

Degree (Un)Equivalencies: The Confounding Case of the Juris Doctor

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I. Introduction

Today's globalized economy has led to increased mobility for job seekers with advanced degrees.¹ Over the past thirty years or so, overseas opportunities for law graduates have expanded, particularly in the foreign branches of U.S.-based law firms.² Americans with law degrees also regularly find work abroad with U.S. government agencies, international organizations,³ nongovernmental organizations,⁴ and even the American Bar Association's Rule of Law Initiative.⁵ Law professors also commonly spend a summer, semester, or even academic year in a foreign university as visiting scholars and researchers. Long-term opportunities abroad in legal academia, however, have received less attention. This makes sense; teaching overseas is less common in

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1. The World Bank, *Constructing Knowledge Societies: New Challenges for Tertiary Education* (2002), <http://siteresources.worldbank.org/TERTIARYEDUCATION/Resources/Documents/Constructing-Knowledge-Societies/ConstructingKnowledgeSocieties.pdf>; Dirk Van Damme, *Trends and Models in International Quality Assurance and Accreditation in Higher Education in Relation to Trade in Education Services*, OECD/US Forum on Trade in Educational Services (2002), at 8, <http://search.oecd.org/education/skills-beyond-school/2088479.pdf> [hereinafter Van Damme, *Trends and Models*].
2. Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 24 GEO. J. LEGAL ETHICS 1 (2011); John Bringardner, *Lawyers Wanted: Abroad, That Is*, THE NEW YORK TIMES (Nov. 21, 2008), <https://www.nytimes.com/2008/11/23/business/23law.html>.
3. Bernard Koteen Office of Public Interest Advising, *International Public Interest Law*, HARVARD LAW SCHOOL, <https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-service-practice-settings/public-international-law/?redir=1>.
4. *Resources for Lawyers Going Overseas*, U.S. DEPARTMENT OF STATE, FAMILY LIAISON OFFICE, <https://www.state.gov/documents/organization/253915.pdf>.
5. Amy Montemarano, *Working Abroad in the Legal Profession*, EFAM (May 7, 2009), <http://www.escapefromamerica.com/2009/05/working-abroad-in-the-legal-profession/>.

law than in other fields because laws differ from country to country (unlike, say, mathematics, biology, engineering, or medicine). There are, nonetheless, law teaching opportunities out there. I am American, and I teach equity and trusts and moot court full time at the University of Malaya in Kuala Lumpur, Malaysia. Nearby, three Americans teach at the Faculty of Law of the National University of Singapore.⁶ An American from Wisconsin taught law with me at my previous post at Multimedia University (also in Malaysia).

Although I expected Malaysian universities to question my familiarity with Malaysian law, I did not anticipate that the nature of my law degree—the *juris doctor*, or J.D.—would be a point of contention. I was wrong. Unlike in the United States, law in Malaysia is studied at the undergraduate level, and nearly all of my Malaysian colleagues have Ph.D.s in law (or are in the process of earning them). Some see the J.D. as a type of bachelor's degree, implying that Americans whose highest degree is the J.D. are not qualified to teach in a university. Indeed, when I interviewed for positions I was informed that my degrees (I have a B.A., an M.A. and a J.D.) were insufficient to teach the undergraduate law students in the Bachelor of Laws (LL.B.) program, but that an exception would be made provided that I concurrently enroll in a Ph.D. in law program. This surprised me because in the United States, a J.D. qualifies one to teach law at the postgraduate level, including for degree programs higher than the J.D., such as for the Master of Laws (LL.M.) and Doctor of Juridical Science (S.J.D. or J.S.D.). At the time, I felt that equating the J.D. with a bachelor's degree, or even a master's, was a grave mischaracterization. After completing the research for this article, however, I have come to empathize with my Malaysian colleagues and human resources officers, because although the J.D. is well-known in the United States and is increasingly offered in other countries, it is a perplexing degree to value.

This article examines this problem of degree (un)equivalencies for legal academicians seeking employment abroad. Disagreement over the value of the J.D. can be frustrating and, in some instances, feel discriminatory. For foreign universities considering hiring candidates with a J.D., the lack of an easily determinable equivalency can lead to confusion, delay, and extra administrative work. Attempts have been made to centralize and streamline recognition of academic qualifications generally, but their impact remains limited. In many countries, including the United States, complicated procedures to determine equivalency continue to be used. Research is scarce in this area, and few solutions have been proposed beyond international conventions and cooperation (which have lagged). The J.D. is particularly problematic, because it is not like an LL.B., LL.M., S.J.D. or Ph.D. American law graduates seeking to teach abroad need to know that, at least in my experience, foreign hiring committees consider only the S.J.D. or Ph.D. in law as sufficient qualification to teach law, and either do not know or decline to consider that in the United States, the J.D. qualifies one to teach law at the

6. *Academic Profiles*, NATIONAL UNIVERSITY OF SINGAPORE, http://www.law.nus.edu.sg/about_us/faculty/staff/staffdiv.asp (last visited May 21, 2018).

university level. This final point is evident from the data: Although studies show that today U.S. law schools are hiring more academics with Ph.D.s in cognate fields (such as economics, political science, and psychology) than ever, the majority of law faculty continue to hold the J.D. as their highest degree. One scholar predicts that the number of U.S. law faculty with Ph.D.s even at the top twenty-six schools will not exceed fifty percent until 2028,⁷ and my own research shows that even at top-ranked Yale Law School, only forty-one percent (fifty of 123) of faculty members hold doctorates arguably higher than the J.D. (Ph.D.s, J.S.D.s, M.D.s and foreign law doctorates). This discrepancy—between how the J.D. is valued at home and abroad—resonates with me personally because of the difficulties I have had in explaining my U.S. law degree to my colleagues and human resources departments in Southeast Asia, where I have lived for the past ten years. My personal experiences both prompted me to write this article and inform my perspective. I draw upon these from time to time to illustrate the challenges raised by the degree (un)equivalency problem.

The article assesses this problem by first, in Part I, describing the relatively unsuccessful international efforts to standardize recognition of all types of higher degrees. Part II traces the development of the J.D. and, to a lesser extent, the LL.M. and S.J.D. It also addresses controversies over whether the J.D. is the equivalent of a Ph.D. and whether holders of J.D.s can call themselves “doctors,” and presents some statistics on the degrees held by U.S. law faculty. Part III applies the commonly accepted standard for determining recognition of a foreign credential—the “substantial difference” standard—to the J.D., only to find it inadequate. To help law graduates seeking academic positions abroad and to more accurately measure the value of the J.D., the article proposes that law schools include a small box of key text on all transcripts and that foreign employers interested in hiring U.S. law academics answer a set of three simple questions.

II. Streamlining Recognition

Recognition of foreign degrees is “an old and complicated problem” that largely remains an exercise in comparing curricula.⁸ Recognition—a “formal acknowledgement by a competent authority of the value of a foreign educational qualification with a view to access to educational and/or employment activities”⁹—is generally achieved in one of two ways: first,

7. Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 J. LEGAL EDUC. 506, 510 (2016).
8. Van Damme, *Trends and Models*, *supra* note 1, at 27; see also Hanna Jabłońska-Skinder, *Problems of Equivalence of Studies and Diplomas in Higher Education Systems*, 13 HIGHER EDUC. IN EUROPE 5 (1988) (describing the problems with equivalencies). Recognition of qualifications can be divided into two: recognition of academic qualifications (referring to educational credentials) and recognition of profession (referring to the right to work in regulated professions, such as law and medicine). This article focuses on the former, primarily in connection with employment in academia.
9. Convention on the Recognition of Qualifications Concerning Higher Education in the European Region, European Treaty Series 165, at art. I (Apr. 11, 1997), <https://www.coe>.

by identifying an equivalent credential in the host country's system, called "equivalence;" or second, by accepting foreign qualifications that are not equivalent so long as the differences are not substantial, called "acceptance."¹⁰ Many countries, including the United States, continue to apply "very detailed and complicated procedures" to identify equivalence.¹¹ The unsatisfactory resolution of equivalency has led to disagreements and conflict.¹²

