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Sticky Floors, Springboards, Stairways & Slow Escalators: Mobility Pathways and Preferences of International Students in U.S. Law Schools

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*Sticky Floors, Springboards, Stairways & Slow
Escalators: Mobility Pathways and Preferences of
International Students in U.S. Law Schools*

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STICKY FLOORS, SPRINGBOARDS, STAIRWAYS & SLOW ESCALATORS

Mobility Pathways and Preferences of International Students in U.S. Law Schools

Carole Silver and Swethaa S. Ballakrishnen*

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International students have earned their place as serious actors in any conversation about the globalization of law, especially in the last few decades. In 2004, Philip Altbach suggested that there were about two million students worldwide who studied outside their home countries and that this figure would likely rise to about eight million by the year 2025, with a continuing majority population from Asian countries to the United States.¹ Eighteen years later, Altbach's predictions are on target: as of the 2016-2017 academic year, the number of international students in the United States alone is more than one million, with 68% of all these students originating from Asia;² moreover, in 2017 there were more than 4.6 million students studying outside of their home countries, representing slightly more than half of Altbach's estimate for 2025 at approximately the mid-way point in the period on which he focused.³ This is but one set of statistics that highlight the demographic transformation in global higher education and, given the context of an increasingly global workforce, this premium on international education is not surprising.⁴

1. See Philip G. Altbach, *Higher Education Crosses Borders*, CHANGE MAGAZINE, Mar.-Apr. 2004, at 19. Of these, the United States was the largest host country and home to more than a quarter of the world's international students (which is more students than the U.K., Germany, and France combined). *Id.* at 20. Altbach described the flow of students in the early 2000s as being dominated by Asia: "The large majority of foreign students in the United States come from developing and newly industrializing countries, with 55 percent from Asia. (The top five countries sending scholars to the United States are India, China, South Korea, Japan, and Taiwan)." *Id.* at 20. For a focus on Asia, see Philip G. Altbach, *The Asian Higher Education Century?*, INT'L HIGHER EDUC., 2013, at 143-47. See also Rajika Bhandari & Alessia Lefebure, *Asia: The Next Higher Education Superpower?*, IIE AND AIFS FOUNDATION, 2015, at 143.

2. *Open Doors 2017 Report*, INST. OF INT'L EDUC., Nov. 13, 2017, <https://www.iie.org/en/Why-IIE/Announcements/2017-11-13-Open-Doors-Data>. This was the second year when more than one million international students studied in the U.S. *Id.* The proportion of students coming from Asia increased by 6.5% over the previous year; the three top sending countries in 2016-2017 were China, India and South Korea, which accounted for 55.2% of all international students in the U.S. International Students Places of Origin (2016-2017 and comparing to 2015-2016). *Research and Insights*, INST. OF INT'L EDUC., <https://www.iie.org/Research-and-Insights/Open-Doors/Data/International-Students/Places-of-Origin> (last visited Mar. 31, 2018).

3. *Project Atlas Infographics*, INST. OF INT'L EDUC., <https://www.iie.org/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics/Infographics> (published in 2017) (last visited Mar. 31, 2018).

4. Altbach was not the only scholar to predict this trajectory for international students and their concentration from Asian countries. For example, Laurel Terry's more recent research on World Trade Organization data reports that "[b]etween 1999 and 2007, the number of international students doubled from 1.75 million to nearly 3 million," with more than one third of these students from Asia. Laurel Terry, *International Initiatives That Facilitate Global Mobility in Higher Education*, MICH. ST. L. REV. 305, 307 (2011) (quoting Council for Trade in Services, Background Note by the Secretariat: Education Services). Of these, "North America and Western Europe are still 'top destinations' for globally mobile students." And other similar data (for 2009 and 2010) confirm that this is a trend of U.S. dominance in the global education market. *Open Doors 2011: Fast Facts*, INST. OF INT'L EDUC., <https://www.iie.org/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics/Fast-Facts> (last visited Nov. 14, 2015).

At the same time, we know that the numbers of international students who pursue higher education outside of their home country are not evenly represented across all educational departments and technical fields.⁵ Recent data on international student enrollment⁶ reflect that engineering and business (including management) account for the top and largest share of international student enrollment.⁷ In contrast, considerably fewer international students enroll in the humanities, and international legal education remains a small sliver of this international transfusion, accounting for just over 1% of all international students in U.S. higher education.⁸ The rationale for

5. 2017 *Fast Facts*, INST. OF INT'L EDUC., file:///C:/Users/Administrator/Downloads/Fast-Facts-2017.pdf [hereinafter 2017 *Fast Facts*] (last visited Mar. 31, 2018) (reporting on thirteen fields of study); 2010 *Fast Facts*, INST. OF INT'L EDUC., file:///C:/Users/Administrator/Downloads/Fast-Facts-2010.pdf [hereinafter 2010 *Fast Facts*] (last visited Mar. 31, 2018); 2001 *Fast Facts*, INST. OF INT'L EDUC., file:///C:/Users/Administrator/Downloads/Fast-Facts-2001.pdf (last visited Mar. 31, 2018); see also Karin Fischer, *Foreign-Student Enrollment in U.S. Rise Despite Global Recession*, THE CHRONICLE OF HIGHER EDUCATION, July 8, 2010, <http://www.chronicle.com/article/Foreign-Student-Enrollments-in/66214/> (reviewing the 2008-2009 rates of international student enrollment).

6. See *supra* note 5. The Institute of International Education (“IIE”) reports that recently, social science has enrolled more students than the physical and life sciences. *Compare 2017 Fast Facts* (reporting 83,046 students in social sciences in 2016-2017 compared to 76,838 in physical and life sciences) *with 2010 Fast Facts* (reporting 61,285 students in physical and life sciences in 2009-2010 compared to 59,865 in social sciences).

7. The concentration in the sciences is unsurprising for a range of reasons. First, the sophisticated levels of training available in the U.S. along with the investment necessary for equipment and laboratories, especially at tertiary levels of higher education, have been relatively scarce in the home countries of many international students. Second, training in technical subjects, including science and engineering, also is highly transferable; because knowledge in the sciences is not limited by jurisdictional applicability, training in one country transfers valued skill sets irrespective of work and life choices made after the completion of the course. Third, because of this sophistication and applicability, international training offers steep labor market benefits for its recipients—both in the host as well as the home country. Thus, not only do these graduate level degrees offer an “in” into a Western lifestyle, they also translate to superior labor market benefits for students who return to their home countries. B. Lindsay Lowell & Allan Findlay, *Migration of Highly Skilled Persons From Developing Countries: Impact and Policy Responses*, 44 INTER'L MIGRATION PAPERS 8 (2001) (available at http://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—migrant/documents/publication/wcms_201706.pdf). For another model of how these superior labor market benefits transfer in the home country context, see Saxenian's description of “brain circulation,” which describes how Chinese and Indian-born engineers transfer Western technical and institutional know-how to their home countries. Annalee Saxenian, *From Brain Drain to Brain Circulation: Transnational Communities and Regional Upgrading in India and China*, 40 STUD. COMP. DEV. 35, 35–61 (2005).

8. As per the IIE 2017 *Fast Facts* data, *supra* note 5, STEM fields, defined to include Engineering, Math and Computer Science, and Physical and Life Sciences, accounted for 44% of all international student enrollment in the U.S. in 2016-2017. In comparison, enrollment in the Social Sciences, Humanities, and Legal Studies and Law Enforcement were approximately 8%, 2% and 1% respectively. Of course, given the scope of the number of international students that the U.S. admits each year, this is not a small sum (15,306 students in Legal Studies and Law Enforcement, for example). See Cory Turner, *U.S. Colleges See a Big Bump In International Students*, NPR, Nov. 18, 2015, <https://www.npr.org/sections/ed/2015/11/18/456353089/u-s-colleges-see-a-big-bump-in-international-students>. On fields of study, see also Neil G. Ruiz, *The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations*, BROOKINGS, Aug. 2014, <https://www.brookings.edu/interactives/the-geography-of-foreign-students-in-u-s-higher-education-origins-and-destinations/> (“Two-thirds of foreign students pursuing a bachelor’s or higher degree are in science, technology, engineering, mathematics (STEM) or business, management and marketing fields.”).

the relatively low numbers in transnational legal education is fairly straightforward: seen as a non-transferable and highly jurisdictional training, legal practice remained domestic⁹ for the most part until the mid-1990s, when it slowly began to be more inclusive to external entrants.¹⁰

In particular, the LLM degree (which is the standard master's training in law that approximately three-quarters of law schools in the United States offer for international students¹¹) has changed the way legal training is perceived by suppliers and consumers of this education.¹² From the U.S. law school's perspective, in addition to the obvious commercial advantage,¹³ the inclusion of international students signals an internationalization of the school's educational atmosphere and experience.¹⁴ On the

9. While LLM programs have been in operation for many decades, prior to the 1990s they were generally seen as credentialing systems for foreign-trained lawyers who wanted an American education before pursuing academic careers in their own country. In contrast, the LLM as a degree that has interested practitioners and academics alike is a more recent phenomenon that coincided with the emergence of global legal and business markets. See Carole Silver & Mayer Freed, *Translating the U.S. LLM Experience: The Need for a Comprehensive Examination*, 101 NW. L. REV. COLLOQUY 23, 23 (2006).

10. A study of the Harvard Law School's graduate population shows that numbers steadily have increased since the mid-1990s in the one graduate school program studied. Swethaa Ballakrishnen, *Hari and Kumar Go to HLS* (2008) (unpublished LLM thesis, Harvard University) (on file with author). The only other time these enrollments were of even comparable magnitude was in the post-World War II phase, when a steady number of international government officers and tax professionals were sent to HLS for a specialized tax LLM. *Id.*

11. Silver's research on LLMs in the U.S. provides some insight into the number of schools that offer these programs, as well as the number of students enrolled in them. See generally Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 FORDHAM INT'L L.J. 1039 (2002) [hereinafter Silver, *The Case of the Foreign Lawyer*]. Using data collected from the websites of individual law schools, she records that "[i]n 1999, at least sixty-eight U.S. law schools offered some sort of graduate degree available to foreign lawyers," and "[m]ore than half of these programs [were] available exclusively to foreign lawyers." *Id.* at 1046. By 2004, 102 law schools offered graduate programs open to foreign law graduates, more than half of which were exclusively for foreign lawyers. See Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARDOZO J. INT'L & COMP. L. 143, 147 (2006) [hereinafter Silver, *Internationalizing U.S. Legal Education*]. By 2016, the number of schools supporting at least one LLM program open to foreign law graduates had increased to 154, based on a review of law school websites (records on file with Silver).

12. The literature on students that come to the U.S. for a master's program deals with the consequences of this dynamic both for the institutional and the individual actors, as well as the implications this has for the broader legal profession. See, e.g., Silver, *Internationalizing U.S. Legal Education*, *supra* note 11, at 146 (2006) (reviewing why international students come to the U.S. for an LLM).

13. LLM programs are financially important for U.S. law schools because the schools can charge full tuition without worrying about the credential of the students for the purpose of national rankings (e.g., U.S. News & World Report). This is true even though schools take seriously the benefits to the general community and student learning that arise from the presence of international students in law school graduate programs. See *id.* at 155; Carole Silver, *Coping with the Consequences of Too Many Lawyers: Securing the Place of International Graduate Law Students*, 19 INT'L J. LEGAL PROF. 227, 228 (2012) [hereinafter Silver, *Too Many Lawyers*]; WENDY ESPELAND & MICHAEL SAUDER, *ENGINES OF ANXIETY: ACADEMIC RANKINGS, REPUTATION, AND ACCOUNTABILITY* (2016).

