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# HOW COSMOPOLITAN ARE INTERNATIONAL LAW PROFESSORS?

Ryan Scoville\* & Milan Markovic\*\*

## INTRODUCTION

International law is formally universal, yet it is common to hear that legal communities in different states hold distinctive understandings of its content and attitudes about its significance. We are told, for example, that there are unique American, Chinese, and European views on topics ranging from the law of international trade to human rights, the environment, and the use of force. Rhetorically, the United States places great weight on the civil and political rights of individuals,<sup>1</sup> while China tends to emphasize collective rights of an economic nature;<sup>2</sup> European countries are often skeptical about the legality of the use of force,<sup>3</sup> while the United States is less so;<sup>4</sup> and unlike its Western counterparts, China often advocates a calibration of international obligations to reflect each state's level of development and capacity to comply.<sup>5</sup>

Other reported differences transcend individual states. In comparison to their colleagues from common law jurisdictions, civil lawyers have been "much more reluctant to incorporate the law of evidence in international law";<sup>6</sup> continental Europe is said to be positivist and formalist;<sup>7</sup> there is an

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1. Anu Bradford & Eric A. Posner, *Universal Exceptionalism in International Law*, 52 HARV. INT'L L.J. 1, 35 (2011).

2. XUE HANQIN, CHINESE CONTEMPORARY PERSPECTIVES ON INTERNATIONAL LAW 151-57 (2012).

3. Bradford & Posner, *supra* note 1, at 19-20.

4. *Id.* at 38.

5. *Id.* at 28.

6. See Mark W. Janis & Ian Brownlie, *Comparative Approaches to the Theory of International Law*, 80 AM. SOC'Y INT'L L. PROC. 152, 154 (1986).

7. See, e.g., Emmanuelle Jouannet, *French and American Perspectives on International Law: Legal Cultures and International Law*, 58 ME. L. REV. 292, 299 (2006); Francesco Messineo, *Is There an Italian Conception of International Law?*, 2 CAMBRIDGE J. INT'L & COMP. L. 879, 905 (2013).

alleged Islamic paradigm;<sup>8</sup> and there is evidence of communist<sup>9</sup> and third-world<sup>10</sup> perspectives as well. Some of these differences are deep and normative, while others are shallow and technical.<sup>11</sup> Of course, given the inevitable diversity of views within states, there is an element of caricature in all of this, but it should surprise no one that a heterogeneous world features diverse angles of approach to common legal questions.<sup>12</sup>

These differences carry real-world significance. The efficacy of global norms depends in large part on the degree to which states internalize shared understandings and commitments. Disagreements over the South China Sea, mass surveillance, and humanitarian intervention, among other topics, are harder to resolve if states possess not only conflicting interests but also incompatible perceptions regarding the contours and legitimacy of global norms. If international law means something fundamentally different to each state, it is neither international nor law in any meaningful sense.

Inspired by an increasingly multipolar and interconnected world, the recently re-ascendant field of comparative international law has sought to identify national differences and the mix of influences that generate them.<sup>13</sup> Interest-based accounts emphasize how divergence arises from countries' rational responses to their unique positions in the global balance of power. According to Anu Bradford and Eric Posner, for example, European countries are hostile "toward unilateral use of force largely because Europeans have limited capacity to engage in unilateral military ac-

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8. Mohammad Fadel, *International Law, Regional Developments: Islam*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (2010), [https://www.law.utoronto.ca/documents/Fadel/Max\\_Planck\\_Final.pdf](https://www.law.utoronto.ca/documents/Fadel/Max_Planck_Final.pdf); Tina Roeder, *Traditional Islamic Approaches to Public International Law—Historic Concepts, Modern Implications*, 72 ZAO RV 521, 522 (2012).

9. See, e.g., Hungdah Chiu, *Communist China's Attitude Toward International Law*, 60 AM. J. INT'L L. 245, 260 (1966) ("Published opinions appear to concur that there are two different sciences of international law—the bourgeois science of international law and the proletarian science of international law.").

10. See generally INTERNATIONAL LAW AND THE THIRD WORLD: RESHAPING JUSTICE (Richard Falk, Balakrishnan Rajagopal & Jacqueline Stevens eds., 2008) (offering perspectives on international law's relevance to countries in the Global South).

11. See, e.g., ANTHEA ROBERTS, IS INTERNATIONAL LAW *International?* (forthcoming 2016) (manuscript at 149-51) (on file with authors) (describing differences between American and European perspectives on the doctrinal framework for evaluating extraterritorial jurisdiction).

12. See, e.g., Janis & Brownlie, *supra* note 6, at 152; Jouannet, *supra* note 7, at 292; David Kennedy, *One, Two, Three, Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream*, 31 N.Y.U. REV. L. & SOC. CHANGE 641, 642, 648-49 (2007).

13. Anthea Roberts, Paul B. Stephan, Pierre-Hugues Verdier & Mila Versteeg, *Comparative International Law: Framing the Field*, 109 AM. J. INT'L L. 467, 468-69 (2015); see also Boris N. Malmyuk & Ugo Mattei, *Comparative International Law*, 36 BROOK. J. INT'L L. 386, 387-88 (2011) (tracing comparative international law to the early 1960s and reporting renewed interest in the field).

tion themselves.”<sup>14</sup> Other accounts are sociological.<sup>15</sup> Jed Rubenfeld, for instance, attributes gaps between popular American and European views to differences in constitutional culture.<sup>16</sup> Still others suggest that domestic political institutions and interest groups, economic capacity, and geopolitical frontiers play a part.<sup>17</sup>

We contend that law schools deserve greater attention. The characteristics of legal education provide evidence of dominant perspectives within a state, and likely play an important role in shaping attitudes and views about international law within a national lawyer class. By hiring and promoting individuals with particular academic pedigrees and professional experiences, law schools reveal their values and conceptions of expertise and merit. By providing the first—and in many cases only—formal setting in which generations of government elites, activists, private practitioners, and experts study law, law schools help to construct the understandings and attitudes of those who make, apply, and explain international norms. Legal training introduces students to international law as a discipline, transmits conventional wisdom, embeds background assumptions, frames issues, and shapes intuitions through processes of persuasion and acculturation.<sup>18</sup> In aggregate and over time, these dynamics can influence state behavior.<sup>19</sup>

After decades of only sporadic treatment,<sup>20</sup> law schools are starting to garner substantial coverage as worthy objects of scholarly inquiry in the

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14. Bradford & Posner, *supra* note 1, at 23.

