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Perspectives on International Students' Interest in U.S. Legal Education: Shifting Incentives and Influence

Carole Silver

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INTRODUCTION

In Educational Ambivalence: The Rise of a Foreign-Student Doctorate in Law (“Educational Ambivalence”), Gail Hupper completes her trilogy on the doctorate in law degree (“SJD”) by focusing on the changing demographics of students pursuing the degree.1 What began as a path for grooming U.S. law graduates to join the faculties of a growing collective of U.S. law schools, now primarily serves international law graduates whose very international-ness, Hupper suggests, has contributed to the marginalization of the SJD. Hupper uses Yale Law School’s announcement of its new PhD in Law to illustrate the significance of the shift in the SJD population from domestic to international students.2 Yale’s description of the PhD in Law reiterates four times that a condition for admission is graduation from a JD program at a U.S. law school.3 The online description

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1 Professor of Global Law and Practice, Northwestern University School of Law. Many thanks to Joe Stranix and John O’Hare for helpful comments on earlier drafts. This Comment was the basis for a presentation at New England Law Review Symposium, “Educational Ambivalence: The Story of the Academic Doctorate in Law,” on November 5, 2014, and I am grateful for comments and questions raised during the symposium.


3 See PhD Program, YALE L. SCH., http://www.law.yale.edu/graduate/PHD_program.htm (last visited Feb. 24, 2015) (two examples suffice: “Ph.D. in Law degree is for students who already earned a J.D. from an American law school;” applicants “must complete a J.D. degree at a United States law school.”). To be sure, this condition does not necessarily exclude foreign
of the degree emphasizes this point by contrasting the PhD in Law with the SJD, which is described by Yale as a program “designed primarily for students who received their initial legal education outside the U.S.”

Hupper’s comments are pointed regarding this distinction drawn by Yale:

On its face, the distinction [between the PhD and SJD] makes sense. Although the J.S.D. is itself a doctorate, it is understandable that the school would offer a degree with more immediate name recognition to U.S.-trained lawyers going on the U.S. teaching market. Moreover, the needs of foreign-trained lawyers are different. Their educational backgrounds are different, as is the nature of their work most plan to undertake upon completion of the degree—teaching back in their home countries. Though plausible, this explanation ignores the history of the J.S.D. degree. In fact, Yale’s J.S.D. initially was designed as a teacher training degree for U.S. law graduates planning to teach on the U.S. market.

Explaining this transition is one of the central missions of Hupper’s Article. It is a transition that relates to the larger context of globalization and higher education, and it is the focus of my contribution to this symposium.

I. Finding Context for the SJD

In seeking to understand this shift, I draw on the approach of New Legal Realism (NLR). Perhaps not coincidentally, several of the early proponents of the SJD described by Hupper in Educational Ambivalence used the SJD as “an important site of legal realist experiments.” “Like the original Realists, who also sought to use social science in service of advancing legal knowledge, new legal realist scholars bring together legal theory and empirical research to build a stronger foundation for understanding law and formulating legal policy.” By invoking NLR, my aim is both to extend Hupper’s work to better understand the shift from domestic to international students and to consider how such an

nations who have earned a U.S. JD. But most U.S. JD graduates are not international students in any sense of the term. By way of example, each of the five current Yale PhD candidates graduated from college in the United States, a strong indication (albeit not determinative) of U.S. citizenship. See Carole Silver, The Variable Value of US Legal Education in the Global Legal Services Market, 24 GEO. J. LEGAL ETHICS 1, 11–12 (2011) (describing methodology of identifying citizenship/ethnicity based in part on the location of a lawyer’s college degree).

5 Id. at 320.
6 Id. at 446.
7 Howard Erlanger et al., Is It Time for a New Legal Realism?, 2005 WIS. L. REV. 335, 337.
understanding might inform policy decisions relevant to the challenges facing U.S. law schools today. NLR “has aligned itself more closely with the inclusive interdisciplinarity of the law-and-society movement, has embraced multimethod eclecticism, and has emphasized the importance of sensitive translation—between theory and observation, as well as between law and the social sciences.” In this Comment, I draw on empirical research that considers multiple vantage points and constituencies including the competing and external forces shaping the shift, in order to highlight the implications of that shift with regard to the current context of legal education, and specifically with regard to the increasingly common presence of international students. My focus here is on both methodology and meaning.

Understanding law student demographic shifts is particularly relevant to the context of legal education in the United States today, which is framed by decreasing applications and enrollment and the financial challenges characterizing U.S. higher education. Comparing the fall of 2014 to the fall of 2010, for example, the number of applications submitted to ABA-approved law schools declined by over 41% and the number of applicants was down more than 36%. The downward trend has not yet reversed and schools are scrambling to address the resulting decline in tuition. One strategy pursued by law schools is to develop new prospective applicant populations, of which international students comprise an

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8 Mark C. Suchman & Elizabeth Mertz, Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism, 6 L. SOC. SCI. (ANNUAL REPORT) 555, 560 (2010), available at http://www.annualreviews.org/doi/pdf/10.1146/annurev.lawsocsci.093008.131617; see also id. at 561 (quoting Stuart Macaulay) (“NLR embraces a ground-level up perspective that draws attention to the effect of law on the everyday lives of ordinary people—in addition to the experiences of elites and professionals . . . .”); DAVID HOWARTH, LAW AS ENGINEERING: THINKING ABOUT WHAT LAWYERS DO 167 (2013) (describing NLR as “an attempt to reconnect legal research with empirical social science research but in a way that retains a place for doctrine to be studied in its own right and an awareness that translating the social sciences into legal categories is far from straightforward.”).

