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# THE ACADEMIC DOCTORATE IN LAW: A VEHICLE FOR LEGAL TRANSPLANTS?

by Gail J. Hupper\*

## Abstract

*In our current era of globalization, there has been considerable writing about the ways in which U.S. ideas about law are diffused to other countries. While some of this literature refers to graduate degrees for foreign lawyers, most authors ignore the nature of the degree itself and the complexity of the U.S. legal educational environment in which the degree is pursued. This article argues that the academization and internationalization of U.S. legal education, combined with the growing dominance of U.S. legal models worldwide, has produced an unprecedented level of interest in U.S. S.J.D. and J.S.D. degrees during the past ten to fifteen years. Moreover, in countries in which the degree is most popular, that popularity marks the reception of not only U.S. doctrinal models, but also theoretical and interdisciplinary scholarship as practiced at a small number of leading U.S. schools. These phenomena suggest important insights about the changing nature of U.S. legal education and its impact on a world stage.*

## Introduction

In our current era of globalization, there has been considerable writing on the mechanisms whereby ideas about law and particular legal norms are diffused around the world. Much of this writing has focused on the spread of U.S. legal norms and ideas in particular, including the adversarial model of criminal justice, the disclosure model of securities regulation, judicial review in constitutional adjudication, and many others. The venues through which this occurs are similarly numerous – from direct imposition in trade agreements, to consultancy on law reform projects, to voluntary adoption to promote foreign investment, to student and faculty exchanges in legal education, to depictions of law and lawyers in popular culture. The literature ranges from well-meaning boosterism<sup>1</sup> to more sober accounts of the pitfalls of trying to impose American-

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\* Director, LL.M. and International Programs, Boston College Law School. Most of the work for this article was done while the author was a Visiting Scholar at Harvard Law School between 2003 and 2006. Warmest thanks go to Bill Alford, Dan Coquillette, Jane Bestor, Larry Cunningham, Frank Garcia, Bruce Kimball, Bill Wood, and the participants in the Harvard Law School History Project and the Boston College Summer Brown Bag Series for their support and for comments on previous drafts of this article. Thanks also to the faculty members and administrators at Columbia, Harvard, George Washington, Michigan, NYU, Wisconsin and Yale who consented to be interviewed for this project, to the archival staffs of these schools' libraries, and to the students in and graduates of Harvard Law School's S.J.D. program, from whom I have learned so much.

style “rule of law” (and, often, an accompanying political agenda) on countries from very different legal traditions.<sup>2</sup>

In this context, U.S. graduate legal education is sometimes referred to as one of the mechanisms through which diffusion occurs. The most extensive discussion occurs in Wolfgang Wiegand’s 1991 article *The Reception of American Law in Europe*, which examines the impact of Swiss students who have pursued U.S. graduate legal education on their home legal system.<sup>3</sup> In addition, in an article concerning a typology of legal transplants, Jonathan Miller has referred to graduate legal education as a vehicle for what he calls “entrepreneurial transplants,” or foreign legal norms that confer benefits on those who encourage their adoption.<sup>4</sup> Other authors have noted in passing the role of U.S. graduate legal education in transplants of particular legal rules<sup>5</sup> to particular legal systems,<sup>6</sup> or in diffusing more general ways of thinking about law.<sup>7</sup>

Some of the literature begins to approach why one might want to do a graduate degree, and what happens in the graduate’s home country once he or she has returned.<sup>8</sup>

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<sup>1</sup> E.g., Sandra Day O’Connor, *Speech: CEELI Award Ceremony and Luncheon: ABA Annual Meeting*, 42 ST. LOUIS L.J. 715 (1998); John Shullenberger, *The Russian Federation and Karelia: Rapid Change and the Rule of Law (pts. 1 & 2)*, VER. B. J. & L. DIG., Feb. 1995, at 20, VER. B. J. & L. DIG., Apr. 1995, at 42.

<sup>2</sup> A classic article in this tradition is David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062 (1974) (questioning the premises of the first law and development movement in the 1960s).

<sup>3</sup> Wolfgang Wiegand, *The Reception of American Law in Europe*, 39 AM. J. COMP. L. 229 (1991).

<sup>4</sup> Jonathan M. Miller, *A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process*, 51 AM. J. COMP. L. 839 (2003), citing YVES DEZELAY & BRYANT G. GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES 7* (Chicago, 2002). The other types to which Miller refers are “cost-saving,” “externally-dictated” and “legitimacy-generating” transplants. Miller, *supra*. For a broader discussion of legal transplants, see *infra* notes 206-11 and accompanying text.

<sup>5</sup> E.g., Jacques Delisle, *Lex Americana?: United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond*, 20 U. PA. J. INT’L ECON. L. 179 (1999); Maximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 HARV. INT’L L. J. 1 (2004).

<sup>6</sup> E.g., Delisle, *supra* note 5 (discussing post-Soviet transplants); Ugo Mattei, *Comment, Why the Wind Changed: Intellectual Leadership in Western Law*, 42 AM. J. COMP. L. 195 (1994) (discussing Latin America).

<sup>7</sup> Delisle, *supra* note 5; Ugo Mattei, *Symposium: Calabresi’s The Costs of Accidents: A Generation of Impact on Law and Scholarship: The Rise and Fall of Law and Economics: An Essay for Judge Guido Calabresi*, 64 MD. L. REV. 220 (2005) (calling graduate legal education a “powerful tool in the worldwide diffusion of U.S. law”).

<sup>8</sup> Miller, for example, addresses both motivation and effect. He argues that a graduate degree enables the degree recipient to obtain significant benefits through the transplantation of learned norms once he or she has returned to his home country. In this context he is speaking primarily of directly transplanted norms – as in legislation that the degree holder has managed to get adopted. Miller, *supra* note 4. Wiegand’s understanding of both motivation and effect is more diffuse. His account of motivation is the ability to obtain a high-status job whose availability is conditioned on the applicant’s having a U.S. law degree. He uses the Weberian “leading lawyers” formulation to explain how graduate degree holders who return to these high-status positions in Switzerland (in both teaching and practice) have contributed to the importation of particular legal devices. Wiegand, *supra* note 3. Delisle does not address motivation, but

However, the vast majority of the literature treats the degree itself largely as a black box into which the student vanishes, ultimately re-emerging with new learning and a new credential. The literature either says nothing about the nature of the graduate degree itself, or assumes that the graduate degree in question is a one-year master's degree rather than a doctorate.<sup>9</sup> In this sense, it does not address the peculiarities of a research-based degree that requires a multi-year commitment, is directed primarily towards teacher training rather than legal practice, and competes directly with the terminal teacher training degree in the student's home country. Nor does it address the complexities of the U.S. legal educational environment – both differences among schools and the motivations that drive a given school's decision to offer the degree.

This article begins to offer insights into these issues through the lens of the U.S. academic doctorate in law – commonly called the S.J.D. or J.S.D. degree. The degree was first introduced in the late 1800s and early 1900s as a vehicle for training U.S. law graduates for teaching in the U.S. During the 1950s, as much as 20% of Harvard Law School's faculty held the degree, as did some 25% of Yale's.<sup>10</sup> Since then, however, those seeking the degree increasingly received their initial legal training in countries other than the U.S.<sup>11</sup> In a few countries the effect has been dramatic. For example, close to half of the law faculty of Israel's Tel Aviv University hold the degree.<sup>12</sup> So do close to 25% of the law faculty at National Taiwan University in Taiwan and 17% of the law faculty at Seoul National University in Korea.<sup>13</sup> As such, the degree is likely to be a vehicle for the transplantation of legal norms and ideas between the U.S. and these countries, and perhaps elsewhere as well.

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agrees with the idea of a diffuse effect. He also argues that graduate legal education is more effective than some other methods of transplantation because of its non-overtly political nature. Delisle, *supra* note 5.

<sup>9</sup> Delisle, however, does touch on typical LL.M. degree requirements, and he does refer to the doctorate in passing. *See id.*

<sup>10</sup> *See* Harvard University, *The Law School Including Courses of Instruction for the Academic Year 1950-51*, OFFICIAL REG. HARV. U., Apr. 1950, at 3-4; Yale University, *Law School For the Academic Year 1956-57*, BULL. YALE U. 1956, at 6-7.

<sup>11</sup> *See* Gail J. Hupper, Database of S.J.D. Graduates (Apr. 21, 2008) (unpublished listing of graduates derived from archival and other materials, on file with the author) (hereinafter Database); Gail J. Hupper, Research on S.J.D./J.S.D. Programs -- Progress Report (Dec. 13, 2003) (unpublished manuscript, on file with the author) (hereinafter Progress Report) (surveying programs at 25 of the 28 schools offering the degree as of 2003). Of the two schools that reported substantial enrollment by U.S. students, one reported a mix of U.S. and international students, and the other reported that all of its students were from the U.S. This latter program is a specialized one in a highly regulated industry. *See id.*

<sup>12</sup> Tel Aviv University, Buchmann Faculty of Law, Members, <http://www.tau.ac.il/law/member.htm> (last visited Mar. 7, 2007).

<sup>13</sup> National Taiwan University, Faculty of Law, Faculty, [http://www.law.ntu.edu.tw/english/faculty/yh\\_03full\\_time\\_professors.htm](http://www.law.ntu.edu.tw/english/faculty/yh_03full_time_professors.htm), [http://www.law.ntu.edu.tw/english/faculty/yh\\_03full\\_time\\_associate\\_professors.htm](http://www.law.ntu.edu.tw/english/faculty/yh_03full_time_associate_professors.htm), [http://www.law.ntu.edu.tw/english/faculty/yh\\_03full\\_time\\_assistant\\_professors.htm](http://www.law.ntu.edu.tw/english/faculty/yh_03full_time_assistant_professors.htm) (all last visited Feb. 14, 2008); Seoul National University, College of Law, Faculty, [http://law.snu.ac.kr/english/news/faculty\\_Members.asp](http://law.snu.ac.kr/english/news/faculty_Members.asp) (last visited Dec. 9, 2007) (hereinafter SNU Faculty Web Site).

The number of degrees being conferred is very small (according to the American Bar Association, only 97 doctoral degrees were awarded in 2006),<sup>14</sup> but it has grown considerably in the past 25 years.<sup>15</sup> This is partly a function of growth in programs that have existed for a number of years, but also a function of the increasing number of U.S. law schools are now offering the degree. The twenty or so that offered the degree as of 1990 included the country's most prestigious schools, and most had established their programs before or shortly after World War II.<sup>16</sup> By 2007, the number of schools offering the degree had increased to more than 35, and their ranks included schools like Pace, Widener and Golden Gate Universities.<sup>17</sup>

The structure of the programs follows a similar pattern. Eligibility for the program is typically limited to students who have a basic law degree in their home country and, with a few exceptions, an LL.M. from a school in the U.S. Students are normally admitted on the basis of a specific dissertation project submitted in connection with their application.<sup>18</sup> Once admitted, students at most schools are expected to spend at least one year in residence, pursuing a combination of course work, directed reading and

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<sup>14</sup> See LAW SCH. ADMISSION COUNCIL & AM. BAR ASS'N, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 852 (Newtown, Pa., 2008 ed.) (hereinafter 2008 Official Guide).

<sup>15</sup> The following historical data on number of degrees conferred serves as a comparison: 1980: 19; 1985: 29; 1990: 34; 1995: 39; 2001: 59. See CARL A. AUERBACH, HISTORICAL STATISTICS OF LEGAL EDUCATION 44 (Chicago, 1997) (as to numbers prior to 2001); LAW SCH. ADMISSION COUNCIL & AM. BAR ASS'N, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 816 (Newtown, Pa., 2003 ed.) (as to 2001).

<sup>16</sup> The following schools had programs before 1990: University of California/Berkeley, University of Chicago, Columbia University, Cornell University, Duke University, George Washington University, Georgetown University, Harvard University, University of Illinois at Champaign/Urbana, University of Michigan, New York University, Northwestern University, University of Pennsylvania, Southern Methodist University, Stanford University, Tulane University, University of Virginia, Washington University in St. Louis, University of Wisconsin/Madison, and Yale University. See Earl C. Arnold et al., *Committee on Advanced Academic and Professional Degrees*, HAND BOOK ASS'N AM. L. SCH. & PROC. 34<sup>th</sup> ANN. MEETING 302, 307-08 n. 39, 41 (1936); Henry D. Gabriel, *Graduate Legal Education: An Appraisal*, 30 S. TEX. L. REV. 129, 159-62 (1990); GARY A. MUNNEKE, BARRON'S GUIDE TO LAW SCHOOLS (Woodbury, N.Y., 9<sup>th</sup> ed. 1990). In addition, by 1990 the University of Washington Law School was offering a Ph.D. in Asian and Comparative Law, and Indiana University at Bloomington Law School was offering an interdisciplinary Ph.D. in law and the social sciences. See *id.*

<sup>17</sup> The following schools established programs after 1990: American University/Washington College of Law, University of Arizona, University of California at Los Angeles, University of Florida, Golden Gate University, Indiana University at Bloomington, Indiana University at Indianapolis; University of Kansas; McGeorge/University of the Pacific, Loyola University of Chicago, Notre Dame University, Pace University, University of Pittsburgh, St. Thomas University, Samford University, Temple University, and Widener University. Compare MUNNEKE, *supra* note 16, with 2008 Official Guide, *supra* note 14, at 96, 857-58; see also Indiana University at Indianapolis, Doctor of Juridical Science (S.J.D.), <http://indyaw.indiana.edu/sjd/> (last visited Dec. 28, 2007); Temple University, Graduate & International Programs, [http://www.law.temple.edu/servlet/RetrievePage?site=TempleLaw&page=Graduate\\_SJD&menuitem=p30](http://www.law.temple.edu/servlet/RetrievePage?site=TempleLaw&page=Graduate_SJD&menuitem=p30) (last visited Dec. 28, 2007); University of Kansas, International Students at KU Law, <http://www.law.ku.edu/admissions/international.shtml> (last visited Dec. 28, 2007).

<sup>18</sup> The application typically includes the individual's prior academic records, prior written work, recommendations from faculty who are familiar with their work, a c.v., etc. See Progress Report, *supra* note 11.

writing.<sup>19</sup> The student's core task in virtually all of the programs is the production of a book-length monograph<sup>20</sup> that is expected to represent a contribution to legal scholarship in the field and to be of publishable quality.<sup>21</sup> In the vast majority of schools the dissertation is defended orally before a committee of faculty members. Beyond this the programs vary enormously in size (from fewer than 5 students to over 70), duration, subject matter, structure, and level of institutional commitment.<sup>22</sup>

To be sure, none of the programs is viewed as more than a sideline relative to the schools' primary mission of professional training for J.D. students. However, at a few schools this sideline is getting a remarkable amount of attention. At Harvard, faculty participants have used the terms "great creative burst"<sup>23</sup> and "electricity"<sup>24</sup> to describe the program's intellectual expansion during the past 15 years. In the past five years, both Harvard and NYU have held conferences featuring S.J.D. student work, and Yale has held a conference featuring the work of current LL.M. and doctoral students.<sup>25</sup> NYU and six other schools worldwide have recently announced an Association of Transnational Law Schools ("ATLAS") initiative, designed to promote training and collaboration

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<sup>19</sup> Among the schools surveyed in 2003, the vast majority reported that they require students to spend at least one year in residence (normally the first year of the program). Only one school seemed to require more than one year of residency. However, as a practical matter students at many schools tended to stay in residence for more than the required period, and some schools actively encouraged this through financial incentives or other means. *See id.* at 3 n.8.

<sup>20</sup> The requirement is normally phrased to indicate that the dissertation is a single extended piece. However, six of the schools surveyed in 2003 indicated that a series of three related articles (in some cases with a unifying essay) would meet the requirement. A sixth did not explicitly indicate that such an approach is permissible, but as a practical matter some dissertations do take this form. *Id.* at 4 n.11.

<sup>21</sup> Whether this in fact turns out to be the case is less certain, and indeed some of the schools surveyed in 2003 explicitly indicated concerns about the quality of the students' work. *Id.* at 4.

<sup>22</sup> *See generally id.*

<sup>23</sup> Interview #15. This is the first of numerous references to interviews the author conducted with faculty, students and administrators involved with the programs at Columbia, George Washington, Harvard, Michigan, NYU, Wisconsin and Yale. Each interview is referred to herein by a randomly-assigned number. For a discussion of how these interviews were conducted, *see infra* notes 34-35.

<sup>24</sup> Interview #9.

<sup>25</sup> Harvard held such a conference in the fall of 2002, *see* Beth Potier, *Looking at Law in Classroom, Not Courtroom*, HARV. U. GAZETTE, Oct. 24, 2002, at \_\_, and NYU held a "Turn to Scholarship" conference, showcasing J.S.D. student work, in January 2004. *See* NYU School of Law, News, Events & Calendars: J.S.D. Conference, [http://www.law.nyu.edu/news/calendars/2003\\_2004/jsdconference/index.html](http://www.law.nyu.edu/news/calendars/2003_2004/jsdconference/index.html) (last visited Dec. 29, 2007); N.Y. UNIV. SCH. OF LAW, GUIDE TO THE DOCTOR OF JURIDICAL SCIENCE PROGRAM 18 (2006-07), available at [http://www.nyulawglobal.org/graduateadmissions/juridicalscience/documents/0607\\_JSD\\_Policies\\_Procedures.pdf](http://www.nyulawglobal.org/graduateadmissions/juridicalscience/documents/0607_JSD_Policies_Procedures.pdf) (hereinafter NYU J.S.D. GUIDE) (the conference is to be held every two years). In addition, NYU has held two workshops on the process of writing a successful dissertation. *See Pursuing a Doctorate: From Application to Publication*, <http://www.nyuglobal.org/pursuingdoctorate.htm> (last visited Dec. 29, 2007) (concerning November 2005 workshop); N. Y. Univ. Sch. of Law, *The Docket*, Sept. 10, 2002, at 12 (concerning October 2002 workshop). Yale's conference included commentary by some of the students' more senior counterparts who are now teaching in U.S. and Canadian law schools. *See* Yale Law Sch., Next Generation Legal Scholarship: Works-in-Progress Symposium of the Graduate Program at Yale Law School (Apr. 10-11, 2007), available at [http://www.law.yale.edu/documents/pdf/News\\_&\\_Events/GradSympSchedule.pdf](http://www.law.yale.edu/documents/pdf/News_&_Events/GradSympSchedule.pdf).

among the schools' doctoral students.<sup>26</sup> The Columbia, Harvard and NYU web sites now feature individual doctoral student web pages,<sup>27</sup> and the students are also increasingly appearing in descriptions of the schools' other scholarly activities.<sup>28</sup> Finally, growing numbers of graduates -- most of them from other countries -- are landing U.S. law school teaching positions, including in some of the country's elite schools.<sup>29</sup>

This article seeks to answer two primary questions: what has caused the current degree of interest in the doctorate? What is likely to be the degree's distinctive contribution to the diffusion of ideas about law, both here and abroad? The article does so by an in-depth examination of the programs at the seven schools that have conferred the most doctorates during the degree's close to 100 years in existence: Columbia, George Washington, Harvard, the University of Michigan, NYU, the University of Wisconsin and Yale.<sup>30</sup> Together these schools accounted for approximately half of the degrees conferred between 1990 and 2006.<sup>31</sup> Beyond the raw numbers, patterns at these schools may be representative of the programs at other schools not addressed by this article.

What explains the current level of interest in the programs? The short answer is a combination of the internationalization and academization of U.S. legal education, and the increasing spread of U.S. legal models world wide. What are likely to be the doctorate's distinctive contributions? Here the answer depends to a great extent on the school at which the degree is offered. Specifically, both the kind of training offered and the geographic origins of the students themselves vary considerably by school. In addition, at some schools those geographic origins are highly concentrated. Thus the structure of a sideline degree in a small number of U.S. law schools may be having a

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<sup>26</sup> Activities will include a three-week workshop each summer at one of the schools, beginning in the summer of 2008. See Welcome to ATLAS, <http://centers.law.nyu.edu/atlasdoctorate/index.html> (last visited Dec. 29, 2007) (hereinafter ATLAS Web Site).

