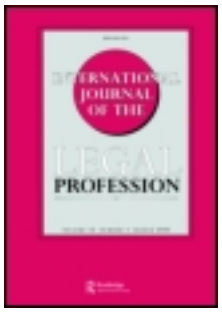

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American legal education: yesterday and today

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Introduction[1]

American legal education has never had a greater influence on the world scene than it has today. In large part this is due to economic and cultural globalisation, accelerated by the fall of the Berlin wall in 1989, and the evident success of American-style law firms worldwide in creating global companies as well as facilitating transnational exchange and dispute resolution. The September 2001 terrorist attack on the United States scarcely slowed this process. American influence primarily occurs in two ways: (1) by training, each year, thousands of foreign lawyers in American law schools, most of whom return to their home countries; and (2) by foreign emulation of important aspects of American legal education.

First, United States law schools have a large number of diverse LL.M. programmes and study abroad and foreign cooperative programmes that encourage American law students to travel overseas and foreigners to study in America. Thus, there are 33 LL.M. programmes designed specifically for foreign lawyers and another 178 LL.M. programmes open to foreigners ranging from specialisation in subjects such as admiralty or taxation to general advanced legal studies.[2] In addition, there are 34 American Bar Association (ABA)-approved cooperative programmes with foreign universities, nine semester abroad programmes organised on the US model, and 146 summer programmes outside the United States in 43 different countries.[3]

Second, American-style law schools are appearing in Europe, Latin America, and Asia. The private Bucerius Law School in Hamburg, Germany, created in 2000, is an example. Its students earn an LL.B. after attending small classes for ten trimesters. The third year class is required to study abroad for a trimester, while foreign law students arrive in Hamburg to take classes taught in English at the Program in International and Comparative Business Law.[4] Tulane Law School and the Instituto Technológico y de Estudios Superiores de Monterrey in Mexico have

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an agreement to train 25 Mexican law professors, who will earn a Tulane Ph.D. in law and absorb American methods of legal education.[5] The Japanese Ministry of Education has plans to open new graduate level professional law schools, modelled in part on the American experience, in 2004.[6]

The history of American legal education until the mid-twentieth century was one of influence from foreign approaches, beginning with the English apprenticeship model during the colonial period. It was always necessary, however, to adjust foreign methods to the American environment and its practicalities. Lacking a system of inns of court, a few educators believed that the prestige of law training could be increased if it were taught as a science, which led to the period of influence by German university legal education. America's turn to export its variant of graduate-level university law study was initially successful only in Canada, where law schools have had a close connection to the Association of American Law Schools. In the 1970s, elements of American legal education were copied in a few German reform law schools, until the national legislature ended that experiment in the 1990s.

To better understand the current wave of interest in American law schools abroad, this essay collects empirical information about United States law schools and presents it in the context of the historical development of American legal education. In particular, I discuss the issues of diversity as they relate to women and ethnic minorities, curricular innovation, and developments in instruction methods and student activities. To illustrate changes that are occurring: a foreign reader might easily accept the fact that American legal education has reached a parity in the enrolment of women and men students, but would find it surprising that Asian Americans will probably outnumber African-Americans by 2005 in law school student bodies.

A brief history

Prior to 1865 the intellectual origins of American legal training were predominantly English. Most attorneys in the nineteenth century learned law through the English apprenticeship approach. William Blackstone (1723–1780) had established a place for student and practitioner use of legal treatises with his four-volume *Commentaries on the Laws of England*, which was widely used in American editions and emulated in commentaries on American law. Henry St. George Tucker (1780–1848), a professor at William and Mary College, for instance, published an edition of Blackstone's *Commentaries* in 1803 with copious notes adapting it to American usage. James Kent (1763–1847), professor at Columbia and chancellor of the New York Court of Chancery, began publishing his four-volume *Commentaries on American Law* in 1826. Joseph Story (1779–1845), United States Supreme Court justice and professor at Harvard, published nine *Commentaries* on various aspects of American law between 1832 and 1845. He frequently cited, in addition to English and American cases, Roman and civil law sources.

The first law schools evolved out of law offices that took in apprentice clerks for a fee. Clerks copied by hand legal documents, conversed with and observed the attorney, and read legal treatises and other law books. A few attorneys preferred

instructing clerks rather than practising law and gained a reputation for teaching. The Litchfield Law School, which operated from 1784 to 1833 and attracted students from several states, or the 20 other law office-type schools patterned on it, clearly show their English parentage. Tapping Reeve (1744–1823), Litchfield's founder, administrated the school like a law practice. Students drafted pleadings and conveyances. This practical education was supplemented with lectures roughly following Blackstone's *Commentaries* and then with periodic examinations.

