The Impact of Global Developments on U.S. Legal Ethics During the Past Thirty Years

LAUREL S. TERRY*

ABSTRACT

This Essay is written to commemorate the thirtieth anniversary of the Georgetown Journal of Legal Ethics. After exploring what the world of legal ethics looked like thirty years ago, this Essay analyzes how global developments have affected U.S. lawyer regulation and legal ethics dialogue since that time. It does so in several different ways. It begins by analyzing the growth pattern of articles published in the Georgetown Journal of Legal Ethics that have addressed or been influenced by global developments. The Essay continues by identifying global societal developments, global legal developments, and global dialogue that have contributed to the evolution of legal ethics over the past thirty years. This Essay concludes with a section that celebrates the past and future role of the Georgetown Journal of Legal Ethics.

TABLE OF CONTENTS

INTRODUCTION ........................................ 366

I. WHAT THE LEGAL ETHICS WORLD LOOKED LIKE IN 1987 .... 366


A. THE BY-THE-NUMBERS STORY ................. 369

B. GLOBAL DEVELOPMENTS DURING THE PAST THIRTY YEARS ........................................................ 371

1. SOCIETAL DEVELOPMENTS .................... 372

2. LEGAL DEVELOPMENTS .......................... 376

* Professor of Law and H. Laddie Montague, Jr. Chair in Law, The Pennsylvania State University—Dickinson Law. The author would like to thank Carole Silver and Joe Carroll for their assistance with this Essay; all views, however, are solely those of the author. The author can be reached at LTerry@psu.edu. The URLs in this Essay were accurate as of June 30, 2017. © 2017, Laurel S. Terry.
INTRODUCTION

I was pleased to be asked to contribute to this Commemorative Issue celebrating the thirtieth anniversary of the *Georgetown Journal of Legal Ethics* ("*GJLE*") and to write about how global developments have affected legal ethics since the *GJLE* began publishing articles in 1987. Part I of this Essay sets the stage by providing a brief snapshot of what the legal ethics world looked like in 1987 when the *GJLE* produced its first issue. Part II examines the impact of global developments on U.S. legal ethics during the past thirty years and uses *GJLE* articles and student comments as a way to highlight these developments. 1 (*GJLE* articles and student comments will hereinafter be referred to collectively as "articles.") Part III concludes this Essay. As this part observes, global developments have had a significant impact on U.S. legal ethics conversations (and regulation). *GJLE* articles provide a lens through which we can examine global societal developments, legal developments, and a rise in global dialogue, collaboration, and formal and informal networks.

I. WHAT THE LEGAL ETHICS WORLD LOOKED LIKE IN 1987

This Essay focuses on the impact of global developments on U.S. legal ethics during the past thirty years. Before addressing this topic, it is useful to describe the legal ethics world of 1987, which is the year the *GJLE* produced its first issue.

When the *GJLE* was founded in 1987, it was the beginning of what I consider to be the “second wave” of developments related to modern U.S. legal ethics. The first wave of modern legal ethics developments included the 1969 adoption of the ABA Model Code of Professional Responsibility 2 and the 1972 establishment of the AALS Section on Professional Responsibility. 3 It was during this first wave of modern legal ethics developments that the ABA established the Center for...
Professional Responsibility\textsuperscript{d} and the Kutak Commission conducted the work that culminated in the 1983 adoption of the ABA \textit{Model Rules of Professional Conduct}.\textsuperscript{5} This first wave also included the 1986 launch of the American Law Institute’s project to develop a \textit{Restatement of the Law Governing Lawyers}.\textsuperscript{6} The scholarship that emerged during this first wave of modern legal ethics developments included treatises, casebooks, and a number of law review articles.\textsuperscript{7}

In my mind, the 1987 establishment of the \textit{GJLE} is one of the events that marks the beginning of the second wave of modern legal ethics developments. In the years since 1987, a vibrant and diverse legal ethics community has emerged that has built upon, expanded, and sometimes challenged the work that had been done during the first wave of modern legal ethics developments. Under the leadership of Father Robert Drinan, who helped establish the journal, the \textit{GJLE} has played a pivotal role in fostering the scholarly dialogue that has been a critical part of this second wave of modern legal ethics developments.

When the \textit{GJLE} was founded in 1987, modern legal ethics education was also on the cusp of its second wave of development. The first wave of modern legal ethics instruction began in the 1970s following the Watergate scandal and the 1974 changes to the ABA accreditation standards that required law schools to instruct students about the ABA \textit{Code of Professional Responsibility}.\textsuperscript{8} An ABA

\begin{itemize}

\item See \textit{Landmark Dates}, supra note 4 (noting the 1978 establishment of the ABA CPR and the 1977–1983 work of the Kutak Commission); see also \textit{A Legislative History: The Development of the ABA Model Rules of Professional Conduct 1982–2013} (Art Garwin ed., 2013) [hereinafter \textit{ABA Legislative History}].


\item See, e.g., 1 \textit{Geoffrey C. Hazard, Jr. & W. William Hodes, The Law of Lawyer: A Handbook on the Model Rules of Professional Conduct} (1985) (treatise); \textit{Charles W. Wolfram, Modern Legal Ethics} (1986) (treatise); AM. BAR ASS’N CTR. FOR PROF’L RESPONSIBILITY, \textit{A Survey on the Teaching of Professional Responsibility} (1986) [hereinafter \textit{ABA Survey}] (citing casebooks by Morgan and Rotunda, Schwartz and Wydick, Kaufman, and Hazard and Rhode); Terry, \textit{Comparative Ethics}, supra note 3, at 475–76 (“One can sense the increased scope of this literature by looking at the citations contained in the ‘Model Rules Discussion Draft—White Book’ that was circulated before the Model Rules were finally approved—law review article citations are listed for a significant number of the proposed rules.”).