Attempts have been made, the most successful in Europe, to streamline recognition of degrees across borders based on the concept of acceptance. These efforts culminated in the 1997 Convention on the Recognition of Qualifications Concerning Higher Education in the European Region (Lisbon Convention), which at its core provides a default state of recognition: The burden to demonstrate that an application does not meet relevant requirements lies on the assessing body, and recognition is mandatory unless the assessor can show substantial differences between the domestic and foreign qualifications.¹³ This shifting of the burden from the assessed having to prove equivalence to the assessor having to prove substantial difference importantly increases the likelihood of recognition. Because an effective system of recognition requires a modern and integrated information system, national information centers have been established in Europe to facilitate recognition procedures at the national level, gathering information in an integrated and coordinated international database.¹⁴

The Lisbon Convention establishes three major categories related to recognition: Recognition of Qualifications Giving Access to Higher Education (Section IV); Recognition of Periods of Study (Section V); and Recognition of Higher Education Qualifications (Section VI). The standard—"unless a substantial difference can be shown"—applies in all three. Article IV.1, for instance, which addresses access to higher education, provides:

Each Party shall recognize the qualifications issued by other Parties meeting the general requirements for access to higher education in those Parties for the purpose of access to programmes belonging to its higher education system, unless a substantial difference can be shown between the general requirements for access in the Party in which the qualification was obtained and in the Party in which recognition of the qualification is sought.

int/en/web/conventions/full-list/-/conventions/rms/090000168007f2c7 [hereinafter Lisbon Convention].

10. Van Damme, *Trends and Models*, *supra* note 1, at 27.
11. Dirk Van Damme, *Quality Issues in the Internationalisation of Higher Education*, 41 HIGHER EDUC. 415, 433 (2001) [hereinafter Van Damme, *Quality Issues*].
12. *Id.*
13. Lisbon Convention, *supra* note 9, arts. III.3(5), VI.1.
14. Van Damme, *Quality Issues*, *supra* note 11, at 432-33.

Article V.1 and Article VI.1 respectively provide the same standard (“unless a substantial difference can be shown”) for recognizing periods of study and for recognition of “knowledge and skills certified by [a] higher education qualification”.¹⁵ In all of these three primary categories of recognition, the convention provides alternatively that the holder of a higher education qualification may be permitted to obtain an assessment of the qualification by a competent body.

In addition to the standards established in the text of the Lisbon Convention, both the convention and the Bologna Process—a European reform process aimed at establishing a European Higher Education Area—call for parties to the convention to encourage their higher education institutions to issue “diploma supplements.” A diploma supplement is a form addendum to a diploma that describes the qualification in simple language and relates it to the higher education system in which it was issued.¹⁶ The purpose of diploma supplements is “to provide sufficient independent data to improve the international ‘transparency’ and fair academic and professional recognition of qualifications” and “provide a description of the nature, level, context, content and status of the studies that were pursued and successfully completed.”¹⁷ Supplements “should be free from any value judgements, equivalence statements or suggestions about recognition.”¹⁸ This last point about refraining from recommendations is crucial in that it leaves recognition completely in the control of the receiving institution, making the diploma supplement a descriptive rather than a prescriptive instrument—evaluating institutions rightfully should be the ultimate arbiters on whether to recognize or not. The diploma supplement also allows for institutions to explain “general access requirements; the national qualifications framework (where applicable), types of institution and the quality assurance or accreditation system.”¹⁹

15. The difference between Articles IV and VI is that the former ensures that a qualification for access to higher education in one country will allow equal access in another country, whereas the latter focuses on those instances in which some aspect of recognition depends on certain skills or knowledge certified by the qualification. Explanatory Report to the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, Council of Europe, European Treaty Series - No. 165 (Apr. 11, 1997), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cde6>.
16. Lisbon Convention, *supra* note 9, art. IX.3; see also Carin Berg & Ulrich Teichler, *Unveiling the Hidden Information in Credentials: A Proposal to Introduce a “Supplement to Higher Education Diplomas,”* 13 HIGHER EDUC. IN EUROPE 13 (1988) (proposing the diploma supplement nearly ten years before the Lisbon Convention).
17. See, e.g., Bournemouth University Diploma Supplement, https://europass.cedefop.europa.eu/sites/default/files/dsupplementexamples-en_3.pdf.
18. *Id.*
19. European Network of Information Centres in the European Region and National Academic Recognition Information Centres in the European Union, [enic-naric.net](https://www.enic-naric.net), The Diploma Supplement, https://www.enic-naric.net/fileusers/Diploma_Supplement.pdf.

Clearly, the diploma supplement if used properly can provide a broad range of information useful in determining the value of an academic degree.

Efforts have also been made to regulate the recognition of academic credentials in the Asia-Pacific region. In 1983, fourteen Asian countries signed the United Nations Educational, Scientific and Cultural Organization (UNESCO) Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific (replaced in 2011 with the Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education, which finally came into force on February 1, 2018, after having received the required number of signatories) (Asia-Pacific Regional Convention). One of the primary goals of the Asia-Pacific Regional Convention is to “improve current recognition practice and to make it more transparent and better adapted to the current situation of higher education in Asia-Pacific.”²⁰ As in Europe, institutions of parties to the convention must recognize qualifications issued by institutions of other parties unless a “substantial difference”²¹ in requirements can be shown.²² Parties must similarly establish national information centers to provide and facilitate access to information about their higher education systems.

A Toolkit for the Recognition of Foreign Qualifications was issued by the Bangkok branch of UNESCO in 2013 to supplement the convention. Aimed at Asian policy-makers, practitioners, educational institutions, and recognition officials, it provides an overview of the convention principles and procedures and describes the content of a model UNESCO Asia-Pacific Higher Education Qualification Statement (the equivalent of the diploma supplements of Europe). In Asia, governmental bodies manage most recognition matters.²³ Joint degrees, in which single diplomas are issued by two or more collaborating universities, have become popular in Asia, complicating recognition procedures.²⁴ To make matters worse, the cooperation between Asian quality assurance agencies and recognition bodies remains “weak” without any “substantial collaboration.”²⁵

20. Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education, Preamble at 2 (Nov. 26, 2011), http://portal.unesco.org/en/ev.php-URL_ID=48975&URL_DO=DO_TOPIC&URL_SECTION=201.html [hereinafter Asia-Pacific Regional Convention].

21. “Substantial difference” is not defined, but parties are instructed to identify the rationale behind gaining recognition instead of attempting to find differences between credentials. UNESCO Bangkok, Asia and Pacific Regional Bureau for Education, *Toolkit for the Recognition of Foreign Qualifications: A Reference for Asia-Pacific Practitioners* 11 (Aug. 2013), <http://unesdoc.unesco.org/images/0024/002435/243536E.pdf>.

22. Asia-Pacific Regional Convention, *supra* note 20, arts. IV.1, VI.1.

23. Angela Yung-Chi Hou et al., *Recognition of Academic Qualifications in Transnational Higher Education and Challenges for Recognizing a Joint Degree in Europe and Asia*, 42 *STUD. IN HIGHER EDUC.* 1211, 1212 (2017).

24. *Id.* at 1216.

25. *Id.* at 1223. Malaysia is the one Asian country where recognition is carried out by the

In other parts of the world, regional conventions facilitated by UNESCO have been developed for Latin America and the Caribbean, the Arab States, Africa, and the Arab and the Mediterranean region.²⁶ Bilateral and multilateral agreements between countries have also been signed, such as between China and Germany, and the United Kingdom and France, and among Belgium, the Netherlands, and Luxembourg.²⁷

Despite these efforts, interaction between recognition bodies across borders remains limited, and “most nations have not developed a convergent system to facilitate the linkage of quality assurance and recognition.”²⁸ Indeed, outside of Europe, the lack of transparency and international convergence in quality assurance processes and the difficulty in accessing information on higher education institutions and programs hinder the acceptance and recognition of academic qualifications.²⁹ Procedures remain complicated and decentralized. In Canada, for instance, the complexity of recognition of foreign qualifications continues to result in a lengthy and frustrating process.³⁰ Detailed and complicated procedures based on equivalency continue to dominate in the United States.³¹ According to the U.S. Department of Education, “There is no single authority in the United States for the recognition of foreign degrees and other qualifications.”³² Rather, recognition is determined by educational institutions, employers, or state or territorial licensing boards (for the practice of regulated professions).³³ In turn, these entities often look to recommendations provided by private credential evaluation services.³⁴

The piecemeal development of credential recognition around the world and the continued reluctance of many countries to integrate their systems into a greater whole leave American graduates who wish to pursue an international law teaching experience with the difficult task of proving equivalence. In this article, in fact, I suggest that *even with* the standards and guidelines from conventions and their accompanying supplements, the J.D. will continue to confound, because it has developed in such a way that outside the United

qualification agency. *Id.*

26. *Id.* at 1215.

