A BRIEF HISTORY OF LEGAL EDUCATION IN THE UNITED STATES

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1. Introduction.

In the United States, lawyers are often the object of ridicule and rude jokes. For example:

Question: If an airplane filled with lawyers crashes into the sea, what do you call it?
Answer: A good start.

There also are countless public opinion surveys that indicate lawyers are not trusted and are generally held in very low esteem.

The "dead lawyer jokes," public opinion surveys and other stories are misleading, however, because they mask the tremendous importance of law and lawyers in the United States. Since the establishment of the United States over 200 years ago, law and the legal profession have had an enormous impact on American society.

Throughout its history, the United States has been a rule-oriented society with great powers and prestige given to judges, lawyers and law professors. Even today, and in spite of the proliferation of "dead lawyer jokes," graduates of American law schools hold positions of power in politics, business, labor, and social reform movements that would be uncommon in other countries. Law professors have an especially privileged existence within the university community and often have a profound effect on the legal profession. Law schools regularly are at the center of professional developments and are significant forces in local, regional, national and international affairs.

The American system of legal education often is regarded as being instrumental in preserving and even enhancing the preeminence of law and lawyers. Without a doubt, legal education has a profound impact on American society. There are about 177 approved law schools in the United States, with 135,000 students and 12,000 law professors, librarians, deans and administrators. In 1994, 40,000 J.D. degrees were awarded and 50,000 new lawyers were formally licensed to practice law.

The object of this paper, which is a brief look at the important transformations in American legal education, is especially noteworthy for people seeking to understand American law, the legal profession and legal education. It also may be useful for those seeking to extract from American legal education some bits that may be usefully employed in legal education elsewhere. To better understand the important transformations in American legal education, however, it first is necessary to get overviews of the American legal system, the system for regulating the legal profession, and the current structure of American legal education.
2. Law, the Regulation of the Legal Profession, and Legal Education

Today - An Overview.

An Introduction to American Federalism. The United States is a federal republic. In theory, the states preceded the federal government - they created it and they were careful to retain their own independent sovereignty. Over the 200 years since the establishment of the republic, much of the states's independence has been lost to an ever powerful federal government; but the fifty states still have their own separate existence and their own complete system of government.

At the national level, there are the constitution and federal statutes governing some civil and criminal matters. The federal constitution is the dominant law in the United States - it supersedes all federal statutes, state constitutions and state statutes. The federal statutes also supersedes the state statutes where there are conflicts between the federal and state statutes.

The federal judiciary consists of three levels - the district court, courts of appeal, and the U.S. Supreme Court, which is the court of last resort.

Each state has its own constitution and civil and criminal statutes. The state constitutions are broadly modelled on the federal constitution, with the same division of government (executive, legislative and judicial branches) and similar guarantees for civil and individual rights. Each of the states also has a complete judicial system. Most commonly, the judicial system has three tiers - trial courts, intermediate appellate courts, and a court of last resort (usually referred to as the state supreme court, but in New York referred to as the New York Court of Appeal).

The existence of a set of laws and a complete judicial system within each state has produced distinct legal systems within each state. Thus, in addition to the federal constitution, the federal statutes and the federal judiciary, there are fifty separate legal systems within the United States. These state legal systems are of special significance in the areas of contracts, torts, property, inheritance, land use controls, family law, criminal law, insurance law, corporations law, and commercial law. In addition, within the state courts, the rules of evidence and the civil and criminal procedures are usually governed by state laws. In many instances, the various state laws and court procedures are quite similar - so similar as to give rise to the notion that there are many general principles of American law broadly applicable throughout the United States. In other instances, however, the state legal systems differ sharply. Louisiana property law, for example, is quite different from Illinois property law.

