIES, AND PRACTICES (2d ed. 1997) (lacking global treatment).

[39] *See, e.g.*, JESSE F. CHOPER, RICHARD H. FALLON, JR., YALE KAMISAR & STEVEN H. SHIFFRIN, THE AMERICAN CONSTITUTION (9th ed. 2001) (lacking global treatment); WILLIAM COHEN & JONATHAN D. VARAT, CONSTITUTIONAL LAW: CASES AND MATERIALS 35, 200-10, 405-06 (11th ed. 2001) (including brief treatment of comparative judicial review, treaty power, Article 55 of the U.N. Charter, and executive powers in international relations and agreements); GEOFFREY R. STONE ET AL., CONSTITUTIONAL LAW (4th ed. 2001) (lacking global treatment).

[40] *See, e.g.*, A. LEO. LEVIN, PHILIP SCHUCHMAN & CHARLES M. YABLON, CASES AND MATERIALS ON CIVIL PROCEDURE 86, 97, 122, 472-73 (2d ed. 2001) (limiting discussion to jurisdiction over and discovery of foreign or multinational corporations); RICHARD L. MARCUS, MARTIN H. REDISH & EDWARD F. SHERMAN, CIVIL PROCEDURE: A MODERN APPROACH (3d ed. 2000) (treatment limited to discussion of personal jurisdiction); STEPHEN C. YEAZELL, CIVIL PROCEDURE (4th ed. 1996) (limiting treatment to personal jurisdiction). *But see* LINDA J. SILBERMAN & ALLAN R. STEIN, CIVIL PROCEDURE: THEORY AND PRACTICE (2001) (containing international materials with focus on jurisdiction and execution of foreign judgments).

Teaching new content means time-consuming material and class preparations and the unhappy displacement of classical treatments of the curricular canons. Thus, there is little time or energy for new global lesson plans.

On the demand side, students may justifiably be reluctant to dedicate large chunks of their semester to international subjects without having first had a foundation course in U.S. law. Many employers continue to look skeptically upon international law and related subjects: "international law" may seem oxymoronic, and students who take international courses may appear dilatory. Students who pursue global legal education risk becoming refugees from the necessary underpinnings of the target discipline. For example, students enrolled in a class on international business transactions frequently have not yet studied the necessary domestic law background to understand the comparative, transnational, and international laws regulating mergers, foreign investment, expropriation, tax, antitrust, intellectual property, sales, and many other subjects.

To meet these pressing needs, most schools seek to hire new professors or visitors from abroad and thus add new courses (some supported by previously published materials). Yet this still leaves most of the domestic curriculum (especially in the first year) virtually unchanged. Even where schools have sufficient resources to hire effectively or the will to require comparative or international law as a separate course in the first year, the impacts on the core curriculum remain limited. These impediments reduce global legal education to a mere trickle, in sharp contrast to the virtual flood of new data, issues, and needs resulting from the globalization of law.

As one of a growing number of legal educators working on this problem,[41] I would like to outline an approach that may help

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[41] *See, e.g.*, Claudio Grossman, *Building the World Community: Challenges to Legal Education and the WCL Experience*, 17 AM. U. INT'L L. REV. 818 (2002) (noting that "although international law is offered on a wider basis in today's law schools, the full incorporation of the subject into legal training remains marginal"); Stephen H. Legomsky, *Globalization and the Legal Educator: Building a Curriculum for a Brave New World*, 43 S. TEX. L. REV. 479, 488 (2002) (arguing for pervasive approach but concluding that "[t]here are varying ways to expose law students to the fundamental principles of international, foreign, and comparative law, each with its own set of benefits and costs"); Winston P. Nagan, *Lawyer Roles, Identity, and Professional Responsibility in an Age of Globalism*, 13 FLA. J. INT'L L. 131 (2001) ("[A]lmost every course in the curriculum of any law school to a greater or lesser degree has a transstate, multi-state, transnational dimension to it. Globalization may have to be given a critical curriculum presence by the willingness of 'domestic' law teachers to revise their domestic law courses with a sensitivity to the law of multi-state problems."); John E. Sexton, *Curricular Responses to Globalization*, 20 PENN. ST. INT'L.L. REV. 15, 17-18

significantly to meet pressing needs sooner, with greater balance, and more pervasively. The model grows out of several years of work teaching a wide range of comparative, transnational, and international subjects, directing an international law center, and chairing a very active curriculum committee. The underlying model for my proposal draws on a personal experience that helped me to think about the different approaches to transnational conflicts. I call this model "the Saja Paradigm," a framework named after my daughter for a scenario of regulation with which all parents (and their children) are intimately familiar: the cross-border transfer and consumption of candy.

II. THE SAJA PARADIGM

A. The Story

We moved to Cleveland when my daughter, Saja (pronounced "SAY-ja") was less than one year old. As new parents concerned with setting strong standards of healthy behavior early on in her life, we did not allow her to eat candy. Because she did not have much opportunity for candy exposure prior to our move from Manhattan, we had no trouble implementing and enforcing this preferred regime.

The Kovic[42] family, who lived across the street, was a lovely crew. The parents were both incredibly warm and caring people. Their three kids were all smart and fun. There was just one problem. They ate candy, lots of it, and without much effective regulation.

I suppose this would not have bothered me very much if the families had not become close. Why should I care if the parents had a different way of raising their children? After all, they were not force-feeding sweets or lacing them with narcotics (which, even without any interaction, might have been a sufficient basis for humanitarian intervention!); so at first this contrasting parental policy was a matter of indifference.

