

## Role of Legal Education in Improving the Quality of Justice

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I am pleased to have the opportunity to participate in this important conference, and to return to Kyoto and Ritsumeikan after a ten year absence. My first visit to Ritsumeikan was in 1991 when I was invited by your distinguished and dearly beloved former colleague, Professor Makitaro Hotta, to discuss war powers under the U. S. constitution. That visit occurred shortly after the United States' war against Iraq. While the United States is now again involved in a war, I come to Ritsumeikan this time to address a very different, but no less important, topic—the role of legal education in improving the quality of a country's justice system.

At the outset, I want to congratulate you on hosting this conference and to state my admiration for the work you are doing as you candidly assess legal education's impact on the quality of the justice system in Japan, and for embarking on sweeping changes designed to improve the quality of legal education. If the world is to be made a better place for all of its citizens, every country, including the United States, must be willing to take a hard look at its system for providing justice and be willing to break from tradition when that tradition may be an impediment to achieving equal justice. Japan is doing that and we can all learn and profit from your experience.

My remarks will focus on the structure and method of legal education in the United States, and the role of the association of American law schools in improving the quality of legal education. I will discuss the relationship between scholarship and teaching, diversity and quality, and then conclude with brief comments about the possible relevance of the U. S. model, and the Association of American Law Schools, for Japan as it begins to make significant changes in its legal education system.

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## I . U. S. SYSTEM OF LEGAL EDUCATION

### A . Historical System

Historically lawyers in the United States were not educated in law schools, but rather as apprentices who were said to be “reading for the law” under the tutelage of practicing attorneys. There was also a time very early in U. S. history when law was studied primarily as an undergraduate discipline, as it is now in Japan. The first separate law schools began to emerge about 1850 but it was well into the twentieth century before most of those separate law schools required prior undergraduate study as a condition for admission to law study. Even in 1900, when the Association of American Law Schools was founded, the association’s membership requirements stipulated only that students admitted to member law schools must have completed high school. It was not until the 1920’s and 30’s that the current graduate school model of legal education became the predominant method for studying law.

### B . Modern System

As you know, legal education in the United States is a three-year graduate program that may be taken only after earning the initial college degree. The law school is a separate professional school, like the medical, business and engineering schools. Students who come to law school have a wide variety of undergraduate majors; it is not essential to have majored in one of the more common subject taken by many potential law students like political science or history; some students have majored in math, music, biology and other subjects. It is important, before coming to law school, to learn how to think logically and write well, but those skills can be acquired regardless of the college major so there is no mandatory or even recommended undergraduate course of study as preparation for law school.

#### 1 . Admission

Applicants to accredited law schools take the Law School Admission Test (LSAT) and most law schools base their decisions on which applicants to accept as students primarily on some combination of an applicant’s score on the LSAT and the applicant’s undergraduate grade point average. Other important factors include extracurricular activities, particularly if those activities demonstrate leadership potential or a commitment to public service; whether the particular applicant will contribute to the diversity of the student body through either interesting work or other life experiences, or racial diversity. For a discipline like law, perhaps more than any other discipline, the quality of education depends on the different experiences that students bring to classroom discussions; those experiences undoubtedly affect their views on policy matters that influence development of the law. I

will speak more about this later.

## 2 . Faculty

Over 2/3 of the instruction in most U. S. law schools is offered by full-time faculty members who, unlike their counterparts in many other countries, are reasonably well paid and are consequently expected to devote the bulk of their time to teaching, scholarship, and service. A full-time faculty member is expected to teach about five to six hours per week, engage in significant scholarly research and publication, and contribute to the law school, university, and profession through public service activities. Law schools also employ adjunct faculty who teach courses like trial advocacy or relatively specialized courses related to their fields of practice. These faculty members enrich the law school's academic program through their special expertise, but generally do not have adequate time to devote to students outside the classroom, to scholarly research and publication, or to law school governance and service.