14. Law schools have a growing interest in expanding their student population to include international students. Further, many schools have made dedicated effort to create a community for

other hand, from the perspective of the incoming students, changes in the world market for legal services have created a new environment in which an international legal education has practical value and demand.¹⁵

But while a small number when juxtaposed against the larger influx of international students in all fields and levels of education, the 1% figure representing students who come to the United States for higher education in law is significant for our purposes.¹⁶ In the 2013-2014 academic year, for example, the American Bar Association Section of Legal Education and Admissions to the Bar reported enrollment for all ABA-approved law schools in all degree programs at nearly 140,000 students (not a small number!).¹⁷ By the fall of 2016, this number had dropped to just below 125,000, reflecting a decrease in the *Juris Doctor* (JD) population, which was offset somewhat by an increase in enrollment in post-JD and non-JD programs.¹⁸ While the largest segment of international students studying law in the United States is enrolled in graduate programs (noted as “post-JD” by the ABA), there has been a concurrent rise in the number of international students who wish to pursue a more mainstream U.S. law degree, i.e., the JD. In recent research, we show that while

their international students. Increasingly, law schools have described the benefits of actively assimilating the incoming international graduate students not only to offer a world-class education to them, but also to offer a broader experience for American students in the classroom. For a short commentary on the advantages of integrating LLMs in American classrooms, see Lauren K. Robel, *Opening Our Classrooms Effectively to Foreign Graduate Students*, 24 PENN. ST. INT'L L. REV. 797, 799 (2006).

15. This practical value and demand has not been universal and it is one example of the variability in these returns that we seek to explore in this Article. Earlier research has shown that the advantage of global education and credentialing depends on the country in which these lawyers are practicing. For example, in work on U.S. legal education and the global legal services market, Carole Silver argues that this is related to various factors, including liberalization structures, institutional limitations and the resultant extent to which local and global law is necessary to be primed. In countries like Germany, where law firms long have embraced international work and local legal education is imperative even for cross-national practice, for example, having an LLM is more of a differentiator in the market than a sorter. See Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 24 GEO. J. LEGAL ETHICS 1, 21–28 (2001) (“But with the strength of the state exam score as a guiding signal, the PhD and LLM are limited to supporting rather than determinative roles in the German hiring market.”). On the other hand, in new markets, U.S. legal education may be more of a necessity than mere icing on the cake. See *id.* at 41; see also ANTHEA ROBERTS, IS INTERNATIONAL LAW INTERNATIONAL? 61–67 (2017) (describing flows of international students studying law in the context of various influences, including language and legal family).

16. IIE recorded 15,306 international students in law (legal studies and law enforcement) in 2017. *Supra* note 6.

17. *2013 Fall Non-JD Enrollment*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_fall_jd_nonjd_enrollment.xlsx (last visited Feb. 28, 2018) (128,641 enrolled full/part-time JD students at 202 ABA-approved law schools and 11,132 non-JD students, including post-JD (which includes LLM and SJD students), post-baccalaureate and non-JD online (reported Jan. 18, 2014)).

18. *2016 Non-JD Enrollment*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2016_jd_non_jd_enrollment.xlsx (last visited Feb. 28, 2018) (110,951 enrolled full/part-time JD students at 206 ABA-approved law schools and 13,667 non-JD students, including post-JD and post-baccalaureate).

certainly not a seamless assimilation,¹⁹ the percentage of international students in mainstream JD programs not only has increased substantially in the last decade but also has surpassed other domestic minority groups in certain instances.²⁰

In tracing these students and their mobility contexts, this Article makes three main contributions. *First*, it maps the changing demographics of international student participation in U.S. law schools and explores the factors shaping students' preferences, including the relative importance of access to training opportunities, language, immigration status, prior work experience, and lawyer regulation and licensing (at home and abroad). In doing so, we highlight, following earlier work,²¹ the importance of local contexts in shaping students' trajectories and the changes in these trends, especially with regard to what we term the "big Asia story."²² *Second*, this Article offers a set of four metaphorical categories to help think about these empirical processes: *sticky floors*, *springboards*, *stairways* and *slow escalators*. Using each of these broad categories, we suggest that students find different sources of persuasion and pushback as they navigate their respective paths within law schools. Our main contribution is that student decisions are molded at different stages by different actors and institutional constraints, with ultimate choices (and, therefore, tracks) reflecting a range of interactions between each of these constraints and capacities. *Finally*, we use these pathways to theorize about the larger potential this case can offer for theories of malleable social capital²³ and recursive transnational theory.²⁴ While global legal

19. Swethaa S. Ballakrishnen & Carole Silver, *Making It (Even When They Cannot Fake It)* (2018) (under advanced review) (on file with author) [hereinafter Ballakrishnen & Silver, *Making It*].

20. Swethaa S. Ballakrishnen & Carole Silver, *The Importance of Being International?*, in LEGAL EDUCATION ACROSS BOUNDARIES (MeeraDeo, Mindie Lazarus-Black & Elizabeth Mertz, eds., 2018) (forthcoming) (international JD students comprised a larger proportion of the student body than Blacks, Asians or Latinos at 13%, 14% and 8% of ABA-approved law schools, respectively, in 2016, and these proportions had increased from five years earlier).

21. Swethaa S. Ballakrishnen, *The Comparative Case of Indian Law Students | U.S. v. Australia* (2015) [hereinafter Ballakrishnen, *The Comparative Case*] (on file with authors); Swethaa S. Ballakrishnen, *Homeward Bound: What Does a Global Legal Education Offer the Indian Returnees?*, 80 FORDHAM L. REV. 2441 (2012) [hereinafter Ballakrishnen, *Homeward Bound*]; Carole Silver, *States Side Story: Career Paths of International LLM Students, or I like to be in America*, 80 FORDHAM L. REV. 2383, 2384 (2012); Silver, *Variable Value*, *supra* note 15, at 3.

22. See Rajika Bhandari, *Asia's Stake in 21st Century Higher Education*, INST. OF INT'L EDUC., Aug. 2015, <https://www.iie.org/Learn/Blog/2015-August-Asias-Transformation-And-The-Role-Of-International-Higher-Education> (providing a review of the impact of Asia's sending potential and the relevance of its local dynamics) ("In most higher education discourse today it is not unusual to hear the claim that the world's center of gravity is shifting toward the East. Indeed, no region has undergone as profound a transformation as Asia during the past half-century, from the 1970s to the present. Unprecedented economic growth has driven major social and demographic change and institutional reform and, in most countries, has brought about greater stability. The advent of a large middle class, coupled with openness and market reforms driven by economic imperatives, has contributed to greater interconnectedness among Asian states and between them and the rest of the world . . . These dynamics are also reflected in the landscape of higher education, especially at a time when economic growth in many rapidly developing Asian economies is linked to knowledge production, advanced skills, and the rising demand for higher education.").

23. Ballakrishnen, *Homeward Bound*, *supra* note 21, at 2441; Bryant G. Garth, *Notes Toward an Understanding of the U.S. Market in Foreign LLM Programs: From the British Empire and the Inns of Court to*

education is not technically a transnational legal order,²⁵ we suggest that the framework aids in thinking through the implications of these mapped paths and trends and the important perspective international students can offer to reveal the ways in which local and global actors emerge and intersect.

1. TRENDS IN INTERNATIONAL LEGAL EDUCATION

The rise of the United States as an important site for educating international lawyers occurred roughly in tandem with the ascendance of U.S. law firms in the global market for legal services and during a period when U.S. higher education also increasingly was valorized.²⁶ The position of U.S. legal education draws from and reflects the interplay between these factors and the respective forces in local contexts contributing to this intersection. In this section, we trace the development and changing demographics of international law students' participation in U.S. legal education. Our description here is necessarily general and aims at linking the fluidity of patterns of students' participation to institutional forces at work within various sending countries and the United States, and across education and legal market contexts.

The presence of international students in U.S. law schools is not a new phenomenon. For most of the post-WWII era, international scholars interested in academic careers enrolled in U.S. law schools to pursue a doctoral degree, commonly known as the *Doctor of Juridical Sciences* (SJD), and since the 1970s they essentially have comprised the main group interested in the SJD.²⁷ But the SJD traditionally was limited as a receptor, both because of resource constraints exerted on potential candidates in their home countries (e.g. national funding for these programs, opportunities for returnees), as well as resource constraints in the United States (e.g.

U.S. LLM Programs, 22 IND. J.L. & GLOBALIZATION 67 (2015); Jongyoung Kim, *Global Cultural Capital and Global Positional Competition: International Graduate Students' Transnational Occupational Trajectories*, 37 BRITISH J. SOC. EDUC. 30 (2016).

24. Terence Halliday & Bruce Carruthers, *The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes*, 112 AM. J. SOCIOLOGY 1135, 1135 (2007); Terence Halliday, *Recursivity of Global Normmaking: A Sociological Agenda*, 5 ANN. REV. LAW SOC. SCI. 263, 263-89 (2009); Gregory Shaffer, *The World Trade Organization Under Challenge: Democracy and the Law and Politics of the WTO's Treatment of Trade and Environment Matters*, 25 HARV. ENVTL. L. REV. 1, 1-93 (2001).

25. See generally Terrence C. Halliday & Gregory Shaffer, *TRANSNATIONAL LEGAL ORDERS* (2015).

26. See Neil G. Ruiz, *The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations*, GLOBAL CITIES INITIATIVE, Aug. 2014, https://www.brookings.edu/wp-content/uploads/2014/08/Foreign_Students_Final.pdf ("The United States is the preeminent global hub for academic training. In the 2012-2013 academic year the United States hosted a record 819,644 international students, 21 percent of all students studying abroad worldwide.") (footnote omitted).

27. Gail J. Hupper, *Educational Ambivalence: The Rise of a Foreign-Student Doctorate in Law*, 49 NEW ENG. L. REV. 319, 319 (2015); Gail Hupper, *The Academic Doctorate in Law: A Vehicle for Legal Transplants?*, 58 J. LEGAL EDUC. 413, 413 (2008); Gail Hupper, *The Rise of an Academic Doctorate in Law: Origins Through World War II*, 49 AM. J. LEGAL HISTORY 1, 1-64 (2007) [hereinafter Hupper, *Rise of an Academic Doctorate in Law*].

limited funding for graduate study at this level, lack of faculty interested in supervising and mentoring SJD students). Partly as a result, the more common home for international law students grew to be the taught postgraduate degree program *Masters of Laws* (LLM). Early on, in the 1930s, according to Gail Hupper, LLM programs were developed as a sort of consolation prize for students who did not complete their SJD.²⁸ At that time, the LLM carried characteristics of a degree intended to be earned by scholars, including a thesis being a common requirement. But as legal practice became more remunerative and prestigious around the world, international lawyers and law graduates could throw off the pretense of scholarship and justify pursuit of a graduate degree on other grounds. Recall that the 1980s and early 1990s was a period of significant global expansion for U.S.-based law firms and their clients.²⁹ By the 1990s, when U.S. law schools experienced a period of growth in their LLM degree programs, international law graduates were thinking about how to make themselves attractive to what we now think of as global law firms.

By the early 2000s, approximately 40% of all ABA-approved law schools offered at least one LLM program open to international law graduates, with some schools offering multiple of these programs organized around various substantive specialties, for example.³⁰ According to the ABA, enrollment in post-JD programs approximately doubled between the mid-1990s and the mid-2000s, and during that period the proportion of international students in this group went from comprising about 40% of all LLM students to nearly 60% of them.³¹ Importantly, during this phase of global legal education, the signal of the LLM was to convey a readiness for interaction beyond home country borders, and it served as a mechanism to distinguish its holder from others at home whose experience was limited to the local context.³² The LLM was considered by both students who pursued it and by their employers as preparation for working with U.S.-based clients and organizations and perhaps clients from other countries as well. As an Argentinian lawyer explained his thinking in 1995 about pursuing an LLM:

And then, at the same time there were a lot of factors like, the U.S. was getting bigger and bigger in terms of economy in Argentina, and . . . it was more and more important to have English. And uh, a lot of investors from the U.S. were coming to Argentina. And uh, I realized that it was a very important matter for me because I wanted to have like, you know, like U.S. clients and the only [way] I could do it was like studying their law, like the U.S. law and talking good English.³³

28. Hupper, *The Rise of an Academic Doctorate in Law*, *supra* note 27, at 51.

29. Carole Silver, *Globalization and the U.S. Market in Legal Services – Shifting Identities*, 31 J. L. & POL'Y INT'L BUS. 1093, 1095 (2000).

30. Silver, *Internationalizing U.S. Legal Education*, *supra* note 11, at 147.

31. The ABA reported 1996 enrollment in post-JD programs as 2,630, and as 4,060 in 2004 (ABA reports on file with Silver).

