

Life and the Structures of the Law School: The Biopolitics of Legal Education

Part 1: Creating the Lawyer

Lawyer as biopolitical asset

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Abstract

This chapter considers the ‘technologies of power’¹ used by regulators and employers in recognition of foreign qualifications, whose holders are thereby constituted as biopolitical assets in legal services markets. It does so from both a macro- and a micro-perspective. The macro-level is that of the regulatory mechanisms for recognition, where compromises are made between assessment of actual competence to practise, and symbolic credentialism of the elite capitals foreign qualifications represent.

At the micro-level, the focus is on two ways in which the macro-level approach enables individuals to seek to enhance their desirability as assets. The first is the strategic use of foreign qualifications to bypass bottlenecks or barriers in local routes to licensure. In the second, formal regulatory criteria act in concert with implicit (employer-defined) criteria to use foreign qualifications, derived from, enabled by, or attempting to remedy deficits in, social and cultural capital,² as a ‘halo’ which may speak more to status than to competence.

The chapter ends, therefore, with a novel proposal to recruit aspirant lawyers as subalterns³ to co-develop a new educational environment transcending regulatory power through the ‘technology of the self’⁴ prioritising competence over (mere) symbolic credentialism.

¹ Foucault (1982), p 781.

² See also MacLeod, this volume.

³ Green (2002).

⁴ Foucault (1988).

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Introduction

Professional licensure as a lawyer has, as the ABA Taskforce has put it, both a public and a private ‘value’.⁵ Without the latter, the capitulation of the self and assault on personal autonomy occasioned by acquisition of the professional habitus⁶ would not be tolerable. Licensure and secure employment⁷ both confer, and are contingent on, economic, cultural and social capital.⁸ Although the individual lawyer is not of course bought and sold in the Marxian economic sense of a commodity, the right to practise is inalienable from the human lawyer who exercises it. Consequently, the bundle of capitals and licensures possessed by that lawyer is tradable in the legal services market and, for the purposes of this discussion, constitutes them, as a biopolitical asset. There is, however, a dialectic in operation in this relationship, between qualifications as indicators of competence, and as symbols emphasising status, social and cultural capital recognised, if at all, as a ‘halo’⁹ in the labour market. This is especially visible for the foreign legal qualifications that are the subject of this chapter.

The chapter is in three parts. First it considers the technology of power¹⁰ present at the regulatory macro-level where compromises are made between evaluation of competence and symbolic credentialism.

It then moves to the micro-level to discuss two ways in which individuals seek to constitute themselves as competitively valuable assets by acquiring credentials (cultural capital).¹¹ They

⁵ ABA Task Force (2014).

⁶ Bourdieu (1977), p 2. See for example Hilary Sommerlad (2008).

⁷ This chapter focuses on employment rather than self-employment, particularly as, in most jurisdictions, a period of employment is required for licensure and this is normally controlled by law firm recruitment practices.

⁸ Bourdieu (1986).

⁹ See Ballakrishnen (2011), p 2445.

¹⁰ Foucault (1988), p 781.

¹¹ Bourdieu (1986), p 241. Bourdieu treats educational qualifications as ‘cultural capital’ capable of translation into economic capital through employment. Cultural capital also includes the advantages of elites in cosmopolitan experience, etiquette and multi-lingualism.

hope to translate these into economic or social capital, or remedy deficits in elite capital.¹² The first represents attempts to bypass barriers in local routes to licensure. In the second the emphasis is on implicit (employer-defined) recruitment criteria using foreign qualifications as a ‘halo’. Whilst in some cases the value of such qualifications has to be individually negotiated, in others they are *de facto* quasi-regulatory requirements.

The chapter therefore ends with a novel call to Gramsci’s concept of subalternity¹³ for the aspirant lawyer, in autonomously co-developing a disruptive proposal for a supra-jurisdictional programme. This would transcend regulation through the ‘technology of the self’¹⁴ to rebalance the opposing poles of the dialectic.

For simplicity, in this chapter, ‘local’ refers to the receiving jurisdiction and ‘foreign’ to jurisdictions outside it.

Macro-level

Here, professional bodies¹⁵ engage with the state, each other and supranational agencies to determine who can practise where and in what. Legal services are the subject of international negotiations through the GATS¹⁶ and similar instruments¹⁷ which ostensibly prioritise competence.¹⁸ The professional bodies, however, determine operationalisation and their bargaining position is influenced by reciprocity, post-colonialism, hierarchy and pragmatism. This trading is enabled because licensure is on a jurisdictional basis and therefore ‘among the

¹² See Ballakrishnen (2011), p 2473 describing a qualification as a replacement for social capital in India.

¹³ Green (2002).

¹⁴ Foucault (1988).

¹⁵ And sometimes law firms: see Faulconbridge and others (2008), p 461.

¹⁶ World Trade Organisation (2021). See also Collins (2018); Terry (2013). The details of the GATS, other than as a technology of power, is outside the remit of this chapter. See for general discussion, however, Hutchinson (2005); Sereno (1995) Terry (2010); Udobong (2012).

¹⁷ As, for example, Directive 98/5/EC which, like the GATS, controls the extent to which foreign lawyers can be re-tested. For discussion, see Blitz (1999).