9 See, e.g., Ethan Bronner, Law Schools’ Applications Fall as Costs Rise and Jobs Are Cut, N.Y. TIMES, Jan. 31, 2013, at A1, available at 2013 WLN 2409883, http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html (“In 2004 there were 100,000 applicants to law schools; this year there are likely to be 54,000. Such startling numbers have plunged law school administrations into soul-searching debate about the future of legal education and the profession over all.”).

10 From Fall 2010 to Fall 2014, the number of ABA law school applicants declined from 87,900 to 55,700 (36.63%). End of Year Summary: ABA (Applicants, Applications & Admissions), LSATS, Credential Assembly Service, LSAC, http://lsac.org/lsaresources/data/lsac-volumesummary (last visited Mar. 28, 2015). In the same time frame, the number of ABA law school applications declined from 604,300 to 355,100 (41.24%). Id.

11 Other strategies to the downturn in applicants and applications include downsizing
important segment. At certain schools, this takes shape in the expansion of existing graduate programs for international law graduates; development of new non-JD programs that aim at applicants who have never studied law also is being undertaken. At other schools, the focus is on adding international applicants to the JD applicant pool; this may come through direct applications or through applications to transfer. Gaining a more nuanced understanding of the shift from domestic to international students in the SJD population described by Hupper may provide insight that will benefit law schools today as they adjust to new populations and paths of students that fill in for declining enrollment of JD students.

In Educational Ambivalence, Hupper explains that shift as almost happenstance, the result not of intentional direction by the law schools but rather emanating from a void of sorts. She describes the scenario that existed approximately fifty years ago, when

the doctorate was falling out of favor with U.S.-trained students, leaving a vacuum into which international students [who already were in the U.S. for the master’s level LLM degree] could move.

generally by admitting smaller entering classes. Certain law schools apparently add back students in the second year through admission of transfer students, which allows the school to regain tuition dollars and avoid implicating U.S. News ranking, since transfer student qualifications are not counted in rankings. At certain schools, international students account for a portion of the transfer students. Other schools eschew large transfer classes in favor of other accommodations to the new competitive environment; this might take the form of admitting applicants with somewhat lower incoming credentials than in the pre-2008 period. Public law schools also have considered the balance of resident and non-resident applicants and the tuition repercussions of altering this mix. Reducing costs also figures into the solution; see Elizabeth Olson, Law School Is Buyers’ Market, with Top Students in Demand. N.Y. TIMES, Dec. 1, 2014, at B5, available at http://dealbook.nytimes.com/2014/12/01/law-school-becomes-buyers-market-as-competition-for-best-students-increases/?_r=0.


14 Students who might be considered “international” may have very different backgrounds and include those who earned their undergraduate degree outside of the United States, whether or not in law, as well as those who earned their undergraduate degree in the United States but are not U.S. citizens and attended some substantial portion of their pre-college education outside of the United States. See Carole Silver, Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S., 24 STAN. L. & POL’Y REV. 457, 491–94 (2013).
In a process fueled as much by inertia as by any conscious institutional decision, the doctorate slowly became a degree pursued by foreign-trained students.”

Hupper takes pains to explain that there was no evidence in the archival material of an affirmative decision by the schools to shift gears regarding the domestic-to-international-student transition. Rather, she emphasizes that what occurred was “permissive [in] nature . . . : there was never an institutional commitment to foreign doctoral students in the way that there had once been a commitment to U.S. doctoral students.”

Other evidence Hupper sets out belies this inadvertent vacuum theory, however. For example, the schools took steps to accommodate international students by changing certain policies that would have prevented them from successfully applying to and pursuing the SJD. Included in these policy changes was one school’s decision to:

soften[] its otherwise stringent standards for the degree. For example, . . . admission to the SJD was conditioned on the student's having earned the LLM with a particular grade average. There is some evidence, however, that foreign students who fell short of the mark would have the opportunity to “improve” their grade averages by doing additional coursework after the LLM year.

Schools also offered “additional time in residence” to enable international students to complete their work. Financial support also was available to international SJDs from at least some of the schools. Together, these policy shifts indicate something more than coincidence and unintentionality.

According to Herbert Kritzer, writing about the growth in law schools over approximately the last thirty years:

Universities are driven by a variety of incentives, two of which are revenue and prestige. These two incentives will tend to work in opposite directions: the former tends to push for greater numbers while the latter pushes for restriction in numbers . . . The educational institutions represent the supply side of the production of producers. However, that is only half of the equation. The other half is the demand side: students seeking legal education. Students can have a range of motivations: potential income, social status, the prospect of interesting and satisfying work, and/or service to a community or an ideology.

