

# MAKING THE IMPLICIT EXPLICIT: DEMONSTRATING THE VALUE ADDED OF HIGHER EDUCATION BY A QUALIFICATIONS FRAMEWORK

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The views expressed in this article are those of the authors and not necessarily those of Lumina Foundation for Education, Inc. This article is based on work first presented at the U.S./U.K. Higher Education Law Roundtable, New College, Oxford, June 2009. The authors are particularly grateful for the review, suggestions, and encouragement of William Kaplin, Barbara Lee, Jamie Merisotis, Dewayne Matthews, Geoffrey Bennett, David Palfreyman, Nancy Leonard, and Gerald Bepko. The authors thank Katherine LaBeau and Lindsay Jancek for their research, writing and editing.

## I. INTRODUCTION

There was a time when higher education in the United States enjoyed considerable autonomy as far as state and federal law were concerned.<sup>1</sup> Over the course of the past fifty years, however, enormous inroads have been made into that autonomy. Using its spending power, its taxing power, its commerce power, and its civil rights enforcement power, Congress now exerts enormous power over American higher education.<sup>2</sup> The states have created and continue to fund the vast majority of American public colleges and universities and have come to expect more from their institutional creations than they did in earlier times.<sup>3</sup> The vast majority of American private colleges and universities are subject to state and federal laws regarding discrimination on the basis of sex, race, and disability, as well as to state-based contract law, tort law, and the law of not-for-profit corporations.<sup>4</sup> Furthermore, an enormous portion of the research that is conducted in those institutions is subject to an intricate web of governmental regulation.<sup>5</sup> Still, higher education in the United States has retained some of its former autonomy,<sup>6</sup> and that autonomy contributes significantly to both the diversity that characterizes American higher education and to the relative decentralization of control exercised over it today.

The decentralized approach to education has resulted in tremendous variety in American higher education—to the benefit of both individuals and society. However, this approach can be problematic when there is need for a major transformation in higher education. In this article we are claiming that, at this point in our history, a major transformation is exactly what American higher education needs. First, the emergent global knowledge economy requires of us a higher education system that contributes significantly to the development of the knowledge and skills that will help us to become competitive in the global economy. Second, despite the enormous growth in higher education that took place in the decades that followed the end of the Second World War, our higher educational system has, in recent years, begun to stagnate, at least in regards to educational attainment. Third, as we seek to remedy that stagnation, we need to make transparent what is currently opaque in the educational process.

While the first part of this argument needs little explanation, the second and third parts, as expressed here, necessitate elaboration. When we speak

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1. WILLIAM A. KAPLIN & BARBARA A. LEE, *THE LAW OF HIGHER EDUCATION* § 1.2 (4th ed. 2006).

2. *Id.* at § 1.3.3. *See also infra* Part IV.D.1–3.

3. *Id.* at § 1.3.3.

4. *Id.* at §§ 1.4.2.4, 5.3, 6.4, 8.2.4.

5. *Id.* at §§ 13.2.3, 13.4.3.

6. *Id.* at § 7.1.6.

of stagnation in educational attainment rates, here is what we mean: The educational attainment rate of a nation refers to the percentage of its people who have earned advanced degrees of one sort or another. In the United States today, roughly forty percent of adults have earned a two- or four-year degree, and this rate has held remarkably steady for the past forty years.<sup>7</sup> In other nations, however, more than half of their young adults have earned degrees of this sort.<sup>8</sup> Further, educational attainment rates in those nations are on the increase, while ours remains stagnant.<sup>9</sup>

When we speak of opacity of the process in America, here is what we mean: In American higher education, students accumulate credits as they progress towards a degree. As long as they do well enough on the papers that they write, the tests that they take, etc., and once they have accumulated enough credits, with due regard for requirements of different sorts, they get a degree. We do not require the institutions at which students study to tell them, and the community, just what it is that someone who has been awarded a particular degree should have learned on his or her way to that degree. This is what we mean when we call American higher education “opaque.” We believe that opacity should be expelled from American higher education and that transparency should take its place. By that we mean that American higher education should develop the ability to tell its students and the rest of us just what learning outcomes any academic degree represents. When, a college or university confers a bachelor’s degree in, say, Geology on a cohort of its undergraduate Geology majors, it should be able and willing to tell us what knowledge those students have shown themselves to possess and in what skills they have demonstrated some level of competence.

Increasing the percentage of Americans with high-quality degrees and credentials has become a national priority.<sup>10</sup> With increasing clarity,

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7. See ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), EDUCATION AT A GLANCE 2009: OECD INDICATORS (2009), available at [www.oecd.org/edu/eag2009](http://www.oecd.org/edu/eag2009) [hereinafter OECD INDICATORS].

8. *Id.* But see CLIFFORD ADELMAN, INSTITUTE FOR HIGHER EDUCATION POLICY, THE SPACES BETWEEN THE NUMBERS: GETTING INTERNATIONAL DATA ON HIGHER EDUCATION STRAIGHT 13–15 (2009), available at [http://www.ihep.org/assets/files/publications/s-z/\(Report\)\\_The\\_Spaces\\_Between\\_Numbers-Getting\\_International\\_Data\\_on\\_Higher\\_Education\\_Straight.pdf](http://www.ihep.org/assets/files/publications/s-z/(Report)_The_Spaces_Between_Numbers-Getting_International_Data_on_Higher_Education_Straight.pdf) (pointing to reasons to doubt whether the data raises any cause for alarm).

9. OECD INDICATORS, *supra* note 7.

10. President Barack Obama emphasized the importance of the United States regaining its place as number one in adult degree attainment, asserting that:

It is our responsibility as lawmakers and educators to make this system work. But it is the responsibility of every citizen to participate in it. And so tonight, I ask every American to commit to at least one year or more of higher education or career training. This can be community college or a four-year school; vocational training or an apprenticeship. But whatever the training may be, every American will need to get more than a high school diploma. And dropping out of high school is no longer an option. It’s not just quitting

policymakers, educators, and business leaders are concluding that the social and economic challenges facing the United States can be addressed only by educating far more people beyond high school.<sup>11</sup>

It is counterproductive to increase degree attainment without regard to what type of learning a degree represents and what opportunities are afforded to an individual based on a degree or credential. Quality is imperative: yet, how should quality be defined? A high-quality degree must have well-defined and transparent outcomes that provide clear pathways to further education and employment. The current higher-education system lacks a mechanism that defines what a degree represents in terms of what a student knows, understands and is able to do. A degree is currently defined by time and credits.

The United States has long enjoyed the reputation of having the best higher education system in the world.<sup>12</sup> However, many countries are not only reforming their higher education systems, but are also radically transforming the educational experience. An array of international initiatives exist that address higher education, the most significant of which is the Bologna Process.<sup>13</sup> The Bologna Process began in 1999 as an

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on yourself, it's quitting on your country—and this country needs and values the talents of every American. That is why we will provide the support necessary for you to complete college and meet a new goal: by 2020, America will once again have the highest proportion of college graduates in the world.

Barack Obama, U.S. President, Remarks of President Obama, Address to Joint Session of Congress (February 24, 2009), *available at* [http://www.whitehouse.gov/the\\_press\\_office/remarks-of-president-barack-obama-address-to-joint-session-of-congress](http://www.whitehouse.gov/the_press_office/remarks-of-president-barack-obama-address-to-joint-session-of-congress).

The Obama administration's higher education initiatives are focused on more resources for community colleges, completion strengthening data and research, and improving remedial education for under prepared students. *See* Michael Shear & Daniel de Vise, *Obama Announces Community College Plan*, WASH. POST, July 15, 2009, at A02. The American graduation initiative proposal calls for an unprecedented federal investment in community colleges. *Id.*

11. *See, e.g.*, Center on Education and the Workforce, <http://cew.georgetown.edu> (last visited Apr. 1, 2010). The Center on Education and the Workforce provides research and analysis on the future labor market and the skills and education needed for those jobs with the greatest increase being in jobs that need some sort of higher education. *Id.*

12. SECRETARY OF EDUCATION'S COMMISSION ON THE FUTURE OF HIGHER EDUCATION, A TEST OF LEADERSHIP: CHARTING THE FUTURE OF U.S. HIGHER EDUCATION 13 (2006) [hereinafter COMMISSION], *available at* <http://ed.gov/about/bdscomm/list/hiedfuture/reports/final-report.pdf>.

13. *See, e.g.*, Benelux Bologna Secretariat, Official Bologna Process Website, [www.ond.vlaanderen.be/hogeronderwijs/bologna](http://www.ond.vlaanderen.be/hogeronderwijs/bologna) (last visited Apr. 1, 2010) (describing the Bologna process); Open Society Institute & Soros Foundations Network, International Higher Education Support Program (HESP), <http://www.soros.org/initiatives/hesp/about> (last visited Apr. 1, 2010) (explaining the Open Society Institute program for the advancement of higher education); Organization for Economic Cooperation and Development (OECD), Feasibility Study for the International Assessment of Higher Education Learning Outcomes (AHELO),

agreement among the education ministers of twenty-nine European countries to address issues facing higher education—issues that, while not identical to challenges facing American higher education, are certainly similar.<sup>14</sup> The Bologna Process is transforming higher education in Europe, and the United States should pay attention to what is happening in Europe with a view towards catalyzing a comparable transformation in our own unique higher education context. This should be a selective approach and not in any way or sense a replication of the European initiative.

In this article, we will, first of all, describe the Bologna Process, focusing, in particular, on its qualification frameworks, Tuning, and Credit Transfer System. We will then argue in favor of the development and adoption of a common degree framework in the United States. Finally, we will suggest some ways in which this could be accomplished.

#### A. The Bologna Process

During the final years of the previous millennium, the education ministries of several European nations decided to work collaboratively on the transformation of higher education in their countries. . This transformative process owes its origins to the *Magna Charta Universitatum*,<sup>15</sup> a statement issued in September, 1988, by the rectors of 388 European universities. While that statement focused primarily on the need that colleges and universities have for autonomy, it also addressed the role that an educated workforce would play in the economic success of the European community and the need that students and teachers have for geographic mobility.<sup>16</sup> The next step in this process was the Lisbon Recognition Convention in 1997,<sup>17</sup> a joint convention of the United

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[www.oecd.org/edu/ahelo](http://www.oecd.org/edu/ahelo) (last visited Apr. 1, 2010).

14. See CLIFFORD ADELMAN, INSTITUTE FOR HIGHER EDUCATION POLICY, THE BOLOGNA CLUB: WHAT U.S. HIGHER EDUCATION CAN LEARN FROM A DECADE OF EUROPEAN RECONSTRUCTION at xi, 5–8, 39 (2008) [hereinafter ADELMAN, BOLOGNA CLUB], available at <http://www.ihep.org/assets/files/TheBolognaClub.pdf>. See also CLIFFORD ADELMAN, INSTITUTE FOR HIGHER EDUCATION POLICY, THE BOLOGNA PROCESS FOR U.S. EYES: RE-LEARNING HIGHER EDUCATION IN THE AGE OF CONVERGENCE 12–15, 55 (2009) [hereinafter ADELMAN, BOLOGNA PROCESS], available at <http://www.ihep.org/assets/files/eyesfinal.pdf>.

15. MAGNA CHARTA OBSERVATORY OF FUNDAMENTAL UNIVERSITY VALUES AND RIGHTS, MAGNA CHARTA UNIVERSITATUM (2003), available at [http://www.magna-charta.org/pdf/mc\\_pdf/mc\\_english.pdf](http://www.magna-charta.org/pdf/mc_pdf/mc_english.pdf).

16. *Id.*

17. For the text of this convention and for a list of the states that have ratified it, see Convention on the Recognition of Qualifications concerning Higher Education in the European Region, <http://conventions.coe.int/Treaty/en/Treaties/Html/165.htm> (last visited Apr. 1, 2010) and Chart of Signatures and Ratifications, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM=1&DF=26/01/2010&CL=ENG> (last visited Apr. 1, 2010). See also European Higher Education Area, Participating Countries and Organisations, <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/pcao/> (last visited Apr. 1, 2010).

Nations Educational, Scientific and Cultural Organization (UNESCO) and the Council of Europe. In this convention, thirty-three nations (twenty-nine European Council members plus four non-Council members, including the United States) agreed to a set of principles governing the mutual recognition of educational credentials; this convention is the only legally binding component of the Bologna Process. The number of signatory nations and those that have subsequently ratified the Convention has steadily increased; the United States, however, has not, to date, ratified the Convention.

The following two Declarations were the real commencement of the Bologna Process: the Sorbonne Declaration,<sup>18</sup> and the Bologna Declaration.<sup>19</sup> Both declarations were named after the location of the meetings. In the first of these declarations, the education ministers of France, Germany, Italy, and the United Kingdom agreed to create, *inter alia*, a common degree structure for their colleges and universities and to facilitate cross-border mobility for teachers and students.<sup>20</sup> In the second of these declarations, the education ministers of twenty-nine European nations agreed to a process that would cause the transformation that they had for the several previous years been advocating. It is this second declaration that gave its name to this transformative process.<sup>21</sup>

The Bologna Process is an attempt on the part of the educational agencies of most every European nation to create a European Higher Education Area (EHEA).<sup>22</sup> The primary purposes behind the creation of the EHEA include: to increase “the international competitiveness of the European system of higher education”;<sup>23</sup> to provide Europe with the highly educated workforce that is essential to success in a globalized economy;<sup>24</sup> and to contribute to the maintenance of “stable, peaceful and democratic societies in the European Union and in neighboring states.”<sup>25</sup>

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18. Sorbonne Joint Declaration, Joint Declaration on Harmonisation of the Architecture of the European Higher Education System, [http://www.bologna-bergen2005.no/Docs/00-Main\\_doc/980525SORBONNE\\_DECLARATION.PDF](http://www.bologna-bergen2005.no/Docs/00-Main_doc/980525SORBONNE_DECLARATION.PDF) (last visited Apr. 1, 2010) [hereinafter Sorbonne Declaration].

19. The Bologna Declaration of 19 June 1999, Joint Declaration of the European Ministers of Education, [http://www.bologna-bergen2005.no/Docs/00-Main\\_doc/990719BOLOGNA\\_DECLARATION.PDF](http://www.bologna-bergen2005.no/Docs/00-Main_doc/990719BOLOGNA_DECLARATION.PDF) (last visited Apr. 1, 2010) [hereinafter Bologna Declaration].

20. Sorbonne Declaration, *supra* note 18.

21. For a fuller description of the conventions and agreements leading up to the Bologna Process, see Appendix A.

22. At the ministerial meeting held on March 11-12, 2010, the Budapest-Vienna Declaration stated in paragraph 1 that it would “launch the European Higher Education Area (EHEA), as envisaged in the Bologna Declaration of 1999.” See [www.ond.vlaanderen.be/hogeronderwijs/bologna/2010\\_conference/documents.htm](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/2010_conference/documents.htm) (accessed 14/03/2010).

23. Bologna Declaration, *supra* note 19.

24. *Id.*

25. *Id.*

Within the EHEA, extending from Ireland in the west to Russia in the east, and from Norway in the north to Turkey in the south, metaphorical bridges will be built, facilitating the free movement of students from educational institutions in one “member-nation” (any of the signatory states) to those in other “member-nations.” For that free movement to occur, the degrees awarded by the institutions within the EHEA will have to be comparable. A bachelor’s degree in geology from the University of Moscow will, for example, have to be substantially similar in level and competencies to a bachelor’s degree in geology from the University of East Anglia in the United Kingdom.

To avoid the standardization of higher education in the EHEA—something that is recognized on all sides as baneful—the proponents of the Bologna Process are instead pursuing harmonization of the differing degree programs in thousands of institutions located in the forty-seven nations that are now committed to the Bologna Process.<sup>26</sup> This is to ensure transparency of the degrees. Under harmonization: “Everyone is singing in the same key, just not necessarily with the same tune,” as one advocate of the Bologna Process puts it.<sup>27</sup>

This harmonization is to be achieved, first of all, by bringing some order to the current disparate state of the degrees that academic institutions in Europe have previously awarded. The basic idea is for all of the institutions in the EHEA to adopt a three-stage degree program, with the first stage identified as the bachelor’s degree stage, the second as the master’s degree stage, and the third as a the doctoral degree stage. The second step in harmonization is the development of “qualification frameworks” for each degree to sit within—and for the equivalent of each major in each degree—that each of the institutions award. The third step, used in an increasing number of countries, is known as the Tuning Process, and the fourth is a Credit Transfer and Accumulation System. It is to a brief description of these latter steps that we now turn.

