

# Legal globalization: investigating the effects of an “inexorable phenomenon”

**Economic globalization is a truth universally acknowledged. But applied to the law, recognition of the phenomenon is less well-documented. If a general trend does exist, how is it affecting practice at the Bar and beyond?**

**By Alistair King of Justis Publishing**

**Mention of it makes him extremely animated.**

**N**ow one of their directors, he has been at the company since 1999. His primary stock in trade is searchable, full-text electronic case reports from the ICLR and elsewhere, but he believes the “it” in question – globalization of the law – is an inexorable phenomenon, sweeping across jurisdictions and significantly affecting the way practitioners operate. “It seems like a natural progression,” he says, adding that “in many fields it’s no bad thing for the world”.

It’s a bold stance from a man quick to point out his lack of legal training. But it seems Jonathan Daymond is prepared to follow this theory: for a number of years Justis Publishing has been expanding its coverage and refining its technology in support.

So is he right? And, more to the point, what is he right about? “Globalization of the law” is, after all, a term likely to mean quite different things to quite different people.

Furthermore, if Daymond’s analysis is accurate, how has it happened? How have lawyers’ professional lives changed in recent times? What are their thoughts on the trend? Which practice areas are they commercially exploiting? And how should they adapt their research in a discipline already governed by an information-gathering process that, at its worst, can be convoluted, esoteric and prone to leaving plenty of stones unturned?

Examples cited to answer these questions were as diverse as the cross-section of practitioners and academics whose views I sought. But one thing is clear: Daymond is onto something.

We should start with an attempt at a definition: what does “globalization of the law” mean? And haven’t common law precedents been bouncing back and forth across borders since Britain’s colonial days, while inter-state trade agreements have existed for centuries? Well, yes. But this is something different, or at least vastly expanded; something inextricably linked to our economic and political globalization; and something in which bodies are increasingly incorporating each other’s laws and collaborating at a level far deeper than before.

Professor Geoffrey Samuel is an academic at the University of Kent. Notable for his research in comparative law, he has lectured extensively in globalization. He identifies several interpretations. “It can mean law operating at a supranational level,” he says, “such as world trade and international arbitration; and there are a number of transnational codes, such as those for airline passengers and the principles of contract law.” But, he adds, “there’s also the more fluid idea of American, European, common law, French law... all having an influence beyond the national state”.

There’s a “globalization of learning, with UK and EU lawyers looking to the States and vice versa,” says barrister Daniel Beard. “And China and India are developing models from the UK and EU,” he adds. Highly praised in The Legal 500, Beard has been a member of Monckton Chambers in London for 10 years, where he specializes in such areas as commercial, competition and EU law, all of which are becoming increasingly globalized.

So what’s going on elsewhere affects us here? “Yes, and it has done for some time,” says Beard, who is currently representing a rubber manufacturer in the High Courts. Accused of being part of a Europe-wide cartel, his client could be affected by the verdict from a corresponding case running in Italy even

if he wins here. He thinks, therefore, that understanding “interpretation of EU law in other national courts would be useful”.

Though Beard’s work at the Bar itself is focused on our courts, he points to law firms “with a diaspora of offices across the world”. Accommodating major clients, they will always consider the global dimension to legal problems, he says.

This rings true for John Keffer. In 1998, following 15 years in practice in Houston, he joined multinational law firm King & Spalding, which counts the likes of Coca Cola and Shell Oil on its books. “We go to where there are clients,” he says. To that end he co-founded the London office five years ago, which he continues to manage. With London strategically placed for working alongside colleagues in the firm’s Dubai, Abu Dhabi and Riyadh offices, they collectively represent Middle East-based firms that do business in the Middle Eastern, European and American markets. “We’re very strong on Islamic Finance, as well as corporate and energy practice,” says Keffer. “This practice wouldn’t have existed before the globalization of our economy,” he adds.

So are young lawyers being nurtured for the opportunities that these shifts represent?

Jules Winterton is associate director of London University’s Institute of Advanced Legal Studies, where he has worked for 17 years. He is also its chief librarian. With the view that “the law is changing enormously in scope and reach,” he compares the situation today in legal education to that of 10 to 15 years ago, when, for example, far fewer students from here and overseas were involved in combined degrees that award graduates with qualifications from two jurisdictions and grant them exemptions from certain professional qualifications.

Suggesting that commercial and maritime

law historically led the way, Winterton thinks there are now “more legal topics than existed before,” which inevitably leads to a widening in international scope. “Almost every aspect of human activity could become affected by globalization,” he adds.