¹⁸ Hill (2006).

most restricted' in the global economy.¹⁹ It perpetuates legal professions as closed groups, anxious to preserve their own monopolies and to limit outsiders' access to them.

Foreign lawyers are often permitted to advise on their own, foreign law:²⁰ this does not trespass on the sensibilities of local lawyers.²¹ Challenges arise when they seek to practise local law, compete with local lawyers²² and, in principle, exercise a power to hold the local state to account through litigation.

It is here that credentialism conflicts with competence. It may be, politically, difficult to refuse to acknowledge academic credentials from high-status foreign institutions, from a former colonial power or legal family hub,²³ particularly where these are acquired by members of powerful, high-status local groups. Consequently, which universities obtain accreditation, and which students, with which capital, have access to them, is a microcosm of the wider transactional picture. Negotiations for recognition may be significant and de-recognition is possible.²⁴

The stakes are higher for the grant of licensure. A jurisdiction's political stance may be protectionist; anxious to establish itself as a preferred international financial or legal centre, or to enhance the tradable value of its own licensure. The result may involve compromise about the assessment of competence, tempered by questions of reciprocity: how local lawyers are treated when they attempt to requalify elsewhere.²⁵

¹⁹ Collins (2018), p 8.

²⁰ Possibly through a bilateral trading agreement: Law Society of England and Wales (April 2021). India has been a notable outlier: Eisen (2011), Desai (2018).

²¹ Partnership with local lawyers may open up opportunities for those local lawyers: Collins (2018), p 10. Outsourcing can provide high-status opportunities for individuals when local jobs are scarce, see Ballakrishnen (2012).

²² 'The practice of law by foreigners ... can lead to resentment by local lawyers who feel that their own control over the profession is at risk': Collins (2018), p 11.

²³ Roberts (2017), p 53, notes that student flows are hierarchical and largely unidirectional into Western states.

²⁴ See for example, Legal Profession Qualifying Board, Malaysia, (1995). India explicitly 'facilitate[s]' Indian students in foreign study, with many recognised law degrees: Bar Council of India (2021).

²⁵ Australian lawyers can requalify as solicitors in England and Wales through a special assessment (with exemptions) but the reverse is a case-by-case assessment. This is being renegotiated: Law Society of England and Wales (June 2021).

One response is principled prohibition,²⁶ so that, subject to nationality requirements, a determined aspirant would have to complete the entire local qualification system, so preserving what Flood calls a ‘monocentric’ approach.²⁷ This treats competence of local and foreign lawyers equally,²⁸ but is unattractive if the country wishes to be perceived as an international player or trade its qualifications in the international market. One British regulator has, for example, moved away from its initial position that its new examination would be universal, to providing exemptions.²⁹

At the opposite end of the scale are systems where even local licensure is necessarily dependent on foreign or multinational qualifications. These include the consciously multi-jurisdictional ‘West Indian system’ licensing for practice in any of the CARICOM nations.³⁰ Guernsey requires prior qualification in England and Wales.³¹ Until recently Bhutanese lawyers could *only* qualify elsewhere.³²

The middle ground is where the risks lie. First, the receiving jurisdiction must monitor the continued existence of accredited foreign qualifications. Second, attention must be paid to the gap between foreign and local education.³³ Assessment of individual competence on a case-by-case basis is possible, albeit resource-intensive.

Another approach is a special entry route for foreign lawyers. This pluralism represents what Flood calls a ‘polycentric’ model³⁴ and may emphasise only distinctive elements of local practice such as land law or the local constitution, taking on trust the foreign assessment of

²⁶ There are some forty countries where (some) foreign lawyers cannot requalify: International Bar Association (date unknown).

²⁷ Flood (2011), p 14.

²⁸ No assessment can fully replicate legal practice in the real world, but if all take the same assessment, it is flawed consistently, even if it only tests a subset of competent practice.

²⁹ Solicitors Regulation Authority (March 2022, April 2022).

³⁰ Wooding and others (1965).

³¹ Guernsey Bar - Barreau de Guernsey (2018).

³² Law (2018).

³³ In India, welcoming of foreign law degrees, there is a mandatory bridging course: Bar Council of India (2016).

³⁴ Flood (2011), p 14.

everything else.³⁵ It is emblematic of the dialectic that the foreign lawyers whom a jurisdiction wishes to attract are unlikely to practise in such fields.³⁶ Consequently, there is a risk of a race to the bottom in defining the lowest common denominator that will a) satisfy the regulator in relation to competence, b) not deter high-status foreign lawyers or operate as ‘a disguised restriction on international trade’,³⁷ but c) not debase the local qualification system by creating attractive bypasses for those with elite capital. Symbolic value is of even greater significance when recognition moves from *de jure* to *de facto* in the employment market.

Micro level

The availability of foreign qualifications coupled with the effects of trading at the macro-level permits lawyers to ‘creatively eliminate or penetrate ... educational and licensing barriers’³⁸ to acquire licensure and status-enhancing credentials. Of course, gaps in local regulation may demand foreign qualifications or licensures³⁹ or may, as in Guernsey, deliberately depend on them. Some lawyers genuinely wish to practise in the foreign jurisdiction. It seems unlikely, however, that all the foreign-educated lawyers who take the New York Bar exam actually plan to practise in New York⁴⁰ and almost half of students on the bar course for England and Wales have been non-UK/EU domiciliaries.⁴¹ A particularly contentious recent example has been the post-Brexit rush by British lawyers to preserve their EU practice rights by dual qualifying in

³⁵ At one stage, a number of local competences were not assessed by one British regulator which assumed that incoming foreign lawyers would have acquired them in work-experience. However, the route was open to lawyers from jurisdictions without work-experience requirements.

