LEGAL EDUCATION
IN THE UNITED STATES

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To understand how law is taught in the United States, a person must begin with the fact that in the United States legal education consists of three years of graduate, professional education and training. The student has already had four years of university education. Moreover, many students come to legal education after having worked for at least a few years in some other position. Thus, the student beginning legal education in the United States is older than in most countries. He or she is at least 22 years of age and is often older.

Prior to beginning legal studies, many students have completed a liberal arts education. Liberal arts focus on such areas as literature, philosophy, history, political theory and anthropology with introductions to other areas such as psychology, sociology, economics, or the physical sciences. Other students will have spent their four years specializing in the physical sciences, mathematics, economics, business administration or music or fine arts. It really matters not. What does matter is that the student comes to law education with a background of at least four years of university education and is now prepared to focus upon professional training. Increasingly, many students enter law school with advanced degrees : masters, sometimes doctorates, sometimes professional doctorates in areas such as medicine or dentistry.

The second fact that must be understood is that with very few exceptions, the student comes to law education with the intent of becoming a practicing lawyer. The concept of "practicing lawyer", is a broad one. It includes the government lawyer as well as the lawyer in private practice. It includes the in-house corporate attorney as well as the attorney in the private law firm. In the United States, there is much fluidity in the practice of law. A government attorney will often leave government to enter private practice. A prosecutor of criminal cases sometimes becomes a criminal defense attorney. An attorney in private practice may enter government or become an in-house corporate lawyer. Therefore, the law school prepares the student to enter any form of practice, and realizes that the form first entered may very well change more than once during an attorney's career.

Thus, the law student -and legal education- in the United States must be contrasted with the student and education in a country in which law education is largely academic, to learn about law, where most students will probably not spend their careers practicing law. Legal education in the United States is to educate and train professionals who are expected to be and usually become practicing lawyers.

Yet, this does not mean that legal education in the United States is technical in nature. It is analytical and academic as well as professional. The student is exposed to the history of how law has evolved to where it is today. And the theory underlining legal structure is a very important part of legal education. Indeed, an essential part of legal education is the analytical. The focus is not on the student memorizing laws but on the student learning to analyze, and this requires a firm theoretical basis of law.

As is well known, the United States is a common-law country. This means that courts play essential roles in making law. In some agreas, the law has historically been court made. In those areas, legislation has had relatively minor effect. Other court-made law is actually the interpretation, construction, and application of Constitution and statute. The United State Constitution contains many broad phrases : due process of law ; equal protection of the laws ; freedom of speech ; commerce among the states and with foreign nations, and the like. These phrases need to be construed and interpreted and given meaning in various contexts. This is the role of the courts. The same is true of statutory enactments. They too need to be construed, interpreted, and applied to varying situations. Conflicting statutory provisions must be reconciled. Gaps in a statutory scheme must be filled. All of these responsibilities, too, fit within the role of the courts.

As is also well known, precedent is very important in the United States legal system. When a statutory provision is construed, it is important in the United States legal system that that construction be applied to subsequent cases. Like situations should evoke like results in the law, unless of course there is good reason to alter the construction. Stare decisis is an important doctrine in the United States legal system, but stare decisis has never meant that exceptions cannot be written into a rule earlier written by a court or even that such a rule itself cannot be altered when good and sufficient reasons are shown to the court's satisfaction.

Yet, there is also much legislation that a lawyer must utilize. This legislation includes constitution, with its own rules of construction, statutes duly enacted, regulations of administrative agencies, and ordinances of local legislative bodies. Indeed, as time has gone on, a larger and larger part of the governing law is legislative in its origin. The lawyer must be aware of relevant legislative enactments and how to utilize them.