32. See Ballakrishnen & Silver, *Making It*, *supra* note 19; Silver, *Variable Value*, *supra* note 15.

33. I70-99. Interviews with international law students and graduates, and with their employers and law firm hiring partners practicing with elite national and international law firms, were conducted

But even among the group of LLM graduates from the late 1990s and early 2000s, some wanted more than the credential from their LLM experience.³⁴ Responses to a survey of LLM graduates from the years 1996, 1998, and 2000 including a question about their motivations for pursuing the LLM (Figure 1) indicate that the LLM was considered a path to something else for certain students.³⁵ Variation keyed to home country environments as well as other factors such as career contexts.³⁶ Students in private firms and corporate positions from Japan and South Korea, for example, were interested in the LLM's bar eligibility status.³⁷ Other students, typically from Europe, hoped for a practice experience—long or short term—in the United States.³⁸ But this was challenging for a variety of reasons, since - spearheaded by the

as part of Silver's ongoing research exploring globalization, legal education and the legal profession. The year of the interview is indicated after the hyphen (i.e. this interview was conducted in 1999).

34. Silver, *Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers*, 45 VA. J. INT'L L. 897, 907–08 (2005) (describing international LLM students' interest in gaining practice experience in the U.S. following their LLM graduation).

35. Silver, *LSAC Research Report Series: Agents of Globalization in Law: Phase 1*, LSAC, 2009, (available at [https://www.lsac.org/docs/default-source/research-\(lsac-resources\)/gr-09-01.pdf?sfvrsn=2](https://www.lsac.org/docs/default-source/research-(lsac-resources)/gr-09-01.pdf?sfvrsn=2)) (describing the survey and results); Silver, *Variable Value*, *supra* note 15, at 5.

36. Silver, *Variable Value*, *supra* note 15; Silver, *Internationalizing U.S. Legal Education*, *supra* note 12, at 158.

37. A Korean LLM, for example, explained that “In Korea, LLM value is first, American license – bar exam. LLM is a process to get license.” (173-03). A Japanese LLM reported that “All [Company Name] employees have passed the New York bar, and all take it after their LLMs!” (174-03). See Carole Silver et al., *What Firms Want: Investigating Globalization's Influence on the Market for Lawyers in Korea*, 27 COLUM. J. ASIAN L. 1, 3 (2015); Kim Seong-Hyun, *The Democratization and Internationalization of the Korean Legal Field*, in *LAWYERS AND THE RULE OF LAW IN AN ERA OF GLOBALIZATION* 217 (Yves Dezalay & Bryant G. Garth eds., 2011); Jinwon Kim, *LOPEOM [LAW FIRM](2009)*; Kuk Woon Lee, *Corporate Lawyers in Korea: An Analysis of the 'Big 4' Law Firms in Seoul*, in *JUDICIAL SYSTEM TRANSFORMATION IN THE GLOBALIZING WORLD: KOREA AND JAPAN* 231 (Dai-Kwon Choi & Kahei Rokumoto eds., 2007); Jaewan Moon, *Impact of Globalization on Korean Legal Profession* (unpublished manuscript) (on file with author); Soogeun Oh, *Globalization in Legal Education of Korea*, 55 J. LEGAL EDUC. 525, 530 (2005); Tom Ginsburg, *Transforming Legal Education in Japan and Korea*, 22 PENN ST. INT'L L. REV. 433, 440 (2004).

38. Research on the careers and aspirations of LLM graduates bears this out. For example, a 1998 LLM graduate from Germany described the evolution of her thinking about trying to remain in the U.S. for a period of practice after graduation: “My anticipation was I wanted to spend my year there and then go back home to Germany and hopefully be good enough to start in one of those big international law firms and then maybe get an overseas assignment or something that way. That was the initial plan. And then when I came to [SCHOOL NAME] . . . I immediately said, you know, one year is really passing by too quickly. I mean I already haven't seen how fast the first semester passes and knowing that graduation was May, I, at that point already couldn't see myself going home already in May. And I said, what I want to do at all possible is try and maybe find work and stay for another half year or year.” I19-07. A Belgian 1996 LLM graduate was determined to stay in the U.S. from his first day, explaining, “I always remember when, my first day in [U.S. CITY] and it was my first time in [U.S. CITY] actually. I arrived quite late at night and then, in the morning, because of the jet lag, I woke up very early and I saw . . . I saw the sun going up and people jogging . . . and I said to myself okay I'm going to stay here for the rest of my life And I kept this thought for quite some time. And that is why I wanted badly to stay in the U.S. after the LLM” I31-08. The survey of LLM graduates from the years 1996, 1998 and 2000 found, for example, that students from Europe (EU and non-EU) comprised the largest group (approximately 38%) of LLM graduates who remained in the U.S. at least several years after graduating; Silver, *States Side Story*, *supra* note 21, at 2400 (Table 5).

weight ascribed to employment outcomes for JD graduates by U.S. News³⁹ - there remained an ill-hidden favoritism by the law schools for their JD students and an absence of any countervailing force that pressed the interests of LLMs with regard to career services. One LLM graduate described the job search as

[D]ifficult because of the way the LLM process works, because essential[ly] you're supposed to wait until all the firms fill their JD slots and then, if they have anything, then they will come and look for you. You know, it's hard, because how do you know? Because firms like [Firm Name] met with all of [the LLMs] and they were very positive. They were like yeah, yeah, but they are not allowed to recruit LLMs before they recruit JDs Oh, because . . . you know, a LLM is second best to JDs always.⁴⁰

Others echoed this frustration with the recruiting process and career services offices.⁴¹

Figure 1: Motivations for pursuing U.S. LLM, classes of 1996, 1998, 2000⁴²

<i>Motivation</i>	<i>Proportion of Respondents indicating this as important</i>
Expansion of professional opportunities in home country	82%
Interest in a particular area of law	54%
Desire to improve English skills	51%
Career advancement	39%
Desire to live in the United States	39%
Influence of colleagues/friends who had an LLM	29%
Path to a job in the United States	29%
Family considerations	21%
Necessity for U.S. bar exam	16%

39. See generally WENDY NELSON ESPELAND & MICHAEL SAUDER, ENGINES OF ANXIETY 119 (2016) (referring to the consequences for LLM programs of U.S. News' exclusive focus on JD programs).

40. I15-06.

41. A French LLM graduate's comment reflected her personal experience regarding competitiveness of an LLM: "I didn't get any summer internships, because of course law firms were looking for JD graduates who were gonna work as associates And I thought with my LLM I could compete against them, and maybe work potentially as an associate I really did not realize, it took me a longtime to realize I am not going to be hired as an associate with a French JD and an U.S. LLM." I26-07. An LLM graduate from Venezuela (class of 2000) noted "I have to say that the office of career services at [LAW SCHOOL] as well as the Graduate Program staff emphasized to the graduate students that the job opportunities available were mostly for JDs and that the help that they could offer was limited because of that." S111; an Austrian 2000 graduate commented that "I am very happy with my current job, however, I would like to point out that career services at [LAW SCHOOL] were absolutely lousy and entirely focussed [sic] on placing JDs." S132. (S indicates survey response).

42. The data reported in Figure 1 was collected as part of a larger study of the careers of U.S. LLM graduates. See Silver, *supra* note 35.

While much remains the same for LLM students today as it was ten or even twenty years ago, in some respects things are quite different. Students' motivations for pursuing an LLM offer an example. On one hand, students talk about the LLM as advancing their career opportunities,⁴³ helping them strengthen their English language skills, and in gaining the cultural exposure that comes with living outside of their home countries⁴⁴—all motivations for pursuing an LLM that were expressed by the LLMs who graduated between 1996 and 2000. On the other hand, while many of these factors might remain relevant, LLMs today also increasingly describe the degree as a means to another end—whether the bar, a U.S.-based practice experience or both—that *itself* is necessary in order for the LLM credential to serve as a mark of distinction in the student's home country.⁴⁵ A Chinese LLM student described this in the context of describing a summer internship. In explaining that the position did not involve compensation, she said: "I don't care [about being paid]. . . . It's not a big problem. It's part time. For LLMs, the most important thing is to get U.S. experience, to help us get a permanent job later. And passing the bar—after passing the bar."⁴⁶

The law schools continued building and growing LLM programs, and today nearly 80% of all law schools offer at least one post-JD degree program for international law graduates, a figure that has approximately doubled over the last ten years.⁴⁷ The number of students enrolled in post-JD programs more than doubled

43. A student from China explained that she came for the LLM "for a boost. I don't know if I'm typical or not, but my life, in terms of study, is like going up steps. So, it's like small city in China, and then larger city, and then Beijing, and then the next step, the United States. It's just a step up a bit. I think that would get me a . . . not an advantage but a broader perspective about the business, the subject, so as to be better for my first job." (C52-15).

44. A Chinese LLM explained that she had three goals: "1. Opportunity to stay here [in the U.S.], 2. English skill, writing and speaking because I know language is so important in the legal field, and 3. I've never studied or lived abroad alone for a long time. So I want to know how it feels. I wanted to do this in high school, [or] to go to college in the U.S. But I didn't make it. So it's a dream in my mind, I have to make it." (C50-15).

45. Two 2017 LLM graduates from China explained the importance of the bar exam in the context of discussing how students select courses (students are identified by interview number): "C067-17: I want to speak for, I think, most of Chinese students when they are picking the class. I think the first thing that they're concerned about is the bar requirement, right? C068-17: Yeah, that's true. It's like your routine. You'll get an LM degree, and then sit for the bar, and get a license. [*Laughs*] C067-17: So, I think the most important guidance for them is the bar exam requirement." A Russian LLM (class of 2014) explained her frustration with the lack of job opportunities in the U.S. for LLM graduates: "I have looked into every way to find even a low-paying or unpaid job." C04-15

46. C50-15.

47. Research conducted by Silver and her research assistant in the spring of 2016 involving a review of individual law school websites showed that 78% of ABA-approved law schools supported at least one LLM program in which international law graduates could enroll. It is relatively common for law schools to offer multiple of such degree programs. Northwestern Pritzker School of Law is an example. It offers a general LLM program for international law graduates. It also offers an LLM in human rights, and one in tax; both of these are open to domestic JD graduates as well as to international law graduates. In addition, it offers four executive LLM degree programs based in different parts of the world, and each of these is aimed exclusively at international law graduates. While Northwestern might be close to one end of the spectrum on number and type of LLM degree programs for international law graduates, consider the example of University of Southern California Gould School of Law, a newer entrant to the group of law schools offering graduate degrees for

between 2004 and 2016 to just below 10,000 students.⁴⁸ And while it is not possible to determine exactly what proportion of this number is comprised of international law graduates because law schools are not required to report this figure, all indications suggest that the lion's share of growth in post-JD enrollment is fueled by international students.⁴⁹

But international students have not been contained in non-JD programs. There has been growth over the last five years or so in the proportion of international students enrolling in U.S. JD programs, too (Figure 2).⁵⁰ While the numbers and proportions remain small, they are not insignificant.⁵¹ In fact, at certain law schools the international JDs outnumber Black, Asian, or Latino students, and this appears to be an increasing trend (Figure 3).⁵²

Figure 2: Non-resident aliens as percentage of all JD students, 2011 and 2016

	2011	2016
All ABA-approved law schools	1.66%	3.17%
Top-20 ranked law schools	2.87%	6.25%

international law graduates. USC offers an on-campus LLM and an online LLM, a two-year LLM and a Masters in Comparative Law degree aimed at international LLM graduates interested in additional U.S. legal education. *See Degrees*, USC GOULD, <http://gould.usc.edu/academics/degrees/> (last visited Feb. 28, 2018).

48. The ABA reported enrollment in 2016 of 9,866 students in post-JD programs, which includes LL.M.s and SJD degrees, as well as Master of Common Law programs. *Statistics Archives*, Excel Sheet at *2016 JD/Non-JD Enrollment Data*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2016_jd_non_jd_enrollment.xlsx.

