FOR THE “TRUE LOVER OF THE LAW” – THE ORIGIN OF LL.M. PROGRAMS
A CASE STUDY OF THE UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

Matthew S. Parker
A DISSERTATION
in
Higher Education Management

Presented to the Faculties of the University of Pennsylvania
in
Partial Fulfillment of the Requirements for the
Degree of Doctor of Education
2015

Supervisor of Dissertation:
Marybeth Gasman, Professor of Education

Dean, Graduate School of Education:
Pamela L. Grossman, Dean and Professor

Dissertation Committee:
Marybeth Gasman, Professor of Education
J. Matthew Hartley, Professor of Education
Helen Albertson, Associate Dean, Loyola Law School
DEDICATION

TO:

My wife Michelle. Unquestionably the greatest thing that has ever happened to me.
ACKNOWLEDGMENTS

Thanks to my wonderful dissertation Committee of Matt Hartley, Helen Albertson and Marybeth Gasman. Special thanks to Matt for his early guidance on this project and for encouraging me to keep testing different theories and ideas when I thought the project would never get off the ground. Once it did start to take flight, I can't thank Matt enough for steering me to Marybeth as an advisor. I have no doubt that the project would never have come close to completion without Marybeth’s encouragement, patience and great advice. She is a fantastic teacher and dissertation advisor, and while I shudder at the thought at this moment, if I ever had to undertake a project like this again there is no one I would rather have in my corner than Marybeth.

I would also like to thank several of my colleagues at Penn Law who were very helpful is helping me along the way. Gabriella Femenia was so generous with her time over a number of years as I pestered her with questions on research materials and Ed Greenlee was a great help in reviewing the final draft and helping me make it as perfect as possible. Lastly, I would like to offer a special thanks to Jo-Ann Verrier, who has supported my efforts in obtaining this degree from day one and who has done so much to create a supportive, energetic and interesting work environment for me over the last ten years.

Lastly I want to thank my amazing family who have been with me from the start (actually my daughter Gwen came into existence after I started this project and has never known anything other than a father writing a dissertation!). No one could ask for a better, more supporting, or more loving children and spouse. To my parents I owe everything. I can never thank them enough for the love, support and sacrifices they have made, and continue to make for me. Words are not enough, but again I say “Thank You” to all of you.
ABSTRACT

FOR THE “TRUE LOVER OF THE LAW” – THE ORIGIN OF LL.M. PROGRAMS
A CASE STUDY OF THE UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

Matthew S. Parker

Legum Magister, or LL.M., degrees have come under increasing criticism in recent years in the United States. Observers have accused law schools of offering these and other graduate law degrees simply to increase revenue, and argue that they provide no value to graduates as they are not respected in the traditional legal services market. Despite these negative appraisals, the number, size, and types of these programs have continued to grow rapidly. While much has been written criticizing this growth, almost nothing has been written on how and why these programs came into existence, even though a number of law schools claim that their programs were founded over a century ago. As graduate law programs continue to blossom and law schools attempt to address the rising tide of criticism aimed at them, law school leaders would be well advised to examine the origin and history of these degrees. Is it possible that law schools have been hoodwinking innocent lawyers into getting a useless degree for decades? Who were these degrees originally intended for and who ultimately chose to matriculate into these programs? What were the curricula for these programs like?

Through historical analysis and archival research, this case study of the development of graduate law programs at the University of Pennsylvania reveals that they were founded in response to a perceived need to make the study of law
more scholarly, and to ensure that law school training was not wholly confined to
the necessities of legal practice. These programs arose amidst a drive toward
professionalization and standardization at the turn of the twentieth century that
was visible across a wide sector of American society, and reflected one aspect of the
long simmering tension between those who viewed law as a scholarly enterprise
much like philosophy or political science, and those who viewed it as a trade, to be
mastered like medicine or engineering. This disagreement persists to the present
day and an examination of the origins of graduate programs vividly illustrates that
the study of law has meant different things to different people from the earliest days
of legal education.
# TABLE OF CONTENTS

Introduction .............................................................................................................................................. 1

History of Legal Education in the United States.................................................................................. 8

The Appearance of Graduate Law Programs ....................................................................................... 36

Graduate Programs in Law at the University of Pennsylvania............................................................. 53

Conclusion............................................................................................................................................... 75

Limitations .................................................................................................................................................. 86

Endnotes ................................................................................................................................................ 88

Bibliography ............................................................................................................................................. 111
INTRODUCTION

The current standard educational path for lawyers in the United States is a three-year graduate program culminating in the award of a Juris Doctorate (J.D.) degree. Upon completion of an accredited program law students receive the J.D. which generally enables them to sit for a comprehensive “bar” examination in any state in the country.\(^1\) In the past two decades however, there has been an explosion in the number and size of Master of Laws (Legum Magister, or LL.M.) programs offered by U.S. law schools.\(^1\) In the past fifteen years alone the number of these programs has more than doubled, rising to more than three hundred in 2013 compared to just one hundred and ten in 2000, with more than 10,000 students in the United States seeking the degree in 2013.\(^2\) This growth has been driven by a number of factors but most agree that, at least in part, this increase is due to the downturn in the number of applicants to J.D. programs in recent years across law schools, and the corresponding need it has created to meet revenue shortfalls created by the loss of J.D. tuition dollars.\(^3\)

LL.M. programs are generally two-semesters in duration, equivalent in cost to one year in the J.D. program,\(^ii\) and are designed for attorneys already holding a

\(^{i}\) Alabama, California, Connecticut, Georgia, Massachusetts, West Virginia and Tennessee allow qualification for its bar exam to individuals who have not graduated from an ABA accredited school with a J.D. degree.

foundational law degree, either from the U.S. or elsewhere. Since they are generally open to those already holding a law degree, they are often referred to as “graduate” law programs. While many schools offer a general LL.M. degree designed for international attorneys, many other LL.M. degrees involve some sort of specialization (e.g. LL.M. in Intellectual Property Law or LL.M. in Tax Law) and are aimed at a domestic audience. Unlike the J.D. degree, these graduate degrees are regulated very loosely by the profession's governing body, the American Bar Association (“ABA”). Standard 308 of the ABA’s rules for accrediting law programs states in relevant part:

A law school may not establish a degree program in addition to its J.D. degree program unless it will not detract from a law school’s ability to maintain a sound J.D. degree program. The school must obtain the Council’s acquiescence prior to commencing such a program. The ABA does not formally approve any program other than the first degree in law (J.D.).

Setting aside the ponderous sentence structure, glaring double negative, and what might possibly constitute a “detraction” of sufficient magnitude for the ABA to withhold its “acquiescence,” it seems clear that the organization is not terribly concerned with the structure and content of these programs. Indeed, one writer refers to this area of legal education as “the unregulated wasteland of the LL.M.,” while another notes, “there is no consensus among law schools, accrediting agencies or legal educators as to [the] purposes, goals or standards of graduate legal education.”


iii The current program at the University of Pennsylvania Law School is an example of this type of LL.M. degree.
In recent years American law schools have come under criticism with respect to the J.D. degree, with a number of observers arguing that it is a poor investment for students. Specifically, they contend that too many students are taking on debt that they will not be able to repay through jobs in the traditional legal marketplace following graduation.\(^7\) Especially harsh assessments have been reserved for LL.M. programs, with a number of observers casting doubt on the utility of these programs for graduates, and accusing law schools that offer them of seeking to enrich themselves at the expense of unwary students. A post from recent years on an online legal tabloid captures this sentiment:

> From time to time, we have an opportunity to opine on LL.M. programs. I think they’re pretty much all worthless . . . but law schools make a lot of money from offering the programs. There’s a whole industry involved in making you think that just about any LL.M. degree can help you in your career . . . . In the battle between common sense and greedy law schools, desperate job seekers are the losers.\(^8\)

In simple terms, many feel that obtaining an LL.M. will not enable degree holders to get better jobs or generally enhance their career prospects, and that they are therefore useless and should not be offered by law schools. Of course, for many not in the legal profession the current sentiment is perhaps better represented by the joke: “Question: What do you have when a lawyer is buried up to his neck in sand? Answer: Not enough sand.”

In other words, outside of strategies for curbing their numbers, why should anyone be concerned about how lawyers are educated? If the students matriculating into these programs, who by definition are adults already in possession of a law degree, are unable to make use of them, why is this the fault of the institutions that offer the degree? The answer lies in, in part, in the fact that
arguably more than any other profession, lawyers perform critical functions across the American political system and social landscape and occupy a unique position of trust and responsibility in our society.

In this country lawyers have been, and continue to be, what one author described as “uniquely important and influential throughout its history.” Legislators, politicians and their staff are disproportionately lawyers as are, of course, nearly all federal, state and local judges. Private attorneys, corporate counsel, public defenders, prosecutors, civil rights attorneys, mediators, and community legal services lawyers provide crucial assistance for large portions of the U.S. population. The history of legal education is, as one author put it, “effectively the history of lawyers and, often, of the law. To attempt to fully understand the law, one must understand who creates, maintains, and changes it, and these people have only one common feature among them: a legal education.”

Stated another way, while those trained in the law may go on to do many things that bear little resemblance to one another, a great number of them start out in the same place: the halls of American law schools. If these institutions are somehow failing in their mission to educate students, the results could have a significant impact on American society. Moreover, the considerable expense of these programs would render any active deception on the part of law schools in taking in students reprehensible, and seem to make any effort to understand their purpose advisable.

As law schools attempt to address the rising tide of criticism aimed at LL.M. programs, law faculty and administrators would be well advised to examine the
origin and history of these degrees. This is particularly true in the current
environment in which the legal job market is contracting, law school applications
continue to drop and law schools scramble to come up with alternative revenue
streams.\textsuperscript{11} As another online author speculated:

Firing faculty and downsizing staff – perhaps even closing whole law schools
– will soon be common; so will the appearance of the LL.M., a degree whose
strange history may be emblematic of the most serious problems in legal
education. The LL.M., awarded after the first degree in law, was once almost
exclusively pursued by foreign students and lawyers seeking expertise in
technical fields like tax law . . . . Now . . . the degree is being awarded to more
and more Americans, often by schools with low employment rates . . . and
there may soon be a dramatic expansion of LL.M.’s offered online.\textsuperscript{12}

This author’s apocalyptic vision is certainly alarming, but is it accurate? Does it
make sense to lump the presence of LL.M. programs in with the firing of faculty and
the closing of law schools? What is this “strange history” that he eludes to? Some
LL.M. programs purport to date back over one hundred years. Is it possible that law
schools have been bamboozling innocent lawyers into getting a useless degree for
over a century? Who were these degrees originally intended for? What were the
curricula for these programs like?

Using historical methods, the aim of this research is to cast some light on
these issues using the University of Pennsylvania Law School (“Penn Law”), an
institute that claims to have offered its first LL.M. degree in 1898,\textsuperscript{13} as a case study.

Specifically, the research questions investigated by this project is:

1. What is the origin/purpose of graduate law degrees in the United States?

2. How did the LL.M. Program come into being at Penn Law?
To date, there have been a number of works looking at some aspect of the history of Penn Law. In fact, a brief history of Penn Law written by Professor Sarah Gordon can be found on its website, entitled: “Chiseling Legal Tradition.” This synopsis, while informative, is written from the perspective of the faculty and concentrates primarily on the history of legal scholarship at Penn Law and its relationship to the physical space in which the school has resided. It makes no mention of Penn Law’s graduate programs. Similarly, while there have been other works focusing either in whole or in part on the history of Penn Law School (e.g. Carson, 1882; Patterson, 1889; Cheyney, 1940; Pepper, 1952; Heft, 1993; Davis, 2000; Crawford, 2002) at most they make only passing note of the law school’s graduate programs. This project explores the origins of graduate legal education through the analysis of archival data and secondary source material.

When first introduced, graduate law programs were designed to provide a more academic inquiry into the law than that being offered at proprietary law schools, institutions of higher learning, or through the traditional apprenticeship model of legal education that existed at the time. They were brought about in an attempt to create a space for those who wished to use their legal training to help shape the current state of the law as legal academics, judges, or political leaders. In other words, they were not designed to make graduates better attorneys or otherwise enhance their prospects to secure jobs as “lawyers” in the traditional sense. As law schools continue to evolve and attempt to respond to the current criticism lodged at law schools in general and LL.M. programs in particular, leaders at these institutions would be well advised to examine how these programs arose.
To place the inquiry in its proper context, this analysis begins with a brief review of the history of United States legal education from its inception to the first decades of the twentieth century, by which time graduate law programs were offered by many of the most prominent American law schools. Thereafter, an examination of the appearance of graduate law programs in the U.S. in undertaken, followed by an exploration of their appearance at one particular school: the University of Pennsylvania. What is revealed through this study is that the current debate surrounding the utility of graduate law programs is in many ways simply a recent manifestation of a debate that has existed since formal legal education was first introduced in the United States over the methods of instruction and purpose of law schools in general. This debate has never completely subsided and remains very much alive today.
THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES

The very term “graduate law programs” refers to studies undertaken after some foundational degree in law and therefore any inquiry into their origins must begin with an examination of the history of legal education in the U.S. Arguably the history of American legal education extends back to ancient times and the establishment of the first rules and regulations along with the corresponding need for individuals to study and interpret these early laws.¹⁶

However, a more reasonable date might be 1756 with the establishment of the first chair of law at Oxford University. The first holder of this professorship was William Blackstone. Some historians point to this date as the genesis of American legal education because it was the writings of Blackstone that were used by those in colonial America interested in studying the law.¹⁸ To be clear, these were scholars...
interested in the law as a focus of academic scholarship, as opposed to students training to practice as attorneys. Even those attending Professor Blackstone’s lectures at Oxford were not preparing for a career in law, but rather for life as learned gentleman, which might involve some civic engagement but did not generally involve the actual practice of law as we think of it today. This distinction between the study of law and its practice is important to understanding the history of American legal education, and can be traced all the way back to its origins, with Blackstone opining in an era of legal training dominated by legal apprenticeships that a lawyer . . .

. . . educated to the bar, in subservience to attorneys and solicitors, will find that he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know. [A well-educated attorney must be interested] in the elements and first principles upon which the rule of practice is founded [or otherwise he could] seldom expect to comprehend, any arguments drawn a priori, from the spirit of the laws and the natural foundations of justice.

During much of the colonial period in the United States, admission to the practice of law was largely unregulated with nearly any white male able to solicit clients for legal services. In early Colonial America there was nothing resembling a unified legal system even within individual colonies and lawyers were often viewed by the colonists with distrust. This attitude arose from a combination of factors, including a pioneering spirit that disdained formalized rules and regulations; less than fond memories of lawyers in Europe, who for some represented an establishment the colonists were seeking to escape; and the often unprofessional and corrupt practices of those claiming to be attorneys in the
colonies, many of whom would stir up litigation simply for the sake of collecting court fees.  

Until the middle of the eighteenth century, members of the legal profession were almost universally held in low esteem in North America and in many colonies people purporting to be lawyers were forbidden from receiving any fee for their services.  

This sentiment is captured to some degree by John Milton writing in the seventeenth century who stated: “Most men are allured to the trade of law, grounding their purposes not on the prudent and heavenly contemplation of justice and equity which was never taught them, but on the promising and pleasing thoughts of litigious terms, fat contentions and flowing fees.”  

This animosity also stemmed in part from the strength of religious communities, as many colonial Americans looked to their clergymen to guide their new governments and resolve disputes rather than those trained in secular law.  

None of the colleges established during the colonial period offered courses in law, although in well settled areas it was common for attorneys to have spent some period of time at a college studying some sort of academic discipline (philosophy, literature, etc.) followed by a period of law-office apprenticeship.  

By the time of the Declaration of Independence, most jurisdictions had established a system of some mandatory period of apprenticeship followed by a formal examination of some type. For example, when John Jay, the first Chief Justice of the United States Supreme Court became a lawyer in 1768 the process for admission to the bar was virtually identical to that found in England for centuries prior.  

After receiving a classical education at Kings College in 1764, he became an apprentice for
five years in the offices of a local attorney, to whom he paid two hundred pounds.\textsuperscript{30} Bar examinations varied in rigor and format but were usually administrated by local courts or members of the bar.\textsuperscript{31}

Legal apprentices, known as clerks or pupils, did any number of menial tasks for their masters \textsuperscript{iv} a large part of which involved the copying of legal forms. Through this process and by observing each stage of a legal case at close range, in theory at least, law clerks gained an intimate knowledge of the various writs and pleadings that lay at the core of daily practice for attorneys of the period.\textsuperscript{32} The problem with this system however, was that a particular preceptor might be too busy, a poor teacher, have a meager or narrow practice area or simply be unconcerned with teaching his law clerks.