Still another factor that must be considered is the role of the lawyer in the United States. This role should be divided into two parts : (1) the advocate before a court, administrative tribunal, arbitrator or other decider of conflicts, and (2) the adviser and negotiator. In each situation, the lawyer represents the best interests of the client. To do this, the lawyer must be able to analyze both legislation -which includes constitution, statute, ordinances, administrative regulations- and court interpretation and construction of legislation as well as those areas in which court-made law is the usual rule. The lawyer must advise the client on what the law is. Where the law is clear and authoritatively stated, whether in statute or case law, the lawyer can so advise. Where the law is neither clear nor authoritatively stated, the lawyer must advise the client on a course of conduct that will most probably work the result that the client desires in a way that will most probably stand up in court if challenged, advising the client of the risks involved.

As an advocate, the lawyer plays a most important role. The United States, of course, has an adversarial system. In this system, the lawyer has the principal responsibility to gather evidence, to marshall the evidence and present it to the tribunal in the most effective manner, to research the law, to present the law to the tribunal, and, when appropriate, to argue that the court-made law as it now exists needs clarification, a new exception, or even outright alteration, presenting the reasons for

that position. The judge plays a role, yes, in assuring that justice is done. But the principal roles are played by the attorney for each side of the dispute and the judge does, and is entitled to, rely upon the attorney's work and presentation as the sole source of evidence and as the principal source of legal argumentation.

Each of these postures demands a highly developed analytical ability. This includes the ability to find and to read statutes and to determine how they are to be interpreted and applied, including when it is appropriate to go to the legislative history underlying the statutory law. It also includes the ability to find and to read case law. To perform these tasks effectively, the lawyer must know the theoretical underpinnings of the law, must know the historical context in which the law exists, must have a feel for the economic, sociological, and psychological contexts as well as impacts, and must be able to bring all of these abilities together in a coherent and meaningful way.

Further, the student must learn about the legal profession. He or she must know about its organization and its ethical and professional requirements. The ethics of the practice of law include strict rules such as govern relations with clients, the prohibiting of conflict of interest, and the relations between lawyer and court. The ethics also include the civility and social mores requirements so that the profession can function as smoothly and efficiently as is possible. Along with the teaching of ethics, the law school also introduces the student to what happens upon the breach of ethical rules : the disciplinary system that exists for that purpose.

As a significant percentage of law graduates immediately begin to practice law on their own, or go into practice with another single practitioner, the law school must be aware that it is preparing the student for the actual practice of law. The only impediment to the practice of law after graduation is the examination for admission to the bar that is administered by the state in which the graduate wishes to practice. When that examination is passed, the young lawyer is entitled, by law, to open up an office and practice law on almost any level. (Practice before the United States Supreme Court requires three years of admission to the bar, not necessarily spent in the practice of law.) That young lawyer, fresh from law school, may write contracts and wills, set up corporations and partnerships, negotiate agreements, plead cases in court, and do anything else that is within the concept "practice of law".

This situation is quite different than it is in many other countries. For example, in the United Kingdom, when a student completes his or her law education, he or she spends two years either in the Inns of Court School (or an equivalent) being educated to be a barrister, or in the Solicitor's School, being educated to be a solicitor ; in either case there is time spent as an apprentice to an already trained barrister or solicitor. In many of the civil-law countries, once the formal, academic education in law is complete, and a state examination is passed, there is time, often two years, spent in both further education and apprenticing before the young lawyer is permitted to go out on his or her own.

In the United States, however, apprenticeship is not required. By reason of successful completion of three years in legal education and passing the state bar examination, the young lawyer is licensed and may begin practice on his or her own. While most begin their practice in the law firms of experienced lawyers or in a government office where supervision and training is available in greater or lesser extent, there are still a significant number of law graduates who, having passed the state examination and acquired a license, begin practice of law on their own or in offices where training and supervision are at a minimum if they exist at all.

For these reasons, the law schools of the United States have the responsibility to teach the theoretical basis of law, the historical and evolutionary flow of law, and those skills that a lawyer needs to be at least at the threshold of being

minimally competent. Of course the law school needs to convey the structure that is the legal system. It also must try to mold analytical ability so that the student, as graduate, is able to handle legal material in a competent manner. Thus, the student is taught how to find and how to read both law cases and legislative material and how to fit that material into the context of the legal system.