27. *Id.*

28. *Id.* at 1223.

29. Van Damme, *Trends and Models*, *supra* note 1, at 28.

30. Clayton MacGillivray, *Recognizing Foreign Credentials Key to Canada's Future, Says Researcher*, UTODAY (Mar. 19, 2014), <https://www.ucalgary.ca/utoday/issue/2014-03-19/recognizing-foreign-credentials-key-canadas-future-says-researcher>.

31. Van Damme, *Trends and Models*, *supra* note 1, at 29. The United States and Canada both signed the Lisbon Convention in 1997 but have not ratified it.

32. *Recognition of Foreign Qualifications*, U.S. DEPARTMENT OF EDUCATION, <https://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-visitus-forrecog.html>.

33. *Id.*

34. *Id.*

States it looks like an undergraduate degree, but inside the United States it is treated in many ways as a doctorate.

III. The Enigmatic Juris Doctor

The tale of the evolution of the J.D. effectively illustrates how not only do some credentials lack an equivalent degree in other countries, but, further, that the “substantial difference” standard of the Lisbon Convention and the Asia-Pacific Regional Convention fails to satisfactorily guide the recognizing body as to the value of the degree. The increasing globalization of legal education³⁵ makes this a timely subject for analysis.

A. The Basic Features and Development of the J.D.

The development of the LL.B., J.D., LL.M., S.J.D., and more recently a few rare programs offering a Ph.D. in law, is largely a story of adaptation to the needs of the U.S. and foreign legal markets. The J.D. is awarded upon completion of a three-year postgraduate U.S. law program.³⁶ Unlike in most other countries,³⁷ the study of law in the United States is a graduate endeavor. Although law-related classes are offered in some universities at the undergraduate level, only by way of the J.D. can a U.S. student become a practicing lawyer.³⁸ Thus, for Americans, qualifying to practice law requires seven years of higher-degree study: a four-year undergraduate degree and a three-year J.D. The curriculum is similar to any first law degree in an English-based common-law country: contract law, tort law, constitutional law, criminal law, property law, etc.

As most accurately described, the J.D. is a professional doctorate—“professional” because it is primarily academic training for a profession (law) and “doctorate” because it is a graduate degree and its issuing universities have determined that it is at the doctorate level. The last phrase, that the J.D. “is at the doctorate level,” is controversial. I urge readers to reserve judgment as to its accuracy until they have read further. The J.D. is not a research degree, which distinguishes it from advanced degrees like the S.J.D. or the Ph.D., but it is also different from a bachelor’s degree because it can be earned only after a bachelor’s degree.

The roots of the J.D. can be traced to a shift in power in the middle of the nineteenth century. At that time, the education and training of lawyers

35. Gail J. Hupper, *Educational Ambivalence: The Rise of a Foreign-Student Doctorate in Law*, 49 *NEW ENG. L. REV.* 319, 323 (2015).

36. “Postgraduate” and “graduate” are used interchangeably as adjectives to refer to a postbaccalaureate degree.

37. See, e.g., Ahmad Ibrahim, *The Law Teacher in Malaysia*, 3 *J. MALAYSIAN & COMPARATIVE L.* 251, 251 (1976).

38. Recently my *alma mater*, the University of Arizona James E. Rogers College of Law, introduced a Bachelor of Arts in Law (the first in the United States). Alexis Blue, *Nation’s First B.A. in Law Now a Model*, *UANEWS* (July 11, 2017), <https://uanews.arizona.edu/story/nations-first-ba-law-now-model>.

was largely based on an apprentice system modeled after the English Inns of Court.³⁹ Many in academia lamented, however, that this education was inadequate, with New York University, for instance, observing that students “generally pursue their studies unaided by any real instruction, or examination, or explanation. They imbibe error and truth, principles which are still in force with principles which have become obsolete; and when admitted to practice, they find, often at the cost of their unfortunate clients, that their course of study has not made them sound lawyers or correct practitioners.”⁴⁰ The transition from training in law firms to studying in law school took many years, but steadily a push came for a “systematic, academic experience designed to upgrade the intellectual quality of law and lawyers and thus enhance their professional status.”⁴¹ Training became institutionalized: the first law degree was awarded by the College of William and Mary in 1792, the first LL.B. by the University of Virginia in 1840;⁴² and Columbia University founded its School of Jurisprudence in 1857.⁴³ By the late 1800s, the study of law had become more formalized and the bar exam more stringent.⁴⁴ With growing authority over legal training, universities began to increase the length of study. The entry-level law degree at that time—the LL.B.—was extended from eighteen months to two years, and in 1899 to three years.⁴⁵ This drive to raise the quality and prestige of the study of law led Harvard Law School to establish a curriculum, emphasize the analysis of appellate cases and eventually transform law into a graduate-level program.⁴⁶ Other universities like Stanford, Columbia, and Yale followed suit by 1921.⁴⁷ Eventually in the United States, law studies were restricted to candidates who had already earned a bachelor’s degree.⁴⁸

Around the turn of the century, some law faculties also started to seek greater recognition for their graduates by proposing a change to the name of the degree. In 1902, the Harvard Law Faculty asked the Harvard Corporation to award their graduates the J.D. (the request was rejected),⁴⁹ and a year later,

39. Julie M. Spanbauer, *Lost in Translation in the Law School Classroom: Assessing Required Coursework in LL.M. Programs for International Students*, 35 INT’L J. LEGAL INFO. 396, 403-04 (2007).

40. ROBERT BOCKING STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 22 (1983).

41. *Id.* at 24.

42. David Perry, *How Did Lawyers Become “Doctors”?: From the LL.B. to the J.D.*, IN PRACTICE 26, 27 (2013).

43. STEVENS, *supra* note 40, at 23.

44. *Id.* at 25.

45. *Id.* at 37.

46. *Id.* at 36-37.

47. *Id.* at 37.

48. Spanbauer, *supra* note 39, at 403-04.

49. David N. Hollander, *Law Faculty Approves Awarding J.D. Degree in Place of the LL.B.*, THE HARVARD CRIMSON (Mar. 12, 1969), <http://www.thecrimson.com/article/1969/3/12/>

in 1903, the University of Chicago Law School awarded the first J.D.⁵⁰ Yet for the next half-century, the predominant law degree awarded in the United States remained the LL.B.⁵¹ This delay can be largely attributed to Harvard's rejection of the J.D. and the rest of U.S. law schools' tendency to follow in Harvard's footsteps.⁵² In the 1960s, the debate over how to designate the U.S. law degree was revived, with proponents of change arguing that the issue was one of "truth in packaging," because the LL.B. did not adequately reflect the law student's years of preparation,⁵³ with the lesser designation impugning the dignity of the law graduate.⁵⁴ The Chairman of the Special Committee on Graduate Study of the Association of American Law Schools in 1962 noted "a rather widespread feeling that the LL.B. degree underrates the seriousness and difficulty of seven years [sic] undergraduate and law training."⁵⁵ The American Law Student Association argued that the J.D. would improve the legal profession's image, putting it on par with the status of medical doctors, dentists, and veterinarians.⁵⁶ In 1964, the Section of Legal Education and Admissions to the Bar of the American Bar Association adopted a resolution favoring the J.D. over the LL.B.⁵⁷ Some observed that U.S. law graduates were at a disadvantage when working with their South American counterparts in countries such as Argentina, Brazil, and Chile, where the degree of Doctor was conferred by law schools.⁵⁸ Other consequences of the designation were noted; for instance, federal employees would receive more compensation with this relabeling,⁵⁹ and arguably the designation of degrees could affect funding

law-faculty-approves-awarding-jd-degree/.