Two additional currents beyond the English influence were also significant. First, Jacksonian Democracy (1829–1837) belittled the need for formal education, putting fledgling law schools and universities under economic pressure. The judiciary in many states was made subject to popular election; some states abolished or reduced apprenticeship requirements for bar membership. Formal education fell into disrespect. Second, civil law doctrines and methods were trumpeted as a supplement to, if not a substitute for, those of the common law. Some law professors and lecturers preached the civilian virtues of reason and order; they translated European treatises into English and published law journals emphasising civil law themes.

Instruction at Harvard Law School, which opened in 1817, was only slightly more intellectual than instruction at a Litchfield-type law school. Professors used—in addition to lectures—a textbook or recitation method for which students had to memorise assigned portions of textbooks. During recitation sessions, a teacher explained the text and quizzed students to determine how accurately they had memorised their assignments. By 1869 the Law School curriculum had been reduced to 18 months, examinations had been abolished, and less than half the students graduating in law possessed college degrees.

Harvard Law School's rise to prominence is attributable primarily to the appointment of Charles Eliot (1834–1926) as university president in 1869 and Christopher Columbus Langdell (1826–1906) to the newly created post of law school dean in 1870. Of the two men, Eliot was easily the more important. He actively initiated and supported reform throughout the university, especially in the undergraduate science curriculum and in the law and medical schools. Eliot presided over most law school faculty meetings and pushed for the appointment of professors who lacked a background of professional practice. The initial 15 years of Langdell's deanship institutionalised five important changes. Langdell, with the help of Eliot's leadership, established: (1) a law school entrance examination; (2) a 2 year and later a 3 year progressive curriculum, leading to an undergraduate bachelor of laws degree (LL.B.); (3) requisite annual examinations before students could proceed on to the next year's subjects; and (4) the beginnings of a research function at the Law School similar to that existing in German universities. Langdell contended that he was by example trying to put American law faculties on a level with universities in continental Europe.[7]

Langdell's most significant innovation, however, was the introduction of an instructional method utilising Socratic dialogue to discuss appellate court cases. Justified as a scientific process to elaborate general, organic principles of the common law, it supplanted lecturing and recitation based on treatises. Professors and students,

the idea ran, should together work through questions and answers to discover common law principles, aided by classroom research manuals called casebooks.

Legal science promised a complete and orderly system of norms; it offered determinate answers in an increasingly complex world. The American Bar Association (ABA) Committee on Legal Education and Admissions to the Bar accepted this model in 1879. While Germans looked to professors to ascertain the true content of law, Americans could turn to judges, assisted of course by the professorate. This became the *usus modernus americanus*.

Harvard's success in institutionalising legal education within a European university tradition established the model followed almost everywhere in the United States by the first decades of the twentieth century. Legal science brought order, system, and prestige. Apprenticeship was in decline. The Harvard curriculum was founded on certain basic required private law courses from the common law—contracts, real property, and torts—coupled with criminal law, civil procedure, evidence, and equity; these were followed by elective courses. By 1909 Harvard successfully transformed the 3-year study of law into a graduate programme, asserted that secondary school graduates lacked sufficient liberal arts skills, and required a college degree for admission. The professors were hierarchically organised as full time scholars. Even students participated as junior scientists; those with distinction as shown by performance on examinations edited and published notes and comments in the scholarly *Harvard Law Review*, founded in 1877.

The American law school population from 1870 to 1900 grew from 1,650 to 12,500 while the number of law schools increased from 31 to 102. At the turn of the twentieth century three quarters of the schools were affiliated with a college or a university. But there were also 20 night law schools catering to the urban masses and emphasising local law and practice much more than university law schools. Elite lawyers began to worry about standards and the influx of immigrant attorneys trained at the night schools. State bar associations began to tighten up qualifying examinations. The American Bar Association, founded in 1878 to improve the profession, set up the next year the Committee (since 1893 the ABA's first Section) on Legal Education and Admissions to the Bar. The schools themselves in 1900 created the Association of American Law Schools (AALS), which together with the ABA went into the standards and accreditation business. The AALS initially accepted 32 schools as charter members. A school that failed to qualify for either list was at a competitive disadvantage in attracting students.[8]

The 1960s enrolment revolution

Law schools in the late 1960s faced many of the same social changes that precipitated student revolutions and opened up universities in the United States, Germany, France, and elsewhere in the Western world.[9] The agents of change in America were the civil rights movement and student hostility toward the Vietnam War; feminism, consumer rights, and environmentalism added to these in the 1970s. Many young people saw law not only as a bulwark of order, but also as a mechanism to promote needed change in American society.