survey published in 1986, which is one year before the launch of the GJLE, documents this first wave of legal ethics education.9 The ABA survey referred to four different books that were being used to teach the required legal ethics course.10 In 2009, by contrast, there were more than twenty-five books available to legal ethics professors.11 Other factors support the conclusion that after 1987, modern legal ethics education reached a new level of development.12 While reasonable minds might disagree about exactly when the second wave of modern legal ethics education began in U.S. law schools, I consider the founding of the GJLE to be a useful marker because it became a “must read” publication for many legal ethics academics.13 The GJLE has served as part of the “gel” that has bound the legal ethics community together and that has educated the ethics community about current developments and debates. In my view, the “second wave” developments have not been characterized by a particular school of thought, but by the dramatic increase in the number of scholars and practitioners who have focused on legal ethics issues and by the diversity of approaches that have emerged. The GJLE’s contributions to that diversity of thought include educating its readers about global developments.

10. See id. at 11.
11. See, e.g., Andrew M. Perlmans, Margaret Raymond & Laurel S. Terry, A Survey of Professional Responsibility Courses at American Law Schools in 2009, at 4 (2009), http://www.legalethicsforum.com/ files/pr-survey-results-final.pdf [https://perma.cc/D67Z-TWWT] [hereinafter 2009 AALS Survey] (describing a 2009 survey by AALS’s Section of Professional Responsibility that asked respondents to indicate which of more than twenty-five books they were using when teaching the legal ethics course; thirteen percent of respondents indicated they used their own materials rather than one of the more than twenty-five books listed).
12. Some of the indicia I consider significant are the number of tenure-track faculty teaching the course, the number of academics who attend legal ethics conferences, and the number of credits assigned to the course. For example, the data in the 2009 AALS Survey showed that approximately seventy-nine percent of courses were taught by tenure-track faculty, fourteen percent were taught by resident clinical faculty, and seven percent of courses were taught by adjuncts. See id. at 1 (survey data based on responses from 105 individuals from at least seventy-seven different law schools). As is noted infra note 88, individuals from more than seventy U.S. law schools attended the July 2016 International Legal Ethics Conference held in New York. Finally, data from 1985, 1994, and 2009 show an increase in the number of credits assigned to the course. Compare ABA Survey, supra note 7, at 3 (sixteen percent of legal ethics courses were three-credit courses, with eighty-two percent one- or two-credit courses), with 2009 AALS Survey, supra note 11, at 2 (57.7% of legal ethics courses were three-credit courses); see also Am. Bar Ass’n Section of Educ. & Admissions to the Bar, Report of the Professionalism Committee: Teaching and Learning Professionalism 19 (1996) (after citing the results from the 1985 survey, this report noted that a 1994 survey showed that “the percentage of law schools having a two-credit-hour basic course in legal ethics had declined to 44 percent and the percentage of law schools having a three-credit-hour course had increased to 23 percent”).
13. I taught my first legal ethics course in Spring 1986 and consider myself among the “second wave” of legal ethics academics. The GJLE has always been a must-read publication for me and for many of my legal ethics colleagues.
II. THE IMPACT OF GLOBAL DEVELOPMENTS ON U.S. LEGAL ETHICS AS SEEN THROUGH THE LENS OF THIRTY YEARS OF THE GEORGETOWN JOURNAL OF LEGAL ETHICS

A. THE BY-THE-NUMBERS STORY

This section identifies a number of important global developments from the past thirty years and explains how these developments have affected legal ethics generally and the GJLE specifically. It uses two quite different methods to assess the impact of global developments. The first method examines the impact of global developments on U.S. legal ethics during the past thirty years by looking at the titles of the articles published in Volumes 1–29 of the GJLE with the goal of determining how many articles have been influenced by global developments. Although this method is a blunt instrument and although the numbers might look somewhat different depending on who is doing the counting, I thought it would be a useful exercise to review the tables of contents for GJLE Volumes 1–29 in order to see what trends, if any, were apparent. My examination has revealed a steady increase over the last thirty years in the number of GJLE articles that address, or that have been influenced by, global developments.

The methodology I used resulted in a list of more than sixty GJLE articles that I consider to have been influenced by global developments, Although some articles on the list I compiled indisputably involve global developments, my list may be both under-inclusive and over-inclusive. For example, I included articles by individuals who I happened to know were foreign authors. I also included articles that I knew included global perspectives even if that fact was not apparent from the article’s title. On the other hand, when I was conducting this “by-the-numbers” count, I chose to exclude articles related to larger societal developments such as the impact of technology, immigration, and responses to terrorism. Although someone else’s list of “global” GJLE articles might look somewhat different from my list, my review convinced me that regardless of who compiles a list of “globally-influenced” GJLE articles, that list would demonstrate the growing impact over time of global developments on the content of the GJLE.

14. After reviewing the tables of contents from Volumes 1–29 of the GJLE, I developed a list of more than sixty GJLE articles that I considered to be influenced by global developments. If you would like a copy of the PDF I assembled that contains the GJLE tables of contents for Volumes 1–29, please email LTerry@psu.edu.

15. For a more general discussion about the growth in scholarship regarding international and comparative legal ethics issues, see generally Terry, Comparative Ethics, supra note 3. That article concluded that there was a “sea change” in 1998 with respect to the use of global perspectives when considering U.S. legal ethics issues. Id. at 516.

16. See infra note 110 and accompanying text.


18. See infra notes 31, 45, 50 (providing examples of the types of articles I chose not to include).
The “by-the-numbers” story about the impact of global developments on the GJLE is striking. During its first decade—from 1987 to 1996—the GJLE published only six articles that explicitly addressed global developments. The very first volume of the GJLE included a student note entitled Systems of Ethical Regulation: An International Comparison. It took five more years before the GJLE published additional articles that had an international focus; these pieces focused on the code of conduct adopted in Europe by the organization that is currently known as the Council of Bars and Law Societies of Europe or CCBE. During the remainder of its first decade, the GJLE published only three additional articles that reflected global developments: one of these articles was based on remarks made during a forum on comparative legal and judicial ethics; another

19. Olga M. Pina, Note, Systems of Ethical Regulation: An International Comparison, 1 GEO. J. LEGAL ETHICS 797 (1988). Although the Essay text identifies this as a student note, as supra note 1 explained, hereinafter this Essay will use the word “articles” to refer to both articles and student notes or commentary.