The increasingly frequent interaction of the children, however, presented us with a conflict of law problem, created by the intersection of two social facts: (1) the *difference* between the Chodosh anti-candy rule and the Kovic pro-candy rule, and (2) the cross-border *interaction* between members of one family and the other. In other words, Saja's

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(2001) (noting efforts at NYU to internationalize first-year courses).

[42] I have altered the names and the facts out of respect for the privacy (and unassailable reputations) of my dear friends.

social exchange with the more liberal Kovic family created opportunity for violation of an important domestic Chodosh rule against candy. What were our options?

B. The Strategies

1. Isolation

First, we could have built an impermeable social border between the two families and prevented any interaction between Saja and her peers. Where there is no cross-border activity, there is rarely a conflict, except for those cases in which the foreign activity violates a value of such psychological depth that we treat it as a universally recognized harm. Think of our reaction to *forced* candy consumption! This aside, preventing Saja from crossing the street, eliminating her interactions with the candy liberals to our west, would have decisively solved the problem. The costs of this approach, however, would have been considerable. The restriction on her interactions would have imposed a hefty social cost on her ability to make friends, enjoy their company, and learn from her peers. The opportunity costs associated with such restrictions were so high that we tended to use the approach sparingly.

2. Choice of Law

Putting this first option aside, we could have drawn on choice of law approaches to decide whose rule applies to whom, when, and where. For example, a territorial approach to choice of law would have suggested that Saja be allowed to consume candy in the Kovic household, but not at home. This approach would have stunted the extraterritorial reach of our regime to our own child's activities abroad. An alternative choice of law doctrine would have focused on the legal personality of Saja as a member of the Chodosh polity, thus binding her to the anti-candy rule regardless of her territorial presence in another regime. Additionally, we could have computed the comparative harm to each one of the families if the other family's rule applied. Whose interests would be more impaired by application of the foreign rule? Is the occasional and arguable health risk to the Chodoshes greater than the occasional and arguable harm of candy deprivation to the Kovices?

By *allocating* the scope of application among conflicting rules, choice of law avoids the opportunity cost of *isolation* (the first alternative), and it does not require either family to alter its fundamental normative choices

(as in the other strategies outlined below). Yet this approach also poses a significant risk that Saja would take advantage of the differences in family regimes through a process of legal arbitrage. Legal arbitrage, the flip-side of forum shopping (which focuses on litigation contexts), is a process of altering the location of conduct to take advantage of a jurisdiction's more favorable standards or rules (e.g., lower tax rates). With choice of law as our only strategy, and assuming the common territorial approach, Saja would have a strong incentive to spend as much time as possible *abroad* (or at least enough to satisfy her hunger for candy), beyond the normative reach of her parents.

3. Comparative Law Reform

Alternatively, we could have pursued a change in our rules or tried to impose one on our dear friends across the street. For us, a sudden change to a pro-candy regime was not desirable. For the Kovic family, a new prohibition era was equally unrealistic. Short of these two extreme reform alternatives, however, we had a number of intermediate strategies. One particularly attractive proposal (itself borrowed from another family's approach) was to create a "candy-day." Under this approach, Saja was allowed to eat candy on only one day per week. Had we not come under the transnational influence of the Kovic regime, we would not have moved in this direction, but it seemed a reasonable way to accommodate the external pressure on our normative system. It became easy to manipulate Saja's interactions with her friends in order to make the best use of this approach. For example, we scheduled her playdates at their house on her candy day and their playdates at our house on some other day, when our rules would apply. Thus, the candy-day rule allowed Saja (so to speak) to have her candy and eat it too.

This approach deeply impressed the Kovic household. The parents were tired of the kids wearing them down for candy day and night. They saw Saja as a well-adjusted child. Our imposed deprivations had not exacted any palpable injury. Within a few months, they adopted the candy-day rule as well, and the problem seemed to have been resolved.

There was one problem, however. We discovered that our candy-day was on Friday, and their candy-day was on Saturday. Guess what? The kids were effectively arbitraging the different regimes by coming to our house on Fridays and going to the Kovic house on Saturdays. Thus, they cleverly transformed our one-day restrictions into two days of candy consumption. This arbitrage required us to pursue a fourth strategy.

4. Uniformity of Law

Because the two families were now close to choosing the same approach, we needed to create greater uniformity to settle on a particular day of the week. Thus, we negotiated a treaty — an agreement between the two families that settled once and for all on the choice of a particular day (Saturday). This treaty not only governed cross-border interactions but intra-familial activity as well. Through this agreement, the two families had achieved a completely uniform rule to strike a balance between health (and cavity prevention) and the enjoyment of sweets (with special attention to flossing and brushing on that particular day).

Problem solved? Not so fast.

5. Unification of Institutions

As might be expected, even where there was agreement on the rule, there was inconsistency in its interpretation and enforcement. Keep in mind that the two families began with very different choices about the proper approach to candy. We were particularly concerned about the harms from candy consumption (the related fears of bad teeth, bad appetite, bad taste, and bad habits were particularly pronounced in our camp). The Kovic family had more of a *laissez-faire*, free-market attitude (kids will be kids; candy is an integral part of childhood; self-regulation is superior). Notwithstanding the evolution of our respective adjustments from the original position to a more accommodating one of a single candy-day, with this pre-existing, underlying difference of value choices, it should not have surprised us if we interpreted and enforced the rule more strictly than did our bilateral treaty partners, where interpretation and enforcement turned out to be particularly lax and threatened to compromise the fundamental terms of the bargain we had reached. Were Tic-Tacs really candy if they contained no sugar? How about sugarless gum? Did we really mean that neither family could use candy as a way of extorting certain kinds of desired behavior (e.g., a reward for cleaning cluttered closets or a palliative for painful vaccinations)?

