

**21. YÜZYILDA  
HUKUK EĞİTİMİ**  
Uluslararası Konferans

**LEGAL EDUCATION  
IN 21<sup>st</sup> CENTURY**  
International Conference

Türkiye Barolar Birliđi Yayınları : 293

*21. Yüzyılda Hukuk Eđitimi*

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# 21. YÜZYILDA LEGAL EDUCATION HUKUK EĞİTİMİ IN THE 21<sup>ST</sup> CENTURY

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6-7 Mayıs 2014 6-7 May 2014  
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Önsözler/Prefaces

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## ÖNSÖZ

Birliğimizin Bahçeşehir Üniversitesi Hukuk Fakültesi ve Amerika Birleşik Devletlerinde kurulu olan John Marshall School of Law ile işbirliği yaparak düzenlediği “21. Yüzyılda Hukuk Eğitimi” konulu Konferans sunumlarının İngilizce ve Türkçe olarak basılıyor olmasından büyük memnuniyet duyuyorum. Türkiye Barolar Birliği olarak hukuk fakültelerinde verilen eğitimin kalitesini yükseltmek için kapsamlı bir çalışma içindeyiz. Hem ilgili bürokrasi ile hem de alanda çalışmakta olan akademisyenlerle sürekli olarak iletişim halinde kalmaya büyük özen göstermekteyiz. Bu kapsamda Genel Sekreterimiz Av. Güneş Gürseler ve değerli hocalarımız Prof. Dr. Feridun Yenisey ve Prof. Dr. Muhammet Özekes tarafından oluşturulan Hukuk Eğitimi İzleme ve Değerlendirme Kurulu’nun girişimiyle oluşturulan Dekanlar Konseyi büyük önem taşımaktadır. Ülkemizdeki tüm hukuk fakültelerinin dekanları davet edilerek oluşturulan bu konsey alandaki önemli bir eksikliği karşılamak için işe girişmiş ve hukuk fakültesi lisans eğitiminde kullanılmak üzere bir “değerlendirme kriterleri listesi” oluşturmuştur. Birliğimizin inisiyatifiyle başlayan bu girişime hukuk fakültesi dekanlarımızın sahip çıkması ve son derece kapsamlı bir çalışma sonucunda bu listeyi oluşturmaları takdire şayan bir tutumdur. Böylece dekanlarımız akademik özerkliğe uygun biçimde kaliteli hukuk eğitimi verilmesi için gerekli kriterleri, keyfilikten uzak biçimde şeffaf ve açık ölçütlerle belirlemişlerdir. Bu kriterlerin yer aldığı liste kitap ekinde değerli okuyucuların dikkatine sunulmaktadır.

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4-5 Mayıs 2014'te İstanbul'da ve 6-7 Mayıs 2014'te Ankara'da gerçekleştirilen bu çok kapsamlı etkinlikte Amerikalı akademisyenler ve yüksek yargıçlar, Türk avukatlar ve akademisyenlerle buluştular ve çok önemli bildiriler sundular, çok yararlı tartışmalar da bulundular. Bu toplantı için elbette pek çok kişi emek verdi ancak hepsinin ismini tek tek anmak mümkün olmayacağı için en çok emek veren iki kişiye teşekkür etmek istiyorum. Değerli Prof. Dr. Feridun Yenisey ve Yönetim Kurulu Üyemiz Av. Gülcihan Türe'ye emekleri için şükranlarımı sunuyorum.

Bu uluslararası önemde etkinliğin unutulmaması ve uluslararası düzeyde hak ettiği biçimde hatırlanması için elinizde tuttuğunuz kitabı da iki dilli olarak, Türkçe ve İngilizce hazırladık. Tüm diğer yayınlarımız gibi bu kitabı da ülkemizdeki tüm hukuk fakültelerinin kütüphanelerine göndereceğiz. Ancak taşıdığı önem nedeniyle bu kitabı ayrıca diğer ülkelerdeki önde gelen hukuk kütüphanelerine de ulaştıracağız. Bu kitaba emeği geçen editörlerimize de ayrıca teşekkür ederim.

**Av. Prof. Dr. Metin Feyzioğlu**  
**Türkiye Barolar Birliği Başkanı**

## PREFACE

I am very pleased that the presentations of the Conference titled “Legal Education in the 21st Century” which was carried out in partnership with Bahçeşehir University School of Law and the United States of America-based John Marshall University School of Law are published in English and Turkish. We, as the Union of Turkish Bar Associations, have been conducting a comprehensive work to enhance the quality of education in schools of law. We attach a high importance to continuously keep in touch with both bureaucracy and the academicians in this field. In this context, set up through the initiative of Monitoring and Evaluation Board of Legal Education which was established by our Secretary General Attorney at Law Güneş Gürseler and esteemed academicians Professor Feridun Yenisey and Professor Muhammet Özekes, the Council of Deans has a great importance. This Council, formed by inviting the deans of all schools of law in Turkey, sets to work to meet an important need in this field and made an “evaluation criteria list” to be used in undergraduate education in schools of law. That our deans of the schools of law have adopted this initiative launched by our Union and have formed this list as a result of a highly comprehensive work is a praiseworthy manner. Therefore, in a far from arbitrary way and with transparent and clear measures, our deans have determined the necessary criteria for the provision of a qualified legal education in accordance with the academic autonomy. List of criteria is presented in the book’s appendix to the attention of distinguished readers.

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In this rather comprehensive event carried out in İstanbul on 4-5 May 2014 and in Ankara on 6-7 May 2014, American academicians and lord high chancellor came together with Turkish lawyers and academicians and they presented significant papers and carried out helpful discussions. Many people have made a huge contribution for this meeting; however, since it is impossible to say people's names one by one, I would like to thank two persons who have given the highest support. I would like to express my sincere gratitude to our distinguished instructor, Professor Feridun Yenisey and to our member of Administrative Board, Attorney at Law Gülcihan Türe for their contributions.

We prepared the book, which you are holding right now, in both Turkish and English in order to ensure this event having international importance to be remembered at international level in a way it deserves. Like all other publications, we will also send this book to the libraries of the all schools of law in our country. However, due to its importance we will send this book to the leading law libraries of the other countries as well. I would also like to thank our editors for their contributions.

**Professor Metin Feyzioğlu, Esq.**  
**The Union of Turkish Bar Associations**

## ÖNSÖZ

Bahçeşehir Üniversitesi Hukuk Fakültesi, Atlanta John Marshall Üniversitesi Hukuk Fakültesi ve Türkiye Barolar Birliği ile ortaklaşa gerçekleştirdiğimiz “XXI. Yüzyılda Hukuk Eğitimi” başlıklı Uluslararası Konferansı Türkiye’den ve yurt dışından pek çok meslektaşımız ve uzmanın katılımıyla 4-7 Mayıs 2014 tarihlerinde İstanbul ve Ankara’da gerçekleştirilmiştir.

Toplantının İstanbul’da gerçekleştirilen birinci bölümünde hukuk eğitiminin gelişimine, günümüzdeki farklı uygulamalara ve geleceğine ilişkin önemli tartışmalar yürütülmüş, bu kapsamda dünyada hukuk eğitiminin durumu, baro sınavları, akademik özgürlükler, dijital çağda hukuk eğitimi gibi güncel konular akademik sunumların konusunu oluşturmuştur.

Toplantının Ankara’da gerçekleştirilen ikinci bölümünde ise dünyadan karşılaştırmalı örnekler yanında Türkiye’de hukuk eğitiminin mevcut durumu ve daha iyi standartlara kavuşturulması için atılacak adımlar pek çok hukuk fakültesi dekanının da aktif katılımıyla tartışmaya açılmıştır. Bu toplantı çerçevesinde, Türkiye’de hukuk fakültesi sayısı, fakültelerin fiziksel koşulları ve kontenjan sorunu, öğrenci kabul kriterleri, akademisyen ve öğrenci oranları gibi niceliksel veriler üzerindeki saptamaların ardından, hukuk öğretiminin yapılandırılmasına ve ders programlarına ilişkin öneri ve değerlendirmeler geliştirilmiştir.

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Bu başarılı etkinlikte tartışılan konuları bir kitap haline getirmiş olmaktan büyük mutluluk duyuyoruz. Konuşmacıların katkıları ve Bahçeşehir Üniversitesi, Atlanta John Marshall Üniversitesi ve Türkiye Barolar Birliği'nin titiz çalışması ile şekillenen bu kitabın Türkiye'de Hukuk eğitimini güçlendirme çalışmaları kapsamında yararlanılacak önemli bir başvuru kaynağı olmasını temenni ediyor, katkılarından dolayı bütün katılımcılar, desteklerinden dolayı Atlanta John Marshall Üniversitesi ile Türkiye Barolar Birliği'ne teşekkürlerimi sunuyoruz.

**Prof. Dr. Feridun Yenisey**

**Prof. Dr. Ayşe Nuhuğlu**

**Bahçeşehir Üniversitesi**

**Hukuk Fakültesi**

## PREFACE

The International Conference titled “Legal Education in the 21st Century” which we carried out in partnership with the Faculty of Law at Bahçeşehir University, the Faculty of Law at Atlanta John Marshall University and the Union of Turkish Bar Associations was held on 4-7 May 2014 in İstanbul and Ankara with the participations of many of our colleagues and experts from Turkey and abroad.

In the first part of the meeting in İstanbul, important discussions concerning the improvement of legal education, different practices of present day and the future of legal education were carried out and in this context such current issues in the world as the situation of legal education, bar exams, academic freedoms and legal education in digital age became the subjects of the academic presentations.

In the second part of the meeting in Ankara, issues of current situation of Turkish legal education and the steps to provide it with better standards were opened up for discussion with the active participations of deans of many faculties. Within the framework of this meeting, following the assumptions on quantitative data like number of faculties of law in Turkey, physical conditions of the faculties and the quota problem, admission criteria for students and academician-student ratio, proposals and evaluations related to the reorganization of legal education and the syllabi were developed.

We are very pleased to have published the discussed issues of this successful event into a book. We wish that this book which has been shaped with the contributions of the speakers

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and the meticulous efforts of Bahçeşehir University, Atlanta John Marshall University and the Union of Turkish Bar Associations will be an important reference guide to be used in the field of studies related to consolidating Turkish legal education and we would like to express our thanks for their contributions to all participants and for their supports to Atlanta John Marshall University and the Union of Turkish Bar Associations.

**Prof. Dr. Feridun Yenisey**

**Prof. Dr. Ayşe Nuhoglu**

**Faculty of Law**

**Bahçeşehir University**



## ÖNSÖZ

Savunma mesleği, artan sorunlar altında boğulmamak için mücadele etmektedir. Bu sorunlardan başta geleni artan Hukuk Fakültesi sayısı ve artan oranda bu fakültelerde görev yapacak yeterli öğretim üyesi olmadan verilen eğitimidir.

Hukuk, birey ve devletin vazgeçilmezidir. Bir ülkenin HUKUK devleti olabilmesi, Hukukun Üstünlüğünün sağlanması için en önemli etkenlerden biri Hukuk Eğitimidir. Hukuk eğitimi bir ülkenin Hukuk Düzeninin temel taşıdır.

Bir ülkenin hukuku, Yargının kurucu unsuru olan Yargıç/Savcı/Avukat/Hukukçu yetiştiren Öğretim Üyelerinin iyi bir Hukuk eğitimi almaları sayesinde gelişir.

Hukukçusu iyi yetişmiş toplumlarda gelişen hukuk sonucu, Hukuk devleti kuralları daha iyi uygulanır.

Bu nedenle TBB tarafından Hukuk Eğitiminin daha kaliteli olabilmesi amaçlı çalışmalar yürütülmekte olup, bu çalışmalardan biri de TBB /Bahçeşehir Hukuk Fakültesi / Atlanta John Marshall Hukuk Fakültesi ile birlikte düzenlenen 21. Yüzyılda Hukuk Eğitimi konulu Uluslar arası konferanstır.

Bu konferans sonucunda, hukuk eğitimine olumsuzluk etkenlerinden birisi de ülkemizde 120 ye ulaşan Hukuk fakültesi sayısının çokluğu gibi konferansa katılan temsilcilerinin ülkelerinde de Hukuk Fakültesi sayısının çokluğunun, hukuk eğitiminde olumsuz etken olduğu, o ülkelerde %30 HUKUK fakültesi oranında azaltıma gidileceği, tüm bu ülkelerde Avukatlık Sınavının zorunlu olduğu tespiti yapılmıştır.

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21inci Yüzyılda Hukuk Eğitimi ile ilgili konferansta sunulan sunumlar, konferansa katılanların hukukçuların görüşleri çok değerli görüşler olup, bu görüşlerin kamuoyu ile, hukukçularla, kamu kurumları ile paylaşılmasının büyük yararı olacağı sonucuna varılarak bu kitap hazırlanmıştır.

Bu konferansın yapılmasında ve kitabın çıkarılmasında büyük katkı koyan başta Türkiye Barolar Birliği Başkanımız Sayın Prof. Dr. Metin Feyziođlu'na, TBB Başkan Yardımcımız Sayın Av. Başar Yaltı ve TBB Genel Sekreterimiz Sayın Av. Güneş Gürseler'e, TBB Yönetim Kurulumuza, Adalet Bakanı Müsteşarı Sayın Kenan İpek Bey'e, Uluslararası konferansın uluslararası ayađını büyük bir özveri ve başarı ile yürüten Üstadımız Bahçeşehir Üniversitesi Öğretim Üyesi Sayın Prof Dr. Feridun Yenisey Hocamıza, Konferansımızın hazırlanmasına katkı veren Sayın Bahçeşehir Üniversitesi Dekanı Prof. Dr. Ayşe Nuhoglu, Sayın Atlanta John Marshall Hukuk Fakültesi Dekanı Prof. Dr. Michael C. Markovitz'e konferansımızın hem hazırlık aşamasında, hem oturum başkanlığı hem de sunumundan dolayı katkı veren Sayın Akdeniz Üniversitesi Hukuk Fakültesi Dekanı. Prof. Dr. Muharrem Kılıç Hocamıza

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Turgut Özal Üniversitesi Hukuk Fakültesi Dekanı Prof. Dr. Sacit Adalı'ya

Ankara Üniversitesi Hukuk Fakültesi Dekanı Prof. Dr. Arzu Ođuz'a

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Türkiye'nin değişik Barolarından konferansa katılan konuklara, Sayın Baro Başkanlarımıza, Türkiye'nin değişik Üniversitelerinden gelen Hukuk Fakültesi Dekanlarımıza, Öğretim Üyelerimize, Hakimlerimize, Savcılarımız, Avukatlarımız, Stajyer Avukatlarımıza, Hukuk Fakültesi Öğrencilerimize, Gerek konferansın gerekse kitabın hazırlanmasında görevli olan büyük emek veren TBB ve Bahçeşehir Üniversitesi ekibine çok teşekkür ederim.

**Av. Gülcihan Türe**  
**TBB Yönetim Kurulu Üyesi**



## FOREWORD

The profession of advocacy struggles in order not to be overwhelmed by the increasing problems. The foremost of these problems is the increasing number of the schools of law and the education given without obtaining sufficient number of faculty members to work in these schools of law.

Law is indispensable for the individual and the state. One of the most important factors for a country to be a state of law and for the provision of the rule of law is the legal education. Legal education is the keystone for the legal order of a state.

Provided that the faculty members educating Judge/Prosecutor/Attorney/Legal Professional who are the founding elements of the judiciary receive a decent legal education, law of a country can improve.

*The rules of a state of law are implemented better as a result of a law emerging in a society the legal professionals of which are well-educated.*

Therefore, works have been conducted by the Union of Turkish Bar Associations to improve the qualification of legal education and one of these works is the International Conference on Legal Education in the 21<sup>st</sup> century organized together with the Union of Turkish Bar Associations/the Bahçeşehir University Faculty of Law, the Atlanta John University Faculty of Law.

*As the result of the conference, it was identified that great number of the schools of law in the countries of the representatives participating in this conference is a negative factor just like in our country where the number of the Schools of Law is high and has reached 120,*

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*which affects the legal education adversely and there will be a reduction of 30% in the number of the Schools of Law in these countries and the exam to become a lawyer will be compulsory in all these countries.*

This book has been prepared by deducing that the presentations in the conference on legal education in the 21<sup>st</sup> century, the opinions of the participant legal professionals have a great importance and that it will be useful to share these opinions with the public, the legal professionals and the public institutions.

I would like to express my gratitude to everyone who has made a huge contribution, to our President of the Union of Turkish Bar Associations Professor Metin FEYZİOĞLU Esq. in particular, the Vice President of the Union of Turkish Bar Associations Başar YALTI Esq., our Secretary General of the Union of Turkish Bar Associations Güneş GÜRSELER Esq, our Executive Board of the Union of Turkish Bar Associations, Counselor of the Ministry of Justice Mr. Kenan İPEK, faculty member of Bahçeşehir University Professor Feridun YENİSEY our master who carried out the international part of the international conference devotedly and successfully, Dean of Bahçeşehir University Professor Ayşe NUHOĞLU who contributed to the preparation of our conference, Dean of Atlanta John Marshall University School of Law Professor Michael C. MARKOVITZ, Dean of Akdeniz University School of Law Professor Muharrem KILIÇ for his session moderatorship and presentation,

Our distinguished deans moderating our conference;  
To the Dean of the Medipol University School of Law Professor Mehmet Akif AYDIN,

To the Dean of the Bahçeşehir University Faculty of Educational Sciences Professor M. Yaşar ÖZDEN,

To the Dean of the Turgut Özal University School of Law Professor Sacit ADALI,

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To the Dean of the Ankara University School of Law Professor Arzu OĞUZ,

To the Dean of the Hacettepe University School of Law Professor Çağlar ÖZEL,

To the President of the Ankara Bar Sema AKSOY Attorney at Law,

To the Member of the High Council of Judges and Prosecutors Mr. Ali AYDIN Attorney at Law who was a session moderator of our conference,

Our Speakers who made presentations about the Legal Education in the 21st Century in our conference;

To the Faculty Member of the Selçuk University School of Law Professor Şahin AKINCI,

To the Directorate General for Laws at the Ministry of Justice, the Judge Yaşar ŞİMŞEK,

To the Vice President of the Justice Academy, the Judge Fırat İNANÇ,

To the President of the Antalya Bar Alper Tunga BACANLI Esq.,

To the President of the Bursa Bar Ekrem DEMİRÖZ Esq.,

To the President of the Trabzon Bar Mehmet ŞENTÜRK Esq.,

Distinguished legal professionals who are foreigner participants coming from distance places and contributing;

To Professor James MOLITERNO, Lisa LASAGE, Professor Jane CHING, Lucy JEWEL, Professor Denis BINDER, Professor Kathleen BURC, Professor Eric JANUS, Professor Jeffrey Van DETTA, Professor Bruce LUNA, Professor Rebecca CUMMINGS, Professor E. Joan BLUM, Professor Lurene

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CONTENTO, Proffessor Elizabeth MEGALE, Proffessor Patrick HUGG, Justice Carol HUNSTEIN, Christine DURHAN, Sally LOCKWOOD, Proffessor Denis BINDER, Proffessor Kathleen BURCH, Emaritus James P. WHITE, Emeritus Dean F. Tom READ,

To the participants coming from different bars of Turkey, to our distinguished presidents of bars, to the deans of school of law coming from different universities of Turkey, to the faculty members, to our judges, attorneys, trainee lawyers, our students of school of law, to the team of the Union of Turkish Bar Associations and the Bahçeşehir University for their contributions and great efforts for preparations of both the conference and the book.

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## Welcoming Remarks

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My institution, Atlanta's John Marshall Law School, has the great honor of co-sponsoring this conference on the very important subject of legal education. Some of the meetings and the welcoming reception are to be held here in Istanbul; the majority of the scholarly presentations are to be delivered in Ankara, home base to the Turkish Law Society and a convenient central location for those traveling to the conference from various Turkish law schools. There will be many law professors speaking, both Americans and Turks, some in Turkish and some in English, on the topics of curricular content, legal traditions and history, law in the context of current events in various societies, and trends in the regulation of legal education.

This is my second academic conference in Turkey; the last one was held several years ago on the beautiful Istanbul campus of our sister law school, Bahçeşehir University. The topic then was Law and Terrorism, given the current events of the times it was a topic of great interest to both the US and Turkey as both countries, each in its own way, was struggling with issues of politically motivated violence.

As I contemplate the conference program before me listing the presentations we are about to hear over the next few days on such subjects as methods of legal pedagogy, theoretical frameworks of law, and opportunities for supervised practical experience to be gained by law students both in American and Turkish law schools, I can't help but reflect on the larger purpose that draws us together despite the differing details of the law school experience in our respective corners of the world. That commonality is the magisterial idea called Rule of Law.

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As currently understood in secular society, rule of law is an entirely human construct, a universal defining characteristic of human communities intending to embody the moral principles by which each society lives and to codify those principles into bodies of law that provide predictable guides to our personal, business, and everyday social interactions. Overseen by the courts and the justice system, rule of law assures each citizen of equal and impartial treatment, whether in business contract enforcement, property rights, criminal matters, and a whole host of topics touching everyone. Importantly, equal treatment means equal treatment for the high-born and the less fortunate, accidents of parentage and socio-economic status not being factors weighing on the scales of justice. At least that is the aspirational goal, although it is sometimes imperfectly administered by imperfect human beings.

Rule of law is the organizing principle of states, defining the citizens' interactions with the state, and the states' responsibility to its citizens. If one were to compile a list of all the really great ideas that have animated human development throughout history, Rule of Law would be right up near the top. It is no small recommendation, and it is a fact, that those countries with the most well developed systems of law experience the greatest economic development and prosperity. It matters not whether the system is based on Common Law or Code, or some derivative combination of the two.

I imagine I may be the only non-lawyer or law student in the auditorium. I am, however, a student of history. My professional life does not involve the details of law or legal administration. I am a psychologist and a professional educator. However, as a reader of history I am keenly aware of the overarching importance of the bigger picture on display these coming few days. I know that though we may discuss and disagree on various details, on this central point we are all in agreement: a system of laws, fair, impartial, just, and predictable, to which all citizens are subject, is perhaps *the* key ingredient to economic progress and social prosperity always and everywhere.

This is why we at Atlanta's John Marshall Law School and Savannah Law School are both greatly proud and honored to join with our Turkish colleagues in a discussion of legal education, a most noble enterprise.

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*Birinci Bölüm / Chapter One*

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# The History and Future of Law Teaching Methods

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Over the last 150 years, legal education has evolved from the traditional law-office apprenticeship to a more experiential style of teaching. Experiential education and experiential learning are not new to legal education or professional education in general.<sup>1</sup>

Learning is not education, and experiential learning differs from experiential education.<sup>2</sup> Learning happens with or without teachers and institutions.<sup>3</sup> For example, eavesdroppers

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<sup>1</sup> European medical education, for example, has its roots in the field experiences of French Napoleonic era battlefield doctors. See Dora B. Weiner, French Doctors, Face War 1792-1815, in *From the Ancient Regime to the Popular Front* 51 (Charles K. Warner ed., 1969); see generally John Dewey, *Experience and Education* (1938) (interrupting education as the scientific method by which individuals study the world to acquire knowledge); Kurt Lewin, *Field Theory in Social Science* (Dorwin Cartwright, ed., 1951) (characterizing the social scientist's essential task as the translation of phenomena into concepts); Carl Rogers, *Toward a Theory of Creativity*, in *Creativity and its Cultivation* (1959) (arguing that experiential education is transferable from experience to experience).

<sup>2</sup> See Lewis Jackson & Doug MacIsaac, Introduction to a New Approach to Experiential Learning, 62 *New Directions for Adult & Continuing Educ.* 17, 22-23 (1994).

<sup>3</sup> See *Learning to Effect* (Ronald Barnett ed., 1992), What Effects What Outcomes?, at 3, 4.

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learn about the things they hear,<sup>4</sup> yet they are not educated simply by the act of eavesdropping because the activity is not accompanied by a teacher's or institution's participation in the learning process. Education, in contrast to a learning opportunity, consists of a designed, managed, and guided experience.<sup>5</sup>

The apprentice form of legal education in the US and elsewhere was primarily an experiential learning opportunity. The learning was guided in only a very limited sense by the mentor. The arrangement chiefly suited the needs of the mentor and was arranged according to the mentor's business needs, not the educational needs of the apprentice.<sup>6</sup> In modern legal education, summer job experiences, unsupervised externships, moot court competitions, and law review memberships are all largely experiential learning opportunities. Although students learn a great deal through participation in these activities, they are only one part of an educational experience. In the law school environment, these activities are surrounded by other opportunities. The organized, designed and guided educational activity has been either loosely or closely linked to the experiential learning activity.

### **Law-Office Apprenticeships**

Legal education in the United States found its roots in the form of a traditional law-office apprenticeship. During this time, a lawyer entered an apprenticeship with a mentor after a formal education through the tenth grade. During the four

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<sup>4</sup> Id.

<sup>5</sup> Robert B. Stevens, *Law School: Legal Education in America From the 1850's to the 1980's* 24 (1983).

<sup>6</sup> In describing the advantages of a casebook over the haphazard order of an apprentice's experiences, Ames said: [I]f a lawyer's office were conducted purely in the interest of the student, and if, by some magician's power the lawyer could command an unfailing supply of clients with all sorts of cases, and could so order the coming of these clients as one would arrange the topics of a scientific law-book, we should have the law-students paradise. James B. Ames, *The Vocation of the Law Professor*, 48 U. Pa. L. Rev. 129, 140 (1900).

years with his mentor, he would read Blackstone<sup>7</sup> and Coke;<sup>8</sup> he would observe his mentor consulting with clients and performing in court. He possessed a deep understanding of the small sliver of the legal profession that was relevant to his life. He had considerable experience with the interpersonal skills that are valuable to a lawyer, although his exposure to the theory behind those interactions was limited to whatever he could draw from the example set by his mentor and other local lawyers whom he observed. He had no academic education, either legal or general, and with such education, he had almost no understanding of the larger aspects of the legal profession.

A lawyer of this generation benefited from extensive experiential learning, but received very little experiential education: he learned much about little from the haphazard series of experiences that came his way during the four years with his mentor. And beyond a reading of Sharswood,<sup>9</sup> his exposure to the law and ethics governing lawyers was limited to whatever he gleaned from watching the ways in which lawyers behaved.

Law office training remains a part of legal education in Canada (called “articling”) and for some aspiring solicitors in the UK. In the UK, the post-degree requirement can be satisfied either by work in a solicitor’s office or by attendance at a school focusing on lawyer skills. The latter has become more and more commonly used.

### **The Langdellian Style**

Between 1875 and 1910, legal education in the US underwent a nearly 180-degree turn: cases replaced treatises, classrooms replaced law offices and courtrooms; ordered, planned

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<sup>7</sup> See 1 William Blackstone, *Commentaries* (1765).

<sup>8</sup> See 1 Edward Coke, *The Second Part of the Institutes of the Laws of England* (1797).

<sup>9</sup> See generally George Sharswood, *Professional Ethics* (Fred B. Rothman & Co., 5th ed., 1993) (1896) (advocating the building and protection of a good reputation among fellow lawyers).

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materials replaced a haphazard course of instruction; academic-led education replaced practitioner-led education; academic analytical skills replaced practical client and interpersonal skills.<sup>10</sup> Educational changes roughly coincided in time with early moves by lawyers to form professional organizations and those organizations' efforts to control a profession coping with dramatic economic and social change.<sup>11</sup> Some have even said that the expansion of law schools as a replacement of the apprentice system was "directly related" to the economic changes in the country.<sup>12</sup>

In 1910, a law student became a lawyer after having graduated from a modern, Harvard-model law school.<sup>13</sup> Like many, but not all, of his classmates, he began law school after receiving a four-year college degree.<sup>14</sup> Legal education was based off of the Langdellian style of scientific legal method.<sup>15</sup> The library was his laboratory, the cases were his data. His mental processes followed the scientific method from hypothesis through data gathering to result. He read little of Blackstone<sup>16</sup> or Coke.<sup>17</sup> Instead he read appellate decisions and engaged in searching classroom dissection of them with his professors and classmates.

Through the three-year law school experience, the student was placed in the mental role of a scientific lawyer applying legal doctrine on a daily basis. An educator designed and planned that experience, along with the materials used. The student's exposure to other activities of lawyers was minimal, largely limited to moot courts. The only clients in his legal education were names in cases, all of them considered utterly

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<sup>10</sup> For a discussion of the Harvard model instituted by Dean Christopher Columbus Langdell, see Arthur E. Sutherland, *The Law at Harvard* 162-205, at 175 (1967).

<sup>11</sup> Jethro K. Lieberman, *Crisis at the Bar* 56-59 (1978).

<sup>12</sup> See *supra* note 5, at 23.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 15 n.146.

<sup>15</sup> *Id.*

<sup>16</sup> See Blackstone, *supra* note 7, at 1-4.

<sup>17</sup> See Coke, *supra* note 8, at 1.



irrelevant in the educational process. His comprehension of a lawyer's work was limited to a deep understanding of utilizing the scientific method to analyze common law materials.

Students taught in the Langdellian style benefited from a great deal of experiential education, but it was limited to a single topic: the scientific method of thinking as engaged in by lawyers. Experiential learning was similarly limited to observations of the same topic. Much like a lawyer who learned the profession as an apprentice, a law student's exposure to the law and ethics governing lawyers was limited to a reading of Sharswood.<sup>18</sup> His social background, early practice experience under the tutelage of a senior lawyer, and the academic rigor of his legal education all shaped his character as a lawyer.

The Harvard method carried with it three ethical implications.<sup>19</sup> First, law was considered a science that was learned so that lawyers could maintain the concept of order. Law was both the instrument and the expression of that order. The fundamental concepts of right and wrong were not taught; law schools focused upon the more complex rules of oral order protected by the law. Second, teaching methods focused upon the cognitive and analytical study of the law and concentrated on the larger moral universe rather than the individual. They considered the morality of practice learned in the law office to be unworthy subject matter for university law study. Finally, the cognitive dimension of law study had its own moral implications. Holmes described education as a form of initiation that disciplines the imagination, the sensibilities and the mind.<sup>20</sup> Legal education's function was to teach a morality of rigor based on its intellectual and cognitive demands.<sup>21</sup>

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<sup>18</sup> For an example of ethics text that was influential at the turn of the century, see generally Sharswood, *supra* note 9.

<sup>19</sup> For a more complete, but still brief, history (upon which some of this very brief history is based), see Michael J. Kelly, *Legal Ethics and Legal Education* 5-6 (1980).

<sup>20</sup> Oliver W. Holmes, *The Use of Law Schools*, in *Collected Legal Papers* 35, 36 (1920); Oliver W. Holmes, *The Profession of Law*, in *Collected Legal Papers* 29, 32 (1920).

<sup>21</sup> See William Frankena, *Ethics* 62-70 (1973).

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No similar development occurred in Europe. In Europe, the lecture remained supreme and dominant. The norm was (and is) for a professor to stand behind a podium or sit behind a desk and deliver his or her knowledge to the students. Questions posed to the students are rare, as are questions by the students of the professor. Of course, there could have been no transformation to the Harvard system in a civil law nation. The court opinions that now formed the basis for casebooks and class discussions in the US simply had no force and were rarely reported in Europe. Instead, the codes dominated and continue to dominate the law material to be learned by the students.

### **The Columbia-Yale Model Law School**

In the mid-twentieth century, legal education began to move from the Harvard-model law school to the Columbia-Yale model law school, dominated by legal realist thought.<sup>22</sup> To legal realists, law served to implement public policy and protect the democratic process. The function of law schools, in their view, was to teach the consequences of legal actions and to impart high ethical standards by which to assess the effect of law in all areas.<sup>23</sup> The realists believed that true ethical inquiry should focus on the defects and impact of the law, and that social policy should pervade all law school courses, not be contained within or limited to a separate lecture on ethics. They were more concerned with the attorney as a policy maker than the attorney as client-server.

The Columbia-Yale classroom style was certainly as rigorous as the Harvard model. It mainly used appellate decisions as classroom materials; it primarily was conducted in a form that came to be described as a Socratic dialogue between

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<sup>22</sup> For a discussion of Legal Realism at Columbia and Yale, see Laura Kalman, *Legal Realism 67-97* (1986).

<sup>23</sup> That is, the political, economic and social consequences of legal rule and procedures. Karl Llewellyn, *On What is Wrong With So-Called Legal Education*, 35 *Colo. L. Rev.* 651 (1953).

professor and students, and it was conducted almost entirely in a classroom as opposed to a lawyer's office or a courtroom. The legal realists, however, rejected the Harvard model's purely hard science approach to legal analysis and, instead introduced the perspective and methods of soft science.<sup>24</sup> The thought processes changed, but the mode of education did not. The thought process learned included the social scientific methods along with the hard scientific method.

A lawyer of this generation benefited from a great deal of experiential education regarding a single topic: the thinking process engaged in by lawyers. But his experiential learning was limited to observations on this same topic. Further, a law student of the mid-twentieth century was exposed to the law and ethics governing lawyers by means of a successor to Elliott Cheatham's Legal Profession course, which was introduced at Columbia in 1933.<sup>25</sup> In this class, the law student studied the ABA Canons in the context of the history and structure of the legal profession.<sup>26</sup> A great deal of his character as a lawyer was formed by his early exposure to senior lawyers in practice and to the academic rigor of his legal education.

### **Legal Education as it is now**

By 1980, US law students continued to be taught in a classroom style that, on its surface, might have been mistaken for the Langdellian style, but was markedly different in four ways. First, about thirty percent of the students were women;<sup>27</sup> their presence brought new perspectives to the law that affected jurisprudence. Second, the law school curriculum of the time included a few prototypical skills courses, most of which were elective.<sup>28</sup> When well conceived, these courses addressed

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<sup>24</sup> Id.

<sup>25</sup> Foundation for Research in Legal History, *A History of the School of Law: Columbia University* 323 (Julius Goebel, Jr. ed., 1955).

<sup>26</sup> See Id. at 323-24.

<sup>27</sup> Stevens, *supra* note 5, at 246 (1983).

<sup>28</sup> Id. at 240.

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a particular segment of the thought processes of lawyers associated with activities such as counseling clients, negotiating, advocating, and writing, rather than the application of legal doctrine and theory. Third, about twenty-five percent of the students experienced a clinical course during law school. Most law schools offered elective, limited enrollment clinical studies.<sup>29</sup> In these courses, students experienced the broader aspects of the lawyer's role in client representation, while under faculty supervision. Although the clinic deliberately accepted only certain categories of cases, a student's experience was largely haphazard, not unlike the traditional law-office apprenticeship. This haphazardness, although realistic, was not conducive to an organized educational experience. Finally, the law student of this generation was required to take a semester-long course called professional responsibility. Taught largely through the same classroom methodology, this course taught the law-governing lawyers through the examination of legal doctrine as revealed in cases, but with an additional emphasis on the ABA Model Rules of Professional Responsibility.

Over the same century of slow movement in American legal education (1880s to 1980s), legal education across the globe also experienced little growth and change.

In Europe, there exist two worlds in terms of reform to the traditional lecture-style legal education. In Central and Eastern Europe, spurred by the energy of the post-communist generation, much change has occurred, though far from enough. Although the lecture remains a staple of the traditional law course, many law faculties in the region now have clinics of one form or another, depending on the particular country's amenability to student practice. And many have faculty members who have adopted far more interactive teaching methods. They have essentially skipped over the Harvard method's common law based interactive classroom methodology, having discovered that all discussions of law, in

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<sup>29</sup> See *Id.* at 240-41.

civil as well as common law countries, can be animated by fact patterns and hypothetical discussions that engage students in the lawyer-act of problem solving. No faculty is more advanced in this regard than Palacky.

But in Western Europe (and in Asia as well), very little change has occurred. Complacency with the status quo is more pronounced in Western Europe than in both the US and in Eastern Europe. A very few Western European law faculties use teaching methods other than lecture. One example is Instituto Empresa in Madrid.<sup>30</sup> IE University is a world-class business school that developed a law faculty offering LLB and LLM degrees with a decidedly international focus. Because IE started as a business school, the law faculty gravitated toward using business school methods, studying “cases,” which in the business school model are actually elaborate hypotheticals or real stories. This form of study calls on students to solve problems, to be in the role of the actors in the hypothetical “case.” The result is an innovative teaching vehicle that removes primary emphasis on the lecture. At IE, as in many Central and Eastern European countries, the Harvard method was leaped over with the use of classroom hypotheticals and fact-patterns.

By 2012, additional clinical and simulation opportunities have developed at most US law schools. But meanwhile, the market for graduates and the nature of law practice had also changed. Legal education had not kept up with the pace of change. The time for the most serious reform since Langdell has come.

### **Legal Education of the Future**

In 2020, the US law student will become a lawyer after graduating from a law school that is a model of early twenty-first century innovations in American legal education. The structure of the curriculum will not be 180-degrees from anything

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<sup>30</sup> <http://www.ie.edu/university/studies/academic-programs/bachelor-laws>

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described above; it will be thirty or sixty or ninety degree from everything. Legal education will retain the primary emphasis on the experience of the lawyer's application-of-law thought process, but this emphasis will not be merely as exclusive as it might have been in previous years. Classroom education will continue to be taught using cases and supplementary material, despite having been changed by shifts in jurisprudential thought.

### *Experiential Education*

In terms of experiential education, a law student will benefit from the same sort of experiences with thought processes of lawyers, as lawyers of previous generations. His education, however, will include significant simulated law practice. The simulations will provide experiential education involving a wide variety of thought processes associated with activities other than the application of law to facts. This simulation will cover the ethics and law of lawyering using a combination of methodologies that address the same thought process addressed in the cases and materials courses and the clinical courses. The program's creators will have attempted to provide a designed, ordered apprenticeship for all students. The combination of classroom work, experiential in the same sense as was the Langdellian education, and the three-year ethics and skills simulation program, experiential in that it will introduce a wide variety of other lawyerly thought processes and activities, will provide the law student of the future with a well-balanced preparation for entry into the legal profession.

### *How Will Change Come?*

How will legal education get to this future vision? Pressure, markets, and self-preservation are opening the door to innovation.

Periodically, legal education has been criticized as disconnected from the profession, by the profession. Among those critiques was Harry Edwards in his 1992 Michigan Law

Review piece, in which he claimed that there was a “growing disjunction” between law schools and law practice.<sup>31</sup> Among his chief points: law review articles were not about the law and not helpful to lawyers and judges. Nearly twenty years later, Chief Justice John G. Roberts, Jr. expressed the same sentiment at the 2011 Fourth Circuit Court of Appeals Annual Conference, explaining that the disconnect between the academy and the profession produces very little scholarship that is either helpful to the practicing bar or judges or influential on the development of law.<sup>32</sup> Indeed, Roberts stated he could not remember the last law review article he read.<sup>33</sup> Similarly, the New York Times critiqued law schools for producing cryptic, unhelpful, and, often, unread faculty scholarship despite the millions of dollars devoted to such work in law school budgets.<sup>34</sup> In the shadow of this outlay, law students often leave law school with no practical training.<sup>35</sup>

Unlike 1992 when Judge Edwards wrote, now legal education is in the cross-hairs of multiple shooters: law firms and other legal employers; law firms’ clients (General Counsels and business people alike); prospective students; even the New York Times. The economy our students face is highly discouraging. Everyone, except older lawyers opposing change for opposition’s sake and faculty members with a stake in the status quo, is demanding law schools do better. If ever there were a time for innovation in legal education, it is now.

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<sup>31</sup> Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 Mich. L. Rev. 34 (1992); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 Mich. L. Rev. 2191 (1993)(recounting the immediate “extraordinary” response).

<sup>32</sup> Chief Justice John G. Roberts, Jr., *Remarks at Fourth Circuit Court of Appeals 77th Annual Conference at 30:30* (June 25, 2011), <http://www.c-span.org/Events/Annual-Fourth-Circuit-Court-of-Appeals-Conference/10737422476-1/>.

<sup>33</sup> *Id.*

<sup>34</sup> David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. Times, Nov. 19, 2011, at A1, available at <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html>.

<sup>35</sup> *Id.*

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One set of current reforms address the market for legal education: increased transparency regarding employment prospects, varied accreditation standards, and less availability of government guaranteed student loans. As the ABA belatedly unmasks deceptive employment statistics, all created in compliance with the ABA's former regime of reporting, prospective students will be less willing to mortgage their future to attend marginal law schools that offer little hope of remunerative employment upon graduation. Will these measures cause some law schools to fail? I think so. When the Japanese installed U. S. -style graduate legal education not quite ten years ago, 80-plus new law schools sprang up. But the bar pass rate, always exceedingly low in Japan, did not increase anywhere near the proportion of the new law schools' output. Many law schools found themselves graduating entire classes of students, none of whom passed the bar. Thirty-plus of those 80-plus have closed. Not all of the remaining fifty or so are stable. In the United States, the difference between job prospects and supply of graduates is not that stark, but when transparency comes, the public will learn that we have some law schools with single digit employment rates at graduation. Some measure of failure will likely occur.

### *A New Partnership With the Practicing Bar*

Some US law schools are responding to the challenge and finding ways to tap private bar resources to help pay for the increased costs associated with smaller classes and more hands-on teaching methods.<sup>36</sup> Recruiting expert practitioners to teach practice-oriented courses at little or no cost to the law school can form a partnership between the practicing and teaching branches of the profession. . Expert lawyers-cum-teachers from significant law firms can, by this device, share the training once provided to their own beginning lawyers with all students who register for their course.

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<sup>36</sup> <http://law.wlu.edu/thirdyear/>



The future law graduate faces a world we did not envision in the 80s, 90s, and even the first half of the prior decade. But now, changes in the market for legal services have come, despite the organized profession's futile clinging to old forms. Unauthorized Practice of Law restrictions must and will fall, especially but not exclusively as they relate to cross-border practice. Internet-based legal services to be sold with minimal lawyer involvement. Competition will be the driver of reform that the organized bar resists: competition from commoditization of law products; competition from UK firms armed with new corporate financing for global dominance. In such a new legal services market, fewer graduates will find high-figure paychecks being cut by employers. More graduates will be entrepreneurs.

### *New Skills and Expertise Needed*

Law schools must reform, at long last, to generate law graduates better able to contribute to clients of law firms and to clients of their solo or small firm entrepreneurial endeavors. Teaching one skill, legal analysis, as was done from the 1880s until the 1980s, is no longer enough, even for elite law schools that will be more delayed in reacting to change because of their market strength. Teaching the laundry basket of skills of the 1980s and 90s (interviewing, negotiating, advocacy, writing), as critical as they are as a base, is no longer enough. Law schools must prepare students to contribute. To be positive members of teams. To understand how projects are managed. To be creative in their view not only of legal analysis but also of business, markets, needs of clients. Law schools must prepare students to engage in sophisticated practice for higher paying clients. To do so, students need to acquire the sensibilities of successful lawyers. They need to take ownership of client problems, be willing to be "out there" and not merely answer posed questions, and be able to solve problems with ingenuity and creativity.

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### *The Inhibitions of a Backward-looking Bar Exam*

Beyond outmoded restrictions on cross border practice, the standard form of the bar exam has also inhibited reforms in legal education. Each state tests a dizzying myriad of subjects beyond the core subjects tested on the Multistate Bar Exam and the Multistate Professional Responsibility Exam.

A typical law school requires 84 credits during the students' three academic years. Courses average three credits each, so a typical student takes about 28 courses.

Often justified for its "gatekeeper" function, protecting the public from incompetent lawyers, the profession has lost sight of the function of a gatekeeper. To be a rational gatekeeper, passage through the gate must be related to what is on the other side of the gate, in this instance the practice of law. A difficult macramé-skills exam would also keep many from passing through the gate, but there would be no confidence that those who passed could practice law. Purely testing knowledge of a wide array of topics fails to assure competence as well. The current typical bar exam test too much and too little. The sheer number of substantive subjects tested and the absence of serious testing of the skills of law practice combine to make the bar exam a counter-productive exercise.

No lawyer knows all the law that would be useful to know. Lawyers should have a base-line level of knowledge of the core of legal subjects. beyond that, every lawyer must know how to learn what is needed to serve his or her clients. I have met lots of lawyers in my thirty-two years since law school. So far I have never had a lawyer say that she solved a client's problem solely based on what she learned during a particular Tuesday afternoon session of the Torts or Contracts class. Client problems are more complex than that and almost always require some measure of synthesis of topics. No matter how many subjects we test, we will never ensure that every beginning lawyer knows all the law that would be useful to know. There is too much law and it is too complex. So let's stop

designing a bar exam that seems aimed at that unrealistic and unnecessary goal.

Insecure students have invested upwards of \$150,000 in their legal education and will invest thousands more in bar prep courses. They understandably fear facing the bar exam without having taken as many of the tested subjects as possible during their three years of law school. This fear exists in inverse proportion to the status of the law school attended and the qualifications of the students. The further down the pecking order the law school, the more insecure are the students about facing the bar exam. So while elitism impedes reform at the highest ranked schools, fear of the bar exam impeded reform at the lowest ranked schools. (To be sure, other factors play significant roles as well, such as the ranking system itself and the inflexibility of the accreditation standards, both of which force all law schools to look as much as possible like Yale.) By pressuring students to be prepared for a dizzying number of subjects, the bar exam impedes reforms that would assist students in being prepared to practice law. Courses, or activities within courses, on writing, problem solving, project management, teamwork, business-savvy, financial knowledge, and the like are not tested on the bar exam. So the official message sent is that they are not a concern of the organized bar. They simply do not play a role in the gatekeeping function. Instead the gate bears little relationship to what is beyond the gate.

Aiming to meet an unnecessary and unattainable goal of instruction in all potentially useful subjects acts as a deterrent to law school reform. Simply no positive reason exists for the wide range of subjects. When law schools require more writing courses, more practice-oriented courses, more ethics courses, students and alums ask: "But how will they pass the twenty-seven subjects tested on the Bar exam?" Students, depending on their level of insecurity, feel a need to fill up their schedules with as many bar courses as possible. Law schools feel a corresponding obligation to offer as many bar courses

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as possible. Ten subjects, including the MBE subjects, ethics, and state-specific procedure, would be more than sufficient to satisfy desires to make the exam a difficult, character-building rite of passage. Every subject tested beyond those incrementally diminishes the ability of law schools to reform their curricula to pay more attention to all the things you want law students to have when they undertake law practice.

In the justifiable clamor for law schools to require more courses that demand that students write, solve problems, learn business sense, project management and so on, the profession maintains a bar exam that frightens students into enrolling in as many of the 25+ bar subjects of the 28 courses they might typically take to earn their JD.

### *Abolish or Reform the Third Year of the JD?*

There are those who would abolish the third year of the JD degree, and if it remained a mere extension of the first and second years, I would not disagree. But rather than abandon the opportunity to education in the third year, legal education should produce value in the third year.

The most advantageous answer for this kind of education is sophisticated experiential education. So, adding to experiential education means more clinics, to be sure, and now-traditional skills courses (legal writing, trial ad, negotiation etc), but it means far more. The “far more” should come in the form of sophisticated, practice-setting sensitive simulation courses taught by a mixture of professors and expert practitioners. In these courses, students are urged to make the transition from student to lawyer. Students continue to learn law, but now do so as lawyers do, with a client’s need as the driver, rather than as students do, with a three hour exam as the driver. In such circumstances, students transition to the thought processes of lawyer-problem-solver and away from learning for no more reason than acquiring knowledge. This kind of third year can be a year with one foot in the academy and one in the practice. Far from exclusively skills courses, these courses develop habits

of the lawyer's mind that are not developed in the traditional courses aimed at appellate legal analysis. This third year is a kind of "mental pathways' transition-time."

An economic transfer is taking place. Law firms formerly trained beginning lawyers in their specific firm ways, mainly by billing their hours to corporate clients. That system no longer exists. Now, law firms are demanding that law schools undertake more practical preparation.<sup>37</sup> Ironically, thirty or more years ago, major law firms preferred that law schools not so engage, fearing that law faculty would ruin otherwise trainable new associates. But the transfer is now taking place from corporate client/law firm expenditures to law school expenditures aimed at more expensive clinical and skills courses. The only way for this transfer to function well is for it to be incomplete: law schools must engage the low-cost, part-time faculty resources that are available to teach practice preparation. At some schools, this has long been the case for courses in, for example, trial advocacy and mediation skills. More effectively still, would be elaborate simulation courses focused on particular practice settings and specialties. So, for example, courses like "The Lawyer for Failed Businesses" might replace or supplement a "Bankruptcy" course; a course called "Corporate Counsel" or "The Defense Lawyer" might do the same for courses in Corporate Law and Criminal Procedure. Depending on how the new courses were structured, they might replace the former course or add a layer of application to it. Attracting and welcoming this no or low-cost contribution for excellent lawyers (often alumni) not only ameliorates cost but represents a more altruistic contribution of the practicing branch to the education enterprise. Rather than exclusively teaching their particular firm's newest members, they will be providing their expertise to any students who enroll in their course.<sup>38</sup>

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<sup>37</sup> See, e.g., Massachusetts Bar Association Report, April 2012.

<sup>38</sup> This is no pipe dream as it is precisely what has occurred at Washington & Lee University Law School. About thirty such new courses exist, half

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Legal education can reform, and it must, despite numerous obstacles: elitism among top law schools and most law faculty, the economic transfer that is shifting the cost of preparing graduates for practice to the law schools, accreditation and rankings, and a dysfunctional bar exam.

In Turkey, and around the world, legal education reform must proceed in steps. An early step is the recognition that the academy and the practicing bar can be partners. Each has its own perspective to be sure. But that only means that each has its own ways of contributing and its own strengths. The initial move toward partnership is based on a simple recognition that both the academy and the practicing bar care about the legal profession and desire to make it a positive force for the society in general. Once this recognition takes hold, differences of focus and expertise can become positive forces rather than divisive ones and the best interests of the society can drive legal education reform.

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of which are taught by part-time faculty members who have, for practical measures, donated their time and are doing excellent work instructing their courses.

# The challenges facing legal services education in the 21<sup>st</sup> Century: a case for collaboration and conversation?

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## 1. Introduction

The genesis of this article is a legal education conference held in Turkey in May 2014, hosted by Atlanta's John Marshall Law School, Bahçeşehir University and the Turkish Bar Association. As the lone British participant, I was struck by the extent to which all of us were responding, in different ways in our different jurisdictions, to similar crises in and affecting legal education. These crises transcend both the civil and common law dichotomy and the variations between the structures in which pre-qualification education for those intending to provide legal services ("legal services education and training": LSET<sup>2</sup>) is delivered. Indeed, in this article it will be my thesis

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<sup>1</sup> [http://www.ntu.ac.uk/apps/research/groups/3/home.aspx/centre/143243/overview/centre\\_for\\_legal\\_education](http://www.ntu.ac.uk/apps/research/groups/3/home.aspx/centre/143243/overview/centre_for_legal_education)). Between 2011 and 2013, I was also a member of the Legal Education and Training Review research team, led by Professor Julian Webb of the University of Warwick. I am indebted to my colleague Pamela Henderson for kindly reading a draft of this article. All errors that remain are my own.

<sup>2</sup> This acronym was adopted in the Legal Education and Training Review materials to distinguish an education for practice in the field from aca-

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that response to these crises could bring those models closer together. I do, however, apologise to my hosts if this article inadvertently contains any errors about their legal education models, in Turkey or in any part of the USA.

### 2. The components of a legal services education

There is a tendency to focus on the obvious differences between legal education structures, and to argue whether a law degree should be postgraduate or undergraduate, or about the relative contribution of the academy and practitioners to the support and development of young lawyers. In some jurisdictions, including my own, there is an ongoing debate about the role of a university legal education as liberal arts study, or as a preparation for the practice of law. Whatever the culture, or regulatory or constitutional environment within which we work, however, there is a finite list of structural components seen in pre-qualification<sup>3</sup> LSET across the world:

- Undergraduate law degrees (of 3-5 years);
- Postgraduate law degrees (e. g. LLM or conversion course for graduates in non-law disciplines) or JD;
- Postgraduate vocational courses (variously called practical legal training course, diploma in professional practice, legal practice course, postgraduate certificate in laws etc) which are consciously vocational and skills-based, often using experiential learning as a vehicle for delivery;
- Summative bar examinations;<sup>4</sup>

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democratic education in the law for its own sake.

<sup>3</sup> For some discussion of CLE/CPD schemes in use in legal professions, see chapter 5 of Webb J and others, 'Legal Education and Training Review Research Phase Literature Review' (Legal Education and Training Review 2013) <<http://letr.org.uk/literature-review/index.html>> accessed 5 June 2014 and citations therein.

<sup>4</sup> To be contrasted with initial aptitude tests such as LNAT in the USA, LSAT or BCAT in the UK. A review of the potential for an aptitude test for intending solicitors in England and Wales is provided in Baron H, 'Evaluation of Use of Aptitude Tests for Entry to the Legal Practice Course'



- Periods of apprenticeship in the workplace (variously called articles, training contract, pupillage, clerkship, internship) (“supervised practice”);
- Courses, interventions or assessments undertaken whilst working; and
- Investigations into fitness and character.

In addition, there is a range of mechanisms to permit horizontal transfer of foreign or (in a federal jurisdiction) out of state qualified lawyers into a profession. In some jurisdictions there is also a need to facilitate horizontal transfer between different legal professions (as, for example, between solicitors and the Bar, or between legal executives and solicitors, in England and Wales). Conceptually the choice is between approaches that require the transferee to take an identical assessment to that of domestic and standard entrants and those that recognise or exempt foreign qualifications, out of state qualifications, qualifications of a different legal profession or even previously acquired skills. In the USA, for example, the trend is towards the former, whereas in England and Wales, there are separate assessments for incoming foreign lawyers who wish to become solicitors or barristers.<sup>5</sup>

Finally, although the place of learning in the early career in the workplace is explicit in those structures which demand formalised periods of supervised practice, it is necessarily tacit in others. Where there is a vocational course, generally taught by practitioners, it will explicitly cover oral skills such as advocacy, negotiation or client interviewing and perhaps even practice skills such as teamwork. This introduces at least some

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(Law Society of England and Wales 2011) <from <http://www.lawsociety.org.uk/representation/articles/lpc-aptitude-test-report-published/>> accessed 5 June 2014. For aptitude tests generally in law, see Dewberry C, ‘Aptitude Testing and the Legal Profession’ (Legal Services Board 2011) <<https://research.legalservicesboard.org.uk/wp-content/media/Aptitude-tests-and-the-legal-profession-2011.pdf>> accessed 5 June 2014.

<sup>5</sup> Qualifications of different legal professions are generally dealt with by way of exemption.

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aspects of the second Carnegie apprenticeship identified by the authors of the Carnegie report:

*“... to the forms of expert practice shared by competent practitioners. Students encounter this practice-based kind of learning through quite different pedagogies from the way they learn the theory. They are often taught by faculty members other than those from whom they learned about the first, conceptual apprenticeship. In this second apprenticeship, students learn by taking part in simulated practice situations, as in case studies, or in actual clinical experience with real clients.”<sup>6</sup>*

In those structures that emphasise legal knowledge, legal writing, research and reasoning in their classroom activity, those oral and practice skills must, therefore be assumed to be learned in the workplace. This can separate, to a large extent, the initial intellectual and cognitive apprenticeship identified in the Carnegie report, from the second and certainly the third.<sup>7</sup>

The invisibility and variety of what is actually learned in the workplace in the early career is, however, difficult to standardise or regulate (if this is desirable) although, as I discuss below, there is increasing interest in seeking to do so by use of outcomes and competence frameworks.

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<sup>6</sup> Sullivan WM and others, 'Educating Lawyers Preparation for the Practice of Law' (The Carnegie Foundation for the Advancement of Teaching 2007) <[http://www.carnegiefoundation.org/sites/default/files/publications/elibrary\\_pdf\\_632.pdf](http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf)> accessed 5 June 2014, 28.

<sup>7</sup> Sullivan WM and others, 'Educating Lawyers Preparation for the Practice of Law' (The Carnegie Foundation for the Advancement of Teaching 2007) <[http://www.carnegiefoundation.org/sites/default/files/publications/elibrary\\_pdf\\_632.pdf](http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf)> accessed 5 June 2014: “The third apprenticeship, which we call the apprenticeship of identify and purpose, introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible. Its lessons are also ideally taught through dramatic pedagogies of simulation and participation. But because it opens the student to the critical public dimension of the professional life, it also shares aspects of liberal education in attempting to provide a wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires. The essential goal, however, is to teach the skills an inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional.”

There is, however, a difficulty if we focus only on structures and the configuration of their component parts. Do academics, practitioners and students agree on what is delivered by each component? Does what is learned in each component complement what is learned in other components, or clash with it? How much of the structure and content of LSET should be prescribed, and by whom? In the next sections I consider the implications of two common configurations.

### 3. Configurations of the components of a legal education: monocentric models in Turkey and the USA

Flood has characterised legal education structures as being either monocentric or polycentric.<sup>8</sup> The monocentric is typified by that of the USA (and a number of civil law countries including Turkey) where there is a single recognised legal profession to which entry is strongly academicised through the university. The profession may nevertheless then “re-filter” by use of a bar examination or a period of supervised practice. Indeed, Wilson, in a survey on the role of practice in legal education, largely in countries which fall into the “continental civil law tradition” found a required period of supervised practice in every country which submitted reports to his investigation.<sup>9</sup>

The Turkish legal education system is an example of the latter. It relies on a four year undergraduate law degree,<sup>10</sup>

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<sup>8</sup> Flood J, ‘Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation’ <[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/lsb\\_legal\\_education\\_report\\_flood.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lsb_legal_education_report_flood.pdf)> accessed 5 June 2014.

<sup>9</sup> Wilson R, ‘The Role of Practice in Legal Education’ [2010] Working Papers <[http://digitalcommons.wcl.american.edu/fac\\_works\\_papers/12](http://digitalcommons.wcl.american.edu/fac_works_papers/12)> accessed 5 June 2014.

The report is, however, complicated by the fact that, in some places but not necessarily consistently, postgraduate vocational programmes are treated as part of the period of supervised practice, even if, as in Australia, England and Wales, Ireland and New Zealand they are delivered by the academy and their content is to any extent prescribed.

<sup>10</sup> There is a national examination which permits entrance to university and is organised by a public body, rather than by the universities themselves. For a history of legal education in Turkey, see Lonbay J and Toprak M, ‘Legal Education in Turkey: Ottoman to Bologna’ in ShuvroProsunSarker (ed), *Legal Education in Asia* (Eleven International Publishing 2013).

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followed by a year's (unpaid) apprenticeship for intending avukatlar<sup>11</sup> and an examination of character and fitness.<sup>12</sup> There is, at present, no prescription, by the Bar or otherwise, of the subjects included in the law degree although Executive Board Decision No: 2009. 35. 5665 of the Council of Higher Education, obliges a law school to have departments covering certain subjects.<sup>13</sup> As is common in civil law jurisdictions, prosecutors and judges qualify separately following the undergraduate degree.

Legal education in the USA, whilst also monocentric, at least at state level,<sup>14</sup> is strongly focused around the JD, a postgraduate academic degree, entry to which is highly competitive. The American Bar Association ("ABA") accredits the JDs<sup>15</sup> of some, but not all law schools. This is significant because opportunities

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<sup>11</sup> In the first six months, the apprenticeship is served in a court or sequence of courts. Advocacy Apprenticeship Regulations govern the apprentices' activities during this period. Local bar associations are also expected to offer training to apprentices. The second six months is served with a law firm under the supervision of a senior lawyer. Again, the Advocacy Apprenticeship Regulations prescribe the apprentices' activities during this period. For further discussion and commentary on the effectiveness of the apprenticeship, see Lonbay J and Toprak M, 'Legal Education in Turkey: Ottoman to Bologna' in ShuvroProsunSarker (ed), *Legal Education in Asia* (Eleven International Publishing 2013), 188-192.

<sup>12</sup> "Advocacy Act No. 1136, dated 19 March 1969, implemented by the Advocacy Act Regulations of the Union of Turkish Bars, made in accordance with article 182 of the Advocacy Act" Lonbay J, 'Experts' Report on the Legal Education and Training System in Turkey.' (2009) <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1677818](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677818)> accessed 5 June 2014, 18, fn 12.

<sup>13</sup> "a.) constitutional law; b.) criminal and criminal procedure law; c.) general public law; d.) history of law; e.) administrative law; f.) Labor and social security law; g.) financial law; h.) civil law; i.) civil procedure and bankruptcy law; j.) public international law; k.) private international law and l.) commercial law" Menu for Justice, 'Regarding Undergraduate Law Degree Programmes' (Menu for Justice 2010) <[https://www.academic-projects.eu/.../TURKEY\\_Undergraduate\\_TF1.doc](https://www.academic-projects.eu/.../TURKEY_Undergraduate_TF1.doc)> accessed 5 June 2014.

<sup>14</sup> To the extent that individual entrants might forum shop for entry between different states, it is polycentric.

<sup>15</sup> The ABA does not accredit non-JD programmes, such as LLMs, although non-JD offering must not "detract from" the JD offering at an ABA-accredited school. See American Bar Association, 'ABA Standards and Rules of Procedure for Approval of Law Schools, 2013-14' <[http://www.americanbar.org/groups/legal\\_education/resources/standards.html](http://www.americanbar.org/groups/legal_education/resources/standards.html)> accessed 5 June 2014.

for qualification may be contingent on having graduated from an ABS accredited school. Although individual knowledge areas are not mandated, ABA standard 302 requires:

*“(a) A law school shall require that each student receive substantial instruction in:*

*(1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;*

*(2) legal analysis and reasoning, legal research, problem solving, and oral communication;*

*(3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;*

*(4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and*

*(5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.*

*(b) A law school shall offer substantial opportunities for:*

*(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence;*

*(2) student participation in pro bono activities; and*

*(3) small group work through seminars, directed research, small classes, or collaborative work.<sup>16</sup>”*

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<sup>16</sup> Clarificatory notes add that “Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instruction in professional skills that fulfill Standard 302” and that “A school may satisfy the requirement for substantial instruction in professional skills in vari-

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Unlike the law degree in England and Wales to which I will turn in the next section, the JD is, therefore, consciously envisaged as a programme for those who wish to practise as lawyers, a role reinforced by a series of reports.<sup>17</sup> I discuss the conclusions of the most recent report, published in 2013, below.

Admission to practice is administered on a state by state basis, either through the courts or the local bar association.<sup>18</sup> A very few states require a minimum period of tuition on ethics or professional responsibility to be taken during law school; others require such tuition to take place after admission. Some states restrict admission to graduates of ABA-accredited law schools but all require entrants to pass a state bar examination.<sup>19</sup> This is normally taken after graduation, although some states allow it to be taken earlier. In eight states, non JD graduates who have completed a period of work in practice may be eligible for the examination under “law office” programmes.<sup>20</sup>

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ous ways, including, for example, requiring students to take one or more courses having substantial professional skills components. To be “substantial,” instruction in professional skills must engage each student in skills performances that are assessed by the instructor”.

<sup>17</sup> For example, American Bar Association Section of Legal Education and Admissions to the Bar, ‘An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap.’ (American Bar Association 1992) <[http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2013\\_legal\\_education\\_and\\_professional\\_development\\_macerate\\_report%29.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_macerate_report%29.authcheckdam.pdf)> accessed 5 June 2014; Stuckey and others R, ‘Best Practices for Legal Education: A Vision and a Road Map’ (Clinical Legal Education Association 2007) <[http://www.cleaweb.org/Resources/Documents/best\\_practices-cover.pdf](http://www.cleaweb.org/Resources/Documents/best_practices-cover.pdf)> accessed 5 June 2014.

<sup>18</sup> See National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar, ‘Comprehensive Guide to Bar Admissions Requirements 2014’ <[http://www.ncbex.org/assets/media\\_files/Comp-Guide/CompGuide.pdf](http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf)> accessed 5 June 2014.

<sup>19</sup> There is an exception for admission to the bar of Wisconsin for graduates of two law schools in that state. They are not, however, exempt from the fitness and character investigation.

<sup>20</sup> National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar, ‘Comprehensive Guide to Bar Admissions Requirements 2014’ <[http://www.ncbex.org/assets/media\\_files/Comp-Guide/CompGuide.pdf](http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf)> accessed 5 June 2014, p 20. For an example, Garvey J, ‘New Hampshire’s Performance-Based Variant of the Bar Examination: The Daniel Webster Scholar Honors Program Moves beyond the Pilot Phase’ (2010) 14 *The Bar Examiner*, 13 <<http://>

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The bar examination is coupled with a detailed investigation into character and antecedents which may be required as a condition of eligibility to take the examination (e. g. Georgia) or taken after successful completion of the examination (e. g. New York).

The multistate bar examination (MBE) developed by the National Council of Bar Examiners is used by almost all states. A number of states also use the NCBE's Multistate Essay Examination (MEE), although most states also use locally drafted essay questions. The MEE syllabus covers Business Associations, Conflict of Laws, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Federal Civil Procedure, Real Property, Torts, Trusts and Estates, and the Uniform Commercial Code and its aim includes testing of the candidate's abilities in written communication.<sup>21</sup> A multistate performance test (MPT) is also available to test "Problem solving, legal analysis and reasoning, factual analysis, communication, organization and management of a legal task, and recognizing and resolving ethical dilemmas".<sup>22</sup> A considerable amount of resource is invested in setting and administering these examinations. The Society of American Law Teachers has, however, argued that:

*"The bar examination does not even attempt to screen for many of the skills identified in the MacCrate Report, including key skills such as the ability to perform legal research, conduct factual investigations, communicate orally, counsel clients*

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[www.equippingourlawyers.org/documents/790210\\_Garvey.pdf](http://www.equippingourlawyers.org/documents/790210_Garvey.pdf)> accessed 5 June 2014; Garvey JB, 'Making Law Students Client-Ready: A New Model in Legal Education' (2009) 1 Duke Forum for Law & Social Change 101 <[http://heinonline.org/HOL/Page?handle=hein.journals/dukef1&div=6&collection=journals&set\\_as\\_cursor=0&men\\_tab=srchresults](http://heinonline.org/HOL/Page?handle=hein.journals/dukef1&div=6&collection=journals&set_as_cursor=0&men_tab=srchresults)> accessed 5 June 2014.

<sup>21</sup> National Conference of Bar Examiners, 'Overview of the MEE' <<http://www.ncbex.org/about-ncbe-exams/mee/overview-of-the-mee/>> accessed 5 June 2014.

<sup>22</sup> National Conference of Bar Examiners, 'The MultiState Performance Test' <<http://www.ncbex.org/about-ncbe-exams/mpt/>> accessed 5 June 2014.

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*and negotiate. Nor does it attempt to measure other qualities important to the profession, such as empathy for the client, problem-solving skills, the bar applicant's commitment to public service work or the likelihood that the applicant will work with underserved communities.*<sup>23</sup>

Assessments of these such skills are rare in single point of assessment centralised bar examinations, but not unknown. In Denmark, for example, the bar examination includes an advocacy test.<sup>24</sup> In England and Wales, the Qualified Lawyers Transfer Scheme (QLTS) for incoming foreign lawyers, lawyers from other parts of the UK and barristers who wish to become solicitors, is an assessment of knowledge, reasoning and problem-solving and also of skills such as advocacy and interviewing. It is in part assessed by OSCEs developed from the medical model.<sup>25</sup> The QLTS deploys a considerable investment in resources to test against a range of “day one outcomes” including client interviewing and advocacy. As we shall see, explicit teaching and assessment of such skills is more common in those jurisdictions which embed them in a distinct vocational course.

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<sup>23</sup> Society of American Law Teachers (SALT), ‘Society of American Law Teachers Statement on the Bar Exam - July 2002’ (2002) 52 *Journal of Legal Education* 446 <<http://www.saltlaw.org/userfiles/SALTBarExam.pdf>> accessed 5 June 2014, p 20. See also Society of American Law Teachers, ‘Potential Alternatives to the Existing Bar Exam’ <[http://www.saltlaw.org/userfiles/file/2004\\_SALTbarexamalternatives.pdf](http://www.saltlaw.org/userfiles/file/2004_SALTbarexamalternatives.pdf)> accessed 5 June 2014; Society of American Law Teachers (SALT), ‘SALT Raises Questions for States Considering Adoption of a Uniform Bar Exam’ <<http://www.saltlaw.org/userfiles/file/1-19-10SALTuniformbarexamfinal.pdf>> accessed 5 June 2014.

<sup>24</sup> Neilsen C, ‘How to Qualify as a Lawyer in Denmark’ <[http://www.ib-anet.org/PPID/Constituent/Student\\_Committee/qualify\\_lawyer\\_Denmark.aspx](http://www.ib-anet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Denmark.aspx)> accessed 5 June 2014.

<sup>25</sup> See Solicitors Regulation Authority, ‘The QLTS Regulations 2011’ <<http://www.sra.org.uk/solicitors/handbook/qlts/content.page>> accessed 5 June 2014. For a description of the QLTS itself, see Fry E, Crewe J and Wakeford R, ‘The Qualified Lawyers Transfer Scheme: Innovative Assessment Methodology and Practice in a High Stakes Professional Exam’ (2012) 46 *The Law Teacher* 132.

The Bar Transfer Test for incoming barristers and transferring solicitors involves an advocacy test and may require a short period of compulsory apprenticeship by way of pupillage. See Bar Standards Board, ‘Bar Transfer Test’ <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/transferring-lawyers/bar-transfer-test/>> accessed 5 June 2014.



Although, for those schools which are ABA accredited, there is a requirement that “A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession”,<sup>26</sup> this does not go as far as stipulating that the JD programme must cover any of the subjects that are tested in the state bar examination. Separate bar preparation programmes are provided by commercial organisations<sup>27</sup> although no doubt the topics prescribed in the local bar examination at least influence the JD curriculum of the state’s universities in the same way that, in England and Wales - although it is in principle possible to offer a law degree that is not a “qualifying law degree” - the market dictates that no one does. There is, however, some evidence of initiatives in the USA to, for example, allow some students to take their bar exam in the third year of the JD;<sup>28</sup> to convert the third year into something more closely resembling a vocational course<sup>29</sup> or to make the third year optional<sup>30</sup> and there are increasing calls for bar examinations to be incorporated into the JD.

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<sup>26</sup> American Bar Association, ‘ABA Standards and Rules of Procedure for Approval of Law Schools, 2013-14’ <[http://www.americanbar.org/groups/legal\\_education/resources/standards.html](http://www.americanbar.org/groups/legal_education/resources/standards.html)>, accessed 5 June 2014, 19.

<sup>27</sup> Chan L, ‘How to Select a Bar Exam Prep Course’ <<http://www.nation-aljurist.com/content/how-select-bar-exam-prep-course>> accessed 5 June 2014.

<sup>28</sup> See for example: Forcier J, ‘Making “Practice Ready” Practice Ready: Arizona’s Attempt to Streamline the Final Process for Admission to the Bar’ <[http://phoenixlawreview.org/pdf/Forcier\\_Jason-Making%20Practice%20Ready%20Practice%20Ready.pdf](http://phoenixlawreview.org/pdf/Forcier_Jason-Making%20Practice%20Ready%20Practice%20Ready.pdf)> accessed 5 June 2014; Illinois State Bar Association, ‘Special Committee on the Impact of Law School Debt on the Delivery of Legal Services Final Report & Recommendations’ (Illinois State Bar Association 2013) <<http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%202013-8-13.pdf>> accessed 5 June 2014.

<sup>29</sup> Washington and Lee University, ‘Washington and Lee’s New Third Year Reform’ <<http://law.wlu.edu/thirdyear/>> accessed 5 June 2014.

<sup>30</sup> Estreicher S, ‘The Roosevelt-Cardozo Way: The Case for Bar Eligibility after Two Years of Law School.’ (2012) 15 *New York University Journal of Legislation and Public Policy* <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2126849](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2126849)> accessed 5 June 2014; Rodriguez D and Estreicher S, ‘Make Law Schools Earn a Third Year’ *New York Times* (2013) <[http://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html?\\_r=0](http://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html?_r=0)> accessed 5 June 2014.

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It is well-known that the licence to practise in the US is not normally<sup>31</sup> contingent on a period of pre-qualification supervised practice (although there is evidence of some reverse engineering in this respect for early-career attorneys once in employment).<sup>32</sup> Several states, however, require new attorneys to attend bridge to practice programmes or participate in new lawyer mentoring initiatives.<sup>33</sup> Voluntary incubator programmes for new lawyers are also available in some places.<sup>34</sup> This is a contrast to the position in England and Wales, which tends to emphasise the supervised practice component, possibly to the detriment of the academic phase.

### **4 Configurations of the components of a legal education: polycentric models, monocentric models and multiple professions in England and Wales<sup>35</sup>**

Flood's polycentric model is represented by the four routes into qualification as a solicitor in England and Wales, one of which accommodates non-law graduates and another non-

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<sup>31</sup> Delaware and Vermont do require periods of prequalification supervised practice and, from 2015, there will be a 50 hours pro bono work requirement in New York (although this may be envisaged more as a matter of good citizenship than as a formative period of apprenticeship).

<sup>32</sup> Furlong J, 'The Return of the Apprentice New Lawyer Training Models for the 21st Century', Law firm evolution: brave new world or business as usual? (Center for the Study of the Legal Profession 2010) <<http://dotank.nyls.edu/futureed/Furlong%20The%20Return%20of%20the%20Apprentice.pdf>> accessed 5 June 2014; Westfahl S, 'Response: Time to Collaborate on Lawyer Development' (2010) 59 *Journal of Legal Education* 645.

<sup>33</sup> State Bar of Georgia, 'Transition Into Law Practice Program (TILPP).' <<http://www.gabar.org/membership/tilpp/>> accessed 5 June 2014.

<sup>34</sup> Finkel E, 'INCubator-Style Programs Growing Among Law Schools' (2013) 42 *Student Lawyer* <[http://www.americanbar.org/publications/student\\_lawyer/2013-14/october-2013/incubatorstyle\\_programs\\_growing\\_among\\_law\\_schools.html](http://www.americanbar.org/publications/student_lawyer/2013-14/october-2013/incubatorstyle_programs_growing_among_law_schools.html)> accessed 5 June 2014.

<sup>35</sup> Scotland and Northern Ireland, together with other parts of the British Isles, such as the Channel Islands and the Isle of Man, have their own distinct legal education systems. The possibility of a separate system for Wales has also been canvassed: Welsh Government, 'Consultation on a Separate Legal Jurisdiction for Wales' (Welsh Government 2012) WG 15109 <<http://wales.gov.uk/docs/caecd/consultation/120326separate-legaljurisdiction.pdf>> accessed 5 June 2014.

graduates. There are, however, eight separate professions recognised as “lawyers of England and Wales” by the Legal Services Act 2007. In descending order of size these are: solicitors; barristers; chartered legal executives;<sup>36</sup> patent attorneys;<sup>37</sup> licensed conveyancers;<sup>38</sup> notaries;<sup>39</sup> registered trade mark attorneys<sup>40</sup> and costs lawyers.<sup>41</sup> Some of these professions adopt monocentric models, albeit not necessarily mediated through a university (e. g. that of patent attorneys).<sup>42</sup>

<sup>36</sup> The Chartered Institute of Legal Executives prides itself on the flexibility of its qualification system. Consequently, whilst there is a comparatively small number of practitioners who have attained full chartered status; the number of members of the institute who are regulated lawyers with more junior membership designations, exceeds the total number of members of the bar. See Chartered Institute of Legal Executives, ‘Chartered Legal Executive Lawyer Qualifications’ (Chartered Institute of Legal Executives) <[http://www.cilex.org.uk/study/lawyer\\_qualifications.aspx](http://www.cilex.org.uk/study/lawyer_qualifications.aspx)> accessed 5 June 2014.

<sup>37</sup> Intellectual Property Regulation Board, ‘Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations [2009]’ <[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/1annex\\_1.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/1annex_1.pdf)> accessed 5 June 2014; Intellectual Property Regulation Board, ‘Rules for the Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys 2011’ <[http://ipreg.org.uk/wp-content/files/2012/08/Rules\\_for\\_Examination\\_and\\_Admission\\_of\\_Individuals\\_2011.pdf](http://ipreg.org.uk/wp-content/files/2012/08/Rules_for_Examination_and_Admission_of_Individuals_2011.pdf)> accessed 5 June 2014.

<sup>38</sup> Council for Licensed Conveyancers, ‘Information For Applicants To Be Registered As A Student With CLC.(includes syllabus)’ <<https://www.clc-uk.org/documents.php?docID=CLC0001>> accessed 5 June 2014.

<sup>39</sup> The vast majority of notaries in England and Wales are dual-qualified solicitors and the role is closer to that of the Latin notary than that of the notary public in the USA: Master of the Faculties, ‘Notaries (Qualification) Rules 2013’ <[http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/notaries\\_\(qualification\)\\_rules%202013.pdf](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/notaries_(qualification)_rules%202013.pdf)> accessed 5 June 2014.

<sup>40</sup> Institute of Trade Mark Attorneys, ‘Flowchart to Qualification’ <[http://www.itma.org.uk/download/1428/Flow\\_chart.pdf](http://www.itma.org.uk/download/1428/Flow_chart.pdf)> accessed 5 June 2014.

<sup>41</sup> Costs Lawyer Standards Board, ‘Training and CPD Rules 2013’ <<http://www.clsb.info/RulesRegulations/TrainingCPDRules.aspx>> accessed 5 June 2014; Association of Costs Lawyers, ‘Train to Be a Costs Lawyer’ (Association of Costs Lawyers) <<http://www.associationofcostslawyers.co.uk/train-to-be-a-costs-lawyer/>> accessed 5 June 2014. Some categories of accountant are also licensed to provided legal services under the act. Claims management companies and immigration advisors re also regulated, but under different legislation, and directly by the Ministry of Justice.

<sup>42</sup> Chartered Institute of Patent Attorneys, ‘Patent Examination Board’ (Patent Examination Board) <<http://www.cipa.org.uk/pages/Patent-Examination-Board-PEB>> accessed 5 June 2014. Patent attorneys, in order to have rights of audience before the European Patent Office, must also sat-

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Some professions are so small that they do so by default, their numbers only justifying a single course with a single provider.