15. See generally Marco Benatar, *International Law, Domestic Lenses*, 3 CAMBRIDGE J. INT'L & COMP. L. 357 (2014) (arguing that scholars should pay greater attention to national legal culture in the making and practice of international law); Colin B. Picker, *Comparative Legal Cultural Analyses of International Economic Law: A New Methodological Approach*, 1 CHINESE J. COMP. L. 21 (2013) (applying comparative legal cultural analysis to the field of international economic law).

16. Jed Rubenfeld, *Unilateralism and Constitutionalism*, 79 N.Y.U. L. REV. 1971, 1974-75 (2004).

17. See William E. Butler, *International Law and the Comparative Method*, in INTERNATIONAL LAW IN COMPARATIVE PERSPECTIVE 25, 36 (William E. Butler ed., 1980).

18. See generally RYAN GOODMAN & DEREK JINKS, *SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW* (2013) (arguing that international law can shape state behavior through social processes of material inducement, persuasion, and acculturation); DEBRA J. SCHLEEF, *MANAGING ELITES: PROFESSIONAL SOCIALIZATION IN LAW AND BUSINESS SCHOOLS* (2006) (discussing the effects of socialization processes in law schools); Ryan M. Scoville, *International Law in National Schools*, 92 IND. L.J. (forthcoming 2017) (on file with authors) (collecting circumstantial evidence that law schools are capable of persuading students to adopt favored views about international law).

19. See, e.g., JUDITH GOLDSTEIN, *IDEAS, INTERESTS, AND AMERICAN TRADE POLICY* 81-136 (1993) (suggesting that college and graduate students who received academic training in liberal economic principles later contributed to the U.S. government's eventual shift away from protectionist trade policies in the 1930s as policymakers); David S. Law & Wen-Chen Chang, *The Limits of Global Judicial Dialogue*, 86 WASH. L. REV. 523, 558-72 (2011) (reporting a “strong correlation” between the education backgrounds and citation patterns of justices on the Taiwanese Constitutional Court).

20. The most important contributions are John King Gamble, *Teaching International Law in the 1990s*, in STUDIES IN TRANSNATIONAL LEGAL POLICY 1 (1992); RENÉ-JEAN DU-

field of international law. In a forthcoming book, Anthea Roberts evaluates international legal education from a comparative perspective by analyzing textbooks, professor biographies, and links between legal practice and teaching in Australia, China, France, Russia, the United Kingdom, and the United States.<sup>21</sup> This research suggests that communities of international law professors in different countries vary in material ways, with distinctive emphases, methodologies, and degrees of cosmopolitanism.<sup>22</sup> Likewise, one of us recently demonstrated that there is significant cross-national variation in the extent to which law schools around the world require their students to study public international law.<sup>23</sup> In some places, such as Brazil, mandatory training in international law is nation-wide,<sup>24</sup> while in others, such as South Korea, it is uncommon.<sup>25</sup> Research in social psychology and political science suggests that these patterns might materially contribute to normative and doctrinal divergences among countries by shaping the understandings and attitudes held by influential groups of professionals in disparate ways.<sup>26</sup>

Much, however, remains unknown. Compulsory training rates for some parts of the globe are still unclear;<sup>27</sup> there do not appear to be national data for any countries on the availability and popularity of elective courses in international law; and there are no global measures of the instructional quality, topical foci, and ideological orientation of international legal education. Roberts' study, while impressive, focuses on just a handful of countries and schools.<sup>28</sup> In general, very little is known about the role of educational institutions in norm diffusion on the global periphery, and even with respect to developed states, much of the collective understanding is impressionistic.

In this Article, we shed new light on the role of law schools as sites of norm reflection and diffusion by examining how U.S. law schools introduce students to the discipline of international law. Operating on the pre-

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DUPUY & GYÖRGY HARASZTI, *THE UNIVERSITY TEACHING OF SOCIAL SCIENCES: INTERNATIONAL LAW* (1967); and RENÉ-JEAN DUPUY & GREGORY TUNKIN, *COMPARABILITY OF DEGREES AND DIPLOMAS IN INTERNATIONAL LAW* (1973).

21. ROBERTS, *supra* note 11, at 153-73.

22. *Id.*

23. *Who Studies International Law? A Global Survey*, PILMAP (2014), <http://PILMap.org> [hereinafter *Who Studies International Law?*] (reporting the results of a global survey of compulsory training rates in public international law).

24. *See Country: Brazil*, PILMAP (2014), <http://pilmap.org/Details/BR> (reporting that Brazilian law requires all law schools in the country to teach a compulsory course on public international law).

25. *See Country: South Korea*, PILMAP (2014), <http://pilmap.org/Details/KR> (reporting that only four percent of Korean law schools require students to complete a course on public international law).

26. *See Scoville*, *supra* note 18, at 20-57 (discussing the relevant research).

27. *See, e.g., Who Studies International Law*, *supra* note 23 (reporting compulsory training rates for only a portion of African states).