³⁶ See, however, suggestion of a ‘corporate’ route that would disregard the aspects of local law that corporate lawyers would not be likely to practise: Law Society of England and Wales (2015) p 34.

³⁷ Collins (2018), p 21.

³⁸ Liu (2013), p 678.

³⁹ For example, a Chinese lawyer practising in China but working for a foreign law firm required a foreign licensure, see Silver (2011), p 42.

⁴⁰ New York State Board of Law Examiners (2020).

⁴¹ Bar Standards Board (2021), p 21. Virtually all those who then commenced the mandatory work-experience (in order to practise in England and Wales) were UK/EU domiciliaries. Bar Standards Board (2021), pp 79 and 93.

the Republic of Ireland⁴² but not desiring to establish in Ireland. Reciprocity appears to have been a component of the negotiated response.⁴³

Despite efforts by institutions to offer courses online⁴⁴ and overseas,⁴⁵ acquiring those licensures and symbols is, however, dependent on economic, linguistic and cultural capital that facilitates study abroad⁴⁶ and licensure assessments.⁴⁷ It may therefore embed, rather than address, inequality. Here we consider two aspects of the microlevel demonstrating the dialectic: bypasses of local qualification routes and the position of foreign qualifications as a ‘halo’ for recruiters.

Bypasses

As we have seen, recognition of foreign *degrees*, particularly if high-status, and from a high-status jurisdiction, is widespread. Foreign qualifications leading to *licensure*, however, may be thought easier,⁴⁸ or more straightforward⁴⁹ than local equivalents. Recruitment is competitive and its processes may be inequitable. Consequently, the impetus to bypass is stronger when it can avoid mandatory work-experience. Until recently, Italian students could avoid the *pratica forense* by qualifying in Spain (the *via spagnola*)⁵⁰ returning under EU freedom of movement provisions. US bar preparation courses have been marketed to aspiring British solicitors, who

⁴² Croft (2018).

⁴³ Law Society of England and Wales (March 2021).

⁴⁴ Receiving jurisdictions often do not accredit more accessible and cheaper part time and online degrees. See for example: Nigeria Bar, (2020).

⁴⁵ Backer and Stancil, (2012); Flood (2011), pp 6-10. For the symbolic capital acquired by the university in so doing, see French (2015).

⁴⁶ Silver (2011), p 47, Ballakrishnen (2011), fn 125 but contrast Lazarus-Black (2017), p 467. See, also the Dutch English-language law degrees with lower tuition fees than in England: studylaw.nl, (date unknown) and those British universities offering two-year LLBs targeting Canadians: Across the Pond, (2021).

⁴⁷ Which may have to be taken in the territory of the jurisdiction concerned, increasing expense.

⁴⁸ See Nicola (2018), p 252: ‘those who ... circumvented the local exam to pass the New York Bar took a shortcut trying to circumvent the more demanding French Bar Passage regime’. Japanese and South Korean students have taken similar steps: Silver, (2006) p 158.

⁴⁹ In Mauritius ‘[t]he difficulty in passing the Vocational Course examinations has resulted in those who can afford it continuing to qualify by being called to the Bar in the United Kingdom’ Phillips and others, (2019) para 16.

⁵⁰ See TitoliSpagna (2022).

also believed US licensure would be a halo for local employers⁵¹ who are, however, committed to local work-experience as authentic and essential.⁵² Bypasses devalue local qualifications by prioritising credentials over competence; advantage those with elite capital and lead the disadvantaged to entrench their vulnerability in the employment market.

Halos

Even qualifications not contributing to licensure can enhance the value of lawyers as assets⁵³ particularly if from a high-status institution⁵⁴ in a high-status country. In some cases, essentially in less high-status countries, foreign postgraduate qualifications are an expectation of high-status employers to the extent that they become *de facto*⁵⁵ and quasi-regulatory requirements. Their value is, however, fluid: differing between jurisdictions;⁵⁶ employers and, if ubiquitous, devalued.⁵⁷

Nevertheless, such study may confer new intellectual perspectives,⁵⁸ cultural awareness,⁵⁹ potential referral networks,⁶⁰ specialist understanding that is underdeveloped in the local context,⁶¹ and linguistic⁶² or other skills that enhance local practice. Foreign students may appreciate the intellectual challenge of new forms of reasoning and pedagogy,⁶³ or find

⁵¹ Aldridge (2011) and the views of employers in Law Society of England and Wales (2015), p 33.

⁵² Law Society of England and Wales (2015).

⁵³ Ballakrishnen (2011) is illuminating on this topic given India's lack of recognition of foreign licensures: pp 2465, 2471, 2453, 2461.

⁵⁴ Silver (2006) p 173, Silver (2011) p 32, Ballakrishnen (2011) pp 2471, 2449.