### 1. Qualifications Frameworks

“A qualifications framework is a statement of learning outcomes and competencies a student must demonstrate in order for a degree at a specific level to be awarded.”<sup>28</sup> Before the implementation of qualifications frameworks, European institutions were unable to compare degrees in terms of learning outcomes that were awarded across institutions. Qualifications frameworks involve performance criteria. They hold institutions accountable for requiring each student to be able to demonstrate

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26. *See supra* text accompanying note 17.

27. ADELMAN, BOLOGNA PROCESS, *supra* note 14, at viii.

28. ADELMAN, BOLOGNA CLUB, *supra* note 14, at ix.

proficiency and completion of required outcomes at different levels of the three-stage degree program described above.

A crucial feature of a qualifications framework is its ability to describe qualifications in terms of learning outcomes, rather than the amount of time to achieve the degree. The Quality Assurance Agency of the United Kingdom states: “The fundamental premise of the [Framework for Higher Education Qualification] is that qualifications should be awarded on the basis of achievement of outcomes and attainment rather than years of study.”<sup>29</sup> Qualifications frameworks are used and implemented by countries that are part of the EHEA.<sup>30</sup> Each country’s framework reflects the educational characteristics of that country’s higher education system, and the common degree framework is consistent with the overarching EHEA framework. Such frameworks are now used in many places throughout the world.<sup>31</sup>

To aid in the development of national qualifications that would be comparable—so that countries in the EHEA would be able to understand what degrees awarded in different countries meant—the Dublin Descriptors were developed.<sup>32</sup> The Dublin Descriptors operate at the overarching

29. THE QUALITY ASSURANCE AGENCY FOR HIGHER EDUCATION, THE FRAMEWORK FOR HIGHER EDUCATION QUALIFICATIONS IN ENGLAND, WALES AND NORTHERN IRELAND 2 (Aug. 2008), available at <http://www.qaa.ac.uk/academicinfrastructure/fheq/ewni08/fheq08.pdf>.

30. See SJUR BERGAN, QUALIFICATIONS: INTRODUCTION TO A CONCEPT 145–159 (2007).

31. See Campus Alberta Quality Council, Canadian Degree Qualifications Framework, available at <http://www.caqc.gov.ab.ca/pdfs/CDQF-FINAL.pdf> (last visited May 1, 2010). See also Joint Quality Initiative, Shared ‘Dublin’ descriptors for Short Cycle, Second Cycle and Third Cycle Awards (2004), available at [http://www.uni-due.de/imperia/md/content/bologna/dublin\\_descriptors.pdf](http://www.uni-due.de/imperia/md/content/bologna/dublin_descriptors.pdf); European Higher Education Area Qualifications Framework, Self-Certification: Verification of compatibility of the Danish National Qualifications Framework for Higher Education with the Framework for Qualifications of the European Higher Education Area, available at <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/qa/documents/DK-QF-report-EN.pdf> (Denmark); Scottish Qualifications Authority, An Introduction to the Scottish Credit and Qualifications Framework (2d ed. Oct. 2003), available at [http://www.sqa.org.uk/files\\_ccc/IntroductiontoSCQF-2ndEdition.pdf](http://www.sqa.org.uk/files_ccc/IntroductiontoSCQF-2ndEdition.pdf); The Quality Assurance Agency, The Framework for Higher Education Qualifications in England, Wales and Northern Ireland (Aug 2008), available at <http://www.qaa.ac.uk/academicinfrastructure/FHEQ/EWNI08/FHEQ08.pdf>.

32. Nick Clark, *Bologna: Curriculum Reform and Other Considerations*, WORLD EDUC. NEWS & REVIEWS (World Educ. Services, New York, N.Y.), March 2007, available at <http://www.wes.org/eWENR/07mar/feature.htm>.

The first step in bridging this gap [gap between what a student needs as general core competencies such as critical thinking and problem solving skills and the discipline specific knowledge and skills] has been the definition of generic, cycle-specific learning outcomes. These generic learning outcomes will form one of the major building blocks of the European Qualifications Framework, which is being promoted as an overarching framework designed to find points of convergence between national qualifications frameworks. Finalized in October 2004 by members of the Joint Quality Initiative, and



EHEA level and outline the learning that is represented by foundation, first cycle, second cycle and third cycle degrees (in the United States, this corresponds to associate's, bachelor's, master's, and doctoral degrees). This nomenclature has helped frame the concept of qualifications frameworks and has provided a structure for countries to use in developing their own degree frameworks. Figure 1 translates the Dublin Descriptors into language used within American higher education.

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known commonly as the 'Dublin Descriptors,' these learning outcomes can be considered a description of the transferable skills that students are expected to possess [sic] upon completion of each 'Bologna-compliant' degree cycle. They relate to any and all disciplines and define attributes such as problem-solving, communication, written, research, and team-working skills. The idea—and a central tenet of Bologna—is that while European degree programs will vary among institutions and subjects, they will nonetheless equip students with a set of cycle-specific core competencies designed to meet the needs of the workplace and also to prepare students for further studies.

*Id.*

**Figure 1: Degree Descriptions**

	<b>Knowledge &amp; Understanding</b>	<b>Apply Knowledge</b>	<b>Judgment</b>	<b>Communication</b>	<b>Learning Autonomy</b>
<b>Associate to Bachelor's</b>	Demonstrates specific knowledge, supported by textbooks, prepares for vocation or further study	Applies knowledge to a vocation or further studies, understands and develops routine arguments	Uses data to solve clearly-defined problems	Communicates information, problems, solutions to peers and supervisors	Learns in a structured environment, develops skills sufficient to continue studies
<b>Bachelor's</b>	Demonstrates broad knowledge built on prior studies, supported by textbooks, prepares for profession or further study	Applies concepts and knowledge to a profession or vocation, develops more complex arguments, solves problems drawing on existing research	Gathers and interprets data, can use data to make decisions and judgments, reflects on social or ethical questions	Communicates information, ideas, problems and solutions to peers and external audiences	Develops skills sufficient to continue more independent studies
<b>Master's</b>	Demonstrates broad and comparative knowledge in specialized field, develops original ideas	Applies concepts and knowledge in broader contexts, solves problems related to field, may conduct research	Integrates knowledge, makes judgments without complete data, makes decisions in complex situations, reflects on social or ethical issues	Communicates cumulative knowledge of field to broad audiences	Demonstrates academic initiative and self-direction, continues studies or professional development independently
<b>Doctoral</b>	Demonstrates mastery of specialized field and associated research methods	Conducts substantial and original research or scholarship that contributes to and expands the field, research is suitable for publication	Synthesizes complex knowledge and ideas, analyzes critically, exercises judgment in complex situations, informs society on social or ethical issues	Communicates broad expertise in the field to all audiences	Promotes and leads the field in all contexts, promotes advancement of society

## 2. Tuning Process

The Tuning Process was the academic response to the Bologna Process initiatives. It was designed to affirm institutional and academic autonomy, to respect the diversity of institutions and programs, and to provide a mechanism for faculty to provide the definition of quality.<sup>33</sup> Tuning began in 2000 as a project to link more directly the objectives of the Bologna Process and the Lisbon Strategy<sup>34</sup> with institutions and faculty. While the Bologna Process was initiated by education ministers, the Tuning Process

33. See, e.g., Julia Gonzalez, *The TUNING Methodology (2004)*, available at <http://www.sefi.be/technotn/wp-content/uploads/the-tuning-methodology-julia-gonzalez.ppt>.

34. See *infra* Appendix A (discussing the Lisbon Strategy).

was a “bottom up” approach, designed to involve a wide array of stakeholders, including employers, in defining what a degree in a subject matter should include.<sup>35</sup> Dr. Julia Gonzalez, a co-director of the European Tuning Project, has found that tuning has significantly changed approaches in teaching, learning and in assessment.<sup>36</sup>

Tuning is a process that defines subject specific learning outcomes and transferrable skills that students should possess and be able to demonstrate to earn a degree in a particular discipline.<sup>37</sup> At least 145 universities in thirty-three European countries and 186 universities in nineteen Latin American countries have formally engaged in the process.<sup>38</sup> The name ‘tuning’ was chosen for the process to “reflect the idea that universities do not and should not look for uniformity in their degree programmes or any sort of unified perspective or definitive European curricula but simply look for points of reference, convergence and common understanding.”<sup>39</sup> Clifford Adelman writes that tuning “provides a common language for expressing what a curriculum at a specific institution aims to do but does not prescribe the means of doing it.”<sup>40</sup>

Tuning is helpful in providing reference points for students to understand what they have accomplished or what they will be able to accomplish. These reference points include, for example: a demonstration of knowledge of the foundation and history of that major field, a demonstration of an understanding of the overall structure of the discipline and the relationships among its subfields and to other disciplines, and a demonstration of the ability to communicate the basic knowledge of the field in coherent ways and appropriate ways.<sup>41</sup>

Tuning helps students understand how courses fit into curriculum and degree programs. Further, it aids employers in knowing what graduates

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35. See Gonzalez, *supra* note 33.

36. See *id.*

37. See Tuning Educational Structures in Europe, <http://tuning.unideusto.org/tuningeu/> (last visited Apr. 1, 2010) [hereinafter Tuning Educational Structures].

38. See *id.* See also Tuning América Latina, <http://tuning.unideusto.org/tuningal/> (last visited Apr. 1, 2010).

39. See Tuning Educational Structures, *supra* note 40.

40. ADELMAN, BOLOGNA PROCESS, *supra* note 13, at 48.

41. See *id.* at 52. Early in 2009, the Lumina Foundation for Education launched a pilot Tuning project involving three American states and six academic subject areas. The project, following the approach used by the Tuning Process in Europe and in Latin America, is faculty-led and has student representation at the meetings, a fundamental principle and requirement for Tuning, with academics working to build consensus within their fields (Indiana: history, education, and chemistry; Minnesota: biology and graphic arts; and Utah: physics and history) about what a student should learn and therefore be able to demonstrate at each degree level in a specific subject area. Thus, a bachelor’s degree in chemistry from Indiana University should convey the same information to stakeholders as the equivalent degree from the University of Minnesota because of established, shared expectations within the discipline about the learning an undergraduate chemistry student should be able to demonstrate. *Id.*

with degrees in a discipline are able to do. Because it is an organic, ongoing, and systematic methodology, which is faculty-led but invites the participation of students and others, the Tuning Process celebrates diversity while recognizing the need for common reference points. It is about learning outcomes and not about content.

A U.S. common degree framework,<sup>42</sup> with subject specificity, would complement the Tuning Process by creating a common definition of the general learning outcomes that a student should achieve at each degree *level*—associate’s, bachelor’s, master’s, doctorate—across all higher education institutions in every state. The framework will make clear the “ratcheting up” that must occur between degree levels, and it will make explicit the additional skills and learning represented by one degree level as compared with another.<sup>43</sup>

### 3. European Credit Transfer & Accumulation System

The European Credit Transfer & Accumulation System (ECTS)<sup>44</sup> has gained prominence throughout Europe due in part to its successful implementation of the relevant parts of the Bologna Process, including the use of active learning outcomes, the assessment of each individual student to obtain credit, and the recognition of student workload.<sup>45</sup> The original purpose of ECTS was to promote student mobility among countries and institutions throughout Europe; now it is used either as the credit system within a country (for example, Italy) or as a reference point (for example, England) to determine whether a student is eligible to earn a particular degree.<sup>46</sup>

The credit system used in the United States originated as a way of assessing the efficiency of institutions and as a way of measuring the amount of contact time between students and the professor or faculty.<sup>47</sup> A credit hour is calculated by reference to the number of minutes that a student spends in class during each week of a semester. A degree represents a set number of credit hours and a specified minimum grade point average. In contrast, ECTS comprises three components: learning

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42. In this article, the terms “qualifications framework” and “qualifications frameworks” are used to refer to the frameworks that have been developed by other countries. The term “common degree framework” is used to refer to what the authors suggest should be developed in the United States.

43. See ADELMAN, BOLOGNA CLUB, *supra* note 13, at 15–32; ADELMAN, BOLOGNA PROCESS, *supra* note 13, at 55.

44. European Credit Transfer and Accumulation System (ECTS), [http://ec.europa.eu/education/lifelong-learning-policy/doc48\\_en.htm](http://ec.europa.eu/education/lifelong-learning-policy/doc48_en.htm) (last visited Apr. 1, 2010).

45. *Id.*

46. *Id.*

47. See Jessica M. Shedd, *The History of the Student Credit Hour*, 122 NEW DIRECTIONS FOR HIGHER EDUCATION 5–12 (2003).

outcomes, student workload, and grades.<sup>48</sup> ECTS has developed to provide a mechanism for students to accumulate enough credits, typically from a variety of institutions, to be awarded a degree. The European approach to qualifications frameworks has made this accumulation of credits and the awarding of degrees more possible.<sup>49</sup> To account for lifelong learning (a key component of the Bologna Process) and distance learning, and to recognize prior learning and prior experiential learning, credits must be based upon the abilities required by learning outcomes, not by “time served.”

#### B. Comparing the U.S. Reality with What Faced Europe

Today in the United States we are faced with a new set of circumstances requiring action. We must address these circumstances by finding a way to increase educational attainment while maintaining quality, to control rising costs that go hand-in-hand with earning a degree, and to address other national issues. The business community increasingly demands accountability—a demonstration of the value added of a college degree and the assurance that those possessing a degree have the skills and abilities needed. Employers find themselves lacking workers with critical thinking and problem solving skills, and higher education often fears that in making itself “accountable” in this way, it will become akin to vocational training.<sup>50</sup> Interestingly, Europe faced a similar challenge in the late 1990s when it became clear that in a knowledge economy, higher education would be the driver and the Bologna Process would be the vehicle to transform European higher education.

The United States can learn from the Bologna Process. One tool of that process is a qualifications framework—a framework that makes explicit the learning outcomes and competencies a student must demonstrate for a degree at a particular level to be awarded.<sup>51</sup> This framework provides the

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48. See ADELMAN, BOLOGNA CLUB, *supra* note 13, at 51.

49. See European Universities Continuing Education Network, National Qualifications Frameworks, *Higher Education: A State Of Play*, available at <http://www.eucen.org/EQFpro/GeneralDocs/FilesFeb09/STATEofPLAY.pdf> (last visited Mar. 24, 2010) (explaining that “[c]redits expressed in terms of learning outcomes are a powerful way to recognise and quantify learning achievements from different contexts; they also provide an effective structure for relating qualifications to each other”).

50. See ASSOCIATION OF AMERICAN COLLEGES AND UNIVERSITIES, RAISING THE BAR: EMPLOYERS’ VIEWS ON COLLEGE LEARNING IN THE WAKE OF THE ECONOMIC DOWNTURN 9 (2010), available at [http://www.aacu.org/leap/documents/2009\\_EmployerSurvey.pdf](http://www.aacu.org/leap/documents/2009_EmployerSurvey.pdf). See also Valerie Strauss, *Balancing Academic Tradition and Skills Employers Demand*, WASH. POST, Mar. 3, 2008, at B02. “‘A college education is increasingly recognized as critical for career success,’ Cornell University President David J. Skorton said. ‘So much so, in fact, there is a real danger of thinking of higher education predominantly as a job training enterprise.’” *Id.*

51. See National Framework of Qualifications, <http://www.nfq.ie/nfq/en/>

mechanism for defining what quality means, provides students with clarity as to the pathways through higher education and into the work force, and assures students, employers and other stakeholders of the true value-added of a degree.<sup>52</sup>

Some will argue that any sort of common degree framework is impossible either due to the diversity of American higher education or because it is antithetical to the values of American higher education to have imposed national benchmark standards. Neither argument is sound. First, any framework that is developed must, at its essence, honor the diversity of American higher education in order to be successful. This diversity is a great strength of our system. Second, this article is not suggesting a common degree framework that would focus on a standardization of content curriculum or pedagogy—this is most certainly not a “No Child Left Behind”<sup>53</sup> for higher education. Instead, a common degree framework would provide transparency with respect to the actual learning that each level of a degree represents. Quality, transparency, and the demonstration of measurable outcomes do not mean a standardization that reduces higher education to the lowest common denominator.<sup>54</sup>

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learner.html (last visited Apr. 1, 2010).