This naturally led to wide disparities in the educational experiences of attorneys of the day, a variation that survived the Declaration of Independence as the newly autonomous former colonies did not undertake to write an entirely new system of laws but instead reaffirmed that the Common Law of England remained in force and the apprenticeship system continued.\textsuperscript{33} Law clerks came away from this educational experience with a robust knowledge of the technical and practical aspects of legal practice, but often had no familiarity with legal theory or the philosophy underlying the system of rules they had become intimately familiar with.\textsuperscript{34}

Legal education within institutions in the United States had its roots, as in so many things, back in England. Prior to the American Revolution, more than two

\textsuperscript{iv} These instructor/attorneys were known as “preceptors.”
hundred colonial Americans had studied at the Inns of Court in London, returning with both a refined sense of legal history and philosophy as well as, perhaps more importantly, professional ties to various London law offices.\textsuperscript{35} The Inns of Court, four of which remain in existence to this day, are able to trace their history as far back as the fourteenth century and are professional associations for barristers in England and Wales that supervise and discipline members as well as provide libraries and other professional facilities.\textsuperscript{36} For much of their existence they also served an important training function where lectures were read and law degrees conferred with the primary form of legal education being the argument of moot cases, which when done by the student members of the Inns served as oral examinations.\textsuperscript{37}

However, if one defines a “law school” as an institution organized to prepare students to be lawyers, among the first in the United States was the Litchfield Law School.\textsuperscript{38} Like similar schools that would follow, this law school was not attached to any institution of higher learning but began as an outgrowth of the office of a practitioner responsible for some number of law clerks who had proven popular enough that he had opened a formalized training program.\textsuperscript{39}
The school housed what was initially an overflow of students in Judge Tapping Reeve’s law office in the small village of Litchfield Connecticut. The brother-in-law of Aaron Burr, who became Litchfield’s first student in 1774, Judge Reeve lectured on the application of the common law to conventional disputes. Rather than cover public law topics like constitutional government or politics it included lectures on things like master and servant relations, actions for debt, evidence, trials, insurance and partnership; and the program of study was taken in conjunction with, or in addition to, a traditional law clerkship.

\[\text{A casual glance at this unimpressive, drafty looking structure is perhaps another indication of the esteem in which lawyers and their clerks were held at this time.}\]
The Litchfield School, and similar institutions, attracted students for a number of reasons. First, once hostilities commenced with the British, it was no longer possible to travel to England for formal instruction, thereby increasing the popularity of these schools for those who wished to receive some sort of academic training in the law.\(^43\) Further, the onset of the Revolutionary War and its aftermath naturally caused people to have a greater need to make use of the legal system to resolve disputes and settle issues of property and commerce.\(^44\) For example, the Revolution led to an increase in trade with other nations to fill the gap in both imports and exports that, at least temporarily, could no longer be fulfilled by the former colonies' connections to England.\(^45\) This led to an increase in demand for legal services in general and schools like the Litchfield School in conjunction with a shortened period of apprenticeship helped meet this demand.

By accommodating students in active law clerkships, students at Litchfield were able to progress rapidly into the profession. Formal admission to practice in each jurisdiction (usually state or county-wide) was in the hands of local courts which usually required would-be lawyers to pass an oral examination administered by judges or a committee appointed by the court made up of prominent local practitioners.\(^46\) If the examiners determined an applicant’s answers were adequate, they were admitted to practice law within that jurisdiction. Often family influences and other connections were equally or more important than a mastery of the subjects tested, and there was obviously therefore value in studying under the tutelage of a local judge or prominent attorney.\(^47\) By 1782, Judge Reeve had a more
or less standardized set of lectures and by 1813 he was training fifty-five students \textsuperscript{vi} at a time.\textsuperscript{48} Among its alumni were sixteen United States Senators, fifty members of Congress, forty judges of higher state courts, eight chief justices of state courts, two justices of the United States Supreme Court, ten state governors and five Cabinet members.\textsuperscript{49}

The Litchfield School’s success spawned imitators and by 1835 there were, or had been, eighteen other law schools independent of a university, each offering programs similar to Litchfield’s.\textsuperscript{50} Many of the instructors in these proprietary law schools were judges due to the fact that judges of the period were notoriously poorly paid and teaching law was a method of generating additional income without risking potential conflicts of interest.\textsuperscript{51} Ultimately the Litchfield School closed in 1833, ten years after the death of its founder, in part the victim of the frontier disdain for scholarship embedded within the new Jacksonian democracy.\textsuperscript{52}

Running concurrently with Litchfield and its imitators at the turn of the nineteenth century, and sharing their fate to some degree, were the first programs run out of, or attached to, established American colleges. While these institutions offered instruction in the law, they were largely scholarly inquiries and played no role in conferring the right to practice law, a power restricted entirely to local courts, which almost always required some period of law clerkship.\textsuperscript{53}

Further muddying the waters, some institutions established professorships in fields such as “police” or “jurisprudence” which one author speculates probably involved the study of some aspects of law combined with what we would call today

\textsuperscript{vi} In a presumably larger, more attractive building.
political science. The first move in the direction of a “law faculty” in the United States appears to have been made by Yale and its President Ezra Stiles. At the time of his election in 1777, the Connecticut Assembly proposed to endow three professorships for the College – law, medicine, and oratory – provided the Assembly might have some voice in the governance of the college. However, while Stiles was accepted as president of the college, Yale’s faculty refused to yield any of its powers and the plan was never implemented, although Stiles himself taught several lectures for students in the basic undergraduate course on topics such as “Law and Jurisprudence,” “Law of Nature and Nations,” and “Law of England.”

In any event, it seems clear that most attempts at legal instruction within institutions of higher learning in the eighteenth century were failures. The only two success stories were in the South at the College of William and Mary, which appointed the first member of its law faculty in 1779 and Transylvania University, which followed in 1799. The program at William and Mary was established by Thomas Jefferson, the Governor of Virginia at the time, and was not intended to train students in the practice of law but rather was designed for elite young gentlemen responsible for political leadership in a fledgling republic.

Elsewhere, as one author noted, little more than “false starts occurred at Columbia, Philadelphia, Harvard and Maryland” during this period. These early efforts at legal education tied to institutions of higher learning were integrated into the classical college curriculum, reflecting the commonly held view at the time that the study of law at a college was a branch of moral philosophy, and not in any way a replacement for apprentice training in a law office. These programs were viewed
as a means to cultivate future leadership for the new republic and to encourage students to lead lives of public virtue, not as a method for the training of practicing attorneys.\textsuperscript{63}

It should also be noted that while early university law programs were not popular, many lawyers of the day particularly those that achieved prominence did have a college education, it was just not in law. In fact, some pre-Revolutionary bar organizations looked at requiring some type of formal education as a means to both ensuring a higher level of competence among practitioners and as a method to help increase the profession’s exclusivity.\textsuperscript{64} For example, in New York in 1756 admission to the bar required a seven-year apprenticeship, but those holding a college degree were only required to apprentice for three years. By 1771 Massachusetts had gone a step further when it declared: “consent of the bar . . . shall not be given to any young gentleman who has not had an education at college or a liberal education equivalent in the judgment of the bar.”\textsuperscript{65}

Following the War of 1812 a number of forces emerged that injected new life into moribund or abandoned university law programs. Among them were a significant growth in industry, population and geographic expansion, creating a surge in the national economy and a renewed need both for more lawyers and a more unified and codified means for settling disputes.\textsuperscript{66} A newly assertive Supreme Court also began to insert itself into national affairs, thereby raising societal awareness of lawyers as important figures.\textsuperscript{67} In this atmosphere the earlier programs at Columbia and Penn were revived, Yale acquired a nearby independent
school, Harvard expanded its faculty and a significant number of new university law programs emerged.\textsuperscript{68}

Still, it was a far from a robust period in legal education at universities. At Harvard, for example, which opened the doors of its law school in 1817, the curriculum included a mixture of student recitations from Blackstone and other law books, as well as faculty recitation of written lectures with students also participating in moot courts and debating clubs. It was not an academically rigorous program, as students were not required to read prior to lectures, or even attend them regularly.\textsuperscript{69} Nor was it a popular program, averaging only nine students per year through the 1820s.\textsuperscript{70}

One author characterized the first twelve years after Harvard Law School’s founding as a “complete failure,” reaching an early low point in 1829 when it had only one student.\textsuperscript{71} Perhaps in response to this underwhelming turnout,\textsuperscript{vii} newly appointed Harvard Law professor and Supreme Court Justice Joseph Story undertook a systematic restructuring of the study of law at Harvard in that year that was decidedly more rigorous as well as more geared to the profession and represents to some scholars the true birth of what would become the modern American law school.\textsuperscript{72}

In the years prior to 1850 there was nothing on the American education landscape resembling “law schools” as we know them today. If a man wanted to

\textsuperscript{vii} Irrespective of its shaky beginnings, Harvard has the distinction of operating the oldest law school affiliated with a university in the United States that has remained continuously in existence since its founding. See, Warren, \textit{A History of the American Bar}, 361.
become a lawyer,\textsuperscript{viii} he entered a law clerkship similar in concept to that followed by prospective blacksmiths or carpenters, in rare instances supplemented by instruction at a university or independent law program like those noted above.\textsuperscript{73} In many instances, far less preparation than that was required, particularly on the frontier. In his work recommending a complete overhaul to the American legal education system, John Sonsteng, cites a fictional account of a frontier lawyer prior to the Civil War as providing an accurate picture of the state of legal education at the time:

\begin{quote}
About all it took to be a lawyer back then was to have read the books and understood a little bit of them. And also to own a black suit of clothes and a white shirt of moderate cleanliness. For anyone even remotely sharp-witted, frontier lawyer was said to be a fine profession.\textsuperscript{74}
\end{quote}

As the middle of the nineteenth century approached however, legal education in the United States began to undergo a transformation. Robert Stevens’ \textit{Law School: Legal Education in America from the 1850s to the 1980s} attempts to explain how entry into the legal profession went from one accessible by moderately clean, remotely sharp-witted frontiersman, to one thoroughly dominated by higher education institutions. While he notes that socio-economic context and a small number of influential actors played major roles in this evolution, his narrative is consumed by a central divide that he asserts is crucial to understanding the story of American law schools: the often profound tension between a vocal segment of practicing attorneys and many legal academics with respect to the form and substance of legal education.\textsuperscript{75}

\textsuperscript{viii} The first female lawyer in the United States was Arabella Mansfield who was admitted to the bar in Iowa in 1869. See, Stevens, \textit{Law School}, 3, 25.
One method used by law schools of the period to increase enrollment, and one particularly antagonistic to local practitioners, were attempts such as those noted previously to get local courts to count time spent in university law programs as equivalent to time spent as a clerk in an attorney’s office. For example, Theodore William Dwight, a professor of law at Hamilton College in Clinton, New York, persuaded the New York state legislature to pass an act in 1855 that allowed graduates of the law department at Hamilton to be admitted to the bar upon examination by lawyers who were members of the faculty at that institution. This practice was known as the “diploma privilege” and was of great concern to practitioners who correctly surmised that if the practice spread it would remove control over entry into the profession, and the attendant flow of income and cheap labor from apprentices, from themselves and place it into the hands of the academic community.

The phenomenon did indeed spread, and four years later the University of Albany secured the right for the graduates of its law school to be admitted to practice simply upon the presentation of a diploma in law from that institution, and a year later in 1860, the right was granted to the graduates of Columbia law school as well. Still, by the mid-nineteenth century legal education in the United States seemed well on its way to the model currently found in many other countries. As noted above, law clerkships remained the common method of acquiring the legal skills and professional connections necessary for entrance to the bar, and university study, while undertaken by some, was perceived as a supplement to such practical experience. It is generally recognized that this path was to a large degree single-
handedly derailed by the efforts of Christopher Columbus Langdell, the first Dean of Harvard Law School, and his President at the time, Charles Eliot. As Stevens states: “In the fifty years from 1870 to 1920, [Harvard] was intellectually, structurally, professionally, financially, socially, and numerically to overwhelm all the other [law schools].”

Among the influences motivating legal educators in general, and Eliot in particular, was the continental model of higher education. By the latter half of the nineteenth century the typical European university was made up of four “faculties”: theology, medicine, law, and philosophy. The law faculty was considered along with the other three subjects to be a location of scholarship and academic pursuit, rather than a place to learn how to be a lawyer in a practical sense. In contrast to the United States, in countries like Germany and Austria entry to the profession of law required multiple years of study at the university level, and could not be accessed by law clerkship alone. Eliot, who had spent time in Germany specifically to study the modes of education found there, passed on this sense of the study of law as a “science” rather than a profession to Langdell who incorporated the idea into a radically new curriculum for the teaching of law at Harvard.

This perceived Germanic ideal of “pure” learning, indifferent to practical applications, was not just restricted to law but was the inspiration for American educators across a wide array of disciplines during this period as they reorganized departments and established new colleges and universities. For many scholars, the rigor and gravity given to advanced scholarship at German institutions of higher education was seen to be vital for American development and needed to be
imported into its own colleges and universities. This sentiment is reflected to some degree in the seminal piece of education legislation of the era: the Morrill Land Grant Act of 1862. This federal statute provided incentives to states to dedicate land sale proceeds to the establishment of college programs in various “useful” disciplines such as agriculture, mechanics, mining and military instruction. In other words, this piece of legislation reflected an understanding that advancement and training in these areas could not be left to experience alone, but rather must also be rigorously studied in an academic setting as well.

When Langdell was appointed Dean of Harvard’s law school, the duration of the law program was eighteen months (sometimes less) and the course of study consisted of ungraded courses on basic law subjects. Students did not take exams and the faculty was comprised of part-time instructors who maintained full-time jobs as lawyers or judges. There were two principle concepts introduced by Langdell to Harvard’s law curriculum beginning in the early 1870s: (1) the use of the “case method” to teach law, and (2) the idea that law should be taught as a graduate program requiring multiple years of study following an undergraduate degree. One of the primary motivations for instituting these changes was a desire to make the study of law more of a scholarly enterprise.

As part of the need to bolster the perceived academic rigor of these programs, experiential training was replaced by Langdell’s “case-method” which was to be administered through Socratic dialogue. This is a largely theoretical exercise wherein students are expected to learn the basic principles of law by orally debating the merits of key judicial opinions. In practice, this meant that instead of
learning what lawyers do on a day-to-day basis through apprenticeship, law students studied judicial opinions through which they were expected to glean the “black-letter-law” of a particular subject area through vigorous argument between and among students and faculty.\textsuperscript{93}

Christopher Columbus Langdell. \textsuperscript{94}

This environment was intended to stimulate critical thinking by pitting opposing views of judicial opinions against one another, rather than absorbing lectures based on the commentaries of historical luminaries.\textsuperscript{95} In the oft-repeated words of many American legal educators today: “law school taught you to think like a lawyer.” \textsuperscript{96} Practical experience was unimportant under this method. As stated by
Langdell himself: “What qualifies a person to teach law is not experience in the work of a lawyer’s office, not experience in dealing with men, not experience, not experience in the trial or argument of causes – not experience, in short in using law, but experience in learning law.”  

By the late nineteenth century this notion had already gained a firm foothold with a prominent lawyer of the day opining: “Schools cannot make a lawyer. They can only help him to make himself a lawyer.” Asking students questions was by no means an innovation. The difference lay in the portion of time in class spent in Socratic dialogue and the preparation required by students to effectively participate in the system. These changes and the general concept that some amount of higher education should be necessary to practice law grew out of a sense by many observers that entry to the legal profession was too easy and instruction in the law too unsystematic. As a result, Harvard’s Law School became synonymous with serious legal education.  

These developments did not go unnoticed by other law schools, and by 1916, the University of Pennsylvania and five years later the law schools of Stanford, Columbia, and Yale added the undergraduate college degree prerequisite as well as the case method, at least in part, in order to not be perceived as inferior to Harvard’s program. These innovations reflected one aspect of a long simmering controversy over standards in the legal profession. On one side were those who subscribed to the view that the privilege of practicing law was a matter of high public concern as lawyers were spokesmen for others; representing individuals,
their property, and their liberty. As such, they felt that the practice of law should be allowed only to those of proved learning and established fitness and competence.¹⁰²

For example, the Virginia State Bar Association was formed in 1888 with the stated goal of raising standards in the legal profession, subtly noting that the current “tests prescribed for determining fitness for administration to the bar in Virginia are a mocking farce.”¹⁰³ Those seeking to place legal education firmly within institutions of higher education were aided by a reversal of the Jacksonian era disdain for scholars and formal education that emerged in the post-Civil war years.¹⁰⁴

On the other side were those who felt that all men had the inherent right to practice law. This conviction had existed for a number of decades perhaps reaching its apex in 1851 with a provision in the constitution of the state of Indiana guaranteeing every male citizen of the state the right to practice law, providing he was of good moral character and at least twenty-one years of age.¹⁰⁵ This democratic concept held that admittance to the profession must not be denied to members of the lowest economic stratum, with the obvious corollary that the practice of law must not become the privilege of the well-to-do.