<sup>27</sup> See Columbia Law School, J.S.D. Candidates-in-Residence, 2006-07, [http://www.law.columbia.edu/lm\\_jsd/jsd/candidates](http://www.law.columbia.edu/lm_jsd/jsd/candidates) (last visited Dec. 29, 2007) (hereinafter Columbia J.S.D. Web Pages); Harvard Law School, S.J.D. candidate Web Pages, [http://www.law.harvard.edu/academics/graduate/sjd\\_candidates/](http://www.law.harvard.edu/academics/graduate/sjd_candidates/) (last visited Dec. 29, 2007); New York University Law School, J.S.D. Students and Candidates, <http://www.nyulawglobal.org/fellowsscholars/jsdcommunity/meetjsd.htm> (last visited Dec. 29, 2007); New York University Law School, Recent J.S.D. Alumni, <http://www.nyulawglobal.org/fellowsscholars/jsdcommunity/recentjsdalumni.htm> (last visited Dec. 29, 2007). The NYU J.S.D. candidate and alumni web pages are hereinafter collectively referred to as NYU J.S.D. Web Pages.

<sup>28</sup> See sources cited *infra* note 93; *cf.* NYU J.S.D. GUIDE, *supra* note 25, at 18 (calling J.S.D. students "an integral part of the wider Law School community" and noting the various academic events around the school in which students participate).

<sup>29</sup> See *infra* notes 116-27 and accompanying text.

<sup>30</sup> The list of schools excludes Stanford, which by now has conferred slightly more doctorates than has George Washington. Stanford did not confer its first J.S.D. until the late 1950s. See Database, *supra* note 11.

<sup>31</sup> See *id.* The Database indicates that the seven schools accounted for 55% of the degrees conferred between 1990 and 2006, but the number of degrees conferred by other schools -- data that was collected from non-archival sources -- is probably underrepresented.

considerable impact in very specific geographic areas. As importantly, the doctorate represents a pedagogical experiment that may hold interesting lessons for the nature of U.S. legal education itself.

These developments may be positive in many ways, but this article is not necessarily an endorsement of what the schools are doing. In particular, we should think hard about the desirability of the export of some kinds of legal models. It has been said, for example, that the law faculty at Tel Aviv University have started to replicate the feuding theoretical models of their Harvard Law School counterparts.<sup>32</sup> Or, as Miller suggests, an educational investment in a particular doctrinal area may result in the wholesale transplantation of that body of doctrine into a legal culture for which it is ill-suited.<sup>33</sup> Moreover, there is a brain drain effect when young scholars from other countries remain in the U.S. to teach. Rather, the article is designed to give us a clearer idea of what is going on and some guidance for other schools that currently offer programs or are thinking of offering them.

The article's conclusions also should be understood as limited by the particular sources of information on which I draw. In the case of the programs themselves, those sources include interviews with faculty members and program administrators at the seven schools,<sup>34</sup> an examination of documents describing the programs, and the compilation of a database of graduates and their dissertations from publicly available information, including the universities' archives. Notably, while that database includes dissertation titles, I have reviewed only a portion of the dissertations for methodology and content, and have made no attempts to assess their quality. Thus, comments about particular dissertations are derived either from the title of the dissertation, a cursory review of its text, or from other materials (including faculty interviews) that refer to the dissertation. In addition, with a few exceptions, the post-1990 documentary materials to which I have had access are limited to those that are publicly available.

In the case of individual countries, the article draws primarily from published writings on legal and educational structures in those countries and on my own background knowledge. While I have interviewed a few doctoral students and graduates from particular countries,<sup>35</sup> the information provided is largely anecdotal. Thus the study makes no attempt to go beyond structural factors in its examination of particular countries or regions. In particular, it makes no systematic attempt to examine the specific contributions of the programs' graduates. In this sense the article's conclusions are more an agenda for future research than a statement of empirical fact.

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<sup>32</sup> See Interview #9; Interview #49.

<sup>33</sup> Miller, *supra* note 4.

<sup>34</sup> Between November 2003 and December 2007, I interviewed a total of 50 faculty members and administrators at the seven schools in person or by telephone, some of them more than once. In most cases, I transcribed notes I had taken during the interview into a longer summary shortly thereafter. These longer summaries generally have not been reviewed by the interviewees.

<sup>35</sup> Between May and October 2005, I interviewed a total of 12 students and graduates, most of them from Harvard's S.J.D. program. The interview technique was the same as for faculty and administrators. In addition, three faculty interviewees were themselves post-1990 graduates of the programs.

## Why the current interest?

The short answer to that question is a combination of three factors: the increasing academization of U.S. legal education, heightened interest in internationalization in U.S. legal educational circles, and the growing dominance of U.S. legal models internationally. These factors helped shape the degree in its early days, then fueled its transition from a means of training U.S. law teachers to one pursued primarily by international students. The development has hardly been smooth, however. The degree nearly disappeared at various stages in its history, and the real interest is very recent indeed.

## Historical overview

Briefly stated, the rise of the degree is an important chapter in the story of law's coming of age as an academic discipline in the first half of the 20th century. Drawing in part on continental European models, a few leading U.S. law schools shaped the degree into a vehicle for training a new class of law teachers, producing research into the nature and functioning of the legal system, and spreading emerging conceptions of law (notably the idea of law as social engineering) to a broader national audience.<sup>36</sup> After World War II, however, the degree increasingly fell out of step with the needs of U.S. legal education as an academic discipline, for two reasons. The first was the growing recognition that the basic law degree (by the 1960s, renamed "J.D.") was itself a graduate degree, and that it therefore could support advanced work of a kind originally reserved for doctoral students. The second was a growing interest in interdisciplinary legal scholarship, which was best supported by work in disciplines other than law. By the 1970s the degree had largely passed from view as a U.S. teacher training vehicle.<sup>37</sup>

This did not, however, represent the demise of the degree itself. Shortly after World War II, a new venue for the doctorate had begun to emerge: the exploding field of international legal studies. At the curricular level, these activities took the form of international courses in the regular law school curriculum, and degree and other programs for international students. For some schools these activities could be accommodated within the schools' traditional mission of training U.S. students for practice and for citizenship, but for others they were part of a larger process whereby the school redefined the legal community it served as an international one. This paradigm shift seems to have happened most quickly at Yale and Harvard, which had the largest international populations in their doctoral programs after the war. By the 1970s, however, most of the other schools had joined in. As the doctorate became part of the schools' international

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<sup>36</sup> See Gail J. Hupper, *The Rise of an Academic Doctorate in Law: Origins Through World War II*, \_\_ AM. J. LEGAL HIST. \_\_ (forthcoming 2007).

<sup>37</sup> Gail J. Hupper, *The Rise, Fall and Rise of an Academic Doctorate in Law: A Case Study of a Legal Transplant Part I* (Draft of Aug. 21, 2006) (unpublished manuscript on file with the author).

portfolios, so did its goals: training teachers, producing research, and a new “missionary” function.<sup>38</sup>

Furthering those goals, however, was much more complicated in the international arena than in the domestic one. A first set of difficulties had to do with the research product. For example, the ease with which foreign students would adapt to a U.S. educational environment would vary substantially according to the legal traditions in which they had been trained and their degree of English language ability. This would have very direct implications for their ability to produce scholarship a U.S. legal educator would view as “advanced.” In many cases they were limited to dissertations in comparative or international law, but not all faculty members would be equipped to supervise these kinds of dissertations. In addition, students’ access to relevant legal materials was only as great as the comparative materials available to them while they were in residence in the U.S., and the (often limited) capacities of their home country libraries when they were out of residence. Finally, the compilation style of doctoral work in many other countries was at odds with the U.S. legal tradition of argumentation in legal writing.<sup>39</sup>

Second, traditional academic career tracks in many countries offered little support for doing a doctorate in the U.S., at least if one planned to teach at home. In Japan and most developed common law countries (England, Canada, Australia and New Zealand), for example, there was no strong tradition of requiring a doctorate as a teaching credential.<sup>40</sup> Students from continental Europe, Korea and (by the 1950s) Taiwan generally would need a doctorate if they wished to teach, but it was less clear that a U.S. doctorate would qualify for this purpose. In continental Europe, for example, the tradition was that only a home country doctorate would do.<sup>41</sup> In Latin America, Taiwan and Korea, the model was either a home-country doctorate or a doctorate from the European parent legal system – Spain or Portugal in the case of Latin America,<sup>42</sup> and Germany in the case of Taiwan and Korea.<sup>43</sup> Finally, whatever the practice in theory,

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<sup>38</sup> Gail J. Hupper, *The Rise, Fall and Rise of an Academic Doctorate in Law: A Case Study of a Legal Transplant Part II* (Draft of Dec. 3, 2006) (unpublished manuscript on file with the author) (hereinafter Hupper Part II).

<sup>39</sup> *Id.* at 31.

<sup>40</sup> See John P.S. McLaren, *The History of Legal Education in Common Law Canada*, in *LEGAL EDUCATION IN CANADA* 111 (Roy J. Matas & Deborah J. McCawley eds., Montreal, 1987) (as to Canada). However, a small number of influential Canadian legal educators had pursued graduate work (including doctorates) at Harvard before the war. See *id.* [insert cites about other countries]

<sup>41</sup> This was due in part to the very hierarchical organization of Western European law faculties, and the need to remain on an established path in order to secure a teaching position. See John Henry Merryman, *Legal Education There and Here: A Comparison*, 27 *STAN. L. REV.* 859, 868-69 (1975); Minutes of the Meeting of the Graduate and Research Committee of the University of Michigan Law School, Sept. 24, 1924, in Law School (University of Michigan) collection, subseries Dean’s Files, 1852-1975, box 54 (available in the University of Michigan Archives, Bentley Historical Library) (hereinafter Michigan 9/24/64 minutes) (“it is unlikely that a German could be induced to come during the period when he is working on his Habilitationsschrift; thereafter he gets an appointment as a professor and passes beyond the reach of the program we are discussing.”)

<sup>42</sup> [insert cites]

<sup>43</sup> [insert cites]

absence from home at the critical moment could hurt a candidate's chances of being hired, even if that candidate otherwise had the requisite qualifications.<sup>44</sup>

Third, a new “missionary” function affected the way that the schools approached the international arena. One way of understanding this function was the idea of aid to foreign legal education – an outgrowth of the growing prominence of the U.S. legal model in the postwar era, and the intact condition of U.S. law schools compared to their counterparts in (say) western Europe. A second, harder version drew on the idea of exporting ideas about law that were specific to the particular school. In Yale's graduate program, for example, Myres McDougal spearheaded an effort to spread the Lasswell/McDougal “policy science” model internationally. A final understanding of the missionary function referred to specific geopolitical targets of opportunity for U.S. legal educators. Yale, for example, seems to have specifically recruited Asian students beginning in the 1940s in part for this reason, and was similarly one of the first schools to admit African students during the wave of independence movements there in the 1960s.<sup>45</sup>

By the 1970s students from developing countries – particularly Africa, the Middle East, and East Asia -- represented the lion's share of those who earned the degree.<sup>46</sup> This was a triumph for the “missionary” function, but it had a tendency to depress academic standards for the degree and faculty interest in supervising doctoral students.<sup>47</sup> The very fact that made developing country students attractive – the possibility of a contribution to local legal education – meant that these students, no matter how brilliant, were likely to be inadequately prepared for U.S. doctoral work. Moreover, in developing countries legal materials tended to be particularly scarce, and in some cases the task of the dissertation essentially became compiling those materials.<sup>48</sup> The interdisciplinary turn of U.S. legal scholarship in the 1970s and 1980s, however, made compilation-style dissertations even less attractive than they had been before.<sup>49</sup> Finally, students' lack of training in other disciplines compounded their preparation problems.

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<sup>44</sup> See, e.g., Michigan 9/24/64 minutes, *supra* note 41 (“[E]very good student [from England] is advised against coming to [the U.S.] if he is interested in a teaching position in England. At the crucial time in his life the young man cannot afford to be absent from the proper sherry parties if he wishes an appointment.”).

<sup>45</sup> See Hupper Part II, *supra* note 38, at 24-26.

<sup>46</sup> During the 1970s and 1980s developing-country students accounted for some 65% of the seven schools' foreign-trained doctoral graduates. By the 1980s they accounted for nearly half of the programs' *total* graduates. See Database, *supra* note 11.

<sup>47</sup> See Hupper Part II, *supra* note 38, at 26-28; Memorandum from the Comm. on Graduate Instruction to the Columbia Law School Faculty, May 14, 1969, in Walter Gellhorn Papers, Box 151 – Correspondence Files ca. 1945-77 – Columbia University: Committees and Projects (available in Rare Books and Manuscripts Library, Columbia University) (citing “constant pressures. . . to admit J.S.D. candidates from, for example, Africa whose interests are not well suited to one or both of the traditional seminars”); Memorandum from Walter Gellhorn to Curtis Berger, Apr. 22, 1980, in Walter Gellhorn Papers, Box 330 -- Subject file Columbia Faculty 1978-79 - Columbia Graduate Studies (available in Rare Books and Manuscripts Library, Columbia University) (“Without exception, the foreigners who have been accepted as J.S.D. candidates have had extreme difficulty in satisfying our requirements . . .”); Interview #53 (so much goes into writing the thesis that once it is produced it is very difficult to turn people down for the degree).

<sup>48</sup> See Interview #48.

<sup>49</sup> See Interview #31 (by this time, compilation-style dissertations were not attractive to most U.S. faculty members); Interview #48.

The situation was exacerbated by a broader paradox I call “international ambivalence.” On the one hand, by the 1970s U.S. legal education had become an active player on the international scene, and international legal studies as a field of U.S. study was broadening. This was apparent not simply in the number of courses U.S. law schools were offering in the field, but also in growth of graduate training for foreign lawyers, exchange programs, and so forth. On the other hand, these activities were increasingly viewed as marginal to the schools’ basic mission of training lawyers for U.S. legal practice. In part this was a function of disillusionment with the possibilities of law in the international arena. Vietnam had taken its toll, law was receding as a vehicle for U.S. foreign policy, and the international legal order was becoming increasingly impotent. In addition, law students were increasingly becoming obsessed with legal education as professional training, and the international arena remained distant from most students’ understanding of their professional horizons.<sup>50</sup> By 1984, Chicago’s Gidon Gottlieb would declare at an ASIL meeting that “‘in nearly 20 years of teaching international law, I have rarely found the academic community less interested and less committed’ to the field.”<sup>51</sup>

The consequences for the doctorate were dramatic. Some of the schools shut down the international component of their doctorate entirely. Michigan’s program, for example, essentially shut down in the mid- to late- 1980s, and in 1990 the school would confer its first S.J.D. degree in four years. NYU tightened admission requirements in the late 1980s, and only three students would earn the degree in the first half of the 1990s. George Washington was regrouping after the retirement of its primary internationalist, and would not confer a degree for four years.<sup>52</sup> Even Harvard was admitting fewer new students. Another move was a flight to “quality”, exemplified by the growing admission of students from Canada and Israel – countries whose legal cultures were by then similar to that of the U.S., and whose top law graduates were increasingly interested in U.S. doctoral study.<sup>53</sup> While this practice would not pack the geopolitical punch of the law and development era, it would produce dissertations that more closely resembled a U.S. professor’s idea of legal scholarship than did those from developing-country authors. The latter trend would accelerate in the 1990s.

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<sup>50</sup> See Roger J. Goebel, *The Internationalization of Law and Legal Practice: Professional Qualification and Educational Requirements for Law Practice in a Foreign Country: Bridging the Cultural Gap*, 63 TUL. L. REV. 443 (1989); *Workshop, Reexamination of the Teaching of International Law*, 78 AM. SOC’Y INT’L L. PROC. 198, 208-213 (remarks of Gidon A.G. Gottlieb) (hereinafter Gottlieb); David Kennedy, *International Legal Education*, 26 HARV. INT’L L.J. 361 (1985). The irony, of course, was that the international would be more a part of graduates’ professional life than ever before.

<sup>51</sup> See Gottlieb, *supra* note 50, at 213.

<sup>52</sup> This was Thomas Mallison, a former student of Myres McDougal. See Jerome A. Barron et al., *A Tribute to Professors W. Thomas Mallison and Leroy S. Middlefield*, 55 GEO. WASH. L. REV. 179, 186-93 (1987); Database, *supra* note 11.

<sup>53</sup> See Interview #9; Interview #17; Interview #30; Interview #33 (as to Canada); Interview #45 (as to Israel).

## The situation today

The current interest in the programs seems primarily to be a consequence of the increasing internationalization of legal education, coupled with the growing academic orientation of U.S. legal education and improvements in communications technology. It has taken a while to get here, however: the real interest in the degree is probably a function of the past ten years.<sup>54</sup>

**Internationalization.** It is a truism to say that, since the fall of the Berlin Wall and the collapse of the Soviet Union, the world has started to look quite different from before. U.S. legal models have become templates for legislation in a growing number of countries, and have influenced a growing body of international norms. U.S. style law and lawyering have become the legal *lingua franca* of international commerce. As a result, the demand among lawyers in other countries for training in the U.S. legal system has grown enormously.

Globalization has also increasingly (though not as profoundly) brought the international into the U.S. In the context of legal education, globalization has increased interest in international matters to an unprecedented level. This interest manifests itself as growth in the international curriculum, growth in international faculty exchanges, increasing incorporation of international and comparative insights into the teaching and scholarship of faculty working primarily in domestic law subjects,<sup>55</sup> growth in internationally-oriented research centers, increasing numbers of faculty (both visiting and full-time) who were trained in other countries, growth in study abroad opportunities for U.S. students, growth of international student populations, etc. One of the better-publicized manifestations is NYU's Hauser Global Law School Program (HGLSP), which was established in 1994 to make the school a leading player in the world legal educational community.<sup>56</sup> But the movement is hardly limited to NYU; indeed the other schools fairly trip over themselves in their claims of commitment to internationalism.<sup>57</sup>

<sup>54</sup> There was only slight growth in the total number of foreign-trained graduates in the 1990s as compared to the 1980s. In the seven years between 2000 and 2006 (inclusive), the seven schools conferred over 220 doctoral degrees on foreign-trained students, as contrasted with 170 during the 1990s. *See* Database, *supra* note 11.

<sup>55</sup> *See, e.g.,* \_\_\_\_, *International Intrigued*, HARV. L. BULL., Spring 2003, at \_\_; Interview #19 (as to NYU); Interview #26 (as to George Washington); Interview #38 (as to NYU); Letter from Harold Koh to Yale Law School Alumni, June 6, 2007, available at [http://www.law.yale.edu/documents/pdf/News\\_&\\_Events/HaroldAlumniLetterSpring07.pdf](http://www.law.yale.edu/documents/pdf/News_&_Events/HaroldAlumniLetterSpring07.pdf) (hereinafter Koh to Alumni, 6/6/07).

<sup>56</sup> *See* Norman Dorsen, *Achieving International Cooperation: NYU's Global Law School Program*, 51 J. LEGAL ED. 332 (2001); Hauser Global Law School Program, <http://www.nyuglobal.org/index.htm> (last visited Mar. 4, 2008). The Hauser name was added after the Dorsen article was published.