Ultimately, we could have concluded that the families on their own were incapable of enforcing the rules to which they had agreed and that some higher level of institutional power and authority would be required. Such a supra-parental allocation of control to a neutral third party, a local sheriff, court, or powerful leader was not desirable in the end. This would have seemed to be an abdication to our assumed level of parental control and authority (indeed, our sovereignty), and in the

final analysis the problems of under-enforcement were outweighed by the loss of power and control associated with letting someone else decide and enforce the rules we had chosen.

C. The Paradigm Applied

What does this story have to do with the legal aspects of globalization? The story shares many central (though highly abstracted) elements of globalization and cross-border arbitrage, the resulting conflicts, and the legal responses available to national communities to accommodate, reconcile, or eliminate differences in law.

Beyond restraints on cross-border activity, the growing use of choice of law, comparative law reform, public international law, and international organizations represent an array of interactive and overlapping strategies designed to deal with the consequences (both positive and negative) of varied forms of social and economic exchange across different national communities. The identification of these strategies helps to clarify what international scholars mean by the terms harmonization,[43] international legal process,[44] and unification.[45] This approach specifies the tools used by politically defined communities to address conflicts arising from cross-border interactions.

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[43] Harmonization is frequently (and unfortunately) equated with uniformity in law. Harmony denotes the simultaneous playing of two or more different musical notes; if the notes were the same, the term harmony would not apply. *See* WEBSTER'S COLLEGIATE DICTIONARY 554 (9th ed. 1986) (noting combination of simultaneous musical notes in chords).

[44] The international legal process encompasses stages of interaction, the creation of norms, internalization, and compliance. *See generally* Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181 (1996); Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2602 n.9 (1997) (reviewing ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS (1995) and THOMAS M. FRANCK, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS (1995)).

[45] The term *unification* is sometimes used interchangeably with uniformity. Below, I use the term to denote developments in political organization, as distinct from the creation of uniform law. Uniformity of law may exist without any such unification of political organization. Furthermore, supra-national forms of political organization may exist without necessitating a uniformity of law. For example, federal diversity jurisdiction in the United States involves a federally unified interstate judicial function, but courts sitting in diversity jurisdiction apply state, not uniform federal law.

1. The Pattern

Consider the following typical pattern:

States	A	B
Parties	(a)	(b)
Key Fact		*
Law	X	Y

This pattern produces a conflict of laws X and Y (where X does not equal Y) between states A and B, where (a) has a permanent connection (e.g., citizenship, domicile) with state A, and (b) has a comparably permanent connection to state B. The key facts (conduct, injury) take place in B. In order to address the conflict from either a structural or doctrinal point of view, the decision makers of A and B would consider several strategies.

Accordingly, the pattern from the Saja paradigm looks like this:

States	Chodosh	Kovic
Parties	Chodosh kids	Kovic kids
Key Fact		Candy consumed
Law	Anti-Candy	Pro-Candy

2. The Pattern Applied

In response to globalization, this framework allows one to see each strategy in isolation from (and combination with) one another.[46] Examples of these legal strategies are plentiful. First, legal measures may seek to restrict cross-border activity[47] (e.g., immigration law,[48]

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[46] Each of the strategies outlined in the foregoing paragraph is also roughly parallel to the major components of a fundamental comparative and international law curriculum. Comparative law aims at an appreciation of difference, including the potential and obstacles of law reform efforts designed to achieve conformity with foreign practice. Choice of law, principles of extraterritoriality, or private international law, do not necessarily seek to proscribe the cross-border activity, but provide a set of doctrines designed to restrict the choice of which law applies. Public international law attempts to create uniform rules between nations to eliminate normative differences. Additionally, the discipline of international institutions encompasses efforts to create supra-national organizations responsible for the creation, application, and enforcement of uniform rules.

[47] *See, e.g.*, Cuban Liberty and Democratic Solidarity (Libertad) [Helms-Burton] Act, 22 U.S.C. §§ 6021-6091 (1999) (providing punishment for corporations which have purchased property that Cuban government has expropriated from U.S. citizens); Anne Q. Connaughton, *Exporting to Special Destinations: Terrorist-Supporting and Embargoed Countries*, *in* COPING WITH U.S. EXPORT CONTROLS 1997 317, 383 (PLI Com. Law & Practice

restrictions on trade of dual-use technologies or hazardous waste[49]), while others promote it (e.g., trade laws reducing tariff and non-tariff barriers[50]). Second, judicial or doctrinal approaches to choice of law, extraterritoriality, or private international law[51] offer approaches based on identity of the states involved,[52] relationships between those states and their interests,[53] or the comparative harms[54] resulting from application of the foreign rule. These doctrines may focus on the forum (state A),[55] the legal personality of the parties (from A),[56] the location of

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Course, Handbook Series No. A4-4527, 1997) (noting that Libya, Iran, Iraq, Cuba, and North Korea are subject to comprehensive embargo by United States).