49. IIE's data also is generally consistent with this. *See Fields of Study 2014-2016*, IIE (available at <https://www.iie.org/en/Research-and-Insights/Open-Doors/Data/International-Students/Fields-of-Study/2014-16>) (last accessed Mar. 31, 2018).

50. These data are reported by the law schools based on students' visa status, so they capture an element of international identity that may not entirely reflect students' sense of their own identity. The non-resident alien figures are reported in law school Standard 509 reports, and available for individual law schools and the annual aggregate group. *See* AMERICAN BAR ASSOCIATION, J.D. ENROLLMENT AND ETHNICITY (2011, 2016), <http://www.abarequireddisclosures.org/>. On international identity, see Ballakrishnen & Silver, *Making It*, *supra* note 19.

51. Ballakrishnen & Silver, *Making It*, *supra* note 19.

52. *See* AMERICAN BAR ASSOCIATION, J.D. ENROLLMENT AND ETHNICITY (2011, 2016), <http://www.abarequireddisclosures.org/>.

Figure 3: Proportion of all ABA-approved law schools in which non-resident aliens (NRAs) are a larger proportion of student body than Blacks, Asians, or Latinos, 2011 and 2016

	2011	2016
% NRAs > Black students	7%	13%
% NRAs > Asian students	3%	14%
% NRAs > Latino students	5%	8%
No NRAs	19%	19%

Tracing the New Internationals: JD Enrollment Patterns and the Big Asia Story

To better understand the interplay of global and local factors shaping students' decisions, it is helpful to consider data offering an overview of the relationship among home country, degree program, schools, and international enrollment in U.S. law schools. To that end, we draw on a dataset comprised of information taken from U.S. visa approvals for international students enrolled in institutions of higher education and studying law for the period 2008 through 2012.⁵³ These data illustrate the “big

53. These data were obtained from Neil Ruiz, who obtained them through a FOIA request while he was Senior Policy Analyst and Associate Fellow at The Brookings Institution. See Neil G. Ruiz, *The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations*, Global Cities Initiative, 2014, https://www.brookings.edu/wp-content/uploads/2014/08/Foreign_Students_Final.pdf. In his writing about the data, Ruiz described his source as a “new database on foreign student visa approvals from 2001 to 2012.” The data reflect approvals of F-1 visas, which Ruiz describes as “the most common visa issued to foreigners studying in a full-time academic program. Students must be accepted by an approved school, document they have sufficient funds to cover 12 months of expenses and demonstrate academic preparedness to succeed in the program.” *Id.* at 3. For a discussion of limitations of the visa data, see *id.* at 6. However, in this Article, the data analyzed are limited as follows. First, details regarding only the years 2008-2012 were shared by Ruiz. Second, in response to our request for information on law students, Ruiz shared only visa approvals for students studying law as defined by the Classification of Instructional Programs (CIP) code, referenced in the I-20 form. See *id.* at 7 (describing STEM). The field of law is defined as “Legal Professions and Studies.” See *Classification of Instructional Programs*, NAT'L CTR. FOR EDUC. STATISTICS, <https://nces.ed.gov/ipeds/cipcode/cipdetail.aspx?y=55&cip=22.9999> [hereinafter *Classification of Instructional Programs*] (last accessed March 31, 2018). The data were cleaned to exclude records for students who had enrolled in (i) universities that had no law school and (ii) law schools that are not accredited by the ABA. In addition, with regard to the master's level analysis, records for students enrolled in law schools that did not support a master's program for international law graduates (determined by reference to the law school website and to ABA records) also were excluded. Omitting these from the analysis resulted in excluding records for 31 doctoral level students and 107 master's level students. Generally, the CIP codes indicate that the program of “law” includes both the JD (for example, the code 22.0101 is defined as “A program that prepares individuals for the independent professional practice of law, for taking state and national bar examinations, and for advanced research in jurisprudence. Includes instruction in the theory and practice of the legal system, including the statutory, administrative, and judicial components of civil and criminal law.”) and a master's degree (for example, the code 22.0202 is for “Programs for Foreign Lawyers” and the code 22.0203 covers “American/U.S. Law/Legal Studies/Jurisprudence”). Note that in this Article, we describe data characterizing students in a doctoral level program as JD students, consistent with the CIP definition. Finally, we note the likelihood that the data are over-inclusive in certain ways that we

Asia” story as well as differences between the LLM and JD enrollment.⁵⁴

During the five-year period of 2008-2012, F-1 visas were approved for nearly 20,000 (19,161) students studying law.⁵⁵ The vast majority of the visas were granted to students for master’s level degrees: 82% of all of the records analyzed were for students in master’s level programs, which includes the LLM.⁵⁶ Only 18% of the records were for students pursuing a JD.⁵⁷ International JD students, according to these data, are most likely to be Canadian, Chinese or South Korean (Figure 4). These three sending countries together accounted for 60% of all international JDs (Figure 4). Canada’s dominance in the JD group likely reflects, at least in part, the proximate ease of migration to the U.S. and the small number of law schools in Canada; for students who do not gain admission to one of Canada’s top law schools, the United States offers an additional and larger pool of schools with prestigious reputations.⁵⁸ In addition, for Canadians as well as international students generally, beginning compensation levels at U.S.-based “Big Law” private firms are another attraction.⁵⁹

In contrast to the JD group, for the LLM/master’s population, ten countries, rather than three, account for just over 60% of the LLMs (Figure 4). At the same time, the three largest sending countries for the master’s group still comprise a significant force, accounting for almost 40% (37.42%) of all international graduate (master’s) level students.⁶⁰ But this contrast with the very focused domination of home countries found in the JD group reflects the inherent international characteristic of the LLM degree program itself. It is known as a degree for international law graduates, a reputation that is identified by international JD students as one reason they chose an alternative law school path.⁶¹

could not counter through cleaning and analysis, and Ruiz was unable to make a more refined cut in order to address these concerns.

54. Ruiz, *supra* note 53.

55. See *supra* note 53 and Ballakrishnen & Silver, *Making It*, *supra* note 19 regarding limitations of the data presented here.

56. Ruiz, *supra* note 53; see also Ballakrishnen & Silver, *Making It*, *supra* note 19 regarding the CIP definition for master’s level degrees as including “Program for Foreign Lawyers.”

57. See *supra* note 53 and Ballakrishnen & Silver, *Making It*, *supra* note 19 regarding defining doctoral-level programs as a JD according to the CIP code.

58. A JD graduate interviewee from Canada explained, “I applied to law school at probably four or five of the Canadian universities After I didn’t get accepted to any of those, then I started looking across the border. I applied to, I think, three schools in the U.S.” I046-15.

59. See *The Salary Wars of 2016: Huge Pay Rises in New York This Summer Forced the City to Play Along*, CHAMBERS STUDENT, Oct. 2016, <http://www.chambersstudent.co.uk/where-to-start/newsletter/law-firm-pay-rises-in-2016>.

60. If Figure 4’s list was expanded to include any country sending approximately 3% or more to either of the two groups (master’s and doctorate), there would be 35 on the JD list (accounting for 91.5% of the JD group) and 43 on the LLM list, accounting for 92.15% of the master’s group.

61. See *supra* note 20 (describing the distancing international JD students attempt from the LLM, including, for example, one student who described the inherent advantages of the JD program over the classic LLM route that other international students might take: “Notice that there are not many international students, especially Chinese students, in JD program. But there are many in LLM program. But actually as an LLM student, you cannot, like, practice law. I’m not sure if I understand it right, you cannot practice law or, like, you are ineligible to take the Bar exam, or so And I think

Asia has dominated as a sending region for the aggregate population of international students studying in the United States, without regard to field of study, as mentioned earlier and as evidenced by data from *Institute of International Education* which reported that in 2016-2017, students from Asia accounted for 68% of all international students in the United States for higher education.⁶² In the field of law, visa approvals data indicate that Asia accounted for approximately 50.5% of all students in the combined master's and doctorate level degree programs.⁶³ The biggest Asian sending countries for legal studies, according to these data, were China, South Korea, and Japan, which together account for over one-third of the total number of visa approvals for international students to study law in either level.⁶⁴ And while there are differences between the JD and master's level groups with regard to the identity and significance of Asian sending countries, China and South Korea figure most prominently in both populations.⁶⁵ Much has been written about higher education and legal education in these two countries that might help explain why they are the most important Asian feeder countries for U.S. law schools, including the reform of the legal education regime in South Korea,⁶⁶ the strength of U.S. and U.K. law firms in China's market and their preference for U.S. law school credentials—the latter, related in part at least, to China's regulatory approach to foreign law firms.⁶⁷

the JD program sounds more interesting to me than the LLM program.”). 1015-17 at 11.

62. Students from East Asia accounted for approximately 43% of all international students (China is by far the biggest sending country of this group, followed by Korea, Taiwan, and Japan (in that order)). See *Places of Origin, 2016/17, Open Doors Report on International Educational Exchange*, INST. OF INT'L EDUC., <https://www.iie.org/Research-and-Insights/Open-Doors/Data/International-Students/Places-of-Origin>. India sent slightly more than half the number of Chinese students (186,267 students in 2016-2017). *Id.* Vietnam also was an important sending country from Asia (sending 22,438 students in 2016-2017). *Id.*

63. See *Classification of Instructional Programs*, *supra* note 53, for a description of the visa data and its limitations.

64. For the aggregate group of international students studying all subjects in the U.S., IIE reported that the top three sending countries are China, India and South Korea. *Id.* India falls to fourth place in the law-focused group, just above Taiwan. See *id.* for information on the visa data describing students studying law in the U.S.

65. *Id.*

66. Silver et al., *supra* note 37.

67. See Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China's Corporate Law Market*, 42 LAW & SOC'Y REV. 771, 771 (2008); Silver, *Variable Value*, *supra* note 15, at 33-53. Keep in mind that these categories of home country are not necessarily mutually exclusive, based on interviews conducted with international JD students for earlier research, see Ballakrishnen & Silver, *Making It*, *supra* note 19; Ballakrishnen & Silver, *supra* note 20. The Canadian group also may include Asian immigrants to Canada, which was the case for several of our interviewees.

Figure 4: Top sending countries, legal studies, 2008-2012

LLM/master's level	% of total master's sent by country	JD	% of total JD sent by country
China	22.68%	Canada	25.02%
South Korea	7.93%	China	19.33%
Japan	6.81%	South Korea	15.91%
Brazil	4.20%	Taiwan	2.98%
India	4.15%	United Kingdom	2.44%
Germany	3.55%	India	2.38%
France	3.52%	Brazil	2.26%
Taiwan	3.34%	France	2.17%
Thailand	3.30%	Saudi Arabia	1.88%
Saudi Arabia	2.95%	Italy	1.61%
Total % represented	62.43%	Total % represented	75.98%

Our research⁶⁸ explains that the trends in the degree programs are hardly universal and vary significantly in relation to factors across levels of analysis. As we show in the next section, many of these interrelated factors could be further categorized along the lines of their global and local coordinates as well.

2. GLOCAL TRENDS: LOCAL CONTEXTS, GLOBAL REPERCUSSIONS

Local contexts long have been important in predicting and preparing students for international careers,⁶⁹ offering important insights into student motivations for pursuing degrees as well as the post-graduate valorization and transferability of these degrees. For some students, the decision to earn an LLM was a way to help themselves stand out in their home country. A German LLM graduate, for example, commented that:

[T]here are lots of lawyers in Germany . . . and so it's quite important to have something where you can distinguish yourself from at least a lot of the other lawyers, so I thought I actually need something more than just the [German] university degree to tell prospective employers.⁷⁰

Similarly, a graduate from Mexico from the same period, now with a private law firm that serves local, foreign, and international clients, explained that:

Clients love it if you have the LLM, and they love it even more if you pass

68. Ballakrishnen & Silver, *supra* note 19; Ballakrishnen & Silver, *supra* note 20.

69. See Ballakrishnen *supra* note 21; Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 IND. J. GLOB. LEGAL STUD. 67, 74 (2007); Bhandari, *supra* note 22.