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15 Hupper, supra note 4, at 331.
16 Id. at 428.
17 Id. at 425 (describing Harvard).
18 See id. at 440.
19 See id. at 419–20.
The decision over whether to seek a legal education will depend on the strength of those motivations, the perceived likelihood of succeeding with regard to the motivation, and the costs of obtaining the education.\textsuperscript{20}

Using Kritzer’s framework as the basis for investigating the shift from U.S. to international law graduates comprising the mainstay of SJD students illuminates the ways in which the SJD figured into the competition for prestige and revenue of the organizations and actors who shaped and were shaped by the shift. This includes the law schools investigated by Hupper, but taking a wider lens both with regard to law schools and other actors is helpful. Faculty who supervised SJDs also might be consulted since they were in a position to motivate and inform their law schools’ attitudes and decisions. The incentives of both domestic and international students also is important and part of the “demand side” that Kritzer describes. Additional actors relevant to a more comprehensive view include funding agencies (particularly those supporting overseas study for international students) and prospective employers of the SJD students. To help situate this discussion, it is useful to keep in mind that the SJD is one part of the arsenal available to law schools. How it factors into their competition for power and influence will tell much about its evolution.\textsuperscript{21}

How might additional exploration of the incentives of law schools and their faculty (which may, of course, not overlap completely) be pursued?\textsuperscript{22}

\textsuperscript{20} Herbert M. Kritzer, \textit{It’s the Law Schools Stupid! Explaining the Continuing Increase in the Number of Lawyers}, 19 INT’L J. LEGAL PROF. 209, 210 (2012) (references omitted).

\textsuperscript{21} See ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 23 (1988) (noting in order to understand organizational change, it is useful to “treat the problem . . . [as one] of organizational dominance, both in terms of the organization’s ability to reproduce itself economically and in terms of the ability of the leaders of the firm to exercise their authority.”); Bryant G. Garth, \textit{Notes Toward an Understanding of the U.S. Market in Foreign LL.M. Students: From the British Empire and the Inns of Court to the U.S. LL.M.}, 22 IND. J. GLOBAL LEGAL STUD. 67, 72 (2015) (describing a shift in influence towards U.S. legal education that corresponded with “The rise of U.S. style corporate law,” among other factors).

\textsuperscript{22} Hupper explores certain faculty incentives. As she notes, the 1960s, when the shift from mostly domestic to mostly international students occurred, also was the height of the first law and development movement, which brought new opportunities for individual law faculty to develop and exert their authority. See Hupper, supra note 4, at 322–24. The link to the SJD was direct; at the University of Wisconsin, for example, Hupper explains that “[m]ost of the faculty members who supervised one or more S.J.D. dissertations had taught abroad, and the candidates that they supervised tended to originate from the areas in which the individual faculty members had taught.” \textit{Id.} at 438 n.380. These students could both introduce faculty to the local landscape, enabling them to conduct research, as well as serve valuable roles in the relationships they developed with local actors. See \textit{id.} at 402-03. Hupper notes, for example, that “foreign students . . . supported the work of individual faculty members at Columbia, Harvard, [Michigan] and other schools.” \textit{Id.} at 402. Indeed,
One possibility is to examine the interests at issue in developing and pursuing competitive opportunities to the SJD, that is, alternative paths purporting to lead to the same end. In the following paragraphs, I highlight several research studies that address these considerations.

Hupper describes the SJD as serving initially as a mechanism for producing faculty for a growing group of law schools. In that context, the SJD provided a process for aspiring law professors to become familiar with the work of existing faculty, and in turn, for existing faculty to promote their own approach to law through their students, who then were sent into the world as promoters of ideals served by their mentors' research agendas. But the SJD was not the only strategy for aspiring academics, and by considering competing approaches it is possible to understand more about the boundaries of various opportunities. One strategy, for example, occupied both a competitive and synergistic relationship to the SJD as described by Nelson, Rishikof, Messinger, and Jo (NRMJ), who present their research as the “first comprehensive empirical study of the post-clerkship employment of Supreme Court clerks . . .” NRMJ “assembled international SJDs’ pursuit of advanced study in the U.S. was written into certain grants. See id. at 419–20. See generally David M. Trubek, The “Rule of Law” in Development Assistance: Past, Present, and Future (draft 2003), available at https://media.law.wisc.edu/s/c_8/mg3md/ruleoflaw.pdf (“[A] small band of liberal lawyers working in development agencies, foundations and universities in the US and Europe. They sought to interest development agencies in the importance of legal reform.”); Garth, supra note 21, at 71–72

The United States extends its influence and hegemony more from the export of its governing expertise—law but also economics in particular—as universal and modern . . . [which included efforts also] to export the U.S. approach to legal education, but the efforts were not [very] successful—at least in the short term. (footnote omitted); John H. Merryman, Comparative Law and Social Change: on the Origins, Style, Decline & Revival of the Law and Development Movement, 25 AM. J. COMP. L. 457, 457–58 (1977) “Law and development” began to emerge as a potential new field of scholarship in the 1960s. . . . Conferences were held. Articles were written. There was a good deal of travel both ways between the U.S. and the Third World, particularly Latin America and Africa. It was all rather heady and glamorous. (footnotes omitted).

