Those who teach and write about international law confront a challenge. To purport to identify any rule of law as operating among states is to claim cross-national uniformity of understanding. Yet states and international lawyers are numerous and diverse, and on many issues, their positions are hard to ascertain. In Papua New Guinea, what is the dominant view on the legality of unilateral humanitarian intervention? Does Nigeria accept the unwilling-or-unable test? What is the Italian government’s practice regarding the extent of a coastal state’s rights in an exclusive economic zone? In the United States, the answers to these and other, similar questions are not widely known, even among professors of international law. The perspectives of colleagues, one’s own government and other states in the West may be familiar, but to pronounce global normativity on such parochial premises requires either arrogance or tolerance for substantial liberties of extrapolation. The self-aware thus face a nagging question: Does my understanding reflect the global norm?

According to Anthea Roberts, the answer may very well be no. “Is International Law International?,” Roberts’s new book, marshals an extensive body of original research to suggest that there are significant cross-national variations in the ideological and doctrinal content of international legal education. Professors at elite universities in China, France, Russia, the United Kingdom and the United States exhibit distinctive tendencies: most French and Russian professors complete their legal education without traveling abroad, while most British professors hold degrees from universities in multiple states and American and Chinese professors fall somewhere in between. These academics also exhibit varying levels of nationalism in terms of their article placements and work experience. Influential publications reflect still other differences: American casebooks, for example, cite primarily to U.S. judicial opinions, while texts from Russia and the United Kingdom cite heavily to international courts. American casebooks also tend to feature more coverage on humanitarian intervention than Chinese texts and less coverage on the law of outer space than Russian texts. Roberts argues that these kinds of
differences show that international lawyers around the world comprise not an “invisible college” of individuals “engaged in a continuous process of communication and collaboration,” as Oscar Schachter once put it, but instead a:

‘divisible college’ whose members hail from different states and regions and often form separate, though sometimes overlapping, communities with their own understandings and approaches, as well as their own distinct influences and spheres of influence.

Why does the divisible college matter? Roberts advances several arguments. First, she suggests that divisibility limits mutual understanding and complicates the resolution of discrete legal questions. Because of disparate patterns of socialization, lawyers from different states disagree with one another on the use of force, cybersecurity, the legality of Russia’s annexation of Crimea and the validity of the ruling in the South China Sea Arbitration, among other issues. Second, Roberts contends that the divisible college is significant because its members hold varying degrees of influence. The rise of English as the lingua franca of international legal scholarship empowers academics from the United Kingdom and the United States while marginalizing non-English speakers from countries such as China and Russia, and colonial legacies accentuate the influence of former metropoles. This is not an international law of universality and equality, but of fragmentation and hierarchy—a collection of variegated national orthodoxies whose respective degrees of global influence depend heavily on the serendipities (and misfortunes) of language and history. Finally, Roberts attributes significance to the divisible college on the view that the advent of multipolarity will require greater awareness of and respect for the varied perspectives of diverse actors. In highlighting differences, she hopes to foster appreciation for the value of intergroup dialogue.

Roberts is not writing on a blank slate. Her decision to approach the study of international law as an empirical question follows in the footsteps of earlier research by René-Jean Dupuy and Grigory Tunkin, who conducted multistate surveys on the study of international law in the mid-twentieth century, and John King Gamble, who did likewise in the 1990s. In analyzing university training with a global and sociological lens, Roberts evokes the work of world society theorists, who have documented patterns of public education across states and disciplines. And in examining differences among states, she draws inspiration from Cold War-era research on comparative international law.

Nevertheless, the book manages to break new ground. For one, it helps to correct a longstanding peculiarity: Even while writing extensively on the sociology of international legal norms, leading scholars have largely ignored the possibility that universities—probably the single most common source of training on international law—play any role in the construction of dominant perspectives. In demonstrating cross-national differences of approach, Roberts suggests that academia is not only sociologically relevant, but that educational institutions complicate, rather than advance, the cause of effective international law. Given that many professors view themselves as champions of cosmopolitanism, this is a provocative idea, and it calls for reexamination of everything from hiring patterns to reading habits and citation practices. The book also moves the ball as an empirical project; we now know far more about the conditions of international legal education. By identifying differences, Roberts exposes a need for greater self-awareness and epistemic humility among scholars in an increasingly post-hegemonic order. The implications are far-
reaching, and I truly view the book as required reading for anyone interested in international law.