The existence of multiple professions leads to the need to accommodate horizontal transfer between them, the creation or merger of professions, or their evolution from paralegal status into an independent profession. So, for example, in England and Wales, the legal executive has developed from a supporting, paralegal role, to a position where there are legal executive partners in law firms, legal executive advocates, at least one legal executive judge, and where the profession is in the process of obtaining permission to engage in independent practice through distinct “legal executive firms”.<sup>43</sup>

The complexity of legal services provision in England and Wales is a product both of history and deliberate government intervention. Historically, divisions between generalist, specialist and supporting legal professions were comparatively clear.<sup>44</sup> Barristers were specialist advocates, operating solely by referral from solicitors and not involved in any part of the conduct of litigation other than representation in court. With a conscious professional commitment to the rule of law, the majority were self-employed, coming together in co-operative

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isfy European qualification requirements: European Patent Office, ‘Regulation on the European qualifying examination for professional representatives’ <[http://archive.epo.org/epo/pubs/oj011/12\\_11/12\\_sup0.pdf](http://archive.epo.org/epo/pubs/oj011/12_11/12_sup0.pdf)> accessed 5 June 2014.

<sup>43</sup> Hall K, ‘New Practice Rights Pending for Legal Executives’ *Law Society Gazette* (10 December 2013) <<http://www.lawgazette.co.uk/practice/new-practice-rights-pending-for-legal-executives/5039166.article>> accessed 5 June 2014.

<sup>44</sup> For the history, see, for example: Abel RL, *The Legal Profession in England and Wales* (Blackwell 1998); Burrage M, ‘From a Gentlemen’s to a Public Profession: Status and Politics in the History of English Solicitors’ (1996) 3 *International Journal of the Legal Profession* 45; Galanter M and Roberts S, ‘From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century’ (2008) 15 *International Journal of the Legal Profession* 143; Pleasance P, Balmer NJ and Moorhead R, ‘A Time of Change: Solicitors’ Firms in England and Wales’ (The Law Society of England and Wales, Legal Services Board, Ministry of Justice 2012) <<https://www.lawsociety.org.uk/.../research.../research-publications/.../a-time-of-change---solicitor-firms-in-england-and-wales/CachedSimilar>> accessed 5 June 2014.

“chambers” to share resources and the supporting services of barristers’ clerks, and employing the “cab rank rule”<sup>45</sup> to ensure that even unpopular clients or cases could receive support. Solicitors carried out transactional work and the preparation of cases for litigation, with rights to advocate only in the lower courts. Legal executives and costs draftsmen (later costs lawyers) were employed in solicitors’ firms as specialist supporting professionals. Patent and trade mark agents (later attorneys) existed largely outside this structure and a very small number of notaries (most of whom were also solicitors) dealt largely with translation and notarisation of documents for use overseas. Corporate counsel were – and remain – generally qualified as solicitors or barristers. Prosecutions, at least in substantial cases were undertaken by barristers who had the police or a government department as a client. Nevertheless, members of the legal professions had monopolies only over a comparatively small list of types of legal work (“reserved activities”), and this list<sup>46</sup> has been problematized:

*“the origins of many of the reservations of legal activities are remarkably obscure. We consider that the often non-existent, and sometimes limited, evidence of Parliamentary consideration and debate at the time the reservations were created or confirmed provides little basis for suggesting a common policy rationale that justifies their existence. Instead, what we most often find is statutory confirmation of*

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<sup>45</sup> For a recent review, see Flood J and Hviid M, ‘The Cab Rank Rule: Its Meaning and Purpose in the New Legal Services Market’ (Legal Services Board 2013) <[https://research.legalservicesboard.org.uk/wp-content/media/Cab-Rank-Rule\\_final-2013.pdf](https://research.legalservicesboard.org.uk/wp-content/media/Cab-Rank-Rule_final-2013.pdf)> accessed 5 June 2014.

<sup>46</sup> By Legal Services Act 2007, s 12, the reserved legal activities are:  
 a) the exercise of a right of audience (i.e. advocacy);  
 (b) the conduct of litigation;  
 (c) reserved instrument activities (i.e. some forms of property transactions);  
 (d) probate activities;  
 (e) notarial activities;  
 (f) the administration of oaths.  
 Not all professions are licensed to carry out all the reserved activities. Barristers, for example, are not normally licensed to carry out the conduct of litigation.

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*then current practice without any exploration of continuing justifications for reservation.*<sup>47</sup>

Issues about monopolies and the potential for conflicts of interest began to emerge in the 1980s. Concerns that the police - and solicitors employed by the police - should not both investigate crime and prosecute it, led to the creation in 1986 of an independent Crown Prosecution Service, albeit largely staffed by solicitors and barristers.<sup>48</sup> The solicitors' monopoly on conveyancing work was broken in the 1980s by the creation of a specialist profession of licensed conveyancer. Solicitors and patent and trade mark attorneys obtained increased rights of audience; the Bar obtained rights to see clients directly rather than by referral through a solicitor. Nevertheless, a number of reports,<sup>49</sup> and in particular that of David Clementi in 2004,<sup>50</sup> led to the wholesale restructuring of regulation of legal services provision in the Legal Services Act 2007. This not only brought all the professional regulators into a single umbrella structure

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<sup>47</sup> Legal Services Institute, 'The Regulation Of Legal Services: Reserved Legal Activities - History And Rationale' <<http://stephenmayson.files.wordpress.com/2013/08/mayson-marley-2010-reserved-legal-activities-history-and-rationale.pdf>> accessed 5 June 2014., p 37. See also Legal Services Institute, 'The Regulation Of Legal Services: What Is The Case For Reservation?' <<http://stephenmayson.files.wordpress.com/2013/08/mayson-marley-2011-what-is-the-case-for-reservation.pdf>> accessed 5 June 2014 and Roy A and Handford C, 'Reserved and Unreserved Lawyers' Activities' <[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/reserved\\_and\\_unreserved\\_lawyers.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/reserved_and_unreserved_lawyers.pdf)> accessed 5 June 2014.

<sup>48</sup> Crown Prosecution Service, 'History' <<http://www.cps.gov.uk/about/history.html>> accessed 5 June 2014.

<sup>49</sup> For example, Office of Fair Trading, 'Competition in Professions' (Office of Fair Trading 2001) <[http://80.86.35.165/shared\\_oftr/reports/professional\\_bodies/oft328.pdf](http://80.86.35.165/shared_oftr/reports/professional_bodies/oft328.pdf)> accessed 5 June 2014; Department of Constitutional Affairs, 'The Future of Legal Services: Putting Consumers First' (Department of Constitutional Affairs 2005) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/272192/6679.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/272192/6679.pdf)> accessed 5 June 2014; Hunt D, 'The Hunt Review of the Regulation of Legal Services' (Law Society of England and Wales 2009) <[http://www.nzls.org.nz/catalogue/opac/DigitalContent/Legal\\_Regulation\\_Report\\_FINAL.PDF?jsessionid=59C098BA43C679461703712227096824?parenttreeid=f4cb742268ce4c4984e1d382ea50d5f4&sessiondepth=1&k=18](http://www.nzls.org.nz/catalogue/opac/DigitalContent/Legal_Regulation_Report_FINAL.PDF?jsessionid=59C098BA43C679461703712227096824?parenttreeid=f4cb742268ce4c4984e1d382ea50d5f4&sessiondepth=1&k=18)> accessed 5 June 2014.

<sup>50</sup> Clementi D, 'Report of the Review of the Regulatory Framework for Legal Services in England and Wales' (2004) <<http://www.legal-services-review.org.uk/content/report/index.htm>> accessed 5 June 2014.

under the Legal Services Board, but allowed for the possibility of other individuals and entities becoming authorised to provide the reserved legal activities.<sup>51</sup> A multiplicity of legal professions is not unique to England and Wales,<sup>52</sup> but it is notable that, at that stage and even given the statutory objective of “encouraging an independent, strong, diverse and effective legal profession” no attempt was made to interfere either with the existence of the separate professions, or with their educational structures.

Those educational structures can be broadly categorised in three ways:

- Specialist v generalist;
- Graduate v non-graduate;
- Sequential v concurrent.

### *Specialist v generalist*

The question of education for breadth or for specialisation is, of course, one of content, rather than structure. In England and Wales, for example, solicitors, legal executives and barristers are educated for breadth. They must cover a variety of areas of legal knowledge, and achieve competence in a range of required skills. Thereafter, with some limitations, they are licensed to practise in any area of law, whether or not it has been covered in their initial education and, normally, without any requirement for formal education in the new area.<sup>53</sup>

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<sup>51</sup> For comment on this from a US perspective, see Rhode D, ‘Reforming American Legal Education and Legal Practice: Rethinking Licensing Structures and the Role of Nonlawyers in Delivering and Financing Legal Services’ (2013) 16 Legal Ethics 243.

<sup>52</sup> See the discussion in Nollent A and Ching J, ‘Legal Education for the Professions in Two Jurisdictions: Comparison, Consolidation or Fragmentation’ (2011) 45 Law Teacher 310.

<sup>53</sup> There are limited exceptions, for example, rights of audience in the higher courts can only be obtained by solicitors following additional study and an assessment of their advocacy performance: Solicitors Regulation Authority, ‘Higher Rights of Audience Regulations 2011’ <<http://www.sra.org.uk/solicitors/handbook/higherrights/content.page>> accessed 5 June 2014.

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Other professions (patent and trade mark attorneys, costs lawyers, licensed conveyancers, notaries) are both educated in specialist fields and licensed only to practise within them. A licensed conveyancer is, therefore, licensed only to provide conveyancing (transfer of real property) services, and that is what the licensed conveyancer qualification system teaches him or her to do. A licensed conveyancer who wishes to, say, conduct property litigation must either transfer into a different profession, or lobby his or her professional regulator to seek additional rights for the entire profession. A solicitor, on the other hand, is restrained from dabbling in intellectual property law, in which he or she has not specifically been trained, only by his or her professional code, by contrast with the patent or trade mark attorney specifically trained in intellectual property work and licensed only to conduct that work.

There is, however, overlap in the sector, as might be expected when the governing legislation explicitly promotes competition in the legal services marketplace. Conveyancing, for example, can be carried out by members of four professions,<sup>54</sup> and advocacy by six.<sup>55</sup>

There is here some equivalence to calls for and initiatives for, limited licensures in the USA.<sup>56</sup> An alternative suggestion, that legal services in England and Wales should be regulated

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<sup>53</sup> Specialist accreditations are available, but these are intended to recognise and promote specialist practice; they are not licences to practise in that field.

<sup>54</sup> Solicitors, legal executives, licensed conveyancers and some notaries.

<sup>55</sup> Barristers, solicitors, CILEx members, patent attorneys, registered trade mark attorneys, costs lawyers. Some rights of audience are limited to the specialist field, as for the IP attorneys and the costs lawyers, or may be contingent on obtaining a separate qualification and enhanced licensure.

<sup>56</sup> See Rhode D, 'Delivery of Legal Services by Non-Lawyers' (1990) 4 Georgetown Journal of Legal Ethics 209; Holland B, 'The Washington State Limited License Legal Technician Practice Rule: A National First In Access To Justice' (2013) 82 Mississippi Law Journal 75 <[http://mississippilawjournal.org/wp-content/uploads/2013/02/3\\_Holland\\_DRAFT.pdf](http://mississippilawjournal.org/wp-content/uploads/2013/02/3_Holland_DRAFT.pdf)> accessed 5 June 2014; Cooper BP, 'Access to Justice without Lawyers' (2014) 47 Akron Law Review 205 <<http://www.uakron.edu/dotAsset/a30dee88-519c-4547-bbe8-c0b77cc9a777.pdf>> accessed 5 June 2014.



by activity, rather than by title,<sup>57</sup> has so far met with limited support, not least from practitioners who have a personal and emotional tie to their particular profession. “Partial access” to reserved activity is, however demanded by European legislation<sup>58</sup>

*Graduate v non-graduate*

The apprenticeship model, involving immersion in what is at least ostensibly a community of practice, is tenacious within the British legal education models. Flood and others have pointed out that substantial graduatisation of even the solicitors and barristers’ professions did not occur until the 1970s.<sup>59</sup> It remains possible for non-graduates to become solicitors and, at least at the discretion of the Bar Standards Board, barristers. The non-graduate regulated professions (legal executives, licensed conveyancers, costs lawyers<sup>60</sup>) pride themselves on their diversity and access for a wide variety of entrants.

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<sup>57</sup> Legal Services Consumer Panel, ‘Legal Education and Training - Submission to the Research Team’ <[http://www.legalservicesconsumerpanel.org.uk/publications/consultation\\_responses/documents/2012-05-21LETRsubmission.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/2012-05-21LETRsubmission.pdf)> accessed 5 June 2014 and commentary in Moorhead R, ‘Activity Based Regulation versus Professional Identity’ <<http://lawyerwatch.wordpress.com/2012/05/21/activity-based-regulation-versus-professional-identity-some-thoughts-on-the-lscps-thoughts-on/>> accessed 5 June 2014.

<sup>58</sup> See Lonbay J, ‘Activity Based Regulation - EU Perspectives on Partial Access to Reserved Activities’ <<http://julianlonbay.wordpress.com/2012/03/09/activity-based-regulation-eu-perspectives-on-partial-access-to-reserved-activities/>> accessed 5 June 2014. For a more detailed discussion of the European perspective, see Lonbay J, ‘Assessing the European Market for Legal Services: Developments in the Free Movement of Lawyers in the European Union’ (2011) 33 *Fordham International Law Journal* 1629 <<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2217&context=ilj>> accessed 5 June 2014.

<sup>59</sup> See Galanter M and Roberts S, ‘From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century’ (2008) 15 *International Journal of the Legal Profession* 143; Boon A and Webb J, ‘Legal Education and Training in England and Wales: Back to the Future?’ (2008) 58 *Journal of Legal Education* 79; Flood J, ‘Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation’ <[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/lsb\\_legal\\_education\\_report\\_flood.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lsb_legal_education_report_flood.pdf)> accessed 5 June 2014.

<sup>60</sup> The patent and trade mark attorneys and notaries are almost all graduates, albeit not necessarily in law.

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The defining issue here, then, may be one of level. Typically, the non-graduate professions recruit directly from school (at 16), and expect students to work and study in parallel for qualifications which often take a two stage approach: a foundation at level 3 (equivalent to the level expected of school leavers at 18) and a final stage at level 6 (equivalent to the final year of an undergraduate degree). Study may be by day release or distance learning. A more recent development, and not confined to law<sup>61</sup> is that of the state sponsored apprenticeship. The legal services apprenticeship is linked to the Chartered Institute of Legal Executive qualifications, providing a route (at present) into qualification as a legal executive.<sup>62</sup> There are also plans to create more advanced apprenticeship routes which are directly equivalent in level to the undergraduate degree and to the postgraduate vocational courses, bypassing the university altogether.<sup>63</sup>

### *Sequential v concurrent.*

One can deploy the educational components in sequence, concurrently, or blend them together. In England and Wales, by tradition and as a result of the Ormrod report of 1971,<sup>64</sup> solicitors

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<sup>61</sup> National Apprenticeship Service, 'Types of Apprenticeships' <<http://www.apprenticeships.org.uk/types-of-apprenticeships.aspx>> accessed 5 June 2014.

<sup>62</sup> Chartered Institute of Legal Executives, 'Chartered Legal Executive Lawyer Qualifications' (Chartered Institute of Legal Executives) <[http://www.cilex.org.uk/study/lawyer\\_qualifications.aspx](http://www.cilex.org.uk/study/lawyer_qualifications.aspx)> accessed 5 June 2014.

<sup>63</sup> Skills for Justice, 'Apprenticeships' <<http://www.sfjuk.com/sectors/legal-services/developing-talent/apprenticeships/>> accessed 5 June 2014.

<sup>64</sup> A number of sector-wide reports are generally cited: Royal Commission on Legal Services, 'Final Report' (Royal Commission on Legal Services 1979); Marre, 'A Time for Change. Report of the Committee on the Future of the Legal Profession' (General Council of the Bar and the Council of the Law Society 1988); Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC), 'First Report on Legal Education and Training' (Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC 1996) <<http://www.ukcle.ac.uk/resources/he-policy/aclec/>> accessed 5 June 2014. For an overview and some comparisons with the MacCrate agenda in the USA, see Boon A and Webb J, 'Legal Education and Training in England and Wales: Back to the Future?' (2008) 58 *Journal of Legal Education* 79.

and barristers are conventionally educated in sequence: undergraduate law degree or non-law undergraduate degree followed by postgraduate conversion course, followed by vocational course (Legal Practice Course or Bar Professional Training Course), followed by the period of supervised practice (training contract or pupillage). Legal executives, and the other smaller professions tend to use structures in which students work and study concurrently, although there may be some element of sequential progression between levels.<sup>65</sup> The principal component of the main sequential structures, however, is the undergraduate law degree and to some extent, other systems and parts of the system define themselves by reference to it. The smaller professions, generally, regard it as a partial exemption from their own structures. Even for solicitors and barristers the undergraduate law degree is still in principle an exemption from professional examinations.

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Further investigation and strategy was, until 2013, carried out for individual professions. For example: Goriely T and Williams T, 'The Impact of the New Training Scheme: Report on a Qualitative Study' (Law Society of England and Wales 1996); Shaw G, 'Notaries in England and Wales: Modernising a Profession Frozen in Time' (2000) 7 *International Journal of the Legal Profession* 141; Boon A and Webb J, 'Report to the Law Society of England and Wales on The Consultation and Interim Report on the Training Framework Review' (Law Society of England and Wales 2002); Sherr A and Harding R, "'Where Science Meets Law'" Report of a Review of the Education, Training and Examinations for the Chartered Institute of Patent Agents and the Institute of Trade Mark Attorneys' (Chartered Institute of Patent Attorneys 2002) <[www.cipa.org.uk/...report.../888A8DC3-3C6C-44F7-B55F-C4C105F6EFC7](http://www.cipa.org.uk/...report.../888A8DC3-3C6C-44F7-B55F-C4C105F6EFC7)> accessed 5 June 2014; Solicitors Regulation Authority, 'Education, Training and Development for Solicitors: The Way Ahead' (Solicitors Regulation Authority 2007); Bar Standards Board, 'Review of the Bar Vocational Course: Report of the Working Group' (Bar Standards Board 2008) <[https://www.barstandardsboard.org.uk/media/1353435/bvc\\_report\\_final\\_with\\_annexes\\_as\\_on\\_website.pdf](https://www.barstandardsboard.org.uk/media/1353435/bvc_report_final_with_annexes_as_on_website.pdf)> accessed 5 June 2014; Bar Standards Board, 'Review of Pupillage: Report of the Working Group' (Bar Standards Board 2010) <[https://www.barstandardsboard.org.uk/media/1383787/pupillage\\_report.pdf](https://www.barstandardsboard.org.uk/media/1383787/pupillage_report.pdf)> accessed 5 June 2014; Smedley N, 'The Smaller Approved Regulators An Assessment of Their Capacity and Capability to Meet the Requirements of the Legal Services Act 2007, with Analysis and Recommendations' (Legal Services Board 2011) <[http://www.legalservicesboard.org.uk/what\\_we\\_do/Research/Publications/pdf/20110622\\_sar\\_report\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf)> accessed 5 June 2014.

<sup>65</sup> For example, between foundation and finals stages or, for trade mark attorneys, between academic study and vocational study.

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### *The undergraduate law degree (“LLB”)*

Although there is a longstanding and in my view ultimately insoluble debate about the purpose of the LLB as liberal arts education or as necessary preparation for entry into two of the legal professions,<sup>66</sup> this is in fact enabled by the existence of the vocational courses as deliberately angled towards preparation for practice. It is also enabled by the existence of the Graduate Diploma in Law (“GDL”), originally the Common Professional Examination from which the LLB was an exemption, but which has developed into a university-delivered, one year conversion course for graduates from non-law disciplines.<sup>67</sup> To add further complication, it is at least alleged that GDL graduates are preferred by law firms<sup>68</sup> and one law school disingenuously advertises its undergraduate law degree as reducing the period

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<sup>66</sup> For some sense of the arguments, see Twining W, ‘Pericles and the Plumber’ (1967) 83 *Law Quarterly Review* 396; Bradney A, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Hart Publishing 2003); Bradney A, ‘Transforming Legal Education: Learning and Teaching Law in the Early Twenty-First Century’ (2008) 35 *Journal of Law and Society* 565; Vollans T, ‘The Law School with Two Masters?’ (2008) 2 *Web Journal of Current Legal Issues* <<http://www.bailii.org/uk/other/journals/WebJCLI/2008/issue2/vollans2.html>> accessed 5 June 2014; Cownie F, ‘Legal Education and the Legal Academy’, *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010); Cownie F, ‘Twining, Teachers of Law and Law Teaching’ (2011) 18 *International Journal of the Legal Profession* 121 <<http://dx.doi.org/10.1080/09695958.2011.619855>> accessed 16 May 2014; Huxley-Binns R, ‘What Is the “Q” For?’ (2011) 45 *Law Teacher* 294; Strevens C, ‘The Changing Nature of the Legal Services Market and the Implications for the Qualifying Law Degree’ (2011) 1 *Web Journal of Current Legal Issues* <<http://www.bailii.org/uk/other/journals/WebJCLI/2011/issue1/strevens1.html>> accessed 5 June 2014; Hardee M, ‘Career Aspirations of Students on Qualifying Law Degrees in England and Wales.’ (Higher Education Academy 2012) <<http://www.heacademy.ac.uk/assets/documents/disciplines/law/Hardee-Report-2012.pdf>> accessed 5 June 2014; Jones MW and others, ‘The State, the Universities and Liberal Legal Education: Students’ Views from England, South Africa and Mauritius’ (Society of Legal Scholars Annual Conference, Society of Legal Scholars Annual Conference, Edinburgh, Scotland, 3 September 2013) <<http://archive.legalscholars.ac.uk/edinburgh/index.cfm>> accessed 16 May 2014.

<sup>67</sup> GDL graduates cannot however, without more, transfer into the Bar in the USA as the period of teaching in the GDL is not sufficient to cross-accredit.

<sup>68</sup> Bermingham V and Hodgson J, ‘Desiderata: What Lawyers Want from Their Recruits’ (2001) 35 *Law Teacher* 1.

to qualification by a year (because graduates of a law degree are not required to take the GDL as well).

The LLB was, until very recently, dual regulated under the Joint Statement of the Bar Council and Law Society as professional bodies<sup>69</sup>, whose Joint Academic Stage Board (“JASB”) accredits “qualifying law degrees” for the purpose of progression into the solicitors or barristers professions.<sup>70</sup> The most significant aspect of the Joint Statement for current purposes is that it prescribes seven mandatory foundation subjects, and the proportion of the curriculum that they must occupy, if the LLB is to be a qualifying law degree. This is not unusual in common law countries, as, for example, in Australia, where the Priestley 11 plays an equivalent role.<sup>71</sup> Qualifying law degrees may also be delivered part-time or as joint honours with another subject.<sup>72</sup>

Simultaneously, because the LLB is a university award, it is also regulated by the Quality Assurance Agency through its

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<sup>69</sup> One corollary of the Legal Services Act has been to require the professional bodies to split their representative and regulatory functions. Consequently, the Law Society represents solicitors, whilst the Solicitors Regulation Authority regulates them. Similarly, the Bar Standards Board regulates barristers; ILEX Professional Standards regulates legal executives and the Intellectual Property Regulation Board regulates patent and registered trade mark attorneys.

<sup>70</sup> Joint Academic Stage Board, ‘Joint Statement’ <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/academic-stage/joint-academic-stage-board/jasb-documents/>> accessed 5 June 2014. Law degrees are often allowed as exemption from the qualification system of other professions, although they do not always clearly identify whether a law degree, or a qualifying law degree is required. To some extent the distinction may be redundant as, through market forces, it would be a brave law school which did not offer a qualifying law degree. The Intellectual Property Regulation Board, for the patent and trade mark attorney professions, currently accredits specific degrees at specific institutions for the academic stage of its own qualification framework.

<sup>71</sup> See Webb J and others, ‘Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales’ (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014, Chapter 4, table 4.4 for some comparison of compulsory subjects.

<sup>72</sup> This includes courses such as the double *maîtrise*, which is a qualifying law degree for both Anglo-Welsh and French professions.

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Subject Benchmark Statement for Law.<sup>73</sup> The two documents do not align precisely and the JASB was formally disbanded in December 2013 (see recommendation 10 of the Legal Education and Training Review research report which I discuss further below).<sup>74</sup> This does not, however, necessarily mean that the concept of the foundation subjects has disappeared. The Subject Benchmark is under review and is likely to be influenced by initiatives, which I discuss below, to move towards regulation by way of prescription, by the professional regulators, of day one competences.

An example of the consequences of the undefined purpose of the LLB is provided by the question whether “ethics” should be an additional mandatory component, as it is in some countries. This proposal can be pejoratively assumed by those who favour the liberal arts agenda, however, as meaning “professional ethics” – coverage of the professional codes of conduct – which can then be argued to be inappropriate for a degree not confined to preparation for the legal professions, rather than the “wide range of legal concepts, values, principles and rules of English law” in fact mandated by both the QAA Benchmark and the Joint Statement. A debate at least equivalent in vigour to that about inclusion of “ethics” in the curriculum is the place of skills in the LLB. Again, there is a confusion of terminology. Even those who object to “skills” in principle must admit that “Analysis, synthesis, critical judgement and evaluation”, “Autonomy and ability to learn”, “Communication and literacy”, “Numeracy, information technology and teamwork”, “Application and problem-solving” of the QAA Benchmark and the stipulation in the Joint Statement that:

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<sup>73</sup> Quality Assurance Agency, ‘Subject Benchmark Statement - Law’ <<http://www.qaa.ac.uk/Publications/InformationAndGuidance/Pages/Subject-benchmark-satatement-Law-2007.aspx>> accessed 5 June 2014.

<sup>74</sup> Joint Academic Stage Board, ‘Joint Academic Stage Board’ <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/academic-stage/joint-academic-stage-board/>> accessed 5 June 2014.

*“Students should be able:*

- i. To apply knowledge to complex situations;*
- ii. To recognise potential alternative conclusions for particular situations, and provide supporting reasons for them;*
- iii. To select key relevant issues for research and to formulate them with clarity;*
- iv. To use standard paper and electronic resources to produce up-to-date information;*
- v. To make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question;*
- vi. To use the English language and legal terminology with care and accuracy;*
- vii. To conduct efficient searches of websites to locate relevant information; to exchange documents by email and manage information exchanges by email;*
- viii. To produce word-processed text and to present it in an appropriate form.”*

describe “skills” which are inherent in the LLB. Skills regarded pejoratively by this camp are, therefore, likely to be those perceived as more relevant to practice: specific legal drafting rather than more generic legal writing; client interviewing and counselling, negotiation and advocacy rather than, or in addition to, mooting.

This is not to say, however, that LLBs with a consciously vocational stance are unavailable. My own institution has been offering a “sandwich degree” in law for more than forty years,<sup>75</sup>

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<sup>75</sup> The sandwich model has an established pedigree in the UK in disciplines such as Business and Engineering and in modern languages. Typically students are in the classroom for the first two years of study, are in a work placement during the third, and return for a fourth year to complete their

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and in its mainstream LLB, core subjects are deliberately linked to a practice-oriented skill,<sup>76</sup> with a “path to professional practice” module available as an alternative to a more academic research dissertation in the final year. The University of York offers a problem based learning model with three streams (Law and Society, Law and the Business Environment and Law and Practice). Clinics, servicing the public in a variety of ways, are attached to many law schools, operating either for credit or as an extra-curricular activity.<sup>77</sup> Some compressed two year degrees are also available, possibly as a response to increased tuition fees for higher education study. Finally, the exempting law degrees pioneered by Northumbria and now available at a number of universities combine the undergraduate law degree with the vocational courses required for entry to the solicitors’ or barristers’ professions.

### *Vocational courses*

Three of the professions (solicitors, barristers and trade mark attorneys) require entrants to complete distinct vocational courses as well as academic study. The other, specialist, professions might argue that the entirety of their educational content is vocational by definition. Where distinct vocational courses exist, however, they provide an unarguable place for experiential learning, role play and simulation and the teaching and assessment of both written and oral skills.<sup>78</sup> The Bar

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study. In the NLS LLB (Sandwich), successful students are awarded a Diploma in Professional Practice in addition to their degree.

<sup>76</sup> For example, Land Law and Professional Advice; Commercial Law and Negotiation

<sup>77</sup> See the list at <http://lawworks.org.uk/index.php?CID=10352#London-Clinics> although note that not all clinics listed are student clinics.

<sup>78</sup> For some early discussion of the Legal Practice Course, see Boon A and Whyte A, ‘Legal Education as Vocational Preparation?: Perspectives of Newly Qualified Solicitors’ (University of Westminster 2002); Fancourt A, ‘Hitting the Ground Running? Preparing Students for Practice’ (UK Centre for Legal Education 2004) <<http://www.ukcle.ac.uk/research/ukcle/fancourt.html>> accessed 5 June 2014;; Boon A and Whyte A, ‘Looking Back: Analysing Experiences of Legal Experience and Training’ (2007) 41 *Law Teacher* 169.



Professional Training Course (BPTC) is heavily regulated by the Bar Standards Board<sup>79</sup> and has an invisible export function for foreign nationals who wish to be called to the English Bar and then return to their own countries. It covers:

- “• *Case Work Skills*
- *Legal Research*
- *General written skills*
- *Opinion-writing (that is, giving written advice)*
- *Interpersonal Skills*
- *Conference Skills (interviewing clients)*
- *Resolution of Disputes Out of Court (ReDOC)*
- *Advocacy (court or tribunal appearances)*
- *Civil Litigation & remedies*
- *Criminal Litigation & sentencing*
- *Evidence*
- *Professional Ethics*
- *Two optional subjects, selected from a choice of at least six.”*

Assessment is largely by the provider of the course (of which there are nine), although following a review in 2008,<sup>80</sup>

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<sup>79</sup> From 2010. Its predecessor, the Bar Vocational Course, was substantially reviewed by a committee under Derek Wood QC in 2008: Bar Standards Board, 'Review of the Bar Vocational Course: Report of the Working Group' (Bar Standards Board 2008) <[https://www.barstandardsboard.org.uk/media/1353435/bvc\\_report\\_final\\_with\\_annexes\\_as\\_on\\_website.pdf](https://www.barstandardsboard.org.uk/media/1353435/bvc_report_final_with_annexes_as_on_website.pdf)> accessed 5 June 2014. The document regulating the BPTC is achieved prescribes resources, structures, assessment processes and outcomes to be achieved by students: Bar Standards Board, 'Bar Professional Training Course Specification Requirements and Guidance' <[https://www.barstandardsboard.org.uk/media/1542061/bptc\\_handbook\\_2013-14.pdf](https://www.barstandardsboard.org.uk/media/1542061/bptc_handbook_2013-14.pdf)> accessed 5 June 2014.

<sup>80</sup> Bar Standards Board, 'Review of the Bar Vocational Course: Report of the Working Group' (Bar Standards Board 2008) <[https://www.barstandardsboard.org.uk/media/1353435/bvc\\_report\\_final\\_with\\_annexes\\_as\\_on\\_website.pdf](https://www.barstandardsboard.org.uk/media/1353435/bvc_report_final_with_annexes_as_on_website.pdf)> accessed 5 June 2014.

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the Civil Litigation, Criminal Litigation and Professional Ethics assessments have, not without difficulty, been centralised under the aegis of the professional regulator, the Bar Standards Board.<sup>81</sup>

For intending solicitors, the Legal Practice Course, (LPC)<sup>82</sup> delivered by upwards of 25 institutions, both public and private, covers, in stage 1, professional conduct and regulation; wills and administration of estates, taxation and core practice areas of business law and practice, property law and practice and civil and criminal litigation. In stage 2 - in principle severable from stage 1 - students must complete three elective topics. In addition, students must learn and be assessed in writing, drafting, practical legal research, solicitors' accounts, business accounts, interviewing and advising and advocacy. There is rather more variation between LPC models than between BPTC models, with bespoke programmes for larger law firms or consortia of firms; a variety of electives, and at some institutions, streams or courses that emphasise different kinds of practice (e. g. corporate, commercial, "high street").

The Professional Certificate in Trade Mark Law and Practice is consciously pegged to both models and includes assessment in interviewing, advocacy and trade mark searching. However, because it services a small profession, it is at present offered by a single institution.<sup>83</sup>

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<sup>81</sup> Bar Standards Board, 'The Bar Standards Board Central Examinations Board Chair's Report July 2013' <[https://www.barstandardsboard.org.uk/media/1527844/130725\\_mac\\_130628\\_chair\\_ceb\\_first\\_sit\\_report\\_july\\_2013\\_v\\_1.pdf](https://www.barstandardsboard.org.uk/media/1527844/130725_mac_130628_chair_ceb_first_sit_report_july_2013_v_1.pdf)> accessed 5 June 2014; Bar Standards Board, 'The Bar Standards Board Central Examinations Board Chair's Report November 2013' <[https://www.barstandardsboard.org.uk/media/1546342/central\\_examination\\_board\\_report\\_november\\_2013.pdf](https://www.barstandardsboard.org.uk/media/1546342/central_examination_board_report_november_2013.pdf)> accessed 5 June 2014.

<sup>82</sup> Solicitors Regulation Authority, 'Legal Practice Course Outcomes' <<http://www.sra.org.uk/students/lpc.page>> accessed 5 June 2014. The LPC began in 1993, and its design and content was influenced by Canadian models for legal vocational courses.

<sup>83</sup> Nottingham Trent University, 'Professional Certificate in Trade Mark Law and Practice' (Nottingham Trent University, 2012) <[http://www.ntu.ac.uk/apps/pss/course\\_finder/108627-1/3/Professional\\_Certificate\\_Trade\\_Mark\\_Practice.aspx#overview](http://www.ntu.ac.uk/apps/pss/course_finder/108627-1/3/Professional_Certificate_Trade_Mark_Practice.aspx#overview)> accessed 5 June 2014.

The LPC and BPTC are currently full year programmes although part-time versions are offered by some providers. The resources required for their delivery render them expensive and, although the large law firms will sponsor their own recruits, the majority of students pay their own fees.

The trade mark course is only available in a part-time mode, and is only offered by one provider. Although in principle a sequential model, its delivery therefore has similarities with the concurrently delivered education frameworks used by the smaller regulated professions.

### *Concurrent study*

The sequential model tends to separate the three Carnegie apprenticeships. Knowledge is separated from procedure (or knowledge-that from knowledge-how), and both from contextualisation in the workplace.

*“[Initial Professional Education] syllabi are notoriously overcrowded because they attempt to include all the knowledge required for a lifetime in the profession... There is little sign as yet of IPE being conceived in a context of lifelong professional learning, in spite of increasing evidence that the frontloading of theory is extremely inefficient. Many IPE courses exacerbate this situation by frontloading theory within the IPE stage itself, thus maximising the separation between theory and practice.”<sup>84</sup>*

The smaller professions, as I have said, make a virtue of expecting at least some of their classroom study to take place concurrently with initial workplace experience. This has clear advantages in cost, and at least in principle in contextualisation of what is learned, alongside additional pressure of making place for study at the same time as work. Although the legal executives courses, notarial practice course and trade mark courses operate within the higher or further education

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<sup>84</sup> Eraut M, *Developing Professional Knowledge and Competence* (Falmer Press 1994), pp 11-12.

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framework, the education systems of other professions are operated largely by or through the profession itself, with consequential difficulties in comparison of, for example, level, with those of the professions aligned with the university system. There are, nevertheless, challenges as well as advantages in the “earn while you learn” approach, not limited to difficulties in juggling workload. For example, where there is potential for a clash between what is taught in the classroom and what is actually done in the workplace (lack of practice validity), those discrepancies must become more immediately apparent to the student moving between both environments in part-time study.

Whether classroom education is delivered sequentially or concurrently, however, all the professions in England and Wales, as in Turkey, require some form of supervised practice prior to independent licensure.

### *Periods of supervised practice*<sup>85</sup>

The relationship of learning in the workplace to entry into the legal profession has a long tradition in England and Wales, perhaps even more so than elsewhere. It is drawn from:

*“...the deeply embedded history of the Inns of Court in England, the traditional route into the bar in that country since the Middle Ages, by contrast with continental entry through the university that developed in the same time period. One route lay through practice, the other through theory. Thus, today the common law jurisdictions, which only “recently” (within the last 100 years!) moved into the university, provide a greater array of options for entry, and across widely varying periods of from no formal schooling at all (the reader, or apprentice, in a*

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<sup>85</sup> For a comparison of periods of supervised practice in England and Wales, see Webb J and others, ‘Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales’ (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014, Chapter 2, Annex II.

*law firm only still an option in England,<sup>86</sup> and at least in theory, in a few states of the United States); a five year undergraduate career in Australia; the standard Bologna formulation of 3 plus 1+3 in Ireland ...; and a seven year period of combined undergraduate study (4 years) and graduate study in law (3 years) in the U. S. England too offers law as a form of graduate study, as one of many options.<sup>87</sup>*

The polycentric model for the education of solicitors, therefore, retains the opportunity for chartered legal executives to transfer into the solicitors' profession by a route where work and study are combined in the workplace and without a university degree. The "five years man" - who qualified as a solicitor by virtue not of a degree, but of a five years' apprenticeship and successful completion of those professional examinations from which a law degree was merely an exemption - has a nostalgic resonance for many. Mr Guppy, in Dickens' *Bleak House*, was one such. As the five years' route only ceased to be available in the 1980s, there is a residuum of senior practitioners who qualified in this way. Increases in university tuition fees, the increasing profile of the legal executive profession and the growth of state sponsored apprenticeships in legal services available to school leavers suggests a popular return to the model.<sup>88</sup>

As Wilson identifies, a large number of jurisdictions employ a required period of pre-qualification experience in the workplace. This may be organised by the state as formal

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<sup>86</sup> This is probably a reference to the legal executive route, although this does in fact involve "formal schooling" through the qualifications offered by the Chartered Institute of Legal Executives. None of the legal professions in England and Wales regulated under the Legal Services Act in fact uses a structure without any formal study.

<sup>87</sup> Wilson R, 'The Role of Practice in Legal Education' [2010] Working Papers <[http://digitalcommons.wcl.american.edu/fac\\_works\\_papers/12](http://digitalcommons.wcl.american.edu/fac_works_papers/12)> accessed 5 June 2014, 46.

<sup>88</sup> See for example Hall K, 'Number of Legal Executives to Grow 17% in next Decade' Law Society Gazette (6 June 2014) <<http://www.lawgazette.co.uk/practice/number-of-legal-executives-to-grow-17-in-next-decade/5041562.article>> accessed 10 June 2014.

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internships, as in Germany, or subject to the market, as in England and Wales. In England and Wales, the period of supervised practice is a precursor to qualification for all but barristers and notaries, for whom it is a precursor to independent practice. There is, therefore, the risk of a bottleneck. In England and Wales, there are more places on the BPTC or LPC than there are available pupillages or training contracts.<sup>89</sup> I discuss the consequences of this further below. Formal assessment of the period of supervised practice amongst the legal professions in England and Wales is, generally, only by way of sign off by the employer. Attempts have been made to standardise both the experience undertaken by the trainee and the standard of his or her performance at the end of the period. Trainee solicitors are, for example, required to experience at least three different areas of legal practice, including both contentious and non-contentious work and to attain the (comparatively passive) Practice Skills Standards<sup>90</sup>. Pupil barristers are signed off against a competence framework.<sup>91</sup> There are required courses to be undertaken during the period of apprenticeship, which may, as with the Business and Finance element of the Professional Skills Course for solicitors, be summatively assessed. Perhaps the most sophisticated approach is, currently that of CILEx, who require candidates for chartered status to demonstrate a list of competences in a portfolio which is assessed not only by the employer but by the professional body.<sup>92</sup> Without some

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<sup>89</sup> This is particularly acute for the bar: Bar Standards Board, 'Health Warning for Prospective Bar Professional Training Course Students' <[https://www.barstandardsboard.org.uk/media/1363162/final\\_health\\_warning\\_for\\_bsb\\_website\\_24\\_jan\\_2012.pdf](https://www.barstandardsboard.org.uk/media/1363162/final_health_warning_for_bsb_website_24_jan_2012.pdf)> accessed 5 June 2014.

<sup>90</sup> Solicitors Regulation Authority, 'Training Trainee Solicitors Guidance to the SRA Regulations on Training Contracts 10 April 2013' <<http://www.sra.org.uk/students/professional-skills-course/psc-guidance.page>> accessed 10 June 2014.

<sup>91</sup> Bar Standards Board, 'Pupillage Handbook' <[https://www.barstandardsboard.org.uk/media/1534328/pupillagehandbook\\_zk2.pdf](https://www.barstandardsboard.org.uk/media/1534328/pupillagehandbook_zk2.pdf)> accessed 5 June 2014.

<sup>92</sup> ILEX Professional Standards, 'Work Based Learning: Handbook' <[http://www.cilex.org.uk/pdf/WBL%20App%20Annex%204%20\(1\).pdf](http://www.cilex.org.uk/pdf/WBL%20App%20Annex%204%20(1).pdf)> accessed 5 June 2014. Prior to this, the Solicitors Regulation Authority carried out an extensive pilot of a portfolio-based assessment of competences both in the training contract and for a group of LPC graduates in legal

such prescription, I suggest, - and in some cases even with it - there is considerable scope for exploitation of entrants, and considerable lack of clarity about what the period of supervised practice is for. Is it for example, about socialisation into the habitus of the profession?<sup>93</sup> Is it a period of legitimate peripheral participation in a community of practice?<sup>94</sup> Are trainees expected to improve in their performance over their performance in the preceding vocational course, or simply to contextualise what was learned in it? Or is it simply a period of humble service which is the price of admission into the arcane mysteries of the profession? It is, I suggest, right that the norms of legal education are periodically questioned and in that context, I turn to recent reviews of legal education in Turkey, England and Wales and in the USA.

### 5. Reviews of legal education and LSET

In 2008, a Promoting Civil Society Dialogue between Bars Through Legal Education project, funded by the European Union, allowed representatives of a number of legal professions in Europe to conduct a scoping exercise to:

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services employment which did not qualify as a training contract. The results of this experiment have to some extent been absorbed into the results of the Legal Education and Training Review but see: Solicitors Regulation Authority, 'Work-Based Learning Pilot' (Solicitors Regulation Authority) <<http://www.sra.org.uk/students/work-based-learning.page>> accessed 5 June 2014; Ching J, "'I Intend to Do Very Well in It": The Road(s) to Competence.' (2010) 19 Nottingham Law Journal 22 <[http://irep.ntu.ac.uk:1801/view/action/singleViewer.do?dvs=1401903441924~232&locale=en\\_GB&VIEWER\\_URL=/view/action/singleViewer.do?&DELIVERY\\_RULE\\_ID=12&application=DIGITool-3&frameId=1&usePid1=true&usePid2=true](http://irep.ntu.ac.uk:1801/view/action/singleViewer.do?dvs=1401903441924~232&locale=en_GB&VIEWER_URL=/view/action/singleViewer.do?&DELIVERY_RULE_ID=12&application=DIGITool-3&frameId=1&usePid1=true&usePid2=true)> accessed 5 June 2014; BMG Research, 'Final Evaluation of the Work-Based Learning (WBL) Pilot' (Solicitors Regulation Authority 2012) <<http://www.sra.org.uk/sra/news/wbl-cpd-publication.page>> accessed 5 June 2014.

<sup>93</sup> Somerlad H, 'What Are You Doing Here? You Should Be Working in a Hair Salon or Something': Outsider Status and Professional Socialization in the Solicitors' Profession' (2008) 2 Web Journal of Current Legal Issues <<http://www.bailii.org/uk/other/journals/WebJCLI/2008/issue2/sommerlad2.html>> accessed 5 June 2014.

<sup>94</sup> Ching J, 'The Significance of Work Allocation in the Professional Apprenticeship of Solicitors.' (2012) 34 Studies in Continuing Education 1.

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*“review the legal education and training system in Turkey in the light of other European experiences and best practice and to foster an evidence-based debate within the Turkish legal profession, prior to reforming the initial education and training system as well as introducing a continuous professional education system.”<sup>95</sup>*

This report<sup>96</sup> identified 43 law schools in operation in Turkey in 2008, an exponential rise over the preceding fifteen years. This number has, it appears, increased to at least 57 in 2010<sup>97</sup> and to 68 by 2013.<sup>98</sup> Legal education in Turkey is, clearly, of significant interest.

The investigation concluded with a recommendation for:

- A working group of stakeholders, including both practitioners and academics;
- The development of training standards:

*“to devise and improve the standards and develop the content of vocational training on matters such as professional ethics, legal drafting, advocacy and the like”<sup>99</sup>*

These two themes, of collaboration and of development of consistent standards, foreshadow those of the later investigations in England and Wales and in the USA, to which I now move.

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<sup>95</sup> Lonbay J, ‘Experts’ Report on the Legal Education and Training System in Turkey.’ (2009) <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1677818](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677818)> accessed 5 June 2014, 7.

<sup>96</sup> Which refers to a bar examination having been in place for a short period, but subsequently having been rescinded by the Turkish parliament.

<sup>97</sup> Menu for Justice, ‘Regarding Undergraduate Law Degree Programmes’ (Menu for Justice 2010) <: [https://www.academic-projects.eu/.../TURKEY\\_Undergraduate\\_TF1.doc](https://www.academic-projects.eu/.../TURKEY_Undergraduate_TF1.doc)> accessed 5 June 2014.

<sup>98</sup> Lonbay J and Toprak M, ‘Legal Education in Turkey: Ottoman to Bologna’ in ShuvroProsunSarker (ed), Legal Education in Asia (Eleven International Publishing 2013), p 184. There are an additional four law schools in Northern Cyprus.

<sup>99</sup> Lonbay J, ‘Experts’ Report on the Legal Education and Training System in Turkey.’ (2009) <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1677818](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677818)> accessed 5 June 2014, p46. Additional recommendations were made about CPD and payment of apprentices.



The investigation in Turkey is unusual in having been carried out by practitioners and academics from outside the country and from a range of jurisdictions. Intramural review of legal education and its fitness for 21<sup>st</sup> century practice has, however, been a preoccupation in recent years in jurisdictions as varied as Australia, Canada, mainland China, France, Hong Kong, India, Mauritius, South Africa and the USA. Although their remits and methodologies have varied, themes related to cost, competence, globalisation, parity of qualification and the balance between regulation and autonomy and innovation, pervade them. Attempts to harmonise different regulatory models are becoming visible, as are attempts to educate on a supra national basis, either through joint or double degrees, or by embedding comparative and international law and cross-cultural competences into individual degree programmes. I will, however, focus on two examples which are linked to the conference in Turkey.

In 2011, the three largest professional regulators in England and Wales - the Solicitors Regulation Authority, Bar Standards Board and ILEX Professional Standards - instigated a substantial research project to investigate legal education and training in England and Wales.<sup>100</sup> Although individual professions had reviewed their own qualification frameworks, this was the first examination of education in the whole sector since 1971. It covered all eight regulated legal professions, and also investigated some of the areas which are not yet regulated, such as will-writers and employment advisors. A research team of academics, of whom I was one, was commissioned to conduct the initial research phase of what became known as the Legal Education and Training Review (LETR). Qualitative aspects of the project involved:

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<sup>100</sup> The project was prompted by the Legal Services Board: Edmonds D, 'Training the Lawyers of the Future: A Regulator's View' (Lord Upjohn lecture, London, November 2010) <[http://www.legalservicesboard.org.uk/news\\_publications/speeches\\_presentations/2010/de\\_lord\\_upjohn\\_lec.pdf](http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2010/de_lord_upjohn_lec.pdf)> accessed 5 June 2014.

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- individual and stakeholder responses to Discussion Papers produced by the research team;
- unsolicited submissions to the research team;
- free text comments submitted as part of an online survey; and
- interviews, meetings and focus groups with a total of 307 respondents including academics, regulators, practitioners of all eight regulated professions and in a variety of organisations (including in-house lawyers) and students distributed across both England and Wales.

Five quantitative surveys were also used to generate quantitative data (with 1,128 respondents to the largest survey). We were also given access to a substantial corpus of consumer data obtained by BDRC Continental for the Legal Services Board.

The overall aim of the project was to ensure that the legal education and training system achieved the objectives set out in the Legal Services Act 2007. Consequently, we had a number of aims:

- a) assessing the perceived strengths and weaknesses of the existing systems of legal education and training across the regulated and unregulated sectors in England and Wales;*
- b) identifying the skills, knowledge and attributes required by a range of legal service providers currently and in the future;*
- c) assessing the potential to move to sector-wide outcomes for legal services education and training;*
- d) assessing the potential extension of regulation of legal services education and training for the currently unregulated sector;*
- e) making recommendations as to whether and, if so, how, the system of legal services education and training in England and Wales may be made more responsive to emerging needs;*
- f) including suggestions and alternative models to assure that the system will support the delivery of:*

- i. *high quality, competitive and ethical legal services;*
- ii. *flexible education and training options, responsive to the need for different career pathways, and capable of promoting diversity.*"

A number of briefing and discussion papers were generated during the course of the research phase,<sup>101</sup> which was also assisted by a Consultation Steering Panel convened as a sounding board and advisory body to the ongoing investigation. Our final report, published in 2013 (<http://letr.org.uk/index.html>) explores the context of education for those working in the sector, including new forms of business structure and the impact of technology; the content of legal services education, including gaps in knowledge and skills; and systems and structures of legal education, in particular standards, access, progression and diversity.<sup>102</sup> It contains 26 recommendations for change, grouped around outcomes and standards; content; structures (including continuing professional development; periods of supervised practice; apprenticeship routes and information available to entrants) and suggestions for further review (see appendix A).

Although response to the final report varied,<sup>103</sup> with some

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<sup>101</sup> Webb J and others, 'Briefing and Discussion Papers' (Legal Education and Training Review) <<http://letr.org.uk/briefing-and-discussion-papers/index.html>> accessed 5 June 2014. For other discussion of the genesis and early stages of the investigation, see Webb J, 'Regulating Lawyers in a Liberalized Legal Services Market: The Role of Education and Training' (2013) 24 *Stanford Law and Policy Review* 533

<sup>102</sup> Webb J and others, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales' (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014.

<sup>103</sup> See for example, in a special edition: Childs P, Firth N and de Rijke H, 'The Gap between Law Student Career Aspirations and Employment Opportunities' (2014) 48 *The Law Teacher* 51 <<http://www.tandfonline.com/doi/abs/10.1080/03069400.2013.875302>> accessed 5 June 2014; Ferris G, 'Values Ethics and Legal Ethics: The QLD and LETR Recommendations 6, 7, 10, and 11' (2014) 48 *The Law Teacher* 20 <<http://www.tandfonline.com/doi/abs/10.1080/03069400.2013.875673>> accessed 5 June 2014; Guth J and Ashford C, 'The Legal Education and Training Review: Regulating Socio-Legal and Liberal Legal Education?' (2014) 48 *The Law Teacher* 5 <<http://www.tandfonline.com/doi/abs/10.1080/03069400.2013.875304>> accessed 5 June 2014; Hamilton A, 'In an Ever-Changing Legal Land-

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suggestions that it had not gone far enough, or that it might prejudice the liberal arts agenda in relation to the LLB, at the time of writing, the regulators are implementing changes in response to the report. So, for example, the Solicitors Regulation Authority and Bar Standards Board are working together on creation of a joint competence framework which will set out what a newly qualified solicitor or barrister should know and be able to do. The Solicitors Regulation Authority, in its Training for Tomorrow project, has also proposed changes to its CPD scheme and potentially wide-ranging changes to regulation of the qualification structure, including the possibility that the LLB/GDL stage and LPC stage could be achieved by “equivalent means”, and opening up the regulation of the training contract.<sup>104</sup>

In 2012, the ABA in the USA convened a task force on the future of legal education (with sub-committees on costs and economics and on delivery of legal education and regulation) to consider how best to address the challenges presented by:

- *The impact of economic trends on the rising cost of legal education and declining legal employment prospects;*

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scape, Paralegals Are the Way Forward’ (2014) 48 *The Law Teacher* 104 <<http://www.tandfonline.com/doi/full/10.1080/03069400.2013.875305>> accessed 5 June 2014; Hardee M, ‘To Prescribe or Not to Prescribe? That Is the Question’ (2014) 48 *The Law Teacher* 69 <<http://www.tandfonline.com/doi/abs/10.1080/03069400.2013.875306>> accessed 5 June 2014; Leighton P, ‘Back from the Future: Did the LETR Really Prepare Us for the Future?’ (2014) 48 *The Law Teacher* 79 <<http://www.tandfonline.com/doi/abs/10.1080/03069400.2013.875308>> accessed 5 June 2014; Twining W, ‘LETR: The Role of Academics in Legal Education and Training: 10 theses1’ (2014) 48 *The Law Teacher* 94 <<http://dx.doi.org/10.1080/03069400.2013.875309>> accessed 16 May 2014.

<sup>104</sup> Bar Standards Board, ‘Legal Education and Training Review (LETR): Next Steps’ <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/letr-next-steps/>> accessed 5 June 2014; ILEX Professional Standards, ‘Fit for the Future: IPS Responds to LETR’ (ILEX Professional Standards) <[http://www.cilex.org.uk/ips/ips\\_home/notice\\_board/ips\\_responds\\_to\\_letr.aspx](http://www.cilex.org.uk/ips/ips_home/notice_board/ips_responds_to_letr.aspx)> accessed 5 June 2014; Solicitors Regulation Authority, ‘Training for Tomorrow’ (Solicitors Regulation Authority, 2013) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow.page>> accessed 5 June 2014; Legal Services Board, ‘Statutory Guidance on Legal Education and Training’ <[http://www.legalservicesboard.org.uk/news\\_publications/press\\_releases/pdf/20140304\\_LSB\\_Education\\_And\\_Training\\_Consultation\\_Response\\_And\\_Guidance.pdf](http://www.legalservicesboard.org.uk/news_publications/press_releases/pdf/20140304_LSB_Education_And_Training_Consultation_Response_And_Guidance.pdf)> accessed 5 June 2014.

- *Innovations, methods and advocacy efforts by state and local bar associations and other groups to reduce the cost of legal education, improve practical skills training, match new lawyers with job opportunities, and provide student loan debt relief; and*
- *The impact of structural changes in law practice to the nature of lawyer work and the number and distribution of attorneys in the bar.*<sup>105</sup>

This group conducted meetings and outreach activities, attended public events and solicited submissions and comments from respondents (including students). Its final report was issued in January 2013,<sup>106</sup> reaching conclusions and making recommendations about pricing and funding of legal education, accreditation (i.e. regulation of legal education); innovation, skills and competences and broader delivery of legal services (see appendix B).

On first reading of the draft ABA report, I was struck by the similarity of the recommendations of the two investigations, as well as the extent to which they opened up the potential for greater convergence between the two ostensibly polarised education models. In practice, of course, the extent of apparent convergence may already be substantial. So, for example, where an Anglo-Welsh GDL, for graduates in non-law disciplines, is coupled with the vocational Legal Practice Course and additional academic or research study to create an LLM award, this starts to look something like a JD; while a JD with a substantial experiential or clinical component starts

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<sup>105</sup> American Bar Association, 'Task Force on the Future of Legal Education Initial Charge' <[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/initial\\_charge\\_of\\_the\\_task\\_force\\_on\\_the\\_future\\_of\\_legal\\_education.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/initial_charge_of_the_task_force_on_the_future_of_legal_education.authcheckdam.pdf)> accessed 5 June 2014.

<sup>106</sup> American Bar Association Task Force on the Future of Legal Education, 'Report And Recommendations American Bar Association Task Force On The Future Of Legal Education' (American Bar Association 2013) <[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf)> accessed 5 June 2014.

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to look like an Anglo-Welsh academic degree and vocational course combination. Of particular interest was the insistence in the ABA Task Force approach, on skills and competences, to which I will return below.

Because, however, the two reports were designed for different audiences: the LETR report for regulators and the ABA Task Force report to a wide range of stakeholders, including the press, it is not easy to correlate the recommendations directly against each other. There are, nevertheless, clear points of consistency in, for example:

- The desire for more information, and for a centre to enhance legal education generally, in ABA A2-A4 and in LETR 20, and 25;
- A desire to encourage limited licensure or alternative means to practise in ABA C3 and, to the extent not already visible in England and Wales, in LETR 22 and 23;
- A desire to work to point of entry standards in ABA C4 and LETR 1-5;
- A focus on skills in ABA C5 and D1 and in LETR 10-13; and
- A focus on financing through the ABA report and on flexible and alternative routes of entry throughout the LETR report.

In this next section, however, I take the five principle areas of concern identified in the ABA Task Force report, and explore convergence and divergence between the US and Anglo-Welsh responses.

### **6. Problems and solutions: convergence and divergence?**

#### *Pricing and Funding*

The tuition fees for an undergraduate law degree in England and Wales are paid by the individual rather than paid or subsidised by the state.<sup>107</sup> Since 2012, they have peaked at

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<sup>107</sup> Except in Scotland and in Wales where state subsidies remain. Tuition fees for undergraduate study in England are, however, not repaid until after graduation. Fees for the vocational courses must, however, be paid in advance, although some of the larger firms will pay, or subsidise, LPC

£9,000 a year. Tuition fees for the LPC are in the region of £12-14,000 and the BPTC in the region of £16,000. Qualification for solicitors or in the case of the bar, independent practice rights are, however, contingent on also obtaining a particular kind of employment contract (training contract or pupillage) in order to complete the supervised practice component. Although there is some evidence that numbers are decreasing, places on both BPTC and LPC outnumber available training contracts and pupillages by some margin, leaving a number of graduates in limbo, and unable to obtain a salary that will allow them to recoup their debt.<sup>108</sup> This leads to a buyer's market in jobs for "paralegals by default" and the possibility of exploitation of individuals by holding out to them the prospect of a training contract at an unspecified point in the future. In what may be an unlikely manifestation of the competition between professions enshrined in the Legal Services Act, it has also led CILEx – which also makes a point of publicising the considerably lower cost of a legal executive education<sup>109</sup> – to provide a route into a regulated status for such individuals with a fast track route into the legal executive profession.

Submissions to LETR included calls for a title to be awarded to aspiring solicitors on completion of their LPC; for a cap on the number of LPC/BPTC places; for such places to be contingent on having already obtained a training contract or pupillage,<sup>110</sup> for extension to the range of types of employment that can qualify for the period of supervised practice. The move by a number of providers, of providing a "top up" by which an LPC or BPTC can be converted into an LLM - an award

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tuition fees.

<sup>108</sup> Simmons R, 'Training: Paralegal Purgatory' *The Lawyer* (24 March 2014) <<http://www.thelawyer.com/training-paralegal-purgatory/3017068.article>> accessed 5 June 2014.

<sup>109</sup> Chartered Institute of Legal Executives, 'Lawyer Qualifications with the Chartered Institute of Legal Executives' (Chartered Institute of Legal Executives) <[http://www.cilex.org.uk/careers/careers\\_home/career\\_change/qualifications\\_and\\_training/lawyer\\_qualifications.aspx](http://www.cilex.org.uk/careers/careers_home/career_change/qualifications_and_training/lawyer_qualifications.aspx)> accessed 5 June 2014.

<sup>110</sup> As in Northern Ireland, where, however, it seems the bottleneck then appears at the point of completion of the law degree.

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which has a status independent of the legal professions and is internationally recognised - might be regarded as a cynical move which only serves to increase income for law schools. At the very least, calls were made for better information, and information at an earlier stage in the educational process, to enable potential entrants to make more informed decisions. Given the concerns about information, and distrust of the information given by law schools, the prospect of litigation in England and Wales along the lines of the litigation that has flourished in the USA alleging misrepresentation of graduate employability by law schools, seemed not very far away.

Ultimately, the day one competence approach recommended by the LETR research team enables greater variety in routes to achieve those competences, which in turn provides a means by which, if the regulators are willing to do so, to lighten the financial load on entrants. Issues of cost also preoccupied the ABA Task force, from a starting point where the cost of a (postgraduate) legal education is already higher than in England and Wales, although, individual responsibility for tuition fees being longer established, methods of support including bursaries and loans are considerably more sophisticated. In addition, there is some evidence that the implications of law school debt have pushed individuals in the USA into premature independent practice, which correlates with an increase in professional negligence claims and ethics violations.<sup>111</sup>

The ABA recommendations included reviews of the extent of undergraduate education that should be required before embarking on the JD; the cost of the JD itself and the possibility of limited licensures outside the JD route. These are being developed particularly in Washington.<sup>112</sup> Educational

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<sup>111</sup> Illinois State Bar Association, 'Special Committee on the Impact of Law School Debt on the Delivery of Legal Services Final Report & Recommendations' (Illinois State Bar Association 2013) <<http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%203-8-13.pdf>> accessed 5 June 2014

<sup>112</sup> See fn 56.



frameworks developed for the latter and for, paralegals in Canada,<sup>113</sup> Scotland<sup>114</sup> and England and Wales,<sup>115</sup> might, therefore, appear similar to those of the smaller specialist professions in England and Wales.

### *Accreditation*

In the USA, the principal target of professional regulation is the JD, particularly its resources and staffing. In England and Wales the focus of regulation has traditionally been on the vocational courses – the current regulations for the BPTC, for example, at 171 pages, rivalling the length of the ABA Standards for the JD –with an uneasy compromise around the LLB. In addition, there is, typically, a hands-off approach to the period of supervised practice, and measurement of CPD/ CLE is by reference to inputs and hours spent rather than outputs. An exception has been CILEx, which implemented both a competence assessment at the point of qualification for candidates for chartered status and a cyclical, benefits model of CPD before the LETR report was published.

The question of regulation was considered by both reviews: by definition in the LETR investigation, commissioned as it was by the professional regulators and from the perspective of cost/benefit and the potential for stifling of innovation, by the ABA Task Force. The question is not, or not only, of more or less regulation, but of the appropriate targeting of regulation:

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<sup>113</sup> Law Society of Upper Canada, 'Paralegal Licensing Process' (Law Society of Upper Canada) <<http://www.lsuc.on.ca/licensingprocessparalegal/>> accessed 10 June 2014

<sup>114</sup> Law Society of Scotland, 'Registered Paralegal Scheme' (Law Society of Scotland) <<https://www.lawscot.org.uk/members/paralegals>> accessed 10 June 2014.

<sup>115</sup> Institute of Paralegals, 'Competency Standards' <<http://www.theiop.org/national-competency-standards/contract-terms.html>> accessed 5 June 2014; National Association of Licensed Paralegals, 'Paralegal Training Pathway' <[http://www.nalptraining.co.uk/training\\_pathways](http://www.nalptraining.co.uk/training_pathways)>

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*“In assessing [competence], a regulatory perspective also requires one to ask what is an appropriate and proportionate use of regulatory resources? If “real” competence is what matters, does continuing legal education and professional development become the key? Does that mean fewer regulatory resources could (and should) be allocated to “initial” assessments of “competence” which may be of limited predictive power, and more to those points where assessment is more likely to make a direct difference to clients, consumers, and employees? Does it mean that in some key (high-risk) areas, specialist accreditation and even reaccreditation should become the norm?”<sup>116</sup>*

A refocussing of regulatory resource is already being demonstrated in responses to the LETR report, with the SRA committed to “a bonfire of the regulations” which incorporates, for example, a concept of achievement of existing stages by “equivalent means” mapped against a day one competence framework which may serve both to cut through the complexity and lack of transparency in existing transfer mechanisms and provide routes which are more cost effective for individuals than the existing configuration of required components.<sup>117</sup>

### *Innovation*

The ABA Task Force report also expresses concern that the extent of regulation for the JD stifles innovation and “reinforces a far higher level of standardization in law schools and legal education than is necessary to turn out capable lawyers”.<sup>118</sup> One can argue whether prescription of knowledge content, explicitly

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<sup>116</sup> Webb J, ‘Regulating Lawyers in a Liberalized Legal Services Market: The Role of Education and Training’ (2013) 24 Stanford Law and Policy Review 533, 562.

<sup>117</sup> Solicitors Regulation Authority, ‘Training for Tomorrow’ (Solicitors Regulation Authority, 2013) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow.page>> accessed 5 June 2014.

<sup>118</sup> American Bar Association Task Force on the Future of Legal Education, ‘Report And Recommendations American Bar Association Task Force On The Future Of Legal Education’ (American Bar Association 2013) <[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf)> accessed 5 June 2014, p 2.

as in the LLB or by implication by reference to a subsequent bar examination, stifles innovation; provides consistency which protects graduates from less prestigious law schools or is a reasonable proxy for the baseline level of knowledge required for practice in the profession which mandate them. Although, for those involved with them in England and Wales, the degree of regulation of the LLB and the LPC and BPTC may have appeared stifling, it could at least be argued that some level of heterogeneity is beneficial in other ways. For example, if the baseline content and delivery of an LPC is consistent across the country, then a mature student who is not portable should not be prejudiced by having to attend his or her local university.

It is, however, apparent that there is a willingness to innovate and that some academics in the USA are committed to doing so, even if in what is currently comparative isolation. There is, however, much that can be shared across jurisdictions. Colleagues in the USA are, I suspect, more advanced than my own in their work on legal writing. There is, however, a considerable body of work and experimentation in skills education and in vocational education in the UK and in Australasia, which can be shared. The post review landscape may, then, begin to be one of cross-jurisdictional collaboration, where academic interest groupings cluster around topics such as skills; clinical education, ethics or advocacy.<sup>119</sup> This is, of course, facilitated across the English-speaking, common law or hybrid common law/civil law nations, but should not be confined to them. If, increasingly, legal practice is globalised, then so too should education for such practice. An international collegiality in legal educators is an eminently worthwhile project. The bigger question may be what we think education for legal practice is seeking to achieve.

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<sup>119</sup> For example: legal skills (<http://glsc.jmls.edu/2014/>); clinical legal education ([http://www.numyspace.co.uk/~unn\\_mlif1/school\\_of\\_law/IJCLE/](http://www.numyspace.co.uk/~unn_mlif1/school_of_law/IJCLE/)); legal ethics (<http://www.city.ac.uk/events/2014/jul/international-legal-ethics-conference-vi-legal-ethics-at-a-time-of-regulatory-change>) and advocacy ([http://www.ntu.ac.uk/apps/events/3/home.aspx/event/155597/default/centre\\_for\\_advocacy\\_2014](http://www.ntu.ac.uk/apps/events/3/home.aspx/event/155597/default/centre_for_advocacy_2014); <http://www.stetson.edu/law/conferences/eats/>)

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### *Skills and competences*

It has been a feature of all the models of legal professional education that they have tended to prescribe processes and structures (inputs). It is for this reason that I was able, at the beginning of this article, to produce a taxonomy of the “components” of legal education models. This can be contrasted with the growing movement towards the more challenging project of trying to assess competence or capability in performance as a lawyer at the point of qualification (output). Even the concept of the point of qualification can be fluid: in the USA, for example, the bar exam graduate can immediately enter sole practice. In England, a pupil barrister is entitled to take on independent work after six months of pupillage. A solicitor, on the other hand, not only does not qualify until two years of supervised practice have been completed, but is normally barred from sole practice for a further three years. The project of trying to define what a lawyer does, or can do, at the point of qualification is by no means easy.<sup>120</sup> On one

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<sup>120</sup> See, for example, various lists of skills, outcomes or competences in sources as varied as: Cooper J, ‘What Is Legal Competence?’ (1991) 54 *Modern Law Review* 112; MacCrate R and others, ‘Legal Education and Professional Development - an Educational Continuum’ (American Bar Association Section of Legal Education and Admissions to the Bar 1992) <[http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2013\\_legal\\_education\\_and\\_professional\\_development\\_maccrate\\_report%29.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report%29.authcheckdam.pdf)> accessed 5 June 2014; Jones P, ‘Competences, Learning Outcomes and Legal Education’ (Institute of Advanced Legal Studies 1994); Gasteen G, ‘National Competency Standards: Are They the Answer for Legal Education and Training?’ (1995) 13 *Journal of Professional Legal Education* 1; Maughan C, Maughan M and Webb J, ‘Sharpening the Mind or Narrowing It? The Limitations of Outcome and Performance Measures in Legal Education’ (1995) 29 *Law Teacher* 255; Australasian Professional Legal Education Council, ‘Competency Standards for Entry Level Lawyers’ <[http://www.aplec.asn.au/Pdf/Competency\\_Standards\\_for\\_Entry\\_Level\\_Lawyers.pdf](http://www.aplec.asn.au/Pdf/Competency_Standards_for_Entry_Level_Lawyers.pdf)> accessed 5 June 2014; Council of the Bars and Law Societies of the European Union, ‘CCBE Recommendation on Training Outcomes for European Lawyers’ <[http://www.ccbe.org/fileadmin/user\\_upload/NTCdocument/EN\\_Training\\_Outcomes1\\_1196675213.pdf](http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf)> accessed 5 June 2014; Solicitors Regulation Authority, ‘Work-Based Learning Pilot’ (Solicitors Regulation Authority) <<http://www.sra.org.uk/students/work-based-learning.page>> accessed 5 June 2014; American Bar Association, ‘Report of the Outcome Measures Committee’ (2008) <<http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>> accessed 5 June 2014; Bar Standards Board, ‘Pupillage

level, it is not enough to seek to predict a set of competences once and for all, pegged to day one, as one might expect lawyers to continue to improve in both “scope and quality” of performance throughout the remaining 40 or so years of their careers and regulatory resources might, perhaps be better targeted on continuing competence throughout the career. This leads to objections about professional autonomy; to arguments that the market both tests and dictates the competence of a self-employed lawyer, and to the rather more contentious subject of periodic re-validation or reaccreditation of lawyers.<sup>121</sup>

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Handbook’ <[https://www.barstandardsboard.org.uk/media/1534328/pupillagehandbook\\_zk2.pdf](https://www.barstandardsboard.org.uk/media/1534328/pupillagehandbook_zk2.pdf)> accessed 5 June 2014; Australasian Professional Legal Education Council, ‘Review of the APLEC & LACC Competency Standards for Entry-Level Lawyers: Discussion Paper Prepared by the APLEC Executive’ (Australasian Professional Legal Education Council 2012) <<http://www.taslawssociety.asn.au/news/PLT%20Competences%20Review%20Discussion%20Paper%20v%206%20June%202012.pdf>> accessed 5 June 2014; Council of Australian Law Deans, ‘Juris Doctor Threshold Learning Outcomes’ <[http://www.cald.asn.au/assets/lists/Education/JD%20TLOs%20\(March%202012\)%20Andrew%20Kenyon.pdf](http://www.cald.asn.au/assets/lists/Education/JD%20TLOs%20(March%202012)%20Andrew%20Kenyon.pdf)> accessed 5 June 2014; Federation of Law Societies of Canada, ‘National Entry to Practice Competency Profile for Lawyers and Quebec Notaries’ <[http://www.flsc.ca/\\_documents/NASCompetencesSept2012.pdf](http://www.flsc.ca/_documents/NASCompetencesSept2012.pdf)> accessed 5 June 2014; ILEX Professional Standards, ‘Work Based Learning: Handbook’ <[http://www.cilex.org.uk/pdf/WBL%20App%20Annex%204%20\(1\).pdf](http://www.cilex.org.uk/pdf/WBL%20App%20Annex%204%20(1).pdf)> accessed 5 June 2014; Institute of Paralegals, ‘Competency Standards’ <<http://www.theiop.org/national-competency-standards/contract-terms.html>> accessed 5 June 2014; Law Society of Scotland, ‘The PEAT 2 Outcomes’ <<http://www.lawscot.org.uk/education-and-careers/the-traineeship/providing-a-traineeship/training-a-trainee/the-peat-2-outcomes>> accessed 5 June 2014; National Conference of Bar Examiners, ‘A Study of the Newly Licensed Lawyer’ (National Conference of Bar Examiners 2012) <[http://www.ncbex.org/assets/media\\_files/Research/AMP-Final-2012-NCBE-Newly-Licensed-Lawyer-JAR.pdf](http://www.ncbex.org/assets/media_files/Research/AMP-Final-2012-NCBE-Newly-Licensed-Lawyer-JAR.pdf)> accessed 5 June 2014.

<sup>A</sup><sub>n</sub> attempt to synthesise some of these as part of the LETR research appears at: Webb J and others, ‘Knowledge, Skills and Attitudes Required for Practice at Present: Initial Analysis’ (Legal Education and Training Review 2012) <<http://letr.org.uk/wp-content/uploads/012012-competence-frameworks-analysis.pdf>> accessed 5 June 2014. Final conclusions and detailed discussion of the subject appears in the final report: Webb J and others, ‘Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales’ (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014.

<sup>121</sup> As advocated by the Legal Services Board Consumer Panel in Legal Services Consumer Panel, ‘Legal Education and Training - Submission to the Research Team’ <[http://www.legalservicesconsumerpanel.org.uk/publications/consultation\\_responses/documents/2012-05-21LETRsubmission.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/2012-05-21LETRsubmission.pdf)> accessed 5 June 2014 but rejected in the final LETR report.

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Nevertheless, 21st century work on common outcomes, for the degree or for competence at the point of entry into legal practice (“day one”) is spreading.<sup>122</sup> This is not without difficulty: What does “day one” or “practice ready” mean? What is its scope? What is its standard?

Such frameworks are already available in Australasia and in Canada. In England and Wales, they are used for sign off of completion of a barrister’s pupillage,<sup>123</sup> for qualification as a chartered legal executive, in the QLTS and have been tested in the training contract for solicitors.<sup>124</sup> There is evidence of experiments with the concept elsewhere, including in the Russian Federation.<sup>125</sup> A similar approach is under discussion as a result of the ABA Task Force report,<sup>126</sup> and a common framework is being developed collaboratively for solicitors and barristers in England and Wales. In addition, law firms and other organisations work with competence frameworks of their own, often using a number of levels and incorporating in the higher levels more sophisticated degrees of responsibility and complexity of work. The emphasis is placed less on the process and structures prior to qualification, but on identification and assessment of the attributes of a competent lawyer. Bar examinations, of course, also operate from this perspective but few, if any, would claim to test the complete range of competences of an entry level lawyer. Even the QLTS, tied to the initial iteration of the solicitors “day one

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<sup>122</sup> See fn 120.

<sup>123</sup> Bar Standards Board, ‘Pupillage Handbook’ (Bar Standards Board 2013) <[https://www.barstandardsboard.org.uk/media/1534328/pupillagehandbook\\_zk2.pdf](https://www.barstandardsboard.org.uk/media/1534328/pupillagehandbook_zk2.pdf)> accessed 5 June 2014.

<sup>124</sup> See references at fn 25 and fn 92.

<sup>125</sup> Miroshnichenko O, Gaivoronskaya Y and Samusenko T, ‘Competence-Based Approach in Modern Juridical Education Experience of Far-Eastern Federal University. Part 4’ (2014) 30 *World Applied Sciences Journal* 116.

<sup>126</sup> Fisher JW, ‘Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students’ (2010) 35 *Southern Illinois University Law Journal* 225 <<http://heinonline.org/HOL/Page?handle=hein.journals/siulj35&id=233&div=&collection=journals>> accessed 5 June 2014.

outcomes”, assumes competence in a number of the outcomes on the basis that candidates who are already qualified lawyers elsewhere will already possess those attributes from their prior experience in practice. What is yet to take place, and would require a meta-analysis of all these competence frameworks alongside each other, is a realistic attempt to identify a supra-national or template set of competences. In Europe, a set of outcomes has been identified for a range of jurisdictions (including civil law jurisdictions) by the Council of Bars and Law Societies of Europe but it is not mandatory or embedded in any qualification system.<sup>127</sup> Competences of an international lawyer, assuming this to be the next level of development and necessarily involving a level of convergence, are, to the best of my knowledge, still at the stage of work by individual, possibly isolated researchers.<sup>128</sup>

*Broader delivery of legal services*

Globalised legal practice is, however, at one end of the spectrum. At the other is the question of access to justice on a domestic level. The ABA Task Force has suggested investigation of the licensure provisions, potentially allowing specialist or limited licences to be available to non-JD graduates. The Legal Services Act in England and Wales actively champions this approach by increasing the variety of bodies that can be licensed. The limited range of reserved activities, however, also means that a wide range of paralegal firms – including those with no legal training, LPC or BPTC graduates who have been unable to complete training and lawyers who have been struck off – can offer advice on, for example, employment

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<sup>127</sup> Council of the Bars and Law Societies of the European Union, ‘CCBE Recommendation on Training Outcomes for European Lawyers’ <[http://www.ccbe.org/fileadmin/user\\_upload/NTCdocument/EN\\_Training\\_Outcomes1\\_1196675213.pdf](http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf)> accessed 5 June 2014.

<sup>128</sup> See for example, Faulconbridge J and Muzio D, ‘Legal Education, Globalization, and Cultures of Professional Practice.’ [2009] *Legal Ethics & Professional Responsibility* (ejournal) <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1516314](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1516314)>; Lonbay J, ‘The Education, Licensing, and Training of Lawyers in the European Union, Part II: The Emerging Common Qualifications Regime and Its Implications for Admissions in Europe’ [2010] *Bar Examiner* 25.

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law or contracts. A risk based approach to the widening of regulated activities, evident in the regulation outside the Act of immigration advisors and claims managers, has resulted in an on again, off again, suggestion of the compulsory regulation of will writing. Registration of paralegals, whether voluntary, or through a distinct scheme such as the registered paralegal scheme in Scotland or under the Ontario model,<sup>129</sup> may be the next development in England and Wales, helping to define a new profession. Creation of new professions and new regulated structures aside, all professions will need to deal with new forms of delivery and new forms of legal work. Some jurisdictions, and some educational frameworks, will be better suited to doing so, than others.

### 7. Conclusion: collaboration and conversations

I conclude by returning to the recommendations for collaboration made in the report on Turkish education. They are echoed in the calls for a legal education hub in the LETR report and implicitly necessary to implement the conclusions of the ABA Task Force. This involves a conversation, and a conversation that involves us all in open-minded listening to what others have to say. Clearly there are cultural, regulatory and historical differences between us. However, insofar as we are dealing with similar problems and working towards similar solutions, there can be a tendency to assume either that the other jurisdiction, the other profession, the other system, has already got it right; or that our problems and our solutions are uniquely ours. In Turkish, you may think my chickens are geese -*Komşunun tavuğu komşuya kaz görünür*- in English, I may think your grass is greener. Collaboration, I suggest, not only provides a clearer insight into the challenges and solutions adopted by others, but -*Amerikayı yeniden keşfe gerek bulunmamaktadır*<sup>130</sup>- reduces the extent to which our limited time and resources are expended in reinventing wheels.

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<sup>129</sup> See fn 113 and fn 114.