<sup>57</sup> Harvard and Michigan, for example, now require students to take at least one internationally-oriented course in order to receive the J.D. Other examples include *The Asian Connection*, GARGOYLE, Spring 2006, at 24 (as to Wisconsin); *Universal Ambitions*, GWLAW SCHOOL, Summer 2007, at \_\_; Evan Caminker, *A Message from Dean Caminker*, LAW QUADRANGLE NOTES, Fall 2006, at 2-3 (as to Michigan); Kristin Eliasberg et al., *Asian Legal Journeys*, HARV. L. BULL., Summer 2006, at \_\_; Kathleen Kocks, *Understanding and Shaping International and Comparative Law*, GWLAW SCHOOL, Fall 2007, at \_\_; Elaine McArdle & Michelle Bates Deakin, *Corporate Governance in a Global Economy*, HARV. L. BULL.,

*Student interest.* The increased interest is quite apparent on the student (demand) side, particularly among foreign-trained LL.M. students. This is partly because of growth in the schools' LL.M. programs, but also partly because a higher proportion of students are interested in continuing on to doctoral study.<sup>58</sup> Part of the reason for this is that the doctorate is increasingly a passport to a variety of careers, both academic and non-academic, in a range of countries. However, two developments in other countries are particularly significant. First, in more and more countries a doctorate is viewed as a prerequisite to a career in law teaching. Second, in more and more countries the U.S. doctorate fits the bill.

This is particularly the case for people trained in two categories of countries. At one end of the spectrum are two countries whose legal systems initially were heavily influenced by that of England, but now more closely resemble that of the U.S.: Canada<sup>59</sup> and Israel.<sup>60</sup> The growth of interest in these countries parallels an explosive growth in legal education and a particular interest in the interdisciplinary turn that American legal scholarship began to take in the 1970s and 1980s. At another end of the spectrum are two countries – Taiwan and Korea -- whose formal law is based primarily on the German system and which had resisted (at least until recently) Western ideas about market democracy and the “rule of law.” The twin needs of export-led growth and democratization have made the U.S. legal model more interesting.<sup>61</sup> At the same time, an increase in the number of law schools in both countries<sup>62</sup> has significantly increased the capacity to absorb U.S.-trained doctoral graduates.

A considerable number hail from other countries as well. In Latin America, a number of law schools have restructured their curriculum along more U.S.-style lines. Many of these schools' needs are met by faculty with U.S. LL.M. degrees, but some professors have done more. At Colombia's University of Los Andes, for example, seven

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Spring 2007, at \_\_\_; James Vescovi, *Building on Strength: International Law at Columbia Law School*, COLUM. L. SCH. REPORT, Fall 2003, at 2; *Yale Law School in the World*, YALE L. REPORT, Winter 2005, at \_\_\_; Koh to Alumni, 6/6/07, *supra* note 55 (identifying globalization as one of the four major priorities of his Yale Deanship).

<sup>58</sup> See Interview #4; Interview #14 (reporting increased interest in the M.L.I. degree, which is the feeder for Wisconsin's S.J.D.); Interview #21 (the number of applications has been going up slowly in the past five years, though they strongly discourage unsolicited applications); Interview #37 (Columbia did not even admit its own LL.M. graduates until around 2000. The primary reason for the change of position was student demand); Interview #59 (reporting increasing competition to get into Harvard's program); Interview #61 (NYU recently changed its web site to discourage unsolicited faculty contacts).

<sup>59</sup> See, e.g., Harry W. Arthurs, *Poor Canadian Legal Education: So Near to Wall Street, So Far from God*, 38 OSGOODE HALL L.J. 381, 389-91 (2000).

<sup>60</sup> See, e.g., Yoseph M. Edrey, A Global Legal Odyssey: A Brief Introduction to the Legal System and Legal Education in Israel and the Curriculum at Haifa Faculty of Law, 43 S. Tex. L. Rev. 343,345 (2002); Ran Hirschl, *Israel's "Constitutional Revolution": The Legal Interpretation of Entrenched Civil Liberties in an Emerging Neo-Liberal Economic Order*, 46 AM. J. COMP. L. 427, 432-35 (1998).

<sup>61</sup> See *infra* notes 225-47 and accompanying text.

<sup>62</sup> See Chang-fa Lo, *Driving an Ox Cart to Catch Up with the Space Shuttle: The Need for and Prospects of Legal Education Reform in Taiwan*, 24 WIS. INT'L L.J. 41, 50-51 (2006) (as to Taiwan); sources cited *infra* note 241 (as to Korea).

of 32 full-time faculty members now hold or are pursuing U.S. doctorates – all from Harvard and Yale.<sup>63</sup> In Argentina, a small group of Yale doctoral students and graduates are teaching at some of Buenos Aires’ reform-oriented schools.<sup>64</sup> Even Western Europe is beginning to supply increasing numbers of students.<sup>65</sup> Part of the appeal, as for Canadians and Israelis, may be the U.S. teaching market.<sup>66</sup> However, European integration also may be opening up new paths to teaching at home.<sup>67</sup> Countries like Australia<sup>68</sup> and the People’s Republic of China<sup>69</sup> are also sending more students than before.

The interest is not simply about the U.S. teaching market and U.S. legal dominance, however. Rather, anecdotal evidence suggests that it is a function of the kind of intellectual discussion and scholarship produced in the elite U.S. law schools – and particular schools at that. Yale’s *Seminario en Latinoamérica de Teoría Constitucional y Política* (SELA),<sup>70</sup> for example, numbers LL.M. and J.S.D. graduates from Yale (and, to a growing degree, other U.S. schools) who are now home in Latin America. According to SELA’s founders, the seminar strives to reflect the “intellectually honest, sharp, and critical style that had surprised and influenced” the participants in their U.S. studies, and the related idea that “law cannot be divided into boxes with clear-cut labels.”<sup>71</sup> There are also stories of individual students who did doctorates at NYU, Harvard and elsewhere

<sup>63</sup> See Universidad de Los Andes, Facultad de Derecho, Equipo Humano, [http://derecho.uniandes.edu.co/derecho\\_uniandes/export/derecho\\_uniandes/recurso/profesores/](http://derecho.uniandes.edu.co/derecho_uniandes/export/derecho_uniandes/recurso/profesores/) (last visited 7/17/07). A few others hold U.S. LL.M. degrees but not the doctorate. *Id.*

<sup>64</sup> These include the University of Palermo, the University of San Andrés, and Torcuata di Tella University. Two NYU J.S.D. graduates also teach at Palermo. See Universidad de San Andrés, Listado de Profesores de la Universidad, <http://www.udesa.edu.ar/Propuesta-San-Andres/Profesores> (last visited Dec. 30, 2007); NYU J.S.D. Web Pages, *supra* note 27; Yale Law School, SELA Members, <http://www.law.yale.edu/intellectuallife/SELA%20Members.htm> (last visited Dec. 30, 2007).

<sup>65</sup> The numbers of Western European graduates of the seven schools are as follows: 1980-89: 21; 1990-99: 20; 2000-06: 20. See Database, *supra* note 11. At Harvard alone, at least 16 more Western European candidates are expected to graduate after 2006. See HARV. LAW SCH., GRADUATE PROGRAM PARTICIPANTS 2007-08 49-75 (2007) (hereinafter Harvard Facebook).

<sup>66</sup> Of the 20 Western European graduates between 2000 and 2006, four are teaching in U.S. law schools. See Database, *supra* note 11. At least two more of the post-2006 group are teaching. See Georgetown Law, Full Time Faculty, Philomila Tsoukala, [http://www.law.georgetown.edu/faculty/facinfo/tab\\_faculty.cfm?Status=Faculty&ID=2354](http://www.law.georgetown.edu/faculty/facinfo/tab_faculty.cfm?Status=Faculty&ID=2354) (last visited Feb. 14, 2008); Washington College of Law, Faculty, Fernanda Nicola, <http://www.wcl.american.edu/faculty/nicola/> (last visited Feb. 14, 2008).

<sup>67</sup> See Interview #27 (a U.S. doctorate may lead to a back door into teaching in continental Europe, through initial teaching positions in either the U.S. or the U.K.); Interview #39 (same).

<sup>68</sup> The numbers of Australian graduates of the seven schools are as follows: 2000-06: 16; 1990-99: 5; 1980-89: 8. See Database, *supra* note 11. According to one faculty member, Australians traditionally do doctoral work in other countries, particularly the U.K. and, increasingly, the U.S. Historically Australians have not done doctorates in law. However, this is starting to change, and for those who do law doctorates, the U.S. is a natural venue. See Interview #6.

<sup>69</sup> The numbers of Chinese graduates of the seven schools are as follows: 2000-06: 8; 1990-99: 9; 1980-89: 4. See Database, *supra* note 11.

<sup>70</sup> In English, Latin American Seminar on Constitutional and Political Theory.

<sup>71</sup> Andrés Jana, Santiago, Chile and Roberto Saba, Buenos Aires, Argentina, Excerpts, *Yale Law Report*, Winter 2000, available at <http://www.law.yale.edu/intellectuallife/selahistory.htm> (last visited July 9, 2007).

specifically because of the interdisciplinary orientation of study there and, in some cases, despite the lack of job prospects for them in their home countries.<sup>72</sup>

*Faculty interest.* The impact of internationalization is not limited to the student (demand) side, however. It tends to increase both the interest of the schools as institutions in supporting the degree, and the interest of individual faculty members in working with doctoral students.<sup>73</sup> More faculty members are interested in the program in general, and if they supervise doctoral candidates they genuinely enjoy the process and feel they get something out of the supervisory experience.<sup>74</sup> There is also a derivative effect: as the program becomes more serious, it receives more support from both the institution and individual faculty.<sup>75</sup>

At the institutional level, the doctorate seems to be viewed as part of the required portfolio for a school that wants to be a “player” in the international educational community. This exists at a few different levels: general distinction for the school in a globalized educational world,<sup>76</sup> closer ties to institutions in other countries,<sup>77</sup> and the corresponding distinction and ties for individual faculty members. This new “coming of age” internationally seems to be particularly important for Wisconsin, whose program has grown considerably since 1990.<sup>78</sup> At some schools, this is coupled with a revived “missionary” function: an interest in spreading the idea of law as something tied to other

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<sup>72</sup> See Interview #11 (citing non-traditional ways of thinking about law, particularly law and economics, as a reason for increased demand among western Europeans); Interview #19 (noting a continental European advisee, working in the law and economics area, who did a second doctorate in his home country so that he could find a teaching position there); Interview #22 (citing the U.S.’s policy-oriented approach to legal thought); Interview #44 (noting the interdisciplinary nature of Harvard’s program).

<sup>73</sup> See Interview #1 (Columbia’s program has gained more faculty support in the past few years); Interview #4 (as to Yale); Interview #6 (calling NYU’s institutional commitment to the program “quite high”, given the Director’s institutional clout); Interview #15 (more Harvard faculty are supervising dissertations than used to be the case); Interview #19 (citing improved faculty perceptions of the program at NYU); Interview #21 (as to George Washington); Interview #60 (as to Michigan).

<sup>74</sup> See Interview #4 (faculty are increasingly coming to view students as “junior colleagues”); Interview #10 (he has worked out a lot of the theory in his field, and his students do empirical work on the ground); Interview #21 (faculty benefit from the supervisory experience); Interview #24 (he particularly enjoys working with S.J.D.s at another school); Interview #26 (the supervisory relationship produces synergies for faculty and student); Interview #27 (citing efforts to make faculty members feel that supervision is something they gain from, rather than just a duty); Interview #45 (calling S.J.D supervision “the most interesting teaching I do”); Interview #51 (S.J.D. supervision is a lot of work, but he finds it very rewarding and learns a great deal from the process).

<sup>75</sup> See Interview #1; Interview #19; Interview #29 (faculty interest in the program increased when one graduate found a teaching position at a top U.S. school).

<sup>76</sup> See N.Y. Univ. Sch. of Law, Report on the SJD Program by the Committee on the Global Law School Program and Related Graduate Program, Feb. 10, 1998 (copy on file with the author) (having a high-quality J.S.D. program is part of being a player in the international academic world); Interview #14 (S.J.D. graduates go on to successful academic and other careers, which brings distinction to the school); Interview #51 (having trained really talented people brings Michigan distinction).

<sup>77</sup> See Interview #21 (graduates constitute a network of people who help build George Washington’s relationships with their own institutions).

<sup>78</sup> See Interview #20 (the program helps Wisconsin develop relationships between the school and people and institutions in East Asia in particular).

disciplines and to experience on the ground, as contrasted with the idea of law as an autonomous system.<sup>79</sup> At Yale, for example, both the LL.M. and J.S.D. programs may be helping build a new version of an old missionary idea: the “New Haven school” of international legal scholarship, an outgrowth of the “policy science” model pioneered after World War II by Myres McDougal and Harold Lasswell.<sup>80</sup>

At the individual faculty level, the motivations are more diffuse. First, more faculty are interested in internationally-oriented scholarship, whether as a primary specialty or as a way of informing their domestic work. Working with doctoral students is a way to participate in this.<sup>81</sup> Moreover, this interest goes hand in hand with improvements in the quality of the school’s LL.M. student body – the primary source of applicants for the schools’ doctoral programs. Because most of the schools in this study are among the elite American schools (and have the greater financial resources of elite schools) they can attract the most talented of this increasingly talented applicant pool.<sup>82</sup> Moreover, better English ability, improvements in legal education in other countries, and more U.S.-style legal education in other countries have strengthened the preparation of the pool as a whole. The result is a cadre of international students who perform better at the LL.M. level, and are capable of in doing more intellectually ambitious theses at the doctoral level.<sup>83</sup>

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<sup>79</sup> See Interview #13 (Yale’s graduate program has traditionally been identified with an effort to spread Yale’s educational philosophy through teacher training); Interview #14 (citing Wisconsin’s focus on the importance of law in action); Interview #33 (Columbia does think of itself as close to the social sciences, so many doctoral projects involve learning about social science tools).

<sup>80</sup> See Koh to Alumni, 6/6/07, *supra* note 55 (a recent conference on the “new” New Haven School, “followed a few weeks later by our first-ever Graduate Program Works-in-Progress Symposium,” convinced him “that Yale Law School continues to represent not just the past and present, but also the future of international legal scholarship and activism.”). Yale’s LL.M. program, unlike those of the other schools covered by this article, is designed primarily for prospective academics. See Yale Law School, LL.M. Program, <http://www.law.yale.edu/academics/llmprogram.asp> (last visited Feb. 15, 2008).

<sup>81</sup> See Interview #1 (Columbia’s direct admit track is designed to bring in students who effectively will collaborate with faculty in areas of interest to the faculty); Interview #4 (some doctoral students function as “junior colleagues” to their faculty supervisors); Interview #18 (he enjoys working with foreign students); Interview #29 (referring to a student with whom he co-authored articles and co-taught); Interview #32 (his work in comparative constitutional law and political philosophy make him attractive to J.S.D. students and vice versa).

<sup>82</sup> At NYU, for example, a substantial increase in the amount of LL.M. scholarship money beginning around 1995 created a “suction” effect that helped attract better foreign LL.M. candidates to the school in general and increased faculty interest in international students. See Interview #38; *accord*, Interview #6 (noting both monetary and non-monetary incentives NYU offers top LL.M. admits); Interview #19. At Harvard, members of the Dean’s Advisory Board honored retiring Dean Robert Clark with a \$5.1 million gift that included \$3 million for scholarships for international students. See HLS Receives \$5.1 Million in Gifts Honoring Clark, June 30, 2003, available at [http://www.law.harvard.edu/news/2003/06/30\\_clark.php](http://www.law.harvard.edu/news/2003/06/30_clark.php) (last visited Dec. 30, 2007). See also Interview #21 (praising George Washington’s LL.M. students in intellectual property and comparative and international law, some of whom go on to the S.J.D.).

<sup>83</sup> See Interview #4 (this is why more faculty are interested in supervising S.J.D. students); Interview #17 (increasingly, S.J.D. candidates have serious academic ambitions and serious research goals; this, in combination with raw talent, makes them stronger, on average, than the J.D. students she supervises); Interview #19 (citing the much-improved caliber of NYU’s foreign student population).

Finally, a “missionary” function also operates for some individual faculty members. Some faculty expressed an interest in contributing to the development of law in other parts of the world, particularly parts of the world in which faculty believe the role of law in governing human relations to be undervalued.<sup>84</sup> For some faculty the programs may serve as a means of spreading more particularized ideas about law and legal education – “left” legal theory,<sup>85</sup> law & economics,<sup>86</sup> and possibly other approaches.<sup>87</sup> On the other hand, some faculty members who are frequent supervisors explicitly reject the notion that their work serves a missionary or gospel function.<sup>88</sup>

**Academization.** Another important factor is the growing academization of U.S. legal education in general,<sup>89</sup> and the presence of more law faculty members who hold Ph.D. degrees in other disciplines in particular.<sup>90</sup> This has had two primary implications for the doctorate in law. First, these faculty are accustomed to the phenomenon of doctoral study and to having doctoral students around. Thus they are more likely than are other faculty members to be affirmative about the idea of doctoral education, to be interested in working with doctoral students, and to be comfortable with the supervisory role. That includes comfort with the book, as contrasted with the law review article, as the medium of scholarly output. Second, the professors’ own doctoral experience serves as a frame of reference for the degree’s structure.<sup>91</sup> Thus far the primary consequence is a demand for greater academic rigor than some programs have shown in the past.

<sup>84</sup> See Interview #36 (George Washington hired Buergethal in 1990 to run the school’s international program, with a particular emphasis on human rights. This resonates with the idea that the U.S. has something to offer the third world); Interview #51.

<sup>85</sup> See Carl N. Edwards, *In Search of Legal Scholarship: Strategies for the Integration of Science into the Practice of Law*, 8 S. CAL. INTERDISC. L. J. 1, 13 (1998) (noting an increase in “activist law” S.J.D. dissertations at Harvard beginning in the early 1990s). In addition, feminist scholar Martha Fineman was by far Columbia’s most active J.S.D. supervisor during the period 1994-99. See Columbia Law School, Internal Report on the J.S.D. Program of Columbia Law School (undated, probably written around 2000) (unpublished report available in Special Collections, Columbia Law School, file box entitled “Law School Archives / Graduate Legal Studies”); Emory Law School, Feminism and Legal Theory Project, <http://www.law.emory.edu/index.php?id=1125> (last visited Dec. 30, 2007).

<sup>86</sup> See Interview #29 (as to one school’s law and economics faculty); *but see* Interview #54 (fundamentals, rather than a particular ideology or methodology, are what matter).

<sup>87</sup> See Interview #33 (noting that he taught a seminar in legal education in part to spread ideas about ways of teaching that students might not find elsewhere).

<sup>88</sup> See Interview #10 (rejecting any “gospel” idea); Interview #32 (he does not seek out students, and indeed some view him as intimidating); Interview #45 (denying that he is creating a “school”).

<sup>89</sup> See Interview #24 (faculty members need outlets for their scholarly proclivities, other than by writing, and this may lead to an increased interest in supervising foreign graduate students); Interview #45 (noting the impact of the increasing number of “intellectuals”, as contrasted with practice-oriented professors, on U.S. law school faculties).

<sup>90</sup> See Interview #45 (the increase in the number of Ph.D.s has led to increased faculty interest in supervising S.J.D. students); Interview #60 (more faculty are interested in supervising because of their own Ph.D. training in other disciplines). *But see* Interview #6 (disenchantment with foreign J.S.D. students’ preparation in companion arts and sciences disciplines may lead faculty with Ph.D.s in these disciplines to prefer to supervise only Ph.D. students in their fields).

<sup>91</sup> At Columbia, faculty responsible for the J.S.D. program are increasingly comparing its standards to that of a Ph.D. program, in part because those faculty members themselves have Ph.D. degrees. This comparison has led to a series of reviews since 2003. See Interview #1; Interview #37 (as of November 2003, three of the Columbia Graduate Committee’s seven members held Ph.D. degrees).

However, there also may be in interest in a more Ph.D.-style model and more interdisciplinary work as a result of these individuals' participation.<sup>92</sup> Finally, the growth of research centers affiliated with the law schools have provided a natural venue for doctoral student work.<sup>93</sup>

**Technology.** Another reason for the current interest has been technological. For most of the degree's history, international students were caught in the following dilemma. On the one hand, students who stayed in residence had relatively easy access to their supervisors and U.S. legal materials. However, they were away from home and had less access to home-country materials to the extent those were important. Technology has significantly mitigated this dilemma. The broad availability of e-mail and other communications technologies has facilitated supervision in a very basic way: it is easy for students who are out of residence to maintain contact with their supervisors. There is also evidence that improved communications has facilitated the development of international networks in particular subject areas. This permits faculty at other institutions to mentor doctoral students, even if they play no formal supervisory role.<sup>94</sup> Finally, technology has created a non-supervisory benefit as well. As legal and other materials are increasingly available on-line, students are no longer as dependent on their schools' library collections. U.S. legal materials are now much more readily available to students who have gone out of residence, and some home-country materials are more readily available to in-residence students as well.

