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# Cross-Border Student Flows and the Construction of International Law as a Transnational Legal Field

By Anthea Roberts<sup>1</sup>

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How does the global flow of students shape the production and diffusion of knowledge in international law as a transnational legal field? Education plays a crucial role in shaping individuals' approaches and networks (incoming influences) and represents a meaningful form of soft power through which academics in some states are able to diffuse ideas, materials, and approaches across borders (outgoing spheres of influence). However, what are the patterns that reflect, and forces that shape, whether individuals from certain states are likely to cross borders to undertake tertiary studies? And, if they do undertake transnational study, where do they go? And how might these patterns influence the construction of transnational fields, such as international law?<sup>2</sup>

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1. School of Regulation and Global Governance (RegNet), Australian National University (Anthea.Roberts@anu.edu.au). This Article is based on a modified version of Chapter 3 from ANTHEA ROBERTS, *IS INTERNATIONAL LAW INTERNATIONAL?* (2017).

2. When I refer to “international law” and “international lawyers,” I am referring to the field

When asked to reflect on the professional community of international lawyers, Oscar Schachter memorably called it an “invisible college” whose members were “dispersed throughout the world” yet “engaged in a continuous process of communication and collaboration.”<sup>3</sup> Schachter pointed to a number of factors in reaching this conclusion, including the “transnational movement of professors and students.”<sup>4</sup> International lawyers have long been taken with Schachter’s description of their professional community. However, as I argue in *Is International Law International?*, it might be better to understand the transnational field of international law as comprising a “divisible college” of international lawyers marked by patterns of difference and dominance.<sup>5</sup>

International law academics in different states often have distinct profiles based on where they studied, whom they teach, which languages they use, what and where they publish, and how they engage with practice. Rather than a single community, the field consists of separate—though overlapping—communities, often demonstrating distinct approaches, reference points, hierarchies, areas of expertise, and spheres of influence. This Article examines the role of transnational legal education in this process. It considers what implications can be drawn from the existence (or otherwise) of transnational educational experiences of students and academics,<sup>6</sup> with a particular focus on students who cross borders to complete a law degree and the educational backgrounds of international law professors at elite universities in the five permanent members of the United Nations Security Council.<sup>7</sup>

I argue that the patterns that can be observed in these transnational flows reflect and reinforce certain nationalizing, denationalizing, and westernizing influences that characterize the field of international law.<sup>8</sup> When students only study law in their own state, they are more likely to develop a nationalized approach to international law,

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of public international law and to international lawyers who have a specialty in public international law, rather than to lawyers who engage in comparative law or transnational contracting and dispute resolution more generally.

3. Oscar Schachter, *The Invisible College of International Lawyers*, 72 NW. U. L. REV. 217, 217 (1977).

4. *Id.*

5. ROBERTS, *supra* note 1, at 1–2.

6. There can be many experiences that can add to the level of internationalization of students and faculty, including exchange programs at the student level, visiting positions at the faculty level, and work in foreign firms or international organizations. Completing a more holistic account of these influences was beyond the scope of this chapter, though some scholars have attempted it with respect to individual academies like the US legal academy, *see, e.g.*, Ryan Scoville & Milan Markovic, *How Cosmopolitan are International Law Professors?*, 38 MICH. J. INT’L L. 119 (2016), and I tracked some other nationalizing and denationalizing influences in ROBERTS, *supra* note 1, at ch. 3. Although it presents only one piece of a broader puzzle, it is worth focusing on law degrees given that they represent a particularly important and visible socializing process within the professional formation of international lawyers and one that typically occurs at a relatively formative stage of a lawyer’s intellectual development and career.

7. For an explanation of why I chose these states and universities for my book, and how I selected the academics to study from these states, *see* ROBERTS, *supra* note 1, at chs. 1-2 and app. A.

8. For an explanation of these terms, *see* ROBERTS, *supra* note 1, at ch. 2.IV.

though this depends in part on the state in which they study. When students cross borders to study international law, this has a denationalizing effect on them as they are exposed to another national approach to international law, and a different community of international law professors and students. However, because students typically move toward core, Western states, transnational legal education often introduces or reconfirms a western orientation. As many of these students return home to practice or teach after their studies, these movements create pathways for ideas, approaches, and materials to move from core states to periphery and semi-periphery ones.

The asymmetrical movements of students from the periphery and semi-periphery toward the core, and ideas and materials radiating from the core toward the periphery and semi-periphery, play an important role in producing the unequal and divisible colleges of international law. These educational patterns reflect and reinforce some of the hierarchies and inequalities that characterize the international legal field more generally, including the disproportionate power of legal elites in core states to define the “international” in their own image and to transpose their national ideas, materials, and approaches onto the international plane. These patterns of difference and dominance are central to understanding the construction of international law as a transnational legal field and are at odds with the self-image of universality that the field likes to project.<sup>9</sup>

This Article focuses on how these asymmetrical transnational educational dynamics play out with respect to the field of public international law. However, it would be worth others exploring to what extent the same or different patterns appear in other legal and non-legal fields, particularly those that aspire to being global, international, transnational, or comparative, such as transnational corporate law, comparative constitutional law, international relations, world history, and economics.<sup>10</sup> It may well be that the more “international” a field becomes, the more it dollarizes on particular currency,<sup>11</sup> reflecting and reinforcing certain hierarchical relationships that inhibit heterogeneity. These patterns of diversity and difference, and hierarchy and heterogeneity, also create a template for understanding the construction of transnational legal orders.<sup>12</sup>

#### TRANSNATIONAL STUDENT FLOWS

No comprehensive data are available on the transnational flow of law students, let alone on students who cross borders to study international law. But the United

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9. ROBERTS, *supra* note 1, at ch. 1.

10. For instance, it might be that students from semi-periphery civil law states who wish to work in large international law firms would place particular emphasis on studying in the United States, whereas those who wish to enter the legal academy may still privilege studying in a core state that shares the same legal family and/or language as their state of origin.

11. See YVES DEZALAY & BRYANT G. GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES* 44–47 (Univ. of Chi. Press, 2002)

12. See generally *TRANSNATIONAL LEGAL ORDERS* (Terence C. Halliday & Gregory Shaffer eds., 2015).

Nations Educational, Scientific and Cultural Organization (“UNESCO”) has compiled reasonably comprehensive data about cross-border flows of tertiary students in general,<sup>13</sup> along with more specific data about cross-border flows of law students into around thirty-five (mainly European and Organisation for Economic Co-operation and Development (“OECD”)) states.<sup>14</sup> This Section deals with each in turn.

*Cross-Border Flows of Students in General*

Broadly speaking, the global flow of students and ideas to date appears to have been shaped by two asymmetrical dynamics. First, students are more likely to move from peripheral and semiperipheral states toward core states, and from non-Western states to Western ones, than the other way around. The symbolic capital associated with undertaking further legal education differs markedly among states because enhanced status is generally associated with movement toward the core rather than away from it. This means that, when it comes to the transnational movement of students, some states function primarily as host states (“importer states”), while others function predominantly as sender states (“exporter states”). This can be seen in Table 1, which sets out the top ten importer and exporter states.

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13. UNESCO collects data on all “internationally mobile students” who “have [physically] crossed a national or territorial border for the purpose of education and are now enrolled outside their country of origin.” See *Glossary*, UNESCO INST. FOR STAT., <http://uis.unesco.org/en/glossary> (last visited Aug. 17, 2017). Internationally mobile students are a subgroup of “foreign students,” a category that includes all noncitizen students in the country, including those who have permanent residency. *Id.* These data cover only students who pursue a higher education degree or diploma outside their country of origin, excluding students who are under short-term, for-credit study and exchange programs that last less than a full academic year. *Id.*

14. This information was provided by e-mail by Chiao-Ling Chen, UNESCO, but is not available on the UNESCO website.

**Table 1:** Top Ten Importer and Exporter States of International Students

Country	Population (millions) in 2017	Outgoing Int'l Students <sup>15</sup>	Incoming Int'l Students <sup>16</sup>	Top Five Destination Countries <sup>17</sup>	Top Five Source Countries <sup>18</sup>
Australia	25	12,026	294,438	US, New Zealand, UK, Germany, Canada	China, India, Malaysia, Vietnam, Nepal
China	1,385	801,187	123,127	US, Australia, UK, Japan, Canada	No data
France	67	80,635	235,123	Belgium, UK, Canada, Switzerland, Germany	China, Morocco, Algeria, Tunisia, Senegal
Germany	83	116,342	228,756	Austria, Netherlands, UK, Switzerland, US	China, Russia, India, Austria, France
India	1,320	255,030	41,993	US, Australia, UK, New Zealand, Canada	Nepal, Afghanistan, Bhutan, Nigeria, Malaysia
Italy	61	56,712	90,419	UK, Austria, France, Germany, Switzerland	China, Albania, Romania, Iran, Greece

15. See UNESCO INST. FOR STAT., <http://uis.unesco.org/en/> (last visited Nov. 17, 2017). These figures were extracted on Oct. 23, 2017 and are for 2016.

16. *Id.* These figures are for 2015, except UK, France, and Japan (collectively for 2014), and Kazakhstan (2016).

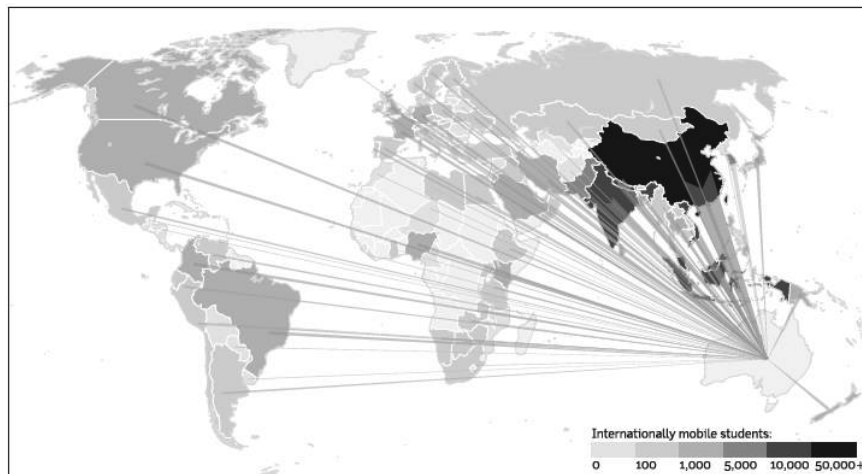
17. These destination states were taken from the summary page for each state UNESCO website on Oct. 23, 2017. The website did not clarify from which year these figures were drawn.

18. *Id.*

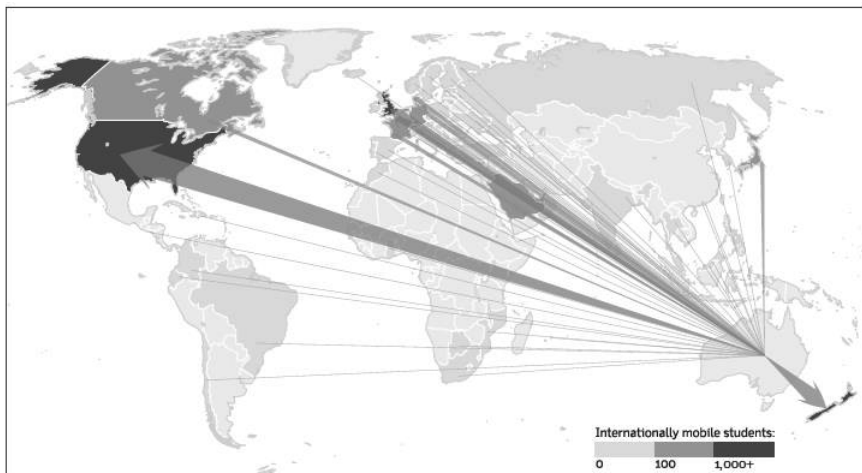
Japan	127	30,179	132,685	US, UK, Germany, Australia, France	China, South Korea, Vietnam, Nepal, Indonesia
Kazakhstan	18	77,965	12,533	Russia, Kyrgyzstan, US, Turkey, UK	Uzbekistan, India, China, Kyrgyzstan, Russia
Korea, Rep.	51	108,047	54,540	US, Japan, Australia, UK, Canada	China, Vietnam, Mongolia, US, Japan
Malaysia	32	64,480	60,244	UK, Australia, US, Egypt, Jordan	Bangladesh, Indonesia, China, Nigeria, Iran
Nigeria	194	75,539	No data	UK, Ghana, US, Malaysia, Ukraine	No data
Russia	147	56,328	226,431	Germany, Czechia, US, UK, France	Kazakhstan, Ukraine, Belarus, Turkmenistan, Uzbekistan
Saudi Arabia	33	86,486	73,077	US, UK, Canada, Australia, Jordan	Yemen, Syrian Arab Republic, Egypt, Palestine, Pakistan
United Kingdom	65	31,078	428,724	US, France, Netherlands, Germany, Australia	China, India, Nigeria, Malaysia, US
United States	326	67,665	907,251	UK, Canada, Grenada, Germany, France	China, India, South Korea, Saudi Arabia, Canada