<sup>130</sup> There is no need to rediscover America. In the English-speaking nations the sentiment is usually expressed as “there is no need to reinvent the wheel”.



Appendix A: the recommendations of the Legal Education and Training Review research phase final report

### Recommendation 1

Learning outcomes should be prescribed for the knowledge, skills and attributes expected of a competent member of each of the regulated professions. These outcome statements should be supported by additional standards and guidance as necessary.

### Recommendation 2

Such guidance should require education and training providers to have appropriate methods in place for setting standards in assessment to ensure that students or trainees have achieved the outcomes prescribed.

### Recommendation 3

Learning outcomes for prescribed qualification routes into the regulated professions should be based on occupational analysis of the range of knowledge, skills and attributes required. They should begin with a set of 'day one' learning outcomes that must be achieved before trainees can receive authorisation to practise. These learning outcomes could be cascaded downwards, as appropriate, to outcomes for different initial stages or levels of LSET. Learning outcomes may also be set (see below) for post-qualification activities.

### Recommendation 4

Mechanisms should be put in place for regulators to co-ordinate and co-operate with relevant stakeholders including members of their regulated profession, other regulators, educational providers, trainees and consumers, in the setting of learning outcomes and prescription of standards.

### Recommendation 5

Longer term, further consideration should be given to the development of a common framework of learning outcomes and standards for the legal services sector as a whole.

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### Recommendation 6

LSET schemes should include appropriate learning outcomes in respect of professional ethics, legal research, and the demonstration of a range of written and oral communication skills.

### Recommendation 7

The learning outcomes at initial stages of LSET should include reference (as appropriate to the individual practitioner's role) to an understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values.

### Recommendation 8

Advocacy training across the sector should pay greater attention to preparing trainees and practitioners in their role and duties as advocates when appearing against self-represented litigants.

### Recommendation 9

Learning outcomes should be developed for post-qualification continuing learning in the specific areas of:

- Professional conduct and governance.
- Management skills (at the appropriate points in the practitioner's career. This may also be targeted to high risk sectors, such as sole practice).
- Equality and diversity (not necessarily as a cyclical obligation).

### Recommendation 10

The balance between Foundations of Legal Knowledge in the Qualifying Law Degree and Graduate Diploma in Law should be reviewed, and the statement of knowledge and skills within the Joint Statement should be reconsidered with particular regard to its consistency with the Law Benchmark statement and in the light of the other recommendations in this

report. A broad content specification should be introduced for the Foundation subjects. The revised requirements should, as at present, not exceed 180 credits within a standard three-year Qualifying Law Degree course.

### Recommendation 11

There should be a distinct assessment of legal research, writing and critical thinking skills at level 5 or above in the Qualifying Law Degree and in the Graduate Diploma in Law. Educational providers should retain discretion in setting the context and parameters of the task, provided that it is sufficiently substantial to give students a reasonable but challenging opportunity to demonstrate their competence.

### Recommendation 12

The structure of the Legal Practice Course stage 1 (for intending solicitors) should be modified with a view to increasing flexibility of delivery and the development of specialist pathways. Reduction of the breadth of the required technical knowledge-base is desirable, so as to include an appropriate focus on commercial awareness, and better preparation for alternative practice contexts. The adequacy of advocacy training and education in the preparation and drafting of wills needs to be addressed.

### Recommendation 13

On the Bar Professional Training Course (for intending barristers), Resolution of Disputes out of Court should be reviewed to place greater practical emphasis on the skills required by Alternative Dispute Resolution, particularly with regard to mediation advocacy.

### Recommendation 14

LSET structures which allow different levels or stages (in particular formal education and periods of supervised practice) to take place concurrently should be encouraged where they do not already exist. It should not be mandated. Sequential LSET structures, where formal education is completed before

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starting supervised practice, should also be permitted where appropriate. In either case, consistency between what is learned in formal education and what is learned in the workplace is encouraged, and facilitated by the setting of 'day one' outcomes.

### Recommendation 15

Definitions of minimum or normal periods of supervised practice should be reviewed in order to ensure that individuals are able to qualify or proceed into independent practice at the point of satisfying the required day one outcomes. Arrangements for periods of supervised practice should also be reviewed to remove unnecessary restrictions on training environments and organisations and to facilitate additional opportunities for qualification or independent practice.

### Recommendation 16

Supervisors of periods of supervised practice should receive suitable support and education/training in the role. This should include initial training and periodic refresher or recertification requirements.

### Recommendation 17

Models of CPD that require participants to plan, implement, evaluate and reflect annually on their training needs and their learning should be adopted where they are not already in place. This approach may, but need not, prescribe minimum hours. If a time requirement is not included, a robust approach to monitoring planning and performance must be developed to ensure appropriate activity is undertaken. Where feasible, much of the supervisory task may be delegated to appropriate entities (including chambers), subject to audit.

### Recommendation 18

There should be regular and appropriate supervision of CPD, and schemes should be audited to ensure that they correspond to appropriate learning outcomes. Audit should be a developmental process involving practitioners, entities and the regulator.

### Recommendation 19

In the short to medium-term, regulators should cooperate with one another to facilitate the cross-recognition of CPD activities, as a step towards more cost-effective CPD and harmonisation of approaches in the longer term.

### Recommendation 20

In the light of the Milburn Reports on social mobility, conduct standards and guidance governing the offering and conduct of internships and work placements should be put in place.

### Recommendation 21

Work should proceed to develop higher apprenticeship qualifications at levels 5-7 as part of an additional non-graduate pathway into the regulated professions, but the quality and diversity effects of such pathways should be monitored.

### Recommendation 22

Within regulated entities, there is no clearly established need to move to individual regulation of paralegals. Regulated entities must however ensure that policies and procedures are in place to deliver adequate levels of supervision and training of paralegal staff, and regulators must ensure that robust audit mechanisms provide assurance that these standards are being met. To ensure consistency and enhance opportunities for career progression and mobility within paralegal work, the development of a single voluntary system of certification/licensing for paralegal staff should also be considered, based on a common set of paralegal outcomes and standards.

### Recommendation 23

Consideration should be given by the Legal Services Board and representative bodies to the role of voluntary quality schemes in assuring the standards of independent paralegal providers outside the existing scheme of regulation. The Legal Services Board may wish to consider this issue as part of its work on the reservation and regulation of general legal advice.

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### Recommendation 24

Providers of legal education (including private providers) should be required to publish diversity data for their professional or vocational courses, Qualifying Law Degrees and Graduate Diplomas in Law and their equivalents.

### Recommendation 25

A body, the 'Legal Education Council', should be established to provide a forum for the coordination of the continuing review of LSET and to advise the approved regulators on LSET regulation and effective practice. The Council should also oversee a collaborative hub of legal information resources and activities able to perform the following functions:

- Data archive (including diversity monitoring and evaluation of diversity initiatives);
- Advice shop (careers information);
- Legal Education Laboratory (supporting collaborative research and development);
- Clearing house (advertising work experience; advising on transfer regulations and reviewing disputed transfer decisions).

### Recommendation 26

In the light of the regulatory objectives and the limited engagement by consumers and consumer organisations in the research phase of the LETR, it is recommended that the regulators ensure that appropriate consumer input and representation are integrated into the consultation and implementation activities planned for the next phase of the LETR.

**Appendix B: summary of the conclusions of the ABA Task Force**

*A. American Bar Association*

The American Bar Association should undertake the following:

1. Establish a Task Force to Examine and Recommend Reforms Concerning the Pricing and Financing of Law School Education. Issues within the Scope of Such a Project Should Include:
  - a. Current methods of pricing used by law schools, including the impact of readily available loans and common methods of discounting based on LSAT scores and related factors.
  - b. The relative lack of need-based discounting offered by law schools.
  - c. The impact of current methods of pricing on access to law school.
  - d. The impact on legal education and access to justice of reliance on loans to finance law school education.
  - e. The structure of the current loan program for financing of law school education and potential alternative.
2. Establish a Center or other Framework to Institutionalize the Process of Continuous Assessment and Improvement in the System of Legal Education.
3. Establish a Mechanism for Gathering Information About Improvements in the System of Legal Education and Disseminate that Information to the Public.
4. Establish Training and Continuing Education Programs for Prelaw Advisors to Improve their Understanding of the System of Legal Education and the Current Environment.

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### **B. The Council of the ABA Section of Legal Education and Admissions to the Bar**

The Council of the Section of Legal Education and Admissions to the Bar should undertake the following:

1. Eliminate or Substantially Moderate the Restrictiveness of Standards, Interpretations, and Rules that Directly or Indirectly Raise the Cost of Delivering a J. D. Education without Commensurately Contributing to the Goal of Ensuring That Law Schools Deliver a Quality Education.
2. Eliminate or Substantially Moderate the Restrictiveness of Standards, Interpretations, and Rules that Directly or Indirectly Impede Law School Innovation in Delivering a J. D. Education without Commensurately Contributing to the Goal of Ensuring That Law Schools Deliver a Quality Education.
3. Carefully Study whether to Eliminate or Substantially Moderate the Requirement in Standard 304(b), of a Course of Study for the J. D. Consisting of No Fewer than 58,000 Minutes of Instruction Time, in that the Requirement may Impede Law School Innovation in Delivering a J. D. Education without Clearly Contributing to the Goal of Ensuring that Law Schools Deliver a Quality Education.
4. Revise the Standards, Interpretations, and Rules Concerning Variances
5. Provide Additional Consumer Information to Prospective Students as Recommended in 2007 by the Section's Accreditation Policy Task Force and in 2008 by the Section's Special Committee on Transparency.
6. Establish Standards for Accreditation of Programs of Legal Education Other than the J. D. Program.



**C. State Supreme Courts, State Bar Associations, and Other Regulators of Lawyers and Law Practice**

State and territorial high courts, state bar associations, and other regulators of lawyers and law practice should undertake or commit to the following:

1. Undertake to Develop and Evaluate Concrete Proposals for Reducing the Amount of Law Study Required for Eligibility to Sit for a Bar Examination or be Admitted to Practice, in Order to be Able to Determine Whether Such a Change in Requirements for Admission to the Bar Should be Adopted.
2. Undertake to Develop and Evaluate Concrete Proposals for Reducing the Amount of Undergraduate Study Required for Eligibility to Sit for a Bar Examination or be Admitted to Practice, in Order to be Able to Determine Whether Such a Change in Requirements for Admission to the Bar Should be Adopted. .
3. As a Means of Expanding Access to Justice, Undertake to Develop and Evaluate Concrete Proposals to: (a) Authorize Persons Other than Lawyers with J. D. 's to Provide Limited Legal Services Without the Oversight of a Lawyer; (b) Provide for Educational Programs that Train Individuals to Provide those Limited Legal Services; and (c) License or Otherwise Regulate the Delivery of Services by Those Individuals, to Ensure Quality, Affordability, and Accountability.
4. Establish Uniform National Standards for Admission to Practice as a Lawyer, including adoption of the Uniform Bar Examination.
5. Reduce the Number of Doctrinal Subjects Tested on Bar Examinations and Increase Testing of Competences and Skills.
6. Avoid Imposing More Stringent Educational or Academic Requirements for Admission to Practice than those Required Under the ABA Standards for Approval of Law Schools.

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### **D. Universities and Other Institutions of Higher Education**

Universities and other institutions of higher education should undertake the following:

1. Develop Educational Programs to Train Persons, other than Prospective Lawyers, to Provide Limited Legal Services. Such Programs May, but Need Not, Be Delivered through Law Schools that are Parts of Universities.

### **E. Law Schools**

Each law school should undertake the following:

1. Develop and Implement a Plan for Reducing the Cost and Limiting Increases in the Cost of Delivering the J. D. Education, and Continually Assess and Improve The Plan.
2. Develop and Implement a Plan to Manage the Extent of Law School Investment in Faculty Scholarly Activity, and Continually Assess Success in Accomplishing the Goals in the Plan.
3. Develop a Clear Statement of the Value the Law School's Program of Education and other Services Will Provide, Including Relation to Employment Opportunities, and Communicate that Statement to Students and Prospective Students.
4. Adopt, as an Institution-Wide Responsibility, Promoting Career Success of Graduates and Develop Plans for Meeting that Responsibility.
5. Develop Comprehensive Programs of Financial Counseling for Law Students, and Continually Assess the Effectiveness of Such Programs.

### **F. Law Faculty Members**

Law school faculty members should undertake the following:

1. Become Informed About the Subjects Addressed in This Report and Recommendations, in Order to Play an Effective Role in the Improvement of Legal Education at the Faculty Member's School.
2. Recognize the Role of Status as a Motivator but Reduce its Role as a Measure of Personal and Institutional Success.
3. Support the Law School in Implementing the Recommendations in Subsection E.

### **G. The Legal Profession**

Members of the legal profession should undertake the following:

1. Become Informed About the Subjects Addressed in This Report and Recommendations, and Play an Effective Role in the Education of Law Students and Young Lawyers.

### **H. Those Who Inform the Public About Legal Education**

Those who supply information and those who employ it should undertake the following:

1. Law Schools, the Profession, and Others in the System of Legal Education Should Commit to Providing the Public with Information about Improvements and Innovations in Legal Education that Respond to the Criticisms Previously Raised.
2. News Organizations Should Strive to Develop Expertise Regarding Legal Education among Staff, and the Organized Bar Should Seek to Assist Them in Doing so.
3. U. S. News & World Report Should Cease Using Law School Expenditures as a Component of Its System for Ranking Law Schools and, in General, Should Ensure that Its Ranking Methodology Does Not Promote Conduct Damaging to the Interests of Law Students and the System of Legal Education.



# The Crisis in American Legal Education: Its Cause and Cure

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## I

For several years the American world of legal education, normally a rather quiet world, has been seething with controversy, predictions of professional doom, and extensive media coverage. The message from most quarters is clear: legal education in the United States is experiencing a major crisis one from which it will emerge a much changed enterprise. For the most part, the crisis is a market crisis: demand for places in law school in the United States has declined drastically in the past five years and the demand for graduates of law schools has also declined quite dramatically, at least in many geographic areas in the nation. The evidence of the crisis is to be found in the contraction in size of the student body of many law schools throughout the nation and, in some cases, the reduction in size of faculties of those law schools most seriously affected financially by reduced demand for places.<sup>1</sup> Many law professors find themselves, for the first time, wondering if their job security is actually threatened, a situation that has deepened the sense of crisis in the law school world.<sup>2</sup>

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<sup>1</sup> As an example, the University of Kansas School of Law has reduced the size of its entering class from an historical average of approximately 160 first year students to approximately 110 students. Other schools have experienced similar declines.

<sup>2</sup> A number of law schools have offered financially advantageous "early retirement packages" to encourage senior [and often highest paid] faculty to retire.

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Looked at objectively one could ask whether what is happening in American legal education today is, in fact, a crisis at all or whether, to borrow a phrase from the financial press, is nothing more than a “market adjustment.” Certainly, there has been a decline in traditional employment opportunities for many law graduates. Certainly, there has been a dramatic decline in applications and enrollment in law schools nationally. Certainly, these two facts alone have led to the downsizing of several law schools. But is this really downsizing or is it “right-sizing.” The facts are not in dispute. Their interpretation, however, is.

### THE CAUSES OF THE CRISIS

#### **The Great Recession**

The final decades of the twentieth century and the first few years of the twenty-first century were, for the most part, years of expansion both for legal education and the legal profession. Of course, there were periods in which hiring slowed and years in which applications to law schools slowed, but, for the most part these were good years both for the legal profession and for law schools. This quarter century of expansion and financial stability came to a crashing halt with the financial crisis of 2008 and the beginning of the Great Recession. The very fact that the 2008 crisis centered upon banking, the financial services industries, and securities and investment banking firms, meant that many large, urban law firms who depended upon clients in these industries saw significant decreases in their practices and in their firm profits. This, in turn, led to a reduction in legal and support staff at many of these firms, reductions in hiring of new lawyers, and, in some cases, consolidation of firms. In a few well-publicized cases, the crisis led to the dissolution of prominent law firms.<sup>3</sup> While the crisis of 2008 and succeeding years hit large law firms in major urban areas like New York,

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<sup>3</sup> A number of these law firm dissolutions involved large, prestigious law firms including the “mega-firm,” Dewey, LeBoeuf.

Los Angeles, and Chicago most severely, larger firms in second tier cities like Kansas City also suffered when banking clients and financial services clients in these cities also experienced hardships. Even law firms in smaller communities who had traditionally depended upon home town banks as stable, income-producing clients suffered losses when many of these banks failed. And, of course, as banks failed and as credit dried up residential real estate sales declined drastically. This, too, dealt a severe blow to many smaller firms who depended upon their real estate practices for a substantial part of their business. As the effects of the Great Recession spread across the nation and employment levels fell, law firms suffered concomitant losses in income as their client bases contracted. Many of the “bread and butter” tasks of small town lawyers, such as real estate, trusts, and commercial litigation disappeared as real estate and other financial transactions became fewer a result of the depressed economy. The legal profession, like so many other sectors of the national economy, suffered significantly as a result of the Great Recession.

As the legal profession suffered so suffered law school placement. Most law schools have traditionally sent the vast majority of their graduates to work in traditional law practice settings, those defined by the American Bar Association as jobs “requiring a JD.” The general contraction of the legal profession beginning in 2008 meant that there were simply fewer traditional law practice jobs in law firms and corporate counsel offices available. The dismissal of significant numbers of experienced lawyers from their positions because of the economic crisis meant that there was also far more competition for what jobs were available. Newly minted law graduates were now competing not only among themselves, but, also, against more experienced lawyers. Not at all surprisingly, law school placement statistics generally took a nosedive.

To make matters worse, during the decades leading up to the Great Recession law schools had become accustomed to the idea that their top graduates, those in the top twenty percent

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of their graduating classes, would, generally, be recruited by the largest law firms in the urban centers to which the schools generally sent them. The elite schools, such as Harvard, Yale, Columbia, and Stanford, were accustomed to having their top graduates being able to move into jobs at the elite national firms. The top graduates of second and third tier law schools would normally be recruited by the large regional firms. Thus, for example, top graduates from the University of Kansas School of Law had become accustomed to almost certain offers of employment from the largest law firms in Kansas City and Wichita as well as in larger cities around the U.S.. But these elite, large national and regional firms were often those the worst hit financially by the Great Recession. As a result many either reduced their incoming classes of lawyers or suspended new hiring altogether. A few even rescinded offers that had already been made to third year law students.

This shift in employment prospects for top law graduates had two major effects. First, as it became widely known that top graduates were not finding employment in their traditional elite firms. The media, both print and digital, saw a major story in the making. Second, when top graduates found that they could not obtain jobs at the elite, larger urban law firms, they began to seek jobs at smaller regional firms, in many cases displacing lower ranked graduates who would otherwise have been competitive in this niche of the market. In effect, the market shifted downward and those at the very bottom of the market, students at the least highly ranked schools and those in the lowest ranks at law schools generally, found that there were simply no traditional law jobs available to them. These were the human stories behind the depressing statistics.

### **The Expansion of Legal Education**

The Great Recession hit law schools harder, in terms of graduate placement opportunities, than other market downturns had done in earlier years. In part, this is, no doubt, attributable to the severity of the 2008 crash. But there was also another im-



portant factor contributing to the problem. Legal education in the United States expanded significantly during the two decades before 2008. There were several causes for this. The expansion in the number of private law schools and the enrollment in private law schools [and this is where the greatest expansion occurred] was attributable, in my opinion, to the fact that universities had discovered that law schools could be highly profitable units.<sup>4</sup> Unlike most university disciplines, law has few requirements: a library, faculty offices, classrooms. Law faculty, though normally paid more than faculty in most other disciplines, do not require expensive laboratories or “start up funding.” Most law school classes are relatively large and, as a result, student-faculty ratios can be favorable from an income perspective. Expensive graduate programs are rare in law schools as are teaching assistants. In effect, the major expenses of law schools are salaries, libraries, and capital outlays for buildings. On the revenue side, the conventional wisdom before the 2008 crash was that law students could and would pay higher tuition than most other students because their post-graduation employment and income prospects were better. Many law schools charged substantially higher tuition and fees to law students than to other students. For instance, law students at the University of Kansas paid both regular tuition and an additional “differential tuition fee” during my time as dean [1994-2000].<sup>5</sup> While there were occasional grumblings about the cost of law school, high salaries on graduation substantially muted dissent. Of course, all of this changed in 2008 when the high salaried post-graduation jobs disappeared for so many students.

During most of the period prior to the 2008 crash, the most important limitation on the expansion of law schools was reg-

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<sup>4</sup> During my years as Dean of the law school at Syracuse University [1988-1994] one of the most contentious issues with the university central administration was the “tax” [i.e. percentage of tuition revenues] that the law school was required to turn over to the university general fund each year.

<sup>5</sup> During this period, the additional fee paid by law students was equal to the per credit hour tuition. Thus, law students paid almost twice what students in other schools paid.

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ulation by the Section on Legal Education of the American Bar Association. This group is one of two principal accrediting bodies for American legal education [the other is the Association of American Law Schools]. As part of the accrediting process, the Section on Legal Education issued standards for accreditation, maintained a rigorous process for initial accreditation of law schools, and operated a program of sabbatical inspections of already accredited law schools. This process was intended to assure that all accredited law school maintained high academic and professional standards. In practice the processes tended to make accreditation quite difficult for new applicant schools. Limitations on student-faculty ratio and other aspects of law school operation also put some limits on expansion of student enrollments at already accredited law schools.

For a variety of reasons, the United States Department of Education, which has overall supervision of American university accreditation, decided to investigate the activities of the ABA Section on Legal Education. The result of this investigation was a settlement signed by both the Department of Education and the ABA that required significant changes in the ABA accreditation standards and processes. In my opinion, the net effect of this investigation and settlement was to make initial accreditation easier. Given the general perception in higher education that law schools could be “profit centers” the years immediately preceding the 2008 crash saw the founding and accreditation of a significant number of new law schools, particularly in California, and, for the first time in decades, many of these were “for-profit” law schools.<sup>6</sup> By 2008 the number of accredited American law schools and the number of students enrolled in these schools had reached all time highs. Thus, when the crash came in 2008 it affected far more law schools and far more law students than it would have just a decade before.

### **Easy Debt**

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<sup>6</sup> One must also recognize that this was a period of general expansion of private, for-profit higher education institutions in the U.S. The creation of private for-profit law schools should be seen as part of this broader trend.

The system of legal education as it existed prior to 2008 could not have existed without students willing and able to pay large amounts of money to obtain law degrees. Certainly, during the decades prior to 2008 the cost of legal education had risen remarkably. In fact, very few law students could afford to pay these spiraling tuitions. They paid by borrowing most if not all of what they needed. Average debt loads of graduates of many private law schools came to be counted in six figures. Law students had numerous sources from which to borrow including federal and state loan programs, often at subsidized rates, and commercial loans at market rates. These loans were very easy to obtain often requiring nothing more than proof of enrollment. Lenders, both governmental and private, assumed that these law students would be able easily to repay these loans once they began work. To add to this security, failure to repay student loans soon came to be viewed as a sign of financial improvidence and graduates who attempted to avoid repayment found themselves unable to gain admittance to the Bar in a number of states.<sup>7</sup>

The system as it developed, therefore, became one of interdependency and, sadly, mutual profit on the institutional side. Law schools could raise their tuition and increase their revenues so long as banks and governments were willing to raise the amount of loans they would offer to would-be law students. These students, in turn, would require ever increasing salaries upon graduation in order to repay their loans and law firms were willing to raise salaries in order to recruit students with the highest credentials. As long as there were enough jobs that paid enough to go around, students could repay their loans, law schools could raise their tuitions, universities could “tax” law schools ever increasing amounts [this was primarily a phe-

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<sup>7</sup> In general, American state Supreme Courts, which have jurisdiction over the Bar and Bar admission, require all applicants to the Bar to pass “character & fitness” examinations. One of the most significant issues with which this process deals is financial responsibility. A number of states have taken the position that failure to repay student loans in a timely manner constitutes evidence of financial irresponsibility and, therefore, is cause for refusing the candidate admission to the Bar.

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nomenon in private universities] and nobody complained except the few unfortunate students who couldn't find jobs that paid enough to permit them to meet the debt service on their student loans. Another group that suffered under this regime, of course, were the public interest law firms, public defender offices, legal aid, and other employers who could not pay the highest wages and, therefore, could not compete for the highest credentialed students who could not afford to take low-paying jobs because of their outstanding student loans.<sup>8</sup> The Crash of 2008 ended all of this and the interdependent parts ceased to work in unison. As jobs dried up, sensible students realized that they would not be able to repay large amounts of student debt and, therefore, either chose not to go to less expensive law schools or not to go to law school at all. Thus, today, law schools around the United States find themselves lowering tuition, giving out more scholarship aid [an alternative to lowering tuition across the board], or reducing class size to meet reduced demand, or some combination of the three.<sup>9</sup> And, this, of course, is at the root of the "crisis" from the law school perspective: law schools are taking in less revenue.

### **The Media**

When the Crash of 2008 was fully underway, the American economy was in retreat, and the legal profession was reeling from the market effects of the crash, the American media saw great opportunities to lash out at lawyers and legal education.

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<sup>8</sup> During my years as dean of the law schools at both Syracuse University and the University of California one of the most frequent complaints I heard from graduating students was that the repayment burden on student loans was a major deterrent to taking lower paying jobs, in particular jobs with not-for profits and government agencies. A number of law schools began student loan repayment programs for graduates who worked in public interest jobs, although such programs were quite expensive and schools without substantial endowments [eg. Kansas] were unable to establish such programs.

<sup>9</sup> For example, the University of Toledo School of Law, faced with a substantial drop in applications and first year students, drastically reduced its law school tuition to improve its competitiveness. As mentioned earlier, the University of Kansas School of Law voluntarily reduced the size of its entering class and significantly increased financial aid to students who did enroll.

Thousands of law students found themselves in law school with substantial debt and even more substantially reduced job opportunities upon graduation. Law schools which had become accustomed to placement percentages in the nineties found themselves with placement percentages in the sixties. Some law schools, usually fourth or fifth tier, found that fewer than half their graduates were employed in traditional legal jobs ninth months after graduation. The crisis in legal education became the major topic of discussion on a number of popular legal blogs, the most successful – and most inflammatory – of which was “Above the Law” and its star commentator, Elie Mystal.<sup>10</sup> Traditional media, too, suddenly became interested in legal education and its woes in ways never before seen, including the venerable *New York Times*. Misery not only likes company; it sells newspapers. Most long-term law school administrators will confess that media attention does affect law school applications. During the 1980s when law and law firms became a favorite topic for prime time television, applications to law school increased substantially.<sup>11</sup> After 2008 when it was difficult for a week to pass without another feature article in print or on the Internet describing some poor law student’s career struggles, applications declined. While the media did not cause the crisis in legal education that we face today, it certainly helped to publicize it and magnify it.

### THE EFFECTS OF THE CRISIS

#### Numbers

The most easily identifiable and described effects of the current crisis in legal education are numerical. Very simply, the number of applications to law schools each year has dropped

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<sup>10</sup> [www.abovethelaw.com](http://www.abovethelaw.com).

<sup>11</sup> There was a general belief among law school deans, myself included, during the 1980s that the hit television show, “L. A. Law,” [on air from 1986 to 1994] significantly increased law school applications. It has also been my observation at both Syracuse and Kansas that in years in which our major intercollegiate sports teams [primarily basketball] won national titles, applications to our law school increased, presumably because of the increased national publicity.

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precipitously, almost forty percent of its high point, and continues to drop.<sup>12</sup> The number of students enrolling in law schools has dropped concomitantly. The drop in enrolled students has not been uniform across all American law schools, a few have managed to avoid such enrollment drops [the University of Idaho School of Law is an example of a school which has not experienced a drop in enrolled students], but most schools, in every ranking tier and geographic region have experienced enrollment drops. This means that schools have less revenue with which to operate. In extreme cases this has led to the closure of a few already marginal schools. In a greater number of cases this has led to reductions in faculty and staff size, elimination of programs, and other economies. While these changes have been painful for faculty and staff it does not appear that they have significantly impacted the quality of education law students receive at the institutions that have made these reductions. In some cases, these reductions have meant that law schools have ceased to be “profit centers” for their universities, but one must ask whether this is necessarily a bad thing.

### **Angst & Self-Reflection**

Perhaps the most significant impact of the current crisis has been a spreading self-doubt amongst law professors and administrators about the nature and process of American legal education. The crisis has been the excuse for a number of attacks on traditional legal education: attacks on its cost, attacks on the traditional three year program, attacks on the extent to which law faculties focus on traditional doctrinal and experiential teaching and research versus “higher” more theoretical work, etc. The most rational, and most talked about, if not the most convincing attack has been a book by Prof. Brian Tamanaha, a professor at the elite, private, Washington University School of Law in St. Louis, *Failing Law Schools*.<sup>13</sup> In this book

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<sup>12</sup> For data on the decline, see the blog, Faculty Lounge, <http://www.thefacultylounge.org/2015/01/lisac-data-and-predicting-of-applicants-for-fall-2015-part-6.html>.

<sup>13</sup> B. Tamanaha, *Failing Law Schools* (2012)

Professor Tamanaha expresses doubts about almost every aspect of traditional university-based legal education in the United States but is especially troubled at what he sees as a strong trend towards convergence on a single model of legal education that is highly theoretical and elitist and out of touch with the needs of the average law student or lawyer.<sup>14</sup>

More pragmatic attacks have come from the Bar and the judiciary as well as law faculty. These attacks have been predominantly aimed at the perceived disjunction between law, as it is actually practiced by most lawyers, and law as it is taught in law schools. Added to this is the belief—with some justification—that law school need not take three years nor cost as much as it currently does. Several law schools have now begun two-year J.D. programs [although not at a substantial discount in tuition from three year degrees] that save students a year.<sup>15</sup> Many schools have begun to shift their curricula away from purely traditional doctrinal courses and advanced electives in seemingly impractical subjects to more practical courses. Schools are also introducing more hands on, experiential course such as clinics, externships, and simulations to better prepare their graduates for what they face when they are out in the world of the law and attempting to earn their keep. Much good can be said of all of these new trends, but we must keep on mind that the current crisis faced by law schools was not caused by traditional law teaching nor the length of the typical law school program. The crisis was caused by an economic collapse combined with an oversaturation of a

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<sup>14</sup> The book has spawned multiple reviews and responses; see, esp. the lengthy review and critique of Dean Steven Sheppard, Dean of the law school at St. Mary's University in San Antonio Texas, online at <http://www.h-net.org/reviews/showrev.php?id=39185>. I have responded to some of Prof. Tamanaha's comments in M.H. Hoeflich, "Rediscovering Apprenticeship," in the *University of Kansas Law Review* (2012) online at [https://law.ku.edu/sites/law.drupal.ku.edu/files/docs/law\\_review/v61/06-Hoeflich\\_Final.pdf](https://law.ku.edu/sites/law.drupal.ku.edu/files/docs/law_review/v61/06-Hoeflich_Final.pdf).

<sup>15</sup> For instance, Northwestern Law School offers a two calendar year "Accelerated J.D. Program." One of the most innovative new, more "practical" curricula is the "Daniel Webster" program at the University of New Hampshire School of Law.

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market artificially propped up by easily available loan funds. On the other hand, many of the reforms being proposed, such as shortening the time to the J.D. and increasing practical training, may well help law schools to recapture some of their lost enrollment if handled properly.

### **The Cure**

In discussing how to cure the current crisis in legal education I think that the first matter that must be dealt with is the question as to whether the crisis needs a cure at all. Since the crisis is actually a result of employment market volatility, negative media coverage, and unwise expansion of the law student population over the past few decades, why not simply let the market reach an equilibrium point at which the supply of young lawyers actually corresponds to the demand for them. Of course, such a solution has about it a whiff of social Darwinism: those law schools that cannot successfully compete for applicants will wither away. Certainly, those who believe in free market economics would support such a solution. In addition, a number of scholars and commentators have now begun to see a pending expansion in the number of law jobs available. These commentators argue that the “crisis” will soon end and that the increasing demand for lawyers will solve the current problems law schools face [this, of course, does necessarily not help those graduates of the past few years who find themselves either unemployed or underemployed].

I have only one objection to this market based solution. In fact, there is a great deal of unmet need for lawyers in the United States. Access to justice is severely limited for many groups: the poor, veterans, the disabled, immigrants. The existing system of legal education has not been able to supply enough lawyers for these groups, and there is no reason to believe that a market based solution to our current crisis will do any better. So, if we do adopt a market based solution and let the legal education sector sort itself out through a social Darwinian process, we should still consider how to create a niche for lawyers



who wish to work in these underserved [and, unfortunately, ill-paying] practice areas.

If we assume that we will allow the market to reach a new equilibrium that calls for fewer law graduates each year and that some law schools will succeed while others fail in the new professional and economic environment, what can law schools do to position themselves to succeed? I think that the answer to this is multi-faceted.

First, I would suggest that law schools exercise restraint even if the demand for new law graduates in traditional law firm settings increases in coming years. There is a lesson to be learned from the “boom years” of the 1990s and early 200s when law school enrolments in the United States soared before the crash of 2008. The answer is that law schools need to be more closely attuned to the realities of the legal job market and do all that they can to ensure that the supply of new lawyers does not exceed the demand for new lawyers. This will require both a more nuanced approach to analyzing market conditions over a longer period of time by law school administrators as well as avoiding the temptation to enroll as many students as possible to maximize tuition revenues. The latter will not be easy to do.

But it is not simply law schools that must exercise restraint. The major accrediting agency for legal education in the United States, the American Bar Association and its section on legal education must also take its role as “gatekeeper” more seriously and screen proposals from new law schools in a far stricter manner. To my mind, this will require two major changes to the process by which new law schools gain ABA accreditation. The first change I believe is necessary is for the ABA to look at proposals for new law schools far more critically than it has done in the recent past and, in particular, ask what the likelihood is that a proposed law school is viable over the long term. In the past several years we have seen several newly accredited law schools find themselves in deep financial trouble as enrolments and revenues dropped, problems that pose the possibility that students will be unable to finish their law degrees at the

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troubled institutions. I believe that the ABA must, as part of the accreditation process, look seriously at the financial viability of candidate schools and ensure that they have the resources to withstand market volatility. This may require that new law schools prove either that they have endowments sufficient to weather financial downturns or have in place contingency plans that will permit them to access funds through means other than tuition revenues.

I think that the ABA should also consider local and regional demographic trends and market demand for law school places when deciding whether to accredit a new law school. In the past, the ABA has not evaluated either demographics or market demand as part of the accreditation process. In fact, such an evaluation might well pose antitrust problems. The ABA has not assumed this role but, has instead, allowed the market to determine viability of new law schools. Of course, failure of ABA accredited law schools during the second part of the twentieth century was not a serious problem. Conditions have changed since 2008, however. Now, I would suggest, is the time for the ABA to change its accreditation process in order to protect those students who might find themselves attending a newly accredited law school in the midst of a financial disaster.

Second, I think that law schools need to recognize that the cost of a legal education has become unrealistically high for many would-be law students. In this matter, those schools who have made the difficult decision to lower tuitions, need to maintain these tuitions and slow tuition growth even as demand for places may increase in future years. By maintaining lower tuitions law schools will help to make legal education available to a wider group of potential students and will also help future graduates who want to take lower paying positions such as legal aid or government service. By keeping tuition low, law schools will also be able, I believe, to counter much of the perceived elitism and predatory behavior now attributed to them by the media and public.

Third, I think that many law schools need to re-conceptu-

alize their missions. It is time to recognize that law faculties can, in fact, do more than simply teach students to enter the practice of law. Law is pervasive in American society. Law is also taught throughout the university curriculum. Law is an essential component of business school programs, of education school programs, of political science and other social science programs. In the humanities, legal history and rhetoric are key areas for majors in history, literature, and communications studies. Can any journalism student be fully prepared without a course in First Amendment law? Even engineers and scientists would benefit from courses in intellectual property and OSHA among others. Law faculties could contribute massively to the teaching missions of other schools and departments if they wished to do so.<sup>16</sup>

This proposal is not so radical as it may seem. In many countries law is an undergraduate program and many of those who take the law course do not do so in order to practice law. In England the first degree in law is an undergraduate degree taught by the law faculty to a pool of students only some of whom will go on to qualify as barristers or solicitors. The level of instruction in English law faculties is certainly as high as it is in American law schools and English law professors have no problem accommodating the needs of both those students who plan to practice law and those who are doing the law course for non-professional reasons. Indeed, in most American law schools a percentage of law students graduate and do not wish to follow traditional legal careers but, instead, use their law degrees in business, education, or other fields. Thus, it is clear that a law faculty can, if it wishes to do so, teach law courses to undergraduates [although such courses might well be limited to upper level electives] as well as to professional students.

Were law schools to expand their teaching roles within

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<sup>16</sup> I made this argument more than a quarter of a century ago in "Law, Culture & the University," *Syracuse Law Review*, v. 40, pp. 789ff. (1989)

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universities in so doing they would increase the number of credit hours they teach [and the tuition dollars attributable to them] without necessarily increasing the number of students enrolled in the traditional, professional law school programs. They would also redefine their place in universities from that of a professional school often on the margins of university life to one more central to many universities' primary missions of teaching undergraduates. By becoming more central to universities' undergraduate teaching missions law schools would not only assure their financial solvency they would also integrate law faculty and students into universities and, thereby, foster greater interdisciplinary scholarship and teaching.

### **Conclusion**

There is a danger in characterizing the law school experience of the past few years as a crisis. In so doing we lend credence to the notion that the 1990s and the early 2000s were "normal" and that our goal should be a return to normalcy. In fact, the years before 2008 were a period that saw an arguably unwise expansion in law school enrollment and an untenable increase in law school costs. Indeed, I would argue that to view this earlier period as normal is historically inaccurate and ignores the realities of the past century. If we view the experiences of the years since 2008 not as a crisis, but as a "market adjustment," on the other hand, then we can decide whether the now smaller law school enrollment figures and reduced law school tuitions are desirable from a professional and societal standpoint and, if they are, make sure that we do not seek to return to the enrollments and tuitions of the pre-2008 adjustment. Further, if we decide to maintain lower enrollments and lower tuitions but wish to increase law school tuition revenues we can look to new means of doing so such as using law faculties to teach across the university and not simply in their own professional programs.

# **A 2014 Primer on Academic Freedom, Tenure, First Amendment, and Faculty Self-Governance**

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We enter the academic profession to teach, mentor, counsel, write, research, and publish. Academic freedom gives us the freedom to dissent, express controversial and non-controversial views, promulgate contrarian and perhaps non-politically correct views. Academic freedom provides the protection to explore, research, and propound unpopular, unexplored, or unquestioned theories. Yesterday's "radical" idea may become tomorrow's general consensus.

Academic freedom allows the non-conformist, the contrarian, the curmudgeon, the iconoclast, the lone wolf to stand alone on issues both within and outside the institution.

We strive to get along with our colleagues and administrators and expect to respect the views of those we disagree with as we expect them to respect us. We believe the Academy is a laboratory for seeking the truth where reasonable minds can often disagree.

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<sup>1</sup> This essay is an overview of the status of the professoriate, partially based on 42 years of teaching law.

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However, personal experience tells us that the Academy is often not an idyllic world. Dissent may not be tolerated and decisions can be based on personality issues. Thus, we need to examine the protections available to faculty members. A critical caveat is that they may differ substantially between tenure and tenure track faculty versus the increasing ranks of contingent faculty.

### **The Threats**

The threats can come from within or without the institution. Outside pressures may come from politicians, the media, and the public.<sup>2</sup> Internal pressures come from regents and trustees,<sup>3</sup> presidents, chancellors, provosts, deans, and chairs along with academic bullies.

### **The Protections**

Academics have protections, some of which are unique to the academic profession. They include tenure and academic freedom, faculty handbooks and manuals, grievance procedures, extended term contracts with presumptions of renewability for contract faculty and the First Amendment Freedom of Speech at public universities. Contingent faculty may also have collective bargaining protections.

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<sup>2</sup> David Horowitz published a book "The Professors: The 101 Most Dangerous Academics in America" (Regnery Publishing 2006), which detailed the author's characterizations of the most "radical" professors in the United States. Professor Richard Falk, one of the "101," has autographed my copy of the book.

<sup>3</sup> A member of the University of Texas Board of Regent since 2011 has requested thousands of pages of documents, including the admissions rates of applicants recommended by legislators. The legislative recommendations yielded a 53% acceptance rate, much higher than the overall university acceptance rate. One legislator even wrote a recommendation for his son. Nathan Koppel, Regent Becomes a Lightning Rod: Texas Legislators Move to Impeach Board University Member Over Push for Documents, Which He Says Show Admissions Misconduct," Wall Street J., June 16, 2016, at p. A6, col. 1. See also, Jack Stripling, Rogue Trustee in Texas Stirs Debate on His Role, Chronicle of Higher Education.

### **The American Association of University Professors (AAUP)**

University professors had the same rights and protections as any other at will employees a century ago - essentially none. Prominent professors, such as John Dewey and Arthur O. Lovejoy, formed the AAUP in 1915 to protect and enlarge faculty protections. Academic freedom, shared governance,<sup>4</sup> and tenure have been constant themes of the AAUP. The AAUP in its 1915 Declaration of Principles stated faculty members are “appointees” rather than employees. Professor Schrecker reminds us “The AAUP is ... the only organization specifically dedicated to the protection of academic freedom and the representation of faculty as faculty.”<sup>5</sup>

#### **Academic Freedom**

Academic freedom is often prized as a protection for faculty members. It protects academicians with academic matters in the classroom and in their research and scholarship. It extends to matters having to do with their institution and its policies as well as issues of public interest, both inside and outside the institution.

The 1994 AAUP Statement on the Relationship of Faculty Governance to Academic Freedom recognizes academic freedom includes the expression of views on:

1. Academic matters in the classroom and in the conduct of research;
2. Matters relating to the institution and its policies; and
3. Issues of public interest generally.

These freedoms exist “even if their views are in conflict if one or another perceived wisdom.”<sup>6</sup>

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<sup>4</sup> I prefer the phrase “faculty self-governance.”

<sup>5</sup> Ellen Schrecker, *One Historian’s Perspective on Academic Freedom and the AAUP*, *Academe*, Jan-Feb 2014 at 30.

<sup>6</sup> *Id.* at 2.

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The Supreme Court recognized academic freedom in *Keyesian v. Board of Regents of State University of New York*:<sup>7</sup>

Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.

That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.<sup>8</sup>

That at least is the theory and widespread belief in academic freedom. Yet, the practical reality is that academic freedom is best achieved with the grant of tenure.

### **AAUP Guidelines**

The Association of American University Professors was founded in 1915. It's primary role is to protect faculty rights. While its rules and standards are technically just guidelines to be followed, the reality is that many institutions have incorporated them by reference into faculty handbooks. Thus they become governing standards for many institutions.

The AAUP published in 1966 the Statement on Government of Colleges and Universities," which identified three major university components: 1) The governing board; 2) The Administration; and 3) The Faculty. The degrees of authority should track the directness of responsibility. Since faculty have the primary responsibility for teaching and research in the institution, their voice on matters dealing with teaching and research should be given the greatest weight. The faculty should have primary responsibility for the choice of methods of instruction, the subject matter to be taught, the policies for admissions of students, the standards of student competence

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<sup>7</sup> 385 U.S. 589(1967).

<sup>8</sup> Id. at 603.



in a discipline, the maintenance of a suitable environment for learning, and the standards of faculty competence.

It approved a 1994 Statement "On the Relationship of Faculty Governance to Academic Freedom." It recognizes that "[A] sound system of institutional governance is a necessary condition for the protection of faculty rights and thereby for the most productive exercise of essential faculty freedoms." The protection of academic freedom is a prerequisite for faculty governance "unhampered by fear of retribution."

The AAUP premised that "allocation of authority to the faculty in the areas of responsibility is a necessary condition for the protection of academy freedom in the institution."<sup>9</sup>

The AAUP is not an accreditation authority. It has no direct authority to enforce its rules and procedures. It does though have the power of moral suasion by posting on its Censure List those institutions in violation of its precepts.

### **ABA and AALS Guidelines**

Law professors often possess greater protections than other academicians in light of the rules, standards, and procedures of the American Bar Association (ABA) and the Association of American Law Schools (AALS). The ABA is recognized by the United State Department of Education as the accreditation authority for law schools. The AALS is a voluntary organization open to law schools with ABA accreditation. Both publish their rules and guidelines for accreditation and membership.

### **ABA Standards**

The ABA Standards provide the Dean and Faculty "shall formulate and administer the educational program of the law school."<sup>10</sup> If not tenure, then "security of position" reasonably

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<sup>9</sup> Id. at 2.

<sup>10</sup> American Bar Association, Standards and Rules of Procedure for Approval of Law Schools: 2013-2014, Standard 205. Governing Board and Law School Authority. This standard applies to the curriculum, methods

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similarly to tenure shall be offered the clinical faculty.<sup>11</sup> Similar rights with safeguards for academic freedom are provided legal writing instructors.<sup>12</sup> The ABA mandates protection of academic freedom, and offers its Appendix 1 as an example.

### **AALS Membership Requirements**

The AALS expects its members to value “scholarship, academic freedom, and diversity of viewpoint.”<sup>13</sup> The faculty shall have “primary responsibility for determining educational policy.”<sup>14</sup> The AALS reinforces the construct that faculty members shall have academic freedom “in accordance with the principles” of the AAUP.

### **Tenure**

Tenure became a standard protection for teachers during the Twentieth Century. Tenure normally provides lifetime security of position except in cases of gross academic misconduct, felony conviction, sexual harassment, or financial exigency. Tenure promotes academic freedom, shared governance, and economic security.

It arose at the beginning of the 20<sup>th</sup> Century and received a strong impetus during the McCarthy Era by the dismissal of professors at many of the nation’s most prestigious universities.<sup>15</sup>

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of instruction, admissions, retention, and graduation standards, and the appointment, retention, promotion and tenure (or security of position) of the faculty. *Id.*

<sup>11</sup> *Id.* at Standard 405©.

<sup>12</sup> *Id.* at Standard 405(d).

<sup>13</sup> AALS Handbook: Membership Requirements, Bylaw Section 6-1(b)(iii).

<sup>14</sup> *Id.* at Bylaw Section 6-5(a) Faculty Governance: “A member school shall vest in the faculty primary responsibility for determining instruction policy.”

<sup>15</sup> See Ellen W. Schrecker, “No Ivory Tower: McCarthyism & The Universities” (Oxford University Press 1986). Professor Schrecker tells the stories of colleges and universities which terminated professors, including tenured professor, during the McCarthy Era. The list includes the nation’s most prestigious private and public universities

### The Decline of Tenure

The trend in the Academy is away from tenure to contingent (non-tenure track) faculty, such as contract, adjunct or graduate student faculty.<sup>16</sup> Trustees and administrators can reduce faculty costs, especially fixed faculty costs, with short term contracts.<sup>17</sup> The statistics are amazing. The AAUP reports that the ranks of contingent faculty rose to 76% of the teaching faculty while the tenure and tenure track faculty dropped to less than 25% a few years ago.<sup>18</sup> The ranks of full-time non-tenure track faculty rose 259% from 1975-76 to 2011, graduate student employees 123%, and part-time faculty 286% while the ranks of tenure and tenure-track faculty only rose 23% during this time span.<sup>19</sup>

The AAUP recognizes the rise of the non-tenure-track faculty “erodes the size and influence of the tenure faculty and undermines the stability of the tenure system.”<sup>20</sup>

### Contingent Faculty

Traditional contingent faculty, frequently with short term contracts, often lack security of position. They may have no presumptions of retention or renewability. I have seen department chairs arbitrarily deny renewal contracts to revered faculty members of long standing.

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<sup>16</sup> Types of contingent faculty include contract faculty, adjuncts, research fellows, post docs, clinical faculty, instructors, teaching fellows, academic fellows, or graduate student instructors.

<sup>17</sup> The financial pressures on public universities through the disinvestment of public higher education are a driving force in the rise of contingent faculty.

<sup>18</sup> AAUP, *Academe, Here's the News: The Annual Report on the Economic Status of the Profession 2012-13* at 8 (March-April 2013). It earlier reported that the part-time faculty doubled from 23% in 1971 to 46% in 2003. AAUP, *Academe, The Devaluing of Higher Education, The Annual Report of the Economic Status of the Profession 2005-06* at p.32 (March-April 2006).

<sup>19</sup> AAUP, *Academe: Losing Focus, The Annual Report on the Economic Profession, 2013-14* at p. 7 (March-April 2014).

<sup>20</sup> AAUP Report, *The Status of Non-tenure-Track Faculty 1* (1993).

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Contingent faculty lacking security of position have to be careful of what they say. Reticence is often the norm.<sup>21</sup>

They normally teach the large sections and lack release time. Depending on the institution, they may be excluded from faculty governance, such as the faculty senate or committees, have limited or no voting rights, or conversely they may have heavy committee assignments and full participation in faculty governance.

Community college faculty are especially vulnerable because of the high percentage that lack tenure opportunities. The AAUP recognizes "The high percent of non-tenure-track faculty in community colleges underscores the importance of enhancing conditions for faculty in these institutions for their own benefit as well as for that of the profession as a whole."<sup>22</sup>

Changes are occurring in recent years. Some institutions offer renewable contracts often with presumptions of renewability. Adjunct professors and contract faculty without managerial powers are increasingly unionizing, such as though the American Association of University Professors. Teaching assistants, graduate teaching fellows are unionizing.

### **The Plight of the Adjunct**

Adjuncts as part-time faculty are especially disadvantaged. Many adjuncts are paid by the credit hour, often at a relatively low salary rate, teach large classes, receive no benefits, lack release time, sabbaticals and other leaves, and have no presumptions of renewability. They may have no say in curricular decisions, although they are hired to teach the curriculum. They may be excluded from faculty meetings. Office space, clerical and secretarial assistance, and faculty support funds may range from slim to none. Yet they may have to pay for parking on

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<sup>21</sup> In general, see Adrianna Kezar & Cecelia Sam, *Beyond Contracts: Non-tenure Track Faculty and Campus Governance*, *The NEA 2010 Almanac of Higher Education* 83.

<sup>22</sup> AAUP Report, *The Status of Non-tenure-Track Faculty 2* (1993).

campus. Many will often teach at multiple campuses and earn the nickname of “Freeway flyers.”

### **The Saga of Professor Ward Churchill**

Professor Ward Churchill was a tenured professor of Ethnic Studies at the University of Colorado. Tenure and academic freedom did not save his job for comments made outside the university.

He wrote a paper, *On the Justice of Roosting Chicken,*” after 9/11 in which he referred to the workers at the World Trade Center as a “technocratic corps” of “Little Eichmanns.” The remarks went unnoticed until 2005 when he was scheduled to speak at Hamilton College. The student newspaper discovered the paper and published it. The national outrage reached a crescendo. The University was experiencing acute embarrassment. Academic freedom and the First Amendment did not save Professor Churchill’s job.

The public and media pressure on the University was relentless. Academic freedom and tenure meant the university could not use the external remarks against him. The days of McCarthy had passed. Instead the University used academic misconduct to terminate his employment.

The Chancellor conducted an investigation in his office with two deans on his committee. They concluded the five most offensive statements, including that of the Little Eichmanns, were protected by academic freedom. However, allegations arose during this investigation about academic misconduct by the professor.<sup>23</sup>

The offensive statements no longer were part of the formal university disciplinary proceedings, although they clearly remained in the background.<sup>24</sup>

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<sup>23</sup> Questions about his qualifications and whether he was of Native American descent as he claimed, also arose, but were not part of the final decision.

<sup>24</sup> This is analogous to jury instructions to disregard the testimony the jurors just heard.

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The Chancellor sent the misconduct allegations to the Standing Committee on Research Misconduct (SCRM). It voted to send 7 of the 9 allegations to a five person investigatory committee. This committee found five areas of misconduct. Three committee members found the violations warranted revocation of tenure and dismissal from the university. The other day members recommended a two year suspension without pay. Their recommendation went back up to the SCRM. Six SCRM members recommended dismissal and three sought suspension without pay.

Their recommendation then went to the five member Privilege and Tenure Committee (P & T). It found 1) three instances of evidentiary fabrication by ghost writing and self-citation, 2) two instances of evidentiary fabrication, 3) two instances of plagiarism, and 4) one instance of falsification. A majority of three P & T members recommended a one year suspension without pay and reduction in rank to associate professor. The minority of two recommended dismissal.

The P & T decision went to the President, who recommended dismissal to the Board of Regents. The Regents voted 8-1 to dismiss Professor Ward Churchill from the university. Professor received full due process rights during the extensive internal review as well as maintaining his rank and teaching responsibilities until the Board's decision.

His lawsuit against the University followed shortly thereafter. He ultimately lost his case on the grounds of quasi-judicial immunity of the Board members.<sup>25</sup>

His offensive remarks triggered the intensive university review, but the dismissal was on other grounds. He probably could have continued teaching until retirement except for the paper, which went viral. His fall is a modern, but faint, echo of the McCarthy Era.

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<sup>25</sup> Churchill v. University of Colorado at Boulder, 293 P.3d 16 (Colo. 2010), cert denied 133 S. Ct. 1724 (2013).

Academic freedom did not protect Professor Churchill. Neither did the First Amendment. Even tenure failed him. These protections could not save him from unrelated academic misconduct.

### **Academic Bullies**

Bullies existed in the schoolyard as we grew up. They still exist as academic bullies in the Academy.<sup>26</sup> They may hold administrative positions or be faculty members, who through positions of power or force of personality, attempt to exert their will on colleagues. The most vulnerable faculty are contingent and non-tenured tenure track faculty since bullies prey on those in an inferior or vulnerable position.<sup>27</sup>

### **Unionization**

The unionization efforts of full time faculties met a substantial setback in the 1980 Supreme Court decision of *National Labor Relations Board v. Yeshiva University Faculty Association*.<sup>28</sup> The Court held that faculty members are employees, but full time employees with supervisory and managerial responsibilities (self-governance)<sup>29</sup> are not subject to the benefits of collective bargaining under the national Labor Relations Act.

However, contingent faculty, including graduate assistants<sup>30</sup> lack self-governance rights and hence can be unionized. The AAUP, American Federation of Teachers, the

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<sup>26</sup> See e.g. Clara Wajngurt, Prevention of Bullying on Campus, *Academe*, May-June 2014 at 39.

<sup>27</sup> Bullying can sometimes occur behind closed doors. I have witnessed colleagues who in the closed, confidential faculty personnel meetings denigrate candidates for appointment, promotion, tenure, or reappointment. Such sessions are confidential, but we realize that leaks are common. The leaks are devastating to faculty morale and colleagues who may be in the same position.

<sup>28</sup> 444 U.S. 672 (1980).

<sup>29</sup> The Court wrote in terms of academic matters, course offerings, teaching methods, grading policies, matriculation standards and effective decisions over which students to admit, retain, and graduate.

<sup>30</sup> These positions are also known as graduate fellows and teaching fellows.

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National Education Association, and the Service Employees International Union are actively organizing these educators into unions.<sup>31</sup>

The resulting collective bargaining agreements can include for security of position, grievance, and freedom of speech provisions.

### **The Faculty Senate**

Most colleges and universities have a faculty governing body to represent the teaching faculty of the institution. It is usually known as the faculty senate. There may also be a faculty senate for an institution with several campuses, such as the University of California with individual campus senates and a system wide faculty senate.

The powers of a faculty senate vary by the institution. Many lack major powers because administrations do not wish to devolve substantial power to the faculty, even in the form of a faculty senate. The administrators would like to view the faculty senate as a powerless debating society rather than a deliberative body. One power a faculty senate will have is to initiate the adoption or amendment of the faculty handbook.<sup>32</sup>

I also realized as the President of the Chapman University Faculty Senate in 2006-07 that while the Senate lacked many powers, the Senate President had two powerful powers: 1) The Bully Pulpit, and 2) Setting the agenda. The bully pulpit, as a practical matter, should best be utilized by a faculty member with security of protection.

### **The Faculty Handbook**

The employment relationship between the institution and the professor is contractual. The formal written contract may be

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<sup>31</sup> See Joe Berry, *Contingent Higher Education Faculty and Their Unions in the USA: A Very Brief Summary*. The traditional blue collar United Auto Workers Union is also actively organizing contingent faculty.

<sup>32</sup> Any adoption or amendments to a faculty handbook are subject to the approval of the governing board.



as short as one page, but it probably incorporates by reference the Faculty Handbook or Faculty Manual. These documents contain most of the term and conditions of employment, including any grievance procedures. The formal contract or Faculty Handbook or Faculty Manual may also incorporate by reference other documents, such as the AAUP's Guidelines for Academic Freedom.<sup>33</sup>

### **The Vote of No Confidence**

A faculty or faculty senate vote of no confidence in an administrator, from a trustee down to a department chair, sends a strong message of faculty discontent. Its effectiveness depends on the institution. Some boards have been known to ignore no confidence votes.

I remember a faculty senate vote of no confidence in the president of my prior institution, a private college. The Board of Trustees, mainly recruited by the President, rejected the vote. The university was up for reaccreditation by the New England Association of Schools and Colleges. The university disclosed the no-confidence vote with an explanation to the accreditation agency in its self-study. The university easily received reaccreditation.

### **The Constitutional Protections<sup>34</sup>**

The First Amendment to the Constitution, especially Freedom of Speech, is a powerful protection for academicians at public universities. The First Amendment and academic freedom overlap like Venn Diagrams. Indeed, the First Amendment is often the legal support behind academic freedom.

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<sup>33</sup> My university, Chapman University, has a university wide Faculty Manual. The Law School has its own Faculty Manual, which controls the internal governance of the Law School. Our internal appointments, promotion, tenure, and renewal policies differ from those of the rest of the university.

<sup>34</sup> The discussion of the First and Fifth Amendments recognizes these constitutional protections technically apply to state action as incorporated into the 14th Amendment. They are inapplicable to the faculty at private universities.

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The Due Process Clause of the Fifth also affords protection for public university professors.<sup>35</sup>

### **Grievance Procedures**

One of the most critical protections for faculty, not only in the promotion, tenure, and renewal area, but also against petty retaliation and harassment in the academic environ, are grievance procedures. The procedures can be found in faculty handbooks and collective bargaining agreements. Their effectiveness and strength varies by institution. Even if a grievance results in a reconsideration of a denial for promotion, tenure, or retention, no guarantee exists that the trustees or regents will reach a different decision the second time around.

### **The New Threats**

*Garcetti v. Ceballos*<sup>36</sup>

The 2005 Supreme Court decision in *Garcetti v. Ceballos* has cast a pall on academic freedom and tenure. The case did not directly affect the rights of faculty members, but its implications do. The Los Angeles District Attorney's Office disciplined a deputy district attorney who criticized his superiors' action. Mr. Ceballos found that a search warrant had been issued based on faulty information. He recommended to his superiors that the case be dismissed. They disagreed and a heated argument ensued. He was reassigned to a less desirable courthouse and demoted.

He filed suit claiming a violation of his First Amendment rights in that he was being retaliated against for his speech. The Supreme Court rejected his claim in a 5:4 decision, holding that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for

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<sup>35</sup> See *Carmody v. Board of Trustees of the University of Illinois*, 747 F.2d 470 (7th Cir. 2014).

<sup>36</sup> 126 S. Ct. 1951 (2006)

First Amendment purposes.<sup>37</sup> Therefore the Constitution did not insulate his communications from employer retaliation.

Justice Souter in his dissent raised the issue that this decision could affect academic freedom.<sup>38</sup> Justice Kennedy, writing for the majority, responded:

There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court's customary employee-speech jurisprudence.

We need not, and for that reason, do not, decide whether that Analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.<sup>39</sup>

Thus the question was left open, but the problem is that "official duties" in the academic profession would include everything included within academic freedom. We teach, we write, we speak as part of our official duties.

Ceballos left the question open, but lower courts in the aftermath of the decision have often been less than receptive to academic freedom and First Amendment claims in academic cases.<sup>40</sup> The reaction at many institutions is to amend their faculty handbooks to clearly protect academic freedom in these contexts.

### **The Illicit Taping**

Almost every student seemingly has both a smart phone and laptop in class. These electronic devices contain increasingly sophisticated audio and video recording capabilities. Every

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<sup>37</sup> Id. at 421.

<sup>38</sup> Id. at 438.

<sup>39</sup> Id. at 425.

<sup>40</sup> See in general, Lauren K. Ross, Note, Pursuing Academic Freedom After *Garcetti v. Ceballos*, 91 Tex. L. Rev. 1253 (2013). See also Robert M. O'Neal, et al, Protecting an Independent Faculty Voice: Academic Freedom After *Garcetti v. Ceballos*, AARP 2010 Bulletin 67.

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professor, who has taught long enough, will have an ill-advised moment in class, which hopefully will not go viral through social media. Even totally appropriate remarks in explaining doctrine can be taken out of context.

The syllabus may prohibit the taping of the class without permission, but that could be small consolation for moments gone viral. The professor may have common law privacy rights, but the video tells the story.

### **The Freedom of Information Act**

The federal government and most states have adopted a freedom of information act to afford the public access to public information that might not otherwise be forthcoming from the government agency. FOIA is a means to obtain information from the government. It has also become a major discovery tool in litigation. FOIA has been used in recent years to seek information about faculty members, such as their emails, grants, and travel and expense reports. The purpose in most of these cases is political – not academic.

A classic situation involves Professor Michael Mann, currently at PennState, but formerly at the University of Virginia. Professor Mann is a leading academic in Climate Change. He created the “hockey stick” made famous by Vice President Al Gore in his 2006 documentary film “An Inconvenient truth.” Professor Mann emerged as a leading emailer in emails leaked in 2009 from the Climate Research Unit of the University of East Anglia.

Bases on the disclosures in the emails, a FOIA request was filed with the University of Virginia requesting Professor Mann’s emails. The Virginia Supreme Court upheld the university’s decision to withhold most of the emails.<sup>41</sup> The decision was based on a provision of the Virginia Freedom of information Act, which exempts Data, records or information of a proprietary

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<sup>41</sup> American Tradition Institute v. Rector and Visitors of the University of Virginia, 795 S.E. 2d 435 (Va. 2014).

nature produced or collected by or for faculty or staff of public institutions of higher education .... In the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern where such data, records, or information has not been publicly released, published, copyrighted or patented.<sup>42</sup>

The court also that the University could seek reasonable fees for the time spend searching the records to determine what could be disclosed. Thus applicants under the Virginia Freedom of information Act could pay for a request and receive nothing.

The University of Virginia had the benefit of a statutory exception to a broad freedom of information act. Not all universities, and not all academics, will have that protection in an escalating area.

### **Conclusion**

The professoriate has come a long way in the past century, from one of employment at will to protections unavailable to most employees in the workplace: tenure, other forms of security of protection, academic freedom, as well as constitutional protections at public institutions. The AAUP, and the ABA and AALS for law schools, have strong positions on academic freedom.

The trend though is a regression of protections for the tenure ranks. The threat is not so much political, as it was during the McCarthy Era, but an intentional shift by legislatures and governing bodies to contingent faculty. Changes in technology and the social media pose new threats to academic freedom. Finally, the *Ceballos* case has created grave uncertainty over the legal protections of academic freedom, the First Amendment, and perhaps even tenure.

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<sup>42</sup> West's Virginia Code Ann §2.2-3705.4(4).



# Academic Freedom: Protecting Unpopular Faculty Speech

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*"In a democratic society freedom of speech is  
an indispensable right of the citizen. "*

AAUP Committee A Statement on  
Extramural Utterances

Around the world, faculty speech is under attack from government, the general public, university administrators, students, and other faculty. In June 2014, two professors from Marmara University were expelled from the faculty and eight others have been banned from promotion for participating in the May 31<sup>st</sup> Gezi Park protests in Istanbul, Turkey.<sup>2</sup> In April

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<sup>1</sup> Portions of this article were presented at the Legal Education in the Twenty-First Century: An International Conference of Legal Educators hosted by Türkiye Barolar Birliği, Atlanta's John Marshall Law School, and Bahçeşehir Üniversitesi, Istanbul and Ankara, May 2014. I would like to thank Atlanta John Marshall Law School's Research Librarian, Mary Wilson, and my research assistant, Robert Coggins, for their assistance.

<sup>2</sup> Two academics expelled from Turkish university for joining Gezi protest, Today'sZaman, <http://todayszaman.com/news-341168-two-academics-expelled-from-turkish-university-for-joining-gezi-protests.html> (last visited July 28, 2014) ("The reasoned explanation for the expulsion accuses the two academics of attempting to destroy the fundamental values of the republic, and attending violent and separatist protests detrimental to na-

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2014, Professor Osman Özsoy was dismissed from Haliç University, where he taught public relations, for criticizing the government's anti-democratic measures.<sup>3</sup> And, Haliç University has ignored a court order declaring the university's termination of Professor Sinan Artan as unlawful, refusing to reinstate Professor Artan.<sup>4</sup> In March 2014, Professor Andrie Zubov of the Moscow State Institute of International Relations was fired for writing an opinion piece where he likened Russia's policy toward Crimea to Nazi German's annexation of Austria in March 1938.<sup>5</sup> In 2013, University of Kansas Professor David Guth was placed on administrative leave and members of the Kansas legislature called for his termination in response to his Twitter post claiming the National Rifle Association (NRA) anti-gun control campaign was responsible for the shooting at the Navy Yard.<sup>6</sup> Also in 2013, Professor Rachel Slocum was pressured to apologize for a statement in an email to her students referencing the October 2013 shutdown of the United States government by a Republican controlled House of Representatives, when a student used social media outlets to object to the reference to Republicans.<sup>7</sup>

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tional interests and security through participation in the protests." ). See also Middle East Studies Association Letter to Prime Minister Recep Tayyip Erdoğan (May 6, 2014), <http://www.mesa.arizona.edu/pdf/turkey20140506.pdf> (last visited July 28, 2014); Two academics expelled after joining Gezi protests, University World News, <http://www.universityworldnews.com/article.php?story=20140313212731260>; Education Union Protests Violation of Rights in Turkey, <http://teachersolidarity.com/blog/education-union-protest-violation-of-rights-in-turkey> (last visited July 28, 2014).

<sup>3</sup> Academic freedom at universities under growing threat, Today's Zaman (May 5, 2014), <http://fgulen.com/en/press/news/44329-todays-zaman-academic-freedom-at-universities-under-growing-threat> (last visited July 28, 2014).

<sup>4</sup> Id.

<sup>5</sup> Steve Gutterman, Russian professor under pressure over Nazi comparison on Ukraine, REUTERS (Mar. 4, 2014, 1:06 p.m.), <http://www.reuters.com/article/2014/03/04/us-ukraine-crisis-russia-professor-idUSBREA23ISX20140304> (last visited July 28, 2014).

<sup>6</sup> John Celock, David Guth, Kansas Professor, on Leave after Controversial Tweet - But GOP Lawmakers Want Him Fired, Huffington Post (Sept. 20, 2013, 6:09 PM, updated 10:33 PM), [http://www.huffingtonpost.com/2013/09/20/david-guth-kansas-fired\\_n\\_3963351.html](http://www.huffingtonpost.com/2013/09/20/david-guth-kansas-fired_n_3963351.html) (last visited July 28, 2014).

<sup>7</sup> Peter Schmidt, One Email, Much Outrage, The Chronicle of Higher Edu-



The categories of speech most at risk are extramural speech and public service speech. Faculty extramural and faculty public service speech should be protected by the principles of academic freedom -- similar to the protections of freedom of research and publication, freedom of teaching, and freedom of intramural speech. Just as the other categories of faculty speech protected by academic freedom are subject to limitations, the freedoms of extramural speech and public service speech are subject to limitations set by professional norms and do not encompass the freedom to do or say whatever one pleases.

Academic freedom is necessary for the pursuit, acquisition, and dissemination of knowledge – both inside and outside the university walls.<sup>8</sup> From the founding of the first university, the role of the university has been to “attain knowledge.”<sup>9</sup> The way a university attains or acquires knowledge is through faculty, the primary asset of the university. In order for the university to acquire knowledge, the faculty must be free to search for that knowledge.<sup>10</sup> Faculty search for knowledge through their research, publication of that research, and dialogue with faculty from other universities – that dialogue occurs in private communications (letters, emails, etc.) and through public communications (conferences, blogs, etc.). Because universities need faculty to engage in research in order to fulfill the university’s role in attaining universal knowledge, it is

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cation, A26 (Mar. 14, 2014),

<sup>8</sup> AAUP, Recommended Institutional Regulations on Academic Freedom and Tenure in AAUP Policy Documents & Reports (10th ed. 2006) (“A college or university is a marketplace of ideas, and it cannot fulfill its purposes of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method. In the words of the United States Supreme Court, ‘Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity, and understanding; otherwise our civilization will stagnate and die.’”).

<sup>9</sup> Magnum Charta Universitatum ¶4, Magna Charta Observatory of Fundamental University Values and Rights, <http://www.magna-charta.org> (last visited July 27, 2014) [hereinafter Magna Charta]. The Magna Charta was adopted by the Association of European Universities at the 900th anniversary celebration of the University of Bologna in 1988. There are 776 signatories to the Magna Charta from 81 countries, including 21 universities from the United States and 23 Universities from Turkey.

<sup>10</sup> Id.

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contrary to the long-term interests and goals of the university to limit the research, publication, and dialogue of the faculty.<sup>11</sup> Moreover, because the purpose of faculty research is to search for “universal knowledge,” the protections of academic freedom should be universal and should protect faculty regardless of where they reside, what subject they teach, or what topic they research – or the subject matter of their speech.

This article discusses the need for protection of both public service speech and extramural speech within the framework of academic freedom. Section I identifies the four categories of faculty speech protected by the current definition of academic freedom. Section II proposes a definition of public service speech and argues that public service speech should be protected by the principles of academic freedom. Section III argues that the application of professional norms to extramural and public service speech through the peer review process protects the interests of both faculty and the university. Section IV concludes that the best mechanism for the protection of public service speech and extramural speech is through private law mechanisms, that clearly state the process by which the faculty of the institution determine whether the speech complied with or violated professional norms.

### I. Defining Academic Freedom

As stated in the American Association of University Professor’s 1915 *Declaration of the Principles of Academic Freedom and Academic Tenure*, “[t]he importance of academic freedom is most clearly perceived in the light of the purposes for which universities exist. These are three in number:

- a. To promote inquiry and advance the sum of human knowledge;
- b. To provide general instruction to the students; and

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<sup>11</sup> Eric Barendt, *Academic Freedom and the Law (A Comparative Study)* 3 (2010).

- c. To develop experts for various branches of the public service."<sup>12</sup>

Academic freedom is most commonly justified as necessary to protect the search for truth.<sup>13</sup> When truth is censored or suppressed by government or religious officials, that truth cannot add to the universe of human knowledge. The Parliamentary Assembly of the Council of Europe has noted that "history has proven that violations of academic freedom and university autonomy have always resulted in intellectual relapse, and consequently in social and economic stagnation."<sup>14</sup>

Knowledge results from the work of faculty acting in their capacity as professional experts in their discipline or area of expertise.<sup>15</sup> To produce true knowledge, faculty require "complete and unlimited freedom to pursue inquiry and publish its results."<sup>16</sup> Thus, in order for the university to fulfill its "mission of advancing the sum of human knowledge,"<sup>17</sup> faculty must have independence of thought and speech.<sup>18</sup>

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<sup>12</sup> Declaration of Principles on Academic Freedom and Tenure (1915) ¶3 in AAUP Policy Documents & Reports (10th ed. 2006) [hereinafter 1915 Declaration].

<sup>13</sup> Barendt, *supra* note 10, at 61 (quoting John Dewey, *Academic Freedom*, 23 *Educ. Rev.* 3 (1902) ("the university function is the truth function")).

<sup>14</sup> Eur. Parl. Ass. Rec. 1762 ¶ 4.3 (2006) [hereinafter Rec. 1762]. See also AAUP, 1915 Declaration (the essential purpose of the university is "to promote inquiry and advance the sum of human knowledge."). See also *Sweezy v. State of New Hampshire*, 354 U.S. 234, 250 (1957) ("The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any straight jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in social sciences, where few, if any principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.").

<sup>15</sup> Matthew W. Finkin & Robert C. Post, *For the Common Good: Principles of American Academic Freedom* 35 (2009) [hereinafter *For the Common Good*].

<sup>16</sup> *Id.* See also *Magna Charta*, *supra* note 8; Rec. 1762, *supra* note 13, at ¶ 4.3.

<sup>17</sup> *For the Common Good*, *supra* note 14, at 35.

<sup>18</sup> *Sweezy*, 354 U.S. at 250 ("To impose any straightjacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.").

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Academic freedom is not *carte blanche*; faculty are required to conform to professional standards.<sup>19</sup> Faculty are judged on their compliance with profession norms through peer review, which acts as a quality control mechanism.<sup>20</sup> Academic freedom protects the interests of society in having faculties that can accomplish the mission of increasing true knowledge.<sup>21</sup>

### A. The definition

Academic freedom is not intellectual freedom.<sup>22</sup> Intellectual freedom is usually enjoyed by “everyone”<sup>23</sup> - students, faculty, employees of research institutes, and perhaps the general public.<sup>24</sup> Academic freedom is limited to university faculty,<sup>25</sup> which includes all members of the university faculty - tenured, untenured, long-term contract, adjunct or part-time, contingent, and administrators who also hold a faculty appointment.<sup>26</sup> Academic freedom not only regulates the relationship of the faculty to the university, but also protects the faculty and the university from the government and from the tyranny of public opinion.<sup>27</sup>

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<sup>19</sup> For the Common Good, *supra* note 14, at 38.

<sup>20</sup> *Id.* at 38-39. See also Barendt, *supra* note 10, at 20-21 (“academic speech, unlike general political or public discourse, is essentially subject to quality controls on the basis of general professional standards of accuracy and coherence, as well as the specific requirement for publication in the better journals that it makes an original contribution to knowledge.”).

<sup>21</sup> See Rec. 1762, *supra* note 13.

<sup>22</sup> See Barendt, *supra* note 10, at 35-38.

<sup>23</sup> See, e.g., Turk. Const., Art. 27 (2011) (“Everyone has the right to study and teach freely, explain, and disseminate science and arts and to carry out research in these fields.”); GG, Art. 5(3) (“Art and science, research and teaching, shall be free.”).

<sup>24</sup> See Barendt, *supra* note 10, at 335-38.

<sup>25</sup> *Id.*

<sup>26</sup> 1940 Statement of Principles on Academic Freedom and Tenure [hereinafter 1940 Statement]; 1970 Interpretative Comments of 1940 Statement, Comment 4 [hereinafter 1970 Interpretative Comments] in AAUP Policy Documents & Reports (10th ed. 2006) (“Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.”).

<sup>27</sup> Marjorie Heins, *Academe’s Still-Precarious Freedom*, *Chronicle of High-*

Academic Freedom protects four distinct areas: 1. Freedom of Research and Publication; 2. Freedom of Teaching; 3. Freedom of Intramural Expression; and 4. Freedom of Extramural Expression.<sup>28</sup> This definition of Academic Freedom has been agreed to by the American Association of University Professors and the Association of American Colleges and Universities,<sup>29</sup> representing an agreement between employee and employer and establishing an industry standard in the United States.

Academic freedom has been similarly defined in Europe. In its Recommendation 1762, the Parliamentary Assembly of the Council of Europe has stated:

In accordance with the Magna Charta Universitatum, the Assembly reaffirms the right to academic freedom and university autonomy which comprises the following principles:

4. 1. academic freedom in research and in training should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction;

4. 2. the institutional autonomy of universities should be a manifestation of an independent commitment to the traditional and still essential cultural and social mission

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er Education B11-12 (Feb. 8, 2011); Jordan E. Kirland, Report Finds Violations of Academic Freedom, *Academe* 5-6 (Sep/Oct. 2011).

<sup>28</sup> Barendt, supra note 10, at 7. This definition of academic freedom is derived from three AAUP documents: the 1915 Declaration, supra note 11; the 1940 Statement, supra note 25; and the 1966 Statement on Government of Colleges and Universities in AAUP Policy Documents & Reports (10th ed. 2006).

<sup>29</sup> Susan Albertine, Toward the Next Century of Leadership: A Future Faculty Model, Association of American Colleges and Universities, [www.aacu.org/peerreview/pr-su13/Albertine.cfm](http://www.aacu.org/peerreview/pr-su13/Albertine.cfm) (last visited July 27, 2014) (“It [the 1940 Statement] was and is our document as much it was the AAUP’s. The 1940 Statement, as it is called, has endured and evolved, a living document, widely respected in higher education. It served as the foundational text on academic freedom and tenure in the twentieth-century United States. To date no other statement has taken its place.”).

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of the university, in terms of intellectually beneficial policy, good governance, and efficient management.<sup>30</sup>

### B. Freedom of Research and Publication

Faculty “are entitled to full freedom in research and in publication of results, subject to the adequate performance of their other academic duties,”<sup>31</sup> which includes teaching, service on faculty committees, and other assignments.<sup>32</sup> All research must be conducted within the bounds of professional norms.<sup>33</sup> Professional norms are applied through publication in peer reviewed publications and imposed by the university through

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<sup>30</sup> Rec. 1762, *supra* note 13, at ¶4. The Parliamentary Assembly’s Recommendation 1762 has been cited with approval by the European Court of Human Rights. See *Sorguç v. Turkey*, App. No. 17089/03, Eur. Ct. H.R. ¶21 (2009).

The European Council and the Magna Charta Universitatum both identify academic freedom and university autonomy as two separate, although related principles. See Eur. Council, *Academic Freedom and University Autonomy*, Rpt. Comm. on Culture, Science, and Education, Doc. No. 10943 ¶51 (2006). Academic freedom belongs to the faculty as individuals. *Id.* at ¶59. Academic freedom protects faculty teaching and scholarship and publication, as well as peer review in hiring, promotion, and tenure, and faculty governance aspects of intramural expression. See Magna Charta, *supra* note 6, at Means 1-2. Faculty extramural expression would be protected under the European Court of Human Rights general free speech jurisprudence under Article 10 of the European Convention on Human Rights. University autonomy refers to the university being free from the control of government regulation of the university’s internal operations, including research, teaching, and publication of ideas. *Id.* at Fundamental Principle 1, 3, and 4. In exchange for academic freedom and university autonomy, universities must be accountable, transparent, and provide quality assurance. Rec. 1762, *supra* note 11, at ¶11. Quality assurance would be provided by robust peer review and faculty involvement in university governance. For a more detailed comparison of academic freedom in the United States and Europe see Kathleen Burch, *Academic Freedom: A Comparative Analysis of Legal Protections in the United States and Turkey*, 7 BAHCESHIR/KAZANCI L.J. 65 (2011).

