



HOW DID LAWYERS BECOME "DOCTORS"?

FROM THE LL.B. TO THE J.D.

By David Perry

American law schools award a basic degree called the J.D. or juris doctor, giving each graduate the Latin title of "doctor of law," although, occasionally, "J.D." is thought to stand for "doctor of jurisprudence." As "doctors," attorneys are in prestigious company – along with many medical practitioners and those academics who have been through around five years of graduate school and have written a doctoral dissertation. An attorney's work is not medical, and it is rarely academic; but each of this year's 44,000 grads is a doctor – and after attending just three years of law school and writing a law review "note"-style paper.

LEGUM BACCALAUREUS

Lawyers weren't always "doctors," and skeptical law school faculties and administrations took 70 years to adopt the J.D. as the first degree in law. It is only since 1971 (since 1969 in New York) that every ABA-accredited American law school has awarded all its graduates the J.D. Until then, most law graduates received a degree called the LL.B. This *legum baccalaureus* or "bachelor of laws" was originally an undergraduate degree – appropriate because an aspirant did not need to have a college degree to matriculate in law school.

The LL.B., first awarded in 1840 at the University of Virginia,¹ had two predecessors: The first law degree in the United States had been instituted in 1792 at the College of William and Mary and had been called the "Batchelor [sic]

of Law”; Virginia had, since 1829, been awarding each new lawyer a “Graduate of Law” degree.² Virginia’s switch to the LL.B. was inspired by the undergraduate LL.B. offered at the University of Cambridge in England. By 1849 the LL.B. was adopted by Harvard’s law school.³ Its adoption soon spread to other law schools in the northeast and then to the rest of the country.

The LL.B. was intended as a bachelor’s and not a graduate degree, as the law degree is today. Law schools did not require college degrees because they had to compete with much cheaper law office study. In fact, almost no jurisdictions required a college degree (or in the 19th century, a law degree either) for bar admission.⁴ It was not until the 1930s that many law schools required two or three years of college and even then took in high school graduates. Despite the lax requirements, though, after 1900 the more prestigious law schools admitted mostly college graduates.⁵ Students at these law schools were accumulating bachelor’s degrees – the B.A. or B.S. – and the LL.B. At the same time, their peers in the arts and sciences and in medicine received *graduate* degrees (the Ph.D. and M.D.) instead of a second bachelor’s. To erase this inequity, in 1900 Harvard students suggested that their school award the J.D. and in 1902 petitioned their faculty to do so.⁶ The Harvard students based the term J.D. on “J.U.D.” or *juris utriusque doctor*, granted by universities in the German-speaking countries,⁷ meaning the recipient was “doctor of both of the laws” – that is, canon and civil.

JURIS UTRISQUE DOCTOR?

The Harvard Law School faculty requested that the Harvard Corporation, the governing body of the university, make the change to awarding the J.D.⁸ The Corporation never did, but the idea was picked up by the new law school established in 1902 at the University of Chicago. For University of Chicago president William Rainey Harper, the J.D. was part of “establish[ing] its law school upon the foundation of academic work.”⁹ The J.D. had to be a graduate degree, too, because only college graduates were to be admitted to the Chicago law school.¹⁰

However, the curriculum itself, which yielded but an LL.B. back at Harvard, did not change to reflect this new graduate degree status.¹¹ (The Harvard Corporation might have been troubled by this failure to change the requirements when it turned down the J.D.-seekers.) Because the curriculum stayed the same, when Chicago eventually agreed to admit law students who had not graduated college, the law school had to retain the LL.B. Thus, students

with no B.A. or B.S. would get an LL.B. for the same course of study as J.D. recipients pursued.

After Chicago’s adoption of the J.D., other prominent law schools followed. New York University offered the J.D. in 1903; Berkeley and Stanford did so in 1905; and Michigan in 1909.¹² As at Chicago, all these schools offered both the J.D. and the LL.B., and J.D. recipients were distinguished from LL.B. recipients by having college degrees. Newer and less prominent law schools joined in: by the 1925-1926 academic year, 80% of law schools were using the same two-degree structure.¹³ Faculties and administrations, and sometimes state governmental bodies, were in control of adopting the J.D. The ABA Committee on Legal Education, an early supporter of the J.D., had no authority to dictate the degrees (or the curriculum) schools gave their students.¹⁴