50. Spanbauer, *supra* note 39, at 405.
51. *Id.*; J. Gordon Hylton, *Why the Law Degree is Called a J.D. and not an LL.B.*, MARQUETTE UNIVERSITY LAW SCHOOL FACULTY BLOG (Jan. 11, 2012), <https://law.marquette.edu/facultyblog/2012/01/11/why-the-law-degree-is-called-a-j-d-and-not-an-ll-b/>.
52. Perry, *supra* note 42, at 27-28.
53. Frederick Hetter, *The Juris Doctor Movement: Why Fight It*, 12 STUDENT L. J. 9, 10 (1966); *see also The Juris Doctor: A Year in Review*, 11 STUDENT L. J. 14, 14 (1966); Editorial Board, *The Law School*, 18 HARV. L. REV. 51, 51 (1904).
54. S.C. Yuter, *Revisiting the Doctor Debate*, 57 A.B.A. J. 790, 790 (1971).
55. Jay W. Stein, *The Juris Doctor*, 15 J. LEGAL EDUC. 315, 320 (1962).
56. David Hittner, *The Juris "Doctor"—A Question of Ethics?*, 55 A.B.A. J. 663, 664 (1969); *see also* Hetter, *supra* note 53, at 10. One of the reasons against switching to a J.D., particularly for universities offering further law degrees such as the LL.M. and S.J.D., was that they would be offering a "doctor's degree" before a master's. *The Juris Doctor: A Year in Review*, *supra* note 53, at 14 (citing Cornell University, *The Cornell Law Forum* (Mar. 1965)).
57. ABA Section of Legal Education and Admissions to the Bar, *J.D. v. LL.B. as First Professional Degree*, REVIEW OF LEGAL EDUC. 21 (Fall 1964), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/1964_review.authcheckdam.pdf.
58. John G. Hervy, *The Juris Doctor Degree: An Inquiry into Some Reasons Advanced Against Adoption*, 11 STUDENT LAW. J. 11, 29 (1966).
59. Gregory C. Pyfrom, *The Limited Use Juris Doctorate in the Shadow of Goldfarb*, 1 GLENDALE L.

requests.⁶⁰ To end confusion and clarify that the law degree was a postgraduate degree, universities gradually began to rename their degree the juris doctor.⁶¹ Eventually, this feeling carried the day and today, all U.S. law schools now offer the J.D.⁶²

The LL.M., which is confusingly a master's degree that can be pursued only after a J.D., similarly evolved because of the educational needs of a growing nation. In 1874, Columbia University awarded an LL.M. to students completing an additional year of study after the LL.B., and in 1903, Harvard began offering LL.M.s as a way to train law professors.⁶³ By 1924, however, Harvard was offering both the LL.M. and the S.J.D., with the latter filling the role of training academics and the former primarily aimed at practitioners who wished to specialize.⁶⁴ After World War II, U.S. law schools experienced an increase in foreign law students wishing to obtain a U.S. degree, leading to the development of LL.M. programs tailored to that constituency.⁶⁵ Foreign students are attracted to American LL.M. programs for a number of reasons, including the desire to work in the United States, gain exposure to the U.S. legal system, and be able to claim that they are a product of a law school, sometimes an Ivy League school, after just nine months of study.⁶⁶ In contrast, in the United Kingdom and France, for example, the LL.M. and its French equivalent are intended for native students.⁶⁷ Understanding that the U.S. LL.M. was originally an additional year of study after a LL.B., then subsequently the LL.B. became a J.D., helps clarify why one can receive a master's degree after a doctorate.⁶⁸ Parallels exist in medicine, where, for instance, one obtains a Master of Science in Dentistry and Master of Dental Science only after having first earned the degree of Doctor of Medicine in Dentistry or Doctor of Dental Surgery.⁶⁹

REV. 371, 371 (1976); see also Perry, *supra* note 42, at 28; Hery, *supra* note 58, at 12 (lawyers in governmental service practicing abroad with LL.B.s faced discrimination).

60. Hery, *supra* note 58, at 13 (noting that legislators, governing trustees, and university administrators are cognizant of degrees when allocating funding).
61. Pyfrom, *supra* note 59, at 371.
62. Spanbauer, *supra* note 39, at 405.
63. *Id.* at 406.
64. *Id.*
65. *Id.* at 407; see also Kenneth K. Mwenda, *A New Paradigm for Commonwealth African Law Schools: The Decline of the LLB and PhD and the Ascent of the JD and SJD?*, 3 J. COMMONWEALTH L. & LEGAL EDUC. 17, 24 (2005) (noting that LL.M. programs are designed and reserved for, and attended almost exclusively by, foreign students) [hereinafter Mwenda, *A New Paradigm*].
66. Mwenda, *A New Paradigm*, *supra* note 65, at 24-26.
67. Helmut Kohl, *LL.M. Programs: The Frosting on the Cake of Legal Education*, 4 GERMAN L.J. 735, 740-41 (2003).
68. James R. Bell, *My Son the Lawyer Doctor*, 13 LAW F. 4, 5 (1983); Spanbauer, *supra* note 39, at 407-08.
69. See, e.g., *Dental Master's Programs*, RUTGERS SCHOOL OF DENTAL MEDICINE, <http://sdm.rutgers>.

The S.J.D. (sometimes called the J.S.D.) also originates from the late 1800s, when the study of law became more “scientific” and the need grew for full-time law professors.⁷⁰ By the 1920s, Harvard, Columbia, Yale, and the University of Michigan were offering research-based doctorates, used primarily for training law teachers, which could be completed in a year or slightly more.⁷¹ As a result of criticism over the quality of some of the programs’ graduates, universities became more selective and demanded a more rigorous thesis.⁷² Foreign students began entering the programs at that time, and although concern was initially expressed over their ability to succeed at the doctoral level, educational and geopolitical needs at the end of World War II persuaded universities to encourage their enrollment.⁷³ Yet for a number of reasons, the S.J.D. began to lose its luster: As the LL.B. became more robust, the curriculum at the undergraduate and doctoral levels began to overlap;⁷⁴ a nationwide expansion in legal education led universities to begin to promote their undergraduates for teaching positions;⁷⁵ LL.B. graduates began to turn to judicial clerkships and law practice for preparation before teaching;⁷⁶ other types of training options like workshops and fellowships were available;⁷⁷ and interdisciplinary studies (as opposed to purely legal studies) at law schools became more popular.⁷⁸

The number of S.J.D.s awarded to U.S. students fell from 155 in the 1950s to 110 in the 1960s, and sixty-five in the 1970s.⁷⁹ By the 1980s, American students made up only twenty-five percent of S.J.D. graduates.⁸⁰ With this drop, the number of foreign students increased, particularly from developing countries: Fifty-five percent of foreign students in the 1960s were from developing countries, and sixty-five percent in the 1970s.⁸¹ U.S. law schools saw a way to spread their ideas around the world, and by the 1980s, foreign students from developing countries comprised nearly half of *all* of the programs’ graduates.⁸² As a result of the targeting of foreign students, and because the LL.M. and S.J.D. are not accredited by the American Bar Association, they are arguably

edu/departments/oral-biology/masters/index.htm.

70. Hupper, *supra* note 35, at 323.

71. *Id.* at 324.

72. *Id.* at 324-25.

73. *Id.* at 326.

74. *Id.* at 368.

75. *Id.* at 371-72, 375.

76. *Id.* at 373.

77. *Id.* at 380.

78. *Id.* at 387.

79. *Id.* at 395.

80. *Id.*

81. *Id.* at 434.

82. *Id.* at 434, 436-37.

perceived by many as less prestigious than the J.D., even though they are higher on the degree ladder.⁸³

B. Is a J.D. the Equivalent of a Ph.D.?

The uneven development of the J.D., LL.M., and S.J.D. has led to great disagreement over their value, particularly of the J.D. Probably the most well-known and most controversial of positions is that of the American Bar Association, which declared:

WHEREAS, the acquisition of a Doctor of Jurisprudence degree requires from 84 to 90 semester hours of post baccalaureate study and the Doctor of Philosophy degree usually requires 60 semester hours of post baccalaureate study along with the writing of a dissertation, the two degrees shall be considered as equivalent degrees for educational employment purposes.⁸⁴

Outside of blog posts, perhaps the most vociferous critic of the ABA's statement is Kenneth Mwenda, a Professor at University of Pretoria (South Africa) and University of Lusaka (Zambia). He holds a number of degrees, including a Ph.D. in securities regulation from the University of Warwick (England), a Doctor of Science in Economics from University of Hull (England), a Doctor of Laws from Rhodes University (South Africa), a joint Bachelor of Civil Law and Master of Philosophy from University of Oxford, and a Bachelor of Laws from University of Zambia.⁸⁵ He argues: "[T]he American Bar Association (ABA), in a self-serving and egocentric statement to try and inflate the image of the JD degree, given that the JD is the main and principal qualification for an individual to practice or teach law in the US, argues that the JD is equivalent to a PhD degree."⁸⁶ Calling the statement "seemingly desperate" and "unfortunate," Mwenda contends that a J.D. is not equivalent to a Ph.D. because J.D. students are not involved in writing major publications or lengthy dissertations and that the ABA ignores the research and dissertation component of the Ph.D.⁸⁷ He also propounds that a "true doctorate" is one that is the highest degree in a field and that many other professional doctorates that he would apparently be more likely to consider to

83. Mwenda, *A New Paradigm*, *supra* note 65, at 24, 26.

84. ABA Council of the Section of Legal Education and Admissions to the Bar, Council Statements, 2. J. D. Degree–Ph.D. Degree Equivalency 147-148, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_council_statements.authcheckdam.pdf.