Table 1. *Law students enrolled in ABA approved schools, by division, 1935–2001*[a]

Year	Total	Full time	Part time	Percent part time
1935	19,834	16,778	3,046	15
1950	41,575	32,918	8,657	21
1960	37,715	27,355	10,360	27
1965	56,510	44,014	12,496	22
1970	78,339	62,376	15,963	20
1975	111,047	90,268	20,779	19
1980	119,501	98,396	21,105	18
1985	118,700	95,640	23,060	19
1990	127,261	106,440	20,821	16
1995	129,397	107,397	22,000	17
2000	125,173	104,791	20,382	16
2001	127,610	106,580	21,030	16

[a]Enrolled in J.D. (and before 1980 LL.B.) degree programmes during the fall semester.

Table 1 details the increase in law student enrolment from the middle of the Great Depression (1935) to the present.

The enormous jump in enrolment occurred during the 15 year period 1960–75, when the number of students in the standard 3 or 4 year degree programme at ABA approved schools grew by 194%. From 1982 (121,791 students), enrolment was flat until 1989 when it began a slow climb that topped at 129,580 students in 1991. The 1990s overall was a decade of enrolment stability tending toward decline, even though ten new ABA schools have now entered the market. A 2,300 student increase in post-J.D. programmes during the 1990s to about 7,500 in 2001 compensated law schools for that decline. First year enrolment in 2001 jumped by 1,552 students, the largest increase since 1988. It is still too soon to tell whether this is due to an economic slowdown and general shortage of job alternatives or to a genuine renewed interest in the law as a career.

Uniformity and diversity

The ABA and the AALS from 1900 until about 1970 brought a substantial degree of uniformity to American law schools by setting national standards and in the case of the ABA by achieving accrediting power. Urban proprietary night law schools either affiliated with a university or went out of business. Legal education finally became a graduate programme everywhere; in 1952 the AALS established 3 years of college education as a prerequisite for law school admission and today virtually all law students hold a bachelor's degree in arts or science. Law schools switched to the J.D. (juris doctor or doctor of jurisprudence) degree to reflect this change.

In 2002 the ABA approved 185 law schools, while 164 of these were members of the stricter AALS. Both organisations have detailed standards for student admission, duration of the J.D. programme, faculty and student body diversity, faculty qualifications and development, law school governance, curriculum, library, physical facilities, and financial resources. Only about 1% of those who become lawyers now

attend a non-ABA school (most of which are located in California), so that there is no longer open access to law study as there was at the turn of the twentieth century. The ABA, however, continues to approve new schools—seven during the 1990s and three more since 2000—even with the stable enrolment pattern of that decade. In part this is to accommodate geographic population redistribution in the United States.

For the past four decades all ABA schools have used selective admission standards to maintain their class size in proportion to their building's capabilities and faculty preferences. Admission decisions are primarily based on an applicant's university accomplishments along with his or her score from the national Law School Admission Test (LSAT). Most schools also consider other factors. These may include ethnic background, which is now prohibited for some states' public law schools as a matter of state law, or is under challenge more generally based on the US Constitution's equal protection clause. Public schools also typically give preference to students applying while resident within their states. Private schools give some preference to alumni recommendations (particularly when backed by a record of donations) or geographic diversity to create a more national student body.[10]

In 1990, 44,104 students enrolled in the first year of a J.D. programme, while 138,865 persons took the LSAT. As the lawyer market became saturated in the 1990s, the number of LSAT takers dropped to 109,030 for the 43,518 first year students enrolled in the class of 2000. The emphasis on exclusivity led to a decline in the proportion of law students who study part time in a 4-year programme from 27% in 1960 to a stable 16% today.[11] All ABA schools for the 1999 academic year budgeted $2.3 billion for expenses, which averages $12.4 million per school or $17,977 per student. The average size school enrols 688 students taught by 32 full time professors and 30 part time teachers.[12]

Beneath the facade of uniformity implicit in a successful effort to raise the nationwide standards for legal education lies a rich diversity unequalled in any other country. The evidence of this diversity flows from several sources. First, America has a large number of *private* university law schools. Virtually all the states have a public university law school, and some larger states such as California, Florida, Illinois, Ohio, and Texas have several. But there is no federal ministry of education (or even state department of education) that sets out the law curriculum, faculty salaries, or research projects. A certain level of diversity is present among public law schools, which parallels the differences among American states. But the greatest diversity stems from the existence and competition of private law schools, which, because state government does not subsidise them, must charge students a higher tuition. In 1999–2000 this tuition averaged $20,700 compared to $7,400 for public law schools (which, however, charge out-of-state residents $14,800). Students will pay this higher cost, even if it is deferred through federal government or private loans (which totalled over $1.6 billion in 1999), only if the educational product or the prestige of the degree they receive is superior to the public alternative.