All that said, my sense is that while the book is effective as a revelation of cross-national differences among academics and textbooks, it is best understood as merely a conversation-starter—a set of hypotheses—on the questions of whether, to what extent and how those differences matter. I say this for a few reasons.

First, even now, there is no direct evidence that formal training in international law consistently produces significant and long-lasting changes in perspective. To be sure, it seems sensible to think that formal study can, under the right circumstances, generate such effects—I have made that argument in my own work. But no one has undertaken sophisticated statistical analyses or detailed case studies to ascertain whether and to what degree that intuition holds true. Are one or two semester-long courses on international law capable of shaping the understandings and attitudes of future lawyers? If so, how often do the courses generate that effect, what is its magnitude, how long does it persist and to what extent is it resistant to counter-socialization in the workplace and popular media? Moreover, what form of socialization is taking place? Are classes on international law venues for persuasion or what Ryan Goodman and Derek Jinks have referred to as “acculturation,” each of which has different implications? The simple answer is that we do not know.

Roberts appears to recognize as much. As evidence that university training can make a difference, she cites research on the lasting influence of the educational experiences of Taiwanese judges, Chilean economists, Israeli law professors and American business lawyers. Yet she generally avoids bold causal claims, instead asserting that education is “likely” to or “may” make a difference. In my view, this was a necessary move not only because of the scarcity and limited value of the current evidence, but also because several studies in recent decades have found that legal education fails to consistently generate durable changes in perspective. If those studies are indicative of broader trends, then casebook content and the backgrounds of law professors are less likely to serve as reliable indicia of the views of international lawyers.

Second, it remains non-obvious that these lawyers materially influence state action. Did Russia annex Crimea in part because Vladimir Putin consulted with idiosyncratically socialized law graduates who understood that annexation would be lawful? Did the United States respond to the use of chemical weapons in Syria by launching missiles at Al Shayrat airfield in part because Donald Trump received a green light from American legal advisers who had internalized permissive views on the use of force? Would these leaders have carried out the very same actions even if their lawyers had counseled otherwise? Many would argue that lawyers do exert meaningful influence, and that is not an unreasonable position. But the empirical support is less than overwhelming; one can only imagine that lawyers matter to vastly different degrees across states; and Roberts does not engage the issue. That is not an indefensible editorial choice, given the book’s other achievements, but it leaves the argument vulnerable to quick dismissal by those who view international law as epiphenomenal. For “Is International Law International?” to be persuasive, the reader must believe that lawyers are important actors in international affairs. I suspect that many readers will, but that is because many readers will be lawyers, not because the book tries to persuade skeptical theorists of international relations.

Finally, my sense is that it is premature to draw conclusions about the significance of the ideological and doctrinal differences that Roberts uncovers without first considering two other forms of difference that the book does not address: the
commonality and quality of international legal education. Much like professor biographies and textbooks, these conditions vary considerably among states. For example, according to a survey I conducted in 2014, 100% of law schools in Russia require their students to study international law, while only 3% of British law schools do the same. International law may be a popular elective at British universities, but even in that event, it is doubtful that the rate of formal exposure among British students is as high as it is among their Russian counterparts. Likewise, as scholars such as Philip Altbach have shown, there are massive disparities in the resources available to universities around the world. Some in the West and parts of Asia enjoy vast wealth and highly qualified faculties, employ rigorous training techniques and maintain extensive links with national and international elites, while many in developing states operate without large library collections, adequate facilities, publications in native languages or full-time instructors.

These additional factors suggest that Roberts’s findings on ideology and doctrine are likely to matter far less in some states than in others. Where hardly anyone studies international law or the quality of the education is poor, it seems doubtful that the biases of the professors and their reading materials could exert much influence. More concretely, the extremely low rate of compulsory training in the United Kingdom raises the possibility that the British academy’s cosmopolitanism matters substantially less than the Russian academy’s nationalism. By the same token, the relatively poor quality of legal education in parts of China suggests that the Chinese academy may contribute less to the social construction of national orthodoxy than do professors and textbooks in France.

To be clear, I do not view these observations as detracting from Roberts’s core contributions, which are to identify certain types of differences and encourage introspection among lawyers who might otherwise assume that personal perspectives reflect global legal Truth. But I do think the issue of causation requires further attention. Are universities effective at constructing dominant perspectives on international law? If so, to what extent do those perspectives influence states? And what are the conditions of education, not only among the permanent members of the Security Council, and not only on ideology and doctrine, but among states in general and with respect to commonality and quality? The significance of the divisible college depends on the answers to these questions.

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