Australia and South Africa represent good examples of these core/periphery and Western/non-Western dynamics because they are regional educational hubs that evidence a clear disparity between where their students come from (mainly non-Western states) and where their students go (mainly Western states) (*see* Figures 1 to 4 below).<sup>19</sup>

**Figure 1:** Australian Inbound Flow of International Students



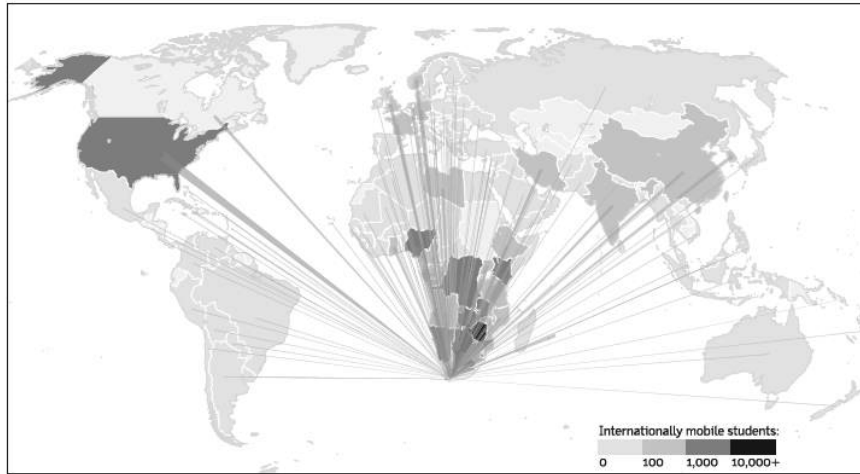
**Figure 2:** Australian Outbound Flow of International Students



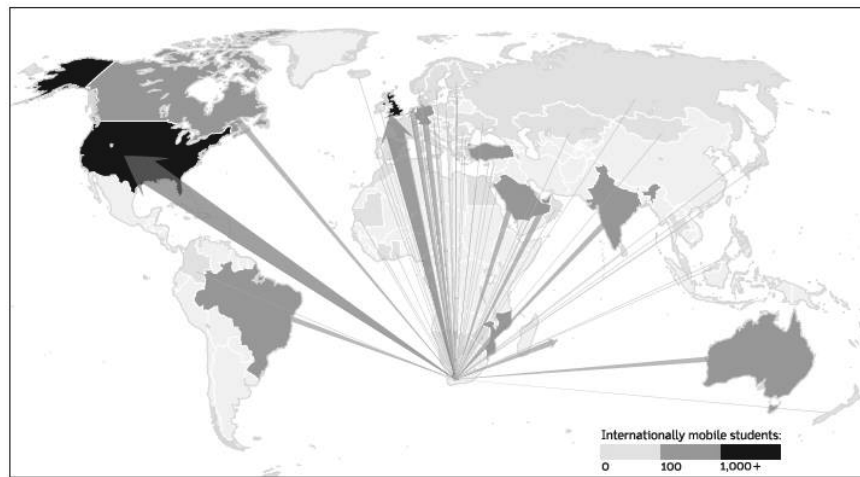
19. All of the figures are taken from ROBERTS, *supra* note 1, and are based on the UNESCO website data.



**Figure 3:** South African Inbound Flow of International Students



**Figure 4:** South African Outbound Flow of International Students



Second, the transnational flow of ideas and materials is asymmetrical in the opposite direction: legal concepts and materials, like textbooks and case law, are more likely to move from core states to peripheral and semi-peripheral ones, and from Western states to non-Western ones, than vice versa. This asymmetrical diffusion results from the hierarchical nature of student-teacher relationships—where diffusion works better from teacher to student, and from student to student, than from student to teacher—and from the tendency of foreign students who study law abroad to return home to teach or practice rather than to stay where they undertook foreign study.

Within these broad patterns, students often move within groupings of states that are bound together by a common language, colonial history, and membership in the

same legal family. The UNESCO data shows the significance of native languages in the global flow of students, whether it be students traveling from Francophone states in Africa and Asia to study in France, or students from Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine, and Uzbekistan choosing to head to Russia. Student flows are often concentrated within legal families and, in particular, along ex-colonial pathways.<sup>20</sup> These influences are evident in regression analyses<sup>21</sup> but they can also be seen in the pattern of attendance of students from Nigeria (a common law, former UK colony) and Mauritania (a civil law, former French colony) (*see* Figures 5 and 6 below).

**Figure 5:** Outbound Flow of International Students from Nigeria



20. For instance, the pattern of students seeking to study in their former colonial master seems to be weaker for many states in South America, such as Brazil and Argentina vis-à-vis Portugal and Spain respectively.

21. On the basis of regression analysis of UNESCO statistics from previous years, Holger Spamann found that more than twice as many students from any state studying abroad select a state of the same legal family rather than a state in a different legal family. When the attraction of host countries was held fixed, students from former colonies were twenty-five times more likely to study in a university of their former colonial power than elsewhere. Holger Spamann, *Contemporary Legal Transplants: Legal Families and the Diffusion of (Corporate) Law*, 2009 BYU L. REV. 1813, 1851 (2009).

**Figure 6:** Outbound Flow of International Students from Mauritania

Despite the influence of native languages and legal families, the educational institutions of core English-speaking states exhibit an especially far-reaching pull. English represents the closest thing to an educational lingua franca. The top three importers of foreign students are English-speaking, common law states (the United States, the United Kingdom, and Australia), and together they host 35% of international students worldwide.<sup>22</sup> Many students from non-English-speaking, non-common-law states study in these states. English-language programs are also becoming more common in non-English speaking states like China, Germany, the Netherlands, and Switzerland, which are seeking to attract foreign students.

Taken together, these trends demonstrate that there are multiple cores and peripheries—an Anglophone core, a Francophone core, a Russophone core, and so forth. Each core state has its own semi-peripheral or peripheral states, though the apex of each core differs in height. France forms an apex for studies within the Francophone world and for students from civil law states. Russia forms an apex for studies within Russophone Eurasian states, though the relationship is changing for states like Ukraine that are reorienting toward the West. All in all, fewer students travel to Russia to study than to France, which in turn is fewer than the number of students traveling to the United Kingdom and the United States to study. This means that there are not just hierarchies within particular core/periphery dynamics, but also among different core states.

However, these patterns are subject to change over time. Changes in the magnitude and orientation of student flows often also track changes in the political and social orientation of sending and receiving states and in the broader geopolitical and economic context. These changes can be illustrated by the student flows, both generally and from particular states, toward the Soviet Union (“USSR”) and Russia in pre- and post-Soviet times.<sup>23</sup> These shifts can also be seen in the relative decline of the

22. *International Student Mobility in Tertiary Education*, UNESCO INST. FOR STAT., data.uis.unesco.org (last visited Oct. 23, 2017).

23. For more details, see ROBERTS, *supra* note 1, at ch. 3.I.

Western dominance of transnational education with the global share of students being taught in the core Western states shrinking significantly over the last few decades at the same time as various regional hubs, like Singapore and South Africa, have increased their market share. UNESCO data shows that North America and Western Europe hosted 63% of the global international students in 1999, while only 55% by 2015. That market share began to increase in other regions, such as East Asia and the Pacific, where it grew from 14% in 1999 to over 20% by 2010, and Eastern Europe where it grew from 7% in 1999 to 12% in 2015.<sup>24</sup> Additionally, the election of President Donald Trump in the United States, with his anti-immigration rhetoric and Muslim travel ban, and the United Kingdom's Brexit vote to leave the European Union ("EU"), have also resulted in dropping foreign student application numbers.<sup>25</sup>

As one example of the movement of key non-Western powers to build up their transnational student numbers, China's government is increasing its funding to elite universities with the aim of moving up the global rankings and attracting five hundred thousand foreign students per year by 2020.<sup>26</sup> Top Chinese law schools are beginning to offer LLM programs in English designed to attract students from around the world.<sup>27</sup> The Chinese government is offering tens of thousands of scholarships to Chinese universities to foreign students, scholars, and diplomats,<sup>28</sup> including a significant number to individuals coming from Africa.<sup>29</sup> These efforts represent an attempt by China to build up its soft power by sensitizing foreign students to Chinese views, customs, and preferences, and to cultivate professional and personal networks that will carry on into the future.<sup>30</sup>

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24. *International Student Mobility in Tertiary Education*, UNESCO INST. FOR STAT., data.uis.unesco.org (last visited Oct. 23, 2017).

25. See Stephanie Saul, *Amid 'Trump Effect' Fear, 40% of Colleges See Dip in Foreign Applicants*, N.Y. TIMES, Mar. 16, 2017; Valerie Strauss, *Why U.S. Colleges and Universities Are Worried About a Drop in International Student Applications*, WASH. POST, July 13, 2017; Katherine Sellgren, *UK University Applications Fall by 4%, UCAS Figures Show*, BBC NEWS, July 13, 2017; Owen Walker and Helen Warrell, *UK University Applications Down for First Time Since 2012*, FINANCIAL TIMES, July 13, 2017; Sally Weale, *UK University Applications from EU Down by 9%, Says UCAS*, GUARDIAN, Oct. 26, 2016.

26. Liu Dong, *Universities to Rival West's in 25 Yrs: Report*, GLOBAL TIMES, Feb. 4, 2010; Li Xing & Chen Jia, *China offers scholarships*, CHINA DAILY, July 22, 2011.

27. For instance, China University of Political Science and Law, Wuhan University, Xiamen University, and Law School of Shanghai Jiao Tong University have all introduced English-language LLM and/or PhD programs, often with a focus on international or Chinese law, which are designed to attract international students. See, e.g., *Curriculum of LLM Program 2016–2017 Spring Semester*, SCH. L., XIAMEN UNIV. (Sept. 30, 2016), <http://law.xmu.edu.cn/en/page/Curriculum>; *LLM in International Law*, CHINA UNIV. POL. SCI. & L., <http://www.lawschoolchina.com/llm> (last visited Dec. 28, 2016); *L.L.M. Program*, KOGUAN L. SCH. SHANGHAI JIAO TONG UNIV., <http://law.sjtu.edu.cn/International/Article120102.aspx> (last updated Nov. 21, 2013); *Popular Programs*, WUHAN UNIV., [http://admission.whu.edu.cn/courses\\_rec.html](http://admission.whu.edu.cn/courses_rec.html) (last visited Dec. 28, 2016).

28. See *Introduction to Chinese Government Scholarships*, CHINA SCHOLARSHIP COUNCIL (Feb. 14, 2017), <http://www.csc.edu.cn/laihua/scholarshipdetailen.aspx?cid=97&id=2070>.

29. DAVID SHAMBAUGH, *CHINA GOES GLOBAL: THE PARTIAL POWER 110* (2014); Stephen Marks, *Introduction*, in *AFRICAN PERSPECTIVES ON CHINA IN AFRICA 2* (Firoze Manji & Stephen Marks eds., 2007).

30. SHAMBAUGH, *supra* note 29, at 241–45; Chen Jia, *Class Act Promotes Global "Soft Power,"* CHINA DAILY, Nov. 11, 2010. Other attempts by China to build its soft power include support for Confucius Institutes in many universities throughout the world. See Peter Mattis, *Reexamining the Confucian Institutes*, DIPLOMAT, Aug. 2, 2012.

*The Globalization of Legal Education*

One cannot assume that the patterns that characterize transnational flows of students in general will necessarily apply to cross-border flows of law students in particular, let alone to those who study international law. Despite the lack of full data about transnational flows of law students, the following may be surmised on the basis of the available information.

First, it would be reasonable to assume that the general data on student flows considerably underestimates the role of native languages and shared legal families in the global flow of law students.<sup>31</sup> Unlike many subjects, such as medicine, economics, finance, engineering, and computer science, law is still very local or national in its orientation or, at a minimum, legal knowledge tends to be very specific to legal families. Success in legal studies also relies strongly on language skills. Thus, we should expect to see multiple core/periphery relationships in legal education based on language and legal families. This suggestion conforms to descriptions of the first two waves of globalization of legal thought which occurred first through colonization and then through legal educational routes following ex-colonial pathways.<sup>32</sup>

Second, it would be reasonable to expect broad movement toward core, English-speaking states, most notably the United States and the United Kingdom, in view of the general importance of these states as educational destinations, the emergence of English as the educational and business global lingua franca, and the dominance of US and UK firms in the market of “global” law firms. Carole Silver has undertaken the most extensive studies on this topic in the United States, primarily focusing on the growing size and significance of US Master of Laws (LLM) programs. More than 110 US law schools now offer LLM programs, which cater almost entirely to foreign students and some schools are finding that their JD programs are beginning to attract higher numbers of foreign students.<sup>33</sup>

UNESCO has collected data on international students studying law in around thirty-five states for the period 2008–12, which are reproduced in Table 2 and followed by a bar chart in figure 7 of the most popular of these states for foreign students studying law. These data are somewhat problematic as not all states record information in the same way.<sup>34</sup> Nonetheless, the limited available data reveal a clear Anglophone core, based primarily on the United Kingdom and the United States, and a Francophone core.