23 See Hupper, supra note 4, at 366

[T]he major benefits of graduate work in a top school to a prospective or incumbent teacher. . . . included the educational experience, which most people describe in terms of the year in residence; the credential, in the form of a degree; and finally, for people who were not already teaching, help in getting a teaching job.

24 See William E. Nelson et al., The Liberal Tradition of the Supreme Court Clerkship: Its Rise,
data on the careers of over 90% of the clerks who served between October Term . . . 1882 and 2006.”\textsuperscript{25} They found an iterative relationship between the academy and the Court, both in preparing students for faculty positions and in their scholarship, which they describe as “an ongoing scholarly conversation with the Court.”\textsuperscript{26} The description of Felix Frankfurter’s approach epitomizes this practice. While a member of the academy, Frankfurter:

worked closely . . . with a number of S.J.D. students who assisted him in his scholarship; the best of them went on to become Justice Brandeis’s clerks. No wonder many of those clerks later went on to become professors: Frankfurter had launched them on that track upon graduation and had sent them on to Brandeis only after they had achieved some initial success as academic researchers.\textsuperscript{27}

This led to a self-reinforcing cycle for Frankfurter of promoting students while also promoting his own agenda and reputation. Upon his retirement in 1962, “the pattern that he and Justice Brandeis had established had become sufficiently institutionalized that it remained in place. Of the 827 clerks who served at the Court during the three decades from 1960 to 1989, information is available on 786; of these, 244, or 31.1%, became professors.”\textsuperscript{28}

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\textsuperscript{25} Id. at 1753 (footnote omitted).

\textsuperscript{26} Id. at 1798 (explaining that, until approximately the 1960s Harvard Law School sent its best graduates to the Court, thereby insuring the Justices ongoing access to the nation’s top legal talent, and the Court reciprocated by sending some of the strongest clerks back to Harvard, thereby revitalizing and strengthening its faculty. Once at Harvard, former clerks engaged in an ongoing scholarly conversation with the Court.

\textsuperscript{27} Id. at 1762–63.

In short, Professor Frankfurter in the 1920s had made himself into a mentor who used Justice Brandeis as much as Justice Brandeis used him, creating a cadre of future leading legal academics to propagate his legal vision. Needless to say, Felix Frankfurter did not alter his agenda when he ascended the bench. He continued to mentor law clerks to become professors who would advance his jurisprudential views just as he had mentored his best students in the past. In all, eighteen of Justice Frankfurter’s thirty-seven law clerks for whom information exists became academics—that is, 48.6 percent—while fourteen, or 37.8 percent, spent some part of their working careers in government service. Four, or 10.8 percent, made their careers there.

\textsuperscript{28} Id. at 1763.

\textsuperscript{29} Id. at 1764.
NRMJ’s research indicates that clerkships became an important element in a law school’s strategy for obtaining influential positions for their students; as such, clerkships constituted significant competition for the SJD. At the same time, however, the clerkship experience interacted with the SJD in certain circumstances, each building on the other as a strategy for gaining access.

Unlike the SJD, the power of clerkships was enduring with regard to serving as an element in the career development for prospective faculty. A recent study of the market for new law faculty conducted by Tracey George and Albert Yoon identified the current importance of clerkships. George and Yoon gathered survey data on the experiences and backgrounds of approximately 475 aspiring law professors who were on the market in 2007–2008. They found that “[a] judicial clerkship improves the probability of being hired by roughly 9–19% [(although] the effect diminishes sharply once controls are added for rank of law school attended).”

More important than clerkships according to George and Yoon is the influence of the reputation of the law school where candidates earned their JD. They explained that “[o]ne factor looms large after the initial screening interview stage: where the candidate attended law school. Even controlling for other factors, graduates of top-50 law schools, and especially of Yale, Harvard, or Stanford, are much more likely than other candidates to receive call-back interviews and job offers.” Reputation today is complicated by the U.S. News rankings, which published its first law school ranking only in 1990. Much has been written about the influence of U.S. News on the conduct of U.S. law schools, and it is not surprising that this hyper-sensitivity also shapes schools’ hiring decisions.

More recently another factor has emerged as significant for aspiring law faculty—training in a discipline other than law as indicated by a PhD. According to George and Yoon, “[a] doctorate in the social sciences or STEM . . . significantly increases the odds of any offer coming from a higher ranked school.” NRMJ also identified a PhD in one of the social sciences.

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30 Id. at 32.