70. 139-08.

the bar in the U.S. The Industry – law – is starting to require the LLM . . . I think they [clients] feel more comfortable when speaking to a guy who’s been exposed to American culture. Your laws are more rigid, so they think you understand what’s at stake when you’re doing a deal. They feel more comfortable that you know what the consequences are.⁷¹

But the valuing of global credentials within local contexts was hardly universal. Other work has highlighted the contextual and interactional nature of cultural capital associated with international credentials. In his study of academic and corporate careers that drew upon a graduate degree in the United States, Jongyoung Kim explains that “the same cultural capital plays out very differently depending on national contexts. In Korea, the U.S. professional degree functions as global cultural capital for the cosmopolitan elite, while in the United States it works as an entrance ticket to corporations and academe.”⁷² Similarly, Bryant Garth’s description of the comments of an economics graduate illustrates the point:

A Brazilian student some years ago made a striking comment about this process, referring to an economics student from Brazil at the University of Chicago. When the student is at the airport in São Paulo on the way to Chicago, the economics student noted, he is at the top of the hierarchy in Brazil. As soon as he lands in the United States, he goes right to the bottom of the U.S. hierarchy. If he needs extra money, he or his spouse may only take whatever jobs an undocumented person can take.⁷³

Ballakrishnen, in her study of Indian LLM graduate returnees, finds that “the value of the [LLM] credential fluctuates depending on the receiver of the information.”⁷⁴ This can involve interpretation by other lawyers, for example, who may or may not have studied in the United States, or by a client with little insight into the subtleties of professional credentials. The theoretical suggestion this offers is that, across contexts, there are macro and micro level forces at play in determining the value of U.S. legal education as a “marker of professional hierarchy.”⁷⁵

For those who wish to gain access to the U.S. legal services market (an option that was not always open to earlier LLM cohorts), getting an LLM is a passport of sorts.⁷⁶ But with the globalized demands of legal services markets, the advantage of

71. 171-03.

72. Jongyoung Kim, *Global Cultural Capital and Global Positional Competition: International Graduate Students’ Transnational Occupational Trajectories*, 37 BRIT. J. SOC. ED. 30, 32–33 (2016).

73. Bryant G. Garth, *Notes Toward an Understanding of the U.S. Market in Foreign LLM Students: From the British Empire and the Inns of Court to the U.S. LLM*, 22 IND. J. GLOBAL LEGAL STUD. 67, 74–75 (2015).

74. Ballakrishnen, *Homeward Bound*, *supra* note 21, at 2471.

75. *Id.* at 2457.

76. For a broad review of the expectations and potential pay-offs students have from this program, see Silver, *Internationalizing U.S. Legal Education*, *supra* note 11 (reviewing why international students come to the U.S. for an LLM). Silver notes that chief among these advantages is the ability to have a “common currency” to be able to communicate with peers in U.S. institutional settings as well as with global clients in their host country settings. *Id.* at 156. The LLM then, is a “process to get [an American] license.” *Id.* at 158 (quoting an LLM graduate from Korea).

the LLM is no longer limited to those who practice law in the United States.⁷⁷ Returning LLMs gain advantages in their home countries both because of the practical advantages the LLM offers (training in international law, exposure to new networks, etc.) as well as its signaling “halo” advantages, which come from being associated with an international law school from a high status country.⁷⁸ In addition to these core functional factors that affect their outcomes in the workplace, returnees can attain numerous other parallel advantages that are “functional” at the personal level, such as using the LLM to create contacts and networks with a global legal community and even locally,⁷⁹ and drawing language and cultural capital from this association.

Even so, the nature and interaction of these rewards to credential varies. Past research has shown that different factors at the individual⁸⁰ and institutional levels⁸¹ alter the kind of advantages that the LLM offers. Further, a key part of this analysis is recognizing the environment in which this credential is being used as capital.⁸² The most common example is the distinction between a U.S. LLM and a JD credential within the organizational context. While the LLM can indeed be a powerful degree in certain circumstances, we know that both students and recruiters treat it differently than a U.S. JD degree.⁸³

77. Silver’s early research shows that the LLM is commonly a condition for partnership or for access to certain jobs and firms outside of the U.S., typically relevant to LLMs who return, at some point, to their home countries. *See id.* This is particularly important in the case of certain countries, including certain jurisdictions in Latin America where the LLM is particularly valorized. *See id.* at 156.

78. This signaling is not always one that has similar access for all LLM candidates who stay. And many international law graduates return to their home countries and gain advantages with their employers and existing networks as a direct result of their LLM. *See Silver, Variable Value, supra* note 15, at 9; *see also Silver, States Side Story, supra* note 21; *see also Ballakrishnen, Homeward Bound, supra* note 21, at 2445 referencing an LLM student returning to China to work for a domestic firm who explained that after “trying out the Bar” (because it would give her “extra points—but no penalty” to clear it), it was an “unwritten rule” that individuals with LLMs, especially those from a “top school,” were more likely to have stronger promotion prospects on return, even though the U.S. degree was not substantially useful in navigating their domestic legal system.

79. An example of the creation of local contacts was described by a Chinese student, initially an LLM but now returning for a JD, who reported that he obtained a job with a top internationally-focused Chinese law firm (for the period between the LLM and JD) through a contact he made in his LLM program with a lawyer who had been counsel in the Chinese firm. C02-17.

80. For a review on how students with different credentials fare (in this case, students with LLMs versus JDs in the U.S. law firm market), *see Carole Silver, Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers*, 45 VA. J. INT’L L. 897, 907–14 (2005).

81. One example of this institutional level advantage has been the valorization of the LLM credential differently in different organizations within the same country. *See Silver, Internationalizing U.S. Legal Education, supra* note 11; *Silver, Variable Value, supra* note 15.

82. This conception of the LLM as “capital” that can be valorized in specific environments is borrowed, broadly, from the work of Yves Dezalay and Bryant Garth that frames law and lawyers in terms of social capital. *See Yves Dezalay & Bryant Garth, Law, Lawyers and Social Capital: ‘Rule of Law’ Versus Relational Capitalism*, 6 SOC. & LEGAL STUD. 109 (1997). We thank them for useful comments on earlier work that helped conceptualize this extension to the original argument.

83. In concurrent work (Ballakrishnen & Silver, *supra* note 19; Ballakrishnen & Silver, *supra* note 20), we are analyzing data on JD students in American law schools—data that can speak to this separation of the two degrees as considered from the perspective of the students. *See also Silver, Variable Value, supra* note 15.

Similarly, research reveals other ways in which the context of the LLM's use affects its value, including Silver's research illustrating the difference U.S.-LLM-educated graduates have in the appraisal of their credential depending on the home country to which they return.⁸⁴ Still, most practical extensions are limited in that they only consider the rewards for graduates returning to countries with some sort of a strong global presence affecting the legal profession.

Transnational Recursivity

Contrary to accounts from even a decade ago,⁸⁵ the globalization of law and legal institutions is no longer a neglected field of study.⁸⁶ Still, following from its definition, much of the theory of transnational legal ordering has been restricted mainly to testing legal "orders."⁸⁷ Global legal education does not fit within the strict definition of a transnational legal order since it is not routinely expressed in recognizable *legal* form; nor does it obviously derive its institutionalization from concurrent norm-making and -shaping across three (transnational, national, local) levels.⁸⁸ However, legal education can socialize students to think as lawyers in particular ways and can indirectly affect their practice subsequently, especially if they perform the function of brokers by practicing law domestically and transnationally.⁸⁹ They can, through practice, become conduits for the flow of transnational legal norms and legal practices, such as contracting. Naturally, as we note below, this impact will be a function of the context

84. See Silver, *supra* note 15, at 21-54 (explaining how the value of this education is variable depending on the host country context (in this case, China and Germany)). In her research, Silver shows that while the more globally mobile German legal market views the LLM as an additional currency, it is never seen as the only legitimizing factor for a local lawyer. On the other hand, the more nascent Chinese legal services market looks to U.S. oriented signals more strictly and in turn, the value of the LLM in the Chinese context gains sanctity. She argues that in Germany, because of the relatively long tradition of working at an international level, language and U.S. connections are not novel. See *id.* at 54-55. In fact, since U.S. firms have entered the market by acquiring German firms, part of the strategy has been an adaptation to existing hierarchies. See *id.* Surely, there is an appreciation for lawyers with more than local experience, but it is not seen as something that can replace local knowledge and experience.

85. Halliday & Carruthers, *supra* note 24, at 1135.

86. See, e.g., Jothie Rajah, 'Rule of Law' as *Transnational Legal Order*, in HALLIDAY & SHAFFER, *supra* note 25; DAVID B. WILKINS, VIKRAMADITYA S. KHANNA, & DAVID M. TRUBEK, *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* (2017); YVES DEZALAY & BRYANT GARTH EDS., *LAWYERS AND THE RULE OF LAW IN AN ERA OF GLOBALIZATION* (2011).

87. For evidence of what a transnational legal order could look like, see Dezalay & Garth, *supra* note 82 ("dealing in virtue: international commercial arbitration and a transnational legal order"). For further theorizing, including ways in which transnational legal ordering can be extended, see HALLIDAY & SHAFFER, *supra* note 25.

88. HALLIDAY & SHAFFER, *supra* note 25, at 3.

89. There are several examples of transnational practice that these students may engage in and the hybrid implications this may have in changing the legal fields—and orders—locally and globally. See, e.g., Sally Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108(1) AM. ANTHROPOLOGIST 38-51 (2006). Similarly, Halliday & Carruthers, *supra* note 24 discuss the importance of brokers more generally as conduits for the flow of transnational legal norms in local jurisdictions.

of the country to which they return. But we find the spirit of the transnational legal ordering framework useful as we think through the implications of the mapped paths and trends for students and the important window it offers to reveal the ways in which local and global actors emerge and interact. We especially appreciate the synergies of this against the wealth of transnational recursivity⁹⁰ theory, which demonstrates the interrelated nature of understanding global legal orders as a function of interactions—with and without alignment or fit—between local and global norms.⁹¹ Transnational legal ordering theory, for example, offers that “national and local resistance can be a catalyst that compels recursive global and transnational law making because it increases the likelihood that powerful actors will be compelled, in their own self-interest in order to ensure greater effectiveness, to negotiate rather than impose norms.”⁹² The credential of an American legal education was variable and negotiable following exactly these interactive dynamics of the local and the global. Local variations remained important for headlining global trends and the difference in different kinds of valorization shaped the import of the credential itself.⁹³

To extend this theory of contextual referencing to the social capital argument above, it is necessary to push the “context” of the host country further. Thus, in contrast to the literature on how LLM advantages transfer to countries where there are deep-rooted functional advantages to having a U.S. law degree (either as a requirement for practice or as a key distinctive credential in influencing labor market outcomes), for instance, Ballakrishnen’s previous work⁹⁴ has examined how having an LLM plays out in host nations like India that have a “closed”⁹⁵ market for international legal services. India’s case is unique in terms of the legal profession, in that it is a quasi-protectionist host country that has been more restrictive with opening its legal market than its Asian counterparts.⁹⁶ The formal regulatory resistance⁹⁷ to

90. See Halliday & Carruthers, *supra* note 24 (setting up the main frameworks for understanding recursivity of law in transnational contexts).

91. See *id.*

92. *Id.* at 1135.

93. See discussion *supra* note 15, regarding variation in the strength of professional capital represented by an LLM, both between different countries.

94. Ballakrishnen, *Homeward Bound*, *supra* note 21, at 2441.

95. We refer to the Indian market as “closed” here (and going forward) because while technically restrictive of foreign legal practitioners and organizations, the regulatory mechanisms that control this osmosis have been manipulated in different ways to informally allow for diffusion of international legal practice within the Indian legal market. See Ballakrishnen, *Present and Future: A Revised Sociological Portrait of the Indian Legal Profession*, in HILARY SOMMERLAD ET AL. EDS., *LAWYERS IN 21ST CENTURY SOCIETY* (forthcoming).