31. Spamann, *supra* note 21, at 1851.

32. See generally Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850–2000*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* 19 (David Trubek & Alvaro Santos eds., 2006).

33. Carole Silver & Swethaa S. Ballakrishnen, *Sticky Floors, Springboards, Stairways & Slow Escalators: Mobility Pathways and Preferences of International Students in U.S. Law Schools*, 3 U.C. IRVINE J. INT'L, TRANSNAT'L, AND COMP. L. 39, 67(2018); Carole Silver, *States Side Story: Career Paths of International LLM Students, or “I Like to Be in America,”* 80 FORDHAM L. REV. 2383, 2404–05 (2012) [hereinafter Silver, *States Side Story*]; Carole Silver, *Internationalizing Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARDOZO J. INT'L & COMP. L. 143 (2006) [hereinafter Silver, *Internationalizing Legal Education*].

34. In particular, some states, like France, reported statistics for “foreign” students studying law (that is, including foreign nationals who are permanent residents), whereas other states, like the United States and the United Kingdom, reported on “international” students (that is, excluding students who are nationals or permanent residents). The number of foreign students is likely to be higher than the number of international students, which skews the statistics in favor of France.

**Table 2:** Foreign and International Students Studying Law in Select States<sup>35</sup>

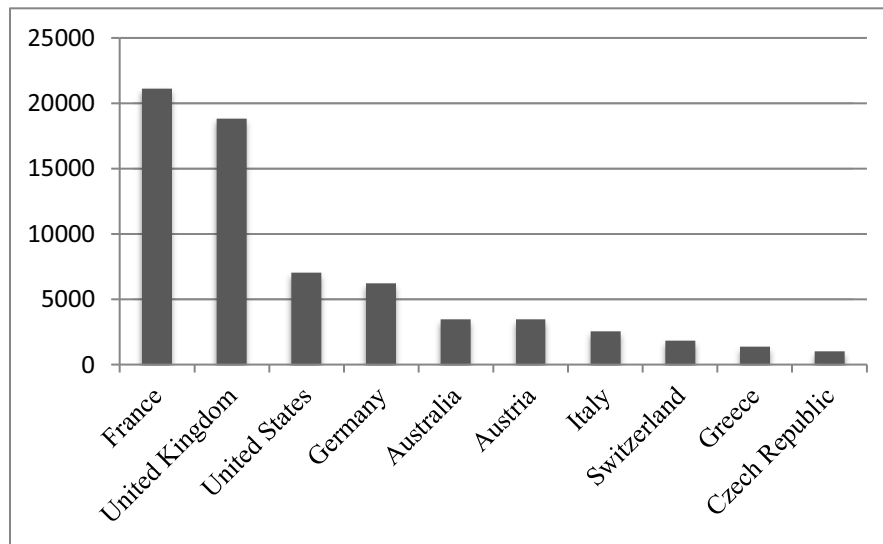
Country	Def'n of Int'l Student <sup>a</sup>	2008	2009	2010	2011	2012	Average
France	F	20,005	20,505	21,300	22,040	21,636	21,097
United Kingdom	N	16,504	18,006	18,961	19,826	20,729	18,805
United States	N	6464	6766	7014	7268	7584	7019
Germany	N	6318	6497	6544	N/A	5615	6243
Australia	N	2979	3418	3704	3606	3628	3467
Austria	N	2770	3184	3952	4090	3286	3456
Italy	F	1811	1538	1133	4088	4238	2561
Switzerland	N	1635	1712	1817	1931	1953	1809
Greece	F	N/A	N/A	N/A	1379	N/A	1379
Czech Republic	F	999	1081	1154	1026	896	1031
Malaysia		N/A	1112	884	705	N/A	900
Portugal	N	787	661	822	N/A	1279	887
Belgium	N	761	390	1081	1030	1048	862
New Zealand	N	998	902	855	768	768	858
Netherlands	N	871	470	743	N/A	N/A	694
Turkey	F	512	496	530	678	934	630
Canada	N	515	546	609	696	N/A	591
Slovak Republic	N	264	432	581	806	816	579
Romania		N/A	N/A	511	488	536	511
Poland	F	N/A	287	N/A	428	433	382
South Korea	F	N/A	N/A	N/A	N/A	380	380
Sweden	N	354	370	358	381	333	359
Lithuania		303	300	310	353	359	325
Norway	N	306	363	282	308	322	316
Hungary	N	284	329	314	314	301	308
Luxembourg		215	N/A	312	N/A	N/A	263
Bulgaria		211	234	231	211	220	221
Chile	N	314	N/A	252	35	61	165
Estonia	N	129	135	133	N/A	148	136
Slovenia	N	32	410	33	38	39	110
Latvia		127	105	81	89	106	101
Denmark	N	28	41	84	99	107	71
Cyprus		8	22	19	38	201	57

35. See ROBERTS, *supra* note 1 (referencing Chiao-Ling Chen, UNESCO (data set) (on file with author)).

Finland	N	50	43	42	42	70	49
Israel		N/A	N/A	33	63	N/A	48
Iceland	N	29	44	51	57	N/A	45
Malta		71	62	N/A	13	12	39

<sup>a</sup> N = nonresident students, F = foreign students. The data cover international students enrolled in full-degree programs. Where the data were not provided, this column is left blank.

**Figure 7:** Foreign and International Students Studying Law in Select States<sup>36</sup>



France and the United Kingdom benefit from two crosscurrents in global student flows. First, both are ex-colonial powers that forcibly exported their legal system and language to numerous states. Thus, more than half of all foreign students studying in France were from Francophone Africa.<sup>37</sup> Although France did not colonize states in Latin America, the civil codes that were exported there by Spain and Portugal were derived from the French and German codes, so students from Latin America often travel to France and Germany for further study (though many are now increasingly turning to the United States and the United Kingdom). Second, both are located in Europe, where cross-border flows of students are notably high because of schemes like the Erasmus program. It remains to be seen how Brexit will change these patterns in the medium to long term, but university applications from Europe to the United Kingdom are already down given factors such as uncertainty over fees and scholarships.<sup>38</sup>

36. *Id.*

37. Jane Marshall, *International mobility of African students – Report*, U. WORLD NEWS, July 6, 2013.

38. Weale, *supra* note 25.

The United States is often assumed to be the leading destination for legal studies, in terms of both numbers and prestige. For instance, Mathilde Cohen has explained that “[t]op students tend to study abroad for their Master’s degrees. Common-law jurisdictions, particularly the United States, are the most popular destination.”<sup>39</sup> “The dominance of US legal education in training legal talent for the global economy is one of the most notable developments in recent decades,” Sida Liu has argued.<sup>40</sup> David Clark supported his assertion that “American legal education . . . has the highest prestige of any legal education in the world” by pointing to the “large number of foreign lawyers who enroll for further education in the United States, more than those who study in any other foreign country.”<sup>41</sup>

US law schools may be the most prestigious according to international rankings, but the UNESCO data indicate that the number of foreign law students studying in the United States (an average of 7,019 per year from 2008 to 2012) is apparently a good deal lower than the average for France (21,097 per year) and the United Kingdom (18,805 per year), and only slightly higher than for Germany (6,243 per year).<sup>42</sup> In the United States, international students studying law make up 1% of the total number of international students, compared with 5% in the United Kingdom and 8% in France. Many factors may contribute to this result, including how selective degree programs are and how much they cost. The number of foreign students US law schools admit will probably increase, including into their JD programs, because of declines in domestic applications.<sup>43</sup> However, on the flipside, foreign student application numbers have also dropped since Trump’s election.<sup>44</sup>

Although law students frequently move toward the core to study, most end up returning home to work.<sup>45</sup> As a result, transnational legal studies do not create as significant a brain drain as is true in some other fields. In the United States, “stay rates” seem to be considerably lower for law than for fields like science and engineering.<sup>46</sup> The number of foreign-educated lawyers taking the New York bar examination has increased, even though only a fraction of these lawyers intend to stay

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39. Mathilde Cohen, *On the Linguistic Design of Multinational Courts: The French Capture*, 14 INT’L J. CONST. L. 498, 508 (2016).

40. Sida Liu, *The Legal Profession as a Social Process: A Theory on Lawyers and Globalization*, 38 L. & SOC. INQUIRY 670, 686 (2013).

41. David S. Clark, *American Law Schools In The Age Of Globalization: A Comparative Perspective*, 61 RUTGERS L. REV. 1037, 1061 (2009).

42. ROBERTS, *supra* note 1, at 66.

43. US law schools are currently facing a crisis given a drastic drop in the number of law school applications. As fewer Americans apply for JDs, many law schools may seek to retain tuition dollars by admitting more foreign JD and LLM students. See Clark, *supra* note 41, at 1050–51; Christopher Edley, *Fiat Flux: Evolving Purposes and Ideals of the Great American Public Law School*, 100 CAL. L. REV. 313, 329 (2012); Lauren K. Robel, President, The Ass’n of Am. L. Schools Presidential Address 2012 (2012); Ethan Bronner, *Law School’s Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 30, 2013.

44. Stephanie Saul, *Amid ‘Trump Effect’ Fear, 40% of Colleges See Dip in Foreign Applications*, N.Y. TIMES, Mar. 16, 2017.

45. See Liu, *supra* note 40, at 685–86; Michael D. Goldhaber, *They Rule the World: One-Year LLM Programs at U.S. Law Schools Are on the Rise Again, Attracting Fledgling Power Brokers from Around the World*, AM. LAW., Sept. 14, 2005.

46. See Silver, *States Side Story*, *supra* note 33, at 2396–98, 2433; see also Carole Silver, *Winners and Losers in the Globalization of Legal Services: Offshoring the Market for Foreign Lawyers*, 45 VA. J. INT’L L. 897, 899 (2005) [hereinafter Silver, *Winners and Losers*].



and practice in the United States and an even smaller percentage end up staying.<sup>47</sup> In some states, such as China, qualifying for the New York bar functions as a signal of excellence and may be a prerequisite for employment by international law firms or major multinational companies. In the United Kingdom, completing a UK LLM is not sufficient to entitle students to be admitted to practice. In France, even though many foreign students come to study law, very few go on to successful careers at the French bar or in the French academy.

*Implications for the Divisible College*

What implications might follow from these global and law-specific student flows for the construction of international law as a transnational legal field? First, the core/periphery and Western/non-Western dynamics affect which persons are likely to study law in one state only (nationalizing influence) or more than one state (denationalizing influence) and where they are apt to go (westernizing influence).

Those who start their education in core states may be unlikely to study law in other states in ways that denationalize their approach to law or diversify their perspective by making them cross a geopolitical, language, or legal family divide. Such students typically receive few incentives to travel to the semiperiphery or periphery to complete further legal study because doing so is not associated with enhanced symbolic capital and heightened career prospects. Accordingly, if stepping outside one's national context to view international law from a different vantage point is a formative part of being an international lawyer and understanding diverse approaches to the field,<sup>48</sup> lawyers from these states may be the least likely to gain these sorts of denationalizing experiences. On the other hand, these lawyers are more likely to experience diversity within the classroom if they study at one of the universities with a significant number of foreign students.

By contrast, students from semiperipheral or peripheral states are less likely to experience a diversity of student nationalities within their home classrooms. But these students have greater incentives than students from core states to attain the denationalizing awareness of studying law in more than one state because obtaining foreign law degrees is typically associated with increased social capital in the form of higher levels of prestige and enhanced job prospects.<sup>49</sup> Of course, because not all students will have the means to study abroad, this opportunity might be more open to students with private funds or scholarship opportunities. Moreover, achieving the potential status increase associated with foreign study typically requires that these students travel toward the core rather than laterally or away from it.

The typical direction of travel means that the degree of diversification students undergo from studying abroad will depend in part on the state in which they begin their legal training. Australian students have incentives to study abroad and thus denationalize, but they flock to the United Kingdom and the United States, so that on

47. Silver, *Winners and Losers*, *supra* note 46, at 906–07.

48. Peter Murray & Jens Drolshammer, *The Education and Training of a New International Lawyer*, 2 EUR. J.L. REFORM 505, 517 (2000) (arguing that “the international lawyer needs to have a sense of ‘globality’, to be able to step outside the boundaries of his/her own jurisdiction and consider international transactions, relationships and disputes from a global rather than national perspective”).