Despite these moves, the three most elite eastern schools – Harvard, Columbia, and Yale – never offered the *juris doctor* as a first law degree.¹⁵ While many schools began calling their three-year law degree the J.D., these eastern leaders focused on expanding programs for a fourth year of law school¹⁶ – typically intended for law teachers. Today, similar courses of study lead to the LL.M., but Harvard and Yale underscored their rejection of the LL.B.-to-J.D. switch by naming this fourth-year degree the J.D. (*not* the LL.M.) and keeping the LL.B. as the first law degree.¹⁷ At the same time, many other J.D.-granting schools adopted the LL.M. for fourth-year programs, or kept it, as they had offered LL.M.s in the 19th century. This is the root of the unusual bachelor’s-to-doctorate-to-master’s program available at law schools. Yet here, the trend of awarding J.D. degrees comes to a halt.

JURIS DOCTOR – MORTIS?

Harvard’s refusal to adopt the J.D. spelled the end of the first era of the J.D. Why?

Robert Stevens, in *Law School: Legal Education in America from the 1850s to the 1980s*, shows that Harvard was the trendsetter for American law schools. When Harvard began to require a three-year course of law study at the end of the 19th century, three years became standard in law schools. When Harvard restricted admission to students with college degrees in 1909, many accredited law schools did the same, and by the early 1970s, all accredited law schools had implemented this standard. When Harvard’s dean, Christopher Columbus Langdell (serving 1870-1895), famously instituted the case method – training students to deduce legal rules from cases in casebooks – to replace the

old method of simply lecturing on black-letter law, the case method rapidly overtook the lecture method and, by the 1920s, became the *only* way to teach law. So when Harvard stayed silent on the matter of adopting the J.D. as a first law degree, Harvard was heard and followed.

The rejection of the J.D. at Harvard (and Yale and Columbia, too) stemmed and then reversed the tide of the J.D. degree. Stanford eliminated the J.D. for those admitted after 1927; Boalt Hall at Berkeley did so in 1930; NYU in 1934. By the late 1930s, the New York State Board of Regents found the J.D. to be inappropriate as a first graduate degree in New York law schools.¹⁸ From the 1920s through the 1950s, many Midwestern and western schools, Michigan and Ohio State among them,¹⁹ made the J.D. an honors degree, given to LL.B. candidates for good grades or superior writing ability. This led to an anomaly: a few schools in the Midwest occasionally gave the honors J.D. to students who had not graduated college, contrary to the usual, post-graduate significance of the J.D.²⁰ The state of Illinois was an exception. Most Illinois law schools awarded the J.D. to all college-graduate students. The University of Chicago had never abandoned the standard, three-year J.D., and Chicago's neighbors accepted its influence.²¹ Elsewhere, however, by 1962, the J.D. was moribund.

JURIS DOCTOR – VIVO

Yet today, the J.D. degree is the universal first law degree. When the J.D. was reintroduced in 1962, there was not decades-long equivocation: universal acceptance of the J.D. and elimination of the LL.B. came in less than 10 years. Why?

In 1963 and 1964, committees of the Association of American Law Schools (AALS) and the ABA's Section of Legal Education recommended its use²² – apparently at the suggestion of John G. Hervey, dean of the Oklahoma City University School of Law.²³ The trend started among the smaller schools, mostly midwestern and western schools that were not nationally prominent. This time the more conservative faculties of Harvard, Yale and Columbia could not buck the resolve of the smaller schools. Note that, again, while the ABA and the AALS backed the change, neither issued a directive requiring it, and in any event schools did not need their permission to do so. By 1968, the clamor of students and alumni even at prestigious LL.B. holdouts became too great for faculties and administrations to ignore.

The administrations of the smaller or less-prestigious schools brought up arguments put forth in 1902 by Harvard's and Chicago's J.D.-proponents that the LL.B., as a bachelor's degree, did not recognize the post-graduate

nature of legal study. By the 1960s, most law students were college graduates, and by the end of that decade, almost all were required to be.²⁴ Dean Hervey and other law teachers called the *juris doctor* a “professional doctorate,” but (as in 1902) they planned no actual change in the basic legal curriculum to match the new degree.

