

Spring 1-1-2018

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### Recommended Citation

Akira Kawamura, *Globalization of Japanese Lawyers: Achievements, Challenges, and Expectations of American Law Schools*, 41 HASTINGS INT'L & COMP.L. Rev. 129 (2018).

Available at: [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol41/iss2/2](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol41/iss2/2)

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# Globalization of Japanese Lawyers: Achievements, Challenges, and Expectations of American Law Schools

BY AKIRA KAWAMURA<sup>1</sup>

## Introduction

Globalization of the legal profession is ever relevant, as the ideology of globalism is challenged in many places around the world today. The most controversial backlash against globalization was the U.S. presidential election, held only a few weeks before the UC Hastings College of the Law symposium on the globalization of the legal profession.<sup>2</sup> This paper will mirror the keynote speech I presented at the symposium.

In the last twenty years, the legal service industry has transformed dramatically and has grown exponentially as part of the global economy, especially with the growth of global financial industries. Should globalization be criticized, the global legal profession may undergo criticism as well. As Dr. Stiglitz points out, it is a question of imbalance of legal power or “asymmetries of information”<sup>3</sup> to which I will refer again later.

It may be said that the global legal industry is overly dominated by common law doctrines as well as British and American professionals, which

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2. Akira Kawamura, Keynote Speech at UC Hastings College of the Law Symposium: Globalization of Japanese Lawyers: Achievements, Challenges and Expectations for American Law Schools (November 18, 2016).

3. JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS XI (1st ed. 2002).

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is one of the potential reasons that prompted the Global Financial Crisis (GFC) of 2008<sup>4</sup> to quickly spread throughout the world. Whether in the common law world or not, many claim that the GFC left enduring economic crutches that most seriously affect noncommon law countries.

Provided that the aforementioned observation is correct, the value of globalization ought to be reexamined and its framework may need reconsideration.

### **Skills Transfer**

Spanning half a century, my professional career started in 1967 as an associate in an American/Japanese law firm, Anderson Mori & Rabinowitz (now Anderson Mori & Tomotsune), founded by three American lawyers who were specially admitted to the Tokyo bar by the Supreme Court of Japan. As a member of the Tokyo bar, I witnessed the development and progress of the international legal profession of Japan as it stands today. In the early times of my practice, especially during the 1960s and 1970s, almost all of my clients were American, British or other foreign companies. I learned skills of cross-border legal practices solely from my association with this firm, and not from studying at a Japanese law school. It was a typical feature of on-the-job training or “Skills Transfer” as defined by the Trade in Legal Service Committee of the International Bar Association (IBA). Without these skills, I could not have accomplished the following: we helped clients both from a number of foreign governments and from foreign countries, such as Saudi Aramco, British Petroleum, Time Warner, McDonalds, establish a business presence in Japan; we represented the interests of the Japanese legal profession in discussions with the World Trade Organization (WTO) on the trade in legal services, as part of the General Agreement on Trade in Services (GATS); and I led a more exciting and challenging life as an international lawyer.

However, Japanese lawyers to date are educated exclusively as court lawyers and are trained to be judges, prosecutors, or advocates, but not as business lawyers or international lawyers capable of advising on cross-border legal transactions. Therefore, Japanese lawyers still need additional specialized education and training to competently advise on cross-border legal issues.

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4. It was a commonly shared view presented at many international legal conferences like the French bars and the St. Petersburg International Legal Forums after the GFC years.

## International Trade Issues

The years of 1980s were the times of “Trade Frictions”<sup>5</sup> between Japan and the U.S. The Japanese industries, which had recovered from the aftermath of World War II, rose to become major threats to U.S. companies on an international trade platform. Trade in Service, including the legal service, was part of the agenda for “Reaganomics” trade policies. The foreign lawyers (“Gaiben”) regime was introduced to the Japanese legal system in 1986 and was an outcome of such trade negotiations between the two countries to mitigate trade frictions. The Gaiben regime was extremely successful in building and establishing the Tokyo international legal market. Today, approximately 400 foreign lawyers are registered in Japan and the top 25 U.S. and U.K. firms (i.e., the elite White-shoe and Magic Circle firms) have offices in Tokyo. I was the executive director in charge of the Gaiben affairs at the Japan Federation of Bar Associations (JFBA) at that time.

The trade negotiations developed from a bilateral level to a global scale, and GATS and WTO were introduced in 1994. The U.S. and U.K. governments aggressively and deliberately pursued their policies of freer “International Trade in Legal Service,” through WTO, OECD, and the EU.<sup>6</sup> In 1998, JFBA, along with the American Bar Association (ABA) and Council of Bars and Law Societies of Europe (CCBE), hosted a global bar leaders’ conference in Paris to discuss the framework and issues relating to cross border legal services.<sup>7</sup> The global conference of this magnitude was the first ever in the history of the global legal profession. I was a co-chair of this Forum.

