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## Who Wants the Global Law School?

Kevin E. Davis

Xinyi Zhang

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# Who Wants the Global Law School?

Kevin E. Davis and Xinyi Zhang\*

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## INTRODUCTION

Judging from the academic literature, US legal educators and their supporters all want to build global law schools.<sup>1</sup> The impetus comes from globalization; in other

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\* Kevin E. Davis is Beller Family Professor of Business Law, New York University School of Law. Xinyi Zhang is Global Programs Coordinator, New York University School of Law. We are grateful to Ava Haghighi for excellent research assistance and to Amy Wilson, Benedict Kingsbury, Siqi Tu, Benjamin Van Rooij and participants in the conference on Globalization of Legal Education for helpful comments. Kevin Davis gratefully acknowledges support from the Filomen D'Agostino and Max E. Greenberg Faculty Research Fund at NYU School of Law. The views expressed in this article are those of the individual authors and do not necessarily represent the views of New York University or the NYU School of Law.

1. See, e.g., Larry Catá Backer, *Internationalizing the American Law School Curriculum (in light of the Carnegie Foundation's Report)*, in THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION 49, 54 (Jan Klabbers & Mortimer Sellers eds., 2009) (describing embrace of transnational legal training by the American Association of Law Schools); David S. Clark, *Transnational Legal Practice: The Need for Global Law Schools*, 46 AM. J. COMP. L. 261 (1998); James R. Maxeiner, *Learning from Others: Sustaining the Internationalization and Globalization of U.S. Law School Curriculum*, 32 FORDHAM INT'L L.J. 32 (2008); John Edward Sexton, *The Global Law School Program at New York University*, 46 J. LEGAL EDUC. 329 (1996). Most of the articles cited above are aspirational. We suspect that relatively few U.S. law schools have made significant efforts to offer the kinds of training recommended in this literature.

words, the impetus comes from increased flows of goods, services, people, and information across international borders. The conventional wisdom is that as globalization progresses, the practice of law becomes increasingly likely to involve transactions or disputes with cross-border dimensions. Lawyers increasingly will be called upon to represent parties involved in matters such as issuing sovereign bonds, building hydro-electric projects, merging with or acquiring firms with multinational operations, maintaining global supply chains, adopting children from overseas, or advocating for human rights in foreign countries. The increased prevalence of transnational legal practice will, in turn, increase the demand for students who have been prepared for that kind of practice by being educated about transnational law.

The presumption in much of the literature is that if law schools build a global law school, students will come.<sup>2</sup> The process by which students decide whether, and to what extent, to participate in the globalization of legal education has received relatively little attention. However, understanding that process is critical because students clearly have choices; they choose whether to attend law school, which law school to attend, and, in many cases, whether to take advantage of opportunities to study transnational law.

Underlying the standard view is a relatively simplistic understanding of how students make decisions about legal education. According to that understanding, students value alternative forms of legal education based primarily on how they impact their opportunities to practice law after they graduate.<sup>3</sup> For example, students will value the opportunity to study Latin American law if they believe it will help them to land the job they covet in a large law firm's Latin American practice group.

In the standard model, the demand for educational opportunities is a derived demand, meaning it is determined entirely by the demand for some other good or opportunity; in this case, post-graduation professional opportunities.<sup>4</sup> This is an unwarranted oversimplification. The gap between this theory and the reality of how students decide which educational opportunities to pursue offers plenty of room for law schools to stumble in their efforts to attract students to programs on transnational law.

We believe that demand for educational opportunities, and particularly demand for opportunities that form only part of an expensive post-graduate degree program, is shaped by a complex set of psychological and social factors. Career concerns are not necessarily the most important of those factors. This insight is widely accepted in

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2. *But see* John A. Barrett, Jr., *International Legal Education in U.S. Law Schools: Plenty of Offerings, But Too Few Students*, 31 INT'L LAW. 845, 856 (1997) (noting that the percentage of students taking international law courses was "woefully low").

3. *See* Claudio Grossman, *Projecting the Washington College of Law into the Future*, 45 AM. U.L. REV. 937, 942 (1996) (noting that Washington College of Law's clinical and international programs were "extremely important" to their admissions process).

4. *See* Maulik Shah, *The Legal Education Bubble: How Law Schools Should Respond to Changes in the Legal Market*, 23 GEO. J. LEGAL ETHICS 843, 843 (2010) ("Students attend law school for a variety of reasons; however, a predominant reason is to gain enough skills by graduation to obtain a satisfactory legal job with an employer of their choice.").

studies of higher education that focus on undergraduates, but has had limited impact in the literature on U.S. legal education.<sup>5</sup> Understanding those factors, as well as the overall decision-making processes in which they play a role, is of both academic and practical value. Shedding light on the process by which law students decide whether to pursue transnational educational opportunities promises not only to contribute to the literature on higher education, but also to help law schools develop programs in transnational law that students find compelling.

We illustrate this argument by using a case study of a set of semester-long study abroad programs in which we were both directly involved; an initiative known as “NYU Law Abroad.” It was launched by New York University School of Law (“NYU Law”) in Spring 2014.<sup>6</sup> NYU Law Abroad was explicitly designed to respond to changes in legal practice caused by globalization. The programs were optional, not mandatory, for NYU JD students. Consequently, as members of the team responsible for implementing the program, we were immediately forced to confront the challenge of inducing students to choose to participate. This experience demonstrated that impact on post-graduation career opportunities was not necessarily the most important factor in students’ decision-making.

The first part of this Article discusses the view that demand for transnational legal education is a derived demand driven by globalization. The second part draws on sociological theories and research in higher education to present an alternative view; namely, that demand in this context is a construct of psychological and social as well as economic factors. The third part describes NYU Law Abroad, including both the supply-side factors that led the law school to create the program and the demand it triggered among students. The fourth part concludes.

## I. DERIVED DEMAND

The derived demand theory is premised on the idea that globalization is a persistent trend which generates demand for lawyers who are capable of appreciating the legal consequences of transnational activities.<sup>7</sup> This leads to demand for lawyers familiar with the laws of multiple jurisdictions, which in turn generates demand for multijural legal education; that is to say, demand for training in the laws of multiple jurisdictions.<sup>8</sup> We will examine each of the steps in this process in turn.

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5. See *infra* notes 45, 58 & 59.

6. NYU Law Announces Ambitious New Study-Abroad Program as Part of Curricular Enhancements Emphasizing Focused Study in Third Year, NYU LAW, [http://www.law.nyu.edu/news/nyu\\_law\\_announces\\_study-abroad\\_program\\_curricular\\_enhancements\\_third\\_year](http://www.law.nyu.edu/news/nyu_law_announces_study-abroad_program_curricular_enhancements_third_year) (last updated July 22, 2013).

7. See John A. Barrett, Jr., *International Legal Education in the United States: Being Educated for Domestic Practice While Living in A Global Society*, 12 AM. U.J. INT’L L. & POL’Y 975, 983 (1997) (noting that for some lawyers the practice of law has long been international and that an international world requires “increased international legal knowledge and skills”).

8. The discussion in this part draws heavily on Kevin E. Davis & Michael J. Trebilcock, *The Demand for Bijural Education in Canada*, in *BIJURALISM: AN ECONOMIC APPROACH* 173 (Albert Breton & Michael Trebilcock, eds., 2006).

*A. Globalization and the Demand for Transnational Legal Services*

It is uncontroversial that cross-border flows of capital, goods, services, people, and information require supporting legal services.<sup>9</sup> Those legal services typically take one of two forms: advice on the legal consequences of particular transactions,<sup>10</sup> which might include advice on different ways of structuring a transaction to achieve the same purpose, and assistance in resolving disputes about transactions which have already occurred.<sup>11</sup> The tasks are connected because understanding the legal consequences of a particular course of action involves anticipating the sorts of disputes it is likely to generate and how those disputes will be resolved. Both tasks require understanding all of the laws applicable to the transaction or dispute in question.

Until recently, all forms of globalization—international flows of capital, services, people, goods, and data—were increasing steadily.<sup>12</sup> In that context it was reasonable to conjecture that demand for the associated legal services was increasing apace. Since the financial crisis of 2008, however, the trend line has frayed. Worldwide volumes of trade in goods and services, as well as foreign direct investment, have declined.<sup>13</sup> However, some flows, such as computer services and tourism, have increased.<sup>14</sup> At the same time, Brexit and the Trump administration’s support for economic nationalism have cast a political cloud over the entire globalization project.<sup>15</sup> In this more complex

9. See Barrett, Jr., *supra* note 7 (noting that an international world requires “increased international legal knowledge and skills”).

10. See Farida Ali, *Globalizing the U.S. Law School Curriculum: How Should Legal Educators Respond?*, 41 INT’L J. LEGAL INFO. 249, 250 (2013) (“In the legal profession, globalization is most often understood as a system that creates a smaller and increasingly interdependent world in which legal issues and transactions transcend national boundaries.”).

