

## Holding Onto 'Too Many Lawyers': Bringing International Graduate Students to the Front of the Class

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### Abstract

As U.S. law schools come to terms with the need for new sources of revenue, the role of international law students may be both central to survival and an indication of the challenges that arise from the presence of different tracks for students. In order to maintain and perhaps increase US law schools' share of the global market for graduate law students, understanding what international students want is crucial to meeting the competition. At the same time, satisfying the goals of international students may require schools to embrace globalization and allow its forces to infiltrate their structures, activities and traditional approaches to educating lawyers.

### Key words

Legal education; globalization; legal profession

### Resumen

Las facultades de derecho de EE UU coinciden en la necesidad de lograr nuevas fuentes de financiación, con lo que el papel de los estudiantes de derecho internacionales puede ser básico para su supervivencia y un indicio de los retos que surgen por la presencia de diferentes grupos de estudiantes. Para que las facultades de derecho de EE UU mantengan y tal vez aumenten su participación en el mercado global de estudiantes de derecho, es fundamental entender qué quieren los estudiantes internacionales. A su vez, alcanzar las metas de estos estudiantes puede obligar a las facultades de derecho a abrazar la globalización y permitir que llegue a sus estructuras, actividades y sistema tradicional de formar abogados.

### Palabras clave

Educación legal; globalización; abogacía

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## 1. Introduction

The concern that there are “too many lawyers” has some currency in the United States today. But regardless of the position taken in the debate about what the number of lawyers should be, there is evidence that U.S. law schools are experiencing the effects of the *perception* that there are too many lawyers. In 2011 and 2012, fewer individuals sat for the law school entrance exam compared to earlier years (LSAC 2012b), and the number of applicants declined significantly in each of the last two years (LSAC 2012a, Weiss 2012, Mitchell 2012). It appears that the combination of job market concerns and what Bryant Garth describes as the “rhetoric of crisis” have contributed to the perception that the market for law graduates is overly saturated (Garth 2013).

These circumstances require law schools to make difficult choices regarding financing their activities, among other things. The decline in applicants has led some schools to admit smaller classes (Neil 2012, Farkas 2012, Mondics 2012, Schafer 2012), resulting in a loss of tuition income. Other schools may maintain their class size and tuition revenue levels by admitting students with lower entering credentials as the competition increases for applicants;<sup>1</sup> this risks negatively affecting the schools' *US News* ranking and, in turn, their competitiveness for students (among other things) in the future. Still other schools are cutting staff (UC Hastings 2012). Commentators on legal education have predicted that schools will close, faculty hiring will slow and salaries decrease (Chemerinsky 2010, Leiter 2012).

Just as businesses look for growth opportunities when they perceive market saturation (Shane 1996, Menkel-Meadow 2013), law schools also may look for new populations of prospective students to support their existing activities and budgetary needs. In the mid-1990s, a dip in U.S. law school enrollment coincided with the development of graduate programs for international law graduates<sup>2</sup> that have become important elements of the financial structure of many schools. The growth of these graduate programs has brought schools at least three benefits: (i) a new source of tuition income which is (ii) de-linked from the complication of *US News*, and (iii) a basis for the schools to claim some connection to the forces of globalization that have assumed importance in light of increased cross-border activities of law firms and their clients, and the receding barriers imposed by national trade regulations (Silver 2011). At the same time, a global market for law students challenges efforts by any single regulator to control the supply of lawyers (Steele 2012).

Attention in 2013 again is turned toward students outside of the typical domestic JD applicant pool. Some schools are focused on attracting students from different fields, whose careers may be enhanced by a series of law-related courses. Others are hoping to diversify geographically by drawing in more students from outside of the U.S. And of course, some schools will pursue both of these strategies as well as others.

In the past, when U.S. law schools developed programs to attract international students, they generally did so without intentionally affecting the education they provided to domestic JD students. The international students by and large were enrolled in a non-JD program, and the two populations were not intentionally— or well — integrated in ways that might have deeply changed the JD experience at most schools. This approach was successful for the law schools initially, but it is

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<sup>1</sup> As Weissmann (2012) notes, “The number of students applying who probably have no business going to law school [based on low LSAT scores] has dropped the least. The number of students applying who probably should apply to law school [based on high LSAT scores] has dropped the most.”

<sup>2</sup> “International law graduate” is used here to describe individuals whose first degree in law is earned outside of the U.S. “International graduate student” and “international law student” (used interchangeably) are used here to refer to international law graduates who enroll in a U.S. law school post-JD degree program, such as an LL.M., M.C.L. or S.J.D.

now being challenged by international competitors, particularly from other English-speaking common law (ESCL) countries (Macready and Tucker 2011, p. 3). Competition for internationally mobile students cuts across disciplines. The U.S. – while still the leading destination – has not maintained its share of this market (OECD 2010). In order to secure the U.S.'s position as a leading receiving country for international law students, and perhaps even to increase the proportion of international students who choose the U.S. as the site of their overseas legal studies, U.S. law schools must consider and respond to the reasons international students pursue overseas legal education. Doing so, however, will press schools to revisit the current approach that educates international and domestic students largely in isolation from one another, and which diminishes the potential influence of globalization. Instead, as U.S. law schools vie for international students, they also must come to terms with their willingness to allow globalization to infiltrate their structures, activities and mission. Moreover, experiences of international students also may offer lessons relevant to law schools contemplating the development of new student populations.

To address these challenges, this article draws on an empirical study of international law students to provide insight into their goals and experiences. The study gathered information from students who earned an LL.M. or similar one-year post-graduate law degree in 1996, 1998 or 2000 from one of eleven U.S. law schools, which were selected to provide a diverse group of law schools with regard to regional location and reputation (as reflected in their *US News* rank).<sup>3</sup> Graduates were surveyed about their backgrounds and motivations for enrolling in a U.S. law school, their careers before and after studying in the U.S., and their experiences in the U.S. Responses to the survey were received from 360 graduates living in 55 countries (and representing 68 birth countries); follow-up interviews were conducted with 66 of the survey respondents.<sup>4</sup> To supplement these data, I interviewed other lawyers involved in international practice to learn more about the market for international law graduates and the role occupied by U.S. legal education.<sup>5</sup>

The article begins in Section I by describing the general circumstances in which U.S. law schools now find themselves and the important role occupied by international law students in light of those circumstances. Section II draws on survey and interview data that explore what international students want from their overseas legal education. It considers why U.S. law schools have been a valuable resource for international students despite the apparent disconnection between the content of U.S. legal education and expertise in substantive home country law, on one hand, and the failure of U.S. law schools to satisfy certain of their goals regarding their overseas legal studies, on the other. Section III identifies salient issues for U.S. law schools to address in order to maintain – and perhaps grow – their market share for educating international law graduates. The conclusion suggests issues that may take precedence going forward regarding international students as well as other new student populations.

## 2. Current challenges for U.S. law schools

The news is filled with stories of the challenges plaguing law schools, their students and recent graduates. In recent years, more American Bar Association (ABA)-

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<sup>3</sup> For additional information about the project, see Silver (2009a). For discussion of another study of international law students, finding similar goals and experiences, see Mindie Lazarus-Black. *The Voice of the Stranger: Foreign Law Students' Experiences of Culture, Law, and Pedagogy in American Law Schools*. *Law & Society Association Annual Meeting, Boston*, May 2013 (on file with author), unpublished; Mindie Lazarus-Black and Julie Globokar. *Making an International Lawyer: The Genealogy of a New Expertise*. *Law & Society Association Annual Meeting, Chicago*, May 2010 (on file with author), unpublished).

<sup>4</sup> Interviews are cited by a number to protect the identity of interviewees.