### **What the schools are trying to do for them**

Another way to understand interest is as a function of the more immediate purposes of the degree. What are those programs' purposes as they are understood today? Faculty views on that question differ,<sup>95</sup> and indeed the programs' marginal

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<sup>92</sup> Examples of supervisors who hold Ph.D.s in another discipline include an NYU faculty member who holds a J.D. and a Ph.D. in economics; a Columbia faculty member who holds a Ph.D. in government and no J.D.; a Michigan faculty member who holds a J.D. and a Ph.D. in political science; and a Harvard faculty member who holds a J.D. and a Ph.D. in international relations. *See* Database, *supra* note 11. The phenomenon is not limited to people who hold Ph.D.s, however. The most obvious example is faculty members who serve on dissertation committees in other departments, even if they do not themselves hold Ph.D.s. Examples include Interviewee #28, Interviewee #32 and Interviewee #51. A different kind of example is a frequent supervisor who serves as an advisor to various academic publishers. She notes that her supervisory tasks include helping students (a) frame a dissertation topic that shows both mastery and originality, and (b) conceptualize how it might appear as a book. *See* Interview #30.

<sup>93</sup> *See* Interview #18 (referring to a program in law, science and technology); Harvard Law School, Research Programs and Centers, <http://www.law.harvard.edu/programs/> (last visited Dec. 30, 2007); Yale Center for Law & Philosophy, <http://www.law.yale.edu/yclp/courses.html> (last visited July 2, 2007) ("Members of the Center may be available to supervise Ph.D.'s or J.S.D.s in the philosophy of law").

<sup>94</sup> *See* Interview #24 (describing his own work with students at another school); ATLAS Web Site, *supra* note 26.

<sup>95</sup> *See, e.g.*, Interview #17 (the program seems driven by the sometimes-conflicting interests and desires of a small group of faculty); Interview #18 (faculty who supervise have different motivations for doing so); Interview #54 (faculty have different ideas of purposes of the degree).

nature sometimes makes institutional purposes difficult to define.<sup>96</sup> Typically there are two matters of basic agreement. First, the fact that the main event is the dissertation suggests a research orientation of some kind. Second, in most schools the degree is viewed primarily as preparation for an academic career. Otherwise the degree's purposes are eclectic: training practitioners,<sup>97</sup> public servants,<sup>98</sup> people who will contribute to a particular field of law,<sup>99</sup> and so forth.

**Research.** The main event in the degree is a dissertation: an extended piece of writing. This represents both a *product* (i.e., something that can be read by others) and a *process* (i.e., something that the student has spent time producing). The *product* orientation of the degree is apparent in the typical requirement that the dissertation represent a contribution to legal scholarship and be in publishable form.<sup>100</sup> While none of the schools currently requires publication as a condition of receiving the degree, most encourage publication.<sup>101</sup> In addition, students often publish interim work outside of the four corners of the dissertation.<sup>102</sup> The product orientation is also apparent in the increasing emphasis on producing first-class dissertations.<sup>103</sup> Other degree requirements

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<sup>96</sup> See Interview #17 (the institutional reason for the degree is unclear, and as a supervisor she is asked to do a great deal of work without much explanation as to why); Interview #51 (comparing his school's commitment as an institution to the common law – the fact that it has come out a certain way, and the way in which it evolved, doesn't necessarily explain its "purposes").

<sup>97</sup> Interview #10.

<sup>98</sup> Interview #21.

<sup>99</sup> See Interview #18 (he supervises in part to develop an underdeveloped field by producing people who will contribute to it); Interview #21 (mentioning intellectual property and government contracts); Interview #33.

<sup>100</sup> See Interview # 21 (as to George Washington); Columbia Law School, J.S.D. Program, [http://www.law.columbia.edu/lm\\_jsd/jsd](http://www.law.columbia.edu/lm_jsd/jsd) (last visited Dec. 30, 2007) (hereinafter Columbia Requirements); HARV. LAW SCH., HANDBOOK OF ACADEMIC POLICIES 32-33 (2007-08), available at <http://www.law.harvard.edu/academics/registrar/hap/handbook.pdf> (hereinafter Harvard Academic Handbook); NYU J.S.D. GUIDE, *supra* note 25, at 15; The University of Michigan Law School, Doctor of the Science of Law (S.J.D.) Information and Requirements, available at <http://www.law.umich.edu/prospectivestudents/graduate/degreeprograms/Documents/SJD-Academic-Regulations.pdf> (hereinafter Michigan Requirements); Yale Law School, J.S.D. Program, Requirements, <http://www.law.yale.edu/academics/jsdrequirements.asp> (last visited Dec. 30, 2007) (hereinafter Yale Requirements).

<sup>101</sup> See Database, *supra* note 11 (Columbia theses typically take the form of three published articles); Interview #19 (referring to publication of his supervisees' work in finance and economics journals); Interview #30 (she advises students on how to turn a book into a series of smaller publishable pieces); NYU J.S.D. Guide, *supra* note 25, at 3 (referring to publication of "the articles and dissertations produced in the J.S.D. program").

<sup>102</sup> See, e.g., Michelle Foster, *Causation in Context: Interpreting the Nexus Clause in the Refugee Convention*, 23 MICH. J. INT'L L. 265 (2002); Alvaro Santos, *The World Bank's Uses of the "Rule of Law" Promise in Economic Development*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL \_\_ (David M. Trubek and Alvaro Santos eds., New York, 2006); Anne-Marie Slaughter, Andrew S. Tulumello and Stepan Wood, *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM. J. INT'L L. 367 (1998).

<sup>103</sup> See Interview #1 (the degree's new orientation mimics the post-comps portion of a Ph.D.); Interview #10 (whatever the degree's purposes, the standards should be kept high); Interview #17 (she looks to have students produce a good scholarly result); Interview #26; Interview #34 (the emphasis should be on producing "a very good Ph.D." that reflects the intellectual caliber of the author); Interview #48 (starting in

(see “Models” below) can be understood as supporting the basic function of creating a strong product.

**Teacher training.** However, research is not necessarily the end of the degree in itself. More often, to the extent research is cited as a purpose at all,<sup>104</sup> it is usually framed in connection with the program’s other functions, particularly teacher training. Indeed, this seems to be the primary understanding of the programs’ purposes at most schools.<sup>105</sup> In this sense the research project is more about the learning *process*: learning in a particular area of law, learning to conceptualize and write an extended piece, and learning a particular methodological approach to one’s subject. In other words, students are learning to produce scholarship, which is part of the job of the teacher.<sup>106</sup>

Whatever the reasons, that purpose is consistent with the experience of recent graduates. More than ever before, the U.S. doctorate has become preparation for a teaching career. Close to 70% of the seven schools’ foreign-trained graduates between 1990 and 2006 have pursued such careers, as contrasted with less than 55% in the 1970s and 1980s.<sup>107</sup> Numerically the most were from Israel (65),<sup>108</sup> East Asia (47)<sup>109</sup> and Canada (29),<sup>110</sup> but Oceania, Africa, Western Europe and Latin America have also contributed considerable numbers.<sup>111</sup> Teaching in one’s home country or region seems to be the primary career goal of most foreign-trained graduates of Columbia,<sup>112</sup>

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the 1990s, Harvard’s graduate committee increasingly felt that every dissertation should have an element of scholarly sophistication); *but see infra* note 137 and accompanying text (as to quality concerns).

<sup>104</sup> See Interview #20 (producing research is not a primary purpose of the Wisconsin S.J.D.); Interview #43 (expressing more interest in training teachers than producing research).

<sup>105</sup> See Interview #13 (as to Yale); Interview #14 (as to Wisconsin); Interview #26 (as to George Washington); Interview #37 (as to Columbia); Interview #43 (as to Wisconsin); Interview #54 (as to Michigan); Interview #60 (noting a perception at Michigan that it is valuable to grow people who will be serious academics in their own countries, which presumably encompasses research as well as teaching); Harvard Law School, Graduate Program, Doctor of Juridical Science (S.J.D.) Program, <http://www.law.harvard.edu/academics/graduate/programs/sjd.php> (last visited Feb. 15, 2008) (hereinafter Harvard Web Page); Michigan Requirements, *supra* note 100 (the application process requires a letter from a professor in the student’s home country that evaluates “the applicant’s prospects for an academic career or other career for which the applicant seeks the S.J.D.”); NYU J.S.D. GUIDE, *supra* note 25, at 3 (the program is oriented towards teachers).

<sup>106</sup> See Interview #21 (George Washington graduates are publishing as well as teaching and working in government); Interview #54 (the purposes are somewhere between producing research and teacher training); Columbia Requirements, *supra* note 100 (“The basic aim of the J.S.D. program is to provide opportunity and encouragement for distinguished scholarship . . .” and “Admission . . . is normally restricted to applicants who desire a career in teaching law. . .”); NYU J.S.D. GUIDE, *supra* note 25, at 3 (“The program prepares students to produce first-class scholarship with a view to a teaching career in the U.S. and around the world.”).

<sup>107</sup> Among all graduates (U.S. and foreign-trained), the comparable percentages are just over 70% for 2000-06 and just over 60% for the 1970s and 1980s. Database, *supra* note 11. All career statistics exclude graduates for whom I was unable to find career information.

<sup>108</sup> This represents around 71% of all Israeli graduates for whom profession is known. *Id.*

<sup>109</sup> This represents around 90% of all East Asia graduates for whom profession is known. *Id.*

<sup>110</sup> This represents around 78% of all Canadian graduates for whom profession is known. *Id.*

<sup>111</sup> See *id.*

<sup>112</sup> See Interview #1 (also noting that people who came through the Columbia LL.M. tend to see the J.S.D. primarily as a professional certification for teaching purposes); Interview #37.

Michigan,<sup>113</sup> NYU, Wisconsin,<sup>114</sup> and Yale, and historically it has been the primary goal of Harvard's graduates as well. Over 55% of 1990s, and close to 50% of 2000-06, foreign graduates obtained teaching positions at home – the highest proportion since significant numbers of foreign-trained students began pursuing U.S. doctoral study.<sup>115</sup>

However, for Harvard graduates in particular, and increasingly for graduates of a few other schools, a new door has opened: teaching in U.S. law schools. This seems to be a function of both the attractions of teaching in U.S. schools from the student's perspective (higher pay, prestige, and a stimulating intellectual environment), and growing receptiveness on the part of hiring committees. The statistics are quite remarkable: at least 60 foreign-trained graduates of the seven schools between 1990 and 2006 are teaching or have taught in U.S. law schools.<sup>116</sup> Of those 60 graduates, 34 are from Harvard<sup>117</sup> and ten are from Columbia; the balance come from all five of the other schools.<sup>118</sup> Notably, some of those graduates are teaching in elite schools, including Columbia,<sup>119</sup> Georgetown,<sup>120</sup> Harvard,<sup>121</sup> Michigan,<sup>122</sup> NYU,<sup>123</sup> the University of Pennsylvania<sup>124</sup> and Virginia.<sup>125</sup> It is unclear whether faculty responsible for the programs initially intended this, but some schools now quite actively support their candidates' forays into the U.S. market.<sup>126</sup> And awareness of the phenomenon increasingly has turned students' eyes to the U.S. market once they are here, even if it was not initially their reason for pursuing doctoral study in the U.S.<sup>127</sup>

### Some qualifications

While interest in doctoral programs has grown, it is important not to overstate it. First, faculty interest is not universal, even among those specializing in international or

<sup>113</sup> See Interview #60 (also noting interest in the U.S. market).

<sup>114</sup> See Database, *supra* note 11.

<sup>115</sup> The previous high for a decade was 43% in the 1960s. *Id.*

<sup>116</sup> This represents about 17% of all foreign graduates for whom careers are known. *Id.*

<sup>117</sup> These 34 represent 25% of Harvard graduates for whom careers are known in the same period. *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Zohar Goshen (Yale J.S.D. 1991).

<sup>120</sup> Alvaro Santos (Harvard S.J.D. candidate).

<sup>121</sup> Jody Freeman (Harvard S.J.D. 1995) and Gabriela Blum (Harvard S.J.D. 2003).

<sup>122</sup> James Hathaway (Columbia J.S.D. 1990), Omri Ben-Shahar (Harvard S.J.D. 2000) and Vikram Khanna (Harvard S.J.D. 1997).

<sup>123</sup> Mattias Kumm (Harvard S.J.D. 2003) and Oren Bar-Gill (Harvard S.J.D. 2005).

<sup>124</sup> Gideon Parchomovsky (Yale J.S.D. 1998).

<sup>125</sup> Michal Barzuza (Harvard S.J.D. 2004) and Dotan Oliar (Harvard S.J.D. 2007). In addition, Balakrishnan Rajagopal (Harvard S.J.D. 2000) teaches at the Massachusetts Institute of Technology.

<sup>126</sup> See Interview # 59; Harvard Web Page, *supra* note 105 (noting U.S. teaching positions graduates have found); NYU J.S.D. GUIDE, *supra* note 25, at 3 (noting that the program trains people for the job market in the U.S. and elsewhere); *but see* Advice for the Prospective JSD Student, <http://www.mayasteinitz.com> (Feb. 2, 2007, 5:01 p.m.).

<sup>127</sup> See Interview #6 (when they begin the program, students tend to believe that they will return home, but as their studies progress they increasingly want to stay in the U.S.); Interview #27 (NYU students are increasingly interested in the U.S. market); Interview #54 (people want to do the doctorate primarily because they want to become legal scholars, but the U.S. market is nonetheless interesting); Interview #59 (increasing numbers of Harvard S.J.D.s are now interested in the U.S. market).

comparative law. Even at schools with the most engaged faculty, a clear minority supervise doctoral students, and at Wisconsin the proportion is minute.<sup>128</sup> Second, at most schools, the programs are still a very small part of the total operation. Harvard's program is by far the largest – some 50 students in residence at any given time, another 20 or so out of residence<sup>129</sup> – but this is still small by the standards of its J.D. student body of over 1600 students. Otherwise the number of students in residence at any given school tends to be 15 or fewer, with the total number of students somewhat higher than this.<sup>130</sup> At George Washington and NYU, the number has been declining, rather than growing, in the past six or eight years.<sup>131</sup>

Third, while most schools' commitment to the program is stronger than it was in the early 1990s, that commitment remains diffuse and, at times, ambivalent. One NYU professor, for example, has commented that, at least among faculty who do not regularly supervise doctoral students, the impression of the J.S.D. program is probably assimilated into their general view of HGLSP as a whole. The general view of the HGLSP is favorable, so the general impression of the J.S.D. program is also favorable.<sup>132</sup> One Michigan faculty member notes that, while he believes the school is committed to the doctorate, that commitment would not necessarily be apparent if one were to poll individual faculty members.<sup>133</sup> At Columbia, a series of reviews in recent years have done little to increase faculty support outside of a core group of internationalists and legal philosophers.<sup>134</sup> At Wisconsin, the S.J.D. program's heavy East Asian representation may marginalize the program in the eyes of some faculty.<sup>135</sup>

Finally, questions about the programs have not disappeared. One of the most frequently expressed concerns remains resource drain -- in the form of fellowship funding

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<sup>128</sup> See, e.g., Interview #6 (some people with Ph.D.s in other disciplines supervise Ph.D. candidates in that discipline rather than J.S.D. students); Interview #10 (indicating that one faculty member's departure left a hole in his school's supervisory group); Interview #17 (her school's S.J.D. program is driven by the interests and desires of a small group of faculty); Interview #18 (at least half of his school's faculty do not supervise); Interview #25 (her school's S.J.D. program is driven by the interests and desires of a small group of faculty); Interview #29 (considerably less than half of his school's faculty supervises); Interview #37 (some faculty are "evidently more willing" to supervise than are others); *infra* notes 193-94 and accompanying text.

<sup>129</sup> See Interview #59.

<sup>130</sup> See Interview #4 (as to Yale); Interview #21 (as to George Washington); Interview #25 (as to Columbia); Interview #37 (same); Interview #58 (as to Yale); Interview #60 (as to Michigan). As of the fall of 2003, NYU had 25 students in residence, see Interview #27, but the number is now closer to 15. See NYU J.S.D. Web Pages, *supra* note 27 (listing 16 J.S.D. candidates in all). The exception is Wisconsin, which has approximately 25 students in residence at any given time. See Interview #14.

<sup>131</sup> See Interview #21 (around 2003, George Washington decided to limit the number of admits to one or two each year); *supra* note 130 (as to NYU. Applications, however, have been increasing during this period). Columbia also has recently decided to limit admits to those in which the faculty has a strong interest, even if that limits the number of new students in any given year. See Interview #25.

<sup>132</sup> Interview #38.

<sup>133</sup> Interview #51; *cf.* Interview #29.

<sup>134</sup> See Interview #3 (expressing skepticism about the program); Interview #25.

<sup>135</sup> See Interview #14; Interview #24.

and faculty supervisory time.<sup>136</sup> Concerns about the quality of the final dissertation have not disappeared.<sup>137</sup> And there are new ones as well. At least one faculty member has expressed concern about the extent to which the programs support the export of U.S. legal models to other countries.<sup>138</sup> There is also a potential “brain drain” effect when young scholars from other countries remain in the U.S.

### What is the doctorate contributing?

When a U.S. law school confers a doctoral degree, what is that school certifying? First, as the word “certifying” suggests, the degree itself is a credential that connotes expertise. As such, it gives additional credibility to the bearer to the extent that expertise and titles are valued in the receiving legal culture. Second, that expertise is *academic*: i.e., the doctorate does not focus on practice-oriented aspects of U.S. legal education (clinics, moots, etc.), except to the extent that a candidate writes specifically about these (which is infrequent). Rather, the degree tends to focus on substantive legal norms and particular ways of thinking about law.

The following discussion traces the degree’s likely contributions in three ways. First, it examines the kinds of dissertations that are being produced, including how and by whom. Having done so, it then attempts to locate graduates from Canada, Israel, Taiwan and Korea in the context of legal developments in those countries during the past twenty or so years. This may help explain why the degree has been so popular among lawyers trained in these countries, and also suggests the kinds of contributions graduates may make there, particularly as teachers and scholars. Finally, it offers some observations about the degree, understood purely as an educational *process*. In this sense the degree represents a pedagogical experiment that holds interesting lessons for how we train law teachers in the U.S., and the place of U.S. legal education in a broader university context.

### Models

One of the most striking observations that comes from a close examination of the programs is the relationship among school, method, and students’ geographic origins. At one end of the spectrum is work that is theoretical or interdisciplinary in nature, typically found at the more elite schools in the group. The structures that produce this kind of work also tend to attract students from a particular geographic background: Canada, Israel and Oceania. At the other end of the spectrum is work that is almost purely doctrinal, found most often at Wisconsin and George Washington. At Wisconsin, this is

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<sup>136</sup> See Interview #1; Interview #4; Interview #6; Interview #26; Interview #37. None of the schools gives faculty teaching credit for supervising doctoral students.

<sup>137</sup> See Interview #20 (conceding that Wisconsin’s focus on developing relationships might hurt quality of dissertations); Interview #26 (noting the “hit or miss” quality of some dissertations); Interview #34 (as to his experience at Harvard); Interview #37. Some of the most sharp-edged criticism comes from faculty members who hold doctorates in other disciplines. See Interview #3; Interview #6; cf. Edwards, *supra* note 85, at 7-15 (reviewing Harvard dissertations produced between 1993 and 1996).

<sup>138</sup> Interview #3.

associated with a heavy concentration of students from East Asia, and at George Washington, it has until recently been associated with a particular doctrinal area (public international law). Between the two lie what I call “policy pragmatist” dissertations, written by a geographically diverse set of graduates of a range of schools. A discussion follows.