Inevitably, the federal system and the distinct legal systems within each of the states have had an impact on American legal education. American law schools
routinely have courses that deal with the resolution of conflicts between federal and state laws and with conflicts between the laws of two or more states. In addition, the more prestigious "national" law schools emphasize the unity of American laws in their course content. Their torts classes, for example, focus on the generally accepted torts principles within the United States, often with little or no reference to the torts law of a particular state. Harvard University is located in the state of Massachusetts, but graduates of Harvard Law School often have little knowledge of specifics of Massachusetts torts law. The less prestigious "state" law schools deal much more with the specific laws of their state so their torts courses and other courses where state laws are dominant are focused on the laws of the state in which they are located.

Regulation of the Legal Profession in the United States. There are national, state and local bar associations. The American Bar Association, founded in 1878, is the leading national association of attorneys. Membership in the ABA is voluntary, but about half of the U.S. legal profession are members. The ABA promotes studies in a wide range of law related topics and it is a powerful lobbying force for lawyers throughout the United States. It does not have much official status or power, however. Local bar associations also do not usually have any official responsibilities, but there are hundreds of them in the cities and counties where they serve as informal professional associations for lawyers.

For most lawyers and law students, the state bar associations are the most important. Today, the practice of law is closely regulated and no person may engage in the practice of law without a license, and it is the state bar associations that control the licensing process. Usually, a bar association requires a person to pass an exam administered and graded by the bar association as a condition to receiving a license to practice. Unlike the bar examination process in many foreign countries, however, the state bar associations' exams typically are not aggressively selective; a typical pass rate for an American bar exam is 80 percent or more and those who fail usually have the option of taking the exam again at a later date. To take the bar exam, the state bar associations generally require that a person have obtained a J.D. degree from an American law school in good standing, although several of the bar associations (the New York Bar Association, for example) permit a person to take the bar exam if they have a graduate law degree from an approved American law school.

The prevalence of state bar exams certainly has had an effect on legal education in the United States. It has tended to reinforce the "state" law schools' bias towards learning the law of the local jurisdiction. The curriculum of the state law schools is tilted heavily towards the specific rules of the state in which the law school is situated. Student selection of elective courses in the second and third years of their law school careers also is influenced by the inevitability of bar exams after their graduation. The prevalence of state bar exams also explains why "bar review courses"
are so well attended. Since the bar exams tend to reward memorization of the substantive and procedural laws of the state in which the bar has jurisdiction, the bar review courses often rely on teaching techniques remarkably similar to the methods employed for teaching grade school children the multiplication tables - simple and straight memorization of the laws of the jurisdiction giving the bar exam.

In about half the state, membership in the state bar is required to continue to practice law. The bar association commonly is also responsible for the discipline of lawyers who violate the state's code of professional responsibilities. In addition, in many instances, the state bars set standards for continuing education requirements for lawyers to remain in good standing, which is a major reason why continuing legal education courses are so prevalent and well attended in the United States.

An Overview of American Legal Education. Within the United States, legal education now is largely at the graduate level. Students usually take twelve years of primary and secondary education, which they complete at about age 18. They then have four years of undergraduate college study in which they concentrate on such diverse subjects as English literature, political science, history, economics, engineering or the physical sciences. Although they are eligible to enter law school directly after obtaining an undergraduate degree, many students work for a few years before entering law school. The standard curriculum in American law schools is for a three year period during which the students take courses similar to those taught in other law programs around the world. They begin with general, introductory courses in contracts, torts, property, procedure, criminal law and constitutional law. They then proceed to more specialized courses and seminars in public and private corporation law, securities law, commercial law, trial and appellate advocacy, family law, conflicts of laws, inheritance law, taxation, international law, and international business law.

Although the course content in American law schools parallels that in many foreign law schools, the method by which the courses are taught is different from that employed in most other countries. The United States is a diverse and complicated society and its state and federal legal systems match the complexity of the society. Therefore, it is not surprising that legal education in the United States is not aimed primarily at memorization of the laws. The complexity and fluidity of the American legal system do not lend themselves to memorization. Instead, for the last one hundred years, American legal education has depended heavily on the case method of instruction.