The NFQ provides a structure (a framework) to compare and contrast the level and standard of different qualifications. This helps you to make informed decisions about your qualification choices and to consider progression opportunities available to you. The NFQ also makes it easier for you to explain to others what qualifications you hold, or are studying for. This becomes very important when you are considering further learning or when you are applying for a job—at home or abroad.

*Id.*

52. European Commission, Press Release: Frequently asked questions: Why does the EU need a European Qualifications Framework?, <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/427> (last visited Apr. 1, 2010).

It is a key aim of the EQF to contribute to creating a truly European workforce that is mobile and flexible. For employers, the EQF will make it easier to interpret the qualifications of foreign applicants. The EQF will support labour market mobility in Europe both between and within countries and sectors by simplifying comparisons between qualifications and enabling a better match between supply and demand for knowledge, skills and competences.

*Id.*

53. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425.

54. See Achieve, Inc., [www.achieve.org](http://www.achieve.org) (last visited Mar. 24, 2010). There is an increasing concern that high school students graduate unprepared for college and the work force. *Id.* This concern is leading to the formation of national standards in English and math. *Id.* See also WILLIAM H. SCHMIDT ET AL., THOMAS FORDHAM INSTITUTE, INTERNATIONAL LESSONS ABOUT NATIONAL STANDARDS 11–13 (2009), available at [http://fordhaminstitute.org/doc/20090826\\_International\\_Lessons\\_Report.pdf](http://fordhaminstitute.org/doc/20090826_International_Lessons_Report.pdf). In 1997 both the United States and Germany were surprised by the poor academic performance of their grade and high school students as compared with students from other countries. *Id.* Germany and the United States have taken dramatically different approaches to resolving the problem. *Id.* Ten years later, the

Within the forty-seven Bologna signatory countries, however, there are those who argue that the process does lead to standardization. For example, some German and Austrian students and academics maintain, that Bologna unleashes an “‘English-American’ system” that is “regimented” and “too examination-heavy.”<sup>55</sup> The degree of opposition to the Bologna stimulated reforms varies among countries and in level of intensity. Often the complaints are in fact against the actions of the national government that has cloaked change in the name of Bologna—changes that are disliked by students, for example include: establishing or increasing fees, making changes in contact hours, requiring student success within decreased linear time limits (three years instead of the five-plus years previously allowed). Those who are experiencing the most change do, it seems, display the greatest antagonism.<sup>56</sup>

As societal demands for more Americans to complete postsecondary education increase, the expectation grows for degrees earned to lead to further education and employment. Higher education must take the challenge to create a common degree framework—an overarching architecture that makes explicit the implicit—one that ensures that, irrespective of institutional prestige, degrees that are awarded have standards—that a bachelor’s degree represents attainment of real skills and knowledge. This is the beginning of redefining what American higher education means by quality. Quality means that degree-bearing graduates can demonstrate acquisition of the learning outcomes assigned to their particular degree level. If higher education doesn’t take the initiative in this process, quality assurance could potentially be imposed upon it by an outside source—a common degree framework developed by the national accreditation system, by implementation of uniform state laws or by federal government intervention. The task is not only to understand the challenges facing higher education, but also to develop a framework that makes learning explicit, that offers student mobility and transfer, and that provides

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United States still lags, while German students are faring better. *Id.* The relative success of German students seemingly supports our contention that in a globally competitive environment, national standards drive excellence.

55. John Morgan, *Bologna not to the taste of Austrians and Germans*, TIMES HIGHER EDUCATION, Dec. 31, 2009, available at <http://www.timeshighereducation.co.uk/story.asp?sectioncode=26&storycode=409733>.

56. See David Palfreyman, *The legal impact of Bologna implementation: exploring criticisms and critiques of the Bologna Process*, 20 EDUC. AND THE LAW 249, 249–55 (2008). Palfreyman’s literature review summarizes and analyzes a number of critical viewpoints on the Bologna Process and focuses mainly on the detrimental effects that he feels are or will be materializing in the United Kingdom under the Bologna Process. *Id.* Palfreyman argues that the United States has the better system of higher education, as compared to the European system under the Bologna process, because the system in the United States is a diverse system. *Id.* at 254–55. He finds it “bizarre” and unthinkable that European countries would want a system that supports convergence when the “lesson” seemingly is that “monolithic, public sector higher education systems are inefficient, under-productive and over-expensive.” *Id.* at 255.

quality assurances for institutions and their degree programs, as well as for stakeholders, as higher education continues to develop and as innovation occurs.<sup>57</sup>

Historically, federal intervention in higher education has occurred only when a significant need existed for national reform of higher education.<sup>58</sup> The current societal demands for an educated workforce require significant reform. Higher education is a national issue that is time sensitive and requires a national approach. A degree awarded in Wyoming should be comparable to a degree awarded in Wisconsin. U.S. higher education leaders and stakeholders should seize this leadership opportunity and frame a national agenda to develop a well-defined degree requirements framework through national collaborative effort.<sup>59</sup> If each state's government were to initiate this process, they could create frameworks and use existing processes for the development of uniform laws, but the existing mechanisms would take years for development and enactment.<sup>60</sup> If stakeholders don't develop a common degree framework to ensure quality, the federal government could and should impose such a framework and accountability mechanisms.<sup>61</sup>

## II. WHAT AMERICA STANDS TO LEARN FROM THE BOLOGNA PROCESS

No one seriously doubts the need for a modern workforce to be both knowledgeable and skilled at a level significantly higher than was adequate even a generation ago. Neither does anyone doubt that each nation's higher education institutions must play a major role in educating and training the members of its workforce in such a way that it can compete effectively in the global economy. The principal concerns that motivate us to recommend the Bologna Process to American educators are two-fold. First, other countries are increasing degree attainment with a focused intentionality. Second, the Bologna Process is a significant process that reframes higher education from what is taught to what is learned. In the process of putting the student at the center, the Bologna Process is expanding educational opportunities and reframing the definition of "quality higher education".

America is falling behind much of the industrialized world in educational attainment. Even with all of the imperfections and flaws in its

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57. Anya Kamenetz, *How Web-Savvy Edupunks Are Transforming American Higher Education*, FAST COMPANY, Sept. 1, 2009, available at <http://www.fastcompany.com/magazine/138/who-needs-harvard.html>.

58. See, e.g., Julie Margetta Morgan, Note, *Consumer-Driven Reform of Higher Education: A Critical Look at the New Amendments to the Higher Education Act*, 17 J.L. & POL'Y 531, 535-43 (2009) (noting that the federal government's involvement in higher education has "evolved in response to pressing governmental and societal needs").

59. See *infra* Part IV.A.

60. See *infra* Part IV.C.

61. See *infra* Part IV.D.



implementation, the Bologna Process does provide an illustration of how change might be achieved both in terms of process and outcomes. We do not in any way, shape, or form recommend that America should adopt the Bologna Process, but we do urge that the United States analyze, adapt, and improve upon that which is appropriate, relevant, and useful in the Bologna Process.

Attracting more recent high school graduates into higher education and helping them to persevere to graduation is one obvious way for a nation to improve its educational attainment rate; facilitating the entry of adults into higher education—or their return to it—is another way to achieve the same result. With respect to either of these strategies, questions of costs and quality arise. As serious as the cost questions are, we will focus here on questions of quality. Historically, these questions have been left, in the first instance, to the academics who decide what the contents of any particular degree program should be, and in the second instance, to the accrediting institutions that, once every so many years, review either entire institutions or specific degree programs, in an attempt to “ensure a basic level of quality” in the education that the institution or program in question provides.<sup>62</sup>

#### A. Degree Transparency and Accountability

Since the end of the nineteenth century, the U.S. higher education system has relied upon private accrediting agencies to perform quality assessment of its institutions and programs. Accrediting agencies serve to “ensure a basic level of quality” in institutions of higher education or specific academic programs within institutions.<sup>63</sup> Yet, accreditation conveys little information about the inherent value of a degree from an accredited institution or program for external stakeholders such as students and employers.

In addition, growing numbers of new for-profit and not-for-profit education providers have emerged to fill market voids. They are often unaccredited, however, which suggests that there is no existing way to measure or compare the quality of the credentials and degrees offered by these institutions.

The U.S. higher education accreditation system varies greatly from other countries around the globe. The United Kingdom, for example, operates under a Code of Practice for the Assurance of Academic Quality and

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62. U.S. Dep’t of Educ., Financial Aid for Postsecondary Students: Accreditation in the United States, [http://www.ed.gov/admins/finaid/accred/accreditation\\_pg2.html](http://www.ed.gov/admins/finaid/accred/accreditation_pg2.html) (last visited Apr. 1, 2010) [hereinafter Accreditation in the United States]. See also WILLIAM K. SELDEN, ACCREDITATION: A STRUGGLE OVER STANDARDS IN HIGHER EDUCATION 29 (1960) (describing the founding of the first accrediting agencies by higher education institutions).

63. Accreditation in the United States, *supra* note 63.

Standards in Higher Education.<sup>64</sup> The Code explains that: “In the [United Kingdom’s] system of higher education, institutions are responsible for the quality of the education they provide and the academic standards of the awards they offer. External examining provides one of the principal means for maintaining nationally comparable standards within autonomous higher education institutions.”<sup>65</sup>

As a result of the lack of information about the quality of a given institution or program, potential students and potential employers of an institution’s graduates rely upon information, such as institution and program rankings, institutional prestige, or personal familiarity with the specific institution to determine degree value. In order to redirect the focus of the existing quality assessment function of the accrediting agencies from a self-contained process to a transparent system providing valuable information to the public, quality assessment in the United States needs to evolve. Drawing upon lessons from the European paradigm, American higher education should develop a common degree framework consisting of general student learning outcomes for each degree level. This would facilitate the development of a system in which each type and level of degree would hold universal meaning and value.

### 1. A Meaningful Measurement of Quality

The value of a degree in the United States is often measured by the prestige of the degree granting institution or an external ranking tool such as *U.S. News and World Report*.<sup>66</sup> This assessment mode is based on “input” measures such as reputation, faculty salaries, and entering student SAT scores<sup>67</sup> and it does not provide stakeholders—potential employers, graduate school admissions officers, the student—a definitive indication of what skills or knowledge the degree holder actually possesses. With each modern reauthorization of the Higher Education Act of 1965,<sup>68</sup> the major federal legislative intervention in higher education, the debate has returned to the question of how to measure degree quality in a meaningful way.

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64. THE QUALITY ASSURANCE AGENCY FOR HIGHER EDUCATION, CODE OF PRACTICE FOR THE ASSURANCE OF ACADEMIC QUALITY AND STANDARDS IN HIGHER EDUCATION, SECTION 4: EXTERNAL EXAMINING 1 (2004), available at [http://www.qaa.ac.uk/academicinfrastructure/codeOfPractice/section4/COP\\_external.pdf](http://www.qaa.ac.uk/academicinfrastructure/codeOfPractice/section4/COP_external.pdf).

65. *Id.* at 3.

66. See *Rankings*, U.S. NEWS & WORLD REPORT, <http://www.usnews.com/sections/rankings/index.html> (last visited Apr. 1, 2010). The U.S. News & World Report rankings have been heavily criticized as arbitrary and easily manipulated by institutions seeking to bolster their rank. See, e.g., Doug Lederman, ‘Manipulating,’ *Er, Influencing ‘U.S. News,’* INSIDE HIGHER ED, June 3, 2009, <http://www.insidehighered.com/news/2009/06/03/rankings> (last visited Apr. 1, 2010).

67. *Rankings*, *supra* note 66.

68. Higher Education Act of 1965, Pub. L. No. 89-329, § 101, 79 Stat. 1219.

Although it is likely that rankings will continue to be one way of measuring institutional quality, the question remains as to the true value of the degree awarded by an institution: “Global education markets, just like other markets, need information to function efficiently. But it needs to be the *right* information.”<sup>69</sup> The *Washington Monthly College Rankings* attempt to provide stakeholders with an alternative view of institutional value by focusing on three criteria: social mobility, research, and service. The *Washington Monthly* argues that “America’s best colleges are those that work hardest to help economically disadvantaged students earn the credentials that the job market demands.”<sup>70</sup> The argument is that institutions that successfully graduate the students who are the most prepared for college could in fact have little value added. One could easily disagree with those criteria for assessing colleges and universities on the grounds that they are under-inclusive, and we will not defend them here. Our point is that establishing alternative rankings may help to provide a better picture of institutional quality. Regardless, rankings alone do not provide a mechanism for assuring the quality of a degree or what a learner is able to do with his or her learning. A common degree framework would verify quality by replacing indicators of degree value—such as institutional prestige—with the *actual learning* that a student gains from an academic program.

## 2. The Value of a Qualifications Framework to Stakeholders

Transparency with regard to the actual learning involved in earning a particular degree will not only create common expectations for students across institutions, but will also facilitate public understanding of the inherent value of a degree. Stakeholders will recognize the value behind the degree because they will possess knowledge of the skills students are required to master in order to earn a degree in a particular field of study. External stakeholders, such as recruiting employers who are presented with a candidate holding a certain degree, will understand what knowledge and skills that person possesses regardless of familiarity with the degree-granting institution. Prior to making the commitment to pursue a degree in higher education, students will know what a particular degree represents to employers, and thus, its market value. Equipped with this information, potential students will be able to assess the long-term benefits of obtaining a specific degree against the opportunity costs incurred in pursuing that education. Potential students will also have access to pre-established

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69. Ben Wildavsky, *International Studies: How America’s Mania for College Rankings Went Global*, WASH. MONTHLY, Sept.-Oct. 2009, available at [http://www.washingtonmonthly.com/college\\_guide/feature/international\\_studies.php](http://www.washingtonmonthly.com/college_guide/feature/international_studies.php).

70. *Introduction: A Different Kind of College Ranking by the Editors*, WASH. MONTHLY, Sept.-Oct. 2009, available at [http://www.washingtonmonthly.com/college\\_guide/feature/introduction\\_a\\_different\\_kind\\_1.php](http://www.washingtonmonthly.com/college_guide/feature/introduction_a_different_kind_1.php).

expectations for achievement of a degree in advance, enabling them to make a truly informed commitment to embark on a degree program. This would ultimately improve student performance by eliminating upfront some, or even most of, those students who cannot meet program expectations. Evidence from the United Kingdom's Quality Assurance Agency indicates that students are better able to engage with their learning when it is outlined in terms of learning outcomes and when they are involved in the process of assessing the effectiveness of their learning—did the approach to demonstrating mastery actually work?<sup>71</sup> The European Students' Union<sup>72</sup> also endorses the value of student engagement in the development of their learning.<sup>73</sup>

Members appointed to former Secretary of Education Margaret Spellings' Commission on the Future of Higher Education ("Spellings Commission") to investigate the state of higher education in the United States recognized that the existing system lacked the necessary transparency, and argued that transparency was essential to "maintaining public trust in higher education."<sup>74</sup> A system of established student learning outcomes for each degree level—a system that is grounded in mutual accountability within the higher education community—will provide the necessary transparency with common language that makes clear what a degree means in learning and in so doing makes the value of a degree explicit.

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71. THE QUALITY ASSURANCE AGENCY FOR HIGHER EDUCATION, *LEARNING FROM ACADEMIC REVIEW OF HIGHER EDUCATION IN FURTHER EDUCATION COLLEGES IN ENGLAND 2005-07* at 11 (2007), available at <http://www.qaa.ac.uk/reviews/academicReview/learningfromheInFe08/HEinFE2007.pdf>.

A large number of reports note that subject benchmark statements are being used to inform the development of intended learning outcomes. Many colleges make effective use of subject benchmark statements to develop intended learning outcomes which relate to the vocational nature of their programmes. A number of reports note that colleges have developed intended learning outcomes which encourage progression to employment or further study in line with college aims. For example, the "intended learning outcomes . . . prepare students for further study and employment [to] meet the needs of local employers and the community."

*Id.*

72. European Students' Union, *Global Student Statement To the UNESCO World Conference on Higher Education +10*, Jan. 23, 2009, 3–4, available at [http://www.esib.org/documents/statements/GlobalStudentStatement\(english\).pdf](http://www.esib.org/documents/statements/GlobalStudentStatement(english).pdf).

73. Aaron Porter, 2 NAT'L UNION OF STUDENTS HE FOCUS 1 (2009), available at [http://resource.nusonline.co.uk/media/resource/HE%20Focus%20IL\\_v%205.pdf](http://resource.nusonline.co.uk/media/resource/HE%20Focus%20IL_v%205.pdf).