49. On the meaning of social capital in general, see PIERRE BOURDIEU & LOÏC J.D. WACQUANT, AN INVITATION TO REFLEXIVE SOCIOLOGY 119 (1992); Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L.J. 805, 812. On the relevance of social capital in transnational student flows, see Silver, *States Side Story*, *supra* note 33, at 2386–87.

the whole they do not noticeably diversify by crossing a geopolitical, language, or legal family divide. Students from China, in contrast, are likely to study in places like the United States and the United Kingdom (because of the movement toward English and the common law) or France and Germany (because the Chinese legal code draws significantly on the Japanese one, which is based on the German civil code), meaning that they are apt to denationalize and diversify on geopolitical, language, and sometimes legal family grounds.

The direction of these movements may confirm or introduce a westernizing influence. Students from Western states who seek further legal training typically go to other Western states, which confirms or reinforces their Western orientation. Students from non-Western states who seek further law degrees often go to Western states, which introduces a Western orientation. Still, these students will not necessarily accept everything they learn in Western environments. For instance, some scholars noted that the Chinese government encouraged its lawyers to study abroad in Western states precisely so that these lawyers would be well equipped to understand Western approaches and schooled in the techniques that might enable China to beat some of these Western states at their own game. There are also exceptions to the movement toward Western states, such as movement from one non-Western state to another non-Western state, like students who transfer from a Russophone semiperipheral state to study in Russia itself or from China to study in Japan. But, in terms of overall trends, law students engaging in transnational study generally progress toward the core and toward the West, while Western students do not commonly leave the West.

Second, the asymmetric nature of these student flows means that legal academics at elite schools in core states are prone to be highly influential in constituting the transnational field of international law. Elite schools have proved to have great impact on domestic legal markets. For example, a study on the American legal academy found that the vast majority of US legal academics had obtained their law degrees from Harvard or Yale and thus these two institutions were able to “infect” the broader academy with their intellectual ideas through the placement of their students as academics in other schools.<sup>50</sup> These student flows suggest that a similar phenomenon occurs in international law, though on a global scale, as international law academics and practitioners often complete part of their legal education at a handful of elite law schools in a small number of core states.<sup>51</sup>

This phenomenon has also been observed with respect to international judges. A 2006 study of all sitting international judges found that many had studied at a handful of elite schools, particularly in the United Kingdom, the United States, and France.<sup>52</sup> The media have highlighted the role played by elite schools in relatively few states in the creation of the international law field.<sup>53</sup> The importance of credentialing in core,

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50. Daniel Katz et al., *Reproduction of Hierarchy? A Social Network Analysis of the American Law Professoriate*, 61 J. LEGAL EDUC. 76, 84 (2011).

51. WILLIAM TWINING, *GENERAL JURISPRUDENCE: UNDERSTANDING LAW FROM A GLOBAL PERSPECTIVE* 282–83 (2009) (listing jurists as agents of diffusion).

52. DANIEL TERRIS ET AL., *THE INTERNATIONAL JUDGE: AN INTRODUCTION TO THE MEN AND WOMEN WHO DECIDE THE WORLD'S CASES* 17–18 (2007); see also GLEIDER I. HERNÁNDEZ, *THE INTERNATIONAL COURT OF JUSTICE AND THE JUDICIAL FUNCTION* 133–34 (2014); Gleider I. Hernández, *Impartiality and Bias at the International Court of Justice*, 1 CAMBRIDGE J. INT'L L. & JUST. 183, 192 n.41 (2012). For more information, see *id.* ch. 2.III.B.

53. For instance, according to an article by Christopher Schuetze in the *New York Times*, although the field of public international law is gradually spreading globally, a handful of universities

typically Western, states has also been observed in other transnational legal fields, such as arbitration. In international commercial arbitration, Yves Dezalay and Bryant Garth have noted that the crucial difference between successful Third World arbitrators and their First World counterparts is that national stature is not enough.<sup>54</sup> An arbitrator from the periphery must find ways of gaining access to and credibility with the center, such as by completing graduate studies at elite universities in core states. Similarly, Sergio Puig found that most elite investment treaty arbitrators are Western, but that the backgrounds of frequently appointed non-Western arbitrators confirm the importance of obtaining a law degree from elite UK, US, or French schools.<sup>55</sup>

Third, the asymmetric student flows are likely to contribute to the asymmetric diffusion of legal ideas and materials. As noted, although law students frequently move toward the core to study, most end up going home to work.<sup>56</sup> These reverse flows are meaningful because where people study and the ideas and sources they are exposed to often affect their subsequent choices in scholarship and practice.<sup>57</sup>

Noteworthy examples of such influence can be cited, such as the “Chicago Boys” from Chile who studied economics at the University of Chicago before returning home to introduce their neoliberal learning into President Augusto Pinochet’s government.<sup>58</sup> Similar observations have been made in domestic contexts. For instance, one explanation given for why US lawyers advising businesses about selecting a state of incorporation usually choose either Delaware or their home state is that they typically know little about the laws of other states.<sup>59</sup> Most US law schools teach only the law of their home state and Delaware corporate law, whereas elite law schools usually focus on Delaware law rather than the law of the state where they are based, and casebooks tend to contain more Delaware cases than cases from any other state.<sup>60</sup>

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in the United States and Europe hold disproportionate sway when it comes to training the international law elite. See Christopher F. Schuetze, *A Bigger World of International Law*, N.Y. TIMES, Oct. 6, 2014. The article described a handful of universities in England and the United States as leading the way, citing reasons such as stellar brands; wealthy endowments; renowned faculties; and ready access to fellowships, internships and development opportunities. These universities also create benchmarking standards as their degrees are easier for others to evaluate than degrees from thousands of universities across the world. *Id.*

54. YVES DEZALAY & BRYANT GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* 25–26 (1996).

55. Sergio Puig, *Social Capital in the Arbitration Market*, 25 EUR. J. INT’L L. 387, 405 (2014).

56. See Liu, *supra* note 40, at 685–86; Goldhaber, *supra* note 45.

57. See TWINING, *supra* note 51, at 280.

58. See YVES DEZALAY & BRYANT G. GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES* 44–47 (2002); see generally JUAN GABRIEL VALDÉS, *PINOCHET’S ECONOMISTS: THE CHICAGO SCHOOL IN CHILE* (1995).

59. See William J. Carney et al., *Lawyers, Ignorance, and the Dominance of Delaware Corporate Law*, 2 HARV. BUS. L. REV. 123, 129–30 (2012); Robert Daines, *The Incorporation Choices of IPO Firms*, 77 N.Y.U. L. REV. 1559, 1581 (2002); Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, 1 J.L. ECON. & ORG. 225, 273 (1985).

60. For explanations based on other factors, such as the importance of precedent and the corporate law expertise of Delaware courts, see generally Ehud Kamar, *A Regulatory Competition Theory of Indeterminacy in Corporate Law*, 98 COLUM. L. REV. 1908 (1998). See also Bernard S. Black, *Is Corporate Law Trivial?: A Political and Economic Analysis*, 84 NW. U. L. REV. 542 (1990); John C. Coates IV, *Managing Disputes Through Contract: Evidence from M&A*, 2 HARV. BUS. L. REV. 295 (2012); Melvin Aron

Diffusion studies show that legal ideas and materials typically move in the opposite direction to transnational student flows. In corporate law, for example, Holger Spamann has found that diffusion of legal materials—including statutes, case law, and textbooks—occurs mainly within legal family trees and along ex-colonial lines.<sup>61</sup> Students moved primarily within legal families and from peripheral and semiperipheral states (former colonies) to core states (former colonial masters). By contrast, legal sources moved in the opposite direction. The textbooks of core states contained few references to legal materials from other legal systems. The textbooks of peripheral and semiperipheral countries contained numerous references to foreign case law, which came predominantly from core countries and especially from those within the same legal family tree.

The effect of interstate educational hierarchies on the transnational flow of ideas is often reinforced by the interpersonal hierarchy established by the teacher-student relationship. The diffusion of ideas works best in a downward direction, traveling from teacher to student. The teacher stands in front of the classroom and shares his or her views with the students. The teacher sets the intellectual agenda by prescribing the textbook and readings that are to be discussed. Students come to learn and are also tested on their understanding by the teacher, which gives students an incentive to try to understand what the teacher wants the students to know and what the teacher thinks about the materials.

Diffusion also works relatively well in a horizontal direction, from student to student. Students may listen to each other in the classroom and interact outside the classroom, creating a network of peer contacts.<sup>62</sup> Studies of technological diffusion found that peer-to-peer interactions are particularly useful in encouraging someone to adopt new ideas.<sup>63</sup> But there may be limits to the transfer of ideas in this way. Various studies have suggested that international students typically forge bonds with other international students, rather than with domestic students.<sup>64</sup> For instance, Silver's work on US law schools suggests that a strong divide separates the JD students (who are primarily American) and the LLM students (who are primarily foreign).<sup>65</sup> Thus, diffusion of ideas may often work better within each group than between groups.<sup>66</sup>

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Eisenberg, *The Structure of Corporation Law*, 89 COLUM. L. REV. 1461 (1989); Jill E. Fisch, *The Peculiar Role of the Delaware Courts in the Competition for Corporate Charters*, 68 U. CIN. L. REV. 1061 (2000); Sarath Sanga, *Choice of Law: An Empirical Analysis*, 11 J. EMPIRICAL LEGAL STUD. 894 (2014).

61. Spamann, *supra* note 21, at 1876.

62. Silver, *States Side Story*, *supra* note 33, at 2406.

63. See, e.g., JAMES S. COLEMAN ET AL., MEDICAL INNOVATION: DIFFUSION OF A MEDICAL DRUG AMONG DOCTORS (1966); EVERETT M. ROGERS, DIFFUSION OF INNOVATIONS 68 (4th ed. 1995).

64. See, e.g., Ioannis Itsoukalas, *The Double Life of Erasmus Students*, in STUDENTS, STAFF AND ACADEMIC MOBILITY IN HIGHER EDUCATION 131 (Mike Byram & Fred Dervin eds., 2008); Ruth Fincher & Kate Shaw, *The Unintended Segregation of Transnational Students in Central Melbourne*, 41 ENV'T & PLAN. 1884 (2009); Johanna Waters & Rachel Brooks, *'Vive la Difference?': The 'International' Experiences of UK Students Overseas*, 17 POPULATION, SPACE & PLACE 567, 574 (2011).

65. Silver, *Internationalizing Legal Education*, *supra* note 33, at 168–70; Silver, *States Side Story*, *supra* note 33, at 2407. Experiences may also differ between US law schools. Some law schools put JDs and LLMS in separate classes or place them on different curves within the same class. Others put them in the same classes and on the same curve, while others go further and have programs to facilitate interaction, such as a buddy JD/LLM system. See, e.g., *LLM Program Description*, B.C. L., <https://www.bc.edu/bc-web/schools/law/admission-aid/llm-program.html> (last visited Dec. 27, 2016).

66. This seems to be particularly prevalent when domestic and international students are

Diffusion of ideas is likely to work less well in an upward direction, from student to teacher. In some states, such as China, France, and Russia, law professors primarily lecture without engaging in class discussion or encouraging questions.<sup>67</sup> This scenario offers little opportunity for student-to-teacher transfers of ideas. In other states, such as the United States, professors often involve their students in a Socratic dialogue, allowing for more room for two-way communication and reciprocal learning. Even there, however, a student will typically hear his or her professor speak far more than a professor will hear a given student speak. And professors have fewer incentives to try to get inside the heads of their students, as they are the ones that set the exams that students take, rather than the other way around.

Upward diffusion is possible, notably when dealing with LLM and Doctor of Philosophy (PhD) students or in small and interactive classroom settings. Nevertheless, downward and lateral diffusion are likely to be more common. This observation means that, in terms of the diffusion of ideas, where a state's students go to study is frequently a more important indicator of where individuals from that state will look to find ideas than where their foreign students come from. If Taiwanese judges study law in Germany, they are more likely to end up citing German precedents than German judges or law professors are to cite Taiwanese precedents on account of having had Taiwanese students in their classrooms. Generally, what one learns in a foreign environment as a student likely leaves a deeper impression on one's intellectual makeup than what one learns as a teacher by having foreign students in the classroom.

The asymmetric movement of students and lawyers means that the diffusion of legal ideas and materials is more likely to proceed from core to peripheral states, and from Western to non-Western states, than the other way around. These dynamics also help to explain how localisms from core states may come to be globalized and to define what is understood by "global" approaches. For instance, Liu observed that increasing numbers of international law students have entered UK and US law schools to receive "global" legal education,<sup>68</sup> and John Flood explained that many young lawyers from around the world now find it essential to obtain an LLM degree at a major UK or US law school so as to be "conversant with global legal techniques."<sup>69</sup> In

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typically enrolled in different programs, like the JD or Bachelor of Laws and LLM or PhD programs. Where domestic and international students are combined within a single degree, the opportunities for them to mix, share insights, and develop networks with each other are greatly increased. For instance, some UK legal academics commented that they saw a much larger disconnect between undergraduate and graduate law students than between domestic and foreign law students who were in the same programs. *Source*: E-mail on file with author, sources non-disclosed for confidentiality.