28. *See generally* ROBERTS, *supra* note 11 (focusing primarily on Australia and the permanent members of the U.N. Security Council).

mise that how professors teach depends in large part on *who* they are,<sup>29</sup> we examined curricula vitae and collected data on the professional and educational backgrounds of all professors who taught an introductory course on public international law at the top 150 U.S. law schools during the 2015 calendar year, and then coded for the type and geography of each professor's experiences.

We are particularly interested in evaluating this group's cosmopolitanism:<sup>30</sup> How international, in other words, are professors of international law in the United States? To what extent have they studied their discipline abroad? How many of them have practiced international law in foreign or international settings? And among those who have external experiences, in which parts of the world did they acquire them? Our intuition is that, in aggregate, the résumés of these individuals not only provide reliable clues about dominant perspectives on the nature and significance of international law in the United States, but also influence the way in which professors transfer knowledge and biases to future generations of American lawyers.

To be clear, our purpose is primarily descriptive rather than normative. We take no position on the types of experiences that *should* qualify a person to teach international law. And, although we believe that there are benefits to cosmopolitanism in international legal training, a national orientation is not without merit. Academics whose background is primarily domestic may, for example, possess a greater appreciation for national sensitivities and needs and be more adept at presenting international material in a way that resonates with domestic audiences.<sup>31</sup> More importantly, the utility of our project does not hinge on one's preexisting views about the value of international law. The central claim is simply that the study of curricula and professors offers a means of identifying cross-national differences of approach, and of understanding the social forces that shape the production and efficacy of global norms.

In the ensuing pages, we describe our study, explain the results, and elaborate on the implications. In particular, we contend that the data constitute new evidence of a tendency for parochialism in U.S. approaches to international law and, depending on one's normative priors, reveal either

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29. Cf. Meera E. Deo, Maria Woodruff & Rican Vue, *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 CHICANA/O-LATINA/O L. REV. 1, 18-19 (2010) (reporting that white male professors are less likely than female professors and professors of color to discuss diversity in the classroom); Deborah Jones Merritt, *Who Teaches Constitutional Law?*, 11 CONST. COMMENTARY 145, 161 (1994) ("The people who teach constitutional law define the constitutional law that is taught.").

30. Cf. Roland Pierik & Wouter Werner, *Cosmopolitanism in Context: An Introduction*, in COSMOPOLITANISM IN CONTEXT 1, 1 (Roland Pierik & Wouter Werner eds., 2010) ("Cosmopolitanism is an age-old normative ideal which contends that . . . all citizens of the world, share a membership in one single community, the cosmopolis, which is governed by a universal and egalitarian law.").

31. Cf. ROBERTS, *supra* note 11, at 217-24 (discussing the risks of excessive denationalization, such as a domestic perception that international law is unresponsive to local needs and irrelevant).

an opportunity for law professors to remold the professional culture or to sustain the dominant paradigm.

### I. THE STUDY

To better understand American perspectives on international law, we reviewed the résumés of all the professors who taught an introductory course on international law at the top 150 U.S. law schools in 2015.<sup>32</sup> The process was straightforward. The first step was to collect course schedules from law school websites to identify the schools that offered the course and the name(s) of the instructor(s) who taught it. When a law school did not post its schedule online, we obtained the information from the registrar.

We focused exclusively on the introductory course for three reasons. First, the course is probably the most important source of formal training in international law. Indeed, it is probably the *only* systematic training in international law that most American lawyers ever receive, and even for those who obtain further training, there is reason to believe that the first exposure tends to exert the greatest influence on student understandings and attitudes.<sup>33</sup> Second, focusing on the introductory course helped to avert line-drawing challenges. A broader examination of all courses pertaining to international law would have required us to take contestable positions on what counts as “international law,” and to make arbitrary decisions about whether the amount of international law content in any given course was sufficient. Our inquiry is narrow, but minimizes discretion. Finally, given that most international law faculties are quite small, those who teach the introductory course will in many cases also be responsible for non-introductory offerings within the same field. We are thus skeptical that a study based on a broader selection of international courses would yield materially different results.

Having assembled a list of courses and professors, the next step was to review online biographical information<sup>34</sup> to identify the extent to which professors had previously studied, practiced, and taught law abroad. In each of the following categories, we coded for whether each professor had at least one year of cumulative experience:<sup>35</sup> (1) undergraduate or gradu-

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32. For simplicity, the study focused on the 150 law schools that U.S. News & World Report ranked in 2015. See *Best Law Schools*, U.S. NEWS & WORLD REP. (2016), <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/> (last visited Nov. 1, 2016).

33. See, e.g., MARY P. DRISCOLL, *PSYCHOLOGY OF LEARNING FOR INSTRUCTION* 359, 365 (2000); Wendy Wood, *Retrieval of Attitude-Relevant Information from Memory: Effects on Susceptibility to Persuasion and on Intrinsic Motivation*, 42 J. PERSONALITY & SOC. PSYCHOL. 798, 806 (1982) (reporting research suggesting that individuals who lack cognitive access to issue-relevant information are more susceptible to persuasive appeals).

34. We utilized the biographical information, including any curriculum vitae, that each professor posted to his/her law school's website.

35. Assuming that brief experiences are less likely to exert material socializing effects, we did not count toward the one-year minimum any educational or work experiences that were less than six months in duration.

ate legal studies at a foreign university; (2) legal practice at a foreign office of a law firm; (3) employment at an international organization or nongovernmental organization outside of the United States; (4) employment for a foreign government; and (5) work at a foreign law school, as a visitor or otherwise. Where there was uncertainty as to duration, we erred on the side of counting an experience as foreign or international.