⁵⁵ For example, in China: Ballakrishnen (2011) fn 17, Liu (2013), p 686, Roberts (2019), p 31, Silver (2011) p 41.

⁵⁶ Dinovitzer and Hagan, (2006), p 131 demonstrated this empirically in the context of movement within a federal state.

⁵⁷ 'As a purchaser of those individuals to come and work at your firm,... you're going to say to yourself "Well, everyone's got [the New York Bar], it's frankly not good enough to do this job so I'm not going to set that much store by it" and then people will stop taking it, and they'll be doing something else that employers consider more effective' (English solicitor quoted in Webb and others (2013), para 2.114).

⁵⁸ Silver (2011), pp 20, 32; Ballakrishnen (2011) fn 38, pp 2467, 2468.

⁵⁹ Local students may, however, not mix with their international peers: Lazarus-Black (2017), p 473.

⁶⁰ See Silver (2011), pp 20, 38; Ballakrishnen (2011), pp 2446, 2467.

⁶¹ Lazarus-Black (2017) p 467.

⁶² Silver (2006) pp 20, 30, 156; Silver (2011), p 32, Lazarus-Black (2017), p 476.

⁶³ Ballakrishnen (2011), fn 38, p 2467, 2468.

them intimidating,⁶⁴ demanding reframing and unlearning,⁶⁵ just as some of them find aspects of foreign legal cultures inexplicable.⁶⁶

In terms of the international trade in qualifications, however, the effect is more questionable. As Roberts demonstrates,⁶⁷ the flow of students is largely unidirectional, towards hubs such as the USA and UK (common law), France and Germany (civil law), and Russia (post-Soviet). It perpetuates, therefore, patterns of historical colonialism,⁶⁸ even where deliberate efforts have been made to create distinct local systems that are culturally and legally relevant, as in CARICOM. It also provides opportunities for new forms of legal colonialism, or, less pejoratively, leadership,⁶⁹ in which models of ethics, legal⁷⁰ and firm culture;⁷¹ the rule of law or of legal education⁷² are transmitted from powerful, high-status nations with confidence in their scholarship⁷³ and the resources to deliver to the less powerful.

Conclusion

The discussion above has shown that, in the context of the recognition of foreign qualifications, at both degree and licensure stage, legal education, at least for those who intend to practise, treads a difficult balance between credentialism and competence. The underlying jurisdictionalism of regulation should, as recognised in the GATS and similar instruments, allow recognition to focus on competence. In fact, in both education and licensure, there is an

⁶⁴ Lazarus-Black (2017), pp 465, 471, 473, 475.

⁶⁵ Lazarus-Black (2017) p 466.

⁶⁶ See Lazarus-Black (2017), p 462 on concepts such as the lay jury and plea bargaining.

⁶⁷ Roberts (2017), p 54, (2018).

⁶⁸ See Lazarus-Black, (2008); Roberts (2017), p 61. See also Adebisi, this volume.

⁶⁹ See Lazarus-Black (2017), p 480, Van Detta (2018).

⁷⁰ Nicola, (2018); Roberts (2018).

⁷¹ See for example Beaverstock, (2004) and Silver, (2011) p 9. The extent of global convergence within a firm may, however, be illusory: Faulconbridge, (2008) or need to be fostered through organisational training and structures: Faulconbridge and Muzio, (2009).

⁷² The obvious example is the global influence of the JD, particularly in Asia, for example Sato, (2016). More unusually, its influence has been seen in other Western nations, such as Canada and Australia: Flood (2011), p 32. The trend might, perhaps, be more accurately described in those countries as a movement to position legal education as post- rather than under-graduate than duplication of the US model.

⁷³ See Garth (2015), p 75 'the superiority of US legal scholarship in the global market is taken for granted within the US'.

international market, in which status; protectionism and reciprocity all play a part in what is recognised, *de jure*, for licensure. Beyond this, there is an active *de facto* market, albeit one that privileges those lawyer-assets with the social and economic capital to study in established high-status centres. Both can be exploited by institutions offering courses designed to attract foreign students; by regulators choosing which degrees to recognise and how to manage foreign re-licensure without deterring foreign investment or devaluing local qualification. An unintended result is that some foreign qualifications are more valuable outside their home jurisdiction than within it.⁷⁴

These mechanisms can be exploited by individuals seeking bypasses or halos, although those attempts can be misconceived, failing to enhance the asset value of the lawyer to potential employers. This is not to say that foreign study cannot have metacognitive benefits for individuals, exposing them to different concepts and ideas, and benefits in social capital and international networks: but this would be the case as much for a Chinese lawyer studying in the UK or USA as it would for the figment of the US or UK lawyer studying in China.

Whilst, as Roberts has shown, foreign study tends to be within legal families and hence to a large extent within language groups, the impact of English as a lingua franca cannot be detached from the equation. An Australasian, British, Canadian or US qualification speaks not only to legal study but even more to a language competence that enhances the value of the asset in working with foreign lawyers and clients. Moving outside the legal family, as when Chinese lawyers seek Anglo-Saxon qualifications, signals cosmopolitanism and a readiness to compete in an international field dominated by Anglo-Saxon law firms (which can also establish and carry out legal work locally) more than it need signal competence in practice.