"Engaging students as co-producers of their education, involving them in the design, delivery and review of their experience will ensure the future of the academic community and help institutions across the [United Kingdom] continue to improve and deliver a robust and excellent experience for all their students." *Id.*

74. COMMISSION, *supra* note 12, at 14.

## B. Engagement of Disadvantaged and Non-Traditional Students

### 1. Persistent Limited Access for Underserved Groups

Transparent requirements behind each degree level—requirements that sustain a common understanding of degree value—will facilitate students’ ability to navigate the higher education system and complete a course of study. This transparency will be especially advantageous to students from populations that traditionally have been less successful, as compared to the national average, in degree completion. The Spellings Commission found that access to higher education is still very limited for underserved and nontraditional student groups, such as adult learners, ethnic and racial minorities, and low-income populations.<sup>75</sup> Furthermore, the Commission found that the traditional perception of the typical undergraduate as an eighteen to twenty-two year-old high school graduate at a four-year institution of higher education often no longer applies.<sup>76</sup> Of fourteen million undergraduate students in the United States, more than 40 percent go to community college, almost 30 percent are older than twenty-four years, 40 percent are enrolled in school part time,<sup>77</sup> and 27 percent have children themselves.<sup>78</sup> Access and achievement gaps for disadvantaged and minority students persist, with only 17 percent of African-Americans and 11 percent of Hispanics obtaining a bachelor’s degree by age twenty-nine, compared to 34 percent of Caucasians.<sup>79</sup> Eighty-one percent of high-income students will earn a bachelor’s degree within eight and a half years after matriculating at a college, while only 36 percent of low-income students will reach the same level at the same pace.<sup>80</sup> The Commission urged policymakers to recognize the altered American higher education landscape, stating that in response to the new reality, “the nation must be committed to building and sustaining a higher education system that is accessible to all qualified students in all life stages.”<sup>81</sup>

A common degree framework that explicitly outlines the learning for degree progression will assist underrepresented populations in navigating the complexities of the higher education system. In addition, by making explicit the progression, the framework will also make explicit the implications of student program and curriculum choices and the options or barriers that result from those choices.

### 2. Enhancing Student Mobility Through Multiple Higher

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75. *Id.* at 8.

76. *Id.* at xi.

77. *Id.*

78. *Id.* at 9.

79. *Id.*

80. COMMISSION, *supra* note 12, at 9.

81. *Id.* at 8.

### Education Pathways

Creating a public understanding of the value of a degree—what one will be able to demonstrate and do with the learning that a degree represents—through a common degree framework is one step toward increased higher education engagement for currently underserved populations. Additionally, changing the credit transfer system is also necessary to facilitate multiple pathways through the higher education system, particularly for nontraditional or disadvantaged students who are less likely to proceed vertically through the system. As the Spellings Commission pointed out in its final report, over twelve million non-traditional students in the United States are enrolled in degree-granting programs at colleges and universities.<sup>82</sup> Many of these adults have children and full-time jobs. As a result, many of them attend school part-time and will therefore require longer than the traditional four years to obtain a degree.

The current credit recognition system does not properly accommodate students who might accumulate credits at several institutions—a community college, a proprietary school, a state university—throughout their higher education career. The existing system lacks a standardized method of determining the worth of previous credits earned by a student, often resulting in wasted credits—representing needlessly expended time, money, and other valuable resources for the student. A U.S. system that builds on the European Credit Transfer System<sup>83</sup> would enable the increasing number of nontraditional learners to accumulate credits from numerous institutions over a period of years to earn a degree. A fluid credit transfer system would minimize wasted student resources and duplicative learning, while acknowledging previous coursework or skills obtained from an accredited higher education institution. In addition, a revised credit system could account for knowledge or skills developed through non-academic means, such as on-the-job training, that would better reflect a student's individual education level than the numeric credits that he or she has accumulated. The Spellings Commission's report concluded the necessary action to be:

Students must have clearer pathways among education levels and institutions and we urge colleges to remove barriers to student mobility and promote new learning paradigms (e.g., distance education, adult education, workplace programs) to accommodate a far more diverse student cohort. States and institutions should review and revise standards for transfer of credit among higher education institutions, subject to rigorous standards designed to ensure educational quality, to improve

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82. *Id.* at 9. Nontraditional students are those not in the 18-24 age group. *Id.*

83. *See supra* notes 44–49 and accompanying text (explaining the ECTS).

access and reduce time-to-completion.<sup>84</sup>

The modern U.S. college student often no longer proceeds neatly along the traditional four-year path—especially those students from groups that are underserved by the current system—and the higher education credit system must be reformed to reflect the new reality. Such a credit system would be possible in the United States if there were an overarching common degree framework to provide clarity regarding what students must demonstrate at each level of learning along their path to a degree.

### C. Global Precedent and the Internationalization of Higher Education

American higher education policy-makers are becoming increasingly interested in the efforts of their international counterparts. It is important that students and workers are equipped to handle a globally competitive environment. As evidenced by the financial crisis of 2008-2009, educational institutions and systems are globally connected.<sup>85</sup> Some segments of U.S. higher education have taken note of the potential implications of the Bologna Process, most notably graduate schools that must grapple with international undergraduate degrees.<sup>86</sup> However, the globalization of higher education goes beyond the Bologna Process. An ongoing debate concerning the treatment of education under the World Trade Organization's General Agreement on Trade in Services ("GATS") is currently underway.<sup>87</sup> As higher education operates in ways that go beyond the concept of education in one place, to include, for example, distance education, online courses and traditional education in several different countries, the reality that higher education is a service that is provided globally becomes increasingly more significant.

Individuals, programs, and institutions within the U.S. higher education community have begun to pay attention to the Bologna Process and other higher education reforms around the world. Much of their focus is typically upon the potential economic impact of the emerging competition and the competitive advantage that countries may enjoy because of reformed higher education systems.<sup>88</sup> The Spellings Commission report

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84. COMMISSION, *supra* note 12, at 18.

85. See Elizabeth Redden, *In Global Recession, Global Ed Still Growing*, INSIDE HIGHER ED, May 29, 2009, available at <http://www.insidehighered.com/news/2009/05/29/international>. See also Aisha Labi, *British Universities Affected by Financial Meltdown in Iceland*, CHRON. HIGHER EDUC., Oct. 14, 2009, available at <http://chronicle.com/article/British-Universities-Affect/1243/>.

86. See *infra* Part II.C.2.

87. See World Trade Organization, General Agreement on Trades in Services, [http://www.wto.org/english/tratop\\_e/serv\\_e/gatsqa\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm) (last visited Mar. 24, 2010).

88. See, e.g., NAFSA: ASS'N OF INT'L EDUCATORS, RESTORING U.S. COMPETITIVENESS FOR INTERNATIONAL STUDENTS AND SCHOLARS (2006), available at [http://www.nafsa.org/uploadedFiles/NAFSA\\_Home/Resource\\_Library\\_Assets/Public\\_Policy/restoring\\_u.s.pdf](http://www.nafsa.org/uploadedFiles/NAFSA_Home/Resource_Library_Assets/Public_Policy/restoring_u.s.pdf) [hereinafter NAFSA]. See generally John Aubrey Douglass,

argues that the U.S. higher education system became complacent, failing to acknowledge that, after having been at the top of higher education for a long period of time, it has now been surpassed by many of its global competitors.<sup>89</sup> Further, the Commission found that America's ongoing research and innovation production, social mobility and future economic growth depend upon the quality and effectiveness of our higher education system.<sup>90</sup> Thus, higher education reforms must be undertaken to allow the United States to safeguard and strengthen its global economic competitiveness in the face of newly emerged competition from countries with reformed higher education systems.<sup>91</sup> Europe initiated the Bologna Process to bolster the region's global competitiveness. Accordingly, the United States should draw upon the best practices of international competitors to enhance the American higher education system.

### 1. Legal Education

Some members of the U.S. legal community have monitored the Bologna Process and are aware of its international implications for legal education and the legal profession in general.<sup>92</sup> Professor Laurel Terry—a leading scholar writing on the impact of the Bologna Process on the United States—offers several policy arguments for why U.S. legal educators should, at a minimum, be knowledgeable of the Bologna changes.<sup>93</sup>

Professor Terry explains that U.S. law schools, along with every other U.S. graduate program, must decide whether or not to admit international students who have graduated with the three-year Bologna bachelor's degree.<sup>94</sup> Terry argues that law schools need a recognition policy for ECTS or diploma supplements in order to deal with previous credit

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*The Global Higher Education Race*, 49 INT'L HIGHER EDUC., Fall 2007, available at [http://www.bc.edu/bc\\_org/avp/soe/cihe/newsletter/Number49/p4\\_Douglass.htm](http://www.bc.edu/bc_org/avp/soe/cihe/newsletter/Number49/p4_Douglass.htm) (describing the emerging globally competitive higher education environment).

89. COMMISSION, *supra* note 12, at x.

90. *See id.* at ix–xiii.

91. Casey E. George-Jackson, *The Spellings Commission on the Future of Higher Education: Global Competitiveness as a Motivation for Postsecondary Reform*, 5 HIGHER ED. REV. 68, 73 (2008).

92. *See generally* AM. BAR ASS'N: SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES (July 15, 2009), available at [www.abanet.org/legaled/committees/International%20Issues%20Report%20\(final\).DOC](http://www.abanet.org/legaled/committees/International%20Issues%20Report%20(final).DOC) [hereinafter SPECIAL COMMITTEE ON INTERNATIONAL ISSUES] (discussing the impact of the Bologna Process on U.S. recognition of foreign lawyers and credits from foreign law schools).

93. *See* Laurel S. Terry, *The Bologna Process and Its Impact in Europe: It's So Much More than Degree Changes*, 41 VAND. J. TRANSNAT'L L. 107 (2008) [hereinafter Terry, *Degree Changes*]; Laurel S. Terry, *The Bologna Process and its Implications for U.S. Legal Education*, 57 J. LEGAL EDUC. 237 (2007) [hereinafter Terry, *Implications*].

94. Terry, *Implications*, *supra* note 93, at 242. *See generally* Terry, *Degree Changes*, *supra* note 96.



obtained by foreign students.<sup>95</sup> Under the Lisbon Convention, a student possessing qualifications in one country is entitled to have those qualifications assessed by another ratifying country through a fair and predetermined procedure.<sup>96</sup> Professor Terry suggests that many U.S. law schools lack the kind of set recognition procedure generally adopted by institutions in nations where the Lisbon Convention has been ratified.<sup>97</sup>

Furthermore, the Bologna Process could “lead to discussions about international law school accreditation standards” of which U.S. legal educators should be aware.<sup>98</sup> For instance, Terry suggests that the Bologna Process quality assurance standards may be superior to law school accreditation in the United States.<sup>99</sup> Curriculum reform is another area where Terry notes that the United States may want to imitate the European higher education transformation.<sup>100</sup> She suggests that for U.S. lawyers to be competitive in foreign markets, U.S. legal educators need to identify commonalities and differences between U.S. legal education and foreign legal educations in order to harmonize the curriculum where necessary: “For example, if representatives from forty-six European countries were to decide that students studying ‘X’ area of law needed to master certain substantive law concepts, it would be important for U.S. lawyers and students to be familiar with those substantive concepts.”<sup>101</sup> In other words, the U.S. legal community needs to know what European law students are learning and to adjust U.S. legal curriculum to keep pace.

Professor Terry also points out the financial impact the Bologna Process could have on U.S. legal education. International students provide a significant source of income for U.S. law schools at the LL.M. level.<sup>102</sup> As European schools have improved and become more attractive and affordable options for international students, they may compete more directly with U.S. law schools.<sup>103</sup> As Professor Terry’s observations indicate, legal educators have begun to appreciate the value in paying attention to the restructuring of higher education around the world, recognizing that “[i]n an increasingly interconnected world, these changes will likely have an impact in the United States.”<sup>104</sup>

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95. See Terry, *Implications*, *supra* note 93, at 243.

96. See *id.* The United States signed the Lisbon Convention but has not ratified it. *Id.* at 243, n.38. See SPECIAL COMMITTEE ON INTERNATIONAL ISSUES, *supra* note 92, at 12.

97. See Terry, *Implications*, *supra* note 93, at 243.

98. See *id.* at 245.

99. See *id.* at 246.

100. See *id.*

101. See *id.* at 247.

102. See *id.* at 249.

103. See Terry, *Implications*, *supra* note 93, at 250.

104. *Id.* at 252.

## 2. Other Higher Education Programs and Organizations

Science and engineering educators have also begun a dialogue on how U.S. educators should respond to the potential impact of the Bologna Process on science and engineering higher education in the United States. The United States has traditionally been an international leader in these fields of higher education, attracting more top-notch foreign students and academics than any other nation.<sup>105</sup> Yet, the National Science Foundation has reported that many other countries, including countries which have signed on to the Bologna Process, are attracting an increasing number of foreign science and engineering graduate students.<sup>106</sup>

The National Academy of Sciences similarly recognizes that the U.S. is facing emerging international competition, arguing that “it is essential to the national interest of the United States to maintain its excellence and overall leadership in [science and engineering] research and education so that it can maintain its own comparative advantage with respect to global knowledge production.”<sup>107</sup> A report for the National Academy of Sciences by its affiliate, the National Research Council, points out that because other advanced industrial societies have followed the lead of the United States and realized the economic value of possessing leading graduate programs in the sciences, the United States faces stiff competition for “the most talented scientists and engineers worldwide.”<sup>108</sup> In order to remain globally competitive in science and engineering higher education, the United States will need to “maintain or enhance its current quality and effectiveness in [science and engineering].”<sup>109</sup>

Like science and engineering educators, the Council of Graduate Schools is pushing for higher education reform that will allow the United States to remain internationally competitive in *all* higher education fields.<sup>110</sup> The Council claims that graduate education enables the United States to “remain competitive in the global economy” and to “protect our national security, whether from political forces, diseases, or natural

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105. NATIONAL SCIENCE FOUNDATION, SCIENCE AND ENGINEERING INDICATORS 2006, GLOBAL HIGHER EDUCATION, HIGHER EDUCATION IN SCIENCE AND ENGINEERING at 2-31, available at <http://www.nsf.gov/statistics/seind02/pdf/c02.pdf> [hereinafter SCIENCE AND ENGINEERING INDICATORS 2006].

106. *Id.* at 2-36. See also Aisha Labi, *As World Economies Struggle, Competition Heats Up for Students From Abroad*, CHRON. HIGHER EDUC., Nov. 21, 2008, at A22, available at <http://chronicle.com/weekly/v55/i13/13a02201.htm>.

107. NATIONAL RESEARCH COUNCIL, POLICY IMPLICATIONS OF INTERNATIONAL GRADUATE STUDENTS AND POSTDOCTORAL SCHOLARS IN THE UNITED STATES 4 (2005).

108. *Id.* at ix.

109. *Id.* at 5.

110. See COUNCIL OF GRADUATE SCHOOLS, GRADUATE EDUCATION: THE BACKBONE OF AMERICAN COMPETITIVENESS AND INNOVATION, available at [http://www.cgsnet.org/portals/0/pdf/GR\\_GradEdAmComp\\_0407.pdf](http://www.cgsnet.org/portals/0/pdf/GR_GradEdAmComp_0407.pdf).

disasters.”<sup>111</sup> Citing numerous reports that “have enumerated the multiple threats to future U.S. competitiveness,” the Council suggests that graduate education reform will help alleviate these obstacles to prosperity.<sup>112</sup> Other umbrella organizations for educators have also pushed for the United States to be aware of and respond to an increasingly competitive environment for the best international students and scholars in light of the Bologna Process and other higher education reforms throughout the world.<sup>113</sup>

#### D. Conclusion

As evidenced by the conclusions of the Spellings Commission, along with the ongoing dialogue in legal education and science and engineering education, it appears many voices in the United States favor higher education reform. The development of qualifications frameworks in other countries has resulted in increased transparency regarding what exactly a degree represents. These developments have provided a mechanism to determine comparability of degrees and programs. Building from what other countries have developed, a common degree framework with common student learning outcomes for each degree level would create a tool to address challenges faced by higher education in the United States.

A common degree framework-based reform would foster transparency by introducing shared student learning outcomes as a meaningful measure of degree quality to which institutions and programs would hold one another mutually accountable. Transparency and the institutional accountability that would inevitably follow will allow potential and current students to understand the market value of a given degree and weigh the costs and benefits of the investment involved in it. It would also give external stakeholders, such as employers, a systematic tool to more accurately compare the learning and skills that employee candidates possess. Further, a common degree framework would make higher education more attractive to nontraditional and disadvantaged student groups—such as minorities, adult learners, and low-income people—by making the market-value of a given degree readily apparent. Finally, reform of this sort would facilitate the development of a more streamlined credit transfer system, allowing credits accumulated from different institutions over time to be recognized in a systematic, understandable, and uniform fashion.