<sup>31</sup> 1940 Statement, *supra* note 25.

<sup>32</sup> See, e.g., *Gorum v. Sessoms*, 561 F.3d 179 (3rd Cir. 2009) (advising student); *Renken v. Gregory*, 541 F.3d 769 (7th Cir. 2008) (administering grant funds); *Saenz v. Dallas County Cmty. Coll. Dist.*, 2011 WL 1935742 (N.D. Tex. May 16, 2011) (fiduciary and budgetary issues); *Savage v. Gee*, 716 F. Supp. 2d 709 (S.D. Ohio 2010) (committee work); *Nichols v. Univ. of S. Miss.*, 669 F. Supp. 2d 684 (S.D. Miss. 2009) (career advice); *Ezuma v. City Univ. of New York*, 665 F. Supp. 2d 116 (E.D.N.Y. 2009) (report of faculty –on-faculty sexual harassment); *Hong v. Grant*, 516 F. Supp. 2d 1158 (C.D. Cal. 2007) (peer review).

<sup>33</sup> For the Common Good, *supra* note 14, at 54.

the peer review process which occurs during hiring, promotion, and tenure, as well as during evaluation for retention.<sup>34</sup> A faculty member's active engagement in the peer review process is part of the faculty member's "other academic duties."

The freedom to research allows the individual faculty to identify the subject matter of their research and, within accepted norms, to choose the research methodology they will use.<sup>35</sup> Because part of the university's mission is to produce new knowledge, to contribute to public debate, research must reach the public and therefore, must be published.<sup>36</sup>

Freedom of research and publication requires research and publication. It is not the freedom to choose not to research or not to publish. Failure to research and/or publish is a failure to participate in the fulfillment of the university's mission and thus, a failure to fulfill the job requirements of being a professor.

### C. Freedom of Teaching

Faculty are "entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject."<sup>37</sup> After the faculty has established the curriculum, the university can require faculty to satisfy curricular requirements within the context of the course they are assigned to teach, but faculty retain the freedom to choose the pedagogy that will be used to meet the curricular requirement.<sup>38</sup> Faculty must use their professional judgment to determine the best and most appropriate pedagogy given the material and the students. While the chosen pedagogy should be within the range of accepted norms, the range of accepted norms includes the ability of the faculty to be creative, to

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<sup>34</sup> For the Common Good, supra note 14, at 59.

<sup>35</sup> Barendt, supra note 10, at 50.

<sup>36</sup> For the Common Good, supra note 14, at 69.

<sup>37</sup> 1940 Statement, supra note 25.

<sup>38</sup> For the Common Good, supra note 14, at 79.

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innovate, and to experiment. Just as with the search for new knowledge in the area of research, faculty must remain free to search for new knowledge within the realm of pedagogy, to test this new pedagogy within the classroom, refine the pedagogy after evaluation of the new technique from students and critique of the new technique by peers, and to add the new knowledge regarding pedagogy to the realm of knowledge through communications with peers and through publication about the new pedagogy.

### D. Intramural Expression

Intramural expression is faculty speech that “that does not involve disciplinary expertise but is instead about the action, policy, or personnel of a faculty member’s home institution.”<sup>39</sup> Intramural expression encompasses speech about the home institution whether stated to the media or during a faculty meeting, committee meeting or other conversation.<sup>40</sup>

It is academic freedom’s protection of intramural speech that protects faculty governance.<sup>41</sup> In relation to the university’s administration and board of trustees, faculty have an equal and independent place within the university.<sup>42</sup> Faculty can comment on or criticize any policy, assist in selection of administrators, set admissions standards, and establish curricular changes.<sup>43</sup> Faculty governance encompasses those areas where faculty have expertise – peer review in faculty expertise and teaching quality, academic standards, student credentials, administrator credentials, etc. Faculty governance is a joint endeavor among the faculty as a group. The freedom

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<sup>39</sup> Id. at 113.

<sup>40</sup> Id.

<sup>41</sup> Id. at 114-16. See also Areen, *Government as Educator: A New Understanding of First Amendment Protection of Academic Freedom and Governance*, 97 *Geo. L.J.* 945 (2009)(discussing theories of constitutional protection for faculty intramural expression that pertains to academic governance).

<sup>42</sup> For the Common Good, *supra* note 14, at 116.

<sup>43</sup> Id. at 124. See also Areen, *supra* note 38, at 994 (speech concerning academic governance should be protected).



of intramural expression protects the individual faculty from his colleagues for statements made during the peer review process and protects the faculty from university administrators for statements critical of university policies. The freedom of intramural expression provides faculty with breathing room to express opinions or criticism that challenge colleagues and the university administrators to fulfill the university's mission to create and disseminate knowledge – to do the right thing - without fear of retribution by colleagues or university administrators.

Academic freedom presupposes that universities “serve the public interest and promote the common good.”<sup>44</sup> As such, universities should not merely further arbitrary private interests.<sup>45</sup> The common good is derived through open debate and discussion.<sup>46</sup> “Faculty, by virtue not only of their educational training and expertise but also of their institutional knowledge and commitment, have an indispensable role to play” in insuring that debate is open and robust to ensure that the university continues to serve the public.<sup>47</sup> Thus, the intramural expression that is protected is faculty speech which furthers the debate of whether the university is serving the public good.<sup>48</sup> Speech about whether the university is continuing to serve the public good includes topics ranging from the quality of teaching (peer review through classroom observation); university policies on conflicts of interest, including acceptance of research funds from corporations that may include limitations on dissemination of research results; debates on curriculum reform; and debates on admissions standards, including affirmative action policies and programs.

The freedom of intramural speech protects speech that takes place within the walls - real or virtual – of the university. Email

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<sup>44</sup> For the Common Good, *supra* note 14, at 125.

<sup>45</sup> 1940 Statement, *supra* note 25.

<sup>46</sup> For the Common Good, *supra* note 14, at 125.

<sup>47</sup> *Id.*

<sup>48</sup> *Cf.* Areen, *supra* note 40.

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communication between faculty members regarding decisions made by the board of trustees is protected intramural speech. Likewise, statements made during a faculty meeting regarding changes to curriculum are protected intramural speech. The freedom also protects speech that takes place outside the walls of the university. Statements made to the media discussing events on campus are protected intramural speech. The key to determining whether the faculty speech is intramural speech is whether the speech concerns the university. If it does, then the speech is intramural speech regardless of where spoken.

### E. Extramural Expression

Typically, extramural speech is about matters of public concern that are “unrelated either to scholarly expertise or institutional affiliation.”<sup>49</sup> The AAUP’s 1940 Statement provides that faculty are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.<sup>50</sup>

The freedom of extramural expression is justified in three ways. First, the university should not limit or artificially define faculty expertise.<sup>51</sup> Second, extramural expression must be protected to prevent universities from penalizing politically outspoken professors in order to appease powerful interests (such as donors or government officials) who disagree with

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<sup>49</sup> For the Common Good, *supra* note 14, at 127.

<sup>50</sup> 1940 Statement, *supra* note 25.

<sup>51</sup> For the Common Good, *supra* note 14, at 133.

the faculty speech.<sup>52</sup> Third, “faculty can promote knowledge or model independent thought in the classroom only if they are actively and imaginatively engaged in their work.”<sup>53</sup> Freedom of extramural expression prevents censorship, which in turn creates an atmosphere where faculty will actively engage in the pursuit of new knowledge.<sup>54</sup>

Moreover, especially for faculty at public universities, freedom of extramural expression reserves to the faculty the similar protections of free speech as enjoyed by all other citizens, including other government employees.<sup>55</sup> The protections are similar but not the same, because the faculty member is held to a higher standard than the ordinary person. Faculty have the burden of informing the public that they are not speaking on behalf of their employer.<sup>56</sup> They are required to be accurate, even though they are speaking in an area outside of their expertise.<sup>57</sup> Unlike an ordinary citizen, they are required to respect the opinions of others and to show restraint.<sup>58</sup> And, if the extramural speech indicates that the faculty member is “unfit” for their position, then the speech can be the basis for termination.<sup>59</sup>

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<sup>52</sup> Id. at 136.

<sup>53</sup> Id. at 139.

<sup>54</sup> Id.

<sup>55</sup> In many countries, including the United States, constitutional limitations only apply to institutions owned by the government not to private individuals and institutions.

<sup>56</sup> 1970 Interpretive Comments, *supra* note 25, Comment 4 (“As members of their community, professors have the rights and obligation of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as a private citizen, they avoid creating the impression of speaking or acting for their college or university.”).

<sup>57</sup> AAUP, Committee A Statement of Extramural Utterances, in *AAUP Policy Documents & Reports* (10th ed. 2006) (“special obligations of faculty members arising from their position in the community: to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to make every effort to indicate that they are not speaking for the institution.”).

<sup>58</sup> Id.

<sup>59</sup> Id. (“An interpretation of the 1940 Statement, agreed to at a conference of the Association of American Colleges and the AAUP held on November

## II. Protecting Public Service Speech

The above definitions of faculty speech leave a gap in the categories of speech protected by academic freedom. If intramural speech only protects speech pertaining to the faculty member's home institution, but not within the faculty member's expertise, and extramural speech only protects speech about matters of public concern that are outside of the faculty member's expertise and do not pertain to their home institution, then one of the purposes of the university, and one of the reasons faculty speak (and often on controversial topics) is not protected. That faculty speech is "public service speech."

According to the AAUP 1915 *Declaration* one of the purposes of the university is to "prepare experts for various branches of the public service."<sup>60</sup> The authors of the 1915 *Declaration* described this third function of the university - the use of faculty expertise by the community - as follows:

"If there is one thing that distinguishes the more recent developments of democracy, it is the recognition by legislators of the inherent complexities of economic, social, and political life, and the difficulty of solving problems of technical adjustment without technical knowledge. The recognition of this fact has led to a continually greater demand for the aid of experts in these subjects, to advise both legislators and administrators. The training of such experts has, accordingly, in recent years, become an important part of the work of the universities; and in almost every one of our higher institutions of learning the professors of the economic, social, and political sciences have been drafted to an increasing extent into more or less unofficial participation in the public service. It is obvious that here again the scholar must be absolutely free not only to pursue his

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8, 1940, states that an administration may file charges in accordance with procedures outlined in the Statement if it feels that a faculty member has failed to observe the above admonitions and believes that the professor's extramural utterances raise grave doubts concerning the professor's fitness for continuing service.").

<sup>60</sup> 1915 Declaration, supra note 11.

investigations but to declare the results of his researches, no matter where they may lead him or to what extent they may come into conflict with accepted opinion. To be of use to the legislator or the administrator, he must enjoy their complete confidence in the distinterestedness of his conclusions.”<sup>61</sup>

The type of unofficial public service which the authors of the 1915 *Declaration* refer to include assisting with the drafting of legislation; commenting upon legislation; testifying at hearings in legislative committee; working on a task force and drafting task force reports for both government entities and non-government organization; drafting amicus briefs; serving on boards of non-governmental organizations; commenting on current events to the media, including letters to the editors and opinion pieces; and sometimes even working as appointed counsel for an indigent defendant or other party. Faculty speech in these types of public service situations may have been a “recent development” in 1915, but remains common today for most disciplines, especially for law faculty. This type of public service speech is almost always on a “matter of public concern” and almost always within the faculty member’s expertise. In fact, that is why the faculty member is serving or speaking – because of their subject matter expertise.

Although the faculty speech is on a matter of public concern, because it is within the faculty member’s expertise, it is not extramural speech within the AAUP definition. The public service speech does not fit within the freedom of research and publication – although the speech may include results of or knowledge due to the faculty member’s research, the speech itself is not research. And, because it often has to do with the political process, the speech may not, due to time limitations, conform to scholarly professional norms. If the faculty member is only presenting the results of research already conducted or published, then it could be argued that the speech is protected by the freedom of research and publication. More often,

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<sup>61</sup> Id.

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however, the speech is not a mere reiteration of the results of previously conducted research, but an application of the results of previous research or subject matter expertise to a new situation or event. Speech applying expert knowledge to a new situation does not fit neatly into the research category, nor has it yet been (although at some indefinite point in the future it may be) subject to peer review. Thus, it is not speech within the definition of research and publication.

An example of public service speech that is not protected as extramural speech or as research and publication is when, as frequently occurs, a faculty member testifies during a committee hearing on a pending piece of legislation either by invitation of the committee chair or as a member of the public. Because the speech is on a pending piece of legislation, the speech, by definition, is on a matter of public concern and would be protected speech if the speaker was an ordinary citizen, including a government employee. But because the faculty member is speaking on a topic within their expertise, the speech is not extramural speech. Even though the topic is within the faculty member's expertise, the faculty member may not have published on the specific issue that is the focus of the legislation. Moreover, because of the immediacy of the issue and the testimony, the faculty speech will not have undergone the peer review process and is not speech within the definition of research and publication. Likewise, when a faculty member is asked by the media to explain a recent court decision or other legal controversy or writes a letter to the editor on the same subject, the faculty member has been chosen or has chosen to speak because of their expertise; thus, the speech is not extramural speech. Moreover, the speech at the request of the media is not peer reviewed and thus, does not fit within the freedom of research and publication. But, the speech in these examples serves the public by explaining to the legislature the possible unintended consequences of the proposed legislation and by explaining to the public what the court's ruling means and how that ruling may affect the public. In both of these situations – testimony to the legislature and comments to the media -- the faculty member's speech in service to the public

would not be protected under either the freedom of extramural speech or the freedom to research and publish.

And, because faculty public service speech is not usually about the faculty member's home institution, then the speech is not intramural speech. Faculty public service speech, by definition, is on a matter of public concern, which, usually, does not include matters pertaining to the university -- although, sometimes, matters of public concern can be about the institution. An example of faculty public service speech that might be protected intramural speech would be a faculty member commenting on their home institution's affirmative action admissions policy at a time when use of race for purposes of university admissions criteria are part of the public debate. When the matter of public concern is about the university, then the faculty speech is about the university and is intramural speech. But, this is rare. Similarly, public service speech usually does not fit within the freedom of teaching. Because the public service speech is within the faculty member's expertise, the faculty member can discuss their public service speech in the classroom if the matter of public concern that is the topic of the speech has a "relation to the subject" matter of the course being taught.<sup>62</sup> So, a professor in the department of education could discuss in his education policy course his public service work on the Department of Education's task force on math standards for elementary school students. But, the freedom of teaching would only protect the classroom discussion; it would not protect the professor's controversial statements criticizing the standards during the task force meetings - even if his controversial criticisms are valid and his proposal would lead to better outcomes. The great majority of faculty public service speech is not protected by the freedom of intramural speech or the freedom of teaching.

Faculty public service speech is not protected under the AAUP's four categories of faculty speech. Yet, public service

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<sup>62</sup> 1940 Statement, *supra* note 25, (faculty "should be careful not to introduce into their teaching controversial matter which has no relation to their subject.").

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speech is precisely the type of faculty speech – in service to the public on a matter of public concern – that we (faculty, universities, and the public) should want faculty to engage in on a regular basis, regardless of whether the speech conforms to public – or government – opinion on the issue. Because the purpose of academic freedom is to protect the mission of the university, which includes the development of “experts for various branches of public service”, academic freedom must protect faculty speech in furtherance of public service.

Public service speech should be considered a separate category and not fit within one of the existing categories of faculty speech protected by academic freedom. If the freedom of extramural speech reserves to the faculty member the ability to speak on matters of public concern in areas outside of their expertise and the purpose of the freedom of extramural speech is to explicitly reserve to faculty members the freedom of speech enjoyed by all citizens, then because public service speech is within the faculty’s expertise, it is not citizen speech, but something more, and thus, is not extramural speech. Although because public service speech is speech within the faculty member’s expertise and most institutions require faculty members to provide service both to the institution and to the larger community, public service speech is speech that could be considered to fall within the faculty member’s job duties. Thus, it may seem appropriate to protect public service speech as a subcategory of intramural speech, which, by definition, already includes other types of speech that the faculty member engages in pursuant to their job duties, including speech pertaining to faculty governance and peer review.

However, protecting public service speech as intramural speech, without more, may be an illusory protection – particularly in the United States for faculty employed by public universities. Although the United States Supreme Court in *Garcetti v. Ceballos*<sup>63</sup> specifically reserved the question of how its government employee speech test<sup>64</sup> would apply to

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<sup>63</sup> 548 U.S. 410 (2006).

<sup>64</sup> In *Garcetti*, the Supreme Court held that “when public employees make



faculty at public universities,<sup>65</sup> lower federal courts are split on whether faculty speech made pursuant to the faculty member's job duties is protected speech under the First Amendment to the United States Constitution.<sup>66</sup> Some courts have specifically found an academic freedom exception to the *Garcetti* job duties test;<sup>67</sup> other courts have refused to recognize such an exception.<sup>68</sup> One federal court has stated:

[u]niversity employment cases have always created a decisional dilemma for the courts. Unsure how to evaluate the requirements for appointment, reappointment and tenure, and reluctant to interfere with the subjective and scholarly judgments which are involved, the courts have refused to impose their judgment as to whether the aggrieved academician should have been awarded the desired appointment or promotion. Rather, the court's review has been narrowly directed as to whether the appointment or promotion was denied because of a discriminatory reason.<sup>69</sup>

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statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." Id. at 422. In general, a public employee's speech is protected by the First Amendment when "(1) in making it, the employee spoke as a citizen, (2) the statement involved a matter of public concern, and (3) the government employer did not have 'an adequate justification for treating the employee differently from any other member of the general public' as a result of the statements he made." Id. at 418. See, e.g., *Pickering v. Board of Education*, 391 U.S. 563 (1968) (public grade school teacher's letter to editor on matter of public concern and thus, protected by the 1st Amendment to U.S. Constitution); *Connick v. Meyers*, 461 U.S. 137 (1983) (prosecutor's survey regarding office conditions was a personal employment matter, not a matter of public concern, thus the speech was not protected).

<sup>65</sup> 548 U.S. at 425.

<sup>66</sup> See, e.g., *Adams v. Tr. of the Univ. of N.C. Wilmington*, 640 F.3d 550 (4th Cir. 2011) (court used tenure standards to determine faculty job duties); *Gorum v. Sessions*, 561 F.3d 179 (3rd Cir. 2009) (advising student in disciplinary hearing within job duties); *Renken v. Gregory*, 541 F.3d 769 (7th Cir. 2008) (statements regarding use of grant funds within faculty job duties); *Hong v. Grant*, 516 F. Supp. 2d 1158, 1166 (C.D. Cal. 2007) ("any activity within an 'employee's uncontested employment responsibilities' is an official duty).

<sup>67</sup> See *Adams*, 640 F.3d at 562 (*Garcetti* does not apply in public university determination of promotion); *Kerr v. Hurd*, 694 F. Supp. 2d 817 (S.D. Ohio 2010).

<sup>68</sup> See *Renken*, 541 F.3d 769.

<sup>69</sup> *Adams*, 640 F.3d at 557 (citing *Smith v. Univ. of North Carolina*, 632 F.3d 316, 345-46 (4th Cir. 1980)). Cf. *Univ. of Penn. v. E.E.O.C.*, 493 U.S. 182

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Categorizing public service speech as within the faculty member's job duties and thus, intramural speech subject to review and disciplinary action by university administrators is contrary to the purpose of public service speech – to use faculty expertise for the betterment of the community. Categorizing public service speech as intramural speech would allow a university administrator, without subject matter expertise, to pass judgment on the value of the public service speech and to punish the faculty member for speech that the administrator did not agree with. It would allow a donor or a member of the legislature who does not agree with the speech to pressure university officials to terminate faculty based on speech. It would lead to the suppression of knowledge – the antithesis of the purpose and mission of the university.

Defining public service speech as intramural speech does not provide sufficient protection. Not only because it is unclear whether intramural speech is protected under the *Garcetti* test, but because it is unclear whether public service speech is part of a faculty member's job duties. Faculty handbook provisions that require service to the community as part of their tenure standards usually do not require that the service be in the form of public service speech.<sup>70</sup> Because the requirement for service is not specifically defined, the faculty can argue that the public service speech is not required and thus not within their job duties. Such an argument, however, does not solve the problem of protecting the public service speech.

An additional problem with categorizing public service speech as intramural speech is that the determination of

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(1990)(university cannot assert academic freedom to prevent E.E.O.C. investigation into allegations that the university engaged in racial discrimination when it denied tenure). See also *Hong v. Grant*, 516 F. Supp. 2d 1158, 1161 (C.D. Cal. 2008) (court not qualified to second guess university's decision concerning hiring and promotion).

<sup>70</sup> See, e.g., Atlanta's John Marshall Law School Faculty Handbook §102 (Mar. 10, 2010) ("The responsibilities of faculty are to teach, to conduct research and to publish the results of that research, and to participate in community service to the Law School and the larger community.") (copy on file with author).

whether the speech is protected may turn on whether the faculty member spoke in response to an invitation or took the initiative in speaking and may depend upon who the faculty member's employer is. If faculty member A, employed by university X that requires service to the institution and to the community in its tenure standards, whose expertise is in national security, accepts an invitation by a local politician to comment upon the recently revealed government surveillance program at a town hall meeting opened to the public and if public service speech is categorized as intramural speech, then faculty member A's speech, made pursuant to his job duty to serve the community, is intramural speech. If the same faculty member writes an opinion letter to the editor opining that the same recently revealed government surveillance program, although illegal is necessary for national security, the speech may not be considered intramural speech because the speech was not made pursuant to his job duty to serve the community, but pursuant to his own desire to speak. And, because the speech is within faculty member A's expertise, the speech is not extramural speech. If faculty member B, employed by university W that does not require service to the community, makes the same statements on the same topic as faculty member A, then neither the statements made at the town hall meeting or in the letter to the editor are intramural speech, because the statements were not made pursuant to faculty member B's job duties. And, the speech is not extramural speech, because the speech is within faculty member B's expertise. But, A and B's speech would be protected under the *Garcetti/Pickering* test for government employee speech,<sup>71</sup> if A and B were public high school teachers who had published the same letter in the same newspaper.

Public service speech furthers the mission of the university and must be protected. Because public service speech is speech within the faculty member's expertise, it can be tested against professional norms. Thus, public service speech should be

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<sup>71</sup> See supra 62-68.

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protected in the same manner that faculty speech in the areas of research and publication and teaching are protected. If the public service speech falls outside of the professional norms, it is not protected. If the public service speech falls within the professional norms – no matter how controversial the topic, the speech should be protected by academic freedom.

### **III. Enforcing Professional Norms for Extramural and Public Service Speech**

Protecting the freedoms of research and publication and of teaching through the peer review process is the norm and is uncontroversial. Since the rise of the medieval university and the idea of “academic expertise,” the freedom of research and publication<sup>72</sup> and the freedom of teaching were protected by peer review.<sup>73</sup> The faculty member was judged by the application of professional norms by colleagues within the faculty member’s department or school within the university. Thus, law faculty judge/apply professional norms to law faculty and biology faculty to biology faculty. Peer review by peers within the faculty member’s subject matter expertise is industry standard. This same standard of peer review can be used to enforce professional norms for extramural speech and public service speech.

#### **A. The Norms – Extramural Speech**

Although extramural speech is not speech within the faculty member’s expertise and thus, not within the expertise of the faculty member’s colleagues, extramural speech is subject to professional norms that can be applied by the faculty member’s

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<sup>72</sup> Frequently, peer review in the area of research and publication is done by experts outside of the faculty member’s home institution. This is done either at the time of submission of an article to a peer-reviewed publication or at the time of promotion, either tenure or rank, to outside reviewers of publications.

<sup>73</sup> For the Common Good, *supra* note 14, at 20 (“demand that judgment of scholarly competence belong to a body of scholarly masters.”).

colleagues. The professional norms set out in the 1940 *Statement*<sup>74</sup> and the AAUP's Committee A Statement on Extramural Utterances<sup>75</sup> are: (1) to be accurate; (2) to exercise appropriate restraint; (3) to show respect for the opinion of others; and (4) to make every effort to indicate that they are not speaking for the institution.<sup>76</sup> If the speech includes fact and not opinion, accuracy of the extramural speech can be measured by faculty colleagues in the same manner that those colleagues determine the quality of teaching and research and publication. To enforce Norm 1, the speech can be "fact checked". The requirement of "appropriate restraint" and "respect for the opinion of others" should focus on the mode and/or manner of the extramural speech. The speaker should "play well with others". There should be no name calling, yelling, and no physical acting out; the speech should be speech. Norms 2 and 3 are similar to the Golden Rule - due unto others - and again, can be measured by faculty colleagues in the same manner that those colleagues determine whether the faculty member is complying with the requirement to engage in faculty governance and peer review - the service to the university component of the faculty member's job duties. Finally, whether the faculty member has made an effort to indicate that they are not speaking for the institution can be determined by faculty colleagues reviewing the speech to determine whether there has been a disclaimer or whether there has been a statement that the speech is on behalf of the university. Whether a disclaimer was made is a fact and can be checked through the same fact-checking process as Norm 1.

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<sup>74</sup> 1940 Statement, supra note 25.

<sup>75</sup> Committee A Statement on Extramural Utterances in AAUP Policy Documents & Reports (10th ed. 2006). See also 1970 Interpretative Comments, supra note 25; 1940 Interpretations to 1940 Statement, Comment 3 ("If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. . .").

<sup>76</sup> Id.

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The university's interest in reviewing faculty extramural speech is limited to protecting and maintaining the university's reputation. If the community that is the audience for the extramural speech knows that the faculty member is employed by the university, then the community may link the reputation of the speaker to the reputation of the university. The two main factors that will reflect upon reputation are accuracy of fact and professional demeanor – Norms 1-3 (accuracy, restraint, and respect). If the factual portion of the speech is not accurate, then the community may think that the university is employing intellectually sub-par faculty, potentially affecting the university's reputation and enrollment. If the faculty member behaves in an unprofessional manner, the community may think that the university is employing, perhaps smart, but still sub-par faculty, and the affect on the university's reputation and enrollment may be the same. The university's reputation, however, can be protected short of censoring or otherwise prohibiting the extramural speech. The university's reputation can be protected by breaking the link between the faculty member and the university in relation to the extramural speech. This can be done through a disclaimer that states the faculty member is speaking on their own behalf and not on behalf of the university. In other words, enforce Norm 4.

Because the university can protect its interests without censoring the extramural speech, the university should not judge faculty for purposes of continued employment at the university based on their extramural speech. As stated in AAUP's Committee A Statement on Extramural Utterances: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness to serve. Extramural utterances rarely bear upon the faculty member's fitness for continuing service."<sup>77</sup> Extramural utterances rarely bear upon the faculty member's

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<sup>77</sup> Id.

fitness because, by definition, extramural speech is outside of the faculty member's expertise. The speech that bears upon a faculty member's fitness is speech that is within the faculty member's expertise. That is faculty speech that is categorized as research and publication, teaching, or public service speech. The type of faculty speech that builds the reputation of the university.

### **B. Norms - Public Service Speech**

Public service speech is speech within the faculty member's expertise. The location or purpose of speech that is within the faculty member's expertise is not relevant for purposes of peer review. It is the fact that the speech is within the faculty member's expertise that matters. Because the speech is within the area of expertise, the faculty member's colleagues have the expertise to judge whether the speech is within professional norms. It is the same process that the faculty member's colleagues use when they are engaging in peer review for research and publication and for teaching.

Although public service speech is usually not subject to peer review prior to publication as is typical for research results that are published in industry journals, much public service speech is recorded - either because it is written (task force reports, amicus briefs, etc.) or audio-recorded (media interviews, testimony before legislative committees) - and thus, can be reviewed after the fact. Similarly, even though the speech is not being reviewed simultaneously as it is when a colleague observes classroom teaching, the public service speech captured in print or audio media can be effectively and efficiently reviewed after the fact. When the public service speech is reviewed, the faculty member's peers - colleagues within the same department with the same or similar expertise - can apply the same process for applying professional norms as they do when they evaluate research and publication and teaching.

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Just as with extramural speech, the university's interest in reviewing faculty public service speech is limited to protecting and maintaining the university's reputation. When faculty speak on matters of public concern within their area of expertise, the faculty builds the reputation of the university. There is a synergistic effect between the reputation of the faculty member and the reputation of the university. The university, in essence, receives free publicity and marketing. A faculty member speaking within their area of expertise can only harm the university's reputation if the speech is inaccurate or outside of professional norms – for example, a physicist claiming that gravity does not exist. The harm from a physics professor claiming that gravity does not exist is the same whether that statement is made in the classroom, in a publication, or in an interview on National Public Radio. Because the injury is the same, the method of protection should be the same. The university's reputation can be protected by the peer review process.

When a university seeks to censor or punish public service speech that is within professional norms, the only reason can be that the university does not agree with the speech. For a university to censor public service speech, whether it is because an administrator, donor, or government official disagrees with the speech, is to destroy the mission of the university – to disseminate knowledge. History has shown that when the mission of the university is destroyed, the public suffers.<sup>78</sup>

### **C. The Process for Evaluation of Extramural Speech and Public Service Speech**

Before a faculty member can be punished for extramural speech or public service speech, it must first be determined whether the speech violated the professional norms discussed

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<sup>78</sup> See Rec. 1762, *supra* note 13 (The Parliamentary Assembly of the Council of Europe has noted that “history has proven that violations of academic freedom and university autonomy have always resulted in intellectual relapse, and consequently in social and economic stagnation.”).



in Subsections A and B. Because those professional norms can be applied as part of the peer review process, the speaker's colleagues within his department should be the ones applying the professional norms, particularly in the case of public service speech. The question to be answered during the peer review process is whether the speaker is "unfit" to continue to serve as a faculty member.<sup>79</sup>

When determining whether the speaker who made an extramural statement is "fit" to continue serving as a faculty member, "a final decision should take into account the faculty members' entire record as a teacher and scholar."<sup>80</sup> When determining whether the speaker who engaged in public service speech is "fit" to continue serving as a faculty member, the decision should focus on whether or not the same or similar statement made in the classroom or in a peer reviewed journal would be speech within the professional norm and protected by academic freedom.

Termination for "unfitness" is termination for cause. When a charge has been made that faculty extramural speech establishes that the speaker is unfit to continue to serve as a professor, the university should file charges under paragraph 4 of the Academic Tenure section of the 1940 *Statement*.<sup>81</sup> Paragraph 4 applies to terminations for cause, including when a faculty member is not complying with professional norms for teaching and/or for research and publication.<sup>82</sup> The 1970 *Interpretative Comments* suggest that a faculty member is entitled to the same process for a determination of "unfitness" based on extramural statements as they would be if their

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<sup>79</sup> Committee A Statement on Extramural Utterances in AAUP Policy Documents & Reports (10th ed. 2006).

<sup>80</sup> Id.

<sup>81</sup> 1970 Interpretive Comment, *supra* note 25. ("In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility; and the American Association of University Professors and the Association of American Colleges are free to make an investigation.").

<sup>82</sup> Id.

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teaching or scholarship were the basis of the termination for cause.<sup>83</sup> That process includes written notice of the reasons for termination for cause, a hearing before a faculty committee, and testimony of experts in the field – teachers and scholars within the faculty member’s area of expertise.<sup>84</sup> During the hearing, the faculty committee applies the four professional norms for extramural speech (accuracy, restraint, respect, and disclaimer).<sup>85</sup> If the faculty member has complied with the four norms and the university’s reputation can be protected through disclaimer, then the extramural statements should be protected under academic freedom, and there should be no cause for termination.

Likewise, because the process set out in Paragraph 4 of the Academic Tenure section of the 1940 *Statement* has always been intended to be used to determine whether a faculty member has complied with the professional norms within their area of expertise – both research and publication and teaching, that process is appropriate to use when a faculty member’s public service speech is being challenged as failing to comply with professional norms. Because speech within the categories of research and publication, teaching, and public service are all within the faculty member’s expertise, the standard used to determine compliance with professional norms in the areas of research and publication and teaching is the same standard that will be used to determine whether the public service speech complies with professional norms. Because it is the same standard that will be used, it is appropriate to use the same process. Because the speech at issue is within the faculty member’s area of expertise, the faculty member should be judged by experts who understand the area of expertise and not by those who may be applying a standard other than the one used within that particular discipline. If the faculty member’s public service speech is within the professional norms, then

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<sup>83</sup> Id.

<sup>84</sup> Id.

<sup>85</sup> See Section III.A.,supra.

the public service speech should be protected under academic freedom, and there should be no cause for termination.

Moreover, by using the Paragraph 4 process for challenges to all types of faculty speech, the faculty will develop an expertise for applying the process, the university will eliminate duplication saving resources, and the individual faculty members will know what standards apply to their speech. Because faculty will know what standards will apply to their speech, less faculty speech will be chilled, erroneously punished, or suppressed. This, in turn, will lead to the dissemination of more knowledge - fulfilling the mission of the university to discover and disseminate knowledge.

#### **IV. Using Both Public Law and Private Law to Protect Academic Freedom**

Academic freedom is neither a shield nor a sword. Academic freedom standing alone is not sufficient to protect faculty speech. Academic freedom is a principle that has been agreed to by faculty and universities, and acquiesced in by the public. For academic freedom to truly protect faculty and thus, the production and dissemination of knowledge, academic freedom must be protected by both public law and private law mechanisms.

##### **A. Public Law - European Convention on Human Rights and U. S. Constitution**

Neither the European Convention on Human Rights or the U. S. Constitution specifically address academic freedom. Nonetheless, the European Court of Human Rights has recognized that Article 10 of the European Convention on

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Human Rights<sup>86</sup> protects academic freedom.<sup>87</sup> And, the United States Supreme Court has recognized, in passing, that the First Amendment to the United States Constitution<sup>88</sup> protects academic freedom. Neither the European Court of Human Rights or the United States Supreme Court has had the opportunity to address speech within all five categories of academic freedom – (1) research and publication, (2) teaching, (3) intramural speech, (4) extramural speech, and (5) public service speech.<sup>89</sup> Thus, while public law clearly protects some aspects of academic freedom as defined in this article, it is, as yet, unclear whether the European Court of Human Rights or the United States Supreme Court will protect all aspects of academic freedom under Article 10 and the First Amendment, respectively.

Moreover, at least in the United States, public law – the First Amendment – only restricts government action. The First Amendment does not protect professors employed by private universities. And, with the lower federal courts split as to whether the Supreme Court’s *Garcetti* public employee speech doctrine protects all faculty speech made pursuant to a faculty member’s job duties, it is unclear whether faculty intramural

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<sup>86</sup> Article 10 of the Convention provides:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring licensing of broadcasting, television, or cinema enterprises.

The exercises of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

<sup>87</sup> See *Aksu v. Turkey*, App. Nos. 41949/04 and 41029/04 Eur. Ct. H.R. (2010); *Sorguç v. Turkey*, App. No. 17089/03 Eur. Ct. H.R. (2009).

<sup>88</sup> The First Amendment provides: “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const., Amend. I.

<sup>89</sup> See Kathleen Burch, *Academic Freedom: A Comparative Analysis of Legal Protections in the United States and Turkey*, 7 *Bahcesehir/Kazanci L.J.* 65 (2011).

speech or faculty public service speech is protected by the First Amendment. Because constitutional free speech protections do not apply to faculty employed by private universities and may not be sufficient to protect faculty employed by public universities, U.S. faculty must seek to protect academic freedom through private law mechanisms.

Likewise, in Europe, while faculty speech may be protected under Article 10 of the European Convention of Human Rights and protected by provisions of domestic law,<sup>90</sup> faculty continue to be expelled from universities and subject to adverse employment action because of speech.<sup>91</sup> At least one university has failed to comply with a court order to reinstate faculty wrongfully terminated.<sup>92</sup> Public law is not sufficient to protect all faculty speech. European faculty must seek to protect academic freedom through private law mechanisms.

### **B. Private Law Mechanisms**

Faculty cannot assume that academic freedom has legal protections, but must be pro-active in seeking protection of academic freedom in their employment contracts. Although the 1940 *Statement* has been agreed to by the Association of American University Professors, representing the professors, and the American Association of Colleges and Universities, representing universities, not all universities (or colleges) have agreed to the definition of academic freedom contained in the 1940 *Statement*.<sup>93</sup> Some institutions have drafted their own definition of academic freedom.<sup>94</sup> The definition of academic freedom that the university will use in determining whether faculty speech is protected is usually found in the university's

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<sup>90</sup> See notes 22, 29, and 86, *supra*.

<sup>91</sup> See notes 1-4, *supra*.

<sup>92</sup> See note 3, *supra*.

<sup>93</sup> Cheryl Sternman Rule, *Freedom in the Academy: Academic Freedom Explored in Policies on Faculty Appointment: Standard Practices and Unusual Arrangements* 1-17 (2000).

<sup>94</sup> *Id.*

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faculty handbook.<sup>95</sup> If the faculty of the university is unionized, the definition of academic freedom may be found in the collective bargaining agreement.<sup>96</sup>

But, it is not just the definition of academic freedom that is important to protecting the freedom. The mechanism of protection is just as important as, if not more important than, the definition of academic freedom. If the faculty member being disciplined for the content of their speech, regardless of the category the speech falls within, is being disciplined by the administration and is not entitled to a hearing before a faculty committee, then there is no academic freedom. The administrator is not a peer, is not subject to the same peer review process as faculty, and may have no experience in applying the professional norms of the particular doctrinal area that is the speaker's expertise. When there is no peer review process, there is no due process because there is no objective standard being used to determine whether the faculty speech violated professional norms. When there is no objective standard being applied, faculty do not know when their speech or even what speech will subject them to discipline and will be more likely to not speak – even when their speech may be in the public's interest or for the betterment of the community. When faculty are silent, knowledge is not disseminated. And, when knowledge is not disseminated, the mission of the university is not being fulfilled.

Faculty must insure that their academic freedom is defined and the mechanism for protection of faculty speech is set out in detailed provisions of their employment contract.

### **C. Non-Legal Mechanisms of Protection**

Academic freedom often comes under attack because people do not understand what it is or why it is important.

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<sup>95</sup> Id.

<sup>96</sup> Id.

When Professors Guthand Slocum were under attack because of their speech, their respective University administrators were responding to public outcry, to law makers, and to students.<sup>97</sup> When events such as these occur, or events such as those at Istanbul's Marmara University,<sup>98</sup> it is important for faculty across the globe to speak out and to educate the public. It is only when the public understands the mission and value of the university to the greater good that the lessons of history and the need for tolerance will be understood. The university is a marketplace of ideas, if the public or a government official does not like the speech of a professor, then the remedy is more speech. The remedy is not to close the doors of the university and to turn one's back on knowledge. As both the European Parliamentary Council and the United States Supreme Court have stated - when the speech of faculty is silenced, the rest of the world suffers.

### V. Conclusion

Academic freedom is necessary to protect the mission of the university -- to discover, create, and disseminate knowledge. Universities fulfill their mission through their faculty - in particular, through the speech of their faculty. Without the protection of academic freedom, faculty will be silenced.

In addition to the traditional four categories of faculty speech - research and publication, teaching, intramural, and extramural, academic freedom should be defined to include public service speech. Public service speech, often the most controversial type of faculty speech, is speech within the faculty member's expertise on a matter of public concern. Public service speech - speech in service to the larger community -the application of expert knowledge to new problems and current events -- is the type of speech faculty should be encouraged to engage in on a regular basis. Public service speech is the type

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<sup>97</sup> See notes 5 and 6, supra.

<sup>98</sup> See note 1, supra.

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of faculty speech that directly furthers the greater good while indirectly building the reputation of the university.

Because academic freedom protects faculty speech so that faculty can fulfill the mission of the university - to discover, create, and disseminate knowledge, faculty have an obligation to insure that their academic freedom is protected in their employment contract - both the definition of academic freedom and the guarantee of peer review. Faculty also have an obligation to educate the public about academic freedom - what it is and why it matters. And, once academic freedom is protected, faculty have the obligation to speak and through that speech to fulfill the mission of the university to disseminate knowledge.



# **The Law School Of The Future: How the Synergies of Convergence will Transform the Very Notion of “Law Schools” during the 21<sup>st</sup> Century from “Places” to “Platforms”**

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## **I. Introduction: The Thesis Of Convergence**

What will law schools like ten years from now? Twenty? How about at mid-century – i. e., in the year 2050? Some have been inspired to approach this question from a perspective of a dystopian future.<sup>2</sup> Rather than assume catastrophe, others

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<sup>1</sup> Associate Dean Van Detta has designed and taught synchronous and asynchronous online courses in both Juris Doctorate programs – e. g. , International Business Transactions, Commercial Law, Conflict of Laws, Civil Procedure, Corporations and Business Organizations, Contract Drafting, Contracts, Torts, Criminal Law, and Jurisprudence – as well as in M. B. A. and LL. M. programs. Associate Dean Van Detta dedicates this article to the lawyers, law students, and law professors of Turkey. He admires and respects them more than he can put into mere words.

<sup>2</sup> See Richardson L. Lynn, *It’s Not the End of the World, But You Can See It from There: Legal Education in ‘The Long Emergency*, 40 U. Toledo L. Rev. 377 (2009). Dean Lynn’s envisions what law schools (as well as the legal profession itself) might be like in an era, predicted by Robert Kunstler in his book of that title, of the “long emergency” -- Kunstler’s thesis is that we have reached or will soon reach “peak oil”-the point at which new discoveries of petroleum will not replace rapidly depleting oil fields.” Id. at 378. As Dean Lynn puts it in his unique, Twainesque conciseness:

My conversational summary of Kunstler’s *The Long Emergency* is that if one-quarter of what he predicts takes place, we will live as we did in

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have tried to visualize how legal education – almost moribund in its basic approach after the innovations of Dean Langdell at Harvard in the 1870s – is responding to the “disruptive change.” That “disruptive change” results from three principal sources. First, “disruptive change” is being produced by rapidly proliferating computer and virtuality technologies applied in graduate education.<sup>3</sup> Second, “disruptive change” arises from the evolution of the students themselves: new generations of law students have grown up in a cyber-crucible of virtual reality<sup>4</sup> – what I choose to call “virtuality.” Third, law practice

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the 1920s; if one-half of his predictions come true, we will live as we did in the 1880s; and if they all come true, we will be living in a world somewhere between the frontier days of the Wild West and the darkness of the Middle Ages.

Id. at 378. As applied to the legal profession and to law schools, Dean Lynn explains the dystopian vision thusly:

Recent reports and conferences on the future of legal education have focused on topics such as teaching to the different student learning styles, preparing graduates for a global legal practice, and the continuing need for greater diversity in the legal profession<sup>3</sup> and improving the “pipeline,” perhaps all the way back to elementary schools. If The Long Emergency arrives, those concerns will seem quaint. Just as lawyers still will be needed in dark times, albeit in a quite different kind of law practice than we see today, law schools can also survive-but not all of them and not as large or encyclopedic as they are now.

The demand for legal services will decrease sharply after the demise of most national and international commerce. There will be substantially less need for the legal specialties mentioned earlier. So, fewer students will seek legal training and those who do will attend nearby law schools because of the greater expense of travel. Course offerings will revert to a core curriculum, plus legal skills training, to reflect the needs of small town and, in cities, neighborhood practices. In a time of economic collapse, our recent recessions will seem comparatively gentle, and current tuition rates will be unsustainable and generous loan programs will be extinct.

Id. at 381. Interestingly, Dean Lynn makes a prediction about online education in the long emergency that is worth noting: “Legal education from sources other than law schools will resume the prominence enjoyed in the nineteenth century, including studying in a lawyer’s office or by correspondence,” to which Dean Lynn adds “[t]his might include on-line law schools, if the World Wide Web survives.” Id. at 382 & n. 41.

Id. at 382.

<sup>3</sup> See, e.g., Higher Education: Creative Destruction – A Cost Crisis, Changing Labour Markets And New Technology Will Turn An Old Institution On Its Head, *Economist*, 28 June 2014, available at <http://www.economist.com/news/leaders/21605906-cost-crisis-changing-labour-markets-and-new-technology-will-turn-old-institution-its>.

<sup>4</sup> See, e.g., two cutting-edge articles by my faculty colleague, Professor Kari Merci Dalton, *Their Brains on Google: How Digital Technologies are Altering the Millennial Generation’s Brain and Impacting Legal Education*,

itself is poised to enter upon a new age in which the virtual law office becomes an increasingly common choice for law-school graduates,<sup>5</sup> as well as more experienced attorneys reinventing their law practices,<sup>6</sup> and the judicial system itself embraces video conferencing as an increasingly attractive solution to a number of persistently intractable problems.<sup>7</sup>

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16 SMU Sci. & Tech. L. Rev. 409 (2013); Bridging the Digital Divide and Guiding the Millennial Generation's Research and Analysis, 18 Barry L. Rev. 167 (2012). See also Joanne Ingham & Robin A. Boyle, Generation X In Law School: How These Law Students Are Different From Those Who Teach Them." 56 J. Legal Educ. 281 (2006).

<sup>5</sup> This was the subject of a presentation by my former faculty colleague, Lucille Jewell, now of the University of Tennessee law faculty, The Indie Lawyer, made at both the Istanbul and Ankara sessions of the Legal Education Conference in May 2014. Conference—Legal Education In The 21st Century, <http://www.bahcesehir.edu.tr/icerik/701-conference-legal-education-in-the-21th-century> (posted 5 May 2014) (detailed program available for download).

<sup>6</sup> See, e.g., John O. McGinnis and Russell G. Pearce, The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services, 82 Fordham L. Rev. 3041 (2014); Hope Viner Samborn, Virtual Law Offices Are Blooming Everywhere, 20 Perspectives 10 (Summer 2011) (Am. Bar Ass'n); Richard S. Granat & Marc Lauritsen,, Next Five Years: Predictions for the Future of eLawyering, 37 Law Prac. 42 (2011); Jordana Hausman, Who's Afraid of the Virtual Lawyers - The Role of Legal Ethics in the Growth and Regulation of Virtual Law Offices, 25 Geo. J. Legal Ethics 576 (2012); see also Jeff Drew, How to Open New Doors by Closing Your Office: Firms That Go Virtual the Right Way Can Enjoy Real Savings and Benefits, 216 J. Accountancy 24 (2013). State bar association journals in the U.S. have featured a plethora of articles about virtual law practice in recent years. See, e.g., Kevin Crewes, The Door To A Virtual Law Practice Is Always Open: And The Proper Use Of Technology Can Keep It That Way, 88-JUN Fla. B.J. 84 (June 2014); Debra L. Bruce, Would A Virtual Law Office Work For You?, 74 Tex. B.J. 428 (May 2011); John S. Swimmer, Book Review: Virtual Law Practice: How To Deliver Legal Services Online By Stephanie L. Kimbro (Chicago, IL: Aba Law Practice Management Section, 2010), 84-JUN Wis. Law. 33 (June 2011). For the cross-border, trans-national dimensions of virtual law practice, see, e.g., Stephanie L. Kimbro, Regulatory Barriers To The Growth Of Multijurisdictional Virtual Law Firms And Potential First Steps To Their Removal, 13 N.C. J. L. & Tech. On. 165 (2012).

<sup>7</sup> See, e.g., Lome Sossin & Zimr Yetnikoff, I Can See Clearly Now: Videoconference Hearings and the Legal Limit on How Tribunals Allocate Resources, 25 Windsor Y.B. Access Just. 247, 249 (2007)(case study of the Ontario Landlord and Tenant Tribunal, "one of the busiest adjudicative bodies in Canada," which "[l]argely as a cost-saving measure, . . . has embraced videoconferencing for hearings outside major urban centres such as Toronto and Ottawa"); Frederic L. Lederer, The Road To The Virtual Courtroom? A Consideration Of Today's—And Tomorrow's—High-Technology Courtrooms, 50 S.C. L. Rev. 799 (1999).

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I have been inspired to ask – and respond – to the question of how legal education will evolve in the future by the excellent interchange I was privileged to have with Professor Dr. Feridun Yenisey, one of Turkey’s great legal scholars.<sup>8</sup> Professor Dr. Yenisey and I were members of a panel at the international conference *Legal Education In The 21<sup>st</sup> Century*, May 5-8, 2014, in Istanbul and Ankara, Turkey, co-sponsored by Bahçeşehir Üniversitesi, Atlanta’s John Marshall Law School, and the Union of Turkish Bar Associations.<sup>9</sup> During my portion of the panel in Ankara<sup>10</sup>, I presented my paper on programs delivered via the Internet for foreign-educated lawyers to study aspects of American law in dialogue with American professors, lawyers, and law students – particularly the Global Forum for American Legal Studies at my home Institution.<sup>11</sup> During the question and answer session, a Turkish colleague in the audience asked about the future role of online legal education and whether purely online legal education was tenable. Not only is entirely online legal education tenable – indeed, it has been done

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<sup>8</sup> E.g., Human Rights Expert Feridun Yenisey Speaks At William Mitchell, 21 Sept. 2010, at <http://web.wmitchell.edu/news/2010/09/human-rights-expert-feridun-yenisey-to-speak-at-william-mitchell/>; Scott Optican Lectures On New Zealand Human Rights Law In Turkey And Kansas, Eden Crescent – Faculty of Law Annual, 2005-2006, at 21 (“Professor [Dr.] Feridun Yenisey, a leading criminal law academic in Turkey and the Director of the Institute for Global Understanding of Law (IGUL) at Bahcesehir” Üniversitesi); see, e.g., Feridun Yenisey, Some Legal Aspects of Terrorism in Western Europe and in Turkey, 14 Kan. J. I. & Pub. Pol’y 643, 648 (2005).

<sup>9</sup> See, e.g., Conference – Legal Education In The 21st Century, <http://www.bahcesehir.edu.tr/icerik/701-conference-legal-education-in-the-21th-century> (posted 5 May 2014) (detailed program available for download); A]MLS Hosts Legal Education in the 21st Century Conference in Istanbul and Ankara, Turkey, <http://www.johnmarshall.edu/2014/04/ajmls-host-legal-education-twenty-first-century-conference/> (posting 1 Apr. 2014)

<sup>10</sup> “Legal Education In The Digital Age” was the name of the panel, and “A Bridge To The Practicing Bar Of Foreign Nations – Online American Legal Studies Programs” was the name of Associate Dean Van Detta’s presentation, given in Istanbul on 5 May 2014 and in Ankara on 6 May 2014. The programme is downloadable at <http://www.bahcesehir.edu.tr/icerik/701-conference-legal-education-in-the-21th-century>

<sup>11</sup> See Atlanta’s John Marshall Law School, LL.M. In American Legal Studies Online, <http://www.johnmarshall.edu/llm/ll-m-in-american-legal-studies-online/>

successfully in the United States since 1998 by Concord Law School – but, I responded, “*it is the future.*” I then hazarded a prediction for the next meeting of this particular conference at Bahçeşehir Üniversitesi, presumably in the 2020s:

“Law schools will no longer be ‘places’ in the sense of a single faculty located on a physical campus. In the future, law schools will consist of an array of technologies and instructional techniques brought to bear, in convergence, on particular educational needs and problems.”

This paper elaborates on that prediction. In so doing, I share a happy discovery that I made as I was contemplating the present article.

In 1994, Robin Widdison – at that time the Director of the Centre for Law and Computing at the University of Durham in England<sup>12</sup> – published a brilliant, visionary article, entitled *Virtual Law School*.<sup>13</sup> In that article, Dr. Widdison presented a prophetic description of “the central role that information technology will undoubtedly play in law schools of the future,” providing a “science[-]fiction style” narrative, worthy of a Ray Bradbury, in which he presents a “futuristic” portrait of what a 21<sup>st</sup> century law student’s life and studies would be like in a generation hence. While Dr. Widdison is now happily retired from Durham,<sup>14</sup> his ideas live on, and they convey an even greater persuasive power today than they had twenty years

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<sup>12</sup> See Robin Widdison, *Law & Computing at Durham*, 3 J.L. & Inf. Sci. 300 (1992).

<sup>13</sup> Robin Widdison, *Virtual Law School*, 8 Int’l Rev. L. Comp. & Tech. 184 (1994); see also John Goldring, *Coping with the Virtual Campus: Some Hints and Opportunities for Legal Education?*, 6 Legal Educ. Rev. 91 (1995).

<sup>14</sup> He and his wife maintain a website, in which they chronicle their retirement activities. See <http://www.widdisons.co.uk/> True to his visionary views of legal education, Dr. Widdison has brought technology to bear in equally innovative ways to his favorite pastimes in retirement: “Living in the centre of Durham allows Robin and Penny to visit the magnificent Cathedral frequently. When not in the Cathedral itself, Robin can take a virtual tour from his armchair designed by his own fair hand.” Id. Dr. Widdison has posted information about the tour at <http://www.widdisons.co.uk/tour/>

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ago. I shall quote liberally from Dr. Widdison's article, because it illustrates precisely the kinds of "synergies of convergence" in applying technology to educational activities that I predict will make the law school no longer *a place*, but rather, *a platform*, unfettered by the bonds of time and physical space.

### II. The Elements Of Convergence

#### A. The Origins and Growth Of Online Legal Education<sup>15</sup>

The author of this article was transitioning from law practice as a partner in a major Atlanta-based law firm to faculty member at his present law school in 1999 when he learned for the first time of an online law school while reading the then-new Jurist website. Supreme Court Justice Ruth Bader Ginsburg was quick to criticize the concept – with no knowledge or experience of online education from which to draw – and she succeeded in establishing a pattern both of stereotyping and shooting from the hip that was to define too much of the conversation about the role the internet should have, and would have, in legal education.

Justice Ginsburg fired the first shot of the debate in 1999 when she delivered an address at the then-new Rutgers University Center for Law and Justice in which she decided to hold forth on the relationship of the Internet to legal education. Justice Ginsburg saw this relationship exceptionally narrowly as "a supplement to classroom teaching," and – having never taken (so far as anyone could tell) a moment of online legal education – decreed that "[t]he process inevitably loses something vital when students learn in isolation, even if they can engage in virtual interaction with peers and teachers." She

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<sup>15</sup> Portions of Section II.A previously appeared in the author's article, Jeffrey A. Van Detta, *A Bridge To The Practicing Bar Of Foreign Nations – Online American Legal Studies Programs As Forums For The Rule Of Law And Pipelines To Bar-Qualifying LL.M. Programs In The U.S.*, 10 South Carolina J. Int'l L. & Bus. 63 (Fall 2013). The author made presentations based on that article in both Ankara and Istanbul as part of the panel, "Legal Education In The Digital Age" at the Conference "Legal Education In The 21st Century." See note 3, *supra*.

concluded these *ex tempore* remarks by observing that she was “troubled” at the idea that “a student can get a J. D. . . . without ever laying eyes on a fellow student or professor.” Had she accepted the invitation of a plucky online law school dean at the time, who invited Justice Ginsburg to “experience” the online curriculum of the school, which he emphasized “won’t replace fixed facility schools and doesn’t seek to do so, but... can make quality legal education accessible to those who otherwise wouldn’t be able to take advantage of it,” Justice Ginsburg might have refined, and perhaps even modified, her opinion. Had she held her commentary until she had time to do some research on the topic of online legal education, she might have benefitted from the enlightenment of a landmark article by Professor Oliphant of William Mitchell College of Law, who closely examined and explained the detailed and thoughtful learning model and highly effective technology platform used by the country’s only entirely online law school.<sup>16</sup>

The “proof of the pudding,” as an Old World proverb goes, “is in the eating.”<sup>17</sup> Since 2001, the author of this article has designed and taught multiple online J. D. program courses in Commercial Law, International Business Transactions and Writing, Jurisprudence and Writing, and Conflict of Laws to many groups of students. He has also taught online courses in Torts, Contracts, Criminal Law, Contract Drafting, and Corporations and Business Associations. It is not boastful for the author to observe that he is almost certainly more experienced in teaching law school courses online than any other member of a law faculty at a brick-and-mortar facility accredited by the American Bar Association.<sup>18</sup> That experience has taught

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<sup>16</sup> Robert E. Oliphant, *Will Internet Driven Concord University Law School Revolutionize Traditional Law School Teaching?*, 27 *Wm. Mitchell L. Rev.* 841 (2000). For Justice Ginsburg’s remarks and Dean Goetz’s responses, see Van Detta, *supra* note 14, at 108-110 &nn. 125-134.

<sup>17</sup> Patricia T. O’Conner and Stewart Kellerman, *Is The Proof In The Pudding?*, *The Grammophobia Blog*, 14 Feb. 2012, at <http://www.grammophobia.com/blog/2012/04/pudding.html>

<sup>18</sup> For the brick-and-mortar law schools currently accredited by the American Bar Association, see [http://www.americanbar.org/groups/legal\\_](http://www.americanbar.org/groups/legal_)

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the author that online legal education can be consistently as effective, and often even more effective, than the traditional classroom, despite the alchemy claimed for the latter by those who have had little or no experience with online course design or delivery.

Over the fourteen years since Justice Ginsburg's comments, the presence of online instruction in legal education has increased dramatically and enjoyed success.<sup>19</sup> Rather than isolating, online legal education has proven to be bond-building. Rather than passive, online legal education has proven to be highly interactive. Rather than becoming a separating force, online legal education has been an incredibly cohesive force by creating (particularly in moderated, online live classrooms) a safe space where students are so engaged that class participation rates soar on a regular basis, as the moderated format brings forth the "silent majority" of law students who rarely speak in class.<sup>20</sup> Furthermore, online legal education

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education/resources/aba\_approved\_law\_schools/in\_alphabetical\_order.html.

<sup>19</sup> See, e.g., The Working Grp. for Distance Learning in Legal Educ., Harvard L. Sch. Program on the Legal Profession, *Distance Learning in Legal Education: A Summary of Delivery Models, Regulatory Issues, and Recommended Practices* 17-18, 20, 22, 46 (Rebecca Purdom ed., n.d.), available at [http://www.law.harvard.edu/programs/plp/pdf/Distance\\_Learning\\_in\\_Legal\\_Ed.pdf](http://www.law.harvard.edu/programs/plp/pdf/Distance_Learning_in_Legal_Ed.pdf); Peter W. Martin, *Employing Technology to Erode Legal Education's Twin Barriers of Distance and Cost*, 61 Rutgers L. Rev. 1115, 1120, 1121-23 (2009); Michael L. Perlin, *Online, Distance Legal Education as an Agent of Social Change*, 24 Pac. McGeorge Global Bus. & Dev. L.J. 95, 99 (2011); Richard A. Westin, *The Need for Prompt Action to Revise American Law Schools*, 46 Akron L. Rev. 137, 158-63 (2013); Abigail Cahak, *Note, Beyond Brick-and-Mortar: How (Cautiously) Embracing Internet Law Schools Can Help Bridge the Legal Access Gap*, 2012 U. Ill. J.L. Tech. & Pol'y 495, 501, 504-05, 525, 526 (2012); see also Nick Dranis, *Past the Pall of Orthodoxy: Why the First Amendment Virtually Guarantees Online Law School Graduates Will Breach the ABA Accreditation Barrier*, 111 Penn St. L. Rev. 863, 866-68 (2007); Stephen M. Johnson, *Teaching for Tomorrow: Utilizing Technology to Implement the Reforms of MacCrate, Carnegie, and Best Practices*, 92 Neb. L. Rev. 46, 83-84 (2013); Todd E. Pettys, *The Analytic Classroom*, 60 Buff. L. Rev. 1255, 1293-99 (2012); Naseem Stecker, *Logging on to a Law Education*, 82 Mich. B.J. 40, 41-43 (2003).

<sup>20</sup> See Paula E. Berg, *Using Distance Learning to Enhance Cross-Listed Interdisciplinary Law School Courses*, 29 Rutgers Computer & Tech. L.J. 33, 40 n.26, 43 n.31 (2003) (citing five separate, scholarly articles authored by law professors who have taught online courses for the proposition



helps students (and helps professors to help students) focus on the logic and syntax of written legal expression—the skill that is at the heart of modern-law practice and the one that many graduate students, in law or other disciplines, find to be the most challenging. (Indeed, that is precisely the reason the author recently transformed two of his online J. D. program seminar courses—“International Business Transactions” and “Jurisprudence”—into courses now called “International Business Transactions and Writing” and “Jurisprudence and Writing” to further emphasize the online forum’s suitability for focus on the written word.)<sup>21</sup>

The literature regarding online legal education has grown substantially since Professor Oliphant’s pioneering article, as selected citations in the margin attest, both in first-law degree

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that “online discussion forums increase student participation in class discussions by providing an environment that is less intimidating than the traditional classroom”); see also Randall D. Burks, *From Paper Chase to Cyberspace: A Case Study of Two Law Professors’ Perceptions of Their First Experience Team-Teaching a Multimedia Online Law School Course* (Aug. 2004) (unpublished Ph.D. dissertation, University of Nebraska), available at <http://digitalcommons.unl.edu/dissertations/AAI3147134/> (describing a study of two different online law school course offerings in which teachers and students reported results consistent with the description offered by the author here from twelve years’ worth of personal, weekly experience).

<sup>21</sup> These courses were further enhanced by adding a real-world deliverable—a client memorandum in one and a bench memorandum for an appellate judge in the other—both of which require original research, and are returned with extensive “Track Changes” commentary from the author. They are then discussed in an individual, extensive online conference, finally resulting in a substantial second draft (i.e., “re-write”) by putting the author’s comments to work in pursuit of holistic improvement. These courses therefore satisfy the upper-division writing requirement adopted by the faculty at the author’s law school, which itself had been crafted by the faculty in response to ABA Standard 302. See Kenneth D. Chestek, *MacCrate (In)Action: The Case for Enhancing the Upper-Level Writing Requirement in Law Schools*, 78 U. Colo. L. Rev. 115, 118–19, 121–25 (2007) (discussing the 2001 amendment to Standard 302, “requiring, for the first time, ‘at least one additional rigorous writing experience after the first year.’”) (quoting Am. Bar Ass’n Sect. of Legal Educ. & Admissions to the Bar, *Standards for Approval of Law Schools* 24 (2001)). The author was particularly attentive to ensuring that the writing experiences met the stipulation of the 2005 amendment to Standard 302 making it clear that the writing is to be done “in a legal context,” i.e., through the research, writing, and revision of a real-world client or legal workplace deliverable. *Id.* at 140–45.

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programs (e. g., Juris Doctorate programs in the U. S.),<sup>22</sup> as well as in graduate law degree programs (e. g., the LL. M. degree in the U. S.<sup>23</sup> and a number of other countries<sup>24</sup>including Canada<sup>25</sup> and Scotland.<sup>26</sup>

Online components to legal education have grown.<sup>27</sup> They have become part of the accepted practice<sup>28</sup> – as reflected in the ABA Standards which, over the last 15 years, have increased the allowed distance learning hours toward a J. D. degree from zero to six to the current twelve,<sup>29</sup> with fifteen hours adopted in a revision to the Standards<sup>30</sup> that is set to go into effect next year

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<sup>22</sup> See, e.g., Perlin, *supra* note 6; Daniel C. Powell, Five Recommendations to Law Schools Offering Legal Instruction over the Internet, 11 J. Tech. L. & Pol'y 285 (2006); Cahak, *supra* note 6.

<sup>23</sup> See William H. Byrnes, A Review of the Development of an Internet Delivered LL.M Program in the United States, J. Info. L. & Tech. (2001), [http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2001\\_3/byrnes/](http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2001_3/byrnes/) (“[O]nline legal education is not only inevitable, but in fact [it is] already here in the United States . . .”); see also Perlin, *supra* note 6, at 106.

<sup>24</sup> See LLM Program Search, LLM Guide, <http://www.llm-guide.com> (search “LL.M. Distance Learning”) (providing a long list of law schools around the world that offer distance learning courses).

<sup>25</sup> See Professional LLM Program, Osgoode Hall L. Sch., <http://www.osgoodepd.ca/pt-llm.html>

<sup>26</sup> See Online Distance Learning, University of Edinburgh, Edinburgh Law School, [http://www.law.ed.ac.uk/teaching/online\\_distance\\_learning/llm\\_degrees](http://www.law.ed.ac.uk/teaching/online_distance_learning/llm_degrees)

<sup>27</sup> See Henry H. Perritt, Jr., The Internet is Changing the Face of American Law Schools, 33 Ind. L. Rev. 253, 266–67 (1999).

<sup>28</sup> See e.g., Michael Heise, Closing One Gap but Opening Another?: A Response to Dean Perritt and Comments on the Internet, Law Schools, and Legal Education, 33 Ind. L. Rev. 275, 285–86 (1999).

<sup>29</sup> Diana L. Gleason, Distance Education in Law School: The Train Has Left the Station 2 (BEPress Legal Series, Working Paper No. 1762, 2006), available at <http://law.bepress.com/expresso/eps/1762> (noting that “the American Bar Association (ABA) Standard 306 on Distance Education stands firm since 2002, allowing just 12 hours of online instruction towards a J.D., and then only after a student has completed 28 credit hours of instruction,” and observing that “the change from zero to 12 units allowed toward a J.D. was a watershed decision that required a great deal of study and discussion”).

<sup>30</sup> Am. Bar Ass’n Section of Legal Educ. & Admissions to the Bar, Redline Draft after November 2011 Meeting, Standard 311(f) (Proposed Draft 2011), available at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/legal\\_education/committees/standards\\_review\\_documents/jan2012/20111222\\_standards\\_chapters\\_1\\_to\\_7\\_post\\_nov11\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/jan2012/20111222_standards_chapters_1_to_7_post_nov11_authcheckdam.pdf); see also Helen Leskovic, Distance Learning in Legal Education: Implications of Frame Relay Videoconferencing, 8 Alb. L.J.

after it was approved this summer by the ABA's governing body, the House of Delegates.<sup>31</sup> While not as rapid as it had been hoped, the opening of the accreditation body's collective mind to online legal education will result, sooner rather than later, in the accreditation of an entirely online law school.<sup>32</sup> The process begins not only with the ABA's recognition of online courses for credit towards the J. D. degree and its increase of the standard to permitting 15 credit-hours of purely online instruction, but also with the ABA's approval of William Mitchell College of Law's hybrid online/ground campus J. D. program<sup>33</sup>, which is the first to receive such approval in the U.

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Sci. & Tech. 305, 323–24 (1998) (noting that before 1997, “[t]he Standards specifically prohibit distance learning in its earliest form of correspondence study,” and that “[c]onsequently, before a law school could experiment with distance learning programs using computer and telecommunications technologies, it had to seek a waiver or approval from the Accreditation Committee of the A.B.A.’s Section on Legal Education and Admission to the Bar or the Consultant on Legal Education,” but that in 1997, “[t]o facilitate experimentation, the A.B.A. . . . proposed Temporary Distance Education Guidelines, which waive the necessity of prior approval in most cases”); A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 Wash. & Lee L. Rev. 1949, 1999 n.195 (2012) (noting the ABA's accreditation Standards Review Committee has proposed expanding to 15 hours the amount of online coursework creditable towards the J.D. degree). But see Perritt, *supra* note 26, at 271 (noting that while the ABA encourages experimentation, it prefers in-class experiences over other mediums). See generally A.B.A. Standards and Rules of Procedure for Approval of Law Schools § 306. .

<sup>31</sup> Tony Mauro, *ABA Delegates Approve Law School Reforms*, Nat'l L.J. 12 August 2014, at <http://www.nationallawjournal.com/id=1202666475781/ABA-Delegates-Approve-Law-School-Reforms#ixz-z3ABk41aN0>. Mr. Mauro's article notes that the Delegates approved a package of amendments to the ABA's Standards for the Accreditation of American Law Schools to, among other things, “allow students to take up to 15 credit hours of distance courses, up from 12.” *Id*

<sup>32</sup> See, e.g., Nick Dranias, *Past the Pall of Orthodoxy: Why the First Amendment Virtually Guarantees Online Law School Graduates Will Breach the ABA Accreditation Barrier*, 111 Penn St. L. Rev. 863 (2006-2007).

<sup>33</sup> See <http://web.wmitchell.edu/admissions/hybrid-program/>. A press release from the school summarized the details: Students who enroll in the new hybrid program will be on campus for at least one week each semester participating in 56 intensive hours of realistic simulations and other coursework. Students will prepare for their on-campus work through an e-learning curriculum designed by William Mitchell faculty to integrate legal doctrine with practical legal skills. In addition, students will have the opportunity to complete externships in their communities under the supervision of practicing attorneys. This innovative hybrid of on-campus and online learning will provide new access to those seeking a rigorous, experiential J.D. degree from an ABA-ac-

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S., but won't be the last.<sup>34</sup> Courts in states presently without online law schools are starting to recognize the online J. D.<sup>35</sup>

As a result, online legal education has grown to offer opportunities to enhance ground-based legal education programs in numerous ways.<sup>36</sup> The growth in online education in law schools should not be confused with what has been the most visible and public face of distance-learning – and at the same time, one of the least effective forms of online education for law students – the currently popular talking

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credited law school.

<http://web.wmitchell.edu/news/2013/12/william-mitchell-to-offer-first-aba-accredited-hybrid-on-campus-online-j-d-program/> To offer the program with an online content in excess of the ABA's (at-the-time) standard of counting only 12 online-earned credit hours towards the J.D. degree, "William Mitchell received a variance from the American Bar Association allowing it to combine its nationally recognized skills-training curriculum with expanded use of digital technology." *Id.* Because of that variance, the new program will be able to make a large part of that program "available through distance learning, including live and pre-recorded online lectures, web-based student-to-student assessment, moderated online discussion forums, and live chat," for a total of "about 50 percent of its curriculum via e-learning technology" *Id.*

<sup>34</sup> Lorna Collier, *New Partially Online Law Degree May Open Door To Similar Programs*

*A New Half Online, Half On-Campus Law Program Is The First To Get A Nod From The American Bar Association*, U.S. News & World Report, 25 June 2014, at <http://www.usnews.com/education/online-education/articles/2014/06/25/new-partially-online-law-degree-may-open-door-to-similar-programs>; Abigail Cahak, Note, *Beyond Brick and Mortar: How (Cautiously) Embracing Internet Law Schools Can Help Bridge the Legal Access Gap*, 2012 U. Ill. J.L. Tech. & Pol'y 495, 499-501 (2012)

<sup>35</sup> The most noteworthy published case to date is *Mitchell v. Board of Bar Examiners*, 897 N.E.2d 7 (Mass. 2008). Until the ABA decides to formulate and issue a comprehensive set of online J.D. accreditation standards, online graduates outside of California will continue to have to seek a waiver of various states' requirement that bar-exam eligibility depends on holding a J.D. degree from a school appearing on the ABA's list of Approved Schools. See, e.g., *In the Matter of Batterson*, 286 Ga. 352 354, 687 S.E.2d 477, 479 (2009) ("Certainly, this Court is cognizant that current technology has provided additional means by which students may pursue a legal education, and students such as Batterson are not precluded from admission to the bar. The Board's procedures provide the opportunity to show good cause that the traditional educational requirements should be waived.").

<sup>36</sup> See *Online, Distance Legal Education*, *supra* note 18 at 99–100 (describing the successful mental disability law program at NYLS); see also Gleason, *supra* note 28, at 5–9 (listing several advantages to integrating online learning into a course's curriculum).

head approach of online education, called Massive Open Online Courses (MOOCs),<sup>37</sup> which are little more than the old “large lecture hall approach,” lacking the kind of interactive and individualized learning that lawyers both need and want, and providing them but little insight.<sup>38</sup> The key to legal education, whether it takes place in an online campus or on a ground-based campus is interactivity, not passive learning.<sup>39</sup>

### B. Disruptive Change/Disruptive Innovation

“Disruptive change,” or “disruptive innovation” as it is sometimes called, is a concept that has entered into the dialogue about college and graduate-school education. Distilled to its essence, disruptive change “is the process by which a sector that has previously served only a limited few because its products and services were complicated, expensive, and inaccessible, is transformed into one whose products and services are simple, affordable, and convenient and serves many no matter their wealth or expertise.”<sup>40</sup>

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<sup>37</sup> Nora V. Demleitner, *The Challenges to Legal Education in 1973 and 2012: An Introduction to the Anniversary Issue of the Hofstra Law Review*, 40 *Hofstra L. Rev.* 639, 650 (2012) (describing MOOCs as a way for law schools to join “the online market and mak[e] their best faculty and lecturers available to a broad audience across the globe”).

<sup>38</sup> See, e.g., Philip G. Schrag, *MOOCs and Legal Education: Valuable Innovation or Looming Disaster?* *Vill. L. Rev.* (forthcoming 2013) (recognizing that MOOCs would have to be supplemented by considerable, small-group, on-site work under mentor supervision in order to be viable in legal education). Cf. Jacob J. Walker, *Why MOOCs Might Be Hindered by the Definition of Correspondence Education*, *Soc. Sci. Res. Network eJournal* (Jan. 28, 2013), <http://ssrn.com/abstract=2208066> (acknowledging that “MOOCs don’t necessarily have a lot of interaction with the instructor, as the instructor has often been pre-recorded, and cannot interact with each of the hundreds of thousands of students who enrolled”). See generally Todd E. Pettys, *supra*, note 134 (discussing MOOCs in a broader context of technology in legal education); Warren Binford, *Envisioning a 21st-Century Legal Education*, 41 *Wash. U. J.L. & Pol’y* (forthcoming 2013), available at <http://ssrn.com/abstract=2280250>.

<sup>39</sup> Jeffrey A. Van Detta, *Collaborative Problem Solving Responsive to Diverse Learning Styles: Labor Law as an Active Learning Experience*, 24 *N.C. Central U. L.J.* 46 (Fall 2001).

<sup>40</sup> C.M. Christensen, M.B. Horn, L. Caldera, & L. Soares, *Disrupting College: How Disruptive Innovation Can Deliver Quality and Affordability to Postsecondary Education at 2* (Center for American Progress & Insight Institute 2011)(hereafter, “*Disrupting College*”, available for down-

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“Disruptive change” operates “by redefining quality in a simple and often disparaged application at first and then gradually improves such that it takes more and more market share over time as it becomes able to tackle more complicated problems.”<sup>41</sup> Recently, commentators have used the theory of disruptive innovation in evaluating the changes that technology brings to the provision of legal services in the United States.<sup>42</sup> A similar phenomenon, driven by digital and internet technologies, has been recognized in the college and graduate school sector generally, and is the subject of an emergent discussion in legal education<sup>43</sup>.

Within six weeks after the conclusion of our international legal education conference in Istanbul and Ankara, the *Economist* magazine featured a cover story on the disruptive

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loading from [http://www.wlu.ca/documents/51318/Disrupting\\_College\\_article\\_by\\_Christensen.Horn.Soares\\_and\\_Caldera.pdf](http://www.wlu.ca/documents/51318/Disrupting_College_article_by_Christensen.Horn.Soares_and_Caldera.pdf). As another scholar has described “disruptive innovation”:

Periodically, our economy generates these “disruptive innovations. Joseph Bower and Clayton Christensen introduced the idea to describe new technologies that undermine and eventually displace established products, firms, or even entire industries. Iconic examples include automobiles, personal computing, and cellular phones. But the idea’s explanatory power extends to many other products and industries. As a result, disruption theory has inspired prolific writing in the business academy and now creeps into other disciplines.

Nathan Cortez, *Regulating Disruptive Innovation*, 29 *Berkeley Tech. L.J.* 175, 177 (2014) (citing Joseph L. Bower & Clayton M. Christensen, *Disruptive Technologies: Catching the Wave*, *Harv. Bus. Rev.*, Jan.-Feb. 1995, at 43, 45 (1995)); see generally Clayton M. Christensen, *The Innovator’s Dilemma: When New Technologies Cause Great Firms to Fail* (1997).

<sup>41</sup> *Disrupting College*, supra n. 31, at 2.

<sup>42</sup> See Worthy Ray Campbell, “Rethinking regulation and innovation in the US legal services market, 9 *NYU J. L. & Bus.* 1 (2012)..

<sup>43</sup> See, e.g., See Michele R. Pistone & John J. Hoeffner, *No Path But One: Law School Survival In An Age Of Disruptive Technology*, 59 *Wayne L. Rev.* 193 (2013); J. Robert Brown, Jr, *Law Faculty Blogs and Disruptive Innovation*, 2 *J. Legal Metrics* 525, 526 (2012) (discussing faculty blogs as a disruptive innovation that initially “were perceived as an inferior technology used by faculty to convey random, often personal, “ but which have, over time, having become “[w]idely read [and] regularly cited” palpably “altered the continuum of legal scholarship and reduced the role of traditional law reviews”) (footnotes omitted); Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 *Santa Clara L. Rev.* 1 (2002).

change that technology is bringing to higher education.<sup>44</sup> The authors observe that change is afoot in higher education, driven by three factors. First, by cost: “Higher education suffers from Baumol’s disease—the tendency of costs to soar in labour-intensive sectors with stagnant productivity.”<sup>45</sup> Second, by change in the labor market:

In the standard model of higher education, people go to university in their 20s: a degree is an entry ticket to the professional classes. But automation is beginning to have the same effect on white-collar jobs as it has on blue-collar ones. According to a study from Oxford University, 47% of occupations are at risk of being automated in the next few decades. As innovation wipes out some jobs and changes others, people will need to top up their human capital throughout their lives.<sup>46</sup>

But it is technology that is proving to be, as the great American baseball player Reggie Jackson is said to have once described himself, “the straw that stirs the drink.”<sup>47</sup> As the *Economist* puts it,

By themselves, these two forces would be pushing change. A third—technology—ensures it. The internet, which has turned businesses from newspapers through music to book retailing upside down, will upend higher education.<sup>48</sup>

The *Economist’s* vision, however, is a bit skewed in perceiving MOOCs as the most important technology that will bring

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<sup>44</sup> Higher Education: Creative Destruction—A Cost Crisis, Changing Labour Markets And New Technology Will Turn An Old Institution On Its Head, *Economist*, 28 June 2014 [hereinafter, Creative Destruction], available at <http://www.economist.com/news/leaders/21605906-cost-crisis-changing-labour-markets-and-new-technology-will-turn-old-institution-its>

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Dave Anderson, Earn Those Pinstripes, *Reggie*, N.Y. Times, 26 May 1977, at D15.

<sup>48</sup> Creative Destruction, supra n. 43.

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disruptive change. As discussed below in Section II. A, *supra*, MOOCs won't have that kind of impact in legal education – or in credible business-school education, as a recent debate about the direction of Harvard Business School's first major online expansion has demonstrated.<sup>49</sup> In commenting on choice of approaches, the Business School's dean captured precisely why the MOOC-approach absolutely has no value – no value whatsoever – in delivering American-style legal education:

The dean had taken a wait-and-see approach – until 18 months ago, when his own university announced the formation of edX, an open-courseware platform that would hitch the overall university firmly to the MOOC bandwagon.