⁷⁴ See, for example, s 15(1A) of the Legal Profession Act 1986, permitting graduates of two British courses to qualify with six months' work-experience in Trinidad and Tobago, when one or two years is required in England and Wales. Ironically, given its privileged symbolic position for foreigners, there are suggestions that the New York Bar examination does not assure local competence: see Task Force on the New York Bar Examination, (2020), p 69.

Whilst credentialism expands the global market, for those with the economic and linguistic capital to take advantage of it, questions of (local) competence narrow it and are a legitimate concern of local regulatory bodies. This is disfigured except in truly monocentric jurisdictions by the competing interests of the status of foreign qualifications and those who hold them, reciprocity and need to attract international business that obscure evaluation of actual competence.

There have been attempts to synthesise supranational statements of shared competences,⁷⁵ though not on the scale of, say, accountancy.⁷⁶ To the extent that some qualifications, such as the New York Bar or call to the Bar of England and Wales, service a wide range of jurisdictions, their outcomes come to operate as such supranational competences by default.

One response might be to retain the negotiated status quo for local practice and embark on a project of convergence of competence by focussing on supra- or international practice. In ‘transnational law’, provided by international treaties, soft law and ‘effort[s] by the parties to create their own law’⁷⁷ by contract, the competences of lawyers may be more similar, but they are shared with those of diplomats and entrepreneurs. Legal licensure may not be required,⁷⁸ rolled over from local licensure⁷⁹ or, rarely, separately granted.⁸⁰ Jones, however, has suggested a model for a qualification for such lawyers.⁸¹ He conceives this conferring *de jure* licensure to operate internationally, including as advocate before international bodies, in general corporate advice and as arbitrator or mediator. Extension of the problems of regulatory hegemony to a supra-national level would, however, compound the credentials v competence

⁷⁵ Conseil des Barreaux Européens – Council of Bars and Law Societies of Europe, (2007). The West Indian system operationalises this approach for CARICOM.

⁷⁶ IAESB (2019).

⁷⁷ Jones (2013), p 63.

⁷⁸ See for example, United Nations Commission on International Trade Law, (2013), art 5.

⁷⁹ International Criminal Court (date unknown).

⁸⁰ European Patent Office (2019).

⁸¹ Jones (2013).

dialectic. Jones' model is drawn from the US experience of courses necessarily based on general principles for students who might later practise in any state. It is worth noting in the context of course design that whether, for example, US legal education is most effective at securing skills in legal writing, some kinds of UK legal education in developing adversarial trial advocacy skills, or German education confers 'excellence in doctrinalisation'⁸² remains sadly unevaluated, although practitioners in international firms know the comparative strengths and weaknesses of the products of different traditions.⁸³

Jones' approach is to devise a curriculum – taught in English – based on 'jurisdiction-neutral' 'general principles' that recognise, by way of comparison, differences between legal traditions, or use international treaties or similar supranational documents as primary sources, and on business and finance issues. It seems to prioritise, therefore, substantive knowledge. Whilst comparativism is pluralist and divergent in nature, it is difficult to treat each comparator, the one known and the one less known, with real equivalence and without 'othering' the less familiar.⁸⁴ Indeed, as Roberts points out, even amongst international lawyers, the concept of what international practice is differs, and is informed by local culture and training.⁸⁵

This chapter closes, then, with an approach to a supranational course that approaches the problem differently in seeking to remedy the problems of the dialectic. First, it builds, not on knowledge, but on active competences: values; ethics; models of practice; concepts of professionalism, metacognition and justice that are key to practice in local, foreign and supranational contexts. Most significantly, it draws on a global resource as its designers: young lawyers themselves. Even though they are acutely conscious of the credential and status value of foreign qualifications, the research on foreign students in the USA referred to in this chapter

⁸² Roberts (2017) p 218.

⁸³ Law Society of England and Wales (2015).

⁸⁴ Even the double maîtrise degrees offered by some universities must involve an element of othering, as students will almost certainly be more familiar with one jurisdiction and its norms than the other and the pairing is often of one civil law and one common law jurisdiction.

⁸⁵ Roberts (2017).

has noted their ability to evaluate and critique foreign legal concepts and therefore to push back, even if silently, at the credentialism and colonialism inherent in the trade in qualifications. My call is to this group within Gramsci's concept of subalternity,⁸⁶ in co-developing a disruptive proposal. It would in concept be creative, disruptive, harnessing the technology of the self and reflecting the autonomy and ethics that should be the defining characteristics of a legal profession and freed of the need to consider licensure as a governing technology of power. It treats its students and creators, not as assets, but as actors; asking what they need to be secure, effective and happy in their work.⁸⁷

Whether law students and junior lawyers are able to articulate what they want and need is constrained by their biopolitical status. They want to obtain licensure and employment and for this, they want to comply, adopt the relevant habitus and status. They are, however, concerned about law and justice, but also about resilience, about equality and about the planetary future. These are topics that are addressed, on a local and sometimes an international basis, in student and young lawyer groups. Young lawyers may be more confident amongst their peers to argue and to transcend norms. They would be concerned, naturally, about the cost and delivery of such a course. It would need to be delivered online and make as many demands of the native English-speaker as it does of others.