67. For more discussions on the traditional method of teaching international law in China, see WU QIZHI (吴启智), *Guoji Fa Jiaoxue yu Rencai Peiyang de Xianzhuang Fenxi yu Jianyi—Jiyu Shisheng Diaocha Wenjuan Xingsheng de Fenxi Baogao* (国际法教学与人才培养的现状分析与建议—基于师生调查问卷形成的分析报告) [*International Law Teaching and Training—Analysis and Suggestions Based on a Survey Study of Students and Teachers*] (2016), <http://mp.weixin.qq.com/>. See also Lingyun Gao, Note, *What Makes a Lawyer in China? The Chinese Legal Education System After China's Entry Into the WTO*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 197, 224 (2002).

68. Liu, *supra* note 40, at 678.

69. John Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, 14 IND. J. GLOBAL LEGAL STUD. 35, 54 (2007); see also John Flood, *Legal Education, Globalization, and the New Imperialism*, in *THE LAW SCHOOL—GLOBAL ISSUES, LOCAL QUESTIONS* 127, 140–44 (Fiona Cownie ed., 1999); Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 FORDHAM INT'L L.J. 1039, 1040 (2002); Goldhaber, *supra* note 45.

this way, the national approaches of some states are able to assert disproportionate influence in defining the “international.”

#### EDUCATIONAL BACKGROUNDS OF PROFESSORS

In a report on the internationalization of legal education, the proportion of academics who had received degrees from other jurisdictions was viewed as a primary indicator of internationalization,<sup>70</sup> yet rates of foreign legal education vary considerably among states. In my book, I examined the educational backgrounds of the international law academics at the five most elite universities in the five permanent members of the Security Council.<sup>71</sup> I also added Australia in order to show some core-periphery, ex-colonial dynamics between Australia and the United Kingdom. Based on this information, it seems that, at least when it comes to international law academics’ own educational backgrounds, this sort of transnational movement is much more prevalent in some academies than others. Educational migration also tends to follow predictable patterns that reflect and reinforce certain nationalizing, denationalizing, and westernizing influences that shape international law as a transnational legal field.

#### *Tracking Educational Diversity*

Some law professors have studied law in two or more states, whereas others have only studied law in a single state. I refer to the first set of professors as exhibiting “educational diversity,” because they are subject to some denationalizing educational influences, even if these are only limited. At least to date, educational diversity has originated in two main ways. First, future professors study law in their home country and then complete graduate legal education in another state before returning home to teach. I refer to this as “outbound diversity” because it stems from outward travel by domestic lawyers.<sup>72</sup> Second, future professors study law in their home country and then complete graduate legal education in a second state before going on to teach law in that second state or a third state. I refer to this as “inbound diversity” because it stems from the entry of foreign lawyers into a specific legal academy.<sup>73</sup>

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70. Christophe Jamin & William van Caenegem, *The Internationalisation of Legal Education: General Report for the Vienna Congress of the International Academy of Comparative Law, 20–26 July 2014*, in *THE INTERNATIONALISATION OF LEGAL EDUCATION* 3, 7 (Christophe Jamin & William van Caenegem eds., 2016).

71. As noted above, the method for selecting these universities and international law academics is set out in ROBERTS, *supra* note 1, at chs. 1–2 and app. A. One point to note about this selection is that, where available, I relied upon country and world rankings of law schools. However, these rankings play a much more significant role in some states than others and often do not account for other factors that might affect students’ selection of law schools, such as a desire to practice in a particular location after graduation or the law school’s location in a particularly desirable area. I also relied upon rankings of law schools in general, not of law schools specializing in international law in particular. This means that, for instance, the US rankings did not include New York University, which falls outside the top five law schools on general rankings despite ranking first with respect to international law.

72. ROBERTS, *supra* note 1, at 72–73.

73. ROBERTS, *supra* note 1, at 73.

**Table 3:** Educational Diversity of Academics in the Study

Country	Educational Diversity: Percentage of academics with law degrees from more than one state	Inbound Diversity: Percentage of academics with a first law degree from another state
Australia	73	20
China	41	4
France	7	5
Russia	8	0 <sup>a</sup>
United Kingdom	77	74
United States	32	32

<sup>a</sup> I treated degrees from the USSR as being degrees from Russia, even if they were obtained in places that now form other ex-Soviet states, like Ukraine.

Table 3 shows the results for the international law academics from the elite universities of the five permanent members of the UN Security Council plus Australia with respect to educational diversity and inbound diversity. (I included Australia in order to show some of the core-periphery dynamics between Australia and the United Kingdom.) The first column provides the percentage of international law academics that hold law degrees from more than one state (educational diversity). These figures confirm that some legal systems are very nationalized in terms of the legal education of their international law academics (Russia and France), some are highly denationalized (the United Kingdom and Australia), and some fall in between (the United States and China).

The second column reflects the percentage of international law academics who received their first law degree in a state other than the state where they are teaching (inbound diversity). At least to date, the location of academics' first law degree has typically been a relatively good indicator of their nationality; having received a first law degree from a foreign state often signals that academics are not now or were not originally nationals of the place where they are teaching. The educational diversity exhibited in core states like the United States and the United Kingdom primarily resulted from inbound diversity, whereas the educational diversity exhibited in China and Australia primarily resulted from outbound diversity. The United Kingdom is an outlier with respect to its extremely high rate of inbound diversity.

#### *Explaining Educational Diversity*

Whether legal elites in a given state tend to study law abroad and, if so, where they go largely depends on perceptions of social capital in those states. Aspiring legal academics will have an incentive to study law in multiple states if foreign qualifications are valued by the academy that they are seeking to enter. In terms of the direction of these flows, status increases typically correspond with moves toward states with more highly ranked educational institutions, which often means core, Western states.

*Lack of educational diversity: Russia and France*

The international law academics in both Russia and France exhibited low levels of educational diversity. In Russia, all of the academics had earned two or three law degrees but almost all of them had obtained all of those degrees in Russia. In less than a handful of cases, an academic had completed a first law degree in Russia, followed by a foreign LLM (in the United Kingdom or Germany), and followed by a PhD in Russia. This lack of educational diversity is not surprising for academics who trained during the Soviet era when it was often not possible to study abroad. But no drastic movement in this regard appears to apply to the younger generations of international law professors appointed to these universities. This reality partly reflects how recently Russia opened up to the world after the collapse of the Soviet Union in 1991 and how long systemic changes require to take hold. It may also reflect the fact that younger lawyers who study abroad do not end up returning to join the Russian international law academy. In addition, none of the Russian international lawyers had completed their first law degree outside of Russia.

Discussions with Russian academics indicate that implicit hierarchies and language constraints mostly explain the low levels of foreign study to date. Russian students could study in other Russian-speaking states but, as Russia would consider itself to be at the core of this language and the constellation of post-Soviet states, these students have little incentive to do so. This outcome fits with patterns from the general student flows where students from other Russian-speaking states (like Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine, and other countries in the Commonwealth of Independent States) are much more inclined to study in Russia than the reverse. As for studying in a foreign language, since most domestic universities teach only in Russian, they do not prepare students well for studying abroad. In response to federal regulations, Russian law schools require all students to complete one language course.<sup>74</sup> Most students study English, German, or French, with English being the most popular. But this language instruction tends to consist of single courses rather than integrated study in other courses or the curriculum in general. Only a handful of Russian law schools teach courses in English.<sup>75</sup> There are few opportunities to practice foreign languages because most of the teaching materials are in Russian, few foreign academics teach in Russia, and many of the foreign students are Russian speakers from former Soviet states.

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74. The standard says in paragraph 5.1 that a graduate must have necessary skills for professional communication in a foreign language, and in paragraph 6.3, that the program of study should include the mandatory coursework in “Foreign language in the field of jurisprudence[.]” Приказ Министерства образования и науки Российской Федерации об утверждении и введении в действие федерального государственного образовательного стандарта высшего профессионального образования по направлению подготовки 030900 Юриспруденция (“бакалавр”) [Order of the Ministry of Education and Science of the Russian Federation on Enforcing Federal Educational Standard of Higher Professional Education in the Field of Jurisprudence (qualification (degree) “bachelor”)] Бюллетень нормативных актов федеральных органов исполнительной власти [Bulletin of Legal Acts of Federal Executive Authorities] 2010, No. 26. (this Order will lose its force in September 2017 because of adoption of new federal standards by Order No. 1501, 2016).

75. These include the Higher School of Economics, Moscow State Institute of International Relations (“MGIMO”), the Peoples’ Friendship University, the Russian Foreign Trade Academy, and Saint Petersburg State University.



Two other factors are also at play. First, even though it has been twenty years since the end of the Cold War, the isolation of Russia from the West means that the senior generation has few links with international lawyers in Western states, which has made it more difficult to create pathways of connection for the younger generation.<sup>76</sup> Second, in terms of academic incentives, although a foreign master's degree is readily understood within the Russian university framework, it is not clear what a foreign PhD or JSD (Doctor of Juridical Science) equates to in Russian credentials, which matters because an academic must hold a doctorate that is recognized in Russia in order to supervise PhD students in Russian universities.<sup>77</sup> After the master's, Russian scholars usually seek a candidate of sciences degree, which involves writing a significant thesis. To become a full professor, a doctor of sciences degree is often (though not always) required. Russian doctorates are typically awarded at a much more senior stage than when a Western scholar would usually be awarded a PhD or JSD, so the two are not clearly equivalent.<sup>78</sup> This disparity creates a disincentive for studying abroad at the PhD level, as the qualification is not readily understood within the Russian system in the absence of an Agreement on Mutual Recognition of Academic Degrees.

Movements are afoot to change the relative isolation of Russian students from global higher education. Two in particular are worth highlighting. First, in 1993, the government announced a national scholarship scheme to support talented students and postgraduate students wishing to study abroad, which has gained in popularity over time.<sup>79</sup> Other schemes to encourage foreign higher education have been introduced, though many do not cover legal studies.<sup>80</sup> Second, international mooted competitions, like the Jessup Moot Court Competition, are becoming popular in Russia, leading to a new generation of Russian international law students whose members are familiar with non-Russian sources of international law, especially English textbooks like those written by Ian Brownlie, Malcolm Shaw, and Lassa Oppenheim, and case law of international tribunals.<sup>81</sup>

These developments are essential to creating a more globally integrated body of well-trained, more denationalized legal professionals. Yet few of these individuals

76. ROBERTS, *supra* note 1, at 75.

77. *Id.*

78. *Id.*

79. See Распоряжение Президента Российской Федерации о стипендиях Российской Федерации [Directive of the President of the Russian Federation on Scholarships of the President of the Russian Federation], Собрание актов Президента и Правительства Российской Федерации [Collection of Acts of the President and Government of the Russian Federation] 1993, No. 37, p. 3451; see also Приказ Министерства образования и науки Российской Федерации о стипендиях направляемых на обучение за рубежом в 2016/2017 учебном году [Order of the Ministry of Education and Science of the Russian Federation on Scholarship Holders of the President of the Russian Federation for Education Abroad in 2016–17 Academic Year], approved by the Deputy Minister of the Ministry of Education and Science of the Russian Federation, June 1, 2016, No. 653, <http://gzgu.ru/doc/in-student/2015/653.pdf> (last visited Jan. 19, 2017).

80. See, e.g., Указ Президента Российской Федерации От 28 Декабря 2013 Г. No. 967 «О Мерах По Укреплению Кадрового Потенциала Российской Федерации» [Presidential Decree of the Russian Federation on Measures to Strengthen the Professional Potential of the Russian Federation], Собрание законодательства Российской Федерации [Russian Collection of Legislation] 2013, No. 52 (Vol. II), p. 7147 (not covering law or international relations).

81. See generally Maria Issaeva, *Twelfth Anniversary of Russia's Participation in the Jessup Competition: A View from Behind the Curtain*, 3 *Международное правосудие* [INT'L JUST.] (2013).

return to Russia and, when they do, they often work in law firms or nongovernmental organizations rather than join the Russian legal academy. After all, Russian academia pays poorly and some young Russians complain that the existing international law academy is insular. According to one young Russian international lawyer who studied abroad, some members of the current generation are becoming more denationalized, but the Old Guard retains control at the universities:

The scene at universities is still dominated by old guards, professors conditioned by the Soviet system. They serve as heads of departments and as such have significant influence over hiring decisions (both professors and PhD students) and curricula for international law courses. They serve as editors of textbooks co-written by professors of the department. They ensure that much of the Soviet legacy remains in the textbooks.<sup>82</sup>

It may be, then, that denationalizing influences are growing in the younger generation, but these will inevitably need time to seep into the broader culture, and the process may be still slower in the academy.