20. See, e.g., Laurel S. Terry, An Introduction to the European Community's Legal Ethics Code Part I: An Analysis of the CCBE Code of Conduct, 7 GEO. J. LEGAL ETHICS 1 (1993) [hereinafter CCBE I]; Laurel S. Terry, An Introduction to the European Community's Legal Ethics Code Part II: Applying the CCBE Code of Conduct, 7 GEO. J. LEGAL ETHICS 345 (1993) [hereinafter CCBE II]. At the time these articles were written, the treaty that created the European Union (EU) had not yet been adopted. For the sake of simplicity, however, this Essay refers to the EU, not the European Communities.

The reason why the sentence in the text used the word “currently” when referring to the CCBE’s name is because there have been a number of changes in the name for which the acronym CCBE stands. As the CCBE I article, cited supra, noted, when the CCBE was established, the acronym CCBE stood for the organization’s French name: “Although the original name of this organization [Conseil des Barreaux de la Communaute Europe] was changed in 1987 to its current name [Commission Consultative des Barreaux de la Communaute Europe], the acronym ‘CCBE’ was officially retained and is used extensively.” CCBE I, supra, at 5 n.5. The 2005 History of the CCBE explains that as a result of the 1987 name change, the English name of the CCBE was changed to the “Council of the Bars of the European Community.” History of the CCBE, CCBE, at 7, http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EN_history_ccbe.pdf [https://perma.cc/FFN6-SGJ2] (last visited Mar. 3, 2017). In 2004, the CCBE approved a new set of “Statutes” or governing documents that changed the CCBE’s name from the “Council of the Bars and Law Societies of the European Union” to the “Council of Bars and Law Societies of Europe.” See Revision of the CCBE Statutes, CCBE-INFO 9 (Mar. 2005), http://www.ccbe.eu/NTCdocument/n_11_enpdfl_1180965138.pdf [https://perma.cc/XRX4-BG5B]. In 2013, the CCBE adopted new Statutes that once again addressed the issue of the name of the organization. See Statutes of the Council of Bars and Law Societies of Europe, as adopted at the CCE Plenary Session in Brussels on 29–30 November 2013, at 1, http://www.ccbe.eu/document/status/statutes_en.pdf [https://perma.cc/KR8E-XYEF] (last visited Apr. 15, 2017) (“I. Name: An international non profit making association is hereby formed, to be named ‘COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE’ (CCBE), and in the languages of the Member States as follows [with a list of the CCBE’s name in the member state languages].”). In January 2017, the new CCBE President stated that one of the things he wanted to accomplish during his presidency was a change in the CCBE’s name. See Michael Cross, European bar council: continental drift, LAW SOC’Y GAZETTE DIRECTORIES (Jan. 9, 2017), http://directories.lawgazette.co.uk/news/european-bar-council-continental-drift/5059692.article [https://perma.cc/CA9M-UQMK] (“‘By the time you’ve explained to someone what CCBE means you’ve lost them already,’ says Ruthven Gemmell, the Scottish and England and Wales-qualified solicitor who last week took up presidency of the body. One of Gemmell’s ambitions for his term is to start the process of changing the organisation’s name—a French acronym for the council of European bar associations—to something which at least includes the term ‘law’ or ‘lawyers’ in either English or French.”).

article called for greater clarification in the ethics rules that applied in international settings;\textsuperscript{22} and a third was a comparative analysis of advocate immunity.\textsuperscript{23}

During the *GJLE*’s second decade, there was a steady growth in the volume of articles that were influenced by global developments. By my count, there were at least eighteen *GJLE* articles published between 1997 and 2006 that reflect global developments; the increase from six to eighteen articles represents a 200% increase over the number of articles published during the *GJLE*’s first decade.\textsuperscript{24} The growth is even more dramatic, however, when one looks at the *GJLE*’s third decade of publication. Using what I consider to be a conservative approach, I counted more than forty *GJLE* articles published between 2007 and 2016 that address or reflect global developments.\textsuperscript{25} In short, a “by-the-numbers” analysis shows the growing influence of global developments on the *GJLE*. This increase in the number of globally oriented *GJLE* articles can be used as a proxy that demonstrates the growing importance of global developments on U.S. conversations about legal ethics and lawyer regulation. The section that follows highlights a number of the important global developments from the past thirty years.

**B. GLOBAL DEVELOPMENTS DURING THE PAST THIRTY YEARS**

In writing this Essay, I thought it would be useful to distinguish among several different kinds of global developments that have affected lawyer regulation and legal ethics conversations during the past thirty years.\textsuperscript{26} Although these


\textsuperscript{24} See supra note 14. I consider this number to be conservative because it excludes articles about developments related to the Internet, immigration, responses to terrorism, or articles about various ABA Commissions. Even if one counted these additional articles, however, the pattern of growth remains the same—there would be one additional article in the first decade and more than ten additional articles in the *GJLE*’s second decade.

\textsuperscript{25} See supra note 14. I consider this number to be conservative. If one were to include articles related to issues that have arisen as a result of societal developments regarding terrorism, the Internet, and immigration, there would be more than thirty additional articles.