Proponents of this view perceived university prerequisites and the increased scholarly character of law school education as creating economic barriers to the profession for worthy but indigent prospective lawyers, and that the imposition of these barriers made access to it possible only for those of the most privileged class.¹⁰⁶ Even among those who felt that the American legal profession was in need
of an increase in professional standards however, not all agreed that a move toward a more scholarly mode of instruction was the best way to achieve this goal.

By 1891, the American Bar Association (“ABA”) which had been formed in 1878 to “raise the standards of the profession,” opposed the concept of making law a graduate course of study and attacked the case method as in their eyes it did nothing to serve “the ideal work of lawyers” which was “knowing the rules and keeping their clients out of court.” 107 Initially this group had little impact on legal education. By 1899, however, the ABA had called for the formation of an organization of faculty from top law schools, and in 1900 the Association of American Law Schools (“AALS”) was formed with twenty-five charter members.108

In the first decade of the twentieth century, the ABA, run by elite-educated lawyers, and the AALS, run by elite-educated scholars, had the same motivation: cleanse the legal profession of “unqualified” practitioners, many of whom came from among the country’s minority and immigrant populations.109

While law schools at the turn of the twentieth century were becoming more standardized, there still existed a great degree of variation between programs with one author writing at the time noting that the methods pursued and requirements [at university law schools] differ both in kind and degree so widely that classification is a matter of difficulty, while some even depart so far from well-recognized standards that they warrant serious speculation as to any practical utility. Deficient, both as to quality and quantity, in instructive force; established without proper equipment in libraries or buildings; having a patronage too small to warrant any number of electives or a protracted course, and requiring nothing in the way of preliminary education, they lack even the merit of meeting a want.110

In order to clean up these perceived deficiencies they looked to the American Medical Association (“AMA”), which in 1910 issued the Flexner Report, effectively
closing down dozens of medical colleges in the United States by condemning non-
scientific teaching methods in medicine.

The ABA and the AALS saw law, like medicine, as a "public profession" and a vital part of the governing mechanism of the state. As such, while as recently as 1891 the ABA had opposed Langdell’s innovations, by the First World War, both the ABA and their academic counterparts in the AALS were actively looking to drive out law schools perceived as insufficiently “scholarly.” In the wake of the Flexner Report, the AMA had cleansed itself of night, part-time, and numerous programs it deemed to have inadequate facilities, thereby significantly decreasing the number of medical students and ultimately doctors. The ABA thought that it had found a similar solution in the Carnegie Foundation, which published the first major report on American legal education in 1914.

This report was authored by an Austrian professor, Josef Redlich, who noted that even at the most elite law schools in the United States, the “democratic idea, which pervades everything in America” existed and students of many different types of backgrounds could be found there. He also noted however, the existence of “proprietary schools” designed to provide the quickest and cheapest possible training for the bar examination and which satisfied the needs of “those social strata whose sons are not thinking of university education in either the American or continental sense. They consider the legal profession as a trade, like any other, and regard legal education in the same light as commercial education in a commercial school.”
The Carnegie Foundation followed this report in 1921 with Alfred Z. Reed’s “Training for the Public Profession of the Law,” which contained a description of the organization of the American legal profession and how it was affected by bar admission rules, law schools, and trade associations. It provides valuable insight into the state of American legal education up to that date. At the time of the Reed Report, there existed 142 law schools in the United States with a diverse mixture of part and full-time programs offering a number of paths into the profession.\textsuperscript{117}

However, in contrast to Flexner’s opinion on the state of medical education, Reed was in favor of maintaining the distinct kinds of instruction being taught in various categories of law schools, and supported keeping at least three types of law schools in existence to produce lawyers who could deliver different skills and services to different levels of clientele: (1) university-based law schools that would produce judges and law makers to help shape the law into what it should become; (2) intermediate schools fit for grooming another level of professional who was to serve the needs of businesses and middle class clients; and (3) proprietary night schools producing lawyers to provide legal services to those at the bottom of the socio-economic hierarchy.\textsuperscript{118}

Supporting a unified bar, the ABA and AALS combined to crush Reed’s initiative, insisting on the raising of standards for a degree to be used across all practice areas and institutions.\textsuperscript{119} While Reed’s ideas were not ultimately adopted, both his report and that of Redlich vividly illustrate the ongoing and evolving battle between those who considered law and the training of lawyers as a scholarly
pursuit and those who viewed it as a trade that should be based at least in part on practical experience.

As late as 1870 only half the states in the union required any sort of preparation prior to the bar exam and no state required students to attend law school.\textsuperscript{120} By the first decade of the twentieth century, three years had become the standard duration for the first degree in law (then known as the “LL.B.”) among top schools, and a few were requiring incoming students to possess a bachelor’s degree in some other discipline prior to admission.\textsuperscript{121} By 1935, due to lobbying efforts by the ABA, nine states required graduation from an ABA-approved law school in order to sit for a state’s bar examination. By 1938 twenty-three states had imposed this requirement and the ABA began to require increasingly stringent requirements for accreditation.\textsuperscript{122} This included the establishment of a core curriculum that did not mandate experiential training, as well as a durational requirement of three years to obtain the degree.

Many part-time and night law schools, which were often the only institutions available to minority and immigrant populations, disappeared as state legislatures required graduation from an ABA accredited school.\textsuperscript{123} Why three years of additional study? It was probably not related to any pedagogical necessity. One author suggested that three years was perceived as almost as many as four, implying that lawyers are three-fourths as learned as doctors and entitled to at least three-fourths as much status and income.\textsuperscript{124} Three years was also probably viewed as another means of limiting immigrant and lower income entry into the profession.\textsuperscript{125}
In this fashion, the study of law in the United States was restricted to a perceived “elite,” studying arcane and confounding legal principles. From the latter part of the nineteenth century then, the story of legal education in the United States has been one of competition between private institutions and their academic leaders, significantly influenced by a trade organization comprised of practicing professionals. While these two groups disagreed on a number of issues, not the least of which was how lawyers should be trained, they came to agree that, in the words of one historian:

The idea that law was a trade to be learned like any other, although it spoke to much in American history, was antithetical to the ideology of legal professionalism. The goal of leading academic institutions and of leading members of the profession was to use the law schools to raise the quality and “tone” of the legal profession in America.126

Many observers have noted that despite significant tensions, American law schools’ curricula over the following decades remained largely static.127 While much of the structure introduced by Langdell has persisted to the present day, there have in fact been periodic attempts by practitioners and others to introduce some degree of skills training into law school curricula. Indeed, almost right from the outset, Langdell’s innovations raised grave concerns among many practitioners who saw danger in training that was too heavily academic. As noted previously, as early as 1891, the ABA attacked the case method, as in their eyes it did nothing to serve “the ideal work of lawyers.” 128 While the ABA clearly supported restricting the profession and introducing higher standards, it did not agree with the legal academy on how these standards should be acquired. This tension is captured in a pair of articles published in the American Law Register in 1888.
In the first, Henry Budd a Philadelphia attorney, points the rise of the diploma privilege as responsible for the lowering of the quality of legal services provided by many attorneys by allowing lawyers to become licensed more quickly. Noting that until recently, American legal education had been centered on the office of the preceptor who directed the course of reading for his pupils, Budd pointed to the value of this personalized attention which allowed students to work on real world cases under the supervision of an expert “who also took pains to impress upon his pupils the dignity of their profession, its great public weight, and in many cases set before them an example of learning and honor which are the distinguishing marks of the true lawyer.”

This was in contrast to university law programs, according to Budd, where a collection of four or five professors delivered lectures on a few narrow areas of law to a much larger group of students who in less than two years were in many places able to obtain a license to practice a profession that bore no resemblance to the experience they had in law school. Budd had little doubt that that even “plodding” students could study the lectures of their professors and successfully pass an examination without understanding the underlying principles in a particular area of law. Henry Rogers, a young law professor and future Dean of Yale Law School and Judge of the United States Court of Appeals for the Second Circuit, disagreed.

In direct response to the article authored by Budd, Rogers made the case that law school was the proper place to study law, and “that a student who desires best insight into legal principles, and the most thorough and systematic knowledge of
law as a science, should seek it in the schools rather than in the offices.” 133 In defending this position, Rogers first noted that law studied as other sciences are studied, in institutions of higher education, is not a new idea and dates back to at least ancient Rome.134 He noted further that in countries such as Germany with a population of law students that dwarfed that found at U.S. law schools at that time, all lawyers were compelled by law to attend a program of legal study at a university.135

According to Rogers, “[t]hat the standard of legal education, as fixed by the law schools is higher than that fixed by the courts, ought to be well known to every intelligent member of the profession, who has any knowledge of the work which the law schools of this country are doing.” 136 If a student “desires to know the law, to master its principles, and understand its reasons,” according to Rogers, he “will not have a rational doubt” that law school is the place where law should be studied.137 Responding in a third article, Budd acknowledged that law schools could be most valuable “in their proper place,” but noted

knowledge of law acquired in a law school as generally conducted in the United States, where the system of instruction is purely in classes, where as a rule there is no entrance examination and where the course is too short to permit full, systematic, scientific instruction, is inferior to that which was obtained under the old system, where the preceptor was a learned and conscientious man (and no other should dare to take students) who would not make a mere clerk of his students and who give to him careful individual instruction.138

The debate between Budd and Rogers demonstrates the atmosphere of the period, with those skeptical of the rising influence of institutional law programs opposed by those convinced that in fact more of this type of instruction should be required.
Both sides were alarmed at a perceived deterioration in the quality of legal practitioners, however each named the other as the source of the problem.

Over the ensuing decades this conflict persisted, with some practitioners clamoring for a more practical course of study, and academics responding either that the case method and Socratic dialogue provided training enough or simply that society was better served by training students to “think like lawyers” rather than teaching them how to actually practice law. One practitioner writing in favor of university law school programs at the turn of the twentieth century opined that they trained lawyers

in the art and habit of analysis so essential to the successful practitioner. [The university law student is] familiarized with leading cases, is taught to distinguish and apply them to similar or allied cases, and incidentally becomes acquainted with the language and modes of reasoning adopted by those eminent at the bar or on the bench.

In 1910 the ABA recommended that after completing three years of law school, prospective lawyers undertake a mandatory one-year clerkship to be done in a law office or judge’s chambers. This recommendation was never made into a requirement and never implemented. These requests for more practical training in law school seem a manifestation of a recurring tension between academics and practitioners over how lawyers should be educated; or stated another way, over the purpose of legal education. Despite these efforts however, the form established by Langdell one hundred and forty years ago has proven remarkably resistant to change.

This resilience is explained, at least in part, by another aspect of American legal education: the strong influence of these institutions on one another.
established at Harvard, the structure and nature of the curriculum spread relatively quickly to other well established schools, often times propelled by Harvard law graduates hired by university presidents for the express purpose of transforming their curricula in imitation of the Harvard model.143 These “elite” institutions were then able to impose their will on the rest of the legal education landscape by co-opting the ABA into accepting the model as an important piece of its mission to maintain high standards for the profession.144

The longevity of the form of legal education established at the end of the nineteenth century can also be explained, at least in part, by the historic circumstances out of which it arose. During that period there was a national movement toward standardization, perhaps most clearly embodied by the establishment of the U.S. Bureau of Standards in 1901. One of the chief proponents of the creation of this office was Henry S. Pritchett, who would later go on to be President of the Carnegie Foundation where he commissioned both the Flexner and Reed reports.145 For many in the decades prior to the turn of the twentieth century, there existed a compelling need to elevate the dignity of the legal profession, instill confidence in the legal system and thereby affirm the belief that justice could be obtained through law.146 As law firm partner V.O. Johnston wrote in 1899:

The cause of legal justice has long been hampered by those whose knowledge of its subject matter was merely superficial, whose aim was never set above the financial gain properly incident to a successful practice and whose training was only of the so-called practical order which enable them by means wise and otherwise to tip the scales in favor of their client and their own advantage. 147

Law schools altered their curriculum in response to this perceived need by linking law with science and attaching legal education to the university, an
institution rapidly growing in influence and esteem in the modern world. As part of this process, university law schools also began to introduce or revitalize graduate law programs.
THE APPEARANCE OF GRADUATE LAW PROGRAMS IN THE UNITED STATES

Graduate coursework in law has existed for centuries in Europe.\textsuperscript{150} Initially, these were entirely scholarly inquiries into the theoretical and abstract analysis of the law, usually concentrating on the evolution and history of ancient Greek and Roman law rather than on its current application to a particular jurisdiction.\textsuperscript{151} As noted above however, the study of law developed along quite different lines in the United States with legal training centered on learning the skills of the profession, and as a result this type of scholarly graduate program in law did not flow naturally.

With respect to graduate law degrees in the United States, a report to the ABA in 1906, noted that a “master’s degree in law” was offered in nineteen schools; all of them in the form of an LL.M.\textsuperscript{152} Each of these programs involved an additional year of legal study beyond that required for the base degree in law, the LL.B. Eleven of the schools offering these degrees had admissions requirements for the LL.B., an innovation added shortly after the turn of the twentieth century by an increasing number of law schools wishing to signal their elite status, and a reform pushed for by those wishing to raise standards for the profession.\textsuperscript{153}

Graduate law programs may then have come out of the strong sentiment by many in the legal community at the time to increase standards for the legal profession and its concurrent push to make the study of law more scholarly,\textsuperscript{154} which in turn was part of a larger trend of American life toward institutionalization and standardization taking place during this period.\textsuperscript{155} These programs were also very likely a product of the cyclical battles and recurring tensions within American
legal education noted previously over how law students should be trained; a debate that persists to this day.\textsuperscript{156}

The first offerings that might legitimately be called graduate law degrees, appeared for a short time in the 1860s and 70s at Columbia and Harvard, and were followed by longer lasting programs at Yale beginning in 1876.\textsuperscript{157} These degrees were to be done following the LL.B., and while they required some amount of coursework, they also required a written thesis, were more scholarly in focus, and had significantly more stringent entrance requirements.\textsuperscript{158} These early programs were to a large degree a reflection of the desire by university law school faculties to add an additional year of study to their law programs.\textsuperscript{159}

Among early post-graduate law degrees were the programs established at what was then known as Columbian University (now known as George Washington University) in 1877, initially simply a supplement to its existing two-year LL.B. program; Columbia’s LL.M. program re-founded in 1893 (which had lengthened its base law degree from two to three years in 1891); and the program established at the University of Michigan in 1889 as a third year supplement to its two-year program, which then became a fourth year supplement to the three-year LL.B. it introduced in 1895.\textsuperscript{160}

Why were these programs created? The few authors who have addressed this question argue that they were not created to meet the demands of legal scholars interested in abstract analysis, but had more “utilitarian” origins reflecting the desire of law schools to extend institutional legal education for an additional year.\textsuperscript{161} This view finds some support in the Report submitted to the Carnegie Foundation
by Alfred Reed in 1921 on the state of legal education in which he opined that graduate law degrees were created as an inducement to get students to remain in university law programs for a longer period. However, it appears that at least part of the motivation behind this desire to extend the period of legal study for law students was, in fact, to provide a more scholarly or “abstract” enquiry into the law.

According to Reed, top law schools in the late nineteenth century desired to make the study of law more scholarly and rigorous by requiring three years of study, but feared that lengthening the basic law degree beyond two years would drive students into law offices as apprentices or into “inferior” law schools. Clearly, as the latter part of the century got underway, university law programs were still very much aware of the competition posed by law offices as training grounds for lawyers. This concern over the length of legal studies is supported by an instructor at Yale Law School who in 1889 observed: “The Faculty believe that more than two years’ study should be required before the bachelor’s degree [in law] is conferred, but have felt that it is impracticable to insist upon such a requirement at the present time. There is [currently] no school in which such a degree cannot be obtained after two year’s attendance . . . .”