In France, all of the academics included in the study had received two or, more commonly, three law degrees and most of these degrees were French. Only a few had earned a first law degree in France, followed by an LLM in the United States, followed by a PhD in France. One had pursued a doctor of juridical science (SJD) in the United States. As with Russia, language barriers and implied hierarchies appear to play an explanatory role. Not only is it easier for most French scholars to study in French than in other languages, but also France would consider itself to be at the apex of the French-language and French-speaking civil law states, negating any substantial incentive to engage in further study at universities in Francophone Africa or Asia or elsewhere in French-speaking Europe. In addition, French academics who study in the United Kingdom and the United States must deal with the language difference and shift from a civil law system to a common law one, which is difficult and makes the experience potentially less relevant in their local market. Accordingly, even though French students in general (not necessarily law students) seem to study abroad at a high rate that does not appear to hold true for French international law professors.<sup>83</sup>

Recruitment processes are also part of the picture. No differentiation is made between the process for hiring academics in French law and hiring academics who specialize in international law. The selection committee is all French and, to be hired at an entry-level position, a would-be professor must have completed a PhD in law in France and demonstrate proficiency in French. These requirements generally have the effect of ruling out academics not trained exclusively or primarily in France and creating an incentive to privilege domestic rather than foreign educational experiences.

The main exception to this nationalized French approach is offered by the newer-style Sciences Po Law School (Sciences Po), one of the graduate schools of the Paris Institute of Political Studies, which has made a splash within the French

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82. E-mail on file with author.

83. Some academics noted that some French legal scholars go to study in Quebec where they have the advantage of learning in French about a mixed civil and common law system. However, this pathway was not well trodden within the group of academics examined in this study. E-mail on file with author. Similarly, when it comes to EU law, it may be that some French law professors choose to study in other states with well-respected EU law programs, such as Italy and Belgium, but French law professors tend to teach either international law or European law, so the profile of such academics was not checked for the purposes of this research.

academy. Christophe Jamin, Sciences Po's dean, explained that the idea was to break from the traditional French mold by being more interdisciplinary and internationalized.<sup>84</sup> Sciences Po embraces social science perspectives instead of spurning them in the name of doctrinalism and the autonomy of law. It employs some foreign professors and others with foreign training; it admits an extremely international student body; it teaches an increasing number of classes in English; and its students generally spend at least one year studying abroad. Several professors in the study who received foreign LLMs or PhDs/JSDs now hold positions at Sciences Po.<sup>85</sup>

*Intermediate educational diversity: China and the United States*

In China, 41% of the international law academics received at least one law degree outside the country, which typically resulted from outbound rather than inbound diversity (that is, scholars completing an LLB in China followed by an LLM or PhD outside China).<sup>86</sup> Similar observations about educational diversity have been made about the training of most personnel at the Ministry of Foreign Affairs<sup>87</sup> and some elite Chinese law firms.<sup>88</sup> Foreign legal education seems to be most prevalent within the younger generation, suggesting that educational diversity is increasing over time. Of the academics who studied abroad, their educational destinations included Australia, Canada, Germany, Japan, South Korea, Switzerland, the United Kingdom, and the United States. Therefore, these academics not only experienced denationalizing influences, but also typically diversified by crossing geopolitical, language, and sometimes legal family divides in their foreign study.

Many factors help to explain these trends. The Chinese government actively encourages its nationals to study or spend time abroad by, for instance, offering scholarships or providing funding to help pay for the costs associated with studying or visiting educational institutions in other states.<sup>89</sup> Another important factor facilitating this educational diversity is that many Chinese students know foreign languages, particularly English, and many Chinese universities bring in foreign professors to teach courses in foreign languages, mainly English.<sup>90</sup> Implicit hierarchies also play a role. Instead of privileging domestic legal training, Chinese universities prize international experience, principally in the form of higher degrees (like LLMs, PhDs, JSDs, and SJDs) from elite schools in core Western states; they often treat such degrees as a

84. CHRISTOPHE JAMIN, *LA CUISINE DU DROIT* 263–67 (2012).

85. The law school also relies much more heavily on professors who come from practice than the leading French law schools, reportedly having twenty full-time faculty to two hundred adjunct practitioners. Sciences Po also has a number of foreign professors who teach in English and French. See *Où en est l'enseignement du droit?*, FR. CULTURE RADIO (Sept. 25, 2014), <http://www.franceculture.fr/emission-esprit-de-justice-ou-en-est-l-enseignement-du-droit-2014-09-25> (discussion between Olivier Beaud, Université Panthéon-Assas (Paris 2), and Christophe Jamin, Sciences Po, on the state of legal education in France and its future direction).

86. This pattern is consistent with observations about Chinese international lawyers and academics. See He Hua (何华), *Zhongguo Jindai Guoji Faxue de Dansheng yu Chengzhang* (中国近代国际法学的诞生与成长) [The Birth and Growth of International Law in Modern China], 4 FAXUE JIA (法学家) [JURIST] 49 (2004).

87. DAVID SHAMBAUGH, *CHINA GOES GLOBAL: THE PARTIAL POWER* 67 (2013).

88. According to one Chinese scholar, some of the top Chinese law firms are now reportedly requiring Chinese students to have completed an LLM at Oxbridge or a top-fourteen US law school in order to be hired. E-mail on file with author.

89. ROBERTS, *supra* note 1, at 78.

90. *Id.*

stronger marker of quality and expertise than local ones. (The educational diversity of China's top legal scholars is also paving the way for the appointment of a growing number of Chinese legal scholars, in both international law and other specialties, to law schools in a variety of states throughout the world.<sup>91</sup>)

Modern legal education in China remains of relatively recent origin, which helps to explain the tendency to look to and privilege foreign legal education. This tendency results in part from the lasting effects of the Cultural Revolution (1966–76), which destroyed the former Chinese legal system. From 4144 law students and 857 graduating law students in China in 1965, the numbers dropped to 410 law students and 49 graduating law students in 1976.<sup>92</sup> It was not until the late 1970s that Chinese universities began to recruit students by a national entrance examination. Since then, the number of law schools and law students has multiplied, rising six fold in the last fifteen years alone.<sup>93</sup> By 2006, China could boast over six hundred law schools and over three hundred thousand law students.<sup>94</sup>

Foreign education in general, and the study of international and transnational law in particular, is encouraged by the government in the interest of better equipping its lawyers to protect China's national interests. For instance, in December 2011, the PRC Ministry of Education and Central Politics and the Law Commission released the Central Politics and Law Commission Opinion on the Implication of the Program for Legal Elite Education, which states five aims, including: "Cultivat[ing] legal elites with different specialties: the emphasis of the Program is to cultivate legal professionals who are proficient in different areas of practice. In order to make a breakthrough, the priority is to cultivate international law professionals who have knowledge of international laws and can participate in international affairs in order to protect national interests."<sup>95</sup> To achieve these goals, the government declared the intention to establish roughly twenty educational institutions specializing in international and transnational law and to set up a foundation to support study abroad by law school students and legal academics.<sup>96</sup> According to a 2016 study, international law is now also taught at more than six hundred Chinese universities and nearly twenty universities and research institutes may grant doctoral degrees in international law.<sup>97</sup>

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91. See, e.g., Phil Chan (Macquarie University), Henry Gao (Singapore Management University), Wenhua Shan (University of New South Wales), Julia Ya Qin (Wayne State University), Jiangyu Wang (National University of Singapore), Dongsheng Zang (University of Washington), and Angela Huyue Zhang (King's College).

92. See Wang Weiguo, A Brief Introduction to the Legal Education in China, Presented at the Conference of Legal Educators (May 24, 2000). For example, in 1957, only 385 graduated from politics and law programs. See NAT'L BUREAU OF STATISTICS OF CHINA, 1983 STATISTICAL Y.B. OF CHINA 521–22 (1983).

93. Carl F. Minzner, *The Rise and Fall of Chinese Legal Education*, 36 FORDHAM INT'L L.J. 335, 336 (2013); see also Zuo Haicong, *Legal Education in China: Present and Future*, 34 OKLA. CITY U. L. REV. 51, 57 (2009).

94. Charles F. Irish, *Reflections on the Evolution of Law and Legal Education in China and Vietnam*, 25 WIS. INT'L L.J. 243, 250 (2007); Minzner, *supra* note 93, at 349.

95. Jiaoyubu, Zhongyang Zhengfa Weiyuanhui Guanyu Shishi Zhuoyue Falü Rencai Jiaoyu Peiyang Jihua de Ruogan Yijian (教育部, 中央政法委员会关于实施卓越法律人才教育培养计划的若干意见) [Several Opinions of the Ministry of Education and the Central Politics and Law Commission of the Communist Party of China on Implementing the Plan for Educating and Training Outstanding Legal Talents], Xinhua (Ministry of Educ., Dec. 23, 2011) (emphasis added).

96. *Id.*

97. WU QIZHI, *supra* note 67.

In the United States, the vast majority of law professors obtain an undergraduate degree in a nonlegal subject and then a graduate degree in law. Some complete a master's degree or PhD in another subject, mostly in the United States but often in the United Kingdom. Yet they rarely complete a second law degree at all, like a PhD in law or a JSD/SJD, let alone doing so outside the United States, partly because of language difficulties and implied hierarchies. Limited foreign language skills prevent most US legal academics from studying in places like France and Germany. Within the English-speaking world, they find little incentive to study law abroad in states like Australia owing to implied hierarchies. Even though the greatest educational movement from the United States is to the United Kingdom, most elite US universities view themselves as superior to the elite UK universities. As the United States sits at the core, little prestige is associated with seeking educational degrees outside the country.<sup>98</sup>

Two law-specific factors are also at play. The fact that US academics complete nonlegal degrees in the United Kingdom, but not legal ones, partly reflects the timing of foreign study and the perception of US legal scholars that the enterprise they are engaged in is different from that of their foreign peers. Most US legal academics who studied abroad did so between graduating from college and attending law school in the United States. This route is standard for those on prestigious scholarships, such as the Rhodes and Marshall awards. As a result, these academics are much more inclined to pursue master's and PhD programs in nonlaw subjects, such as economics and international relations, than to embark on legal degrees. Legal realism also took hold in the United States in a way that has made the US legal academy deeply skeptical about the value of legal reasoning.<sup>99</sup> One consequence is that US legal academics typically dismiss European legal training and scholarship as doctrinal and formalist in comparison with the more realist and interdisciplinary approach they celebrate in their native legal training and scholarship.

Almost no US law academics who acquire their first law degree in the United States seek an additional law degree, let alone one in a foreign state.<sup>100</sup> Some market factors help to drive this result. In the United States, unlike many states, law is a postgraduate degree so that US law students have fewer incentives to undertake additional legal study in another state. PhDs are becoming more common in nonlegal subjects, like economics, history, and sociology, but not in law.<sup>101</sup> This development reflects the value that the US legal academic market places on becoming interdisciplinary over becoming internationalized. Increasingly, aspiring US law professors are spending one or two years as a visiting assistant professor at a domestic law school before entering the US market. This route may function as a partial substitute for further legal study, but there are clear rewards to be gained by penetrating the networks that help secure an entry-level teaching position.

This nationalized educational profile describes the majority trend in US law schools, where 68% of the academics in this study evidenced no educational diversity. However, a minority trend has emerged in the last few decades at some of the elite

98. JAMIN & VAN CAENEGEM, *supra* note 70, at 7 (noting that foreign legal education is particularly prevalent within common law countries, with the exception of the United States).

99. *See generally* Richard A. Posner, *The Decline of Law as an Autonomous Discipline*, 100 HARV. L. REV. 761 (1987).

100. ROBERTS, *supra* note 1, at 80.

101. *But see Ph.D. Program*, YALE LAW SCHOOL, <https://www.law.yale.edu/studying-law-yale/degree-programs/graduate-programs/PhD-program> (last visited Dec. 31, 2016).

schools, though it is not clear that this trend applies to US law schools more generally. Some 32% of the US international law academics at the elite schools in this study received their first law degree outside the United States, often before completing a second or third law degree in the United States or elsewhere. As a result, almost all of the diversity of education in the US law academy comes from inbound rather than outbound diversity, which reflects the United States' status as a core state. Some US professors seek to internationalize their perspective later in their legal careers through experiences such as being a senior Fulbright Scholar in a foreign country. But the well-trodden educational pathways to a US tenure track job are almost exclusively domestic, especially when dealing with legal education.

*Significant educational diversity: the United Kingdom and Australia*

In the United Kingdom and Australia, almost all of the academics held two or three law degrees and the vast majority received those degrees from at least two countries (77% in the United Kingdom and 73% in Australia). This finding accords with a recent study of the internationalization of legal education that concludes that the UK legal academy is one of the most internationalized in the world.<sup>102</sup> Still, while both states score highly in terms of diversity of legal education, they present very different models of denationalization. The United Kingdom evidences strong inbound diversity, whereas Australia evidences strong outbound diversity. This dichotomy reflects the core/periphery dynamics between these states.