85. *About*, KENNETH K. MWENDA, <http://kennethmwenda.com/about.htm> (last visited Jan. 1, 2019).

86. KENNETH K. MWENDA, *COMPARING AMERICAN AND BRITISH LEGAL EDUCATION SYSTEMS: LESSONS FOR COMMONWEALTH AFRICAN LAW SCHOOLS* 21 (2007) [hereinafter MWENDA, *COMPARING AMERICAN AND BRITISH LEGAL EDUCATION SYSTEMS*].

87. *Id.* at 22.

be true doctorates—such as a Doctor of Business Administration or a Doctor of Engineering—are earned only after a master’s degree.⁸⁸ Mwenda further argues that because the undergraduate degree that U.S. law students must earn need not have any relation to law, the J.D.-holder’s knowledge of law is no greater than that of an undergraduate with an LL.B. Professor Craig Hemmens of Washington State University, who holds a J.D. and a Ph.D. in criminal justice, seems to agree, calling the ABA position “disingenuous” and arguing that J.D.-holders are not qualified to teach criminal justice because the J.D. is not (like a Ph.D.) a terminal degree, the ABA underestimates the credit hours necessary to complete Ph.D. studies, and law students are not taught to reflect, consider theory, understand human behavior, or analyze systems.⁸⁹

While Mwenda’s and Hemmens’ premises are generally correct—that the J.D. is not the highest law degree, that the J.D. does not include a research component like that of the Ph.D., that the J.D. curriculum is roughly equivalent to that of an undergraduate LL.B. in other countries—their characterization of the ABA statement is, I suggest, flawed. Seemingly overlooked by many of the statement’s critics is the statement’s ending phrase “for educational employment purposes.” The ABA does not appear to be suggesting that the J.D. is the equivalent of a Ph.D. for all purposes—merely that the two degrees are equivalent for educational employment purposes. Understood this way, the statement would mean, for instance, that a law professor holding a J.D. would have the same opportunity to obtain tenure (a permanent post) or be eligible for a promotion as, for instance, an anthropology professor holding a Ph.D. Or a candidate with a J.D. seeking employment at a law school would not be at a disadvantage to one with a Ph.D. in chemistry applying for a position at the chemistry department. The statement would not mean that the degrees are equivalent in thesis requirements, prerequisites, terminal status, etc. Considering this limitation in the language of the ABA statement, it does not appear so “egocentric” or “disingenuous.” Clearly, the J.D. is not the equivalent of the Ph.D. They are very different degrees. Their differences, nonetheless, do not preclude them from having similarities and overlap, nor do they preclude them from both being “doctorates.”

C. Can Lawyers Call Themselves “Doctors”?

Another matter that illustrates how difficult the J.D. is to characterize is whether J.D.-holders can call themselves “doctors.” In my own experience, I have never heard American lawyers refer to themselves as “doctors,” nor do I, so I was surprised to find that in some states this usage is protected. In 1969, as law schools were transitioning from the LL.B. to the J.D., the ABA’s Committee on Professional Ethics issued Opinion 321, which advised lawyers not to call themselves doctors based on ethical rules prohibiting “self-

88. *Id.* at 23-25.

89. Craig Hemmens, *Waist Deep in the Big Muddy: The JD/PhD Debate in Criminal Justice Education*, 19 J. CRIM. JUST. EDUC. 19, 21-28 (2008).

laudation.”⁹⁰ Less than a year later, though, the committee reversed itself in Informal Opinions 1151 and 1152 (1970).⁹¹ Over the ensuing years, states including Texas,⁹² New Jersey,⁹³ New York,⁹⁴ and South Carolina⁹⁵ have agreed with the ABA’s changed position (ABA opinions are not binding on states), while others, including Maine⁹⁶ and North Carolina,⁹⁷ have not, largely basing their position on whether the use of “doctor” is misleading.⁹⁸

Commentators have sometimes taken strong positions against this designation, with online articles titled “Any Lawyer Who Calls Himself ‘Doctor’ Like a Ph.D. Should Get Punched in the Mouth”⁹⁹ or “Michele Bachmann Is Not a Doctor” (about former Congresswoman Michele Bachmann, who holds a J.D.).¹⁰⁰ James Maule, a Professor of Law at Villanova University, calls his J.D. a “fake doctorate.”¹⁰¹ On the other hand, Milard Roper (a lawyer and former president of the Jamaica, Queens, Real Estate Board) wrote passionately in 1973 that a lawyer fits the definition of “doctor” when considering the word’s Latin roots derived from “teacher”; that law graduates wear doctoral cap and gown; that universities have the authority to confer the degree; and that holders of other doctoral degrees not requiring a

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90. Opinion 321, *Ethical Use of Degree Designation*, 55 ABA J. 451 (May 1969); see also Kathleen Maher, *Lawyers are Doctors, Too*, ABA J. (Nov. 2006), http://www.abajournal.com/magazine/article/lawyers_are_doctors_too/.
91. Maher, *supra* note 90.
92. *Opinion No. 550*, COMMITTEE ON PROFESSIONAL ETHICS (May 2004), <https://www.legalethicstexas.com/getattachment/75a98e5b-ec5-4f43-ardb-eodf4fo8ged6/Opinion-550>.
93. *Opinion 461 Designation of “J.D.” or “Doctor”; “Ph.D.”; Foreign Language Fluency Reversing Prior Opinions 321 and 159*, ADVISORY COMMITTEE ON PROFESSIONAL ETHICS (Sep. 4, 1980), <https://law.justia.com/cases/new-jersey/advisory-committee-on-professional-ethics/1980/acp461-1.html>.
94. *Professional Ethics Committee Opinion 105(a)*, NEW YORK STATE BAR ASSOCIATION (Oct. 30, 1969), <https://www.nysba.org/CustomTemplates/Content.aspx?id=8355>.
95. Peter H. Geraghty, *YourABA: Are There Any Doctors or Associates in the House?*, AMERICAN BAR ASSOCIATION (2007), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/your_aba_20072509_are_there_any_doctors.pdf (citing South Carolina Opinion 76-02 (1976)).
96. Professional Ethics Commission, *Opinion #5, Juropsychotherapist Opinion*, STATE OF MAINE: BOARD OF OVERSEERS OF THE BAR (Oct. 17, 1979) http://www.mebaroverseers.org/attorney_services/opinion.html?id=.
97. Maher, *supra* note 90.
98. *Id.*; see also S.A.P., *Trust Me, I’m a Doctor of Law*, THE ECONOMIST (Mar. 1, 2013), <https://www.economist.com/blogs/johnson/2013/03/professional-titles>.
99. Elie Mystal, *Any Lawyer Who Calls Himself “Doctor” Like a Ph.D. Should Get Punched in the Mouth*, ABOVE THE LAW (Nov. 11, 2011), <https://abovethelaw.com/2011/11/any-lawyer-who-calls-himself-doctor-like-a-ph-d-should-get-punched-in-the-mouth/?rf=1>.
100. Tim Murphy, *Michele Bachmann Is Not a Doctor*, MOTHER JONES (Aug. 18, 2011), <https://www.motherjones.com/politics/2011/08/michele-bachmann-not-doctor-phd/>.
101. James E. Maule, *Dr. Maule, I Presume?*, MAULEDAGAIN (Nov. 8, 2006), <http://mauledagain.blogspot.my/2006/11/>.

dissertation, like the Doctor of Medicine (M.D.), are referred to as “doctor.”¹⁰² Indeed, around the end of the fifteenth century, “doctor” was used for faculties of law, theology, and medicine.¹⁰³ The Merriam-Webster dictionary’s most relevant definition for “doctor” is “a person who has earned one of the highest academic degrees (such as a PhD) conferred by a university.”¹⁰⁴ This definition certainly does not preclude J.D.-holders from calling themselves “doctors.”