[48] *See* Patrick Smikle, *Caribbean-U.S.: Immigrant Bashing Raises Concern*, INTER PRESS SERVICE, Apr. 29, 1997, *available at* 1997 WL 7075076 (describing recent efforts to limit immigration to United States and American sentiment toward immigrants).

[49] *See, e.g.*, WTO Appellate Body, Report of the Panel on European Communities: Measures Affecting Asbestos and Asbestos-Containing Products, WTO Doc. WT/DS135/AB/R (Mar. 12, 2001), *available at* http://www.worldtradelaw.net/reports/wtoab/ec-asbestos(ab).pdf.

[50] *See, e.g.*, Agreement on Technical Barriers to Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, LEGAL INSTRUMENTS – RESULTS OF THE URUGUAY ROUND 117 (1994) [hereinafter RESULTS], 33 I.L.M. 81 (1994) *available at* http://www.usinfo.org/law/gatt/toc.html (ensuring that regulations, standards, testing, and certification procedures by central government bodies do not create unnecessary obstacles to international trade).

[51] Decisions on the extraterritorial application of U.S. law have been made in a wide variety of contexts. *See, e.g.*, Hartford Fire Ins. Co. v. California, 509 U.S. 764, 794-99 (1993) (holding that doctrine of comity did not preclude application of U.S. antitrust law overseas when it did not conflict with British law); E.E.O.C. v. Arabian Am. Oil Co., 499 U.S. 244, 248-59 (1991) (deciding not to apply Title VII of Civil Rights Act of 1964 extraterritorially); Lauritzen v. Larsen, 345 U.S. 571, 573-93 (1953) (refusing to apply U.S. labor standards statute against Danish ship sailing in Cuban waters).

[52] *See* Anne-Marie Burley, *Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine*, 92 COLUM. L. REV. 1907, 1919 (1992) (arguing that act of state doctrine helps to circumscribe zone of "legitimate difference" among liberal states).

[53] *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145 (1972) (directing courts to apply law of state with "most significant relationship to the occurrence"). *See generally* Griggs v. Riley, 489 S.W.2d. 469, 472-74 (Mo. Ct. App. 1972) (applying "most significant relationship" test).

[54] *See* Bernhard v. Harrah's Club, 546 P.2d. 719, 722-25 (Cal. 1976) (applying comparative impairment doctrine); William Baxter, *Choice of Law and the Federal System*, 16 STAN. L. REV. 1 (1963) (arguing that courts should apply law of state whose policies would be most impaired by rejection of its rules).

[55] For an example of the domestic application of the *lex fori* rule, *see* Foster v. Leggett, 484 S.W.2d. 827, 829 (Ky. Ct. App. 1972) ("The basic law is the law of the forum, which should not be displaced without valid reasons.").

[56] *See, e.g.*, Babcock v. Jackson, 191 N.E.2d 279, 284 (N.Y. 1963) (applying New York law to accident that occurred in Ontario because parties to accident were citizens of New York); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402, cmts.d-g (1986) (discussing principles based on personality of defendant (nationality) and plaintiff (passive personality)); BRAINERD CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS (1963)

the key facts at issue (state B),[57] or the nature of the law in conflict.[58] Third, often due to international pressure, some comparative legal reform interventions create either greater uniformity (e.g., intellectual property protections,[59] or types of damages in civil litigation[60]) or more reactively, even greater differences in national law (e.g., U.S. death penalty for terrorists[61]). Fourth, public international law (e.g., treaty or custom) seeks to create partial or complete uniformity among previously divergent laws, ranging from trade to human rights.[62] Fifth, institutional allocations of power may create supra-national forms of political organization (e.g., the European Union, the World Trade Organization, NATO, Interpol, etc.).[63]

(discussing domestic legal theories which prioritize legal personality factors).

[57] *See, e.g.*, E.E.O.C. v. Arabian Am. Oil Co., 499 U.S. 244 (1991) (holding that Title VII did not apply extraterritorially to employment of American citizens employed by U.S. firm in Saudi Arabia); Alabama Great S. R.R. v. Carroll, 11 So. 803 (Ala. 1892) (applying Mississippi law to dispute between Alabama plaintiff and defendant because injury occurred in Mississippi); RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 311 (1934) (describing law in contract disputes chosen by reference to place of contracting, or law in tort chosen by reference to place of wrong, which is place of last event necessary to make actor liable).

[58] *See, e.g.*, note 57 *supra*. In *E.E.O.C.*, the question before the court was whether Congress intended Title VII to apply extraterritorially; whereas in *Carroll*, the question before the court was whether the legal injury occurred in a territorial jurisdiction that allowed recovery.

[59] *See* William P. Alford, *Making the World Safe for What? Intellectual Property Rights, Human Rights and Foreign Economic Policy in the Post-European Cold War World*, 29 N.Y.U. J. INT'L L. & POL. 135, 136-40 (1997) (describing United States' efforts to get People's Republic of China to adopt and enforce laws protecting intellectual property).

[60] *See* Kimberly Pace, *Recalibrating the Scales of Justice Through National Punitive Damage Reform*, 46 AM. U. L. REV. 1573, 1575 (1997) (arguing that United States should change its system of punitive damages to conform with standards found in other countries).

[61] *See, e.g.*, Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-32, §§ 701-08, 110 Stat. 1214 (codified as amended in scattered sections of 8 U.S.C.) (providing increased penalties for certain terrorist acts).