JURIS DOCTOR

Proponents of the J.D. were far more focused on the professional advantages a professional doctorate could confer. At the first schools reintroducing the J.D., faculty and some students expressed concern about preferential hiring of J.D.s over LL.B.s. Evidence was adduced that, when some government agencies determined an employee's pay grade, the employee received more credit for a “doctorate” J.D. than a “bachelor's” LL.B. Many alumni reported problems, too, in their hiring or promotion at universities: LL.B.-holders were not considered to have the doctoral degree that universities prized in their instructors.²⁵ Aspirants' concern was increased by how *unaccredited* law schools, still common in California and a few other states, tended to admit students without college degrees and to give only LL.B.s.²⁶

The *image* of lawyers was a less commonly stated reason, but just as strong. Being a “doctor” looks better than being a college graduate to clients and the public. The enthusiasm of alumni for making the change spotlights this. At the same time that law schools began awarding their current students the J.D., they gave their alumni the opportunity to exchange their LL.B. degrees for J.D. degrees.²⁷ A small fee was usually required; many schools treated it as a way to stay in touch with and gratify their alumni. And what an alumni-relations opportunity it was! Valparaiso University awarded 400 J.D.s to its LL.B. alumni in a Law Day ceremony in May 1970, a few years after current students began receiving them.²⁸ “Almost half” of the living alumni of the Vanderbilt Law School (including some who had graduated in 1912) came back to campus for the 1969 “J.D. Investiture” ceremony.²⁹ One-third of living Columbia alumni took part in a poll on whether this *nunc pro tunc* award of the J.D. to LL.B. holders would be acceptable to them; 80% said yes.³⁰

Alumni embraced their new image enhancer. State bar ethics opinions, in New York and elsewhere, from the 1960s and 1970s, refused lawyers the right to say that they hold an LL.B. *and* a J.D. when they had earned only *one* of them.³¹ A score of opinions were issued on the right of lawyers to announce themselves as “Doctor” so-and-so.³² American lawyers may call themselves “doctor” in a university setting or overseas, wherever native lawyers use

the title. A few states, like New York and, recently, Texas, have allowed a practicing attorney to call himself or herself “doctor.”³³

SCEPTICI

Despite the enthusiasm, “reactionary” faculty members insisted that the traditional LL.B. was sufficient. The faculties of prominent eastern schools – Harvard, Yale, and Columbia – as well as Texas and Georgia denied the existence of prejudice in government or academic hiring. While Oklahoma City’s Dean Hervey may have thought that “receipt of a second bachelor’s degree by law school graduates tends to impair the image of the legal profession,”³⁴ those from prestigious or established schools faced fewer image problems, and the reactionaries attacked the innovation as a mere grab for credentials. The dean of the Buffalo Law School in New York (which has its roots in the 19th century) accused Dean Hervey of hunting only for prestige: “[C]ertain small law schools, with a wide proliferation of evening schools heading the group, have decided to by-pass [sic] a period of normal school development and attempt to attain for themselves and their graduates a form of professional recognition which could not properly be theirs for many years.”³⁵ Columbia faculty insisted any given degree was prestigious because of the *awarding institution*, not because of the name of the degree itself.³⁶ And Columbia’s dean suggested that if Harvard, Yale and Columbia awarded only the LL.B., the LL.B. would be the degree regarded as prestigious.³⁷

RESISTANCE IS FUTILIS

Conservatives resisted until student pressure became too insistent.³⁸ Student newspapers and spokesmen from one school would monitor each new adoption of the J.D. by another school and use it to pressure unwilling faculty and administrators. Columbia Law School is a powerful example: At Columbia, student demands for the J.D. began in earnest in 1966³⁹ and became more insistent leading up to Columbia’s student protests of 1968.⁴⁰ Both faculty and students explicitly associated the faculty’s refusal to adopt the J.D. as yet another instance of the faculty’s refusal to adapt the curriculum, class schedules and attitudes to students’ desires.⁴¹ The dean’s stuffy refusal to progress to the J.D. seemed similar to the dean’s insensitivity to student resistance to the Vietnam War.⁴² Some students were even concerned (although the rules were changed as early as 1962) that LL.B. candidates, as bachelor’s students, were more liable to be drafted into the military than if they were termed graduate students.⁴³ After 1968, faculties and ad-

ministrations relented.

With the last few holdouts, including Yale, moving to the J.D. in 1971, every law student in America would leave school as a “doctor of law.” The curriculum and the level of deliverable work required had not changed appreciably since 1900, but the profession now had the trappings of a “professional doctorate” instead of the naïf’s bachelor’s. Even now, law degrees are continuing to develop. In the past decade, most Canadian law schools have switched from the LL.B. to the J.D. (again, without any concomitant change in requirements). The Canadians seem to be seeking prestige and to be keeping up with their neighbor lawyers in the United States. And then, there’s the rush among law schools to offer LL.M.s and similar fourth-year degrees – maybe being even a “doctor” is not enough. Resumes require yet another degree, and more tuition and other costs to students, to look as “professional” and employable as possible.