Second, the historic pattern of law school development established a hierarchy of prestige among law schools that further stimulates competition: for the best students and faculty, for the best library, or for selling points such as the best

environmental law or clinical training programme. Students (and law firms that hire them) learn about the pecking order. The annual law school rankings, created and published by *US News & World Report*, stimulates hypocrisy each year among law school deans who publicly condemn the rankings for their superficiality, but then mail glossy promotional materials to attorneys, judges, and law professors to convince them to answer the *US News* survey with a higher ranking for their school.

American legal education ranges from national schools—such as Harvard, Stanford, and Yale—to regional schools that attract students from several states, to local schools that focus on a constituency largely from one state. Students who plan to enter politics, for instance, often attend the local state law school. Part time divisions, which usually detract from prestige and are located at urban private schools, serve working-class students and those who desire to enter law as a second career. Local schools tend to emphasise the technical aspects of law and the knowledge needed to pass the state bar examination.

Third, beginning in the 1960s, schools experimented with methods of instruction beyond Langdellian appellate case analysis. In addition, curricular developments eroded what was left of a scientific study of law and opened law schools to a cornucopia of electives.

Finally, the composition of the typical student body and faculty changed from essentially a group of white males to represent more closely the diversity of the American population. Table 2 shows the dramatic increase in the number and percentage of women attending law school beginning in the late 1960s. As a proportion of the total J.D. enrolment, women increased from 3.4% in 1960 to almost achieve parity at 49% in 2001. In fact most of the total enrolment growth in law schools since 1970 is accounted for by the admission of women.[13] The affirmative recruitment of ethnic minority students began in the 1970s and their proportion in law schools rose from 6.1% in 1970 to 20.6% in 2001. African Americans, constituting the largest minority presence in law school at 7.4% (in 2001), are

Table 2. *Women and minority law students in ABA approved schools, by type, 1960–2001*[a]

	1960	1970	1980	1990	2000	2001
Women	1,296	6,682	40,834	54,097	60,633	62,476
% of total	3.4	8.5	34.2	42.5	48.4	49.0
Minority		5,520	10,575	17,330	25,753	26,257
% of total		6.1	8.8	13.6	20.6	20.6
Black		3,744	5,506	7,432	9,354	9,412
Mexican American		883	1,690	1,950	2,417	2,334
Puerto Rican[b]		94	442	506	680	689
Other Hispanic		179	882	2,582	4,177	4,411
American Indian		140	415	554	952	990
Asian		480	1,640	4,306	8,173	8,421

[a]Enrolled in J.D. degree programmes during the fall semester. Minority student numbers exclude the Puerto Rican law schools. The 1970 figures for minority students are from 1971.

[b]Excludes Puerto Rican students enrolled in the three ABA schools in Puerto Rico: 1,711 in 1980, 1,511 in 1990, 1,742 in 2000, and 1,821 in 2001.

Table 3. *Law teachers and professional staff in ABA approved schools, by type, 2001*

	Total	Women	Minority
Full time	6,009	1,887	837
Part time	5,803	1,656	504
Deans & Administrators	3,788	2,447	731
Librarians	1,464	960	201

still disproportionately under-enrolled since they comprise 12% of the American population. Asian Americans will probably outnumber blacks as the largest ethnic minority in law schools by 2005, since their presence has almost doubled since 1990.

A similar improvement in the diversity of law teachers and professional staff has occurred, illustrated in Table 3. Of the full time professorate in 2001, 31% are women and 14% are from minority groups. This change, in particular, has altered the discourse about law and legal institutions in America that is shaping law school communities and to some extent the larger legal profession in the twenty-first century.