**The theoretical/interdisciplinary model.** This model, which appears most often at Columbia, Harvard, Michigan, NYU and Yale, describes work that inquires into the fundamental nature of legal rules and the social, political, economic and institutional context in which they operate. The entire dissertation need not be theoretical, and indeed many include discussions of how theoretical insights play out in the actual operation of legal norms. Rather, what distinguishes this work is an effort to engage theoretical debates in the area of the dissertation at a high level of abstraction, and an effort to organize the work around this engagement in some meaningful way. It is interdisciplinary to the extent that it explicitly draws on the insights of disciplines other than law (i.e., economics, political science, philosophy, linguistics, sociology, etc.). I also include in this category “law and status” work, or work that examines how law affects historically disadvantaged or dominated groups of people,<sup>139</sup> to the extent that it deploys theoretical or interdisciplinary insights in doing so.

Many of the titles are suggestive: *Law as a Promoter of Benevolence*;<sup>140</sup> *Follow the Children: Identity, Integrity, Leaning and Law*;<sup>141</sup> *Towards a Theory of Freedom of Religion in International Law*;<sup>142</sup> *Les Juristes Inquiets: Critical Currents of Legal Thought in France at the End of the Nineteenth Century*;<sup>143</sup> *Three Essays on Theoretical Foundation of Empowering Shareholders*;<sup>144</sup> *Gendered Lives Under Neutral Laws: Women, the Family and Feminist Legal Reform in Taiwan*;<sup>145</sup> *Essays on Economic Analysis of Private Law, Public Policy and Distribution*;<sup>146</sup> *Law as Communication: A Concept of International Law*;<sup>147</sup> *Dividend Policy: Implications for Firm and Market Efficiency*;<sup>148</sup> and *The Anglo-American Constitutional Model: Why the British and American Constitutional Systems Are Not as Different as Most Think*.<sup>149</sup> The dissertations cover a broad range of subject areas, including international law, and many appear to have little mooring to a particular national or regional legal system. These

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<sup>139</sup> The “law and status” nomenclature is borrowed from Guido Calabresi, *An Introduction to Legal Thought: Four Approaches to Law and to the Allocation of Body Parts*, 55 STAN. L. REV. 2113, 2127 (2003). The cultural study and law-and-status orientation has been particularly pronounced at Michigan and Columbia.

<sup>140</sup> Yuval Livnat, Columbia J.S.D. 2002 (law and philosophy).

<sup>141</sup> Shauna Van Praagh, Columbia J.S.D. 2000 (social theory).

<sup>142</sup> Peter G. Danchin, Columbia J.S.D. 2006 (theories of international law).

<sup>143</sup> Marie-Claire Belleau, Harvard S.J.D. 1995 (legal theory).

<sup>144</sup> Ok-Rial Song, Harvard S.J.D. 2002 (law and economics).

<sup>145</sup> Chao-Ju Chen, Michigan S.J.D. 2003 (feminist legal theory).

<sup>146</sup> Ronen Avraham, Michigan S.J.D. 2003 (law and economics).

<sup>147</sup> Maya Steinitz, NYU J.S.D. 2005.

<sup>148</sup> Zohar Goshen, Yale J.S.D. 1992 (law and economics).

<sup>149</sup> Rivka Weill, Yale J.S.D. 2002 (legal history and constitutional theory).

patterns are particularly strong among dissertations by Canadian and Israeli students, but they are not limited to this group.

More of this work goes on at the top schools than elsewhere, in part because these schools have a higher concentration of faculty who are interested in it, in part because the schools are able to attract students who are suited for it, and in part because of the structures that support it. A discussion follows.

*Admission.* Admission to the programs is now highly selective. This is consistent with both the inherent demands of the undertaking and the schools' growing emphasis on a strong final product. In other words, the more one expects of the dissertation, the more stringent one's admissions requirements become. It also is consistent with the realization that producing a strong dissertation requires supervisory support and, ideally, financial aid.<sup>150</sup> And financial aid is increasingly available, particularly at Yale, NYU and Harvard, and for participants in Columbia's Associates-in-Law teaching program.<sup>151</sup>

Typically students are admitted to the program based on a standard application that includes biographical information, recommendations, transcripts, and a dissertation proposal. At least one member of the school's faculty must have agreed to supervise the dissertation, whether at the request of the applicant or the Graduate Committee.<sup>152</sup> Most

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<sup>150</sup> See Interview #6 (noting the difficulty of completing a dissertation while struggling for a living). At NYU in particular, a commitment to fully funding students for three years translates into a maximum of five admits per year and a cap of 15 students in all. See Interview #27; Interview #34; Interview #61; NYU J.S.D. GUIDE, *supra* note 25, at 3 (this practice was begun in 2004-05). However, the school also will consider for admission students who have full funding from an external organization for three years. See Hauser Global Law School Program, J.S.D. Students, Funding, <http://www.nyuglobal.org/graduateaffairs/jsdfunding.htm> (last visited Mar. 4, 2008).

<sup>151</sup> See Interview #4 (Yale fully funds students, based on financial need, for up to two years); Interview #10 (Michigan tries to fully fund first year students); Interview #58 (as to Yale); Interview #59 (Harvard fully funds students, based on financial need, for as long as they are in residence). At Columbia, first-year students generally receive tuition fellowships but must pay their own living expenses. The exceptions are participants in Columbia's Associates-in-Law program, a two-year program in which appointees teach legal research and writing to either first-year J.D. students or LL.M. students. For this they receive a tuition waiver, a \$43,250 annual stipend, and benefits. See Interview #25; Columbia Law School, Associates-in-Law Program, [http://www.law.columbia.edu/lm\\_jsd/assoc](http://www.law.columbia.edu/lm_jsd/assoc) (last visited Dec. 31, 2007). In 2007-08, there were a total of 12 Associates, of whom four were J.S.D. candidates. See *id.* As of 1990, the total number of Associates was six, and they taught only J.D. students. COLUM. U. SCH. OF LAW, GRADUATE LEGAL STUDIES 1990-91, at 5.

<sup>152</sup> See Interview #37 (a faculty member must have enthusiastically agreed to supervise); Columbia Requirements, *supra* note 100 (dissertation Advisory Committee is "assigned" by Graduate Committee); Harvard Academic Handbook, *supra* note 100, at 32-33 (overall supervisor is "selected by the candidate and approved by the Committee on Graduate Studies"); Michigan Requirements, *supra* note 100 (unless a member of the Law School faculty is "available and interested to serve as chair" of an applicant's committee, the applicant will not be admitted); NYU J.S.D. GUIDE, *supra* note 25, at 6, 10 (referring to "dissertation advisor assigned at admission," who is "confirmed" during first year. However, the student typically establishes contact with prospective supervisors before applying); Yale Law School, Apply for the J.S.D., [www.law.yale.edu/admissions/JSD.htm](http://www.law.yale.edu/admissions/JSD.htm) (last visited Feb. 15, 2008) (hereinafter Yale Admission

of the schools require that the applicant have completed a prior U.S. LL.M. degree, and have a strong preference for their own LL.M. graduates.<sup>153</sup> None of the screening devices are new, but they are applied with increasing rigor. In particular, schools are expecting more of applicant's dissertation proposal;<sup>154</sup> requiring that the proposed faculty supervisor be affirmatively enthusiastic about the student and his or her project;<sup>155</sup> relying less on direct admit tracks;<sup>156</sup> and requiring that the applicant have achieved a high GPA in the school's own LL.M. program.<sup>157</sup> Columbia, which is alone in regularly admitting applicants who do not hold a U.S. LL.M., requires J.S.D. students who participate in the Associates-in-Law program to be knowledgeable enough about the Anglo-American legal system to teach legal writing to first-year J.D. students and/or foreign-trained LL.M. students.<sup>158</sup>

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Requirements) (requiring the "contingent approval" of the overall supervisor and two faculty readers, all of them Yale Law School faculty).

<sup>153</sup> See Harvard Law School, Graduate Program, Application Information for Doctor of Juridical Science (S.J.D.) Program, <http://www.law.harvard.edu/academics/graduate/admissions/sjd.php> (last visited Feb. 15, 2008) (hereinafter Harvard Admission Requirements) (non-Harvard LL.M. graduates are rarely admitted); Yale Admission Requirements, *supra* note 152 (non-Yale LL.M. graduates are admitted only "under extraordinary circumstances"). The other schools do not explicitly state a preference for their own LL.M. graduates, but in fact most of those admitted to the doctoral program have completed the school's own LL.M. With respect to NYU, *compare* NYU J.S.D. GUIDE, *supra* note 25, at 3 (expressing no preference as between NYU LL.M. candidates and others) *with* NYU J.S.D. Web Pages, *supra* note 27 (most of the school's J.S.D. candidates hold the NYU LL.M.). With respect to Columbia, *compare* Columbia Requirements, *supra* note 100 (stating that equal consideration will be given to Columbia LL.M.s and external candidates) *with* Columbia J.S.D. Web Pages, *supra* note 27 (eight of ten resident J.S.D. candidates hold Columbia LL.M. degrees). With respect to Michigan, *see* Michigan Requirements, *supra* note 100 (describing direct admission to an LL.M./S.J.D. program, but indicating that most S.J.D. candidates come from the Michigan LL.M. program).

<sup>154</sup> See Interview #1 (as to Columbia); Interview #27 (often the student has worked on his or her topic for more than simply the LL.M. year); Interview #33 (prior to Columbia's 1999-2000 reforms, it was possible to be admitted on the basis of a loose dissertation proposal; now the proposal must be fairly fully developed); Harvard Admission Requirements, *supra* note 153 (describing expectations of proposal).

<sup>155</sup> See Interview #25 (as to Columbia); Interview #27 (as to NYU); Interview #33 (prior to changes adopted in 1999-2000, it was possible to be admitted to Columbia's program without the prior agreement of a faculty supervisor. This is no longer the case); Interview #37 (as to Columbia); Interview #59 (as to Harvard); Interview #60 (as to Michigan); Michigan Law, Admission to the S.J.D. Program, <http://www.law.umich.edu/prospectivestudents/graduate/degreeprograms/sjd/Pages/sjdadmission.aspx> (last visited Mar. 4, 2008) (admission requires "that a faculty member strongly endorses the candidate and is available to act as S.J.D. advisor"); *cf.* Yale Admission Requirements, *supra* note 152 (requiring that the entire dissertation committee have agreed to serve at the time of admission).

<sup>156</sup> Until approximately 2000, Columbia would not even consider its own LL.M. graduates for admission to the J.S.D. Now most of their admits hold Columbia LL.M.s. See Interview #25; Interview #37; Columbia J.S.D. Web Pages, *supra* note 27. As to Michigan, *see* Michigan Requirements, *supra* note 100. *But see* NYU J.S.D. GUIDE, *supra* note 25, at 7 (describing LL.M.-J.S.D. Program in International Law).

<sup>157</sup> See Interview #10 (as to Michigan); Interview #60 (same); Harvard Admission Requirements, *supra* note 153; NYU J.S.D. GUIDE, *supra* note 25, at 8 (admission requires a 3.5 GPA in the NYU LL.M. or a comparable GPA in another U.S. school's LL.M.); Yale Admission Requirements, *supra* note 152 (requiring a Yale LL.M. with "high standing" except in "extraordinary circumstances", and emphasizing the "highly selective" nature of J.S.D. admission).

<sup>158</sup> Columbia Law School, Associates-in-Law Program, [http://www.law.columbia.edu/llm\\_jsd/assoc](http://www.law.columbia.edu/llm_jsd/assoc) (last visited Feb. 20, 2008).

Everywhere except for Yale, these standards have yielded a high concentration of students from developed common law countries – Australia, Canada, Israel, New Zealand, the Republic of Ireland, and the United Kingdom. These students have native or near-native English language skills, knowledge of a legal system that strongly resembles that of the U.S., and a prior legal education that incorporates many of the elements of U.S. legal education. Where a school requires high performance during the LL.M. year as a condition of admission, these students would be likely to meet the requirement. Thus when Columbia finally started to admit international students in the late 1980s, most were from developed common law countries.<sup>159</sup> More recently, high admissions standards have been said to account for the heavy representation of Israeli students in the programs at the top schools.<sup>160</sup>

The statistics are striking. Between 1990 and 1999, Columbia, Harvard, Michigan and NYU conferred a total of 49 doctorates on students from developed common law countries – a figure representing 52% of all foreign-trained doctoral degree recipients at the schools during the same period. The same countries accounted for 90 graduates between 2000 and 2006, or 66% of all foreign-trained graduates of the schools.<sup>160A</sup> When combined with U.S.-trained students, the developed common law group made up 71% of the four schools' doctoral graduates during the same period.<sup>161</sup> The proportion was particularly high at Columbia, where graduates from developed common law countries represented over 70% of foreign-trained graduates in the 1990s, and over 95% of foreign-trained graduates between 2000 and 2006. Most of these students were Israeli and Canadian, but Australians were also appearing in greater numbers than before.<sup>162</sup>

At Harvard and Yale, however, admission has not been limited to these groups. While 52% of Harvard's foreign-trained graduates between 1990 and 2006 fell in the

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<sup>159</sup> See COLUMBIA UNIVERSITY SCHOOL OF LAW, GRADUATE LEGAL STUDIES 1994-95 at 3, 5 (only students from the U.S., United Kingdom, Republic of Ireland, Canada, Australia and New Zealand normally are eligible for the J.S.D.); Interview #33 (concerning admission of Canadians); Interview #37 (concerning the exclusion of civil law trained students until around 2000).

<sup>160</sup> See Interview #27. Indeed, Columbia finally started admitting civil law-trained students around 2000 because of demand among its Israeli LL.M. students. See Interview #33 (foreign students were “beating at our door”); Interview #37 (citing demand among Columbia's international LL.M. students, particularly Israelis).

<sup>160A</sup> See Database, *supra* note 11. The proportions are depressed by the inclusion of Harvard, which accounted for about half of the graduates from developed common law countries, and well over half of all foreign-trained graduates, between 1990 and 2006. At Columbia, Michigan and NYU, developed common law graduates accounted for 59% of foreign graduates during the 1990s and 79% of foreign graduates between 2000 and 2006. *Id.*

<sup>161</sup> Except at Harvard, the pattern persists among current students as well. See Harvard Facebook, *supra* note 65, at 49-75 (23 of 71 foreign-trained S.J.D. candidates are from developed common law countries); Interview #60 (as of 2007, Israelis continue to be a significant proportion of Michigan's J.S.D. candidates); Columbia J.S.D. Web Pages, *supra* note 27 (5 of 9 resident J.S.D. candidates in 2006-07 were from developed common law countries); NYU J.S.D. Web Pages, *supra* note 27 (13 of 16 J.S.D. students in 2007-08 are from developed common law countries).

<sup>162</sup> The concentration of Australians is higher at Columbia than at any of the other schools. See Database, *supra* note 11.

developed common law category, the remaining 48% represented a considerable number: a total of 63 graduates. At Yale, the proportion of graduates from other countries is higher: between 1990 and 2006, the school conferred 41 doctorates on students originally trained in other countries, which represented 64% of doctorates Yale conferred on foreign-trained students during the same period. At both schools, the graduates represented a broad range of countries, including 18 graduates from continental Europe. Korea was the single largest country of origin: its 11 graduates were twice as many those from any other country.<sup>163</sup> More recently, Yale in particular has begun to graduate increasing numbers of candidates from Latin America.<sup>164</sup>

The segmentation may be partly a function of a crowding-out effect between the most prestigious schools and the others. Implicit in the idea that students from developed common law countries tend to do well academically in the U.S. is the idea that students from elsewhere, on average, tend to do less well.<sup>165</sup> Harvard and Yale, the two most prestigious schools among the seven, would presumably attract the top students from the latter group for their LL.M. programs. These LL.M. students are in turn the primary pool from which each school draws its doctoral candidates. Where would students not admitted to these schools go? One possible answer is that they would not complete doctorates in the U.S. at all. Another is that they would go to a school with a smaller developed common law population. My evidence for this claim is indirect, however, in that it derives primarily from the proportion of students from East Asia and Africa who have received degrees from schools of less exalted pedigree.<sup>166</sup>

*Degree requirements.* At most schools, the focus is on scholarship – the writing process. The following near-universal requirements apply: at least a year in residence following the LL.M.,<sup>167</sup> followed by completion of a book-length dissertation. The dissertation usually is understood to take the form of a single monograph, but it can take the form of a series of shorter articles on a single theme, accompanied by a unifying essay.<sup>168</sup> A single full-time faculty member typically has primary supervisory

<sup>163</sup> The next largest shares came from China (8 graduates) and India (7 graduates). *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> See Interview #15 (noting the continuing preparation hurdles people from developing countries face).

<sup>166</sup> These include Golden Gate, Indiana University at Bloomington, the University of Washington, Washington University in St. Louis, and Wisconsin. See Database, *supra* note 11. It also disregards the “pipeline” effects generated by a school’s ties to a given region (such as Wisconsin’s ties to East Asia).

<sup>167</sup> At Yale, the Yale LL.M. can satisfy the residency requirement, but this occurs relatively rarely. See Interview #58; Yale Admission Requirements, *supra* note 152. Michigan occasionally permitted this in the past, but no longer does so. See Interview #10. The school’s direct admits, however, need only spend a year in residence. See Michigan Requirements, *supra* note 100. The schools actively encourages students to spend more than a year in residence, and most in fact do. See Interview #58 (Yale allows up to two years in residence); Interview #59 (as to Harvard); Interview #60 (as to Michigan); Columbia Requirements, *supra* note 100; NYU J.S.D. Guide, *supra* note 25 (NYU encourages three years in residence).

<sup>168</sup> At Columbia, three articles is the typical model. See Database, *supra* note 11; Columbia Requirements, *supra* note 100. At Harvard and NYU, the series of papers approach is the exception. See Harvard Academic Handbook, *supra* note 100, at 32-33 (series of papers approach requires special approval); NYU J.S.D. GUIDE, *supra* note 25, at 15. Yale does not explicitly permit this approach, but some students do employ it. See Interview #4.

responsibility for the student from start to finish, but his or her work is supplemented by others along the way or at key points in the process.<sup>169</sup> An oral defense before the student's dissertation committee is the final degree requirement everywhere except Yale.<sup>170</sup> The period of time in which students are expected to complete the dissertation ranges from two to seven years, though extensions beyond the stated time are typically available.<sup>171</sup>

Various other requirements supplement the dissertation. In the first year, for example, most schools either require or encourage students to pursue coursework related to the dissertation.<sup>172</sup> Michigan and NYU impose "candidacy" reviews a year after admission to monitor the student's research progress and keep the student focused and on track.<sup>173</sup> In addition, all five of the schools offer workshops in which students periodically present their work in progress. These workshops help students focus their research efforts, inform them about different kinds of legal scholarship, improve their

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<sup>169</sup> See Columbia Requirements, *supra* note 100 (during the course of study, candidates are supervised by a three-member Advisory Committee, of which the Chair is most active. A fourth faculty member participates in the oral defense); Harvard Academic Handbook, *supra* note 100, at 32-33 (in addition to overall supervisor, two or three faculty members are on orals committee during first 18 months, and there is a second reader at the dissertation evaluation stage); Michigan Requirements, *supra* note 100 (the Chair selects the other two members of the dissertation committee shortly after admission; at least one must be a full time member of the law school's faculty); NYU J.S.D. GUIDE, *supra* note 25, at 6 (a single full-time faculty member – who may be a full-time adjunct – is the main supervisor, and two additional faculty members join the dissertation committee in the second year); Yale Admission Requirements, *supra* note 152 (a single overall supervisor and two readers – all of whom must be Yale Law School faculty members – must be on board as of the time of admission).

<sup>170</sup> See Interview #4 (as to Yale); Interview #37 (as to Columbia); Harvard Academic Handbook, *supra* note 100; Michigan Requirements, *supra* note 100 (as to Michigan); NYU J.S.D. GUIDE, *supra* note 25 (at NYU, the public is also invited to the defense).