ENDNOTES

1 See Alfred Zantzing Reed, *Training for the Public Profession of the Law* 166 n.2 (1921); John Ritchie, *The First Hundred Years: A Short History of the School of Law of the University of Virginia for the Period 1826-1926* 21-22 (1978).

2 Ritchie, *supra* note 1 at 15.

3 Twenty-Fourth Annual Report of the President of Harvard College to the Overseers, Exhibiting the State of the Institution for the Academical Year 1848-49 13 (1850).

4 Robert Stevens, *Law School: Legal Education in America From the 1850s to the 1980s* 99 (1983).

5 *Id.* at 37 nn.22,23.

6 *The Law School Degree*, Harvard Crimson (Apr. 26, 1902), available at <http://www.thecrimson.com>.

7 James Parker Hall, *American Law School Degrees*, 6 Mich. L. Rev. 112, 113 (1907).

8 *Id.* at 114.

9 Frank L. Ellsworth, *Law on the Midway: The Founding of the University of Chicago Law School* 120 (1997) (citing William Rainey Harper, 7 *The University Record* 199 (1902-03)).

10 *Id.*, p. 120.

11 See, e.g., Ernst Freund, *The Correlation of Work for Higher Degrees in Graduate Schools and Law Schools*, 11 Ill. L. Rev. 301, 301-02 (1916).

12 New York University, “Special Announcement for 1903” 3 (appended to New York University Law School Announcements for 1903-1904); Sandra P. Epstein, *Law at Berkeley: The History of Boalt Hall* 38 (1997); Marion Kirkwood & William B. Owens, *A Brief History of the Stanford Law School, 1893-1946* 18 (1961), available at <http://www.law.stanford.edu/school/history/historysls.pdf>; *Notes and Personal*, 2 Am. L. Sch. Rev. 291, 300-301 (1909).

13 Alfred Zantzing Reed, *Present Day Law Schools in the United States and Canada* 78 (1928).

14 *See Report of the Committee on Legal Education and Admissions to the Bar*, 29 Ann. Rep. Am. Bar Ass’n 487, 496 (1906).

15 *Special Committee on Advanced Academic and Professional Degrees*, 1937 Proceedings of the American Association of Law Schools 292, 298.