This observation provides an important insight into the environment in which law schools in the late 1800s were operating. They were not simply institutions of higher learning motivated by the pursuit of knowledge, but were driven by powerful economic forces as well. Most notably for law departments at universities during this period, there existed two other avenues through which students could progress into the legal profession: apprenticeship and/or through a
proprietary school unaffiliated with an institution of higher learning. While training in a college or university could often offer a higher quality of education, it was also time consuming and perhaps most significantly, more expensive.\textsuperscript{165}

The desire to both deepen and broaden the study of law while simultaneously not driving away current and prospective students with increased requirements for the basic degree in law, Reed contended, led to schools offering an advanced degree beyond the LL.B. In his report, Reed stated that the first Law School to offer the “novel degree of LL.M.” was Columbia, which actually conferred the degree beginning in 1863 to students remaining for a third year of law study, but, unable to attract students after the first two years, the degree was allowed to dissolve thereafter, although it continued to be announced in the Columbia university catalogue.\textsuperscript{166}

Reed also noted that Harvard and Boston University adopted a “similar device” for a few years after 1873 but called their graduate law degree an “A.M.” and “M.A.” respectively.\textsuperscript{167} Reed also noted similar graduate law programs at Yale (offering an M.L. (one-year) and a D.C.L. (two-year) beginning in 1876) and Columbian (offering a Master-of-Laws course in 1877), with Georgetown, National University, Washington University (St. Louis), Northwestern, Michigan and Minnesota Universities all offering a one-year M.L. or LL.M. by 1890.\textsuperscript{168} Reed noted further that additional attempts by other law schools of the era to launch similar programs that were never able to get off the ground.\textsuperscript{169}

According to Reed, attendance in these programs was “very small,” and he somewhat cryptically went on to state that the “chief interest of this early
movement for post-graduate work in law lies in the fact that it failed, and that the
lesson of its failure seems to have been lost upon the present generation.”¹⁷⁰

Writing in 1921 amidst the prior noted strong push to increase the standards in the
legal profession and rigor in legal education, as noted previously, Reed would
ultimately recommend against a three-year academic course of study requirement
for all law students; holding the door open for law programs of various type aimed
at attorneys performing different functions. From his perspective, the lack of
interest shown in the early graduate law programs should have been taken as
something of a cautionary tale by those in his era looking to impose a mandatory
three-year duration for the basic law degree and take the education of lawyers
completely out of the hands of practitioners. It would appear then that graduate law
programs have been looked at with some skepticism, at least in some quarters, at
least as far back as 1921.

While Reed’s contention that the primary motivation for the creation of
graduate legal programs was to induce students to remain at law schools for
additional training seems plausible, it is important to note that these programs
came to life in the broader context of a systemic and radical transformation that
took place in the United States higher education between 1865 and 1900. According
to one author, the forces driving this change were post-war reconstruction which
brought new private and public funding sources, a yearning for equality with
perceived higher quality institutions in Europe, and a sense of alarm over the
decending influence of the academy in the preceding decades.¹⁷¹ Academics who had
studied overseas surveyed post-Civil War America and were convinced that the
seriousness of purpose associated with higher education in Europe, particularly in Germany, was essential for American development as a whole.\textsuperscript{172}

In her work examining the academic doctorate in law, Gail Hupper noted that in the late nineteenth century ideas imported from continental Europe began to be considered by top law schools in the United States as well. Specifically: (1) the idea of law as a “science” that belonged in a university, (2) the idea of a full-time law professor – the norm in Europe but in sharp contrast to the U.S. where even university law faculty were practitioners first and instructors second, and (3) the idea of advanced study for students who wished to become legal academics.\textsuperscript{173} Hupper noted further that these ideas “meshed well with a fourth phenomenon of the era: a call for lawyers equipped to handle the increasingly complex legal needs of a rapidly industrializing nation.” \textsuperscript{174} Former State Attorney General and U.S. Congressman from Virginia, John R. Tucker, noted in 1896:

\begin{quote}
We have forty-five commonwealths in our Federal Union with diverse systems of jurisprudence; all of which no lawyer can afford to be ignorant. The citizenship of each State is inter-communicated to and with all the others. We are as one, in trade, contract, travel, transportation and thought through railroads, telegraphs and the most wonderful waterways. The conflict of jurisprudence of the several States must be so ordered and harmonized in respect of this inter-communion, that uniformity of administration shall promote the general welfare of all without injury to the interests of any.\textsuperscript{175}
\end{quote}

These forces had already begun to be noted by legal academics of the period. For example, in setting forth a framework for legal education in 1873, Harvard law professor and former governor of Massachusetts Emory Washburn noted that the legal profession had eroded since the time of the American Revolution and the decades that followed immediately thereafter when many members of the bar were
less concerned with income; in his view, content instead to “influence public judgment” by consciously “wielding a moral power” granted by those in their immediate surroundings as a reward for their demonstrated wisdom and independent judgment.  

While this view of early American lawyers is undoubtedly influenced by Washburn’s own experience during the post-revolutionary period, he maintained that during that time formal legal education was not terribly important. By contrast, he viewed the current environment for lawyers as far less noble, where “party politics succeeded to statesmanship and noisy partisanship took the place of tried patriotism and sound judgment,” and “money became more and more the chief end for which men labored” as it had become “the test and measure of a man’s social position . . . giving consequence to men, who without it were of no account in the community.” According to Washburn, it was imperative that something be done to “sustain the character” of the legal profession “against the downward tendency which it was taking, from a liberal science to a mechanical trade.”

For Washburn, one of the chief dangers to the law profession of his day was that many of the collegiate law programs that had appeared since the middle of the nineteenth century were being used simply as a mechanism to get into practice more quickly and make more money sooner. In a second article, while he conceded that there would always be many lawyers “whose occupation is a mechanical dealing with . . . details,” for whom “accurateness and readiness of despatch [sic] . . . are what is wanted, rather than breadth of learning or a familiarity with principles”; Washburn identified another category of attorneys who hoped “to
lead at the bar, and make their influence felt in directing and sustaining sound public thought.” ¹⁸⁰

For this second group, Washburn noted changes in technology were making the world a much smaller place with a correspondent need for lawyers to be able to understand the laws of other local and international jurisdictions in order to help the law evolve and for society to move forward.¹⁸¹ Therefore, according to Washburn, legal education needed to evolve in order to grapple with the new realities of the later nineteenth century. Part of that evolution, he thought, could take place within the college law programs where students could learn the academic and philosophic underpinnings that had shaped the law up to that point. He noted, that American law students need not exclusively “pursue the study of Roman law into its specialties and details…”

...but if one of these [students] wishes to go beyond the scope of the mechanical details of his profession, and to ascend into the purer and clearer atmosphere of jurisprudence as a liberal science, he cannot do it more readily or effectually than by drawing inspiration from the immortal system of which it has been eloquently said: ‘As if the mighty destinies of Rome were not fulfilled, she reigns throughout the whole earth by her reason, and after having ceased to reign by her authority.’¹⁸²

This grandiose vision of legal history by Washburn was an eloquent entreaty not to allow the legal profession in the United States to become mired down as a mere mechanical activity.

In his third and final article on legal education, Washburn made an impassioned plea that entry to the profession be barred to those who had trained exclusively as apprentices. He had “no faith in learning law as an apprentice does
his trade, by doing, the same thing over and over again, till he masters it by
manipulation, independent of the science that lies at the bottom.” 183 He noted:

A man may copy forms till doomsday, and never know the reason of what he
is doing; whereas, let him first master the rudimental principles upon which
the forms and practice of the law depend, and he will understand in the very
first form he copies after leaving the law school and entering an office, what
it means and how to accomplish its ends.184

For Washburn, and a growing number of legal academics of the day, a legal
education should “have a broader scope than merely learning how to do a thing,” as
lawyers “must be ready to engage in the making and administering of laws, as well
as construing and interpreting them, and therefore must know beforehand
something of the science of government.” 185

One aspect of the legal profession that Washburn and others considered in
sore need of upgrading was the civility of the bar, which had been infiltrated in their
view by large number of coarse and ill-mannered men. For those hopeful for a
more refined atmosphere, there was no

school that [they knew] of so well calculated to educate a young man in all
respects . . . as a good law school. In that is embraced a good library, good
instructors and body of ingenuous young men who come together for a
common end, with high purposes and generous motives, old enough to know
what is due from one gentleman to another, and free and independent
enough to rebuke rudeness or coarseness in any of their number, and to
imprint lessons of propriety upon the minds and memories of the most
reckless of them.186

This opinion was in sharp contrast to that held by many practitioners of the
day, as set forth above by Philadelphia attorney, Henry Budd, who viewed university
law programs as responsible for placing dangerously underqualified lawyers into
the steam of commerce.187 In fact, in addressing the very same problem – “sharp,
active practitioner[s] hurrying to ‘get business,’ [and] to get rich” at the expense of
society, Budd explicitly blamed law schools, stating that they had “taken a place which under the American system of legal education they were never intended to take – or, rather, which have assumed to do that which they do not accomplish.” Instead, he blamed law schools for “the admission to the bar of men scantily prepared for the work of their profession and in many cases not even so sufficiently equipped as to be able to acquire that learning which in many cases is necessarily postponed until after the technically called studentship has come to an end, not understanding thoroughly the foundations of the law.”

It is unlikely then that many who blamed university law programs for the low quality of many legal practitioners of the day would support the creation of additional years of law study in the form of graduate law programs. However, the influences identified by Hupper and given voice by Washburn, are expressly linked to the formation of graduate programs in law in an article written about Cornell Law School by one its professors, Harry Hutchins, in 1889. Describing the state of Cornell Law School at the time Hutchins stated: “In obedience to what seemed to be a demand for such action, it was recently determined to provide hereafter opportunities for graduate work in the law . . . .” This program was one-year in duration, open to the graduate students of Cornell or any law school “of recognized standing” and led to the granting of the degree Master of Law to graduates. As stated by Hutchins, the degree was intended to meet the needs, first, of those who desire to devote an additional year, under the direction of teachers, to the general study of the law; secondly, of those who propose to make a specialty in practice of some particular branch of the law, and who wish to take advanced preparatory work in the line of the specialty chosen; and thirdly, of those who have in view the study of the law.
as a science, and who desire to become familiar with the sources and philosophy of our jurisprudence. Hutchins’ reference to “a demand for action” could very well signal a desire on the part of the institution to offer a degree already offered at other schools. This inter-school competition is also signaled in Hutchins’ statement that the new degree is open to students from other schools of “recognized standing.” Moreover, the desire to offer a more scholarly form of legal education is clearly set forth in the description of who the degree was intended for. Such a course of study appears to directly respond to the calls of Washburn and others that some lawyers at least, must be ready to engage in the creation, guidance and administration of laws, as well as the construing and interpreting of them and therefore must know beforehand something of the philosophy and history behind the creation of the these regulations. This sentiment is echoed in a report on legal education prepared by a committee of the American Bar Association and the U.S. Bureau of Education published in 1893.

That report first noted that the “importance of well-trained lawyers is greater now than at any time in history. The law has become so complex and extensive with the multitude of decisions and statutes that a higher training is indispensable.” By way of illustration, the report noted an observation by a law professor from that period who stated: “It is easy to find single opinions in which more authorities are cited than were mentioned by Marshall in the whole thirty years of his un-exampled judicial life, and briefs that contain more cases than Webster referred to in all the arguments he ever delivered.” Noting that lawyers filled “a large proportion of our offices, State and national, and their influence is
most potent in political affairs,” the report stated that “[a] system of law which accepts all the cases on a given subject as authority is possible only with a thorough knowledge of the elementary principles of the law on the part of the lawyers and judges. These, with a proper classification and scientific method, have become indispensable.” 195

Acknowledging that a course of more than two years of legal study in a university was “impracticable” for many, the committee recommended, among other things: “for those to whom a longer course of study is possible, provision be made in the schools for post-graduate courses, where the subjects of general jurisprudence and public law shall be taught.” 196

Stated another way, the committee members from the ABA and the Bureau of Education directly identified post-graduate legal education as a solution to the perceived challenge created by the evolution of the law in the United States and its attendant challenges to legal practitioners; a position echoed in the wake of the report by the then Dean of Yale Law School Austin Abbott. Noting that a great danger of the day was “the lack of respect for law which is shown in so many ways, from social laxity, and commercial and political fraud,” Abbot cited “the ultimate necessity of post graduate courses [in the law] of the highest grade” as a “clear” solution in aid of “a trained bar that can supply fit candidates for the bench, the legislature and the chief executive and administrative offices.” 197

By 1889 Yale had created a two tiered system of graduate law degrees designed to properly train practicing members of the profession as well as those seeking a higher level of legal scholarship. The first, the Master of Laws, required
an additional year of study and offered topics of general interest and was meant to serve as an introduction to the “higher grades of practice.” \(^\text{198}\) The second graduate law degree offered at Yale was the Doctor of Civil Law. It was available only to those who had completed the Master of Laws and had completed a course in Roman Law, with “a good knowledge of either French or German” also being a requirement.\(^\text{199}\) The objective of the Yale faculty in creating this second degree was characterized as follows: “a test of real attainments in legal scholarship, insisting upon an unusual standard of ability and industry, and never giving the degree unless the candidate had proved himself especially worthy of the distinction."\(^\text{200}\)

As the turn of the twentieth century approached, graduate programs in law began to explicitly signal that that they were designed for those who sought more than what might be strictly necessary for the average law practitioner. This concept is reflected in the description of the Master of Laws program at the University of the City of New York (present day New York University) in its catalogue for 1892-1893, the year after the degree was introduced, which sets forth that the program was framed upon a broad basis, with the design of aiding the equipment of Attorney and Counsel for the Trial of Causes; for the Argument of Questions of Law; for Conveyancing \(^\text{ix}\); for Preparation for the Bench; or for Legal Authorship, as well as of promoting advanced studies in the History and the higher Philosophy of Jurisprudence, and in Constitutional and Political Science. . . . The design is both to supply the most common deficiencies in undergraduate attainments, and to promote the development of powers needed for the higher walks of the profession.\(^\text{201}\)

\(^{ix}\) The transfer of property.
Clearly the program was established to produce graduates capable of doing more than simply assisting clients with run-of-the-mill legal problems. It was instead designed to address a perceived gap in legal education that was inadequately preparing students to assist in shaping the law amidst the dizzying array of changes taking place at the turn of the twentieth century. This goal was set forth in explicit terms as another of the guiding principles in the foundation of the Master of Laws at this law school:

The multiplicity of new relations and controversies at the present day constantly raises new questions on which there are no adequate precedents. And old questions abound in conflicting precedents. When a case is embarrassed by want of precedent, or by conflict, then is the opportunity for counsel capable of free and strong forensic reasoning. American law has silently become a Progressive Jurisprudence; and the great need of the post-graduate student is to carry forward his elementary studies so as to develop the ability to keep abreast of its movements, and to deal with current business in accordance with these requirements of the times.202

While not spelled out as clearly in the records of other schools of the period, an examination of the requirements for graduate degrees in law at other schools reveals a similar desire that recipients of the degree have a strong grounding in history and philosophy as well as the laws of other nations, reflecting a perceived need to produce legal scholars in addition to legal practitioners.203

This need was not a perception held only within the confines of university law programs. Addressing the myriad legal issues facing American society, turn of the twentieth century lawyer Randolph Tucker suggested

diverse grades of degrees might be adopted to measure the amount of scholastic training the law school has furnished the student: Proficient in Law; Bachelor of Laws; Master of Laws. Each student would thus adapt his time to his necessity, and win the degree, which fairly measures his scholastic work. Besides, the shortest time, might be devoted to the
grounding in the principles of the law, and the longer time to the precise and scientific study and analysis of cases.\textsuperscript{204}

The problem for law schools and the legal profession of course went beyond simply creating this type of coursework, but also to how to get students to enroll in it. It is worth noting that simply because graduate law programs began to spring into existence in the late nineteenth century, they were very poorly attended with only a trickle of students completing them.\textsuperscript{205} One author surveying the American law school landscape from the year 1906 reported: “thirty-three schools give post-graduate work, but only 23 had any students – 270 in all,” out of a total law school population of 15,411.\textsuperscript{206} Describing the degree, he noted it was “not generally provided for, [was] not in demand, [had] no standing with practitioners, [was] not usually attractive to the best students” and raked “an undue amount of instructors’ time for the benefits conferred . . . .” \textsuperscript{207}

It seems likely then, that the creation, and continued existence of graduate law programs were manifestations of the tension between law as a scholarly pursuit and law as a profession at American law schools, or more broadly, a reflection of a renewed emphasis on scholarship in American colleges and universities. This renewed focus was driven at least in part, by the rapid wave of industrialization, scientific discovery and professionalization that followed the end of the Civil War.\textsuperscript{208}

Higher Education historian John Thelin characterized the American university of this era as “an adolescent – gangly, energetic, and enigmatic,” \textsuperscript{209} and the variation among, and somewhat precarious nature of, the early graduate law programs may well be a reflection of this personality trait. At the same time, there can be little doubt that competition, not only with the apprentice model and
proprietary law schools, but in and among university law schools themselves also played a role. As admissions pools began to become more national and prospective students became more aware of the differences between university programs, law school's interested in attracting top students and increasingly mobile professional law faculty could ill afford to fall behind in the intellectual arms race that was sweeping legal education during the late nineteenth century. This may be one reason that graduate law programs spread rapidly and persisted, at least as set forth in university catalogues, even though they appear to have attracted very few students.

