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COMPARATIVE LAW YEARBOOK

The Center for International Legal Studies is a non-profit and non-stock organization incorporated under the laws of the State of California and with headquarters in Salzburg, Austria. The Center is devoted to the promotion of internaional legal education, research, information exchange and understanding. It coordinates and supervises various law seminars in Europe and sponsors research in areas of Comparative and International Law.

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Table of Contents

Part III. *Significant Developments in Private International Law*

Part I

SYMPOSIUM

Approaches to Legal Education in Selected Jurisdictions

Introduction: Divergent Goals and Models*

Ved P. Nanda, Professor of Law and Director, International Legal Studies Program, University of Denver Law Center

Significant variations regarding the major objectives of legal education exist among the various legal systems. For example, the primary goal of U.S. law schools is to train lawyers; yet, law departments of Japanese universities primarily educate students who serve corporations or the Japanese government not as legal professionals but generalists;[1] of Japanese law graduates only one-fourth take the National Law Examination.[2] Also, countries comprising the same legal system do not necessarily share similar priorities for legal education. However, even at an abstract level, if there could be discerned a common goal of legal education, that of imparting to the students an understanding of the law and equipping them with the necessary skills to meet the legal needs of society, one finds divergent models of legal education to accomplish that common objective.

Similarities, as well as differences, in approach regarding the objectives of legal education and the means to achieve them, especially curriculum and teaching methods, are a useful subject of study

* The material for this article is in part drawn from the two papers the author presented at the ninth and tenth World Law conferences, in 1979 in Madrid ("Case Method. An Effective and Viable Tool of Instruction in Legal Education") and in 1981 in Sao Paulo ("Graduate Legal Education in the United States: An Appraisal").

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for students of comparative law and jurisprudence. Essays which follow address these questions. This chapter, however, is designed to provide an overview of some of the significant trends in a few selected countries.

Goals of Legal Education

A healthy skepticism about the goals of legal education and legal training marks the recent history of legal education, especially in the post-World War II period.[3] Unprecedented growth in the number of law students and law schools in many countries, combined with reform movements, has spurred significant changes in law school curricula, in prerequisites for admission to law schools, and in the legal profession itself.

Although these developments vary considerably from country to country, some similarities in experiences are readily discernible. One such trend relates to the continuing quest for improvement in the quality of legal education in many Common Law jurisdictions, notably the United States, England, Canada, and Australia.[4] Another trend relates to the reappraisal of legal education by many leaders of the newly independent developing countries. To illustrate, Simbi Mubako, Minister of Justice and Constitutional Affairs, Republic of Zimbabwe, recently stated the functions of legal education at the University of Zimbabwe:

> The primary function of the law school is to teach law and to produce men and women with sharpened critical and creative faculties, with the legal skills and the moral qualities required by government, business and the general public. Inasmuch as the law school is entrusted with the task of educating future attorneys, advocates, draftsmen, administrators, company lawyers, judges and even legislators, its influence on legal development can be enormous, and is directly related to the quality of its education. The law teacher must know and be able to impart his knowledge of the law as it is, with its virtues and its defects. He must also understand the social and political context in which the law operates.[5]

In Latin American law schools, an effort has been underway since the late 1950s to modernize legal education.[6] Several conferences of Latin American law schools in the 1960s discussed questions such as aims of legal education; basic organization and structure of the law school, particularly curricula and course structures; library holdings; legal research; practical education methodology; relationships between law schools; position and function of law teachers; role of the law school in Latin America and its function in the community; the law school and the state; and student welfare.[7]

Recommendations on several of these questions show a desire to adjust legal education to the social needs of the immediate community and those of the rest of Latin America.[8] A necessary aim of legal education was urged to be "the production of 'a man of law', who would be a skilled technician with a firm cultural base".[9] Legal education in many universities, however, still suffers from an overemphasis on doctrinal training with little relation to the real life setting in which rules operate.