For most Americans today, however, “doctor” connotes a physician. In a 1987 survey, ninety-four percent of 921 respondents in Indianapolis shopping centers associated “doctor” with a physician, yet only twenty-three percent of doctoral degrees awarded (excluding law) were M.D.s.¹⁰⁵ This common understanding of the term is being tested as new doctoral degrees are issued—more nurses, for instance, are earning doctorates in nursing and insist on calling themselves “doctor” (causing physicians to worry about losing control of the term).¹⁰⁶ Until recently, pharmacists and physical therapists needed only a bachelor’s degree, but now a doctorate is required.¹⁰⁷ The J.D. is part of these developments that test our understanding of who is a “doctor.”

D. What Degrees Do American Law Professors Hold?

The types of degrees that American law professors hold reveal much about what the J.D. signifies in the world of higher education. The J.D.—perhaps surprisingly to those from other fields—remains a sufficient prerequisite to teach law at the university level in the United States. An LL.M., S.J.D. or Ph.D. in law is not required (and all remain fairly uncommon degrees for Americans), although Ph.D.s in cognate fields that complement law, such as economics, political science, philosophy, and history, are gaining ground.¹⁰⁸ Thirty years ago, in 1988-89, only five percent of tenure-track faculty at all U.S. law schools held Ph.D.s (these refer to nonlaw Ph.D.s; almost no U.S. programs offer a Ph.D. in law).¹⁰⁹ A 2012 study reported that twenty-seven percent of tenure-track faculty at the twenty-six top-ranked schools held Ph.D.s.¹¹⁰ A 2016 study

102. Milard King Roper, Jr., *Ethics: Informal Opinion 1151 - Lawyers and the Title “Doctor,”* 6 AKRON L. REV. 83, 87-88 (1973); see also Hittner, *supra* note 56, at 664.

103. Nicholas F. Hrisomalos, *Doctors—Who Are They?*, 79 J. NAT’L MED. ASS’N 1210, 1210 (1987).

104. “Doctor,” MERRIAM-WEBSTER ONLINE DICTIONARY (2018), <https://www.merriam-webster.com/dictionary/doctor>.

105. Hrisomalos, *supra* note 103, at 1211-12.

106. Gardiner Harris, *Calling More Nurses ‘Doctor,’ a Title Physicians Begrudge*, THE NEW YORK TIMES (Oct. 2, 2011), at A1.

107. *Id.*

108. Justin McCrary, Joy Milligan & James Phillips, *The Ph.D. Rises in American Law Schools, 1960-2011: What Does It Mean for Legal Education?*, 65 J. LEGAL EDUC. 543, 546 (2016) (Ph.D.s in law are largely awarded to non-Americans).

109. Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation’s Law Professors*, 25 U. MICH. J.L. REFORM 191, 213 (1991).

110. Joni Hersch & W. Kip Viscusi, *Law and Economics as a Pillar of Legal Education*, 8 REV. L. & ECON.

found that forty-eight percent of those hired at these schools from 2011 to 2015 had J.D.-Ph.D.s (none had a Ph.D. only).¹¹¹ Lynn LoPucki projects that if current trends continue, the proportion of J.D.-Ph.D.s at the top twenty-six law schools will exceed one-third in 2019 and one-half by 2028.¹¹² The number of Ph.D. holders at lower-ranked schools is almost certainly fewer. To illustrate how even the most accomplished law scholars stop at the J.D., the deans at both Harvard Law School and Stanford Law School, who are both professors, have the J.D. as their highest academic degree.¹¹³

To obtain a small sample of the current representation of Ph.D.s at top law schools, I collected data from Yale Law School's website.¹¹⁴ Because *U.S. News & World Report* ranks Yale as the top U.S. law school in 2018,¹¹⁵ presumably Yale should have more Ph.D.s than average.¹¹⁶ Of 123 faculty members,¹¹⁷ forty-three (thirty-five percent) hold (nonlaw) Ph.D.s;¹¹⁸ three hold foreign law doctorates; two hold M.D.s; and two hold J.S.D.s. Fifty-eight (forty-seven percent) hold the J.D. as their highest degree;¹¹⁹ six hold LL.M.s; eight hold LL.B.s (without a J.D.); and one holds an M.A. (without a J.D.). These data indicate that while Ph.D.s and other doctorates (other than the J.D.) make up a sizable portion of the faculty's highest degrees, the J.D. remains the most commonly held of their highest degrees and is clearly the most common law qualification.

Understanding the qualification necessary to supervise and teach at the highest law degree levels also helps illuminate the value of the J.D. Although I was unable to locate compiled data on the types of qualifications required to teach at the LL.M., S.J.D. or Ph.D. level, I looked to the website of highly regarded Harvard Law School (ranked third) for a clue (Yale does not provide

487, 489 (2012) (data are based on faculty appointments for the academic year 2010-2011).

111. LoPucki, *supra* note 7, at 520.

112. *Id.* at 540.

113. See *Faculty: John F. Manning*, HARVARD LAW SCHOOL, <https://hls.harvard.edu/faculty/directory/10552/Manning> (last visited April 22, 2018); *Directory: M. Elizabeth Magill*, STANFORD LAW SCHOOL, <https://law.stanford.edu/directory/m-elizabeth-magill/> (last visited April 22, 2018).

114. See *Our Faculty*, YALE LAW SCHOOL, https://lawyale.edu/faculty?combine=&field_type_value=Faculty (last visited May 24, 2018).

115. *Best Law Schools*, U.S. NEWS & WORLD REPORT, <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited May 24, 2018).

116. McCrary, Milligan & Phillips, *supra* note 108, at 546 (observing that the proportion of Ph.D.s generally rises with law school rank).

117. Yale divides its faculty into "Faculty" and "Lecturers & Affiliates." To focus on the school's most academically qualified, only the degrees of those categorized in "Faculty" were collected.

118. The Ph.D.s are in fields other than law. Some Ph.D.s were earned after a J.D., some before.

119. Of the fifty-eight, fifteen also have a master's degree outside of law (*e.g.*, M.A., M.Sc., M.Phil.). Sometimes the master's was earned before the J.D. and sometimes after.

information on its J.S.D. or Ph.D. candidates).¹²⁰ Of the sixty S.J.D. candidates, I assessed the first ten listed alphabetically. None appeared to be American.¹²¹ They each had three or four supervisors. From these, twenty-three unique supervisors were identified (some professors supervise multiple students), twelve for whom the J.D. is their highest degree; one has an LL.M.; two have S.J.D.s; and eight have Ph.D.s (one with an honorary Ph.D. after having earned an LL.B.). Although these data do not cover all of the S.J.D. candidates at Harvard, nor can they be generalized to the entire S.J.D. population, one point does become clear: The J.D.-holder is qualified at Harvard (and thus almost certainly across the rest of the United States) to supervise (and thus to teach) S.J.D. students.

E. How Is the J.D. Viewed by Other Countries?

My foreign colleagues are often intrigued and confused about the J.D. They ask me, “What is this juris doctor degree of yours? It has the word ‘doctor’ in it, but its curriculum is like our bachelor’s degree. Do you call yourself ‘doctor’? Did you wear a doctoral hood at graduation?” I usually smile, agree that it is confusing and mumble something about “different systems.” Australia and Canada are seeing a shift by leading law schools to offer a J.D. instead of the traditional LL.B. Since 2007, Melbourne Law School offers only the J.D., while Australia National University School of Law and the University of Sydney Law School now offer both.¹²² The University of Toronto Faculty of Law and the Peter A. Allard School of Law at the University of British Columbia transitioned from the LL.B. to J.D. in 2001 and 2008 respectively, while the Faculty of Law at McGill University continues to offer only the LL.B. as its first law degree.¹²³ One of the reasons for the change is that the LL.B. is viewed in some countries outside Canada and Australia (primarily the United States) with confusion and unfamiliarity.¹²⁴

Despite this shift, however, oddly the J.D. is valued differently in Australia and Canada than in the United States. In Australia, the J.D. is considered

120. See *Current S.J.D. Candidates*, HARVARD LAW SCHOOL, <https://hls.harvard.edu/dept/graduate-program/current-sjd-candidates/> (last visited April 22, 2018).