<sup>5</sup> All but two interviews of survey respondents were conducted in person; two were telephone interviews. Interviews were open ended, lasting generally between 60 and 90 minutes.

accredited law schools are producing more law graduates while law school tuition also has increased, but because of the sluggish economy and a decrease in high-end corporate transactions, the job market cannot accommodate both more new lawyers and their need for higher wages (Hylton 2012). As the debate about legal education focuses increasingly on economics, the mismatch between more law students incurring more debt to pay higher tuition, on one hand, and fewer jobs that support repaying law school debt, on the other, has become the central focus. Relatedly, efforts to control and decrease the cost of legal education have implications for what is taught, too. None of this diminishes the importance of issues relating to the demand for lawyers, but in this article I leave to others the job of considering the implications of whether there are too many lawyers – and particularly too many new law graduates – on lawyers' roles in satisfying unmet legal needs (Sandefur and Smyth 2011, The New York Times 2011, Menkel-Meadow 2013).

Between 2000 and 2009, the number of U.S. lawyers grew by more than 15% (ABA 2011b) while the rate of growth for the U.S. population as a whole was below 10 percent (Mackun and Wilson 2011). Expansion of the lawyer population during this period corresponds to the creation of new law schools and growth in the number of students at existing schools. Between 2000 and 2009, the number of ABA-accredited law schools grew by 9.9% (ABA 2010), and the number of enrolled first year law students in the U.S. increased by 18.7% (ABA 2010). Applications have dropped significantly in the last several years (LSAC 2012c), while “[t]otal enrollment in J.D. programs was 11 percent higher in 2012 than in 2000, but fell slightly between 2005 and 2012” (Hansen 2012).

Over the same period, law students have paid more to become lawyers. According to the ABA, the average in-state tuition at public law schools was \$7,790 in 2000; in 2009, it was \$18,472 – a 137% increase (ABA 2012a). The average tuition for private law schools increased by 44% from \$24,790 in 2000 to \$35,743 in 2009 (ABA 2012a). Inflation during the decade of 2000-2010 was only 2.56% (Inflationdata.com 2011). The steeper rise in tuition at public law schools reflects what Lauren Robel, then president of the Association of American Law Schools (and currently Executive Vice-President and Provost, Indiana University), described as “the rapid privatization of public higher education, including public legal education, a long-term trend that has accelerated as a result of states' economic distress.” (Robel 2012).

Despite the high cost of legal education, law students have had ready access to borrowed funds to finance their studies.<sup>6</sup> But students' ability to repay their law school (not to mention undergraduate-related) loans is compromised by the current job market. According to the National Association of Law Placement, the number of law school graduates who obtained employment in large law firms, where the highest levels of compensation are paid to new lawyers, fell 27% from 2009 to 2010, compared to a nine percent decrease in law firm jobs overall during the same period (NALP 2011). Similarly, for the class of 2011, when fewer than half of employed graduates found law firm jobs, the proportion working for smaller firms of 50 or fewer lawyers – where starting salaries typically are lower – rose to approximately 60% (NALP 2012).<sup>7</sup> These forces have contributed to the perception that there are too many lawyers and law school applicants, and factor into the decline in applications to law school (Kritzer 2012, p. 220, LSAC 2012a).

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<sup>6</sup> According to Kritzer (2012, p. 219), “Almost 90% of law students borrow to finance their legal education.” Evidence of the changing debt landscape for law students also is apparent in data gathered by the Law School Survey of Student Engagement, which shows that 15.9% of the nearly 25,000 respondents to the survey in 2006 expected to owe more than \$120,000 at the time of their graduation in educational debt from attending law school; in contrast, the comparable figure in 2011 was 27.5% of more than 33,000 respondents.

<sup>7</sup> But see Benjamin Barros (2013).

To make up for this shortfall, U.S. law schools increasingly may rely on alternatives to the traditional pool of JD students and look to international students as part of the solution. International student mobility – both in law and generally in higher education – has more than quadrupled over the last 30 years according to the OECD, and has “accelerated during the past 13 years, mirroring the globalisation of economies and societies” (OECD 2010, p. 313). “The number of foreign tertiary students enrolled worldwide has increased by 85 percent since the year 2000. However, . . . the percentage of tertiary students leaving their home countries to study has remained stable, at about 2 percent, since 1999. Overall, the recent rise in student mobility has simply kept pace with the worldwide growth in tertiary enrollment over the same period” (Macready and Tucker 2011, p. 10). The U.S. is one of the primary receiving countries for international students. In 2008, “[t]he United States received the most (in absolute terms) with almost 19% of all foreign students worldwide, followed by the United Kingdom (10%), Germany (7%), France (7%) and Australia (7%).” (OECD 2010, p. 314, see also June 2012, Macready and Tucker 2011)

U.S. law schools have benefitted from the growing global market in higher education. Beginning in the mid-1990s, they began courting international law graduates through reconceived and expanded graduate programs that aimed at a broader group than the would-be academics who earlier had populated U.S. law graduate programs (Hupper 2008). Schools welcomed international law graduates who wanted to practice law and were interested in studying the same subjects pursued by U.S. JD students (Silver 2006).<sup>8</sup> The similarity of curricular interests between this new wave of international law graduates and their JD students enabled schools to capitalize on existing resources by directing the international students into empty seats in ongoing courses (Tamanaha 2012, pp. 64-65, Silver 2006). More recently, and in part in response to burgeoning enrollment in graduate law programs, there has been some increase in international enrollment in JD programs, too, particularly among for students from certain countries, including China (Silver 2011).

Generally, graduate programs for international students were developed on the basis of being entirely student-funded with regard to tuition; that is, international students either paid tuition from personal resources or brought funding from their home country or employer, but they typically were not supported through student scholarships funded by U.S. law school. The survey of international law graduates described in Section 1 confirms this financial bargain (Table 1). Approximately 40% of respondents reported that they relied exclusively on personal or family savings to finance their U.S. law studies.<sup>9</sup> Fewer than 2% were supported exclusively by funding from their U.S. law school, and nearly 16% were fully supported by a scholarship from an employer or other national or international organization, such as the German Academic Exchange Service or Fulbright.<sup>10</sup> This presents a stark contrast to the funding of JD students by the same law schools (Tamanaha 2012, pp.99-100).<sup>11</sup> Nor is the U.S. alone in this approach; generally, international graduate students pay full fare while domestic students are supported by government subsidies and university scholarships (Thornton 2012, Woodward

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<sup>8</sup> While space limitations prevent me from delving into the history of international graduate students in U.S. law schools, see Silver (2002, 2006, 2009a, 2011, 2012).

<sup>9</sup> See also IIE (2011b), noting that “63 percent of all international students receive the majority of their funds from personal and family sources.” The IIE statistic does not pertain only to law students.

<sup>10</sup> According to interviews with international graduate program directors conducted in 2003, funding from employers is more likely for students from particular countries; Korean and Japanese students might be funded for their law studies and even for one year of practice in the U.S. following their studies, while students from Europe rarely have been funded by employers. On Korean support, see Neil Chisholm, “Legal Diffusion and the Legal Profession: An Analysis of the Processes of American Influence on South Korea’s Lawyers,” on file with author, unpublished.

<sup>11</sup> Tamanaha was not focused on the 1996-2000 period, but the contrast between funding approaches for JD and international graduate students has not changed considerably.

2012).<sup>12</sup> Even this, however, is not stable: as law schools increasingly vie for national diversity among their graduate students, they are more likely to use student funding as a means of competition, while the financing of tuition for domestic JD students is under significant stress (Kritzer 2012).