11. See Barrett, Jr., *supra* note 7, at 989–90 (noting that modern day litigators “must know the peculiarities of transnational legal dispute settlement”).

12. See David S. Law, *Globalization and the Future of Constitutional Rights*, 102 NW. U.L. REV. 1277, 1301 (2008) (stating that the KOF index of globalization defines globalization as “transnational movement of capital, people and ideas” and that the index shows a trend of globalization increasing over time); Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451, 1476 (2000) (stating that international flows of trade in goods and services have multiplied exponentially over the past few decades); Joel P. Trachtman, *The International Law of Financial Crisis?*, 104 AM. SOC’Y INT’L L. PROC. 295, 296 (2010) (discussing “future increases in globalization, financial innovation, information technology, and growth”).

13. See *Exports of Goods and Services (% of GDP)*, WORLD BANK GROUP <https://data.worldbank.org/indicator/NE.EXP.GNFS.ZS> (last visited Feb. 8, 2018); *Foreign Direct Investment, Net Inflows (BoP, Current US\$)*, WORLD BANK GROUP, <https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD> (last visited Feb. 8, 2018); *Foreign Direct Investment, Net Outflows (BoP, Current US\$)*, WORLD BANK GROUP <https://data.worldbank.org/indicator/BM.KLT.DINV.CD.WD> (last visited Feb. 8, 2018); Prakash Loungani et al., *World Trade in Services: Evidence from a New Dataset*, 34 fig.16 (Int’l Monetary Fund, Working Paper No. 17/77, 2017).

14. See Loungani et al., *supra* note 13, at 8 (increased exports of Telecommunications and Computer and Information Services); *International Tourism, Expenditures (% of Total Imports)*, WORLD BANK GROUP, <https://data.worldbank.org/indicator/ST.INT.XPND.MP.ZS> (last visited Feb. 8, 2018); *International Tourism, Receipts (% of Total Exports)*, WORLD BANK GROUP, <https://data.worldbank.org/indicator/ST.INT.RCPT.XP.ZS> (last updated 2017).

15. *League of Nationalists*, THE ECONOMIST (Nov. 19, 2016), <https://www.economist.com/news/international/21710276-all-around-world-nationalists-are-gaining-ground-why-league-nationalists>.

world, it is difficult to sustain a blanket assumption that further globalization is inevitable and will drive steadily increasing demand for legal services.

Even if it is too soon to sound the death knell for globalization, and the volume of cross-border transactions and disputes actually increases over time, there need not be a proportional increase in the demand for legal services. Some cross-border transactions and disputes demand more advice from lawyers than others. For example, international sales of goods between most countries are so routine that information about how to structure transactions to achieve predictable legal effects is widely available, even to people without legal training—countless entrepreneurs around the world figure out how to import goods from China without legal advice. The situation is different for transactions that are unusual, or where the applicable legal principles change frequently or are not widely accessible. A sale of advanced computer equipment from a US entity to an Iranian one might be a good example because the sale must comply with legislation implementing US sanctions on Iran.<sup>16</sup> There are similar variations in the extent to which lawyers are involved in other types of international transactions. The financing and construction of a one-of-a-kind international pipeline in Central Asia is likely to require more legal assistance than financing and building a warehouse in Mexico.<sup>17</sup> In short, different forms of globalization—different volumes and types of transnational activities—generate different levels of demand for legal services.

#### *B. Demand for Multijural Lawyers*

If globalization does generate demand for lawyers, there is an open question as to what kinds of lawyers will be able to satisfy that demand. Some proponents of the global law school suggest that lawyers who work on transnational transactions or disputes have to be familiar with the laws of all the jurisdictions implicated.<sup>18</sup> Different

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16. See Press Release, U.S. Dep't of Treasury, United States Takes Action to Facilitate Communications by the Iranian People and Targets Iranian Government Censorship (May 30, 2013), <https://www.treasury.gov/press-center/press-releases/Pages/j11961.aspx> (noting that the removal of sanctions on exporting computer parts to Iran would not apply to the Iranian government or individuals and entities on the Specially Designated Nationals list).

17. Compare Benjamin C. Esty, *Why Study Large Projects? An Introduction to Research on Project Finance*, 10 EUR. FIN. MGMT. 213, 216 (2004) (discussing project finance transactions involve numerous contracts), with *Doing Business, Mexico*, WORLD BANK GROUP, <http://www.doingbusiness.org/data/exploreeconomies/mexico#dealing-with-construction-permits> (last visited Feb. 8, 2018) (describing process for obtaining a construction permit for a warehouse in Mexico City).

18. See Backer, *supra* note 1, at 83 (“There can be no such thing, at a level of specificity necessary for practice, of the possibility of an acquisition of a generalist’s knowledge.”); Mark A. Drumbl, *Amalgam in the Americas: A Law School Curriculum for Free Markets and Open Borders*, 35 SAN DIEGO L. REV. 1053 (1998) (arguing for instruction in Mexican, Canadian and U.S. law for students practicing in areas affected by the North American Free Trade Agreement); Gloria M. Sánchez, *A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal Language of the Major U.S. American Trading Partners*, 34 SAN DIEGO L. REV. 635, 641 (1997) (“[L]awyers who do not command the law, language, and culture in which they are counseling their clients, whether for transactional or litigation purposes, are not performing their duties competently and ethically, are courting malpractice on a personal level, and, on a broader level, are

levels of familiarity might be required. At one end of the spectrum is the lawyer who is familiar with the law of only one jurisdiction, the monojural lawyer.<sup>19</sup> At the other end of the spectrum is the lawyer who is equally capable of practicing the laws of all the relevant jurisdictions, the perfectly bijural or multijural lawyer.<sup>20</sup> In between are lawyers with varying levels of familiarity with the different jurisdictions' laws.

It is not obvious that effective transnational lawyers must be familiar with the laws of all the jurisdictions implicated in a matter. The middle ground between perfectly monojural and perfectly multijural lawyers includes people who are not necessarily familiar with the specific features of the legal systems implicated in a matter, but who are also familiar with the general issues that arise in transnational settings. Imagine, for example, a Canadian lawyer who is only capable of offering advice on Quebec law. By virtue of his or her training or experience in transactions or disputes involving Canada's common-law provinces, that lawyer might appreciate the potential differences between legal systems and have a sense of what questions to ask foreign lawyers, even in a transaction involving, say, New York law and Chinese law. That general familiarity with transnational legal issues might allow the lawyer to be more effective than a purely monojural lawyer in a variety of cross-border transactions.<sup>21</sup>

The clients who demand multijural lawyers may also want lawyers who are multilingual.<sup>22</sup> In many cross-border matters either the parties speak different languages or the applicable laws are written in different languages. Lawyers involved in these cases benefit from being able to communicate in the relevant languages because they can avoid the costs of translation. Similarly, when the parties come from different cultural backgrounds, lawyers who can negotiate different cultural norms without intermediaries will avoid unnecessary costs, frictions, and misunderstandings.<sup>23</sup> In this sense, linguistic and cultural skills are what economists call complements to multijural legal skills, meaning their presence enhances the demand for the services of multijural lawyers.<sup>24</sup>

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undermining the legitimacy of the profession.”) (citations omitted).

19. Yves-Marie Morissette, *McGill's Integrated Civil and Common Law Program*, 52 J. LEGAL EDUC. 12, 24 (2002) (comparing McGill's integration of civil and common law jurisdictions to traditional programs that do not integrate both jurisdictions).

20. James W. Bowers, *The Elementary Economics of Bijuralism: A First Cut*, 52 J. LEGAL EDUC. 68 (2002) (finding that multijuralism occurs when multiple jurisdictions have their own legal doctrines that separate them from all the others).

21. Catherine Valcke, *Global Law Teaching*, 54 J. LEGAL EDUC. 160 (2004) (discussing the benefits of rendering students capable of “thinking like global lawyers,” but questioning the feasibility of covering more than one or two foreign legal systems).

22. For empirical studies suggesting that speaking a common language facilitates international trade, see Ingo Eduard Ispording & Sebastian Otten, *The Costs of Babylon—Linguistic Distance in Applied Economics*, 21 REV. INT'L ECON. 354 (2013) and Jacques Melitz, *Language and Foreign Trade*, 52 EUR. ECON. REV. 667 (2008).

23. See Carole Silver, *Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S.*, 24 STAN. L. & POL'Y REV. 457, 459–62, 470 (2013).