<sup>171</sup> See Interview #4 (Yale dissertation may be completed within one year, but as a practical matter most students take at least two years); Columbia Requirements, *supra* note 100 (dissertation must be submitted and defended within six years of enrollment, though an extension for a seventh year is occasionally granted); Harvard Academic Handbook, *supra* note 100 (dissertation phase does not begin until after the first year; dissertation normally is completed within three years after orals, but there is provision for extension for up to three more years); Michigan Requirements, *supra* note 100 (the dissertation must be completed within five years of "admission to candidacy" review, which itself occurs one to two years after admission to the program); NYU J.S.D. GUIDE, *supra* note 25, at 6, 17 (the dissertation is designed to be completed in three years, and must be completed within five); Yale Requirements, *supra* note 100 (the dissertation must be completed within five years; extensions will be granted only under extraordinary circumstances).

<sup>172</sup> See Interview #58 (Yale permits coursework on an audit basis); Columbia Requirements, *supra* note 100 (students register for a seminar or directed reading course during the first semester in residence and may audit relevant courses/seminars); Harvard Academic Handbook, *supra* note 100 (requiring eight credits of coursework, normally on an audit basis, in the first year); NYU J.S.D. GUIDE, *supra* note 25, at 12 (in the first year, requiring two special methods seminars plus auditing of other courses in the areas of the dissertation in the first year); *id.* at 15 (second year students register for one law school colloquium – a research workshop – in their field in the second year); Yale Requirements, *supra* note 100 (imposing no formal requirements other than the dissertation). Only Michigan appears not to encourage coursework during the first year if the candidate already holds a U.S. LL.M. See Michigan Requirements, *supra* note 100.

<sup>173</sup> See Interview #60; Michigan Requirements, *supra* note 100; NYU J.S.D. GUIDE, *supra* note 25, at 6 (a paper of 15,000 to 20,000 words is submitted to the dissertation committee at the end of the first year).

presentation skills and help promote academic community.<sup>174</sup> Otherwise, only Harvard<sup>175</sup> and Columbia<sup>176</sup> are making any serious efforts at pedagogical training,<sup>177</sup> and Columbia's commitment is less strong than in the past.<sup>178</sup>

These measures may be designed to promote high-quality work, but nothing in them necessarily produces theoretical or interdisciplinary scholarship, as contrasted with other kinds of scholarship. If a dissertation is to be a serious piece of theoretical or interdisciplinary scholarship, the author and his or her supervisor must face the methodology question. The challenge is particularly difficult for interdisciplinary work. U.S. scholars that do this kind of work increasingly have advanced training in the companion discipline – i.e., economics, philosophy, history, literature, etc. Most international students, by contrast, do not even have an undergraduate degree in the field – law itself is the undergraduate degree.<sup>179</sup> How can they bridge the gap?

One possible response is not to attempt to. First, as will be discussed, not all dissertations written at these schools follow the theoretical/interdisciplinary model. Moreover, even among those that do, some faculty members are quite emphatic that their doctoral programs in the law school are not “interdisciplinary” in the sense that joint Ph.D. programs between a law school and a social science department are “interdisciplinary.”<sup>180</sup> As a result, some schools report paying particular attention at the

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<sup>174</sup> See Interview #4 (as to Yale); Interview #58 (as to Yale); Interview # 60 (as to Michigan); Columbia Requirements, *supra* note 100; Harvard Academic Handbook, *supra* note 100; Michigan Requirements, *supra* note 100; NYU J.S.D. GUIDE, *supra* note 25, at 13-16.

<sup>175</sup> At Harvard, the first-year of study is structured around three or four “fields,” some of which may correspond to an upper-level course that the student eventually would teach. The school also sponsors an active program of teaching assistantships, workshops and other teaching-oriented activities for doctoral students. See Harvard Web Page, *supra* note 105.

<sup>176</sup> Columbia's primary vehicle for pedagogical training is its Associates-in-Law program. See *supra* note 151.

<sup>177</sup> NYU advertises teaching opportunities, but does not actively encourage students to take them. Compare NYU J.S.D. GUIDE, *supra* note 25, at 18 (candidates work as teaching assistants, research assistants and co-teachers elsewhere in the university, participate in teaching workshops at the law school, and, during the third year, have a chance to teach a law school class) with Interview #34 (suggesting that the school does not offer J.S.D. students too many teaching opportunities because this would distract them from their central task of writing). Elsewhere, a student occasionally co-teaches a course with a faculty member or teaches a standalone course at a neighboring school. See Interview #4 (as to Yale); Interview #60 (as to Michigan).

<sup>178</sup> Columbia recently dropped its special Seminar in Legal Education for J.S.D. students, a course that had been in place since the mid-1930s. Compare Hupper, *supra* note 36, at \_\_\_; COLUM. U. SCH. OF LAW, GRADUATE LEGAL STUDIES 2002-03 6, 65 with Columbia Requirements, *supra* note 100. See also Interview #33 (the current J.S.D. Workshop, which focuses on developing scholarship, reflects the view that writing, rather than thoughtfulness about teaching, is what gets people hired).

<sup>179</sup> This is not the case for anglophone Canada, where law is a graduate degree. In addition, some foreign doctoral students have advanced training in another field. See Interview #58 (noting that some candidates have advanced degrees in economics, philosophy, etc.).

<sup>180</sup> See Interview #1; Interview #6 (in law and philosophy, the law school does not offer core canonical courses in philosophy in the way that the arts and sciences department does, and the law school's advanced colloquium in law and philosophy is too advanced for some students); Interview #19; *infra* notes 258-70 and accompanying text.

admissions stage as to whether an applicant's proposed project is doable by that applicant, given his or her background.<sup>181</sup> This scrutiny extends to the early stages of research as well: both the research methodology and the necessary preparation are tailored to the particular person and project.<sup>182</sup>

For students who do pursue interdisciplinary projects, the schools' most common approach combines interdisciplinary courses and colloquia at the law school with appropriate directed reading tailored to the individual student's project.<sup>183</sup> An additional source of support for interdisciplinary work is the companion department itself. All of these schools permit students to receive guidance from professors in other disciplines – whether as a formal member of the dissertation committee, or in addition to the formal members.<sup>184</sup> However, only Harvard actively encourages students to pursue coursework in the other discipline.<sup>185</sup>

A more structured approach, in place at Harvard, begins to mimic a combined Ph.D. in law and another discipline. Students are admitted to the program based on a proposal that includes work in three or four different fields, one of which typically falls in another discipline.<sup>186</sup> Each field is supervised by a faculty member with expertise in that field – including faculty members in other university departments. After admission, students spend time putting together a “study plan” for the first year that included coursework and directed reading in each field.<sup>187</sup> At the end of the year, each student undergoes an oral examination, conducted by his or her field supervisors and overall supervisor, that tests the student's mastery of each field and focused his or her work for the dissertation. If the student passes the oral examination, he or she is permitted to go on to the dissertation stage.

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<sup>181</sup> See, e.g., Interview #1 (as to Columbia); Interview #34 (as to NYU).

<sup>182</sup> See, e.g., Interview #1 (as to Columbia); Interview #34 (as to NYU).

<sup>183</sup> See Interview #6 (his students do a combination of directed reading, law school coursework, and the advanced law school colloquium in law and philosophy; they tend not to do coursework in the philosophy department); Interview #19 (his students do his basic law and economics course and the advanced law and economics colloquium, both at the law school); Interview #58 (Yale students do seminars in law and economics, law and philosophy, etc., at the law school).

<sup>184</sup> See Interview #4 (some students have readers from other Yale departments in addition to their required three Yale Law School readers); Database, *supra* note 11 (as to NYU); Columbia Requirements, *supra* note 100 (faculty members in other Columbia departments may be called upon to help the candidate); Harvard Academic Handbook, *supra* note 100 (orals committee members may be from other Harvard departments); Michigan Requirements, *supra* note 100 (one committee member may be from another University of Michigan department).

<sup>185</sup> See Interview #59; Harvard Academic Handbook, *supra* note 100 (specifically referring to coursework in other university departments). Yale students may pursue coursework in other university departments if doing so would be helpful to their projects. See Interview #58.

<sup>186</sup> Harvard Academic Handbook, *supra* note 100.

<sup>187</sup> When this approach was first instituted in the early 1990s, the school's Graduate Committee had hoped that various specialized groups on the faculty – particularly those working in law and economics, but also those working in law and history, law and philosophy, etc. – would develop canonical reading lists that would be used for the orals period. This did not occur until much later. Interview #45.

Finally, both Harvard and NYU are beginning to offer doctoral student seminars that specifically address the methodology question. Both take as their point of departure the idea that law implicates two major strains of modern social thought: normative philosophical inquiry, and the positive/descriptive enterprise of the social sciences. At Harvard, the seminar is the brainchild of a small group of students in the program, and is completely voluntary. It proceeds from the premise the idea that contemporary American legal thought is a cluster of responses to the insights of legal realism on the one hand and developments in the social sciences and humanities on the other.<sup>188</sup> NYU, whose interdisciplinary posture is less aggressive than is Harvard's, now requires all J.S.D. students to take a seminar in "evaluative theory" that is oriented towards normative political theory, and an "explanatory theory" seminar that is oriented towards the social sciences – why things happen in a particular way. Combined, the two seminars are intended to give students "serious methodological awareness."<sup>189</sup>

**The doctrinal model.** At the other end of the spectrum is a quite different model, found most often at George Washington and Wisconsin. The doctrinal model's distinguishing characteristic is its focus on rules in themselves, whether in isolation or applied to a particular problem. Some projects are in the style of a classic U.S. law review article: a discussion of the rules as applied to a particular problem or set of problems, plus a policy proposal. Some take the form of a comparative exercise in which the student discusses the approaches of two or more countries (one of which is typically the student's home country) to a particular problem. The dissertation may examine emerging fields such as digital technology law, fields that are highly developed in the U.S. but underdeveloped in the author's home country, or fields as to which there has been scholarly confusion or neglect. While the thesis may touch on the theory underlying a particular body of legal doctrine or the context in which it operates, discussion of theory and context take a back seat to the comprehensive presentation of doctrine.

Given the prevalence of doctrinalism in civil law countries' legal education, it is not surprising that most graduates who have pursued the doctrinal model were originally civil law-trained. In this sense, the model represents far less of a departure from the student's prior training than would the theoretical/interdisciplinary model. Other factors that support doctrinal dissertations are the faculty members who tend to supervise these dissertations and the way in which the degree is structured. A discussion follows.

*Wisconsin and East Asia.* At Wisconsin, the doctorate is heavily dominated by one geographic region: East Asia. While Wisconsin hardly has a monopoly on students from this region, the number of students who go to Wisconsin as contrasted with the other schools is stunning. Since 1990, over 60% of the school's 81 doctoral graduates have hailed from the region, particularly Taiwan and Korea.<sup>190</sup> This is not accidental. In the mid-1980s, faculty member Charles Irish became interested in the region, and in 1990

<sup>188</sup> See Proposed Materials for Legal Theory Seminar for First-Year SJDs (2007) (copy on file with the author); Interview #8.

<sup>189</sup> See Interview #34; NYU J.S.D. GUIDE, *supra* note 25, at 12.

<sup>190</sup> Database, *supra* note 11.

the school established an East Asia program under his direction.<sup>191</sup> Most of the school's master's-level (M.L.I. and LL.M. degree) students are from the region, and these programs are the primary source of the school's doctoral students. The doctorate is now a well-established credentialing vehicle for aspiring law professors from the region, though some graduates pursue other careers.

Formal admissions requirements at Wisconsin are similar to those at the other schools: completion of the school's own LL.M. or a comparable research-based degree elsewhere, the agreement of a full-time faculty member to supervise the dissertation, a high previous grade point average in one's prior U.S. law studies, and a credible research proposal.<sup>192</sup> However, the school's approach to faculty supervision is unusual (at least among these schools). Irish and one of his colleagues take the position that, if an applicant has the native ability and the formal qualifications required to complete the degree, the school should attempt to accommodate him or her. When no other faculty member is interested in supervising, the two have an informal arrangement under which one supervises the economic law-oriented projects, and the other supervises the public law-oriented projects.<sup>193</sup> The vast majority of dissertations are in fact supervised by one of the two.<sup>194</sup>

Wisconsin also is unusual in the amount of emphasis it places on writing, at the level of both admission and degree requirements. At Wisconsin, unlike the other schools, the LL.M. year is devoted almost entirely to a writing project. The success of that writing project – plus additional work done in connection with the S.J.D. application -- appears to be one of the main screening devices at the S.J.D. admissions stage.<sup>195</sup> The degree itself perpetuates the writing emphasis. Indeed, alone among the seven schools, Wisconsin actively discourages students from pursuing coursework while they are doing the degree. The school does, however, offer a workshop in which students periodically present their work in progress.<sup>196</sup>

The result is a regular stream of dissertations that represent an effort to understand the U.S. or international legal models in relation to the student's home environment. Not all follow the doctrinal model (see the "policy pragmatist" discussion below), but those that do tend to fit the following pattern. They take the foreign or international model – and the premises underlying it -- as given, then compare their own system and needs. The implication is that the foreign model may be imported into the student's own system

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<sup>191</sup> See *The Asian Connection*, *supra* note 57; Interview #20.

<sup>192</sup> See Interview #14; University of Wisconsin Law School, Advanced Law Degrees, <http://www.law.wisc.edu/grad/prospective/sjd/apply.htm> (last visited Jan. 1, 2008). Many applicants also have completed a course-based master's degree, whether in Wisconsin's M.L.I. program or another U.S. school's LL.M.

<sup>193</sup> See Interview #20; Interview #43; Database, *supra* note 11.

<sup>194</sup> See Database, *supra* note 11.

<sup>195</sup> See Interview #24. In the past the school has strongly preferred students who had completed its own M.L.I. program, but more recently the school has admitted increasing numbers of students who did a course-based LL.M. elsewhere. See Interview #20.

<sup>196</sup> Interview #14; Interview #57.

in some way, or that the student's own system may be modified in order to bring it into harmony with international norms.

*George Washington and international law.* George Washington, by contrast, has a very small program that, until very recently, has been almost entirely subject matter driven. Admission is quite restrictive: no more than one or two new students are admitted each year. In recent times, the program has preferred candidates from George Washington's own LL.M. program,<sup>197</sup> although non-George Washington LL.M. graduates continue to be admitted. The admission of each candidate must be approved by the Dean as well as the graduate program.<sup>198</sup> Once admitted to the program, candidates' primary focus is on the dissertation. As in the other schools, this includes the opportunity for candidates to present their work in progress periodically.<sup>199</sup>

For most of the period since 1990, the program has represented a return to the classic international law model of the postwar era. What is meant by this? First (and quite remarkably), after its suspension in the late 1980s, the program was resurrected by Louis Sohn, mentor to numerous postwar doctoral students in international law at Harvard, and his former student Thomas Buergenthal, who had become director of George Washington's international law program in 1990.<sup>200</sup> Several of the dissertations the two supervised were in the classic continental model: a comprehensive treatment of the doctrinal and institutional arrangements in a particular area. Second, until very recently virtually all of the resulting theses focused on a particular substantive area: public international law and human rights.<sup>201</sup>

More recently, however, the program's focus has changed. Part of this represents a move towards the theoretical/interdisciplinary model of the dissertation. However, it also reflects the changing nature of the international itself. For example, during the past five years the school's programs in government contracts and intellectual property have generated a few graduates. This is partly a function of the growth of international norms

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<sup>197</sup> This is partly a function of the need to have the enthusiastic support of the applicant's proposed faculty supervisor, and a commitment to serve on the part of each member of the applicant's dissertation committee. See Interview #21. It is also partly a function of different countries' "radically different" expectations concerning dissertation quality and academic integrity. The school is able to catch and address problems of this nature among its own LL.M. graduates; it is much more difficult to do so among graduates of other LL.M. programs. See Interview #26.

<sup>198</sup> These practices reflect a recognition of the enormous time commitment required of supervisors and an overarching desire to keep quality standards high. Other admission requirements include the submission of a 20- to 30-page dissertation proposal, and the documentation required by most of the other schools. See Interview #21; George Washington University Law School, Admissions, Doctor of Juridical Science (S.J.D.) Degree, <http://www.law.gwu.edu/Admissions/SJD+Admission/S.J.D.+Degree.htm> (last visited Jan. 17, 2008).

<sup>199</sup> Interview #21.

<sup>200</sup> Sohn, then in his late 70s, was recruited to join George Washington's faculty by Thomas Buergenthal in 1991. See Jo M. Pasqualucci, *Louis Sohn: Grandfather of International Human Rights Law in the United States*, 20 HUM. RTS. Q. 924 (1998). Sohn supervised the school's first S.J.D. graduates since 1990, both of whom graduated in 1994. A few other faculty members began supervising dissertations in the early 1990s. See Database, *supra* note 11.

<sup>201</sup> See Database, *supra* note 11.

in the area, generated by WTO and related regimes.<sup>202</sup> In addition, a few faculty members who specialize in core domestic law subjects are now supervising comparative dissertations in those areas.<sup>203</sup>

**The policy pragmatist model.** Between the two ends of the spectrum is a model that can be found at all seven schools. Theses in the “policy pragmatist” model are like those in the doctrinal model in that they have a significant proportion of doctrinal content. However, policy pragmatist theses also go beyond the formal rules, discussing the political, economic or technical context in which the rules operate. In this sense, they represent a significant departure from the continental conception of the “law book”, and a significant change in approach for students schooled in the civil law or another autonomist tradition. What distinguishes these theses from the theoretical/interdisciplinary model is the concrete, descriptive way in which the contextual discussion proceeds. In other words, there is less effort to engage the context, or the way law operates in it, from a theoretical or systematic standpoint.

This is not intended as a criticism – many such dissertations skillfully deploy context in developing persuasive arguments. Nor does it necessarily imply an acceptance of the context or status quo. A Columbia thesis on refugee law, for example, demonstrates the ways in which law and policy in China and Australia operate to the detriment of particular refugee groups.<sup>204</sup> Others engage in spirited critiques of the way in which the law operates in relation to its basic purposes. Wisconsin theses, on the other hand, tend to proceed from a posture of acceptance. As in the doctrinal model, the effort has to do with the adaptation of U.S. or international norms to the needs of the student’s home country. A thesis on Korean banking reform, for example, pairs discussions of financial industry and bank regulatory structures with a discussion of Korea’s new banking regulation. It then turns to the U.S. model as a possible source of reforms.<sup>205</sup>

### **Transplants to particular countries**

These models in turn have important implications for the doctorate as a diffuser of U.S. legal culture. The above discussion has identified certain countries in which large numbers of U.S. doctoral graduates were originally trained. While not all of these students return to their home (whether upon graduation or earlier), many do. What fuels their interest in U.S. doctorates, and what is likely to be their contribution when they return? The following discussion represents an effort to identify some of the major

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<sup>202</sup> Interview #21 (referring particularly to intellectual property requirements and the government procurement side agreement under the WTO); Interview #26; Database, *supra* note 11.

<sup>203</sup> Interview #21.

<sup>204</sup> Penelope Mathew, *Sovereignty and the Right to Seek Asylum: A Study of Restrictive Measures Against Asylum-Seekers* (2001) (unpublished J.S.D. dissertation, available at Arthur W. Diamond Law Library, Columbia University).

<sup>205</sup> Yongjae Kim, *Analyses of the 1998 Korean Banking Reform and Suggestions to the Future Reform Modeled on the United States* (1998) (unpublished S.J.D. dissertation, available on microfiche in Hein’s Legal Theses and Dissertations, no. 017-00304).

structural factors at work, drawing on the experience of individual countries to the extent it is available.