## 3 . Method of Instruction

The Socratic method is the predominant method of instruction in U. S. law schools. There are however variations on the Socratic method from one instructor to another and most professors still lecture at least part of the time. The traditional Socratic method, as exemplified by the character of Professor Kingsfield in the popular 1970's movie that some of you may have seen, "The Paper Chase", involved a dialogue between the professor and student that many say was so abusive that it hindered student learning. Today most professors use a more supportive version of the Socratic method in which the student is responding to questions or asking questions, and is provided with both positive and negative feedback in a more respectful manner.

The Socratic method was developed in conjunction with the "case method", in which students read appellate cases and are expected to derive generally applicable principles of law from reading those cases. Most textbooks use, as their primary reading materials, excerpted cases. In recent years however textbooks have begun to include more problems and narrative material, and a few textbooks have departed entirely from using the appellate case as the primary teaching material. Whether the professor is using the case method, problem method, or some combination, he or she can still use the Socratic — question and answer — method in the classroom. This includes not only a dialogue between the professor and student, but also students engaged in dialogue with other students.

## 4 . Curriculum

The curriculum in the last thirty years has literally exploded in the number and variety of courses offered. Although we do not have nationwide data, studies done by some law schools indicate that the number of courses has doubled or even tripled. Although the typical first year curriculum is similar to what it was thirty years ago, there has been dramatic expansion in the number of elective courses, particularly with the introduction of clinical legal education. Today almost all law schools have some form of clinical program

and many schools have a variety of clinical courses.

The most common method of offering clinical legal education is through a live client clinic in which students represent clients in court under the supervision of a professor. Other methods are simulation, in which students are given hypothetical facts and hypothetical clients to represent. Schools also offer what are called externships, in which students work in the offices of local attorneys, both public and private, and represent clients under the supervision of those attorneys. Although most professors in the United States consider the live client clinic the best because it subjects the students to the real experience, both intellectually and emotionally, of representing clients in court. The live client clinic clearly teaches the human dimension of lawyering better than the simulation method. It is also however the most expensive method, because a professor cannot reasonably be expected to supervise more than about 10 clinical students in a semester. If you contrast this with large classes of over 100 students in the classroom, or even seminars of 15-25 students, it is very expensive.

#### C . Recent Changes and the Future

A major development in the last ten years is the globalization of the U. S. law school. Although this globalization is perhaps most visible in a few urban area law schools, it has been embraced in varying degrees by virtually every law school in the United States. In a recent survey the AALS committee on curriculum and research asked law schools what elective courses had been added to the curriculum in the last five years. The single largest growth area, by far, was in international and comparative law courses. These courses ranged from a variety of business and trade courses to environmental law to human rights, and courses on the law of a particular country.<sup>1)</sup> In addition to adding new courses, many professors have added a global component to other courses. For example, before I became chief executive officer of the association I taught constitutional law. In that course I would compare the approach of the United States constitution with the approach of another country's constitution. This comparative approach both teaches students something about the law of the other country and forces them to critically examine and evaluate the approach of their own country. Because of the dramatic growth in transnational transactions, and the impact of what may appear to be solely domestic decisions in other countries, globalization of U. S. law schools, and law schools in other countries, will continue for the foreseeable future.

Legal education in the United States and many other countries will almost certainly change even more the next ten years. There will be more specialization and the curriculum will become even more global than it has in recent years. Technology will make

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1) For a more complete description of the survey results see Deborah Merritt, "New Course Offerings in the Upper-Level Curriculum: Report of an AALS Survey", *AALS Journal of Legal Education* (vol. 47, #4, December 1997).

possible collaborative efforts, not only within the United States, but also among the world's law schools. There are already specialized courses taught on the internet, with a professor at one law school teaching students at multiple law schools. It is now possible to have judges and practitioners participate in electronic discussions with students and offer their perspectives that are informed by their job experience; it is also possible to teach courses across national boundaries, thus enhancing students' knowledge of other cultures and legal systems. Although it is important to retain the critically important advantages of "face-to-face" education, we must also take advantage of the benefits offered by technology to broaden the knowledge base of our students.