A common degree framework has the potential to confront issues discussed here, and to also stimulate national dialogue on higher education, paving the way for further constructive transformations. The legal community, science and engineering educators, and graduate educators

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111. *Id.* at 6.

112. *Id.*

113. *See, e.g.,* NAFSA, *supra* note 91. *See generally* Douglass, *supra* note 91 (describing the emerging globally competitive higher education environment).

represent only a small portion of the stakeholders who have begun to push for U.S. higher education policymakers to look internationally as they pursue domestic reform. Implementing a framework would create a mechanism in which degrees from U.S. institutions would hold the inherent market value necessary to maintain global economic competitiveness.

### III. HOW A COMMON DEGREE FRAMEWORK COULD BE DEVELOPED

#### A. The Bologna Process in Europe

During the last years of the previous millennium, the nations of Europe began an effort to reconstruct and transform higher education.<sup>114</sup> Today forty-seven countries are involved in the Bologna Process, with four thousand institutions and sixteen million students working to increase geographic mobility for students and faculty.<sup>115</sup>

The Bologna Process has increased dialogue and cooperation among countries beyond the forty-seven signatory states. Israel, Kazakhstan, Australia, New Zealand, and the nations in the Maghreb, along with countries in Asia and Africa, are showing increasing interest in the Bologna Process and are implementing facets of the process.<sup>116</sup>

Many in the United States are taking notice of the Bologna Process. For example, the Council of Graduate Schools, the National Academy of Sciences, the National Science Foundation, and the National Education Association, have all published articles about the possible impact of the Bologna Process.<sup>117</sup> Further, during a conference on “Graduate Education and American Competitiveness” in 2005, it was said that “[v]irtually every speaker at the conference, in one way or another, stated that international competition in graduate education threatens American world-wide leadership in research and innovation and therefore threatens American prosperity.”<sup>118</sup> A speaker at the conference also summarized the events unfolding in European higher education as constituting a vast transformation of it, one which would ultimately provide more competition

114. See generally Terry, *Degree Changes*, *supra* note 93.

115. For a list of countries see, Chart of Signatures and Ratifications, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM=1&DF=26/01/2010&CL=ENG> (last visited Apr. 1, 2010).

116. See EUROPEAN HIGHER EDUCATION IN A GLOBAL SETTING WORKING GROUP, THE EUROPEAN HIGHER EDUCATION AREA (EHEA) IN A GLOBAL CONTEXT: REPORT ON OVERALL DEVELOPMENT AT THE EUROPEAN, NATIONAL AND INSTITUTIONAL LEVELS (Feb. 13, 2009), available at [http://www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/documents/2009\\_EHEA\\_in\\_global\\_context.pdf](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/documents/2009_EHEA_in_global_context.pdf).

117. See, e.g., SCIENCE AND ENGINEERING INDICATORS 2006, *supra* note 108; NAFSA, *supra* note 91.

118. See Terry, *Degree Changes*, *supra* note 93, at 210 (quoting Paul Tate, *Graduate Education and American Competitiveness*, CGS COMMUNICATOR (Council of Graduate Schs., Washington, D.C.), June 2005, at 2, available at [http://www.cgsnet.org/portals/0/pdf/comm\\_2005\\_06.pdf](http://www.cgsnet.org/portals/0/pdf/comm_2005_06.pdf)).

for the United States.<sup>119</sup>

While there are many features of the Bologna Process that should inform American higher education, qualifications frameworks, Tuning, and the Credit Transfer System should be foremost.<sup>120</sup> American higher education should not simply replicate or adopt a Bologna-type methodology. However, U.S. higher education can benefit from, and be informed by, learning from Bologna. The crucial word is “inform.” The U.S. system of higher education and its stakeholders will, no doubt analyze, digest, reconfigure, contextualize, adapt and possibly adopt the principals of the Bologna Process, but to not be informed would be unwise.

#### B. Why a Common Degree Framework would Benefit American Higher Education.

By implementing a common degree framework, the United States would provide a mechanism for clearly outlining and defining the learning outcomes of each degree level and would make clear the pathways to further education and employment. Higher education and its stakeholders would benefit from the clarity as to what students are able to do with a degree.

One consequence of the Bologna Process has been a great deal of debate over the “purpose, methodology, and assessment of higher education.”<sup>121</sup> Our European counterparts for over a decade have studied, discussed, and calculated the best possible practices to ensure not only that students seeking higher education in Europe receive an exemplary education but also that they will have completed qualifications ensuring demonstration of a proficiency in a field. In addition, potential employers will have knowledge of candidate qualifications based on frameworks and a credit system. Europe’s qualifications frameworks can bring about a systematic change by broadening goals and preparing students for future endeavors upon completion of their degree.<sup>122</sup>

A common degree framework would bring transparency and clarity to the U.S. higher education system. Stakeholders would be cognizant of the benefits and additional value added to a system provided with a common degree framework. In addition, a focus on outcomes and what students are able to do with their degrees would provide clarity on the pathways through

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119. See Terry, *Implications*, *supra* note 93, at 241.

120. See John H. Yopp, *Convergent Evolution of European and U.S. Higher Education Systems: Adapting to the Environments of Globalisation*, in INTERNATIONALISATION OF HIGHER EDUCATION HANDBOOK (2009). Dr. Yopp argues that the United States should examine the European Credit and Transfer System. He suggests that U.S. higher education needs to realize the limitations of its current credit system and analyze the implications of the European approach to credits and the correlation with learning outcomes, qualification frameworks and tuning. See *id.*

121. See Terry, *Implications*, *supra* note 93, at 246.

122. See BERGAN, *supra* note 30, at 247.

higher education and would provide the United States with a leadership opportunity in defining higher education in a global context.

#### IV. HOW TO DEVELOP A COMMON DEGREE FRAMEWORK

There are, as we see it, four ways in which a common degree framework could come into being. The first, and the best, way would be for leaders of the higher education community, working cooperatively with students, employers, and others, to develop and pilot a common degree framework and then to honor its demands. The second way in which a common degree framework would come about would be for accrediting agencies, to shift from their current input oriented assessment modalities to a vastly more output-oriented approach. Once they made that shift, they would be well on their way towards assessing quality with reference to a framework quite similar to the one that we have described here. The third way would be for the states to enact a Uniform National Framework for Higher Education Act that the National Conference of Commissioners on Uniform State Laws had proposed to them. The fourth way would be for Congress, acting on its spending power, to amend the Higher Education Act in such a way as to make compliance with a common degree framework a condition precedent to an institution's receipt of federal funds.

Each of the ways to develop a common degree framework has challenges. With the value American higher education places on institutional autonomy, the most desirable approach is to voluntarily build consensus around the concept. In this part of our article, we will explore, in a quite preliminary and tentative fashion, each of the four ways to develop a common degree framework, as well as the trade-offs involved in each of them.

##### A. The First Way: Institutional Initiatives

A U.S. overarching common degree framework consisting of general student learning outcomes at each degree level would ideally be developed and fostered through the voluntary, combined effort of higher education leaders, experts, and key stakeholders. The diversity of U.S. higher education leadership provides for a wealth of expertise and experience that, if united towards the common purpose of establishing agreed-upon national student learning outcomes at each degree level, could create the ideal framework for the U.S. higher education system. These stakeholders should be brought together to reach a consensus that shared learning outcomes are a desirable and feasible solution to some of the problems plaguing higher education today, and then to discuss the best process for designing and implementing these learning outcomes in a manner that reflects the uniqueness and complexity of U.S. higher education.<sup>123</sup>

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123. Key individuals should include, for example, the leadership of institutional

A common degree framework movement could emerge from within the field through higher education practitioners. Professor Paul Gaston proposes uniting faculty members, students, university board members, administrators, state higher education officers, members of the public, and higher education association representatives, a group which he terms the Higher Educators' Congress.<sup>124</sup> The Congress could include an executive committee charged with managing liaisons with state and federal agencies to obtain the necessary government support, and an organizing committee comprising the leadership of subcommittees established throughout the process.<sup>125</sup> The objective of the Congress would be to reach a consensus on an agenda for comprehensive higher education reform, informed by the lessons of the Bologna Process.<sup>126</sup> Underlying that objective would be the premise that some form of common degree framework is a desirable means of addressing some of the problems in U.S. higher education, but the participants would have to be free to determine how the framework should be formed and what it should look like.

The Higher Educators' Congress would carefully delineate the strengths and weaknesses within the current higher education system, and distill an agenda for reform intended to address the current problems in U.S. higher education.<sup>127</sup> One focus might be upon creating a national framework of student learning outcomes for each degree. Through a collaborative voluntary effort, higher education leaders would "frame a strategy of reform that first recognizes and incorporates existing efforts and then identifies gaps and the means of addressing them."<sup>128</sup> In the context of a framework discussion, this would entail recognizing those associations, institutions, disciplines, states, and individuals who have already begun to work towards remedying many of the issues that a qualifications framework would address.<sup>129</sup> This stocktaking would prevent duplicative

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membership associations such as the American Council on Education, the Council of Independent Colleges, the Association of Public and Land-Grant Universities, the American Association of State Colleges and Universities, and the Association of American Colleges and Universities. See The American Council on Education, [www.ace.org](http://www.ace.org) (last visited Apr. 1, 2010); Council of Independent Colleges, [www.cic.org](http://www.cic.org) (last visited Apr. 1, 2010); The Association of Public and Land-Grant Universities, [www.aplu.org](http://www.aplu.org) (last visited Apr. 1, 2010); American Association of State Colleges and Universities, [www.aascu.org](http://www.aascu.org) (last visited Apr. 1, 2010); The Association of American Colleges and Universities, [www.aacu.org](http://www.aacu.org) (last visited Apr. 1, 2010).

124. PAUL GASTON, *THE CHALLENGE OF BOLOGNA: WHAT U.S. HIGHER EDUCATION HAS TO LEARN FROM EUROPE, AND WHY IT MATTERS THAT WE LEARN IT* 183–85 (2010).

125. *Id.* at 184.

126. *Id.* at 183–84.

127. For a discussion of the major issues in U.S. higher education today see *supra* Part I.B.

128. GASTON, *supra* note 124, at 184.

129. See GASTON, *supra* note 124, at 177–79 (discussing present efforts to positively transform U.S. higher education).

efforts, build upon already-established practices, and identify stakeholders who had not been involved in the process but whose dedication to transforming U.S. higher education would merit their inclusion.<sup>130</sup> The stakeholders would collaborate, among other things, to identify general student learning outcomes at each higher education degree level.

#### B. The Second Way: Initiatives by Accrediting Agencies

The traditional function of accreditation in the United States is to assess and make a judgment for the government and the public on the quality of a higher education program or institution in relation to predetermined standards.<sup>131</sup> The modern accreditation process has evolved into a comparison of an institution's programs and activities to its own stated mission and goals, rather than a comparison to uniform standards.<sup>132</sup> While accrediting agencies are technically private associations comprising institutional members, they also possess an "involuntary and public character" because of the federal government's reliance upon accreditation to determine institutional eligibility for federal funding.<sup>133</sup> Accreditation is not compulsory; an institution must apply to be reviewed by the relevant agency. In so doing, the institution signifies that it seeks to conform to the accrediting agency's standards so that it may reap the resulting benefits, most notably federal aid eligibility.<sup>134</sup> The accreditation process involves peer review of an institution or program by higher education faculty, administrators, and members of the public.<sup>135</sup> Thus, from the perspective of an institution, accreditation is essentially a seal of approval from its accredited institutional peers stating that the institution meets shared expectations of quality within higher education. In their capacity as warrantors of higher education institutions for the federal government, the public at large, and for the benefit of the accredited institutions, accrediting agencies have tremendous potential to initiate a movement for reform at the institutional level.

If a voluntary process of defining student outcomes results in a common degree framework, accrediting agencies can play a significant role in influencing the implementation and use of the common degree framework to drive accountability and provide assurance of quality. A collaborative effort by the regional and specialized accrediting agencies could reinvent

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130. *See id.* at 178–79.

131. *See, e.g.,* HAROLD ORLANS, PRIVATE ACCREDITATION AND PUBLIC ELIGIBILITY 2–3 (1975); SELDEN, *supra* note 62.

132. *See* 20 U.S.C. § 1099b (2008).

133. ORLANS, *supra* note 131, at 2.

134. *See id.*

135. COUNCIL FOR HIGHER EDUCATION ACCREDITATION (CHEA), THE FUNDAMENTALS OF ACCREDITATION 2 (2002), *available at* [http://www.chea.org/pdf/fund\\_accred\\_20ques\\_02.pdf](http://www.chea.org/pdf/fund_accred_20ques_02.pdf).



modern accreditation to better address some of the issues facing higher education today. As accrediting agencies approach the issue of developing a common degree framework, they should turn to their existing accreditation process to build upon the quality-review elements that already work to promote quality and consistency, and to make changes to the process to better meet the original, fundamental goal of accreditation: accurately measuring quality.

### C. The Third Way: Uniform State Law

In addition to a stakeholder-directed voluntary approach or an accrediting agency initiative, the process could also be initiated through state law. A uniform state law would be the best channel to promote the adoption of common degree framework legislation by as many states as possible.

Every state has adopted some type of legislation to regulate its public higher education system. State constitutions often contain a provision establishing a public education system, including state colleges and universities or a state college and university system, and sometimes community colleges.<sup>136</sup> Each state surveyed for purposes of this discussion also includes a title pertaining to higher education in its code.<sup>137</sup> In either the constitution or elsewhere in the code, states establish the governing or coordinating authority for higher education in the state.<sup>138</sup> In the state statutes analyzed here, responsibility for higher education lies with a state board charged with duties similar to those of directors of a not-for-profit organization.<sup>139</sup> Through uniform legislation that could be inserted into existing state higher education code, state governing or coordinating boards could be authorized to initiate the creation of frameworks at the individual state level.

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136. The authors surveyed the state constitutions in Indiana, Utah, Minnesota, Alabama, Illinois, and Montana to obtain a general idea of how higher education is treated by certain states. *See, e.g.*, ALA. CONST. art. XIV; ILL.CONST. art. X; IND. CONST. art. 8; MINN. CONST. art. XIII; MONT. CONST. art. X; UTAH CONST. art. X.

137. *See generally* WILLIAM A. KAPLIN & BARBARA A. LEE, THE LAW OF HIGHER EDUCATION, STUDENT EDITION 24 (2007) (explaining the placement of higher education in state constitutions and statutory schemes).

138. *Id.*

139. *See, e.g.*, ILL. CONST. art. X, § 2; MONT. CONST. art. X, § 9; UTAH CONST. art. X, § 3; ALA. CODE § 16-5-8 (2001); ILL. COMP. STAT. 205/2 (West 2006); IND. CODE § 21-18-6-1 (2007); MINN. STAT. § 136F.06 (West 2003). *See also* Aims C. McGuinness, The Education Commission of the States, Policy Brief: Governance and Coordination: Definitions and Distinctions, <http://www.ecs.org/clearinghouse/31/62/3162.htm> (last visited Mar. 25, 2010) (explaining the responsibility of a state governing or coordinating board).

### 1. Background on the National Conference of Commissioners on Uniform State Laws

The National Conference of Commissioners on Uniform State Laws (“NCCUSL”) is the main entity responsible for drafting and promulgating uniform laws in the United States.<sup>140</sup> A long-standing institution, the NCCUSL held its first convening in 1892 after an ABA resolution urging states to achieve national uniformity through “voluntary state action” before the federal government could override conflicting state laws with federal legislation.<sup>141</sup> Today, the NCCUSL is a nonprofit, unincorporated association of around 300 commissioners from all states, plus the District of Columbia, Puerto Rico, and the Virgin Islands.<sup>142</sup> Most states provide for their commission by statute, and each jurisdiction determines the number and method of appointment for commissioners.<sup>143</sup> States typically appoint three to four commissioners, but each state receives only one vote in the Conference.<sup>144</sup> The majority of state commissioners are practitioners, judges or law professors who are selected because of their elite knowledge base and “intellectual interest in uniform law.”<sup>145</sup>

The state commissioners meet annually at the National Conference to “study and review the law of the states to determine which areas of law should be uniform.”<sup>146</sup> The work of the NCCUSL allows for uniformity of state law in areas where it is practical and beneficial, while preventing duplicative efforts by individual states.<sup>147</sup> In some ways similar to a legislative body, the Conference, through study and drafting committees, creates and proposes uniform laws in desirable legal areas.<sup>148</sup> However, no proposal for enactment of a uniform law becomes law in any state unless that state’s legislature votes to adopt it.<sup>149</sup> While its projects vary greatly, the Conference usually distinguishes between law *reform* and codification of existing common law principles with an interstate application.<sup>150</sup> The Conference tries to avoid new legal subjects, yet exceptions exist, such as

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140. See National Conference of Commissioners on Uniform State Laws, Organization, <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=11> (last visited Apr. 1, 2010) [hereinafter NCCUSL Organization].