Concern with particular countries pushes us into the realm of legal transplants, a term first coined by the comparativist Alan Watson in 1974.<sup>206</sup> I have used the term earlier in this article without really engaging it, but must now confront it directly. In its extreme form, the “transplant” rubric has been used the term to describe the movement of legal rules from one country to another in a mechanical way, as in Japan’s imposition of much of its legal system on Korea in the early 1900s. This view of transplantation, which largely ignores the broader context in which law operates, has been largely discredited by Pierre Legrand and others. The core of the critique is that positive legal rules by themselves are “law” in only a limited sense, and that what makes law effective in a given setting – what gives law meaning -- is a function of a range of factors.<sup>207</sup> These include the nature of the rule being transplanted, the family resemblance between the systems of the transferring and receiving countries, the reasons for the transplant, and the ways in which the transplant occurs.<sup>208</sup>

As I have suggested, U.S. graduate legal education is sometimes referred to as one of the mechanisms through which U.S. legal norms are transplanted to other countries. It has been cited as a particularly powerful vehicle for transplantation, in that (a) it forces the student to think about law, at least for a time, as an American lawyer would;<sup>209</sup> (b) because it is not tied to a formal U.S. government agenda, it does not carry the political baggage that more directly-transmitted norms do;<sup>210</sup> and (c) it engages with U.S. legal scholarship, which is a highly efficient way of diffusing U.S. ideas about law abroad.<sup>211</sup> In what way is the contribution of those who hold a U.S. *doctorate* likely to be distinctive? The previous section discussed the nature of their engagement with U.S. legal models, which differs in many ways from that of the typical LL.M. student. So do the careers that many pursue upon returning home.

Doctoral graduates as a group pursue a variety of careers, and any given graduate may pursue more than one kind of work during his career. The world is full of graduates whose work has included not only academics, but also work in law firms, the judiciary, government, and other kinds of organizations – some of them simultaneously. As noted above, however, the degree’s distinctiveness lies in its preparation for an academic career. At a more concrete level, this translates into three core roles law professors play:

<sup>206</sup> ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* (Athens, Ga., 2d ed. 1993).

<sup>207</sup> See, e.g., Pierre Legrand, *Against a European Civil Code*, 60 *MOD. L. REV.* 44 (1997); William Ewald, *Comparative Jurisprudence (I): What Was It Like to Try a Rat?*, 143 *U. PA. L. REV.* 1889 (1995); William Ewald, *Comparative Jurisprudence II: The Logic of Legal Transplants*, 43 *AM. J. COMP. L.* 489 (1995).

<sup>208</sup> See Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, 51 *AM. J. COMP. L.* 163 (2003) (contrasting “receptive” and “unreceptive” transplants); Langer, *supra* note 5; Legrand, *supra* note 207; Miller, *supra* note 4.

<sup>209</sup> See Delisle, *supra* note 5, at 280.

<sup>210</sup> *Id.* at 284-85.

<sup>211</sup> See Mattei (1994), *supra* note 6, at 207-08.

classroom teaching, scholarship, and deliberation about the basic functions and structure of legal education. To this might be added a fourth that is less distinctive to scholars, but which is nonetheless an important role: expert advice on current and prospective law to governments and other organizations.

The degree's contribution may be particularly important to the extent that one focuses on the teaching function. As Legrand suggests, teachers help shape the way that people think about law in a very basic way. Teachers who have foreign graduate training may transmit substantive norms and modes of thought at formative stages in a future lawyer's career. In this sense graduate teacher training is a partial response to Legrand's emphasis on cognitive limitations on the acceptance of legal transplants. The extent to which this actually occurs depends in part on what a particular faculty member is teaching, whether the imported idea is presented as central or peripheral, and whether it is adapted to a preexisting framework or presented *as* the framework. It also may depend on the extent that the faculty member uses pedagogical techniques derived from the foreign experience. Finally, the impact also is likely to depend on the extent to which other faculty members reinforce those lessons – i.e., what proportion of a given faculty has legal training in the foreign system.

However, the graduate's influence is not likely to be limited to the teaching contribution. Scholarship, for example, has a cognitive impact even if it never results in the modification of positive law.<sup>212</sup> Graduates' scholarship includes, most immediately, the dissertation itself, to the extent that readers have access to it (physically and linguistically). Graduates also bring the insights of their U.S. studies into their home-country scholarship, which may have a different audience than does either the dissertation or scholarship by U.S. authors. The impact also can be more concrete, as when the graduate as academic expert advises on (or is central to) the adoption of particular legal reforms. Many academics also participate in debates concerning the structure and functions of legal education in their country. Matters debated include whether legal education is training for citizenship or for a profession, how long it takes, what is studied and how, its relationship to other university education, and so forth. While relatively few dissertations directly treat these questions, a graduate's sustained exposure to U.S. legal education is likely to cause him or her to form opinions about some of these matters.

The doctorate is, of course, simply one form of U.S. graduate legal education. Other mechanisms include LL.M. or other master's-level programs, non-degree research fellowships, special short-term programs (whether in the U.S., the academic's home country, or elsewhere), and even J.D. degrees. Not surprisingly, holders of the doctorate make up a small fraction of the total number of foreign-trained academics who have pursued some kind of training in U.S. law. However, the nature of the doctorate may make its contribution distinctive. Because it lasts over a period of years, it makes for a much more sustained engagement with U.S. legal models than does (for example) a one-year master's degree. It is thus more likely that the graduate will have internalized U.S.

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<sup>212</sup> *Id.*

ways of thinking about law and, to the extent his or her dissertation concerns substantive U.S. law, mastered that body of U.S. law. It is also more likely that the lessons of the doctorate will be presented as central, rather than peripheral, in the graduate's teaching, writing and other work. Finally, because the doctorate is the graduate's terminal degree (and often the degree that makes him or her eligible for a teaching position), it is on display as a credential in a way that other forms of graduate legal education are not.

This analysis puts the geographic and methodological patterns identified above into sharper focus. In particular, cycles of faculty interest in students from particular countries and regions, and cycles of interest among those students in doing a doctorate, coincide with developments in a larger legal world. In post-1990 Canada, Israel, Korea and Taiwan, those developments have included the growth of U.S.-style judicial review, export-led economic growth, and structural change to legal education. In this context, the growth of interest in the doctorate as a teacher training vehicle has functioned as a marker of the reception of U.S. legal models. But which models? To a great extent, the *kind* of doctorate people from a given country have pursued has corresponded to aspects of U.S. legal culture that have met a perceived need in that country. This is of course not surprising, but what makes it significant is the fact that "*kind* of doctorate" translates into particular U.S. law schools.

**Canada and Israel.** The pattern is particularly apparent in Canada and Israel, both of which have absorbed large numbers of graduates since 1990.<sup>213</sup> Both countries have an underlying legal culture drawn from the British common law system, and as such one with a strong family resemblances to that of the U.S. Unlike the U.S. model of law as social engineering, however, the British model is highly bound in precedent. As of the mid- to late-1980s, both countries were making a transition to a more social engineering model. In both countries, this seems to have fueled demand for the theoretical/interdisciplinary and policy pragmatist models of U.S. doctoral study, and helped transform legal education once graduates returned home to teach.

In Canada, the engagement with U.S. legal education was hardly new by the 1980s,<sup>214</sup> but the rapid rise in doctoral student enrollment followed two important events. The first was the 1982 adoption of the Charter of Rights and Freedoms, which greatly expanded the range of legislation that would be subject to judicial review in Canadian courts.<sup>215</sup> U.S. courts by then had embraced both the practice of rights-based judicial review and open policy argumentation in deciding such cases. The second was the release of an influential 1983 report to the Social Sciences and Humanities Research

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<sup>213</sup> Between 1990 and 2006, the seven schools conferred a total of 38 doctorates on Canadian-trained students. Of these, at least 22 returned to Canada to pursue academic careers. During the same period, 95 Israel-trained students received doctorates from the seven schools, and at least 50 returned home to pursue academic careers. See Database, *supra* note 11. The statistics are particularly striking given the two countries' tiny populations.

<sup>214</sup> See, e.g., Arthurs, *supra* note 59; Jerome E. Bickenbach & Clifford Ian Kyer, *The Harvardization of Caesar Wright*, 33 U. TORONTO L.J. 162 (1983).

<sup>215</sup> Peter W. Hogg, *The Charter of Rights and Canadian Legal Education*, in LEGAL EDUCATION IN CANADA 300, 301-02 (Roy J. Matas & Deborah J. McCawley eds., 1987).

Council of Canada. That report devoted enormous attention to the need for research on the relationship between law and its social, political and historic context, including interdisciplinary work.<sup>216</sup>

In this context, the elite U.S. law schools were a natural magnet for the academically ambitious: not only did they have more developed research in these areas, but they were also richer and more prestigious. Many more students came to the U.S., and some stayed on for doctorates.<sup>217</sup> Moreover, those who came tended to be interested in what was cutting-edge about U.S. scholarship rather than the doctrinal diet to which they were accustomed at home.<sup>218</sup> By the late 1990s theoretical, interdisciplinary and policy-oriented work had become a commonplace in Canadian legal education.<sup>219</sup> Holders of U.S. doctorates are not the only reason, obviously, but they almost certainly played a role.

Israeli legal education also has a long history of support from the U.S.,<sup>220</sup> but until the 1990s legal education there was largely doctrinal. That began to change in the 1990s, in part because of the increasingly activist jurisprudence of the Israeli Supreme Court,<sup>221</sup> and in part because of an unusually large number of law teaching positions that were opening at the time.<sup>222</sup> This environment both stimulated demand for doctoral study (the doctorate has long been a requirement for law teaching in Israel) and made

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<sup>216</sup> This was the so-called Arthurs report, more formally CONSULTATIVE GROUP ON RESEARCH & EDUC. IN LAW, LAW AND LEARNING: REPORT TO THE SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL OF CANADA (Ottawa, 1983).

<sup>217</sup> See Interview #17 (she started supervising Canadian students in the mid-1980s, and they were very strong students); Interview #29 (there were top-flight people from Canada when he did his J.S.D. residency in the 1980s); Interview #30 (for 10-12 years starting in the mid-1980s, she was “majoring in Canadians.” Many were LL.M.s, and a few stayed on as S.J.D.s); Interview #33 (Canadians were stronger than U.S. students in Columbia’s Associates Program around this time).

<sup>218</sup> For example, two faculty members who work in feminism, human rights, and equality theory report supervising numerous Canadian students beginning around this time. See Interview #17 (noting that her Canadian students tended to come with strong pro-feminist agendas); Interview #30. See also Arthurs, *supra* note 59, at 389 (“In the 1970s and 1980s, foundational texts by leading American scholars on feminist legal theory, critical legal studies, law and economics and legal pluralism helped to reconfigure the landscape of Canadian legal scholarship, although mutant strains of these intellectual and political perspectives ultimately emerged in northern latitudes.”); Graham Parker, *Legal Scholarship and Legal Education*, 23 OSGOODE HALL L.J. 653 (1985) (bemoaning this trend).

<sup>219</sup> Joost Blom, *Looking Ahead in Canadian Law School Education*, 33 U.B.C. L. REV. 7, 10 (1999).

<sup>220</sup> See, e.g., Edrey, *supra* note 60, at 345 (“many of the leading jurists of the country for the last three decades have had an American background”); Asher Grunis, *Legal Education in Israel: The Experience of Tel-Aviv Law School*, 27 J. Legal Educ. 203 (1975) (noting the number of professors at Tel Aviv and Bar Ilan with U.S. graduate legal training); Joseph Laufer, *Legal Education in Israel: A Visitor’s View*, 14 BUFF. L. REV. 232 (1964) (mentioning the Harvard-Brandeis-Israel Research for Israel’s Legal Development program at Harvard Law School in the 1950s and 1960s).

<sup>221</sup> On the growth of judicial activism in Israel during this period, see ROBERT H. BORK, *COERCING VIRTUE: THE WORLDWIDE RULE OF JUDGES* 111-134 (Washington, D.C., 2003); Gary Jeffrey Jacobsohn, *The Permeability of Constitutional Borders*, 82 TEX. L. REV. 1763, 1773-87 (2004); see generally AHARON BARAK, *THE JUDGE IN A DEMOCRACY* (Princeton, N.J., 2006).

<sup>222</sup> This was due in part to the retirement of the post-war generation of European-trained academics, [verify and get cite if possible], and in part because of the emergence of several new private law schools.

interdisciplinary training increasingly important for aspiring academics.<sup>223</sup> Access to the U.S. academic community also gave budding Israeli academics a much broader audience for their work – important to a small country with an obscure language. The top U.S. schools offered both an academic model and the prestige that would meet these needs.<sup>224</sup>

**Taiwan and Korea.** The story in Taiwan and Korea (two other countries that have absorbed high numbers of graduates since 1990)<sup>225</sup> is more complicated, perhaps because the changes on the ground have been more dramatic. Both countries' legal systems are based largely on the German model, and legal education is highly dogmatic. In addition, historically law itself has played a very limited role in social organization. In both countries, the arrival of significant numbers of U.S.-trained doctoral graduates in the 1980s coincided with structural change towards a more Western-style market democracy. These changes stimulated not only the absorption of U.S. ideas about law and substantive legal rules, but also important debates on the structure of legal education and the legal profession. In this context, however, no model of U.S. doctoral study has emerged as the clear favorite.

The beginnings of interest in Taiwan coincided with the country's embarkation on an aggressive export-led growth strategy in the 1970s and 1980s. In addition, the Kuomintang government's new "soft authoritarianism" started to become more responsive to citizen concerns, and lawyers were beginning to participate actively in political change.<sup>226</sup> These trends accelerated in the 1990s with the reform of the political process following the lifting of martial law; the continuation of export-led growth; and a perceived need for greater numbers of lawyers.<sup>227</sup> In this context, U.S. legal models have had a considerable influence on economic and constitutional law,<sup>228</sup> and also on legal education. In the 1970s National Taiwan University (NTU), the country's leading law faculty, began actively encouraging its top law graduates to study in the U.S. as well as

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<sup>223</sup> See Yoseph M. Edrey & Sylviane Colombo, *Haifa and Its Law School: Toward the Future*, 51 J. LEGAL EDUC. 338, 342 (2001) (noting the increasingly interdisciplinary orientation of Haifa's curriculum); Oren Gazal-Ayal, *Economic Analysis of "Law & Economics,"* 35 CAP. U. L.REV. 787 (2007) (discussing law and economics scholarship in Israel).

<sup>224</sup> See Gazal-Ayal, *supra* note 223; Nuno Garoupa & Thomas S. Ulen, *The Market for Legal Innovation: Law and Economics in Europe and the United States*, available at [http://esnie.u-paris10.fr/pdf/garoupa\\_2005/Legal\\_Innovation.pdf](http://esnie.u-paris10.fr/pdf/garoupa_2005/Legal_Innovation.pdf) (2005) (last visited Feb. 4, 2008); Interview #46 (also noting that the U.S. is a comfortable place to do a doctorate and the fact that many of the candidates' predecessors held U.S. doctorates); Interview #49.

<sup>225</sup> Between 1990 and 2006, the seven schools conferred a total of 38 doctorates on Korea-trained students. Of these, at least 23 returned to Korea to pursue academic careers. During the same period, 28 Taiwan-trained students received doctorates from the seven schools, and at least 17 returned home to pursue academic careers. Database, *supra* note 11.

<sup>226</sup> See Jane Kaufmann Winn & Tang-chi Yeh, *Advocating Democracy: The Role of Lawyers in Taiwan's Political Transformation*, 20 LAW & SOC. INQUIRY 561 (1995).

<sup>227</sup> In particular, the bar passage rate, historically kept at around 5%, reached 14% in 1989. Since then, it has remained at approximately 10%. See *id.* at 573.

<sup>228</sup> See Interview #42 (some leading laws in these areas were authored by graduates of U.S. S.J.D. programs); see generally Winn & Yeh, *supra* note 226.

Germany and Japan.<sup>229</sup> By the 1980s many of them were pursuing U.S. doctorates. Close to half would return home to pursue academic careers, including at NTU itself.<sup>230</sup>

As of this writing, NTU has hired at least 11 holders of U.S. doctoral degrees from a mix of schools.<sup>231</sup> A few of the 1980s graduates, and all of the graduates of the seven schools since 1990, wrote dissertations of the theoretical/interdisciplinary type. What kind of impact are they likely to have? Anecdotal evidence suggests it is considerable. In addition to authoring the country's new securities and administrative laws in the late 1980s and early 1990s,<sup>232</sup> the NTU group has argued for significant educational reforms at NTU itself. These include a greater emphasis on analytical reasoning, an awareness of other disciplines, more internationally-oriented coursework, and more professionally-oriented training. Indeed, it has been said that the U.S.-trained group has been pitted directly against the German-trained group in these debates.<sup>233</sup> To date, however, the U.S.-trained group remain a minority at the faculty, and the core subjects covered on Taiwan's all-important bar examination remain those taught by their German-trained colleagues.<sup>234</sup> Even a former U.S.-trained Dean of NTU has conceded that the basic structure of legal education remains largely unchanged.<sup>235</sup>

Graduates writing in the doctrinal or policy pragmatist mode – primarily those from Wisconsin – have found teaching positions in a number of other Taiwanese schools. The fields in which these graduates wrote tended to be in those relevant to international economic relations – international trade, taxation, intellectual property, foreign investment, etc. They tend not to be concentrated in any given school, and some are teaching in special graduate programs devoted to such fields rather than in the basic law school curriculum. Thus they are even less likely than the NTU group to have a fundamental impact on how their students think about law. Rather, they seem to be acquainting their students with the rules of the road for participating in the world economy.

Korea represents a modified, and slightly delayed, version of the Taiwan story. U.S. actors have attempted to influence the country's legal development since shortly after World War II, and the country nominally adopted U.S.-style judicial review in the

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<sup>229</sup> Joseph L. Pratt, *The Two Gates of National Taiwan University School of Law*, 19 UCLA PAC. BASIN L.J. 131, 146 (2001).

<sup>230</sup> In the 1970s and 1980s, U.S. schools conferred approximately 35 doctorates on students from Taiwan. Of the 27 for whom career information is available, 14 pursued academic careers in Taiwan. The first graduate arrived at NTU in the early 1980s, and another three joined the faculty in the late 1980s. *See* Database, *supra* note 11.

<sup>231</sup> In addition to the seven schools examined in this study, Chicago, Duke, Stanford and the University of Washington are represented. *See id.*

<sup>232</sup> *See* Interview #42.

<sup>233</sup> *See* Lo, *supra* note 62 (the author, a Harvard S.J.D. graduate and then Dean of NTU's law faculty, advocates reforms along these lines); Pratt, *supra* note 229, at 172-73, 176 (describing disagreements on these questions between U.S.-trained and Germany/Japan-trained law faculty at NTU).

<sup>234</sup> *See* Pratt, *supra* note 229, at 172-73.

<sup>235</sup> *See* Lo, *supra* note 62, at 41-43 (also noting the continuing emphasis on memorization rather than analysis, and law on the books rather than law in action).

1960s.<sup>236</sup> However, Korea (like Taiwan) then had little cultural tradition of social organization through law,<sup>237</sup> and a succession of authoritarian governments hardly promoted such a tradition. Accelerating export-led growth beginning in 1970s sparked a perceived need for lawyers schooled in U.S. law and U.S. norms, and increasing numbers of law graduates began to study in the U.S. In 1987 massive political protests sparked constitutional reforms, including a new constitutional court system that has taken a surprisingly activist stance towards judicial review.<sup>238</sup>

Social and legal change since then has been dramatic. An explosion of constitutional, civil and administrative litigation followed,<sup>239</sup> along with a growing acceptance of law as a legitimate force in people's lives.<sup>240</sup> This in turn fueled a perception that the country needed more and better-trained lawyers. The number of universities offering law programs – including specialized programs treating international affairs -- began to increase,<sup>241</sup> and in 1995 the Supreme Court and a so-called Presidential Globalization Committee began considering a series of proposals to reform the structure of legal education and the bar examination system. Since then, the annual bar passage rate has been raised to 1000 from its prior level of 300, non-traditional subjects like tax, intellectual property and international transactions have been added to the bar examination,<sup>242</sup> and internationally-oriented courses have been added to the curriculum of the Judicial Training and Research Institute.<sup>243</sup> In July 2007, the National Assembly finally resolved to establish a system of U.S.-style graduate law schools, the first of which are to open in 2009.<sup>244</sup>

<sup>236</sup> See generally Kyong Whan Ahn, *The Influence of American Constitutionalism on South Korea*, 22 S. ILL. U. L.J. 71 (1997).