Table 1: Methods of financing U.S. legal education for international graduate law students

	<b>Exclusive method of financing*</b>	<b>Contributed to financing (but not exclusive)*</b>
Personal or family savings	40.2%	69.7%
Scholarship from U.S. law school or university	1.9%	15.6%
External scholarship (employer or other funding organization)	15.8%	35.8%
Other financing method	6.4%	14.4%
*percentages do not add to 100%		

Developing a pool of international applicants for a graduate program, then, serves as an attractive strategy for law schools, offering the potential to develop revenue without substantial effect on their JD programs.<sup>13</sup> This approach is not unique to law schools or even universities; even at the high school level in the U.S., schools seek international students to cope with declining enrollment, and international high school students pursue education in the U.S. in order to improve their chances of admission to a U.S. college or university (Thornton 2012, Simon 2012, Marklein 2011).<sup>14</sup>

While interest in revenue from mostly-self-funded international students is shared across education levels, however, the role of rankings makes international students even more valuable to U.S. law schools than they are elsewhere. In the U.S., as in other countries, international law students generally enroll in degree programs other than the primary law degree offered in the host country. In the U.S., this means that a post-JD degree, typically an LL.M., is the popular choice, as opposed to pursuit of a three-year JD either instead of or in addition to education at home. By choosing the LL.M. or another non-JD degree program, most international

<sup>12</sup> See also Healey (2008), noting that, with regard to universities in the United Kingdom, Australia and New Zealand, "universities under financial strain . . . were allowed to charge full cost tuition fees to foreign students long before governments faced the political watershed of allowing universities to charge partial fees for domestic students."

<sup>13</sup> Healey (2008, p. 346) comments on a similar framework with regard to international student populations in Australia, Canada, New Zealand, the U.K. and the U.S. (denominated "MESDC"): "the internationalization of MESDC universities was not a rational growth strategy in the way implied by the Uppsala model, but rather a response to (arguably dysfunctional) government policy, which saw foreign tuition income as a way to shore up university finances without having to face the political challenge of deregulating domestic tuition fees; that is, it is a product of a distortionary government regulatory and funding model, not the outcome of optimization by rational, profit-maximising businesses."

<sup>14</sup> International students have been an attractive solution to financial woes of other levels of schooling in the U.S., too. See Simon (2012) for a story about public high schools: "Across the United States, public high schools in struggling small towns are putting their empty classroom seats up for sale. . . . [and] administrators are aggressively recruiting international students. They're wooing well-off families in China, Saudi Arabia, Pakistan, Russia and dozens of other countries, seeking teenagers who speak decent English, have a sense of adventure - and are willing to pay as much as \$30,000 for a year in an American public school. The end goal for foreign students: Admission to a U.S. college." But see Healey (2008, p. 348), explaining that many international students since the early 1990s have "come from modest family backgrounds with tuition fees and living expenses being funded by extended family savings and bank debt."

students avoid taking the LSAT and their credentials are 'off the books' for *US News* ranking purposes (Silver 2011).

U.S. graduate programs for international lawyers have grown substantially since the mid-1990s, both in terms of the number of schools offering such programs and the number of students enrolled (Silver 2006, Tamanaha 2012, p. 64). This reflects a general growth in non-JD program enrollment; according to the ABA, "ABA-approved law schools reported a 39 percent increase in enrollment in non-J.D. programs from 2005 to 2012 and a 52 percent increase from 2000 to 2012" (ABA 2012b). Determining the proportion of growth due to international student enrollment is difficult because available records are incomplete, but a rough proxy is the number of bar test-takers whose legal education was earned outside of the U.S. According to the National Conference of Bar Examiners, there was a 260% increase in internationally-educated bar exam test takers between 2000 and 2009.<sup>15</sup> Looking at this another way, in 1996, at the beginning of the period of substantial growth of graduate U.S. law school programs for international law graduates, 2.2% (1,589 individuals) of the individuals who sat for a U.S. bar exam earned their legal education outside of the U.S.; by 2011, 7.1% (5,620 individuals) of all bar exam test-takers earned their legal education outside of the U.S. (NCBE 1997, 2012).

Despite this growth, according to information provided by the ABA, international graduate students comprised only 3.16% of the size of the JD population in 2005, the most recent year for which ABA statistics are available;<sup>16</sup> this is a somewhat smaller proportion than the approximately 4.5% of all 2005 bar exam test-takers who earned their legal education outside of the U.S. (NCBE 2006),<sup>17</sup> and only slightly lower than the proportion of international students enrolled at all levels in U.S. colleges and universities for the same period, when international students accounted for 4% of enrolled students (Healey 2008).<sup>18</sup> More recently, in 2008, international students accounted for only 3.4% of college and university students in the U.S., compared to the substantially larger proportion of enrollment they occupied in three other English-speaking common law countries: 14.7% in the U.K., 20.6% in Australia and 12.9% in New Zealand (OECD 2010 at Table C2.1).<sup>19</sup> There is, thus, much room for growth in international student enrollment in U.S. colleges, universities and law schools.

<sup>15</sup> Certain law schools tried to develop opportunities for additional pools of law students by offering entire degree programs overseas; these have the benefit of avoiding the costs of leaving home, but their benefits are limited because the New York State Board of Law Examiners interpreted its rules to require U.S. physical residency during coursework in order to qualify for bar eligibility. See New York Board of Law Examiners, Foreign Legal Education, at IV.8, Available from: <http://www.nybarexam.org/Foreign/ForeignLegalEducation.htm> interpreting the phrase "in the United States." Thus, the growth of international student populations in law likely will result in physical presence in the U.S., at least until regulation of law graduates accedes to the flattening effect experienced in other sectors of the economy. See generally Healey (2008, p. 344): "For much of the post-war period, many governments viewed the recruitment of foreign students to their domestic campuses as, at best, a form of international development policy and, at worst, a tool of strategic foreign policy. . . . This paternalistic view of higher education has . . . been increasingly challenged . . . . Higher education is a 'superior good', in the sense that . . . as per capita gross domestic product rises, the demand for higher education rises proportionately faster."

<sup>16</sup> Figures were derived from data provided by the ABA Section of Legal Education and Admissions to the Bar, and ABA (2011a).

<sup>17</sup> 2005 is the most current year of data available from the ABA relating to graduate student enrollment. For JD student enrollment, see ABA Section of Legal Education and Admissions to the Bar, statistics, avail. At [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html).

<sup>18</sup> Compare to IIE (2011a), reporting that international students accounted for only 3.2% of all enrollment in the U.S. in 2005-2006.

<sup>19</sup> See also IIE (2011b), reporting that for undergraduate and graduate level combined the "top 10 most popular fields of study for international students in the United States in 2009/10 were Business and Management (22 percent of total), Engineering (19 percent), Mathematics and Computer Science (9 percent), Physical and Life Sciences (9 percent), Social Sciences (9 percent), Fine & Applied Arts (5 percent), Health Professions (5 percent), Intensive English Language (5 percent), Education (2 percent), Humanities (2 percent), and Agriculture (1 percent)."



The financial contribution of international students generally in higher education is significant. “[I]nternational students contribute more than \$21 billion to the U.S. economy, through their expenditures on tuition and living expenses, according to the U.S. Department of Commerce. Higher education is among the United States’ top service sector exports” (IIE 2011b). Their importance is not limited to the U.S. In Australia, where “[i]nternational education activity contributed \$16.3 billion in export income to the Australian economy in 2010–11[,] many educational institutions rely on the income from full-fee paying international students to assist in the provision of quality education to all students, both international and domestic” (Australian Bureau of Statistics 2011). For U.S. law schools, the tuition generated by graduate programs for international law graduates is free from certain of the burdens related to JD programs; notably, ABA oversight does not require parity among student opportunities for those in different degree programs because accreditation and approval is limited to JD programs. In addition, as long as the bulk of international students enroll in degree programs other than the JD, their admission does not trigger *US News* consequences.