He said he remembered listening to an edX presentation at an all-university meeting. "I must confess I was unsure what we'd be really hoping to gain from it," he said. "My own early imagination was: 'This is for people who do lectures. We don't do lectures, so this is not for us.' " In the case method, concepts aren't taught directly, but induced through student discussion of real-world business problems that professors guide with carefully chosen questions.<sup>50</sup>

Indeed, in developing their online program, Harvard Business School's Dean, Nitin Nohria, observed that "[w]e don't do lectures." "Part of what had already convinced me that MOOCs are not for us is that for a hundred years our education has been social," Dean Nohria observed. Thus, the Business School embraced the challenge to offer a much more sophisticated platform – one that met the "challenge ... [of] invent[ing] a digital architecture that simulated the Harvard Business School classroom dynamic without looking like a classroom."<sup>51</sup> Unlike the MOOC, the Harvard Business

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<sup>49</sup> Jerry Useem, *Business School, Disrupted*, N.Y. Times, 1 June 2014, at BU1, also available for download at <http://www.nytimes.com/2014/06/01/business/business-school-disrupted.html>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*



Schoolplatform “replicate[s] the Harvard Business School discussion-based style of learning.”<sup>52</sup> In accomplishing that end, the Harvard Business School architects of the online platform have created what sounds like an incredibly and dazzlingly more sophisticated realization of Robin Widdison’s futuristic vision of 1994.

Thus, as discussed in detail in Section III, *infra*, it is other internet and digital technologies which are bringing change to legal education, rather than the MOOC. Nonetheless, if we simply broaden our perspective on the disruptive technologies beyond the MOOC, the *Economist’s* observations about the nature and extent of the disruptive change in higher education are equally applicable to the world of legal education:

Now the MOOC, or “Massive Open Online Course”, is offering students the chance to listen to star lecturers and get a degree for a fraction of the cost of attending a university.

MOOCs started in 2008; and, as often happens with disruptive technologies, they have so far failed to live up to their promise. Largely because there is no formal system of accreditation, drop-out rates have been high. But this is changing as private investors and existing universities are drawn in. One provider, Coursera, claims over 8m registered users. Though its courses are free, it bagged its first \$1m in revenues last year after introducing the option to pay a fee of between \$30 and \$100 to have course results certified. Another, Udacity, has teamed up with AT&T and Georgia Tech to offer an online master’s degree in computing, at less than a third of the cost of the traditional version. Harvard Business School will soon offer an online “pre-MBA” for \$1,500. Starbucks has offered to help pay for its staff to take online degrees with Arizona State University.

MOOCs will disrupt different universities in different ways. Not all will suffer. Oxford and Harvard could benefit.

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<sup>52</sup> Id.

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Ambitious people will always want to go to the best universities to meet each other, and the digital economy tends to favour a few large operators. The big names will be able to sell their MOOCs around the world. But mediocre universities may suffer the fate of many newspapers. Were the market for higher education to perform in future as that for newspapers has done over the past decade or two, universities' revenues would fall by more than half, employment in the industry would drop by nearly 30% and more than 700 institutions would shut their doors. The rest would need to reinvent themselves to survive.<sup>53</sup>

Of course, "[l]ike all revolutions, the one taking place in higher education will have victims."<sup>54</sup> However, the disruptive change in higher education "does promise better education for many more people," which will create an occasion of which the *Economist* observed, "[r]arely have need and opportunity so neatly come together."<sup>55</sup> The *Economist* quotes *The Idea of a University*, "published in 1858," in which "John Henry Newman, an English Catholic cardinal, summarised the post-Enlightenment university as 'a place for the communication and circulation of thought, by means of personal intercourse, through a wide extent of country,'" and most aptly observes that "[t]his ideal still inspires in the era when the options for personal intercourse via the internet are virtually limitless."<sup>56</sup> The disruptive change brought by digital and internet technologies are resulting in an array of technologies that enable new teaching techniques to be implemented, and the aggregate of these advancements create synergies that enable more and more sophisticated subjects to be delivered to students entirely online. In this way, the digital and internet

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<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> Id.

<sup>56</sup> The Future Of Universities – The Digital Degree: The Staid Higher-Education Business Is About To Experience A Welcome Earthquake, *Economist*, 28 June 2014, at <http://www.economist.com/news/briefing/21605899-staid-higher-education-business-about-experience-welcome-earthquake-digital>

technologies creation of disruptive change leads to synergies of convergence, making law schools platforms rather than places. That is the subject explored in the following section.

### III. The Synergies of Convergence

While Concord Law School created an entirely online Juris Doctor degree program that enrolled its first students in 1998, the brick-and-mortar law school world more slowly and tepidly tried to wrap its faculty's collective mind around using online resources originally as a component of on-campus classes, then as a means of delivering a few courses within the curriculum. This, in turn, has led to one American law school introducing what is known as a "hybrid program" in which the program is delivered by a combination of online and on-campus instruction.

Meanwhile, Turkish law faculties are also beginning to offer online coursework<sup>57</sup>, following in the footsteps of the institution that is leading the way in the provision of online education, Anadolu University. A recent article in English observed several very notable – and yet-to-be well-known – attainments of that institution:

When [Professor J. S. ] Daniel researched the mega-universities – those distance education institutions with enrolments of over 100,000 that have so dramatically increased participation while markedly reducing costs – he was surprised to discover that Turkey had the greatest proportion of university students enrolled in distance education in the world. He was equally surprised to find that, in terms of degree-level students, the relatively unknown dual-mode Anadolu University . . . was one of the world's largest universities. Visiting the campus in Eskişehir in central Anatolia to study the Open Education System, he found that the Open Education

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<sup>57</sup> This observation is based primarily on interchanges between panelists and law-school faculty in the audience in the Ankara session of the International Legal Education Conference that the author attended in May 2014. See note 2, *supra*.

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Faculty (OEF) staff were acutely aware of global developments in distance learning and displaying leadership in technology development.<sup>58</sup>

Law faculty in Turkey will be following closely the ways in which Anadolu University meets the challenges that the authors described for it:

Anadolu University has successfully provided distance education for Turkish people in Turkey, across Europe and in Northern Cyprus since the early 1980s. The size, diversity and distribution of the student body and associated technological, logistical, legal and political issues present enormous challenges to the Open Education System. Anadolu is now improving its educational products and services through e-transformation and by employing new instructional models in its undergraduate, graduate and e-certificate programmes. However, there are still many issues to consider; how to prepare the learners for self-managed, collaborative, technology-based learning; how to train faculty in the new technologies, methodologies and research practices; how to persuade politicians and administrators to write legislation and bills that will support open education; and how to improve the technological infrastructure and services.<sup>59</sup>

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<sup>58</sup> Colin Latchem, Ali Ekrem Özkul, Cengiz Hakan Aydın, & Mehmet Emin Mutlu, *The Open Education System, Anadolu University, Turkey: e-Transformation In A Mega-University*, 21 *Open Learning* 221 (Routledge 2006); Kamil Cekerol, *The Demand For Higher Education In Turkey And Open Education*, *Turkish Online Journal of Distance Education-TOJDE* 11:3 (2012), available at [www.tojet.net/articles/v11i3/11332.pdf](http://www.tojet.net/articles/v11i3/11332.pdf). For an informative account of the history of distance education in Turkey, see the article by Assistant Professor Dr. Nursel Selver Ruzgar, *Technical Education Faculty Marmara University, Distance Education in Turkey*, *Turkish Online Journal of Distance Education-TOJDE* 5:2 (2004), available at <https://tojde.anadolu.edu.tr/tojde14/articles/ruzgar.htm> (noting that "Ankara University-Law Faculty-Bank and Trade Law Research Institute started the first concrete and significant application on distance education in Turkey in 1956. With this application, the bank personnel were trained with letters. In 1961, the Education Center With Letter was established under the management of Ministry of National Education, and at this Institute, the preparatory courses were given with letters to the persons who wanted to complete their educations from outside.")

<sup>59</sup> *Id.* at 233-234.

Distance learning in higher education, and online classroom environments, are still in an emergent state in Turkey – although observers on the scene have commented that “[a] number of universities are now introducing e-learning into their on-campus and off-campus programs, but there is a lack of instructional design expertise, and the universities mostly produce digital versions of existing teaching materials rather than new and effective e-learning environments”<sup>60</sup> – but the synergies of convergence may eventuate in a rapid acceleration in Turkey’s e-learning sector.

Some in the legal education field have declared a state of perfection to have thereby been reached, suggesting that the optimized program of legal education has been attained and will always be hybrid – never entirely, or even primarily, online. The author disagrees, and profoundly so. One is reminded of the 1907 American Nobel laureate’s proclamation that “The more important fundamental laws and facts of physical science have all been discovered, and these are so firmly established that the possibility of their ever being supplanted in consequence of new discoveries is exceedingly remote.”<sup>61</sup> (We all know how well *that* statement has stood the test of time!)<sup>62</sup> Legal education has discovered online delivery, and having unleashed the Promethean fire, that discovery continues to advance – and its ultimate destination is not as the handmaiden to the traditional brick-and-mortar law school. Thus, while some have argued that a hybrid approach is the *way* of the future<sup>63</sup>, I take the view that it is but a *waystation*

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<sup>60</sup> Colin Latchem, Nurettin Simsek Ozlem Cakir Balta, Orhan Torkul, I. Hakkı Cedimoglu, & Alpaslan Altunkopru, Are We There Yet? A Progress Report from Three Turkish University Pioneers in Distance Education and E-Learning, *Int’l Rev. Research in Open & Distance Learning* 10:2 (April 2009), available at <http://www.irrodl.org/index.php/irrodl/article/view/686/1220>

<sup>61</sup> Albert A. Michelson, *Light Waves And Their Uses*, 23-25 (U. Chicago Pr. 1903).

<sup>62</sup> See, e.g., Gerald Holton, Einstein, Michelson, and The “Crucial” Experiment, *60 Isis* 137 (1969).

<sup>63</sup> In addition to remarks at the Ankara session of the Legal Education in the 21st Century conference, see notes 2-6, *supra*, see also Gerald F. Hess,

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on the road to legal education's transformative future – as an education delivered *primarily* online.

The vision painted below draws both from Robin Widdison's amazing 1994 article, as well as my own experience designing and teaching law courses online, both synchronously and asynchronously, for the last thirteen years.

The variety of digital information and communications technologies that have been refined over the last 20 years are converging in their application to higher education. Concomitantly, the technologies are being brought to bear on the problems and challenges facing legal education and the legal profession in the 21<sup>st</sup> century. The synergies of this convergence will revolutionize legal education in a way more dramatic and more long-lasting than the "case method" of Christopher Columbus Langdell.<sup>64</sup> The result will not be a hybrid approach, in which law schools as currently configured will sit comfortably in the Langdell model of American legal education<sup>65</sup> or in the undergraduate, Continental model of Turkish legal education<sup>66</sup>, with these technologies

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Blended Courses In Law School: The Best Of Online and Face-to-Face Learning?, 45 McGeorge L. Rev. 51 (2013); Joseph Rosenberg,, Confronting Clichés in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills, 12 SMU Sci. & Tech. L. Rev. 19, 21 (2008)

<sup>64</sup> Bruce Kimball, "Warn Students That I Entertain Heretical Opinions, Which They Are Not to Take as Law": The Inception of Case Method Teaching in the Classrooms of the Early C.C. Langdell, 1870-1883, 17 Law & Hist. Rev. 57 (1999); Russell Weaver, Langdell's Legacy: Living with the Case Method, 36 Vill. L. Rev. 517 (1991).

<sup>65</sup> Edward Rubin, What's Wrong With Langdell's Method, And What To Do About It, 60 Vand. L. Rev. 609 (2007)

<sup>66</sup> See, e.g., Julian Lonbay, Experts' Report on the Legal Education and Training System in Turkey, at 20 (August 14, 2009), available at SSRN: <http://ssrn.com/abstract=1677818>; Sulhi Donmezer & Feridun Yenisey, The System of Legal Education and Training in Turkey, 43 S. Tex. L. Rev. 717 (2001-2002); Elliot E. Cheatham, Legal Education in Turkey: Some Thoughts on Education for Foreign Students, 2 J. Legal Ed. 21 (1949); see also Simone Benvenuti, Judicial Training in Turkey in Light of Constitutional Traditions and Europeanization, 4 J. Civ. L. Stud. 309, 324 (2011). For a recent overview of Turkish legal education as presented to prospective international students, see Türkiye Bursları Scholarships, Why Law School In Turkey?, <http://www.turkiyeburslari.gov.tr/index.php/en/>

as mere appurtenances. Rather, the synergies realized by the convergence of these technologies will forever alter the very notion of what a “law school” *is*. To my delight when I discovered it, Widdison’s view of the future described the law school of the future in exactly this way:

The phrase ‘law school’ no longer brought to mind a clear-cut, geographical location. For example, both academic and support staff invariably worked from home these days. Video-linking obviated the need for expensive office accommodation and time wasted in travelling to and from work.<sup>67</sup>

The erosion of law school as a place will be due to the incredibly liberating effect that the synergies of convergence will bring to the entire legal education process. Those synergies will not merely permit online legal education. The advantages arising from those synergies will mandate it. And it is from this fountainhead that law schools will cease to be primarily “places”. Instead, they will become “platforms” for legal education, offered with a student-centeredness and flexibility that the mind of Langdell could never have comprehended in 1870 – and that many law school deans and boards even now find incomprehensible. But come it will – and they’d best be prepared, or they will end up<sup>68</sup> like the weavers of Scotland, driven to poverty and commercial extension by their defiance of the industrial revolution’s reality.<sup>69</sup>

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<sup>67</sup> Robin Widdison, *Virtual Law School*, 8 *Int’l Rev. L. Comp. & Tech.* 185, 190 (1994)

<sup>68</sup> See Pistone & Hoeffner, *supra* note 42.

<sup>69</sup> See, e.g., Norman Murray, *The Scottish Hand Loom Weavers, 1790-1850: A Social History* (1978); see also Neil J. Smelser, *Social Change in the Industrial Revolution: An Application of Theory to the British Cotton Industry*, at 129-157 (Routledge 2013)(reprint of 1959 ed.). I owe great thanks to my colleague, Professor Liza Karsai, who pointed out the potential analogy to me as she spoke to me generously about her research into this period during her year in residence (2013-2014) researching and writing her LL.M. thesis at the University of Edinburgh, under the supervision of Dr. John W. Cairns. See <http://www.law.ed.ac.uk/people/johnwcairns>

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### ***A. Location Becomes Global; Localization Becomes Irrelevant***

Much of the challenge for those seeking a legal education outside of the largest of urban centers is that they have been forced by the brick-and-mortar concept of the law school to localize themselves in order to be near the physical location of the law school. As Widdison foresaw it, however, law students of the future will no longer be forced to upend their lives to relocate physically for law school; nor, on the other hand, will they have to limit their choices of school based solely on their proximity because of life limitations that make physical relocation untenable. Rather, the law school of the future – while maintaining rigorous academics – overcame the myth that rigor can only be found in drafty, garishly lighted classrooms. The student is no longer compelled to meet the school on the school's terms. The school has been intentionally designed to meet the student on her terms—while providing rigorous academics, the school no longer purveyed the utter fiction that a campus setting optimizes learning. In so doing, the future law school makes good on the commitment to open the profession even further, and to thereby make it more representative of the people it serves. Widdison describes how this works for his typical law student of the future, a bright, nonconformist he called Zena:

Zena was most definitely human. As a person, she had always been inclined to be rather hedonist by nature. This showed up in her school reports as frequent comments to the effect that she was high on intelligence but low on motivation. And that just about summed it all up. For her, life had been what happened before, after, but never during school hours. Towards the end of this first stage of her educational career, she was seldom seen on or even near the school premises by the teachers. Despite an unflinching belief that everything would turn out all right in the end, it had not. Not up to now, anyway. Leaving school at sixteen without any qualifications worth having, she drifted into, and out of, a number of boring,



unsuitable jobs. Eventually, she had met and married Alec. Shortly after, the children had come along.

After the separation and divorce, she had been totally at a loss for a while. To her, it felt as though she was doomed to an eternity of grueling, stuck-at-home, single parenthood. Then, and just for fun, she had followed an interactive careers guidance series on the TV and was very surprised at the outcome. In essence, the advice had been that she should get herself into higher education and seek to qualify as a lawyer. But how could she do this without any decent school qualifications? A one year tele-access course was the way to remedy that problem. At thirty, wasn't she too old to be going back into education? It seemed not. Mature students were actively encouraged to apply and, indeed, made up more than 50 per cent of the student community at most law schools. And, even before Parliament had passed the Age Discrimination Act, law firms had already begun to put a high premium on such qualities as maturity, reliability and pre-existing life experience. But who would care for the children? The advance of educational technology had brought about the situation where students could, for the most part, choose the day, time, place and pace of their studying. It was more possible than it had ever been before to combine the roles of parent and student satisfactorily.<sup>70</sup>

One of the traditional arguments for law school as "a place" was the centrality of the law-school library. Many law schools define themselves by their libraries, but do so in terms of the library as a place, rather than as a resource. However, because the internet has revolutionized how lawyers acquire most of their legal knowledge, imposing an entirely new professional responsibility in keeping abreast of vastly increased quanta of information accessible via the world-wide web, the law library as those of us educated in the 20<sup>th</sup> century knew it will cease to exist in the law school of the future<sup>71</sup>, as Widdison predicts:

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<sup>70</sup> Id. at 188-189.

<sup>71</sup> Concerns of law-library professionals that has been addressed in the

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True, there were still clear, identifiable places on the map where equipment such as the machines holding the library archives and the central mail hub could be found. Come to think of it though, even ‘library’ had become rather an amorphous concept by now. A certain amount of material was indeed held on one machine in one place. But this facility was as much a gateway as a repository in its own right. From the law school library it was now possible to access collections of material spread across the world. In reality, it could be argued that there existed just one enormous, global law library.<sup>72</sup>

Hybrid programs remain limited by the inextricable tether to the brick-and-mortar, both as a place and as an ideology. Widdison’s vision of virtuality does not entirely eliminate any role for the physical gathering – it maintains a small role, and one that is decentralized from the central campus model. Rather, it is much more like the External Degree (now called International Studies Programme) that the University of London has provided since the 1850s – which, for example, allowed Nelson Mandela<sup>73</sup> to study law while imprisoned.

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scholarly literature. See, e.g., Michael Whiteman, *Book Burning in the Twenty-First Century: ABA Standard 606 and the Future of Academic Law Libraries as the Smoke Clears*, 106 *Law Libr. J.* 11 (2014); Genevieve Blake Tung, *Academic Law Libraries And The Crisis In Legal Education*, 105 *Law Libr. J.* 275 (2013); Lawrence Duncan MacLachlan, *Gandy Dancers On The Web: How The Internet Has Raised The Bar On Lawyers’ Professional Responsibility To Research And Know The Law*, 13 *Geo. J. Leg. Ethics* 607 (2000).

<sup>72</sup> *Id.* at 190.

<sup>73</sup> Nelson Mandela studied for the LL.B. degree through the University of London’s External Program while incarcerated at the infamous Robben Island prison. See <http://www.londoninternational.ac.uk/our-global-reputation/our-history/timeline>. As President Mandela wrote about his experience, At 8 P.M., the night warder would lock himself in the corridor with us, passing the key through a small hole in the door to another warder outside. The warder would then walk up and down the corridor, ordering us to go to sleep. No cry of “lights out” was ever given on Robben Island because the single mesh-covered bulb in our cell burned day and night. Later, those studying for higher degrees were permitted to read until ten or eleven. “Robben Island - The Dark Years”, Excerpt From Chapter 61 of Mandela’s autobiography *Long Walk to Freedom* (1994), excerpted at <http://www.pbs.org/wgbh/pages/frontline/shows/mandela/prison/darkyears.html>.

In that model, students study in their home countries and take examinations at correspondent locations in their home countries that are nearby the students.<sup>74</sup> The University of London's external degree programs paved the way for the kind of meaningful interaction that Widdison foresaw as an ingredient of virtual law study - rather than the other way around:

. . . . at the end of each semester, students were required to attend in person at a law school 'study camp'. There they would take part in a week of intensive activities with fellow students and academic staff. Camps could take place at a regional study centre shared by a number of local law schools or, and especially during the summer, could be put on at a hotel either by the sea or in one of the nearby national parks. Free crèche facilities and organized activities for older kids were required by statute. Student-orientated activities at these camps would typically involve short lecture courses by 'big-name' academics, competitive mootings and role-playing games, group problem-solving exercises, visits to local courts, tribunals and law firms and a remarkable amount of socializing. Competitions involving groups would generally involve pitting one student video-conferencing group against another. This provided the benefits of promoting esprit de corps within the groups themselves and fitting the would-be lawyers with the teamwork skills that were so essential in legal practice.

These camps, Widdison envisions, are not done because they are academically necessary - as the advocates of hybrid

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<sup>74</sup> See University of London International Programmes, <http://www.londoninternational.ac.uk/>; Christine Kenyon Jones, "The People's University," 1858-2008: 150 Years Of The University Of London And Its External Students (2008); see also From Imperial To Transnational: Exploring The Legacy Of The University Of London External System Of Open, Flexible And Distance Learning In The Commonwealth Today, [http://wikieducator.org/PCF5:Exploring\\_the\\_legacy\\_of\\_the\\_University\\_of\\_London\\_External\\_system\\_of\\_open\\_flexible\\_and\\_distance\\_learning](http://wikieducator.org/PCF5:Exploring_the_legacy_of_the_University_of_London_External_system_of_open_flexible_and_distance_learning); see also 150th Anniversary of the University of London External System, <http://www.londoninternational.ac.uk/150/history/index.shtml>. The author is also a student enrolled in the LL.M. Degree Program in the University of London's International Programmes.

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programs as panacea might have us believe. Rather, they serve an emotional, rather than an intellectual or academic, function: “the technology was now capable of conducting the student through most of the course without the need for any direct contact with another human at all” yet “the strongest support for maintaining the camp system had come from the customers themselves – the students” because “they enjoyed them.”<sup>75</sup>

B. The Corollaries Of “Mass Customization”: Technological Synergies Will Permit Students Of The Virtual Law School Of The Future To Tailor An Incredible Amount Of Their Education To Their Own needs

The 21<sup>st</sup> century will be remembered for the unprecedented customization of goods and services that business makes available to the individual consumer. “The continuous growth in the level of environmental complexity demands from the organization the pursuit of continuous growth *in* the level of customization,” Mohammed A. Sarlak has observed.<sup>76</sup> “This dependence will create a threshold where customers will be part of the design, production, and management of their own needs, resulting in the generation of highly personalized and customized services and goods.”<sup>77</sup> The phenomenon described by Dr. Sarlak is called “mass customization” – “the ability ‘to customize products quickly for individual customers or for niche markets at a cost, efficiency and speed close to those of mass production, relying on limited forecasts and inventory’”<sup>78</sup> – and it has been recognized to apply to higher

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<sup>75</sup> Robin Widdison, *Virtual Law School*, 8 *Int’l Rev. L. Comp. & Tech.* at 191

<sup>76</sup> Mohammed A. Sarlak, *The Customer-Centric Face Of Organizations in 21st Century: A Management and Business Reference Book* 130 (2010). Dr. Sarlak is an associate professor of public administration at the Payam Noor University in Iran. See <http://www.igi-global.com/affiliate/mohammadali-sarlak/31929>; <http://en.pnu.ac.ir/Portal/Home/>

<sup>77</sup> *Id.*

<sup>78</sup> Farrokh Mistree, Jitesh H. Panchal, & Dirk Schaefer, *Mass-Customization: From Personalized Products to Personalized Engineering Education*, in *Supply Chain Management*, Ch. 9, at 149 (2012)

education.<sup>79</sup> “Educational mass-customization supports personalized learning and thereby the development of diverse knowledge and competencies in a” class, a course of study, and an entire degree-earning education.<sup>80</sup>

The traditional model of legal education – filling large classrooms with a high student-to-teacher ratio—is practiced both in the United States<sup>81</sup> and in Turkey.<sup>82</sup> Writing early in my transition from 13 years as a practicing lawyer to a full-time law teacher, I made a number of observations about the ways in which that system of legal education was inadequate for emergent 21<sup>st</sup>-century needs:

What inspired me to search for ... multifaceted[non-

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<sup>79</sup> Id. In that article, the authors discuss [their] efforts towards adapting the paradigm of mass customization from product development to the domain of engineering education. Our rationale for doing this is anchored in the continuing process of globalization and its ramifications on the education sector. In a world in which change is the order of the day, it no longer makes sense to offer a one-size-fits-all education as the competencies required in the workforce of near tomorrow vary significantly from one individual to another. In addition, there is a worldwide increasing demand for online education to accommodate students that, for a number of reasons, are not able to participate in traditional onsite education. In order to address these challenges, the National Academy of Engineering (NAE) has declared ‘Advance Personalized Learning’ as one of their Grand Challenges, along with, for example, the development of new energy systems. Reflecting on this and relating it to the evolution of product design, the similarities between personalizing products and services in general and educational programs and delivery modes in particular are striking. Hence, [the authors]e decided to apply the paradigm of mass-customization to engineering education and demonstrate how this could be achieved in the context of a graduate design course. Id. at 149-150.

<sup>80</sup> Id. at 150.

<sup>81</sup> See The Origins of American Legal Education: - From Apprenticeship to Lecture Hall to Training Laboratory, <http://www.law.nyu.edu/experientiallearninglab/methods/origins>; sf. Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 *Northeastern U. L.J.* 87 (2013).

<sup>82</sup> See, e.g., Julian Lonbay, *Experts’ Report on the Legal Education and Training System in Turkey*, at 20 (August 14, 2009), available at SSRN: <http://ssrn.com/abstract=1677818> (“University legal education is said to be of a rather theoretical character, lacking any practical application of the law. The personal relationship between the professor and students is mostly lacking and there is relatively little learning in small groups. The classes have a form of formal lectures ex cathedra without any significant interaction on the part of the audience or their active participation in a discussion.”).

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traditional] learning opportunity for my law students? The reason is quite simple. I am privileged to teach law students who will become the representative demographic of many graduating law-school classes of the twenty-first century. The hallmark of these students is their diversity: diversity in culture, race, national origin, sex, age, previous educational opportunities, and learning styles. Graduating these students to become practicing lawyers will shift an anachronistic paradigm that has seen far too many resources educating far too narrow a range of students to work in over-compensated areas of the legal profession that are already saturated, over-lawyered, and over-served. Although such diverse students have often been referred to as “at-risk,” that label is usually misunderstood to denote some shortcoming in the student’s ability. However, “at-risk” students are really those who are harmed by the traditional inflexibility of legal education to respond to students of diverse learning styles with appropriate, diverse teaching techniques.<sup>83</sup>

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<sup>83</sup> Jeffrey A Van Detta, Collaborative Problem-Solving Responsive to Diverse Learning Styles: Labor Law as an Active Learning Experience, 24 N.C. Central U. L.J. 46 (2001)(discussing a class I designed during the summer of 2000 and facilitated in Fall Semester 2000)(footnotes omitted) (footnotes omitted). In the years since I wrote that article, I’ve developed – and taught – over a dozen courses for the online platform. Among those courses is a challenging survey course in American Commercial Law – i.e., the Uniform Commercial Code (UCC). A good example of the synergies that the online platform allows comes from my own course in Commercial Law. I hold 14 live online class sessions, each 2 ½ hours in length. My classes are conducted in a Socratic style, in which I focus on questioning the students about not only the cases we read, as well as answering plentiful questions from the students, but also, on a healthy sampling of short-essay problems from the casebook that I’ve selected for the course. That casebook is the classic, *Problems and Materials on Commercial Law*, published by Aspen in the U.S. and written by the legendary Professor Douglas Whaley of the Ohio State University Moritz College of Law faculty. See *Adventures In The Law School Classroom*, <http://douglaswhaley.blogspot.com/2011/09/adventures-in-law-school-classroom.html>; Douglas J. Whaley, *Teaching Law: Advice for the New Professor*, 43 Ohio St. L.J. 125 (1982). In collaboration with Professor Whaley, he prepared 10 hours of video lectures for this course in 2003, and he re-filmed and updated those lectures in coordination with me during Spring 2013. In addition, I have added 24 practical exercises in reading and applying the UCC, which are submitted for credit and which train the students in the methodology and techniques of effective Code reading and synthesis of Code sections to solve problems. During the course, students write three 2 ½ hour timed analyses of essay-formatted, real-world client problems

And where is the traditional model of legal education fourteen years later? Well, its day is being drawn to a close by the synergies of convergence, which will push legal education into the “mass customization” market that is taking hold in every other sector of commerce and services.

Widdison saw this future quite clearly from his 1994 vantage point; in fact, one of the most impressive characteristics of the virtual law school – one that has yet to be realized but is on its way – is an incredible amount of customization of the program that an array of technologies, coupled with reconceptualized teaching techniques, will make possible.<sup>84</sup> Widdison describes what he calls “the interface,” which is an artificial intelligence that the law student will create and customize to her specific needs, and with careful content programming from the law professors, will be her tutor and her daily study guide through her legal education, providing her with the kind of strategic advice, counsel, and undivided attention that even a law professor’s son or daughter enrolled in law school could not expect to have:

Rob was, of course, the perfect one-to-one tutor for Zena. He had, after all, been preprogrammed to be infinitely patient,

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in commercial law, and these essays are scrutinized closely and commented upon extensively by both an Instructor (who is an experienced practicing lawyer) as well as by myself as the course professor. Our comments are typed directly into each student’s essay answers. Students also take quizzes totaling 60 multiple choice questions over the term, written in the style of the challenging multiple choice questions on the Multistate Bar Examination. Students are thereby very well prepared for the comprehensive final examination at the end of the course. All of this instruction is delivered entirely online. I estimate that over 400 students have taken the course with me in the 11 years I have taught it, and they have gone on to rewarding careers. See Dr. Brenda Ponsford Named Dean Of Henderson School Of Business, 26 March 2013, at <http://www.hsu.edu/interior2.aspx?id=19492>.

<sup>84</sup> Widdison elaborated in more detail on specific technologies and techniques that he predicted will bring an unprecedentedly student-centered learning experience. See Robin Widdison, *Learning Law In The 21st Century*, 8 *Int’l J. L. & Info. Tech.* 166, 192 (2000) (“In whatever way we deploy our machines - whether as information resources, communication devices, or interactive tutors - the potential is there to make a major contribution to learner-centered education and, through that, help to build the learning society.”)

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encouraging and wise. Zena herself had been the one who had selected his gender, his name and his basic personality characteristics from the installation menus right at the beginning of her first semester. At the start, she had dismissively dubbed him 'Robot'. But, within a few days, he had become 'Rob' to her and had remained so ever since. To begin with, she thought that all the claims made in the law school prospectus that Consortium tutor constructs were 'more human than human' was just hype. How could something made up of a few thousand lines of computer code ever be more than just an interface with a face stuck on? But now, when she recollected that there was no real Rob sitting at the other end of the videophone smiling at her, it sent an involuntary shiver down her spine. It was like being told your best friend had accidentally been atomically restructured.

Anyway, Rob himself had evolved a great deal since his installation. The Consortium was strongly committed to this whole 'personality meshing' approach. Each interface constantly evolved and adapted as it learned more and more about the student to whom it had been assigned. It only took a couple of weeks (or so it was claimed) before a tutor construct had developed into the ideal companion and foil for its allotted student. Providing a face and a personality was the easy part, however. It was Microsoft's breakthrough in natural language recognition research at the turn of the century that had really made all the difference. Natural language recognition, coupled with the parallel development of a sophisticated conversation generator, had been the spark that had created life. No more keyboards, mice, touch-screens, barcode readers and all that sort of junkcluttering up the desk. No more artificial barriers between user and machine. Just interpersonal communication as nature - via its servant or agent, Bill Gates - had intended.<sup>85</sup>

In conversing with Bob, her interface to the virtual law school's tutorial technology, Zena reveals an ability to obtain

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<sup>85</sup> Robin Widdison, *Virtual Law School*, 8 Int'l Rev. L. Comp. & Tech. at 187.



tailored learning, practice, advice, counsel, organization, and encouragement that even an Alexander couldn't get with an Aristotle<sup>86</sup>, nor a Benjamin Cardozo with a Horatio Alger<sup>87</sup>:

'So', said Rob, 'what would you like us to do today? Do you want to start by going through a summary of the issues that arose during the offer and acceptance visualization exercise that you did on Friday morning?'<sup>88</sup>

*The offer and acceptance visualization exercise.* It is worthy to note the potential for taking the learning – of offer and acceptance, for example – from the dusty Victorian pages of *Carlill v. Carbolic Smoke Ball Co.*<sup>89</sup>, to a life-like, interactive analysis of real human beings, in human communications, during the course of a business deal. Visualization of legal scenarios is becoming an accepted part of both learning the law, and practicing law.<sup>90</sup> Interactive, internet-based visualization exercises for learning key legal concepts and processes not only enhance the lawyering skills that recent reports on legal education have so heavily emphasized; they also make the learning engaged and interactive in a way that cannot be achieved in large class sections of the brick-and-mortar law school world.<sup>91</sup> Zena's

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<sup>86</sup> Philip Merlan, Isocrates, Aristotle and Alexander the Great, *Historia: Zeitschrift für Alte Geschichte*, Bd. 3, H. 1 (1954), pp. 60-81

<sup>87</sup> Richard Polenberg, *The World Of Benjamin Cardozo: Personal Values And The Judicial Process 18-24* (1997)

<sup>88</sup> Id. at 185.

<sup>89</sup> [1892] EWCA Civ 1, [1893] 1 QB 256.; see A.W. Brian Simpson, *Quackery And Contract Law: The Case Of The Carbolic Smoke Ball*, 14 *J. Leg. Studies* 345 (1985).

<sup>90</sup> See, e.g., Matthew J. McCloskey, Note & Comment, *Visualizing The Law: Methods for Mapping The Legal Landscape and Drawing Analogies*, 73 *Wash. L. Rev.* 163 (1998); Gerlinde Berger-Walliser, Robert C. Bird, & Helena Haapio, *Promoting Success Through Contract Visualization*, 17 *J.L. Bus. & Eth.* 55 (2011); Thomas D. Bartona, Gerlinde Berger-Walliser, & Helena Haapio, *Visualization: Seeing Contracts For What They Are, and What They Could Become*, 19 *J.L. Bus. & Eth.* 47 (2013).

<sup>91</sup> As Professor Berger-Walliser and her co-authors explain it, Rather than reviewing court cases examined elsewhere about ignorance or reluctance to read contracts or the consequences, we inquire into the question of whether visuals can aid individuals to read contracts regardless of their legal background. We also address whether visuals can increase comprehension of key contractual terms. In addition, we consider

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interface suggests that later in her study-day, she tackle a different kind of doctrine-and-skill building activity – a virtual reality game designed by faculty for law students:

“There is a virtual reality game sequence that I know you will enjoy playing. It involves the sale of a second-hand car in defective condition. You play the part of the solicitor for the plaintiff. You have to identify witnesses, question them, research the law, commence proceedings, and appear for your client at the hearing. A full run-through should take you no more than two hours. It’s very realistic. I strongly recommend that you play it. Shall I retrieve it for you?”<sup>92</sup>

I have to remark here that when I read Widdison’s dialogue about the “virtual reality game sequence,” I thought of a comment my son made to me two years ago when he was 10 years old and saw me getting ready to teach an online law class.

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whether such visual scripts can aid the use of contracting processes and documents proactively to promote business success.

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The practice and discipline are far too new and the necessary research far too sparse to argue for a broader implementation. Rather, the purpose of this paper is to discuss the structural weaknesses inherent in traditional commercial contracting, examine the potential of visual contracting, and provide some specific applications where visualization tools might be most effective or most easily applicable in commercial practice. With this work we also hope to bridge the gap between literature on visualization that is gaining momentum amongst scholars in Europe and a North American academy which may be less informed of the power of legal visualization techniques.

Visualization techniques have already been studied to good effect through improving the comprehension of jury instructions via the use of flowcharts or other illustrations, the use of visual and audiovisual evidence in court proceedings, and the use of decision trees to facilitate making complex decisions. Visualization tools might be similarly useful outside the trial scenario. For example, visualization can illustrate whether to sue or settle, by graphically illustrating the options, probabilities, and possible outcomes. The more questions that researchers ask, and the more opportunities that are brought that can possibly benefit from contract visualization, the more rapidly this field will grow beyond its embryonic state into a useful area of study and practice.

17 J. Bus. L. & Eth. at 57-58. Other kinds of visualization focus less on graphics, and more on working through legal scenarios by placing yourself in them and by using metaphoric and analogic techniques to express your evaluation of them. See generally McCloskey, *supra*.

<sup>92</sup> Id. at 186. This kind of practical skills exercise reflects another convergence for which the practicing bar has hoped for over half a century. See, e.g., Louis M. Brown, *The Law Office – A Preventive Law Laboratory*, 104 U. Pa. L. Rev. 940 (1956).

He suggested that I find a way to adapt the popular online “sandbox” video quest game called Minecraft to teach law to my students “because they’d have a lot more fun!” I was startled by the laser-beam accuracy of my son’s observation, and to find that Widdison had himself visualized a similar aspect to the virtual law school two decades earlier was even more amazing to me. Secondary educators share my son’s observation<sup>93</sup>, and the game has captured the attention of serious academic behavioral researchers, who describe it more technically as a “Massively Multi-user Virtual Environment (MMVE)”.<sup>94</sup> It is only a matter of time until Minecraft transcends its common emphasis on “construction and survival” to the introduction of law, as a concept and as a system, to regulate the affairs in that virtual world.<sup>95</sup> The game has already captured the attention of behavioral researchers,<sup>96</sup> and literature has appeared describing how online games—particularly massively open online games (MMOG)—may become integral to law study because they “have the capacity to help people understand when they have a problem that has a legal solution, how that problem can be addressed, and how to find those who are able to assist in addressing it.”<sup>97</sup>

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<sup>93</sup> Jeffrey Brand and Shelley Kinash., *Crafting Minds In Minecraft*, Education Technology Solutions 55, 56-58 (2013), available at <http://epublications.bond.edu.au/tls/53/>; Daniel Short, *Teaching Scientific Concepts Using a Virtual World—Minecraft*, 58 *Teaching Science* 55 (2012); . Beth Bos, Lucy Wilder, Marcelina Cook & Ryan O’Donnell, *Learning Mathematics Through Minecraft*, 21 *Teaching Children Mathematics* 56 (August 2014).

<sup>94</sup> H.A. Engelbrecht & G. Schiele, *Koekepan: Minecraft As A Research Platform*, 12th Annual Workshop on Network and Systems Support for Games (NetGames)(IEEE, 2013).

<sup>95</sup> See, e.g., Sean C. Duncan, *Minecraft, Beyond Construction And Survival, 1 Well Played: a journal on video games, value and meaning* 1 (2011)..

<sup>96</sup> Engelbrecht&Schiele, *supra* note 93.

<sup>97</sup> William E. Hornsby, Jr., *Gaming The System: Approaching 100% Access To Legal Services Through Online Gaming*, 88 *Chi.-Kent L. Rev.* 917, 941, 942-944 (2012-2013); see also Nicola Lettieri, Ernesto Fabiani, Sebastiano Faro, & Rosario De Chiara, *Transmedial Patterns And Design Of Legal Serious Games: A Case Study*, in *eChallenges: e-2011 Conference Proceedings* (Paul Cunningham & Miriam Cunningham eds.)(IIMC International Information Management Corporation, 2011), available for downloading at <http://www.ittig.cnr.it/Ricerca/Testi/lettieri-fabiani-faro-dechiara2011.pdf>.

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But the array of interactive teaching techniques in Widdison's virtuality allows the student even more room to learn what she wants, when she wants to learn it. To her interface's suggestion about the offer-and-acceptance visualization exercise, Widdison's Zena responds:

'No, no. Not yet anyway. I would like to give that stuff more time to sink in. Perhaps we could schedule the summary for tomorrow morning. I would like to give that stuff more time to sink in. I want to begin by doing some basic reading on a brand-new topic. Could you get me, say, the first dozen case reports on the misrepresentation list?'<sup>98</sup>

Not only does the interface do this for her, but it even reminds her of the orientation it gave her previously on this topic, and the suggestion that when she took the topic up in her studies, Zena should "start with the cases on actual misrepresentation and inducement to contract."<sup>99</sup> The interface also brings to her attention contextual reading material that students have found helpful in putting the rules and concepts from misrepresentation and inducement in context, and points out to her that "[b]y the way, I also picked up a couple of articles whilst I was searching the archives. One is a recent Modern Law Review piece by Professor Baker which I think you will find particularly interesting and helpful."<sup>100</sup> The virtual interface also permits Zena to determine interim challenges for herself, and to request - and receive - detailed feedback (rather than merely that which her teachers might offer or impose), as she looks for new challenges and seeks to stretch her emergent case-reading skills:

"I'll start reading the case reports first - full-text form please and don't mark up the 'purple passages' for me yet. I want to look for the relevant bits myself and then have you check them

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<sup>98</sup> Robin Widdison, *Virtual Law School*, 8 *Int'l Rev. L. Comp. & Tech.* at 185-186.

<sup>99</sup> *Id.* at 186.

<sup>100</sup> *Id.*

over for me. Then I'll transfer them to my contract notebook file. After the reading, I would like you to set me up an appropriate rule induction lesson. Then perhaps you can dig out a simple problem-solving exercise. Finally, I will have a look at those articles you found. Maybe we can then have a chat about them until around midday."<sup>101</sup>

Likewise, the interface also suggests additional work for Zena, based on its constant (daily) assessment of her skills, knowledge, and progress, and Zena suggests ways for the interface to tailor that work to her perceptions of her progress:

'Now, do you want me to organize anything for you to do after lunch?' inquired Rob.

'Yes, but what do you think I should do?'

'Well, I suggest that it is about time you tackled some written work. I could find you a suitable problem question if you would like me to.'

'Please make it a bit less complicated than the last one, will you? I really felt out of my depth.'<sup>102</sup>

This is a true dialogue - a meeting of intelligence, both biologically hosted and artificially hosted - to optimize Zena's skills and progress. As Widdison describes it, this is an intentional result, inextricably intertwined with the design of the software for the virtual law school:

Behind it lay the business side of things - the applications software. This comprised some clever programming undertaken by, or for, the Consortium. In essence, the applications part was best conceived of as three major, interlinked components. Firstly, there was a databank which was full to the brim with sets of pre-prepared, learner-orientated exercises covering just about every major topic area in just about every course offered

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<sup>101</sup> Id.

<sup>102</sup> Id.

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by the law schools. All these exercises (and there really were hundreds of them) were catalogued in a multitude of different ways. They were graded according to difficulty and complexity. They were classified according to the predominant technology used – multimedia hypertext, expert system, interactive video, full virtual reality simulation. They were sorted according to the types of skill to be imparted - comprehension, problem-solving, rule-induction, analytical and contextual skills, theorizing etc. And they were classified according to the role they invited the user to take on – law commissioner, legislator, judge, practitioner, academic, client or even law student.

The student always had the first say on which exercises and sets of exercises to do. However, the tutor construct would suggest, advise, strongly recommend, passionately urge or, by default, select which exercises should be undertaken by the student. It really could be remarkably persistent at times. The construct's views on matters like this were informed by such factors as the general ability of the student, his or her level of performance on the course in question and, ultimately, the demands of the course syllabus itself.<sup>103</sup>

The new variety and flexibility introduced by the virtual law school's virtuoso software also opened up entirely more credible and educationally sound means and modes of assessing student performance and progress, assessment tools that far outstrip the traditional "all-or-nothing" final examination that dominated law schools for 150 years:

The second of the three components was the student assessment module. This, the newest and most innovative piece of the applications software, monitored and weighed up every single written or oral word expressed by the student, whether during an exercise, in a pre-prepared contribution to the student video-conferencing group or during any resulting group discussion. Apart from having finally eradicated the

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<sup>103</sup> Id. at 187-188.

need for formal examinations (needless to say, an enormously popular development as far as the students were concerned), this module was able to analyze automatically a student's strengths and weaknesses. It could then constantly plan and replan the approach taken by the construct in order to achieve absolutely maximum educational effect. A student could expect to make rapid and purposeful strides until he or she reached his or her upper level of competence. Thereafter, the approach adopted would be orientated much more towards encouraging and challenging the student to roll back these limits. But if, after a few faltering steps, the student began to get into difficulties, the tutor construct would pick this up immediately and switch into a more remedial style of approach for as long as was deemed necessary. "Two steps forward, one step back" would have made an appropriate motto.<sup>104</sup>

The interface's programmed talents extend beyond the solely academic. Career services have become one of the most important functions within any law school<sup>105</sup>, and thus, the interface's functions, in Widdison's vision, have been extended to that area as well:

Rob smiled. . . . 'Anything else for this afternoon?'

[Zena replied:] 'It would be nice if you could do that talk on legal careers that you offered. I guess it's never too early to start thinking about what I am going to do after graduating.'<sup>106</sup>

The functionalities of the virtual law school's multi-media platform also allow for efficient, creative, and just-in-time scheduling of meetings that bring like-minded students

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<sup>104</sup> Id. at 188.

<sup>105</sup> See, e.g., Sandra L. Mans, *Your Law School Career Services Offices-An Effective Way To Hire*, 70-JUN N.Y. St. B.J. 32 (May-June 1998); John Fisher, *Career Service: Challenges and Changes*, 2004-JUL W. Va. Law. 10; Catherine D. Fitch, *The Placement Search And Employment Opportunities For Law School Graduates*, 29 Stetson L. Rev. 1285, 1288-1289 (2000); see also John H. Garvey, *The Business of Running A Law School*, 33 U. Tol. L. Rev. 37 (2001-2002);

<sup>106</sup> Robin Widdison, *Virtual Law School*, 8 Int'l Rev. L. Comp. & Tech. at 186.

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together in a way that optimizes impact and convenience. For example, in the preceding exchange with her interface, Zena decides not only that she wants a dose of legal career counseling that day, but also, that she'd like to make a group discussion of it with two classmates – who could be located down the street from her, in another state from her, or across the globe from her:

“Perhaps we could turn it into a group discussion. Could you page the other student members of my video-conference group to see if they would like to join in for a little ad hoc chat? I know that Hannah and Steve are at least as keen to get on with this as I am. ”

Rob nodded. “I will see what I can do. ”<sup>107</sup>

Those kinds of video conferencing meetings are business as usual at the virtual law school:

For the students, the tutor constructs were not the only contact points with the law school. During the semester, discussions would be set up involving the members of each video-conferencing group. On average, such a group comprised a dozen students and one or two staff tutors. Discussions would

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<sup>107</sup> Id. The effectiveness of rapid, digital communications systems is a critical component of the virtual law school. As Widdison envisioned it, The third of the three components was a Consortium-inspired adaptation of ‘College Notes’, a Lotus educational groupware package. This application really did a number of things. It handled the one-to-one communications traffic via the law school’s own mail hub. Its tasks included managing the video-calls and electronic mail between student and law school on the one hand, and between student and student on the other. It also dealt with everything to do with the video-conferencing side of things. Finally, there was the matter of two-way communications with the library. Law students, of course, still needed to get at large amounts of policy papers, legislation, case reports, monographs, articles, conference papers, law videos, careers materials etc. Accessing all this stuff, together with the associated file transfers back to the student, was all managed by this groupware application. To facilitate searches amongst the enormous quantities of material to be found in law school, national and international archives, the component made use of one of the latest generation of super-fast, high-powered ‘gophers’. These software devices, which had first started to be widely used in the 1990s, could be sent off to look for and retrieve any requested information completely reliably and automatically. Id. at 188.



either be prearranged according to a central timetable or set up on an ad hoc basis. As to these ad hoc discussions, they might be initiated either by one of the student members of the group, or by one of the tutor constructs. If an interesting new legal development occurred or, if the conferencing activities of any particular group were not going too well, one of the staff tutors might step in and take the initiative. Staff tutors also had an important one-to-one counselling role for the students in their allotted video-conferencing group. They provided this by means of a 'hotline' service whereby any individual student could raise academic or personal problems in confidence by simply 'posting' a note to the tutor's email box. The staff tutor might then email a detailed reply, or, in appropriate cases, propose a face-to-face discussion via the video-link.<sup>108</sup>

The virtual law school indeed is a platform on which legal education transpires, rather than a place to which students must harken and journey in order to receive instruction in law. Technology, and creative and innovative software design will be the great levelers of the notion of law schools<sup>109</sup> as a place and insipid rivalries between law schools and rankings derived from arbitrary and specious, not to omit suspiciously secretive, processes.<sup>110</sup> The fact that the law school will become a platform, rather than a place, opens up a universe of commodious possibilities that are virtually precluded under a balkanized brick-and-mortar law school, bounded as it is by time, space, and a desire for hegemony over other law schools. Widdison describes it this way, from the perspective of the British (undergraduate) LL. B. degree model:

By now, all the law schools in the country offered the eight-semester, combined academic course and vocational

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<sup>108</sup> Id. at 186.

<sup>109</sup> See the authorizes cited in note 42, supra.

<sup>110</sup> See, e.g., Rachel F. Morán, Of Rankings and Regulation: Are the U.S. News & World Report Rankings Really a Subversive Force in Legal Education?, 81 *Indiana L.J.* 383 (2006); Michael E. Solimine, Status Seeking and the Allure and Limits of Law School Rankings." 81 *Ind. L.J.* 299 (2006).

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qualification. Based on full-time study, this type of course could, in theory, be completed in no more than four years. However, a high proportion of undergraduates these days were mature students with existing work and/or family commitments to take into account. Everything had to be arranged so that they were given the maximum flexibility in their study arrangements. It was not uncommon for students to spread the course over five, six or sometimes seven years. Flexibility extended beyond duration into location. Students were free to move from one law school to another (and even a third) during the relevant period.<sup>111</sup>

This flexibility makes it possible for the law student like Zena to “access her system any time she wished, from any videophone and from any place on Earth (or anywhere else for that matter).”<sup>112</sup>

The reconceptualization of “law school” that virtuality occasions does not, however, mean that law faculties are no longer necessary; quite to the contrary, they are more necessary than ever, both to create and constantly update and revise the digital content of the virtual law school, and also to focus their energies more individually on students, which the software

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<sup>111</sup> Id. at 189.

<sup>112</sup> Id. at 189. In addition, the system itself is much less cluttered and clunky than the computer interfaces we’ve known:  
On the desk in front of Zena stood one A5-sized, portable, dark grey box of tricks with can ultra-high resolution colour screen and integral camera lens, a microphone and a couple of on-board microspeakers. It looked just like a modern cellular videophone. Come to think of it, it was a cellular videophone. Talking with your tutor construct was no different from communicating with another human at the other end of the line. No, that was not quite true. It could be very different in some ways. Your construct never said anything tactless or unkind, never told lies (not big ones, anyway) and never ever suffered from a hangover!  
Id. See also, Catherine Dunham & Steven I. Friedland, Portable Learning For The 21st Century Law School: Designing A New Pedagogy For The Modern Global Context, 26 J. Marshall J. Computer & Info. L. 371 (2009) (the authors suggest that “a more portable learning environment would better match the changing world and make legal education more effective” but also caution that “the most significant issue raised by accepting the premise of portability in legal education involves redefining the classroom,” which “raises normative and deep structural issues about legal education generally”).

and the interface makes possible.<sup>113</sup> To that, I must add an observation from thirteen years of simultaneously teaching in the virtual and physical classrooms: the role of the professor in interacting synchronously with groups of students will never be displaced<sup>114</sup>, even by the “Bobs” and other interfaces that may come along. Rather, the role will be enhanced far beyond what it could ever be in the large, cold classrooms of a Langdell Hall.<sup>115</sup> The synchronous, live classroom technology for teaching reasonably-sized groups of students online, and in dialoguing with students individually online, I predict will lead to a protocol of best practices among the effective law schools, which emphasize the personal and individualized contact between professor and learners<sup>116</sup> that students of law and social philosophy enjoyed in the circle of Socrates.<sup>117</sup>

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<sup>113</sup> Id. at 190.

<sup>114</sup> See, e.g., Matt Hlinak, *The Socratic Method 2.0*, 31 *J. Leg. Studies Educ.* 1 (Winter 2014); Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate Of Traditional Law School Methodology In The 21st Century*, 27 *Loy. U. Chi. L.J.* 449 (1995)

<sup>115</sup> A famous Harvard Law School building constructed in 1907 and home to library facilities as well as large classrooms. See *Building Overview: Langdell Hall*, <http://www.law.harvard.edu/prospective/jd/experience/langdell-hall.html>; *Opening of Langdell Hall: New Law School Building Open For Occupancy Next Week*, *Harvard Crimson*, 26 Sept. 1907, at <http://www.thecrimson.com/article/1907/9/26/opening-of-langdell-hall-plangdell-hall/>; Scott Turow, *One L* 40 (1977)

<sup>116</sup> See Florence Martin & Michelle A. Parker, *Use of Synchronous Online Classrooms: Why, Who, and How?*, 10 *MERLOT J. Online Learning & Teaching* 192 (June 2014), available at [http://jolt.merlot.org/vol10no2/martin\\_0614.pdf](http://jolt.merlot.org/vol10no2/martin_0614.pdf); ; Dent, Eric B. and Wharff, Deborah and Blackwell, Jacqueline, *The Individualized Interaction Between Professor and Student in an Online Course*. 25 *Md. Ass'n Higher Ed. J.* 12 (October 22, 2013), available at <http://ssrn.com/abstract=2343476> or <http://dx.doi.org/10.2139/ssrn.2343476>; E.C. Boling, M. Hough, H. Krinsky, H. Saleem, & M. Stevens, *Cutting The Distance In Distance Education: Perspectives On What Promotes Positive, Online Learning Experiences*, 15 *Internet & Higher Ed.* 118 (2012); Spencer C. Weiler, *Quality Virtual Instruction: The Use of Synchronous Online Activities to Engage International Students in Meaningful Learning*, 2 *J. Int'l Educ. & Leadership*. 1 (Summer 2012), available at <http://www.jielusa.org/wp-content/uploads/2012/01/Quality-Virtual-Instruction-Spencer-Weiler.pdf>.

<sup>117</sup> Amy R. Mashburn, *Can Xenophon Save The Socratic Method?*, 30 *Thomas J. L. Rev.* 597 (2008); Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character In Literature*, 33 *Hofstra L. Rev.* 955 (2005). Some have pointed out that what law-school professors in America have referred to as “Socratic method” really isn’t so much Socratic as Protagorean. See William C. Heffernan, *Not Socrates, But Protagoras: The*

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Those who might think otherwise – that the virtual law school threatens to diminish the professorial role in legal education – I fear are those who do not share my vision of what legal education is all about or who do not have the experience that I’ve enjoyed of having, in a manner of metaphorical speaking, one foot planted firmly in the physical classroom and other foot planted firmly in the online classroom throughout the vast majority of my teaching career.<sup>118</sup> I believe that recent developments at Harvard’s business school confirm my contention that the professor, and the discussion method, will remain at the heart of online education for the professions, particularly for the virtual law school. Those developments are the subject of the next subsection.

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Sophistic Basis of Legal Education, 29 *Buff. L. Rev.* 399 (1980). Others have focused on Plato’s Socratic dialogues as demonstrating a variety of teaching techniques. See David H. Calhoun, Which “Socratic Method”? Models of Education in Plato’s Dialogues, in *Knowledge, Teaching And Wisdom*, at 49-70 (Springer Netherlands, 1996). A very informative survey of a spectrum of disciplines and eras in which teaching was claimed to be “Socratic” is provided in Jack Schneider, *Remembrance of Things Past: A History of the Socratic Method in the United States*, 45 *Curriculum Inquiry* 613 (2013).

<sup>118</sup> For example, I have taught an online course in American Civil Procedure since 2001. I facilitate 12 to 14 live, interactive Socratic classroom sessions of 150 minutes each over the course of nine months. The students are also fortunate to have the benefit of 8 to 10 hours of video-recorded lecturing by America’s greatest scholar and teacher of civil procedure and Federal Courts, Professor Arthur R. Miller. See, e.g., Tammy K. Lefko, *America’s Law Professor: More Than Most, Arthur Miller Has Been A Teacher In The Public Domain*, *Harvard Law Today*, 1 Dec. 2008, <http://today.law.harvard.edu/leaving-the-mound/>; Jennifer Frey, *Faculty Focus: Introducing Arthur R. Miller*, *University Professor*, *NYU Law Magazine* (2007), at <http://blogs.law.nyu.edu/magazine/2007/arthur-r-miller/>; Adam Liptak, *Virtual Jurisprudence: Forget Socrates*, *N.Y. Times*, 25 Apr. 2004, at <http://www.nytimes.com/2004/04/25/education/virtual-jurisprudence-forget-socrates.htm>; Concord Law School Supplementary Lecturers, at <http://www.concordlawschool.edu/Lecturers.aspx>. Neither of us have supplanted the other in delivering the online education; rather, my synchronous and his asynchronous contributions have enhanced student learning. If a synchronous online law teacher can remain relevant even with the country’s greatest living authority on the subject as the asynchronous lecturer, I do not think law professors should fear the virtual law school – but rather, celebrate it. For some traditional academics, that understanding has come harder than for others, as Professor Miller knows from personal experience. See, e.g., Jack Brower, *The Law School And The Law A “Benthamite” Dean Lets A Hundred Legal Flowers Bloom*, *Harvard Magazine* (Jan.-Feb. 2000), <http://harvardmagazine.com/2000/01/the-law-school-and-the-l.html>; Leigh Jones, *Long-Time Harvard Prof Leaves For NYU Law*, *Nat’l L.J.*, 15 May 2007, at <http://www.nationallawjournal.com/id=900005481235/Longtime-Harvard-prof-leaves-for-NYU-Law>

### C. Harvard Business School Paves The Way For The Transition Of American Law Schools To The Platform Rather Than The Place

Earlier in Section II. B, we discussed the similarity of the business school approach to education as exemplified at Harvard Business School, and we recognized its close analogy to the American style of legal education – a “discussion-based style of learning.”<sup>119</sup> Part of that approach is to take the Socratic-style, case-intensive conversation of the brick-and-mortar classroom, and to make it even more effective when done online. The description of the virtuality created by the Business School’s online platform is nothing short of dazzling:

In a demonstration of a course called economics for managers, the first thing the student sees is the name, background and location – represented by glowing dots on a map – of other students in the course.

A video clip begins. It’s Jim Holzman, chief executive of the ticket reseller Ace Ticket, estimating the supply of tickets for a New England Patriots playoff game: “Where I have a really hard time is trying to figure out what the demand is. We just don’t know how many people are on the sidelines saying, ‘Hey, I’m thinking about going.’”

It’s a complex situation meant to get students thinking about a key concept – “the distinction between willingness to pay and price,” Professor Anand said. “Just because something costs zero doesn’t mean people aren’t willing to pay something.” A second case study, on the pay model of The New York Times, drives the point home.

Then a box pops up on the screen with the words “Cold Call.” The student has 30 seconds to a few minutes to type a response to a question and is then prodded to assess comments made by other students. Eventually there is a multiple-choice quiz to gauge mastery of the concept. (This was surprisingly

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<sup>119</sup> Jerry Useem, Business School, Disrupted, N.Y. Times, 1 June 2014, at BU1, also available for download at <http://www.nytimes.com/2014/06/01/business/business-school-disrupted.html>

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time-consuming to develop, Professor Anand said, because the business school does not give multiple-choice tests.)

At a faculty meeting in April, Professor Anand demonstrated the other two elements of HBX: continuing education for executives and a live forum. He unveiled the existence of a studio, built in collaboration with Boston's public television station, that allows a professor to stand in a pit before a horseshoe of 60 digital "tiles," or high-definition screens with the live images and voices of geographically dispersed participants. "I'm proud of our team, and how carefully they've thought about it even before they've done it," Professor [Michael E. ] Porter said.<sup>120</sup>

This, in a nutshell, is the future of law schools in the 21<sup>st</sup> century – a global educational platform, rather than a parochial place on the map.

### **IV. The Future: The Virtual Law School's Paradigm Shift From "Places" To "Platforms" – And The Promise They Hold For Preserving The Rule Of Law In An Alarming Dystopian and Authoritarian Age<sup>121</sup>**

The time is upon us when the power of the Internet as the principal medium for revolutionizing the delivery of higher education is demonstrated year after year. As the most

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<sup>120</sup> Id. Professor Michael E. Porter is one of the long-time stars of the Harvard Business School faculty, noted, among other things, for his groundbreaking, now classic, book, *Competitive Advantage* (1980) and "widely considered the father of modern business strategy." Id. Professor Porter had taken the position that in moving into virtuality, the Business School needed to transpose the instructional style that made it such an effective educational institution. For him, to the question of whether the Business School should establish an online educational platform, the answer is yes – create online courses, but not in a way that undermines the school's existing strategy. "A company must stay the course," Professor Porter has written, "even in times of upheaval, while constantly improving and extending its distinctive positioning." Id. See also Professor Porter's faculty page at <http://www.hbs.edu/faculty/Pages/profile.aspx?faclid=6532>

<sup>121</sup> Portions of Section IV previously appeared in the author's article, *A Bridge To The Practicing Bar Of Foreign Nations – Online American Legal Studies Programs As Forums For The Rule Of Law And Pipelines To Bar-Qualifying LL.M. Programs In The U.S.*, 10 *South Carolina J. Int'l L. & Bus.* 63 (Fall 2013).

tradition-bound of disciplines, the law has lagged behind other disciplines in making use of the most powerfully democratizing force in the history of education. Resistance has emanated largely from uninformed stereotypes of online education as well as on the rarity of the skills required for online teaching among many in the legal academia who have never sought to immerse themselves into a radically new student-centered pedagogy. Slowly, but inexorably, the world of legal education, both in the U. S. and abroad, is being confronted with the reality that new generations of learners are coming to the study of law with the expectation of increasing emphasis on the use of online education as a – and one day, the – primary delivery medium.

Whether ready or not, legal education will be vaulted into the online world as its consumer's ramp up their demand for it and demand the associated cost and convenience savings that it affords.

Not only is the virtual law school redefining the very concept of law schools from "places" to "platforms," it also offers the opportunity for students from a broad range of cultures and countries to participate in a conversation about the rule of law by studying the legal system and laws of a particular country with lawyers and professors who are immersed and working within that system.<sup>122</sup> Additionally, an online learning environment would remove not only the physical limitations that attend all ground-based programs, but it would also remove the constant and intrusive physical scrutiny of brick and mortar campuses by local authorities bent on censorship.<sup>123</sup> For example, when

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<sup>122</sup> See generally Lincoln Dahlberg, *The Internet and Democratic Discourse: Exploring the Prospects of Online Deliberative Forums Extending the Public Sphere*, 4 *Info., Comm. & Soc'y* 615 (2001), available at <http://ep-phenicie.iweb.bsu.edu/5820550.pdf> (discussing the role of the Internet as a host of public forums for a considered discourse).

<sup>123</sup> A recent and stark example comes from China. See *China[s] Universities Vow Ideological] Campdown On Staff, Students*, Yahoo! News, 1 Sept. 2014, at <http://news.yahoo.com/china-universities-vow-ideology-clampdown-staff-students-132939456.html> (reporting that "Three top Chinese universities have vowed to tighten 'ideological' control over

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centered on servers located outside of the countries in which censorship is a web-based campus may operate with maximum academic freedom. That, of course, does not mean that even those programs will be able to operate with complete freedom or even optimal freedom.<sup>124</sup>

The centrality of the Internet and the social media that inhabit it lend themselves to the determination of international legitimacy sought by governments.<sup>125</sup> For example, through social media, the world took note of protests around the world, such as the Arab Spring and similar, popular movements against once entrenched governments.<sup>126</sup> However, the reality of the 21st-century Internet is that there are multiple, well-known (and to the mind of many in the global community, notorious) examples of government programs that systemically limit the availability and kind of access to the Internet for their

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students and teachers, as a wider clampdown on free expression in the country intensifies.”). “The statement from Peking University — China’s top academic institution — condemned those with ‘ulterior motives’ who target the ruling party,” and asserted that “[i]n recent years, some people go on the Internet and with ulterior motives add fuel to the fire... ultimately targeting the Chinese Communist Party and the socialist system.” Id. In an offensive euphemism that calls to mind Orwell’s dystopian world of 1984, Peking University’s “Communist Party Committee” concluded that “We need to respond to this with a cool head, [and] guide the teachers and students to strengthen political sensitivity.” Id. (emphasis supplied). Less euphemistically, Fudan University’s “Communist Party Committee” declared its intention to “strengthen educational guidance’ for its young teachers so they could ‘grasp Marx’s way of reaching his viewpoint,’” “reinforce” teaching the history of the Party and the country,” and “provide a deep understanding of why the West’s path of development is unsuited for China.” Id. “The comments came from the Communist Party [C]ommittees of Peking University, Shanghai’s Fudan University, and Sun Yat-sen University in Guangzhou, which each wrote a statement in the Communist Party theoretical journal *Qiushi*” under the heading “How to carry out good ideological work at universities and colleges under new historical conditions.” Id.

<sup>124</sup> See, e.g., Jessica E. Bauml, Note, *It’s a Mad, Mad Internet: Globalization and the Challenges Presented by Internet Censorship*, 63 Fed. Comm. L.J. 697, 702–04 (2011) (discussing the various challenges associated with the Internet itself, and associated with who may control the Internet).

<sup>125</sup> See generally, Kevin Gregg, Note, “Text ‘Revolution’ to Vote”: Social Media’s Effect on Popular Consent and Legitimacy of New Regimes, 31 B.U. Int’l L.J. 315 (2013).

<sup>126</sup> See id. at 333–40.



citizens.<sup>127</sup> For countries in which there is internet censorship by the government, lawyers who seek to participate in the robust conversation of an online law-school program might find their internet access limited or even blocked.<sup>128</sup> Fortunately, however, these countries are still few – but of those few, some are eminently populous.<sup>129</sup> Yet, that does not mean, however, that ways cannot be – and are not – found to circumvent these restrictions; indeed circumventing censorship is both possible and, to varying degrees, practicable.<sup>130</sup> A recent article analyzing the effects of censorship on internet-user behavior thoroughly explored the results of a study conducted with participants who (covertly) participated from an undisclosed, internet-censoring country.<sup>131</sup> The researchers observed that “the ways that people in The Country experience blocking and censorship and the strategies they use to navigate the Internet underscore the urgent need to better understand how

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<sup>127</sup> See, e.g., Lewis S. Malakoff, Comment, *Are You My Mommy, or My Big Brother? Comparing Internet Censorship in Singapore and the United States*, 8 *Pac. Rim. L. & Pol’y J.* 423 (1999); Christopher Stevenson, Note, *Breaching the Great Firewall: China’s Internet Censorship and the Quest for Freedom of Expression in a Connected World*, 30 *B.C. Int’l & Comp. L. Rev.* 531 (2007); J. Alex Halderman et al., *Internet Censorship in Iran: A First Look*, USENIX, <https://www.usenix.org/conference/foci13/internet-censorship-iran-first-look> (then follow hyperlink “Aryan PDF”) (last visited Jan. 20, 2014).

<sup>128</sup> See, e.g., Rebecca MacKinnon, *Flatter World and Thicker Walls? Blogs, Censorship and Civic Discourse in China*, 134 *Pub. Choice* 31, (2008) (discussing the effective Internet regulation used by the Chinese government).

<sup>129</sup> See Shanthi Kalathil & Taylor C. Boas, *Open Networks Closed Regimes: The Impact of the Internet on Authoritarian Rule* (2003) (citing China, Cuba, Singapore, Burma, Vietnam, the United Arab Emirates, Saudi Arabia, and Egypt as examples of countries where Internet regulation is prolific).

<sup>130</sup> See e.g., Xueyang Xu, Z. Morley Mao & J. Alex Halderman, *Internet Censorship in China: Where Does the Filtering Occur?*, *Passive and Active Measurement 2011*, <http://pam2011.gatech.edu/program.html> (then follow “Internet Censorship in China: Where Does the Filtering Occur?” hyperlink) (last visited Jan. 20, 2014); see also MacKinnon, *supra* note 92, at 32–38 (discussing proxy servers and blogs as a method that may be used to circumvent Internet regulation, to an extent, in China).

<sup>131</sup> See Irina Shklovski & Nalini P. Kotamraju, *Online Contribution Practices in Countries that Engage in Internet Blocking and Censorship*, in *Proceedings of ACM CHI 2011 Conference on Human Factors in Computing Systems* 1109 (2011), available at <http://www.itu.dk/~irsh/pubs/p1109-shklovski.pdf>.

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people in a broad variety of contexts experience and navigate blocking and censorship when making decisions about online contributions.”<sup>132</sup>

Any virtual law school would do well to include in its planning process a careful consideration of the policy factors underlying the decisions of internet censors in particular countries so that they might anticipate the actions and reactions of those censors as part of a long-term strategic plan for making the program accessible to students in that country.<sup>133</sup> They would also do well to lobby the American corporations who have been complicit collaborators in a large measure of foreign-nation internet censorship.<sup>134</sup> In addition, as another commentator suggests, there may be opportunities for legal educators to foment a complaint about a leading practitioner of internet censorship with the World Trade Organization in which the censoring nation has a major, vested stake in its membership.<sup>135</sup>

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<sup>132</sup> Id. at 1118.

<sup>133</sup> Dynamic research in such areas is being done not only by academics and professionals, but by doctoral dissertation students as well. See, e.g., David Bamman, Brendan O'Connor & Noah A. Smith, *Censorship and Deletion Practices in Chinese Social Media*, 17 *First Monday* (March 5, 2012), <http://journals.uic.edu/ojs/index.php/fm/article/view/3943/3169>.

<sup>134</sup> See; Surya Deva, *Corporate Complicity in Internet Censorship in China: Who Cares for the Global Compact or the Global Online Freedom Act?*, 39 *Geo. Wash. Int'l L. Rev.* 255 (2007); William J. Cannici, Jr., *Note, The Global Online Freedom Act: A Critique of Its Objectives, Methods, and Ultimate Effectiveness Combating American Businesses that Facilitate Internet Censorship in the People's Republic of China*, 32 *Seton Hall Legis. J.* 123 (2007). First introduced in 2004, the U.S. Congress has considered, but not yet adopted, a bill entitled "The Global Online Freedom Act," which "would require technology firms operating in a designated group of restrictive countries to publish annual reports showing how they deal with human-rights issues." *Free to Choose: Governments and Internet Firms are Wrestling with the Rules for Free Speech Online*, *Economist*, Oct. 6, 2012, \_\_\_\_\_. More specifically, "[i]nternet companies listed on U.S. stock exchanges and operating in designated countries would be required to publish in their annual reports policies addressing human rights due diligence, disclosure of personally identifiable information to such governments, and transparency of restrictions on search engines and content hosting services." Ian Brown, *The Global Online Freedom Act*, 14 *Geo. J. Int'l Aff.* 153, 154 (2013).

<sup>135</sup> See, e.g., Jennifer Shyu, *Speak No Evil: Circumventing Chinese Censorship*, 45 *San Diego L. Rev.* 211, 246-47 (2008); Cynthia Liu, *Note, Internet*

The rule of law concept<sup>136</sup> is, at its essence, expressed as the bounding of power by reason in an atmosphere in which frank, public dialogue critiquing the legal system and its participants can occur without fear or threat of reprisal.<sup>137</sup> The virtual law school of the 21<sup>st</sup> century may prove to be not only superior to brick-and-mortar and hybrid programs. It may very well also prove to be the most effective and durable crucible of resistance to dystopian shadows and predictably authoritarian power-grabs that imperil the rule of law in places where it had been sustained for so long.<sup>138</sup>

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Censorship as a Trade Barrier: A Look at the WTO Consistency of the Great Firewall in the Wake of the China–Google Dispute, 42 *Geo. J. Int'l L.* 1199, 1227–37 (2011); Fredrik Erixon, Brian Hindley & Hosuk Lee-Makiyama, *Protectionism Online: Internet Censorship and International Trade Law 1* (European Ctr. for Int'l Political Econ., Working Paper No. 12/2009), available at [http://www.ecipe.org/media/publication\\_pdfs/protectionism-online-internet-censorship-and-international-trade-law.pdf](http://www.ecipe.org/media/publication_pdfs/protectionism-online-internet-censorship-and-international-trade-law.pdf) (suggesting that while many WTO members have “the option to selectively censor [cross-border Internet services,] . . . there is a good chance that a [WTO Dispute Settlement Body] panel might rule that permanent blocks on search engines, photo-sharing applications and other services are inconsistent with the GATS provisions, even given morals and security exceptions.”).

<sup>136</sup> Jeffrey A. Van Detta, *A Bridge To The Practicing Bar Of Foreign Nations—Online American Legal Studies Programs As Forums For The Rule Of Law And Pipelines To Bar-Qualifying LL.M. Programs In The U.S.*, 10 *South Carolina J. Int'l L. & Bus.* 63, 74–88 (Fall 2013).

<sup>137</sup> *Id.* at 88–97; see also Michael Risch, *Virtual Rule Of Law*, 112 *W. Va. L. Rev.* 1 (2009).

<sup>138</sup> Van Detta, *supra* note 121, at 159–161.



# Back to the Future: Apprenticeship in the Law School Classroom

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## ***Abstract***

*To say that the legal profession is undergoing a crisis is an understatement. The legal job market has contracted dramatically since the beginning of the Great Recession. Law school graduates are struggling to find jobs that require a juris doctorate degree. Those law graduates who do find work with a law firm are discovering a drastically changed legal environment. Clients are reducing the amount of legal work sent to outside counsel. Law firms, facing pressure from their clients, are responding to long-ignored complaints regarding exorbitant billing. This has resulted in new pricing pressures, as well as increased limits on the hours billed by untrained junior associates.*

*Corresponding to the changing legal market, law student applications have declined 37% since 2010. Law schools, facing a decline in revenue from smaller student bodies, are reducing faculty and staff. One ray of light in the tumultuous legal market is a serious return to discussing substantive changes to legal education in order to attract law students. Although perhaps self-serving, curricular changes in law schools to focus on practice-ready students meets the needs of law firms and will help graduating law students find jobs, or at the very least enable law graduates to practice immediately upon passing the bar. To do this, law schools are focusing more than ever before on providing law students with the skills necessary to practice law.*

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*This article will first discuss the historical models of legal education in the United States. Second, this article will analyze past proposals for curricular reform focusing on developing practice-ready law students. Finally, this article will propose additional ways that law schools and law professors can train their students in the classroom.*

### I. Introduction

To say that the legal profession is undergoing a crisis is an understatement. The legal job market has contracted dramatically since the beginning of the Great Recession.<sup>1</sup> Law school graduates are struggling to find jobs that require a juris doctorate degree.<sup>2</sup> Those law graduates who do find work with a law firm are discovering a drastically changed legal environment. Clients are reducing the amount of legal work sent to outside counsel.<sup>3</sup> Law firms, facing pressure from their clients, are responding to long-ignored complaints regarding exorbitant billing.<sup>4</sup> This has resulted in new pricing pressures, as well as increased limits on the hours billed by untrained junior associates.<sup>5</sup> Together, these factors have resulted in drastically limited employment opportunities for law school graduates.

Corresponding to the changing legal job market, law student applications have declined 37% since 2010.<sup>6</sup> Law schools, facing a decline in revenue from smaller student bodies, are

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<sup>1</sup> See Peter Coy, *The Great Recession: An 'Affair' to Remember*, BLOOMBERG (October 11, 2012), <http://www.businessweek.com/articles/2012-10-11/the-great-recession-an-affair-to-remember>.

<sup>2</sup> See Adam Cohen, *Just How Bad Off Are Law School Graduates*, TIME (March 11, 2013), <http://ideas.time.com/2013/03/11/just-how-bad-off-are-law-school-graduates/>

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Martha Neil, *Law School Applications Down 37 Percent Since 2010; First-year Class Could be Smallest in 40 Years*, ABA Journal (July 22, 2014); [http://www.abajournal.com/news/article/law\\_school\\_applications\\_down\\_37\\_percent\\_new\\_lsac\\_survey\\_shows\\_theyve\\_dropped](http://www.abajournal.com/news/article/law_school_applications_down_37_percent_new_lsac_survey_shows_theyve_dropped) (last visited July 25, 2014).

reducing faculty and staff.<sup>7</sup>In addition, law schools are facing new pricing pressures by reducing tuition while at the same time increasing scholarship and grant money to entice new students and transfer students, as well as to retain current students.<sup>8</sup> These changes, while potentially advantageous for law students, have created enormous upheaval for law schools, administrators, and law faculty.<sup>9</sup> One ray of light in the tumultuous legal market is a serious return to discussing substantive changes to legal education in order to attract law students.<sup>10</sup> Although perhaps self-serving, curricular changes in law schools to focus on practice-ready students meets the needs of law firms and will help graduating law students find jobs, or at the very least enable law graduates to practice immediately upon passing the bar. To do this, law schools are focusing more than ever before on providing law students with the skills necessary to practice law.

This article will first discuss the historical models of legal education in the United States. Second, this article will analyze past proposals for curricular reform that focus on developing practice-ready law students. Finally, this article will propose additional ways that law schools and law professors can train their students in the classroom using an apprenticeship model of teaching.

## **II. overview of legal education**

### **A. Pre-Langdell Legal Education**

Prior to the introduction of the current model of legal education by Christopher Langdell, lawyers received little

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<sup>7</sup> See Ashby Jones and Jennifer Smith, *Amid Falling Enrollment, Law Schools Are Cutting Faculty*, WALL STREET JOURNAL (July 15, 2013), <http://online.wsj.com/news/articles/SB10001424127887323664204578607810292433272>

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See Eli Wald, *Foreword: The Great Recession and the Legal Profession*, 78 *Fordham L. Rev.* 2051 (2010).