[62] Uniform international standards have been promulgated in numerous fields. *See generally* General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, RESULTS, *supra* note 50, at 23, 33 I.L.M. 1125 [hereinafter GATT] (trade relations); International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (human rights).

[63] Supra-national organizations have been formed to attempt to resolve or prevent many different types of conflict. *See generally* U.N. CHARTER arts. 9-22 (establishing rules and functions of General Assembly); U.N. CHARTER arts. 23-32 (establishing rules and functions of Security Council); Statute of the International Court of Justice, June 26, 1945, art. 38, 59 Stat. 105, 1060, T.S. No. 993 (stating that purpose of court is "to decide in accordance with international law such disputes that are submitted to it"); GATT, *supra* note 62 (establishing WTO as mechanism to govern trade practices of member states); United Nations Convention on the Law of the Sea, Dec. 10, 1982, 21 I.L.M. 1261 (1982) (establishing rules for use of ocean and its resources); Beth A. Simmons, *The Legalization of*

Viewing the international legal process through the prism of the Saja Paradigm allows students to explore the advantages and disadvantages of these competing strategies in isolation or combination with one another. Restricting the cross-border activity eliminates the conflict but also creates opportunity costs for communities resulting from the inability to interact. Choice of law preserves the differences, and allows the activity, but creates transaction costs and indeterminacy. Comparative reform efforts aimed at reducing contrasts between the different regimes may also conflict with local determinations over public choices. Public international law eliminates many of the normative differences, but compromise often renders the uniform rule vague and ambiguous, thus merely deferring the conflict to a later date for resolution by an adjudicator of one nation or the other. Unification efforts may create greater consistency in the uniform rule's application and enforcement. International organizations, however, also reduce local control and create a greater distance between representative decision makers and the represented populations, thus reducing direct democratic participation, access, and accountability.

III. THE PROPOSAL: GLOBAL COMPLEMENTS TO THE U.S. LAW CURRICULUM

I have developed the Saja Paradigm to distill the major components of these increasingly recurring problems and the strengths and weaknesses of competing approaches. Against this background, I propose that legal educators work collaboratively to develop a series of comparative, transnational, and international textbook complements to the basic U.S. law curriculum (the "Complements").

Before outlining the merits of this particular delivery system, it will be helpful to review what I pointed out above as two major programmatic obstacles to globalizing the curriculum. The first hurdle is the limited expertise among law faculty, including professors with a domestic focus who may lack international expertise, and internationalists who may lack domestic expertise. The second obstacle is the limited space and time for new lesson plans within existing courses or for new courses as a fourth or fifth of a student's semester.

A. Choice of Discipline and Topic

In developing the series of global Complements, therefore, it is important to extend the expertise of faculty in both directions (from

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International Monetary Affairs, in LEGALIZATION AND WORLD POLITICS, *supra* note 31, at 189.

domestic to international and vice versa) and to achieve modesty, balance, and efficiency as instructors introduce new content. In bringing international legal studies to bear on domestic disciplines, the proposal seeks simultaneously to *domesticate* comparative, transnational, and international law and to *globalize* domestic legal disciplines.

With these goals in mind, the Complements would dovetail with pre-existing teaching materials on basic U.S. law courses, including the first-year curriculum of torts, contracts, constitutional law, property, criminal law, civil procedure, and criminal procedure. They would also address advanced topics such as corporate law, antitrust, intellectual property, bankruptcy, and many others.

Each of the Complements would focus on a pressing issue of international significance within each subject. This would keep the intervention focused on high-interest areas, modest in scope and length. Thus, each of the Complements would be short (approximately one-third the length of a case book).

The short length conveys several advantages. First, it reduces the cost of necessary materials. Second, brevity makes the Complements adaptable to currently utilized textbooks without requiring a change of casebook. Third, the short length allows the books to focus on particularly topical issues of great interest to students and faculty alike. Fourth, the Complements approximate one-credit's worth of time, in order to allow law schools and faculty to pursue one of many alternatives.

As one option, the Complement materials could replace a modest amount of content in pre-existing courses. Alternatively, the Complements could allow faculty to teach parallel or sequential short courses that globalize the U.S. course. Under a third option, the Complements could supply materials for adding self-standing short courses or writing seminars.

B. General Outline

Depending on the nature of the subject matter, the books would be roughly organized in four or five short sections. Each book would expose students to four or five disciplines or strategies employed in the Saja Paradigm and would explore the global dimensions and compare alternative legal strategies responsive to the problem. Beyond restrictions placed on the underlying cross-border activity, the Complements first would provide comparative materials on significant differences between U.S. law and foreign law, including current law reform projects aimed in part at the elimination of cross-border activity

or a reduction of legal differences. Second, the Complements would look at choice of law, extraterritoriality, and private international law as a way of resolving disputes arising from cross-border activity that gives rise to conflicts between U.S. and foreign laws. Third, the Complements would examine international lawmaking efforts to reduce or eliminate such differences through uniformity, e.g., treaty, custom, or declarative law. Finally, the Complements would discuss any progress or proposals toward the creation or extension of international institutions to address these problems.

C. Illustration from the First-Year Curriculum

Accordingly, each global complement would focus on a pressing issue of domestic and international importance through the prism of the four disciplines examined in the Saja Paradigm: comparative law, transnational (or private international) law, public international law, and international organizations.