31 Id. at 7.


33 See id. at 587–88.

34 Id. at 588.

35 George & Yoon, supra note 29, at 6.
sciences as notable, particularly with regard to explaining the scholarly direction of law faculty today.\(^{36}\)

This research suggests that the value of legal education—even when earned at an elite law school—is significantly enhanced for purposes of the hiring market for law faculty when combined with training in a social science discipline.\(^{37}\) It is in this context that Yale’s announcement of its PhD in Law makes sense as an effort to reassert the significance of legal education, law, and Yale into faculty hiring. Yale’s description of the program takes quite explicit aim at this competition. Under a heading, “Is a Ph.D. in Law Right for Me?,” Yale explains:

If you are trying to decide between the Ph.D. in Law and a Ph.D. in another discipline, many of the same considerations come into play. Also keep in mind that Ph.D. programs in economics, political science, history and other fields train scholars to produce research responsive to the questions central to those disciplines. The scholarship produced by law faculties, and expected of candidates for teaching positions at law schools, is largely motivated by different sets of questions. While many students are able to apply their training in other disciplines to the study of law, a significant advantage of the Ph.D. in Law is that it is designed specifically to prepare students for careers in legal scholarship, rather than scholarship in another field. We should also stress that the Ph.D. in Law program welcomes applications from candidates with interdisciplinary research interests and it will be possible to receive significant advanced training in other disciplines as part of the Ph.D. in Law program.\(^{38}\)

This description situates Yale’s PhD in Law as an attempt to recapture influence in the production of law faculty.

The research briefly described above offers additional insight into why the law schools Hupper studied might have turned their attention from the SJD in favor of other experiences and credentials that would situate their graduates for gaining law school faculty and similarly influential positions. At the same time, it also explains why domestic students were less interested in pursuing the SJD, since their goals were better served by taking alternative paths that exposed them to influential actors within and

\(^{36}\) Nelson et al., supra note 24, at 1801 (explaining that “[l]egal scholarship today is generally addressed not to judges but to academics in other disciplines, to a vastly enlarged international community of fellow legal scholars, and on occasion to a highly educated lay public.”).

\(^{37}\) Likely the PhD in a social science field also is accompanied by strong networking relationships that ease the path to a faculty position as well as provide a ready audience for the author’s work.

outside of the academy. The SJD lost power relative to competing opportunities—but what is influential is not static.

II. Globalization’s Influence

Globalization also had a role in the story of the changing appeal of the SJD, as it does today. In order to be relevant in the current context of legal education—not to mention higher education generally—a law school must have a credible claim to being connected to the global environment. In earlier work, I found that:

[t]he “production of” lawyers is no longer simply a national enterprise. Rather, there is a growing market for legal services that reaches beyond national boundaries. Inherent in this market is intense competition over claims to being the legitimate producer of those credentials and experiences necessarily characteristic of “global lawyers.” U.S. law schools have invested significantly in this competition . . .

Global forces also were at play when the SJD student population transition occurred. Hupper explained that law schools’ enthusiasm for international students in the SJD context took shape in the post-war era, when at least one law school had an appetite to create a “‘world school of law’ that would train U.S. and foreign students together.” Harvard hoped its international students would occupy the same sorts of “positions of influence and power” overseas as its domestic graduates occupied in the United States. A similar sentiment resonates today. Law schools in the United States and overseas attempt to extend their spheres of influence outside of their home countries through the addition of international students, faculty exchanges, overseas teaching programs, and more. Pursuit of this influence is entirely consistent with welcoming international students into the SJD program, both now and in the post-war period.

But to understand the shift in student population that characterized the SJD we also must explore what initially drew international students to the SJD programs and to U.S. law schools generally. As Kritzer notes, students might seek legal education as a path to “potential income, social status, the prospect of interesting and satisfying work, and/or service to a community or an ideology.” Generally, the value of education relates to its “impact on

40 Hupper, supra note 4, at 403.
42 Kritzer, supra note 20, at 210.
[students’] knowledge and skills” and its role as a signaling device. Both of these likely are important in explaining why international students pursued the SJD.

My research on international LLM graduates confirms that both aspects of professional capital are in play, and that formal learning related to U.S. law is only one of several motivations explaining the appeal of U.S. legal education for international students. No doubt there are differences between the aspirations of international students who pursue an LLM and those who pursue the SJD, but there also is cross-over between the two groups, and indeed it is quite common for SJD students to earn an LLM prior to embarking on the SJD. In fact, certain law schools today use the opportunity to pursue an SJD as a mechanism for attracting LLM applicants and a means of competition with law schools that do not offer the opportunity of an advanced degree and its related longer time frame in the United States. Insight from the LLM group also may be relevant for considering why international students found, and continue to find, the SJD appealing.

Using a combination of survey and interview methods, I investigated the role of U.S. legal education in the careers of international students who earned an LLM in the United States in the late 1990s and early 2000s. Survey results identified the most common reason for pursuing the LLM as the expansion of professional opportunities in the student’s home country. Figure 1 reports on the relative importance of various motivations for LLM study.