24. ROBERT S. PINDYCK & DANIEL L. RUBINFELD, *MICROECONOMICS*, 6th ed., 22–23 (2004).

Cross-border matters do not automatically generate demand for multijural lawyers. In the first place, not all cross-border transactions involve multiple legal systems. Some cross-border transactions are conducted between jurisdictions that have chosen to harmonize their laws. This is most obvious within the European Union, where many subjects are governed by European law rather than the law of one of the member states.<sup>25</sup> At the global level, the best example of harmonization is probably the United Nations Convention on Contracts for the International Sales of Goods, which provides a common set of rules to govern international sales of goods.<sup>26</sup> In addition, in the case of many commercial transactions, the parties have the option of choosing the applicable law, and it is common for them to choose a *legal lingua franca*, meaning a set of norms that are accessible to all kinds of otherwise monojural lawyers.<sup>27</sup> A good example of these kinds of substantive norms is the UNIDROIT *Principles of International Commercial Contracts*.<sup>28</sup> Meanwhile, on the procedural side, the rules promulgated to govern commercial arbitration before major arbitral institutions are designed to be accessible to lawyers from all sorts of jurisdictions, (i.e., procedural *legal lingua franca*).

There is a second reason why cross-border matters might not require the assistance of multijural lawyers: teams of monojural lawyers might be effective substitutes for multijural lawyers.<sup>29</sup> For example, instead of turning to lawyers licensed to practice in both New York and Mexico for advice on a cross-border acquisition, the parties might call upon multinational law firms which can staff the matter with monojural lawyers based in New York and Mexico City. The choice between a multijural lawyer and a team of monojural lawyers is likely to involve tradeoffs. Monojural lawyers have the advantage of specializing in the laws of a single jurisdiction. However, they face the disadvantage of having to coordinate with one another in ways that involve translating legal concepts from one system (e.g., *amparo* or equitable lien) into terms used in another system. A multijural lawyer, or even a team of multijural lawyers, may be less specialized but can avoid the need for legal translation.

### C. Derived Demand for Multijural Legal Education

According to the derived demand theory, if globalization generates demand for multijural lawyers, then prospective students will demand multijural legal training from law schools. That is to say, training that covers more than domestic law and *legal lingua franca*. Demand for bijural training should be particularly strong among law students

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25. See generally PAUL CRAIG & GRÁINNE DE BÚRCA, *EU LAW: TEXT, CASES AND MATERIALS* 1, 607–37 (6th ed. 2015).

26. U.N. Convention on Contracts for the International Sale of Goods, U.N. Doc. A/CONF 97/19 (Apr. 11, 1980).

27. Davis & Trebilcock, *supra* note 8, at 190–96, 201.

28. International Institute for the Unification of Private Law [UNIDROIT], *UNIDROIT Principles of International Commercial Contracts*, art.1.6(2) (2010).

29. Davis & Trebilcock, *supra* note 8, at 190, 200–01.

who expect to be able to offer related linguistic and cultural skills. That training can take several different forms, since there are many different ways in which a school might arrange for its students to learn about foreign and transnational law.<sup>30</sup>

The most extreme approach involves complete and prolonged immersion, and usually leads to some sort of dual degree. In this model, students are required to travel physically to the foreign jurisdiction to be taught by local faculty alongside local students for long enough to be capable of practicing at the same level as a monojural local lawyer. At the other end of the spectrum are short courses in transnational or comparative law taught as part of a law school's regular curriculum by its regular faculty and designed to provide only general knowledge about foreign and transnational law rather than specific knowledge about any particular legal system. In between are study abroad programs that offer varying amounts of exposure to local faculty, students, and practitioners.

The demand for more and less immersive experiences will depend in part on the level of demand for training in foreign languages and cultures. A US student who wants to provide advice on Chinese law and also negotiate agreements with Chinese business executives in their native tongue is more likely to want an immersive experience in China than a student who simply wants to be able to work effectively with (English-speaking) lawyers in the Beijing office of her or his law firm.

The derived demand theory admits at least two main caveats to the prediction that increased globalization will lead to increased demand for multijural training from law schools. The first caveat is that demand for multijural training from law schools will be limited by the extent to which students can obtain equivalent or better training elsewhere. If, for instance, students expect to learn how to practice transnational law on the job after graduation, then there will be little demand for law schools to provide similar learning opportunities. In fact, large law firms with offices in multiple locations sometimes permit lawyers to spend short stints in foreign offices. In principle, that kind of on-the-job training in multijural legal practice might be superior to training in law school.

There is a second obvious caveat to the derived demand theory. Even if derived demand for multijural lawyers is a factor that explains demand for multijural training, it may not be the only factor. Potential employers look for many attributes in law students, and multijural training is only one of them. Factors such as raw intellect, doctrinal knowledge, familiarity with clients' operations, interests and aspirations, are also important.<sup>31</sup> Law schools offer a bundle of opportunities to law students, and the demand for any single component of the bundle will depend heavily on what else is on offer. Students may show little interest in multijural training if it interferes with their ability to take courses that allow them to earn high grades, learn US legal doctrine, or

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30. Backer, *supra* note 1, at 49–112.

31. For data on the range of factors that legal employers seek in law students, see John C. Coates IV, Jesse M. Fried, & Kathryn E. Spier, *What Courses Should Law Students Take? Harvard's Largest Employers Weigh In* (Feb. 17, 2014), HLS Program on the Legal Profession Research Paper No. 2014-12 (Harvard Public Law Working Paper No. 14-20), <https://ssrn.com/abstract=2397317>.

take interdisciplinary courses that boost their understanding of business or politics.

## II. A THEORY OF CONSTRUCTED DEMAND

### *A. Limitations of Derived Demand*

The derived demand theory reflects an economist's way of understanding educational decision-making. Economists tend to presume that the principal determinants of variations in demand—both across individuals and over time—are economic variables such as stocks of human capital, relative prices, and incomes, and that preferences can safely be treated as similar across people and stable over time.<sup>32</sup> The derived demand theory adheres to this approach by focusing on growth in demand for multijural lawyers—which, in turn, should drive up the prices they can command for their services—as the principal determinant of how law students' decisions to pursue multijural training will vary over time. To be clear, however, the theory acknowledges that the level of demand at any given point in time also will be determined by economic or social constraints, such as limited financial resources, or familial obligations, that limit students' mobility and prevent them from pursuing opportunities to study abroad.

This theory rests on several important assumptions, namely: employers are well-informed about students' capabilities when they make decisions about whether to hire them; students are rational, reasonably well-informed actors who choose educational programs to achieve the best possible career outcomes, evaluated according to a set of well-ordered preferences that are stable over time and relatively consistent across individuals; and more specifically, the career preferences of US law students favor post-graduation employment with either private law firms that offer high earnings prospects, or high-profile governmental, inter-governmental, or non-governmental organizations.

Virtually all of the assumptions that underlie this approach to educational choice are contestable. Employers may not be well-informed about students' capabilities. Students may not be well-informed about their educational options and how pursuing different options will impact their careers. Students may not make educational decisions based on reasoned consideration of the consequences. They may also not have stable well-defined preferences over different outcomes. And, to the extent students do account for the consequences of the decisions, they may not weigh career consequences very heavily.

The assumption that employers are well-informed is particularly easy to challenge in the law school context. In many U.S. law schools, most opportunities for multijural training take the form of optional courses offered after the first year of a three-year degree.<sup>33</sup> However, many law firms hire students at the beginning of their

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32. For the classic defense of this position, see George J. Stigler & Gary S. Becker, *De Gustibus Non Est Disputandum*, 67AM. ECON. REV. 76(1977).

33. See Backer, *supra* note 1, at 76–82 (describing prevailing models for incorporating

second year of law school, on the basis of grades from the first year. Strictly speaking, those students are only being hired to work at the law firm for the summer following their second year of law school. In practice, however, the vast majority of students who work at law firms during their summer break receive offers of permanent employment.<sup>34</sup> If a firm decides not to extend an offer of permanent employment to a student employed for the summer, it is likely to be because of their performance at the law firm rather than because of anything they have done or not done in law school.<sup>35</sup> The upshot is that law firms frequently hire law students before they know whether the student has pursued opportunities for multijural legal training. Furthermore, even if an employer does know what opportunities a student has pursued, they might have a hard time determining what skills the student has acquired as a result.

There is also an open question as to whether students have good information about the value of multijural training. There is no obvious source for information about the state of demand for various types of legal training. No single employer has an incentive to produce much information of this sort. Individual lawyers may be able to pass this information on to students in direct communications, but not that many law students have this kind of personal relationship with practicing lawyers who have direct knowledge of opportunities to work on transnational problems. Consequently, the information available to students is likely to depend on what is provided at the initiative of law school faculty and staff.

The economists' assumption that people make decisions based on rational assessments of the consequences has come under attack from social scientists in other disciplines. Psychologists suggest that decision-making is distorted by innate personality traits and cognitive biases, as well as our limited cognitive capacity in the face of complex decisions that require analysis of large amounts of information.<sup>36</sup> Some social scientists go so far as to suggest that individuals' actions are largely determined by normative rules embedded in social structures that are beyond their control. French sociologist Pierre Bourdieu occupies a middle ground with an influential theory which posits that human actions are rarely "decisions" of reason based on conscious, rational calculation with purposive goals, nor are they determined by cultural or material mechanisms external and superior to the individuals.<sup>37</sup> Rather,

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international and transnational issues into U.S. law school curricula and noting only a handful of examples that involve first year courses).