I suggest that an appropriate pedagogy, extending the discipline-specific concept of comparative law, is that of 'variation theory'.⁸⁸ This focuses on the ways in which people experience the same phenomenon differently, and teaches that we learn by examining commonalities and differences. Doing so in the context of individual experience provides a clear link to autonomous practice. The flow of information should not be from legal hub

⁸⁶ Green, (2002).

⁸⁷ See also Madhloom, this volume.

⁸⁸ See for example Marton and Ling (2012). And, in law, Åkerlind and others (2010); Ching, (2015); Steel (2019).

towards developing country, or by perpetuating existing hegemonies and colonial cultures,⁸⁹ but by creation of new knowledge amongst peers in a safe environment in which different legal families, including indigenous approaches, are valued and heard.

If effective, and if valued by employers, such a programme might come to acquire *de facto* or even *de jure* status and therefore capital in its own right, but would have evolved from a starting point that is distinct from treating lawyers as assets, trading in symbols or actively seeking to bypass regulatory structures. In the current environment, however, it remains no more than a thought experiment. What remains is the dialectic, in which qualifications and licensures – and their holders – are traded. Perhaps the best we can hope for is that the young people expending their time and money on them can be made aware of what they can, and what they cannot, provide.

⁸⁹ See Adebisi, this volume.

Reference list

Primary Sources

Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

Legal Profession Act 1986 (Trinidad and Tobago)

Secondary Sources

Articles and book chapters

Larry Cata Backer and Bret Stancil (2012) 'Beyond Colonization - Globalization and the Establishment of Programs of US Legal Education Abroad by Indigenous Institutions' 5 *Drexel Law Review* 317.

Swethaa Ballakrishnen (2011) 'Homeward Bound: What Does a Global Legal Education Offer the Indian Returnees' 80 *Fordham Law Review* 2441.

Swethaa Ballakrishnen (2012) "'I Love My American Job': Professional Prestige in the Indian Outsourcing Industry and Global Consequences of an Expanding Legal Profession' 19(2-3) *International Journal of the Legal Profession* 379.

Jonathan V Beaverstock (2004) "'Managing across Borders': Knowledge Management and Expatriation in Professional Service Legal Firms' 4 *Journal of Economic Geography* 157.

Brad K Blitz (1999) 'Professional Mobility and the Mutual Recognition of Qualifications in the European Union: Two Institutional Approaches' 43 *Comparative Education Review* 311.

Pierre Bourdieu (1986) 'The Forms of Capital' in J Richardson (ed), Richard Nice (tr), *Handbook of Theory and Research of the Sociology of Education*, Greenwood Publishing Group, 15-29.

Jane Ching (2015) "'Favourable Variations': Towards a Refreshed Approach for the Interviewing Classroom' 25 *Legal Education Review* 173.

Vyapak Desai, Kshama Loya and Bhavana Sunder (2018) 'Entry Restricted Casually: The Supreme Court of India's Judgment on the Entry of Foreign Lawyers in India' 20 *Asian Dispute Review* 112.

Ronit Dinovitzer and John Hagan (2006) 'Lawyers on the Move: The Consequences of Mobility for Legal Careers' 13 *International Journal of the Legal Profession* 119.

Arno L Eisen (2011) 'Legal Services in India: Is There an Obligation under the GATS or Are There Policy Reasons for India to Open Its Legal Services Market to Foreign Legal Consultants' 11 *Richmond Journal of Global Law and Business* 273.

James R Faulconbridge (2008) 'Negotiating Cultures of Work in Transnational Law Firms' (2008) 8 *Journal of Economic Geography* 497.

James Faulconbridge and others (2008) 'Global Law Firms: Globalization and Organizational Spaces of Cross-Border Legal Work' 28 *Northwestern Journal of International Law & Business* 455.

James R Faulconbridge and Daniel Muzio (2009) 'Legal Education, Globalization, and Cultures of Professional Practice' 22 *Georgetown Journal of Legal Ethics* 1335.