Graduate law programs do not appear then to have been established to increase the job opportunities of graduates in the traditional legal marketplace, or even make them better practitioners, but instead they were created in response to calls to make the study of law more “scholarly” and were motivated, at least in part, by a desire to extend the duration of the basic law degree as a means of increasing the standards and exclusivity of the legal profession. It is also clear that that these early programs were mechanisms to add or maintain prestige at academic institutions in an increasingly competitive market for faculty and students across American higher education during this period.

To this day, perhaps the ABA merely “acquiesces” to their existence because graduate programs are fundamentally different from the basic degree in law and they should not be evaluated using the same lens as that used for J.D. programs. American legal education up through the early part of the twentieth century struggled, as it does today, with two related but distinct missions: (1) to provide
education in the law and (2) to prepare their students to engage in the practice of law. As one author has noted: “at different times and in different types of institutions, one emphasis has been more in vogue than the other, and these emphases may well have shifted in accord with shifts in the culture beyond the walls of the law school.” In any event, by the end of the first two decades of the twentieth century, graduate legal education had become a common, if not very popular, option at a growing number of American law schools. In the decades to follow they would expand further, both in size and diversity of focus, however to better understand their place in American legal education it is useful to examine the interplay of forces surrounding the genesis of graduate law programs at one particular institution: the University of Pennsylvania.
Any inquiry into the history of Penn Law and its graduate programs must begin with the founding of the University of Pennsylvania itself. A glance at Penn Law's website, lists 1740 as the year Benjamin Franklin “founds the University of Pennsylvania.” 212 This is perhaps a bit misleading, particularly as Mr. Franklin wrote in his autobiography that he had first conceived of the college in 1745, but other events distracted him and he took no action until 1749.213 However, in 1740 a charity school was in fact established in Philadelphia with Ben Franklin as one of the school's trustees.214 This was a school for indigent children, maintained by the voluntary contributions of members of the local church parish. It was in no sense an institution of higher learning.

Nine years later, in 1749, Ben Franklin distributed a petition for the founding of a “Publick [sic] Academy” of higher learning. With the charity school foundering, in 1753, he obtained a charter from the provincial legislature to start the “Academy and Charitable Schools in the Province of Pennsylvania.” 215 This institution opened two years later in 1755 as the College, Academy and Charitable Schools in the Province of Pennsylvania. In 1779, in the midst of the Revolutionary War, the legislature removed several trustees of that institution on suspicion of being Tory sympathizers and had the school re-chartered under the name the University of the State of Pennsylvania.216 This school was run simultaneously with the former

---

* See, John Thelin, A History of American Higher Education, 2d ed. (Baltimore: The Johns Hopkins University Press, 2011): 2-8 noting how links to the past are frequently distorted by modern institutions of higher education in order to enhance their prestige.
institution until the two were finally merged into the University of Pennsylvania in 1792.217

With respect to instruction in the law, in 1682, the first General Assembly of Pennsylvania required ‘the laws to be taught in the schools of the province.” 218 No action appears to have been taken with respect to this directive however, until after the Revolutionary War in 1790, the year in which James Wilson, a U.S. Supreme Court Justice and signor of the Declaration of Independence, offered a series of lectures intended to be the beginning of a three-year course meant to cover the entirety of public and private law.219 According to one author, the idea for this professorship may have originated from a request made to the trustees that a group of young lawyers who had formed themselves into a society have permission to hold their meetings in a room within the college.220 In any event, a course was created the aim of which was “to furnish a rational and useful entertainment to gentlemen of all professions, and in particular to assist in forming the legislator, the Magistrate and the ‘Lawyer’.” 221

While Wilson would go on to give a total of twenty-four of these lectures and he generally enjoyed a good reputation as a member of the bar and bench, it should be noted that his lectures were not universally well regarded. One contemporary wrote: “Mr. Wilson on the bench was not the equal of Mr. Wilson at the bar, nor did his law lectures entirely meet the expectations that had been formed,” while another stated with delightful understatement that: “These lectures . . . have not met with general approbation, nor is their excellence altogether undisputed.” 222
Like the other university law programs of the era, this course was not intended in any way to provide training for the practice of law, but rather it was designed to instill his students with the virtues of republican leadership. Stated another way, they were simply meant to inform attendees on relevant topics in the law and the new government and there appears no indication in the records of the University of Pennsylvania or Wilson’s personal papers that he had any intention of founding an institution in any formal sense.

While these lectures were initially attended by such luminaries as President Washington, his Cabinet, members of both Houses of Congress and numerous state officials, they lasted less than two years and ended for reasons that remain unclear.
to this day.\textsuperscript{226} The lectures centered on theoretical considerations of the role of democracy in the United States and the moral foundation of the republican form of constitutional government.\textsuperscript{227} Though Wilson remained on the University’s roster as its first, and only, Professor of law until his death in 1798,\textsuperscript{xi} no further instruction in the law appears to have been contemplated at the University of Pennsylvania until 1817.\textsuperscript{228} That year, Charles Hare was elected as the second Professor of law in the school’s history.

Professor Hare was a well-known attorney in Philadelphia, and the son of a famous friend of Ben Franklin’s, and his announced intention was to offer a series of courses in law to be completed over three years.\textsuperscript{229} These courses were also not intended to provide practical training but were instead designed to provide background as to the “philosophy of law.” \textsuperscript{230}

While it appears that Professor Hare did in fact initiate a course of study, also intended to be three years, his lectures also only lasted a year.\textsuperscript{231} Hare’s reason for discontinuing the course of study was apparently due to the onset of health problems characterized by one author writing in 1882 as “a loss of reason.” \textsuperscript{232} By the time the University of Pennsylvania re-established its Chair in law under Hare in 1817, William and Mary, Transylvania University and Harvard (where initial lectures had been instituted the previous year) appear to have been the only colleges or universities actively running a law program in the United States.\textsuperscript{233} In

\textsuperscript{*} Wilson’s appointment as a professor of law was preceded in the United States only by that of George Wythe at William and Mary noted above, appointed in 1779.
other words, the apprenticeship model for legal education still dominated the landscape.

Following the collapse of the Professor Hare’s program, the study of law at the University of Pennsylvania appears to have remained dormant until the appointment of George Sharswood, a judge of the Philadelphia District Court, as Professor of Law in 1850. It is not clear why there existed such a lengthy gap between Hare and Sharswood. One reason may have been simple economics. There were numerous members of the local bar on the board of trustees of the university who supplemented their income and enhanced their law practices by serving as preceptors to law clerks in the Philadelphia area. The establishment of a robust law program in the region based in the university would mean a dilution, if not outright interruption, of this income stream and source of cheap labor. As noted previously, in this system, clerks were at the mercy of their preceptors, whose reputation and success were usually of significantly more importance than the law clerk’s legal education, notwithstanding the fact that in most cases the clerk or his family paid a fee in exchange for the preceptor’s time and resources in training the younger man.

The life of a law clerk was generally a dull and tedious existence. As printed legal forms were often necessary but not readily available, the job of a law clerk often meant endless hours of copying legal documents, thereby creating a powerful incentive for lawyers to take in law clerks. A reason for the resurgence of university programs may lie in the fact that as commerce grew, population centers became more dense, communications and technology improved, and the country
moved off the war time footing of the Revolutionary War and the War of 1812; the old law clerkship system as the sole preparation for a career in law, with its heavy emphasis on local practice, became increasingly ill-suited to the training of attorneys for the new and complex problems of the day.\textsuperscript{239}

In any event, in 1849 the University of Pennsylvania established five new departments: Modern languages and Literature, American History, Chemistry, Natural History, and Law, and named Sharswood as the chair of the Law department.\textsuperscript{240} He delivered his initial lecture in the fall of 1850.\textsuperscript{241} Among Sharswood’s first tasks was to decide whether the focus of the law department should be on training attorneys for local practice or attempt to establish a “national” law school to compete with Harvard that was more focused on theory.\textsuperscript{242} From the outset then, at Penn there existed a tension centered on how law students should best be instructed. This ambivalence was reflected in the 1854-1855 catalogue, which stated:

The Professors do not presume to embrace in their course, the peculiar laws and rules of procedure in all parts of the Union. Their design is so to discipline and prepare the mind, by instruction in the principles of jurisprudence and their application in Pennsylvania, that other local codes can be acquired with facility and advantage.\textsuperscript{243}

While this statement reflects at least some thought that Penn Law graduates might take their education and practice in other jurisdictions, it also reflects Sharswood’s preference that students be trained in the idiosyncrasies of the laws of the Commonwealth. This opinion is also reflected in his view that his lectures would be a supplement to law office clerkships, rather than provide the entirety of what students needed know to practice law.\textsuperscript{244}
It was also not Sharswood’s thought that instruction in law should be restricted to candidates with demonstrated prior academic ability and his course had no admissions prerequisites for aptitude or previous education. He appears then to have been among those noted previously who felt that the practice of law should be open to all, or at least to all white men. By contrast, as of 1849 the general college course at the University of Pennsylvania required entrance examinations in Latin and Greek authors, arithmetic, and grammar. Admission standards were therefore far lower for the study of law than they were to obtain a basic liberal arts baccalaureate degree.

Sharswood remained in his post until 1868 when he ascended to the bench of the Supreme Court of Pennsylvania. He was replaced by his faculty colleague Spencer Miller. During this initial period the Law Faculty was established which consisted of three professors, but it was not a particularly popular program with the average graduating law class numbering only 15 from the years 1852 to 1881. One author writing in 1940 speculated that this was due at least in part to the fact that local courts and practitioners did not have much respect for the program and refused to allow the degrees and certificates issued by the law school to have any significance in their regulations for admission to practice. Thereafter followed a number of leaders who over the next thirty years oversaw the establishment of a much more academic system for the instruction of lawyers at Penn Law.

One of the high points of this period was the granting by the courts of the state of Pennsylvania in 1875 of the aforementioned “diploma privilege”: an exemption to the requirement of an apprenticeship period to be qualified to practice
law for holders of a Bachelor of Laws from the University of Pennsylvania. Nevertheless, it would still take nearly another thirty years for the law program at the University of Pennsylvania to free itself entirely from the law clerkship system. As in the re-establishment of the law school itself, the principle obstacle appears to have been that the men in control of the apprenticeship system had a strong economic motivation to see that it remained in place.

Working against these entrenched practitioners, was the late nineteenth-century trend toward legal specialization that appeared as lawyers began to concentrate their practices in particular fields of law. In this new environment, a well-rounded university education became more attractive, particularly after 1875 when it was recognized by the courts as sufficient to practice. Simply put, if you wished to practice locally, the courts’ decision meant one could swiftly gain entry to the profession without a formal apprenticeship of any kind. All one needed was a degree from Penn Law. Unsurprisingly, shortly after this decision was announced enrollment at the law school rose swiftly, growing from fifty-nine students in 1874-75 to one hundred and forty-one students in 1879-1880.

As the program grew in popularity, it did not necessarily become academically more rigorous; at least not right away. While the course catalogue from 1876-1877 seemed to offer a wide ranging and thorough course of instruction across two years of instruction, this was in fact not the case. Examinations were rare and inconsistent, and classes often did not meet regularly or frequently; forcing students to seek outside tutoring to obtain knowledge on a subject purportedly covered by the curriculum. This was due in no small part to the fact that very few
professors were full-time instructors; instead holding down legal practices that commanded much of their attention.256

In addition, professors were compensated directly by the students. Once expenses were paid, the remaining funds were simply divided among the instructors. This provided a powerful incentive to attract as many students as possible, regardless of their qualifications.257 The situation changed dramatically in the spring of 1889 when the trustees adopted a new system for regulating the finances between the law school and the university. The new system effectively capped the amount individual instructors could receive from student enrollment, and placed control of remaining funds in the hands of the trustees.258

This change decreased the incentive to attract as many students as possible and dovetailed with the increasing previously noted desire on the part of many practitioners in the latter part of the nineteenth century for greater standards in the profession.259 It was also concurrent with a move among the faculty to make the curriculum of the law school more rigorous so as not to be perceived as inferior to other schools of the day offering law degrees. As part of this effort, in 1887 Algernon Sydney Biddle introduced Harvard’s case method of instruction at Penn Law.260

Similarly, in 1888 Penn Law followed the trend established at other top institutions and extended its program from two to three years.261 The lack of admissions standards to the law school also began to be perceived as a problem, particularly in the absence of any financial reward for large class sizes.262 No single event propelled Penn Law’s transformation into a modern law school more
however, than the appointment of William Draper Lewis as dean of the faculty of law at the University of Pennsylvania.

Lewis became Dean at the age of twenty-nine in 1896 with a single minded determination to raise the standards of legal education in general, and the overall reputation of Penn Law in particular. Like many of his era, he was very concerned about raising the quality of legal practice, and was convinced that this should be done through the establishment of legal education as a modern academic pursuit.\textsuperscript{263} While dean of the Law School (1896-1914) Lewis began the conversation with local bar associations and legal examiners to implement a state-wide bar examination;\textsuperscript{264} established an entrance examination that could be waived upon the presentation of a certification of college attendance, in effect introducing the idea of a college degree as a pre-requisite to admission to the law school;\textsuperscript{266} established a minimum age for
entrance to the law school;\textsuperscript{267} oversaw the construction of a new facility dedicated solely to the law school;\textsuperscript{268} established a full-time faculty;\textsuperscript{269} expanded the curriculum, both increasing the amount of course work required by students as well as increasing the variety of courses students could take;\textsuperscript{270} implemented the first ever attendance requirement in the department’s history;\textsuperscript{271} and oversaw the significant growth and development of the law library.\textsuperscript{272} During his nineteen years of leadership, Lewis shepherded the law school at the University of Pennsylvania completely out of the era of legal apprenticeship into the modern era of legal education. Most significantly for the purposes of this inquiry however, it was under his leadership that a graduate program in law became a permanent fixture of Penn Law’s curriculum.

Like others of his era noted above, one of Lewis’ main goals was to have legal education entirely transferred out of the hands of practitioners and into the hands of law professors.\textsuperscript{273} In a report to the Provost dated January 28, 1897, he wrote that the “office of the practicing attorney, where the student was formerly initiated into the art of his future profession, and regularly examined as to his progress has become a thing of the past.”\textsuperscript{274} He continued:

Not one third of the reputable attorneys in the city will receive law students even on the payment of a fee. The increased office rent is partly responsible for this, but the main causes are that the title insurance and trust companies on the one hand, and typewriters on the other, which perform all the work that used to be left to the students. Where the student is received, as far as examination is concerned, he is neglected. As far as knowledge of practice, where he is permitted to assist his preceptor, which is seldom, his knowledge is always confined to the line of business in which his preceptor is engaged. . . . The law school has become a centre of legal instruction for a much wider area than the city. We not only train lawyers for the city, but for the state and country at large.\textsuperscript{275}
Clearly set forth in this statement is Lewis’ opinion that the apprenticeship model of legal education had been overtaken by the modern age; both conceptually, as Philadelphia law firms seemed unable to him to provide the necessary breadth of instruction for lawyers at the turn of the twentieth century; and practically as other professions and advances in technology were rendering the work of apprentices superfluous.

Like others of his day, this is not to say that Lewis believed that law should be taught on a theoretical basis alone. He maintained instead that the practical application of the law was important, but could also be delivered within the confines of a university law school. In dedicating the new law school building in 1900 he noted:

Some there are who tell us that we should try to make our teaching practical, others that we should confine ourselves to fundamental principles. The one regards the law as an art, and likes the word practical; the other regards law as a science, and is fond of such expressions as ‘grounded in the theory of the law.’ . . . We [the faculty] have never discussed this question because we are united in the thought that a system of legal education which pretended to give the principles of law, disassociated from their practical application, would be as useless a system which confined the student to copying legal papers. All of us admit that law is a science. But it is a living science; one that is applied every day to the affairs of living men.276

It was in this atmosphere that Penn’s graduate law programs appear to have been founded, as the timeline posted on its current website notes the year 1898 as the year “the first LL.M. degree was offered.” 277 A closer examination of the historical record however indicates that this is not entirely correct.