Under the case method, the reading materials for courses are not so much organized statements of the law, but instead are a collection of individual cases, generally appellate court opinions. In class, the cases are discussed as discrete subjects by themselves and in relation to other cases. General legal principles are not
presented through abstract lectures, rather they are extracted from the cases being discussed. Often, the professor does not lecture on the cases; instead the students are asked to recite the cases, which involves stating the relevant facts in the cases, the issues presented, and the courts’ holdings on the issues. As part of the student presentation of the cases, the professor generally questions the students about their reaction to the cases using the “Socratic” method. In purely Socratic classes, the professor rarely gives his or her opinion about the case or the legal generalizations derived from the cases, but just keeps pushing the students to make their own analysis more profound. In these classes, no correct interpretation of the law is offered, only the lesson that the law is always flexible and debatable. For the students, many of whom feel they should know the law after having a course in the subject, the Socratic method often is confusing and frustrating. American law schools continue to rely on the case method with Socratic questions and answers because the prevailing view is that this style is so effective in teaching students how to think about the law and how to approach the myriad legal questions they are likely to face later.

The extent to which American law schools depend on the case method varies greatly, and even within law schools there often are markedly different degrees to which the case method is used. At national law schools, the case method and an emphasis on the development of reasoning skills are likely to be more prevalent. At state law schools where the pressure to know the law may be more compelling, the case method may be coupled with lectures by the professor during which legal principles are set out, presumably for memorization by the students.

American legal education also is noted for its clinical and simulation courses. In clinical programs, law students are taught about the practice of law in actual practice situations, which typically involve legal problems of low income people or prison inmates who otherwise would not have access to legal services. In simulation courses, students participate in mock trials or business negotiations to get a better understanding of the substantive responsibilities of lawyers.

Clinical and simulation courses are good, practical counterweights to the sterility of the case and lecture courses. An important constraint on making greater use of clinical and simulation courses is that they are much more teacher intensive than courses taught through the case or lecture method. As a result, clinical and simulation programs are much more expensive to sustain than more traditional law courses. In addition, too heavy a reliance on clinical and simulation courses can produce law graduates who have a good understanding of where the court house is and how to dress for their first day in court, but who have been poorly trained in legal analysis.
3. Early History.

Legal training in the first hundred years after the establishment of the United States was markedly different from legal education today. In the early 1800s, training for most lawyers consisted of apprenticeships in law offices. During the apprenticeship, the apprentice "read law" and performed other tasks, such as copying documents, for a period of one to five years. There were a few law schools at this time; but they were proprietary schools run for profit and were indistinguishable from trade schools. These law schools generally developed from the law offices of practitioners who had established themselves as being especially skilled or popular as teachers.

Professional standards for admission to practice were lax or nonexistent. In those jurisdictions with a bar exam, the exam was always oral and normally casually given. In 1860, Indiana and New Hampshire had no formal requirements for admission to the practice of law. New Hampshire, for example, permitted any citizen over the age of 21 to practice law.

Beginning in 1850, there were increased pressures to improve the quality of training for lawyers. The leading advocate for improvements in legal education was Theodore W. Dwight, a professor first at Hamilton College and then the head of the new law school at Columbia University. Dwight knew that most of the leading lawyers of the time had been trained in law offices and were skeptical of the utility of formal professional law schools. But Dwight took an unequivocal position in favor of formal training for lawyers and few in the profession were prepared to fight the move away from apprenticeships.

Even as the position of law schools grew stronger, however, no one was suggesting that all legal training be spent in law schools. Instead, the leading lawyers at the time were pressing for a generalized requirement of apprenticeship, part of which could be completed in law school, and an effective bar exam. They recognized that increased rigor in law training and more systematic bar exams would limit entry into the legal profession, thus making the profession more narrow and less democratic. But the concerns about improving the professionalism of lawyers and perhaps some acknowledgement that the changes would create a more monopolistic position for existing lawyers caused the legal professionals to support improved standards for the profession. As a result, in the period between 1870 and 1890, bar admission standards were tightened considerably. By 1890, twenty-three of the thirty-nine jurisdictions required a formal period of study or apprenticeship. The states also established the committee system for examining for the bar and the written bar exam was becoming more commonly accepted.