\textsuperscript{26} Space limitations have prohibited me from discussing all of the global developments that I consider significant and the different kinds of impact they have had. For additional articles showing my views about the impact of global developments, see Laurel S. Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 Lewis & Clark L. Rev. 717 (2016) (hereinafter Terry, *Proactive Regulation*) (distinguishing among the beginning, middle, and end stages of lawyer regulation); Laurel S. Terry & Carole Silver, *Transnational Legal Practice [2014]*, 49 ABA/SIL (n.s.) 413 (2015) (hereinafter Transnational Legal Practice [2014]) (identifying national and transnational examples of what the article called “TLP-Nets,” and thereafter highlighting the meeting points and relationships that cross borders and facilitate policy-making and practice); Laurel S. Terry, Steve Mark & Tahlia Gordon, *Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology*, 80 Fordham L. Rev. 2661 (2012) (hereinafter Terry et al., *Trends*); Laurel S. Terry, *The Future Regulation of the Legal Profession: The Impact of Treating the Legal Profession as “Service Providers,”* 2008 J. Prof. Law. 189 (hereinafter Terry,
categories are obviously intertwined, this section addresses separately societal developments, legal developments, and the rise of global networks, dialogue, and collaboration.

1. Societal Developments

The most significant societal developments of the past thirty years include the profound changes in technology that have altered the ways in which clients do business, altered clients’ personal lives, and altered the ways in which U.S. lawyers interact with their clients, with other lawyers, and with third parties. For example, both the Internet and email were in their infancy in 1987 when the GJLE was founded and Google and online communication platforms such as Google+ did not yet exist. Technology changes that have allowed lawyers to disaggregate tasks have also profoundly changed legal practice and have raised new issues. GJLE articles have documented some of the ways in which these societal developments related to technology have given rise to new legal ethics and regulatory issues.

---


29. Service Providers] (identifying a “service providers” paradigm in which lawyers are referred to and regulated in a manner similar to other “service providers”); Laurel S. Terry, The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms, 28 NW. J. INT’L. L. & BUS. 527 (2008) [hereinafter Terry, The Legal World is Flat]. In addition to these articles, the transnational legal practice year-in-review articles I have co-authored have documented a number of developments that would not otherwise be easily found. All of my articles are posted at https://works.bepress.com/laurel_terry/.

30. See, e.g., Terry, The Legal World is Flat, supra note 26, at 537–41 (discussing outsourcing of legal work and citing Professor Daly and Silver’s GJLE article about legal ethics and outsourcing).

31. A review of the PDF cited supra note 14 shows no such articles in Volumes 1–9 of the GJLE; fewer than ten such articles in Volumes 10–19; and many more articles in Volumes 20–29 of the GJLE. For some examples, see Lawrence D. MacLachlan, Gandy Dancers on the Web: How the Internet Has Raised the Bar on Lawyers’ Professional Responsibility to Research and Know the Law, 13 GEO. J. LEGAL ETHICS 607 (2000); J.T.
A second important societal development of the past thirty years is globalization. (The technology changes discussed in the prior paragraph obviously are intertwined with, and have facilitated, globalization.) Although one could write multiple books about globalization, it is sufficient to provide a few examples that illustrate the impact that globalization has had on U.S. clients, legal services, and law firms. With respect to clients, in recent years, every U.S. state has had annual exports of more than a billion dollars. Because lawyers serve clients, it should come as no surprise that as clients have begun to do business around the world, so too have lawyers. The resulting globalization of legal services has been documented in a number of places, including in two reports issued by the World Trade Organization. Law firms have also been affected by globalization. Global law firms are now common. Moreover, it is not just the “Global 100” firms that have offices outside the United States: data from 2015 has shown that law firms located in forty-seven U.S. states have offices in a foreign country.
Several studies have found that a large number of lawyers who do not specialize in international law have nevertheless engaged in cross-border legal practice.\(^{37}\) This phenomenon may explain why many law firms that do not have an international office participate in international networks.\(^{38}\) \(GJLE\) articles have addressed a number of issues that have arisen as a result of globalization,\(^{39}\) including developments such as the rise of global law firms,\(^{40}\) changes in the way global law firms are organized,\(^{41}\) U.S. efforts to provide “outbound” legal services to other countries,\(^{42}\) outsourcing of legal services,\(^{43}\) legal services that are “inbound” to the United States,\(^{44}\) and U.S. lawyer interactions with inbound
foreign clients (e.g., immigrants).45

In addition to technology developments and globalization, political developments have also affected U.S. lawyers during the past thirty years. For example, in response to the 1989 fall of the Berlin Wall and its aftermath, the ABA created the Central and Eastern European Law Initiative (CEELI) that sent U.S. lawyers to other countries.46 The ABA CEELI program led to other ABA capacity-building programs and to the creation of the ABA’s Rule of Law Initiative (ROLI), which continues to sponsor U.S. lawyer outreach to other countries.47 These developments, and the conversations they have fostered, have become part of U.S. legal ethics conversations.48 These developments have reached a broad audience as a result of being memorialized in a number of GJLE articles.49
The terrorist attacks of September 11, 2001, and their aftermath are another set of political developments that have not only affected society at large, but have also affected lawyer regulation. The *GJLE* has published a number of articles that have discussed legal ethics issues connected to the fight against terrorism.\(^5^0\)

In sum, as this brief discussion has shown, there have been a number of societal developments during the past thirty years that have affected lawyer regulation. *GJLE* articles have documented these developments.

2. LEGAL DEVELOPMENTS

In addition to the three societal developments identified in the prior section, there have been global legal developments that have become part of U.S. legal ethics conversations. This section highlights, in rough chronological order, some of the most significant of these global developments.