34. See, e.g., NAT'L ASS'N FOR LAW PLACEMENT [NALP], PERSPECTIVES ON 2016 LAW STUDENT RECRUITING 29 (2017) (citing as 94.6% of summer students at participating firms received offers of associate positions).

35. We are not aware of any rigorous empirical analysis of this topic but for corroboration, see *What To Do When You Don't Get An Offer from Your Summer Employer*, YALE LAW SCHOOL, <https://law.yale.edu/student-life/career-development/students/career-guides-advice/what-do-when-you-dont-get-offer> (last updated July 2017) (listing three most common reasons why summer associates do not receive offers to return).

36. See, e.g., Icek Ajzen, *The Theory of Planned Behavior*, 50 ORG. BEHAV. & HUM. DECISION PROCESSES 179 (1991); Matthew Rabin, *Psychology and Economics*, 36 J. ECON. LITERATURE 11 (1998).

37. Bourdieu's writing on the theory of practice and relevant concepts is vast and spreads across a few decades. This discussion of his theory draws primarily on Pierre Bourdieu, *The Genesis of*

human actions follow an economic logic that is constitutive of practices “most appropriate to achieve the objectives inscribed in the logic of a particular field at the lowest costs” which, socially and historically constructed, “can be defined in relation to all kinds of functions,” with the maximization of economic interests being only one of them.<sup>38</sup> Since Bourdieu’s theory has been influential in studies of education,<sup>39</sup> we will use the next couple of paragraphs to outline its key components.

According to Bourdieu, social practices are engaged in by agents who operate in specific “fields” (e.g., the religious field, the political field, the artistic field, the scientific field, the legal field), holding various amounts and forms of accumulated resources known as “capital” (economic, cultural, social, or symbolic), guided by a set of internalized dispositions he calls “habitus.”<sup>40</sup> Habitus is a “structuring mechanism” that operates within agents as a repertoire of thoughts, perceptions, expressions, and actions that make possible an infinite capacity to achieve diversified tasks, but with limits set by historically and socially bounded conditions.<sup>41</sup> It also includes internalized beliefs about what is possible and impossible, and senses of inclusion and exclusion, from the social position in which an individual is situated.<sup>42</sup> Habitus is shaped disproportionately by early socialization, which is regulated by an individual’s class or group origin. In turn, individual agents and more generally, members of social groups, actively reproduce and constitute a social world that is in accordance with the objective social structures (of distinctions and hierarchy) in which they reside.<sup>43</sup> Agents draw on habitus and their stocks of capital as they formulate strategies to compete for power and authority in any given field.<sup>44</sup> As a result, the practices they select often reproduce inequalities and pre-existing patterns of inclusion and exclusion.<sup>45</sup>

Bourdieu’s theory challenges not only the assumption that decisions are based

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*the Concepts of Habitus and Field*, in 2 SOCIOCRITICISM 11, 11–24 (Edmond Cross ed., 1985); Pierre Bourdieu, DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGMENT OF TASTE (Richard Nice trans., Routledge 8th ed. 1996) (1984); Pierre Bourdieu, *The Forms of Capital*, in HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF HIGHER EDUCATION 46, 46–58 (J.E. Richardson ed., Richard Nice trans., Greenwood Press 1986) (hereinafter Bourdieu, *The Forms of Capital*); PIERRE BOURDIEU, THE LOGIC OF PRACTICE (Richard Nice trans., 1990) (hereinafter BOURDIEU, THE LOGIC OF PRACTICE); PIERRE BOURDIEU & LOÏC J.D. WACQUANT, AN INVITATION TO REFLEXIVE SOCIOLOGY (Polity Press 1992).

38. BOURDIEU, THE LOGIC OF PRACTICE, *supra* note 37, at 50.

39. Bourdieu’s model is employed, often partially, in studies of educational attainment and choices. See, e.g., Paul DiMaggio, *Cultural Capital and School Success: The Impact of Status Culture Participation on the Grades of U.S. High School Students*, 47 AM. SOC. REV. 189, 189–201 (1982); Annette Lareau, UNEQUAL CHILDHOODS: CLASS, RACE, AND FAMILY LIFE 361–64 (University of California Press 2d ed. 2011); see also *infra* notes 51 and 52.

40. Bourdieu & Wacquant, *supra* note 37, at 120.

41. *Id.* at 18–19.

42. *Id.* at 126–27.

43. *Id.* at 133–34.

44. *Id.* at 105.

45. However, it is important to note that Bourdieu also points out the creative, inventive aspects of habitus and thus does not negate agency. It predisposes individuals to certain practices but does not predetermine that. Bourdieu thinks that while habitus leads to the reproduction of the social conditions, it does so in a relatively unpredictable way.

entirely on conscious calculation, but also the assumption that they can be explained primarily by reference to stable preferences over economic outcomes. Bourdieu rejects reducing the historically variant, socially constituted notion of “interest” to a constant propensity to seek monetary or material gain.<sup>46</sup> Individuals and groups are motivated by desire to establish status and domination (a.k.a., the power to distinguish), which is not only achieved through accumulation of economic capital but also through command over cultural embodiments and signals (cultural capital), possession of a network of durable, institutionalized relationships that provide its own members the backing of the collectively owned resources (social capital), and honor or prestige that are collectively recognized in the field (symbolic capital).<sup>47</sup> The efficacy of each form of capital is subject to the logic of the field, in which agents struggle for not only the monopoly of the capital that is effective but also for the power to command “conversion rates” between different forms of capital.<sup>48</sup> Within this framework, according to Bourdieu, interest is “a socially constituted concern for, and desire to play, given social games” in which agents compete for distinctions.<sup>49</sup> Therefore, preferences for certain outcomes, whose differences are rooted in relation to the unequal amount of capital endowed with different social class/group, would only make sense in response to the historically arbitrary value assigned to certain practices in a given field.<sup>50</sup> In that, preferences are socially and historically constructed, rather than constant and static. This approach also allows for the possibility that students’ preferences might be mutable, susceptible to influence from authority figures and peers.

Following this logic, then, we can challenge the assumption that when law students consider the consequences of their educational decisions they focus primarily on career outcomes, measured primarily in terms of monetary earnings. In the educational context, where intellectual curiosity and cultural competence are valued, students might choose a particular course of study (in this case, multijural training) as an end in itself. Through the working of habitus, these considerations might often come “naturally” to students, rather than in a linear, systematic manner. At the same time, the likelihood of taking this course of study is mediated by the students’ prior socialization and the extent to which their outlook aligns with those who are around them in school.

#### *B. An Alternative to Derived Demand*

Given the limitations of the derived demand theory we propose to explore

46. Bourdieu & Wacquant, *supra* note 37, at 25.

47. Bourdieu, *The Forms of Capital*, *supra* note 37. Additionally, see Pierre Bourdieu, *Social Space and Symbolic Power*, 7 *SOCIOLOGICAL THEORY* 14 (1989), where Bourdieu states that symbolic capital is not different from other forms of capital, but is “the form [of capital] that the various species of capital assume when they are perceived and recognized as legitimate.” *Id.* at 17.

48. Bourdieu & Wacquant, *supra*, at 17–18.

49. *Id.* at 25.

50. *Id.* at 26.

whether an alternative theory of educational decision-making helps to understand law students' decisions about whether and to which extent to pursue opportunities for multijural training. The derived demand theory presents demand as the virtually-automatic product of mathematical operations on data from the market for multijural lawyers, taking the distribution of economic capital into account. Drawing insights from Bourdieu, we instead characterize demand as a complex social process that not only includes economic calculations, but also involves the interplay between the non-economic capital and dispositions that students bring with them to law school, in part as a result of their social class and status, the socialization that takes place while they are in law school in the course of interactions with peers and faculty, and historically contingent conceptions of status and power. We call this alternative theory of demand for educational opportunities, "constructed demand" to suggest that demand is constructed from a variety of factors.

Research on college choice as well as undergraduate student interests in studying abroad provides empirical grounds for the constructed demand model. Students' educational choices are explained to some extent by economic variables such as individuals' initial stock of human capital, measured by academic preparation and achievement, and access to resources required to pursue expensive opportunities (often measured by family income and financial aid).<sup>51</sup> Taken as a whole, however, the literature suggests that both college choice and students' interest in studying abroad are shaped by a complex interplay of factors such as socio-economic status, gender, race and ethnicity, cultural and social capital, and organizational environment.<sup>52</sup>

### III. NYU LAW ABROAD

To explore the value of derived demand and constructed demand in explaining

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51. These variables are widely used in models of college choice. *See, e.g.*, Michael B. Paulsen, *The Economics of Human Capital and Investment in Higher Education*, in *THE FINANCE OF HIGHER EDUCATION: THEORY, RESEARCH, POLICY & PRACTICE* 53 (Michael B. Paulsen & John C. Smart eds., 2001). For a review of conceptual models and empirical studies on college access and choice, *see* Laura W. Perna, *Studying College Access and Choice: A Proposed Conceptual Model*, in 21 *HIGHER EDUCATION: HANDBOOK OF THEORY AND RESEARCH* (John C. Smart ed., 2006).