We also *declined* to code for certain experiences. We did not count temporary or periodic work completed alongside domestic law school teaching, such as consulting. Nor did we count foreign experiences unrelated to legal education and law practice, such as time with the Peace Corps. These kinds of experiences may help to foster cosmopolitanism in a general sense but are unlikely to contribute materially to the professional socialization of those who teach international law, and are less likely to engender cosmopolitan perspectives specifically on international law and its content.<sup>36</sup>

We also declined to credit the practice of international law for domestic institutions. Far from exerting a cosmopolitan influence, the representation of one's own government is likely to entrench nationalistic inclinations by requiring lawyers to socialize primarily with national colleagues and imposing professional ethical obligations to serve parochial client interests.<sup>37</sup> The U.S. Department of State's Office of the Legal Adviser, for instance, is not a neutral expositor of international legal principles but rather the "defender of U.S. interests and the U.S. Constitution with respect to international law."<sup>38</sup>

This study design complements and significantly expands upon emerging scholarship in the field. Examining a subset of the tenured and tenure-track international legal academics at six elite U.S. law schools, Roberts finds that only a minority hold a law degree from another country, that

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36. Equally important, it would have been extremely difficult to collect information about such experiences, given that résumés and online biographies often do not report them.

37. See ROBERTS, *supra* note 11, at 198:

[W]orking for one's government is likely to have a nationalizing effect. The scholar is likely [to] be in a working environment where he or she is surrounded by national peers. . . . If the scholar worked with a more external function . . . they would likely be interacting with foreign colleagues but they would be representing their home state in a way that might influence the way in which they framed international legal issues.

These dynamics are not unique to international law. In fact, sociological studies have found that the process of representation often leads lawyers to internalize the values and positions of their clients. See Sung Hui Kim, *Naked Self-Interest? Why the Legal Profession Resists Gatekeeping*, 63 FLA. L. REV. 129, 145-49 (2011) (explaining that lawyers adopt their clients' interests as their own to avoid cognitive dissonance); Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503, 526-27 (1985) (finding that, even when contrary to their own interests, politically liberal lawyers supported deregulatory initiatives that favored their clients' interests).

38. Harold H. Koh & Aaron Zelinsky, *Practicing International Law in the Obama Administration*, 35 YALE J. INT'L L. ONLINE 4, 11 (2009).



most publish primarily in domestic law journals, and that far more have experience working for the U.S. government than for foreign or international entities.<sup>39</sup> On the basis of this evidence, she concludes that professors at the relevant schools are likely to carry national biases and perspectives.<sup>40</sup> But, of course, this small and unrepresentative sample tells us little about the broader community of international law professors in the United States. Most American lawyers, including many who go on to practice some form of international law, do not graduate from a top-six school. Nor do most professors teach at such a place. In expanding the scope of the inquiry, we aim to enrich understanding of the American legal community's relationship with an important field of study and practice.

## II. RESULTS

The study yields a number of noteworthy results. First, schools varied widely in their treatment of the introductory course on international law. A small number (19%) offered it in both semesters of 2015, while nearly two-thirds (62%) offered it in one semester. Slightly less than twenty percent (19%) did not offer it at all.

Second, a solid majority of the professors (66%) on whom we obtained biographical information<sup>41</sup> had at least one year of experience in at least one of the measured categories. This means that slightly over one-third (34%) did not have at least one year of experience studying law abroad, practicing law at a foreign office of a law firm, working for an international organization or NGO outside of the United States, serving in a foreign government, or teaching at a foreign law school. These results are depicted below in Figure 1.

Third, international experience was typically quite limited even when present. As shown in Figure 1, over eighty percent (83%) of those examined—including one of this Article's authors—had two or fewer qualifying experiences abroad. We suspect that this reflects the tendency for American law schools to hire early-career professionals and valorize domestic markers of achievement, such as diplomas from leading American universities, federal judicial clerkships, and positions at major U.S. law firms, the effect of which is both to limit foreign opportunities and incentivize individuals to focus on the attainment of domestic credentials.

Fourth, among the professors who had some form of foreign or international experience, most acquired it by studying or teaching law at a foreign university. Almost forty percent (37%) of all professors taught in some capacity at one or more foreign law schools, and nearly as many (35%) obtained an undergraduate or graduate law degree from a foreign

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39. ROBERTS, *supra* note 11, at 165, 176, 191-92.

40. *Id.* at 164-65.

41. Out of 151 professors, we were unable to obtain sufficient information on two.

university.<sup>42</sup> Employment abroad with an international organization or NGO (20%), a foreign government (14%), or a law firm (13%) was less common, as shown below in Figure 2.

FIGURE 1: NUMBER OF EXPERIENCES ABROAD  
(BY PERCENTAGE OF STUDIED INDIVIDUALS)