Although some deans and administrators may teach a course or two, it is striking how pervasive they are in relation to the number of full time teachers. In part this represents the increased complexity of the twenty-first century American law school, with substantial staff for admissions, student support, career services, and fund raising.[14]

Curriculum

Harvard Law School set the curricular pattern for American legal education in the nineteenth century. The goal was to develop students' legal reasoning rather than to learn the law of a particular jurisdiction. Harvard offered only 22 subjects in the 1890s, even after the elective course system was adopted in 1886 to supplement a core of mandatory courses. The core curriculum consisted of contracts, real property, torts, criminal law, civil procedure, evidence, and equity. Public law dominated the significant additions in the 1920s and 1930s: administrative law, labour law, and taxation. Seminars in advanced subjects were by then taught at many schools.

The modern round of curricular reform began in the 1960s when less acquiescent students—concerned about civil rights and more socially relevant courses—flooded into law schools. In the next decades schools whittled back or sometimes thoroughly reformed the core mandatory courses, providing more time in a 3-year programme for electives and seminars. The most successful innovations were in courses using the problem method, legal clinics, and professional skills courses focusing on negotiation, conciliation, drafting, and counselling. Responding to the increased complexity of American law, many law schools created or expanded joint degree and post-J.D. programmes, usually lasting a year and awarding the joint

degree or an LL.M. (master of laws) degree. In 1990 there were 5,172 students in these programmes, which grew to 7,481 in 2001.

Globalisation has fostered curricular change pushed by foreigners, many already lawyers, studying in American law schools, and by Americans studying law abroad. Most of the foreigners enrol in an LL.M. degree programme (and now represent more than half of the total LL.M. enrolment). On the other side, American law students and lawyers do not tend to study in foreign universities, but rather use a summer or semester abroad programme at one of the 76 American law schools now offering these courses in 43 countries. In 1980, in contrast, only 18 schools had such a programme.[15]

The curricula of four law schools are described to illustrate the variety in American legal education. Two of these schools are public (the University of Michigan and Louisiana State University—LSU) and two schools are private (Stanford University and Willamette University). Two have a national reputation for their professors' scholarship and attract students from throughout the country (Michigan and Stanford) and two are regional schools (LSU and Willamette). Table 4 profiles these schools.

All four of the law schools profiled organise the first year students in larger classes for the mandatory curriculum,[16] with the exception of legal research and writing classes and one of the other required courses, which are usually half the size of the normal first year courses. This slight decrease in efficiency was initiated to promote collegiality between faculty and students.

Table 4. *Selected law school profiles, 2000*

	Michigan	Stanford	LSU	Willamette
J.D. Enrolment[a]	1,101	545	650	434
% women	43	46	44	47
% minority	23	32	9	13
% foreign	<1	3	1	1
Full time teachers	75	36	32	22
Annual tuition	$20,956	$27,926	$7,164	$19,080
Nonresident	$26,956	$27,926	$13,005	$19,080
Library				
Volumes	862,000	496,000	582,000	287,000
Current serials	8,700	7,700	2,600	3,300
Curriculum				
First year course size	85	60	85	105
Elective courses	101	114	118	61
Seminars	50	46	12	12
Student enrolment				
Clinics	179	55	0	24
Simulated skills	79	282	709	213
Externs	0	31	0	12
Law journals	361	380	51	61
Practice competitions	96	30	124	145

[a]Michigan has the largest post-J.D. enrolment, with typically about 40 full time students from 25 countries.

University of Michigan

The first year required curriculum covers contracts, torts, property, criminal law, civil procedure, constitutional law, and legal practice. This last 1-year course is designed to teach legal writing, research, and advocacy, skills that future lawyers will need no matter which branch of the profession they choose. Students are permitted to enrol in one elective course during their first year. The second and third years are freely open to student selection, except for a required course on professional responsibility (which most schools mandate) and enrolment in at least one seminar.

Michigan is unique among public law schools in that it enrols only about a quarter of its students from its own state. This is politically possible since the law school has raised its own endowment, which partially funds the cost of operations and thus relieves the state legislature of that burden. It is economically possible since the school charges most students a high tuition similar to that of an elite private law school. Table 4 reflects the large number of elective courses and seminars (151), which include almost every conceivable legal topic and many interdisciplinary offerings. Examples include Bloodfeuds, Constitutionalism in South Africa, and The War on Drugs.

Michigan has a large number of centres, joint degrees, and other programmes. The Center for International and Comparative Law is the focal point for the school's substantial number of visiting foreign faculty and graduate students as well as for the home faculty and students interested in those subjects. In addition, there is the Olin Center for Law and Economics, the Program in Refugee and Asylum Law, several clinical programmes with almost a quarter of the upper class student body participating in 2000, and 12 joint degree programmes.