Another observable feature is that the Civil Law tradition in European universities continues to provide a vigorous and broad academic approach to law and legal reasoning.[10] Also, a noticeable change is evident in the post-Cultural Revolution China, with a renewed effort to upgrade legal education in China and to improve the legal system within the context of the "four modernizations", a ten-year program of development in industry, agriculture, defense, and science and technology.[11]

The goals of legal education necessarily will vary with the primary purposes for which the consumers of that education, the law students, undertake the study of law. To illustrate, most law schools in the United States consider their primary function as the preparation and training of professional lawyers, and, to some extent, catering to the needs of non-traditional lawyers, although suggestions have been made that legal education should train policy makers as well.[12] However, in a setting where most students in law schools are trained as generalists and not as professional lawyers, legal education is likely to have a different orientation and emphasis from that of its counterpart in the United States.

Primarily because of the divergence of goals of legal education, differences are likely to surface on a variety of issues, including the approach to legal education; that is, should it be primarily academic or practical; should there be emphasis on clinical education, areas of specialization, and advocacy skills, for example?

Finally, it seems essential that the training of international and comparative lawyers be substantially strengthened, for obviously, unless the ever increasing global interdependence is managed, it has no meaning, and the lawyer's role in managing this interdependence hardly needs to be emphasized.[13]

Structure, Curriculum and Teaching Methods

Structure: Modern legal education throughout the world is imparted primarily in law schools or institutes which usually are either integral parts of universities or are affiliated with them. Even in England, with its division of the legal profession into branches of barristers

and solicitors each of which has a different set of prerequisites for admission, a university law degree has now become the dominant method of entry into the legal profession.[14] Legal education in Europe bears the distinctive imprint of the centuries old tradition of the European universities and is markedly influenced by it. In Japan, however, one enters the legal profession only after a two-year training and apprenticeship at the Supreme Court's Legal Training and Research Institute, for which the government pays the total cost and even gives a monthly stipend.[15]

Curriculum: Europe, Latin America, and other countries which comprise the Civil Law system and trace their legal heritage to the institutions, principles, legal techniques and procedural roles of Roman Law, usually emphasize in their legal education the theoretical rather than the practical side of the law. A distinctive common element in their teaching is their focus on imparting a general legal background – jurisprudence, basic principles, and legal institutions and mechanisms which govern the various fields of law – rather than on practical skills.[16] Since the law is codified, a study of the content of codes forms an integral part of legal education. Legal education programs could be divided in parts, as a diploma, *license*, and *maitrise en droit* in France[17] and *candidatures* and *licenses* in Belgium;[18] Germany, however, now has opted for a program of single graduate studies.[19] Compulsory courses traditionally have included Roman Law, Legal History, Criminal Law, Commercial Law, aspects of Civil Law, Administrative and Constitutional Law, Conflict of Laws, and a few optional courses. Students also are given exposure to Social Science courses such as sociology, history, philosophy, psychology, and political science, often with a legal perspective. In Eastern European countries, the traditional model has remained almost intact with the addition of modern Marxist theory.[20] It should, however, be noted that students enter the law programs in most universities after having obtained their high school diplomas and at the age of eighteen or nineteen are not prepared for specialization in law. Only after the students receive their legal education do those who wish to enter the legal profession undergo practical training as apprentices or undertake further studies in a specialized school.[21] Movements for reform in legal education have resulted in some changes in the recent past in France, Germany, and in some universities in Latin America. To illustrate the study of law in a Civil Law system, in France, the degree course is a four-year program, consisting of two "cycles".[22] After completing the first two-year cycle, a student earns a license, *Diplome d'etudes universitaires générales, mention droit*, which qualifies the student for certain professional work, preparing him or her for further legal studies.