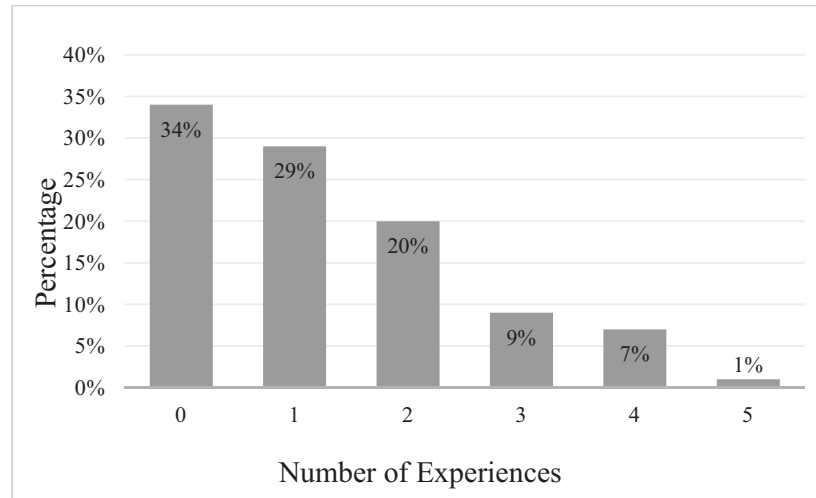
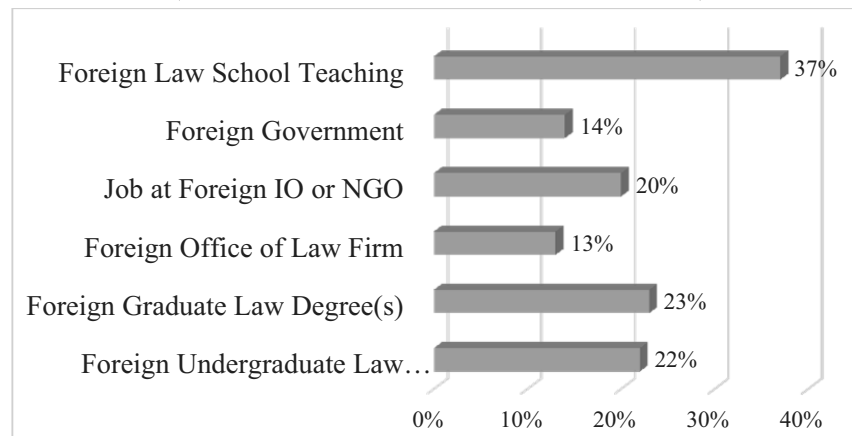


FIGURE 2: TYPE OF EXPERIENCE ABROAD  
(BY PERCENTAGE OF STUDIED INDIVIDUALS)



Finally, professors acquired most of their foreign or international experience in the West. Nearly a third (32%) had foreign experience exclusively in Western Europe, Australia, New Zealand, or Canada. In contrast, less than one quarter (19%) had foreign experience exclusively outside of

42. Expanding the scope of our inquiry to include education of any type reveals that 29% of the professors earned undergraduate degrees abroad and 37% earned graduate degrees abroad.

the West, while slightly less (15%) spent time in both Western and non-Western states. Figure 3 illustrates these percentages. As shown in Figure 4, the most common Western countries were the United Kingdom, Canada, and France, while the most common non-Western countries were China, Israel, Japan, Russia, and South Africa.<sup>43</sup>

FIGURE 3: PERCENTAGE OF EXPERIENCES ABROAD (BY REGION)

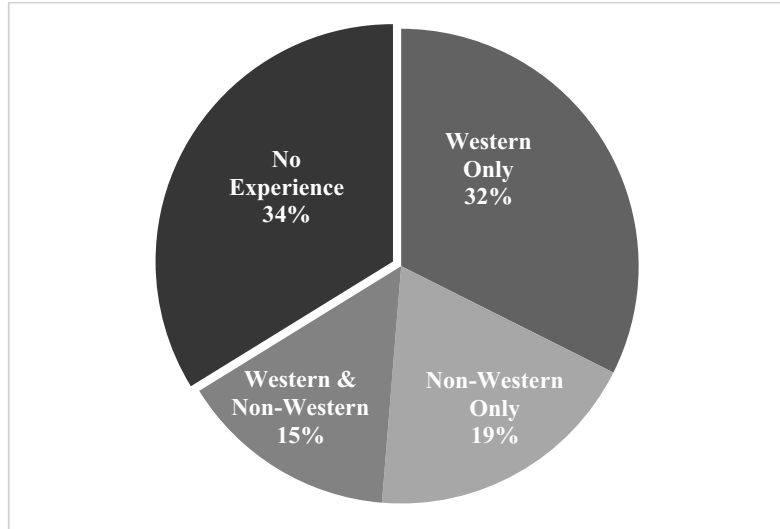
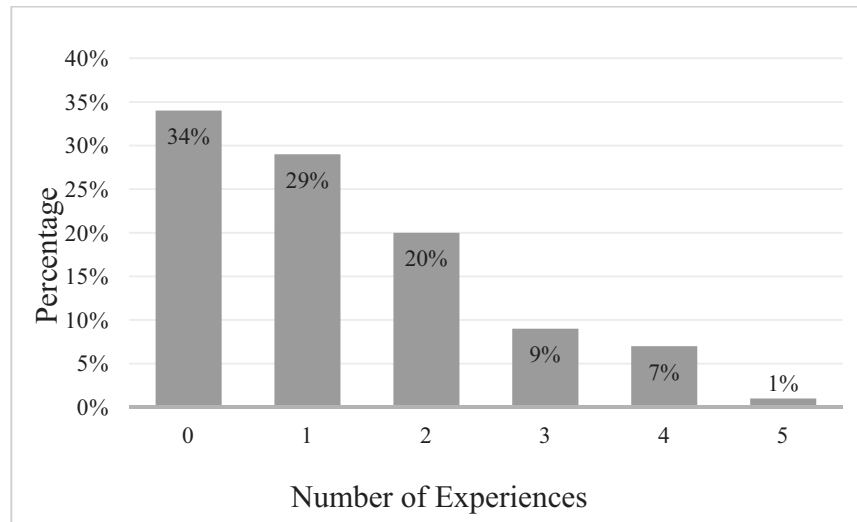


FIGURE 4: TOTAL NUMBER OF EXPERIENCES ABROAD (BY COUNTRY)



43. The countries that appeared most frequently in the biographies were, in descending order, the United Kingdom (31 times), Canada (13), France (12), Switzerland (9), the Netherlands (9), Italy (9), Germany (9), China (8), Israel (6), South Africa (4), Russia (4), Japan (4), and Australia (4).