1898 appears at least nine years too late in light of an article published by former Dean of Penn Law, C. Stuart Patterson in 1889 in which he notes the existence at the law school of a “post-graduate course of study, covering two years
and involving a philosophical inquiry into the history and sources of the law.” 278

According to Patterson, graduates of this decidedly scholarly sounding course

“received the degree of Master of Laws.” 279 Another researcher noted the following:

In 1896 William Draper Lewis was named Dean of the Faculty at the age of
twenty-nine. He immediately took control of the school. The post-graduate
course which had been Professor Parsons’ responsibility alone from its
inception in 1883 was suspended and not re-established until 1907.280

This suspension of the graduate law program is most likely due to the fact that that
the LL.B. Program had recently been expanded from two years to three, thereby
rendering the extra year superfluous to some degree,281 but in any event this
information pushes the inception of Penn Law’s LL.M. Program back even further, to
1883, where it appears to have been under the charge of Professor of Law James
Parsons.

James Parsons had been appointed in 1874, joining the faculty as the new
chair in the Law of Personal Relations and Personal Property.282 Regardless of his
specific area of expertise, Parsons was a firm believer in the idea that law was a
science that needed to be mastered like any other traditional academic discipline of
the day. In his introductory lecture in 1875, Parsons characterized law as a “science
made up of all other sciences, the science of sciences!” 283 A law student might
wonder, Parsons continued, “why he is called upon to admire the Middle Ages and to
sigh over the decay of feudalism, when they are both as dead as Moses.” 284

Answering his own question, Parsons opined that the nature of the common law
with its reliance on precedent rendered it necessary that the American lawyer, and
therefore the student of American law, “must survey the entire field of legal history,
and make his argument square with every case, unless relieved from its binding force by virtue of a statute.”

It comes as little surprise then that in the Annual Report to the Provost for 1883, the following description of his graduate law course appears under the heading “Department of Law, Professor James Parsons”:

The graduate course of law in the Department of Philosophy is designed to supplement the practical course of instruction furnished by the Law Department. The higher branches of legal education could not be crowded into the legal course of two years, even if it were desirable to force all students to pursue studies which are not indispensable to their success as practitioners. A knowledge of the development and of the metaphysics of the law is not made part of the ordinary curriculum, which already compresses the practical essentials of legal education into the limited period devoted to preparation for admission to the bar, but is reserved for an after-course, in order to carry on only such students as have acquired the faculty of legal research and a disposition to master the theory of law and comparative jurisprudence.

As noted by Professor Parsons, the University of Pennsylvania’s graduate law program was actually initially housed within the Department of Philosophy and not the Law Department. A more clear distinction from coursework designed to prepare students for legal practice can hardly be imagined.

The timing of the establishment of a graduate program in Law at Penn is supported by another researcher who states without citation: "When the School’s first Post Graduate Course in Law was established by James Parsons in 1883, it arose more from a diffuse sense that Penn Law ought to have such a program than from any expressed need" (emphasis in original). This would seem to indicate that a graduate program at Penn Law was born out of a sense, at least by some, that something was lacking in legal education at the time, and that the degree was created at that institution as one way of addressing this shortcoming. Given the
of the degree provided by Patterson, as well as that contained in the 1883 Report to the Provost, it hardly seems a great leap to assume at least part of the motivation behind the establishment of this program was a desire to offer a path for those wishing to pursue a more academic inquiry into the law. Indeed, the Provost’s Report explicitly noted that the degree is designed for those who wanted to go beyond the “practical essentials of legal education” in order to “master the theory of law and comparative jurisprudence.”

Further, in his description of the new Post Graduate Course in Law program in the catalogue for the University of Pennsylvania from 1884-1885, Parsons describes the program as aiming “to broaden and deepen the foundation of legal education.” He continued: “The method adopted is a comparison of the systems of law which obtain in different countries, — the Roman, or the Civil Law, which is the basis of the Continental law of Europe, not to speak of other countries, and the Common Law, which serves as the groundwork of the law for the English race.”

Among the reasons for offering the course, Parsons included: “The intercourse which now prevails between all parts of the world brings the citizens of different countries into contact with each other, and legal controversies arise out of the relation established.”

In addition to this practical application of the knowledge to be obtained through this course of study, in his opinion there was little need to emphasize the importance of studying the Common law in its sources and in its history. The effect of taking Lord Coke [a Seventeenth Century English jurist] as a starting-point and of neglecting the earlier periods of development is felt to have been a fatal error, which has deadened the system. The modern effort has been to retrieve the mistake, and, by returning through history to the primeval structure of society, to reinfuse life
into the law which has been isolated from its sources. . . . The legal thought and wealth of experience epitomized in the Anglo-Saxon law and extended through the Feudal system is an untold treasure. To utilize it is to revitalize the common law. 291

This two-year course of study involved a first year dedicated to the study Roman law followed by another devoted to the study of Common law beginning with Anglo-Saxon law and the Feudal system. 292

Somewhat unsurprisingly, this less than enthralling sounding course of study was awarded for the first time in 1886 to just one student. 293 The year after its founding the program appeared in the university catalogue in the Philosophy department instead of the Law department where it remained until 1890 when it switched back to the Law department. There it remained until in the 1896-1897 catalogue wherein the following cryptic note appeared: “Instruction in this course is suspended during the current year, pending certain modifications in the system. Announcement of these will be made in due season.” 294

This announcement was repeated in the in the catalogue for the following year, with the degree disappearing altogether thereafter until reappearing in the 1907-1908 catalogue in the Law Department listed as “The Degree of Master of Law” over a terse description mandating simply that students remain in the program at least a year and produce a thesis “acceptable to the faculty.” 295 Clearly the University of Pennsylvania’s initial foray into graduate legal education was not a smooth one, and appears to have come to life almost entirely through the vision and persistence of James Parsons. Nowhere is this better demonstrated than in the annual report of the Provost and Treasurer in the fall of 1885, which included the following description of the program:
In order to afford an opportunity to graduates of this or other Law Schools, who wish to pursue an advanced study of the Roman Law and of the Common Law, a Post-Graduate course extending over two years, was established in 1883 under the charge of Prof. James Parsons. Classes of limited size have entered upon this valuable course under the immediate supervision of that Professor, to whose disinterested zeal in the cause of higher legal education the establishment of this course is due.296

Identifying the inception of the degree is certainly important in telling the story of Penn Law’s graduate programs; however, by itself it tells us nothing with respect to how the degree was perceived. Some insight into how the degree was regarded during this period can be found in the Provost’s Report eighteen years after its founding following the death of James Parsons. In the Annual Report for the academic year 1899 to 1900, his passing is noted by the Provost, stating:

For twenty-four years Professor Parsons held the chair of Commercial Law and Contracts in the Law Department, and was noted in the Faculty as one whose studies leaned rather to the fundamental and original principles of Law. So earnest was he in the desire to lead his students into these studies that he induced many to take them up in what was practically seminary work, to which he was willing to devote any amount of time and care. In the course of time this special work was recognized, not altogether wisely, as a course by itself, and for some years rewarded by the degree of Master of Laws.297

Without reflecting on the methods that might have been used to “induce” these hapless students, it is certainly worth noting that in the eyes of Penn’s Provost at the turn of the twentieth century, the idea of a graduate course in law was so unpalatable that he felt compelled to note its inadvisability in the eulogy of its founder. There seems little question then that the fledgling graduate law degree at Penn Law was not viewed favorably in all quarters.

Further evidence of this can be found in the minutes to the Trustees of the University from December, 1894 in which the Committee on the Department of
Philosophy requested that the program be discontinued, stating that the “course given as a post-graduate course in law, it being professional in character and given under circumstances and in surroundings that are professional, be not admitted as either a major or minor course in the Department of Philosophy.” 298 Doubtless this is the reason the degree vanished from the university catalogues shortly thereafter. Ironically it appears that the Philosophy faculty objected to a degree that had been placed in its purview in order to distinguish it from the practical course work being undertaken in pursuit of the LL.B., on the grounds that is was somehow insufficiently scholarly, or in their words “professional in character.” In any event, graduate programs at Penn Law appear to have had a decidedly precarious existence in the years following their inception.

This rather insecure beginning is supported by historian Robert Stevens, who in discussing the ABA’s urge to “upgrade” the profession in the latter part of the nineteenth century stated: “The University of Pennsylvania tried, as it was to do so often in later generations, to cover all its bases. It was close to the profession, yet it was one of the earliest schools to offer degrees beyond the LL.B.” 299 This would seem to indicate a sense, at least on the part of Stevens, that “degrees beyond the LL.B.” (i.e. graduate law degrees), were not something sought by practitioners when they first appeared and may have even been opposed by them, but were something favored by at least some legal academics. In other words, Penn Law perhaps attempted to “cover all its bases” by ensuring that it had opportunities for those seeking a more scholarly study of legal principles in addition to its more practical law coursework.
Having been discontinued in 1894 by the Philosophy Committee, by March 6, 1900, the Law Committee recommended that the Trustees empower the faculty of law to resurrect the degree within the law school in a course leading to the Master of Laws, once the Provost was satisfied that the Law Department was in a financial condition to establish such a course. Approval of this request was granted and Penn Law’s graduate course was reestablished in 1906 and began admitting student in the 1907-1908 academic year.

Why then did it re-emerge? A clue can be found in William Draper Lewis’ explanation to the Provost in his report for the year 1898-1899. There Lewis notes that while the law school was not currently offering graduate instruction in law, “[a]s a step which may ultimately lead to the regular establishment of such a course . . . [the law school] requested [particular faculty] to prepare for the session of 1900 and 1901 seminar courses on Roman Law and the History of the Common Law.” Both of these courses lie squarely within the academic, as opposed to the practical, realm of legal study. Specifically identifying them as an attempt to offer something akin to graduate studies in the law would seem to indicate that, at least in the mind of Lewis, graduate legal studies at Penn Law would have a more scholarly focus than the required coursework for the LL.B. As noted above, this was an opinion shared by the leaders of other law schools establishing graduate law programs during this period.

In his Annual Report to the Board of Trustees for 1906-1907, the Provost represented that the Faculty of Law explicitly rejected the idea of the graduate
course as being simply an additional year of legal coursework in either modern or
ancient Roman or Greek Law. Instead they determined that it

should consist in work by the student on the original materials of the law,
together with his orderly expression of the result of his researches. . . . [I]t
should not consist in attendance on lectures but rather, that the graduate
student, under the guidance of a member or members of the Faculty, should
labor over the raw material of the law with a view of increasing the stock of
human knowledge. [It was designed for] the true lover of the law . . .
attempt[ting] to ascertain and accurately state the principles of the law, trace
their development in the past, or ascertain the lines on which they may
wisely be reformed.

By 1907-1908, the University’s Law School Catalogue set forth the requirements for
its “Graduate Course” stating that it was open to anyone with a Bachelor of Laws
from Penn Law or an equivalent degree from a law school belonging to the
Association of American Law Schools. To receive the degree of Master of Law,
students had to remain in the program for at least one year and “under the direction
of a member . . . of the Faculty” and must write “a work worthy of being published
under the auspices of the Law School of the University.” This second iteration of
the Master of Law degree, it seems clear came amid the late nineteenth century push
in American legal education in general, and at Penn Law in particular, for greater
standards within the profession and its concurrent effort by those in the academy
for a more scholarly approach to the study of Law.

Clearly the recent criticism of graduate law degrees is not a new
phenomenon but has, at least at Penn Law, been part of the story since they were
first created. The skepticism captured in the Provost’s Report in 1900 set forth
above was no doubt shared by others within the institution and surely contributed
to its precarious existence in its early days. It also does not appear to have been a
popular degree among students during this period, and while perhaps technically able to be conferred, was not actively pursued by many students for a number of years after it was introduced. As noted above this was an experience shared by other law schools of the day offering these programs.

The somewhat ephemeral nature of Penn Law’s graduate law degree in its early days may also be attributed to the fluidity and uncertainty that co-existed with a sense of innovation and change throughout American higher education and American society in general in the latter half of the nineteenth century noted previously. In any event, while it has undergone considerable changes, having been re-established in 1906-1907, the LL.M. degree at Penn Law has remained a part of its curriculum to the present day, providing a different sort of legal education to a non-traditional type of student. For example, among the first candidates awarded the degree was a student from Japan in 1911, as well as Tanna Alex Randall, a law student from the University of Southern California Law School who became the first woman to earn a graduate degree from Penn Law four years later in 1915. Over the following decades Penn Law’s graduate programs slowly grew in size and variety, eventually focusing on legal education for attorneys from outside the United States where it remains to this day.

While an examination of how these programs evolved into their current form is outside the scope of this inquiry, their creation at a time when the very purpose and form of legal education was being hotly debated and as law schools began to perceive one another as competitors for students, faculty and prestige, resonates with the current discussion taking place over the role of law schools in training
lawyers in general and the role of LL.M. programs within the scheme of American legal education in particular.
CONCLUSION

As the debate rages on how best to educate lawyers in the current environment, an understanding of the genesis of graduate law programs should help inform the debate currently taking place over their value. That is not to say that anything discovered by this inquiry will go any distance toward satisfying the objections of those who feel law schools are somehow defrauding those who pursue many of these degrees. However, it seems clear that these programs were established for reasons other than making graduates more attractive in the traditional legal marketplace. They were created out of a sense that law schools had responsibilities beyond merely training students in the practical necessities of lawyering. They were a different kind of degree, designed to push the boundaries of current legal knowledge and prepare students interested in pursuing careers in academia, politics, philosophy or related professions.

In a sense, graduate programs in American legal education were born out of a debate linked to the very nature of “law” itself as an educational pursuit. For some practitioners it is a trade, while for others it is a public calling. For law professors it is often a scholarly enterprise much like philosophy or political science, and for politicians and other policy makers it can be a mechanism for maintaining order and regulating society. For law students, it can be both an opportunity to engage in a wide array of civic issues, such as the fight for civil rights or against poverty or crime, and/or as a perceived gateway to a professional career in the law or elsewhere with its attendant prospects for social advancement and economic stability. Unsurprisingly, this has led to recurring vigorous debate on how lawyers
should be trained in general, and the role of law schools in particular. As noted previously, this debate has recently crystalized around the perception of many that there exists a “disconnection between the real or practical world of law practice and the unreal or theoretical world of law teaching.”\textsuperscript{310}

It is an argument that has waxed and waned over the length of American legal educational history in one form or another but has never disappeared altogether and, as set forth above, existed at the birth of the modern American law school in the mid-nineteenth century. As noted previously, in 1910, the ABA recommended that students have a mandatory one-year clerkship requirement following three years of law school.\textsuperscript{311} By the 1920’s and 30s the demand for more practical training in law schools was answered in the form of the first legal clinics, which while available to all upper level students, were not a required part of the curriculum and were most often capped to accommodate only a tiny fraction of the student body.\textsuperscript{312} Even as these clinical programs were being introduced, some were calling for a transformation from a “law school” suited to academics, to a “clinical lawyer school” designed for the practice of law.\textsuperscript{313}

Other suggested innovations included the ABA’s unheeded call in 1930 for one half of the faculty at law schools to be practitioners,\textsuperscript{314} the view in 1943 that the “proper function of . . . law schools is . . . to contribute to the training of policy-makers for the ever more complete achievement of the democratic values that constitute the professed ends of the American polity,”\textsuperscript{315} and Chief Justice Burger’s rejected proposal to the ABA in 1970 for two years of conventional law school to be followed by one year of law clerkship.\textsuperscript{316} This debate has become even more
complicated in recent decades as the definition of “law practice” has itself become broader and more varied.\textsuperscript{317} In other words, there has never been a consensus as to method or even the purpose of a legal education and the purposes and utility of LL.M. programs are inextricably bound up in this debate.

Stated another way, the sharp criticism of LL.M. programs in the current environment can be understood as simply another aspect of the long running argument over the form and substance of American legal education. This negative appraisal largely centers around the contention that these programs are only being promulgated to line the pockets of law schools and provide little benefit to graduates. In the words of one observer, the recent proliferation of LL.M. programs “a once rare post-graduate degree . . . is becoming to critics a symbol of unscrupulous law school practices.”\textsuperscript{318} This writer notes further, that “[a]n LL.M. is not necessary to work as a lawyer, no member of the Supreme Court holds one, and successful pursuers of the Master in Laws will end with more education than most of their professors.”\textsuperscript{319} The purported attraction for law schools is that, since many graduate programs integrate these students into the coursework designed for JD students, LL.M. students require little overhead; usually pay the same tuition as JD students with a far smaller percentage receiving financial aid; and schools are not required to report pre or post graduate statistics rendering them neutral with respect to the closely watched \textit{U.S. News and World Report} rankings.\textsuperscript{320}

Fueling this criticism are two assumptions: (1) that LL.M. programs may largely be viewed as sufficiently similar that they can be lumped together and
criticized as one category; and (2) that purpose of legal education is to secure a specific type of employment in the legal market. With respect to the first assumption, it can be easily demonstrated that there is an enormous variety of graduate law programs that vary widely in form, substance and mission. The most obvious division is that between LL.M. programs designed for foreign law practitioners, which make up a substantial portion of the “explosion” in programs noted by critics.\textsuperscript{321} In these programs, students are able to add the legal methods and concepts of the United States, unquestionably the most influential jurisdiction in the world, to bring back to their home country should they choose, making them generally more attractive in the marketplace for legal services.\textsuperscript{322}

Moreover, many of these students are not seeking to use their degree to get a better job, but are instead attempting to enhance their skills for use at the job they left temporarily to obtain their LL.M. \textsuperscript{323} This highlights another aspect of the problem noted previously with measuring the success of LL.M. programs by looking at job placement numbers, namely: many LL.M. students do not even enter the job market following graduation but simply return to the position they held prior to studying for their degree now armed with the skills and knowledge they obtained while pursuing the LL.M.