During the second half of the twentieth century, a number of public international law and private international law tribunals were established.\(^5^1\) The establishment of these tribunals has led to new legal ethics issues for U.S. lawyers.\(^5^2\) *GJLE* articles have addressed some of the resulting legal ethics and lawyer regulation issues, including issues that arise for lawyers who practice

---


\(^5^1\) See PROJECT ON INT’L COURTS & TRIBUNALS, SYNOPTIC CHART (2004), http://www.pict-pci.or g/publications/synoptic_chart/synop_c4.pdf [http://perma.cc/27ZB-YZ7R] [hereinafter 2004 SYNOPTIC CHART] (two-page PDF listing public international law tribunals); GLORIA MICCIOLI, AM. SOC’Y INT’L L., ELECTRONIC RESOURCE GUIDE: INTERNATIONAL COMMERCIAL ARBITRATION 4 (2015), https://www.asil.org/sites/default/files/ERG_ARB.pdf [https://perma.cc/B3NF-PTMV] (“There has been a tremendous increase in arbitration options in the last 50 years . . . . One reason for the growth in arbitration is that there are now many arbitral bodies, and parties can select one that is best suited for their needs.”).

\(^5^2\) See, e.g., Catherine A. Rogers et al., Challenges of Transnational Legal Practice: Advocacy and Ethics, Proceedings of the 103rd ASIL Annual Meeting, 103 AM. SOC’Y INT’L L. PROC. 255 (2009) (discussing ethics challenges for lawyers working in international tribunals); see also Laurel S. Terry, Codes of Conduct for International Tribunals and Arbitration (May 11, 2009), http://www.personal.psu.edu/faculty/l/s/ls3/ presentations%20for%20webpage/ASIL_Terry_Codes_International_Tribunals.pdf [https://perma.cc/H6CW-D67L] (showing which international tribunals had lawyers’ ethics codes as of 2009).
before international criminal law tribunals53 and before other international tribunals.54

U.S. lawyer regulation has also been affected by the European Union’s regulation of lawyers. In 1977, the European Union (EU) adopted the first of several directives regarding intra-EU lawyer mobility.55 These directives have been important to U.S. law firms that have offices in Europe56 and to those licensed as lawyers in one EU Member State who want to practice temporarily in another EU Member State.57

The impact of these directives has been much broader than this, however, because these EU directives frequently have been cited in U.S. conversations about U.S. lawyer mobility rules. For example, the ABA Commission on Multijurisdictional Practice’s 2002 final report stated that a “number of organizations and individuals have noted that, in the European Union, a lawyer in one member state may establish a law practice in another member state with relative ease.”58

The EU’s regulation of lawyers has given rise to a number of other issues that have been discussed in the United States. These issues include attorney-client

53. See, e.g., Milan Markovic, Comment, In the Interests of Justice?: A Critique of the ICTY Trial Court’s Decision to Assign Counsel to Slobodan Milosevic, 18 GEO. J. LEGAL ETHICS 947 (2005); Theresa (“Tracy”) Roosevelt, Comment, Ethics for the Ethical: A Code of Conduct for the International Criminal Court Office of the Prosecutor, 24 GEO. J. LEGAL ETHICS 835 (2011). For information on the number of international tribunals, including criminal tribunals, see 2004 SYNOPSIS CHART, supra note 51 (showing, for example, that the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Court were established in 1993 and 2004, respectively).


56. See Outward Bound, supra note 34 and Am. Law Global 100, supra note 35 for data about U.S. firms with foreign offices. Research has shown that most U.S. law firms that have a foreign office have an office in London. See Silver et al., Glocal, supra note 40, at 1439.

57. See Council Directive 77/249, supra note 55 (this temporary practice directive does not contain an EU citizenship requirement). In contrast to Directive 77/249, U.S. citizens who are licensed EU lawyers may not take advantage of Directive 98/5. Compare Directive 77/249, supra note 55, art. 1(2) (no citizenship requirement), with Directive 98/5, supra note 55, art. 1(2)(a) (the lawyers’ establishment directive is limited to EU lawyers who are also “a national of a [EU Member State].”)

privilege issues and antitrust issues. GJLE articles are among the articles that have addressed EU lawyer regulation issues.

International trade agreements that apply to legal services represent a third international legal development that has influenced U.S. lawyer regulation discussions and developments. While one can trace some U.S. lawyer regulatory developments directly to these trade agreements, such as the ABA’s “inbound foreign lawyer” proposals and related state rules, these international trade agreements have had an additional impact by changing the identity of those who are involved in lawyer regulation conversations. For example, at the time the ABA Model Rules were adopted in 1983, conversations about the proper scope of lawyer regulation occurred mostly between and among lawyers, organizations in which lawyers were dominant, and the state supreme courts that regulate lawyers.

In contrast to the situation in 1983, international trade agreements that apply to legal services have led to conversations about lawyer regulation that have gone beyond the closed circle of lawyers, organizations in which lawyers are dominant, and state supreme courts. For example, the ABA Standing Committee on International Trade in Legal Services has a conference call approximately once a month and a representative from the Office of the U.S. Trade Representa-

---


61. See generally Laurel S. Terry, From GATS to APEC: The Impact of Trade Agreements on Legal Services, 43 AKRON L. REV. 875 (2010) (discussing the 1992 NAFTA, the 1995 GATS, and thirteen additional trade agreements).

62. See, e.g., Conf. of Chief Justices, Resolution 2: In Support of Regulations Permitting Limited Practice by Foreign Lawyers in the United States to Address Issues Arising from Legal Market Globalization and Cross-Border Legal Practice (Jan. 2015), http://ccj.ncsc.org/media/microsites/files/ccj/resolutions/01282015-legal-market-globalization.pdf (WHEREAS, in addition to the TTIP, the United States is actively negotiating several multilateral trade-in-services agreements that, if adopted, will likely boost the need for cross-border legal practices in both the United States and the foreign trade partner countries.);

63. See generally Transnational Legal Practice [2014], supra note 26 (discussing TLP-Nets); infra Part II(B)(3).

64. See, e.g., ABA LEGISLATIVE HISTORY, supra note 5 (explaining the process and noting the identity of those who submitted comments to the ABA).
tive (USTR) regularly participates in those calls. The federal government’s Intergovernmental Policy Advisory Committee (IGPAC), which discusses the impact of federal trade policy with various state regulators, has included in recent years a representative from the Conference of Chief Justices.