In terms of inbound diversity, 74% of the UK international law academics in the study received their first law degree outside the United Kingdom.<sup>103</sup> Thus, most of these UK international law academics are likely to be (or, at least, are likely to have been) foreign nationals. A considerable number of these foreign-trained academics came from Australia, but they also hailed from Austria, Canada, Germany, Greece, Ireland, Italy, Latvia, the Netherlands, Nigeria, the United States, and Zambia. Many received their LLMs in the United Kingdom, but others received them in Australia, Canada, Germany, the Netherlands, South Africa, Switzerland, the United States, and Zambia. Most of them received their PhDs in the United Kingdom, but PhDs or the equivalents were also awarded by Australia, Austria, France, Germany, Italy, Switzerland, and the United States. These findings reflect the tremendous—and highly unusual—educational diversity of the UK legal academy.<sup>104</sup>

The United Kingdom therefore represents an exception to the general asymmetric patterns of core states, which feature highly internationalized student bodies but relatively nationalized faculties. It is unclear what has made the UK legal academy so open to hiring foreign-trained academics. As the head of the Commonwealth legal empire, the UK law profession has developed strong connections with lawyers in many states throughout the world, and a significant amount of educational and professional movement has always taken place within the

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102. Antonios E. Platsas & David Marrani, *On the Evolving and Dynamic Nature of UK Legal Education*, in *THE INTERNATIONALISATION OF LEGAL EDUCATION* 299, 299–300 (Christophe Jamin & William van Caenegem eds., 2016).

103. ROBERTS, *supra* note 1, at 81.

104. ROBERTS, *supra* note 1, at n. 91; Platsas & Marrani, *supra* note 102, at 304 (noting that there are considerable numbers of legal academics with foreign training contributing to the development of a scholarship in the United Kingdom, including some cases where a very large proportion of academics in a specific faculty of law have been trained outside the United Kingdom and have come to work in the UK academy).

Commonwealth. European integration, which has seen the movement of lawyers and law students within Europe, adds to this phenomenon. Whether as a cause or an effect, UK law firms have traditionally hired large numbers of foreign-trained lawyers, particularly at midlevel positions. But the internationalization of the UK legal academy also seems to be driven by certain financial pressures and opportunities.

In terms of financial pressures, since academics are not well paid in the United Kingdom, gifted UK nationals have few incentives to enter the academy. To remain globally competitive, UK universities have responded by opening up the recruitment process to international applicants. As UK universities are some of the best-ranked in the world, foreign-trained academics are motivated to work at elite UK law schools. Moreover, because the UK academic recruitment process is both competitive and internationally open, some of the best British-trained international law academics end up at very good regional schools rather than the most elite schools. The United Kingdom has also been a magnet for internationally minded legal academics from other states that have traditionally been more domestically oriented, like Germany.

In terms of financial opportunities, UK universities admit a high percentage of foreign law students, particularly in their lucrative LLM programs.<sup>105</sup> UK universities charge one fee for domestic and EU students and another, much higher, fee for international students. For instance, in 2012–13, an MPhil in law at Oxford University cost £3,828 for domestic and EU students and £13,200 for international students.<sup>106</sup> This differential makes international students attractive to the UK universities as a major source of revenue. International and transnational offerings are popular with LL.M.s thanks to their transportable nature, which has enabled UK universities to hire more academics with these backgrounds and for these academics to assume a relatively central role in the law schools. The UK situation contrasts with the US market where a large proportion of the international students complete the LLM degree in order to take the New York bar and those who have not completed a first law degree in a common law jurisdiction are required to study many US subjects, which are usually taught by US-trained professors.

For their part, Australian international law academics typically received their first law degree from Australia, which is on the Western semiperiphery, and then moved toward core countries, most commonly the United Kingdom and the United States, to complete their second and third law degrees.<sup>107</sup> Around 80% of Australian international law academics received their first law degree in Australia, which leaves 20% who were originally educated in foreign states. Those who originally studied law outside Australia attended schools in Brazil, Canada, Germany, Japan, New Zealand, the United Kingdom, and the United States. Around 73% of the academics received law degrees in two or more states, the most common pattern being for the academic to have completed the first law degree in Australia, followed by an LLM and/or a PhD in a foreign state. The high rate of outbound educational diversity has a lot to do with the position of Australia on the semiperiphery, which encourages its academics to look outward and to value the external. Australia is also a relatively affluent state with many available scholarship schemes for foreign study, mostly in the United Kingdom and, to a lesser extent, the United States.

105. ROBERTS, *supra* note 1, at 82.

106. See *Tuition Fees from 2012/13 Onwards*, UNIV. OXFORD, <http://www.ox.ac.uk/students/fees-funding/fees/rates> (last visited Jan. 27, 2018). This is unlike the US model where high fees, often around US\$50,000, are charged to domestic and international students alike.

107. ROBERTS, *supra* note 1, at 82.

The Australian international lawyers in this study tended to flock to like-minded or relatively similar states when pursuing LL.Ms and Ph.Ds. The perspective of these international lawyers is likely to be denationalized to some extent in virtue of having studied abroad, but it is still probably westernized and not subject to the diversifying influence of crossing a geopolitical, linguistic, or legal family divide. Australian international law academics thus commonly experience semiperipheral-to-core diversification, but otherwise are not highly diversified. The relative consistency of their educational migratory patterns also suggests that the Australian legal academy is less radically diversified than the UK legal academy.

#### *Implications for the Divisible College*

How might the existence of educational diversity in international law professors, and whether this diversity comes about primarily from inbound or outbound diversity, affect the construction of the divisible college of international lawyers?

First, the lack or existence of educational diversity may have a nationalizing or denationalizing effect. If academics have studied law only in the place where they teach, the experience is likely to have a nationalizing effect. They may be more likely to have learned international law with an emphasis on the domestic case law and practices of that state, to have been exposed to the views of international law academics from that state, and to have developed national networks. There is a greater probability that they were a national of that state and that they learned in an environment where they were surrounded by other nationals of that state. They may be less apt to have had the sorts of dislocating experiences that would make them aware of their own national assumptions, lenses, and biases when approaching international law.

By contrast, if academics have studied law in multiple countries, this experience may have a denationalizing effect. These academics are more likely to have studied domestic case law and practices in relation to the international law of more than one state, to have been exposed to academic work from different states, and to have developed transnational, rather than just national, networks. There is a greater chance that they will have been a national minority within the classroom or encountered students or teachers from diverse states with distinct national perspectives. All of these dislocating experiences may tend to make them aware of their own and others' national assumptions, lenses, and biases when approaching international law, providing them with a firsthand experience of the comparative international law phenomenon.

Anne Peters, a German international law scholar, has written about the espousal by international legal scholars of positions that can be linked to prior education in their domestic legal system and that serve the national interest, which she refers to as "epistemic nationalism."<sup>108</sup> She does not argue that scholars should completely detach themselves from their education and cultural context, which she concedes would be impossible and unnecessary, but that they should make a conscious effort to internalize the perspectives of their "others."<sup>109</sup> One way to become aware of one's

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108. Anne Peters, *Die Zukunft der Völkerrechtswissenschaft: Wider den epistemischen Nationalismus* [The Future of Public International Law Scholarship: Against Epistemic Nationalism], 67 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (ZAÖRV) [Heidelberg J. INT'L L.] 721 (2007) (Ger.).

109. *Id.* See also Christian Marxsen et al., *Introduction to Symposium: The Incorporation of Crimea by*



national biases, and to see the world through other eyes, is to study international law in more than one state.

Nationalizing and denationalizing effects may have more impact at the wholesale than the retail level. Academics who individually had a wholly national experience of learning international law may still become quite internationalized if they work in an academy that is largely composed of academics that come from or have studied in multiple states. But the nationalizing effect is likely to be intensified when the international legal community in a state is predominantly made up of academics that have studied law only in that state, as is the case in Russia and France. There seems to be a greater probability that these communities will produce relatively self-contained dialogues about international law and thereby reinforce the divisible college of international lawyers.

This sort of self-contained community is exemplified by Russia. Lauri Mälksoo has observed that international law scholars in Russia are often, first and foremost, Russian international law scholars in the sense that they tend to be “linguistically and network-wise relatively distinct and separated from international law scholars in the West.”<sup>110</sup> Russian international law scholars form a separate epistemological community that is tied together by common language, history, and geography, resulting in a fairly “self-contained” international law dialogue with roots in the Soviet government’s isolationist attitudes that created a parallel world to the West. This reality was stark in Russian debates about Crimea following its 2014 annexation by, or reunification with, Russia.<sup>111</sup>

Second, the lack or existence of educational diversity may affect the sources and approaches that scholars use when identifying and analyzing international law. In comparative law, diversity of legal education is linked with greater comfort in dealing with foreign legal materials in general, and in encouraging recourse to legal materials from the state where the foreign study took place. For instance, Justice Gérard La Forest of the Canadian Supreme Court has noted a “definite link” between the use of US precedents by his colleagues on the court and the training of those justices in the United States.<sup>112</sup> Likewise, Justice Claire L’Heureux-Dubé of the same court has explained that judges, lawyers, and academics who go abroad for parts of their education naturally turn for inspiration and comparison to those jurisdictions whose ideas are already familiar to them.<sup>113</sup>

Beyond the level of anecdote, this link is beginning to be explored more systematically. For instance, David Law and Wen-Chen Chan are studying the connection between a diversity of legal education and the willingness of justices on supreme or constitutional courts in various countries to draw on comparative law.<sup>114</sup> Law has demonstrated that whether the judges of the Japanese Supreme Court, the Korean Constitutional Court, the Taiwanese Constitutional Court, and the US Supreme Court are likely to draw on comparative law in deciding cases correlates with

*the Russian Federation in the Light of International Law*, 75 ZAÖRV 3, 4 n.2 (2015) (Ger.).

110. LAURI MÄLKSOO, RUSSIAN APPROACHES TO INTERNATIONAL LAW 87 (2015).

111. ROBERTS, *supra* note 1, at 84.

112. Gérard V. La Forest, *The Use of American Precedents in Canadian Courts*, 46 ME. L. REV. 211, 213 (1994).

113. Claire L’Heureux-Dubé, *The Importance of Dialogue: Globalization and the International Impact of the Rehnquist Court*, 34 TULSA L. REV. 15, 20 (1998).

114. See David S. Law & Wen-Chen Chan, *The Limits of Global Judicial Dialogue*, 86 WASH. L. REV. 523, 571 (2011).

the commonness of foreign legal education in those systems, as indicated by the diversity of legal education of judges, law clerks, and constitutional law academics at elite schools in those states (see Table 4).<sup>115</sup>

**Table 4:** Diversity of Legal Education in Japan, South Korea, Taiwan, and the United States<sup>116</sup>

	Japan	South Korea	Taiwan	United States
Foreign-trained justices	2/15 US: 2	4/9 US: 3 Germany: 1	11/15 Germany: 7 US: 4 Japan: 2 China: 1	None
Foreign law usage by parties and/or their attorneys	Low	Law firms tend to hire foreign law experts for cases that receive oral argument (i.e., high-profile cases)	Low	Low
Foreign-trained clerks	Roughly half, including at least one German-trained and one French-trained clerk	(1) Around 60% of clerks have foreign training (2) Additional researchers are hired specifically for their expertise in foreign law (3) Research Institute personnel all have foreign training	Most	None
Foreign-trained constitutional scholars at elite law schools	University of Tokyo: 1/4 (25%) Keio Law School: 2/4 (50%) Waseda Law School: 2/4 (50%)	Seoul National University: 6/6 (100%) Korea University: 5/6 (83%) Yonsei University: 5/5 (100%)	National Taiwan University: 8/8 (100%)	Harvard: 2/28 (7%) Stanford: 1/16 (6%) Yale: 2/19 (11%)

Conversely, lack of educational migration may also produce tangible consequences. In discussing the parochialism of the US Supreme Court in its choice of

115. David S. Law, *Judicial Comparativism and Judicial Diplomacy*, 163 U. PA. L. REV. 927, 1035 (2015).

116. *Id.* at 1035.

authorities, Law and Chan reason that “American judges are not to be blamed if their own vision ends at the water’s edge. They are simply products of the system that created them.”<sup>117</sup> As long as US law school faculties do not place a premium on hiring scholars with foreign or comparative law expertise or training their own students in foreign law, today’s US law clerks and tomorrow’s US judges and law professors will neither seek nor possess foreign or comparative training. Law and Chan argue that the day that US law students prize a degree in comparative law or a foreign law degree as a stepping-stone to a US Supreme Court clerkship or a teaching position in a US law school is the day that judicial comparativism will become truly institutionalized.<sup>118</sup>

Specific emigrational patterns also have a palpable effect because lawyers and academics are more inclined to draw on materials from the foreign jurisdiction in which they trained. In Law and Chan’s study of the Taiwanese Constitutional Court, they found a strong relationship between the educational backgrounds of the justices and the sources of foreign law that they cited. Judges with German law degrees accounted for 87% of citations to German precedents and 60% of the citations to German constitutional or statutory provisions. Judges with some US legal training were responsible for 62% of citations to American precedent.<sup>119</sup> These correlations are not difficult to explain: in Taiwan, as elsewhere, judges are more likely to cite what they know than what they do not know.<sup>120</sup>

Similar observations have been made about the Americanization of legal education in Israel, which has been described as a modern form of “legal colonialism.”<sup>121</sup> Many Israeli faculty members gain a postgraduate education in American law schools and, as a result, have imported research and teaching practices, as well as theories and values, from US law schools to Israeli ones. This exposure affects Israeli legal scholarship: it tends to focus more on universal issues and less on local ones; the perceived value of doctrinal work is waning while the prestige of theoretical and interdisciplinary work is rising; the main language of legal academic discourse is English; and US content and materials are heavily featured. It also seems to extend beyond scholarship, influencing the way legal issues and cases are approached in Israeli society and courts.<sup>122</sup>

These patterns suggest that scholars who have studied law only in one state and work in a highly nationalized environment may be more likely to cite sources, such as case law and academic commentary, from that state. Because Russian and French scholars have typically studied law only in Russia and France, they may tend to cite a high proportion of Russian and French materials, respectively. Similarly, because many US international law academics have studied law only in the United States, they may be predisposed to rely primarily on US cases, practice, and academic commentary. By contrast, because Chinese and Australian international law academics evidence a high

117. Law & Chan, *supra* note 114, at 576.

118. *Id.*; ROBERTS, *supra* note 1, at 85.