In addition, LL.M. programs for international attorneys provide a method for these lawyers to obtain a license to practice law in a growing number of U.S. states,

the most popular of which are New York and California. That means these students can actually enter the U.S. legal market without taking the LSAT or spending more than one year of law school tuition. Beyond that, when these graduates return to their home countries many go on to become judges, professors, government officials and, in the words of one law professor, “have an opportunity to share some of the values, multi-cultural learning, living experiences, and inter-cultural sensitivities they acquired living in U.S. communities.” ³²⁴ In some instances, this sort of interaction may represent one of the few modes of engagement between the United States and regimes that are otherwise closed or openly hostile.³²⁵ One author has labeled these LL.M. graduates as “agents of globalization in law,” ³²⁶ while another makes the case that many immigrant lawyers who have earned LL.M. degree are also “agents of gender, racial and ethnic diversity.” ³²⁷ The blanket statement that these programs “are of no use” to graduates would seem to have little merit.

Beyond this broad split between graduate law programs designed for international attorneys and those designed for American JD holders, there is tremendous diversity among this latter group, with many of these degrees offered online and target practicing attorneys who wish to burnish their skills within their existing job.³²⁸ For example, on May 15, 2015 Washington University School of Law, a U.S. News top twenty school, graduated its first class of online LL.M. graduates composed of 25 legal professionals made up of practicing attorneys, members of parliament and executives from businesses and law firms from over 14 countries.³²⁹ Other programs combine coursework from a particular area of the law that may have emerged recently or not have been of interest until an attorney has
tested the waters in a particular sector of the legal market and made a
determination of where his or her interests may lie. Still other programs are
designed for very specific purposes such as the University of Washington’s Legal
Education Support Program – Afghanistan, a collaboration with the U.S. Department
designed to strengthen legal institutions in that country by training attorneys in
both Seattle and Afghanistan, after which students are awarded an LL.M. degree.

Clearly the utility of these degrees will vary widely depending on the type of
LL.M. obtained and the reason for seeking it and, contrary to the opinion of many of
the most vocal critics, there exist numerous LL.M. graduates who are satisfied with
their experience in these programs. Stated another way, the fact that no member
of the U.S. Supreme Court possesses an LL.M., if it means anything, it is that this type
of degree is not necessary for that very specific job. Would noting that no Surgeon
General of the United States has ever held a specialty in dermatology lower the
value to of this type of training for some doctors?

Further, the contention that holders of a graduate law degree will have “more
education that most of their professors” is almost certainly false. In fact, for decades
law faculties have been increasingly populated by instructors who not only possess
J.D. degrees, but also a graduate degree in some other discipline, often in such
subjects as economics, sociology, philosophy, psychology, political science,
literature, and history. This simply highlights the fact that there are many
different things one might do with a law degree of any sort, and, just as they did not
need to when graduate law degrees were created, law schools need not restrict their
programming to that designed for attorneys seeking to obtain better positions at
law firms.

There has never been a consensus among practitioners, academics or outside
observers on how best to train lawyers for any of the professions one might seek
after training in law school. Graduate law programs were born out of an attempt to
compromise between a number of factions facing a changing legal education
landscape and marketplace; a conversation that has evolved significantly over time
but one that is still very active to this day. Even within the “traditional” market for
law graduates seeking to work at law firms, they now enter a world where these
entities are much less willing than in prior decades to provide on-the-job training;
potential clients are able to turn to an increasing number of non-lawyer consultants,
accountants, and economic and business consultants; consultation can be done with
increasing ease as technology makes accessing this information easily accessible;
and where a growing amount of legal work can be outsourced to low-wage areas of
the world or to high-end international law firms that have arisen to compete with
top U.S. firms. 334

Modern graduate legal education programs have evolved in concert with
these forces and, as they have since they emerged over one hundred and fifty years
ago, they continue to grow into spaces left uncovered by the standard J.D.
curriculum. Just as technological advances like the telephone and the typewriter
and cultural shifts caused by events like the closing of the frontier and the Civil War
created challenges and opportunities that deeply impacted the legal profession and
legal education, so too are the internet, cell phones and the recent global financial
meltdown having an effect on who needs to be trained in the law and what form that education should take. Indeed, this understanding is perhaps best reflected in the fact that some law schools are for the first time beginning to offer programs and coursework specifically designed for those who will never practice law in the traditional sense. As one author notes,

the need to navigate and understand the U.S. legal system has grown sharply with the rise of the regulatory state over the past 50 years. Today it is increasingly important for workers in the knowledge economy to understand how laws and the regulatory environment can affect goals and strategies in their fields. Law faculties should collaborate more closely with colleagues in other colleges and departments to meet this growing need. Such programs, intended to provide access to legal knowledge rather than to produce more lawyers, would marry that knowledge to the subject matter of myriad other disciplines. Virtually every sector of today’s economy would benefit from employing workers with more than superficial knowledge of the law.

In a sense, law schools are becoming closer to what Professor Parsons and other like-minded members of the legal community envisioned in the nineteenth century: an institution where one comes to learn about the law, rather than one strictly designed to produce lawyers.

This was a vision shared by Woodrow Wilson who in 1894 urged that the study of law be established in universities at the undergraduate level as it was in his mind essential for all American citizens, not just lawyers, to have some understanding of the law. According to Wilson the United States needed “laymen who understand the necessity of the law, and the right uses of it,” and that

‘[e]very businessman should have at least a minimum of training in the law; every minister should know the function that it performs in society; every citizen, in fact, ‘should know what law is, how it came into existence, what relation its form bears to its substance, and how it gives to society its fibre [sic] and strength and poise of frame.’ “
The vast array of graduate programs offered at American law schools are helping shape this narrative and, as they have been since their founding, are products of the economic, political and educational environment they exist in.

Labeling these programs as useless or a waste of time and/or money, not only infantilizes consumers of this type of education, it ignores the context out of which they arose and incorrectly lumps them into one category with a perceived single purpose (i.e. to make holders of the degree more attractive to traditional legal employers). This is not to suggest that powerful market forces aren’t helping drive law schools to look for alternative revenue streams beyond the traditional J.D. degree. The market for legal services has undergone substantial changes in recent years, driven primarily by the collapse of the financial services market in 2008. The ensuing recession caused an enormous reduction in the need for new lawyers, particularly at the top of the market. This has led to fewer people interested in going to law school and a corresponding drop in the tuition revenue for many U.S. institutions. Clearly developing alternative revenue streams is a part of the picture when examining graduate legal education, but it is not the only part.

Law Schools might help defuse some of the current controversy by setting forth more clearly that these degrees are different in kind and purpose from the basic degree in law. Many are already doing so. For example, Loyola University of Chicago sets forth that its LLM in Health Law is designed for lawyers who want to focus on the legal, regulatory, political, ethical and economic aspects of health care delivery, and then goes on to list both potential career paths as well as actual examples of graduates working in the health/law field. This is not dissimilar
from what the graduate law programs of the early age did. They were unabashed that this was a distinctive kind of law degree designed to do something different from the base degree in law; a degree for the “argument of questions of law,” “preparation for the bench,” or for “Legal Authorship.” ³⁴⁰

Just as graduate legal education was born, at least in part, out of a recognition that legal education needed to create a space for a scholarly examination of the law, perhaps graduate legal education today can play a role in training students to deal with the multitude of legal issues that have sprung up across a vast array of landscapes inside and outside of law firms and the traditional “legal” profession.

Since their establishment in the latter part of the nineteenth century, the number and type of graduate legal education programs has exploded, with many bearing no resemblance to one another. Nonetheless, it is important that we gain a better understanding of where these programs came from. As Alexis de Tocqueville famously noted over a century and a half ago: “scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.” ³⁴¹ The vital role attorneys and the law play in society, within the U.S. and abroad, as well as the enormous commitment in time and resources required of law students of all sorts demands that serious consideration be given to how they are trained. It is therefore important that law school policy makers have a firm understanding of the nature and utility of the graduate programs they are offering. At the very least, a critical self-examination might reveal better solutions when confronting the central question that has faced law schools since their inception: how best to train legal practitioners, and how to advance legal scholarship.
More fundamentally however, the current debate should be understood within the context of a critical question that has existed in American legal education from the beginning, namely: what is the purpose of legal education? Those of the belief that it is simply to produce legal practitioners in the traditional sense will doubtlessly view the utility of graduate legal education quite differently than those who view legal education more broadly. For this latter group, law schools are becoming or should become places where people from a variety of professions and academic disciplines can come to learn about the law, including those who already possess a law degree who may want to undertake a closer examination of some area within the law either to advance their career prospects among traditional legal employers or to move in an entirely new direction. The fact that the traditional legal marketplace for attorneys is in a recession, rendering it difficult for attorneys of all stripes to advance their careers, does not necessarily mean that graduate law degrees provide no benefit to those that obtain them.
LIMITATIONS

The goal of this paper was to discover the genesis of graduate law programs in the United States. As noted, there are currently more than three hundred LL.M. programs in over thirty practice areas for U.S. students, and over seventy law schools offer an LL.M. course designed for internationally trained attorneys while still others offer coursework for attorneys and non-attorneys alike. Many of these programs are offered online, partially or fully, and bear little or no resemblance to one another or their initial form and structure.\textsuperscript{342}

It is beyond the scope of this research to trace how the primordial programs of the latter part of the nineteenth century developed into this dizzying array of graduate law offerings. While it is hoped that this inquiry into the first appearance of graduate law programs may inform the current debate around the training of attorneys and the dispensation of legal knowledge in general, and the utility of LL.M. programs in particular, it is important to note that the current slate of widely different programs arose at different times and in contexts bearing little or no similarity to that of Penn Law.

In other words, while there exists a great variety of graduate legal education programs offered within and among present day American law schools, it was the purpose of this project to investigate how they came into American legal education in the first place. Despite the variation that would come later, the relatively simultaneous appearance and endurance of these degrees at a number of institutions in one form or another, should make the origin of American graduate
legal education programs in general, and that at the University of Pennsylvania in particular, of interest to faculty and administrators at other American law schools.
ENDNOTES

1 “A Consumer’s Guide to LL.M. Programs,” The National Jurist, October 2011: 26, noting “Almost 10,000 students were enrolled in graduate law programs in the 2010-2011 school year, . . . . In 1990 there were only 5,000 graduate law students and 7,300 in 2000.”


3 Nora V. Demleitner, “Stratification, Expansion, And Retrenchment: International Legal Education in U.S. Law Schools, International Law News 43(2) (2014): 6 (noting “[a]s law schools experience increasing fiscal pressure due to the downturn in the number of applicants to their JD programs, ever more of them have opened or increased the size of LL.M. program targeting foreign attorneys.”)


89


16 See. e.g. Horace Wilgus, “Legal Education in the United States,” Michigan Law Review, 6 (1908): 647, 648 (contending that the origin of law schools “is lost in antiquity,” but noting the existence of advocates and schools for the education of judges and scribes in ancient Egypt and Babylonia as far back as 2000 B.C.).

17 Reproduced under license from CartoonStock, purchased September 9, 2013.


21 Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s (Chapel Hill: The University of North Carolina Press, 1983), 3 (noting that in
1783 only in urban areas was there anything even resembling compulsory apprenticeships for aspiring lawyers."

 22 Albert J. Harno, *Legal Education in the United States*, (San Francisco, CA: Bancroft-Whitney, 1953), 18 (noting that the feelings of early American Colonists were not merely negative but for many amounted to open suspicion and distrust).

 23 Ibid.


 25 Ibid., 6.

 26 Ibid., 7.


 30 Ibid. This fee was typical for the period with apprentice clerks typically paying a fee of $100-$200, or if the lawyer had a strong enough reputation it could sometimes be as much as $500, see James M. Peden, “A History of Law School Administration,” in ed. Sheppard, *History of Legal Education*, 1107.


 33 Ibid.


 35 Susan K. Boyd, *The ABA’s First Section, Assuring a Qualified Bar* (Section of Legal Education and Admissions to the Bar, American Bar Association, 1993), 1.

 36 The British legal profession is split into two main categories: barristers and solicitors. Barristers are advocates in legal hearings, actually standing in court in often in full regalia (wigs, robe, etc.) pleading their clients’ cases. They usually operate independently, and are not a part of a larger entity such as a law firm or corporation. Solicitors on the other hand are consulted for much more general legal advice and advise clients, undertake negotiations, and draft legal documents and are often employed by law firms and corporations. See W. Erskine Williams, “The Barrister and the Solicitor in British Practice: The Desirability of a Similar Distinction in the United States,” *Texas Law Review* 14 (1935): 55.

38 Ibid., 13.


42 Ibid.

43 Ibid., 4.


45 Ibid.

46 Ibid., 1108

47 Ibid. (describing how formal admission to the practice of law during this period was in the hands of local courts who appointed a committee, almost always involving some sort of oral examination of the applicant, and noting further that these examinations were often more casual than rigorous with the influence of family and position playing as important a role as legal knowledge in the determining admission).


50 Ibid., 14.


52 Derek Davis, “A Living Science and A Present Art: A History of the University of Pennsylvania Law School” (unpublished manuscript, 2000), 12. This is certainly not to say that all lawyers of the period suffered a loss of influence and prestige. Particularly in major cities like Boston lawyers continued to play a very influential role in local and regional affairs and enjoyed a high degree of prestige and status. See Sheppard, *History of Legal Education*, 9.


56 Ibid., 345-342.

57 Ibid., 342.

58 This appointment was George Wythe, the preceptor who oversaw the law clerkship of Thomas Jefferson. Appointed by William and Mary in 1779, he is widely regarded as the first true professor of law in the United States. Although see Horace Wilgus, “Legal Education in the United States,” *Michigan Law Review*, 6 (1908): 648 (crediting John Vardill of King’s College (now Columbia) as the nation’s first law professor; a position he accepted in 1773).


61 Sheppard, *History of Legal Education*, 14 (further characterizing Dartmouth’s efforts as a “haphazard smattering of law from 1796 to 1808, when a professorship of law was created for which funds were never raised).


65 Ibid.


69 Ibid.

70 Ibid.


72 Stevens, *Law School*, 15 n. 46 (opining that Story’s appointment as law professor set Harvard’s on its course toward becoming the preeminent law school in
the United States); Lon Fuller, Report on The Law School of the University of Pennsylvania, May 1958, p. 6 (characterizing Story's reorganization of the study of law at Harvard in 1829 as marking the birth of the modern university law school in the United States); Dempsey, “Origin of Legal Education Institutions,” 178 (stating that Story's appointment along with Simon Greenleaf “gave to the Harvard Law School a preeminence which it has never lost”).

73 Bennett, “Nineteenth Century Legal Education,” 1.


75 E.g. Stevens, Law School, xv.


77 Ibid.

78 Ibid.


80 Stevens, Law School, 36-38.

81 Ibid. 41.


83 Ibid.


88 Ibid. 76.

89 Sonsteng, “A Legal Education Renaissance, 16.

90 Ibid. 55-58, 35-37.
91 Ibid., 36.

92 Ibid., 55.


104 Veysey, *The Emergence of the American University*, 1-4.


106 Harno, *Legal Education in the United States*, 85-86 (noting the ABA Chairman of 1895’s unconcern that adding education pre-requisites might leave a highly qualified but untrained lawyer excluded from the profession, stating: “The general level of professional standing should not be lowered for fear some singled chieftain is never found.”).

Ibid. 96-97

Ibid. 114.


Ibid. 113.

Ibid. 114.


Redlich, *The Common Law and the Case Method*.

Ibid, 70.

Ibid.


Ibid. 416-419. Reed saw the need for this differentiation because in his opinion “practicing lawyers do not merely render to the community a social service, which the community is interested in having them render well. They are part of the governing mechanism of the state. Their functions are in a broad sense political. This is not due primarily to the circumstances that a large proportion of our legislature and administrative officials, and virtually all of our judges, are chosen from among the practically ruling class . . . It springs even more fundamentally from the fact, early discovered, that private individuals cannot secure justice without the aid of a special professional order to represent and advise them.” Reed, “Training for the Public Profession of the Law,” 3.