Many U.S. law schools have taken advantage of these conditions by limiting their investments in programs for international students, so that each tuition dollar from an international student in a graduate law program is likely to yield a higher proportion of net income compared to the income generated by JD tuition. In this way, international law graduates present the potential for making a significant contribution toward solving the financial woes of law schools. For example, staffing of student services for international graduate and JD programs often differs.<sup>20</sup> International programs often have their own director, who serves as student advisor, alumni director, admissions officer and career advisor for international students in a post-JD program. Schools justify this arrangement by pointing to the expertise accumulated by an international program director, and in truth there are many excellent examples of this. But assigning all services to a single, all-encompassing role is risky. For example, it may be unrealistic to expect an international program director also to develop expertise on career advising comparable to that provided to JDs. In fact, career advising may be more complex for international students because of the variety of markets to which they may direct their attention; it may not be feasible for a program director to develop detailed knowledge of the hiring processes and opportunities in each country. Schools justify treating JDs and international graduate students differently based on their presumption that international students will return to their home countries and draw on resources from home to identify professional opportunities. They even have included statements warning students about the absence of opportunities in the U.S. on their websites and in admission letters (Silver 2012). But this attitude regarding students returning home flies in the face of experience, and reflects what one scholar has labeled the “colonial hangover” model of higher education (Wisker 2000), “in which the ‘cultural providers’ (i.e., universities) allow those alien to the culture to visit, learn from, and ultimately return home invigorated from this new cultural experience” (Kingston and Forland 2008, p. 209). Moreover, the presumption that students will return home after graduation is inconsistent with the intentions of many international law students (Silver 2012).<sup>21</sup> Nevertheless, by

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<sup>20</sup> See generally Professional Development Seminar, University of Oregon Law School, avail. at <http://law.uoregon.edu/academics/catalog/1163/>; Mystal (2012a) (discussing critique of Oregon’s creation of a course focused on career development skills as one example of the kind of investment schools make in JD career development).

<sup>21</sup> The mindset, however, is not unique to law schools. It is similar to the views of higher education administrators in other fields, including business. See Rhodes (2010): “‘As long as we have a sufficient number of American MBA graduates, U.S. employers are more likely to hire U.S. MBAs,’ Linda Salchenberger, dean of Marquette University College of Business Administration in Milwaukee, wrote in an e-mail. So, many schools are helping international students adjust their job-search strategies. ‘Our advice to our international student population is they really do need to look at returning home as an option,’ said Mark Brostoff, career center director at the Olin Business School at Washington University

segregating staff serving international and domestic students, schools protect those focused on JDs, and indirectly the JDs themselves, from having to come to terms with the varying interests, backgrounds and approaches of international students.

Investment in faculty for international students also may take a different approach than for JD programs. It is rare for schools to add to their tenure-track faculty because of growing demand from international students. In part, this relates to the history of development of these programs, when international students were placed into vacant seats in courses whose primary audience was the JD population. But in addition, schools utilize less expensive non-tenure track faculty to teach international students in courses that respond to their interests in particular subjects, whether a core course offered only for international students, such as contracts, or a specialized course that is particularly appealing to international students because of their experience working as lawyers, such as courses on anti-corruption measures.<sup>22</sup> This is not an assessment of the quality of teaching or mentorship by faculty who occupy non-tenure track positions; rather it simply identifies the ways in which schools have pursued growing populations of international students without making investments that otherwise would be required to accommodate a larger student population. Nor have schools trained their faculty on pedagogical approaches to teaching international students. Policies such as relying on non-tenure track faculty and separate grading scales for international students may send the message that teaching international graduate students is not as important as teaching JDs.

This approach of limiting investment in programs for international students carries increased risk in light of expanding efforts from legal educators in other ESCL countries to recruit from the same pool of potential students. Overseas competitors often charge lower tuition compared to the U.S., although rates for international students may be higher compared to the rates for domestic students in such countries (Woodward 2012). In addition, schools in Australia, New Zealand and England, among others, are more conveniently located to students' home countries – particularly for the important sending countries of China and India – and may provide students with a more diverse international student experience because of greater national diversity at the university level, where law departments often are situated outside of the U.S. And in those countries that have substantially higher proportions of international students enrolled in all disciplines at the university level, there may be more sensitivity to providing support for international students comparable to that offered to domestic students.

U.S. law schools historically have had at least two advantages in the competition for international students. First, studying law in the U.S. has provided international students with the promise of insight into U.S. law, lawyers and law firms, which has been important in large part because of their role on the global stage of the U.S. economy. Whether working for or with U.S. clients, lawyers or law firms, knowing how U.S. lawyers are trained – and having an opportunity to become acquainted with U.S. lawyers and law students – has held great value. Second, earning an LL.M. or similar one-year post-JD degree in the U.S. has qualified international students to gain a U.S. law license by passing a state bar exam in certain commercially-important jurisdictions, including New York. This has translated into a signal of legitimacy with regard to working in an international setting where U.S. law may be relevant (Silver 2011). While these attributes have enabled U.S. law schools to compete successfully for international students in the past, each presents challenges going forward. Bar eligibility has been and remains outside of

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in St. Louis. 'I have empathy for the international students who made the commitment to come to a top U.S. business program, but we also try to be very realistic with them when they interview.'

<sup>22</sup> See Georgetown Law Center's course, Anti-Corruption Laws and Enforcement Mechanisms - An International Approach, [http://www.law.georgetown.edu/curriculum/tab\\_courses.cfm?Status=Course&Detail=1070](http://www.law.georgetown.edu/curriculum/tab_courses.cfm?Status=Course&Detail=1070), taught by adjunct professor Barbara Fredericks.

the control of the law schools. There is no national approach to recognizing international law credentials despite consideration recently by the ABA's Section of Legal Education and Admissions to the Bar of a proposed rule developing such a framework (ABA, Section of Legal Education and Admissions to the Bar 2011), and state bar regulations recently have imposed challenges difficult for schools to meet. For example, the imposition of a pro bono requirement by New York's Board of Bar Examiners may be difficult for schools to arrange on behalf of their international students (New York §520.16 2012). Generally, schools have denied clinic seats to international graduate students, for example, and as discussed below, they have not provided the same access to externships as JDs enjoy. At the same time, other ESCL jurisdictions are considering altering their rules to permit access to licensing by international students on a basis analogous to what has been possible in New York and several other U.S. jurisdictions, which would neutralize this factor in the U.S. arsenal. On the other hand, the promise of gaining insight into U.S. lawyers is well within the control of law schools, although it has been difficult for them to deliver in a consistent and meaningful way. Law schools have not successfully choreographed interaction between domestic and international students, and without such design, relationships are unlikely to develop (Silver 2013).

Overall, law schools may seek to rely on international students as a sufficiently flexible element of their populations and revenue stream to enable the schools to weather changes in the JD student population, job market and related matters, all of which affects the financing of legal education. But it may be unrealistic – and unwise – to assume continued interest on the part of international students without also considering how their presence might change U.S. legal education for all involved. That is, a one-way influence pressing out from U.S. legal education and onto international students may have been the framework schools used in the past, when the competing alternatives available to international students were not as attractive. Today, neither bar qualification nor the lessons about U.S. lawyers are reliably unique or deliverable to justify their serving as the basis for schools' future financial security. If the goal is for an international population to serve as a long-term and central element of U.S. legal education, schools must consider what is necessary to satisfy international students and how this will change their education of JDs, as well.<sup>23</sup>

### 3. What do international graduate law students want?

It may be obvious why U.S. law schools find international law students attractive, but why do international law graduates want to attend U.S. law schools? Understanding this is central to U.S. law schools maintaining their position as primary receivers of international students.