52. For studies on the complex process of college choice, *see, e.g.*, PATRICIA M. McDONOUGH, *CHOOSING COLLEGES: HOW SOCIAL CLASS AND SCHOOLS STRUCTURE OPPORTUNITY* (1997); MITCHELL L. STEVENS, *CREATING A CLASS: COLLEGE ADMISSIONS AND THE EDUCATION OF ELITES* (2009). For studies on undergraduate student interests in studying abroad, *see* Susan B. Goldstein, *Predictors of U.S. College Students' Participation in Study Abroad Programs: A Longitudinal Study*, 30 *INT'L. J. INTERCULTURAL REL.* 507 (2006); April H. Stroud, *Who Plans (Not) to Study Abroad? An Examination of U.S. Student Intent*, 14 *J. STUD. INT'L. EDUC.* 491 (2010); Mark H. Salisbury et al., *Going Global: Understanding the Choice Process of the Intent to Study Abroad*, 50 *RES. HIGH. EDUC.* 119 (2009); Mark H. Salisbury et al., *To See the World or Stay at Home: Applying an Integrated Student Choice Model to Explore the Gender Gap in the Intent to Study Abroad*, 51 *RES. HIGH. EDUC.* 615 (2010); Mark H. Salisbury et al., *Why do All the Study Abroad Students Look Alike? Applying an Integrated Student Choice Model to Explore Differences in the Factors that Influence White and Minority Students' Intent to Study Abroad*, 52 *RES. HIGH. EDUC.* 123 (2011); Jennifer Simon & James W. Ainsworth, *Race and Socioeconomic Status Differences in Study Abroad Participation: The Role of Habitus, Social Networks, and Cultural Capital*, *IRSN EDUC.* 1 (2012), <http://www.hindawi.com/journals/isrn/2012/413896/>.

law students' decisions to study abroad we present a case study of NYU Law's study abroad programs. NYU Law Abroad makes for a good case study because it represents the product of an exceptionally large investment in multijural training, at least by the standards of US law schools. At the same time, the programs are optional, not mandatory, which means that students' decisions about whether to participate can be used to draw inferences about demand for multijural training.<sup>53</sup> The derived demand theory predicts that a program like NYU Law Abroad ought to have attracted significant numbers of students interested in improving their career prospects. At the same time, the distinctive features of Law Abroad and our relationship to the programs limit the value of this case study.

First, US JD students are not representative of all potential law students. Because many aspects of U.S. law serve as *legal lingua franca*, and the English language is a bona fide lingua franca, the derived demand theory predicts that US JDs will have unusually low levels of interest in multijural training.

Second, NYU Law's experience might not be representative of experiences at other US law schools. NYU Law is a highly ranked national law school located in the heart of New York City, one of the most cosmopolitan cities in the world, and in close proximity to many potential employers that engage in transnational legal work. As a result, NYU's JD students operate in a very different cultural environment and face different employment opportunities from students at many other law schools. They also may be more mobile, on average, than students at regional law schools (since many of them have already demonstrated the ability to move in order to be at a national school). In addition, NYU Law has made an exceptionally large investment in multijural legal education, including but not limited to NYU Law Abroad.<sup>54</sup> We suspect that the magnitude of that investment has had opposing effects on demand for NYU Law Abroad. On the one hand, it has probably attracted an unusually internationally-oriented student body to NYU. On the other hand, it has given them an unusually large array of alternative ways of obtaining multijural training.

Finally, a third limitation on the value of this case study stems from the fact that we were both personally involved in the creation and operation of these programs. Consequently, we cannot claim to be objective observers.<sup>55</sup> At the same time, our unique perspective on NYU Law Abroad gives us access to information that would be relatively difficult for other researchers to uncover. Moreover, our subjective beliefs about this program may themselves be useful data for other researchers.

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53. See generally *NYU Law Abroad*, N.Y. UNIV. SCHOOL OF LAW, <http://www.law.nyu.edu/global/globalopportunities/nyulawabroad> (last updated 2017).

54. Thomas Adcock, *Going Global*, NYU LAW MAG. (2015), <http://blogs.law.nyu.edu/magazine/2015/going-global/> (last visited Dec. 1, 2017), (detailing NYU Law's global initiatives over the past two decades); see also *infra* note 64.

55. For instance, because of the constraints imposed by our positions, we do not offer much beyond publicly available information about the supply side of the Law Abroad initiative, i.e., the factors that led NYU Law to launch the programs.

*A. Background*

NYU Law has been in the vanguard of efforts to globalize legal education in the US for at least twenty years.<sup>56</sup> A transformative moment in the history of NYU Law was the establishment of the Global Law School Program, later renamed the Hauser Global Law School.<sup>57</sup> The creation of the Global Law School was led by then dean of the law school, John Sexton, and supported by a major donation from a pair of wealthy philanthropists, Rita and Gus Hauser. The Global Law School Program consisted of three main components:

1. Global Faculty. A set of faculty recruited from around the world who would be invited to teach repeatedly at the NYU campus in New York.
2. Global Scholars Programs. A scholarship program for foreign graduate students.
3. Curriculum and research. Support for curricular innovations and research from “a transnational perspective.”<sup>58</sup>

John Sexton explicitly justified the Global Law School Program as a response to globalization.<sup>59</sup> Interestingly, in published writings he emphasized the connection between globalization and law reform, suggesting that the twenty-first century would demand lawyers capable of bringing insights from multiple legal systems to bear on common or transnational problems.<sup>60</sup> He was particularly interested in making NYU attractive to foreign students planning to work overseas.<sup>61</sup>

By the end of the first decade of the 21st century, NYU Law was no longer the only global law school in the US.<sup>62</sup> Other top-ranked US law schools had expanded their numbers of visiting faculty and many US law schools expanded LLM programs aimed at students from overseas. In addition, there was a broad consensus in the US legal academy around the need to adopt a transnational perspective on curriculum design and academic research.<sup>63</sup>

At the same time, the larger university to which the law school belonged had also

56. Adcock, *supra* note 54.

57. Norman Dorsen, *Achieving International Cooperation: NYU's Global Law School Program*, 51 J. LEGAL EDUC. 332, 332 (2001); John Edward Sexton, *The Global Law School Program at New York University*, 46 J. LEGAL EDUC. 329 (1996) [hereinafter Sexton, *Global Law School*].

58. Dorsen, *supra* note 57; Sexton, *Global Law School supra* note 57, at 333.

59. Sexton, *Global Law School supra* note 57, at 330.

60. See John Edward Sexton, *Curricular Responses to Globalization*, 20 PENN ST. INT'L L. REV. 15 (2001) (hereinafter Sexton, *Curricular Responses*); see also John Edward Sexton, *Out of the Box: Thinking About the Training of Lawyers in the Next Millennium*, 33 U. TOL. L. REV. 189 (2001) (hereinafter Sexton, *Out of the Box: Thinking*).

61. See Sexton, *Global Law School, supra*, at 332.

62. See e.g., *International Law*, YALE LAW SCHOOL, <https://law.yale.edu/study-law-yale/areas-study/international-law> (last visited Dec. 1, 2017) (calling itself a “first-class global law school”).