There are additional examples that illustrate how the participants in lawyer regulation conversations have changed. The Year-in-Review articles of the Transnational Legal Practice Committee of the ABA Section of International Law have documented conversations about lawyer regulation that go well beyond U.S. lawyers, lawyer organizations, the Conference of Chief Justices, and the state supreme courts. For example, these Year-in-Review articles have reported on various “Summits” in which lawyers and organizations from outside the United States have met with ABA members and other U.S. lawyers to discuss trade issues (and possible changes in U.S. lawyer regulation). Thus, not only have international trade agreements led to concrete policy changes, such as the inbound foreign lawyer rules, but they have also changed who sits at the table to discuss lawyer regulation issues. GILE articles have documented the trade agreement phenomenon and have discussed legal ethics issues related to these agreements.

Although one could highlight a number of additional global legal developments that have affected U.S. lawyers and legal ethics, this section concludes by

---

65. The author has personal knowledge of this fact. See also Transnational Legal Practice [2014], supra note 26 at 413, 417 (discussing transnational legal practice networks, or TLP-Nets, and the participation of USTR representatives in the work of the Conference of Chief Justices).


69. International trade agreements are not the only developments that have led to changes in the identity of those who participate in conversations about lawyer regulation. As set forth in greater detail in Terry, Service Providers, supra note 26, I believe there are a number of developments that have contributed to, and reflect, a new “service providers’ paradigm.” The service providers’ paradigm represents a fundamental change in lawyer regulation, in which it is now common for lawyers to be regarded as simply one of many different kinds of “service providers” and to be regulated together with other service providers. In my view, international trade agreements have contributed to this new paradigm.

70. See, e.g., Priscila McCalley, Comment, The Dangers of Unregulated Counsel in the WTO, 18 GEO. J. LEGAL ETHICS 975 (1994); Paul F. Downs, Comment, The Trans-Pacific Partnership and Conflicting Customary International Norms, 26 GEO. J. LEGAL ETHICS 661 (2013); Kim, supra note 54.
citing two significant global developments from 2007. The first development, which several *GJLE* articles have discussed, was the decision by the Australian law firm Slater & Gordon to issue shares on the Australian stock exchange, thereby becoming the world’s first publicly-traded law firm. The second significant legal development from 2007 was the United Kingdom’s adoption of a new Legal Services Act. That Act made a number of important changes in the way lawyers are regulated and created a framework that allows alternative business structure or ABS firms. These two events are significant because public ownership and outside ownership of law firms reflects a fundamental change in the way lawyers traditionally have been regulated. Both the UK Act and Slater & Gordon have been the subject of several *GJLE* articles.

Because of space limits this Essay has discussed only a few of the global developments that have affected U.S. lawyer regulation. *GJLE* articles have addressed some of the additional developments including developments related to human rights, foreign corrupt practices, litigation financing, and foreign

---

71. In the author’s view, these two developments are among the most significant of the last decade. Others agree. For example, these two developments have been prominently featured at programs sponsored by the Georgetown Center for the Study of the Legal Profession. See infra note 86 and accompanying text. The 2007 UK Legal Services Act is significant, among other reasons, because of the size and importance of the UK legal services market and because of the dramatic changes the 2007 Act made to the “who-what-when-where-why-and-how” issues of lawyers regulation. See generally Terry et al., Trends, supra note 26. The Slater & Gordon IPO was significant because having a publicly-traded law firm is a watershed event.


73. See Legal Services Act 2007, c. 29 (Eng., Wales).

74. See id. pt. 5 (Alternative business structures).

75. See Am. Bar Ass’n Comm’n on Ethics 20/20 Working Grp. on Alternative Business Structures, *Issues Paper Concerning Alternative Business Structures*, at 2 (Apr. 5, 2011), http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.authcheckdam.pdf [https://perma.cc/FNR6-6JS9] (“At present, only the District of Columbia permits nonlawyer ownership or management of law firms.”). As this Issues Paper shows, the rules in other countries that permit outside ownership of law firms are of relatively recent origin. Id. at 7–16.


79. See James M. Fischer, *Litigation Financing: A Real or Phantom Menace to Lawyer Professional Responsibility?*, 27 GEO. J. LEGAL ETHICS 191, 193 (2014) (noting that litigation financing has been used in Australia and Europe and is now spreading to the United States).
sovereign immunity. Thus, as these examples have shown, legal developments from outside the United States have affected lawyer regulation and legal ethics conversations within the United States.

3. THE RISE OF GLOBAL NETWORKS, DIALOGUE, AND COLLABORATION

In addition to the global societal developments and global legal developments discussed in the prior sections, this Essay would be remiss if it failed to discuss the rise of global networks and the increased global dialogue and collaboration that have occurred since the founding of the GJLE. As this section will demonstrate, global networks, dialogue, and collaboration have contributed to the international exchange and cross-fertilization of ideas that are reflected in GJLE articles.

There obviously is overlap between an increase in global networks, dialogue, and collaboration, on the one hand, and the societal and legal developments discussed earlier, on the other hand. For example, if the Internet did not exist, there would not be the same kinds of global networks, dialogue, and collaboration that exist today. If legal developments such as the World Trade Organization’s General Agreement on Trade in Services (GATS) and the 2007 UK Legal Services Act had never occurred, some of the global exchanges that now occur on a regular basis might not exist. Despite the potential overlap with the prior topics, I submit that the rise of global networks, dialogue, and collaboration is worth examining separately.