- Jan Hoffman French (2015) 'At Play in the Field of Law: Symbolic Capital and Foreign Attorneys in LLM. Programs' 22 *Indiana Journal of Global Legal Studies* 95.
- Michel Foucault (1982) 'The Subject and Power' 8 *Critical Inquiry* 777.
- Michel Foucault (1988) 'Technologies of the Self' in Luther H Martin, Huck Gutman and Patrick H Hutton (eds) *Technologies of the Self: a seminar with Michel Foucault*, Tavistock Publications, 16-49.
- Bryant G Garth (2015) 'Notes toward an Understanding of the US Market in Foreign LLM. Students: From the British Empire and the Inns of Court to the US LLM' 22 *Indiana Journal of Global Legal Studies* 67.
- Marcus Green (2002) 'Gramsci Cannot Speak: Presentations and Interpretations of Gramsci's Concept of the Subaltern' 14 *Rethinking Marxism* 1.
- Louise L Hill (2006) 'Services as Objects of International Trade: Bartering the Legal Profession' 39 *Vanderbilt Journal of Transnational Law* 347.
- Terry Hutchinson (2005) 'The Transnational Lawyer: GATS, Globalisation and the Effects on Legal Education' 10/11 *Australia & New Zealand Journal of Law & Education* 93.
- Colin PA Jones (2013) 'The International Commercial Solicitor: Proposing a New Legal Profession for Japan - and the World' 60 *Osaka University Law Review* 45.
- David S Law (2018) 'Isolation and Globalization: The Dawn of Legal Education in Bhutan' 9 *Yonsei Law Journal* 41.
- Mindie Lazarus-Black (2008) 'After Empire: Training Lawyers as a Postcolonial Enterprise' 12 *Small Axe* 38.
- Mindie Lazarus-Black (2017) 'The Voice of the Stranger: Foreign LLM. Students' Experiences of Culture, Law and Pedagogy in US Law Schools' *Comparative Law and Anthropology*, Edward Elgar Publishing, 462-488.
- Sida Liu (2013) 'The Legal Profession as a Social Process: A Theory on Lawyers and Globalization' 38 *Law and Social Inquiry* 670.
- Ference Marton and Lo Mun Ling (2012) 'Towards a Science of the Art of Teaching: Using Variation Theory as a Guiding Principle of Pedagogical Design' 1 *International Journal for Lesson and Learning Studies* 7.
- Fernanda Nicola (2018) 'The Global Diffusion of U.S. Legal Thought: Changing Influence, National Security, and Legal Education in Crisis' in Colin Crawford and Daniel Bonilla Maldonado (eds) *Constitutionalism in the Americas*, Edward Elgar, 240-257.
- Anthea Roberts (2018) 'Cross-Border Student Flows and the Construction of International Law as a Transnational Legal Field' 3 *UC Irvine Journal of International, Transnational, and Comparative Law* 1.
- Nobuyuki Sato (2016) 'The State of Legal Education in Japan: Problems and Re-Renovations in JD Law Schools' 3 *Asian Journal of Law and Society* 213.
- Lourdes A Sereno (1995) 'GATT and GATS: Implications on the Legal Profession and Legal Education' 11 *World Bulletin: Bulletin of the International Studies of the Philippines* 58.
- Carole Silver (2006) 'Internationalizing US Legal Education: A Report on the Education of Transnational Lawyers' 14 *Cardozo Journal of International and Comparative Law* 143.

Carole Silver (2011) 'The Variable Value of US Legal Education in the Global Legal Services Market' 24 *Georgetown Journal of Legal Ethics* 1.

Hilary Sommerlad (2008) "'What Are You Doing Here? You Should Be Working in a Hair Salon or Something': Outsider Status and Professional Socialization in the Solicitors' Profession.' *Web Journal of Current Legal Issues*, <http://www.bailii.org/uk/other/journals/WebJCLI/2008/issue2/sommerlad2.html>.

Alex Steel (2019) 'Succeed, Question, Repeat: Threshold Concepts and Variation Theory in Understanding How Law Students Build Competency' 53 *The Law Teacher* 231.

Laurel S Terry (2010) 'From GATS to APEC: The Impact of Trade Agreements on Legal Services' 43 *Akron Law Review* 875.

Edna Udobong (2012) 'Trends in Cross-Border Lawyering: The GATS Ideal or the Indian Reality for U.S. Lawyers' 43 *California Western International Law Journal* 343.

Jeffrey A Van Detta (2014) 'Transnational Legal Services in Globalized Economies: American Leadership, Not Mere Compliance with Gats, through Qualifying LL. Degree Programs for Foreign-Educated Lawyers Seeking State Bar Admissions' 13 *Journal of International Business and Law* 1.

Books

Pierre Bourdieu (1977) *Outline of a Theory of Practice*, Cambridge University Press.

David Collins (2018) *The Public International Law of Trade in Legal Services*, Cambridge University Press.

Anthea Roberts (2017) *Is International Law International?*, Oxford University Press.

Reports

ABA Task Force (2014) *Report and Recommendations American Bar Association Task Force on the Future of Legal Education*, American Bar Association, http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf.

Bar Standards Board (2021), *BPTC Key Statistics 2021 An Analysis of Students over Three Academic Years* Bar Standards Board, <https://www.barstandardsboard.org.uk/uploads/assets/e7d22219-ffb2-4f36-a206b21736e2d2d8/BPTC-Key-Statistics-Report-2021-All-parts.pdf>

John Flood (2011) *Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation*, Legal Services Board, http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lsb_legal_education_report_flood.pdf

Law Society of England and Wales (2015) *Global Competitiveness of the England and Wales Solicitor Qualification*, Law Society of England and Wales, <https://www.lawsociety.org.uk/topics/research/global-competitiveness-of-the-england-and-wales-solicitor-qualification>.

New York State Board of Law Examiners (2020) *NYS Bar Exam Statistics* New York State Board of Law Examiners <https://www.nybarexam.org/ExamStats/Estats.htm>

Nick Phillips and others (2019) *Report of the Committee Government of Mauritius*
<https://attorneygeneral.govmu.org/Documents/ReportCommiteeLawPractitionersAct/FinalReportofCommittee.pdf>

Task Force on the New York Bar Examination (2020) *Report of the NYSBA Task Force on the New York Bar Examination* New York State Bar Association
<https://nysba.org/app/uploads/2020/03/Report-of-the-NYSBA-Task-Force-on-the-New-York-Bar-Examination-With-Appendix-compressed.pdf>

Julian Webb and others (2013) *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales*, SRA, BSB, CILEx Regulation
<https://paulmaharg.com/letr/the-report/index.html>

Hugh Wooding and others (1965) *Report of Committee on Legal Education*, University of the West Indies.