63. See generally Simon Chesterman, *The Evolution of Legal Education: Internationalization, Transnationalization, Globalization*, 877 GERMAN L.J. (Oct. 13, 2009); Margaret K. Lewis, *International Law Takes Center Stage in Legal Education*, THE NATIONAL LAW JOURNAL (Sept. 7, 2009); James P. White, *A Look at Legal Education: The Globalization of American Legal Education*, 82 IND. L.J. 1285, 1287 (2007).

evolved. After serving fourteen years as dean of the law school, John Sexton was appointed president of New York University.<sup>64</sup> He almost immediately expanded NYU's network of overseas facilities for hosting New York-based students studying abroad. He also launched an ambitious plan to build two new campuses overseas, one in Abu Dhabi and the other in Shanghai. The resulting institution is known as the Global Network University, with three main "portal" campuses (New York, Abu Dhabi, and Shanghai) and smaller facilities at ten other overseas sites (plus one in Washington, D.C.).<sup>65</sup>

NYU Law initially had little to do with the central university's overseas sites. Its flagship JD program consisted exclusively of courses offered at the New York campus, with the only exceptions being semester-long exchange programs at select foreign institutions.<sup>66</sup> The Global Law School attempted to offer a transnational legal education, but mainly in New York. The Global Law School was designed "to bring the world to NYU," not "to bring NYU to the world."<sup>67</sup>

This all changed with the advent of the programs now known as NYU Law Abroad, which allow NYU Law students to study for a semester in NYU facilities in one of three locations: Buenos Aires, Paris, and Shanghai. Students abroad are charged the same tuition and fees that they would pay in New York. The programs are aimed primarily at NYU Law's 3L JD students, but 2Ls and, as of Spring 2016, LLM students, are also permitted to enroll.<sup>68</sup>

NYU Law Abroad was created at the recommendation of a committee of the law school's board of trustees ("the Strategy Committee") charged with exploring how changes in the legal profession should affect the JD program.<sup>69</sup> Most of the Strategy Committee's recommendation focused on enhancing the value of the third year of the JD degree.<sup>70</sup> Among other things, the Strategy Committee recommended that the Law

64. *John Sexton: Biography*, NEW YORK UNIV. SCHOOL OF LAW, <https://its.law.nyu.edu/faculty/profiles/index.cfm?fuseaction=profile.biography&personid=20281> (last visited Nov. 14, 2017).

65. As of Fall 2017, the foreign sites were located in: Accra, Ghana; Berlin, Germany; Buenos Aires, Argentina; Florence, Italy; London, England; Madrid, Spain; Paris, France; Prague, the Czech Republic; Sydney, Australia; and Tel Aviv, Israel. See *Global Programs*, N.Y. UNIV., <https://www.nyu.edu/about/leadership-university-administration/office-of-the-president/office-of-the-provost/global-programs.html> (last visited Nov. 14, 2017).

66. See *Global Network University Reflection*, N.Y. UNIV., <https://www.nyu.edu/about/leadership-university-administration/office-of-the-president-emeritus/communications/global-network-university-reflection.html> (last visited Dec. 1, 2017) (NYU established its first study abroad site in 1959). See also *supra* note 6.

67. Adcock, *supra* note 54, at 16, 19.

68. "The program is designed primarily for third year NYU law students; exceptions for other NYU Law students will be considered on a case-by-case basis, with permission of the Vice Dean and the faculty program directors." *Before You Apply*, NEW YORK UNIVERSITY SCHOOL OF LAW, <http://www.law.nyu.edu/global/globalopportunities/nyulaw%20abroad/before> (last visited Nov. 14, 2017). As of Fall 2017, only one LLM student has ever enrolled in Law Abroad.

69. See *NYU Law Announces Ambitious New Study-Abroad Program as Part of Curricular Enhancements Emphasizing Focused Study in Third Year*, N.Y. UNIV. SCHOOL OF LAW, [http://www.law.nyu.edu/news/nyu\\_law\\_announces\\_study-abroad\\_program\\_curricular\\_enhancements\\_third\\_year](http://www.law.nyu.edu/news/nyu_law_announces_study-abroad_program_curricular_enhancements_third_year) (last updated July 22, 2013).

70. *Id.*

School better prepare its graduates for practice in an increasingly globalized world. The Strategy Committee wrote:

The increasingly global nature of law practice, in areas ranging from climate change to commerce and war crimes to taxes, demands lawyers able to work across jurisdictional and cultural boundaries. And, despite English being one of the world's dominant languages, knowledge of local languages is more critical as more litigation, M&A work, and other transactions take associates all over the world and require them to deal with regulators and local counsel in foreign jurisdictions. Existing study-abroad programs offered by law schools (including NYU), offer valuable opportunities for study of foreign law, but NYU Law School can improve on current offerings—and distinguish itself and its graduates—by developing a more ambitious, integrated program that combines language training, cultural education, and foreign practice opportunity (through internships and clinics) with formal course study in other countries. NYU Law School faculty, working in collaboration with overseas partners, are well positioned to design a program that will prepare students for global legal practice.<sup>71</sup>

The Strategy Committee's report makes no reference to evidence of demand from students for additional opportunities to study abroad. On the contrary, it notes that “only a small number of students take advantage of [NYU's existing] exchange programs.”<sup>72</sup>

NYU Law Abroad was launched in Fall 2012, and the first cohort of students went overseas in January 2014.<sup>73</sup> The program offers students less immersion in the local legal culture than a dual degree or even a traditional exchange program, but more immersion than any program that could be offered in the United States. On the one hand, the entire program—including the curriculum—is designed and administered by NYU Law, the classes take place in buildings occupied full-time by NYU (the central university), and the classes are all taught in English. On the other hand, all the courses are taught by faculty from the relevant region, students from local law schools participate in most of the classes (free of charge), and each site offers language courses in French, Spanish, and Mandarin, respectively. In addition, in Buenos Aires and Paris, students can enroll in a limited number of courses at local law schools as exchange students, including courses offered in Spanish and French. In Buenos Aires and Paris, students have the option of participating in a clinical course that allows them to work on public interest matters involving clients from the region. The structure of the program is flexible enough to accommodate courses that cover foreign law, as opposed to comparative or transnational law, in varying levels of detail.<sup>74</sup>

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71. NEW YORK UNIVERSITY SCHOOL OF LAW BOARD OF TRUSTEES STRATEGY COMMITTEE REPORT AND RECOMMENDATIONS 3–4 (Oct. 5, 2012).

72. *Id.* at 5.

73. *See supra* note 6.

74. Since the focus of this essay is student demand, we will not detail the process by which the curriculum is developed. Suffice to say, the process involves significant consultation between faculty based in New York and those based overseas. Nor do we discuss the ways in which Law Abroad has

The NYU Law Abroad sites were designed to accommodate either sixteen (Paris) or twenty-five (Buenos Aires and Shanghai) students, reflecting the fact that the programs were intended to induce a meaningful portion of NYU Law's roughly 1,300 JD students (roughly 420 per class) to study overseas.<sup>75</sup> This ruled out relying on exchange programs or dual degree programs. Exchange programs are almost invariably structured so that they do not involve any extra tuition charges to the students.<sup>76</sup> Accordingly, the participating schools try to maintain a balance between the number of incoming and outgoing students. Typically, an exchange program is capped at two to five students per year. NYU Law is one of the most selective law schools in the United States, and it also has one of the largest student bodies.<sup>77</sup> It would be difficult for a school like NYU Law to find suitable exchange partners that could both accommodate a significant portion of NYU Law's student body and send an equivalent number of suitably qualified students. As for dual degree programs, they typically require at least one additional year of study<sup>78</sup> and, in the case of programs in non-English-speaking jurisdictions, fluency in a foreign language. Few US law students are sufficiently interested in studying abroad to incur the cost of additional year of schooling. Plus, a relatively small number of students are fluent in a foreign language.

The NYU Law Abroad programs change from year to year. The curriculum of each site is reviewed and adjusted yearly based on teaching evaluations from the students, faculty availability, and indications of substantial student interest in certain topics. In addition, logistical improvements related to scheduling and programming are made in response to student feedback.<sup>79</sup>

Since the purpose of this case study is to analyze student interest in NYU Law Abroad, it is important for us to explain how students enter the program. This begins with recruitment. NYU Law Abroad is a prominent part of the information aimed at

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been used to support the development of international research networks.

75. The number of students allowed in the Paris program (initially 14, now 16) is lower than that in Buenos Aires and Shanghai (25) because NYU Law's partner institution in Paris limits the number of foreign students they can enroll.

76. See *Prospective Exchange Students: General Information*, N.Y. UNIV. SCHOOL OF LAW, <http://www.law.nyu.edu/global/globalopportunities/incomingexchangestudents> (last visited Nov. 14, 2017).

77. See Best Law Schools, U.S. NEWS & WORLD REPORT, <https://www.usnews.com/best-graduate-schools/top-law-schools> (reporting enrolment of U.S. law schools and ranking them using a methodology—which we do not necessarily endorse—in part on the basis of selectivity).

78. This is partly because of American Bar Association rules that limit the number of credits taken overseas that can be counted towards the J.D. degree. See American Bar Association, *ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017*, Criteria for Accepting Credit for Student Study at a Foreign Institution, Section I(c)(1).

79. During the period covered by this article, Law Abroad was administered primarily by two full-time administrators (including Zhang) based in New York who reported to a Vice-Dean (Davis). Each program has a New York-based faculty director. In the case of Buenos Aires there is also an on-site faculty director. Additional support is provided as needed by onsite staff employed by the central university. In addition to supporting students and faculty, the administrative staff of Law Abroad work on ensuring compliance with American Bar Association regulations, agreements with local partners, and local laws.

prospective students. The program has a dedicated page on the law school's website,<sup>80</sup> which includes not only information about the application process and curriculum but also video testimonials from previous participants. Presentations to JD students who have been admitted to NYU Law but who have not yet matriculated routinely include mentions of NYU Law Abroad. As for matriculated students, each fall there is a panel discussion of opportunities to work and study abroad, which includes both faculty and students. Separate panels are organized early in the spring to present information about individual sites. Videos of the panels are posted online. The panels and the opening of the application periods are advertised on digital billboards around the law school.