44 Id. at 2; see also Silver, supra note 3, at 6.
45 The LLM is a master’s level degree. See CAROLE SILVER, AGENTS OF GLOBALIZATION IN LAW: PHASE 1, 2009 LSAC RES. REP. SERIES 1, 1; Carole Silver, Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers, 14 CARDOZO J. INT’L & COMP. L. 143, 143 (2006); Carole Silver, States Side Story: Career Paths of International LL.M. Students, or ‘I Like to be in America’, 80 FORDHAM L. REV. 2383, 2385 (2012) [hereinafter States Side Story]; Carole Silver, The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession, 25 FORDHAM INT’L J. 1039, 1039 (2002); Silver, supra note 3, at 6; Silver, supra note 14, at 463.
46 This practice of keeping an active SJD program in order to support interest in the LLM program, described to me by the admissions committee at one U.S. law school, also can be interpreted as a signal to prospective students that the school invests in its international students through the commitment of its faculty. See Silver, supra note 14, at 491.
47 See generally Garth, supra note 21 (explaining his research “on career trajectories as the basis for understanding the structure of national legal fields and how they are changing”).
Follow-up interviews fleshed out some of the variety of meanings this held for respondents and illustrated that what is valued by one student may vary from what another finds significant. Differences relate in large part to the home country framework for interpretation of value. For example, one graduate described his goal of achieving the same knowledge and status as some of the more senior attorneys working in some of the big law firms in Buenos Aires. And all of them had one thing in common: they all had done an LLM in the States and most of them had also worked for... an associates program...[at a] big New York law firm.... There was some kind of myth around it. I attributed the difference in skills and knowledge and experience and everything else to their experience in the U.S. Today I realize there was much more to it, but that was the biggest, I still believe it was a big component.

Another graduate was intent on acquiring a U.S. law license because home-country regulatory hurdles prevented her from achieving a particular status with her U.S.-based employer, and admission in a U.S. jurisdiction (which required an LLM) offered an alternative path to recognition. Others were motivated by a desire to learn about a particular subject matter such as regulating insider trading, or a theoretical approach

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48 Silver, supra note 3, at 6.
49 Interview # 22, U.S., 2007 (on file with author). Interviews (cited by number to preserve confidentiality) were conducted with international LLM graduates, including survey respondents.
such as law and economics, that was uniquely identified with U.S. legal education.\textsuperscript{50} Interest in perfecting language ability often was related to serving international, English-speaking clients or interacting with lawyers when English was the only common language.\textsuperscript{51} Many interviewees described their hope of remaining in the U.S. for some period following the LLM, whether for personal or professional reasons or both, which is relevant to the SJD because it serves to extend the period of a student’s residency in the United States.\textsuperscript{52} Certain international students were attracted to the United States to avoid their home-country education and licensing regime for lawyers, particularly where that system rendered unpredictable whether a student would be successful in navigating the path to a legal career.\textsuperscript{53} Finally, my research suggests that students’ decisions and motivations might vary substantially based on the reputation of the U.S. law school to which they gain admission. The fact that Hupper’s research was limited to a group of seven law schools comprised nearly entirely of elite schools complicates the inferences that can be drawn about students’ analysis of competing opportunities.

Research on international higher education supports the notion of overseas education as an important signaling device, but the signal is not limited to the international aspect of the experience. According to Rachel Brooks and Johanna Waters, studying in another country is, for certain students, simply a “second chance” for those who fail “to secure access to an elite [domestic] institution.”\textsuperscript{54} Brooks and Waters studied students in England who were contemplating or had returned from earning a degree overseas. They found that home-country opportunities play an important role in determining motivations for overseas study. In addition to the second chance motivation, Brooks and Waters found that students’ decisions to pursue an overseas education were often inextricably bound up with, for example, family connections abroad, a desire to secure permanent residency in another country and/or, previous experiences of travel. However, a significant majority of

\textsuperscript{50} Respondent #13, (“Enrich my legal studies, experience a U.S. law school, work and research in one of the world best law library and learn about Socratic method.”); Respondent #18 (“I was interested in studying civil procedure and judicial system of the U.S.”). “Respondent” indicates information provided by a respondent to the survey.

\textsuperscript{51} More men than women indicated language improvement as one of their motivations for pursuing the LLM (56\% for men compared to 41\% for women).

\textsuperscript{52} Silver, States Side Story, supra note 45, at 2429.


[their] respondents were also strongly motivated by the desire to gain entry to an elite higher education institution and, for a considerable number, this appeared to be a key factor in their decision-making.55

The same point relates to the motivations of international students pursuing U.S. legal education. While U.S. law schools portray themselves as educating international students about substantive law,56 the students value other aspects of the opportunity to study in the U.S. as much as the formal educational objectives identified by the schools.

Despite accepting increasing numbers of international students, particularly into LLM programs, many (if not most) U.S. law schools remain substantially domestically-focused. This is the case regarding their teaching, curricula, and the proportion of international students enrolled in the JD program, which comprise law schools’ principal focus.

This U.S.-centricity of legal education stands in contrast to the focus of other graduate programs, including business schools, where international students have reached a level of representation that suggests they may be more thoroughly integrated into their respective non-law student bodies.57

Figure 2 compares the proportion of international students enrolled in the JD and MBA programs at a set of twenty-six schools, taken from among the highest-ranking schools for each degree according to U.S. News.58 It is clear

55 See id.

The LL.M. Program is a one-year, full-time program beginning in the fall semester. It is an opportunity for our students to specialize in fields not fully covered in their previous law work; to broaden their knowledge of their current field of practice; or to explore new areas of interest in legal practice.