Students pursue international higher education for a variety of reasons, including gaining access to what is otherwise unobtainable at home.<sup>24</sup> The details of what is inaccessible and valued differ widely. Science students may study abroad in order to work in well-equipped labs unavailable in their home countries (Millard 2005). Other students may find the international aspect of their experience most important. This may be related to learning to contextualize home country experiences,<sup>25</sup> to gaining access to an elite institution when that is otherwise

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<sup>23</sup> I take up the issue of how the presence of international students may benefit JDs by offering opportunities to learn to work in a global environment separately in Silver (2013).

<sup>24</sup> See generally Reichman and Sterling (2002, p. 941 n. 59): "Human capital is operationalized as the specific lawyering skills acquired through both legal education and practice experience. Social capital consists of individuals' ability to draw on relationship networks for establishing support."

<sup>25</sup> See generally Rizvi (2007, p.5) (defining "cosmopolitan learning" as "develop[ing] a different perspective on knowing and interacting with others, within the changing context of the cultural exchanges produced by global flows and networks. . . . Such learning is of course best done collaboratively, in transcultural collaborations, in which local problems can be examined comparatively, and linked to the global processes.").

unavailable from home<sup>26</sup> or to the opportunity to develop particular skills, such as English language ability. The specific reasons for pursuing international study depend as much on home country as on the characteristics and interests of an individual student (Sayad 2004). As Ronit Dinovitzer and John Hagan (2006) explained, "the worth of a particular form of symbolic capital is based on its recognition as valuable in local settings."

These themes are echoed by the international graduate law students who earned an LL.M. in the U.S. in the late 1990s and 2000 and responded to my survey. Many described their goal as the acquisition of elite status that otherwise was inaccessible at home.<sup>27</sup> For example, one LL.M. graduate from Latin America explained his expectation that the LL.M. would signal social and professional capital by representing that

your social skills are good because you came to the States all alone. You did this by your own, you just spent a lot of money, so that talks very good things about you. You know, that you are self-sufficient .... Self-motivated ... First of all, you had the money so you come from a family that can pay this. So, you have social skills; ... you might have contacts when you go back. So, there's a lot of things that ... really count at the time of hiring somebody. ... [Y]ou talk good English and they need people who talk in English because they have clients . . . , U.S. and British, ... European that speak in English because it is a universal language. So they need a lot of people like you after the masters (#67).

In order to unpack motivating factors, I surveyed a sample of international graduates from a nationally diverse set of U.S. law schools about their reasons for pursuing legal education in the U.S. Table 2 sets out their responses, showing both the proportion of respondents who indicated that a particular factor was among their motivations (center column) and the proportion who indicated it was the most important motivation (right-hand column).

<sup>26</sup>See Brooks and Waters (2009, p. 1091) (explaining that international education is, for some students, a "second chance" for those who fail "to secure access to an elite [domestic] institution.").

<sup>27</sup> See Brooks and Waters (2009, p. 1092) ("decisions to pursue an overseas education were often inextricably bound up with, for example, family connections abroad, a desire to secure permanent residency in another country, previous experiences of travel and/or a wish to pursue a new 'adventure' overseas. However, a significant majority of our respondents were also strongly motivated by the desire to gain entry to an elite higher education institution and, for a considerable number, this appeared to be a key factor in their decision-making.").

Table 2: Motivations of international law graduates for pursuing U.S. graduate legal studies

Motivation	% of Respondents indicating this was important*	% of Respondents indicating this was the most important reason for pursuing U.S. legal studies*
Expansion of professional opportunities in home country	82%	51%
Interest in a particular area of law	54%	19%
Desire to improve English skills	51%	6%
Career advancement	39%	14%
Desire to live in the U.S.	39%	6%
Influence of colleagues/friends who had earned an LL.M.	29%	0.6%
Path to job in the U.S.	29%	7%
Family considerations	21%	3%
Necessity for U.S. bar exam	16%	4%
*percentages do not add to 100%		

The largest group of respondents was motivated by their belief that U.S. legal studies would expand their professional opportunities at home; this also was identified as the *most* important motivating factor by the largest group of respondents. The ways in which U.S. legal studies affect career opportunities are shaped by the professional hierarchies and opportunities for competition in each home country (Dinovitzer and Hagan 2006, Silver 2011), but certain common themes are reflected in Table 2 and in interviews. For example, according to LL.M. graduates and hiring partners at elite law firms (both U.S. and non-U.S. firms), U.S. legal education signals an understanding of the common law system and the acquisition of English language skills that are highly valued in many countries. According to one international graduate, "70% of clients are U.S.-based companies. The better deals involve international parties. If you want to be on these deals, you must be able to speak, read, write in English as if it's your own language—almost mandatory. Most law firms require knowledge of English before hiring in a job as a lawyer" (#89). Another graduate explained, "I wanted to have . . . U.S. clients and the only [way] I could do it was . . . studying. . . U.S. law and talking good English. If not, you know, I wasn't able to do it" (#67).<sup>28</sup> Even for lawyers whose clients are not U.S.-based, however, U.S. legal education offers benefits.<sup>29</sup> Familiarity with the common law system, for example, and with the ways in which U.S. lawyers approach basic notions such as drafting contracts, provides confidence and

<sup>28</sup> See Marginson (2008, quoted in Brooks and Waters 2009, pp. 1090-1091) ("US hegemony . . . is underpinned by the global use of English; research concentration and knowledge flows; and its success as a 'people attractor', through offering superior salaries for staff and scholarships for students.")

<sup>29</sup> Interview #90 ("most of the clients we deal with are foreign clients and very often we have to deal with their legal counsel.")

credibility to international law graduates when they interact with U.S., British and other common law lawyers on transactions and in the context of disputes.<sup>30</sup>

International law students also are motivated to acquire what might be described as technical knowledge and skills. English fluency is one example, and slightly more than half of the survey respondents indicated improving English as a motivating factor. Exposure to U.S. law and legal theory also was a significant motivation. One graduate described his interest in learning U.S. securities regulation: "When I studied law - I did my first state exam in '95 - there was no such thing in Germany as capital markets law or securities regulation. I mean insider dealing, for example, was not illegal" (#13). Others were more interested in exposure to theoretical approaches that were absent from their home country legal education, such as law and economics. Overall, interest in a particular area of law was identified as an important motivation by more than half of all respondents, and as the *most* important motivating factor by nearly 20% of all respondents. The particular subject of interest may reflect the current legal debates and high stakes for corporate clients, and over the course of the survey years from 1996 to 2000, students shifted towards intellectual property<sup>31</sup> – a trend that now surely reflects the norm.

Generally, while the motivating factors listed in Table 2 were quite consistently ranked by respondents regardless of their home country, slight regional differences were present. The importance of the LL.M. as a means for expanding opportunities at home was not limited by where 'home' was located. But slightly more of the respondents born in Asian-Pacific countries and in Latin America (including Mexico and the Caribbean), as compared to respondents from other birth regions, indicated that their interest in a particular area of law motivated their decision to pursue the LL.M. At the same time, slightly fewer of the respondents born in Asian-Pacific countries considered living in the United States a motivation for pursuing U.S. legal studies, compared to respondents born in the Latin America region and in Europe (including both EU and non-EU countries).

The motivating factors identified in Table 2 are not exclusive of one another. For example, while bar eligibility was cited by the smallest group of respondents, its influence may be felt as an element of expanding professional opportunities, too. These and other factors were present in the explanation of one LL.M. graduate: "In Korea, [the] LL.M. value is first, [an] American license – bar exam. [The] LL.M. is a process to get [a] license. Second value is prestige of [the] law school; it convinces clients of credibility. They say, 'Oh, you graduated from [school's name], you can have this business.' [The] third value of LL.M. is English improvement. Really, English is more important, but credential of license is important" (#81). This graduate was the first lawyer sponsored by his law firm to study in the U.S., and he reflected the weight of their expectations in his remarks.<sup>32</sup> A second graduate explained that "having a master's degree in the United States allow[s] you to have more room to jump and to look for a higher kind of meaning. If you want to achieve, you have to [have] a different perspective. Not only from your side, but from the other people['s] side" (#84).