Certain types of experiences tended to predominate in particular countries. Of the eight professors in our study who spent time in China, seven were there as visiting professors. Eighteen individuals obtained an undergraduate or graduate law degree from a British university. Most professors who spent time in Switzerland were there while working at an international organization. These tendencies seem to reflect the types of opportunities that are practically available and the comparative advantages held by different countries in the global production of symbolic capital.<sup>44</sup> They also suggest high levels of uniformity in terms of the nature of the socialization that professors encounter within certain states; those who study or work abroad in a particular country often encounter not only the same national legal culture, but also the very same institutions and even colleagues.

Although we did not separately inquire into *why* law professors pursued experiences in the West more than elsewhere, one can imagine a variety of explanations. Language barriers probably play a role, particularly for regions such as Southeast Asia. Self-interest probably plays a part, given the prestige associated with degrees from elite universities and positions at major international institutions, most of which are concentrated in the West. We would also expect professional networks within the West to be much more robust than those that span the divide between the global core and periphery, the result of which is to create greater access to professional opportunities in the West. In short, those who might hope to expand the geographic and cultural range of their experience are likely to encounter a variety of logistical and professional challenges. Even in a heavily globalized world, the aspiring cosmopolitan encounters a bit of a headwind.

### III. IMPLICATIONS

The study results carry important implications for both scholars and policymakers.

#### A. *Peripheral Status*

Although electives in international law have gradually proliferated since the end of World War II,<sup>45</sup> the results confirm that international law continues to have a peripheral role in American legal education. The fact that only a handful of schools require students to complete even the introductory course,<sup>46</sup> and that a sizable number (19%) do not offer it on a yearly basis, shows that collective priorities lay elsewhere.

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44. Cf. YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE* 18-19 (1996) (discussing Pierre Bourdieu's concept of symbolic capital and applying it to the field of international commercial arbitration).

45. Scoville, *supra* note 18, at 14-15.

46. See *Country: United States*, PILMAP (2014), <http://pilmap.org/Details/US> (reporting that only 4% of U.S. law schools require student to complete a course on international law).

Why does this matter? The decision to sideline international legal education reflects a collective judgment that international law is insufficiently important to be compulsory or even consistently offered, communicates that judgment to impressionable classes of new professionals, and makes it possible to become a lawyer without first acquiring any knowledge of international law.<sup>47</sup> In other words, the decision to marginalize international law in the curriculum may both reflect and materially contribute to the field's diminished practical utility. By producing generations of lawyers who are mostly unfamiliar with international law and the issues it presents, American law schools limit the prevalence of international legal analysis to clients and the frequency of international legal claims and arguments in court, thereby contributing to the impression that international law is largely irrelevant.<sup>48</sup> In this sense, dominant perspectives are self-reinforcing.

### B. *Western and National Orientation*

The results also suggest that the prevailing American approach to international law exhibits a Western and national orientation. There are two senses in which this is true.

First, the data reflect a general willingness of American law faculties to hire and promote as international law professors individuals whose experiences are primarily Western and domestic. Less than twenty percent of the law professors we studied had international experience in more than two qualifying categories.

There are a number of conceivable explanations for this hiring pattern. One possibility is that the American legal academy views substantial foreign experience, particularly outside of the West, as unnecessary for a person to teach and write about international law, serve as a professional role model to students, and provide international expertise to others. On this view, it is enough to be a lawyer with outstanding domestic credentials and a sprinkling of foreign experience, or, even better, experience at a federal agency that is involved in foreign affairs. This view might arise from common misconceptions about the nature of international law, including the idea that it is synonymous with foreign relations law,<sup>49</sup> or it might arise if hiring committees prioritize general indicia of scholarly potential rather than practical experience in a particular field. Separately,

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47. See John A. Barrett, Jr., *International Legal Education in U.S. Law Schools: Plenty of Offerings, But Too Few Students*, 31 INT'L L. 845, 854 (1997) (discussing evidence that, in the United States, the "percentage of students graduating having taken at least one course in international law is, at most, 37 percent," and explaining that the percentage had not meaningfully increased since the 1960s).

48. Cf. Aharon Barak, *Comparison in Public Law, in JUDICIAL RECOURSE TO FOREIGN LAW* 287, 287 (Sir Basil Markesinis & Jörg Fedtke eds., 2006) (describing similar dynamics concerning the use of foreign law).

49. Cf. David Kennedy, *International Legal Education*, 26 HARV. INT'L L.J. 361, 367 (1985) (explaining that the author's legal education gave him the impression that "international law was a somewhat special form of the United States municipal legal order").

some law schools might hire and promote individuals who lack significant international experience in response to a shortage of applicants with more cosmopolitan backgrounds, or because faculties are more familiar with, and capable of discerning, the symbolism of domestic credentials. Still other schools might conscript faculty members who specialize in domestic fields to teach the introductory course in order to maintain a broad selection of offerings while avoiding new hiring in an age of austerity. All of these phenomena would contribute to the dominant pattern.

Second, the data suggest that most international law professors' personal understandings and attitudes about international law reflect a Western and national orientation. Only a third of professors in our study had *any* experiences outside of the West. This result is striking in light of the inclusive nature of our methodology;<sup>50</sup> the fact that it is quite possible to avoid meaningful interactions with foreign legal culture even while studying, teaching, or working abroad; and the possibility that some foreign experiences may have occurred too late in professors' careers to exert material influence on their teaching and scholarship.<sup>51</sup> The result also means that, as the inevitable products of their own experiences, professors are more likely to write and lecture disproportionately on what *we* do, with the rest of the world—particularly non-Western states—playing only a marginal role. The arguments, values, data points, and concerns will be mostly Western and American.