Courses include an introduction to law, an introduction to Civil Law, constitutional law and political institutions, economics, criminal law and criminology, legal history, procedure, and international relations, and several optional courses, and students are also instructed in practical aspects of professional work, as well. In the next two-year cycle, the student earns a *license en droit* after one year of study and a *maitrise en droit* after completing the second year of the cycle. During this cycle, the student is given the opportunity to take courses in an area of concentration. The effort is to introduce the student to social sciences and to encourage legal education in an interdisciplinary setting. Theoretical foundations of the law are taught with an emphasis on the interrelationship between law and society. Increasingly, the more technical and practical aspects of the profession are also being incorporated in legal education. In Common Law countries, especially in the United States and Canada, the curriculum is designed to train the student for entry into legal profession. Since legal education is a graduate-level program, the emphasis increasingly has been on the inculcation of professional values and basic skills, including advocacy skills, and on specialization.[23]

Teaching Methods:

(1) Lecture Method[24]

In most Civil Law countries, the teaching method is the traditional magisterial model. The teacher lectures, students take notes, codes are annotated, and there is little dialogue between the teacher and student. Since the law is codified, there is no room for *stare decisis* and as the classes are large, the lecture method serves a useful purpose. The lack of active student participation, however, now is being remedied at some universities by the introduction of directed studies, tutorials, and smaller classes.

(2) Case Method

The case method, introduced into the American legal education system more than a century ago by Professor Christopher Columbus Langdell at Harvard, remains the primary mode of instruction. However, its continued use as the sole method of instruction during the second year and especially in the third year of a law student's education has come increasingly under attack in the recent past. It has been considerably modified and adapted to meet the new challenges of legal education and, as Professor William Beaney recently remarked, casebooks of today which typically contain annotated notes, editorial comments, hypotheticals and problems, and supplementary materials including statutes, congressional reports,

excerpts from law reviews or treatises, empirical studies, and materials from other disciplines such as philosophy and social sciences, bear little resemblance to those of the past. Nonetheless, critics challenge the usefulness of the case method beyond the first year of law school primarily on three grounds: one, it is wasteful; two, it breeds cynicism and alienation; and finally, it is too theoretical and is unrelated to the "real world". In other words, to use the often misused and abused expressions, it is not "meaningful"; it is "irrelevant".

Professor Langdell's *Cases on Contracts* was the first casebook used in an American law school. It was at Harvard that the case method was initiated. The original curriculum, using the new technique, also was created at Harvard. Langdell also receives the credit of providing not only teaching methodology but also basic pedagogical assumptions and curriculum. In 1951, long after the initial rumblings about the usefulness of the case method had subsided and Langdell's system had triumphed with its adoption by every law school in the country, a distinguished protagonist of the system, Professor Edwin Patterson, identified the presuppositions of the method as fourfold: (1) scientific, (2) pedagogical, (3) pragmatic, and (4) historical.[26]

As to the scientific nature of the law, in Langdell's words: "First, law is a science; secondly, all the available materials of that science are contained in printed books. If law be not a science, a university will best consult its own dignity in declining to teach it. If it be not a science, it is a species of handicraft, and may best be learned by serving an apprenticeship to one who practices it".[27] It is worth noting that Langdell was attempting to lend legitimacy and respectibility to the study of law in a university setting. Until his time, American law schools employed a manner similar to the one used by practitioners in training their law-clerk apprentices. Professor Ames described the then-leading law school in America, Harvard, shortly before Langdell's arrival there in 1869, as "a school without examination for admission or degree. [It] had a faculty of three professors giving but ten lectures a week to one hundred and fifteen students of whom fifty-three per cent had no college degree, a curriculum without any rational sequence of subjects, and an inadequate and decaying library".[28] Langdell argued that law is a science and just like any other natural science, it possesses a body of principles to be found in adjudged cases; principles which can be logically discovered and scientifically deduced. In Langdell's words, the law library "is to [law professors and students] what the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists".[29]

Although the later advocates of the case method continued to assert that it was a scientific method, what is really implied in these assertions, which are primarily rhetoric, is that in the Anglo-American legal system law students learn how generalizations are derived from cases. For today, law is seen not as an absolute system of principles, but as a process which is subject to change.