## Emergence of Global Legal Profession

Under the WTO and EU regimes, the international financial service grew exponentially and then came to a sudden halt when the global bubble burst in 2008, triggered by the collapse of Lehman Bros. A 2010 WTO

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5. During the 1970s and 1980s, the trade imbalance was the most serious diplomatic issue between Japan and the United States. The restrictions on trade, such as the export of textiles and automobiles from Japan, were introduced by the U.S. government against Japan. It was called the “Trade Frictions” or “Trade War” by Japanese media.

6. In 1983, the Reagan administration adopted new economic and trade policies and took a hard stance in negotiations through the U.S. Trade Representatives with trade counterparts, like Japan. The General Agreement of Trade in Services (GATS) was the most important outcome of such Reagan diplomacy.

7. Symposium, *Paris Forum on Transnational Practice for the Legal Profession: An Introduction to the Paris Forum on Transnational Practice for the Legal Profession*, 18 DICK. J. INT’L L. 1 (1999).

report on the trade in legal service<sup>8</sup> highlighted very interesting features of the GFC. The global legal services had grown dramatically in the first 10 years of this century, while international financial services grew under the auspices of international trade regimes such as the WTO and the EU. By the time of the outbreak of the GFC, the WTO report stated that the amount of trade in legal service had grown to \$581 billion in 2008,<sup>9</sup> representing the annual growth rate of 5% for the period between 2004 and 2008.<sup>10</sup> The report further demonstrated that only the U.S. and the U.K. were net exporters of legal services during this period, whereas the rest of the world, especially the fast growing economies of BRICs, were the substantive and net importers of the U.S. and U.K. legal services.<sup>11</sup>

### Global Legal Profession and the GFC

The GFC first broke out in New York and London, and subsequently expanded throughout the world. The U.S. and the U.K. recovered relatively quickly, while less developed economies, namely Greece, Italy, Spain, Portugal and Eastern European countries, suffered from the aftermath more harshly and for a longer duration than the U.S. and the U.K. The aftermath of the GFC struck down those legal service importing countries, rather than the exporting countries, for many years until recently. Interestingly, most of those importing countries were traditionally civil law countries, but the global mega firms based in London or New York dominated their legal service markets.

I was elected as the president of the IBA in 2010, shortly after the outbreak of the GFC. It was one of the most challenging times for the world economy. I was the first IBA president elected among the Asian civil law countries, without an English background. My presidential priority was to achieve and provide legal empowerment to people and in turn ensure the people's wellbeing, particularly those suffering most seriously from the aftermath of the GFC. Naturally, I focused on the causes of the GFC. As stated by the WTO report, the GFC was enhanced under the dominant legal power of the growing global mega firms, all of which were based in the U.S. and the U.K.<sup>12</sup> I also noted that the GFC's aftermath gave rise to a huge

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8. WTO Council for Trade in Services, *Legal Services, Background Note by the Secretariat*, S/C/W/318, 14 June 2010, para 1.

9. *Id.*, para 4.

10. *Id.*

11. *Id.*, para 3.

12. WTO, *Legal Services, Background Note by the Secretariat*, at para 9.

amount of insolvency work, which could not have been handled so swiftly and skillfully throughout the world if we did not have the strength of the global legal profession. In short, whether for good or bad, the people's wellbeing is now dependent on and in the hands of the global legal profession after the GFC, which are largely dominated by professionals with common law educations.

### **Globalization and Its Discontents**

Dr. Stiglitz, a Nobel Prize winning economist, had predicted the outbreak of the GFC in his book, "Globalization and its Discontents," as early as 2003. He explained that the "Asymmetries of Information" between people of advanced and less advanced countries would bring about the GFC.<sup>13</sup> I would argue that "Asymmetries of Legal Power" was also one of the causes of the GFC. The legal profession should be able to deal with the disparities of legal power among people in such a way as to prevent the GFC from reoccurring. It is extremely important to balance between the common law skills and moral-oriented civil law doctrines to seek the sustainable development of the global economy beyond existing cultural differences. "Globalization with Diversity" seems to be the top priority to structure the global legal profession in order to maintain that global balance and prevent a reoccurrence of the GFC.

Post-GFC, legal powers already began to diversify and disperse beyond London and New York to other regions like the Asian Pacific. Chinese law firms have collaborated and combined with the rich legal resources of American, Australian, and British firms and are growing at a dramatically fast pace.<sup>14</sup> Recently, "The American Lawyer" magazine's 2016 list of Global 100 reported that the world's largest law firm per headcount was a Chinese-based law firm, Dentons,<sup>15</sup> and another Chinese-based law firm, King & Wood Mallesons, figured as one of the world's top 10 largest law firms.<sup>16</sup> A Korean law firm, Kim & Chang, as well as a few Australian and Canadian firms, are also progressing and emerging in the Global 100.<sup>17</sup>

Japanese law firms are growing and changing, too, although at a much

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13. *Supra* note 3.

14. Akira Kawamura, *Asia Shift of Legal Market and Japanese Lawyer*, *Japan Bar Association*, RULE OF LAW No. 173, April 2014, at 56.