During the period from 1870 to 1920, American legal education was transformed into a structure and content that would be easily recognizable today. It was during this period that law schools became the exclusive path for legal training, the program of legal education was set at three years, the case method was widely adopted, and law professors emerged as a class distinct from legal practitioners. In bringing about all four of these transformations, Harvard University played a commanding role.

The Institutionalization of Legal Education. In the 1850s, Theodore W. Dwight was instrumental in beginning the institutionalization of legal education. While he was at Hamilton College and later Columbia University in the 1850s, he was a leading opponent of the apprenticeship system and a strong advocate of the importance of formalized legal training in a law school environment. At that time and apparently due to Dwight's presence on the campus, Columbia University was the leader of the law school improvement movement. Dwight also had a profound impact on the New York bar. He was one of the founders of the Bar Association of the City of New York, as well as most other professional associations established during that time.

But what Dwight and Columbia University began, Harvard University and Christopher Columbus Langdell, Charles Eliot, and James Barr Ames carried forward with enormous influence on American legal education - influence that still is readily apparent in American law schools.

In 1869, Charles Eliot was appointed President of Harvard. Eliot was responsible for a great many innovations in undergraduate and graduate education, but he also provided a supportive environment in which Langdell and Ames were able to flourish in their efforts to reform legal education.

Langdell was appointed by Eliot to the new position of dean of the Harvard Law School in 1870. At the time Langdell became dean, the Law School was an adjunct of Harvard, but it had no relation with Harvard College. Students generally chose either the Law School or the College, but not both, which meant that legal education at Harvard (and elsewhere as well) was at the undergraduate level. The standards for admission to the Law School also were not rigorous and there was a somewhat relaxed two year program in which students were free to start at any point. By the end of Langdell's deanship in 1895, Harvard had pushed Columbia and Dwight into the shadows and become the preeminent law school in the country. Institutionalized legal training also had become accepted as the standard for leaders of the legal profession.
The general acceptance of institutionalized legal education did not occur without controversy. While practicing lawyers recognized the need to raise the standards of practice, they did not accept law school training without some hesitancy. They were concerned that too much academic training might be counterproductive and leave a person with a poor understanding of the law. Still the opposition to institutionalized legal education was not shrill, but fairly muted, perhaps because the supporters of the law schools recognized a continuing role for apprenticeships.

The Three Year Term for Legal Education. During the decade of the 1870s, the study of law at Harvard gradually shifted from an informal program to a recommended, but not required three year term. In part because of the limited curriculum, most students at the time remained at Harvard only for one or one and a half years. In 1899, however, the three year required term was established at Harvard; and, because of Harvard's size and influence, other law schools slowly adopted the three year requirement, which is now the recognized term throughout the United States. The content of the law school curriculum 100 years ago was quite similar to what it had been at earlier times and is remarkably similar to what is taught today, with some exceptions for specialized courses in areas of the law which were nonexistent or of little importance then. The Harvard curriculum of 1852 included property, equity, contracts, bailments and corporations, partnership and agency, shipping and constitutional law. Torts was added in 1870, jurisprudence and federal procedure in 1872, trusts in 1874, mortgages in 1876, suretyship in 1882, quasi-contracts in 1886, and damages in 1890. Today's curriculum at Harvard still contains many of the courses offered in 1852 and 1900, plus new areas such as taxation, securities regulation, antitrust, and international business transactions law.