Traditional LLM, N.Y.U. L., http://www.law.nyu.edu/llmjsd/traditionalllm (last visited Mar. 13, 2015) (“The traditional LLM degree is designed for students who wish to take full advantage of NYU’s extraordinarily wide range of course offerings and the diverse research interests of our faculty.”).


58 See Appendix A for more information about the schools included in Figure 2 and the
that law schools are lagging behind; at the same time, however, these numbers reflect only students enrolled in JD programs and omit international students in other law school degree programs.59

Figure 2: Proportion of international students in JD and MBA programs

This comparison certainly would look different if international students enrolled in graduate law programs (such as the LLM and SJD) were included.60 But if international graduate students were included in Figure 2, it also might suggest a degree of unification and cohesion among international and domestic law student populations that is contrary to research findings. Research investigating the relationships between international graduate law students and the generally domestic JD population enrolled in U.S. law schools found limited interaction.61

methodology behind the comparison.

59 Degree programs other than the JD are not counted for this purpose since the data was drawn from law schools’ reports filed with the American Bar Association and relate only to their JD programs.

60 However, the precise contours of such a comparison remain elusive due to an absence of data on the number of international students in such graduate programs. See Ethan Michelson, Immigrant Lawyers and the Changing Face of the U.S. Legal Profession, 22 IND. J. GLOBAL LEGAL STUD. 105, 106, 108 (2015); Silver, AGENTS OF GLOBALIZATION IN LAW: PHASE I, supra note 45, at 3; Silver, States Side Story, supra note 45, at 2387–88.


One LLM graduate explained, “This is one of the sad things about the [LLM] program. I met lots of LLMs from many countries, but not enough
Occupying different degree programs likely partly explains the segregation of these groups, but as a general matter law schools have not successfully delivered to their JD students a message about the importance and advantages of integrating with international students. Nevertheless, a prospective international law student’s decision regarding which degree program to pursue involves a complex set of factors, including licensing considerations, financial consequences of a three versus one-year program, comfort with English, and the relative importance of interacting with U.S. students or with other international students.

For prospective SJD students, the considerations shaping their decision of where to pursue advanced study likely take shape along similar lines to the factors outlined above. Not only must students contemplate their

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JDs.” Another reported that she was able to make some friends of JD students, but “[m]ost of my JD friends were transfer students, who also felt excluded.” A third LLM graduate expressed her frustration more starkly: “The JDs have such an ambivalent attitude towards the LLMs, you know, it’s like, as far as they’re concerned, it’s like this new class of colored people come every year and then leave.”

SILVER, AGENTS OF GLOBALIZATION IN LAW: PHASE 1, supra note 45, at 10; Silver, supra note 14, at 487. Nor is this problem limited to law students or to the experience of international students enrolled in U.S. colleges and universities. See Silver, supra note 14.


choices for which law school and which degree program to pursue, but as Brooks and Waters indicate they also must consider whether a better alternative is available at home. This may relate to the particular substantive field they wish to study, as my research indicated was the case for certain LLM students. But in addition, financial and personal factors also often play a role in shaping decisions. Hupper recounts the financial support available from law school and external funding sources as important, and these sources largely have disintegrated in recent years. Law schools instead choose to allocate resources to students in the JD program, whose presence is reflected in the U.S. News rankings.

CONCLUSION

My goal in this Comment has been to consider what lessons might be learned from an NLR approach to understanding the incentives motivating the shift from domestic to international students in the SJD programs Hupper describes. Broadening the framework of analysis allows consideration of the competing factions and opportunities that contextualize the SJD. Drawing on empirical research offers a way to attack the question of shift from a variety of perspectives, each of which brings a slightly different explanation than that available from relying on a single lens emanating from the law schools. In the same vein, situating Yale’s new PhD in Law in the context of the complex set of interests and incentives shaping legal (and higher) education helps us understand Yale’s investment as well as that of its students. But much is left for future scholars to consider, and Hupper’s work provides a rich foundation for moving ahead.

Appendix A

The schools offering MBA programs included in Figure 2 are the following:66

<table>
<thead>
<tr>
<th>MBA school</th>
<th>U.S. News rank</th>
<th>% of students identified as international or as from outside of the US67</th>
</tr>
</thead>
</table>

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### Perspectives on International Students