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to no standardized legal education.<sup>11</sup> Most lawyers were either self-taught or gained professional experience through apprenticeships with experienced attorneys.<sup>12</sup> To some extent, law schools were designed to supplement the training of young apprenticed lawyers.<sup>13</sup>

The apprenticeship model of training lawyers worked well to prepare young lawyers for the practice of law.<sup>14</sup> Under the mentorship of experienced lawyers, apprentices could supplement their education by learning the realities of professional practice.<sup>15</sup> Apprentices typically learned the law by reading treatises while also working in the office of a mentoring attorney.<sup>16</sup> Thus, apprentice lawyers learned how to manage the daily business of being a lawyer.<sup>17</sup> Most assignments given to apprentice lawyers were menial in nature, and may not have lent themselves to understanding the black letter law.<sup>18</sup> Typically, apprentice lawyers would copy and draft court documents, study law cases and treatises, and shadow their mentors as they practiced.<sup>19</sup> The apprenticeship system, however, was only as good as the mentoring attorney.<sup>20</sup> Apprenticeship training varied widely based on the ability and time of the lawyer to train their apprentices.<sup>21</sup> It is these

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<sup>11</sup> See A. Christopher Bryant, *Reading the Law in the Office of Calvin Fletcher: The Apprenticeship System and the Practice of Law in Frontier Indiana*, 1 Nev. L. J. 19, 22 (Spring 2001).

<sup>12</sup> *Id.* at 19.

<sup>13</sup> *Id.*

<sup>14</sup> See Jeffrey J. Pokorak, Ilene Seidman, and Gerald M. Slater, *Stop Thinking and Start Doing: Three-Year Accelerator-to-Practice Program as a Market-Based Solution for Legal Education*, 43 Wash. U. J.L. & Pol'y 59, 64 (2013).

<sup>15</sup> See Michael H. Hoeflich, *Rediscovering Apprenticeship*, 61 U. Kan. L. Rev. 547, 550-551 (December 2012).

<sup>16</sup> See Mark Warren Bailey, *Early Legal Education in the United States: Natural Law Theory and Law as Moral Science*, 48 J. Legal Educ. 311, 313 (September 1998).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 314.

<sup>21</sup> *Id.*



drawbacks to the apprenticeship system that led to the growth of formal legal education in the mid-19<sup>th</sup> century.

While assuming that students would gain most of the practical training through apprenticeships, the number of law schools increased in the latter half of the 19<sup>th</sup> century to address legal and societal changes brought about by the Industrial Revolution, as well as to supplement apprenticeship training.<sup>22</sup> Unlike apprenticeship, law schools focused on teaching students the black letter law, as well as the theory and history of law.<sup>23</sup> Over time, most states dropped apprenticeship requirements for admission to the bar in exchange for graduating from a formal law school.<sup>24</sup>

### **B. The Langdell Model of Legal Education**

Charles Langdell, dean of Harvard Law School from 1870 to 1895, established the modern form of legal education.<sup>25</sup> Prior to the Langdell reforms, law schools had no substantive admission requirements and were taught by part-time practitioners.<sup>26</sup> Most law school courses were basic black letter law and the course of study was less than two years.<sup>27</sup> The average faculty member was a practitioner that taught part-time.<sup>28</sup> After the Langdell reforms, legal education resembled what exists today: admissions criteria, the Socratic method of teaching caselaw, full-time faculty, and a three-year program of study.<sup>29</sup> Langdell's purpose was to train students to think like lawyers, rather than to recite applicable law from memory.<sup>30</sup>

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<sup>22</sup> See Jarrod T. Green, A Play on Legal Education, 4 Phoenix L. Rev. 331, 344-345 (Fall 2010).

<sup>23</sup> See W. Burlette Carter, Reconstructing Langdell, 32 Ga. L. Rev. 1, 13-14 (Fall 1997).

<sup>24</sup> Id.

<sup>25</sup> Id. at 22.

<sup>26</sup> Id. at 11.

<sup>27</sup> Id. at 18-19.

<sup>28</sup> Id. at 25-26.

<sup>29</sup> Id.

<sup>30</sup> Id. at 50-52.

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From a modern perspective, it is hard to imagine a time when caselaw study and the Socratic method was not a part of legal education. Modern fiction is replete with examples of what is considered the archetype of legal training.<sup>31</sup> Initially, however, Langdell's push for teaching legal doctrine via appellate court decisions was considered revolutionary, if not heretical.<sup>32</sup> Using the Socratic method to teach caselaw forced students to analyze judicial decisions and arrive at an understanding of legal principles rather than to simply read from a black letter law textbook or listen to the lecture of a practitioner-professor.<sup>33</sup>

Over the last several decades, several influential critiques of the modern legal education have promoted the need to revise the Langdell model of legal education to integrate more skills-training. Moreover, while the Langdell model has been successful in providing students with the skills in critical thinking and legal analysis, the prior apprenticeship system provided students and young lawyers with the legal and professional skills to appropriately represent clients – something that the typical law school curriculum cannot provide. This lack of skills-training has haunted legal education ever since.

### C. The Clinical and Pro Bono Movement

The introduction of law school clinics was one of the first post-Langdell movements to address law students' lack of practical skills.<sup>34</sup> Initially designed as a voluntary option for students to learn legal skills for no credit, law school clinics

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<sup>31</sup> See generally J. Osborn, *The Paper Chase* (Twentieth Century Fox 1972); K. Roome, *The Letter of the Law* (1979); M. Levin, *The Socratic Method* (1987); Scott Turow, *One-L* (1977).

<sup>32</sup> *Id.* at 34.

<sup>33</sup> See Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses*, 43 *Cal. W. L. Rev.* 267, 270 (Spring 2007).

<sup>34</sup> See Edward Rubin, *The Real Formalists, the Real Realists, and What They Tell Us About Judicial Decision-Making and Legal Education*, 109 *Mich. L. Rev.* 863, 878-879 (April 2011).

expanded over time to provide significant hands-on practical skills training for law students.<sup>35</sup> Throughout the latter half of the twentieth century, law school clinics gradually became commonplace in many law schools.<sup>36</sup>

Although clinics have been a part of legal education since the early part of the twentieth century, clinical education really evolved and expanded during the 1960's and 1970's.<sup>37</sup> As part of the social upheaval related to the civil rights movement and Johnson's Great Society programs, clinics spread to serve the underrepresented and poor.<sup>38</sup> Clinical training, then, became a way to not only give law students some experience in the practice of law, but as a way for law students to fulfill ethical social obligations.<sup>39</sup> Based on how clinics evolved, most clinics today continue to focus on very narrow areas of law focusing on serving a very limited form of client. As a result, despite the experiential value, most law school clinics do not necessarily provide law students with a window on the typical law practice.<sup>40</sup> Moreover, the type of experience that law students receive in clinics is not necessarily analogous to most types of law practice.<sup>41</sup> Most law clinics are litigation-oriented, with transactional work under-represented in the clinical field.

Despite the use of law school clinics, however, proponents of increased skills training have continued to criticize the apparent lack of practice-readiness exhibited by recent law school graduates.

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<sup>37</sup> See Katherine R. Kruse, *Getting Real About Legal Realism, New Legal Realism, and Clinical Legal Education*, 56 N.Y.L. Sch. L. Rev. 659, 660-661 (2011-2012).

<sup>38</sup> *Id.*

<sup>39</sup> See Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J.L. & Soc. Just. 331, 332 (Spring 2012).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 340.

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### III. Proposed Reforms to Legal Education

#### A. The MacCrate Report

Despite the introduction and widespread use of clinical and pro bono education to train law students in the practice of law, law schools have continued to be criticized for failing to produce “practice-ready” attorneys. Over two decades ago, the American Bar Association published its Report on the Task Force on Law Schools and the Profession: Narrowing the Gap (the “MacCrate Report”), evaluating then-current legal education standards and the need to focus on the practice-side of lawyering.<sup>42</sup> In its assessment of legal education, the MacCrate Report listed ten specific skills for law schools to develop in their students: problem-solving, legal analysis and reasoning, legal research, factual investigation, communication (both oral and written), counseling, negotiation, knowledge of litigation and alternative dispute procedures, organization and management of legal work, and recognizing and resolving ethical issues.<sup>43</sup> The MacCrate Report considers these ten skills necessary for a generalist attorney to be able to assume competent representation of a client.<sup>44</sup>

Beyond law school curricula, the MacCrate Report also recommended that bar examinations include more skills-oriented evaluations.<sup>45</sup> Specifically, the MacCrate Report suggested that law schools work to integrate practical skills-components with the study of legal doctrine and theory.<sup>46</sup> With respect to clinical education, the MacCrate Report reiterated the traditional critique of the Langdell model of legal education by stressing the value of clinics as a means to train law students in the necessary skills and values of practicing law.<sup>47</sup>

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<sup>42</sup> A.B.A., *Legal Education and Professional Development--An Educational Continuum, Report on the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992).

<sup>43</sup> *Id.* at 138-40.

<sup>44</sup> *Id.* at 125.

<sup>45</sup> *Id.* at 136.

<sup>46</sup> *Id.* at 273-304.

<sup>47</sup> *Id.* at 332.

Despite the recommendations of the MacCrate Report, made over twenty years ago, legal education is essentially unchanged. Clinics and skills-based courses are rarely required among law schools, and continue to be predominantly elective courses.<sup>48</sup>

### B. The Carnegie Report

Only fifteen years after the MacCrate Report recommendations, the Carnegie Foundation for the Advancement of Teaching repeated the MacCrate Report's criticisms regarding the lack of experiential training in legal education in its report entitled *Educating Lawyers: Preparation for the Profession of Law* (the "Carnegie Report").<sup>49</sup> In addition to noting the failure of legal education to adopt MacCrate Report's recommendations, the Carnegie Report proposed that law schools adopt a new model of legal education promoting what it termed the "three apprenticeships."<sup>50</sup> The three apprenticeships involved cognitive, practical, and ethical training of law students as a method of producing competent and practice-ready attorneys.<sup>51</sup> The Carnegie Report went further than the MacCrate Report, however, by stressing increased integration of doctrinal and clinical education and recommending non-Socratic teaching methods to develop practice and ethical skills, going so far as to suggest that doctrinal faculty actually teach clinical and skills courses.<sup>52</sup>

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<sup>48</sup> See Ann Marie Cavazos, *Demands of the Marketplace Require Practical Skills: A Necessity for Emerging Practitioners, and its Clinical Impact on Society – A Paradigm for Change*, 37 *J. Legis.* 1 (20122); Lucia Ann Sillecchia, *Legal Skills Trainin gin the First Year of Law School: Research? Writing? Analysis? Or More?*, 100 *Dick. L. Rev.* 245, 249 (Winter 1996).

<sup>49</sup> William M. Sullivan et al., *Carnegie Foundation for the Advancement of Teaching, Educating Lawyers Preparation for the Profession of Law* (2007).

<sup>50</sup> *Id.* at 28.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 35.

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### C. Best Practices.

At the same time as the Carnegie Report was issued, the Steering Committee for the Best Practices Project of the Clinical Legal Education Association issued its report, the Best Practices for Legal Education (the “Best Practices Report”).<sup>53</sup> Like the MacCrate and Carnegie Reports, the Best Practices Report criticized legal education for failing to provide students with the skills necessary to practice law.<sup>54</sup> Similar to the Carnegie Report, the Best Practices Report made the recommendation that law schools integrate doctrinal, skills, and professionalism training using new teaching methods and assessments.<sup>55</sup>

### IV. A New Law Classroom

Almost one-hundred and fifty years since the introduction of the Langdell model of education, as well as the various reform movements to find a balance between education designed to train students to “think like lawyers” and “practice like lawyers,” law schools and legal academics continue to struggle with how to meet both goals. Although not designed as a holistic answer, this Article proposes that, in addition to skills courses and clinics, law professors integrate a more apprenticeship-oriented model in the law school classroom to meet these objectives. This section of the Article will discuss the need to teach and train students, not as law students, but as apprentice legal practitioners. The second part of this Article, in line with significant amount of past and present proposals, suggests more integrated teaching of legal skills with doctrinal teaching. And finally, the final section will propose that the nature of legal academia change as well, by promoting more current and former practitioners into full-time tenure track professorial positions.

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<sup>53</sup> Roy Stuckey et al., Best Practices for Legal Education (Clinical Legal Education Ass’n 2007), [www.cleaweb.org/Resources/Documents/best\\_practices-full.pdf](http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf).

<sup>54</sup> Michele Mekel, Putting the Theory into Practice: Thoughts from the Trenches on Developing a Doctrinally-Integrated Semester-in-Practice Program in Health Law and Policy, 9 Ind. Health L. Rev. 503, 507 (2012).

<sup>55</sup> Best Practices Report, *supra* note 55 at 165.

### A. Law Students as Apprentices

The Carnegie Report recommendations for improving the skills training of legal education focused on three “apprenticeships.”<sup>56</sup> Although not used in the sense of apprenticeship training of the 19<sup>th</sup> century, the terminology holds true in the sense that law students need to be inculcated with the professional identity and skills associated with being of becoming an attorney. This indoctrination needs to begin from day one of law school to prevent law students from entering into the cocoon of being simply a student at a law school rather than an apprentice lawyer. Law professors need to model for students the characteristics of the legal profession, as well as train students in doctrinal classes about the “how” of law practice. To meet these goals, law professors need to accept their role as mentors to a student body of apprentices.

The first step in establishing a culture of apprenticeship in the classroom is to delineate the roles and expectations between the law professor and the law student. Similar to the model of post-graduate education where graduate students are considered apprentices, post-doctoral students are considered journeymen, and professors as masters, law professors need to promote the idea, from the very first class of each first-year law student, that they are now apprentice lawyers.<sup>57</sup> Professors should act as role models in terms of appropriate business dress, speech, and treatment of the students as future-colleagues. Although this author is unfamiliar with any mandatory dress codes at any law school, stressing business dress in the classroom is a strong way to signify the entry into the legal profession. In addition, establishing a professional hierarchy between the professor and student at lawyer and apprentice, rather than simply as professor and student, is critical in

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<sup>56</sup> Supra note 50.

<sup>57</sup> This idea in no way indicates, suggests, or supports that law students should be given the expectation that they can practice law until provided for by their respective state bar guidelines and related ethical codes of conduct.

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creating an apprenticeship culture in the classroom. To do this, professors should be explicit in characterizing their role as a senior attorney mentoring and training the law students as their junior attorneys.

In the classroom, the Socratic method can still be used. However, caselaw and hypothetical factual scenario discussions should be made not only to develop students' legal analysis skills, but also to develop in students the challenges and dilemmas that face practicing attorneys with respect to managing clients and a law practice. An example of this in the classroom might go like this:

Professor [transitioning from a Socratic dialogue on the nature of the legal principles at issue in a case]: "As we've discussed, Mr. Smith, in Alpha v. Beta, the court held that the failure of the client's attorney to appropriately file a financing statement with the correct description of collateral resulted in the client losing its claims to certain secured assets, resulting in the client becoming an unsecured creditor. Why do you think the attorney in this case made this mistake?"

Student: "I'm not sure. Maybe they were incompetent, or taking work they were not capable of doing. Or maybe they had too much work and didn't manage their time. Perhaps the work was delegated to someone else that made the mistake, and the attorney simply didn't catch it."

Professor: "Fair enough, but now assume you were the attorney that prepared the financing statement at issue. How do you explain to your client this mistake?"

Student: "Regardless of the circumstances leading to the mistake, I think you need to take full responsibility. I guess I would apologize..."

Professor: "Thank you, Mr. Smith, but put yourself in the shoes of your client. Do you think your client would be satisfied with a simple apology? And, do you see any way to salvage your relationship with your client now that this error



has occurred and your client has lost a case, time, and, most importantly to the client, money?”

Student: “No, I guess you would need to explain how the mistake happened. I’m not sure how you maintain the relationship with the client. I assume I would have been fired for it. Maybe I can refund the money the client paid? Maybe I can suggest doing or continuing working for the client at reduced rates? I guess it depends on how damaged the client is by the mistake.”

Professor: “What about your professional obligations? You’ve already taken your required Professional Responsibility course, should you be concerned about your client suing you for malpractice or submitting a complaint to the state bar?”

Student: “I guess it would depend on the circumstances of the mistake. If it was a mistake based on an honest interpretation, I would not be worried. But if it was because I had failed to supervise a junior attorney or paralegal; or if I made the mistake because I didn’t have the background or experience to do the work, then I guess I would be very concerned about a possible malpractice suit or bar complaint.”

In this way, a typical Socratic discussion of appellate caselaw decisions, then, can also be used to introduce law students to the issues and concerns that practicing attorneys routinely face in the practice of law.

## **B. Skills Training in Doctrinal Courses**

Law students are hungry for practical skills training. By considering law students as apprentices, professors can supplement their doctrinal instruction with assignments and in-classes exercises designed to show how the legal principles discussed in class translate into the real world of law practice. Training students in the practice of law, while teaching the principles of the law itself, should be a reinforcing process.

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In addition to being professional thinkers, lawyers are professional readers and writers. The traditional Langdellian legal education model focuses on the training of legal analysis and reasoning, and to a lesser extent the process of reading to discern relevant information. Exposing students to the written aspect of practice in an area of law is an easy way to reinforce the legal principles being taught. For example, Civil Procedure classes can include reviewing and drafting sample motions. Real Property classes can include assignments revolving around leases; and obviously, Contracts courses can include a variety of contracts for students to either peruse or fact patterns for students to attempt to draft. Legal writing and the documentation involved in the practice of law did not evolve out of a vacuum. It is a direct result of the evolution of legal theories and doctrine. A typical recital in almost any contract includes a pro form recitation for the exchange of consideration. Students seeing such examples can see, physically, how the legal principles they are learning in class are set forth on paper. A commercial law or contracts course dealing with warranties can include assignments relating to finding and analyzing typical warranties included in almost any purchase of a household good. Students can parse trial motions to see how the federal rules of civil procedure are applied in documents that are actually read by law clerks and judges. For an example of a sample classroom writing assignment designed to reinforce the teaching of a doctrinal course (in this case, a commercial law course), please see Part V of this Article.

### **C. Practitioner-Professors**

Although changing to a certain degree over the last decade, full-time law professors typically have had limited law practice experience. In the past, the typical process for becoming a law professor has involved: first, becoming credentialed at a highly-ranked law school; second, obtaining a clerkship at a federal court for several years while the proto-law professor establishes a scholarly agenda and publishes some legal articles; and finally, application and admission to a law school

faculty as a tenure-track assistant professor. This process has worked exceedingly well for preparing and training law clerks to become law professors under the Langdell model. Becoming a federal law clerk provides excellent training and exposure to the court system and the judicial processes for legal decision-making. But this track towards law professorship doesn't necessarily provide future law professors with significant experience in the practice of a typical attorney. Accordingly, law professors that are inclined to integrate skills training in their doctrinal courses may be unable to actually teach these skills from lack of experience.

Currently, most practitioners that do enter academia either become non-tenure track skills professors or adjuncts. Expanding the ranks of tenure-track law faculty to include former practitioners can have a serious positive impact towards reforming legal education to include more practical skills. Practitioner, like the mentor-attorney of the 19<sup>th</sup> century apprenticeship system, have the model the professionalism and impart client-oriented skills to law students. Moreover, practitioner-professors are far better suited to training law students in the ethical dilemmas that face practicing attorneys on a daily basis. Accordingly to address the need to train law students to practice, legal academia needs to reevaluate the typical criteria for admission to law faculties.

### **V. Conclusion**

Legal education in the United States is in crisis as a result of recent economic turmoil. However, with crisis comes opportunity. After decades of insufficiently reforming the modern legal educational model, there are real pressures, and incentives, for law schools to finally make substantive and lasting changes to the method and goals of training law students. By reforming legal education to adopt more of an apprenticeship model of education, law schools will be able to produce practice-ready students, thereby meeting the needs of both law students and law firms

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### VI. Sample Classroom Problem

Sales and Secured Transactions

Professor Bruce G. Luna II

Assignment #2-4: Article 9 Drafting Assignments

#### FACT PATTERN

You are an assistant general counsel at ACME America, Incorporated (using the trade name “ACME”). ACME is incorporated in the state of Georgia, and has its management offices at 1420 W Peachtree St., Atlanta, GA 30309. Its primary business is the manufacture and sale of anvils and barrels of dynamite and TNT. Because of large sales volume in the Arizona desert, ACME has several branch offices and a manufacturing plant in Tucson, Arizona (234 Roadrunner Ave., Tucson, AZ 85702).

ACME makes the following models of anvils: London (100 lbs), bench (8lbs) and farrier (260 lbs).

ACME’s dynamite is made of sawdust (used as an absorbent) and nitroglycerin (used as the explosive agent). ACME commonly sells its dynamite in the shape of sticks, with a line of fuse. ACME’s TNT is produced in liquid form and poured into shell casings.

ACME has one major customer, Will E. Coyote, who orders a majority of ACME’s products. Because of the long-term relationship between ACME and Mr. Coyote, Mr. Coyote has his own credit line with ACME. Mr. Coyote’s account (account #36741) has a credit limit of \$50,000; currently, the outstanding balance is \$32,500. ACME keeps a savings account (account # #63471) and checking account (account #37614) with Regions Bank.

As part of its plans to expand, ACME’s CEO, Elle Muir Fudd, has negotiated a loan from Wells Fargo Bank, secured by ACME’s current and future inventory in anvils and barrels of dynamite, as well as ACME’s accounts, office equipment, and

manufacturing equipment. Ms. Fudd hopes to have the loan and security agreement finalized within the week. To speed the loan underwriting process, Ms. Fudd has asked you to prepare the security agreement and related financing statement rather than to wait for Wells Fargo's notoriously slow underwriting department to do the work. In addition, Ms. Fudd doesn't want to use Wells Fargo's form account control agreement because she thinks it is too "bank-friendly." Please draft a short account control agreement to be submitted for negotiation with Wells Fargo.

ACME requires its legal department to keep track of billable hours. Please record how much time you spend on these assignments in 6-minute increments per our class discussion on time keeping.

Please prepare a draft security agreement between Wells Fargo and ACME (DUE November 9, 2012). Please use the form security agreement provided on TWEN.

Please prepare a UCC-1 financing statement to be filed upon execution of the security agreement between Wells Fargo Bank and ACME (DUE November 9, 2012).

Please prepare a draft deposit account control agreement between Wells Fargo and ACME (DUE NOVEMBER 16, 2012). Please use the form deposit account control agreement provided on TWEN.



# **Better Analysis, Better Decisions: Why Reading Cases Can Improve Legal Education, Advocacy, and Decisionmaking Around the Globe**

*Elizabeth Berenguer Megale*

In May 2014, I had the honor and privilege of traveling to Istanbul to participate in the Legal Education in the Twenty-First Century conference on the future of legal education. It was hosted by Atlanta's John Marshall Law School and Savannah Law School in partnership with Bahçeşehir Üniversitesi. This conference was envisioned to spark discourse amongst law professors and lawyers about how to improve legal education and legal systems around the world. It offered a forum for the exchange of ideas about best practices for preparing, educating, and training future lawyers.

The topic of my panel was "Reading Cases Globally," and I presented on the benefits of employing the Socratic method of case study as a pedagogical tool for teaching law in civil code countries. Before fully exploring the advantages of reading cases globally, though, we ought to consider the purpose and

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goals of formalized legal education. As a basic matter, legal education is the method by which attorneys are created. Black's Law Dictionary defines "attorney" as "one who is designated to transact business for another; a legal agent."<sup>1</sup> I think a more comprehensive definition would define an attorney as a problem-solver who employs a methodological approach, considering competing perspectives and various dimensions of a given issue in the context of existing law, political theory, and social and cultural norms. From my perspective, then, the purpose of legal education is to teach students how to solve problems as an attorney by introducing them to the language of the law, guiding them in determining the parameters of the legal arena, and integrating them into the legal discourse community through developing literacy in the discipline of law.<sup>2</sup>

Legal problem-solving requires the attorney to think in a sophisticated manner that can only be developed by engaging in learning at the highest and most advanced levels. In 1956, Benjamin Bloom published *Taxonomy of Education Objectives: The Classification of Educational Goals. Handbook I: Cognitive Domain*. Commonly known as Bloom's Taxonomy, he ranked six major categories within the cognitive domain from simplest to most complex as follows: (1) knowledge, (2) comprehension, (3) application, (4) analysis, (5) synthesis, (6) evaluation.<sup>3</sup> This taxonomy was revised in 2002 as follows: (1) remember, (2) understand, (3) apply, (4) analyze, (5) evaluate, (6) create.<sup>4</sup>

The most basic cognitive process is remembering, which requires the student to "[r]etriv[e] relevant knowledge from long-term memory."<sup>5</sup> Next, understanding involves "[d]

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<sup>1</sup> Black's Law Dictionary 147 (9th ed. 2009).

<sup>2</sup> Teri A. McMurtry-Chubb, *Legal Writing in the Disciplines: A Guide to Legal Writing Mastery*, xiii – xxi (2012).

<sup>3</sup> David R. Krathwohl, *A Revision of Bloom's Taxonomy: An Overview, Theory Into Practice*, Autumn 2002, at 213.

<sup>4</sup> *Id.* at 215.

<sup>5</sup> *Id.*



etermining the meaning of instructional messages, including oral, written, and graphic communication.”<sup>6</sup> The third level, application, is the “[c]arrying out or using a procedure in a given situation.”<sup>7</sup> These first three basic levels of learning do not require the learner to exercise much, if any, independent thought, and only the third level encourages the learner to engage in any sort of problem-solving. These levels of learning are commonly found in elementary, middle, and high schools, but once students transition into University and post-University studies, they ought to be challenged to advance their learning beyond basic knowledge, comprehension, and application.

The last three categories represent the more challenging levels of learning. Analysis requires the student to “[b]reak[] material into its constituent parts and detect[] how the parts relate to one another and to an overall structure or purpose.”<sup>8</sup> Evaluation is the process by which a learner “[m]ak[es] judgments based on criteria and standards.”<sup>9</sup> Finally, creation is the act of “[p]utting elements together to form a novel, coherent whole or make an original product.”<sup>10</sup> Notably, each level of learning is fundamental to the next level meaning that no one can master understanding without first remembering. Similarly, no one can create without first remembering, understanding, applying, analyzing, and evaluating, in that order.

These advanced levels of learning are the cornerstone of problem-solving because they require students to question the status quo, break apart the status quo, study the relationship amongst the component parts, and then rebuild those components to resolve novel legal problems. Thus, to become a sophisticated problem-solver, law students must engage in advanced levels of learning.

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<sup>6</sup> Id.

<sup>7</sup> Krathwohl, *supra* note 3, at 215.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

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Because of its ability to engage student at the most advanced levels of learning, I believe case study through the Socratic method is an essential part of the education and training of lawyers, regardless of whether that lawyer intends to practice in a civil law or common law country. Because civil code countries are distinguished by their reliance on codified law as opposed to precedent judge-made law, legal education in civil code countries does not focus on the study of cases. In fact, cases are difficult to even find in civil code countries since they have little precedential value. Civil code legal education, therefore, largely utilizes a pedagogy of memorization whereby students are required to commit statutes to memory. Students commonly learn via classroom lecture, and their examinations, which are sometimes written and other times conducted through oral exposition, require them to demonstrate that they have memorized the law. Nowhere in this method of instruction and assessment are students encouraged, or even allowed, to question the status quo of the law. They rarely experience the opportunity to deconstruct the law and analyze it in a new context. Seldom are they called upon to apply the law in the context of a hypothetical. Law schools in civil code countries, therefore, produce learning at merely level 1 or 2 according to Bloom's Taxonomy, falling short of producing sophisticated problem-solvers.

In comparison, the cornerstone of legal education in common law countries, like the United States, is the Socratic method. Taking its legal tradition from England, the United States initially adopted a common law approach, but even now that most law is in fact codified, judicial interpretation, precedent, and *stare decisis* remain fundamental to the legal system. The practical need for case study, therefore, is obvious. The questions that I studied in preparing for my presentation, then, were these: (1) does the value of studying cases in the common law tradition extend beyond this practical need? and (2) would any such value extend to the study of law in civil code countries?

It seems at least counterintuitive that the study of caselaw would be valuable in a country where judicial precedent is not binding and has no authority. After all, if a lawyer is not permitted to argue for a particular outcome by citing a prior case, why would there be any value in studying cases at all? Analysis of the case method reveals that it is a powerful pedagogical tool that engages students in advanced levels of learning. So, it does far more than just initiate students into the American legal tradition—it changes the way students think, creates new neural pathways for processing information, and ultimately develops students into sophisticated problem-solvers.

Let's take a look at the particulars. The Socratic method involves the study of case law. It is the method by which the professor asks questions and students answer those questions with the goal of achieving truth. In common law countries, most professors teach by engaging students during class via the Socratic method, or some variation on the Socratic method. Through this approach, professors guide students in evaluating cases by stimulating critical thinking. As students prepare for and later participate in class, they move through the various levels of learning as classified in Bloom's Taxonomy.

The first step for a student preparing for a class taught Socratically is to read and brief the case(s). Initially students are reading to gain a broad understanding of the case. The first read-through provides the context, and students are expected to remember some basics like the parties, the cause of action, some facts, and the holding. On a second read-through, students spend a little more time with the opinion attempting to understand it. Students should be trying to identify the court's rationale and figure out which facts are legally significant. Especially for new law students, the at-home preparation is generally going to pull them through only the first two levels of learning, remembering and understanding.

The in-class teaching is where the Socratic method actually occurs. Professors will engage one or more students through a

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series of questions designed to get them to apply, analyze, and evaluate the knowledge they have gained from reading the cases on their own. Professors will often begin with a series of questions designed to reveal the knowledge and understanding possessed by the student(s). Then, through a series of variations on the facts or wholly new hypotheticals, professors begin to move students into level three learning by asking them to apply their knowledge and understanding to these scenarios. Generally, the hypotheticals increase in difficulty so as to push students beyond merely applying the law, rules, and principles derived from the case. Eventually, students ought to begin dissecting the components of the case and questioning the rules of law and policies that have resulted. During a Socratic dialogue, students are called not only to apply what they know and understand, but they are also asked to critique what they know and understand by analyzing the component parts and evaluating them. By the end of class, students should be questioning what they know and understand because they have moved through the processes of application, analysis, and evaluation.

The final level of learning, creation, is accomplished once students begin compiling their class notes into an outline in preparation for their examinations. It is in the creation of the outline that students revisit their knowledge, understanding, application, analysis, and evaluation of discrete points of law. The creation of the outline forces students to restructure the components in a manageable way so that they can use the knowledge to effectively problem solve on their exams. Ideally, students will retain all that they have learned and continue building upon this foundation as they continue through their legal careers. It is by moving through and into creation that students reach a point where they can effectively use information to problem-solve.

In both common law and civil law countries, attorneys are called upon to be problem-solvers. In both systems, attorneys use their knowledge and understanding of the law to resolve

conflicts, negotiate resolutions, and make and defend legal positions on behalf of their clients. Only those educated in the common law tradition, however, have been specifically trained to problem-solve by systematically engaging in analysis and synthesis, which processes lead to sophisticated evaluations of legal arguments. Without specialized and intentional training in methods of problem-solving, attorneys are at a disadvantage when it comes to practicing law. Therefore, law students in civil code nations ought to be taught Socratically, at least in some of their classes.

But the value of reading cases goes beyond just the training and education of lawyers. Even upon entering practice, attorneys can benefit from reading and using cases. My conclusion here has a lot to do with how the brain receives and processes information. Cognitive rhetoric provides insight into how the brain processes persuasive messages. A fundamental premise is that an audience is more likely to be persuaded by arguments that are thorough, logical, and seem familiar to the audience. The study of caselaw provides the materials from which attorneys construct logical legal arguments. They also create a frame of reference for attorneys so that legal arguments seem familiar.

The desire for thorough logical arguments is in tension with the way our brains actually receive and process information. Because our brains do not operate like machines, our thought processes are not as logical as we would like to think they are. On the contrary, the thought processes of human beings are affected by a number of factors, including past experiences and present physical environments.<sup>11</sup> In fact, after about the age of three, no one is really capable of processing abstract information without first filtering it through a prior life experience.<sup>12</sup>

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<sup>11</sup> Elizabeth Megale, *Gideon's Legacy: Taking Pedagogical Inspiration from the Briefs that Made History*, 18 *Barry L. Rev.* 227, 233 ("Cognitive theory establishes the mind's dependent relationship upon the body and physical experience.").

<sup>12</sup> *Id.* ("This principle explains why the common response to an inquiry

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As we read and study cases, we build in “prior life experience” that is relevant to the future resolution of legal issues. For practicing attorneys, the study of precedent provides a framework through which cognitive short cuts in the logical processes of legal arguments can be created. In other words, by studying cases, attorneys and judges process similar life experiences giving them a shared database of knowledge from which they can create seemingly familiar legal arguments.

The appeal of logical argument cannot be overstated. Reliance on logical arguments creates a sense of security in the advocate that the argument is “correct.” Even in common law countries, lawyers and judges like to think of the law as providing clear-cut solutions and obviously correct answers. That tendency is even truer in civil code countries where the reliance on precedent is nearly non-existent. But the reality is that the law rarely provides obviously correct solutions. What is more, the assumption that our brains process information in a logical fashion is erroneous because humans do not make rational decisions based on a logical thought process.<sup>13</sup>

Even so, the most persuasive arguments seem to be those that at least portray rationality at first glance. Good legal arguments demonstrate a deep level of understanding illustrated by a strong analytical framework and reasoning by analogy that includes detailed discussion of authorities and facts. This analytical framework derives from the progression through all the levels of learning identified in Bloom’s Taxonomy. The analytical framework represents creation,

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about the taste of a mystery meat (like alligator or shark) is: ‘It tastes like chicken.’ Nearly everyone has an idea of what chicken tastes like, so when a person asks what another type of meat tastes like, the individual responding gives a frame of reference, or category, that is familiar and can be readily understood based on a general life experience.”)

<sup>13</sup> Steven L. Winter, *A Clearing in the Forest: Law, Life and Mind* (2001) (“Surprisingly little of human rationality actually fits the rationalist model. Instead, the data present a picture of human rationality that is bottom-up rather than top-down, imaginative rather than linear, flexible rather than definitional, and characterized by openness rather than closure (as in radial categories.)”).

which cannot manifest without journeying through each level of learning. By the same token, meaningful analogies emerge only after thorough analysis and evaluation.

As explained above, reading and studying cases is one of the best ways to move through these levels of learning. Therefore, attorneys who study cases in preparation for making legal arguments are by virtue mastering each level of learning related to any given legal issue. The resulting arguments are bound to demonstrate a deep level of understanding grounded in a strong analytical framework. Additionally, attorneys can further legitimize their arguments by including analogical and counter-analogical reasoning using case-based authorities and facts. The natural consequence, of course, is that attorneys who know how to read and study cases effectively are more sophisticated advocates for their clients.

The benefits of reading and studying cases do not end here, though. Beyond the pedagogical and strategic benefits, the case study method also benefits legal systems as a whole because relying on precedent promotes predictability, consistency, process, integrity, and flexibility.

Once judges in civil code countries begin to rely on precedent, this methodology provides an avenue by which the citizenry can trust the decisions being made within a legal system. Yes, it is true that even when we have cases to guide the courts, decisions cannot always be accurately predicted, but we can rely on the judicial process and integrity of the system itself because courts are motivated to be consistent in their decision-making.

In common law countries, the doctrine of *stare decisis* ensures that courts are bound by their previous decisions as well as the decisions of any other court that has jurisdiction over it. Nevertheless, *stare decisis* should never replace common sense in the legal system, and courts have flexibility to distinguish cases to reach a different and more just result in any given case. Under certain circumstances, courts can even overrule prior decisions.

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So, precedent, almost paradoxically, provides room for flexibility. When cases are truly evaluated, the important components, particularly the underlying principles and policies, emerge to guide courts into new territory, new cases, and new decisions that are responsive to an evolving society, all the while preserving integrity of the judicial process.

To illustrate this point, consider an example. In 1896, the United States Supreme Court decided the case of *Plessy v. Ferguson*.<sup>14</sup> In that case, the court had to consider the constitutionality of a law that required railroads to provide separate but equal passenger accommodations for Caucasians and African-Americans. The law was challenged by Mr. Plessy, an individual who was seven-eighths Caucasian and one-eighth African-American. He did not appear to be colored, and he argued that he was entitled to be treated as a Caucasian under the law. The court reasoned any law that creates “merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude.”<sup>15</sup> Thus, the Court held the law was constitutional, and the doctrine of separate but equal became the law of the land.

Over the course of the following fifty years, however, separate but equal proved to be an unworkable doctrine. In 1954, the Court reconsidered the separate but equal doctrine and specifically overruled *Plessy* by holding that separate is inherently unequal. In the years leading up to the decision in *Brown*, the doctrine of separate but equal had been somewhat eroded.<sup>16</sup> Because of *stare decisis*, the Court hesitated to overrule

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<sup>14</sup> 163 U.S. 537 (1896) overruled by *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483 (1954).

<sup>15</sup> *Plessy*, 163 U.S. at 543.

<sup>16</sup> *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483 (1954) supplemented sub nom. *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S.



the separate but equal doctrine and for over fifty years chose to draw factual distinctions leading to particular results while preserving the separate but equal doctrine. In deciding *Brown*, the Court specifically acknowledged the binding precedent of *Plessy* and the line of cases that had weakened its validity. The Court then explicitly overruled *Plessy* not only because the doctrine had proven unworkable, but also because the societal and cultural norms revealed that the doctrine reproduced racism. The number of years it took to overrule *Plessy* illustrates the integrity of process and consistency reproduced in a common law legal system. The fact that *Plessy* was overruled reveals the flexibility afforded by the common law legal system. Courts have room to respond to cultural and societal changes, but they are not so free that the integrity of the entire system is lost.

This example of the evolution of legal doctrine from *Plessy* through *Brown* is but one of many. When judicial opinions are documented, courts can be held accountable for complying with the law. Furthermore, courts can study the impact of laws and legal doctrines over time to determine whether those doctrines have proven workable to meet the socio-cultural needs of the citizenry. Even in civil code countries, documentation and study of cases can produce more consistent outcomes, even if precedent never gains as much power as it has in common law countries.

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294 (1955). ("American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the 'separate but equal' doctrine in the field of public education. In *Cumming v. Board of Education of Richmond County*, 175 U.S. 528 and *Gong Lum v. Rice*, 275 U.S. 78, the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337; *Sipuel v. Board of Regents of University of Oklahoma*, 332 U.S. 631; *Sweatt v. Painter*, 339 U.S. 629; *McLaurin v. Oklahoma State Regents*, 339 U.S. 637. In none of these cases was it necessary to re-examine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt v. Painter*, *supra*, the Court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.").

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In three distinct ways, then, reading and studying cases is valuable to all legal systems. At the student level, the study of cases engages students in the highest levels of learning, which necessarily produces more sophisticated problem-solvers. For attorneys already engaged in practice, the study of cases creates a network of familiarity on any given legal question so that attorneys can tap into this recognizable framework and advance arguments more efficiently. Finally, for the judiciary, the documentation of legal opinions legitimizes the legal processes. Precedent provides both the systematic and consistent process of decision-making while allowing flexibility for laws to evolve with changing societal needs. Fundamentally, reading cases is an indispensable way of uniting globalized lawyers in the legal discourse community.

# International Experiential Learning with Targeted Field Studies

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## I. Introduction

A “crisis mentality” has surged through legal education in the United States.<sup>1</sup> As is widely heralded today, law school economics are out of balance, with law school costs high, graduate job placements low, and the natural market response of plunging enrollments.<sup>2</sup> Simultaneously amid the existing glut of available law graduates, law firms and their corporate clients are refusing to pay for basic training of new graduates, urging law schools to undertake this long-needed element of legal education.<sup>3</sup> Law schools struggle with their

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<sup>1</sup> Erwin Chermerinsky and Carrie Menkel-Meadow, Don’t Skimp on Legal Training, N.Y. Times, April 14, 2014, at <[http://www.nytimes.com/2014/04/15/opinion/dont-skimp-on-legal-training.html?hp&ref=opinion&\\_r=1](http://www.nytimes.com/2014/04/15/opinion/dont-skimp-on-legal-training.html?hp&ref=opinion&_r=1)>.

<sup>2</sup> Ronald G. Ehrenberg, American Law Schools In A Time of Transition, 63 J. Legal Educ. 98, (2013). See also: Brian Tamanaha, The Collapsing Economics of Legal Education, 14 Engage: J. Federalist Soc. Prac. Groups 61 (2013), (illustrating with many specific examples of economic effects).

<sup>3</sup> James E. Moliterno, The American Legal Profession in Crisis; Resistance and Responses to Change, Oxford Univ. Press, 2013, 192- 97, 226-229 (The author explains in detail how the entire legal profession in the U.S. suffered dramatically from the recent economic crisis. Id.). See also, Hannah Hayes, Recession Places Law School Reform in the Eye of the Storm, Perspectives, Vol. 18, No. 4 (1010) at 8 (Economic downturn spurred change, as “[c]lients hit hard by the recession don’t want to pay for an inexperi-

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own economic challenges, including high fixed costs, intense school-on-school competition, skepticism about the value of a law degree, and falling enrollments. <sup>4</sup>Many of these schools are rushing to find ways to adjust their curricula and general business models, meet their budgets,<sup>5</sup> and attract students. <sup>6</sup>Innovation and change are the mantra today.<sup>7</sup>

Many law school management strategies are in motion these days. As fewer university graduates choose law school, law school competition heightens for the available applicants and their large tuition sums.<sup>8</sup> One current and prevalent strategy is for law schools to offer something especially appealing to applicants, and in this case, something that will make the law graduate more attractive to prospective employers: practical training in legal skills.<sup>9</sup>

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enced associate." Id.).

<sup>4</sup> Kyle P. McEntee, Patrick J. Lynch, & Derek M. Tokaz, *The Crisis in Legal Education: Dabbling in Disaster Planning*, 46 U. Mich. J.L. Reform 1, at 1-2 (2012)

<sup>5</sup> "Let me be crystal clear on one point: we are making business decisions designed to get our institutions to places of safety; we are not making pronouncements of our social, political, or aesthetic values." William Henderson, *A Blueprint for Change*, 40 Pepp. L. Rev. 461 (2013), at 463.

<sup>6</sup> From lowering tuition, to revising curricula, many law schools are innovating ways to attract students and teach more effectively. See e.g.: "In the latest salvo of the law-school tuition wars, University of Arizona's law school is slashing costs for nonresidents for a second year in a row. Out-of-state students entering this fall will pay \$29,000, down from \$38,841 the year before." Jacob Gershman, *University of Arizona Law School Woos Bargain Hunters With Tuition Drop*, Wall St. J. Lawblog, at <http://blogs.wsj.com/law/2014/05/27/university-of-arizona-law-school-woos-bargain-hunters-with-tuition-drop>. See also, Hannah Hayes, *Recession Places Law School Reform in the Eye of the Storm*, Perspectives, Vol. 18, No. 4 (1010) at 8, (A broad range of curricular innovations are under discussion. Id.).

<sup>7</sup> Karen Tokarz et al, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required*, 43 Wash. U. J.L. & Pol'y 11 (2013) (describes innovation needed, with many examples of law school experimentation).

<sup>8</sup> "Across the country, law schools, which have long enjoyed a wealth of students, are competing more fiercely than ever for a shrinking pool of applicants - just two-thirds the size it was four years ago and set to narrow another 8 percent this year." Benjamin Wermund, *Shrinking applicant pool has law schools competing to cut costs*, Houston Chronicle, May 31, 2014, at <http://www.houstonchronicle.com/news/education/article/Shrinking-applicant-pool-has-law-schools-5519781.php>.

<sup>9</sup> See e.g. Adam Palin, *Firms clamour for law graduates with practition-*

Thus, many law school administrators and faculty, as well as leaders at the bar, are researching, discussing, and experimenting with ways to offer various forms of this practical training, as well as simply to teach lawyering more effectively.<sup>10</sup> The economic urgency in law school budgets today has injected huge energy into concurrent recent efforts by bar leaders to “reform” legal education,<sup>11</sup> begun with the publication of the well-known Carnegie Report, *Educating Lawyers*, in 2007.<sup>12</sup> “If the economic crisis has a silver lining, it may be this potential to catalyze a greater emphasis on practical training in American law schools.”<sup>13</sup>

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er skills, *Fin. Times*, November 15, 2013, at <http://www.ft.com/intl/cms/s/0/384719e0-3d87-11e3-b754-00144feab7de.html?siteedition=intl#axzz356Aagw00>. See also, Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education and the New Job Market*, 5 *J. Legal Educ.* 598 (2010) (the job market will favor job-seekers with proven practical training. *Id.* At 611).

<sup>10</sup> Timothy Casey and Kathryn Fehrman, *Brutal Choices in Curricular Design ... Making Lawyers Out of Law Students: Shifting the Locus of Authority*, 20 *Perspectives: Teaching Legal Res. & Writing* 96 (2012); David Segal, *What They Don't Teach Law Students: Lawyering*, *N.Y. Times*, Nov. 20, 2011, [www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?\\_r=1](http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?_r=1); Carolyn Pratt, *Still Worth It? A Discussion of the Value of a J.D. in Today's Economy and Recent Proposals for Revising the American Law School Model*, *DRI -- The Voice of the Defense Bar*, March 7, 2012, <http://dritoday.org/post/Still-Worth-It-A-Discussion-of-the-Value-of-a-JD-in-Todaye28099s-Economy-and-Recent-Proposals-for-Revising-the-American-Law-School-Model.aspx>.

<sup>11</sup> While previous “movements” to reform legal education caused little real change (most notably the 1992 MacCrate Report and its similar recommendations (See *Legal Education and Professional Development: an Educational Continuum* (MacCrate Report), ABA Section of Legal Education and Admission to the Bar (1992)), today's economic crisis will stimulate substantial change. Moliterno, *supra*note 3, at 178 (The crisis is real and will produce a new legal profession. *Id.*). For recent, detailed report on efforts to “reform” legal education from the 1920s forward til today, see the ABA Committee on the Professional Educational Continuum, *Section on Legal Education and Admissions to the Bar, Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary*, (2013) at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/june2013councilmeeting/2013\\_open\\_session\\_e\\_report\\_prof\\_educ\\_continuum\\_committee.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf).

<sup>12</sup> William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007).

<sup>13</sup> Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession*,

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*The National Jurist*, a widely circulated legal magazine, announced recently that it has ranked the *top sixty* law schools offering practical training in the US.<sup>14</sup> Thus, the movement is substantial, and so many are convinced of the importance of this form of law reform that a serious pedagogical movement has evolved, emphasizing many forms of what the Academy has termed “experiential learning.”<sup>15</sup> A Google search readily reveals scores of university web sites from all across the U. S. boasting various forms of this “experiential learning” [hereafter EL]. That search will also lead the reader to websites for groups or consortiums of law schools promoting it.

One prominent example of these collaborative efforts is the Institute for the Advancement of the American Legal System (IAALS), founded at the University of Denver with a serious national initiative to encourage change in the way law schools educate students.<sup>16</sup> The program, entitled “Educating Tomorrow’s Lawyers,” in its leaders’ words, “provides a platform to encourage law schools in the U. S. to showcase innovative teaching to produce more practice-ready lawyers who can better meet the needs of an evolving profession.”<sup>17</sup> Rebecca Love Kourlis, its Executive Director and a former Colorado Supreme Court justice, explained that “Educating Tomorrow’s Lawyers leverages the Carnegie Model of learning: “Our project provides support for shared learning, innovation, ongoing measurement and collective implementation. We are

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Practical Legal Education and the New Job Market, 59 J. Legal Educ. 598, 611 (2010).

<sup>14</sup> See: Riley Combelic, National Jurist Names Top 60 Law Schools for Practical Training, at <http://www.nationaljurist.com/content/60-law-schools-earn-top-honors-practical-training>, March 4, 2014..

<sup>15</sup> The term “experiential learning” is not so new. See e.g. Deborah Maranville, Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning, 51 J. Legal Educ. 51, 52, (2001).

<sup>16</sup> Some thirty law schools have joined the consortium to work together to develop more effective ways to teach lawyers. See <http://educatingtomorrowlawyers.du.edu/schools/>.

<sup>17</sup> NEW INITIATIVE LEVERAGES CARNEGIE’S MODEL FOR EDUCATING LAWYERS, Carnegie Perspectives, at <http://www.carnegiefoundation.org/carnegie-perspectives/in-the-news/preparation-the-profession-law> (last viewed July 1, 2014).

very excited to launch this project to encourage new ways to train law students and to measure innovation in the years to come.”<sup>18</sup> William M. Sullivan, the lead author of the Carnegie Report, and subsequently the Director of the ETL effort, added that:

“Change is happening in law schools across the country. While most are evolving independently, many schools are working toward the same end: developing new teaching methods and strategies that teach students skills that will give them an edge with employers.”<sup>19</sup>

And there are many other organizations and focus points for the reform scholarship and cooperation.<sup>20</sup>

Most of us in legal education applaud this general re-setting of focus, helping to reform our anachronistic US system of legal education. Legal education had evolved over years to a university based model, emphasizing legal theory and critical reasoning, but precious little practical training.<sup>21</sup> Explainable only by its historical evolution, modern legal education in the U. S. until today has required no practical training for the practice of law. A law graduate could well sit for and pass the

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<sup>18</sup> Id.

<sup>19</sup> Zachary Willis, *Educating Tomorrow’s Lawyers* blog, <http://online.iaals.du.edu/category/educating-tomorrows-lawyers/>, (last viewed April 6, 2014).

<sup>20</sup> For example *Best Practices for Legal Education*, <http://bestpracticeslegaled.albanylawblogs.org/>., *Clinical Legal Education Association*, <http://www.cleaweb.org/>., *Institute for Law Teaching and Learning*, <http://lawteaching.org/>., and the *Legal Education Analysis and Reform Network*, organized by Stanford Law School and the Carnegie Foundation, among others. Blogs fostering discussion include: *Empirical Legal Studies: Bringing Methods to Our Madness*, [www.elsblog.org/the\\_empirical\\_legal\\_studi/](http://www.elsblog.org/the_empirical_legal_studi/); *Association of American Law Schools*, [www.aals.org](http://www.aals.org); *BestPractices for Legal Education*, <http://bestpracticeslegaled.albanylawblogs.org>; *Journal of Legal Education*, [www.swlaw.edu/jle](http://www.swlaw.edu/jle); *ABA Section of Legal Education & Admissions to the Bar*, [www.abanet.org/legaled](http://www.abanet.org/legaled).

<sup>21</sup> For authoritative history, see, Steve Sheppard, *The History of Legal Education in the United States*, Salem Press (2007). For recent short history, see, G. Edward White, *American Legal History: A Very Short Introduction* (Oxford University Press 2014).

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bar exam, become licensed, and be hired by a client, without ever having set foot in a court room or even seen the inside of a law office. Thus and not surprisingly, the movement toward EL has been welcomed by most as a step in the right direction.

My thesis in this conference paperproposes: first, that this quasi-rage for EL is constructive, and thatimprovements in legal education will come from it; however and second, I join other commentators and scholars who caution thoughtfulnessin this rush to reform.<sup>22</sup> Prudence suggests that we evaluate carefully the many forms of experiential learning. The Carnegie Report itself and much scholarship following it advise that the innovation and reform must be designed and implemented with sophisticated learning in mind, and not merely by throwing practice skills training into the curriculum en masse.<sup>23</sup> This leads to my central proposal today recommendingthat international experiential learning programs can offer an unusually rich form of experiential learning that can serve well as a part of a broad experiential curriculum. In particular, I recommend international Field Studies such as Loyola Law School has been fortunate to produce for many years.

### **II. More sophisticated than just more traditional skills training**

We have witnessed a rush toward adding practical skills courses, and I fear that some voices in this discussion are less constructive in their calls for rapid replacementof swaths of law school curricula, to make room for the skills classes. Some innovative reforms suggested todayinvolve radical changes, such as abolishing the third year of law school altogether.<sup>24</sup> Others suggest meaningful substitutions in the second and

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<sup>22</sup> See, e.g., Kristen Holmquist, Challenging Carnegie, 61 J. Legal Educ. 353 (2012).

<sup>23</sup> See, Carnegie Report, supra, note 12, and see, e.g. Kristen Holmquist, supra, note 22.

<sup>24</sup> See, e.g., Samuel Estreicher, The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School, 15 Legis. & Pub. Pol'y 599 (2012).



third year curricula.<sup>25</sup> Most of the recommendations require eliminating a few traditional courses, some of which offer various measures of valuable intellectual training, to allow room for more practical training. We all recognize that adding additional course credit requirements for graduation is economically untenable. So adding skills means subtracting existing courses. Thus, this process of reform in the current volatile (especially economically volatile) environment warrants caution and thoughtfulness.

The principal fear, of which I express concern here, would be a wholesale adoption of practical training at the cost of valuable learning and sophisticated intellectual training, including some international experiences that may, at first blush, seem less functional. We must discern the difficult balance of what we adjudge to better serve our students. Experienced practicing lawyers know that some skills training is so basic and easily learned that valuable course time need not be sacrificed for it. And unfortunately, some skills training offered by some lawyers can be of dubious quality. We should acknowledge that all practical experience isn't always constructive. Bad training does happen, and we know that some law firms have preferred to train their own associates their way.<sup>26</sup>

I can recall serving on my law firm's hiring committee when we did not view favorably applicants' practical experience at a state prosecutor's office because of its reputation for overly aggressive, sometimes abusive, prosecution training. This style of trial practice and of legal thinking did not seem to fit what we perceived as our firm style for business law and our view of professionalism. Likewise, many of us fear that some law firms today operate with a profit mentality that sometimes may value practice techniques and attitudes that we would not recommend to novices in our profession.

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<sup>25</sup> See, e.g., William Henderson, *A Blueprint for Change*, 40 *Pepp. L. Rev.* 461, 463 (2013).

<sup>26</sup> Moliterno, *supra*, note 3, at 196.

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So what did we on our hiring committee look for? The same things that many successful lawyers today look for. I put that question to several respected colleagues in the law practice, as well as in the Academy. The answers consistently centered on a theme expressed by one partner in a law firm: Lawyers, he explained pragmatically, seek law graduates who can serve foremost in the firm by helping and being attractive to colleagues, clients, judges, and juries.

Such a broad statement begs for more specific description. That hiring partner was not really looking foremost for someone who knows how to process discovery documents or stand on the correct side of the courtroom. Those functions can be taught reasonably quickly. He and most lawyers are looking foremost for someone who has a combination of qualities and abilities: If they are going to potentially spend years working with this person, being represented by this person to clients and courts, they want more. And what they really to avoid is mistakenly hiring graduates with lesser aptitudes, and attitudes – and then having to endure the awkward and costly process of gradually dismissing these employees.

Lawyers want future colleagues to have a broad, rich education, some substantial life experience, including appreciation of diverse cultures, some previous leadership experiences: experiences from which come judgment, maturity, and some poise. All of this circles back to serving clients, colleagues, and others well.

Law firms and clients need problem-solvers – people who can navigate conflicting narratives, exercise discretion and judgment, and balance compromises (or not). Good lawyers serve clients “not only in the board room, or courtroom, but in all areas of civil society – our legislatures, administrative agencies, schools, workplaces, and beyond.”<sup>27</sup> This represents a broader view of the purposes of lawyering.

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<sup>27</sup> Erwin Chermersky and Carrie Menkel-Meadow, *supra*, note 1.

Now, as we face the substantial movement for improvement in lawyering training, we should evaluate what experiential offerings teach these abilities and virtues, and include them in our curriculum to complement the more narrow practice skills training.

Finally, I have seen many law school administrators stampede students into internships and externships of various quality. I fear that too, in some cases, can be overdone. Quality experiential learning depends on the quality of legal thinking processes and tasks taught. Making copies of documents at a law firm is functional, but it pales when compared with a carefully constructed international experience. Yet some students are discouraged from any summer work or study other than stacking up internships and externships, not matter what the quality of experience taught. We are not training factory workers to be merely practical technicians. We are preparing counselors of law, to not just work with, but to attract and advise clients and serve as advisors and decision makers in a wide array of matters.

Berkley Professor Kristen Holmquist expressed similar views in the *Journal of Legal Education*, entitled *Challenging Carnegie*.<sup>28</sup> She conducted a study following the Carnegie Report in which she questioned a group of eminent lawyers, judges, and mediators about the Carnegie conclusions, and she heard a “different, deeper, and richer” conversation.<sup>29</sup>

“Rather than focusing on what tasks recent graduates can or cannot do – which is where much of the legal education reform talk is centered – these experienced, successful lawyers talked about how new lawyers do and do not think.”<sup>30</sup> They offered these suggestions.

1) New lawyers need to learn to recognize the complexity of

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<sup>28</sup> See, Holmquist, *supra*, note 22, at 353.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

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their client's stories and desired outcomes. Client problems can be messy, with difficult to determine facts, with legal and non-legal aspects, and multiple potential outcomes that may differently serve one or many of the clients' goals or aspirations.

- 2) Law students should acquire a broad historical and contemporary sense of lawyers' varied roles in relationship with their clients, within and among institutions, and in society at large.
- 3) Students need to begin to develop the confidence and judgment that experience brings.
- 4) They wanted lawyers to be trained to serve the public good and serve their clients effectively and ethically.<sup>31</sup>

Holmquist and her colleagues thus challenged the Carnegie conclusions. "The Report's stress on the distinction between thinking and doing belies the inter-relatedness of understanding, experience, evaluating and creating. As a result, it defines "thinking like a lawyer" downward to encompass only the sharp, non-value-based doctrinal analysis and application in which law school so thoroughly immerses its students. . . ."

She says that students need an opportunity to engage in sophisticated higher-order thinking about law and policy, problems, and goals, and about potential paths, obstructions, and solutions. We do not teach students to think like a lawyer in the richer sense. . . ."

Professors Chermerinsky and Menkel-Meadow add:

"We agree that legal education could benefit from further innovation, but not in the ways many of the critics advocate. Law schools need to teach a greater diversity of subjects to improve legal judgment and decision-making. "

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<sup>31</sup> Id.at 353-54.

“Law school faculties . . . must deal with the emerging problems of the 21st century. Law schools need to develop new courses to provide students with the expertise to deal with the crucial problems of our time in fields like banking law, national security, conflict resolution, food safety, Internet law and migration policy. There should be “problem-based” seminars in fields such as public health, homelessness, environmental habitat regulation and world peace.”<sup>32</sup>

### **III. Among many valuable techniques, the International Field Study can offer powerful experiences.**

Loyola Law School features two International Field Studies: the Field Study from Istanbul to Athens and the Field Study Exploring the Institutions of the European Union, from Brussels to Paris.<sup>33</sup>

#### **A. Turkey-Greece: Exploring the Roots of the Civil Law and Current Legal Issues**

We understood that one of the most important aspects of the Field Study was that the researchers or inquirers were informed and focused on the issues. “Target Inquiries” were framed and vetted; these included topics relating to the incredibly rich legal history of both Turkey and Greece, such as the promulgation of the epochal foundation of today’s civil law tradition, Justinian’s *Corpus Juris Civilis*, as well as Greek and Roman law sources in Ephesus and Athens. We traversed the geographical sources of much of early Western legal tradition. The historical explorations were complemented, even eclipsed at times, by inquiries into more urgent contemporary legal

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<sup>32</sup> Id.

<sup>33</sup> Caveat: These Field Studies are not sight-seeing tours. They are structured carefully to promote informed focus, sophisticated inquiry, and disciplined participation. The participants are required to read preparatory materials in advance, informing and focusing the specific issues to be researched. As is described more fully below, the students are required to attend a lecture in advance regarding the locations and issues. Subsequent readings are required during the travel experience, and daily diary entries are assembled on the group’s web site.

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issues festering in both countries. Of course, the world has focused intensely in the past two years on the economic and legal implications of the euro crisis for the country of Greece, as well as the European Union. Commentators asked repeatedly whether this crisis would lead to deeper legal integration in Europe, or lead to the collapse of the Eurozone and less economic and political integration. And the waves of migrants trying to enter the EU through Greece and Turkey posed pressing questions for governments and people. Legislative incapacity, amid popular unrest with austerity was also a focus for our on-the-scene inquiry.

Issues in Turkey included evaluating criticisms of the current Erdoğan government for allegedly manipulating its popular majority to promote one-party rule, partially through suppression of free speech and of the press. Free speech complaints seemed to surround us as we prepared to embark. In particular, we had read a recent Economist article reporting that one hundred Turkish journalists were in jail for criticizing the government.<sup>34</sup> Another vibrant issue was the government's alleged encouragement of Islamic religious influence in politics and society in general, and how this implicated Turkish women's rights and religious freedom. Related and also of interest to us was the repression of religious minorities, notably the restrictions on the Greek Orthodox Church and other faiths in Turkey.

Reading assignments were prepared by the faculty and distributed to the group two weeks before the Field Study departed. These included current news articles, editorials, and excerpts from relevant literature and historical texts. These would be supplemented by contemporaneous news reports while traveling, which we discussed in our daily focus meetings. Students would be encouraged to inquire, observe, and note carefully as we advanced day to day.

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<sup>34</sup> Repression in Turkey: Enemies of the State, Economist, Mar. 17, 2012, at [www.economist.com/node/21550334](http://www.economist.com/node/21550334) ("At least 100 journalists are behind bars in Turkey, more than in any other country." Id.).

The Field Study was designed to unfold as a two-part learning experience. A primary duty of the students as we traveled was to evaluate and ultimately select topics for research papers to be more fully researched and written upon their return to the law school and their regular legal studies. Considerable discussions would ensue through the travel regarding this subsequent follow-through work.

As is the nature of such an immersion study, one of our purposes for the on-the-ground experience was to interact with people and try to discern the authentic circumstances around us. We were preparing to explore, interact, and investigate issues. We did not realize, but would soon discover, that one of the most important intellectual abilities we would face was the difficulty in *deciphering conflicting live human discourse*. From the start, we began keeping a group diary or journal. The professors offer their direct observations and assessments, illustrated and informed by contributions of the students.

On arrival, the students found themselves in a predominantly Muslim country for the first time, and in one of the most beautiful cities in the world, Istanbul. That first evening, the group convened for orientation at a popular Turkish restaurant in the city's historical epicenter, Sultanahmet, gathered in a private upstairs dining room with dramatic views of the illuminated Hagia Sophia and the Blue Mosque. After Mediterranean dishes were ordered, substantive instruction was presented to focus students' observations and foster their understanding of Constantinople and Istanbul.

Three Turkish students, who were friends of some of the group, joined us at the orientation dinner. The Turkish students were gregarious, spoke excellent English, and welcomed us warmly. Not surprisingly, their dress, manner of speech, food and drink preferences, and even their electronics were indistinguishable from those of our students. After the dinner, they also accompanied some of the group for subsequent fun and discussions on the usual friendly updates, but also on issues of our Field Study research in Istanbul. We planned to

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gather information from such informal interaction with willing participants, considering that to sometimes more valuable than prepared presentations from official representatives of government institutions or tourism services. As the evening progressed, conversation ultimately would turn to some of our Field Study issues, and they ultimately would tell of their concern about some government policies.

The next morning, Monday, our first full day on site, began, as every day would, with the group gathering at the hotel, and one of the professors offering specifics on the plan for the day, the experiences to be encountered, and the inquiries to be considered. Information was presented about the significance of the accomplishments of Constantine (transplanting the Roman capital eastward in the Fourth century), Justinian, the jurist Tribonian, the Great Palace in which the *Corpus Juris Civilis* was written, the Hippodrome, and then the Ottoman presence of the Blue Mosque and the Topkapi Palace. Because our law school offers mixed jurisdiction curricula, with both civil and common law courses, we value especially the *Corpus Juris Civilis* from which the civil law tradition flows.

The ancient racing ellipse of the Greco-Roman Hippodrome, filled with monuments erected by Constantine's to impress his citizens in the New Rome, impressed the students. One of the professors offered peripatetic history lessons as the group walked through this relatively small area. And then we stepped directly into the adjacent, magnificent Blue Mosque.

The stunning scenes of and in the mosque offered architectural, artistic, and religious images unknown to most of the students. The female students enthusiastically donned the headscarves distributed at the entrance to the Mosque, and all entrants removed their shoes. The students became animated and seemed delighted at the unusual experience, as they clicked photos of themselves throughout the mosque. While literature is probably the most accessible way to learn about many things, having the opportunity to personally experience something as grand as the Blue Mosque or the Hagia Sophia



can impress upon and motivate one to learn in ways literature cannot.

Next we walked the few hundred meters to the Topkapi Palace, the elaborate residence and government center of the Ottoman Sultans for centuries. A student reported, "The brilliant architectural design offered gorgeous views of the intersecting waterways and also allowed for the Sultan to essentially guard the water bridge between Europe and Asia Minor."

A surely rare experience followed, as we continued to Chamber of Holy Relics. Here we joined lines of worshipers and tourists alike viewing such notable Islamic treasures as the Holy Mantle of the Prophet Muhammad, his preserved footprints, sword, and more. Religious tracts were continuously recited by religious leaders over a speaker system. None of our group was more than a little familiar with the Islamic faith, so this was informative to us in a concrete way.

The day would conclude at another stunning piece of architecture and functional urban planning, the Basilica Cistern, another of Justinian's Sixth century engineering feats. We were awash, this first day, in visual stimuli of multiple dimensions.

The events of the Field Study's second full day, Tuesday, would thrust the group into more current issues. We started this day honored by an audience with the Greek Orthodox Ecumenical Patriarch, His Holiness Bartholomew I of Constantinople, who graciously received us at his chancellery. This visit was to permit first hand inquiry about controversial issues of religious freedom in Turkey, in particular for the Greek Orthodox Church and its followers. The Patriarch expressed his overall approval of the Erdoğan government, and especially its more progressive attitude toward the Greek minorities in Turkey. He was hopeful that the Greek Orthodox seminary that had been closed by previous governments in Turkey would be allowed to re-open next year.

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At mid-day, we traveled to the offices of a local newspaper where we would discuss many of our issues. Differing views as to press freedom and women's role in society would confront the students. Many headscarves, few women allowed in key roles, and a preference to criticize the government in constructive ways impressed the group participants, challenging their U. S. experiences. Some of the comments from our group were confrontational, as some could not accept the soft-spoken acceptance of cultural roles and freedoms. Ultimately interchange became sensitive as we began the uneasy experience of balancing respect for fellow humans against credibility or accuracy concerns. We were sitting in the conference room politely listening to our gracious host, as he delivered his presentation politely. The dynamic in our group was one of some anxiety from the uncertainty - here is the discovery process moving to the next level and personal in real time. Being required by respect to sit politely and listen to a person making statements that one doubts generates a different sensation. Maybe this nice spokesman was correct - he surely appeared credible, polite, and educated. The ethos he emanated was sincere. His assurances followed that the newspaper was unbiased and in fact that it piously pursued the truth, seemed reasonable on their face. But, what about our readings? This puzzling dialogue continued for some thirty-five minutes in all, and in the end we were all relieved in a way when it ended, and we were escorted back to the lobby. The students explained later how this was such a different form and context for discovering information -- encountering speech face to face in close personal proximity, politely participating in the dialogue, while struggling to assess for one's self the legitimacy of the statements. This was stressful.

We then returned to the old city to explore the massive Hagia Sophia. The professors again delivered walking historical commentary to lead the students through the centuries of architectural, political, religious, and artistic history. For nine centuries, this was the leading and largest church of Christendom. The Ottoman conquest of the 15<sup>th</sup>

century transformed it into a mosque, and early magnificent Byzantine mosaics and icons were covered with stucco and Islamic emblems. In the 1920s, the revolutionary secular leader Mustafa Kemal Atatürk declared that mosque a state museum, honoring both previous traditions, presenting evocative issues for today.

On the fourth day, the group met for instruction about our planned water journey up the Bosphorus, the waterway of Greek mythology and history, and the narrow aquatic dividing line between eastern Europe and western Asia. Essential to our meaningful appreciation of this was an appreciation of the Bosphorus's geographical significance in history, as well as currently in relation to politics and world trade. We discussed how dramatically the Bosphorus links the Black Sea, all Danube and lower Russian commerce, the Sea of Marmara, flowing to the eastern Mediterranean – and the commercial, political, and cultural significance. We would traverse the dramatic geography of the Bosphorus and the Golden Horn - and view some of the still centuries-old fortifications that played a role in the epochal siege of Constantinople.

At the mouth of the Black Sea, the group disembarked at the old fishing village on the Asian side – for most of our group the first visit to that continent. After the mandatory group photo overlooking the entrance to the (recently more relevant) Black Sea, we headed south to the city. There, we had scheduled a meeting with other students from the area, as well as three of their teachers. Once assembled, we again discussed our Field Study purposes and issues. The conversations ranged from the polite “lovely weather” conversation to serious questions and answers about the key issues central to our inquiries into the current political and legal situation in Turkey. The teacher participants were in unison explaining how serious they considered some of the current legal developments to be. They were insistent that the current federal administration was orchestrating a surreptitious campaign to impose its influence on the schools, the courts, and the Parliament – they feared

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that some were attempting to change the political apparatus to foster a not-so-democratic one dominant party rule. They reported that many journalists, artists, and academics were in jail for disagreeing with the current government. Every school in Turkey, they explained, is required by law to be approved by the government's Ministry of Education, and this department is controlled by the executive branch. Through this, the government is able to reach into the internal operation of both public and private schools. Sometimes, the influence might be indirect, but everyone knew what their superiors in government wanted. One of our students then delivered a lecture on the father of modern Turkey, Atatürk, emphasizing the importance he placed on the principle of secularism in modern Turkey and its Western orientation. Wide-ranging candid group discussion followed.

Considering what we had been told about the free speech issues the day before, we recognized that we were facing two diametrically opposed narratives of the situation on the ground. We struggled. US law students and their faculty tend to so emphasize factual bases for claims. For us, generalities are rarely sufficient; we crave concrete specifics. Here we were receiving starkly conflicting general and often conclusory statements, supported with some assertions and some facts. We were, at times, confused and unsatisfied.

Thursday, the fifth day, concluded the Istanbul visit, as the group flew south to Izmir, transported by van to the Aegean port of Kuşadası, our base for Friday's exploration of the renowned excavations of the ancient Greek and Roman site of the former city of Ephesus.

This sixth day would be eventful, as we discussed ancient Greek and Roman government, urban planning, and architecture, while walking through the remarkable excavations and restorations by Turkish and Austrian archeologists at the former port of Ephesus. Also included in the tour were visits to the Church of St. John the Evangelist and to the shrine located on a nearby mountaintop that many people believe

was the location of the Virgin Mary's last earthly home. Many of the students recalled hearing about St. Paul's letters to the Ephesians; they were now on site.

Similar to Tuesday's experiences, this was to be another unusual day of learning – or of struggling to learn. Our Field Study inquiry became especially interesting early this Friday morning as we were gathering our group for the bus ride to Ephesus. As I waited for the students to gather, I struck up a conversation with a local businesswoman. She explained that she was a former academic who had taught in the U. S. As she, another student, and I waited in the hotel's front entrance doorway, I explained to her the general purposes of our Field Study I asked her directly about the speech suppression issue. The student and I were stunned by her response: she looked at me directly and slowly raised her pointer finger to her lips, in a "shhh" sign. "Too many ears," she softly said glancing at the hotel desk attendants, "we'll could talk later after your tour. Perhaps we could have a coffee later this afternoon. " I asked the student standing next to me pointedly: "We are hearing this, right?"

As it developed later that day, a student and I did meet her in a coffee shop next door to the hotel. We talked extensively about our families, hometowns, and also current events. She was eager to tell us about her family and the current government policy's effects on them and her work. We described to her our confusion at the seeming opposite portrayals of free speech issues, and our visit to the newspaper and then the meeting with the students and teachers. She was certain, and she was worried. She said that the regime's religious agenda was also a political agenda. She elaborated that all schools are subject to political pressure.

Then she elaborated how she and her husband had received telephone calls from local religious school advocates encouraging them to transfer their child to a local Islamic school. She and her husband did not wish for their daughter to have a strict fundamentalist Islamic education. She explained that they

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were hoping to emigrate from Turkey to a different country so that they could raise their children without government or unsolicited religious interference in their personal family lives.

Coincidentally, that day's Turkish Daily News newspaper delivered more for us to consider: the announcement of a news columnist being charged with the offense of insulting public employees regarding their duties.

Another student was struck by the different practices about personal attire: "I remember feeling as if my headscarf was flashy in comparison to most Turkish women's clothing - my scarf was gold and a little glittery. It was surprising because it seemed that depending on where you were in Turkey, the custom or rules changed. On the rich shopping streets and in upscale restaurants, the women dressed and looked like supermodels, but they were still covered more than what you would see on a typical street in the U. S. In some more conservative neighborhoods, we felt out of place even with our hair covered because other women were fully covered in traditional Islamic dress. In the main parts of Istanbul, dress code was more relaxed. But this was complicated too, as one night as we were out and a man became overtly rude ogling one of our group who obviously was dressed less discreetly.

On the seventh day, the group would depart Turkey via ferry and enter the European Union at the Greek island of Samos, where we lodged at the harbor of Pythagorio. The island is associated with the birthplace of two ancient philosophers, Pythagoras and Aesop.

On the eighth day, the group assembled for lecture and discussions with a special focus on the historical odyssey of Greeks and Turks through the ages. From the Bronze Age to the present relationship between Turks and Greeks, the broad perspective was designed to focus the group on the dramatic events of the past to illuminate the issues of today. The similarities of the geography, cuisine, and Eastern influence are evident but differing in religion and culture,

these two countries have had a troubled co-existence. Then current points of contention were elaborated, regarding the divided Cyprus, oil exploration on the continental shelf, and continued controversies involving minorities in both nations were discussed.

The rest of this day was left for exploration.

On the ninth day, the group flew from Samos to the Greek capital of Athens. There the group would quickly gather for the trek up to the Acropolis, illuminated by student guide presentations of its significance, followed by a visit to the Acropolis museum. Stunning was this vista and its history.

After dinner, the students explored nearby social gathering places and sought some conversation with the local people. One student reported a coffee shop patron who urged the U. S. to pay help bail out Greece because the U. S. “owed it” to the Greeks for inventing democracy.

On the tenth day, Saturday, we visited the US Embassy to receive a briefing on Greek- U. S. relations, followed by a visit to the Greek Parliament, and then to meet with some students at the nearby law faculty. In discussions, the group talked about the political situation, but it was obvious that it was a delicate topic. Everyone was respectful; the Greek students seem to think that one answer was to change the Greek mentality; however, they also said that they didn’t think the older generation would ever change.

The students enjoyed an evening of conversation and socializing with Greek students that evening.

A student’s reflection at this point: “There is something more about Greece that is substantially different from Turkey; it’s not just the architecture but the sentiments and ideals seem to be completely different. People seem willing to accept that certain things about Greece are a mess and don’t mind talking about them with total strangers. On our last night in Athens, we went out with a group of Greek law students. I spent nearly an

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hour talking with another student who had the exact opposite values that I did. However he was eager to share with me what he thought should change about the country and what the problems were. In fact we were both amused that we had such differing opinions. These dialogues were a sharp contrast from the tense and somewhat awkward conversations that we had in Turkey even in forums where we were invited to come and discuss issues with our Turkish peers”

Thus, ten days of exploration ended with a long travel day home, and plenty of time to let the impressions settle in and to reflect on what was learned.

### **B. Institutions of the European Union Field Study**

Fifteen years ago, students in my European Union course suggested that the abstract concepts presented by our EU instruction could be fortified if we actually went to the EU institutions, saw first-hand what it looked like, and talked with real legal actors there. We were bold, and we did it. The results were obvious from the start.

The eight-day field study that begins in Brussels, moving through Luxembourg, then Strasbourg, and ending in Paris is truly a whirlwind learning experience. As with all Field Studies, the goal was to learn from first hand perception and experience, acting as legal researchers through interactions and inquiry with varying people within the European Union.

This learning could not be mirrored in the classroom. The students were able to visualize what they had spent a semester learning. Seeing where the action takes place, so to speak, is something that would make the European Union real to the students.

Agani, focusing the students on the issues was key. By using what they had already learned in class, the “target inquiries” were framed that would expand on the students prior knowledge, enriching their understanding of the EU. Topics included immigration and asylum, such as whether



Europeans have experienced anti-immigration behavior and how the EU addresses immigrations. Is Islam an issue among immigrants? Obviously, the current economic crisis in Europe has been a highly relevant topic worldwide as it has in the United States. The students were to gather insight as to the sentiment about the EU from different people in different states. Euroscepticism and conversely pro-European attitudes help mold our understanding of how the EU works within each Member State. Is the European Union doing too little or too much today in its efforts to restore economic growth? Have you been affected personally by national austerity measures imposed as a result of the current economic crisis? Is the EU budget too large and wasteful? Should the northern countries send money to bail out the southern countries? In depth questions about political beliefs and observations of individual Europeans created our inquiry topics.

The usual reading assignments with current event articles about the EU helped to refresh their memories before arriving at each individual location. Upon arrival at each institution, we were given information via presentations and handouts, and students were instructed to take notes to submit to our evolving diary, as well as to pose more meaningful questions at the end of each session or other experience. They were asked to focus on pulling as much information as possible from lawyers, journalists, local law students and faculty, and various other staff members at European institutions. As usual, the students were tasked with chatting with people at various restaurants and pubs to get a holistic view of multiple perceptions.

The field study began in Brussels, where the students are swept away by the beauty of the Grand Place with its Medieval architecture, all decorated for the Christmas Market. As always on the arrival evening, our orientation dinner introduced the students to our issues, while they feasted on the delicious original Belgian “pommes frites,” waffles, and “mussels in Brussels.”

On Monday morning, we rode the metro toward the

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European Quarter, stopping first at the behemoth Justus Lipsius building, headquarters to the Council of the European Union, as well as the meetings of the European Council. We were hosted by a member of the Council's Legal Services who delivered a detailed lecture on the current EU issues and events taking place in this building. The students sat in the actual seats of the Council representatives -- experiencing exactly the routine of the many Council legal actors. The speaker described for us the hour-by-hour workings of a recent eventful European Council meeting. Often, American students can get lost in the difference between the three different "Councils" in Europe; never again will the Field Study participants get confused because of their vivid, on-site experiences with the three (two in Brussels, one in Strasbourg). When a student is told that she is sitting in David Cameron's chair in Brussels, that student will always remember the European Council.

After the lecture in the Council, our group hosts a lovely luncheon just near Shuman Circle, to which we invite the representatives from the Council and the Commission, as well as lawyers from a major international law firm (where we would be hosted by them that evening). The casual luncheon affords us the opportunity to speak candidly and directly with these different authentic EU players.