Electronic Sources

Across the Pond (2021) *LLB (Qualifying Law Degree)* <https://ca.studyacrossthepond.com/llb-uk-law-school>

Gerlese Åkerlind and others, (2010) ‘A threshold concepts focus to first year law curriculum design: supporting student learning using variation theory’
https://unistars.org/past_papers/papers10/content/pdf/12B.pdf.

Alex Aldridge (2011) *Horses for Courses. Why US Qualification Doesn't Help in UK Job Market* <https://www.theguardian.com/law/2011/feb/11/law-student-suing-college>

Bar Council of India (2016) *Introduction of Bridge Course for Foreign Law Degree Holders*
<http://www.barcouncilofindia.org/introduction-of-bridge-course-for-foreign-law-degree-holders/>.

Bar Council of India (2021) *Foreign Universities Whose Degrees in Law Are Recognised by the Bar Council of India* <http://www.barcouncilofindia.org/about/legal-education/list-of-foreign-universities-whose-degrees-in-law-are-recognised-by-the-bar-council-of-india/>

Conseil des Barreaux Européens – Council of Bars and Law Societies of Europe (2007) *CCBE Recommendation on Training Outcomes for European Lawyers*
http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf

Jane Croft (2018) ‘*Brexit Concerns Push UK Lawyers to Register in Ireland*’
<https://www.irishtimes.com/news/politics/brexit-concerns-push-uk-lawyers-to-register-in-ireland-1.3590701>

European Patent Office (2019) *European Qualifying Examination Guide for Preparation 19th Edition*
[http://documents.epo.org/projects/babylon/eponet.nsf/0/AD1DEB5847E771FEC125764E0056D80B/\\$File/eqe_preparation_guide_9th_edition_2019_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/AD1DEB5847E771FEC125764E0056D80B/$File/eqe_preparation_guide_9th_edition_2019_en.pdf)

Guernsey Bar - Barreau de Guernsey (2018) *Qualifying as a Guernsey Advocate*
<http://www.guernseybar.com/students-careers/qualifying-as-a-guernsey-advocate-in-detail.aspx>

IAESB (2019) *Handbook of International Education Standards*
<https://www.ifac.org/iaesb/publications/2019-handbook-international-education-standards>

International Bar Association (date unknown) *International Trade in Legal Services*
https://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Map.

International Criminal Court (date unknown) *Guide for Applicants to the ICC List of Counsel and Assistants to Counsel* https://www.icc-cpi.int/iccdocs/PIDS/docs/ICC_GuideForApplicants_ENG.pdf

Law Society of England and Wales (March 2021) *Irish Re-Open Door to English and Welsh Solicitors* <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/irish-re-open-door-to-english-and-welsh-solicitors>.

Law Society of England and Wales (April 2021) *France Paves the Way for UK Lawyers to Continue Practising in Paris Post-Brexit* <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/france-paves-the-way-for-uk-lawyers-to-continue-practising-in-paris-post-brexit>

Law Society of England and Wales (June 2021) *Legal Profession Will Benefit from New Trade Deal with Australia* <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/legal-profession-will-benefit-from-new-trade-deal-with-australia>.

Legal Profession Qualifying Board (1995) *New List of Recognised Law Degrees (LLB) from the United Kingdom*
[http://www.lpqb.org.my/images/psag/infomation%20for%20prospective%20candidates/PRESS%20RELEASE-5%20dec%201999-NEW\[1\].pdf](http://www.lpqb.org.my/images/psag/infomation%20for%20prospective%20candidates/PRESS%20RELEASE-5%20dec%201999-NEW[1].pdf)

National Council of Bar Examiners (2021) *NCBE Comprehensive Guide to Bar Admission Requirements* <https://reports.ncbex.org/comp-guide/>.

Nigeria Bar (2020) *Council Of Legal Education Nigerian Law School Application For 2020 Bar Part I Course* <http://www.nigeriabar.com/2020/06/council-of-legal-education-nigerian-law-school-application-for-2020-bar-part-i-course#.YO1HyT2SkdU>.

Solicitors Regulation Authority (April 2022) *SQE Assessment Exemptions*
<https://www.sra.org.uk/become-solicitor/qualified-lawyers/sqe-exemptions/>

Solicitors Regulation Authority (March 2022) *Qualified Lawyers*
<https://www.sra.org.uk/become-solicitor/qualified-lawyers/>.

studylaw.nl, (date unknown) *Study Law in Holland*
<https://www.studylaw.nl/faq#:~:text=For%20EU%20students%2C%20the%20annual,15%2C000%2C%20depending%20on%20the%20programme>.

Laurel S Terry, (2002, revised 2013) *General Agreement on Trade in Services: A Handbook for International Bar Association Member Bars*
https://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Committee/Projects.aspx

TitoliSpagna, (2022) *Practicante a vita?* <https://www.titolispagna.com/>.

United Nations Commission on International Trade Law, (2013) *UNCITRAL Arbitration Rules*
<https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration>

World Trade Organisation (2021) *Legal Services*
https://www.wto.org/english/tratop_e/serv_e/legal_e/legal_e.htm.