<sup>237</sup> See Chan Jin Kim, *Korean Attitudes Towards Law*, PAC. RIM L. & POL'Y J. 1 (2000), citing PYONG-CHOON HAHM, *THE KOREAN POLITICAL TRADITION AND LAW* 205-17 (1971).

<sup>238</sup> Ahn, *supra* note 236.

<sup>239</sup> See Jeong-Oh Kim, *The Changing Landscape of Civil Litigation*, in RECENT TRANSFORMATIONS IN KOREAN LAW AND SOCIETY 321 (Dae-Kyu Yoon ed., Seoul, 2000); Ahn, *supra* note 236; Kun Yang, *Judicial Review and Social Change in the Korean Democratizing Process*, 41 AM. J. COMP. L. 1, 2-4 (1993) (constitutional litigation).

<sup>240</sup> See Chan Jin Kim, *supra* note 237; Ahn, *supra* note 236, at 84-85.

<sup>241</sup> For a small sampling, see Handong Global University, [http://www.han.ac.kr/n\\_english/](http://www.han.ac.kr/n_english/) (last visited Feb. 6, 2008) (a university founded in 1995 that includes an International Law School founded in 2001); Korea Aerospace University, <http://www.hangkong.ac.kr/english/> (last visited Feb. 6, 2008) (whose Department of Air and Space Law was established in 1998); Transnational Law and Business University, <http://www.tlbu.ac.kr/> (last visited Feb. 6, 2008) (a university founded in the mid-1980s that includes a Graduate School of Law founded in 2000).

<sup>242</sup> See Dae-Kyu Yoon, *Current Reform Efforts in Legal Education and the Delivery of Legal Service in Korea*, in EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY 64, 75, 83 (Louise G. Trubek & Jeremy Cooper eds., Brookfield, Vt., 1999); Hoyoon Nam, *Note, U.S.-Style Law School ("Law School") System in Korea: Mistake or Accomplishment?* 28 FORDHAM INT'L L.J. 879 (2005).

<sup>243</sup> See Soogeun Oh, *Globalization in Legal Education of Korea*, 55 J. LEGAL EDUC. 525, 526-27 (2005).

<sup>244</sup> See Tae-Jong Kim, *Law School to Open in 2009*, THE KOREA TIMES, July 4, 2007, available at [http://www.koreatimes.co.kr/www/news/nation/nation\\_view.asp?newsIdx=5931&categoryCode=117](http://www.koreatimes.co.kr/www/news/nation/nation_view.asp?newsIdx=5931&categoryCode=117). For discussions of recent debates in Korean legal education, see generally Yoon, *supra* note 242; Ahn, *supra* note 236; Jae Won Kim, *The Ideal and the Reality of the Korean Legal Profession*, 2 ASIAN-PAC. L. & POL'Y J. 45 (2001).

Meanwhile, the number of Korean law graduates pursuing U.S. doctorates has skyrocketed.<sup>245</sup> As in Taiwan, the single largest cluster has landed at the country's most prestigious law faculty: Seoul National University (SNU). They represent a smaller proportion of the total faculty, and more of them wrote doctrinal theses than did their Taiwanese counterparts. However, they may be helping pave the way for even more significant change. SNU's faculty, for example, now includes two professors who hold both J.D. and social science Ph.D. degrees from U.S. institutions.<sup>246</sup> More generally, as in Taiwan, Korean debates about legal educational reform have been said to pit U.S.-trained professors against their German-trained colleagues.<sup>247</sup>

**Stepping back.** The previous discussion described structural changes that have coincided with growing demand for U.S. doctoral study in four countries. The discussion noted some of the effects that graduates may be having in those countries, but on the whole its claims about impact were quite modest. This was primarily a function of the limited scope of this study, and the author's even more limited local knowledge. To the extent that one could trace the programs' impact more concretely, however, how might one judge it? Let me venture a few observations.

The first has to do with what we are exporting. While U.S. law does have things to offer to the rest of the world, many of them are manifestations of a legal culture that is much more individualistic, litigious and openly instrumental than are many others. Moreover, even in our legal culture, some of those models are subject to lively criticism. To the extent that U.S. doctoral programs facilitate a wholesale transference of those models to other legal cultures, the programs' value may be questionable. One might note the reductionist tendencies of law and economics scholarship,<sup>248</sup> the nihilist impulses of critical legal studies,<sup>249</sup> or (at the other end of the spectrum) the details of U.S. securities law doctrine.<sup>250</sup>

On the other hand, the method in which transfer occurs may have a moderating impact. Even if U.S. doctoral study is transformative in some way, the graduate teaching at home ultimately is responsible to his or her own legal environment. One can but hope that the graduate will have the good sense to take our models for what they are – the insights of a particular legal system rather than some absolute truth – even if that system happens to be a dominant one. If there is one thing that U.S. legal education does better

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<sup>245</sup> The number of U.S. doctoral graduates grew from seven in the 1980s to approximately 30 in the 1990s and approximately 45 in 2000-06. Of those graduates for whom career information is available, 2/3 of 1990s graduates and ¾ of 2000-06 graduates returned home to pursue academic careers. See Database, *supra* note 11.

<sup>246</sup> See SNU Faculty Web Site, *supra* note 13.

<sup>247</sup> Jae Won Kim, *supra* note 244, at 66-67.

<sup>248</sup> See Mattei (2005), *supra* note 7.

<sup>249</sup> See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 47 (1992).

<sup>250</sup> See Delisle, *supra* note 5, at 180.

than do most other countries, it is to teach critical thinking. May our students turn that lesson on whatever else they have learned from us.

Desirable or not, it is unlikely that this kind of engagement with U.S. legal culture will last forever. India, for example, supplied numerous students to U.S. doctoral programs beginning in the 1960s, but by the 1980s the stream had slowed to a trickle. A similar pattern prevailed among African students between the 1970s and early 1990s.<sup>251</sup> While the reasons for retrenchment are not completely clear, one obvious factor is the limited number of law teaching positions in any given country – a fact that may start to affect demand among Israeli-trained students.<sup>252</sup> Another factor is a country’s ability to build its own system of doctoral (or other) teacher training, with a concurrent falloff among those studying in the U.S. Such a pattern may be emerging in Canada today.<sup>253</sup>

### **Internal transplants**

Thus far this Article has proceeded from the assumption that the primary effect of the doctorate is external – i.e., to the extent that graduates pursue teaching or other careers in other countries. However, it is likely to be having an impact in the U.S. as well. This internal “transplant effect” is partly a function of graduates pursuing law teaching positions in the U.S., but also partly about the contribution of the programs (and students pursuing them) to U.S. legal education itself.

**U.S. teaching positions.** What kind of impact are the programs likely to have in the U.S. market? The most obvious impact has to do with the *internationalization* of U.S. legal education. Schools interested in building their international programs need faculty trained in international and comparative law. One way to get that training is to hire U.S.-trained faculty working in the field,<sup>254</sup> but another is to hire foreign-trained faculty.<sup>255</sup> Foreign-trained faculty who have a U.S. doctorate bring insights from both their home countries and the U.S. to the table. However, not all doctoral graduates are being hired to teach international or comparative law courses. Some of the “new domestic” graduates – particularly Israelis specializing in law and economics – have been hired to teach core American law courses (contracts, corporations, securities).<sup>256</sup> In this

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<sup>251</sup> See Hupper Part II, *supra* note 38; Database, *supra* note 11.

<sup>252</sup> See Interview #34 (Israeli J.S.D. students are increasingly looking at the U.S. market first, because the job market at home has tightened).

<sup>253</sup> See generally Sanjeev S. Anand, *Canadian Graduate Legal Education: Past, Present and Future*, 27 DALHOUSIE L.J. 55 (2004).

<sup>254</sup> Indeed, some U.S.-trained graduates have been hired for this purpose in recent years. These include Marsha Echols (Columbia J.S.D. 2001) of Howard, and John Ohnesorge (Harvard S.J.D. 2002) and Asifa Quraishi (Harvard S.J.D. 2006), both of Wisconsin.

<sup>255</sup> See Potier, *supra* note 25; Interview #48. Recent examples include Georgetown’s Alvaro Santos, Harvard’s Gabriela Blum, and NYU’s Mattias Kumm. See *supra* notes 116-27 and accompanying text.

<sup>256</sup> Recent examples include Michigan’s Omri Ben-Shahar, NYU’s Oren Bar-Gill, Penn’s Gideon Parchomovsky, and Virginia’s Michal Barzuza and Dotan Oliar. See *supra* notes 116-27 and accompanying text. *But see* Interview #54 (law and economics candidates face heightened scrutiny about their ability to teach doctrinal courses, and foreign-trained law and economics candidates face this more than do U.S.-trained candidates).

sense, doctoral graduates may be contributing to the continuing *academization* of legal education.

**The degree itself.** Another area that bears examination is the degree itself: how it compares to other kinds of training for similar purposes, and what that comparison suggests about U.S. legal education. In this sense I refer not so much to the importation of foreign norms, but rather the implications of the process whereby someone with foreign training interacts with American legal education. This arises in two basic ways, particularly in the theoretical/interdisciplinary model of the degree. First, the degree is an experiment in training someone with a non-U.S. educational background to do methodologically rigorous work, particularly in an interdisciplinary context. In this context it is an alternative to existing patterns of training designed primarily for U.S. law graduates. Second, it offers insights about what is distinctive about law itself as an early 21<sup>st</sup>-century academic discipline.<sup>257</sup>

How does the degree fit in as a pedagogical experiment? At this point it is worth spelling out some of the alternative paths to teacher training in U.S. legal education today. These include (a) one- or two-year paid fellowships, offered to top graduates of U.S. law schools, in which the fellow is in residence and writes an article with which to go “on the market”; (b) combined Ph.D. degrees in law and social sciences, many of which are available to people without prior legal training; and (c) the combination of a J.D. and a Ph.D. in another discipline.

To some extent the comparison depends on the model of the S.J.D. or J.S.D. itself. As suggested above, most schools structure the doctorate as a writing degree. Interdisciplinary perspectives are incorporated through a combination of regular law school courses, special colloquia, and directed reading in the relevant field. This approach bears a close resemblance to the fellowship alternative of the previous paragraph, except that the doctorate generally provides for more sustained engagement with the faculty supervisor and more ongoing quality control.<sup>258</sup> Faculty supervisors offer differing views of how well this approach works. Some supervisors believe that it works well, particularly at a school (such as Yale) in which many regular courses are taught from an interdisciplinary perspective.<sup>259</sup> Others take it upon themselves as supervisors to make sure that it works, even if the student lacks background in the

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<sup>257</sup> A 2006 blog posting on some of these questions provoked a lively debate. Posting of Orly Lobel to Prawfsblawg, [http://prawfsblawg.blogs.com/prawfsblawg/2006/03/how\\_to\\_design\\_a.html](http://prawfsblawg.blogs.com/prawfsblawg/2006/03/how_to_design_a.html) (Mar. 31, 2006, 4:43 p.m.).

<sup>258</sup> The sustained faculty supervision can be a major advantage of the doctorate. On the other hand, among U.S.-trained fellowship holders with prestigious credentials, this tends not to be enough incentive to stay on for the doctorate. See Interview #18 (in a fellowship program in law and technology, participants with fancy credentials tend to do a straight fellowship rather than a combined fellowship-J.S.D.).

<sup>259</sup> See Interview #13 (given how Yale courses are structured, people learn the other discipline through osmosis).

companion field.<sup>260</sup> On the other hand, some supervisors have suggested that, while the approach may succeed in law and economics, it is less successful in some other fields.<sup>261</sup>

Except at Harvard, faculty who hold Ph.D.s in another discipline generally deny that the degree is analogous to a full Ph.D. First, they argue, U.S. law schools simply cannot offer courses in a particular companion or interdisciplinary field that are as advanced as those available in a Ph.D. program. The alternative, courses designed for graduate students in the companion field, generally do not offer the kind of support a law doctoral student needs.<sup>262</sup> Second, Ph.D. departments tend to work in narrowly defined fields. Students are therefore working on topics that are close to each other, so they can talk to each other about their work more readily than can law doctoral students, who write on a range of topics. Third, to the extent that the school purports to offer a Ph.D. in law, there is real question as to what would constitute the central “canon” or “method” of a law Ph.D. in the U.S. Our scholarship is too pluralistic, and in order to effectively do (say) effective law and economics scholarship one need not necessarily have a grounding in post-structuralism. The new methods seminars at NYU and Harvard are only a partial response.<sup>263</sup>

Fourth, the completion of interdisciplinary projects depends on the participation of supervisors who have the requisite expertise in the other discipline. Within a law school itself, there are more likely to be such faculty members now than there were 20 years ago, but not all of them necessarily will be willing to supervise doctoral dissertations. Apart from the question of willingness to supervise in general, there is a special question relating to work in another discipline. Bringing a student who has no training in the other discipline takes considerable work on the supervisor’s part. Success is not assured.<sup>264</sup> Meanwhile, the faculty member may also have the option of supervising students in the arts and sciences department. In a world of limited time, the faculty member may choose to supervise the latter students – with whom he or she is likely to succeed – rather than students in the law school.<sup>265</sup> The same considerations

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<sup>260</sup> See Interview #19.

<sup>261</sup> One faculty member offered the following explanation. First, there tend to be more law school courses in law and economics than in other interdisciplinary fields. Second, economics, like mathematics, is in large part concerned with elaboration of basic premises. A student with the raw intelligence can achieve a basic mastery of the field relatively quickly. A field like philosophy, by contrast, is more heavily oriented towards reading, and thus mastery simply takes more time. Interview #6; cf. Interview #28 (Harvard has several law and economics scholars who work with S.J.D. students, and S.J.D. work in that field is therefore highly developed). *But see* Interview #19 (disagreeing with the idea that it may be easier for people to get up to speed in law and economics than in law and philosophy).

<sup>262</sup> See *id.*; cf. Interview #30 (S.J.D. “fields” in a companion discipline tend to be narrower and more specialized than are Ph.D. fields in other departments, and tend to reflect law’s disciplinary preference for normative argument).

<sup>263</sup> On the other hand, the web site of Yale’s Center for Law and Philosophy seems to put Yale J.S.D. candidates on a footing similar to that of Yale Ph.D. candidates in philosophy. See *supra* note 93.

<sup>264</sup> See Interview #3 (interdisciplinary work is risky if the person does not already have a background in the other field); Interview #6.

<sup>265</sup> See Interview #6.

apply to faculty affiliated with other departments, except that these professors have even less reason to supervise law students.

What of the Harvard Ph.D. model? This begins to resemble some of the alternatives that actually use the Ph.D. label.<sup>266</sup> Indeed, Harvard initially adopted the approach in the early 1990s to revitalize the S.J.D. for U.S. students. It was designed to address the increasing tendency of U.S. hiring committees to look for candidates who held Ph.D.s in other disciplines as well as law degrees – a byproduct of the increasingly interdisciplinary orientation of legal scholarship. Earning both a J.D. and a Ph.D. is an extremely time-consuming process, and it appeared to the school’s graduate committee that the S.J.D. could be modified to produce a similar result in less time. The idea was to admit top J.D. graduates to the S.J.D. directly, give them training in the other discipline that was rigorous but fell short of a full Ph.D., then have them go on to the dissertation phase after that.<sup>267</sup> However, it also proved to be appealing to international students – first those from developed common law countries,<sup>268</sup> then a broader range.

Is the Harvard model really different from the more common writing model? To some extent it may be a function of the culture of the school – i.e., the extent to which one needs formal requirements in order to achieve a given result.<sup>269</sup> A more fundamental difference is the point at which the writing process begins in earnest. Most schools expect the student to begin writing the dissertation quite early in the process. Harvard does not. Students spend the first twelve to eighteen months thinking and learning, and their dissertation projects may change considerably along the way. In addition, the focus on “fields” in the early years tends to produce people with broader mastery of, and the ability to teach in, those fields. Obviously this comes at a cost, most immediately in terms of money and student and faculty time, and sometimes in terms of the final dissertation.<sup>270</sup> But the approach may be part of what has made Harvard’s graduates so attractive to U.S. law school hiring committees.

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<sup>266</sup> By this I refer to explicitly interdisciplinary programs such as Berkeley’s Ph.D. in Jurisprudence and Social Policy, whose “fundamental objective . . . is to focus the knowledge and perspectives of the social sciences and humanities on the analysis of law and law-related policies, and on the practice and teaching of law.” School of Law – Boalt Hall, Admissions, JSP Program, <http://www.law.berkeley.edu/admissions/jsp/> (last visited Jan. 22, 2008).

<sup>267</sup> Interview #45.

<sup>268</sup> During the 1990s as a whole, 28 of the school’s 54 foreign-trained graduates (52%) had been trained in developed common law countries. Among graduates between 1995 and 1999 – those who would have been admitted under the new regime -- the proportion was much higher. For this group, 21 of 32 total foreign-trained graduates, or 66%, were students from these countries. Database, *supra* note 11.

<sup>269</sup> One Yale faculty member, for example, noted that Yale’s small size enables supervision to be a much less formal affair than Harvard’s size permits. A Yale student can wander into the faculty member’s office, raise a question about the student’s project, and the faculty member will respond “read these three books”. The student will do so, come back, and they then talk some more. Harvard cannot do this because of its size, so the school has to institute more formal requirements. This faculty member also noted that Yale’s students are top-notch – the school is infinitely more selective than almost every other school. See Interview #32; *accord*, Interview #28 (confirming cultural differences between Yale and Harvard).

<sup>270</sup> See Interview #34.

Finally, debates about structure raise questions about the doctorate's identity and status within U.S. legal education. Here I am projecting the prior doctoral training of three people who have played important roles in the development of their schools' programs. One of the three, who earned a law doctorate in Europe, thinks of his school's doctorate along the lines of an Oxford D.Phil. – mostly about writing.<sup>271</sup> In that sense the doctorate *as a degree* remains essentially foreign. Another, who holds a U.S. Ph.D. in another discipline, indicates that his school's law doctorate is modeled on the post-comps portion of a Ph.D.<sup>272</sup> Again, this model is mostly about writing, but it specifically analogizes the student's prior legal education and practice to the pre-comps portion of the Ph.D. In this sense, it treats what is essentially *professional* training as part of the academic experience. By contrast, a third scholar, who also holds a U.S. Ph.D. in another discipline, thinks of Harvard's S.J.D. as analogous to a full Ph.D.<sup>273</sup> In this sense what leads up to the dissertation is essentially *academic* training.

### Conclusion

This article has examined the academic doctorate in law, a degree that has reemerged from relative obscurity during the past ten to fifteen years. Far from its nineteenth-century origins as a teacher training degree for the U.S. market, the degree is now pursued primarily by lawyers trained in other countries. As such, it is potentially an important mechanism for diffusing U.S. ideas about law to elsewhere in the world. But what ideas? And to where? Two factors are of particular importance here. First, the lessons that students take with them are very much a function of the particular schools at which they have studied. This article has examined the distinctive approaches of seven schools: Columbia, Harvard, George Washington, the University of Michigan, NYU, the University of Wisconsin and Yale. Second, since 1990, the degree has been particularly popular among students originally trained in Canada, Israel, Korea and Taiwan. Structural changes in these countries during the same period suggest that the degree functions as a marker of the reception of U.S. legal models – both doctrinal and academic. Finally, the growth of the doctorate offers interesting insights concerning the changing nature of U.S. legal education.

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<sup>271</sup> Interview #34.

<sup>272</sup> Interview #1 (referring primarily to people admitted directly to the doctorate, rather than people admitted after having completed the school's LL.M. degree).

<sup>273</sup> Interview #45.