At five o'clock that first day, we have for several years been invited to a presentation at the major international law firm (referenced above) located nearby on the Rue de la Loi. We are welcomed by the senior partner, who is a prominent EU lawyer, and then four associates with the firm offer Powerpoint presentations describing their work at the firm. These are engagingly relevant, because the students know well that, in short time, they will be on the other end of that table -- at a law firm somewhere in the world. The associates portrayed their jobs and talked about areas of law that some of the students could potentially have an interest in. With the target inquiries in mind, students were able to talk to these young lawyers, ask for advice, and get an insight as to what EU lawyers actually do.

On Tuesday morning, our last stop in Brussels was to pose for a photo before the iconic Berlaymont building, traditional headquarters of the European Commission, then walked to the Charlemagne Building for a meeting with a Commission representative. The European Commission is the EU's ubiquitous executive body, about which we had studied for the entire previous semester, and many students felt a sense of importance after sitting at the Commission's original round meeting table that was the locus of countless Commission meetings following the Single European Act. The staff member speaking to our group portrayed that table as a symbolic and special place for the Commission. The Commission was established at that table in 1951 when there were only 9 members, and before the EU was in existence, of the European Coal and Steel Community. The historical evolution of the European Communities was artistically choreographed on the walls of that room. Students were able to walk around and observe the photos taken each year with the Commissioners meeting around the table. Now, the commissioners choose to stand in a group picture because of their sheer size. Most notable was the change in attire in the pictures, and the fact that commissioners were allowed to smoke inside the building in earlier days. This gave students not only a reference to the history, but to time.

Shortly after that presentation, our group boarded the train to Luxembourg, the home of the European Court of Justice. For many of the students, the Court's dramatic architecture and the power of the courtrooms gave them their most powerful experience. We have, for many years, been greeted warmly by a Judge on the Court, adding a full measure of exceptional hospitality. We are provided a briefing session to explain the legal issues presented by the case that is the subject of the oral argument we are about to hear.

The case on appeal was an environmental law case from the Netherlands, and barristers from several different EU Member States were participating, arguing about the acceptability of

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the land under EU legislation. The Member States took varying positions regarding the strength of European environmental rules in relation to their own domestic governments' rights to promote their own policies and purposes. American law students learn about legal "standing" in their first year of law school, and my students found it interesting to see a case in which every Member State had standing – if it so wished. Seeing the United Kingdom barrister (flocked with curly wig) argue in this case gave students a grasp on this aspect of how the EU functions. Because it is not easily comparable to our own justice system, students were able to have an unusual learning experience.

Not only were multiple Member States arguing on behalf of (or against) a single country, but no one official language was being spoken in the oral arguments. On each side of the courtroom were elevated glass cubicles, in which translators were working to translate for each language active in the case. They were busily translating, gesturing, taking turns to keep up with the torrid pace of the arguments. Each Judge, Barrister, and member of the public, had a phone connected to his or her chair that would translate the language of whoever was speaking to a language dictated by a button. It was happening in real time, and the speed at which the translators were operating was impressive. At one point, a judge asked a nervous barrister from the Netherlands to slow down her delivery, as the translation could not keep up.

The students commented later in the day that they were surprised by the "inefficiency" of it all. Although the translators were skilled and efficient at what they actually do, the amount of resources spent at the ECJ and all the European Institutions on translations alone seemed excessive. Time and time again we got shrugs and told, yes, but how can you hold a citizen accountable for laws that they cannot read? And linguistic identity was an important principle in the EU Treaties. So inefficient yes, but that is just the way it is. Being able to question this in person on the ground in a courtroom allowed

the students to understand easily one of the complexities of the EU. Member States with entirely different political values, backgrounds, and even languages have come together in attempt to better govern and run the better part of a continent. We had studied the many criticisms of the EU's excessive reach into government, the rising Euroskepticism, and the current economic difficulties, so the students were contemplating all this in real time.

We had a experiential surprise during the oral argument. The Advocate General posed a question to one of the oralists that demonstrated that the Advocate General has performed extraordinary research into the case presented. In her hypothetical question, she revealed a previous contradictory position taken by the national government involved that seemed to strongly undermine the oralist's argument being presented that morning in court. The courtroom was became quiet, the oralist stunned, asked permission to confer with her national representative also present in the courtroom. The oralist then simply stated that she could not explain the difference, but respectfully urged the Court to rule for her position. That was quite an experience, and the students all understood the importance of full preparation for an oral argument in a prestigious court. And after that episode, the students would never forget the valuable position of an Advocate General.

After the oral argument, we were fortunate to be received by one member of the panel from that morning's hearing, the distinguished Portuguese Judge on the Court, Judge José Luís da Cruz Vilaça, who spoke to the group for almost an hour about the hearing. Meeting one of the judges who had just conducted oral argument offers another unusual experience for law students.

The next morning, our group returned to the trains for the two-hour journey from Luxembourg to Strasbourg, France, the home of the European Parliament, the Council of Europe, and the European Court of Human Rights. Strasbourg is especially beautiful at Christmastime, and the Christmas

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markets spread widely through the city center and down into the quaint, historic quarter of La Petite France. Our group was led through the twists and turns of Strasbourg, and then to another orientation dinner, this time with two young Court of Human Rights lawyers from Azerbaijan. Enjoying candid conversation and socializing with these two lawyers offered excellent preparation for our visit the next morning at the European Court of Human Rights. They provided the students insights into their jobs as lawyers there, and even took them out for drinks to discuss their work in a relaxed setting. Many of our law students are interested in public interest and human rights work after graduation, so this was fruitful.

The next morning, we were welcomed at the Court of Human Rights for a briefing on the jurisdiction and workings of this most famous human rights court in the world. Then we were escorted to the grand plenum courtroom, and one of our friends from the previous evening offered his insights on current cases and issues at the court. Every student received a copy of the European Convention on Human Rights, and we discussed some of its primary provisions and what type cases were noteworthy. Of course, many of the provisions are quite unlike anything the U. S. students had seen in our law. The students were intrigued by the volume of cases, and the type of rights that are being infringed upon in other countries. Shortly after our visit, France would be at trial for its law on banning head scarves in public schools as a religious symbol. In a country where we like to think we have every human right available to us, it is so interesting to hear about what is happening throughout the EU, and what the ECHR is working toward.

We left the Court and traversed the river to see the principal structure of the Council of Europe headquarters and Assembly, followed by a similar walk to the magnificent and massive building of the European Parliament. The tour inside this architectural achievement always impresses the students with both its beauty and the size of this huge democratically elected international parliament.

The following morning, we enjoyed the fast TGV to Paris, to take our final walk from our hotel down to the site of the French Foreign Ministry (known as the Quai d'Orsay) on the Seine -- to the place where, oddly enough, modern European integration all began. During the beginning of our first semester in Law of the EU I course, we study in detail the extraordinary events that led to and made possible the creation of a supranational quasi-federal polity, ultimately evolving into today's EU. We would celebrate the EU by visiting the precise site of its origin and commemorating this novel achievement in legal science and legal history. It was here that, on May 9, 1950, French foreign minister Robert Schuman proclaimed the Shuman Declaration, proposing and inviting other nations to join France in the first of the European Communities. It was fitting to bring the students here, where they could witness this grand location and reflect vividly on their EU journey.

We would toast to European peace and cooperation, and then stroll a little further to the views from the Eiffel Tower. The students would continue to pursue the target inquiries and submit their diary entries until we all returned to the U. S. when all of the offerings would be assembled and published, revealing just how much we had learned experientially.

### I. Conclusion

“Legal education is at a crossroads, uniquely ripe for innovative curricular and pedagogical change.”<sup>35</sup> Reform is on the way, and law schools are introducing more much-needed practical legal skills training. In this process, law schools should exercise prudence, recognizing the “need to prepare students to contribute to the law firm team, to be able to engage in sophisticated practice, and be able to solve issues with ingenuity and creativity. The most advantageous answer for this kind of education is sophisticated experiential education. ... more clinics ... and more now-traditional skills courses ..., but it means far more.”<sup>36</sup>

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<sup>35</sup> See, *supra*, note 7, at 12-13.

<sup>36</sup> Moliterno *supra*, note 3, at 228.

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As this paper urges with vivid examples, experiential learning can be richer, deeper than just teaching someone how to file a pleading or where to stand in the courtroom. Carefully designed and focused international experiential learning can foster skills valuable to lawyers in an unusual way: discovering different legal and social cultures on a person-to-person level, immersed in research in the day-to-day lives of humans in other lands and their issues. Exploring fundamental rights conflicts in extreme circumstances and different cultural contexts, or the functioning of supranational collaboration beyond the U. S. experience, can thrust our law students into experiential learning in valuable dimensions.

Waking to the unusually beautiful call to prayer broadcast from loud mosque speakers in Istanbul at 4:45 a. m. and standing high atop the Acropolis can vividly communicate to U. S. students that they are not at home in the classroom, and can shake open their senses as well as their sensitivities to appreciate and discern the reality of legal judgments in very different worlds. And of course, interacting with peers and pedestrians from other cultures teaches so much. One student commented poignantly as we were leaving Istanbul: “Hey Professor, you know, we have spent four days with these Turkish students, they are all Muslims, and they are just like us.” What value is added to this student’s discernment skills or leadership skills when this student returns to the U. S. and hears anti-Islamic rhetoric?

“The mark of professional expertise is the ability to both act and think well in uncertain situations.”<sup>37</sup>

As we in U. S. legal education work toward more effective teaching, we should thoughtfully design and construct many forms of practice oriented experiences for our students. The targeted international field studies described above can contribute valuable skills of perception and judgment, as well

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<sup>37</sup> Educating Lawyers, supra note 12, at 9.



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as foster a rich and nuanced perspective, to the modern law graduate today, offering one special way to enrich our students with experiential learning.



**Legal Education for the Twenty-first Century:  
An International Conference of Legal Education  
BAR EXAMS AND ADMISSION  
TO PRACTICE STANDARDS**

*Sally Evans Lockwood*

*Director, Georgia Office of Bar Admissions*

I am delighted to meet with you today and to bring you greetings from the fifty-six Bar admission authorities of the United States.

As you know, the government of the United States is the federal government of the republic of fifty states that constitute the United States, as well as one capital district, and 5 territories. Admission to the practice of law in the US jurisdictions -the individual states and territories- is regulated by each jurisdiction. There is no national admission to the practice of law in the United States.

The fifty-six United States jurisdictions are made up of the fifty states, the District of Columbia, and the 5 territories: Guam, Northern Mariana Islands, Palau, Puerto Rico, and the U. S. Virgin Islands.

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And where are some of those fifty-six jurisdictions looking for software and IT support for their work? Right here in Ankara, Turkey.

ILG Information Technologies out of Ankara and Mountain View, California, has developed an online application and data management system called Admissions Manager that is now used by five U. S. jurisdictions, and I predict will add more soon. The company's president, Baris Misman, has been invited to join us for this conference.

In the United States, there is no national Bar Admission, nor is there currently a completely national Bar Examination. There is an organization called the National Conference of Bar Examiners (NCBE). NCBE performs a number of functions:

- Serves as a resource for bar admissions authorities in the U. S.
- Develops tests that jurisdictions may purchase.
- Conducts educational programs for bar admissions administrators and boards on topics such as drafting and grading bar examination questions and conducting fitness investigations; and
- Publishes each year a very useful tool called *Comprehensive Guide to Bar Admission Requirements* that is available online at NCBEX.org.
- Provides detailed information on the requirements in each US jurisdiction.

Under the Constitution of the State of Georgia, the Supreme Court of Georgia is responsible for the regulation of the practice of law in Georgia, including admission to the practice. This is true in most United States jurisdictions, as well, although in a few states, such as California, admission and regulation of practice is shared by the state Supreme Court and the legislature.

Each state and territory of the United States has an Office of Bar Admissions or some similar name which is charged

with administering and enforcing the admission standards. Admission to practice requires meeting two types of standards in every US jurisdiction:

- (1) Character and fitness; and
- (2) Competence

The purpose of requiring applicants to meet both types of standards is to protect the public from unethical and incompetent lawyers. The proper functioning of the legal system depends on the honesty and competence of lawyers and judges.

### **Character and fitness**

Does the applicant have the requisite honesty and trustworthiness, that is, the **character** expected?

Does the applicants demonstrate the requisite diligence, reliability, and good judgment - the **fitness** to practice law?

### **Competence**

Does the applicant demonstrate a minimum level of competence in:

- (a) Identifying legal issues in a statement of facts such as may be encountered in the practice of law;
- (b) Engaging in a reasoned analysis of the issues; and
- (c) Arriving at a logical solution by the application of fundamental legal principles, in a manner which demonstrates a thorough understanding of these principles.

To evaluate character and fitness, we investigate the background of each applicant. To evaluate competence, we test applicants with what we call a Bar Examination on which every applicant must achieve a passing score to be admitted to practice.

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Every US jurisdiction conducts a character and fitness investigation and a Bar exam of all who want to be admitted to practice. However, each jurisdiction may do it a bit differently, so it is important to check each jurisdiction's requirements in the *Comprehensive Guide*.

In Georgia, the Supreme Court has delegated to two Boards the authority to make decisions about new attorney admissions, and the Court appoints all members of both boards:

(1) The Board of Bar Examiners determines if an applicant is competent to be admitted to the practice of law - this Board is in charge of the Bar Examination itself; and

(2) The Board to Determine Fitness of Bar Applicants determines if an applicant possesses the requisite character and fitness to be admitted to practice.

Both the investigation and the Bar examination are conducted pursuant to the Rules Governing Admission to the Practice of Law in Georgia, promulgated by the Supreme Court of Georgia.

Bar admission in Georgia is a two step process:

1. Certification of Fitness - shorthand for character and fitness

2. Passing the Bar Examination

To be admitted to practice, one must accomplish both steps; one, cannot go to step 2 (the examination) until step 1(fitness certification) has been achieved.

In some jurisdictions, this process is reversed, with passing the Bar exam required prior to the investigation of character and fitness. In others, the processes are concurrent, with the investigation as an ongoing process and Certification not required before sitting for the exam.

The Georgia Fitness Board consists of ten members, seven lawyers, and three members of the public, (currently one

business consultant, one psychiatrist, one with non-profit community experience.)

The Georgia Board of Bar Examiners consists of six lawyers engaged in the practice of law.

The two boards are separate and act independently; however they share a staff, that of the Office of Bar Admissions, an administrative agency of the Supreme Court of Georgia.

### **Educational requirements for admission to the practice of law in Georgia**

Prior to taking the examination, the applicant must have been awarded:

- An undergraduate degree (BA, BS, BBA, or equivalent) by an accredited institution (by Commission on Recognition of Post-secondary Accreditation), usually four years; and
- The first professional degree in law (JD or LLB) from a law school approved by the American Bar Association, usually three years.
- Law school is a graduate program in the United States.

Recently, at the request of the Board of Bar Examiners, the Supreme Court of Georgia amended the educational requirements in the Rules to allow foreign educated lawyers to sit for the Georgia Bar Exam if they have satisfactorily completed a LLM. degree in the Practice of Law in the United States.

- A foreign educated lawyer is a lawyer educated at a law school located outside the US and its territories and authorized to practice law in a foreign jurisdiction.
- This is a particular LLM program that meets Curricula Criteria specified by the Board to equip foreign educated lawyers for admission to practice in US jurisdiction.
- The adoption of this rule demonstrates the recognition by the Georgia Supreme Court that the world is growing smaller and more connected each day.

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- In fact, Georgia offers one of the most supportive legal frameworks for international arbitration in the world, including arbitration-friendly courts and legislation, as well as a welcoming environment for foreign lawyers.
- As Justice Hunstein says, our “experienced judiciary embraces a system of international arbitration as vital to global commerce.”
- Prior to the recent rule change, a foreign educated lawyer could apply for a waiver of the rule requiring graduation from an ABA-approved law school, and the Board of Bar Examiners has granted a number of such waivers. The waiver process is still available to those who choose not to pursue the LLM in the Practice of Law in the United States.

### **Citizenship**

An applicant to take the Georgia Bar Examination does not have to be a U. S. citizen, but must produce documentation showing that he or she maintains legal status in the US and will maintain that status until admitted to practice.

### **Character and Fitness Investigation**

The raw material for the fitness investigation is the online Fitness Application. The application is long and detailed. It asks the applicant to disclose to the Supreme Court a vast amount of information:

- education
- residence history
- employment history
- academic history (particularly any misconduct)
- any criminal history
- credit history, any serious debt problems,
- any drug or alcohol problems



- any mental health issues
- personal and employment references

The staff investigates these areas and verifies the information, then brings all applications to the Fitness Board for review. This is where ILG Technologies comes in. Without it, it would have been impossible for our office to have handled the huge influx of applications over the past two years without adding staff.

The Fitness Board reviews the application to make a determination whether or not the applicant should be certified to the Supreme Court for admission to the bar. We currently receive approximately 2000 fitness applications a year. Eighty per cent of fitness applicants sail through the process with no problems. The critical issue for the Board is what the character is today, not what it was five years ago.

- The Board looks carefully at conduct, particularly as it relates to honesty, trustworthiness, reliability, diligence and judgment.
- It applies criteria in reviewing this conduct (age at time, seriousness, patterns of misconduct, recency).
- The most important and even critical element is evidence of rehabilitation.
- It is the Board's position that an applicant can be rehabilitated regardless of the seriousness of the conduct, and the burden is on the applicant to demonstrate rehabilitation.
- The Board's Policy Statement Regarding Character and Fitness Review explains the elements required to show rehabilitation in more detail.
- In 1982, the Georgia Supreme Court issued one of the first opinions in the United States on rehabilitation for Bar admission purposes. *In re Cason*, 249. Ga. 806 (1982) is the seminal case on this point.

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### **The major character and fitness issues seen in our applications:**

1. LACK OF CANDOR: omitting or minimizing problem conduct.
2. DRUGS & ALCOHOL: DUI's – they are a criminal act, a societal problem, and perhaps an indication of drug or alcohol abuse or addiction.
3. CREDIT HISTORY: – financial irresponsibility shown by defaulted student loans, liens, charged off accounts, accounts in collection. If there have been credit problems, an applicant must show six consecutive months of paying on time to be certified. Lawyers are expected to be able to handle their own funds and to be trusted with the funds of others.
4. ACADEMIC MISCONDUCT: plagiarism, suspension, expulsion.

An example of how the Board handles a problem area can be seen in its approach to a history of alcohol-related problems and offenses. If this kind of history is revealed in the investigation, the Board would ask the applicant to give a statement about alcohol use and any treatment. If the Board remained concerned, it may refer the applicant to a psychiatrist with a specialty in addiction for an independent medical evaluation at the Board's expense. If a problem is diagnosed and treatment recommended, the Board would table the application until the course of recommended treatment has progressed for a period of time. At that point, the Board could invite the applicant for an informal conference with the Board to assure that treatment has progressed to a point where the applicant is dealing constructively with the problem and would not be a danger to the public if he or she were certified to take the bar exam.

Of the 2000 applicants a year, forty or so are asked to attend an informal conference with the Board. Five or six applicants each year are tentatively denied Certification of Fitness. A

Tentative Order of Denial triggers the right of the applicant to a hearing before an impartial hearing officer. The hearing officer makes written findings of fact and recommendations to the Board. The Board is not bound by the hearing officer's decision. If the Board decides to issue a Final Order of Denial of Certification of Fitness, the applicant has right to appeal to Supreme Court of Georgia.

### **Bar Examination**

Once an applicant has received Certification of Fitness to Practice Law, the second step is to sit for and pass the Bar Examination. The applicant may take part of the exam on his or her laptop for a small additional fee for the software, essentially a word processing program that blocks access to the internet and all other programs. It is very secure software. Ninety per cent of our Bar Exam applicants choose to take it on lap top.

The Georgia Bar Examination is a two-day exam given twice a year, in February and July. It is given on the same dates in every jurisdiction, although some jurisdictions add an additional half or full day of testing. The July exam is the larger, because it includes more first-time applicants who just graduated from law school in May.

The first day of the exam consists of:

(1) Four essay questions, to be answered in three hours total. Each Bar Examiner writes and grades one question on topics listed in the Rules that should be answered according to Georgia law. These are called jurisdiction - specific questions. The questions are passed out on paper, but ninety per cent of the applicants input the answers with the special exam software that is later uploaded to a secure server to which the Bar Examiners have access for grading.

An essay question consists of a narrative description of a legal problem about which specific questions are asked. It calls for a narrative response that presents a balanced analysis that applies the law to the facts and reaches a conclusion.

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All United States jurisdictions use essay questions on the exam; some are jurisdiction specific, some are not. The National Conference of Bar Examiners will provide Multistate Essay Questions that are not jurisdiction- specific. The Georgia Board of Bar Examiners has chosen to write its own jurisdiction-specific essay questions.

The second part of the first day of the exam consists of: two Performance Test items to be done in three hours total, written by the National Conference of Bar Examiners, NCBE, but graded by the Georgia Bar Examiners. Each Performance test item asks the applicant to complete a task, such as writing a memorandum or letter to a client, drafting a pleading, or some other task that any first year lawyer should be able to accomplish. The Multistate Performance Test (MPT) is essentially an open book test. The applicant is given the file and the library of research materials.

The MPT requires the applicant to read and absorb a set of materials, to separate the relevant from irrelevant materials in the facts and law provided, and to respond to a specific set of instructions from a supervisor.

Forty-one United States jurisdictions administer the Multistate Performance Test. Examples of the essay questions and the Performance Test questions can be found on the Bar Admissions website at [www.gabaradmissions.org](http://www.gabaradmissions.org).

Day 2 of the Georgia Bar Examination consists of:

1. A 6-hour 200 multiple choice test called the Multistate Bar Examination, or MBE; developed by the National Conference of Bar Examiners (NCBE).

2. Questions are not jurisdiction specific and cover 6 subjects:

Constitutional Law, Contracts, Criminal Law, Evidence, Real Property, Torts.

1. The questions contain a tightly organized set of facts.
2. The applicant is given four options and asked to select one

choice that corresponds to the most appropriate rationale for resolving matter.

3. The applicants uses an answer sheet to bubble in the chosen response with a pencil.
4. Machine scored through the NCBE.

All United States jurisdictions except Louisiana and Puerto Rico) use the MBE.

The two-day Georgia Bar Examination consists of three sections:

1. Four Georgia-specific essay questions;
2. Two Multistate Performance Test items; and
3. The Multistate Bar Exam (200 multiple choice questions).

Each section tests different skills and knowledge in different ways, but they complement each other to provide a picture of competence for the Bar Examiners.

Fourteen jurisdictions have adopted what the National Conference of Bar Examiners calls the Uniform Bar Exam or the UBE. The UBE consists of the MBE (multiple choice exam), the MPT (performance test) and six Multistate Essay Questions that are not jurisdiction-specific.

For the Georgia exam, the scores from each day of the two-day exam are combined to determine Pass/Fail. 400 points are possible, 270 required to pass (67.5% after scaling).

About 1400 applicants take July exam; about 600 take the February exam. It takes about three months for the Examiners to grade the essay answers. The exam results are released in May for the February exam and in October for the July exam. The July pass rate is 75 - 80% because there are more first-time takers who recently graduated from law school. The February pass rate is 50 - 60%. There are more repeat takers for the February exam. Statistically, if one is going to pass, one passes in the first two times.

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### MPRE

There is one other test that one must pass to be admitted in Georgia and in all but three other U. S. jurisdictions ( Maryland, Wisconsin, and Puerto Rico): the Multistate Professional Responsibility Examination or MPRE:

1. A two-hour, 60-question multiple choice test on the Model Rules of Professional Conduct, the rules on which the lawyer ethics rules of most jurisdictions are based.
2. Administered three times a year at testing centers in every jurisdiction, but not at the site of the February and July exams.

### **Certificate of Eligibility for Admission to the Practice of Law in GA**

Those who pass the Georgia Bar Examination receive a letter from our office congratulating them. The letter contains a Certificate of Eligibility to Practice Law in Georgia. The certificate must be taken to a superior (trial) court judge who administers the Attorney's Oath, or one can be sworn in at several large swearing-in ceremonies conducted by law schools or local bar associations:

*"I swear that I will truly and honestly, justly and uprightly, conduct myself as a member of this learned profession and in accordance with the Georgia Rules of Professional Conduct, as an attorney and counselor, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God."*

After one is sworn in, he or she enrolls in the State Bar of Georgia and becomes subject to the Georgia Rules of Professional Conduct. All U. S. jurisdictions have similar admission procedures.

### **Mandatory Mentoring Program**

After enrollment with the State Bar of Georgia, one also becomes subject to the Mandatory Mentoring Program of the State Bar. Each newly admitted lawyer is assigned a mentor with whom the beginning lawyer works through a Mentoring Plan for the first year of practice. The Mentoring Plan is tailored to the practice needs of the beginning lawyer. Beginning lawyers are also required to participate in Continuing Legal Education for beginning lawyers and tied to the Mentoring Plan.

The State Bar of Georgia has worked with several other jurisdictions in developing Mentoring Programs based on the Georgia model: Florida, Louisiana, Maryland, North Carolina, Ohio, Tennessee, South Carolina, Utah, and Virginia. We have also been consulted by the People's Republic of China.

### **Admission on Motion without Examination**

Another type of admission process in Georgia allows for the licensing of a lawyer without examination by a host state if the lawyer has been engaged in active law practice in good standing in another U. S. jurisdiction for a significant (five of the last seven years) period of time and has been admitted there by examination. Admission on Motion applicants must meet the same educational requirements as exam applicants: undergraduate degree from accredited institution and graduate degree from an American Bar Association approved law school. Admission on Motion essentially waives the examination, but not the fitness certification requirement. Forty-two U. S. jurisdictions have some form of admission on motion without examination. California and Florida do not. We have seen an increasing number of Admission on Motion applicants since Georgia adopted this rule in 2003. We now receive about 200 petitions for Admission on Motion a year.

### **Foreign Law Consultants**

There is one final kind of admission to practice in Georgia that is called Foreign Law Consultant. This is limited licensure,

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but Certification of Fitness is still required. Foreign Law Consultants are limited to rendering legal advice on matters governed by international law, the law of the foreign country where they are admitted to practice, or the law of a non-U. S. jurisdiction. Foreign Law Consultants may not render legal advice on Georgia or U. S. law. They are permitted to be in partnership with U. S. lawyers, they may employ U. S. lawyers, and they may use the firm name of U. S. lawyers so long as the name is not false or misleading.



# **Legal Education in the Twenty-First Century: An International Conference of Legal Education**

*James P. White*

Since 2000 there have been at least four major international conferences on legal education. The first conference held in May 2000 was part of the centennial celebration of the Association of American Law Schools. The Conference took place in Florence, Italy where representatives of twenty-seven countries from around the world presented papers. The theme of the conference was to foster more cooperative efforts among law schools throughout the world mindful of the increasing globalization of legal education. As stated in the introductory materials, "The time has long since past that any of us can be educated members of society and the legal profession without developing an understanding of other cultures and legal systems. Its focus is on the structure of legal education and legal systems. We will thus be talking about what those structures are, and how they affect our ability to cooperate in faculty exchange, student exchange, and possible joint curriculum development. Only through an open-minded, candid discussion will we be able to determine what new projects or institutions should be developed to facilitate enhanced global understanding and cooperation.

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The second conference was in conjunction with the joint meeting of the American Bar Association and the British Bar and British Law Society held in London in 2000.

As John Sexton observed in his 2000 remarks to this London meeting of the American Bar Association. ".... today clients are represented in the same transaction by lawyers from American law firms who are graduates of American law schools and by lawyers from European firms who are products of a much more typical legal education consisting of five years of education after secondary school. These clients report that the American trained lawyers and those trained elsewhere bring comparable skills to the table. This observation, if true, will become more palpable as the American firms and the European firms begin to hire lawyers from each other's pools - and these lawyers begin to practice side by side as associates and partners."

The third conference was in June 2001 on the topic of Assuring Quality Legal Education in the Face of Similarities, Differences and Rapid Change held in Istanbul, Turkey sponsored by South Texas College of Law in cooperation with the section of Legal Education and Admissions to the Bar of the American Bar Association and the Law School Admission Council. This conference was conceived as a follow-up to the Florence conference. The purpose of the Istanbul conference was to "focus on some of the critical issues that will confront law schools in all countries. " Some forty invitees from seventeen countries met for four days. As stated, "The theme of this conference focusses on our core responsibility to educate competent and ethical lawyers for the future. The theme is not abstract but instead very concrete. How we can improve our "quality control" mechanisms at the three critical phases of legal education: 1) inventing effective controls at entry into law schools, to focus on merit, ability and access; 2) creating a support mechanism to assure that all the law schools in a country's system provide high quality, relevant legal education; and 3) creating measurement devices on exit from law school to assure that those who are becoming lawyers are knowledgeable, competent and ethical. "

The fourth conference was held in Beijing to celebrate the 50<sup>th</sup> anniversary of the China University of Political Science and Law and an International Conference on the Rule of Law and Legal Education. Four conferences over a three year period reflecting the interaction of legal educators throughout the world – the globalization of legal education.

Four conferences in three years, Italy, Great Britain, Turkey and China with legal education in a global context as the theme and with discussions and the presentation of scholarly papers demonstrate that truly globalization of legal education has taken place.

The theme of all of these conferences was to review legal education in each country with a goal towards greater compatibility among the legal education systems of the world. While there is a great diversity in legal education throughout the world there is a commonality, which must be accentuated for all lawyers from all countries, must practice effectively in our global world of the 21<sup>st</sup> Century.

In the past ten years we have witnessed many changes in legal education in countries throughout the world. As Professor Herigan has observed, “Law schools specifically are at a strategic juncture and so are universities in general. Law schools however have been able to hide behind their assumed protective cloak of having a monopoly in raising new lawyers. In bonds with bars and professional organizations, law schools felt they were shielded against rough weather. ” I believe that much is changing for law schools, which poses a variety of reasons to reflect on legal education; the growing competition between schools and between countries and programs. IT technologies; out-sourcing; the costs of legal education and the costs of legal services; the entrance on the market of cheaper E-learning, combined with globalization and Europeanization trends. Law schools have endeavored to offer as many courses as possible to their students and to enable their professors to combine research with teaching. What might certainly happen however is that students, wanting value for

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money, will choose online popular mainstream courses, with automated testing and marking. Lectures by top academics can be put online and made available for many. How will universities and law schools (have to) respond to these and similar developments? Do they all want to be comparable (and imitate the best schools, knowing that they do not have the resources to copy what they are doing), or do they have to charter out their own difference courses? How can law schools contribute to access and the low price of legal education and to the trend that legal costs for society cannot keep going up and those stakeholders will always seek ways to avoid legal costs? Education is an expensive commodity for the public sector and/or for private individuals. The public sector will try to keep the costs of education as low as possible, if education is privatized, the students will be looking for the best deals. In both contexts it is inevitable that legal education will have to seek ways to improve productivity, or to decrease costs and seek ways to carve out business models which benefit from IT technologies and the benefits of economies of scale.

We speak of the globalization of the practice of law and the transferability of skills. Basic skills relating to problem solving, oral and written communication are to a large extent transferable. Also transferable is the art of listening, a skill too often ignored by those training for the legal profession.

The vast development of means of communication facilitates the globalization of law practice and the cooperation and exchange among law schools. The freer flow of students between recognized institutions in various countries, the recognition of legal studies undertaken outside of one's own country, procedures for recognizing degrees, greater integration of institutions and joint research projects all assume mutual trust. We as legal educators must foster mutual trust. The Internet is but a tool that must be used wisely to foster cooperation and exchange.

We must consider certain issues affecting the globalization of legal education. First, the level of resources of the institutions

of different communities may be different. Efforts at internationalization are expensive. They demand investment, which may not yield fruit immediately. The institutions of the various communities do not necessarily have equal resources for undertaking the task.

Second, the indirect resources for supporting the educational task are likewise not similar. In terms of internationalization initiatives, the funds allocated for education, which are channeled through students, may be especially significant. A student who has state-supported financing his or her participating in an international program will be much better prepared to benefit from such programs than a student who has to pay the cost of participation out of family assets.

Third, the forces favoring the internationalization of legal education sometimes clash with forces seeking to protect specifically national level interests that may also have a valid space in the life of some institutions. For example, universities in some countries feel strongly identified with the national character of the lectureships. They see the lecturer as a government employee who, barring extraordinary circumstances, by that very fact ought to be a citizen of the country. As valid as such perceptions may be they do not encourage the internationalization of faculties. Initiatives such as those promoting joint appointment of professors between institutions in different countries as a linking mechanism, may run up against obstacles of this nature.

Fourth, the differences in the organization arrangements of law schools and departments of the different traditions also tend to impede interrelations. A North American style institution, which operates as a whole without subject-based departments, may take a long time to understand that in relating to their counterparts in another tradition they must communicate with an academic department, not simply the law school as a whole. These are the issues that, in my judgment, influence our efforts to speed our cooperation transnationally. The manner in which we deal with them can greatly affect the success of our efforts.

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We, as lawyers, have the opportunity to shape the legal institutions that will govern the future. As legal educators, we have the responsibility of preparing students to continue this process. And I want to stress the idea that changing legal education, like institutional building, is also a process in which we are engaged. We do not yet know the end result we simply know that participating in this process is essential to solving the global problems facing today's world. Standing alone, neither the approach taken by the "translators" nor the "modernizers" produces the paradigmatic shift required to educate lawyers in the new world reality. Both schools of thought appear to underestimate the breadth of the changes currently taking place. What is needed, instead, is a profoundly different approach: one that advocates a qualitative rather than quantitative change in legal education.

In the United States there is much ferment about the legal profession and legal education. The American Bar Association's Task Force on the Future of Legal Education released its final report. It reported: Law Schools as a rule are too expensive, too much alike and too focused on doctrinal instruction to provide enough of the kind of practical skills training today's new lawyers need.

It also states that law school accreditation standards stifle innovation and impose too many requirements that increase the cost but not necessarily the quality of legal education.

And it suggests that state supreme courts and bar admitting authorities are too wedded to the idea that only people with JDs from ABA accredited law schools are capable of providing basic legal services to those who couldn't otherwise afford a lawyer.

Critics of the report say it contains many bad ideas such as eliminating the requirement of an undergraduate degree for admission to law school reducing the law school program from three to two years, and allowing nonlawyers to engage in the practice of law.

This report comes at a time in American legal education when experimental learning opportunities which provide practical training for students while they are still in law school are significantly increased. These courses increase costs to the schools when resources for law schools are declining as are the number of law students. The American Bar Association reports the following statistics.

Year/Total JD Enrollment/1st Year Enrollment

2013 Fall = 128,641/ 39,675

2012 Fall = 139,055/ 44,481

2011 Fall = 146,288/ 48,697

Law school enrollment in the United States has fallen to a level of what it was thirty years ago, in spite of a number of new law schools created in this period. The New American Foundation reports that the 2012 median amount debt of law students upon graduation is \$146,616.

Data just released by the Law School Admission Council reports that Fall, 2014 applicants have again decreased by about 10%. Thus we have rising student debt, a decreasing applicant pool, more law schools, and decreased resources for legal education, a transformation of the practice of law, both in the United States and throughout the remainder of the world. We must address these factors in our discussion at this Conference and at our respective law schools.

In 1987 the Council of the Section of Legal Education and Admissions to the bar released a report of a Task Force on Long Range Planning for Legal Education in the United States. The Report's concluding recommendation was it is not enough to urge that the Council continue to monitor existing Standards and work toward continuing fiscal support. The task for the future is to provide continuous review of developments in the legal profession in order to assure that legal education's values respond as fully as possible to changing needs and obligations

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of the profession. At the same time, legal educators should protect against the infusion by the profession of values that are in any respect unworthy.

Ultimately, each law faculty is the guarantor of quality legal education for its students, the future lawyers of America. Even more important is the obligation to the public to train lawyers for competence and professional responsibility in the interest of justice. These are large responsibilities. We are confident that legal education is committed to the task and will perform admirably, even in the less than optimum circumstances that we may encounter in a yet-undetermined future.



## **Professionalism in the Practice Of Law**

*Carol W. Hunstein*

It's a pleasure to be here this evening. I am always grateful for an opportunity to talk about professionalism. It is a subject that is very important to me. Only the highest standards in professional conduct, honesty, diligence and civility, will foster public confidence in our legal system.

The law along with medicine and theology, has traditionally been considered one of the world's three true professions because of its importance to civilized society. Medicine preserves the body and theology preserves the spirit. The law preserves civilization and attendant world affairs.

The practice of law is an honorable profession. I continue to take pride in my profession even though, these days, lawyers are often resented and mistrusted. Unfortunately, there are some (and I believe it is a minority) in our profession who have provoked such criticism. They have forgotten that the practice of law is the search for the truth – for justice. It is the application of legal knowledge and experience to the resolution of disputes and problems. They are concerned only with winning – no matter what.

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If we are to ensure public confidence and trust in our profession, lawyers must strive not only to maintain the ethical standards required by our rules of professional conduct, but to go further. Former Chief Justice of the Georgia Supreme Court Harold G. Clarke defined Professionalism as the level of honorable and upright conduct which is expected above and beyond that which is required under the rules.

When I attended Stetson Law School, a one hour credit course on Legal Ethics was a relatively new requirement for graduation. The general attitude was that, if a lawyer complied with the ethical standards, the required standard with the ethical standards, the required standard of professional conduct would be met. But professionalism is more than just following the rules and being careful not to come too close to the line. True professionalism is a matter of character. The dictionary defines ethics as the discipline dealing with what is good and bad or right and wrong, with moral principles and values. I think our first ethics and professionalism training comes from our parents and grandparents when they tell us to be honest, to work diligently, to respect others and to treat people the way we would like to be treated.

The ABA Commission on Professionalism defines a profession as an occupation where members have special privileges, such as exclusive licensing, that are justified by the following assumptions:

- a. that the profession receives substantial privileges from the state;
- b. that its practice requires substantial intellectual training and the use of complex judgments;
- c. That since clients cannot adequately evaluate the quality of the service, they must trust those they consult;
- d. That the client's trust presupposes that the practitioner's self-interest is overbalanced by the devotion to serving both the client's interest and the public good; and

- e. That the occupation is self-regulating - that it is organized in such a way as to assure the public and the courts that its members are competent, do not violate their clients' trust and transcend their own self interest.

Jerome J. Shestack, former President of the ABA believes that there are six components of professionalism:

- a. Ethics, integrity and professional standards;
- b. Competent service to clients while maintaining independent judgments;
- c. Continuing education;
- d. Civility;
- e. Obligations to the rule of law and the justice system; and
- f. Pro bono service.

In today's society, lawyers must use sound business principles and practices in the administration of their law practices. But commercialism must not replace professionalism. If the legal community is primarily motivated by profit, rather than the ideal of justice and public service then lawyers are just merchants similar to any others engaged in selling goods or services for profit. Their sole goal would be the accumulation of wealth. John Grisham, attorney and author of novels based on the legal system, says in his book *The Rainmaker*, "All students enter law school with a certain amount of idealism and desire to serve the public, but after three years of brutal competition we care for nothing but the right job with the right firm where we can make partner in seven years and earn big bucks." I don't believe that is true of most lawyers; I certainly hope not.

In 1994 Warren E. Burger wrote an article for the *Wall Street Journal*, "The ABA Has Fallen Down on the Job," in which he stated, "The law historically has been viewed as a learned profession rather than a trade. As such, a lawyer's "calling" goes beyond his or her immediate financial interest. Lawyers

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have viewed themselves as statesmen and have served as problem-solvers, harmonizers, and peacemakers - the healers of conflict, not "gunslingers." The legal profession, in short, abided by standards that were above the minimum commands of the law. All of the profession's current problems—the eroding public respect for lawyers, the lack of professional dignity and civility on the part of some lawyers, and lawyers' insensitivity to the litigation explosion are clear indications of a lack of professionalism.

Are lawyers promoters of conflict? First Amendment free speech rights allow lawyers to advertise. Some lawyer advertising certainly appears to encourage conflict and litigation. There have been lawyers who thought that this First Amendment right to free speech allowed a lawyer or his agent to directly, in-person, and without invitation, solicit employment from individuals. Fortunately, the Eleventh Circuit Court of Appeals, in a 1998 decision, Falanga v. State Bar of Georgia, decided August 18, 1998, upheld the possible imposition of sanctions against the lawyers for this conduct which was in violation of the Code of Professional Responsibility (now replaced by the Georgia Rules of Professional Conduct.)

Are lawyers just hired guns whose legal acumen can be purchased by the highest bidder with little or no regard for the search for justice? Is win at any cost our philosophy? According to The Georgia Rules of Professional Conduct, a lawyer must diligently represent his client; however, "a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued."

The legal profession must not use diligent representation and the need to win as an excuse for deviation from what is morally right in any given situation. It is the responsibility of judges and lawyers to uphold the integrity of our legal system. Litigants have the right to have their cases adjudicated equitably and efficiently, regardless of their social position or financial resources. In every case, the litigation process must be

ultimately the search for truth. The Chief Justice's Commission on Professionalism has defined it well in their Aspirational Statement on Professionalism:

'There are unfortunate trends of commercialization and loss of professional community in the current practice of law. These trends are manifested in an undue emphasis on the financial rewards of practice, a lack of courtesy and civility among members of our profession, a lack of respect for the judiciary and for our systems of justice, and a lack of regard for others and for the common good. As a community of professionals, we should strive to make the internal rewards of service, craft and character, and not the external reward of financial gain, the primary rewards of the practice of law. In our practices we should remember that the primary justification for who we are is the common good we can achieve through the faithful representation of people who desire to resolve their disputes in a peaceful manner and to prevent future disputes. We should remember, and we should help our clients remember, that the way in which our clients resolve their disputes defines part of the character of our society and we should act accordingly. "

The Professionalism Commission has developed and adopted the following Lawyer's Creed by which all attorneys should abide:

To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

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To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

One of the most important things you do to foster professionalism is to mentor new lawyers. In your written materials you have some information on the mentoring program which is overseen by the Chief Justice's Commission on Professionalism. The four central features of the program are:

Every beginning lawyer will be assigned a mentor for the first year of law practice.

A new CLE program called Enhanced Bridge-the-Gap will emphasize lawyering skills as well as the lawyer's relationships with clients, other lawyers, the courts, and the public.

The CLE curriculum will lay the groundwork for the activities and discussions between the mentor and beginning lawyer about the basic precepts of law practice, practical skills, and ethical and professionalism norms.

(4) Each mentor and beginning lawyer will develop a Mentoring Plan tailored to their circumstances. It can be integrated into a training program that a law firm or organization may already have in place. The Mentoring Plan is to be completed in the first year after admission to the Bar.

In closing, I would remind each member of the bar that every day and in every case you will be judged by others with whom you have contact. If you have a commitment to the principles we have discussed, you will develop in the community a reputation of which you will be proud and your career in the law will be a distinguished one. I think Chief

Justice of the United States Charles Evans Hughes, who served as an Associate Justice from 1910-1916, and as Chief Justice from 1930-1941, said it eloquently, I quote:

“The highest reward that can come to a lawyer is the esteem of his professional brethren. That esteem is won in unique conditions and proceeds from an impartial judgment of professional rivals. It cannot be purchased. It cannot be artificially created. It cannot be gained by artifice or contrivance to attract public attention. It is not measured by pecuniary gains. It is an esteem which is born in sharp contests and thrives despite conflicting interests.

It is an esteem commanded solely by integrity of character and by brains and skill in the honorable performance of professional duty. In a world of imperfect humans, the faults of human clay are always manifest. The special temptations and tests of lawyers are obvious enough. But, considering trial and error, success and defeat, the bar slowly makes its estimate and the memory of the careers which it approves are at once its most precious heritage and an important safeguard of the interests of society so largely in the keeping of the profession of the law in its manifold services.”

We must resolve to strive each day to conduct ourselves in a professional manner. We have special knowledge and skills which enable us to serve mankind. We must use those skills wisely if we are to uphold the dignity, integrity, and honor of our profession.





# **Legal Education Quality Management State Examination**

*By Martin Groß*  
*Ankara, November 27, 2014*

## Preliminary Remarks

Legal education might be considered as the key to success of every legal system, which, in turn, is essential for every society. Nowadays we are happy to have the opportunity to have a look across our national borders, discussing the process of reforming our own systems of legal education. In Germany we have done considerable research concerning the legal education system in the other European countries, an important work providing valuable information for our own reflections. In this context I am happy to have got the opportunity to provide you some information about the system of legal education in Germany. I hope some of this might be helpful in your discussion.

The basic model of judicial training was established in the nineteenth century to educate an elite for the service of the Prussian state. Following this tradition the members of the German legal community in one sense belong to a common corps in that they are recruited through a common process and have a common formation. State examination plays an important role in this system. This essay deals with the philosophy of the Ger-

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man legal education system and the role of state examinations in this context, the connection and the influence between academic education and state examinations in which legal experts and legal practitioners take part. Furthermore, the essay provides detailed information about the organization of the examinations, especially about producing and grading examination questions, quality management, examination results and about the reputation the results have in the legal community as well as their impact on the legal career of the applicants.

### **A) The System as a Whole**

#### **I. The German Way of Legal Education**

How to make a good lawyer? The answer will differ around the world. Legal education is strongly influenced by the history and the development of a specific legal culture in each country. On the one hand, the roots of the US Legal system can be found within the British common law and it is no surprise that the legal education systems in both countries show clear resemblances. On the other hand, the continental European countries are members of a homogenous legal family strongly influenced by the ancient Roman authors, e.g. the thoughts of Ulpian. Since the Middle Ages, Roman law has been taught in universities all over Europe in Paris, Bologna, Cologne, Leuven, and later on also in Berlin. Therefore, I would like to provide some information about a system I personally know best, the German scheme of legal education and the importance of state examinations in this system.

Educating a lawyer will take about 7 to 8 years. The first step will be a compulsory academic education at a law faculty in a university. The young student has to learn about legal doctrines and the highly complex structure of an advanced legal system. Furthermore, in an earlier stage of the education, the student will be required to attend lectures learning to use theoretical knowledge to solve specific cases. The young students are also encouraged to go abroad for a year to learn about other legal systems and a foreign legal language. After completing

his studies, the students have to pass the first state examination. This is a difficult first examination. The candidate has to prove his knowledge in all the relevant disciplines of the law (after the Reform of 2003, 30 per cent of the examination is performed at university, but the state part of the examination is still considered as the main obstacle on the way to a legal profession). Having passed the first examination, the former student, now a trainee (*Referendar*) receives a supervised training in the main branches of all legal professions. And after completing a second examination, with a special centralization on his professional skills, you will have developed a highly sophisticated person ready to undertake the responsibilities required in all branches of the law, while doing no harm to the clients. The best will be outstanding and the rest will be good enough; or as the Belgian law professor Vanistendael notes: "Colleagues worldwide will agree that generally speaking German law students are low risk, high quality students."

In an overview, the structure of legal education in Germany is as follows:

- First, a four year undergraduate degree at a law faculty, following the completion of secondary school and the passing of the university entrance exam (*Abitur*).
- Instead of a law degree from the university, students then take the first examination, a comprehensive set of exams that emphasizes on academic knowledge in all relevant disciplines of the law. The main part (70 %) is handled by the Ministry of justice and the second part (30 %) is handled by the law faculty in a specifically selected branch of law, e.g. intellectual property law; about 70 % of the applicants pass the examination
- Persons who passed the first examination enter a compulsory practical training for two years *Referendariat* (a preparatory course). The aim of this period is to train the young people in the practical work of lawyers in the main legal professions. In each stage (civil court, criminal court,

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public prosecutor's office, administrative agency, law firm; also big companies, a ministry, or e.g. the chamber of trade in Taipei) the *Referendar* has to draft legal documents under the instructions of a supervisor. In addition, accompanying courses cover specific legal matters.

- At the end of the preparatory course, the applicants have to pass the second examination, again a comprehensive set of exams that emphasizes on more practical legal skills.

After passing the second examination successfully, the young lawyer, now called an *Assessor*, is theoretically qualified to adopt any legal profession. However, in reality, he will only be able to apply successfully for the office of a judge or a prosecutor if he has achieved the best marks (i.e. ranking among the top 15 per cent of his year).

Regarding the legal system as a whole, the state examinations play an important role in the process. As Heribert Hirte, a German law professor, remarks, the first examination and - to a minor extent - the second examination is the decisive bottle neck in the system. The examinations are very demanding and have - as one may say - colossal dimensions. Hence, the examinations are the key controlling element for students on their way to all legal professions. The necessity to pass the examination dominates the whole process. It focuses the student's attention on the topics and skills tested in the examinations.

In recent years we have had a vehement discussion about our system of examination.

And we have found the same conclusion as Stefan Koriath: "Though the system is hard, it provides again to be fair and a suitable and impartial way to find the best candidates"

### **II. Main Reforms: The View of a Judge, Thinking like a Lawyer; a Defined Influence for the Law Faculties**

One of the problems of the German system might have been that it traditionally focuses strongly on the pursuit of a judge-

ship. This goal is expressly stated in the respective statute of the *Deutsches Richtergesetz* (German Judges Act): Once you pass the second examination you acquire the qualification for the office of a judge (*Befähigung zum Richteramt*).

This could be a problem. In earlier times, the written tests in the examination often asked the candidates: "How will the judge decide?" In accordance with this approach, one could be tempted to think, "studying law means giving the right answer to a question". In such a context, the lawyer's oral argument capabilities appear to be less important. Students and candidates who only face these type of questions might be tempted to learn a tacit rule that there is always only *one* correct answer for a given legal question. That would be wrong. As any experienced lawyer knows, it is extremely difficult to predict precisely how a case brought to court will be decided in the end. There is a saying in Germany: "In court and on the high seas you are in the hands of the Lord". Or likewise: "Two lawyers: three different opinions". The field of law regularly offers a wide range of argument points and behavior bases.

This is why, since the reform of 2003, we have initiated a clear paradigm shift and have since then started to carefully regard the lawyers' view in the examinations. Nowadays, regarding the position of the judge as well as the position of the lawyer or the prosecutor, the focus of the examination and the focus of legal training for all legal professions are strongly associated with the proceedings in the courtroom.

In addition to encouraging more specializations for students and, the reform also introduced a separate university exam in specialized subjects. Students now have the opportunity to select subjects of specialisation. It is up to the universities to define these subjects and to set up their own exams in these subjects. As mentioned previously, the results in the state exam account for 70 per cent and the university exam in specialized subjects should account for 30 per cent of the overall result of the First Examination. This provides an incentive for the law faculties to develop their own profile and to compete with oth-

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er faculties. At the same time, students are encouraged to think about what kind of specialization would best serve their interests and their chances in the legal field.

### III. Legal Education and State Examinations

In Germany the law is regarded as one of the central concerns involving the identity of the state. You cannot have “rule of law” without very well trained, sophisticated lawyers. This is why law standards are strictly connected with the standards of legal education. So in my country, the state feels obligated to keep a keen eye on our legal education. In order to maintain a unified standard in our legal education system, we utilize the state examination.

In Germany we appreciate the importance of state examinations. Art. 33 (2) *Basic Law (Grundgesetz*, the German constitution) stipulates: “Every German shall be equally eligible for any public office according to his aptitude, qualifications and professional achievements.” This article must be considered together with Article 12 (1) *Basic Law which stipulates*: “(1) All Germans shall have the right to freely choose their occupation or profession, their place of work and their place of training.”

With the state examination, we try to provide an unbiased and nearly objective system for the examinees to prove their knowledge and their skills and to gain access to the office of a judge or an attorney, irrespective of their origin and social status.

The state examination system defines the required legal canon, the set of standard texts, approaches, examples, and cases by which it is recognized and which its members repeatedly invoke and employ. State examinations ensure that every candidate who passed the examination has gained enough knowledge in all relevant branches of the law. It further ensures that all candidates have the specific professional skills expected from a future judge or attorney.

In conclusion, the state examination is an excellent process to ensure that the state will have well-trained, highly sophisticated people to be appointed as judges, prosecutors and/or civil servants. The system also provides excellent candidates for the big law firms. It ensures that every lawyer working in the legal sector will have gained the skills and the knowledge necessary to meet the requirements of his clients.

The reputation of the system is excellent. After achieving high marks in the state examinations, the candidate no longer needs to worry about his professional career. Large corporations looking for a lawyer also regard the results of the examination carefully. We had a conference in Berlin last January about legal education and the requirements of market and business. Recruiting experts from large corporations told us that they are looking for well-trained lawyers, and were not interested in making fundamental changes in a tried and proven legal education system. Any additionally required business skills can be trained later, on the job or in supplementary courses provided by the companies.

### **B) Legal Education in Detail**

#### **I. Study of Legal Science**

Regarding the study of legal science the requirements are set by section 5a German Judges Act. The minimum study period is four years containing a minimum of two years in Germany. The provision distinguishes between mandatory courses (*Pflichtfächer*) and elective courses for specialization (*Schwerpunktbereiche*). Section 5a (2) German Judges Act also prescribes the compulsory subjects: the main elements of civil law, criminal law, public law, procedural law, and the law of the European Union; legal methodology; and the philosophical, historical, and social foundations of the law. The elective subjects are not set by federal law. The law simply states that they should broaden and deepen the compulsory subjects. The intention is to teach the interdisciplinary and international aspects of the law and to offer students an opportunity for specialization.

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University studies have to take into consideration the practical needs of a judge, a civil servant, and an advocate. Students have to successfully participate in classes teaching foreign legal terminology or classes teaching legal science in a foreign language. Furthermore, they have to participate in classes training so-called key qualifications: soft skills like conflict management, advocacy, mediation, and rhetorical skills needed by lawyers.

However, the law does not prescribe compulsory classes to develop those abilities in detail.

Although federal law determines this structure of legal studies it does not determine the exact number of courses. Federal law however states that in the First Examination as the first legal degree the mandatory courses constitute a portion of 70 per cent and the elective courses constitute 30 per cent of the final grade. Regulation in detail is left to the *Länder*, which have to observe the standards set by federal law and at the same time the freedom of academic teaching and research which is guaranteed by the constitution.

Consequently, the framework set by federal law is completed by the respective Legal Education Act (*Juristenausbildungsgesetz*) complemented by Legal Education and Examination Regulations (*Juristenausbildungs- und Prüfungsordnung*) of each state.

The law faculties do not have any discretion concerning the compulsory parts of the legal study, but they have broad discretion over the elective subjects. Federal state law and states (*Länder*) law only prescribe the aims, allowing the elective subjects to be defined by the law faculties. They leave some room to the individual universities mainly regarding the establishment and content of elective courses.

In contrast, the specific content of the mandatory courses is defined by the laws of the German states (*Länder*) which are more or less identical. These regulations do not state an exact number of courses but refer to a specific content to be taught in the courses. Consequently, law faculties are free to structure the courses as long as all aspects of the respective subject are taught.



## 1. Admission to Universities

Unlike students in other countries, German law students begin legal studies without an undergraduate degree.

The only general requirement for registering with a law faculty is the *Abitur* which is the final examination pupils take at the end of their (higher) secondary education. Higher (secondary) education is normally completed at the age of seventeen or eighteen, after eleven or twelve years in school. About 30 per cent of all students register with a university afterwards. There is no admission test for law students. Students can freely choose the law faculty they want to attend. Only in case of overcrowded law faculties can students be refused, and those not accepted are guaranteed a place at another university. By a "capacity regulation" the state assigns to every law faculty an exact number of students who have to be accepted.

Law faculties – if they are part of a state university – are not allowed to establish admission exams. Their organization is regulated by state law, and most importantly, they depend financially on state contributions. Hence, the state decides whether studies are free of charge or not.

There are only few exceptions e.g. the private *Bucerius Law School* in Hamburg (founded in the late 1990s), they have admission exams.

## 2. Structure, Curricula and Organization

Structure and Curricula of the course are university matters. Constitutional law provides that the state may not interfere with academic self-regulation and scientific freedom. Therefore, the law calling for certain compulsory subjects or a minimum duration of the studies is not legally binding upon the universities. The general federal and *Länder* laws do not contain specific regulation as to the content of the curriculum. The curricula, again, are a university matter. *De facto*, however, universities are indirectly bound since law students would not choose a university which does not offer those subjects needed to be studied to pass the exams.

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As the structure of the course is a university matter it may differ among the universities. With the four universities in Berlin and Brandenburg offering law studies it only differs in detail. In principle, university study is divided into three phases, the first of which is the Foundation Phase, which normally lasts for three to four semesters and is rounded off by an intermediate examination. The respective study and examination regulations are set by the university.

The Foundation Phase is followed by the Main Phase lasting a further five to seven semesters. The programme then is concluded by the Examination Phase. Depending on how students plan their course, the Main Phase and Examination Phase may overlap to some extent. The minimum term called for by section 5 German Judges Act lasts four years, i.e. eight semesters. Given the faculties' programmes, most students need nine semesters to complete the programme.

### *3. Foundation Phase and Intermediate Examination (Zwischenprüfung)*

The Foundation Phase is dedicated to the underlying elements of law (e.g. legal history, philosophy, logic and methodology) and the compulsory fields of law (civil, criminal and public law). The lectures on civil, criminal and public law, known as basic courses (*Grundkurse*), not only provide students with the necessary technical legal knowledge, but also help develop the specifically legal way of working on solving practical cases, e.g. writing expert opinions or applying rules to particular facts. During the basic stage, the historical and philosophical fundamentals of the legal system, the fundamental theories and rules of civil, criminal and public law, and case-work methods are taught in lectures and exercises. Students must pass a civil, criminal and public law exam respectively and write a legal opinion on a case in each of these fields. The basic courses are backed up by tutorials. The responsible tutors make use of case examples for revision purposes and to hone practical skills.

Most universities conduct intermediate examinations at the end of the Foundation Phase. Students have to pass a kind of “elimination” examination comprising examinations in all three of the basic courses and either history or philosophy of law. Students who do not pass this examination will not be allowed to continue the programme. These “elimination” examinations must be taken for the first time by the fourth semester and can only be repeated once. They mostly consist of examinations on the lectures given in the basic courses and a coursework assignment. The assignment should usually be completed by the end of the third semester.

The intermediate exam was introduced in order to limit the number of students failing at the first examination by sorting them out already at the intermediate exam. The idea is to signal students early whether their talent and efforts are sufficient to successfully complete studies and subsequent examinations. They are designed to expel only those students who are completely unable or unwilling to cover the subjects.

After passing the intermediate examination, many students stay abroad for one or two semesters.

### **4. Main Phase**

The subsequent Main Phase is divided into two segments which usually run parallel to each other. Students deepen and broaden their knowledge of civil, criminal and public law, including European and procedural law. At the same time they specialize in subjects they choose and attend a foreign language course and courses on soft skills.

On the one hand, students will have further, in-depth lectures on the compulsory subjects of civil, criminal and public law. For a successful completion of classes universities often require a homework assignment and a supervised written test. In both papers, the student is usually presented with a set of

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hypothetical facts and must provide a reasoned legal opinion with the relevant statutes available. The results of those exercises will not be used in the calculation of grades toward the final degree. It is generally considered that those tests are much easier to pass compared to the State Examination. For passing each examination successfully, students receive a certificate (*Schein*), which is a necessary prerequisite for the admission to the State Examination in Mandatory Courses (*Staatliche Pflichtfachprüfung*).

On the other hand, the Main Phase also sees the start of the elective subjects. Students choose one of the special subjects offered by the faculty. This gives the different law faculties a chance to create a distinctive profile by offering a range of specialized courses. Hence, there is a variety of elective courses offered, such as, for example, Media Law or French Law (University of Potsdam), European Law (Viadrina University Frankfurt (Oder) and Humboldt University Berlin).

The university elective subjects in German Law Studies are intended to complement and consolidate knowledge of the related compulsory subjects and to communicate the interdisciplinary and international ramifications of the law. They are divided into three fields. The field “key qualifications” aims to sharpen the students’ profile with courses such as contract drafting and management, questioning techniques and rhetoric. The field “additional qualifications” aims to broaden the students’ horizon and includes, for example, training in legal vocabulary and usage in foreign languages, the principles of business administration and macroeconomics, and lectures on the social sciences. The third field is a subject-related elective area.

The elective subject consists of several lectures, courses and seminars. Usually the universities require an ordinary paper, a thesis and a presentation or an oral examination which will count for the university exam in special subjects and by means of which for the final grade of the First Exam.

## 5. Examination Phase

The course of study is concluded by the Examination Phase with the First Examination in Law. Many students use the Examination Phase as a preparation time for the First Examination. During this time, most students attend either private, rather costly preparatory courses or free preparatory courses offered by the Universities.

## 6. Organization of Teaching

To a great extent, law education at university still consists of formal lectures, a one-way presentation by the professor or the assistants. However, meanwhile an increasing number of lecturers try to integrate student participation into the lecture by asking questions. Besides the lectures there are seminars to deepen the knowledge of a certain subject and study groups or tutorials in which lecturers and students work together on the subjects and discuss cases.

Additionally, classes taught in foreign language or classes dealing with foreign law are offered. Half a year or one year stays abroad are encouraged.

The standards for the students are high. As the system deals primarily in abstract, theoretical concepts and is formed systematically rather than through the influence of case law, students must learn to evaluate specific situations in light of abstract norms. In general, students should, but are not obliged to, rework or prepare the topics presented.

In written examinations and papers, the students must give legal opinions for a set of hypothetical facts, applying statutes, legal doctrines, and cases to draw up a proper legal report. Students are required to render impartial opinions for the facts presented. They are taught to deal with the facts and the law from a judge's point of view. Based on this students also learn the lawyers' perspective which has been emphasized following the 2003 reform.

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Practitioners are often asked to give classes in areas which are perceived to be outside the central parts of law (i.e. in tax law, accounting law, intellectual property law) or which require practical experience (i.e. drafting of contracts or litigation tactics). They typically only teach on a part time basis, but can become a Professor on a honorary basis by teaching at a law faculty for several years. Additionally, practitioners can also teach on a contractual basis without becoming a honorary professor being paid for each lecture or semester on the basis of a contract for services, without being employees (so called *Lehrbeauftragter*). This is very often the case in courses with a strong practical approach (e.g. drafting of contracts).

### 7. Internships

Law studies at university do not comprise any other kind of practical legal experience than compulsory internships of at least three months in total, which have to be taken during the breaks. Due to the fact that German law students have to participate in the legal traineeship after the first examination in order to become a lawyer legal clinics are rare. Humboldt University Berlin, however, has now implemented three law clinics, dealing with the law of the internet, human rights and consumer protection.

Although law students have to undertake some internships during their studies at the university of at least three months the law faculties are not involved in the offering or supervision of these internships. The internships usually have to be taken at a court, a prosecutor, an administrative authority, a lawyer, a notary, a company or an association being suitable to give a glimpse on the legal profession.

Unlike during the legal training in the *Referendariat*, the students here typically do not work on their own but watch their respective supervisor during his legal work. As these internships form a prerequisite for taking the first examination, it

is the regulations of the German *Länder* that contain detailed requirements for the internships which are monitored by the governmental authority being in charge for the state exams (*Prüfungsamt* – Legal Examining Board, a state administrative agency). Law students therefore usually ask for the confirmation by this authority that their internship fulfils the legal requirements.

### 8. Key Qualifications

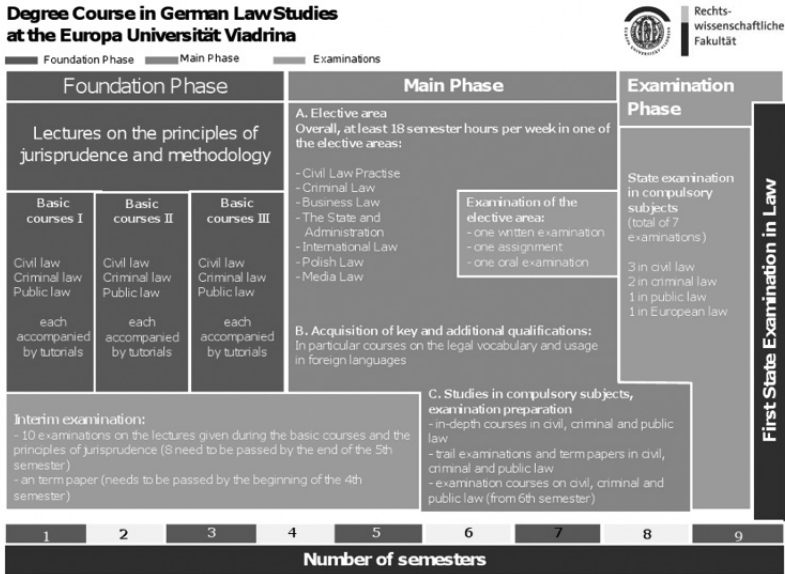
Due to the division of German legal education into a rather theoretical part being the responsibility of the universities and a rather practical part being the responsibility of the Courts of Appeal, practical legal education hardly takes place at the universities. Nevertheless, the teaching of soft skills gained a growing importance within the last years and is nowadays mandatorily offered at German law faculties, too. This shift in the importance of soft skills in legal education was caused by the general lack of these abilities after the regular legal education and higher demands by legal practice. It has to be noticed, though, that German law, particularly the law of civil procedure, pays a higher attention to written documents than to oral presentations, since there is no jury system and arguments need not be presented in court hearings but may be introduced by referring to submissions. This has been reflected by the weight that German legal education system attributed to writing rather than oral communication competences until the 2003 reform.

Therefore, federal law now stipulates that each student has to attend a class on typical lawyers' skills ("soft skills") like negotiation, pleading, legal rhetoric and the like. Federal law leaves it to the state legislature, and those typically leave it to the specific universities how to fulfil this teaching requirement. Legal Clinics are one of the possible classes to be taught here. But it could also be moot courts, debating or rhetoric classes.

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### 9. University Studies in a Nutshell

One of our Berlin-Brandenburg faculties – the 500-year-old Viadrina – graphically illustrates their curriculum as follows:



### II. First Examination

University studies in law normally take at least four years or eight semesters. However, German law students apply to be admitted to the first examination after about ten semesters on average. In theory, it is possible to take the first exam much earlier, provided that the student has already obtained the certificates of achievement showing that he or she has successfully attended compulsory classes.

But it is deemed to be a great challenge to have complete command of the entire law in force at the time of the examination. 10 to 15 per cent reach a level above average. 30 per cent fail at first try. Those who fail may re-take the examination once. Therefore, students tended to postpone their examination.

As an incentive to encourage students to strive to take the exam at an earlier date students are awarded a "free shot" (*Freis-*



*chuss*) which is granted if the exam is taken before the ninth semester. The first attempt shall be deemed not to have been taken if candidates registered early for the examination and completed the required examination assignment in full. If they do so, they might accept the result achieved or try to improve in a second attempt whilst they retain the result achieved as a minimum result. The registration deadline for privileged early applicants expires after the 8th university semester. Specific periods, e.g. of study abroad, of illness or maternity leave, can be deducted (in respect of the total period of study). About 50 per cent of the candidates in Berlin take advantage of this (350 – 400 per year).

According to Section 5d German Judges Act the First Examination consists of a university examination in the elective subjects (*Schwerpunktbereichsprüfung*) and a state exam (*staatliche Pflichtfachprüfung*) in the mandatory subjects, whereas the state exam accounts for 70 per cent of the overall grade awarded for the First Exam and the university exam accounts for 30 per cent. The examinations have to consider the practical needs of a judge, a civil servant and an advocate and the key qualifications needed. Knowledge of foreign languages may also be taken into account.

Both the state exam in mandatory courses and the university exam in elective subjects consist of a written and an oral part. Regulation in detail is again left with the *Länder* and the university faculties regarding the university exam. The *Länder* have enacted respective laws on legal education and examinations rendered more precisely by complementing Regulations for legal education and examinations. The universities have enacted their own regulations for examinations in the elective courses.

### **II. First Examination**

#### **1. University Exam in Elective Subjects (*Schwerpunktbereichsprüfung*, EES)**

The university is exclusively responsible for the written and oral examinations related to the elective part. At the same

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time, these examinations are integral parts of the First Examination and account for 30 per cent of the overall result. Most universities require both a homework assignment or thesis and a presentation or oral examination. Regarding the *EES* the examiners are university professors. Organizing, preparing and conducting examinations are part of their professional duties. They qualify for their position by their qualification as a university professor.

The *EES* is organized under exclusive responsibility of the university. Hence, regulations may differ. The Humboldt University Berlin, for example, requires a thesis, a paper and an oral exam.<sup>1</sup> The extent of the thesis shall not exceed 70,000 characters. It has to be submitted six weeks after the topic has been announced. Papers have to be delivered within five hours and will be invigilated. Papers are graded by two examiners. The oral exam will be conducted by two examiners, takes 20 minutes per candidate and is an interview and discussion about issues stemming from the voluntary matters of the elective subjects. Assumingly, other faculties of law organize their *EES* in a similar way. The state does not interfere in the organization.

### 2. State Exam in Mandatory Subjects (*staatliche Pflichtfachprüfung, EMS*)

After finishing their legal studies at university and obtaining all necessary certificates of achievement, students may apply for admission to the State Exam in Mandatory Subjects, hereinafter referred to as *Exam in Mandatory Subjects - EMS*. The *EMS* including the admission process is administered by state legal examining boards (*Justizprüfungsämter*). The *EMS* shall assess whether the student has the necessary legal knowledge and thus qualifies for the subsequent Preparatory Course (*Vorbereitungs-*

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<sup>1</sup> Cf. sections 23 through 26 of the *Prüfungsordnung für die Durchführung der Zwischenprüfung und der universitären Schwerpunktbereichsprüfung im Studiengang Rechtswissenschaft 2003, Juristische Fakultät der Humboldt-Universität Berlin*.

*dienst*). It is a comprehensive final examination, thus covering all the knowledge acquired during all semesters at university. It consists of a written and an oral part. Prerequisites, structure and organization of the first exam are regulated in detail by the *Länder* which have to observe the guidelines set by federal law. Therefore, exams differ slightly in the various federal states. The number of papers, the weighting of oral and written examinations may vary (see table 1 below) and the extent of the examination subjects may also slightly differ among the *Länder*.

### *a) Admission to the Exam in Mandatory Subjects (EMS)*

According to federal law and the Berlin Legal Education Act the prerequisites for admission are:

- an application for admission
- university study of legal science of at least four years
- a minimum term of legal study in Germany of two years
- registration with a Berlin or Brandenburg university for the two semesters previous to the application
- successful completion of an intermediate examination at a German university faculty
- successful completion of examinations of classes in civil, criminal and public law
- successful completion of examination in classes in legal history or philosophy
- submission of a certificate of successful participation in a class teaching key qualifications
- internships of three months in total

Students who already failed twice at regular attempts will not be admitted to the *EMS* anymore.

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### *b) Structure of the Examination*

State	Type of Question	Percentage of/share in overall result
Baden-Württemberg	-6 papers	70
	- oral examination	30
Bavaria	-6 papers	75
	- oral examination	25
Berlin	-7 papers	63
	- oral examination	24
	- presentation	13
Brandenburg	-7 papers	63
	- oral examination	24
	- presentation	13

### *b) Organization of the Examinations*

The EMS is organized by the respective State Legal Examining Board. Usually the board comprises several full-time examiners under supervision of a most senior examiner as president of the board. Normally, the full-time examiners are experienced judges or public prosecutors who themselves achieved high grades in their exams. They produce papers in collaboration with university professors, who will be asked to provide questions for the written part; these will be considered by the senior examiners of the board in order to join questions together into a coherent and well-structured examination which tests all of the desired skills. The candidates are usually presented with a set of hypothetical facts and must provide a reasoned legal opinion with the relevant statutes available within five hours. The exam is the same among all candidates in a federal state, no matter at which faculty of law they have studied.

All candidates of a state have to sit the exam at the time under supervision of the *Justizprüfungsamt* and at its premises. After successfully passing the written examinations, the candidates will be admitted to the oral examinations. These are

again held at the premises of the Examining Board. University professors, senior examiners of the Board and qualified legal practitioners, such as judges, public prosecutors, attorneys or lawyers working as civil servants participate in the process of examining. They form an Examination Committee consisting of three examiners, one of which, usually the most experienced examiner, presides over the others. Each single examiner is responsible for the examination of one of the mandatory subjects. For that reason, the Board sees to it that each examiner is an expert in one of the mandatory subjects. The examiners, however, jointly award grades for the different examination questions. Right after finishing the oral examination the chairman of the examination committee announces and if necessary explains the assessments of the committee, the grades awarded to the respective examination questions and the overall grade awarded to the examination in total. The President of the Board will then issue a certificate of successful completion of the First Exam, showing grade and points.

The examination period is about six months, mainly because the exams have to be evaluated and a date for the oral examination has to be set. In Berlin and Brandenburg exams are held twice a year. The number of candidates participating is around 600 to 800 per campaign.

### *d) Examination Questions*

Examination questions have to fulfil the requirements of the Berlin Legal Education Act. It stipulates a certain canon of examination subjects. The candidate has to show the ability to apply the law and the knowledge needed thereto. Questions and assessment shall emphasize the understanding of the legal system and the ability to work systematically. Examination questions shall consider issues of legal practice.

### *aa) Written Exam*

Candidates have to take five to seven written exams of five hours each in which they have to give legal opinions on hypo-

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thetical cases related to civil, criminal and public law. The cases presented comprise undisputed facts only so the task at hand is reduced to a mere legal opinion.

Once a candidate has successfully passed the written exam he will be admitted to the oral exam. The prerequisite for admission is a minimum of four papers graded four points or 3.5 points on average.

### bb) Oral Exam

The oral examination consists of a presentation on a legal issue to be prepared and held on the day of the examination and examination questions with regard to civil, criminal and public law. The presentation accounts for 13 per cent of the overall result, the examination questions for 24 per cent.

### cc) Formulation of Examination Questions

The process of producing questions for papers or presentations consists of several stages. Candidates are usually presented with a set of hypothetical facts and must provide a reasoned legal opinion with the relevant statutes available. Full-time examiners produce papers for the First Exam in collaboration with university professors, who will be asked to provide questions for the written part. These will be considered by the full-time examiners of the board in order to join questions together into a coherent and well-structured examination which tests all of the desired skills.

Examination questions are reviewed and edited by a full-time examiner specializing in the subject that is crucial for the case presented. The draft will be revised and checked by his counterpart examiner specializing in the same subject. They will discuss the question and work out possible solutions. If they agree on the questions and a suggestion for a reasonable solution they will seek approval of the President of the Joint Legal Examining Board. Not until the President approves the suggested question and solution the question will be used in the examinations. Eventually, potential questions have been reviewed four times before being used in the examinations.

Presentation tasks for the oral examination are prepared the same way as papers. Examination questions and cases are prepared by the examiners on their own.

### *c) Selection of Examiners*

Concerning the EMS the Joint Legal Examining Board of the States of Berlin and Brandenburg (*Gemeinsames Juristisches Prüfungsamt der Länder Berlin und Brandenburg, GJPA*), has a pool of some hundred examiners consisting of three groups:

- law professors at universities
- appointed full-time examiners working with the GJPA
- appointed voluntary examiners from outside the GJPA.

Law professors at universities are by law examiners since the legislator assumes that they have the necessary qualifications. As for the rest, examiners – attorneys, lawyers in civil service, judges, public prosecutors, public notaries - are carefully selected. They must be qualified to hold the office of a judge, experienced in the subject they will be appointed for as examiners, they should be legal practitioners for some years and their own examination results should be at least above average.

Normally, the full-time examiners are experienced judges or public prosecutors who themselves achieved high grades in their exams. The current full-time examiners count to the top level of the graduates of their respective years. Some of them have conducted study groups in practical legal training or have gained experience as assistant teachers at law faculties while on the way to earn their doctorate in law. For the time being, each mandatory subject (civil, criminal and public law) is covered by two full-time examiners.

### *d) Grades and Results*

#### aa) Grading Process

##### (1) Written Exams

After the written examinations papers are sent to examiners for correction and grading. Each paper is graded by two

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examiners. If they do not agree on the result, the examination board takes the average of their respective points provided the difference between the two does not exceed three points. Otherwise a third examiner has to grade the paper and to decide on a final result.

It is worth noting, that papers are written without disclosing the candidate's name or gender. A number is assigned to each candidate beforehand in order to assure anonymity.

All scores are disclosed to the candidates. The *GJPA* will inform them via Internet and in writing about the points awarded to each paper and tell them whether they are admitted to the oral examination or not. Candidates are allowed to check their papers after correction at the *GJPA* premises and are entitled to challenge the result.

### (2) Oral Exams

The oral exam is conducted and graded by three examiners, who jointly discuss and decide about the grade and points to be awarded.

University professors, senior examiners of the Board and qualified legal practitioners, such as judges, public prosecutors, attorneys or lawyers working as civil servants participate in the process of examining. They form an Examination Committee consisting of three examiners, one of which, usually the most experienced examiner, presides over the others as a chairman. Each single examiner is responsible for the examination of one of the mandatory subjects. For that reason, the Board sees to it that each examiner is an expert in one of the mandatory subjects. The examiners, however, jointly award points and grades for the different examination questions.

At the end of the oral exam the examiners may deviate in their decision from the arithmetically calculated points where such deviation gives a better reflection of the candidate's performance in view of the overall impression gained provided that such deviation has no influence on the candidate's passing the examination. The deviation made shall not exceed one



third of the average range within a grade (i.e. one point). Right after finishing the oral examination the chairman of the examination committee announces and if necessary explains the assessments of the committee, the points awarded to the respective examination questions and the overall grade awarded to the examination in total.

Right after finishing the oral examination the chairman of the examination committee announces and if necessary explains the assessments of the committee, the grades awarded to the respective examination questions and the overall grade awarded to the examination in total.

Students, then, are entitled to ask the chairman of the examining committee to give detailed reasons for the points awarded. The chairman in turn is obliged to do so. Candidates may challenge the result afterwards. If this does not occur, the President of the Board will then issue a certificate of successful completion of the exam giving the overall results (points and grade).

#### e) Grading Scheme

Grades are awarded to single examination questions according to the grading system pursuant to section 1 (2) of the Ordinance on the Grade and Point Scale for the First and Second State Law Examinations (*Verordnung über eine Noten- und Punkteskala für die erste und zweite juristische Prüfung*) which is federal law. It is based on a scale from zero to 18 points on which 18 points marks the best and zero the worst result.