Legal Education as a Graduate Program. The movement to make legal education a graduate program took longer to achieve. In 1898, about 8 percent of the law students had college degrees. At the more elite institutions the level was higher - Harvard had over 75 percent of its law students with college degrees; at Northwestern, it was 39 percent; and at Yale, it was 31 percent. The influence of Harvard and the other more elite institutions certainly pushed other schools to move legal education to the graduate level, but by 1915, only Harvard and the University of Pennsylvania had any serious base for claiming that law was a graduate program. By 1921, Stanford, Columbia, Western Reserve and Yale law schools required a college degree except for those enrolled as undergraduates at the same university. Another four schools required three years of college work; twenty-three schools required two years; and twenty required one year. This meant that more than half the law schools in existence in 1921 still required only high school education or less for admission to law school. Now, of course, the national norm is that admission to law school requires an undergraduate degree.
There were two apparent reasons for the movement to make legal education a graduate program. Both had to do with the established bar's concerns about maintaining high levels of professionalism. First, concerns about maintaining high professional standards within the legal profession naturally generated pressure for law schools to be more selective in their admission process. The obvious way to be more selective was to grant admission only to college graduates. The second reason was the feeling that lawyers should have a good liberal education as an underpinning for their legal training - a feeling that was ostensibly fairly widespread among members of the practicing bar. One must question, however, whether concerns about having a proper foundation for legal education were really thinly disguised attempts to approve the monopolistic position of the existing members of the practicing bar.

Adoption of the Case Method. Of the four transformations for which Harvard was responsible between 1870 and 1920, the most significant was the introduction of the case method. The earliest use of the case method in American legal education apparently was in an equity course at New York University in the 1860s. The case method has come to be associated with Langdell, however, because he used it so systematically and with great determination. Langdell viewed law as a science consisting of certain doctrines. In explaining the reason for using the case method, Langdell said:

"[L]aw, considered as a science, consists of certain principles or doctrines. To have such mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer ... and the shortest and the best, if not the only way of mastering the doctrine effectively is by studying the cases in which it is embodied... Moreover, the number of legal doctrines is much less than is commonly supposed."

Under Langdell, the case method consisted of the professor and students analyzing appellate court decisions with a view to extracting from the cases the general principles of law. This process became mixed with the question and answer technique which was quite similar to the typical law school quiz at the time, and the merger of the case method with the question and answer technique has become known as the Socratic method. Langdell, Eliot and Ames stressed that the case method was considerably more practical than prior teaching methods, with their heavy emphasis on lectures and quizzes.

"[T]he special combination of Eliot, Langdell, and Ames produced an educational system unusually well adapted to its time and place. Eliot provided the inspiration and 'power in action,' Langdell was its first practitioner and therefore its symbol, and, finally, the talent and perhaps
youthful enthusiasm of Ames helped to perfect and perpetuate the system. The case method fulfilled the latest requirements in modern education: it was 'scientific,' practical, and somewhat Darwinian. It was based on the assumption of a unitary, principled system of objective doctrines that seemed or were made to seem to produce consistent responses. In theory, the case method was to produce mechanistic answers to legal questions; yet it managed to create an aura of the survival of the fittest.

One of the important advantages of the case method was its adaptability. Langdell's approach did not include any details on how the case method should be taught, but the system quickly took on the Socratic method of question and answer. In addition, and most importantly, later academics put less emphasis on using the case method to teach substantive legal principles. Instead, they stressed the case method's ability to develop a sense of legal process in the minds of students. These academics, including Ames, viewed law as a complex system with an infinite number of principles. By 1907, use of the case method had shifted from teaching substantive law to legal process. As Ames said:

"The object arrived at by us at Cambridge is the power of legal reasoning, and we think we can best get that by putting before the students the best models to be found in the history of English and American law, because we believe that men who are trained, by examining the opinions of the greatest judges the English Common Law System has produced, are in a better position to know what legal reasoning is and are more likely to possess the power of solving legal problems than they would be by taking up the study of the law of any particular state.

The most significant effect of the case method was to shift American legal education away from substantive law to legal process, where the emphasis was on training students to think like lawyers. This effect dominates American legal education even today, where so much of the classroom and legal scholarship are devoted to legal reasoning rather than substantive law.