The major pedagogical presupposition of the case method is that active participation by students in the teaching process through problem-solving is a better learning device than their being "merely passive recipients of the teacher's solutions". Reported cases are likely to be more interesting to students than the "dry generalizations of textbook or lecture". Also, it would train students to solve practical problems, thus equiping them to become lawyers.

Instruction by the "Socratic" method was designed for the training of the legal mind through the dissection of cases and the distillation of legal principles. A student, thus, would be able to sharpen his analytical ability and considerably improve his competence to compare and contrast, and distinguish and synthesize the law. Professor Ames aptly stated:

> "If it be the professor's object that his students shall be able to discriminate between the relevant and irrelevant facts of a case, to draw just distinctions between things apparently similar, and to discover true analogies between things apparently dissimilar, in a word, that they shall be sound legal thinkers, competent to grapple with new problems because of their experiences in mastering old ones, I know of no better course for him to pursue than to travel with his class through a wisely chosen collection of cases".[30]

Thus, the claim is that if the purpose is to train students in lawyering skills, in legal reasoning and legal thinking, "to think like a lawyer", to learn how to handle cases and other legal problems, the Socratic method is a superior method of instruction. For under this method, the student, in a responsible and competent fashion, starts to perform tasks that he or she will perform later as an attorney representing his or her clients. The teacher skillfully questions, engages, challenges and provokes the student, and presents various hypotheticals, raising further questions, thus using the "Socratic dialogue" to give clues as to the significance of the case discussed and to extend or limit its doctrine or principle.

One of my colleagues, who uses the Socratic method with admirable effectiveness, defends this approach by pointing to the outcome: "It toughens students and prepares them for the real world. It's the best technique to develop their basic intellectual capacity and to sharpen the critical skills they need to analyze, in short, to train them to be good lawyers".

The pragmatic aspect of the case method was described by Judge Oliver Wendell Holmes, Jr.: "And is not a principle more exactly and intimately grasped as the unexpressed major premise of the half-dozen examples which mark its content and its limits than it can be in any abstract form of words".[31] Learning the law in the factual context out of which each rule of law has arisen in the past and will arise in the future gives a student a deeper understanding of the relationship between law and fact.

Thus, in Dean Walter Oberer's words, once a student has achieved "the degree of understanding and sophistication of a lawyer, he finds himself challenging the logic and fairness of any 'rule' in terms of the factual context out of which it arises. He is driven, therefore, back to the case or cases out of which the rule sprung, and to the always immediately adjacent cases out of which the qualifications and the qualifications of the qualifications arise. There is in short, no short cut for developing mastery of a substantive area of the law. You must know the factual environment to see the rule in full perspective, with all of its attendant strengths and weaknesses. What you learn finally, if you learn truly, is a body of related cases, each like a bead on a string, with its essential facts, its issue of law, its decision, and the supportive reasoning. For the student thus armed, the rules become tools of which the student, now lawyer, is master, not captive".[32]

Finally, as to the historical presupposition, Langdell said: "Each of these doctrines [of the law] has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually, is by studying the cases in which it is embodied".[33]

It appears that among these presuppositions, two, namely pedagogical and pragmatic, are still valid. However, as noted earlier, the case method has been considerably changed since its inception with a view to its adaptation to meet the new challenges of legal education.

Critics contend that the use of the case method may be found wanting in preparing the lawyer of the future for the various tasks he or she may be asked to perform in society. One such critic recently has used harsh language to make his point:

> "As social problems proliferate, traditional legal education, aggressively abstract and perversely indifferent to the findings of the social and behavioral sciences concerning human conditions, is in serious danger of becoming a monumental irrelevancy in the process of social change".[34]

It is suggested that the case method is inadequate for the study of