141. See WALTER P. ARMSTRONG, JR., A CENTENNIAL HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 16–19 (1991); James F. White, *Ex Proprio Vigore*, 89 MICH. L. REV. 2096, 2097, 2102 (1991).

142. See NCCUSL Organization, *supra* note 140.

143. See *id.*

144. See Discussion, *Uniform State Laws: A Discussion Focused on Revision of the Uniform Commercial Code*, 22 OKLA. CITY U. L. REV. 257, 261 (1997). See also 25 ILL. COMP. STAT. 135/5.07 (2006); IOWA CODE § 5.1 (2003).

145. White, *supra* note 141, at 2096.

146. NCCUSL Organization, *supra* note 140.

147. See *id.*

148. See *id.*

149. *Id.*

150. See White, *supra* note 141, at 2098.

the Uniform Workmen's Compensation Act, in instances where states strongly desired legislation in new legal areas.<sup>151</sup> Today the Conference has moved beyond simply codifying existing common law, but as a general rule it avoids new legal issues with no previous legislative or administrative history.<sup>152</sup>

## 2. Uniform Law Creation and Promulgation

It takes several years for NCCUSL to create a uniform law. The process begins with the Scope and Program Committee creating the agenda for the annual Conference by investigating proposed acts and reporting to Executive Committee on which acts are feasible and desirable to undertake.<sup>153</sup> Once the Executive Committee approves a project, a drafting committee of commissioners and at least one ABA advisor is appointed.<sup>154</sup> The commissioners meet throughout the year to produce tentative drafts, which receive extensive consideration.<sup>155</sup> A draft is then submitted to the annual Conference for initial debate.<sup>156</sup> Each draft must be read aloud word-by-word at a minimum of two consecutive annual meetings of the entire Conference.<sup>157</sup> Commissioners comment on various provisions of the draft and offer suggestions on statutory language.<sup>158</sup> The Conference must then approve the new draft that emerges.<sup>159</sup> Finally, a majority of the states present, but not less than twenty, must approve the draft before it can be officially adopted as a uniform law.<sup>160</sup> The act must also be submitted to the ABA for endorsement by the House of Delegates.<sup>161</sup> A uniform law

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151. *See id.* at 2099.

152. *See id.*

153. *See* National Conference of Commissioners on Uniform State Laws, Procedures, <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=11> (last visited Apr. 1, 2010) [hereinafter NCCUSL Procedures]. *See also* National Conference of Commissioners on Uniform State Laws, New Project Criteria, <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=3&tabid=42> (last visited Apr. 1, 2010) [hereinafter NCCUSL New Project Criteria] (listing the criteria that the Scope and Program Committee uses to evaluate project proposals).

154. *See* NCCUSL Procedures, *supra* note 153; *see also* National Conference of Commissioners on Uniform State Laws, Constitution and Bylaws, art. 30, <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=3&tabid=18> (last visited Apr. 1, 2010) [hereinafter NCCUSL Constitution and Bylaws].

155. *See* NCCUSL Procedures, *supra* note 153; *see also* NCCUSL Constitution and Bylaws, *supra* note 154.

156. *See* NCCUSL Procedures, *supra* note 153.

157. *See* NCCUSL Procedures, *supra* note 153; *see also* NCCUSL Constitution and Bylaws, *supra* note 154, at art. 8, § 1.

158. *See* NCCUSL Procedures, *supra* note 153.

159. *See id.*

160. *See* NCCUSL Procedures, *supra* note 153; *see also* NCCUSL Constitution and Bylaws, *supra* note 154, at art. 8, § 3.

161. *See* NCCUSL Procedures, *supra* note 153; *see also* NCCUSL Constitution and Bylaws, *supra* note 154, at art. 7, § 1.

is then officially promulgated to the individual states for adoption by the state legislature.<sup>162</sup> Commissioners encourage their own state legislatures to adopt the uniform law as-is to promote the goal of uniformity, but state legislatures are free to modify the proposed law as they wish prior to codifying it in their respective state.<sup>163</sup>

Other key stakeholders in the state uniform law process include the ABA and the American Law Institute (ALI). The NCCUSL and the ABA are formally affiliated through an agreement in which ABA advisors in different subject areas assist in the uniform law drafting process, and the House of Delegates (the ABA's policymaking body) endorses final drafts before they are officially promulgated as uniform laws.<sup>164</sup> Like the NCCUSL, the ALI drafts model legislation.<sup>165</sup> The ALI worked collaboratively with the NCCUSL to develop the Uniform Commercial Code—the most significant undertaking to date for either organization.<sup>166</sup> ALI model legislation differs from uniform state laws in that it explicitly seeks to *reform* the law,<sup>167</sup> whereas NCCUSL uniform laws aim to operationalize existing legal principles through clarification and codification. Also, the NCCUSL only addresses state law issues, whereas the ALI takes on projects on all types of law.<sup>168</sup>

There are numerous policy justifications to support the use of uniform law over federal legislation to achieve national uniformity. First, the drafting of uniform laws involves a sustained process that requires years of consideration and revisions.<sup>169</sup> Elected federal congressmen serve short

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162. See NCCUSL Procedures, *supra* note 153.

163. See *id.* See also Discussion, *supra* note 133, at 266–71 (discussing issues that arise during the uniform law adoption process by individual state legislatures and possible solutions for those issues).

164. See American Bar Association, Participation of ABA Liaisons with National Conference of Commissioners on Uniform State Laws Drafting Committees and Procedures with Respect to the Formulation of Uniform Acts to the American Bar Association, <http://www.abanet.org/leadership/nccusl/> (follow “For the procedures with respect to the formulation of uniform acts to the American Bar Association” hyperlink) (last visited Apr. 1, 2010). See also American Bar Association, Instructions for ABA Advisors to Drafting Committees of The National Conference of Commissioners on Uniform State Laws, <http://www.abanet.org/leadership/nccusl/> (follow “For more information on NCCUSL and its relationship with the ABA” hyperlink) (last visited Apr. 1, 2010).

165. See American Law Institute, Overview, <http://www.ali.org/index.cfm?fuseaction=projects.main> (last visited Apr. 1, 2010) [hereinafter ALI Overview].

166. National Conference of Commissioners on Uniform State Laws, History, <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=11> (last visited Apr. 1, 2010).

167. See ALI Overview, *supra* note 165.

168. See American Law Institute, Current Projects, <http://www.ali.org/index.cfm?fuseaction=projects.currentprojects> (last visited Apr. 1, 2010) [hereinafter ALI Current Projects].

169. See Discussion, *supra* note 144, at 263.

terms, and the condensed federal legislative process allows for much less time to consider potential legislation.<sup>170</sup> Also, because commissioners are not concerned with reelection, they tend to be more interested in long-term issues than the typical legislator concerned with establishing immediate political support.<sup>171</sup> Uniform laws also hold vast potential to be technically and substantively superior to laws drafted by Congress, because the commissioners are appointed to projects according to their expertise and interest in the subject area.<sup>172</sup> As a result, the commissioners who will ultimately write a uniform law have legal expertise on the specific subject matter that the average congressman simply will not possess. The uniform law drafting and consideration process is also much more open and transparent than some congressional decisions made behind closed committee doors or in the hands of congressional staffers. In contrast, uniform laws are read aloud, line-by-line, in front of the entire NCCUSL Conference on at least two separate occasions, with an open debate and revisions occurring at the meeting.<sup>173</sup> Finally, the NCCUSL process makes certain that each state will have a voice in the ultimate product,<sup>174</sup> rendering it much more likely that the uniform law will satisfy individual state needs.

### 3. A Uniform State Degree Framework Law

As entities with statewide responsibility for higher education, state governing or coordinating boards represent the most viable means of implementing a framework that would apply to all public institutions throughout the state. Their comprehensive oversight capabilities place the state-level boards in an ideal position to receive statutory enforcement responsibilities in a uniform state framework. Thus, state code subchapters that stipulate the powers and duties of the higher education governing or coordinating board would seem to be the most appropriate place to insert a uniform state degree framework.

Among a board's typical statutory duties in the states surveyed, several would allow for the board to originate the development of student learning outcomes for each degree level at institutions state-wide. For example, Alabama, Illinois, and Indiana authorize their respective boards to create a long-term plan for higher education in the state, including setting "statewide objectives and priorities with methods and guidelines for achieving them."<sup>175</sup> A state framework can be characterized as a forward-

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170. *See id.* at 262.

171. *See id.* at 263.

172. AMERICAN LAW INSTITUTE, ABOUT THE AMERICAN LAW INSTITUTE, available at <http://www.ali.org/doc/thisIsALI.pdf>.

173. *See* NCCUSL Constitution and Bylaws, *supra* note 154, at art. 44A, § 1.

174. *Id.* at art. 2, § 2.

175. *See* ALA. ADMIN. CODE r. 300-1-1-.01(3)(a) (2001). *See also* 110 ILL. COMP.

thinking transformation of the state higher education system with the expectation of significant lasting benefits, which would certainly fall under long-term planning. Alabama, Illinois, and Indiana also authorize the board to recommend potential legislation pertaining to higher education to the governor and state legislature.<sup>176</sup> Uniform state laws qualify as potential legislation, thus, the state governing or coordinating board could actively promote a uniform qualifications framework law to the state legislature. Finally, Alabama, Indiana, Minnesota, and Utah empower the board to review and approve academic programs.<sup>177</sup> This duty could include ensuring that institutions establish and maintain student learning outcomes at each degree level.<sup>178</sup>

Apart from existing state code provisions that would allow for the governing or coordinating board to enforce a state framework with minimal statutory revisions necessary, creating a freestanding framework subchapter within a state higher education title is another possibility. In this type of uniform legislation, regulatory authority could be vested in the state governing or coordinating board or an alternative method of ensuring institutional compliance could be constructed. For instance, new licensing to operate a higher education institution within a state or license renewal for established institutions could be conditioned upon the implementation of a state framework consisting of statewide student learning outcomes.<sup>179</sup> This approach would have the advantage of encompassing state institutions *as well as* private institutions.

Absent the promulgation of a uniform state framework law, no reliable means exists to ensure the cooperation of each individual state in implementing a framework law.<sup>180</sup> Yet a uniform framework law could

STAT. 205/6 (2010); IND. CODE § 21-18-8-1 (2007).

176. *See, e.g.*, 110 ILL. COMP. STAT. 205/9.02 (2010); IND. CODE § 21-18-8-4 (2007); ALA. ADMIN. CODE r. 300-1-1-.01(3)(c)(1) (2001).

177. *See, e.g.*, IND. CODE § 21-18-9-5 (2009); MINN. STAT. § 136F.30 (2003); UTAH CODE ANN. § 53B-6-101 (2009); ALA. ADMIN. CODE r. 300-1-1-.01(3)(c)(2) (2001).

178. *See, e.g.*, ALA. ADMIN. CODE r. 300-1-1-.01 (2001) (describing in detail the goals and responsibilities of the Alabama Commission on Higher Education). A challenge of this approach is whether both public and private institutions fall within the statutory requirements.

179. The Education Commission of the States (“ECS”) has compiled state profiles on Postsecondary Governance Structures in each state. According to the profiles for each of the six states surveyed for this Memo, the Illinois Board of Higher Education and the Minnesota Higher Education Services Council have licensing authority over private, degree-granting institutions in the state. In Montana, a degree-granting institution must have the Board of Regents’ approval or be accredited by a recognized accreditation agency. Utah, Alabama, and Indiana lack a licensing agency for private, accredited degree-granting institutions. *See* ECS Postsecondary Governance Structures Database – Single State Profiles, [http://www.ecs.org/dbsearches/Map\\_Searches/SRCH\\_DB\\_StateNarrativeProfiles.htm](http://www.ecs.org/dbsearches/Map_Searches/SRCH_DB_StateNarrativeProfiles.htm) (follow individual state hyperlinks to view respective profiles) (last visited Mar. 25, 2010).

180. As an incentive for state cooperation, the federal government could make conditional federal funding available to states that are willing to implement a state

require years to create and promulgate. First, an idea conforming to the NCCUSL project criteria would need to be submitted. The NCCUSL project criteria and the examples of past projects suggest that the Conference would be hesitant to take on qualifications framework legislation because this type of higher education legislation would constitute a new legal area. If the NCCUSL did decide to undertake the project, legal experts on higher education law and other related subjects along with ABA advisors from relevant sections would need to be involved in the extensive research, drafting, and revisions that would follow. Meanwhile, stakeholders would need to obtain the critical support of as many states, individual commissioners, and outside influential parties as early in the process as possible to ensure a smooth promulgation of the final uniform law by the state legislatures. Based upon the experiences of other uniform acts such as the Uniform Trust Code, the entire process from initial consideration and drafting to enactment by the first state legislature would require approximately 10 years.<sup>181</sup>

Arguably, a uniform state framework law would be superior to the option of federal legislation because of its voluntary creation by state NCCUSL commissioners and vertical adoption process requiring individual state buy-in. Yet, even if the NCCUSL took on the project, the process includes no guarantee that *any* state will adopt the uniform law that is created, let alone *all* of the states. As a result of the uncertainty of the adoption of the resulting uniform law in individual states and the intensive and lengthy process the project would entail, the creation and promulgation of a uniform state law—while theoretically possible—is not a realistic means of achieving a common degree framework.

#### D. The Fourth Way: The Federal Approach

Traditionally, with the exception of the five military academies and some institutions that serve Native American populations, the federal government played a background role in American higher education. In the mid-twentieth century, however, the federal government assumed a more direct statutory involvement in regulating higher education as a result of changing social and political circumstances, including vast institutional growth, technology advances, and increasing numbers of students in higher education due in part to civil rights progress.<sup>182</sup> The main objective of federal government involvement in higher education was to establish

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qualifications framework under the congressional spending power. *See infra* Part III.D.2. *See also* White, *supra* note 130, at 2099.

181. Posting of Steven Maimes to The Trust Advisor Blog, <http://thetrustadvisor.com/tag/uniform-trust-code> (Oct. 2, 2009) (noting that the Uniform Trust Code was written in 2000 and that the twenty-first state to adopt the Code is Michigan, whose statute becomes effective Apr. 1, 2010).

182. KAPLIN & LEE, *supra* note 1, at § 1.2.

national spending priorities and to provide funds appropriated through federal statutes.<sup>183</sup> Congressional spending power allows the federal government to place restrictions on the use of federal funds.<sup>184</sup> Through grant-in-aid statutes, such as the Higher Education Act of 1965 that implement preconditions to federal funding allocated under the statute, the federal government took on a much greater role in higher education.

## 1. A Significant Federal Role in Higher Education: The Higher Education Act of 1965

### (a) *Background and Purpose*

The Higher Education Act of 1965 (HEA) remains the most significant piece of legislation authorizing federal higher education spending.<sup>185</sup> The HEA and similar legislation of its time were enacted to address difficulties arising from a dramatic increase in the student population and institutions of higher learning that occurred throughout the 1950s and 1960s.<sup>186</sup> Beginning with the GI Bill of 1944,<sup>187</sup> Congress passed a series of laws allowing returning veterans the financial opportunity to attend college.<sup>188</sup> HEA was the most far-reaching piece of legislation passed during this period because it provided the most expansive financial assistance opportunities for students and institutions.<sup>189</sup>

Congress, in an effort to contain federal control over higher education, continued to defer to existing private accrediting agencies to determine the quality of education provided by institutions for eligibility to receive federal funds.<sup>190</sup> Private accrediting agencies had been performing the quasi-governmental function of monitoring the quality of higher education institutions and programs since the late nineteenth century.<sup>191</sup> In order to ensure that these accrediting agencies were reliable authorities, the

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183. *Id.* at § 13.1.2.