He supports his view with the plausible observation that it’s not just the obvious trade-related areas of the law that are changing; family law is becoming globalized. “Children, divorce, marriage, wills... were generally conducted without reference to anything other than domestic law,” he says, “but now there are often other jurisdictions involved”.

Beard extends the argument by bringing criminal law into the mix, a point backed up by an example from Chilean academic Arnulf Becker Lorca, who reminds me of Spain’s attempts a few years ago to extradite his countryman, the former dictator Augusto Pinochet, from Britain. Neither residing in nor to be brought to a country in which his alleged crimes took place, Spain’s grounds for attempting to try him were based on the notion that “torture constitutes an international crime,” which can be tried anywhere, according to Becker Lorca.

A lecturer in public international law, Becker Lorca is now based at King’s College London, which is a founding member of a new international consortium of law schools. Opening this month, the Centre for Transnational Legal Studies, which includes institutions from civil and common law jurisdictions, is headquartered in London; an institute set up, it seems, in sympathy with Winterton’s analysis. It’s come about, says Becker Lorca, “so lawyers will have knowledge of common and civil law [in the codified, continental sense] systems.” Endorsing others’ comments, he adds: “Today all fields of legal knowledge are more or less affected by globalization.”

Word on Legal Street appears to vindicate Daymond, who adds climate change, human rights and terrorism as areas in which international alignment of laws will become increasingly necessary.

But, as an information provider, his concern is in the dissemination of all these cases, statutes and decisions.

He sees the uniquely provider-neutral citator JustCite as key. Developed over the past six years, he says that it’s more than a citator. “It’s a directory. It cross-references, it shows how cases have been treated, where to find texts and, most importantly, its foreign jurisdictional coverage is rising – we’ve recently added cases from Australia and Singapore, and we’re talking to others,” though he won’t be drawn on whom. His main point is that although other countries’ courts’ decisions are usually not binding elsewhere, JustCite will show where cases have been cited abroad, linking users with full-text reports (on the Justis library or elsewhere), where the arguments laid out can be extremely useful for litigators here.

Are electronic avenues being explored by those at the legal coal face?

Familiar with JustCite from his colleagues’ use of it, Winterton says he can see how it’s “amenable to proliferation.”

Beard says his generation does all its searching through new media and he sees it as an essential part of the process. “The more important it becomes to have overseas material, the more important it is to have electronic access,” he adds.

And Keffer regularly uses full-text online case reports to check contractual terms to “see whether various court cases define them and affect their meanings”.

At this point Daymond is keen to highlight another type of case reporting that will now, finally, be digitized: international law as a practice area in its own right. “Through our partnership with Cambridge University Press,” he says, “the full texts of the International Law Reports, going back to 1919, will be made available electronically for the first time in November”. He adds that although international law is often regarded as a separate entity, it shouldn’t necessarily be. It’s his view that “it’s not inconceivable that precedent generated within international law in certain areas could become more persuasive in domestic courts”. Searchable access to precedent, he says, is therefore important for all practitioners.

Finally, my attention is drawn to Caselex, a new service which, according to Daymond, brings together for the first time English

summaries of cases from the Supreme Courts of EU member states; cases which specifically interpret EU legislation and focus on areas such as competition, consumer protection, employment, environmental and IP law. If there are no domestic cases for litigators to base their arguments on, this service allows them to “spread their nets,” he says.

There could be a market for this: Samuel tells me of a case from 2004 in which Lord Justice Bingham suggested that a set of circumstances relating to a case he was presiding over “must have happened in France or Germany.” Saying that their courts would “indicate where justice might lie,” he turned to counsel and gave them 24 hours to find out. Daunting, says Daymond, “unless you have Caselex”.

But in conclusion, I think of Winterton’s thoughts on the family.

Derided at the time, could Rowan Williams’s speculation that Sharia would inevitably be incorporated into English family law actually be a logical extension of the trend? Daymond certainly feels the archbishop’s comments “don’t look nearly so far-fetched now”. As animated as ever, he of course sees this as an opportunity for lawyers.

Whether globalization of the law is indeed “no bad thing for the world” is a matter for a much longer article. But either way lawyers will do well to take note of the developments and do what they can to access all of the information.

*I have been commissioned by this journal to write a follow-up piece for the next issue. Expanding on the jurisdictional dimension of the debate, I shall elaborate on what Daymond intriguingly describes as “a new product from a country whose laws will be increasingly important on the world stage”.*

Samples of full Justis and JustCite records can be viewed at [www.justis.com/dssample](http://www.justis.com/dssample) and [www.justcite.com/dssample](http://www.justcite.com/dssample).

- Before joining Justis Publishing last year, Alistair King was a journalist for Building magazine. This followed several years at various academic publishers, including Routledge and Pickering & Chatto.