A half of upper class students participate on one of the school's six journals: the *Michigan Law Review*, *Michigan Journal of Law Reform*, *Michigan Journal of International Law*, *Michigan Journal of Race and Law*, *Michigan Journal of Gender and Law*, and *Michigan Telecommunications and Technology Law Review* (online).

Stanford University

The first year curriculum consists of seven prescribed courses together with two to four electives taken in the spring term. The mandatory courses are contracts, torts, property, criminal law, civil procedure, constitutional law, and a 1-year research and legal writing course. This latter course is taught by teaching fellows; students take one of their required courses in a small group of 30. The objectives in the first year are to develop analytic ability, familiarity with the entire substantive legal terrain, basic working skills (assembling, organising, and communicating information), familiarity with legal institutional contexts (litigation, negotiation, and counselling), awareness of the non-legal environment, and professional ethics. The upper class curriculum includes 160 courses and seminars, including those offered as electives to first year students.

Stanford promotes professional skills training through simulation, with up to three quarters of the upper class student body participating in these practice courses.

Almost all upper class students serve on one of the school's eight journals: the *Stanford Law Review*, *Stanford Environmental Law Journal*, *Stanford Journal of International Law*, *Stanford Journal of Law, Business and Finance*, *Stanford Journal of Legal Studies*, *Stanford Law and Policy Review*, *Stanford Technology Law Review*, and *Stanford Agora* (online). The school also has a large number of programmes: environmental and natural resources law and policy; international law, business and policy; international labour studies; law, science and technology; and international legal studies. There are several joint degree programmes with other departments or schools in the university and even with two other universities, as well as the Gould Center for Conflict Resolution, the Olin Program in Law and Economics, and the Roberts Program in Law, Business, and Corporate Governance.

Louisiana State University

LSU has a profile typical of a public state university law school, with the unusual difference that it is in a mixed civil law-common law jurisdiction. This difference is reflected in the first year required curriculum, which includes the civil law subjects of obligations, civil law property, and Louisiana civil law system, in addition to the types of courses offered in the other profiled schools: contracts, torts, criminal law, civil procedure, constitutional law, and legal writing and research. Louisiana also requires criminal procedure.

LSU mandates some study during a summer session or a seventh semester. With fewer full time professors than the national law schools, it offers fewer elective courses and seminars (130). In lieu of a clinical programme it has an unusually large simulated professional skills enrolment (practically all the student body, and then some in more than one course per year). LSU students participate more often in moot court, advocacy, and counselling competitions than do students at the two profiled national schools, but have less opportunity for a law journal experience with the single *Louisiana Law Review*. The tuition cost is low by American standards, but there is a high first year student attrition rate of 22%.

Willamette University

Willamette is a small private regional law school with most of its students from the west coast, who nevertheless represent 22 states. The first year required curriculum includes contracts, torts, property, criminal law, constitutional law, civil procedure, legal research and writing, and one of five electives. Each of these four electives is the introductory course to one of the school's optional certificate programmes: dispute resolution, international and comparative law, law and business, and law and government.

With fewer professors Willamette offers only 73 elective courses and seminars (although one must remember that the typical student can only enrol in 20 such courses during the second and third years of study). Externships in government offices are available, since the school is located in the Oregon state capital, and practice competitions support the nationally ranked dispute resolution programme.

Willamette's law and government programme includes the Oregon Law Commission, created by the state legislature in 1997 to promote law reform. The international and comparative law centre supports exchanges in Shanghai, Quito, and Hamburg.

About 23% of upper class students participate on one of the school's three journals: the *Willamette Law Review*, *Willamette Journal of International Law and Dispute Resolution*, and *Willamette Law Online*.

Methods of instruction

Case method

The case method in legal education began with the publication of Dean Langdell's casebook on contracts and its use at Harvard in 1871. Casebooks used actual appellate cases and arranged them to show scientific principles of law. Langdell argued that these principles transcended local law and could reveal faulty judicial reasoning in specific instances. The teacher using a casebook became a Socratic guide, who posed questions to students that revealed concepts as essences hidden in appellate opinions. Professors replacing the traditional lecture method with the case or Socratic method required students to truly prepare for class by studying the cases in depth before meeting.

By the twentieth century the case method of instruction was the *usus modernus americanus*. By moving from the particular to the general and then the abstract to the concrete, this technique replicates the dialectical common law method itself. Its advantage is that it provides students with an understanding of the evolution of legal doctrine and the capacity to evaluate and compare successive concrete fact patterns for their relevance in creating legal precedent. Its disadvantage is that it is too narrow. Professors typically ignore economic, political, and social issues and emphasise abstract doctrine. Even after legislation was added to teaching materials, pretending it had no meaning until a judge interpreted it obscured legislation's importance. The case method atomised American law compared to the more systematic study in England of law through textbooks. It is notoriously inefficient in teaching much of the detail of legal doctrine.