184. *Id.*

185. *Id.* at § 13.4.1.

186. H.R. REP. NO. 89-621, at 2 (1965).

187. Servicemen's Readjustment Act, Pub. L. 78-346, 58 Stat. 284m (1944).

188. Other legislation that followed including the National Defense Education Act of 1958, the Higher Education Facilities Act of 1963, the Health Professions Educational Assistance Act of 1963, and the Nurse Training Act of 1964, also assigned the federal government a new, direct role in providing access to higher education for certain groups of students. See Matthew W. Finkin, *The Unfolding Tendency in the Federal Relationship to Private Accreditation in Higher Education*, 57 LAW & CONTEMP. PROBS. 89, 97 (1994). See also KAPLIN & LEE, *supra* note 1, at § 13.4.1.

189. Kerry A. Ryan, *Access Assured: Restoring Progressivity in the Tax and Spending Programs for Higher Education*, 38 SETON HALL L. REV. 1, 6 (2008). See also KAPLIN & LEE, *supra* note 1, at § 13.4.1.

190. Jeffrey C. Martin, *Recent Developments Concerning Accrediting Agencies in Postsecondary Education*, 57 LAW & CONTEMP. PROBS 121, 124 (1994).

191. See Finkin, *supra* note 188, at 90–91.



Commissioner of Education (now the Secretary) was charged for the first time with officially recognizing agencies in the Veteran's Readjustment Assistance Act of 1952, in an attempt to correct alleged abuses of veteran's educational benefits through more stringent federal oversight.<sup>192</sup>

The report accompanying the original HEA states that “[i]nadequate library resources, a lack of qualified teachers, packed classrooms, and insufficient scholarship funds characterize many of the Nation's colleges and universities. . . . It is the purpose of the Higher Education Act of 1965 to overcome, or at least to ameliorate, some of these problems.”<sup>193</sup> The most significant provisions of the HEA, which address student assistance, were intended to allow low-income individuals access to higher education by helping to offset the continually rising “college cost spiral.”<sup>194</sup> Congress also sought to educate greater numbers of skilled American workers to allow U.S. economic development to keep pace with other nations.<sup>195</sup>

Failure to become accredited by an agency recognized by the Secretary, failure to show that it is “making reasonable progress toward accreditation,” or the withdrawal of accreditation by such an agency, automatically renders an institution of higher education ineligible for participation in HEA programs.<sup>196</sup> Federal recognition is “considered essential or at least desirable by most agencies.”<sup>197</sup> The effect of accreditation on a college or university is recognized by the courts. In September 2009 a federal judge sitting in Atlanta granted a temporary injunction to the Paul Quinn College against the Southern Association of Colleges and Schools (SACS) to restrain SACS from revoking the College's accreditation (and thus access to federal funding).<sup>198</sup>

As the HEA demonstrates, the federal government exercises its spending power authority over higher education to establish accrediting agency recognition and other institutional eligibility prerequisites to receiving federal student assistance or institutional aid.

#### *(b) Relevant Amendments and Ongoing Concerns*

Since 1965, the HEA has been comprehensively amended and reauthorized eight times, most recently in 2008.<sup>199</sup> Enduring concerns over

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192. *See id.* at 94–95.

193. H.R. REP. NO. 89-621, at 2 (1965).

194. *See id.* at 20.

195. *See id.*

196. *Id.* at 42.

197. Martin, *supra* note 190, at 124.

198. Paul Quinn Coll. v. S. Ass'n of Colls. and Schs. Comm'n on Colls., Inc., No. 1-09-CV-2327 (N.D. Ga. Aug. 26, 2009) (granting the school's motion for preliminary injunction), available at <http://www.pqc.edu/PaulQuinnreinstatement.pdf>.

199. *See* The Higher Education Amendments of 1968, Pub. L. No. 90-575, 82 Stat. 1014; The Higher Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235;

how best to regulate institutional and programmatic quality have appeared repeatedly throughout recent amendment debates.

Since 1992, an ongoing debate has played out about the proper role of accrediting agencies in determining the quality of higher education institutions and programs. While the 1998 amendments did not significantly alter the role of accrediting agencies or the recognition criteria, statements made in a hearing before the House Subcommittee on Postsecondary Education, Training, and Life-Long Learning offer insight into some of the major issues under deliberation. Jeffrey Wallin from the American Academy for Liberal Education commented upon the difficulty of determining what constitutes “quality” in an education:

[O]ne of the difficulties here is when you look at a college and say, well, let’s see if it is a good college, how many students go to graduate school or how many get good jobs, [these questions are] very relevant on one hand; on the other hand, that has an awful lot to do with the students that get there in the first place. I mean, Princeton may be a great place, but even if it is not, it is still a good place to send your child, because they are going to do pretty well afterwards . . . . If you get beneath that, if you are trying to find out what the value added [in the education] is, what are the students learning or not learning, I don’t think there is an easy way . . . . But you have to have standards that you can measure. If you are going to talk about students’ writing, well, we have got to decide what that really means. If you want to talk about them being statistically literate, we have to decide what that means and do it within the context of maintaining the universities’ institutions and their perspectives.<sup>200</sup>

The concern with whether or not the accreditation process can accurately verify institutional quality continued through the 2008 reauthorization debate.

The 2008 reauthorization amendments—known as the Higher Education Opportunity Act (HEOA)—modified the program integrity provisions in Part H. First, the Act requires accrediting agencies to respect the missions

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The Higher Education Amendments of 1976, Pub. L. No. 94-482, 90 Stat. 2081; The Higher Education Amendments of 1980, Pub. L. No. 96-374 94 Stat. 1367; The Higher Education Amendments of 1986, Pub. L. No. 99-498, 100 Stat. 1268; The Higher Education Amendments of 1992, Pub. L. No. 102-325 106 Stat. 448; The Higher Education Amendments of 1998, Pub. L. 105-244, 112 Stat. 158; The Higher Education Amendments of 2008, Pub. L. No. 110-315, 122 Stat. 3078.

200. *H.R. 6, The Higher Education Amendments of 1998, System Modernization Efforts at the Department of Education and Accreditation: Hearing Before the Subcomm. on Postsecondary Educ., Training and Life-long Learning of the H. Comm. on Educ. and the Workforce*, 105th Cong. 48 (1997) (statement of Dr. Jeffrey D. Wallin, President, American Academy for Liberal Education).

of educational institutions, including religious missions.<sup>201</sup> Second, it changed the existing accreditation due process standards by requiring agencies to have written accreditation standards and a conflicts of interest policy.<sup>202</sup> The Act also adds distance education oversight responsibilities, requirements to evaluate program growth and teach-out plans, credit transfer policies, and public disclosure requirements.<sup>203</sup> While the HEOA imposes additional requirements upon accrediting agencies, it also explicitly limits the Secretary's authority over these agencies.<sup>204</sup> The HEOA makes clear that the Secretary cannot establish criteria that specify the standards accrediting agencies must use to evaluate institutions.<sup>205</sup>

The 2008 Part H amendments are an attempt to focus the accreditation process upon the *quality* of education. Yet, since the amendments do not address the standards the agencies use to assess institutional quality and, in fact, expressly prohibit the Secretary from reviewing or directing the standards, the question of how to ensure that the accrediting process accurately measures educational quality persists. The ongoing concern over how to appropriately measure institutional or programmatic quality that permeated recent HEA reauthorization debates demonstrates that some stakeholders believe that the existing system is ripe for reform. Qualifications frameworks are an accountability measure that would address quality through prescribing standard, communally-determined student learning outcomes to be achieved by students at each degree level in general and within specific disciplines, regardless of the institution.

## 2. Spending Clause Authority

Under the congressional spending power stemming from Article I, Section 8 of the Constitution,<sup>206</sup> Congress could amend the eligibility requirements that serve as prerequisites to federal, state, institutional, and student aid under the HEA to require states and public institutions to demonstrate that they are involved in a collaborative national process of developing student learning outcomes for each degree level prior to

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201. DAVID P. SMOLE ET AL., CONGRESSIONAL RESEARCH SERVICE, THE HIGHER EDUCATION OPPORTUNITY ACT: REAUTHORIZATION OF THE HIGHER EDUCATION ACT 34 (Sept. 8, 2008), *available at* [http://assets.opencrs.com/rpts/RL34654\\_20080908.pdf](http://assets.opencrs.com/rpts/RL34654_20080908.pdf).

202. *Id.*

203. *Id.*

204. *See id.*

205. *Id.*

206. The language of the spending clause reads: “[t]he Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.” U.S. CONST. art. I, § 8, cl. 1. Most commentators turn to the phrase “provide for . . . [the] general welfare” as the constitutional basis for the power to spend. *But see* David E. Engdahl, *The Basis of the Spending Power*, 18 SEATTLE U. L. REV. 215, 216 (1995) (arguing that this emphasis is misplaced, and that Congress’s power to spend is authorized by the Necessary and Proper Clause and the “Property Clause” of Art. IV).

becoming eligible for federal aid.<sup>207</sup>

The Supreme Court's modern treatment of spending power challenges makes clear that as long as a statute does not violate a specific constitutional limit on federal power, the Court will defer to congressional judgments on spending power legislation.<sup>208</sup> In *South Dakota v. Dole*, the Court put forth a four-part test that persists as the modern framework of analysis for determining the validity of a federal spending power law.<sup>209</sup> Currently, it is this *Dole* test that is used to analyze the constitutionality of an HEA amendment placing further federal funding prerequisites upon states or institutions.<sup>210</sup>

The first *Dole* factor requires that the spending power must be used for the general welfare and the Court will not second-guess a congressional decision on this question.<sup>211</sup> Under this lenient general welfare standard, Congress could easily justify initiating national higher education reform intended to increase access to higher education, make the system more transparent and accountable, and foster U.S. competitiveness in higher education, among other readily available policy justifications.

The second *Dole* factor requires that the conditions placed upon the receipt of federal money be unambiguous in the statute, so that a recipient can make an informed choice of whether or not to accept a federal grant.<sup>212</sup> This factor could also be met through clear statutory language.

Third, the *Dole* test states that the conditions placed upon the federal funds must be reasonably related to the purpose for which the grant is offered.<sup>213</sup> The third factor may be trickier to satisfy, but with purposeful language placed throughout legislative consideration of an HEA amendment, Congress should be able to demonstrate that the development of common degree frameworks would have a wide-ranging positive impact on higher education.<sup>214</sup> Federal funds are issued for a variety of purposes,

207. The provisions listing conditions to the receipt of different types of federal aid are codified in various sections of Title 20, Chapter 28 of the United States Code.

208. See *Lawrence v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 269–70 (1985) (stating that “[i]t is far from a novel proposition that pursuant to its powers under the Spending Clause, Congress may impose conditions on the receipt of federal funds, absent some independent constitutional bar”).

209. 483 U.S. 203, 207–08 (1987).

210. The *Dole* test has been applied in numerous subsequent Supreme Court and lower federal court decisions examining the limits of the federal spending power. See, e.g., *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006); *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 654 (1999) (Kennedy, J., dissenting); *New York v. United States*, 505 U.S. 144, 167–72 (1992); *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 279–81 (5th Cir. 2005).

211. *Dole*, 483 U.S. at 207.

212. *Id.*

213. *Id.*

214. In *Dole*, the Supreme Court suggested that Congress is not required to provide specific findings on the relatedness of the condition to the federal funding at issue, but only that the condition can be found to be “reasonably calculated” to serve the stated

and are intended to enhance access and quality in higher education share the same purpose as a common degree framework.

Finally, a statute will be invalidated under *Dole* if the conditions imposed violate an “independent constitutional bar.”<sup>215</sup> The Court defined “independent constitutional bar” to mean that Congress could not place restrictions on the receipt of federal funds that would “induce the States to engage in activities that would themselves be unconstitutional.”<sup>216</sup> It would be difficult for a challenger to argue that the development of a common degree framework by states and institutions was unconstitutional since higher education has traditionally operated under the direction of state and local government with significant institutional autonomy. For the reasons analyzed above, amendment of the HEA to condition federal funding upon the development of qualifications frameworks falls within the modern judicially-defined limits of the federal spending power.

### 3. Commerce Clause Authority

Federal legislation to encourage the development of a common degree framework could also be justified under the federal commerce power. Not only are students persons who move in interstate commerce as they transfer among institutions in different states, but the substantial commercial activity surrounding higher education would justify federal legislation under the commerce power.

Like the spending power, the commerce power is found in Article I, Section 8 of the Constitution.<sup>217</sup> Since Article I, Section 10 of the Constitution specifically prohibits states from restricting imports and exports and engaging in other activities pertaining to trade or foreign

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purpose. *See id.* at 208. The Supreme Court has not offered further guidance on the requirements of the third *Dole* factor, and in several cases that apply the test, a court seems to take for granted that conditions placed upon federal funding are reasonably related to the purpose behind the funding, without much discussion or guidance. *See, e.g., New York*, 505 U.S. at 167 (listing the third factor of the test and providing several examples of instances where the Court has upheld federal spending power statutes without applying the factor to the facts at hand). Yet, the Third Circuit does provide some guidance, interpreting the third *Dole* factor to require a “discernible relationship” between the funding condition and the congressional purpose behind the funding program. *See Koslow v. Pennsylvania*, 302 F.3d 161, 175 (3d Cir. 2002). The *Koslow* Court found that a clearly expressed congressional interest that was in some way directly furthered by the funding condition would suffice. *Id.*

215. *Dole*, 483 U.S. at 208. This aspect of the decision has been called into doubt by commentators who question allowing Congress to circumvent any restrictions on its regulatory power through an unlimited spending power ability to regulate state activity. *See also* Lynn A. Baker, *Conditional Federal Spending After Lopez*, 95 COLUM. L. REV. 1911, 1933 (1995).

216. *Dole*, 483 U.S. at 210.

217. U.S. CONST. art. I, § 8, cl. 3 (stating Congress shall have the power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”).

relations, states seem to lack a reserved power in these areas.<sup>218</sup> Thus, the Supreme Court has sometimes invalidated state legislation that seemingly regulates interstate commerce even if the issue has not been preempted by federal legislation—a judicially implied federal power known as the “dormant commerce clause.”<sup>219</sup> Other constitutional provisions have been found to limit the commerce power in past challenges, such as Tenth Amendment state autonomy principles.<sup>220</sup> These and other limitations on federal authority would undoubtedly be raised by those opposed to a new federal bill on higher education.<sup>221</sup> Yet, the Supreme Court’s current doctrine rejects these broad claims of state and local immunity from federal commerce power legislation.<sup>222</sup> Due to the explicit power laid out in the Constitution, the dormant power that has often checked state efforts to pass regulation affecting interstate commerce, and the Court’s unwillingness to entertain alternative constitutional defenses to federal legislative intervention under the commerce clause, the modern federal commerce power is a far-reaching authority.

*United States v. Lopez* sets forth the clearest modern framework for analysis of commerce power legislation.<sup>223</sup> As a preliminary matter, *Lopez* suggests the regulated activity must be economic or commercial in nature, or part of a broader class of activity that will have a cumulative and substantial impact on interstate commerce.<sup>224</sup> Congress is then free to regulate three types of economic or commercial activity so long as there is a rational basis for the regulation: “channels” of interstate commerce, such as highways or other modes of access to interstate mobility; “instrumentalities” of interstate commerce, or persons or objects affecting interstate commerce; and activities that “substantially affect” interstate commerce.<sup>225</sup>

Congress should be able to employ its expansive commerce power to

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218. JOHN E. NOWAK & RONALD D. ROTUNDA, PRINCIPLES OF CONSTITUTIONAL LAW 74 (3d ed. 2007).

219. *Id.* at 160.

220. *See, e.g.*, *New York v. United States*, 505 U.S. 144 (1992); *Nat’l League of Cities v. Usery*, 426 U.S. 833 (1976); *Coyle v. Oklahoma*, 221 U.S. 559 (1911).

221. For examples of challenges to intervention with state and institutional autonomy, see *Printz v. United States*, 521 U.S. 898, 935 (1997) (explaining that when state sovereignty prevents the implementation of a federal regulatory scheme: “The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a Federal regulatory program.”); *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring) (delineating “the four essential freedoms” of a college or university, including who may teach, what may be taught, how it shall be taught, and who may be admitted to the college or university).

222. *See generally* *United States v. Lopez*, 514 U.S. 549 (1995).

223. *See id.*

224. *Id.* at 560–61.