William Draper Lewis, “American Bar Association’s Position on Legal Education – Agreements and Differences Between the Report of Committee on Which the Action of the Association was Taken and the Carnegie Foundation Report,” *American Bar Association Journal* 8 (1922): 39, 41 (expressing doubt on whether Reed fully realized “the disastrous effects on the public – especially the poor – of admitting to the bar each year an increasing number of superficially trained men without professional ideals”).

Bailey, “Early Legal Education,” 2.


123 Stevens, Law School, 191-99.

124 Ibid. 179.

125 Ibid. 99-100.

126 Ibid. xv.


128 Stevens, Law School, 27, 58.


130 Ibid.

131 Ibid., 73.

132 Ibid., 73-74.


134 Ibid., 341-42.

135 Ibid., 345

136 Ibid., 348.

137 Ibid., 355.


139 E.g. Stevens, Law School, 119-120 (noting the contention among some observers that “the case method no longer professes to give its students a present mastery of judge-made law. It prepares them merely to master judge-made law in the future.”).


141 Ibid. 120.
Hupper, "The Rise of an Academic Doctorate," 14 (noting the "tremendous competition for prestige" among University law schools at the turn of the twentieth century).


Stevens, Law School, 95

Ibid, 103 n. 2.


Johnston, "Law Schools and the Profession,” 61.

See e.g. “School and Alumni Notes, The Yale Law Journal, 17 No. 3 (1908): 219-20 (noting enhanced requirements for its graduate law degree programs “in accordance with the general raising of the standard of the Yale professional schools.”)

Gabriel, “Graduate Legal Education,” 130 (noting the existence of advanced law degrees by the twelfth century universities in both Bologna and Paris).

Ibid.


Ibid.

Hupper, "The Rise of an Academic Doctorate," 14, noting that a graduate degree “could function at once as an educational initiative that has intrinsic merit, a source of funds and prestige for the school, a means for the professional class to experiment, and a substitute for extending the basic law degree.”

Stevens, Law School, 20, discussing a thirst for more "rationalism" during this period with an accompanying urge for professionalization and stratification brought about by the desires of a growing middle class for a structured environment. Feelings of dislocation brought about by the industrial revolution and the closing of the frontier also played a role.

Ibid. 6-7. See also, William D. Henderson, "Why hands-on training is not enough," The National Jurist 21(2) (2011) (noting that “the daunting economics
facing law schools is intertwined with heightened business pressures on practicing lawyers. To help ease these pressures, many employers are telling law schools that [they] need to do a better job producing practice-ready graduates who can ‘hit the ground running.’ Many legal educators have responded by pushing for a greater commitment to experiential education – more clinics, pro bono initiatives, simulation and skills courses and externships, all of which emphasize learning by doing.”


158 Ibid., 14-15 (noting that the coursework for these degrees included some training in Roman law, jurisprudence and legal history, with the Doctor of Civil Law at Yale requiring a prior bachelor’s degree, higher standing in one’s law studies, and knowledge of Latin and either French or German).

159 Gabriel, “Graduate Legal Education,” 131.

160 Ibid.


163 Ibid. (describing a strategy employed at Harvard and Yale law schools in the 1870’s “to leave the LL.B. requirement at its previous maximum of two years, on the theory that the refusal to grant it after this interval would merely drive students into offices or inferior schools; and to establish a higher degree as a symbol of higher attainment”).


166 Reed, “Training for the Public Profession of the Law,” 176.

167 Ibid.

168 Ibid.

169 Ibid. note 4, noting that in 1874 the University of Iowa law school attempted to add an additional postgraduate year that was unsuccessful and formally abolished in 1882.
170 Ibid. 176.

171 Veysey, The Emergence of the American University, 2.

172 Thelin, A History of American Higher Education, 87 (noting “numerous scholars who had pursued advanced studies on the Continent argued that the seriousness of purpose associated with advanced scholarship at German universities was essential for national development and ought to be transplanted to the United States”).


174 Ibid., 4.

175 Tucker, “What is the Best Training For the American Bar,” 595.


177 Ibid., 66-67.

178 Ibid., 67.

179 Ibid.

180 Emory Washburn, “Legal Education. II. What?”, The American Law Register, May, 1873, 266.

181 Ibid. (noting that there had been “for a century or two, a gradual and all but imperceptible process of assimilation going on between nations, whereby, in their intercourse with each other, they are more like provinces of one broader state in their laws and administration, when applied to the citizens of other states, than separate and independent bodies politic, as they once were.”)

182 Ibid., 271.


184 Ibid., 412.

185 Ibid.

186 Ibid., 414.

Ibid., 72.

Ibid., 71.


Ibid.

Ibid. 249 (emphasis in original).


Ibid.

Ibid.

Ibid., 15.


Dagget, “The Yale Law School,” 248

Ibid.

Ibid.

The University of the City of New York, Catalogue for 1892-1893, pp. 128-129.

Ibid. 129.

See Catalogue of Yale University, 1890-91, p. 176 (setting forth the requirement of a preliminary examination in Roman law and Roman history as a pre-requisite to its Master of Laws degree); Calendar of the University of Michigan 1892-1893, pp. 140-41 (setting forth required courses for its Master of Laws degree including Public International Law, History of Treaties, History of Real Property Law and the Science of Jurisprudence) Northwestern University Catalogue 1891-92, p. 121 (setting forth required courses for its Master of Laws degree including Comparative Constitutional Law, Public International Law, and History of English Law).

Tucker, “What is the Best Training For the American Bar,” 603.


Ibid.


Ibid. 7 (note Carson’s opinion that the charter was “abrogated under the cover of frivolous and groundless charges of a political nature against her officers,” an act he characterizes as “disingenuous and misleading,” and proved that “the men of that day were quite as crafty as any of their descendants.”).

Ibid., 7-8.


C. Stuart Patterson, “The Law School of the University of Pennsylvania,” *Green Bag*, 1 (1889): 99; Davis, “A Living Science,” 10 (both simply noting that the course did not continue). Carrington, “The Revolutionary Idea of University Legal Education,” 549-550 (noting speculation that the course may have ended due to Wilson’s courting of a seventeen-year-old girl in Boston (who later became his second wife), or because of significant financial difficulties arising out of his purchase of an iron works); Lloyd, “Interim Report,” p. 2 (noting evidence that both the size and social prominence of the audience begin to diminish after the initial few lectures along with Wilson’s interest in giving them as the novelty of presenting them waned).


Ibid., (noting that Professor Hare's courses were not intended to provide "legal information and training, such as were the lectures given to medical students, which were of direct use in their practice.")


Hampton L Carson, *An Historical Sketch of the Law Department of the University of Pennsylvania* (Philadelphia, PA: Press of the Times, 1882), 19; see also Cheyney, *History of the University of Pennsylvania*, 234 (noting that Charles Hare became ill in the winter of 1817-18 “ultimately losing his mind.”)


Carson, *An Historical Sketch*, 21. George Sharswood's family had been in the New World since 1665. Prior to re-founding the law program at the University of Pennsylvania, Sharswood was a well-respected jurist as a judge in the District Court
of Philadelphia; a position he maintained during his tenure as a law professor. Davis, “A Living Science,” 188.


238 Bailey, “Early Legal Education,” 2.

239 Hupper, “The Rise of an Academic Doctorate,” 6-7. See also George W. Pepper, Philadelphia Lawyer An Autobiography, (Philadelphia: Lippincott Co., 1944), 346 (contending that that the apprentice system in law began to breakdown in the mid nineteenth century because “in the law school a greater variety of courses can be better coordinated and more efficiently taught and from the further fact that the highly organized modern law office is no place for quiet study.”)


241 Ibid., 17.

242 Ibid., 17-18.


244 Davis, “A Living Science,” 18.

245 Carson, An Historical Sketch, 25.


247 Ibid., 22.

248 Cheyney, History of the University of Pennsylvania, 1740-1940, 236.

249 Ibid.

250 Carson, An Historical Sketch, 34.

Catalogue of the University of Pennsylvania 1876-1877, Law Department, 86-91 (stating as the mission of the Law Department to “aid in preparing gentlemen for admission to the Bar, and, also, to offer to those who have not the Bar in view, an opportunity of acquiring knowledge in an one or all of the branches of legal training . . . through lectures, and by books and portions of books upon the subjects of the lectures, [upon which] students are frequently and carefully examined.”).

Heft, “William Draper Lewis,” 9, 10.

Ibid., 10.

Ibid.

Ibid., 11-12; see also Report of the Provost of the University of Pennsylvania for the two Years ending October 1, 1889, pp. 105-106.


Ibid., 13.

Bennett, “Nineteenth Century Legal Education,” 35.


Ibid., 83-86.


Heft, “William Draper Lewis,” 47.

Ibid., 26-27.

Ibid., 50, 99.

Ibid., 63 100. Among the courses he championed was the introduction of a course on legal practice, designed to blunt the rising tide of criticism that law
graduates were receiving no instruction on the actual practice of law. Ibid. 67-68. This course was the pre-cursor to clinical course work which would become ubiquitous in law schools decades later. Ibid., 101.

271 Ibid., 90.

272 Ibid., 69.

273 It is worth noting that Lewis was the author of the ABA’s response to the Reed Report in 1922 which clearly sets forth his views on the importance of university legal education and its responsibility for maintaining the highest standards for the legal profession. William Draper Lewis, “American Bar Association’s Position on Legal Education – Agreements and Differences Between the Report of Committee on Which the Action of the Association was Taken and the Carnegie Foundation Report,” American Bar Association Journal 8 (1922): 39

274 Minutes of Meeting of the Faculty of the Department of Law Of the University of Pennsylvania, January 28, 1897, Records of the Law School (1896-1897) Vol. 1 p, 45.

275 Ibid., 45.


279 Ibid.


282 Carson, An Historical Sketch, 33.

283 James Parsons, Law as Science, the Introductory Lecture Delivered at the University of Pennsylvania by Professor James Parsons on October 1, 1875 At the Opening of the Annual Course in the Law Department (Philadelphia: King & Baird, 1875) 3.

284 Ibid., 4.

285 Ibid.
286 University of Pennsylvania Annual Reports of the Provost and Treasurer for the year ending October 1, 1883, p. 56.


288 Catalogue and Announcements 1884-1885 University of Pennsylvania, p. 112.

289 Ibid.

290 Ibid.

291 Ibid., 112-113

292 Ibid., 113.

293 University of Pennsylvania Commencement Notes, 1986, stating “The Master of Laws degree . . . was awarded for the first time at the Commencement of 1886 and, in this first instance, to just one graduate.”

294 Catalogue and Announcements 1896-1897, University of Pennsylvania, p. 213.

295 Catalogue of the University of Pennsylvania 1907-1908, p. 359.

296 Annual Reports of Provost and Treasurer of the University of Pennsylvania for the Year Ending October 1, 1885, p. 22.

297 University of Pennsylvania Annual Report of the Provost to the Board of Trustees from September 1, 1899, to September 1, 1900, p. 5.

298 Minutes of the Trustees of the University of Pennsylvania, December 4, 1894, University of Pennsylvania archives vol. A. 13, p. 248.

299 Stevens, Law School, 74.

300 Minutes of the Trustees of the University of Pennsylvania, March 6, 1900, University of Pennsylvania archives vol. A. 14, p. 11.

301 University of Pennsylvania Annual Report of the Provost To the Board of Trustees from September 1898, to September 1, 1899, p. 105.

302 University of Pennsylvania Annual Report of the Provost to the Board of Trustees from September 1, 1906 to September 1, 1907, p. 130.

303 Ibid., 131.
University of Pennsylvania Law School Bulletin, 1907-08; see also, Minutes of the Trustees of the University of Pennsylvania Oct. 16, 1907, University of Pennsylvania archives vol. A14, p. 516 (approving the language in the catalogue).

Ibid.

For example, the course catalogue from the academic year 1889-90 notes the existence of a graduate program stating: “The degree of Master of Laws is granted in the post-graduate course in Law.” However, none of the students listed among the matriculants for that year appear to have participated in the program. University of Pennsylvania Catalogue and Announcements 1889-90, p. 32.


Ibid., 132 (noting that by 1954 “the faculty saw the need for more flexibility in dealing with the needs of foreign students – who by then provided the vast majority of LL.M. candidates” at Penn Law).


Stevens, Law School, 120.

Johnston, “Law Schools and the Profession,” 162.

See, e.g., Frank, “Why Not a Clinical Lawyer-School?”

Stevens, Law School, 176.


Stevens, Law School, 243.


See e.g. Temple University Beasley School of Law’s LLM in Trial Advocacy (designed for “practicing attorneys . . . who wish to perfect both litigation tactics and courtroom performance”). http://www.law.temple.edu/pages/current_students/trial_ad_llm_overview.aspx. Accessed April 29, 2014.


See e.g., John Treu, “Should You Go For An LLM Degree After Law School? It Depends,” Fuller Professional Education Law Blog, January 16, 2014, accessed March 7, 2014, http://fulleredu.com/lawblog/should-you-go-for-an-llm-degree-after-law-school-it-depends/ (noting the difference between seeking an LL.M. degree for specialized legal knowledge that can’t be gained in the workplace versus seeking to improve one’s job prospects or obscure a poor J.D. academic record versus obtaining a license to practice in a new jurisdiction); Michelle Weyenburg, “How Beneficial is an American LL.M. Degree?”, The National Jurist, November, 2008, p. 30 (quoting an American law school administrator saying “An LL.M. is becoming virtually indispensable for foreign students . . . . It’s a credential that is so valuable back home. It may not be a prerequisite for a top job, but it is something that governments and other entities look to as an important qualification.”); Rebecca Larsen and Michelle Weyenberg, “Where are they now?”, The National Jurist, Graduate Annual 2013-2014, p. 8 (highlighting to American LL.M. graduates who valued their degrees twelve years later).

Ribstein, 1656.

Ibid., 1659-62

See e.g., Emory Law School's Juris Master Program (designed not for lawyers or law students but for “professionals interested in gaining a better grounding in law and regulation to advance their careers or students whose primary degree would be enhanced by an integrated study of law.”), http://law.emory.edu/academics/jm-degree-program/index.html. Accessed April 30, 2015.


Harno, Legal Education in the United States, 84-85, quoting Woodrow Wilson Legal Education of Undergraduates, 439, 441 (1894) (out of print).


The University of the City of New York, Catalogue for 1892-1893, pp. 128-129.

342 See *The National Jurist*, http://www.nationaljurist.com/graduate-law, for a comprehensive listing of these programs.
BIBLIOGRAPHY

http://www.americanbar.org/groups/legal_education/resources/statistics.html

http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/by_year_approved.html

http://www.americanbar.org/groups/legal_education/resources/LL.M.-degrees_post_j_d_non_j_d.html


Boyd, Susan K. The ABA’s First Section, Assuring a Qualified Bar (Section of Legal Education and Admissions to the Bar, American Bar Association, 1993).


Catalogue of the Trustees, Officers, and Students of the University of Pennsylvania Session 1854-55, Regulations, Etc., of the Law Department of the University of Pennsylvania. Retrieved on December 2, 2012, from the University of Pennsylvania Archives, Primary Sources Online,  
http://www.archives.upenn.edu/primdocs/upl/upl1/ucatalog_entry.html

Catalogue of the University of Pennsylvania 1876-1877, Law Department, 86-91 retrieved on December 14, 2012, from the University of Pennsylvania Archives,

Catalogue of the University of Pennsylvania, Department of Law 1896-87, Announcements for Session 1897-98


Committee minutes and records, Law, 1944-1945 (Box UPB 6. 2:001). University of Pennsylvania Archives, Philadelphia, PA.


Parsons, James, *Law as Science, the Introductory Lecture Delivered at the University of Pennsylvania by Professor James Parsons on October 1, 1875 At the Opening of the Annual Course in the Law Department*. Philadelphia: King & Baird, 1875.


Report of the Provost of the University of Pennsylvania for the two Years ending October 1, 1889.


University of Pennsylvania Annual Reports of the Provost and Treasurer for the year ending October 1, 1883.

University of Pennsylvania Annual Report of the Provost To the Board of Trustees from September 1898, to September 1, 1899

University of Pennsylvania Annual Report of the Provost to the Board of Trustees from September 1, 1899, to September 1, 1900.

University of Pennsylvania Annual Report of the Provost to the Board of Trustees from September 1, 1906, to September 1, 1907.

University of Pennsylvania Catalogue and Announcements 1889-90.


Washburn, Emory. “Legal Education. II. What?”, *The American Law Register*, May, 1873, 266.