In law school, then, the goals of international students are related to substantive and professional lessons. And while the law school experience is what begins the

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<sup>30</sup> See, e.g., Interview #11 ("the biggest asset of an LL.M., is really that you get outside of your country, get involved in the foreign country, because it's long enough you learn about the people, as a lawyer you do pick up enough about the legal system to understand how they think, and if you end up practicing law, or if you end up in an international job like manager and you deal with Americans, you have a leg up on the people who haven't done this LL.M., in dealing with them, because you just know how they think, you know how they were brought up. I mean, you don't know it, but you have a much better feeling for it.").

<sup>31</sup> Note, however, that the small number of respondents identifying IP or any other topic as related to their motivation for studying in a U.S. LL.M. program limits the significance of this finding.

<sup>32</sup> He already was licensed in Korea, a difficult feat at that time, when bar pass rates were below 5%.

journey for international law students, it does not define the scope of the experience many hope to achieve (Silver 2012). Instead, they aim for the gestalt of the U.S. legal education experience, including participation in the social as well as academic life of the school,<sup>33</sup> passing the bar<sup>34</sup> and working in the U.S. after graduation in a law-related job.<sup>35</sup> These social and experiential aspects of U.S. legal education facilitate international students becoming "comfortable at working across national boundaries and cosmopolitan in lifestyle and outlook" (Brooks and Waters 2009, p. 1087), and they are pivotal to imbuing the experience with its value as a mechanism for expanding professional opportunities at home. As one graduate from the EU explained, "people will look even more differently to you if you've had an American law firm experience. They think you know more than they know or people will ... kind of value you more" (#85).<sup>36</sup> That is, these additional experiences comprise an important part of the reasons that professional opportunities at home may be enhanced. As clinics and externships have become mainstays of U.S. law schools, they, too, offer significant opportunities for gaining relevant experience.

Achieving comfort in a multinational setting is one of the most significant gains available from studying overseas, whether in law or another discipline, and stems from exposure to a nationally-diverse peer group. This can facilitate learning how to navigate multi-nationality with regard to substantive law, styles of working and communicating, and differences in approaches to lawyering and learning. One can conceive of this as being akin to acquiring a global legal literacy, which includes the ability to communicate with those whose first language is different, cultural fluency - particularly with regard to professional legal culture, an appreciation for the ways in which the roles of lawyers differ in particular countries, and an awareness of basic variations regarding national law (Silver 2009b).

For most international law students, simply enrolling in a U.S. law school graduate program promises exposure to certain experiences central to global legal literacy. They must interact with U.S. culture, in English, by virtue of being physically present in school in the U.S. Moreover, their international graduate program classmates may provide a nationally-diverse group, which is an important part of the U.S. law school experience. It was explained nicely by one U.S. LL.M. graduate:

I came here [to the U.S. LL.M. program] hoping to meet people from different countries, different cultures, and it did open my mind. Literally, the first day I felt like I had been hit with an axe in my head and it opened, you know. I had traveled very little when I was younger, so I didn't know much of the world and I hadn't met anyone from Asia or, I don't know, different countries in Europe, Eastern Europe, Africa, so it was a new and very intense experience (#75).

But in 2012, the national diversity that was central to this student is not a universal in U.S. graduate law programs. Certain programs have become overwhelmed with students from the same country, which compromises the diversity of the international graduate cohort. Several factors are relevant in explaining this change, including the development of the EU's Erasmus program, which has

<sup>33</sup> See n. 29, supra (#11).

<sup>34</sup> See Silver (2011, p. 29): "The sole distinction of the U.S. LL.M. compared to similar post-graduate degrees offered in other common law jurisdictions, according to international law firm hiring partners, relates to bar eligibility in the United States. A senior partner in a U.K.-based international firm explained, "[t]he huge advantage of the U.S. is the route to the New York bar. For the U.K., the LL.M. is not a path to qualification."

<sup>35</sup> Silver (2012) describes the challenges to international law graduates pursuing careers in the U.S. Also, see Silver (2011, p. 42): "A lawyer working in the China office of an international firm explained, 'If someone has only an LL.M. and the bar . . . there is no big advantage. The advantage comes from working experience in the U.S.'"; and Wiers-Jenssen (2008, p. 113), finds that "mobile students are far more likely to consider and acquire working experience abroad compared to non mobile students. Mobile students with diplomas from abroad have the highest probability of working abroad."

<sup>36</sup> See also Mazlish and Morss (2005) (suggesting four models of global elites). In addition, for some, the level of compensation paid to U.S. lawyers has been an attraction. With the post-2008 changes in job opportunities, however, it may be even more difficult for international students to secure U.S. jobs, much less high-paying ones. See Silver (2012).

generated opportunities for European students to study in other EU countries (Lonbay 2012). Competition from schools in other ESCL jurisdictions also challenges U.S. schools' efforts to enroll a nationally diverse group. One hiring partner offered his opinion that legal education in most schools in ESCL countries is essentially fungible (Silver 2011, p. 29). To the extent his view is widely shared, students may consider factors such as cost, proximity and the opportunity for relationships as more significant in distinguishing between schools and countries for their overseas studies. And while having several students from the same country in a program offers some comfort as students adjust to the U.S. and its version of legal education, it may complicate efforts to bridge the divide between domestic and international cohorts (The Economist 2010).

Apart from the national diversity represented by international classmates, international students expect to gain an understanding of U.S. law students and to learn alongside them. This is one reason students choose the U.S., after all. It is U.S. immersion and context they desire, and while this is a logical expectation, it has proven difficult for schools to deliver. The challenge of providing a connection to host country students is not unique to U.S. law schools. A recent article about international students in Australian universities described a chilly relationship with their host country peers: "Australians . . . do not really appreciate us back" (Woodward 2012, see also Singh and Sproats 2004).

International students generally report that it is difficult to establish relationships with JDs. According to one graduate, "The only class in which I interacted with JD students was negotiations. This is one of the sad things about the program. I met lots of LL.M.s from many countries, but not enough JDs" (#92). Another graduate explained that "LL.M.s stuck together. I was the only native English-speaker. But I had more in common with LL.M.s than with the JDs. None of the JDs became my friend. Americans are friendly, but they don't want to be your friend generally" (#80). In fact, it is relatively common for international students to report failing to become well-acquainted with *any* JD student. One interviewee reported that she interacted with "hardly any" JDs (#91). Occasionally, international students capitalize on a personal (often romantic) relationship with a JD student as their bridge to integration and immersion;<sup>37</sup> others use sports activities in which JDs also participate.<sup>38</sup> Aside from these sorts of coincidental meetings, however, interaction tends to be limited (Silver 2013).

While friendship is not necessarily the goal, in order to master global legal literacy in the U.S. context, international students must become part of an integrated international community that includes U.S. students. They must have opportunities for interaction to allow for non-formal learning<sup>39</sup> and the acquisition of tacit knowledge (OECD 2012, Eraut 2000). However, as illustrated by the graduates' comments above, simply enrolling in a U.S. law school does not guarantee an international student either "meaningful interaction [with U.S. law students] or the development of valuable intercultural communication skills and international perspectives" (Leask 2009, p. 206).

Formal classroom experiences also present difficulties. U.S. law faculty are unsure whether to treat international students similarly to JDs, ignore them entirely, look to them for comments on their home country law, or all or none of the above. Norms on these issues are scarce both within and across U.S. law schools, and

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<sup>37</sup> Interview #78 (dated, then married, a JD student).

<sup>38</sup> Interview #51 (played sports with international and American students, in and outside of the law school).