225. *Id.* at 558–59.

regulate higher education under the *Lopez* framework. Under the first *Lopez* consideration, higher education is readily classifiable as economic or commercial.<sup>226</sup> Students are consumers of higher education, paying tuition in exchange for access to courses and other resources that will allow them to obtain a degree. Additionally, higher education institutions engage *directly* in interstate commerce through numerous activities such as out-of-state purchases, recruitment of students and faculty, and the manufacture of their “products”—the students they educate and release into the market.

Next, higher education activities fall under the “substantially affect” prong of the three types of allowable regulation.<sup>227</sup> As discussed previously, higher education inherently involves substantial economic and commercial activities that broadly impact the national economy.<sup>228</sup> Additionally, Supreme Court case law indicates that the movement of persons between states may be regulated as a class of activities that “substantially affect” interstate commerce.<sup>229</sup> Most higher education institutions cater to out-of-state students, faculty, and regular visitors to campus who participate in or reap the benefits of the institution, and activities that affect this movement may justifiably be subject to federal regulation. Thus, the *Lopez* framework indicates that Congress should have no difficulty identifying a rational basis for regulating higher education activity under the commerce clause authority.

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226. In fact, the *Lopez* court found that the “business” of elementary, middle, and high schools classifies as economic or commercial activity. *See id.* at 552. Courts have found that a diverse array of activity classifies as economic or commercial. *See, e.g.,* *Hodel v. Virginia Surface Mining and Reclamation Ass’n*, 452 U.S. 264 (1981) (intrastate coal mining); *Perez v. United States*, 402 U.S. 146 (1971) (intrastate extortionate credit transactions); *Wickard v. Filburn*, 317 U.S. 111 (1942) (consumption of homegrown wheat); *United States v. Bongiorno*, 106 F.3d 1027 (1st Cir. 1997) (payment of child support).

227. For examples of activities that courts have found “substantially affect” interstate commerce, see *Gonzales v. Raich*, 545 U.S. 1 (2005) (home-grown marijuana); *United States v. Jeronimo-Bautista*, 425 F.3d 1266 (10th Cir. 2005) (local production of child pornography); *United States v. Gregg*, 226 F.3d 253 (3d Cir. 2000) (interfering with the operation of reproductive health clinics).

228. *See* Irena Macerinskiene & Birute Vaiksnoraitė, *The Role of Higher Education to Economic Development*, MANAGEMENT 2006 VOL. 2 (11) 82, 83, 88–89, available at [http://www.leidykla.eu/fileadmin/Vadyba/11/Irena\\_Macerinskiene\\_Birute\\_Vaiksnoraitė.pdf](http://www.leidykla.eu/fileadmin/Vadyba/11/Irena_Macerinskiene_Birute_Vaiksnoraitė.pdf) (arguing that “[a] competitive economy can only be based on a well-educated population” and citing studies showing that education has a significant impact on the availability of higher education).

229. An earlier line of cases addressing challenges to civil rights legislation suggested that racial discrimination in places such as restaurants and hotels substantially affected interstate commerce by inhibiting the free movement of persons among states. *See Katzenbach v. McClung*, 379 U.S. 294 (1964) (holding that Congress could find racial discrimination in restaurants that received a large amount of food served from out of state had a “direct and adverse effect” on interstate commerce); *Heart of Atlanta Hotel, Inc. v. United States*, 379 U.S. 241 (1964) (holding the public accommodations provisions of the Civil Rights Act of 1964 to be valid under the Commerce Clause).

As discussed above, a common degree framework initiated through federal commerce power legislation could be achieved constitutionally. Furthermore, such legislation would promote the flow of interstate commerce in the United States. Inherent degree value created through universally-defined and understood student learning outcomes at each degree level has vast national economic development implications stemming from the expanded mobility opportunities that would result. Therefore, new federal legislation passed through the commerce power would offer an alternative to amending the HEA in order to implement a common degree framework.<sup>230</sup>

#### 4. The Role of Accrediting Associations in a Federal Approach

Under either an HEA amendment or freestanding federal legislation initiating a common degree framework, the accrediting agencies would function to assist and monitor the development of frameworks by institutions. The accrediting agencies might voluntarily amend their institutional review standards to align with the new condition placed upon federal higher education funding. However, in order to solidify the role of the accrediting agencies in the process, the Department of Education might need modestly expanded statutory authorization to direct accrediting agency activity.

As discussed previously, the Secretary of Education, as the chief federal officer presiding over higher education, recognizes accrediting agencies to ensure that they are fit to determine the quality of institutions and programs for purposes of federal programs under the HEA and elsewhere. Yet, the Secretary's existing statutory authority does not permit him or her to specify, define, or prescribe "the standards that accrediting agencies or associations shall use to assess any institution's success with respect to student achievement."<sup>231</sup> In order to facilitate the establishment of a common degree framework, the statutory recognition criteria codified in the Code of Federal Regulations would need to allow the Secretary of Education to have some control over the substance of the accrediting agencies' review standards.<sup>232</sup> With this authorization, the Secretary could advise accrediting agencies to look for the development of student learning outcomes in their reviews of institutions. The accrediting agencies would then reform their review standards to mandate the development of institutional frameworks aligning with a common degree framework.

A new federal legislative attempt to further regulate state education

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230. The political opposition such a bill would face renders its likelihood of passage very slim, as challengers would likely characterize the legislation as dramatic federal over-reaching in an area which has traditionally been relatively autonomous.

231. 20 U.S.C. § 1099b(g) (2008).

232. The criteria and procedures for accrediting agency recognition are listed at 34 C.F.R. § 602 (2009).



systems or individual institutions might be challenged as a subversion of state supremacy over higher education in violation of the Tenth Amendment, state sovereignty principles, and the institutional right to academic freedom.<sup>233</sup> In order to achieve a common degree framework through federal legislation, the authority for such legislation would need to preempt state and local power in the realm of higher education based on an explicit federal constitutional power, such as the spending power or the commerce power.<sup>234</sup> A common degree framework could legally be initiated by federal legislation through either the constitutional spending or commerce powers, but the collaborative, voluntary, and inclusive alternative initiated from within higher education previously described in Section B would be more attractive to most higher education stakeholders.

## V. CONCLUSION

American higher education is faced with many challenges. The system that has effectively educated millions and has advanced unparalleled innovation is now confronted with the need to dramatically increase the number of citizens with high-quality degrees. This challenge comes at a time when many students approach higher education inadequately prepared for its rigors. Meeting the challenge of increased degree attainment given the complexity of the system and the escalating costs of higher education will require creative thinking.

The United States is not the only country needing to increase higher education attainment levels, nor is it the only country looking at ways to improve and reform its higher education system. The Bologna Process is transforming higher education in Europe and beyond. This process provides the United States with an opportunity to learn from an effort to transform higher education and to use that information to reform our system to meet the needs of today's citizens.

To increase degree attainment and maintain quality, American higher education needs to develop a common degree framework that makes explicit what a student knows, understands, and is able to do at each degree level. It is important that the framework be national and transparent as to the mastery that is represented by each degree level. The United States

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233. See, e.g., *Printz v. United States*, 521 U.S. 898, 935 (1997) (explaining that when state sovereignty prevents the implementation of a federal regulatory scheme: "The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a Federal regulatory program."); *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring) (delineating "the four essential freedoms" of a college or university, including who may teach, what may be taught, how it shall be taught, and who may be admitted to the college or university).

234. See *supra* Parts IV.D.1–3 (discussing enumerated federal constitutional powers).

needs to compete globally, and in order to do so effectively, it must prove that students—regardless of state or institution—will obtain a quality degree that employers will value. This framework will shift the focus from what is *taught* to what is *learned* and provides a mechanism for higher education to demonstrate to stakeholders—students, parents, employers, and policymakers—the value added of a degree. As new providers and programs surface to meet the increase in demand, stakeholders will be assured of the quality of these degrees. A common degree framework will ensure that all degrees represent actual learning.

American higher education has developed with little federal intervention, and this decentralized system has served the country and its citizens well. However, a need currently exists to change the status quo to significantly improve attainment levels and educational quality on a national scale. Development and implementation of a common degree framework is central to beginning a quality assurance effort, and a variety of ways exist in which that framework can be developed. In keeping with the current decentralized system, the most practical approach is for development to be voluntary. Under this voluntary approach, key leaders and stakeholders would develop the common degree framework and accreditors would build new quality assurance processes based on the framework. However, other implementation avenues exist should the voluntary approach prove unsuccessful. Higher education leaders might potentially look towards the states to develop uniform laws. Unfortunately, this process is long and has the potential to yield uncertain results. Ultimately if the voluntary approach fails, the federal government has the ability to enact legislation creating a common degree framework through either the Spending clause or the Commerce Clause.

The development of a common degree framework will not result in a standardization or homogenization of American higher education. Each institution and each program will retain total autonomy. However, a common degree framework *will* establish an agreed-upon core of learning principles for each degree awarded at a particular level and will provide a clear mechanism for defining quality. Further, the framework will allow for the creation of an innovative system that expands on work currently in progress, allowing students to accumulate learning from various education providers while continuing to pursue a high-quality degree.

American higher education has before it an invaluable opportunity—an opportunity to learn from what has been transforming higher education in other countries and to construct a system that will make possible the higher education system that is needed to sustain the United States in the future and allow it to thrive in a globally competitive society.

## APPENDIX A:

The effort to transform European higher education has been significant. Key milestones along the way to the development of the Bologna Process include:

*The Lisbon Recognition Convention, 1997.*<sup>1</sup> Twenty-nine countries agreed to a set of principles for mutual recognition of educational credentials from grade school to graduate school. This agreement is the only *legal* agreement that is part of the Bologna Process. The Convention was developed by the Council of Europe and UNESCO to facilitate mobility for persons and the recognition of their educational qualifications. The Convention agreed to use of the Diploma Supplement as the document that provides the specificity on what a degree represents—not just a listing of courses and grades. The Diploma Supplement is the main vehicle for recognition of educational credentials, as it has a standardized format and contains pertinent factual information. The United States signed the Convention Agreement on November 14, 1997, but has not ratified it. To date the Diploma Supplement is not used by U.S. institutions. This is the only legal instrument of the Bologna Process.

*The Sorbonne Declaration, 1998.*<sup>2</sup> Education ministers of France, Germany, Italy, and the United Kingdom agreed to design and lead a broad and cooperative reconstruction of basic terms of higher education to create a common European degree structure, to remove barriers to cross-border mobility, and to allow students to take advantage of the potential of the university systems throughout Europe. This meeting was the precursor to the creation of the Bologna Process.

*The Bologna Declaration, 1999.*<sup>3</sup> The education ministers from twenty-nine countries agreed to a process that would bring their higher education systems more transparency as to degree cycles, quality assurance practices,

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1. For the text of this convention and for a list of the countries and ratification dates, see Convention on the Recognition of Qualifications concerning Higher Education in the European Region, <http://conventions.coe.int/Treaty/en/Treaties/Html/165.htm> (last visited Apr. 1, 2010) and Chart of Signatures and Ratifications, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM=1&DF=26/01/2010&CL=ENG> (last visited Apr. 1, 2010). See also European Higher Education Area, Participating Countries and Organisations, <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/pcao/> (last visited Apr. 1, 2010).

2. Sorbonne Joint Declaration, Joint Declaration on Harmonisation of the Architecture of the European Higher Education System, [http://www.bologna-bergen2005.no/Docs/00-Main\\_doc/980525SORBONNE\\_DECLARATION.PDF](http://www.bologna-bergen2005.no/Docs/00-Main_doc/980525SORBONNE_DECLARATION.PDF) (last visited Apr. 1, 2010) [hereinafter Sorbonne Declaration].

3. The Bologna Declaration of 19 June 1999, Joint Declaration of the European Ministers of Education, [http://www.bologna-bergen2005.no/Docs/00-Main\\_doc/990719BOLOGNA\\_DECLARATION.PDF](http://www.bologna-bergen2005.no/Docs/00-Main_doc/990719BOLOGNA_DECLARATION.PDF) (last visited Apr. 1, 2010) [hereinafter Bologna Declaration].

and credit mechanisms so that students could move effortlessly throughout Europe. The goal was to create the European Higher Education Area, which would be attractive to students from all over the globe. The ministers planned for the Process to be fully implemented by 2010. However, it is for each signatory state to determine how it will implement the agreed action lines specified by the bi-annual ministerial conferences and the resulting communiqué (see Prague later). There is no over-arching legal authority; it has been said to be a “name and shame” approach through the use of self evaluation National Reports and the “Stocktaking” reports.

*The Lisbon Strategy, 2000.*<sup>4</sup> While not a part of the Bologna Process, the Lisbon Strategy is relevant to the higher education transformations occurring throughout Europe. The Strategy acknowledges that Europe will not be a world manufacturing leader, but instead must, to compete, be the most dynamic knowledge-based economy in the world. Higher education is critical to meeting this goal of truly becoming a knowledge-based economy.

*Prague, 2001.*<sup>5</sup> Beginning with this 2001 meeting in Prague, “communiqués” were published. At this meeting lifelong learning was added as a significant policy theme, and students were added to committees to allow them to actively participate in the Process.

*Berlin, 2003.*<sup>6</sup> The Berlin Communiqué established the qualifications frameworks at the national level and for the European Higher Education Area (EHEA) as core tools for the Process, and agreement was reached on the general construct of the European framework. A clear three-cycle degree structure—bachelor’s, master’s, and doctorate—was outlined. This links Bologna and the Lisbon Agenda as well as connects higher education to the European Union’s European Research Area that was launched in 2001.

*Bergen, 2005.*<sup>7</sup> This meeting added focus to the development and recognition of joint degrees and established as a priority the assessment and recognition of prior learning. Also, an additional policy strand was

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4. European Trade Union Confederation (ETUC), The European Union’s Lisbon Strategy, <http://www.etuc.org/a/652> (last visited Apr. 1, 2010).

5. Towards the European Higher Education Area, Communiqué of the meeting of European Ministers in charge of Higher Education (May 19, 2010), [http://www.bologna-bergen2005.no/Docs/00-Main\\_doc/010519PRAGUE\\_COMMUNIQUE.PDF](http://www.bologna-bergen2005.no/Docs/00-Main_doc/010519PRAGUE_COMMUNIQUE.PDF) (last visited Apr. 1, 2010).

6. Realising the European Higher Education Area, Communiqué of the Conference of Ministers responsible for Higher Education (Sept. 19, 2003), [http://www.bologna-bergen2005.no/Docs/00\\_Main\\_doc/030919Berlin\\_Communique.PDF](http://www.bologna-bergen2005.no/Docs/00_Main_doc/030919Berlin_Communique.PDF) (last visited Apr. 1, 2010).

7. The European Higher Education Area—Achieving the Goals, Communiqué of the Conference of European Ministers Responsible for Higher Education (May 19-20, 2005), [http://www.bologna-bergen2005.no/Docs/00-Main\\_doc/050520\\_Bergen\\_Communique.pdf](http://www.bologna-bergen2005.no/Docs/00-Main_doc/050520_Bergen_Communique.pdf) (last visited Apr. 1, 2010).

added—the “social dimension”—attracting disadvantaged students to higher education. Each country has its own definition of “disadvantaged student,” with the most common characteristics being geographically isolated students, students with disabilities, students from the working class, and immigrant students.

*London, 2007.*<sup>8</sup> The ministers agreed to enhance accreditation and quality assurance by supporting establishment of a register of quality assurance agencies.

*Leuven, 2009.*<sup>9</sup> The ministers agreed that there had been significant achievements in the areas of the three degree cycles, quality issues, qualification frameworks, and credits. In the immediate future, they agree that continued progress needs to be made in striving for excellence, the social dimension (access and widening participation), lifelong learning, and ensuring a student-centric approach. The importance of recognizing the student at the heart of higher education is a crucial facet of Bologna.

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8. European Higher Education in a Global Setting: A Strategy for the External Dimension of the Bologna Process, <http://www.ond.vlaanderen.be/Hogeronderwijs/bologna/documents/WGR2007/Strategy-for-EHEA-in-global-setting.pdf> (last visited Apr. 1, 2010).

9. The Bologna Process 2020—The European Higher Education Area in the new decade, Communiqué of the Conference of European Ministers Responsible for Higher Education (Apr. 28-29, 2009), [http://www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/documents/Leuven\\_Louvain-la-Neuve\\_Communique\\_April\\_2009.pdf](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/documents/Leuven_Louvain-la-Neuve_Communique_April_2009.pdf) (last visited Apr. 1, 2010).