As one of many examples, the Criminal Law Complement might focus on the horrific crime of rape from a global perspective. Part One would provide an appreciation of differences in U.S. and foreign criminal law on rape, with attention to varied national experience or contrasting ways of either defining the elements of the crime or balancing the rights of the accused against legal protections of the victim.[64] Part Two would

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[64] *See, e.g.*, Prosecutor v. Akayesu, No. ICTR-96-4-T (ICTR 1998), *available at* http://www.ictr.org (last visited Dec. 2, 2003) (defining rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive"); Prosecutor v. Furundzija, No. IT-95-17/1-T ¶ 185 (ICTY 1998), *available at* http://www.un.org/icty/furundzija/trialc2/judgement/fur-tj981210e.pdf, defined rape as

> (i) the sexual penetration, however slight:
>
> > (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
> >
> > (b) of the mouth of the victim by the penis of the perpetrator;
>
> (ii) by coercion or force or threat of force against the victim or a third person;

see also Prosecutor v. Kvocka., No. IT-98-30/1-T ¶ 177 (2001), *available at* http://www.un.org/icty/kvocka/trialc/judgement/kvo-tj011002e.pdf (last visited Dec. 2, 2003), which defined rape as

> (i) sexual activity . . . accompanied by force or threat of force to the victim or a third party;
>
> (ii) sexual activity . . . accompanied by force *or* a variety of other specified

address problems of extraterritorial application and enforcement of U.S. law when U.S. nationals are accused or victimized abroad.[65] Part Three would examine either domestic reform inspired by comparative example or the historical treatment of rape under public international law.[66] Part Four would cover the legislative inclusion of rape as a tool of war in the declarations and statutes that created the International Criminal Tribunals for Rwanda and the Former Yugoslavia (ICTR/ICTY), and in the Rome Treaty on the Permanent International Criminal Court.[67] It would examine the recent precedents by the ICTR/ICTY tribunals recognizing and defining, however differently, the elements of rape as a war crime.[68]

Additional first-year course complements would pick up equally important issues of criminal law and procedure (corruption[69] or the

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circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal; or

(iii) the sexual activity must occur without the consent of the victim.

[65] *See, e.g.*, Michael P. Scharf & Lawrence D. Roberts, *The Interstellar Relations of the Federation: International Law and "Star Trek: The Next Generation,"* 25 U. TOL. L. REV. 577, 600 (1994) (noting that in one episode, "a Ullian found to have committed a form of rape involving memory invasion aboard the Enterprise is returned to Ullian authorities for prosecution"); *see also* Geoffrey R. Watson, *Offenders Abroad: The Case for Nationality-Based Criminal Jurisdiction*, 17 YALE J. INT'L L. 41, 83 (1992) (arguing for extraterritorial application of U.S. law to serious criminal offenses, including rape, committed by U.S. nationals).

[66] *See, e.g.*, Richard J. Goldstone, *Prosecuting Rape as a War Crime*, 34 CASE W. RES J. INT'L L 277, 279 (2002) ("The statutes of the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East at Tokyo contained no reference at all to rape.").

[67] *See* S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993) (establishing International Criminal Tribunal for the former Yugoslavia, now seated in The Hague, Netherlands); S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (1994) (establishing International Criminal Tribunal for Rwanda, now seated in Arusha, United Republic of Tanzania); Rome Statute of the International Criminal Court, U.N. Doc. A/C.183/9 (1998) (defining one actionable crime against humanity in Article 7(1) as "Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity . . . when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack").

[68] *See* Prosecutor v. Kunarac, No. IT-96-23-T and IT-96-23/1-T, (2001) *available at* http://www.un.org/icty/foca/trialc2/judgement/kun-tj010222e.pdf (last visited Dec. 2, 2003) (holding of trial chamber that, for first time, systematic rape of women during armed conflict constitutes war crime).

[69] *See* Convention on Combating Bribery of Foreign Officials in International Business Transactions, Dec. 18, 1997, 37 I.L.M. 1 [hereinafter OECD Anti-Bribery Convention] (addressing problems that raise serious moral and political concerns, undermine good governance and economic development and distort international competitive conditions); International Anti-Bribery and Fair Competition Act of 1998, Pub. L. No. 105-366, 112 Stat

death penalty[70]); torts (punitive damages[71] or strict product liability[72]); contracts (sale of goods[73] or choice of law[74]); constitutional law (judicial independence[75] or free speech[76]); property (regulatory takings[77] or extralegal property of the poor[78]); and civil procedure (taking of evidence[79] or alternative dispute resolution[80]). Second- and third-year

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3302 (1998) (amending Securities Exchange Act of 1934 and Foreign Corrupt Practices Act of 1977 to improve competitiveness of American business and promote foreign commerce and implementing OECD Anti-Bribery convention); Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (1977) (codified as amended in 15 U.S.C. § 78 (2000)) (amending Securities Exchange Act of 1934 to make it unlawful for issuer of securities to make payments to foreign officials and other foreign persons and to require such issuers to maintain accurate records).

[70] *See* Soering v. U.K., 11 Eur. H.R. Rep 439 (1989) (holding that extradition of West German national to United States, where individual would be tried for crimes punishable by death penalty, would constitute violation of prohibitions on torture and inhuman and degrading treatment or punishment under European Convention on Human Rights).

[71] *See* Norman T. Braslow, *The Recognition and Enforcement of Common Law Punitive Damages in a Civil Law System: Some Reflections on the Japanese Experience*, 16 ARIZ. J. INT'L & COMP. L. 285, 286 n.2 (1999) (discussing *Northcon I v. Katayama*, in which Japanese Supreme Court held U.S. judgment of punitive damages unenforceable as against public policy of Japan).