119. Law, *supra* note 115, at 980. *See also* Law & Chan, *supra* note 114, at 558.

120. Law, *supra* note 115, at 980.

121. Haim Sandberg, *Legal Colonialism - Americanization of Legal Education in Israel*, GLOB. JURIST, Jun. 2010, at 1, 2.

122. *Id.* at 13–23 (giving examples of the influence of (1) *Brown v. Board of Education*, 347 U.S. 483 (1954), on Israel policy with regard to allocation of land resources to minorities in a Jewish state; (2) US theories concerning indigenous people and distributive justice on the privatization of agricultural land in Israel; and (3) American theories of distributive justice and social responsibility on the attitude of the Israeli legal world to land expropriations).

degree of outbound educational diversity, these academics may be inclined to draw on materials and ideas from elsewhere, including first and foremost the states in which they studied.

The asymmetries of these educational movements mean that usually this sort of diffusion is primarily one-way rather than fully reciprocal. Chinese international law academics who have studied in the United States, the United Kingdom, and France are likely to be better placed to understand the perspectives of those states and to draw on materials and ideas from those states than the other way around. This circumstance may contribute to the field's Western orientation because it means that Western materials experience greater diffusion than non-Western materials and are more apt to constitute the field's common language. In the longer term, however, the lack of knowledge in Western international law academics about Chinese and other non-Western approaches and materials will become more problematic as China and other non-Western states grow in power.

Third, educational migration patterns might suggest some movement toward English common law approaches as a legal, global lingua franca. Although no large-scale data are available on this point, the educational backgrounds of many successful international lawyers suggest that students who originally studied law in a non-English speaking civil law state and then acquire further legal training in an English-speaking common law state are more common than the reverse. Many students who engage in transnational legal study stay within their language and legal family. But, to the extent that some traverse these lines, they appear to favor somewhat asymmetric movement toward English-speaking common law states.<sup>123</sup> In some cases, students complete their first law degree in a common law state and then an LLM or PhD in schools like Leiden University in the Netherlands, the Graduate Institute of International and Development Studies in Switzerland, and the European University Institute in Italy, but these institutions tend to be highly internationalized by virtue of their professors rather than steeped in civil law approaches.

These asymmetric patterns could be expected to affect what emerges as the lingua franca of international lawyers. For example, Colin Picker argues that international law evidences a mixed common law/civil law heritage, but that the balance between the two influences has shifted over time. Whereas international law was originally much more like civil law, it has shifted in the last sixty years to become more like the common law.<sup>124</sup> In studying this drift in the context of the World Trade Organization (WTO), Picker identifies one explanatory factor as the large number of officials, practitioners, and scholars in the field who have pursued legal studies in common law states, including many civil-law-trained students who undertook postgraduate legal studies in common law systems.<sup>125</sup> Even when law students have not attended common law universities themselves, their lecturers and advisers will often have studied or spent considerable time at such universities.

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123. JAMIN & VAN CAENEGEM, *supra* note 70, at 7 (one reason for this may be language, another may be the relatively low number of LL.Ms offered by civil law universities).

124. Colin B. Picker, *International Law's Mixed Heritage: A Common/Civil Law Jurisdiction*, 41 VAND. J. TRANS. L. 1083, 1104–06 (2008); Colin B. Picker, *Beyond the Usual Suspects: Application of the Mixed Jurisdiction Jurisprudence to International Law and Beyond*, 3 J. COMP. L. 160, 162 (2009).

125. Colin B. Picker, *A Framework for Comparative Analyses of International Law and its Institutions: Using the Example of the World Trade Organization*, in *COMPARATIVE LAW AND HYBRID LEGAL TRADITIONS* 117, 133–34 (Eleanor Cashin Ritaine et al. eds., 2009).

In the nineteenth and early twentieth centuries, universities in civil law states played a far more prominent role in Western legal education and thought.<sup>126</sup> The emergence of English as the global lingua franca is a critical factor in developing and sustaining legal cultures and English is closely associated with the common law. Thus, Picker claims that the ever-increasing role of English in international law suggests that the influence of common law legal cultural characteristics will continue and possibly expand.<sup>127</sup> This process tends to be exacerbated by the linguistic insularity of most native English speakers.

Fourth, states at the core of their language and legal family often evidence a clear asymmetry: for the most part, they are relatively internationalized in terms of their student bodies, but much more nationalized in terms of the education of their own professors. This pattern seems to be largely true of Russia, France, and, to a somewhat lesser extent, the United States. Such asymmetry means that they generally evidence a greater degree of international output than international input; these academics are well placed to diffuse some of their ideas to an international audience through their teacher-student relationships (output), but they are subject to relatively national influences in terms of determining their own approaches (input). This asymmetry is consequential because diffusion is more likely to occur in a downward and lateral direction than in an upward direction.<sup>128</sup>

The exception to this pattern is the United Kingdom, the only core state in the study to evidence double internationalization: a radically internationalized student body and international law academy. The international law academy is also internationalized through inbound diversity, with academics from a wide range of other countries, including many non-English-speaking and civil law states. Double internationalization helps to make the UK legal academy a fertile place for the development of international law because it brings together international lawyers from a broad variety of states as both students and teachers. The common language of these professors and students is the “international” and “transnational” rather than the “national” because not even the professors have a national legal tradition in common.

The UK academy’s double internationalization, coupled with the leading role of London in international law practice and its proximity to other centers of international law like The Hague, makes it well suited for an outsized influence on shaping the construction of international law as a transnational legal field. It becomes a true meeting place for “the international”—a melting pot of internationalization on both input and output levels. Of course, this diversity is not perfect. For example, the profile of inbound diversity shows that few international law academics at the elite schools come from non-Western states. Yet, compared with those in the other states in the study, UK international law academics may enjoy more internationally diverse professional networks, which could well encourage them to draw upon legal

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126. COMPARATIVE LEGAL TRADITIONS: TEXTS, MATERIALS AND CASES ON WESTERN LAW 56–57 (Mary Ann Glendon et al., 4d ed. 2014); Clark, *supra* note 41, at 1060 n.165 (2009); Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850–2000*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 19, 24 (David Trubek & Alvaro Santos eds., 2006).

127. Colin Picker, *The Value of Comparative and Legal Cultural Analyses of International Economic Law* 42–44 (May 13, 2012) (unpublished PhD thesis, University of New South Wales) (on file with UNSW Library).

128. ROBERTS, *supra* note 1, at 89.

developments and sources from a much wider range of states than their peers in many other states.

Nevertheless, these profiles and patterns are dynamic. Whether or not the unusual internationalization of the UK legal academy continues to the same degree following Brexit remains to be seen. There are already reports of international and foreign academics not applying to, or leaving, the UK academy in the wake of the UK's Brexit vote. The Brexit vote has also put into doubt significant European research funding for UK universities and UK universities have started to fall within international rankings within recent years.<sup>129</sup> All of these changes may affect the relative openness and attractiveness of the UK legal academy to foreign scholars, as well as the opportunities and incentives to focus on international, transnational and European scholarship.<sup>130</sup> At least for now, however, the UK international law academy is extremely internationalized, subject to potentially shifting patterns going forward.

Finally, although this section tracks educational patterns of the international law academics at the top five law schools in each state, some of these states include other universities that specialize in international law whose patterns may differ from those norms. The best example of this is New York University (NYU), the top-ranked law school for international law in the United States,<sup>131</sup> which is strikingly more denationalized than its sister schools on a variety of measures.<sup>132</sup> This difference can be seen by comparing the statistics for NYU's international law faculty with those for the international law faculties at the other elite US law schools. For the NYU international law faculty, 78% completed their first law degree outside the United States, compared with 32% for the other elite US law schools. Moreover, 67% of the NYU international lawyers exhibited educational diversity in their law degrees, compared with 32% for the other elite US law schools.<sup>133</sup>

The international law group at NYU is atypical in the US law academy. Some of the academics have backgrounds that would look more at home in the UK academy. Others are US-trained, though have often done much of their publishing in peer-reviewed journals, which is more common in Europe than the United States. Indeed, writing for the twenty-year celebration of the first edition of the *European Journal of International Law*, Martti Koskenniemi noted ironically that "[t]he European Journal has since then become one of the more interesting publications in the field and New York University has come to be regarded as the home of the world's most prestigious European law school."<sup>134</sup> The character of NYU is particularly significant in the US market given the high number of foreign LL.M.s that NYU teaches each year. However, even though NYU is more internationalized than its counterparts, the diversity of its regular faculty nonetheless largely derives from its inclusion of

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129. Richard Adams, *UK universities fall down global league tables after budget cuts*, *GUARDIAN*, Jun. 7, 2017; but see Rachael Pells, *UK universities dominate global rankings for first time despite Brexit reputation fears*, *INDEPENDENT*, Sept. 5, 2017.

130. See Sally Weale & Lisa O'Carroll, *Brexit brain drain threatens UK universities, MPs warn*, *GUARDIAN*, Apr. 25, 2017; Rachael Pells, *Brexit exodus: EU academics 'already pulling out' of UK universities, MPs warned*, *INDEPENDENT*, Jan. 25, 2017.

131. *Best International Law Programs*, *U.S. NEWS & WORLD REP.*, <https://www.usnews.com/best-graduate-schools/top-law-schools/international-law-rankings> (2017).

132. See ROBERTS, *supra* note 1, at ch. 5.I.A.

133. These figures represent the regular NYU international law faculty, not the more diverse visiting faculty that forms part of the Hauser Global Law School Program.

134. Martti Koskenniemi, *The Politics of International Law—20 Years Later*, 20 *EUR. J. INT'L L.* 7, 18 (2009).

international law academics trained in other Western states, including Australia, New Zealand, the United Kingdom, and Israel, suggesting both denationalizing but also westernizing influences.

#### CONCLUSION

When one looks at transnational movement of law students and law professors, what appears are hierarchical patterns and unequal core/periphery dynamics. Students from core, Western states rarely study law outside the West, while elite law students from outside this core are attracted to studying in core Western states because of the social capital associated with such moves. This results in an asymmetrical movement of students followed by an asymmetrical movement of ideas, materials and approaches in the reverse direction. As I explore more fully in my book, these inequalities appear not just in legal education, but also in many areas of international law, from the cases that international law textbooks cite to the nationality and educational profiles of top international arbitrators and counsel before the International Court of Justice.<sup>135</sup>

Transnational legal education may make the international law field more “international” in one sense, but it reproduces and likely exacerbates certain forms of dominance and inequality in a way that belies the field’s claim to universality in another sense. It is this latter point that leads to the questioning of whether international law really is international. What versions of international law are adopted in the academies of each core state, which are then radiated out to their semiperiphery and periphery states, is beyond the scope of this chapter and is more fully discussed in the book.<sup>136</sup> However, these hierarchical and asymmetrical transnational flows of students and ideas, materials and approaches have much to tell us about the sociology of the globalization of a knowledge in general, and of law and international law in particular.

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135. See ROBERTS, *supra* note 1, at chs. 3.IV, 4.IV and 5.III.

136. See *id.* at chs. 1, 4–6.