96. The Indian economy, like other similarly developing economies, traditionally has been closed. In 1991, the liberalization reforms opened some sectors for global commerce, which directly impacted the nature and scope of international transactional work that came into the country. The legal profession, however, stays securely closed. The statutory restriction against the practice of law by non-Indian lawyers is a fairly blanket restriction, and there has been some debate as to what this means. See *Lawyers Collective v. Bar Council of India*, (2009) Writ Petition No. 1526/1995 (India), (available at <http://bombayhighcourt.nic.in/data/judgements/2009/OSWP8152695.pdf>). Ballakrishnen has argued elsewhere that this lack of clear explanation for what the phrase “practice of law” means—e.g., the practice of “any” law, the practice of “any law in India,” and/or the “practice

opening the legal market, along with the broadening stratification of the domestic Indian profession, has created institutional and organizational⁹⁸ cultures in which American legal credentialing is not afforded a particularly uniform favor. Ballakrishnen's research suggests that while some graduates find resonance and validation in certain interactions, for the most part the degree is more of a chance to have a "break year" where they can be intellectually engaged further before returning to their "real" careers. Students do not expect the LLM – or these experiences – to have much—if any—direct impact on their career prospects when they return. And when it does impact their life, it usually is primed in unpredictable ways (for example, a partner might mention a "Harvard educated" junior to clients in passing to help create rapport, but it will not be the basis of promotion or increasing the lawyer's salary).⁹⁹ It is this indirect halo advantage that many Indian students who continue to explore U.S. LLM options have, that stands in contrast to returnees to countries where a U.S. LLM (or a foreign degree generally) is set-up to have traditional

of law in India"—is what enables India to be selectively liberal. See Swethaa Ballakrishnen, *Lawful Entry: A Preliminary Framework for Understanding the Liberalization Prospects of the Indian Legal Market* (2009) (unpublished manuscript) (on file with authors).

97. Not only is the Indian legal market currently closed to the entry of foreign players, there is no reason to believe it will open anytime soon. See Kian Ganz, *India Legal Market to Stay Closed Until 2015, Edwards Angell Partner Says*, BLOOMBERG, Nov. 9, 2010, <http://www.bloomberg.com/news/2010-11-10/india-legal-market-to-stay-closed-until-2015-edwards-angell-partner-says.html>. However, there has recently been some movement on the possibility of U.K.-based law firms entering the Indian legal market. See Brian Baxter, *India Leaves Door Ajar for U.K. Firms*, THE AM LAW DAILY, Sept. 29, 2011, <http://amlawdaily.typepad.com/amlawdaily/2011/09/india-foreign-firms.html>. Still the pressures against such entry, given the Indian regulatory temperament, make the possibility of opening the Indian legal market doubtful. For a recent interview with the president of the Society of Indian Law Firms, in which he reiterates this stand about being "happy with the existing arrangements" of not having foreign lawyers, see *Conversation with Lalit Bhasin*, BAR & BENCH, Nov. 22, 2011, <http://barandbench.com/brief/4/1854/conversation-with-lalit-bhasin-managing-partner-bhasin-amp-co>. Nevertheless, discussions about liberalization persist. See Pallavi Saluja, *BCI, SILF, BAI Buy Time to Submit Proposals on Entry of Foreign Law Firms*, BAR & BENCH, July 28, 2017, <https://barandbench.com/foreign-law-firms-bci-silf-bai-law-ministry/> (reporting that the Law Minister has requested a proposal on entrance of foreign law firms).

98. Ballakrishnen's research (2012) on Indian LLMs draws from two main qualitative samples—a 2007-2008 study on students and recent alumni at Harvard Law School (n=14), and a 2011 study on LLM students (n=9) and LLM returnees (n=19) from a range of other U.S. law schools. See Ballakrishnen, *Homeward Bound*, *supra* note 21. These data revealed that most workplaces did not give credit for an LLM year and fewer offer advantages as a reward to the credential. While there are a few firms that offer financial assistance (in the form of loans) to employees that want to pursue a graduate degree in law overseas, the year is still "written off" when the student returns to the firm. "An article in Bar & Bench, India's premiere online forum for the legal profession, explains this risk more generally: [T]he assumption that if an LLM candidate did not find a job abroad a top tier law firm in India would hire them unfortunately no longer holds good. Now with the exodus of foreign trained and recently laid off Indian lawyers making their way back home, top tier law firms in India are pickier than ever before. In order to better understand their job prospects . . . LLM aspirants should know that in addition to where they get their LLM degree, employment history and educational background prior to the LLM also matter a great deal." Anjum Rosa, *From the Horse's Mouth—The Foreign LLM Story*, BAR & BENCH, Feb. 23, 2010, <http://barandbench.com/brief/1/538/from-the-horses-mouth-the-foreign-LLM-story> (emphasis added).

99. See Ballakrishnen, *Homeward Bound*, *supra* note 21.

functional credentialing benefits for its returnees.¹⁰⁰

Our use of the Indian case is only illustrative. These differences in the rewards upon return—which may relate more to association with a particular school than to the United States being the source of the degree, for example¹⁰¹—remain important as we consider the reasons why students might be making choices to pursue other international law degree options. Essentially, if host country organizational and institutional factors are crucial to determining how the LLM is mined as a credential, what happens to this American legal degree in countries where the United States does not have a structured legal presence?¹⁰² The extensions of this research question remain relevant in the case of all international higher education markets where students' returnee prospects are crucial to their decision-making processes.

3. MOBILE PATHWAYS: STICKY FLOORS, SPRINGBOARDS, STAIRWAYS AND SLOW ESCALATORS

The dilution of the LLM as a credential proved a frustration for students that limited their prospects. For some, this was a functional limitation: LLM graduates were stymied by the refusal of most U.S. jurisdictions at the time to recognize the degree as leading to bar eligibility.¹⁰³ This caused problems for graduates who wanted to work in states other than New York and California (the two major jurisdictions where the LLM could satisfy U.S. legal education conditions for bar admission), and, instead, motivated them to pursue a JD. A South African LLM explained these considerations as leading him to return to his law school for a JD:

I got a head hunter in DC, and I started looking around for another position, and then she thought of financial services at other firms, and got a lot of interest from [Law Firm name]. . . . [U]nfortunately about the same time it was 9/11, and that caused everything to dip. And where litigation would have

100. The term “functional benefits” is used here (and hereinafter) to refer to both the broader functional gains attached to international education like prestige, immigration prospects, and better returns in the labor market (e.g., promotions, raise in pay, etc.), as well as LLM-specific functional gains like language training and LLM-specific rewards that are typically available upon return to other home countries. These “specific rewards” could be, as in the case of China, a requirement to enter the domestic branch of an international law firm, or, as in the case of Germany, direct signaling of distinctive benefits. See Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession* *supra* note 11 (offering a review of LLM advantages more generally); see also Robel, *supra* notes 14, at 20–54 (providing a more detailed explanation of the China/Germany comparison).

101. Analysis of the visa approval dataset for master's level students suggests that students from India were sensitive to law school rank, with more than twice the number of students pursuing an LLM at a school ranked in the top 25, and four times for schools ranked in the top five, compared to others. This pattern was not universal for students from all countries.

102. The current formal regulation in India that governs lawyers (The Advocates Act) does not allow the practice of law by non-Indian lawyers. Even if there is a decoupling of this in practice, the regulation is suggestive of the formal resistance to the Americanization of these markets. For institutional decoupling more generally, see John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOC. 340, 340 (1977).

103. See Carole Silver, *Regulatory Mismatch in the International Market for Legal Services*, 23 J. OF INT'L L. & BUS. 487, 491 (2003); see also Silver & Freed, *supra* note 9.

been okay, the financial markets took a dive, and there were no new mutual fund issuances, which had driven a lot of the profits of the practice group for a long-time at [Law Firm name], so the market was down, and, um, there was less interest in the area. They sent, [Law Firm name] sent me to [City] where they had more of a need, to interview there. And I had discussion with a partner, but again it would have required, they were talking about me, because of the Bar issues, [State] had the same Bar issues that DC has, that you've got to re-qualify by getting, I would have had to sit for the [State] Bar, and I would have had to done a few, a couple of more courses. So after having gone all through that already, and already got my Bars, I was not keen. So I started seriously thinking about what to do, and I decided to go back to [LLM law school name] to get my JD.¹⁰⁴

Still, while bar eligibility was important, many respondents found the jump from an LLM to a JD useful even beyond this functional issue. For example, a Filipino lawyer who earned an LLM in 2001 and later returned for a JD described his thinking about the LLM as follows:

For one thing it was a very common practice to pursue graduate legal studies . . . in the U.S. . . . On top of that I wanted to enhance my credentials. I saw it as a way to enrich my personality. I thought that being exposed to a more international community would help me not only as a lawyer but as a person.¹⁰⁵

This is generally consistent with the students who described the LLM as break year with intellectual engagement.¹⁰⁶ More recently, students have described the LLM as a “field test”¹⁰⁷ for the JD. A Chinese student who did an LLM first and then transferred into the JD program at her law school (JD class of 2016), for example, explained that she initially hedged her bets in her decision about which degree to pursue:

So I think I can do LLM first and see if I really like it. ‘Cause you know, like, JD is really a big commitment. . . . either in terms of time or money. So I think it's a good thing for me to do LLM and see if I really like, I can, you know, figure out how to do a JD afterwards. . . . If I don't like it, I can just go back.¹⁰⁸

At least for those who had studied law at home before coming to the U.S., the decision to pursue the JD was seen as a way to distinguish oneself in a market that had begun to saddle the LLM with a distinct, unshakeable international tag.¹⁰⁹ As a recent Chinese JD graduate who earned her first law degree in China explained, her decision about which U.S. law degree program to pursue was predicated on the distinct

104. I20-09.

105. I72-01.

106. *Supra* Section 2; Ballakrishnen, *Homeward Bound*, *supra* note 21.

107. C02-14.

108. C09-15.

109. Ballakrishnen & Silver, *supra* note 19, at 14 (describing efforts of international JD students to distance themselves from international LLMs).

advantages the JD offered when compared to the LLM:

Well, because the Chinese, there are so many students pursuing the LLM degrees in China. I mean there are plenty of students going . . . all over the United States to get their LLM degree. And I thought by the time I graduate from United States with my LLM degree, get back to China, maybe I am not so competitive. But JD degree, well, I mean I say will guarantee my ability to pursue my legal career.¹¹⁰

For other students, the path to the JD was more direct, usually following a home country undergraduate degree in a field other than law. This choice was partially dictated by the student's perception of the LLM as too specific and not broad enough for someone who lacked a background in law, which shaped the preference for the JD over and above the branding we mention above. And for many of these students without a law background, the decision to pursue the JD involved a deliberation about where and what to study. A student who earned her undergraduate degree in psychology and politics in Hong Kong explained her thinking about whether to earn her law degree in the United States or Hong Kong:

And at that time I was thinking, do I want to stay in Hong Kong for a legal education [with] a ton . . . of other people? So a lot of my friends, they attend LLB in Hong Kong, so they already have their law degree and their undergraduate study. And Hong Kong also provided JD programs as well, but I was thinking, you know, I received my undergrad location in kind of the best university in Hong Kong and I know how this education is like. And also if I receive a JD degree in the States I can always go back to Hong Kong if I want, because they really welcome to American JD. So, and if I'm lucky enough, I can stay in the U.S. So going to, to pursuing a JD degree in the U.S. gives me more choices, and also I think that U.S. has the best legal education so that's why I want to come here.¹¹¹

This student's reasoning included thinking that a U.S. JD will distinguish her from her Hong Kong classmates, give her a credential that is recognized at home as well as abroad, and signal quality while positioning her for more choices in her career.¹¹² She had the option to earn a JD in Hong Kong (where law also is offered as an undergraduate course of study)¹¹³ but had decided instead to start her legal education in the U.S. directly at the graduate level. A recent Mexican graduate, who also had earned a first degree in law in his home country, described his decision about which degree to pursue as related to his career goals as well as to differences in the curricular framework for the LLM and JD:

So I thought the JD was a better fit for me because I wanted to start from the very basics . . . of the U.S. legal system, and then go up from there, instead of my first course being about taxation and bankruptcy or something

110. C06-15.

111. C47-15.

112. *Id.*

113. *Id.*

very specific. And I also wanted to practice in the U.S. -and I thought JD was a better venue for that.¹¹⁴

Finally, there were international students whose first degree was earned in the United States. For these students, applying for a U.S. JD felt like an extension of their undergraduate degree. While they described opportunities in their home countries, there was no suggestion that these would have been seriously considered by them, personally, as equivalent to pursuing a JD in the U.S. A recent JD graduate originally from China explained:

I won't have the chance to study law back in China, just because I did my undergrad here. China has a undergrad law degree, and I don't think the quality of the education for a graduate law degree in China without a bachelor background would be the same. And a JD degree, in my view, is way more valuable than a graduate degree in law in China.¹¹⁵

Similarly, a Korean student explained why she did not seriously consider returning to Korea for law school, despite there being a graduate law school system in place:

I heard that classes were harder [in Korea], . . . because I don't know any of the difficult vocab or anything I don't feel comfortable doing like reading comprehension in Korean So I didn't feel comfortable about taking [the] Korean [version of the] LSAT And the Korean legal system is not as strong as the one in the U.S., the legal market's not doing well. So I didn't think about going to a Korean law school.¹¹⁶

For both women, the reputation of the U.S. system of legal education and of the U.S. legal system itself, compared to those in their home countries, influenced their decision to remain in the U.S. for law school. At least as important, though, was that their assessment of opportunities for pursuing legal education at home involved the prospect of uncomfortable compromises, which were made even more acute because both were able to earn their law degrees from top-ranked U.S. law schools.¹¹⁷

Together, these varied experiences suggest the kinds of new trajectories and hybrid tracks to global legal education. They also help reveal that the rise of international JDs has not been the product of a single kind of mobility process. For many international students, there were choices to be made about where they would pursue their law degree (e.g. in the United States or in their home country), what kind of credential made sense for their own personal and professional aspirations (e.g. JD v. LLM v. SJD), and the eventual cost-benefit analysis of opportunities these respective paths might offer. Even for those who *did* choose to pursue a JD, the paths were numerous: some transferred to a JD from an LLM at the same school; for others, the LLM led to a JD at another, more prestigious law school. Even for those who started directly within the JD program, not all JDs were equal, and a JD in one school could

114. C25-15.

115. C64-17.

116. C19-15.

117. *Id.*

serve as a stepping-stone for a transfer to a JD program in a school with a more internationally recognized reputation. In all, the path to the JD for many of these students was hardly straightforward and the circuitous routes pursued by them offer new ways of thinking about both the journey and its embedded expectations.

To make sense of these various trajectories, this Article evokes the imagery of four pathways to illuminate certain broad categories within which they fall. The *first* of these pathway categories employs what other scholars have referred to as the “sticky floor” in mobility studies. And in our employment of the metaphor, the stickiness of the floor prevents students from getting off the ground despite their desire to move to the next step, whether that involves enrolling in an LLM or JD degree program, transferring to a more prestigious school or pursuing a specific kind of job opportunity. Although selection considerations curtail our data from theorizing about these categories fully, we can imagine that this stickiness might involve a range of factors including language, financial resources, seniority in their home country, and personal considerations and responsibilities. They are not in the “path to JD” diagram (Figure 5), but they remain an important data point for consideration, signaling an “in-waiting” cohort of international students who might be the next group of students to saturate the LLM market, especially as those positioned just above them move their aspirations from an LLM to a JD track. An example of a student on the sticky floors pathway, who recently got “un-stuck,” is a Chinese lawyer who had wanted to pursue a U.S. LLM in the early 2000s but remained in China for more than ten years, working in several corporate counsel positions. Upon finally gaining admission to an LLM program at an elite U.S. law school, he reported that he had decided against the JD for now, at least, because “time is against” him.¹¹⁸

The *second* kind of pathway offers a sort of springboard for students. Unlike sticky floors, springboards are more advantageous for mobility. Springboards can lead to many different opportunities and positions (e.g. other kinds of advanced graduate degrees or policy jobs that are advantaged by, *but do not require*, a law degree), but the common theme is that they serve as a platform for movement to pivot, or change direction at the individual level. This characterization rests on the degree not being an end in itself; neither is our focus here on its utility for substantive reasons. Instead, for those whom the pathway acts as a springboard, the motivation to pursue the credential might be personal, a function of factors beyond the credential itself, or a “halo” advantage that allows them access to paths beyond the springboard itself. Springboard-ers are not likely to jump to the JD, but not because they fail to see the value in it per se. Rather, the JD has no value for *them* (and, as we discuss in the following two strategies of *stairway* and *slow escalators*, that would require more intention).¹¹⁹ Global legal education for them might be a sufficient signal to help them

118. C70-17.

119. See Bryant G. Garth & Joyce Sterling, *Diversity, Hierarchy, and Fit in Legal Careers: Insights from Fifteen Years of Qualitative Interviews*, GEO. J. LEGAL ETHICS (forthcoming 2018) (characterizing legal career paths as on and off Broadway).

catapult to where they want to go.¹²⁰ Further, springboard-ers may not have resources to invest in legal education beyond the opportunity that the springboard offers them, making this, therefore, their one shot at their personal (and/or professional) pivot.

A *third* kind of pathway category that we identify is the stairway—a more direct mobility pathway from one kind of program to another, or one kind of school to another. The structure itself offers a chance for students to access and move through different paths with different starting points, directions and speeds. But here, too, there is a stickiness of sorts to their individual mobility—and different individual levels of agility and energy (metaphorically) may result in different experiences and trajectories. Movement on this pathway—from an LLM to a JD, from one school to another with a wider reputation, or into a JD from another field, for example—might reflect previous international experiences, exposure and socialization specifically to the United States, and experience on the stairway itself,¹²¹ among other factors. At the same time, no pathway is just about the institutional blueprint it offers. Even within the same “stair” international students may take seemingly identical steps with very different consequences; even for those from the same home country who enroll in the same U.S. law school, differences in skills and advantages may mediate the paths very differently.

The *fourth* pathway is that of a slow, crowded, escalator—this, like the stairway, is an institutional metaphor, but unlike the stairway where individual characteristics matter, the escalator is more about the pace and structure of the path itself. Escalators take people in a uniform direction, from a common starting point, at a set—and, especially from the perspective of someone who might have high individual ability and agility—slow pace. The journey may seem easier than what is involved in navigating a stairway, for example, reflecting advantages of class, home country and similar factors that may lead to entry to the escalator. But even here, the path may be frustrating as well as slow: students may have trouble fitting in, or finding friends and communities that make their journey sustainable. They also experience regular maintenance issues—from routine administrative burdens¹²² to the emotional pressure of the law school and job market experiences that present real difficulties for many international students, despite their having taken the escalator.

This discussion of transportation systems is aimed at highlighting the hurdles and constraints that are part of the experiences and paths of international students. The pathways and mechanisms are not mutually exclusive, and a student’s journey may reflect all four over the course of their education and career. And despite the challenges, students generally perceive the value in their choices, which is evidenced by the rise in international enrollment. But while no path is doomed, none is smooth

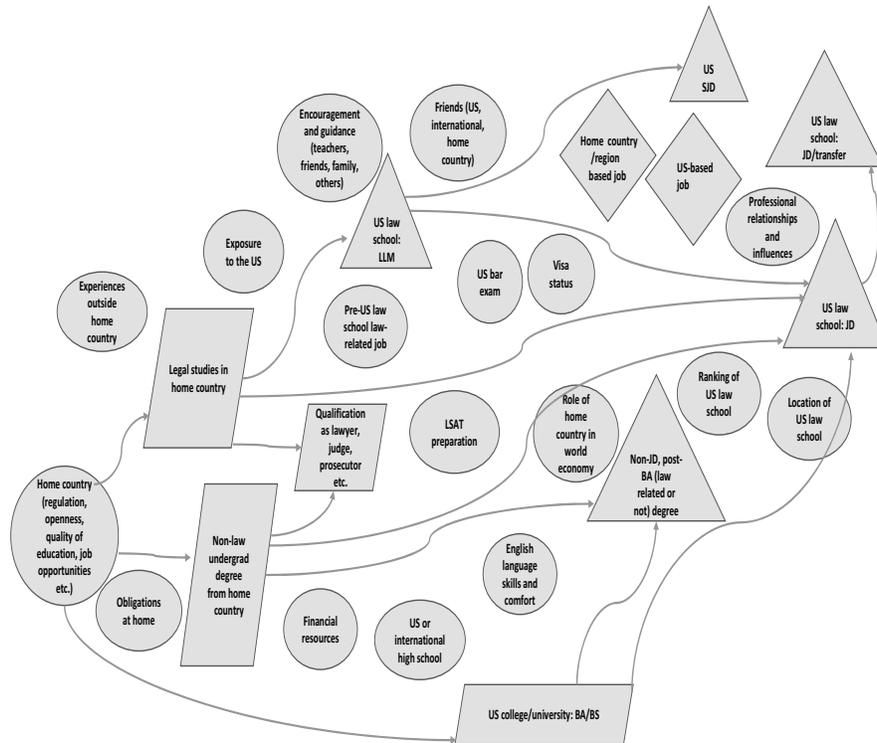
120. *See id.*

121. For another use of the stairway metaphor in the context of students’ gains in higher education, see SUSAN MARY PAIGE ET AL., *THE LEARNING COMMUNITY EXPERIENCE IN HIGHER EDUCATION: HIGH-IMPACT PRACTICE FOR STUDENT RETENTION* (2017).

122. *See* Ballakrishnen & Silver, *supra* note 19 (describing administrative burdens of being an international student).

sailing, either. Although there has been an increase in international student enrollment in U.S. law schools, without the institutions to efficiently house them both during their degree and after, their rise still is riddled with obstacles.

Figure 5: Pathways of International Students



4. DISCUSSION & CONCLUSION

Tracing the paths of international law students reveals as much about what is on the pathways map (Figure 5) as what is not depicted there. The map illustrates the various choices made deliberately by students in pursuing global legal education in the United States and ultimately in their post-graduation jobs. Each of the turning points or connectors, depicted by arrows, is malleable, responding to the various forces supporting, motivating, challenging and/or barricading pursuit of a next step. These next steps may appear rather obvious in hierarchy, but the hierarchy itself is neither fixed nor static. Instead, in the context of global legal education, interpretation of that hierarchy requires a consideration of several factors, including home country and context, the relative position of the United States and any relevant third countries, and a comprehensive understanding of the various actors and institutions that shape what is construed as most valuable and attractive. The choice of whether and how to pursue U.S. legal education occurs in the midst of a contest of sorts, for recognition and preference. It is a moving target, where one can imagine the four path mechanisms interacting in complex, confusing and perhaps even dangerous ways.

To understand the variations in global recursive scripts, transportation imagery offers a good metaphor: where people go depends on where they start, what connections they make during their journeys and what choices they make at different points in the process. But at the same time, it is not all just about choice at the individual level. It also matters who else is traveling with you, who is ahead of you and giving you way to move forward, and who is pressuring you to get off and walk a different path.

From students' perspective—which is the mainstay of this Article—there are distinct changes about these preferences from even a decade ago. The thought of whether a JD was better than an LLM traditionally did not even arise for most students (with some exceptions of students from Canada and Australia related in large part to hiring market influences¹²³), but now there is a big shift to how this thinking is being processed. Some of this is about the inflation of the credential (the LLM is simply “not enough”); how it is valued is a flexible, mutable process that varies across specific inter (and intra) country contexts.¹²⁴ The variations in sending countries sketched above in the description of the dataset on visa approvals illustrate an increasing awareness by students from China and South Korea, at least, that the opportunities offered after a JD differ from those attached to the LLM. Additionally, there are variations in law schools that provide important differences to international students, including the obvious factor of U.S. News ranking but also related to location (e.g. whether the school is proximate to a major legal market or not) and job prospects that may be more or less attractive to an international cohort.¹²⁵ Choices also are likely to be influenced by the diversity of students and others in the law school, university and larger community—in which significant populations from the same home country may be perceived as either supportive or problematic, or both.

