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Reflection: Similarities and differences in Legal Education in Europe and the US

I'm honored to be asked to do this. I am a sabbatical fellow at the American Society; during the past fall, I visited on the faculty of the University of Utrecht law faculty's School Human Rights Research. My work at American is as director of the International Human Rights Law Clinic, for 20 years. I have thought, taught and written about these issues since we started, with great changes in the profession. I also serve as reporter for upcoming Int'l Congress on Comparative Law, in DC in August, on "The Role of Practice in Legal Education," which may be one of the reasons I'm here as the only American representative.

How do we differ in our approaches to legal education, and how are we the same? I suspend, for now, the impossibility of talking about a singular "European" perspective on legal education, given the fundamental differences in Germany, France, England and Italy, just to name a few of the faces of legal education on this continent, particularly as I hear the diverse descriptions of your structures and programs throughout the rich history of Europe. I will focus instead on the features of legal education in the U.S.

In 1996, John Henry Merryman, perhaps America's leading scholar on the civil law tradition, wrote a book chapter called "Legal Education There and Here: A Comparison," updating his 1974 article by the same name. While I disagree fundamentally with some of his observations, his framework is a good place to begin.

For Merryman, there are three fundamental differences in higher education:

1. Democracy v. Meritocracy
2. The minor role of private universities in the civil law
3. U.S. self-consciousness on objectives and methods of university education

These are all truisms, but greatest single difference is Merryman's first. Law here is democratic and undergraduate; law there is a meritocratic, graduate discipline.

One must attend four years of university studies and graduate with a Bachelor of Arts or Science BEFORE applying to law school at all. Law school is three years of study after university, plus another year for the masters, if one goes that far. So our students have studied some general, non-legal field before arriving. Most typically, they study political science or economics, as I did, but they may study anything! I have had students with degrees in physics, French literature and even music.

Here in Europe, even before university, primary and secondary schools track students toward university education in hierarchical ways that the more egalitarian system of the U.S. does not. Here, legal education is open and inexpensive, indeed supported by the state, while in the U.S., law school is expensive for both public and private law study, averaging \$28,400 per year in tuition and fees in 2008. Student debt burdens in the US are perhaps the single most salient issue in legal education, with *average* debt in 2008 for private schools of \$91,000, and nearly \$60,000 for public schools. Here, legal education is singularly less expensive, although its costs are rising too, and trendy new competitive and specialized English-language programs here are more expensive than public law school options, but are meant to attract a US market.

Legal education is general here, as it must be for young students seeking multiple options, and students may or may not practice law when they graduate. In the U.S., legal education is specialized, with tracks into commercial, international, immigration law, and public interest practice, just to name a few.

My stepson, Brian, will enroll at the law school of New York University this fall, a highly competitive private law school ranked in the top 5 in the all-important US News and World Report rankings. One must have stellar grades and an excellent score on the national law school entrance exam to get in there. Brian is 22 years old, has finished undergraduate studies and worked for a year after graduation, which is typical. This coming fall, he faces yearly costs of \$60,000 for his three years of graduate study. Here, enrollments are high and dropouts and failures are legion between enrollment and graduation. There, once in a law school, the dropout rates are insignificant, although he, like many other entering law students, believes he may use his law degree for business rather than law practice, in order to have a less driven lifestyle than that demanded by big law, even when salaries in private firms in New York City, he was told last weekend, still average \$160,000 for first year graduates. Some counsel that a job with big law is the only way to effectively keep the debt monkey off of students' backs.

What will he face in law school? He will study for three years. His first year of mandatory core courses, a core that is quite similar to your own basic courses in law, in part because we looked to the German system as a model in the late 19th century when designing curricula. The basic, core courses will be torts, contracts, property, civil procedure, criminal law and procedure and constitutional law, as they have been for more than a century in virtually every one of the 200 law schools in the U.S. What differs is that after completing those core courses, he will choose from hundreds of elective courses over the next two years. As he has an abiding interest in intellectual property, he can find courses in that field and focus on it entirely, knowing only that he faces a bar examination after graduation, in any state, that will test on basic core courses plus others, like corporations, tax and evidence, that are not required. Whether to take so-called “Bar courses” is a decision faced by all students enrolled in law school in the U.S.

What about when he graduates? Law graduates in the U.S. generally will practice law as public or private advocates when they graduate. Being an advocate is the single greatest aspiration of law graduates. An advocate with a law license, which he can get after taking a very tough two or three-day state bar examination, and without one day of apprenticeship, can file pleadings and appear in court in any field, from corporate law to general practice, from criminal defense to prosecution, from legal aid to immigration to government ministry. He will NOT become a judge, as judges are selected (often by non-partisan elections) later in life, usually in their 40s, and usually after a career in court, often as a prosecutor. One distressing piece of information, in my view is the following. In 1960, in the U.S., business lawyers were 45% of the bar, while 55% did individual-oriented practices (personal injuries, criminal law, divorces, wills and real estate work). In 1995, by contrast, corporate lawyers were 64% of the bar, while lawyers for individuals had fallen to 29%. Two-thirds of the practicing bar – our advocates – works in big law! The monetary rewards are high, but the cost to personal life is enormous. Last year, even during a worldwide recession, partners in the largest global firms earned an average of 2.1 million dollars per partner, per year!

As you hear this description of our legal education, supplemented by what you heard yesterday from Heribert Hirte, you get a picture that our systems are quite different. Merryman concludes that ours is better, but I will make no such judgment, today or ever.

Are there some areas of convergence? Yes.

- Enormous growth in numbers over past several decades – in number of law schools, students enrolled in law studies, and graduates in law; both the US

and Germany have too many lawyers. What that means demographically is that the age of lawyers in the profession is dropping, with 44% of all lawyers under 35 in the peak year of 1982. By 2020, says scholar Mark Galanter, the number of lawyers in their 30s and 50s will be the same. Query whether that trend will continue with economy, but this year applications are up 6.5% in the US, as students retreat into education instead of job market

- Women are entering the profession in unprecedented numbers, due to university admissions policies and strength of feminist views. 47% of all enrollees are women in US; 65% at my school. In the Netherlands, 65% of all enrollees are women, and 95% of all entering judges are women.
- We both have long way to go on race. Only 6% of minorities are senior partners, and our law school, a leader in the US, has 28% minority enrollment
- Professoriate is full-time, and mostly does not practice, although we have a growing segment doing clinical work. We too brainwash our students, as one speaker said yesterday. We socialize them to think like lawyers, not a bad thing in itself, but it is if the abstract is too far from the practical.
- Globalization is touching us all, in good and bad ways.

The landscape for legal education is changing, with dual degrees, study abroad under ERASMUS or US plans, and growing numbers of internationalized and skills-focused courses. We, as law teachers, must, in my view, teach values as well as substance, inculcating a vision of law with both heart and conscience. We must do adapt or die.