15. *The Global 100*, *The American Lawyer* (Sept. 26, 2016, 9:35 AM), <https://www.law.com/americanlawyer/almID/1202767838452/?tokenvalue=399B307C-0A66-4F1A-A576-FA93EE1E33C4>.

16. *Id.*

17. *Id.*

slower rate. They have come a long way from the beginning of this century and are catching up with the trends of globalization. Six major Tokyo law firms opened more than 25 overseas offices, mainly in Asia, in the last two or three years.<sup>18</sup> This has been possible only because the number of admissions of lawyers to the Japanese bar has increased significantly from the beginning of this century. One or two Japanese firms may potentially be listed on the Global 100 if their financial data is publicly disclosed.

As Professor Stiglitz admits in his books, the globalization of economies and societies is an unavoidable reality, and even positive if properly managed. The legal profession is destined to be global to help people navigate through the rough seas of globalization. As such, the Japanese legal profession should most certainly seek globalization in its path towards progress.

### **What is the Challenge for the Japanese Legal Profession?**

Under the given circumstances of globalization in the Asian Pacific region, the challenges to the Japanese legal profession seem clear. The top priority for the Japanese legal profession should be to reform the legal education program. Japanese lawyers were historically part of the elite profession, almost exclusively educated and trained to serve the court system together with their colleagues of judges and public prosecutors. Their admission and education were only provided through the Supreme Court Judicial Research and Education Institute (*Shiho Kenshusho*). In the first part of this century, there were attempts to innovate this system by introducing the law school education system and, at the same time, by dramatically increasing the number of admissions to the bar. This was an admitted failure<sup>19</sup> and the number of admissions to the legal profession dropped again.<sup>20</sup>

However, the failure was not the number of admissions, but rather, the program. The Supreme Court through “Shiho Kenshusho” provided the skills education and training for traditional officers of court which dominated the program. More business-oriented topics, like international lawyering skills, must be introduced in the curriculum for legal education, both at law schools and “Shiho Kenshusho.”

The second priority is the innovation of law firm management. Cross-

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18. Kawamura, *supra* note 14.

19. Resolution of the Council of Ministers for Nurturing Legal Professionals (July 16, 2013).

20. From 3,000 per year to about 1,500 or 2,000 per year. *Id.* at 1.

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border mergers and partnerships that enabled Chinese mega-firms to grow and expand their operations to a large extent should be introduced in Japanese law firms too. Fundraising from capital markets and Initial Public Offerings (IPOs) could be a possible agenda, albeit somewhat remote, because law firms cannot expand or go abroad without a stable large capital funding. For example, the world's first IPO law firm was an Australian law firm, Slater & Gordon. The Asian Pacific region is now a place of dramatic revolution in law firm management.

The third priority is the government's international trade strategies to promote trade in legal services as the U.S. and U.K. had successfully done a few decades ago through WTO, OECD, EU and TPP. TPP may no longer be an effective measure since the new administration of the U.S. government decided to withdraw from the TPP negotiation.<sup>21</sup>

Freer international trade in legal service is a critical policy agenda to promote the globalization of the economy. The Japanese government recently adopted a package of economy development strategies,<sup>22</sup> which stresses the importance of internationalization of the justice system and legal profession. Interestingly, it explicitly noted that the international arbitration infrastructures, among others, must be established and promoted in Japan.<sup>23</sup>

Thus, the Japanese government's policy is now focusing on the promotion of globalization of the Japanese legal profession.

### **What Would Be Expected of American Law Schools?**

Japanese lawyers should be given more education on international legal services to meet the growing demands from internationalized societies. American law schools are the best providers of such education if proper arrangements for trans-jurisdictional education are possible between the two countries. The law schools of the U.K., Australia and Canada may also provide similar programs for Japanese students. These countries would be able to give Japanese students and lawyers opportunities to gain sophisticated international lawyering skills, which the Japanese system is unable to provide at the moment. American law schools are now given opportunities to provide advanced career development support, and more specifically, the law school degrees and qualification for admission to the

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21. The U.S. President signed the presidential order to withdraw from TPP negotiations on January 13, 2017.

22. Cabinet Decision, Basic Policy on Economic and Fiscal Management and Reform 2017 (June 9, 2017).

23. *Id.* at 16.

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bars. The GATS notably requires its member nations to adopt a system of mutual recognition of the professional qualifications and of the law school degrees.<sup>24</sup> The introduction of this system of mutual recognition would permit American and Japanese law schools to cooperate on a number of issues.

### **Conclusion: “The Justice of Business and the Business of Justice”**

The tough experiences post-GFC highlighted the importance of a globalized legal profession to ensure sustainable development of the economy throughout the world. It should function as a good coordinator or mediator of conflicting economic interests and legal principles as well as existing cultural factors among related countries. One should no longer single-mindedly follow and apply the traditional principle of one legal system to practices where diversified multi-jurisdictional interests are involved.

It is no doubt the right time for the Japanese legal profession to be a part of this newly growing global legal market. A step forward in this direction is not only for Japanese interests, but also for the diversified interests of the world.

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24. GATS: General Agreement on Trade in Services art. 7, Apr. 15, 1994, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994).