121. I determined their nationality by their undergraduate degree institutions. Students came from Iran, Israel (two), Ghana, Nigeria, Australia, England (two), Colombia, and Mexico.

122. See THE UNIVERSITY OF MELBOURNE LAW, <http://law.unimelb.edu.au/> (last visited April 22, 2018); AUSTRALIAN NATIONAL UNIVERSITY, <https://law.anu.edu.au/> (last visited April 22, 2018); THE UNIVERSITY OF SYDNEY LAW SCHOOL, <https://sydney.edu.au/law/study-law/our-law-degrees.html> (last visited April 22, 2018).

123. See *J.D. Designation*, UNIVERSITY OF TORONTO FACULTY OF LAW, <https://www.law.utoronto.ca/alumni/alumni-services/jd-designation> (last visited April 22, 2018); *Conversion of the LLB to J.D. - FAQs*, PETER A. ALLARD SCHOOL OF LAW, <http://www.allard.ubc.ca/conversion-llb-jd-faqs> (last visited April 22, 2018); *Law Admissions*, MCGILL, <http://www.mcgill.ca/law-admissions/> (last visited April 22, 2018).

124. Lisa Jemison & Rosel Kim, *A Law Degree by Another Name: Proposed Change from LL.B. to J.D. “consistent with international norms,” Dean Says*, THE QUEEN’S UNIVERSITY JOURNAL (Nov. 29, 2007), <http://www.queensjournal.ca/story/2007-11-29/news/law-degree-any-other-name/>.

an extended master's degree.¹²⁵ In Canada it is viewed as a second-entry baccalaureate.¹²⁶ Countries not offering the J.D. have also attempted to gauge its value. In Portugal, it is the equivalent of a master's.¹²⁷ Mwenda reports that in many Commonwealth countries "a JD is treated, for all intents and purposes, as the equivalent of an undergraduate LLB."¹²⁸ Other countries have taken a less conclusive position but have emphasized that the J.D. is not the equivalent of a Ph.D.: In the Netherlands, for professional degrees like the J.D. and M.D., "the term 'Doctor' refers to a professional title and is not a PhD";¹²⁹ the European Research Council has similarly stated that in Europe, first-professional degrees are neither research degrees nor equivalent to the Ph.D.¹³⁰ In sum, the adoption and evaluation of the J.D. outside the United States clarifies nothing and in fact adds greater confusion and uncertainty over how to determine the degree's value across borders.

F. Valuing the J.D. Is Inconsistent Even Among U.S. Authorities

While it is perhaps understandable that the J.D. is valued differently in different countries, more surprising is that it is also described differently even among U.S. authorities. Recall that the ABA opines that the J.D. is the equivalent of a Ph.D. for "educational employment purposes." The International Affairs Office of the U.S. Department of Education declines to go this far, instead taking a relatively neutral descriptive approach, providing that the J.D. is a graduate-level program because it follows prior undergraduate studies, but is in fact a first degree in law; J.D.-holders "are considered to have an entry-level

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125. *Australian Qualifications Framework*, at 72 (Jan. 2013), <https://www.aqf.edu.au/sites/aqf/files/aqf-2nd-edition-january-2013.pdf>; *The Melbourne JD: Teachers' Brief*, THE UNIVERSITY OF MELBOURNE LAW SCHOOL, at 10 (July 2015), http://melbourne-cshe.unimelb.edu.au/__data/assets/pdf_file/0007/1761370/Law-July-2015-JD-teachers-brief.pdf.
126. *Ministerial Statement on Quality Assurance of Degree Education in Canada*, COUNCIL OF MINISTERS OF EDUCATION, CANADA, at 3 (2007), <http://www.cmec.ca/Publications/Lists/Publications/Attachments/95/QA-Statement-2007.en.pdf>; see also *Conversion of the LLB to JD -FAQs*, THE UNIVERSITY OF BRITISH COLUMBIA PETER A. ALLARD SCHOOL OF LAW, <http://www.allard.ubc.ca/conversion-llb-jd-faqs> (last visited April 22, 2018); *JD Designation - Frequently Asked Questions*, UNIVERSITY OF TORONTO FACULTY OF LAW, <https://www.law.utoronto.ca/alumni/alumni-services/jd-designation-faq> (characterizing the change as a mere change of "designation") (last visited April 22, 2018).
127. *Recognition of Qualifications: Guide for Foreigners*, MINISTRY OF SCIENCE, TECHNOLOGY AND HIGHER EDUCATION at 49, http://internacional.ipvc.pt/sites/default/files/Reconhecimento%20de%20qualifica%C3%A7oes_EN.pdf.
128. MWENDA, COMPARING AMERICAN AND BRITISH LEGAL EDUCATION SYSTEMS, *supra* note 86, at 27.
129. Nuffic (the NARIC Centre (National Academic Recognition Information Centre) and the National ENIC Centre (European Network of Information Centres)), *The American Education System Described and Compared with the Dutch System*, at 12, <https://www.nuffic.nl/documents/485/education-system-united-states.pdf>.
130. *Annex 2 ERC Policy on PhD and Equivalent Doctoral Degrees*, EUROPEAN RESEARCH COUNCIL (2015), <https://erc.europa.eu/document-library/results?title=degrees>.

qualification and may undertake graduate study in these professional fields following the award of the first-professional degree”; and although the degree uses the term “doctor” in the title, the program of study does not “contain an independent research component or require a dissertation (thesis) and should not be confused with PhD degrees or other research doctorates.”¹³¹

In contrast, in 2006 the Acting Associate Director of Domestic Operations for the U.S. Citizenship and Immigration Services of the U.S. Department of Homeland Security wrote that the J.D. and M.D. are not “likely equivalent to a Ph.D.” but would be considered “equivalent to, if not higher than, a masters [sic] degree.”¹³² This use of ambiguous language like “equivalent to, if not higher than” adds to the confusion and reveals the associate director’s uncertainty. (Degrees were discussed in the context of using the Adjudicator’s Field Manual to administer applications and petitions for naturalization and citizenship.)

In essence, given the range of views and perspectives, if one were forced to identify an equivalent, the J.D. could arguably match a bachelor’s, a master’s, a Ph.D. (for educational employment purposes), or something in between those categories, which means it is really the equivalent of none.

IV. Application of the “Substantial Difference” Standard and a Proposal to Value the J.D.

A. Inadequacy of the Lisbon Convention and the Diploma Supplement

Uniform adoption and concerted implementation of the Lisbon Convention, the Asia-Pacific Regional Convention and others like it would go a long way to overcoming the obstacles associated with the global recognition of academic credentials. Even these standards, however, would not adequately address the difficulties of evaluating the J.D. To explain, using the standards of the Lisbon Convention and information available in a diploma supplement, most countries outside the United States that were to assess the J.D. would almost certainly determine that its holder would be qualified for admission to the same programs of study and the same employment opportunities as the holder of an LL.B. (excluding the practice of law, which would require additional professional requirements associated with licensing bodies). This conclusion would clearly be incorrect. While the J.D. and LL.B. arguably should provide access only to the same level of advanced study—namely, the LL.M.¹³³—it would

131. *Structure of the U.S. Education System: First-Professional Degrees*, INTERNATIONAL AFFAIRS OFFICE, U.S. DEPARTMENT OF EDUCATION, <https://www2.ed.gov/about/offices/list/ous/international/usnei/us/professional.doc> (last visited Jan. 2, 2019).

132. *Interoffice Memo re AFM Update: Chapter 31: H-1B Cap Exemption for Aliens Holding a Master’s or Higher Degree from a U.S. Institution. (AD06-24)*, U.S. DEPARTMENT OF HOMELAND SECURITY (2006), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2006/ac21_050206.pdf.