<sup>39</sup> Non-formal learning has been described by the OECD as an "intermediate concept" that may be "**organised and can have learning objectives**. . . . [It] may occur at the initiative of the individual but also happens as a by-product of more organised activities, whether or not the activities themselves have learning objectives." (OECD 2012) See also Eraut (2000).



faculty attitudes range from considering international students an impediment to their teaching to appreciating their contribution to a diverse student experience.

The uncertainty of faculty is perhaps matched by the diversity of learning styles that international students bring to the U.S. Differences in what Hofstede described as "power distance" affect the ways in which students may approach participation in a typically interactive law school classroom (Kingston and Forland 2008, pp. 205-206). But as Kingston and Forland (2008, pp. 207-208) note, learning styles are not static. International law students are remarkably adaptive to U.S. law school classrooms; one graduate described a common experience:

Some professors . . . don't call on LL.M.s in class. LL.M.s know this, and some do not prepare for these classes. But I did continue to prepare. Still, I felt that this unwillingness to call on LL.M.s affects our status with regard to the JD students. So I resented this practice. Also, it denied me the experience of being called on, one of the basic common experiences of U.S. law school (#84).<sup>40</sup>

Nearly all of the interviewed international graduates reported enjoying, and found invigorating, both the formal aspects of their education in the U.S.<sup>41</sup> and their interactions with other international graduate students. As one graduate explained, "For me, one of... probably the best aspect was the fellow international students. It was... in fact this last weekend I went to New York to visit a friend of mine who I actually met in the program, I mean our connections were formed that remained that strong. And that was probably the single best element of that LL.M." (#74). But the absence of meaningful interaction with American students is a frustratingly persistent complaint. The same respondent commented that, with regard to interactions with American JDs, there was "more of a division . . . , very, very limited involvement with the U.S. students. Far less than anybody in the LL.M. wanted, everyone in the LL.M. expected to be making far more American friends, and everybody sort of, the consensus was that was very difficult to do and that wasn't happening" (#74). While this lack of interaction between international and domestic students is neither a uniquely American problem nor limited to the law school context,<sup>42</sup> it goes directly to one of the two reasons international students choose the U.S. over other ESCL countries for their legal studies: the opportunity to learn about and with future U.S. lawyers. Law schools cannot control the relative position of U.S. lawyers, law firms and law in the global legal market, but they do have influence over the experiences of international students that occur within their walls. The nature of their interactions and integration into the community of their schools is likely to be a key factor in the increasingly competitive market for international law students. If law schools are to rely more heavily on international students as a salvation for their current financial challenges, this is a challenge that must be addressed.

#### 4. Moving from marginal to mainstream

To ensure continued competitiveness in the market for international graduate students, U.S. law schools must capitalize on their advantages and respond to the

<sup>40</sup> Moreover, certain of the challenges described above might not characterize the experience of international students if they enrolled in the JD program. From admission requirements to grading policies, the standardization of the JD framework would erase certain of the inequalities discussed here. But international JD students do not offer all of the advantages of the graduate program students because of the influence of *U.S. News*.

<sup>41</sup> For example, one graduate described his formal learning from classes as revolving around "smaller technical issues . . . [for example,] if you need a power of attorney from an American company, it's always a big hassle how you prove that the person acting is authorized to act on behalf of the company . . . It's a very different concept from the German one and, well, these smaller technical issues, it helps me to find my way and ask exactly what I am looking for in such documents. Some of the major concepts like the concept of consideration in contract laws . . . [t]hat helped me to explain some German concepts to American clients. But I don't apply . . . in my every day work any knowledge of American law other than that" (#14).

<sup>42</sup> See, e.g., Woodward (2012) (describing international students in Australian universities (not limited to legal studies) as experiencing "loneliness to incidents of outright discrimination.").

interests outlined above. This involves providing an educational framework that enables meaningful interaction with an internationally diverse peer group, including U.S. JD students, and one that offers exposure to practice experiences, too. Each of these has implications for the policies of U.S. law schools; in the following discussion, my aim is to highlight the issues and suggest possible factors to consider rather than resolve the dilemmas.

What is unique about U.S. legal education is part of what attracts international students. The Socratic method, for example, memorialized by John Jay Osborn's Professor Kingsfield, has contributed to the understanding of U.S. legal education for domestic and international students. Implicit in this is the interaction between students and faculty and among students. International students, no less than domestic JDs, want access to this sort of interaction. As one interviewee explained, when faculty are unwilling to include international students in the classroom dialogue, "it denie[s them] the experience of being called on, one of the basic common experiences of U.S. law school" (#84).

To extend this experience to international students, however, may change in the classroom dynamic. The implicit assumption inherent in the current approach of U.S. law schools to educating international graduate students is that there is a one-way influence from the school to the international student. But in order to offer students the ability to interact with JDs, the one-sided nature of this structure must shift. As Leask describes, it is necessary to "move away from deficit models of engagement" (Leask 2009, p. 218). By including international students in the classroom conversation, faculty send a message that affirms the importance of diversity.

Integrating international and domestic students presents challenges in terms of language ability,<sup>43</sup> learning styles, diverse risks and rewards stemming from law school academic achievement,<sup>44</sup> and in legal expertise. Differences in degree programs often are the justification for keeping the two groups separate. Many schools focus on social interaction, using mentorship programs, for example, that pair international and JD students to establish a relationship between members of the two groups. But to learn to work together, integration in the classroom is key. Evidence suggests that academic integration will help international students acclimate to their new environments more efficiently (Rienties *et al.* 2011).

U.S. law faculty may balk at the notion that they reorient their teaching to deliberately facilitate interaction between international and domestic students. They may suggest that a goal of integration between these groups is unworkable or even unfair to domestic students, and U.S. JDs may agree. In addition, faculty correctly may claim inexperience in facilitating collaboration between even U.S. JD students (LSSSE 2012, p. 13); expecting them to coordinate intercultural and inter-degree program integration may ask too much. Questions surely will be raised regarding whether intentional integration must permeate the curriculum or can be left to particular parts of the curriculum, such as negotiations, a popular course among international graduate students at many U.S. law schools. Recall the LL.M. graduate mentioned earlier who described his negotiations class as the sole site of interaction with JD students. This was a common experience among my LL.M. graduate interviewees; the intentional pairing of students on assignments that deliberately require interaction while refraining from privileging the U.S. student's comfort in the learning environment was transformative.<sup>45</sup>

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<sup>43</sup> See Figueiredo and Mauri (2012) (describing the absence of language fluency as an asset in teaching about global interaction); Silver (2013) (considering the same issue in the law school context).

<sup>44</sup> Grades earned by JDs are an important element in their job searches, while for international students grades may or may not be a crucial element in securing a job.

<sup>45</sup> See also Horenczyk and Bekerman (1997, p. 73) (describing "structured intergroup encounters" as leading to "changes in group perceptions beyond those resulting from the intercultural acquaintance experience.").

Moving ahead, law schools might offer support for faculty who lack experience working in globally diverse settings, and ask colleagues in higher education and psychology, for example, to help them “adapt their teaching to an international, culturally diverse teaching and learning environment rather than expecting learners to adapt to a monocultural, inflexible environment[, and to] be self-reflective and critically aware of how their own culture influences what they do, including the way they select and structure what they teach, how and what they learn, and how they respond to students and other staff” (Leask 2009, p. 212). If the proposition that forms the basis of this article is correct – that international students will become a mainstay of U.S. legal education – then learning to teach to this new reality is a central task.

Returning to the theme of pursuing U.S. legal education in order to expand their professional opportunities at home, international students also seek U.S. practice experiences. The current job market for new law graduates may render it particularly difficult for international graduates without a JD to secure employment, but this only increases the attractiveness of experiential course offerings. Certain law schools embed an externship in their programs for international students.<sup>46</sup> Others may worry that with limited seats in their clinics, offering slots to international graduate students encroach upon JD participation. In addition, in certain jurisdictions students must hold a limited license from the state to fully participate in a clinic’s activities, which may be difficult or impossible for international students to obtain. Externships, too, may raise the concern over competition between the two groups, particularly as field experiences provide a basis for developing job opportunities in addition to their educational role.