- 16 Reed, *supra* note 13, at 80 n.1.
- 17 See Harvard Crimson, Apr. 14, 1910; W. Lee Hargrave, LSU Law: The Louisiana Law School from 1906 to 1977 47 (2004) (citing many professors who took the fourth-year J.D. program). Boalt Hall at Berkeley did the same in the late 1920s, making the LL.B. a three-year degree and awarding the J.D. for a fourth year. Epstein, *supra* note 12, at 125.
- 18 Kirkwood, History of the Stanford Law School at 43; Epstein, *supra* note 12, at 125; New York University, New York University Bulletin, School of Law Announcements for the Session 1934-35 17 (1934); Miguel de Capriles, *The Escalating Battle of the Degrees*, Trial, June/July 1967 at 54.
- 19 E.g. Jay W. Stein, *The Juris Doctor*, 15 J. Legal Educ. 315, 318 (1963) (the law schools of the Ohio State University, the University of Oregon, the University of North Dakota, and Wayne State University); William Wleklinski, A Centennial History of the John Marshall Law School (1998) at 27; Reed, *supra* note 13, at 80 n.10.
- 20 See *1936 Report (With Corrections) of the Committee on Advanced Academic and Professional Degrees*, 1937 Proceedings of the American Association of Law Schools 306, 307; Reed, *supra* note 13, at 80 n.1.
- 21 See the report Section of Legal Education of the American Bar Association, Law Schools and Bar Admission Requirements in the United States: 1959 Review of Legal Education, and the reports for subsequent years for adoptions of the J.D. by all American law schools.
- 22 *Report of the Special Committee on Graduate Instruction*, 1963 Proceedings of the American Association of Law Schools 154, 171; John G. Hervey, *Law School Graduates Should Receive Professional Doctorates: Time for a Change from LL.B. to J.D. Degree*, Student Law (June 1965) at 6; Stevens, *supra* note 4, at 247 n.6.
- 23 See *Report of the Special Committee on Graduate Instruction*, *supra* note 22, 154, 168-69.
- 24 Section of Legal Education of the American Bar Association, Law Schools and Bar Admission Requirements in the United States: 1959 Review of Legal Education and succeeding annual editions; Stevens, *supra* note 4, at 46 n.22, 193.
- 25 E.g., Daniel Gutman, *The Escalating Battle of the Degrees*, Trial June/June 1967 at 55; *A Matter of Degree*, Time, Dec. 30, 1966 at 42; Hervey, *supra* note 22, at 5.
- 26 Section of Legal Education of the American Bar Association, Law Schools and Bar Admission Requirements in the United States: 1959 Review of Legal Education and succeeding annual editions.
- 27 For a summary of 10 years of this enthusiasm, see Tamar Lewin, *The Great Degree Sale*, Nat'l L.J., May 5, 1980 at 14 ("No one has exact figures, but registrars at law schools estimate that perhaps 100,000 LL.B. holders have taken up the offer" for the change to the J.D.).
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- 29 Don Welch, *The Vanderbilt Law School: Aspirations and Realities* 14 (2008).
- 30 *The J.D. Degree at Columbia*, Law Alumni Bulletin [Columbia], Winter 1969, at 6-8.
- 31 NYSBA Committee on Professional Ethics, Op. 488 (July 17, 1978); Olavi Maru, Digest of Bar Association Ethics Opinions (1970 & Supps. 1970, 1975 and 1980) §§ 6548 (Fla. 1968), 7279 (Tex. 1970).
- 32 E.g., Maru, Ethics Opinions, §§ 8503 (Kentucky, 1971); 10787 (Fla. 1974); 12256 (Ore. 1975) (all yes); 7169 (Ohio, 1967); 7962 Col. 1974); 8366 (Ill. 1975) (all no).
- 33 NYSBA Committee on Professional Ethics, Op. 105(a) (1969); New York City Bar Op. 876 (1971); Kathleen Maher, *Lawyers Are Doctors, Too*, ABA Journal.com, Nov. 24, 2006, available at http://www.abajournal.com/magazine/article/lawyers_are_doctors_too/; *contra* A.B.A. Formal Op. 321 (1969) (refusing a lawyer the right to use the title "doctor").
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- 35 George P. Smith, *J.D. Only Instant Status Symbol*, Trial, Aug./Sept. 1967 at 18.
- 36 *Faculty Split Over Student Degree Vote*, Colum. L. Sch. News, Nov. 20, 1967 at 1.
- 37 *Profs. Lusk, Farer Disagree on JD-LL.B. [sic] Controversy*, Colum. L. Sch. News, Nov. 20, 1967 at 5.
- 38 David N. Hollander, *Law Faculty Approves Awarding J.D. Degree in Place of the LL.B.*, Harvard Crimson, Mar. 12, 1969.
- 39 E.g., *Around the Circuits*, Colum. L. Sch. News, Oct. 18, 1965 at 5; *Around the Circuits*, Colum. L. Sch. News, Oct. 18, 1965, at 5; Columbia University Faculty of Law Meeting Minutes, Dec. 15, 1967 at 3,423.
- 40 See Steve Schwarz, *Students to Vote Thursday on J.D.-LL.B. Controversy*, Colum. L. Sch. News Oct. 30, 1967 at 1; *Overwhelming Student Vote Supports Change From LL.B.*, Colum. L. Sch. News Nov. 20, 1967 at 1; *Profs. Lucky-Farer Disagree on JD-LL.B. [sic] Controversy*, *supra* note 37, at 5; *Faculty Rejects J.D. Degree[,] Remains Indifferent to Issue*, Colum. L. Sch. News Mar. 27, 1968 at 1; *Student Council Unanimous[:] Pursue J.D. Degree Again*, Colum. L. Sch. News Oct. 28, 1968 at 4; and various letters to the editor in Columbia Law School News; Columbia University Faculty Meeting Minutes, Jan. 17, 1969 at 3526-27.
- 41 Columbia University Faculty of Law Meeting Minutes, Feb. 14, 1969, at 3537-38.
- 42 See *Students Meet Opposition From Dean on JD [sic] Issue*, Colum. L. Sch. News, Feb. 19, 1968 at 1.
- 43 *Draft Board Surprise for LL.B. Seekers*, Colum. L. Sch. News, Mar. 23, 1966 at 6.

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