As Dean John Sexton of New York University school of law noted in his excellent paper, "thinking outside the box", in teaching law we are not simply teaching technicians who can handle a particular legal problem; we are teaching policy-makers for our society. Not only have many of the world's political leaders been trained in law, but also corporate leaders, journalists, and people who practice many other professions. Law schools teach societal values, like the rule of law, and that a society should be organized around rules of law, not raw power and economic might.

Understanding the values that underlie a just society requires acquiring not only that knowledge that can be acquired from books or information on websites; it requires an understanding of the people who make up that society and their values and motivations. That cannot adequately be taught except through face-to-face human interaction. That is why U. S. law students should be drawn not only from the many different cultures present in the United States, but also from people who come from different cultures and legal systems throughout the world.

#### D . Student Evaluation of Faculty

Most law schools in the United States have a system in which students evaluate their professors at the end of the semester. The evaluation form typically asks certain questions about how challenging the professor was, how prepared, whether the presentation was clear, and asks students to rate professors on a numerical scale. Students also have the opportunity to write narrative comments. At most law schools these evaluations are reviewed by the associate dean for academic affairs and/or the dean, and play some role in the promotion and tenure process for faculty. Some faculty accuse schools of overusing these evaluations and thus "punishing" faculty who are demanding, but not necessarily popular, instructors. On the other hand, students sometimes complain that the school is not paying enough attention to these evaluations. At almost all schools the evaluations are given to the faculty member to read so that he or she can use the comments to evaluate and improve teaching.

## II . ADMISSION TO THE BAR

Upon completion of law school, graduates must then take the required steps for admission to practice law. No one can become a licensed attorney in the United States without being admitted to practice in one of the 50 states or other jurisdictions (for example, district of Columbia or Puerto Rico). In the 50 states the highest court of the state (in most states called the supreme court) determines the requirements for admission. The courts have delegated this authority to state boards of bar examiners. In most states, the Chief Justice of the state's highest court appoints members of the board. Once an applicant is admitted to practice in a state, he or she may be admitted to practice in the federal courts, including the United States Supreme Court, without taking an additional examination.

About 45 states require that applicants for admission be graduates of a law school accredited by the American Bar Association. All but one state requires all applicants to pass a bar examination. All states also examine the applicant's character and fitness to practice law.

The bar examination generally consists of a one day "Multistate Bar Examination" (MBE), which is the same multiple choice examination, administered on the same day in every state that uses the MBE (48 states), and a second day of essay questions prepared by the board of bar examiners for that particular state. The MBE covers the basic first year courses taught in almost every law school — contracts, torts, criminal law, evidence, property, and constitutional law. Although essay questions may cover the same subjects covered on the MBE, they will more likely test knowledge of somewhat more specialized subjects and focus on peculiarities of state law rather than generally applicable legal principles.

Forty-seven states require passage of a separate multistate professional responsibility examination (MPRE), which tests knowledge of the code of professional responsibility. Passage of this exam is generally a condition to taking the substantive bar examination referred to in the prior paragraph.

After admission to practice the formal legal education of attorneys has essentially ended except for continuing legal education courses. Most states require the completion of a certain number of hours (generally ranging from 8–15 hours) of continuing legal education each year as a condition to retaining the license to practice law. There are many providers of these courses, including the American Law Institute, state bar associations, and many law schools. Judges can obtain specialized continuing education from the Judicial College in Reno, Nevada.

### III . ROLE OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS

#### A . Overview

I turn now to a discussion of the role played by the Association of American Law Schools. The AALS was founded in 1900 for the purpose of “improving the quality of the legal profession through legal education”. That remains the mission of the association today. The primary governing body of the association is a nine-member executive committee, all of whose members are legal academics.

When the association was founded it had membership requirements that schools had to meet to become members. Although those first membership requirements established 100 years ago seem very minimalist today, they required only a high school degree, without any undergraduate study, for admission to law school, only two years of law school, and reasonable access to a library which simply needed to contain the United States Supreme Court reports and the reports of the highest level court in the state in which the law school was located. In 1900 these requirements represented a big step forward in helping to improve the quality of legal education. Today the AALS has many more membership requirements, but the purpose of those requirements remains the same.