The majority of students apply to study abroad in the spring before the year they intend to go abroad. For example, students who intend to go abroad in Spring 2018 apply in Spring 2017.<sup>81</sup> There is a second round of applications at the beginning of the fall semester for programs that have spots remaining. Traditionally, only a handful of students join in the fall. At the time of application, students do not know what adjustments will be made to the programs during the semester they are going abroad. Similarly, students are not provided detailed information about facilities and immigration requirements until after they are enrolled in the program.<sup>82</sup>

The spring application process permits students to apply simultaneously to multiple NYU Law Abroad and exchange programs, but they must rank them in order of preference. As part of the application process, students are asked to submit a law school transcript, a curriculum vitae, and a 500 word "plan of study" that addresses how their application satisfies the stated criteria for selection. Those criteria comprise the following:

- The academic or professional reasons stated for the particular study abroad program;
- The extent to which the plan fits in with the student's overall academic and/or professional objectives, including courses already taken;
- Whether the student plans to coordinate the proposed program with work or research during the preceding or following summer;
- Student's proficiency in and efforts to learn the language of the program site/host country;
- Familiarity with the region; and
- Evidence of preparedness for study abroad.<sup>83</sup>

Students are selected by the faculty directors of the respective programs. In

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80. *NYU Law Abroad*, N.Y. UNIV. SCHOOL OF LAW, <http://www.law.nyu.edu/global/globalopportunities/nyulawabroad> (last visited Nov. 17, 2017).

81. *Infra* note 90.

82. We have no reason to believe that information about logistical limits of the program (e.g., convoluted student visa application processes or changes limiting people entering China on a student visa to a single entry) systematically causes students to withdraw.

83. *Application Procedure*, N.Y. UNIV. SCHOOL OF LAW, <http://www.law.nyu.edu/global/globalopportunities/nyulawabroad/application> (last visited Nov. 17, 2017).

addition to the explicitly stated criteria for selection, there is a preference for students who appear to be on track to secure employment after graduation. Or perhaps more accurately, there is a bias against students who are not on track. This mainly affects applicants in their penultimate year of law school who have not yet secured employment for the coming summer (i.e., the summer prior to their final year of law school) since a summer job is usually an important step toward post-graduation employment. The reason for this is that NYU Law, like other US law schools, is very concerned about maintaining a high overall rate of post-graduation employment for its JD students. Accordingly, the law school is not enthusiastic about allowing students who are likely to be searching for a job during their final semester of law school to participate in NYU Law Abroad or exchange programs.

Student interest in NYU Law Abroad was relatively low in its first year of operation, but over the course of the next three years, enrollment in the Buenos Aires and Paris programs stabilized at or near their full capacities. Interest in Shanghai was consistently lower, and in the fourth year, the Shanghai program was suspended because enrollment was too low to make it viable.

#### *B. Evidence of Derived Demand*

There is some evidence that interest in NYU Law Abroad is shaped by students who believe that participation will be valuable in their future careers. Over its first four years of operation, about 21 percent of the students who participated in NYU Law Abroad listed career interests as a rationale for applying.<sup>84</sup> In addition, the program consistently attracts students who are interested in international business transactions and international arbitration. Enrollment in courses that focus on dispute resolution and cross-border transactions has been stable across all NYU Law Abroad sites while enrollment in the public interest clinics offered in Paris and Buenos Aires has been more variable.

At first glance, the relatively low level of interest in the Shanghai program is difficult to reconcile with the derived demand theory. China represents a larger proportion of global trade and investment than South America,<sup>85</sup> and thus the demand for training in Chinese law ought to be relatively high. We will return to this puzzle later on. For now, we only note that differences in students' linguistic skills arguably help to resolve the puzzle. The derived demand theory suggests that perceived demand for multijural lawyers will lead to demand for legally-oriented language training, at least among students who expect to be able to become reasonably capable in the relevant language. Consistent with this hypothesis, students applying to NYU Law Abroad have shown consistent interest in language courses. In fact, the desire to

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84. *See infra* Table 1.

85. *See, e.g.*, EUROSTAT—INTERNATIONAL TRADE IN GOODS, EUROPEAN UNION, [http://ec.europa.eu/eurostat/statistics-explained/index.php/International\\_trade\\_in\\_goods](http://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_goods) (last updated 2017) (the EU, China and the United States are by far the leading players in international trade); WORLD TRADE ORG., WORLD TRADE STATISTICAL REVIEW 2017, at 13 (2017) (Asia, Europe and North America account for approximately 86% of total world merchandise trade).

acquire or improve language skills is the single most cited rationale for application among students who participated in NYU Law Abroad (mentioned by 23 percent of the students).<sup>86</sup> Actual enrollment in language courses varies based on whether or not the levels of instruction that are made possible within the program match students' existing language abilities. Students also have opted out of language courses because they have found the workload to be too heavy, in combination with the law courses they are taking. However, students whose needs for language training cannot be met fully within a program often actively seek out alternative methods of language training, such as private tutoring and language exchanges with local students.

The derived demand theory predicts that demand for training in any foreign legal system or foreign language will be strongest among students who expect to be capable of functioning in the relevant foreign language. The differences in demand for Paris, Buenos Aires, and Shanghai respectively are consistent with this prediction. NYU Law Abroad programs are too short to permit anyone to become fully functional in a completely new foreign language. This means that students who focus on the career benefits of language training are most likely to choose programs that enable them to become more competent in a foreign language in which they expect to be able to function, at least eventually. We observe some calculation on the students' end in assessing their investment and return in language learning when deciding whether or not to study in each site. There are more students who have some level of familiarity with French and Spanish than those who are familiar with Mandarin, as typical American law students have more opportunities to study French and Spanish in their pre-law education. In addition, students who have no prior familiarity with any of the languages mentioned above may still be more likely to choose to learn French and Spanish because those two languages share a common alphabet with English, which make them relatively easy for an English speaker to learn.

In 2016, we solicited post-graduation feedback from the first two cohorts of students who participated in the Law Abroad program in 2014 and 2015. We specifically asked about the longer-term impact of the program, especially with regard to their professional development. Respondents noted that the program was critical for them to improve language skills (especially in Paris and Buenos Aires) and gain knowledge of foreign legal systems and cultures.<sup>87</sup> A handful of respondents indicated that the experience played a direct role in helping them secure a job. Some mentioned that the topic came up frequently in job interviews after law school. More commonly, students reported that their experiences abroad were well received by employers. Their enhanced knowledge of foreign legal systems and cultures gave them a professional edge in comparison to fellow recent graduates at their law firms, often increasing their chances to be selected to work on cases related to foreign clients. A few thought that the program enhanced their professional network and opened the door to new career opportunities abroad. Some alumni of the program reported that their pursuit of a

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86. *See infra* Table 1.

87. *See infra* Table 1.

non-traditional law school experience became a signifier of their problem-solving skills and ability to think outside the box among employers.

We present alumni feedback as evidence for derived demand with a few caveats. First, the response rate of the alumni feedback was low (37.1 percent for Buenos Aires, 46.2 percent for Paris, and 22.7 percent for Shanghai). It is therefore hard to tell if the reported experience can be generalizable to the entire group. Second, students may have overstated the professional benefits given the fact that the survey specifically asked them to detail this aspect. Third, those who had a more positive experience during and after the program may have been more likely to provide feedback. Given the selection bias, we were unable to determine whether the reported linguistic and professional benefits were objectively obtained through participating in the program or were simply part of a “self-fulfilled prophecy” that students were conditioned to believe in.

### *C. Evidence of Constructed Demand*

Although some features of the NYU Law Abroad case are consistent with the derived demand theory, many are not.

The most obvious inconsistency is that as a result of the program’s structure, students would not expect participation in NYU Law Abroad to contribute to their prospects of securing post-graduation employment, at least not in an immediately tangible way. Recall that NYU Law Abroad participants study abroad in either their 2L or 3L spring semester. This means that most students have secured summer associate positions, which often lead to full-time jobs after graduation (in the case of 2Ls) or full-time jobs (in the case of 3Ls), before they study abroad. In other words, at the time students apply for these employment opportunities, they are not able to show employers that they have completed any potentially valuable coursework abroad. While students may mention their intentions to participate in NYU Law Abroad to potential employers during interviews, they can only do so in a limited way as they would not yet be able to describe or show what they have learned abroad. Therefore, for many students the basic structure of NYU Law Abroad rules out the possibility that their decisions to participate will be based on immediate impact on their careers. The same will be true of any optional study abroad program that takes place after the third semester of law school. We do not want to overstate this point, however, because a non-trivial minority of potential participants in NYU Law Abroad can reasonably anticipate that they will be searching for employment shortly after completing the program. For some potential applicants this will be because they have not yet found a summer position. For some, their summer position may not be the kind that is likely to lead to post-graduation employment, as is common among students who work in government or for public interest organizations. Still, other students may anticipate changing employers shortly after graduation.