From a demand perspective, the entry of international students is subject to a range of push and pull factors. Law schools court international students through various mechanisms, and these students comprise an increasingly important population because of the decline of interest in the United States for law school. Moreover, related resource constraints strain law schools' efforts to meet, much less exceed, the competition for students, student opportunities during and after law school, support for students during law school and a school's reputation in the larger community that may demand more and varied activities and outreach. It is clear that international students have become an important population for many, if not most, U.S. law schools based on the rise in the number of schools with at least one dedicated LLM program (to nearly 80% in 2016) and the related enrollment growth during this period when the size (i.e., headcount) of post-JD programs more than doubled. While law schools do not report the proportion of post-JD students who are international, estimates put this figure well above the half-way mark, and the visa dataset is generally consistent with such an estimate. Moreover, as JD programs have shrunk, this emphasis on post- and non-JD enrollment, with its heavily international population,

123. See, e.g., Silver, *The Case of the Foreign Lawyer*, *supra* note 11, at 1077 (describing U.S. law firms' recruiting efforts in Canada and Australia for law graduates, and for Canadian and Australian graduates of U.S. law schools).

124. See Silver, *The Variable Value*, *supra* note 15; Ballakrishnen, *Homeward Bound*, *supra* note 21.

125. For example, the proportion of students who take first post-graduation jobs in firms in the Big Law category is one factor cited by certain international students as an important attribute in light of the students' desires to shape their careers to preserve and create opportunities to move to their home country/region in the future. C02-17.

puts pressure on law schools to adjust their conception of the typical law student, with repercussions for faculty and the allocation of resources, at a minimum.¹²⁶ In 2016, for example, close to half of all graduating students (all degree programs, combined) at Washington University in St. Louis School of Law were international.¹²⁷

Relatedly, while international students contribute substantially financially¹²⁸ and otherwise to law schools and to higher education generally, competition for them is intense. Given the heightened stake of Asia and her students in international higher education, the United States cannot afford to equivocate. As of 2014, China and India remained the largest sending nations to the three countries¹²⁹ that are most competitive to the U.S. for international higher education students: the U.K.,¹³⁰ Canada,¹³¹ and Australia.¹³² India, in particular, holds the demographic advantage of

126. See Silver, *Holding Onto 'Too Many Lawyers': Bringing International Graduate Students to the Front of the Class*, 3 OÑATI SOCIO-LEGAL SERIES 533, 533–60 (2013); Silver, *supra* note 13, at 227.

127. For example, Washington University School of Law conferred degrees in May 2016 on “228 JDs, 173 LL.Ms, 2 JSDs, and 11 MLS degrees.” *WashU Law Celebrates Commencement 2016*, WASH. UNIV. SCH. OF LAW, <http://law.wustl.edu/news/pages.aspx?id=10736> (last visited August 16, 2017). According to the Law School’s Standard 509 Report, 23 JD degrees were awarded to non-resident aliens. See *Washington University 2016 Standard 509 Information Report*, WASH. UNIV. SCH. OF LAW, 2016, [file:///C:/Users/Administrator/Downloads/Std509InfoReport%20\(18\).pdf](file:///C:/Users/Administrator/Downloads/Std509InfoReport%20(18).pdf). Assuming for the sake of discussion only that all of the LL.Ms and JSDs were international students and that none of the other JDs or MLSs were international (all in all, relatively conservative assumptions), approximately 48% of all degrees awarded in 2016 were awarded to international students.

128. International students’ (in all fields and not limited to law) spending in all 50 states contributed more than \$30 billion to the U.S. economy in 2014, according to the U.S. Department of Commerce. Additional breakdowns of the economic impact of international students by host state are available from NAFSA, which conducts a detailed regional, state and congressional district analysis on the economic benefits of spending by international students and their dependents to the U.S. economy, using Open Doors data combined with calculations of the local tuition and cost of living rates. See *International Student Economic Value Tool*, NAFSA, http://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/NAFSA_International_Student_Economic_Value_Tool/ (last visited Nov. 18, 2017).

129. For a list of countries with significant investment in international higher education, see *Top 20 Countries for International Students*, THE GUARDIAN, Nov. 10, 2015, <http://www.theguardian.com/higher-education-network/blog/2014/jul/17/top-20-countries-international-students>.

130. Approximately 18% of all students in UK higher education came from other countries in 2012–2013, according to the Higher Education Statistics Agency (HESA). OECD statistics show that the UK attracts a large proportion of international students globally, with a market share of around 13% in 2011, second only to the U.S. with 16.5%. See *Students in Higher Education 2012/13*, HESA, Feb. 13, 2014, <https://www.hesa.ac.uk/data-and-analysis/publications/students-2012-13>; *Education at a Glance 2013: OECD Indicators*, OECD PUBL’G, 2013, <http://dx.doi.org/10.1787/eag-2013-en>. Chinese students were the largest group of international students studying in the UK from 2012–2013, making up almost a fifth of the total, according to data released by HESA this year (see linked Excel spreadsheet). Indian students were the second largest group, comprising 5.3% of international students, despite their number declining by around 25% since 2011–2012, according to the Higher Education Funding Council for England, coinciding with visa changes. See *id.*; Kounteya Sinhal, *Student Visa Rules Tightened By UK Govt*, THE TIMES OF INDIA, Jul. 29, 2014, <https://timesofindia.indiatimes.com/home/education/news/Student-visa-rules-tightened-by-UK-govt/article-show/39243701.cms>. For more data on the higher education numbers in the United Kingdom, see *International Student Statistics: UK Higher Education*, UKCISA, Nov. 29, 2015, <http://www.ukcisa.org.uk/Info-for-universities-colleges—schools/Policy-research—statistics/Research—statistics/International-students-in-UK-HE/>.

131. Just between 2012 and 2013, international student enrollment in Canada rose by 84%. Even so, Canada’s student enrollment is less than half of the UK’s at about 8% of all post-secondary

being the world's youngest population—making it an important site for education policy-makers.¹³³

At the same time, these ramifications are hardly one-sided. The influx of international students into these new spaces is moderated by institutional factors, but they also are responsible for the co-creation of others that affect the institution. For example, from the law schools' perspective, the impulses and aesthetics that shape the curation of a law school cohort depend on many factors, including the differences that characterize international students who participate in an LLM or JD program, and what it means to have diversity (of home country; gender, race and ethnicity; background experience and global exposure, among other factors) within the international student community. Yet, significantly, at the same time, with this influx, what it means to be diverse has changed, as has what a global legal education means to an international student, and neither is understood as a universal or static idea. For instance, as law schools increasingly diversify their degree program offerings (including new master's programs for non-law graduates, substantively- and experientially-focused curricula, distance learning and executive education, for example), the variety of ways in which being successful in recruiting international students matters also has proliferated. This is complicated by the challenge of understanding motivations for enrollment that reflect only home country and legal market considerations, and the nuance involved in gauging how an expanding set of programs can reach new student pools, in diverse professions and job markets, stages of career, and with varying resources. At the same time, law schools grapple with the tension of various conceptions and presentations of diversity, including how to make diversity look good for different audiences. U.S. News' consideration of diversity, for example, does not recognize international students in its analysis; this, along with the exclusive focus on the JD program, has enabled the LLM to function as an international enclave. But as international students increasingly shift towards the JD, these once-clear lines and depictions of diversity may blur.

From the perspective of sending countries, the enthusiasm for global legal education may reflect a fluidity regarding the characteristics, experiences and skills associated with power, status and access. Societies are not static in this regard, as evidenced in the shifting landscape of home countries of international students

enrollment. Of these, almost half of all students are from India, China and South Korea (32.42% of all international students are from China, 10.79% are from India and 6.23% from South Korea). For more details, see *Facts and Figures*, CAN. BUREAU OF INT'L EDUC., Nov. 29, 2015, <http://www.cbie.ca/about-ie/facts-and-figures/>.

132. Australia attracts even more international students from Asia—for obvious proximity reasons—than the U.S., UK, and Canada; the top 10 sending countries to Australia all are from Asia. However, India and China again remain the two most prominent sending countries overall across general sectors (university, vocational, etc). For monthly detailed reports with breakdowns by sector for 2014, see *International Student Data*, AUSTRALIAN GOV'T DEP'T OF EDUC. & TRAINING, https://internationaleducation.gov.au/research/International-Student-Data/Pages/InternationalStudentData2014.aspx#Detailed_Monthly.

133. "India, Asia's third largest economy, is projected to add 300 million people to its workforce over the next 2 decades—the equivalent of the entire United States (U.S.) population. And all this growth will be among the youth, India's huge 'demographic dividend' that will need to be educated." See Rajika Bhandari, *Asia's Stake in 21st Century Higher Education*, INST. OF INT'L EDUC., Aug. 2015, <http://www.iie.org/Blog/2015/August/Asias-Transformation-And-The-Role-Of-International-Higher-Education>; see also Allan E. Goodman, *A Passage to India*, INST. OF INT'L EDUC., Oct. 2015, <http://www.iie.org/Blog/2015/October/A-Passage-To-India>.

enrolling in higher education in the United States over the last twenty to twenty-five years. During this period, the number of students from Europe has remained relatively constant,¹³⁴ but their proportion in the group of all international students in the United States has dropped by half, from a high of 20% to their current standing at just under 10%. This is due in large part to the rise of Asian and, to a lesser extent and recently of Middle Eastern, students.¹³⁵ But equally important is that the way students from Asia are participating has shifted, at least in law, from a marginal role institutionally to one that may more deeply puncture existing hierarchies. Expanded opportunities to work in the United States, if they materialize, may reverberate against legal practice at home, since the option of returning is attractive as long as it offers comparable responsibility and opportunity to graduates' U.S.-based career options. At the same time, the presence of more international JDs likely will challenge the already flagging efforts of U.S. law firms to address diversity by pressing for recognition; this comes at a time when there is growing awareness of the failure of these firms to embrace Asian American lawyers.¹³⁶

Home country dynamics change the ways in which countries send or plan to send candidates abroad. An example may be useful. At the same time that China has been sending students to the United States for the LLM and JD, it also has been internationalizing its own faculties.¹³⁷ One way in which this has occurred is by hiring American law graduates to teach in China.¹³⁸ These faculty members contribute to the preparation of students in formal and informal ways, including by their analysis of the culture and hierarchy of U.S. legal education and the legal profession. While initially constrained in adjunct or visiting statuses, they now are being integrated into mainstream roles at certain law faculties.¹³⁹ The addition of Americans, among other international faculty, to law faculties in China, as well as in other countries, is both a reflection and response to global legal education and globalization of the market for legal services, and reveals a step in the iterative process of interpreting the hierarchies framing what it means to be local and global.

134. European students went from 73,489 in 1994-1995 (*All Places of Origin of International Students, Selected Years: 1949/50-1999/00*, INST. OF INT'L EDUC., 2009 (retrieved from <http://www.iie.org/opendoors>)) to a high of 91,915 in 2015-2016 (*International Student Totals by Place of Origin, 2014/15-2015/16*, INST. OF INT'L EDUC., 2016, (retrieved from <http://www.iie.org/opendoors>)).

135. Brendan O'Malley, *Middle East Swells International Student Growth in U.S.*, UNIV. WORLD NEWS, Nov. 20, 2014, <http://www.universityworldnews.com/article.php?story=2014112021585741>.

136. See Eric Chung et al., *A Portrait of Asian Americans in the Law*, YALE LAW SCH. & NAT'L ASIAN PACIFIC AM. BAR ASSOC., 2017, https://static1.squarespace.com/static/59556778e58c62c7db3f8e84/t/596cf0638419c2e5a0dc5766/1500311662008/170716_PortraitProject_SinglePages.pdf ("Asian Americans have the highest ratio of associates to partners of any racial or ethnic group, and this has been true for more than a decade.").

137. See Liz Gooch, *Chinese Universities Send Big Signals to Foreigners*, N.Y. TIMES, Mar. 11, 2012, <https://www.nytimes.com/2012/03/12/world/asia/12iht-educlde12.html> (describing a general trend of hiring foreigners among Chinese universities).

138. The Peking University School of Transnational Law faculty consistently has included American legal academics; see, e.g., *Visiting Faculty*, PEKING UNIV. SCH. OF TRANSNATIONAL LAW, <http://stl.pku.edu.cn/faculty/visiting-faculty/> (last visited Jan. 28, 2018).

139. See, e.g., *Joseph L. Pratt, Associate Professor*, PEKING UNIV. LAW SCH., <http://en.law.pku.edu.cn/faculty/faculty1/38131.htm>.