One factor that has contributed to the increase in global dialogue and collaboration is the fact that legal education and legal ethics academics are much more global now than they were in 1987. There are many reasons for this. In addition to reading about global developments in the GJLE and elsewhere, a large number of U.S. legal ethics professors have now had the opportunity to teach abroad and to meet colleagues from other countries. Moreover, many more
foreign students attend law school in the United States now than did previously. And even if a particular legal ethics professor has not had the opportunity to teach abroad and has not had foreign students in class, that professor likely has heard international perspectives elsewhere. For example, the ABA’s annual ethics conference included its first internationally oriented program in 1995, since that time foreign speakers have become a regular feature at the conference. Georgetown University Law Center has been a leader in hosting symposia that have brought in speakers from around the world who have discussed changes in the legal market and lawyer regulation. Three of the last four International Legal Ethics Conferences (ILEC) have been held in North America; attendees at the ILEC VII Conference held in July 2016 in New York City included academics from approximately seventy U.S. law schools, along with individuals from more than sixty countries. In short, there are many more globally aware legal ethics academics now than there were thirty years ago.

A second factor that has contributed to the increase in global dialogue and collaboration is the fact that legal ethics practitioners, as well as legal ethics academics, have become more global than they were thirty years ago. Consider,

83. See, e.g., Carole Silver, Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers, 14 CARDOZO J. Int’L & Comp. L. 143, 147 (2006) (using empirical data and noting that in 1998, sixty-seven law schools offered graduate programs in which foreign lawyers could and did enroll, and that by 2003, this number had increased more than fifty percent to 103 schools); Carole Silver, Globalization and the Monopoly of ABA-Approved Law Schools: Missed Opportunities or Dodged Bullets?, 82 FORDHAM L. REV. 2869, 2875 (2014) (“Moreover, in the period from 2000 to 2012, graduate law programs grew by more than 50 percent, although this figure also includes programs not limited to international students. International students also comprise a larger proportion of J.D. applicants than was the case a decade ago, although they still account for only a small percentage of J.D. students, typically well under 5 percent of the entering class.”).
84. See Terry, Comparative Ethics, supra note 3, at 491 n.124 and accompanying text (citing an email from ABA Center for Professional Responsibility staff lawyer Art Garwin about the concurrent panel session entitled “Ethics in International Practice: It’s a Small, Small World.”); see also id. at 514 nn.230–32 and accompanying text (in June 2005, the Association of American Law Schools Section of Professional Responsibility sponsored what I believe was its first session on globalization; this session was part of the AALS Midyear Meeting in Montreal).
for example, the Association of Professional Responsibility Lawyers (APRL), which was established in 1990 and is one of the primary organizations for legal ethics practitioners.\(^89\) APRL held its first international meeting in 1996 in Paris.\(^90\) Since that time, it has held a number of additional international meetings, has published some of the papers from those international meetings in U.S. law review symposia, and has continued to make its international meeting materials available to its members.\(^91\) As a result, APRL members (and other legal practitioners) are much more globally aware and globally connected than they were in the past.

A third factor that has contributed to the increase in global dialogue and collaboration is the fact that legal ethics regulators, like legal ethics academics and practitioners, have become more aware of global developments than they were in the past and are more likely to participate in international networks. For example, in 2013, the National Organization of Bar Counsel’s (NOBC) annual meeting was held in conjunction with the Third International Conference of Legal Regulators (ICLR) meeting and shared speakers and programs.\(^92\) In 2014, long-time NOBC member and D.C. Bar Counsel Gene Shipp stated that “NOBC members had undergone a sea change and were ready to address [transnational legal practice] and globalization issues.”\(^93\) In 2015, the NOBC added a “Global Resources” tab to its webpage that included links to materials designed to educate NOBC members about global developments.\(^94\) (This webpage still exists and has been updated several times.)\(^95\) In 2016, the D.C. Office of Disciplinary Counsel sponsored the Fifth International Conference of Legal Regulators, which many

\(^89\) See Welcome, ASS’N PROF’L RESPONSIBILITY LAWYERS (APRL), https://www.aprl.net/ [https://perma.cc/AN6T-SADR] (last visited Nov. 26, 2016) (“Originally formed over two decades ago primarily as an association of lawyers who represent other lawyers in disciplinary proceedings, APRL membership now encompasses lawyers who provide services in all aspects of legal ethics and professional responsibility.”)

\(^90\) See Meeting Materials Archive, ASS’N PROF’L RESPONSIBILITY LAWYERS (APRL), https://www.aprl.net/members/meeting_archive/download.html [membership log-on required] (on file with author) (listing APRL’s international meetings, including the 1996 Paris Meeting).


\(^92\) See, e.g., Transnational Legal Practice [2014], supra note 26, at 418 (“All NOBC members were invited to the last session of the 2013 International Conference and all 2013 International Conference attendees were invited to attend the NOBC’s 2013 annual meeting reception (and were encouraged to register for the full NOBC meeting), leading the two groups’ members to engage.”).

\(^93\) See Transnational Legal Practice [2014], supra note 26, at 418–19 (memorializes this remark and related remarks).


\(^95\) See id. The author has personal knowledge that this webpage has been updated.
U.S. regulators attended. U.S. regulators have also attended the 2015 and 2016 U.S.-Canadian regulator breakfasts held during the ABA’s annual ethics conference, two proactive risk-based regulation workshops that have included international attendees, and additional ICLR conferences. Moreover, it is not just the “day job” regulators who have become more global. As was noted earlier, a Conference of Chief Justices (CCJ) committee receives regular briefings that include information about international developments.

Voluntary bar associations have also contributed to the rise in global dialogue and collaboration. Consider, for example, the various ABA Commissions that have examined lawyer regulatory issues. The ABA Commission on Multidisciplinary Practice considered developments from outside the United States and heard from international speakers. The ABA Commission on Multijurisdictional Practice was asked to examine both domestic and international mobility issues; it too heard from international speakers and considered international models as part of its deliberations. The ABA Commission on Ethics 20/20


97. See Program for the 42nd ABA Conference, supra note 85 (listing the U.S./Canadian networking breakfast). The author has personal knowledge that this was the second such breakfast because she helped organize them.