Adoption of the case method was not without controversy. In the 1890s, the ABA's annual meetings contained major attacks on the case method. It was claimed that the case method developed an ability to argue any side in a controversy, but failed to equip the student to advise clients on what the law was. Use of the case method, it was said, presents the law in a disjointed fashion, rather than in a continuous and unifying flow. By the mid-1890s, however, criticisms of the case method had become quite muted and it was becoming widely and rapidly accepted throughout the United States. By the beginning of the twentieth century,
... the case method, although far from unanimously approved, was recognized as the innovation in legal education. Its success, though largely the result of the confluence between its drama and its ability to engage students in imaginative activity, was related to other factors. No doubt part of the method's popularity was snobbism; once elite law schools had decided to approve of the system, those aspiring to be considered elite rapidly followed. Such elitism, however, may have been not only on the part of the institutions but also on the part of the individuals within them. Law professors undoubtedly relished their increasing power and influence in the classroom and happily made the change from treatise-reading clerk to flamboyant actor in a drama. Moreover, the law student felt the appeal, too. By the 1890s, going to law school was no longer a rarity; a law student who wanted product differentiation sought out a case-method school. A certain amount of practicality also went along with this student attitude, and the new breed of academic lawyers taking over legal education was interested in teaching in case-method schools.

Another advantage of the case method that emerged was finance. Use of the case method, mixed with the questions and answers of the Socratic method, enabled law professors to teach large classes. This greatly improved the economics - the profitability of legal education.

Law Professors as Distinct from Practitioners. Until the 1870s, law professors had been either practitioners who spent a few hours teaching or fulltime teachers who had extensive practical experience before they took up their teaching careers. Thus, the appointment of James Barr Ames to be an assistant professor of law at Harvard in 1873 had great significance for legal education. Ames was the first of a new style of legal academic - a person who had limited practical experience, but was first and foremost a teacher and scholar of the law. At the time of his appointment, Ames was a recent graduate of Harvard Law School who had barely practiced law. Dean Langdell said of the Ames appointment: "A teacher of law should be a person who accompanies his pupils on a road which is new to them, but with which he is well acquainted from having often travelled it before. What qualifies a person, therefore, to teach law is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of cases, not experience, in short, in using law, but experience in learning law." Ames was very successful in his use of the case method and he was especially popular with the students.

The Ames' appointment marked the beginning of a trend that helped to move law schools away from their status as approximations of trade schools with a close affiliation to the practice of law to a closer affiliation with the higher education industry. The Ames' appointment created for the first time a division in the legal profession
between the academics and the practitioners - a separation that continues to this day.

While the profession of law teaching now is widely accepted as separate and distinct from the practice of law, there still is a continuing link between teaching and practice. The degree to which this link exists varies with each law school, and with each law professor, but it still is common for law teachers to have had some practice experience before entering a law teaching career. In addition, many law professors feel a closer association with law practitioners than their colleagues in academe.

5. Conclusions.

Although there are over 150 law schools in the United States, there is a fair measure of uniformity among the schools in the basic elements of legal education: (i) American legal education today is taught over a three year term at the graduate level; (ii) the case method is widely used as an important component in a great many of the law school courses; (iii) the case method generally is counterbalanced with clinical and simulation courses; and (iv) law professors are recognized as a distinct class within the legal profession. Much of the uniformity probably is due to the existence of the American Bar Association's Law School Accreditation Committee. This committee determines whether law schools have satisfied certain minimum standards to merit being officially "accredited." Since only J.D. degrees from law schools which have been accredited qualify graduates to take state bar exams, the ABA's Accreditation Committee has very considerable influence.

On the other hand, it is easy to overstate the degree of uniformity in American legal education. As mentioned in the second part, law schools have distinct characteristics - the more prestigious law school take a national view and concentrate on broad and generally accepted principles. They also are likely to emphasize development of reasoning, research, writing, advocacy and negotiating skills. Less prestigious schools often emphasize the law of a particular state and may devote a significant portion of the curriculum to learning the law, with a premium on memorization of the rules.