Today the remnants of Langdell's innovation can probably better be described as the discussion method. Casebooks include statutes, court rules, regulations, excerpts from journals and books—even from disciplines outside the law—and other legal materials such as contracts or pleadings. The discussion method in its purest question-and-answer form works best for first year students in the mandatory curriculum. As novices in juristic analytic reasoning, they are more willing to prepare for class.

Lecture

The traditional lecture method has found new popularity—especially in the upper division curriculum—as professors strive to explain the complexity of contemporary American legal materials or how these materials might best be utilised in a diverse social matrix. The hiring of many younger law professors over the past quarter

century with both law degrees and PhDs in other disciplines adds to this impulse. New electronic classrooms, wired to the Internet and with computer-generated displays, facilitate the visual side of lecturing. Another motivation is to undercut the moral relativism that adheres to the contemporary case or discussion method, by which students learn to find good legal arguments for either side of any case. Students come to believe, as the pragmatism in American law would suggest, that what wins lawsuits is the most sophisticated or instrumental argument, not necessarily what is just. For those professors who hold some *a priori* conceptualist philosophy, such as natural law, law and economics, Marxism, or some variants of feminism or critical race theory, lecturing provides the avenue to try to develop a coherent view among their students regarding American law.[17]

In seminars, with 15–20 students, the professor generally will lecture for the initial class meetings until students have settled on topics to use in writing their papers. At the end of the term students typically make a presentation summarising their papers to the class.

Problem method

Some advanced courses and seminars with small enrolment emphasise the solution of current problems. Students study a complex factual situation—for instance, related to the environment, business organisations, estate planning, or human rights violations—and propose solutions using legal rules and institutions. These courses provide a convenient opportunity to combine non-legal with legal materials. For example, a seminar at Michigan, Globalisation and Labor Rights, looks at freedom of association, collective bargaining, employment discrimination, and child labour issues, some in the context of the WTO or NAFTA. It also questions the use of economic sanctions by the United States against countries that violate labour rights, and the effectiveness of corporate codes of human rights practice.

Professional skills training (simulation) and clinical methods

Students complained in the 1960s that legal education was too theoretical and did not offer enough practical experience in the law. The issue had been raised since the days when legal apprenticeship first fell into disfavour, but more professors listened this time to the calls for relevance. The Ford Foundation set aside funds to encourage law schools to experiment with clinical studies. Certain bar committees discussed requiring particular practice courses, such as trial advocacy.

Practical education today takes many forms, but can be divided between simulated exercises in the classroom and live experience with real clients in administrative and judicial proceedings. Student performances are sometimes videotaped for subsequent discussion and evaluation. The idea is to replicate the roles and responsibilities of practising attorneys. Students prepare pleadings, briefs, and motions. They present oral argument. They learn to interview and counsel a client, examine a witness, and negotiate with another lawyer. They draft documents. These exercises may occur in specific simulation or clinical courses or in courses as divergent as real estate transactions or welfare law.

Externship

Some law schools permit upper class students to spend a semester serving as a law clerk for a state or federal judge or to work in a governmental agency, public interest law firm, or non-profit organisation. Judges or attorneys supervise the students' activities.

Student activities

There are dozens of organisations and activities available to students at a typical law school. In the early 1960s the most prestigious organisation was the law review, based on the Harvard model. The review chose student members at the end of their first year based on high grades. Review editors selected articles submitted by law professors and occasionally by judges or lawyers and the staff helped to edit them. The student members themselves wrote case notes or comments. Supporters of student journals saw them as an excellent learning device to supplement the case method of instruction. It is peculiar to law as an academic discipline in America that students control the primary organs of current scholarly communication within the profession. In fact it is unique in the world, where scientists and scholars themselves make decisions about quality, orthodoxy, and innovation.

By the 1970s as a more diverse student body entered law school, the few organisations representing interests such as international law or moot court expanded in number to reflect new concerns. At Stanford today, for example, there are distinct associations for Asians, students with disabilities, bisexual, gay and lesbian (queer) students (OUTLAW), blacks, Jews, Native Americans, parents, Christians, Latinos, and women. Issue organisations exist for Chinese law, entertainment and sports law, environmental law, international law, moot court, business law, prisoners' rights, global challenges, zymurgy (home brewing and wine making), street law, law and technology, and public interest law. Political groups support civil liberties, a more diversified faculty, progressive causes (National Lawyers Guild), and conservative causes (Federalist Society). In addition, the number of student-run law journals has proliferated into specialised fields so that many more students have an opportunity to benefit from journal participation.