The student is also taught to analyze a factual problem in order to find the legal issues that need to be pursued. After all, a client does not come to a lawyer with a well-thought out legal issue. The client comes with a factual hurt of some sort, presents a story that is often filled with irrelevancies, and seeks assistance. It is the lawyer who must be able to analyze that factual problem, separating out the relevant from the irrelevant, and then knowing or finding the law that pertains to the relevant. This process occurs whether the lawyer is advising a client or pursuing a matter in litigation. And this process directs the lawyer to search for the factual evidence that will be relevant to a resolution of the matter on which he or she is retained.

Finally, the lawyer must convey the law and the facts both orally and in writing and must do so coherently and appropriate to the occasion. An advocate's brief to a court, of course, differs significantly from an opinion letter to a client, and each differs from the contract, the will or other document. Oral presentation, whether to a court or to a client or a gathering of principals, is very important to the practice of law. While law schools should not be expected to teach basic writing skills or the elements of public speaking, they do undertake the responsibility to attempt to improve the written and oral skills of the student as he or she enters law school and to introduce the student to the factors that make legal written and oral presentations, in all of their permutations, different from those presentations to which they had been exposed in the past.

With this background, one can approach legal education in the United States with some understanding. Thus, the so-called socratic method to which the student is exposed is designed to hone the student's analytical ability and more particularly the ability to use legal material in an analytical way. The teaching of rules of, for example, contracts is essential, of course, but it is almost secondary to the ability to use those rules in an analytical manner. Mere memorization of rules or even of theory and of historical flow as put forth by the professor or book is not enough. The student must also be able to use those rules, their theoretical, and their historical progression in an analytical way. The student must not just swallow, but must learn to reason, to question, to think in an active way about the material presented.

Thus, the student is asked to recite on a case, but not just to repeat the case. The student must learn to discern those facts that are material to the issue and ultimate outcome of the case, discarding those that are irrelevant. The student must find the real issue, the outcome of that issue, and the reasoning that led from issue to outcome. The outcome of the principal issue becomes the rule of law that can be taken from this case, what is called the "holding." It is the holding that is of the greatest precedential value of each case. But then the student must be prepared to go further. The student must be prepared to test the validity of the holding, and the reasoning of the court, by seeing how they would play out in situations that are similar but not identical to that presented in the case. Finally, the student must be prepared to put this case, its holding and reasoning, into the context of other cases already studied, to see what is added or subtracted in the structure of law that the student is building around him or her.

True, this is a slower and much harder way of learning than just having the professor lecture on rules, perhaps with theoretical and historical flow, the student takes the lectures down in notes (or buys the notes produced by another), and then

memorizes or otherwise learns that material. But the reason is that it teaches something that in the United States is considered much more important than the rules themselves : the ability to handle legal material in an analytical manner. Accomplishing that result takes time and much effort on the part of both student and professor.

Many law teachers in the United States use the socratic method to some extent. To what extent and in what manner depends on the individual instructor. One significant variation on the socratic method is the use of problems as the material on which analytical training is based. In this variation, the student is required to read material assigned and perhaps there is some lecture in class. But then the student is expected to apply this knowledge to problems that are presented. Again, the student is expected to analyze the problem, and be prepared to discuss variations in the facts presented and how those variations would affect the result. The method is still socratic in the broad sense of that word.

The student is expected to participate fully in the class discussion. This experience, before a large number of classmates, is often quite stressful. As a part of the presentation, the student is subject to questions by the professor. The student is asked to defend his or her statements and conclusions, referring to case text or legislative rule, and justifying conclusions with careful, analytical reasoning. For some students, this is the first opportunity of such oral presentation and defense of position. This too is a part of his or her training.

While the focus may be on the student who has been called upon to carry the laboring oar, the other students in the class are brought into the discussion with their suggestions, comments and questions. A class sitting quietly, passively absorbing information, is the antithesis of this teaching method. Indeed, note taking is not as easy as under the straight lecture method, for the notes must be distilled from the ebb and flow of the discussion and it is within expectation that different students may take away different lessons from the same discussion.