133. Access to programs of study to which LL.B. holders are not qualified, such as the Ph.D.,

not be accurate to say that educational employment opportunities should be equal: The holder of an LL.B., except in perhaps unusual circumstances (such as having undertaken to pursue a higher degree), is not qualified to teach law (at least in Malaysia) even at the first law degree stage; the holder of a J.D. (at least in the U.S.) undoubtedly is. Yet under the Lisbon Convention standards, higher education teaching opportunities for which an LL.B. holder would be denied would similarly be denied to a J.D. holder because the degrees that qualify one to teach LL.B. students full time in most countries outside the United States—the LL.M. or Ph.D.—are substantially different from the J.D. Indeed, in the university where I am currently teaching, even the LL.M. is insufficient without concurrently undertaking to register for Ph.D. studies. The similarities between the J.D. and LL.B. are just too obvious to ignore: in curriculum, in qualification to practice law, in their nonterminal degree nature, and in the type of the subsequent program of study which they qualify one to pursue.

The diploma supplement does not solve this problem, as no portion of it is specifically designated for educational employment. Although Section 6 of the diploma supplement broadly allows universities to insert any “Additional Information” that is not provided elsewhere, the accompanying instructions fail to mention educational employment. As a result, someone completing the form would have to think of it independently, which is rather unlikely.¹³⁴

B. A Proposal for U.S. Law Schools and Foreign Employers

Currently, foreign university hiring committees are forced to guess about the value of the J.D., do their own research, or rely on representations from the (self-interested) candidate. These are not optimal options. This article proposes two simple and straightforward measures that U.S. law schools and foreign employers can implement to assist in the transparent and fair valuation of the J.D.

First, a law school offering a J.D. (the “issuing school”) should, through the university registrar, include a brief annotation on academic transcripts that describes the educational employment and further study opportunities for which the J.D. qualifies its holder. This information could be presented simply as:

This juris doctor degree qualifies its holder to teach law at the following level(s) of [issuing school]: juris doctor (J.D.); master of laws (LL.M.); doctor of juridical science (S.J.D.). The degree also qualifies its holder to pursue

would likely be equally denied to the holder of a J.D. because of a “substantial difference” between the qualifications necessary to enter the Ph.D. program (namely, an LL.M.) and the J.D. (no LL.M.).

134. Section 5 of the diploma supplement asks the issuers of degrees to provide information on the function of the qualification, which includes a space for “access to further study” and “professional status (if applicable).” This section seems focused on regulated professions like law and medicine, but as regards practice rather than teaching.

further studies in law at the following level(s) of [issuing school]: master of laws (LL.M.).

The suggestion is to restrict the scope of the statement to educational employment and higher study *at the issuing school* to ensure the statement's accuracy. Requirements at other law schools, even within the same state, could differ. If the issuing school does not offer certain higher degrees in law for which the holder would qualify to teach or study, it could insert additional language explaining that, along with any appropriate qualifications or clarifications. The information box does not cover other tangential areas of study for which the holder may be qualified to pursue or teach; for instance, the teaching of Ph.D. students in criminal justice studies or the pursuit of a Ph.D. in a cognate field like economics or political science. Extending the information so would run the risk of not adequately accounting for different standards among different universities or among departments of the university.

The second part of the proposal, which works in tandem with the first part, is aimed at employers outside the United States. The natural reaction abroad to an unknown degree is to try to find an equivalent. Not only does the literature suggest that equivalency is how most countries have traditionally viewed cross-border degree evaluation; my own colleagues who learn of my degree, without exception, attempt to immediately identify an equivalent degree in their own system. This is a futile task. The Lisbon Convention in effect acknowledges that it is "an illusion to assume that there can be a true equivalence for programs, credits or qualifications achieved in different educational and cultural environments."¹³⁵ The key to valuing the J.D. properly, I submit, is to change the inquiry from trying to assess the J.D. to determining whether the purpose of the assessment and the value of the J.D. at the issuing school are compatible. The starting point (for foreign hiring committees) is to evaluate what the J.D.-holder would be hired to do; and (for admissions offices) to evaluate what the J.D.-holder is seeking to study. Hence the first question to be asked is:

1. For what teaching level and programs do we wish to hire the job candidate? OR, for what level or program of education is the candidate applying to study?

Once that has been determined, the second step is to look at the transcript statement (the information in the text box explained above) and ask a second question:

2. What level and/or program is the candidate qualified to teach/study at the issuing school?

The third step is simply to put the answers to the first two questions together.

135. Van Damme, *Quality Issues*, *supra* note 11, at 432.

3. Given the answers to the first two questions (and any applicable rules and regulations), is it appropriate to follow the issuing school's practice?

The foreign employer (or admissions office) need not follow the practices of the issuing school but those practices should, I propose, be followed unless a compelling reason not to presents itself. As in the Lisbon Convention, the burden should rest on the evaluating employer to provide this compelling reason.

The two parts of the proposal work together; without the first (the text box), answering the questions of the second would be difficult. At the least, law schools should provide a service to their graduates whereby such statements can be issued upon request. The crucial point here is that the focus of recognition for the J.D. should be on the domestic practice of the issuing school rather than equivalency between countries. Again, the foreign employer need not follow that practice, but the job candidate deserves to be evaluated by those standards and at the very least be assured that they were seriously taken into consideration.

V. Conclusion

Adoption of measures similar to those embodied in the Lisbon Convention, especially the use of diploma supplements, would go a long way to easing and improving the recognition process across international borders. Yet nearly twenty years after the convention became effective, credential recognition continues to suffer from a patchwork of inconsistent standards and a lack of international collaboration.¹³⁶ This article suggests that until concerted regional or international efforts are made to reform the recognition process, U.S. law schools and foreign employers can take some simple steps to ease this difficulty. The search for an equivalent of the J.D. is counterproductive and cannot but lead to inequity in valuation.

In Malaysia, I have been fortunate to have been hired to teach law to LL.B. students and to pursue a Ph.D. in law. Assessing the J.D. strictly by equivalency or even by the standards of the Lisbon Convention, I probably should have been denied both opportunities. If the two-part proposal made in this article is used to evaluate my degrees, I would most likely be qualified to teach LL.B. and arguably LL.M. students, as J.D.-holders in the United States can teach at both of these levels; but understandably this decision must ultimately be made by the hiring university with the guidance of any relevant government bodies.

Am I qualified to teach Ph.D. students? Ostensibly no, given that I do not have a research doctorate such as an S.J.D. or Ph.D. On the other hand, professors with the J.D. as their highest degree are qualified to teach and supervise S.J.D. students (an important difference may be that S.J.D. students are generally required to publish law review articles rather than the traditional

¹³⁶. Yung-Chi Hou et al., *supra* note 23, at 1223.

dissertation required of Ph.D. students). From my online research, only three accredited U.S. universities appear to offer a Ph.D. in Law: Yale University, University of Washington, and Indiana University Bloomington.¹³⁷ Although their websites are unclear on whether some of their courses are taught by professors whose highest degree is a J.D., I would be surprised if none was.

Am I qualified, as a student, to directly enter a Ph.D. program in law without having earned an LL.M.? At Yale, a J.D. (not an LL.M.) is the required minimum degree for admission to the Ph.D. in law program;¹³⁸ at the University of Washington, an LL.M. is required;¹³⁹ the Indiana University Bloomington program requires any undergraduate degree (although it prefers some graduate school or legal education).¹⁴⁰ This inconsistency perfectly illustrates the long history of irregular development of law degrees in the United States and thus embodies the ever-evolving difficulties of valuing higher degree credentials, leaving me grateful for the opportunities made available to me.

137. Vanderbilt University Law School offers a Ph.D. in law and economics, and the School of Law at the University of California, Berkeley, offers a Ph.D. in jurisprudence and social policy.

138. See *Ph.D. Common Questions*, YALE LAW SCHOOL, <https://lawyale.edu/studying-law-yale/degree-programs/graduate-programs/phd-program/phd-common-questions> (last visited April 22, 2018). The Ph.D. in law at Yale is aimed at U.S. students (unlike the concurrently offered S.J.D.) and is “formally awarded” by the Graduate School of Arts and Sciences.

139. See *Ph.D. Admissions*, UNIVERSITY OF WASHINGTON SCHOOL OF LAW, <https://www.law.uw.edu/admissions/phd-admissions/> (last visited April 22, 2018).

140. E-mail from Elizabeth Adams, Assistant Director, Center for Constitutional Democracy, Indiana University Maurer School of Law (May 15, 2018) (on file with author).