In addition to membership requirements the association also offers professional development programs that are designed to help law school professors, deans, and other administrators improve the quality of their work. The association also offers many services to its member law schools, and is the principal representative of legal education to the federal government and to the larger world of higher education, both nationally and internationally. I will briefly explain each of these roles of the association.

#### B . Membership Requirements

Membership requirements establish standards which schools must meet to become, and remain, members. Schools are periodically inspected to assure that they continue to meet these requirements once they become members. These periodic inspections are conducted jointly with the American Bar Association, whose accreditation standards are similar to, but slightly less rigorous than, the membership requirements of the AALS.

These requirements affect all aspects of the law school’s operation. The association has five core values and all of the membership requirements relate to those five values, which are (1) a diverse intellectual community; (2) quality of teaching; (3) a commitment to faculty scholarship; (4) academic freedom; and (5) faculty governance of the law school.

To meet these core values, a law school must have adequate financial resources to carry out its mission. It must have an adequate physical plant. It must offer sufficient salaries to assure its ability to attract and retain a competent faculty. It must have an adequate

library and access to information for teaching and research purposes. It must offer a sufficiently diverse curriculum so that its students will be able to learn jurisprudential, transnational, multicultural and interdisciplinary perspectives on law, lawmaking, and legal practice. Students must be taught skills of legal reasoning and research, written and oral communication, and critical thinking skills. They should also be taught skills of drafting, counseling, negotiation, dispute resolution and planning and problem solving.

Schools must seek to have a sufficiently diverse student body and faculty to enable learning about different perspectives on the law and how the law affects different groups in society. Schools must assure academic freedom for faculty in their teaching and research, so that there is no governmental or private corporate interference with the open expression of views in the classroom or scholarship.

The requirement of faculty governance is based upon the belief that the faculty collectively should be in charge of important policy decisions, like determining what the curriculum will be, and who will be hired to join the faculty.

#### C . The Relationship Between Scholarship and Teaching and Diversity and Quality

Let me say a few words about the relationship between scholarship and teaching, and diversity and quality. The AALS is committed to the position that there is generally a close relationship between scholarship and teaching. It is a false dichotomy to say that a school or individual professor can emphasize either scholarship or teaching but not both. Being active in research and scholarly publication requires a professor to learn about the ideas of others and to put his or her own ideas into the public arena for criticism and refinement based on the responses of others to those ideas. This process enables the scholar to acquire new insights that can be shared with students in the classroom. Similarly, teaching raises new questions about existing law that surface in the process of the classroom dialogue, thus providing new ideas for scholarship that contribute to the development of the law. So teaching and scholarship complement each other and each contributes to improving the quality of the other. The full time law teacher has the freedom to engage in research that is not client-driven; thus, law professors have an obligation to use that freedom to contribute to the development of the law.

It is also a false dichotomy to say that a school must choose between having high quality students and faculty or a racially diverse student body and faculty. Those who oppose using racial diversity as a factor in the admissions process, or in faculty hiring, generally argue that it leads to dilution in the quality of the student body or faculty. They tend to believe that something like the score on the law school admission test, or the pedigree of the degree of faculty candidates, are essentially the primary factors in evaluating quality. Nothing could be further from the truth.

The classroom dialogue is greatly enriched by professors and students whose experience with law and the legal system is different. That different experience may be derived



from diversity of background that is unrelated to race, such as type of work experience, or the type of neighborhood in which one grew up, but race also affects how one experiences the law and legal system.

Consider just a few important issues discussed in the law school classroom for which racial and ethnic diversity are critical to the robust exchange of ideas:

- In criminal law, whether capital punishment is wise and just social policy is a major issue. One aspect of the debate relates to whether capital punishment is disproportionately applied to racial minorities than whites, and if so, why.
- The practice of “redlining” by financial institutions to grant less generous mortgage terms in neighborhoods with a high percentage of racial minorities is an equally important issue in the classroom.
- The perspectives of racial minorities on matters like the Rodney King incident, the O. J. Simpson trial and a host of others, are critical to the quality of classroom discussion of these issues.

A law school class that consists almost exclusively of whites debating these policy issues can no more successfully understand the full range of choices and policy implications than could a class that consisted almost entirely of men discussing issues of sexual harassment.