In the process, the student is presented with much material : the civil procedure code, the commercial code, the criminal code, the evidence code, the taxation code, as well as the common-law material that has been classified under headings such as contracts, real property, and torts. The student should emerge from the class with a significant familiarity with the rules of that subject area, a thorough grounding in its theoretical basis, a clear understanding of its historical flow - but the student should also be able to utilize all of that material in an active and analytical manner.

Students are also taught research, writing, and oral skills. There is a clear understanding that no lawyer could, or would want to, learn all law, even in a particular field. There is also an understanding that law constantly changes. Some of those changes are minor modifications and qualifications. Sometimes there is a large change that occurs in a particular field of law, which may in turn impact on other legal fields. Thus, the lawyer needs to be able to find the law as it then currently exists. This need requires a thorough ability to use the law library both in hardcopy and electronic form.

Teaching this research ability is one of the responsibilities of the law school and every program has a first-year course to introduce the new student to this world of material and how to gain access to it in an efficient manner. These courses also require the student to prepare written material emanating from the research and attention is given to the writing skills of the student. These written documents will include opinion letters to a client and argumentative briefs for courts, as well as other material. Moreover, the student is asked to make an oral presentation on some of this material, in order to help hone the skills of oral presentation.

The teaching of written and oral skills does not end with this one course, however. Most, if not all, law schools require the research and preparation in written form of additional papers throughout the remainder of law school. These may be done in research seminars, as independent writing projects, as student members of law journals, as members of moot court teams, and the like. Most law schools today have several law journals in which hundreds of students participate in researching and writing articles for publication as well as editing submissions by scholars, practicing lawyers, and judges. And most law schools encourage participation by students in scores of moot courts that have now proliferated on the scene. In these moot courts, students research and write the briefs or memorials that are required, and then make the oral presentations to courts. Some of these moot courts are on a trial, rather than an appellate, level ; others focus upon negotiation and mediation. It matters not what the focus is ; the student acquires experience in researching a problem, and then presenting it in written and oral form. And while the team is in preparation stage, the student's written and oral presentations are constructively criticized by other students and by faculty who participate in helping to build a winning team.

Still another aspect of United States legal education is the clinic. Many law schools have clinic positions for a half or more of the students in the third year class. In the typical clinic, the student actually represents real clients. This representation is quite often in court. In such a situation, the court typically assigns cases involving indigents to the clinic. The clinic is under the supervision of a faculty member often working with clinical attorney-instructors who are there to both learn and teach. The clinic is probably in one particular field, such as, representing indigent criminal defendants in minor cases, or representing indigents in landlord and tenant or small claims court. But sometimes a clinic will work on the prosecution side of criminal cases. Some clinics will handle matters before one or more administrative agencies. Other clinics actually have walk-in offices in which the student advises indigents on legal rights, perhaps drawing up simple documents and handling simple court matters. And then there are others that work in the legislative process, representing what is often called public interest causes -non-profit causes that have little financial resources - before a state or even the federal legislature.

In common in all of these clinics is an academic component, where the student learns in more detail the area of law in which the clinic focuses. The academic component is also used to bring back into the classroom the experience of the real world and the problems encountered, using the discussion of these experiences and problems to better educate the entire clinic class on the practice of law, its ethics, its social mores, its skills, as well as its substantive content. Finally, all clinics have in common the thorough supervision of the student by an attorney and ultimately by a faculty member. The student's written product and oral presentation are rehearsed and constructively criticized so that the student continues to hone his written and oral skills. At the same time, of course, the student learns much about the practicalities of being a lawyer.

Thus, there are three types of classes in the law school : didactic, which almost always include some variation of the socratic method, seminars, and clinics. Moreover, there are many other learning devices that are available to those students who wish to participate, with the school and the profession encouraging participation : the law journal and moot court team among them. The total effort is to educate and train a neophyte lawyer, one who graduates with a thorough grounding in the legal system and enough skills so that he or she can really begin to be educated and in the meantime do good, instead of damage, as an attorney.