Many law students obtain legal work during the summer after their first and second years to help pay the steep costs of education, to obtain practical experience, and to facilitate employment upon graduation. Some students work during the academic year, but the ABA attempts to limit this to 15 hours per week. The employment search has been institutionalised in the past three decades through the school's office of career services. Michigan, for instance, hosts 750 employers each year to interview its students.

The bar examination

Under the American federal system, admission to and regulation of the legal profession falls to the states. All states except eight require an applicant to graduate

from an ABA approved law school (California is the main exception), to satisfy the criteria of an ethics committee, and to pass a written examination of 2–3 days duration. All but three states use the standardised Multistate Bar Examination as part of this process. Since the remainder of each state's examination process tests for local law, candidates normally pay for a private 4–6 week cram course on bar subjects. In 2000, 75% of first-time test takers passed bar examinations nationwide.

To practise in another state a lawyer normally must either take its bar examination or, if she has practised for 5 years, apply for admission on motion. About 30 states permit this later option. Bar admission also includes the right to litigate in federal courts. In response to the globalisation of legal services, 23 states permit foreign lawyers to take their bar examination (sometimes also requiring an American LL.M. degree) and thus to become an attorney in that state. New York in 2000 dominated this trend, passing 1,093 foreign lawyers, who succeeded at a 41% rate.

Notes

[1] An earlier version of this essay appeared as part of a chapter in D.S. Clark & T. Ansay (Eds), *Introduction to the Law of the United States* (The Hague, Kluwer Law International, 2002).

[2] See American Bar Association, ABA Network, Post J.D. programmes, at <http://www.abanet.org/legaled/postjdprogrammes/postjd.html> (21 March 2002).

[3] See American Bar Association, ABA Network, Foreign study, at <http://www.abanet.org/legaled/studyabroad/abroad.html> (21 March 2002).

[4] See Bucerius Law School, Program in international and comparative business law, at <http://www.law-school.de/international> (21 March 2002).

[5] See B. Narum, South of the border (1999) *Tulane Lawyer* 10–14.

[6] See N. Kashiwagi, New Graduate Law Schools in Japan and Practical Legal Education (2001) 11 *Zeitschrift für Japanisches Recht* 60.

[7] See D.S. Clark, Tracing the roots of American legal education—a nineteenth-century German connection (1987) 51 *Rabels Zeitschrift für ausländishes und internationales Privatrecht* 313.

[8] For the standard history of American legal education until 1980, see R. Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill, University of North Carolina Press, 1983).

[9] For a comparative treatment of demographic and other changes in legal education in several countries since the 1960s, see D.S. Clark, Comparing the work and organisation of lawyers worldwide: the persistence of legal traditions, in: John Barceló III & Roger Cramton (Eds) *Lawyers' Practice and Ideals: A Comparative View* (The Hague, Kluwer Law International, 1999), p. 9; J.H. Merryman, D.S. Clark & J.O. Haley, *The Civil Law Tradition: Europe, Latin America, and East Asia* (Charlottesville, VA, The Michie Co., 1994), pp. 841–892.

[10] See R. Strickland, Creating opportunity: admissions in US legal education (2001) 51 *Journal of Legal Education* 418; A.K. Wing, Race-based affirmative action in American legal education (2001) 51 *Journal of Legal Education* 443.

[11] See Table 1 for details.

[12] An important development in the 1990s was the significant decrease in the student-faculty ratio, particularly in larger law schools. Using a calculation based on full time student equivalents, from 1990 to 1999 large schools (over 1,100) reduced the ratio from 27 to 19, medium schools (divided between 700–1,100 and 500–700) from 26 or 24 to 19 or 17 respectively, and small schools (300–500) from 22 to 17.

[13] See Table 1.

[14] See F.T. Read, The unique role of the law school dean in American legal education (2001) 51 *Journal of Legal Education* 389.

[15] See D.S. Clark, Transnational legal practice: the need for global law schools (1998) 46 (supp) *American Journal of Comparative Law* 261.
[16] See Table 4.
[17] For a discussion of the rise in teaching law and economics and critical legal studies and a decline in educating lawyer-statesmen, see A.T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge, MA, Belknap Press, 1993).

Further reading

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