[72] *See, e.g.*, Peter Obstler, *Toward a Working Solution to Global Pollution: Importing CERCLA to Regulate the Export of Hazardous Waste.* 16 YALE J. INT'L L. 73, 97-119 (1991) (discussing extraterritoriality of U.S. Comprehensive Environmental Response, Compensation, and Liability Act).

[73] *See* United Nations Convention on Contracts for the International Sale of Goods, U.N. Doc. A/C. 97/18, art. 9(1) (1980), 52 Fed. Reg. 6264 (1987), 19 I.L.M. 671 (1980) [hereinafter CISG].

[74] *See, e.g.*, Asante Techs. Inc. v. PMC-Sierra Inc., 164 F. Supp. 2d 1142, 1147 (N.D. Cal. 2001) (holding that state law claims were preempted by CISG without sufficient "opt-out provision"); Allison E. Butler, *Knowing When, Why, and How to "Opt Out" of the United Nations Convention on Contracts for the International Sale of Goods*, 76 FLA. B. J. 24 (2002).

[75] *See* Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., U.N. Doc. A/810, at 71, art. 10 (1948) ("Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."); *see also* [European] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 6(1), 213 U.N.T.S. 222 ("[E]veryone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal.").

[76] *See generally* Jeff Sanders, *Extraterritorial Application of the First Amendment to Defamation Claims Against American Media*, 19 N.C. J. INT'L L. & COM. REG. 515 (1994) (discussing application of First Amendment protection internationally). Even Roy (an ardent opponent of globalization) argues for the globalization of dissent as "the only thing worth globalizing," and "India's best export." Roy, *supra* note 9, at 33.

[77] *See* North American Free Trade Agreement, Dec. 17, 1992, art. 1110, 32 I.L.M. 605, 639 (1993) ("No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment.").

[78] *See, e.g.*, HERNANDO DE SOTO, MYSTERY OF CAPITAL (2000).

[79] *See* Hague Convention on the Taking of Evidence Abroad in Civil or Commercial

course complements would cover a wide array of issues, from antitrust[81] and insolvency[82] to patents[83] and the law regulating human cloning.[84]

D. Collaboration

No one person is capable of completing a full range of these books within a reasonable period of time. Thus, experts in domestic courses and in comparative, transnational, and international legal studies must collaborate with one another. The template for the outline discussed above provides a baseline from which to work, and authors will make efforts to focus on topics that lend themselves to this analysis. Further, as a research tool, and to compensate for their necessarily incomplete coverage of other hot topics emerging from the same discipline, the

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Matters, 23 U.S.T. 2555, 847 U.N.T.S. 231, 8 I.L.M. 37 (1969), *codified at* 28 U.S.C.A. § 1781 (West 2002) [hereinafter Hague Evidence Convention] (attempting to accommodate differences in common and civil law evidence-taking procedures); Société Nationale Industrielle Aérospatiale v. United States Dist. Ct., 482 U.S. 522 (1987) (describing evidence taking procedures utilized in France under Hague Evidence Convention and holding that international convention in question was intended to establish optional procedures for obtaining evidence abroad). *Compare* FED. R CIV. P. 26-37 (detailing various U.S. forms of discovery, such as depositions, interrogatories, and requests for production of documents, when these forms of discovery are available to parties for use, and ultimately formulating permissive system of discovery prior to trial), *with* John H. Langbein, *The German Advantage in Civil Procedure*, 52 U. CHI. L. REV. 823 (1985) (detailing judicial control of fact-gathering processes at trial level, including such discovery mechanisms as expert witnesses and witness testimony).

[80] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 38, 7 I.L.M. 1042 [hereinafter New York Convention] (providing that arbitration awards covered by this convention are enforceable in treaty countries).

[81] *See, e.g.*, Hartford Fire Ins. Co. v. California, 509 U.S. 764, 794-99 (1993) (refusing to limit extraterritorial application of U.S. antitrust law for comity reasons where it did not conflict with British law).

[82] *See, e.g.*, INTERNATIONAL MONETARY FUND, ORDERLY & EFFECTIVE INSOLVENCY PROCEDURES: KEY ISSUES (1999), *available at* http://www.imf.org/external/pubs/ft/orderly/index.htm (last visited Dec. 2, 2003).

[83] *See* Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994; Marrakesh Agreement Establishing the World Trade Organization Dec. 15, 1993, Annex 1C, art. 31; RESULTS, *supra* note 50, at 319, 333.

[84] Paul Lesko & Kevin Buckley, *Attack of the Clones . . . and the Issues of Clones*, 3 COLUM. SCI. & TECH. L. REV. 1, Part III (May 10, 2002), *available at* http://www.columbia.edu/cu/stlr/html/volume3/lesko.pdf (last visited Dec. 2, 2003) (reporting on trend in criminalization of reproductive cloning, in contrast to therapeutic cloning, although very few countries have laws specifically addressing cloning, which is considered legal in almost 180 countries); *South Korea Probes Human Clone Claim*, BBC NEWS, July 24, 2002, *available at* http://news.bbc.co.uk/2/hi/asia-pacific/2148864.stm. (reporting that Korean woman was carrying clone, and that company claiming responsibility asserted that it was not subject to Korean jurisdiction because procedure took place outside of Korea).

books will contain extensive bibliographies on other topical matters within the chosen discipline or domestic course.