In an increasingly multicultural nation with a global reach, a commitment to diversity — to broadening the boundaries of inclusiveness of American institutions — is economically necessary, morally imperative and constitutionally legitimate. In higher education, diversity is also vital to intellectual pursuits. Different backgrounds affect the way people see the world. These differences enrich learning, scholarship, public service and institutional governance. The voices from diverse cultures thus bring to the classroom important and different perspectives.

#### D . AALS Services for Member Schools and Faculty

In addition to enhancing quality through membership requirements, the AALS provides many services to its member schools including publication of a newsletter four times each year, an annual directory of law teachers, and an annual faculty recruitment conference.

The newsletter contains information about programs of the association and columns which express views on important matters for legal education. The directory of law teachers contains a list of all law schools and the members of their faculty, with a biographical sketch of every full-time faculty member.

The association has a faculty recruitment conference every year and publishes a list of foreign faculty who have expressed an interest in teaching for a semester or year in the United States.

The faculty recruitment conference is a major undertaking each year. Attorneys who

are interested in becoming full-time law teachers may sign up for this conference. When they sign up they submit to our office a standard form resume, which is distributed to all schools in both hard copy and electronically. The online version is in searchable fields so that a school could, for example, make a list of all candidates in the register who have graduated from a particular school, or who want to teach a particular subject and also many other criteria. Many combinations are possible, including lists of women or minority group candidates.

Law schools have faculty recruitment committees that review these resumes. The committee selects a group of candidates to interview at the recruitment conference. The typical law school might interview about 30 candidates for one half hour each over a two-day period. They then select their top choices to invite back to the law school for a full day or more of interviewing with the faculty members. Many schools also require candidates to make a scholarly presentation to the faculty as part of the interview process.

#### E . AALS as “Advocate” and “Ambassador” For Legal Education

In the role of representing legal education to the government the association has worked to provide guaranteed student loan funding, funding for clinical education, and federal funding for a program designed to assist minorities, and others who may have suffered educational disadvantage, to learn the skills necessary to be admitted to law school.

In representing legal education to the rest of the world of higher education the association is a member of various groups, such as the National Humanities Alliance, the Consortium of Social Science Associations, the Washington Higher Education Secretariat (a group of associations that represent university presidents and other top officials in higher education), and the American Council of Learned Societies. Through these groups we work to achieve the mutual objectives of legal educators and our colleagues in other disciplines like political science, sociology, anthropology, the Asian and Middle East studies associations, and many others.

#### F . Professional Development Programs

The AALS publishes a scholarly journal about legal education, the journal of legal education, and co-publishes the clinical law journal.

Perhaps the function that contributes more than any other to achieving our objective of improving the legal profession through legal education is our professional development programs.

##### 1 . Sections and the Annual Meeting

The single largest professional development opportunity is the association’s annual meeting, held the first week of January each year. At this meeting the association’s eighty sections all present one or more programs of interest to members of their sections. These sections are primarily subject-matter oriented, like the international law section, compara-

tive law section, constitutional, commercial, and many others. A few sections are what we call affinity group sections rather than groups of professors who teach a particular subject, such as the section for women in legal education, or minorities in legal education. A few other sections serve the interests of administrators, like the section for the law school dean and the section on student services, whose members are deans of admission or deans of students while a few others, like the teaching methods section, may be of interest to all law professors. Most of the sections publish newsletters throughout the year that contain articles and other information of interest to their members. Generally about 3,000 law professors attend the annual meeting.

#### 2 . Other Professional Development Programs

In addition to the annual meeting, the association also sponsors five or six programs at different times of the year; these programs range in length from two to five days and are designed for a more targeted group than those who attend the annual meeting. Two of these programs are held every year — a new law teachers workshop and a workshop for clinical legal educators.

The new law teachers workshop is designed for those who are new to legal education. It contains programs on teaching methods and demonstrations of different methods, and programs on how to be an effective scholar.

The annual clinical workshop is designed to provide clinical faculty with the opportunity to get together to share information about the types of clinical programs and clinical teaching methods.