<table>
<thead>
<tr>
<th>University</th>
<th>Admissions/Students</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harvard</td>
<td>1 (tie)</td>
<td>35%</td>
</tr>
<tr>
<td>Stanford</td>
<td>1 (tie)</td>
<td>44%</td>
</tr>
<tr>
<td>University of Pennsylvania</td>
<td>1 (tie)</td>
<td>31%</td>
</tr>
<tr>
<td>Wharton School</td>
<td></td>
<td></td>
</tr>
<tr>
<td>University of Chicago</td>
<td>4</td>
<td>36%</td>
</tr>
<tr>
<td>MIT Sloan</td>
<td>5</td>
<td>40%</td>
</tr>
<tr>
<td>Northwestern</td>
<td>6</td>
<td>36%</td>
</tr>
<tr>
<td>UC Berkeley</td>
<td>7</td>
<td>43%</td>
</tr>
<tr>
<td>Columbia</td>
<td>8</td>
<td>41%</td>
</tr>
<tr>
<td>Dartmouth</td>
<td>9</td>
<td>35%</td>
</tr>
<tr>
<td>NYU</td>
<td>10</td>
<td>38%</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>University of Michigan</th>
<th>11 (tie)</th>
<th>34%</th>
</tr>
</thead>
<tbody>
<tr>
<td>University of Virginia</td>
<td>11 (tie)</td>
<td>36%</td>
</tr>
<tr>
<td>Yale</td>
<td>13</td>
<td>39%</td>
</tr>
<tr>
<td>Duke</td>
<td>14</td>
<td>36%</td>
</tr>
<tr>
<td>University of Texas at Austin</td>
<td>15</td>
<td>24%</td>
</tr>
<tr>
<td>UCLA</td>
<td>16</td>
<td>35%</td>
</tr>
<tr>
<td>Cornell</td>
<td>17</td>
<td>29.6%</td>
</tr>
<tr>
<td>Carnegie Mellon</td>
<td>18</td>
<td>35%</td>
</tr>
<tr>
<td>University of North Carolina</td>
<td>19</td>
<td>36%</td>
</tr>
<tr>
<td>Emory</td>
<td>20</td>
<td>43%</td>
</tr>
</tbody>
</table>


82 Class Profile, Univ. Tex. Austin McCombs Sch. of Bus., http://www.mccombs.utexas.edu/mba/Full-Time/Admissions/Class-Profile (last visited Mar. 13, 2014) (“international” for the full-time class of 2016).


The law schools included in Figure 2 are as follows:\textsuperscript{88}

<table>
<thead>
<tr>
<th>Law School</th>
<th>U.S. News rank</th>
<th>% nonresident alien as reported on 509 report for 2013\textsuperscript{89}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yale</td>
<td>1</td>
<td>5.4%</td>
</tr>
<tr>
<td>Harvard</td>
<td>2</td>
<td>8.8%</td>
</tr>
<tr>
<td>Stanford</td>
<td>3</td>
<td>2.6%</td>
</tr>
<tr>
<td>Columbia</td>
<td>4 (tie)</td>
<td>11.8%</td>
</tr>
<tr>
<td>University of Chicago</td>
<td>4 (tie)</td>
<td>4.4%</td>
</tr>
<tr>
<td>NYU</td>
<td>6</td>
<td>4.9%</td>
</tr>
<tr>
<td>University of Pennsylvania</td>
<td>7</td>
<td>3.1%</td>
</tr>
<tr>
<td>University of Virginia</td>
<td>8</td>
<td>1.3%</td>
</tr>
<tr>
<td>UC Berkeley</td>
<td>9</td>
<td>2%</td>
</tr>
<tr>
<td>Duke</td>
<td>10 (tie)</td>
<td>5.1%</td>
</tr>
<tr>
<td>University of Michigan</td>
<td>10 (tie)</td>
<td>3.1%</td>
</tr>
<tr>
<td>Northwestern</td>
<td>12</td>
<td>8.1%</td>
</tr>
<tr>
<td>Cornell</td>
<td>13 (tie)</td>
<td>10.9%</td>
</tr>
<tr>
<td>Georgetown</td>
<td>13 (tie)</td>
<td>4.1%</td>
</tr>
<tr>
<td>University of Texas at Austin</td>
<td>15</td>
<td>1.8%</td>
</tr>
<tr>
<td>UCLA</td>
<td>16 (tie)</td>
<td>1.6%</td>
</tr>
<tr>
<td>Vanderbilt</td>
<td>16 (tie)</td>
<td>4.1%</td>
</tr>
<tr>
<td>Washington University (St Louis)</td>
<td>18</td>
<td>9.2%</td>
</tr>
<tr>
<td>Emory</td>
<td>19</td>
<td>5.8%</td>
</tr>
<tr>
<td>George Washington University</td>
<td>20 (tie)</td>
<td>3.3%</td>
</tr>
<tr>
<td>University of Minnesota</td>
<td>20 (tie)</td>
<td>9.5%</td>
</tr>
<tr>
<td>USC</td>
<td>20 (tie)</td>
<td>2.3%</td>
</tr>
<tr>
<td>University of North Carolina</td>
<td>31</td>
<td>0.1%</td>
</tr>
</tbody>
</table>

\textsuperscript{88} The information on international students enrolled in law school was compiled from the Standard 509 information reports available through ABA Section of Legal Education and Admissions to the Bar, Standard 509 Information Reports, AM. BAR ASS’N, http://www.abarequireddisclosures.org/ (last visited Mar. 13, 2014), for each of the individual identified schools. The relevant information is reported as the percentage of total JD enrollment for “nonresident alien” students (see table titled “JD Enrollment and Ethnicity”). Id.

\textsuperscript{89}