

Charles H. Koch, Jr.

*Judicial Review and Global Federalism*

54 Admin. L. Rev. 491 (2002)

Abstract by Carl Tugberk

Over the last several years, the free-trade movement began the larger and inevitable movement towards a global community. Although economically driven initially, the increased interrelationship amongst the world's nations will require legal globalization as well. In this article, Charles H. Koch, Jr. discusses the effect this movement will have on American legal institutions and American lawyers. Koch explains that globalization will result in a shift of sovereignty from the national government to global institutions. Koch suggests that one of the most significant effects of this shift will be a change in judicial lawmaking. In his analysis, he frequently uses the European Union (E.U.) as an example of this shift in sovereignty. In particular, he recognizes how, in its early years, the laws of the founding national governments influenced the laws of the E.U., but more recently, that trend has reversed. Overall, globalization will require the American legal community, particularly attorneys, to understand that free-trade movement that spawned it and the impending evolution of a new body of international law.

Koch suggests that the emergence of a global legal community will have two major effects. In addition to shifting from sovereignty from the national government to supranational, global institutions, legal globalization will require the meshing of two separate legal cultures: the common law system (used in the United States) and the continental system (used in the E.U.). Despite these challenges, Koch argues that U.S. lawyers should be very capable of adjusting. Specifically, they have the experience of living and working in a federal legal system in which the laws of the state and federal governments coexist. This familiarity could be invaluable to integrating into a system in which national and supranational laws must similarly coexist. Koch concludes that in order to successfully assimilate into a new global community, there is much to be learned by all members of the U.S. legal institutions, especially attorneys, who should be well-prepared to meet the challenge.