In addition to those annual programs, there are other programs held every five to seven years. Most of these are subject-matter oriented, so for example we have recently had workshops on international trade, human rights, bankruptcy, family law, and the upcoming constitutional law and evidence workshops. We also occasionally offer a conference of new ideas for experienced teachers. Through these workshops we hope to expose teachers to the latest developments in scholarship and teaching in their field, and to enable them to share ideas with their colleagues about how to become more effective scholars and teachers.

Recently the AALS has also started offering international programs. In May 2000 the association offered its first conference of international legal educators, called the “La Pietra Conference” because it was held at New York University’s Villa La Pietra in Florence, Italy. This will be followed by an international conference in 2004 on “Training for a Transnational Law Practice.” Also, in 2003, we plan to offer a program on certain aspects of private international law in conjunction with the European Law Faculties Association. We hope to offer additional joint programs with counterpart associations in other parts of the world in the future.

#### G . The "Foreign-Affiliated Law School Program"

Three years ago the association began a program called the "Foreign-Affiliated Law School Program". Through this program foreign law schools that enroll, for a nominal fee of \$150, as a foreign affiliate may send representatives to our annual meeting or other professional development programs, receive association publications, and have their professors become members of sections and join section listservs. The association heavily subsidizes this program because of the importance we place on international cooperation and assisting our member schools and their faculty to establish cooperative arrangements with law schools in other countries.

### IV . POSSIBLE RELEVANCE OF THE U. S. MODEL FOR JAPAN

I conclude with a few observations about the possible relevance of the United States legal education system, and the AALS, for the new Japanese system.

First I should note that the type of system that works for one country will not necessarily work for another. It would thus be presumptuous and arrogant for me to suggest that Japan should adopt all of the features of the U. S. model. I will however note the factors that are critical to the success of the U. S. model.

First, although legal education in the United States is much less expensive than other forms of graduate education, it is much more expensive than most undergraduate education. The primary source of funding for students attending U.S. law schools is the federally guaranteed student loan programs. Without that level of federal support, many U.S. law schools would go out of existence because a large number of students could not afford to go to law school. Some would argue, perhaps justifiably, that legal education in the United States would be better with fewer law schools, but it is not likely to happen in the near future.

Public law schools were, at one time, highly dependent on state government funding, and most public schools still benefit financially from state support, but that support is much less than it was even as recently as ten or fifteen years ago. Public law school tuition levels have thus increased significantly in recent years; nevertheless, they are still measurably lower than tuition in private schools. Thus, to develop a legal education system like the United States' system requires substantial funding, from a combination of sources: the government, tuition, and private fund-raising from donors, both individual and corporate. It is critical to note that the government funding has not been accompanied by government regulation.

With regard to accreditation, the system in the United States is relatively detached from the government. Thus, the American Bar Association is a totally private entity, although its section on legal education and admission to the bar must be certified by the U. S. department of Education as an accrediting body in order for it to serve as the

“gatekeeper” for access to federally guaranteed student loan money for students.

The Association of American Law Schools, a quasi-accrediting body through enforcement of its membership requirements, is totally private and does not seek any form of government certification or recognition. In the 100-year history of the association, it has been a key player in improving the quality of legal education, both through its membership requirements and its professional development programs. It became a key player, and has remained one, because of the prestige value associated with membership. Thus, all of the major United States law schools have sought, and most have achieved, membership in the AALS.

I do not know enough about conditions in Japan to speculate about whether a similar private organization could develop and be successful. I do however offer the assistance of the Association of American Law Schools should you be interested in developing such a model.

Finally, I should note that other countries are developing accreditation models similar to the U.S. model, although they sometimes involve a larger governmental role. I have chaired accreditation teams in other countries where this is the case. While I believe that a private model is superior to a government regulation model, if there is to be government regulation, it is absolutely critical that it incorporate strong guarantees, in both the structure and appointment of personnel, against political influence and control.

Thank you for the opportunity to participate in this important conference. There is much that each of us can learn from each other and I look forward to collaborating and working cooperatively with you to achieve our mutual goal of improving the quality of justice, not only in our own countries, but throughout the world.