These conditions are likely to yield intergenerational effects. The biographies of the current group of international law professors signal the types of educational and professional credentials that academics ought to have, and thus incentivize aspiring scholars to acquire similar experiences. Meanwhile, legal education transmits status quo orthodoxies to new classes of lawyers, judges, executive branch officials, and scholars through social processes such as persuasion in the classroom.<sup>52</sup> The orientations of today's professionals thus replicate themselves in the next generation.

The current orientations also appear to manifest in concrete ways and diverse settings. For example, when professors of international law in the United States write amicus briefs and law review articles about customary international law, they cite far more frequently to American and Western legal authorities as evidence of custom than to non-Western sources.<sup>53</sup>

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50. For example, even a semester of teaching at a Chinese law school qualified as long as the professor had at least a year of foreign teaching experience in aggregate. Working in a non-Western office of a U.S.-based law firm also qualified.

51. Cf. Wood, *supra* note 33, at 806 (suggesting that individuals are more susceptible to persuasion when their preexisting, message-relevant cognitions are limited or otherwise inaccessible). This phenomenon is particularly likely to limit the socializing effects of visiting teaching positions, which are typically offered only to mid- and late-career academics.

52. See Scoville, *supra* note 18, at 22-38 (citing research in support of the proposition that law schools can be effective venues for persuading students to adopt favored views about international law).

53. Ryan M. Scoville, *Finding Customary International Law*, 101 IOWA L. REV. 1893, 1928-30 (2016).

U.S. federal judges do likewise in judicial opinions.<sup>54</sup> And when American professors lecture on and write casebooks about international law, they refer most frequently to American and Western sources.<sup>55</sup> Surely this is no coincidence. It is only natural for people to talk and write about what they know, and what they know tends toward the occidental and domestic.

These orientations may even affect U.S. policy. One possible illustration is the so-called “unwilling or unable” test, a doctrine that would justify the unilateral, defensive use of military force against non-state actors present in a country whose government is unwilling or unable to prevent them from carrying out external attacks.<sup>56</sup> Advocates of this doctrine, which has been contested even by close allies of the United States, have relied primarily on Western and American practice in arguing that it constitutes customary international law.<sup>57</sup> In response, scholars who have spent substantial time abroad have been especially critical of the test’s claim to legal status.<sup>58</sup> Given this divide, it strikes us as plausible that the test’s domestic legitimacy has relied, at least in part, upon the predominance of socialization patterns that subtly encourage American commentators and government lawyers to discount the significance of non-Western practices and views.

Finally, the current orientations are significant because they implicate a delicate balance between international law’s domestic and global legitimacy. On one hand, domestic legitimacy derives from a certain degree of localization; the United States, like other countries, is more likely to heed international norms that resonate with national values and reflect national concerns and influence.<sup>59</sup> In this sense, a Western and national orientation may help to encourage respect for international norms in the United States. On the other hand, excessive localization risks undermining the efficacy of international law by fostering idiosyncratic views that other states

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54. *Id.* at 1909-12.

55. ROBERTS, *supra* note 11, at 84-100; *see also* Kennedy, *supra* note 49, at 366-69.

56. *See generally* Ashley S. Deeks, “Unwilling or Unable”: Toward a Normative Framework for Extraterritorial Self-Defense, 52 VA. J. INT’L L. 483 (2012) (explaining the test and its foundations in customary practice).

57. *See id.* at 519-33; *see also* Monica Hakimi, *Defensive Force Against Non-State Actors: The State of Play*, 91 INT’L L. STUD. 1, 25-26 (2015) (describing the lack of consensus concerning the test’s legality in connection with the use of force in Syria). *But see* Elena Chachko & Ashley Deeks, *Who is on Board with “Unwilling or Unable”?*, LAWFARE (Oct. 10, 2016, 1:55 PM), <https://www.lawfareblog.com/who-board-unwilling-or-unable> (discussing more recent evidence of somewhat broader state support).

58. Compare Kevin Jon Heller, *The Absence of Practice Supporting the “Unwilling or Unable” Test*, OPINIO JURIS (Feb. 17, 2015, 2:53 PM), <http://opiniojuris.org/2015/02/17/unable-unwilling-test-unstoppable-scholarly-imagination/> (criticizing supporters of the unwilling-or-unable test for relying on under-inclusive surveys of state practice and opinio juris), *with* Kevin Jon Heller, SOAS University of London, <https://www.soas.ac.uk/staff/staff86828.php> (last visited Nov. 1, 2016) (listing Professor Heller’s credentials).

59. *See* Thomas Risse & Stephen C. Ropp, *International Human Rights Norms and Domestic Change: Conclusions*, in THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 271-72 (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink eds., 1999).

do not share, complicating the task of understanding foreign and non-Western perspectives, and implicitly encouraging other states to approach international law in ways that are equally solipsistic and uncommon. In this sense, insularity may contribute to the fragmentation of international law.<sup>60</sup>

### C. Comparisons

Our study provides a basis for comparative and historical analysis. Roberts suggests that communities of international law professors in different countries exhibit varying degrees of cosmopolitanism: majorities in the United Kingdom and Australia, for example, appear to hold one or more law degrees from foreign universities, but hardly anyone in Russia or France holds a foreign degree.<sup>61</sup> Roberts also observes that it is common for professors in Russia to work for their own government, rather than foreign or international institutions before entering academia, but relatively rare for their Australian, British, and Chinese counterparts to follow such a path.<sup>62</sup> Assuming that these conclusions accurately portray the broader community of international law academics in each of these countries, our data suggest that professors in the United States occupy a middle position—more cosmopolitan than their colleagues in France and particularly Russia, but more parochial than their colleagues in the United Kingdom, Australia, and perhaps China. The contributors to such cross-national variation are probably multiple and complex, but could include geography, financial resources, government restrictions on travel, prestige, and language barriers, among others.<sup>63</sup> Depending on the pervasiveness of parochialism in countries not covered by existing studies, legal education around the world may impede, rather than facilitate, efforts to standardize understandings and attitudes concerning international norms.