Bar eligibility also is a continuing concern for international law students. With notable exceptions, most states prohibit international students from taking a bar exam after completing only a single year of law school in the U.S. (NCBE and ABA 2012, Chart 4, p. 14). Law schools have been reluctant to engage bar regulators in discussion on this issue, perhaps because of some sense of undermining their loyalty to JD students. At the same time, as noted earlier, bar eligibility is an enormous advantage of U.S. law schools compared to schools in other ESCL countries, where licensing has not been possible for international graduate students with only a single year of study. For example, the UK system of “degree, vocational learning, training contract—impedes the route to qualification rather than open it up” (Flood 2012). But this difference is not static, and there is reason to anticipate that England, at least, will move to permit international students to qualify to practice.

Of course, U.S. law schools cannot control bar regulators. But bar regulators continue to exert control over law schools with regard to international students. Their force is one of standardization, not altogether a negative influence, as I have argued elsewhere (Silver 2011). But the intrusion of the bar over curricular decisions now risks complicating schools’ efforts to use every asset – including curricular innovation – to compete for students. Respondents to my survey reported that they chose the U.S. for legal studies for myriad reasons that defy the rationale of a single educational approach. Comments on the survey included the following motivating factors, among others: in order to study at a particular, notable law school; because it would be “fun [and offer a] chance to live abroad;” to switch substantive fields, from tax to corporate law; to “take a sabbatical and enjoy the ride;” “to live the great American campus experience;” “to have an international experience, to know other cultures;” “to enhance my job prospects in other countries” outside of the U.S. and home; “different teaching methods;” “personal experience” and “simply as a good experience;” and “to improve my

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<sup>46</sup> See

[http://www.mcgeorge.edu/Academic\\_Programs/LLM\\_and\\_JSD\\_Programs/LLM\\_in\\_Transnational\\_Business\\_Practice.htm](http://www.mcgeorge.edu/Academic_Programs/LLM_and_JSD_Programs/LLM_in_Transnational_Business_Practice.htm) (describing the LL.M. in Transnational Business Law).

knowledge[] in international law."If standardization requires a focus primarily on U.S. law as opposed to comparative, international or transnational law, for example, as is the current trend,<sup>47</sup> this may undermine schools hoping to attract the diversity of talent they need. Of course, not all students are interested in the bar, but it is a signal of comparability as much as anything. And without local bar eligibility, a law school's home state generally will be unavailable as a possible site for future employment. This is contrary to the experiences for JDs, who often remain in the same region after they graduate.<sup>48</sup>

One can imagine U.S. law schools using these considerations as mechanisms of competition for international applicants. The most notable schools might offer international students access to their 'classic' U.S. law school experience with no change from their current practices. Schools that are less well known abroad may promote an intentionally integrated classroom environment. Alternative approaches to creating an immersion experience may lead to the development of clinical and externship opportunities, which may result in focusing on particular segments of international applicants, whether based on background and expertise. Still other schools may design their programs around bar eligibility and preparation, including special attention to English language skills. At the same time, there is some strength in maintaining sufficient flexibility so that U.S. law schools can champion the same message, that U.S. legal education – as opposed to that offered in another ESCL country – represents the gold standard.

## 5. Conclusion

International student mobility is a significant trend as well as big business. U.S. law schools have benefitted from the presence of international students, who have flocked to special graduate programs designed specifically for them. But the market for international students is subject to increased competition at a time when U.S. law schools are likely to feel more urgency to maintain or increase the number of international applicants.

Until now, the motivations of international students have not occupied a central focus for most U.S. law schools with regard to the design and implementation of their graduate programs. Rather, schools offered an opportunity to experience U.S. law school as it has been delivered to domestic JD students. In part, this maybe exactly what international students seek – the classic U.S. law school experience including the hallmark Socratic method. But in accepting this offer, international students have both conceded their marginality and foregone some of the more captivating experiential course offerings. Of course, this may suit the purposes of certain international students, but marginalization is unlikely to garner loyalty in a competitive market. Whether international students would find U.S. law schools more attractive if their experiences were on par with those of domestic JDs is a question that schools must grapple with as they vie for position in a global law student market.

One of the lessons of the survey and interview data presented here is that the market for international students is fueled by difference. The financial bargain is different for domestic and international students, in the U.S. and elsewhere. Concern about an oversupply of law graduates is less acute with regard to international students in part because of the assumption that they will have different career paths than domestic students, returning home to pursue home country opportunities. As discussed above, this assumption may be unwarranted,

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<sup>47</sup> See New York State Board of Law Examiners (2012) Court Rules for Admission of Attorneys and Counselors at Law 520.6(b)(1)(ii)(b)(3)(vi) (imposing new substantive course requirements focused on U.S. law and bar-related subjects)

<sup>48</sup> See, e.g., The University of Chicago Law School, Alumni: Where are they now? (reporting that 3156 graduates are in the Chicago area, far more than the next most concentrated area (California with 1368), Available from: <http://www.law.uchicago.edu/prospective/afterchicago/wherearetheynow>.

but it highlights the ways in which law schools conceive of their international and domestic students as separate cohorts.

New programs being developed for non-law students and aimed at providing some exposure to legal issues eventually may encounter similar problems. Will the new non-JD graduates compete for the same jobs pursued by JD graduates? Is limited exposure to legal education sufficient to help non-JDs gain promotions and catapult themselves into new career trajectories? If so, why would JD graduates not hope for similar opportunities? In addition, proposals to reduce the time required for the primary law degree in the US from three years to two might also lessen the distance between JD graduates and graduates of the new non-JD programs, whose central focus now is outside of legal practice (Rodriguez and Estreicher 2013).

With regard to international students, it may well be that their interests are identical to JDs, both in terms of their experiences in law school and afterwards. Law schools may be pressed to address the justifications upon which different treatment has been based in order to continue attracting international applicants. Of course, the time and money invested by JDs is more substantial and perhaps justifies some difference in treatment. Moreover, to give international and domestic students equivalent experiences may well require a shift in the teaching methods now used. This may benefit domestic students in much the same ways as it would provide new insight to international students. But while international students have taken the step of traveling overseas for study, and in doing so acknowledging the importance of global forces in their professional lives, U.S. students who have not taken a similar affirmative act in recognition of globalization may reject its salience (Silver 2013). It is not clear where their faculty stand in this regard.

In addressing the challenges identified in this article, collaboration may yield benefits for law schools. This might take the form of initiatives aimed externally, for example at bar regulators and potential employers, or internally at issues such as increasing transparency in international students' academic records, which would both facilitate transfer between degree programs and provide outsiders with insight into the substance of the U.S. law experience. Schools might consider whether international law students would benefit from a comparable one-size-fits-all approach used in JD assessment. Without this sort of transparency, the stronger signal is the identity of the U.S. law school rather than the student's work in the school, and relying on law school reputation means deferring to *US News*, widely-acknowledged as deficient. At the same time, uniformity is not necessarily consistent with the variety of motivations characteristic of students in international graduate programs. It may be that the maintenance of a strong international student presence is a unifying force that will guide policy for the structures offered by the schools (Garth 2013).

As law schools consider whether to rely even more heavily on their international students, they also must address their competitiveness vis-à-vis legal education in comparable jurisdictions. Will the favor of the marketplace be won by the schools that most directly address the interests of international students, offering an equivalent – if not identical – experience to that enjoyed by domestic students? And if so, how will U.S. law schools respond to these demands and maintain their unique identities? These are the dilemmas of globalization faced by myriad firms already. Now it is the law schools' turn.

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