In addition, employers care about other factors besides participation in NYU Law Abroad. We know, for example, that employers value good grades. Therefore, in addition to the fact that most employers do not see transcripts that indicate

participation in NYU Law Abroad when making hiring decisions, in the rare case they do, the number of good grades is likely to outweigh the impact of NYU Law Abroad courses.

Students' self-reported reasons for participating in NYU Law Abroad and choosing among the three sites also belie the claim that impact on career outcomes is a dominant factor in their decision-making.<sup>88</sup> As Table 1 shows, a majority of students who participated in NYU Law Abroad cited reasons besides career considerations or language training as rationales. At the application stage students tend to emphasize professional and academic reasons for studying abroad. However, we can also draw on information from post-program reviews and informal conversations. Program alumni consistently recognized personal benefits they gained from the program, such as cultural immersion and making close friends. We know, in addition, that some students choose to study abroad in attempts to diversify their law school experience. For many 3L students that choose to study abroad, the fact that they have already secured employment means that they can afford to "take more risks" and pursue a non-traditional law school experience before graduating. Many also see participating in NYU Law Abroad as the "last chance" they have to be able to live in and travel around a different part of the world *for fun*. Thus, students' demand for the program is not only based on expectations of the benefits in their future career, but also from anticipation of the undesirable aspects of that career.

**Table 1.** Application rationales cited by participants in NYU Law Abroad<sup>89</sup>

Application Rationales	AY 13-14	AY 14-15	AY 15-16
Desire to improve language skills	25%	20%	28%
Career interest in international law and/or working abroad	24%	19%	23%
Interest in gaining exposure to different legal systems	20%	13%	2%
Interest in study abroad and cultural immersion	18%	21%	15%
Location-specific	13%	28%	32%

88. See *infra* Table 1.

89. Data in this table are collected through annual program evaluations completed by the participants in the program. This is an open-ended question and the categories are the result of careful readings of student responses.

The “fun” aspect of the program is greatly mediated by peer influence. First, students’ impressions of the program are influenced, sometimes quite significantly, by the experiences of those who have already participated in the program. If they have friends who enjoyed the program, they are more likely to consider participating themselves. Second, students are more likely to participate in the program if their friends are also considering to do so. The prospect of living and traveling with friends abroad is attractive. Conversely, students have voiced reluctance over spending time away from their friends for a full semester, especially if that is the final semester they have at the law school.

Friends are not the only determinants of the fun factor associated with studying abroad. Students’ general beliefs about the sites’ locations also seem to matter. At one point the law school asked prospective students to record their immediate impressions of each city. For Buenos Aires and Paris, the responses were rife with words like “lights,” “music,” “wine,” “dance,” “culture,” and “romantic.” For Shanghai, the associations were, overall, noticeably less positive: “big,” “noisy,” “crowded,” “business,” and “pollution.” We believe, but cannot prove, that these sorts of ideas contributed to students’ perceptions of the relative value of studying in each place. We would expect them to determine, for instance, which places were regarded as “strange” and “uncomfortable” as opposed to “exotic” or “exciting.” This would explain the relatively low levels of interest in studying in Shanghai. Although we cannot defend the point here, we believe that these ideas are constructed from partially articulated assumptions and beliefs that are historically and socially contingent rather than being based upon rational analysis of available data.

We also suspect but cannot prove that students’ interest in NYU Law Abroad programs has been influenced by their interactions with faculty members. Faculty involved in the administration of NYU Law Abroad programs regularly promoted the programs to students with whom they had relationships. Faculty who were skeptical of the program sometimes discouraged students from participating. This means that demand for the programs was influenced to some extent by the wide array of factors that determined the patterns of relationships between faculty members and 1L or 2L students. These include whether faculty involved in NYU Law Abroad teach large courses typically taken in the first three semesters of law school, alignment of the student and the faculty’s academic interests, and even personalities.

Students who rely on the general reputation of study abroad locations or cues and advice from peers or faculty to make decisions about studying abroad may be responding rationally to information overload. NYU law students have over three hundred courses to choose from, as well as fellowships, clinics, journals, and year-long dual degree programs. Faced with this enormous array of choices and pressed by deadlines, it may be rational for students to turn to heuristics such as general reputation or recommendations from peers or faculty.

Finally, an interesting feature of the students who enrolled in NYU Law Abroad

is that students from minority ethnic groups were slightly overrepresented relative to the population of the law school.<sup>90</sup> This observation might be consistent with the derived demand theory. It may be that minorities were more likely to possess the linguistic or cultural skills that complement multijural training. Another possibility, however, is that NYU Law Abroad tends to attract students who are predisposed toward travel and exploration, and those dispositions tend to emerge in immigrants or children of immigrants, or perhaps in members of disadvantaged minority groups.<sup>91</sup>

In light of the above, we are convinced that it is misleading to characterize students' decisions to participate in NYU Law Abroad as the products of rational calculations of the potential impacts on their post-law school careers. Those decisions are better characterized as rational, or at least reasonable, efforts to achieve both career and non-career related outcomes that are shaped by students' predispositions, what they do and do not know or think they know, their social positions, and their personal histories.

#### CONCLUSION

Commentators regularly justify initiatives to provide opportunities for US law students to study overseas on the grounds that they will satisfy demand from students who want multijural training in order to improve their career prospects. Such commentators embrace what we have called the derived demand theory. However, there are important reasons to doubt that demand for multijural lawyers is the only, or even the most important, explanation of demand from law students for multijural training while in law school. There are plausible reasons to doubt whether employers take this kind of training into account when making hiring decisions, that students weigh career outcomes highly when making decisions about which opportunities to pursue as part of a law school degree, or even that students' decisions involve any careful, calculated analysis. These possibilities suggest that demand for multijural training might not simply be derived from demand for multijural lawyers, but might instead be constructed from a larger set of factors, including the kinds of contingent historical and social factors that Bourdieu emphasizes in his theoretical model.

Our case study of NYU Law Abroad supports the claim that demand for at least one set of study abroad programs is based on more than just perceptions of employers' demand for multijural lawyers. Some NYU JDs' interest in studying abroad has been driven, to some extent, by perceptions that multijural training, in

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90. This finding is consistent with data from the 2004 Law School Survey of Student Engagement. LAW SCH. SURVEY OF STUDENT ENGAGEMENT, 2004 ANNUAL SURVEY RESULTS, STUDENT ENGAGEMENT IN LAW SCHOOLS: A FIRST LOOK 13 (2004) (finding that Asian/Pacific, foreign national, joint degree, and transfer students are more likely than other students to participate in a study abroad program).

91. Interestingly, minority students are historically underrepresented among American undergraduate students who study abroad. *See, e.g.,* NAFSA, *Trends in U.S. Study Abroad*, available at [http://www.nafsa.org/Policy\\_and\\_Advocacy/Policy\\_Resources/Policy\\_Trends\\_and\\_Data/Trends\\_in\\_U\\_S\\_Study\\_Abroad/](http://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/Trends_in_U_S_Study_Abroad/). Therefore, it is worth investigating characteristics of minority students who enter elite law schools.

combination with language training, would make them more appealing to employers. But potential impact on their careers was only one of several factors in students' decisions. Other factors include the desire to have fun, influences from their peers, and ideas about the appeal of the locations of the study abroad sites. These non-career related factors are in turn shaped by changing historical and social circumstances, such as students' earlier socialization, the extent to which study abroad experience is valued by the social group they are in, and geopolitical conditions.

These findings may be useful to law schools trying to decide whether and what kinds of study abroad opportunities to offer their students. If nothing else, the findings highlight the potential value of certain recruitment techniques, such as testimonials from peers and dissemination of information about the "fun" aspects of programs along with information about opportunities for intellectual and professional development. More generally, these findings suggest that law schools ought to pay close attention to the non-career oriented factors that might influence their students' educational decision-making at any given moment in time and try to respond accordingly. This is likely to involve coordination between several parts of the law school's academic and administrative staff, including faculty, career advisors, counselors, and members of the communications team.

Our finding about the limited influence of derived demand at NYU Law also hints at an intriguing challenge for all law schools, even keeping in mind the distinctive features of NYU Law and NYU Law Abroad. Should law schools offer opportunities that maximize students' abilities to work as multijural lawyers if students value other kinds of opportunities? If not, should they give students the opportunities they want, even if those opportunities do not necessarily enhance the students' capabilities after graduation? In other words, should the global law school be designed to serve the needs of the legal profession, the interests of students, or perhaps some other set of interests? This important question is likely to bedevil law schools for years to come.