E. The Market

With the modest length and highly topical focus of each Complement, the books would be designed to dovetail with the major casebooks and thus maximize the demand for this series as a set of easily adaptable teaching tools for large numbers of professors. Accordingly, a professor currently teaching a course that she wishes to *globalize* in this way could: (1) replace a credit or less worth of material; (2) add a credit to a two- or three-credit course; or (3) teach a special seminar or add parallel or sequential global overlays to basic courses. This would avoid a great deal of displacement and meet the demand for new working materials. In addition to targeting individual professors, marketing efforts would focus on chairs of curriculum committees, associate deans for academic affairs, directors of international law centers, and law school deans, who may have the ability to encourage professors through incentives (e.g., modest grants) to move their courses in this direction.

It is also possible that the books would be used in Continuing Legal Education programs for practitioners who wish to refine their understanding of global issues. For example, family law practitioners might use a Complement to learn more about the ways in which child custody is handled in other jurisdictions (the comparative dimension),[85] how courts handle conflicts between our custody laws and those of other countries (the transnational dimension),[86] the current international law

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[85] *See* Thomas Foley, *Extending Comity to Foreign Decrees in International Custody Disputes Between Parents in the United States and Islamic Nations*, 41 FAM. CT. REV. 257, 257-59 (2003) (comparing best interest of child standard used in U.S. custody law and religion-based standards of Islamic custody law); June Starr, *The Global Battlefield: Culture and International Child Custody Disputes at Century's End*, 15 ARIZ. J. INT'L & COMP. L. 791, 791, 806-26 (1998) (contrasting U.S. standards, e.g., best interests of child, with Islamic legal preferences for paternal custody); *see also Mideast Report: Once Jewish Kids Returned to Islam*, THE JEWISH NEWS WEEKLY OF NORTHERN CALIFORNIA, FORMERLY THE JEWISH BULLETIN OF NORTHERN CALIFORNIA, July 25, 1997, *at* http://www.jewishsf.com/bk970725/imideast.Htm (reporting that Israel's High Court of Justice had overturned Beersheva rabbinical court ruling that four children, whose Jewish mother had embraced Islam, married Muslim man, and then went back to Judaism, could be raised as Jews by their mother, who was now divorced).

[86] *See* Starr, *supra* note 85, at 16 (analyzing how U.S. courts decided seven international custody disputes involving at least one Muslim parent whose State was not signatory to Hague Convention on the Civil Aspects of International Child Abduction); *see also* Danielle M. Andrews, *Non-Muslim Mothers v. Egyptian Muslim Fathers: The Conflict Between Religion and Law in International Child Custody Disputes and Abductions*, 23 SUFFOLK TRANSNAT'L L.

on jurisdictional allocations in custody disputes (the public international law dimension),[87] and the work of international organizations in addressing custody battles between countries not party to the relevant international treaty on child abduction (the international institutional dimension).[88]

As the interest and demand of law students for comparative and international legal study opportunities increase, both legal education and private and public sector opportunities for lawyers with exposure and expertise in these areas must respond. Thus, there is a potentially large and increasing demand for these materials and the model they propagate.

CONCLUSION

The Saja Paradigm sketched in this Essay may help academic programs to catch up to fast-paced, global legal developments, integrate domestic and international legal expertise, and surmount practical impediments to the delivery of effective global legal curricula. Over a century ago, local law schools became nationally recognized in part because they offered a national law curriculum. In the near future, national law schools will become internationally recognized through their leadership in comparative, transnational, and international legal studies. The Saja Paradigm provides a modest vehicle for advancing one

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REV. 595 (2000) (examining conflicting cultural and societal values that contribute to child custody and abduction battles between Egypt and non-Muslim nations such as United States); Monica E. Henderson, *U.S. State Court Review of Islamic Law Custody Decrees – When Are Islamic Law Custody Decrees in the Child's Best Interest?* 36 BRANDEIS J. FAM. L. 423 (1997) (discussing differences between Islamic and U.S. law and concluding that although Islamic law of personal status claims to embrace best interests of child, it is mechanical and formulaic, and U.S. state courts should be suspect of foreign custody decrees based on Islamic law).

[87] *See* Hague Convention on Private International Law, Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, at art. 14, 19 I.L.M. 1501 [hereinafter Hague Convention] (stating that "in ascertaining whether there has been a wrongful removal or retention [of a child] within the meaning of Article 3, the judicial or administrative authorities . . . may take notice directly of the law of . . . the State of the habitual residence of the child").

[88] For example, Iran is not a party to the Hague Convention and many custody battles between Iran and the United States are unresolved. *See* International Parental Child Abduction – Iran *at* http://travel.state.gov/abduction_iran.html (last visited Dec. 2, 2003). Beyond the Hague Convention itself, the United Nations monitors cases from signatories. *See generally* The Hague Conference on Private International Law: The International Child Abduction Database (INCADAT) *at* http://www.incadat.com (last visited Dec. 2, 2003) (making accessible leading decisions of national courts of signatory states regarding cases with respect to 1980 Hague Convention).

step further in that direction.

Most importantly, in its distillation of competing and potentially complementary approaches to cross-border problems and the integration of strategies in one framework, the Saja Paradigm articulates an intellectual foundation and curricular vision for the comparative study of the alternative solutions to the most critical cross-border legal issues of our time.