98. The minutes from both of these workshops are available on the Colorado PMBR webpage. See Office of Att’y Regulation Counsel, Proactive Management-Based Regulation Materials, COLO. SUP. CT., http://www.coloradosupremecourt.us/AboutUs/PMBRMinutes.asp [https://perma.cc/EK25-7KZ2]. For additional information on proactive regulation, see Terry, Proactive Regulation, supra note 26.


100. See, e.g., Transnational Legal Practice [2015], supra note 36, at 534–35; Transnational Legal Practice [2014], supra note 26, at 416–17 (describing CCJ interactions). The CCJ Committee, in one form or another, dates back at least to 2003. See Terry, Comparative Ethics, supra note 3, at 509 n.211. The author has personal knowledge that this CCJ group is now referred to as a working group, rather than a committee.

101. See AM. BAR ASS’N COMM’N ON MULTIDISCIPLINARY PRACTICE, BACKGROUND REPORT: ISSUES AND DEVELOPMENTS (Jan. 1999), http://www.americanbar.org/groups/professional_responsibility/commission_multidisciplinary_practice/multicomreport0199.html [https://perma.cc/TMD7-DHVJ] (“The rules that regulate lawyer conduct in some foreign countries permit various forms of lawyer/nonlawyer affiliations that are prohibited in the United States. As a result, the Big-5 accounting firms have vigorously entered the market for the delivery of legal services in those countries. In search for new sources of revenue, they have also significantly expanded their consulting services in the United States.”).


103. See AM. BAR ASS’N COMM’N ON MULTI-JURISDICTIONAL PRACTICE, INTERIM REPORT AND APPENDICES OF THE COMMISSION ON MULTI-JURISDICTIONAL PRACTICE 60–65 (Nov. 2001), http://www.americanbar.org/content/dam/aba/migrated/mjp_final_interim_report_appen_2.authcheckdam.pdf [https://perma.cc/S52H-EDZC] (available as a link from the ABA MJP Commission’s homepage; Appendices F and G to the Interim Report list the individuals who provided oral testimony and written comments); AM. BAR ASS’N COMM’N ON MULTI-
examined whether any changes to the ABA Model Rules of Professional Conduct were needed in light of globalization and technology developments. The Commission’s hearings and discussion papers triggered extensive global dialogue about ethics issues. The Commission’s recommendations also led to the adoption of several new ABA model rules regarding “inbound foreign lawyers” and a new comment to the choice-of-law rule that was influenced by the experiences of U.S. lawyers outbound to other countries. The ABA Commission on the Future of Legal Services recommended, and the ABA adopted, model regulatory objectives that were inspired, at least in part, by developments outside the United States.

It is important to note that the ABA is not the only voluntary bar association whose work has contributed to increased global dialogue about legal ethics. The International Bar Association’s Bar Issues Commission (BIC) has sponsored several projects, including the 2014 Global Legal Services Report and the 2016 Directory of Regulators, that have been circulated in the United States and that have contributed to increased global conversations about lawyer regulation.

JURISDICTIONAL PRACTICE, CLIENT REPRESENTATION IN THE 21ST CENTURY: REPORT OF THE COMMISSION ON MULTIJURISDICTIONAL PRACTICE (2002); see also Terry, Comparative Ethics, supra note 3, at 498–500 nn.144–55 and accompanying text (listing the foreign entities and individuals from whom the Commission heard testimony); id. at 501 n.162 and accompanying text (noting the seriousness with which the Commission considered the foreign testimony).

104. This Commission was active between 2010 and 2013. See generally Laurel S. Terry, Globalization and the ABA Commission on Ethics 20/20: Reflections on Missed Opportunities and the Road Not Taken, 43 Hofstra L. Rev. 95 (2014). The Commission proposed and the ABA adopted model policies that applied to inbound foreign lawyers.


106. See id. at Resolution 107D (as adopted); AM. BAR ASS’N COMM’N ON ETHICS 20/20, RESOLUTION & REPORT TO THE HOUSE OF DELEGATES: MODEL RULE 8.5 (CHOICE OF RULE) (Feb. 2013).


These examples illustrate the point that during the past thirty years, there has been an increase in international cooperation and networks focused on legal ethics and lawyer regulation issues.

Articles published in the *GJLE* reflect the global dialogue, collaboration, and formal and informal networks that now exist among legal ethics academics, practitioners, regulators, and voluntary bar associations. For example, the *GJLE* has published articles that have been written solely or partially by foreign authors; articles that address foreign or comparative legal ethics issues; and articles that have analyzed the work of the ABA Commissions cited above. In short, *GJLE* articles include the type of international exchange that has now become common.

### III. Conclusion

As this Essay has demonstrated, a retrospective look at the *GJLE* provides a useful way to identify the significant impact that global developments have had on U.S. legal ethics conversations and regulation during the past thirty years. *GJLE* articles have reflected the rise in global societal developments, global legal developments, and the rise in global dialogue, global collaboration, and formal

---

109. For further discussion of the formal and informal networks or TLP-Nets, see Transnational Legal Practice [2014], supra note 26.


and informal global networks. This retrospective examination of the GJLE has also shown how the impact of global developments has increased over time. I predict that despite recent political events such as Brexit and the 2016 U.S. presidential election, in the future, global developments will continue to affect U.S. legal ethics conversations and regulation. Global dialogue, global collaboration, and formal and informal global networks seem to be here to stay.

I am pleased to have had the opportunity to add my voice to the chorus of voices honoring the GJLE and to thank it for the role it has played in helping create and nurture the legal ethics community. I look forward to many more years in which the GJLE plays a pivotal role in fostering legal ethics conversations, including those related to global developments.