The study also provides a point of comparison for future historical analyses. While parochialism and cross-national variation may be common today, it is not clear when these patterns emerged or how the current community of international law scholars in the United States contrasts with earlier generations.<sup>64</sup> International law emerged as a common topic of

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60. Joost Pauwelyn, *Europe, America and the "Unity" of International Law*, in *THE EUROPEANISATION OF INTERNATIONAL LAW: THE STATUS OF INTERNATIONAL LAW IN THE EU AND ITS MEMBER STATES* 205 (Jan Wouters, André Nollkaemper & Erika de Wet eds., 2008).

61. ROBERTS, *supra* note 11, at 165.

62. *Id.* at 195.

63. For example, international law professors in Cuba are generally unable to travel abroad for conferences, research, and other professional opportunities. It is unclear whether this is due to government restrictions, limited financial resources, or both. *See* Interview with Celeste Elena Pino Canales, Professor of Pub. Int'l Law, Univ. of Havana, in Havana, Cuba (Jan. 13, 2016).

64. *See* ROBERTS, *supra* note 11, at 33 (speculating that American law schools have shifted from hiring European refugees in the aftermath of World War II to homegrown scholars in more recent years, but acknowledging that no systematic analysis exists).



study in the late 1800s at European universities,<sup>65</sup> and after World War II in the United States,<sup>66</sup> yet as far as we can tell, there are no systematic analyses of the backgrounds of the individuals who taught these courses. There is some evidence that nineteenth-century academics from different European countries conceived of international law in different ways,<sup>67</sup> but biographical analysis could help to elaborate on those tendencies and identify subsequent shifts. Our data thus invite new research on the development and historical influence of national communities of international law scholars.

#### D. Opportunities

Finally, the study results reveal opportunities. For those inclined to think that the status quo's dominant orientations are excessively parochial and Western, the primary takeaway seems to be that the American legal academy should further internationalize the discipline of international law.

Aspiring and current professors could pursue a variety of activities in this regard. They might consider the results as evidence of a need for reflection on the ways in which their own ideology, teaching, and scholarship reflect a distinctive socialization process rather than a universal standard. And they might consider the data in making professional choices, such as which journals to read, where to spend a sabbatical, pursue research, and attend conferences, and whom to approach as collaborators.

Law schools could also adopt a number of simple measures to expose their students to more international perspectives. For instance, faculties could arrange more visiting professorships for foreign scholars of international law, provide institutional support for faculty members who seek out denationalizing experiences, and place greater weight on non-Western credentials in faculty hiring.<sup>68</sup> The dearth of professors with significant experience in Africa, Central and South America, Eastern Europe, Central Asia and the Middle East, Southeast Asia, and even Scandinavia suggests an abundance of possibilities.<sup>69</sup>

Far more ambitiously, we can imagine efforts to promote global convergence regarding best practices in international legal education. States might formally or informally agree, for example, to make the study of in-

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65. MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960*, at 30-35 (2001).

66. Scoville, *supra* note 18, at 15-16; *see also* John M. Raymond & Barbara J. Frischholz, *Lawyers Who Established International Law in the United States, 1776-1914*, 76 AM. J. INT'L L. 802, 815-18 (1982).

67. KOSKENNIEMI, *supra* note 65, at 32-34.

68. A conspicuous precedent for this sort of effort is the U.N. Charter, which provides that "[d]ue regard shall be paid to the importance of recruiting the staff [of the Secretariat] on as wide a geographical basis as possible." U.N. Charter art. 101, ¶ 3. As of 2013, there were over 3,000 staff positions subject to this requirement, the result of which has been substantial, even if imperfect, geographic diversity. *See* U.N. Secretary-General, *Composition of the Secretariat: Staff Demographics*, 45-48, U.N. Doc. A/68/356 (Aug. 30, 2013).

69. *See supra* Figure 4.

ternational law compulsory for legal professionals, encourage geographic diversity in international law faculty hiring, draft global educational materials and standards, and fund more exchanges between professors and students from different states. Such measures could help to ensure that the “invisible college of international lawyers” is in fact international.<sup>70</sup>

Others, however, might view the prospect of denationalization with concern. A more cosmopolitan perspective could conceivably weaken scholarly commitments to values that are important in the United States and the West. In addition, moving away from America’s traditional orientations might endanger international law as a field by making it less responsive to U.S. interests and further alienating its nationalist critics. And if professors in other countries are similarly parochial in their orientations, unilateral denationalization in the United States may simply cede U.S. influence over the content of global norms. For those who hold such concerns, the study takeaways are quite different. Rather than document a problem, the data stand as evidence of a status quo that scholars should maintain and entrench.

#### CONCLUSION

Comparative international law extends identity politics into the international realm. Law schools play an underappreciated role in the construction of state identities with respect to international law by socializing classes of professional elites to view the field in privileged ways. Because professors as a group are not an exception to the dominant national paradigm, but rather a reflection of and an important contributor to it, the biographies of international law professors offer insights into the nature of the socialization that is taking place. In the United States, the backgrounds of those who teach the introductory course on public international law indicate that the influential perspectives are, while cosmopolitan in certain respects, primarily Western and nationalistic. Law schools can respond either by sustaining this condition or incorporating more global perspectives.

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