

Legal Ethics and Professional Responsibility in a Global Context

**Lawyers and Jurists in the 21st Century:
American Society of Comparative Law
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Summary of My Talk

- **Introduction**
- **Legal ethics in a global context**
 - **The Distant Past**
 - **The Recent Past**
 - **The Present – a “sea change”**
- **Reasons for the Sea Change**
- **The Future**

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Thank You

- **To our Hosts for their hospitality**
- **For including *Legal Ethics* on the program**

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Introduction

- **The Conference theme is correct: the context is now global**
- **The field of “Legal Ethics” reflects this change in context**
- **This is different than when I first became involved 20 years ago**

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So What is PREL?

- Professional responsibility and legal ethics = *PREL*"
- My definition of PREL:

PREL is what is studied by professors of PREL and covered in annual conferences we attend! (In US: AALS/CPR)
- A primary focus is lawyer regulation

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Global PREL & the Distant Past: 1904-1974

- Theory:
 - Before 1974, relatively little attention was paid to U.S. PREL
 - Most non-US academics didn't teach PREL
 - Comparative PREL focused primarily on legal education and sociology

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Global PREL & the Distant Past: 1904-1974

■ The Practice/Global Context:

- The first US foreign branch office opened in 1960
- Until 1970, only 2 US firms had foreign offices
- By 1974, only 14 US firms had them

Global PREL & the Recent Past: 1974-1998

■ Theory:

- In 1974, the ABA adds PREL as a graduation requirement (Watergate)
- U.S. Domestic PREL blossoms
- Most non-US academics still don't teach PREL
- Comparative PREL is fairly rare ⁸

Global PREL & the Recent Past: 1974-1998

■ **The Practice/Global Context:**

- 1998: 72 US firms have foreign offices
- EU Directives (77, 85 & 98) & ECJ Cases
- 1988 CCBE Code of Conduct
- GATS and global MDP developments

Global PREL & the Present: 1998-2004

■ **Theory:**

- Global & comparative PREL is now more common in the US
- Global & comparative PREL is more common outside the US

■ **Why measure from 1998?**

- A "sea change" happened in Nov. 98

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What was the 1998 "Sea Change?"

- In Nov. 1998, the ABA held its first hearings on lawyer-nonlawyer "MDPs"
- The ABA heard from Canada, the UK, Australia & the EU about MDPs (PREL)
- PREL discussions now acknowledge the global context and impact of PREL

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What is the Global Context of PREL in 2004 re Lawyers?

- 93-03: US legal imports increase 173% (\$879 million); exports up 134% (\$3.4 billion)
- UK firms are 6 of world's 10 largest firms
US firms are 13 of 20 largest
- 6 of 10 largest firms have > 50% of lawyers outside firm's home country
- All 10 have more than 1400 lawyers and foreign branch offices

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What is the Global Context of PREL in 2004 re Clients?

- Why business clients increasingly use both US and foreign lawyers:
 - MO had \$15.5 billion in 2002 foreign direct \$
 - MO exported \$7.2 billion in 2003 (27th)
- Why individual clients increasingly use both U.S. and foreign lawyers:
 - MO has 151,000 foreign born residents (26th)
 - 81% increase since 1990 census ranks 26th

Examples of Recent Global PREL Dialogue

- ABA Ethics 2000 Hearings (Spain/CCBE)
- ABA MJP Hearings (Canada, UK, EU, UIA)
- ABA 2000 annual meeting in London
- Sarbanes-Oxley & internat'l comments
- Increased "Double Deontology" focus
- NOBC International Discipline Committee & pending webpage

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Examples of Recent Global PREL Dialogue - Part 2

- **Multiple Antitrust (Competition) studies**
- **Multinat'l conferences (ABA CPR, Exeter)**
- **Various GATS-inspired events**
 - *1998 Paris Forum*
 - *2003 IBA GATS Forum*
 - *2004 Atlanta "Summit"*
 - **IBA & UIA Resolutions**
 - **Int'l Agreements Committee of the
Conference of Chief Justices**

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**So why did this
sea change
happen?**

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Some Reasons for this Sea Change in Academia

- **Reality - PREL issues cross borders**
- **Increased summer abroad programs**
- **Increased foreign & LL.M. students**
- **Foreign invitees at conferences**
- **PREL becomes "law" through 1998 EC Directive and GATS**

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Some Reasons for this Sea Change by Practicing Lawyers

- **Multi-country firms face daily PREL issues**
- **PREL affects competition (MDPs-ads)**
- **Risk management issues**
(Enron, Prince Jefri)

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Some Reasons for this Sea Change by Regulators

- **Because lawyers hold dual licenses, PREL issues have spillover effects**
- **PREL rules from other jurisdictions are cited in domestic policy debates**
- **High-profile cases illustrate potential problems (Enron)**
- **Regulators risk irrelevance if they don't adapt to a changed world**

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Some Reasons for this Sea Change by Global Bar Associations

- **WTO Members want to hear from the voice of a global bar**
- **Bar associations want to maintain their roles (not gov't authorities)**
- **PREL issues are relevant to practice opportunities of lawyer members**

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Global PREL Issues for the Future

- **The current regulatory systems face major pressures – major changes?**
(e.g. federalism, antitrust, and grey market)
- **Double deontology, esp. for conflicts**
- **Confidentiality versus disclosure**
(e.g., Enron-type fraud, money laundering)
- **Fitting PREL into an Internet world**
(e.g., admission, ads, discipline, pro bono)
- **“Classifications” for statistics & GATS**

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Conclusion

- **Legal services occur in a global context**
- **Theory lags significantly behind reality**
- **Global PREL is now a reality and comparative perspectives are useful**
- **This sea change affects US & non-US lawyers and academics**
- **It's an exciting time for global PREL!**

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Resources

- **Prof. Terry's SSRN and *Global Legal Practice Resources* Webpages**
<http://www.personal.psu.edu/faculty/l/s/lst3/globalprac.htm>
- **Prof. Lonbay's ELIXIR Webpage**
<http://elixir.bham.ac.uk/menu/country/default.htm>
- **Prof. Henssler's Documentation Centre**
<http://www.uni-koeln.de/jur-fak/dzeuanwr/indexenglisch.html>
- **ABA GATS/Legal Services Webpage**
<http://www.abanet.org/cpr/gats/home.html>
- **Free email newsletters:**
 - CCBE, Law Society of England & Wales, Bridges Weekly, NAFTA Claims

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Global Legal Services & the US

U.S. Legal Services Imports and Exports (in Millions of Dollars)

	1993	2001	2002	2003	Change 93-03
Imports	\$321	\$740	\$780	\$879	173%
Exports	\$1,442	\$2,966	\$3,148	\$3,376	134%

Source:
<http://www.bea.doc.gov/bea/di/1001serv/1003serv/tab103.xls>

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