Points	Grade	Explanation	Transcription
16 to 18	sehr gut	eine besonders hervorragende Leistung	excellent (outstanding)
13 to 15	gut	eine erheblich über den durchschnittlichen Anforderungen liegende Leistung	good (well above average/ seldom awarded)
10 to 12	vollbefriedigend	eine über den durchschnittlichen Anforderungen liegende Leistung	fully satisfactory (above average)

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7 to 9	befriedigend	eine Leistung, die in jeder Hinsicht durchschnittlichen Anforderungen entspricht	satisfactory (meets all requirements)
4 to 6	ausreichend	eine Leistung, die trotz ihrer Mängel durchschnittlichen Anforderungen noch entspricht	sufficient (meets requirements despite some weaknesses)
1 to 3	mangelhaft	eine an erheblichen Mängeln leidende, im ganzen nicht mehr brauchbare Leistung	deficient (considerable weaknesses no course certificate)
0	ungenügend	eine völlig unbrauchbare Leistung	inadequate/unsatisfactory (wholly unacceptable)

Table 2: Scale of Grades and Points applicable to Legal Examinations

Law faculties have adopted this system for their internal examinations and are obliged by law to use it for the *EES*.

As the examination as a whole consists of several different examination questions from different fields, every single one is awarded a grade and all grades are weighted in order to award a single overall grade. The weighting depends on the respective examination regulation of the States (*Länder*), since the number and type of examination questions differ (see above).

According to section 7 (1) Berlin Legal Education Act four out of seven papers must be graded four points at least and the average result of all papers must be at least 3.5 points to pass the written part of the examination which is the prerequisite to be admitted to the oral examination. The average shall be calculated by adding up the points awarded to the respective paper and dividing the sum by the number of papers. Only two decimals shall be considered.

The final result of the *EMS* is composed by the average of the grade of the seven papers (63 per cent) and the result of the oral exam (37 per cent). The oral examination consists of a presentation on legal issue to be prepared and held on the day of the examination and examination questions with regard to civil, criminal and public law. The presentation accounts for 13 per cent of the overall result, the examination questions for 24 per cent.

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The overall number of points of the First Exam composes of 30 per cent of the result of the *EES* and 70 per cent of the result of the *EMS*, whereas candidates need at least a total of four points for each to pass the examination.

Since it is more difficult to obtain an overall grade of 18 points than it is to reach it once or twice for a single examination question the scale of overall grades is slightly modified.

Every candidate who achieves an overall result of at least 4.0 points passes the exam.

Points	Grade	Explanation	Transcription	Percentage of passers as of 2009	
				1st	2 <sup>nd</sup>
14.00 - 18.00	sehr gut	eine besonders hervorragende Leistung	excellent (outstanding)	0,3	0,1
11.50 - 13.99	gut	eine erheblich über den durchschnittlichen Anforderungen liegende Leistung	good (well above average/seldom awarded)	4,9	2,3
9.00 - 11.49	vollbefriedigend	eine über den durchschnittlichen Anforderungen liegende Leistung	fully satisfactory (above average)	26,0	14,8
6.50 - 8.99	befriedigend	eine Leistung, die in jeder Hinsicht durchschnittlichen Anforderungen entspricht	satisfactory (meets all requirements)	48,4	36,3
4.00 - 6.49	ausreichend	eine Leistung, die trotz ihrer Mängel durchschnittlichen Anforderungen noch entspricht	sufficient (meets requirements despite some weaknesses)	20,5	30,5
1.50 - 3.99	mangelhaft	eine an erheblichen Mängeln leidende, im ganzen nicht mehr brauchbare Leistung	deficient (considerable weaknesses no course certificate)	30	16
0 - 1,49	ungenügend			n.a.	n.a.

Table 3: Scale of Grades and Points applicable to Legal Examinations, Overall Results

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### *f) Challenging the Results*

} Candidates are allowed to check their papers after correction at the *GJPA* premises

} They may ask the examiners for a review of their grading and if they have good reasons, they are sometimes successful

} At least they are entitled to challenge the result and to apply for a decision of the public administration court (approximately 1 per cent of the candidates do so, but in most cases without success)

### Final Remarks

At the end of my speech I would like to return to my initial question. *How to make a good lawyer?* I found a quote by Felix Frankfurter, Justice with the U.S. Supreme Court from 1939 through 1962, taken from a letter dated May 13, 1927 when he was Professor at Harvard Law School:

*"In the last analysis, the law is what lawyers are. And the law and the lawyers are what the law schools make them".<sup>2</sup>*

In more general terms: Good legal education makes good lawyers who in turn make good laws. Therefore, as persons in charge of legal education it is our mission to provide the best legal education possible. This might sometimes mean to come up with fresh ideas, to adopt new approaches and to debate reforms. I do wish you the right touch to cope with this exciting challenge.

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<sup>2</sup> Letter from Felix Frankfurter, Professor, Harvard Law School, to Mr. Rosenwald (May 13, 1927), quoted in Harry T. Edwards, "The Growing Disjunction Between Legal Education and the Legal Profession", 91 Michigan Law Review (1992), 34, at 34.

**Martin GROSS (Berlin Eyaleti-Hukuk Devlet Sınavı Kurumu Başkanı)**

Bayanlar baylar, sayın dekanlar, öncelikle Türkiye Barolar Birliği'ne, Genel Sekreter'e ve Profesör Yenisey'e bana burada olma, tartışmalarınıza katılma ve ülkemizdeki kendi hukuk sistemimiz için bir şeyler öğrenme fırsatı verdikleri için teşekkür ediyorum.

Bence, iki ülkede de hukuk eğitiminde bazı benzer sorunlara sahibiz. Bazen hukuk eğitimi diğer insanlara ucuz gözükabilir; bazen çok fazla öğrenciye sahip olduğumuzu ve kalite sorunu yaşadığımızı düşünebiliriz.

Biz de Almanya'da hukuk eğitimiyle ilgili konularda pek çok tartışma yaşıyoruz ve Almanya'dan geldiğim için en iyi bildiğim hukuk eğitimi sistemi olan Alman sistemi hakkında sizi biraz bilgilendirmekten ötürü mutluluk duyuyorum.

Öncelikle kendimi size tanıtayım. Berlin'den geliyorum ve Berlin ile Brandenburg eyaletlerindeki hukuk eğitiminden sorumluyum ve hukuk sınav kurulunun başkanıyım.

Bu alanda, yaklaşık sekiz bin öğrencili dört hukuk fakültemiz var. İki temyiz mahkememiz var. Brandenburg'daki temyiz mahkemesi ve Berlin'deki eskiden Kammergericht olarak adlandırılan temyiz mahkemesi stajyerlerimizden, hukuk stajyerlerimizden sorumludur ve bir tane hukuk sınavı kurulumuz vardır. Ben bu kurulun başkanımı ve yılda yaklaşık iki bin beş yüz adayımız vardır.

Belki ilginizi çeker, bu sabah kontrol ettim, tüm Almanya'da kırk dört hukuk fakültesi var. Öncelikle Alman hukuk eğitim sistemi hakkında kısa bir giriş yapayım ve vasıflarla (liyakatlarla) başlayalım.

Bir açıdan, biz temellerini aynı hukuki geleneklerden alan büyük Avrupa hukuk ailesinin üyeleriyiz ve bu eski antik Romalı kaynakların ve eski Romalı hukukçuların fikirlerine dayanır.

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Ve en eski alanda, tüm Avrupa hukuk ailesinde, hukukun bir bilim olduğunu düşünürüz.

Dolayısıyla, tüm bu ülkelerde hukuk fakültelerinde hukuk eğitimiyle başlarız ve öğrencilere hukukun yapısını öğretmeye çalışırız.

Ve sonrasında, hukuk eğitimimizin yüksek kalitesinin sağlanması amacıyla, öğrencilerimiz eğitimlerini üniversite diplomasıyla değil devlet sınavıyla bitirirler. İlk sınav, hukukun konu ile ilgili olan tüm alanlarındaki akademik bilgilerden oluşan kapsamlı sınav gruplarından oluşur.

Ve bundan sonra hukuk mahkemesi, ağır ceza mahkemesi, hukuk bürosu, idare ofisi vb. ile Referendariat (Stajyerlik) dediğimiz iki yıllık zorunlu pratik eğitim vardır.

Sonrasında stajyerlerimiz hukuk eğitimlerini ikinci sınav ile sonlandırırılar. Eğer ikinci sınavı başarılı şekilde geçerse, onlara ehil (yetkin) hukukçu adı verilir. Almanca terimimiz Einhaltjus (?)'u tam olarak çevirmek neredeyse imkansız; ancak ikinci sınavı başarılı olarak geçmiş adayın yargıç, savcı ya da hukukçu gibi mahkemede tüm hukuk mesleklerine erişimi olduğu anlamına gelir.

Sistem oldukça eski. On sekizinci yüzyılın sonunda Prusya'da bulunmuştur. Üniversitelerdeki hukuk eğitimi ve pratik eğitim süresinin kombinasyonu katı bir şekilde denetlenir ve devlet sınavıyla sonuçlandırılır. Bu özel hukuk eğitim şeklinin amacı ve bence bahsetmeye değer, genel hukuk alanlarında geniş akademik bilgiye sahip ve aynı zamanda insanların gereksinimlerini karşılayacak özel mesleki becerilere sahip iyi eğitilmiş hukukçular elde etmektir.

Ve Alman hukuk eğitimi sistemi ortak hukuk temeli, ortak hukuki temellere dayanan ortak süreç ile hakimler, avukatlar ve savcılar için ortak olan bir hukuk dili üretir. Temel fikir, eğer ki hakim ve avukatlar mahkeme salonunda aynı seviyede olur ve aynı seviyede tartışılırsa, aralarında bir fark olmaz ve hakim avukatla aynı eğitime sahip olacağından ona yukarıdan bakmaz şeklindedir.

Sayılara göz atalım. Almanya’da hukukçu sayılarında biz de benzer bir sürece sahibiz, sayılar 2001’de yaklaşık olarak seksen yedi bin hukukçudan artarak şimdilerde yaklaşık yüz elli sekiz bin hukukçuya ulaşmıştır. Bu 2012’den bir sayı, sanırsam birisi bahsetmişti, şu anda yüz altmış bin hukukçu civarında ve bu doğru bir sayı.

Biraz devlet sınavındaki hukuk eğitiminden bahsedeyim. Çünkü devlet sınavları Almanya’daki hukuk eğitiminin kalite yönetimindeki kilit modeldir. Farklı tipler de bulabilirsiniz ancak devlet sınavı işe yarayabilecek bir modeldir. Ve ilk olarak bahsetmek istediğim ve bunu yeterince sık ifade edemem: Hukuk eğitimi tüm hukuki sistemlerdeki başarının anahtarındır ve tüm toplumlar için temeldir. Hukuk kanunlarının olduğu ancak iyi eğitilmiş, tecrübeli hukukçuların olmadığı bir topluma sahip olamazsınız. Toplumun yüksek standartta bir hukuk eğitimine sahip olduğunuzu güvenceye alması toplum için mutlaktır. Biliyorum, politikacılara anlatması zor bir şey, ancak böyledir. Ve benim bakış açım göre, devlet ve toplum üst seviye eğitimden sorumludur.

Ve bizim sistemimizde, devlet sınavı sistemin darboğazıdır. (Sistemde bilgi akışının yoğunlaştığı kısımdır). Sınavlarımızın, onlara daha sonra daha yakından bakacağız, oldukça fazla talepkar olduğunu düşünüyoruz. Sınavlar öğrencilerin dikkatini odaklar ve bence bu en ilginç nokta olabilir, gerekli hukuki kayıtları tanımlar. Eğer ki devlet sınavında olacak şeyleri tanımlarsanız, öğrenciler tam olarak bunu öğrenecektir ve bu en azından sınava girenlerin bilgilerini kanıtlaması açısından tarafsız ve neredeyse objektif bir sistem sağlar.

Alman hukuk akademik eğitimine kısaca bakacak olursak, en az dört yıllık bir eğitim süreci vardır. Ve hukuk eğitim kanunumuz, bu eğitimin en az iki yılını Almanya’da geçirmek zorunda olduğunuzu ifade eder. Hukuku kısmen yurtdışında da okuyabilirsiniz. Zorunlu derslerimiz var ve bunlar Türkiye’de de aynı. Temel elemanlar olarak medeni hukuk, ceza hukuku, kamu hukuku ve Avrupa Birliği hukuku vardır. Bu günlerde, öğrencilerin hukukun felsefi, tarihi ve sosyal temellerinin hu-

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kuki yöntem bilimini öğrenmesinin oldukça önemli olduğunu düşünüyoruz. Müzakere, savunma, hukuki hitabet ve benzeri tipik hukukçu becerileri bu günlerde kilit vasıflar olarak daha önemli olmaya başladılar. Ve öğrencilerimizin en az bir yabancı dil öğrenmesi konusunda oldukça hevesliyiz. Dün Profesör Yenisey ile bunu tartıştık. Bu yabancı dil Türkçe de olabilir. Örnek olarak, bildiğiniz gibi Berlin’de oldukça iyi bir Türk toplumu var. Anadili Türkçe olan insanların Türkiye’ye gidip, Türk hukukunu biraz öğrenmesi güzel bir fikir olabilir.

Sistemimizdeki genç öğrenci, hukuki doktrinlerini (öğretirlerini) öğrenmek zorundadır, ileri hukuk sistemlerinin oldukça karışık yapısında hareket edebilmeyi öğrenmek zorundadır. Ve bu da önemli, öğrenci eğitiminin ilk aşamalarında özel vakaları çözmek için teorik bilgilerini kullanmayı öğrenecektir. Bu yalnızca doktrini öğrenmek değil, aynı zamanda verilen vakanın çözümü için hukuki bilginizi kullanmaktır da.

2003’te ufak bir paradigma kayması yaşadık, bundan bahsetmek istiyorum. Geleneksel hukuk eğitimi sistemimizde yargıcın görüşü, yargıcın nasıl karar vereceği temel konuydu. 2003’ten beri, hukuk eğitiminizin bir parçası olarak avukatın da nasıl davranacağını düşünmek zorundayız. Ve temel nokta şudur, genel bir kural olarak ifade edilebilir ki, hukuk statik değil dinamiktir. Bu hukuk düzenlemesi, müvekkiliyle ilk defa karşılaşan bir avukatın geniş bir skalada tartışma noktalarını ve hareket şekillerini düşünmesini sağlar. 2003’teki reformdan bu yana, avukatların görüşlerini hukuk eğitimi ve sınavında dikkatle hesaba katıyoruz. Ve ben özellikle avukatların yeteneklerinden bahsettim, örneğin hukuki hitabetten. Eğer ki avukat olarak çalışmak istiyorsanız, konuşabilmek zorundasınız. Okumak ve yazmak hukuk eğitimi için yeterli değildir. Müzakere, avukatların işlerinin en önemli parçalarından biri olduğu için, bizler de bunu hukuk eğitiminin bir parçası haline getirmeye çalışıyoruz bu günlerde.

Tamam. Burada sizlere örnek olarak Alman hukuku çalışmalarındaki Yunan dersini verdim. Burada görebildiğiniz üzere, temel aşamasında temel dersler var ve sonrasında seçmeli



alanının da olduğu asıl aşama var. Bu da 2003'te oluşturuldu. Üniversitelerin hukuk fakültelerine özel hukuki alanlarda ders verme olanağı sunduğumuz için, hukukta ek dersler verilmektedir; örneğin işletme hukuku, Polonya hukuku, medya hukuku, fikir ve sanat eserleri hukuku vb. Bu gibi alanlardan biri öğrencinin özelleşmesi, kendi becerileriyle buluşması ve hukuk bilimi grubunun bir kısmını biraz daha derinlemesine öğrenmesi içindir ve sonrasında da devlet sınavına hazırlık dersleriyle birlikte sınav aşaması vardır.

Bu ekonomik sınav ilk sınav grubunu yansıtmaktadır. Bu günlerde, ilk sınavın iki kısmı vardır; final sonucunun yüzde yetmişini oluşturan devlet kısmı ile sayısal hukuk, hukuk tarihi ve felsefesi, kanun metni gibi Kıbrıs'ta okuyabileceğiniz seçmeli konulardaki üniversite sınavı kısmı. Bunlar ilk sınavımızın iki kısmıdır. Sınava başvuru için, tahsilin tamamlanmış olması gerekir. Bundan bahsedeceğim. Almanya'da ilk sınav için benzer yapılar vardır ancak her zaman aynı değildir. Size burada verdiğim örnekte Bavarya'daki tüm sınavdan altı sayfa ile Berlin ve Brandenburg'daki sınavın devlet kısmından yedi sayfa, sözel sınav ve sözel sunum yer almakta.

Hukuk sınavının devlet kısmından sorumlu olan hukuki sınav kuruludur. Size yalnızca sayıları veriyorum. Berlin-Brandenburg'daki bu hukuki sınav kurulunun başkanı benim. Sınavı uygulayan tam zamanlı çalışanlarımız deneyimli yargıç ya da savcılardır. Ve benim kurulumda, sınavın hazırlanma süreciyle meşgul olan yedi kişi var. Ancak temel iş, tüm sınav kağıtlarının değerlendirilmesi yarı zamanlı çalışan sınav uygulayıcıları tarafından yapılır. Bunlar hukuk profesörleri, yargıçlar, avukatlar, savcılar, noterler ve iki parlamento üyesinden oluşur. Ve hukuki sınav kurulumuzda hepsi alanlarında uzman yedi yüz insan vardır.

İlk sınav ya da temel kısımda, her biri beş saatlik olan yedi yazılı sayfa vardır. Üç sayfa medeni hukuku, iki sayfa ceza hukukunu, bir sayfa idari hukuku ve bir sayfa anayasal hukuku kapsar. Tüm bu sayfalarda, yöntemsel metoda ya da Avrupa hukukunun metodlarına ilişkin sorular da bulunur. Sınavda-

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ki bir aday gibi düşünmelisiniz, ilk sınavda bir varsayımsal gerçeklik kümesi verilir. Bir vaka gibi bir şey üretiriz ve onu yazmak için bir sayfa kullanırız. Aday, vakanın çözümü için varolan ilgili yazılı kanunlarla temellendirilmiş hukuki bir görüş sağlamak zorundadır.

Soruların oluşturulma süreci hukuki sınav kurulunda olur. Soruları oluşturanlar, Berlin hukuki eğitim kanununun gereksinimlerini karşılamakla yükümlüdürler. Belirli sınav konuları kaideleri vardır ve biz soruların hukuk sistemi anlayışını ve kanunları uygulama becerisini vurgulaması için sıkı çalışırız. Böylece yalnızca öğrenilmiş bilgi üretmeyiz. Sınav soruları hukuki sınav kurulunda tam zamanlı çalışan sınav uygulayıcıları tarafından, çoğunlukla üniversite profesörleriyle işbirliği içinde hazırlanır. Yeniden gözden geçirme ve kontrol aşamasından sonra sınav uygulayıcıları hukuki sınav kurulunun başkanının onayını, benim onayımı, alırlar ve böylece sınav soruları oluşturulur.

Yazılı sınavdan sonra, sayfalar düzeltme ve notlandırma için sınav uygulayıcılarına gönderilir ve her bir sayfa iki sınav uygulayıcısı tarafından notlandırılır ve belirtmek istediğim bir şey de şu ki, bu sayfalarda adayların isimleri ya da cinsiyetleri ifşa edilmez. Anonimliği sağlamak adına öncesinde adaylara yalnızca bir numara atanır ve benim görüşüme göre, eğer ki bir bakanın oğlu sınavı geçemeyecek kadar iyi değilse ve sınavdan kalıyorsa, ancak o zaman devlet sınavı iyidir denebilir.

Kağıtların notlandırılmasından sonra, sözlü sınava girme hakkı kazanılır. Bunun için en az dört puanlı dört sayfa ya da sayfaların ortalamasının üç nokta beş puan olması gerekir, bunlarla sözlü sınava girme hakkı kazanılır. Sonrasında bu sonuçlar internet kullanılarak adaylara duyurulur. Ve daha sonra, üç sınav uygulayıcısından oluşan sınav komitesiyle sözlü sınav yapılır. En deneyimli olan başkan görevi görür ve her birinde beş kişi sınava girer.

Normalde sabah dokuzda başlayıp, öğleden sonra dörtte bitiririz. Öğleden sonra sınav komitesinin başkanı komitenin değerlendirmelerini duyurur ve gerekirse açıklar.

Eğer ki adaylar başarısız olurlarsa, sınavı bir kez daha tekrarlamalarına izin verilir. Özel durumlar da vardır ancak burada detaylarına girmeyi istemiyorum. Bunlara ikinci kez tekrarlamaya izni verilebilir. Ancak tekrar başarısız olurlarsa eğer, kesin bir şekilde sınavdan kalmış olurlar.

Adaylar kağıtlarını kontrol edebilir, sonuçlarına itiraz edebilirler. En azından sonuçlarına itiraz edip, kamu idare mahkemelerinin kararına başvurabilirler. Ancak bunu yapanlar, yaklaşık olarak yüzde bir oranındadır. Sınav uygulayıcılarının kalitesinin yüksekliğinin devamını sağlamak için pek çok şey yapıyoruz. Onlar için eğitim birimleri, sözlü sınav simülatörleri var ve Almanya'da yılda bir defa sınav kurulu başkanlarının toplantısı yapılır ve ilk sınavı müteakiben hazırlık eğitimi vardır. Bu eğitimin sonunda ikinci sınav yapılır.

İkinci sınavı da geçen aday, eğitim hedefine başarıyla ulaşır. Alman sisteminde bu, sizi yargı makamında tutacak bir yeterliliklerdir. Ama bu aynı zamanda adayların hakimliğe başvurabileceği, savcı olabileceği anlamına gelir. Aynı zamanda baroya da başvurabilirler. Bu adayların baroya başvurabilmesinin tek yoludur, başka bir yol yoktur. Ve/veya aday, istediği büyük şirkette avukat olarak çalışabilir.

Sonuçlardan konuşalım biraz da. Oturduğunuz yerden şekilleri okuyabiliyor musunuz bilmiyorum ancak... 2009 yılının geçme yüzdeleri var burada ve gördüğünüz gibi ilk sınavda adayların yüzde otuzu sınavda başarısız olmuşlardır. Bir diğer taraftan, yaklaşık olarak yüzde otuz oranında sınavda yüksek not alan vardır. İkinci sınavda, yaklaşık yüzde on altı başarısız olmuştur ve yaklaşık olarak yüzde on yedi-on sekiz oranında olağanüstü notlara ulaşılmıştır. Eğer ki ilgilenirseniz, tam sayıların olduğu slaytları alabilirsiniz.

*(Verilen sayıların doğru olup olmadığını sorduğunda verdiği yanıt) Yemin ederim. Oldukça eminim.*

*(Bu rakamlar sadece Berlin için mi yoksa tüm Almanya için mi diye sorulduğunda verdiği yanıt) Bu sayılar tüm Almanya için.*

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Tüm Almanya'daki sonuçlarda, ortalama yüzde on altı ikinci sınavda başarısız olmuştur.

Tamam. Son sözlerim şöyle, böyle bir sınav sisteminin saygınlığı oldukça yüksektir. Eğer ki devlet sınavında yüksek puanlar elde ederseniz, artık profesyonel kariyeriniz hakkında daha fazla endişe etmenize gerek kalmaz, profesyonel bir kariyer elde edeceksinizdir. Hakimlerin atamasından sorumlu olan kişilerle konuştum. Eğer ikinci sınavda dokuz alan bir hakim atarlarsa, yargıç başarısız olur ve işini yapamaz. Aynı zamanda avukat arayan büyük hukuk büroları ve büyük şirketler, sınav sonuçlarını dikkatle değerlendirirler. Sınavı geçen diğer insanlar da iş bulurlar tabii. Ve müşterilerine herhangi bir zarar getirmeyecekleri beklentisi içinde oluruz. Amacımız budur.

Son görüşüm de Bolonya sürecindeki hukuk eğitimi ile ilgili. Almanya'da Bolonya süreciyle ilgili olarak oldukça güçlü tartışmalar yaşadık. Birçok araştırma yaptık. İki bin civarında yer hakkında rapor yazdık. Ancak sonunda, devlet sınavı on altıya sıfır kazandı. Ve devlet sınavı Almanya'da hukuk eğitiminin hedefi olarak kaldı. On altı tane eyalet var ve tüm bu on altı eyalet oybirliğiyle devlet sınavı sisteminde kalmaya karar verdiler.

Ancak hukuk fakültelerinin yaklaşık üç yıllık çalışma sonrasında öğrencileri ek lisans derecesiyle ödüllendirme olasılığı ya da kanun metni, sigorta hukuku ya da bunun gibi bir yeni hukuk yaratarak bu alanda master derecesi verme olasılığı vardır. Ancak bu bir hukuk mesleği oluşturma yöntemi değildir.

Sonuca gelirsek eğer, hukuk eğitimi ve kalite yönetimi büyük konulardır ama bence her türlü çabayı hak ederler. Ve adaletin uygulanması için iyi eğitilmiş insanlara ihtiyaç vardır. Bu Almanya'da da böyledir, Türkiye'de de, dünyanın her yerinde de böyledir. Teşekkürler.

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*İkinci Bölüm / Chapter Two*

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*6-7 Mayıs/May 2014*

*Ankara*



**SUNUCU-** Sayın Başkan Yardımcım, değerli konuklar; Türkiye Barolar Birliği Atlanta John Marshall Hukuk Fakültesi ve Bahçeşehir Üniversitesi Hukuk Fakültesi tarafından ortaklaşa düzenlenen “21. Yüzyılda Hukuk Eğitimi” başlıklı etkinliğimize hoş geldiniz.

4 Mayıs tarihinde İstanbul’da başlayan etkinliklerimizin devamı olarak gerçekleştirilen bugünkü ve yarınki oturumlarımızın açış konuşmalarını gerçekleştirmek üzere Türkiye Barolar Birliği Başkan Yardımcısı Sayın Av. Başar Yaltı’nın kürsüyü teşriflerini arz ederim efendim.

**Av. Başar YALTI (Türkiye Barolar Birliği Başkan Yardımcısı)-** Dünyanın öbür ucundan gelen sevgili dostlarımız, değerli konuklar; hoş geldiniz. (Alkışlar)

Barolar Birliği Başkanımız Metin Feyzioğlu’nun daha önceden planlanmış bir programı nedeniyle bugün burada bulunmadığını belirtmek ve selamlarını iletmek istiyorum. Zannediyorum yarın akşamki gala yemeğimizde kendisi aramızda bulunacaktır.

Hukuk artık toplumların devletlerin ortak kültür değeri haline geldi. Dolayısıyla hukuk konusunda görüş alışverişinde bulunmak, hukuk sistemlerinin birbiriyle ilişkisini görmek, bunların yakınlaşmasını izlemek ve mümkünse hukuku bütün alanlarında ve ortak değer olarak benimsetmek hepimiz için görev diye düşünüyorum, insanlık için bir görev diye düşünüyorum.

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Bu nedenle Bahçeşehir Üniversitesiyle birlikte uluslararası olarak düzenlenen bu konferansın çok yararlı olduğunu değerlendiriyorum. Bu çerçevede konferansın gerçekleşmesinde büyük emek veren Bahçeşehir Üniversitesinin tüzel kişiliğiyle birlikte, asıl ona can katan Feridun Hocamıza çok çok teşekkür ediyorum. Türkiye Barolar Birliği adına da, üstelik de çok kısa bir sürede aynı katkıyı sunan yönetim kurulu üyemiz Gülcihan Türe arkadaşımıza bu organizasyonu gerçekleştirdikleri için teşekkür ediyorum.

Konferansın burada çok daha anlamını bulacağını değerlendiriyorum. Çünkü uygulamacılar da aramızda olacak, avukatlar aramızda olacak. Dekan, hocalarımız aramızda olacak ve konferans gerçek anlamını Barolar Birliği çatısı altındaki iki günlük sürede bulacaktır diye değerlendiriyorum.

Tabii buradan çıkacak sonuçları da hep birlikte değerlendirip, belki de bir yayın haline getirebiliriz. Çok şey öğreneceğimizi düşünüyorum. Hepinize hoş geldin diyorum, saygılar sevgiler sunuyorum. (Alkışlar)

**SUNUCU-** Sayın Başkan Yardımcımıza konuşmaları için teşekkürlerimizi arz ederim. Programın genel sunumu Sayın Dekan Emeritus Tom Read tarafından gerçekleştirilecek. Kendisinin kürsüyü teşriflerini arz ederim efendim.

**Tom READ (E. Dean)** I want to thank our Turkish hosts for the wonderful hospitality they have shown us. It is a joy for the Americans to be here.

In 2001 on Heybeli Island, outside of Istanbul, we had the first of a series of meetings that, where we legal educators from around the global world trying to think about what legal education would be like in the next decade. In a real sense, this is a successor meeting to that. We are here again looking for good ideas from one another. Now, I am going to give you the key to making this conference successful. You have got to be aggressive and you have got to be willing to ask questions. You have



got to be willing to probe. So what I am going to do is kind of act as a policeman for each panel. I would like each panel to at least allowed ten minutes after each panelist has spoken so that we can ask questions all of us.

We all have great strengths in our legal systems and our legal education systems. But we all have weaknesses. We learn from one another. And so from both sides, from across the pond and from the Turkish side don't hesitate to raise your hand and ask questions and we will try to provide for that questioning period at least ten minutes after each panel.

And before I step down, I want to single out a single human being whose done more to bridge the waters and bring our systems together; a man committed to students' finding places abroad to study and bringing them back with new educational ideas; a man who is just been in inspiration on both sides of the Atlantic and that my very close friend, Professor Doctor Feridun Yenisey.

We have a very special guest from United States who runs an extremely important organization and he is threatened me if I introduce him he will be very angry so I am going to introduce him anyway. He is my very close friend Dan Burnstein who is president of a National Law School Admission Counsel and that counsel provides admission cast to all applicants to law school in the United States and Canada. And Dan is watching today, Dan Burnstein.

I am going to now turn to each panel and let each panel introduce themselves and the panel chair will do that. Again the important thing is if you have a question, hold it and write it down. Don't hesitate to interrupt and ask questions at the end of each panel. We learn from one another and the whole point of this is to exchange ideas and get more familiar with each of our systems. And so I turn it over to our first panel, which is on the state of legal education across the globe and I will get it started.

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*Türk ev sahiplerimize gösterdikleri misafirperverlik için teşekkür etmek istiyorum. Amerikalılar için burada bulunmak büyük bir keyif.*

*2001 yılında, İstanbul dışında Heybeliada'da, küresel dünyanın her yerinden gelen gönüllüler olarak bir dizi toplantının ilkinin gerçekleştirip gelecek on yılda hukuk eğitiminin nasıl olacağı üzerinde düşünmeye çalıştık. Gerçek anlamda, bu toplantı onun bir devamı niteliğinde. Yine burada birbirimizden iyi fikirler alma arayışı içinde beraberiz. Şimdi, size bu konferansın başarılı olmasının anahtarını söyleyeceğim. Girişken ve soru sormaya istekli olmalısınız. Derinlemesine incelemeye istekli olmalısınız. Ben ise her bir panel için bir nevi polislik yapacağım. Her bir panel için panelistler konuştuktan sonra en az on dakikanın herkesin soru sorabilmesi için ayrılmasını istiyorum.*

*Hepimizin hukuk sistemlerinde ve hukuk eğitimi sistemlerinde çok güçlü yanlarımız var. Ama hepimizin zayıflıkları da var. Birbirimizden öğreniyoruz. Ve dolayısıyla, her iki taraftan, okyanus ötesinden ve Türk tarafından olsun, lütfen elinizi kaldırıp soru sormaktan çekinmeyin; biz de bu soru sorma bölümünün her panelden sonra en az on dakika olmasını sağlayacağız.*

*Kürsüden inmeden önce, sular üzerine köprü kurup sistemlerimizi bir araya getirmek için çok çaba göstermiş, kendisini öğrencilerinin yurtdışında kendilerine yer bulup, çalışıp, yeni eğitimsel fikirlerle dönemlerine adanmış, Atlantik okyanusunun her iki tarafında da ilham kaynağı olmuş ve benim çok yakın arkadaşım olan özel birisinden bahsetmek istiyorum; Profesör Doktor Feridun Yenisey.*

*Amerika Birleşik Devletlerinden gelen ve çok önemli bir organizasyonun başında olan özel bir misafirimiz var. Eğer onu takdim edersem çok kızacağına dair beni tehdit etti, ama ben yine de onu takdim edeceğim. Çok yakın arkadaşım, Dan Burnstein. Kendisi, Uluşal Hukuk Fakültesi Kabul Konseyi başkanı ve bu konsey Amerika Birleşik Devletleri ile Kanada'da hukuk fakültelerine başvuran bütün adayların kabul heyetini oluşturuyor. Ve Dan bugün burada bizi izliyor, Dan Burnstein.*

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*Şimdi tek tek panellere geçiyorum ve her bir panelistin kendilerini tanıtmalarını rica ediyorum. Bunu panel yöneticisi yapacak. Yine, bir sorunuz olursa, bunu aklınızda tutup not almanız çok önemli her bir panelin sonunda müdahale edip soru sormaktan çekinmeyin. Bir-birimizden öğreniyoruz. Bütün bu çalışmanın amacı fikir alışverişi yapmak ve birbirimizin sistemlerine daha aşina olmak. Şimdi sözü dünyada hukuk eğitiminin durumunu konu alan ilk panele bırakıyor ve başlatıyorum.*



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### *Beşinci Oturum*



**Prof. Dr. Sacit ADALI (Oturum Başkanı)-** Sayın Profesöre teşekkür ediyoruz. Böyle güzel bir organizasyonun içinde bulunmaktan, çok değerli yabancı misafirlerimizi, ilgililerimizi dinlemekten son derece istifade edip memnun olacağız.

Burada hakikaten globalleşmenin kesin bir örneğini görüyoruz. Eskiden uzaklar uzaktı, yakınlar yakındı, şimdi uzaklar yakın oldu. Globalleşmeyi ben uzakların yakın olması olarak anlamak istiyorum. Dünyayı bir anda görmek, dünyayı bir anda ayağımızın dibinde bulmak, karşılıklı etkileşim içinde bulunmak, her iki tarafa herkese, her bilime muhakkak ki büyük faydalar sağlayacak.

Burada bugün bunun güzel örneğini beraber yaşayacağız. 15'e dakikalık aşağı yukarı, sonunda 10 dakika 15 dakika bir soru-cevap payı bırakmak üzere, 15'er dakika konuşma payıyla ilk sözü Prof. Dr. Moliterno'ya veriyorum. Buyurun.

**Prof. Dr. James MOLITERNO (Washington ve Lee Üniversitesi Hukuk Fakültesi, Virginia, ABD)-** Thank you very very much for the wonderful welcome. I am most honored to be here, in your wonderful facility. I think it is wonderful that the bar associations of Turkey have such a marvelous place to host visitors and to host conferences like this. I think it is wonderful.

My wife and I landed in Istanbul just a few days ago and it was our first time in Turkey. And I felt very comfortable. I felt very much at home. Partly because of the welcome of the warm people here. But partly perhaps because all for of my grandparents are Mediterraneans. And I found that as my wife and I began to walk on the streets of Istanbul, I was frequently mistaken for being Turkish. Even Professor Yenisey confessed,

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that when he first saw me he thought perhaps I was Turkish. So I feel very comfortable here and I very proud to be mistaken for Turkish.

I am going to talk very very briefly. I would love to have your questions as Dean Reed told. I am going to talk very very briefly about the background of American legal education a very short history of it and then tell you about our current conditions in American legal education which are actually in a troubling time for us. So this is called the American legal education in crisis, it is drawn from my Oxford University press book of just this past year, which is more broadly about the American legal profession and how it has reacted during times of crisis. Unfortunately, the way the American legal profession has reacted during times of crisis is to try by different means to stay the same. It always wants to stay the same despite the fact that the world is changing around it. And of course any institution that tries to stay the same when the world change around it, eventually loses. And it must change as society and culture, global trends change all around it.

So very very briefly, how have we gotten to where we are in American legal education. Two hundred years ago, a lawyer, a person became a lawyer in the United States by being an apprentice to an existing lawyer. There were very very few universities that had law faculties or law schools and almost everyone who became a lawyer, became a lawyer by becoming some current lawyers' apprentice. Just like someone might become a shoemaker or another trades person by attaching themselves to a current person.

The most important reform in American legal education occurred in the 1880's when the Ottomans were still in power. In the 1880's at Harvard Law School, the American Legal Education was reformed and it was made into a kind of science. It was then that we began to get scientific methods into the study of law. We learned over time that interactive methods of teaching were superior to simply having some professor lecture to you, where there was only one voice in the room and that



was the professors. And over time we have developed these interactive methods so that now, today we spend a great deal of time in American law schools putting the students in the role of a lawyer and creating situations for them in which they can themselves play the role of a lawyer and do the lawyers' work under the guidance of their professor. So, in a way, we have brought back the old apprenticeship. But we have done it in side of universities rather than in the lawyer's office.

Today we are experiencing a very difficult time in American legal education. Our applications for students to come to law school are at a 30-year-law. They have fallen 4 years in a row by more than 10% each year. So that we are now seeing applications at about the same rate as occurred in the 1970's and 80's. There are demands from everywhere, from law firms, from bar associations, from the students themselves to make law school more practical, more relevant, more able to prepare the students for the work that they will do when they graduate. It is also becoming very expensive in American law schools. And as a result there are demands for the cost to come down as well.

Our crisis in American legal education, although it seems to be very recent, has very deep roots. In those 1880 reforms, when Harvard Law School reformed the legal education, medical education was also being reformed at the very same time. Medical education at that time decided that its mission would be to create doctors to serve the society. Legal education at the same time decided that its mission would be to create law professors. It would be a purely academic exercise one that distance education from the actual practice of law. We are still, 140 years later, trying to recover from those choices. We are still trying to find our way back so that we can have a connection with the practice of law.

Many people are to blame for our current difficulties in legal education and everyone has some favorite person or group to blame. Something, our current problems are the fault of professors who have been selfish, who want to teach very

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little and want high pay. Other people think it is the problem of universities who have wanted to earn great deal of money from their law schools. Some say that it is the problem of our accreditation system and our American bar association that sets the rules for what law schools must be like. Others think it is the fault of corporate clients in the United States who have stopped paying for the work of beginning lawyers and as a result law firms have stopped hiring very many beginning lawyers. In any event there are many possible entities to blame for the current difficulties and it is probably a little bit of each that is truly to blame.

As we have seen the demand by law students to come to law school applications have gone down. We are beginning now to see the price, the cost of legal education come down. Many law schools are beginning to reduce their tuition and other law schools are finding ways to give discounts to law students who want to come and attend their schools. Some people have suggested eliminating the third year of our three-year graduate legal education, our JD degree. Even our president Obama has recommended that that be eliminated. But other schools, like my own, and I will get to talk about this this afternoon have decided to make the third year a practical year, make the third year a time when students can be prepared for the practice of law. Some people have recommended changes in our accreditation standards that can make law schools run more like businesses and less like university departments.

Finally, our American legal education system truly is an excellent system in that it involves interactive learning and experiential education with our students. But it is still so much short of what it could be. I think it is very, very good but it must be even better, much better than it is now. As we are in this time of crisis, we must do what everyone does, wise people do during the time of crises and that is look for progress, look for reform, look for ways of making what is good much better still. I will be happy to have your questions after the remarks of my colleague. Thank you very much.

*Bu harika karşılama için çok çok teşekkür ederim. Burada, bu harika mekanda olmaktan onur duydum. Türkiye Barolar Birliğinin ziyaretçileri ağırlamak ve böyle konferanslar yapmak bu kadar muhteşem bir yerinin olması harikulade. Bence bu harikulade.*

*Eşim ve ben bir kaç gün önce İstanbul'a geldik ve bu bizim ilk Türkiye ziyaretimiz. Ve ben kendimi çok rahat hissettim. Kendimi evimde gibi hissettim. Kısmen buradaki sıcak insanların karşılama-sından kaynaklı. Ama belki de kısmen bütün aile büyüklerimin Akdenizli olmasından. Ve fark ettim ki, eşim ve ben İstanbul sokaklarında yürüdükçe, çoğunlukla beni Türk zannettiler. Profesör Yenisey bile, beni ilk gördüğünde Türk olduğumu düşündüğünü itiraf etti. Dola-yısıyla, burada kendimi çok rahat hissediyor ve Türk zannedilmekten gurur duyuyorum.*

*Çok, çok net konuşacağım. Dekan Reed'in de söylediği gibi sorularınızı duymayı çok isterim. Amerikan hukuk eğitiminin geçmişinden çok, çok net bir şekilde bahsedeceğim, çok kısa tarihini anlatacağım ve aslında bizim için sorunlu bir dönem diyebileceğimiz Amerikan hukuk sisteminin mevcut durumunu aktaracağım. Buna Amerikan hukuk sistemi krizde diyoruz. Bu benim, Amerikan hukuk mesleği ve kriz dönemlerine ne şekilde tepki verdiği üzerine yazdığım Oxford University Press kitabımdan alıntı. Ne yazık ki, Amerikan hukuk sistemi, kriz dönemlerinde aynı kalmak için farklı yönetimlerle çaba göstermiş. İçinde yaşadığı dünyanın değişmesi gerçeğine rağmen hep aynı kalmayı istemiş. Ve tabi ki, içinde bulunduğu dünya değişirken aynı kalmakta ısrar eden her kurum, kaybeder. Toplum, kültür ve küresel trendler değiştikçe, o da değişmek zorundadır.*

*Çok, çok kısa olarak, Amerikan hukuk eğitiminde bulunduğumuz yere nasıl geldik? İki yüz yıl önce Amerika Birleşik Devletleri'nde bir kişi mevcut bir avukata stajyerlik yaparak avukat olabilmekteydi. Hukuk fakültesi veya hukuk okulu olan çok, çok az sayıda üniversite vardı ve neredeyse avukat olan herkes mevcut avukatların stajyerliğini yaparak avukat oluyordu. Aynı bir kunduracı veya tüccar olacak bir kişinin kendini var olan bir kişinin yanında yetiştirdiği gibi.*

*Amerikan hukuk eğitiminde en önemli reform 1880'lerde, Osmanlı Devleti hala büyük bir güçken gerçekleşmiştir. 1880'lerde Harvard*

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*Hukuk Okulu'nda Amerikan hukuk eğitimi yeniden düzenlenmiş ve bir bilim alanı haline getirilmiştir. Bu zamandan sonra hukuk çalışmalarının içine bilimsel yöntemler sokulmaya başlanmıştır. Zamanla; sınıfta tek bir ses varken ve bu ses profesörün sesi iken, öğretimin etkileşimli metotlarının profesörün konuşmasından daha üstün olduğunu öğrendik. Ve zaman içerisinde bu etkileşimli metotları geliştirdik ve şimdi bugün Amerikan hukuk okullarında zamanımızın önemli bir kısmını öğrencileri avukat rolüne koyarak, onlara avukat rolü oynayabilecekleri durumlar yaratarak ve profesörlerinin rehberliğinde avukatlık işleri yaparak geçiriyoruz. Yani, bir bakıma, eski stajyerliği geri getirdik; ancak bunu avukatlık büroları yerine üniversitelerde yapıyoruz.*

*Bugün Amerikan hukuk eğitiminde çok zor günler geçiriyoruz. Öğrencilerin hukuk okuluna kayıt yaptırabilmeleri için başvurularımız 30 yıllık bir kanuna dayalı şekilde yapılıyor. Her yıl %10'dan fazlası arka arkaya sınıfta kalabiliyor. Böylece şu anda 1970 ve 1980'lerde var olan oranlarda başvuruların olduğunu görüyoruz. Her yerden talepler var; hukuk firmalarından, barolar birliğinden, hukuk okulunu daha uygulamalı, daha bağlantılı, öğrencileri mezun olduklarında iş hayatına daha çok hazırlayan hale gelmesini isteyen öğrencilerden. Aynı zamanda Amerikan hukuk okulları daha pahalı hale gelmeye başladı. Ve sonuç olarak, fiyatın da düşürülmesi konusunda talepler var.*

*Amerikan hukuk eğitimindeki krizimiz her ne kadar güncel gözükse de aslında derin bir geçmişe sahip. 1880 reformlarında, Harvard hukuk okulu hukuk eğitimini yeniden düzenlerken, tıp eğitimi de aynı zamanda yeniden düzenlendi. Tıp eğitimi o zamanda misyonunun topluma hizmet etmek için doktor yetiştirmek olduğuna karar verdi. Hukuk eğitimi, o dönemde, misyonunun hukuk profesörleri yaratmak olduğuna karar verdi. Bu gerçek avukatlık mesleğinden eğitimi ayıran tamamıyla akademik bir uygulama oldu. 140 yıl sonra biz hala bu seçenekleri iyileştirmeye çalışıyoruz. Biz hala hukuk uygulaması ile bağlantımız olabilir diye geri yolumuzu bulmaya çalışıyoruz.*

*Pek çok insan hukuk eğitiminde yaşadığımız zorluklardan sorumlu tutuluyor ve herkesin suçladığı gözde bir kişi veya grup var. Güncel problemimiz bencil olan, az öğretip yüksek ücret almak isteyen profesörlerin hatasından kaynaklanıyor. Diğer kişiler problemin*

*hukuk okullarından çok miktarda para kazanmak isteyen üniversitelerden kaynaklandığını düşünüyor. Bazıları akreditasyon sistemimizin ve hukuk okullarının nasıl olması gerektiğine dair kurallar koyan Amerikan Barolar Birliğimizin problemi olduğunu söylüyor. Bazıları ise yeni başlamış avukatlara ödeme yapmayı kesen Amerika Birleşik Devletlerindeki tüzel müvekkillerin hatası olduğunu düşünüyor ve sonuç olarak hukuk firmaları yeni başlamış avukatları işe almayı durduruyor. Her durumda var olan zorluklar için suçlanacak pek çok merci var ve büyük olasılıkla bunlardan çok azı gerçekten suçlu.*

*Gördüğümüz kadarıyla, hukuk okulu uygulamalarına gelmek için hukuk öğrencileri tarafından gelen talepte bir düşme vardır. Şu anda ücrette, hukuk eğitimi bedelinde bir düşme olduğunu görmeye başladık. Pek çok hukuk okulu, okul ücretini düşürmeye başladı ve diğer hukuk okulları, okullarına gelip katılmak isteyen hukuk öğrencilerine indirim yapmak için yollar arıyor. Bazı kişiler bizim üç yıllık RJD derece hukuk eğitiminin üçüncü yılının ortadan kaldırılmasını öneriyor. Başkanımız Obama bile ortadan kaldırılmasını tavsiye ediyor. Ancak benim okulum gibi bazı diğer okullar, ki bu konu ile ilgili öğleden sonra konuşacağım, üçüncü yılı pratik yılı yapmaya, öğrencilerin hukuk uygulanmalarına hazırlandıkları bir zaman olarak ayırmaya karar verdi. Bazı kişiler hukuk okullarını üniversite departmanından daha çok iş yeri haline getirecek şekilde akreditasyon standartlarında değişiklik yapmamızı tavsiye ediyor.*

*Son olarak, Amerikan hukuk eğitimi sistemimiz, öğrencilerimiz ile beraber etkileşimli öğrenmeyi ve deneysel eğitimi kapsayan tamamen mükemmel bir sistem; ancak hala olabileceğinden çok fazla kısa. Bana göre çok, çok iyi; ancak şu an olduğundan daha iyi olmak zorunda. Kriz zamanında olduğumuz için herkesin yaptığını yapmak zorundayız; deneyimli kişilerin kriz zamanında yaptıklarını yapmalıyız ve süreci aramalıyız, reformu aramalıyız, daha iyi olmanın yollarını aramalıyız. Meslektaşlarımın açıklamalarından sonra sorularınızı almaktan memnuniyet duyarım. Çok teşekkür ederim.*

**Av. Başar YALTI (Türkiye Barolar Birliği Başkan Yardımcısı)-** Sayın Profesöre gönülden teşekkür ediyoruz. Genel bir manzarayı çizdi. Şimdi bunun içini doldurulması için sözü Profesör Jane Ching hanımefendiye veriyoruz.

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**Prof. Dr. Jane CHING (Nottingham Üniversitesi Hukuk Fakültesi, Nottingham, İngiltere)-** Thank you. Good morning. I am delighted to be here and I have to thank my US and Turkish hosts, colleagues and I very much hope friends for allowing me to spend some time this morning telling you about developments in England and Wales and I have to be quite careful to say England and Wales at the moment as you may be aware in September Scotland may be an entirely different country.

One of my starting points with new students in my university is to ask them how many legal professions they think there are in the country. And they usually say two; they have heard of solicitors, they have heard of barristers. And then in fact I say to them actually there are eight, possibly ten, possible twelve if we start counting paralegals. And under our legislation, we have a multitude of different legal professions. Some of them as you will see from the numbers very small, some of them in a country of sixty million people, quite large. I am going to talk largely about one of them, the biggest number; the solicitors.

So, solicitors do most of the legal work, barristers are the specialist advocates; legal executives or a profession which began life as paralegals working with other lawyers. They have just, in the last few weeks, received permission from the government to practice independently. So they now are the third largest legal profession. And after number of government investigations we now have legislation that tells us how legal services have to be provided. It has objectives, which you might think are fairly obvious. They refer to the public interest, to the rule of law, to access to justice and to an independent and effective legal profession. They also prescribe the kinds of activity that are reserved; that only regulated lawyers can do. And those are comparatively limited they are advocacy, litigation, some property activity. General advice on contracts for instance is not reserved, anybody can do it. And with eight or ten or twelve professions they each have their own education system. The two largest professions generally start

with a law degree and as in Turkey that is an undergraduate law degree. It is followed by a vocational course, a postgraduate course, which is experiential, which is skills-based, which is about being a lawyer. And these are then followed by a mandatory internship, a training contract, a pupillage. Some of the specialist professions, the intellectual property lawyers for instance expect people to have science degrees. And some of our professions are very proud of the fact that they will take people straight from school, that they can work and study at the same time and that is much more like the older apprenticeship model.

So this is the model for solicitors; the biggest profession. An undergraduate law degree. And some of those undergraduate law degrees are part time, some of them are online, some of them are what we call a "sandwich". You spend some time in the university then go work in a law firm and then come back. And there is a great deal of debate about whether we should treat the law degree as preparation for the profession or not. About in some places 30% of students on a law degree going to the profession the rest do not. The legal practice course is yearlong, highly experiential highly skills-based course that involves advocacy and interviewing and legal drafting and so on. And then the training contract is a two-year, for solicitors, a two-year apprenticeship with requirements for what people must cover. At the moment, it is not formally assessed. Things may change a lot. But as you will see we do not have a bar exam except for incoming foreign lawyers and I looked up the requirements for Turkish lawyers this morning. Turkish lawyers, who want to come into England and Wales, need to take a knowledge test and a skills test which is also involves advocacy and interviewing and so on.

We have got many similar problems to those in the US: student debt, arguably too many lawyers, or too many of the wrong kind of lawyer. And so in 2011, the three biggest regulators decided to commission a research review of all of legal education for all of those professions. It is an evidence-

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based review. It involved interviews, surveys, focus groups, quantitative analysis; and it was carried out by a team of researches from a number of British universities, of whom I am one. And we were asked to decide if we would look at these things. What people currently need to work in the area? What are they going to need in ten years time? How can we make sure that those public interests, rule of law, objectives in the legal services act are achieved? Can we have a legal education system that is flexible that treats people equally? That is, equal in terms of social class for instance. And given that we know things are going to change, can we have a system that can accommodate that change? And as you might imagine, given eight different professions, should we just give up and have one profession and just call it lawyers? Or, should we regulate more and different professions?

So I am not going to talk in great detail about what we did. We looked at the context: what the lawyers do. We looked at the content: what we were being told that the legal education system didn't deliver. And we looked at the structures: where are the barriers? where is it difficult to move from one stage to another for example. And we made a number of recommendations, which were in four groups. We recommended that we should work to outcomes, work out what it is people need to be able to do on the day they qualify and then work backwards from that. We made recommendations about the content: there should be more ethics for instance, more commercial wellness. We recommended more flexible skills. We recommended students had more information about career prospects, about what they were getting into. And at the moment, the regulators are working on how to achieve all of this. And they are taking on board our recommendations. So things will change in England and Wales in the next few years. If people are interested in looking at the report, this is where you will find it. I always recommend that you download the e-book because the main report is about that big, in which point, I am entirely happy to answer questions as well.



*Teşekkür ederim. Günaydın. Burada olmaktan çok memnunum ve Amerikan ve Türk ev sahiplerine, meslektaşlarıma ve bu sabah burada İngiltere ve Galler'deki gelişmeleri anlatmama olanak tanıyan arkadaşlarıma teşekkür etmek istiyorum. Ve şu anda İngiltere ve Galler derken dikkatli olmam gerekiyor çünkü bildiğiniz gibi Eylül ayında İskoçya tamamen farklı bir ülke olabilir.*

*Üniversitedeki yeni öğrencilerimle çalışmaya başlarken, ilk olarak onlara ülkede kaç tane avukatlık türü olduğunu sorarım ve genellikle iki derler; hukuk müşavirleri ve dava vekillerini duymuşlardır. Ve ben onlara eğer sekiz, belki on, avukat stajyerlerini sayarsak belki on iki tane olduğunu söylerim. Ve bizim yasalarımız altında çok sayıda farklı avukatlık türümüz vardır. Bunlardan bazıları görebileceğiniz üzere çok az sayıda bazıları ise altmış milyon nüfuslu bir ülkede oldukça çok. Ben büyük ölçüde bunlardan bir ile ilgili, en fazla sayıda olanla ilgili konuşacağım; hukuk müşavirleri.*

*Hukuk müşavirleri, hukuk işlerinin çoğunu yapmaktadır; dava vekilleri uzman avukatlar, hukuk yöneticileri veya hayatlarına diğer avukatların yanında çalışan avukat stajyerleri olarak başlayıp mesleklerini icra edenlerdir. Birkaç hafta önce bağımsız olarak çalışmak için hükümetten izin aldılar. Yani şu anda onlar üçüncü en geniş avukatlık türünü icra edenleri oluşturuyorlar. Ve bir dizi devlet araştırmasını takiben, şimdi hukuk hizmetlerinin nasıl sağlanması gerektiğini bize yasalar söylüyor. Oldukça açık ve net hedefleri var. Kamu yararını, hukukun üstünlüğü prensibini, adalete erişimi ve bağımsız ve etkin avukatlık türünü temsil ediyorlar. Aynı zamanda yalnızca özel olan ve resmi avukatların yapabilecekleri faaliyet çeşitlerini uyguluyorlar. Ve bunlar kısmen sınırlıdır; bunlar avukatlık, hukuk davası, mülkiyet faaliyetleri. Örneğin, sözleşmelerde genel olarak verilen tavsiye uzmanlık alanına özel olmamasıdır, herkes yapabilir. Ve sekiz veya on veya on iki işkolu ile her biri kendi eğitim sistemine sahiptir. İki en büyük işkolu genellikle hukuk diploması ile başlar ve Türkiye'de olduğu gibi bu bir lisans hukuk diplomasıdır. Bunu deneysel, beceriye dayalı, avukat olmaya yönelik bir meslek kursu, lisansüstü kursu izler. Ve bunları da zorunlu stajyerlik, eğitim sözleşmesi ve vesayet altında bulunma dönemi izler. Örneğin bazı uzmanlık alanları, fikri mülkiyet avukatları, insanların fen alan*

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*diploması sahibi olmalarını gerektirir. Ve bizim bazı uzmanlık alanlarımız, kişileri doğrudan okuldan alıp hem çalıştırıp hem eğitim verme durumundan gurur duyarlar ve bu durum daha çok eski stajyerlik modeline benzemektedir.*

*Bu model en büyük işkolu olan hukuk müşavirlerinin modelidir. Yüksekokul hukuk eğitimi. Ve bazı yüksekokul hukuk eğitimleri yarı zamanlı, bazıları online olarak, bazıları ise bizim değişimimizle "sandviç". Zamanınızın bir kısmını üniversitede geçiriyorsunuz, daha sonra bir hukuk firmasına çalışmaya gidiyorsunuz ve sonra tekrar geri dönüyorsunuz. Hukuk eğitiminin iş kolu için bir hazırlık olması gerekip gerekmediği ile ilgili büyük bir tartışma vardır. Bazı yerlerde hukuk eğitimi alan öğrencilerin %30'u avukatlık mesleğine başlarken geri kalanı başlamıyor. Yasal uygulama kursu son derece deneysel, son derece beceriye dayalı avukatlığı, mülakatı, yasal tasarımı ve birçok şeyi kapsayan bir yıllık bir kurstur. Ve daha sonra hukuk müşavirleri için eğitim, kişilerin yerine getirmesi gereken yükümlülükleri içeren iki yıllık stajyerliktir. Şu anda resmi olarak ölçme ve değerlendirmesi yapılmıyor. Koşullar çok değişken; fakat göreceğiniz gibi yeni gelen yabancı avukatlar için var olanın dışında bir avukatlık sınavımız yok. Bu sabah Türk avukatları için geçerli olan gerekliliklere baktım. İngiltere ve Galler'e gelmek isteyen Türk avukatların, içerisinde avukatlık ve mülakat ve birçok şeyi barındıran bir bilgi sınavı ve beceri sınavından geçmesi gerekir.*

*Amerika Birleşik Devletleri'nde pek çok benzer sorunumuz var: öğrenci borçları, tartışmaya açık bir biçimde çok sayıda avukat veya çok sayıda yanlış alanda avukatlık yapanlar. Ve 2011'de, en büyük üç düzenleyici bütün bu meslek alanları için tüm hukuk eğitimini araştırmak ve denetlemek için bir kurul kurmaya karar verdi. Bu kanıta dayalı bir denetlemeydi. Mülakat, anket, odak grubu, sayısal analizleri içermekteydi ve benim de içerisinde olduğum birçok sayıda İngiliz Üniversitesi araştırmacısından oluşan bir ekip tarafından uygulandı. Ve bizden bu konularla ilgilenip ilgilenmeyeceğimize karar vermemiz istendi. İnsanlar alanda çalışmak için ne gibi şeylere ihtiyaç duyarlar? On yıl içinde nelere ihtiyaç duyacaklar? Bu kamu yararı, hukukun üstünlüğü ilkesi, yasal hizmet kanununun başarı elde edeceğinden nasıl emin olabiliriz? Kişilere eşit bir şekilde muamele*

*edilen, esnek bir hukuk eğitimi sistemine sahip olabilir miyiz? Buradaki eşitlik örneğin sosyal sınıfaçısından olan eşitliktir. Ve koşulların değişeceği düşünüldüğünde, bu değişikliklere uyum sağlayacak bir sisteme sahip olabilir miyiz? Ve tahmin edebileceğiniz gibi, var olan sekiz değişik mesleki alan düşünüldüğünde, hepsini bir yana bırakıp yalnızca bir alana odaklanarak bunu avukatlık olarak adlandırmalı mıyız? Veya daha fazla ve daha değişik alanlar mı düzenlemeliyiz?*

*Daha önce neler yaptığımızla ilgili çok fazla detay vermeyeceğim. Kapsamı gördük: Avukatlar ne yapar? İçeriği gördük: Eğitim sisteminin neleri aktaramadığı konusunda bize anlatılanlar. Ve yapıları baktık: Engeller nerede? Örneğin; bir etaptan diğerine geçişte nelerde güçlük çekiliyor? Ve dört grup altında tavsiyeler oluşturduk. Çıktılara odaklanılması gerektiğini, mesleğe hak kazandıkları günden itibaren neler yapabiliyor olmaları üzerinde durulması gerektiği ve daha sonra geriye dönük neler üzerinde çalışılması gerektiğine dair tavsiyelerde bulunduk: Örneğin, daha etik davranış ve daha fazla ticari ahlak. Daha esnek beceriler üzerinde durulmasını tavsiye ettik. Öğrencilerin kariyer beklentileri, nereye gittikleri hakkında daha fazla bilgi sahibi olmalarını tavsiye ettik. Ve şu anda, düzenleyiciler bütün bunların nasıl başarılacağı ile ilgili çalışıyorlar. Ve bizim önerilerimizi uygulamaya alıyorlar. Yani, gelecek birkaç yıl içerisinde İngiltere ve Galler'de koşullar değişecek. Eğer rapora bakmak isteyen varsa, buradan görebilirsiniz. Size her zaman e-kitabı indirmenizi tavsiye ederim çünkü asıl rapor da bu büyüklükte. Bu noktada sorularınızı da yanıtlamaktan memnuniyet duyarım.*

**Prof. Dr. Sacit ADALI (Oturum Başkanı)-** Sayın profesöre yine aynı içtenlikle teşekkür ediyoruz. Amerika Birleşik Devletlerinin ve İngiltere Galler ülkesinin deneyimlerini bizim önümüze getirdiler serdiler. Böylece dünyayı daha yakından tanıma imkânını bahşettiler.

Şimdi soru-cevap faslına herhalde geçelim. Buyurun efendim.

**Prof. Dr. Feridun YENİSEY (Bahçeşehir Üniversitesi Hukuk Fakültesi)-** Ben her iki konuşmacıya teşekkür ediyorum, sizlere de katılımınız için teşekkür ediyorum. Türkiye'de ve

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dünyada hukuk eğitiminin bir önem taşıdığını gördük her iki konuşmacıdan da. Mesela Amerika örneğinde şunu gördük: Çok kaliteli ve pahalı hukukçu yetiştiriliyor. Üç senelik bir eğitim, ikiye düşürmeyi düşünüyorlar. Biz ise hukuk eğitimi ni daha beş sene, daha da fazlaya çıkartmayı öngörüyoruz, onları düşünüyorduk.

Fakat bu 1800'lü yıllardaki Harvard Raporu ve Harvard değişimi ilginç. Bakınız profesör yetiştirmek için eğitim vermeyi planlamış Harvard o yıllarda. Yani sıradan bir hukukçu değil, çok üst kaliteli hukukçu yetiştirmek, profesör yetiştirmeyi öngören bir programlama içerisinde ve pahalı.

Şimdi acaba değişen dünyanın ihtiyaçlarına nasıl bakmamız gerekiyor hukuk eğitiminde? Hukukçunun rolü ne? Burada İngiliz meslektaşımızın verdiği üç tane fikir var. Hukuk devletinin temeli, "rule of law" hukukçu bunu sağlayacak. Hukuk devletinin temelini sağlayacak.

Bunun için 21. yüzyılda nasıl bir hukukçu yetiştirilmesi gerekiyor? Bütün dünyayı yakından ilgilendiren çok önemli bir sorunu bugün sizlerle tartışacağız. Fakat örnek aldığımız batı ülkelerinde de hukuk eğitimiyle ilgili büyük problemler olduğunu görüyoruz. Daha henüz söylenmedi, ama Amerika'daki hukuk fakültelerinin yüzde 30'unun kapanma tehlikesi olduğu söyleniyor. Hukukçuların azalacağı, okulların çok pahalı olduğu; fakat Türkiye'de tam tersi var şimdi. Her üç-dört tane hoca bulan fakülte açıyor ve iyi bir eğitim veriyor mu acaba? Kaliteli bir eğitim veriyor mu? Nasıl bir eğitim vermemiz gerekiyor? Bu toplantı bu bakımdan çok önemli.

Barolar Birliğine teşekkür ediyorum büyük bir destek verdiği için. Atlanta John Marshall'a çok teşekkür ediyorum; çünkü bütün bu konuşmacıları onlar getirdiler, onlar temin ettiler bize. Dekanlarımıza teşekkür ediyorum geldiler, baro başkanlarımıza, yarın da öğrencilerimize. İstanbul'dan 40 tane öğrenci otobüsle gelecek. Esas bizim hedef kitlemiz öğrenci. Bu toplantılar öğrencisiz olmamalıydı. Umarım ki Ankara üniversitelerinden de katılımlar olur öğrencilerden. Kıbrıs'tan da

öğrenciler gelecek. Öğrencilerle birlikte tartışmamız lazım bu hukuk eğitiminin geleceği.

Teşekkür ederim.

(Alkışlar)

**Prof. Dr. Sacit ADALI (Oturum Başkanı)-** Bu işin tasarımcısı planlayıcısı kotarıcısı ve bizi buraya davet etme şerefini bahşeden Barolar Birliğiyle işbirliği yapan Sayın Feridun Yenisey'e teşekkür ediyorum. Bu açılımlar şimdi devam edecek. Soru cevaba devam edebiliriz. Buyurun.

**Av. Cengiz YAŞAR (Ankara Barosu)-** Öncelikle her iki konuğumuza hoş geldin diyorum. Şimdi sorum her iki konuğa olacak. Hukuk eğitiminden bahsedilirken, bence hukuk niçin var? İnsanoğlu hukuk denilen kavramla niçin tanışıldı? Her iki ülkenin eğitim sisteminde de bu konuya hiç değinilmedi.

Örneğin, İngiltere ve Amerika Birleşik Devletlerinde Roma hukuku temel ders olarak öğrencilere öğretiliyor mu öğretilmiyor mu? Çünkü Roma hukuku, aslında bugünkü çağdaş hukukun temel varlık nedenidir. Yani hiç kimse sahip olduğu haktan fazlasını kimseye devredemez ilkesi, aslında insanın insana karşı mücadelesinde eşit durmayı ve birey olmayı temel ilke olarak önemsemiş ya da Ulpian "*hiç kimsenin hakkını yeme onurlu yaşa, kimseye de hakkını yedirme*" bundan 2 bin yıl önce derken, tamamen insan aklına hitap eden ve insanı insan yapan bir temel duruş sergilemiştir.

Bugün bizim ülkemizde son 10 yıl içerisinde Roma hukukunun dinsel etkilerinden etkilenmediğinden dolayı, örneğin ben fakülte okuduğum sene Roma hukuku çok zor bir dersti. Öğrencilerin en zorlandığı dersti, ama bugün ülkemizde son 10 yıl içerisinde Roma hukuku sıradan bir ders oldu. Yani öğrencilere üstünkörü bir ders veriliyor ve öğrenilmemesi isteniyor. Çünkü Roma hukukunda dinin etkisi yok. Gerek çok tanrılı dinlerin, ne de tek tanrılı dinlerin etkisi yok, tamamen insan beyninin doğanın karşısındaki üretimidir. Amerika Birleşik Devletlerinde Moliterno böyle bir konuya değinmedi, Sayın Ching sadece şunu söyledi; etik dedi, ahlak dedi.

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Acaba biz hukuk eğitiminde kariyer mi önemli, para mı önemli, mevkii mi önemli, insani değerlerin öğretilmesi mi önemli?

**Prof. Dr. James MOLITERNO (Washington ve Lee Üniversitesi Hukuk Fakültesi, Virginia, ABD)**- I will be happy to tell you what is the beginning course work for American law students, at least at my school and at most schools. We do not teach the Roman law as a foundational course. We begin by having them learn our Constitutional Law, contract law, law of obligations, property law, tort law, law of injuries, law of crimes, procedure, court procedure and international law and lawyer ethics. So lawyer ethics is a required course at every American law school. Those are the foundational courses at most American law schools. There are some other courses that are often required. But it has become more and more uncommon in American law schools for there to be courses in legal philosophy, Roman law and other kind of basic courses of that nature; background courses, philosophical and theoretical courses. But lawyer ethics is a primary course, always.

*Size, Amerikalı hukuk öğrencileri için, en azından benim okulmda ve pek çok okulda, ilk derslerindeki çalışmanın ne olduğunu söylemek istiyorum. Biz Roma Hukukunu zorunlu bir ders olarak öğretmiyoruz. Biz onlara anayasa hukuku, sözleşme hukuku, borçlar hukuku, eşya hukuku, haksız muamele hukuku, zarar hukuku, suçlar hukuku, muamele, mahkeme işlemleri, uluslararası hukuk ve hukuk etiği öğreterek başlıyoruz. Yani avukatlık etiği bütün Amerikan hukuk fakültelerinde zorunlu derstir. Bunlar, pek çok Amerikan hukuk fakültesinde zorunlu derslerdir. Zorunlu bazı başka dersler de vardır; ancak hukuk felsefesi, Roma hukuku ve bu bağlamdaki diğer temel dersler; kaynak dersler, felsefi ve teorik dersler, Amerikan hukuk fakültelerinde gittikçe az bulunur bir hal alıyor. Ancak avukatlık etiği her zaman temel zorunlu derstir.*

**Prof. Dr. Jane CHING (Nottingham Üniversitesi Hukuk Fakültesi, Nottingham, İngiltere)**- Thank you. In England Wales we have a simple list of foundational subjects; contracts, tort, land law, equity, criminal law, constitutional law and

European law and human rights. Again as a common law country we do not require people to study Roman law, I went to university where we did; but that was unusual. We have an interesting situation in relation to ethics. In the undergraduate degree, we are required to cover a few values; in the social justice were not required to cover jurisprudence. We cover our professional ethics. There are the specific professional ethics once people have decided which profession they are going into in the vocational course. But one of the issues in our report was that there was still some lack of clarity about exactly how ethical social justice issues we dealt with through out legal education.

*Teşekkür ederim. İngiltere ve Galler'de sade bir zorunlu ders listemiz vardır; sözleşmeler, haksız muamele, arazi hukuku, ceza hukuku, anayasa hukuku ve Avrupa hukuku ve insan hakları. Yine, bir ortak hukuk ülkesi olarak, biz Roma hukukunu zorunlu ders olarak vermiyoruz. Ben bunun zorunlu olduğu bir üniversiteye gittim; ancak bu olağandışı bir durumdu. Etik konusu hakkında ilginç bir durum söz konusu. Yüksekokul eğitimi bazı değerleri kapsıyordu; sosyal adalet içerisinde hukuk felsefesinin kapsanması gerekliliği yoktu. Biz meslek etiğini kapsama aldık. İnsanların karar verdikleri alanlara göre gidecekleri meslek kurslarına özel mesleki etikleri değerler vardır; ancak raporumuzdaki konulardan bir tanesi de hukuk eğitimizde etik sosyal adaletin tam olarak nasıl işlendiği ile ilgili halen belirsizliklerin olmasıdır.*

**Prof. Dr. Sacit ADALI (Oturum Başkanı)-** Teşekkür ederiz. Buyurun efendim.

**Av. Tahir ELÇİ (Diyarbakır Baro Başkanı)-** Ben de hem Türkiye Barolar Birliğine, hem Bahçeşehir Üniversitesi ve Feridun Hocamıza, hem de John Marshall Üniversitesine teşekkür etmek isterim, bu imkânı bize sundukları için.

Benim iki sorum var. Birincisi, Profesör Jane Ching'e. Şimdi tabii ben şu ana kadar İngiltere'de ya da İngiltere ve Galler'de, ya da Britanya'da, avukatlık mesleğinin iki kategoriye ayrıldığını biliyordum, "barrister" ve "solicitor" bugün bir de patent

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avukatlığı ya da işte “trademark” gibi gibi çeşitli alanlarda da bir uzmanlaşma veya bir kategorileşmenin olduğunu gördüm.

Ben şunu öğrenmek istiyorum: Acaba “barrister” ve “solicitor” dışındaki alanlarda, yani bu iki kategorinin dışında özel bir alan mı? Yani “solicitor” ve “barrister”lardan birileri, örneğin patent avukatlığını da yapabilir mi? Bir de daha çok merak ettiğim şey şu: Acaba mesleğin başında “solicitor” olan, daha sonra fikir değiştirip örneğin “barrister” olabilir mi? Veya işte patent avukatlığına kayıt yapan baronun bu bölümüne kayıt yapan bir avukat, daha sonra alan değiştirebilir mi? Birinci sorum buydu.

İkinci sorum, tam da bu dönemde biz de bir Avukatlık Yasası hazırlığı içindeyiz Türkiye olarak ve çok köklü değişikliklerin yapılacağı bir ay içerisinde, öyle görünüyor ki parlamentodan geçecek. İşte Feridun Hocam dedi ki, Amerika’da avukatlık eğitimi üç yıldır, iki yıla düşürmeyi düşünüyorlar. Bizde bir de staj sorunu var. Staj şu anda bizde bir yıl, ama şu anda Meclise sunulmakta olan sunulacak olan veya stajın üç yıla çıkarılması öngörülüyor. Acaba hem İngiltere’de hem Amerika’da staj kaç yıldır, nasıl yapılıyor? Bunu ben öğrenmek isterdim.

Teşekkür ediyorum.

**Prof. Dr. Jane CHING (Nottingham Üniversitesi Hukuk Fakültesi, Nottingham, İngiltere)-** Thank you. On the first question, there is a short answer and there is a very long answer. The short answer is that the different professions are regulated to do different things. I am a solicitor, I could do some advocacy, I could do patent and trademark law. Patent and trademark attorneys can only do patent and trademark law. That is the short answer. The long answer is yes you can move from one profession to another. I was the person who in our report spent I think three days looking at all the regulations to try to work how you did it. And that is one of the reasons why we recommended flexibility that should be easier to do. In terms of internship, the solicitors have two years. The



barristers have one year. Some of the other professions have different periods of time, ranging between I think two and five.

*Teşekkür ederim. Birinci soru için, hem kısa hem de çok uzun bir cevabım var. Kısa cevap; farklı meslek alanları farklı olayları gerçekleştirmek için düzenlenmiştir. Ben bir hukuk müşaviriyim; avukatlık yapabilirim, patent ve marka hukuku üzerine çalışabilirim. Patent ve marka avukatları yalnızca patent ve marka hukuku ile ilgilenebilirler. Bu kısa cevap. Uzun cevaba gelecek olursak, evet bir meslek alanından diğerine geçiş yapabilirsiniz. Raporumuzda, bunun nasıl yapıldığını anlamaya çalışmak için üç gün geçiren kişi bendim. Ve, esnekliği tavsiye etmemizin bir nedeni de, yapılması kolay olduğundan budur. Stajyerlik konusuna gelirsek, hukuk müşavirlerinin iki yıl sürer. Dava vekillerinin iki yıl sürer. Diğer meslek alanlarının ise, sanırsam iki ila beş yıl arasında değişen farklı süreleri vardır.*

**Prof. Dr. James MOLİTERNO (Washington ve Lee Üniversitesi Hukuk Fakültesi, Virginia, ABD)-** So in the US, we of course begin with an undergraduate degree, a bachelor's degree in any subject at all. Our low degree is a graduate degree. So my undergraduate degree, my bachelor's degree was in mathematics. It is common for my students to have undergraduate degrees in history or philosophy or any number of subjects at all, political science perhaps. After the undergraduate degree, a student is enrolled in a three-year graduate program. So it is a complete seven years to become a lawyer even though the first four are spent in undergraduate school in any subject. After the three years of law school, there is no required internship time in the US. But it is extremely common for our law students to work in the market place while there are students to have jobs in law firms, in government agencies, assisting judges, a variety of different activities that they engage in that allow them to get a feeling of the workplace, the legal workplace. After they graduate from law school, they must pass the bar exam. Once they have passed the bar exam, they are a lawyer. And in US we have unified legal profession. So a person can be any kind of specialist they choose to be and learn how to be. So they can do corporate law, they can do

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criminal law, they can do any manner of legal specialty, they can be common expert in securities and trademarks, whatever they choose.

It is also true that in the US, unlike many places I have visited, it is very common for an American lawyer to change careers during their lifetime to become a prosecutor, to become a judge, to finish some part of a career as a judge and go, become a lawyer again, a private lawyer. So our profession is unlike many in the world that have particular categories. You are simply a lawyer and then you make career choices as you go along.

*Amerika Birleşik Devletleri'nde, tabii ki herhangi bir alanda elde edilecek ön lisans derecesi, lisans derecesi ile başlıyoruz. Hukuk eğitimiz bir lisans eğitimidir. Benim ön lisans mezuniyetim matematik üzerineydi. Benim öğrencilerim arasında tarih, felsefe veya siyaset bilimi dahil olmak üzere pek çok alanda ön lisans diplomasına sahip olanlar vardı. Bir öğrenci ön lisans mezuniyetinden sonra üç yıllık bir lisans programına kayıt olur. Yani, avukat olmak, ilk dört yılı herhangi bir alanda herhangi bir yüksek okulda olmak üzere, toplam yedi yıllık bir süreyi kapsar. Üç yıllık hukuk eğitiminden sonra Amerika Birleşik Devletleri'nde zorunlu bir stajyerlik süresi yoktur; hukuk öğrencilerimiz arasında dükkanlarda çalışanlar yaygın olduğu gibi, çalışma ortamını, hukuk firmalarında, resmi kurumlarda, hâkimlere yardım ederek veya hukuki çalışma ortamını tadabilmelerini sağlayacak etkinlikler gerçekleştirenler de mevcuttur. Öğrenciler hukuk okullarından mezun olduktan sonra baro sınavını geçmek zorundadır. Baro sınavını geçmeleri ile birlikte artık avukattırlar. Amerika Birleşik Devletleri'nde tek tip meslek alanı vardır. Yani, bir kişi seçtiği ve nasıl yapacağını öğrendiği her alanda uzmanlaşabilir. Yani, şirket yasası ile ilgilenebilirler, ceza hukuku ile ilgilenebilirler, hukuk alanında herhangi bir uzmanlık edinebilirler, güvenlik ve marka konusunda bilirkişi olabilirler; hangi alanı isterlerse onu seçebilirler.*

*Gittiğim pek çok yerin aksine, Amerika Birleşik Devletleri'nde Amerikan avukatlarının iş yaşamları boyunca kariyerlerini değiştirip savcı olmaları, hâkim olmaları veya kariyerlerinin bir kısmını hâkim olarak geçirip daha sonra özel avukat olmaları yaygındır. Yani bizim*

*meslek alanımız, çok fazla kategorinin bulunduğu dünyadaki pek çok ülkedeki meslek alanlarından farklıdır. Siz bir avukatsınız ve sonra ilerleyen süreçte kariyer tercihi yaparsınız.*

**Prof. Dr. Sacit ADALI (Oturum Başkanı)-** Evet, bizim hiç alışık olmadığımız sistemleri görmüş oluyoruz. Hakikaten ilginç. Buyurun efendim.

**Dr. İhsan BAŞTÜRK (Yargıtay Cumhuriyet Savcısı)-** Merhabalar, öncelikle sayın misafirlerimize hoş geldiniz diyorum Türkiye'ye ülkemize ve toplantıda emeği geçen Türkiye Barolar Birliğine, Bahçeşehir Üniversitesine içten teşekkürlerimi sunmak istiyorum.

Şimdi Profesör James Moliterno ve Jane Ching'i dikkatle dinledim. Profesör Moliterno hukuk eğitimiyle tıp eğitimi arasındaki benzerliğe dikkat çekti. Ben de aynı düşüncüyü paylaşıyorum. Hukuk eğitimine olan talebe bakıyorsunuz ve kriz içinde olduğumuzu söylüyorsunuz. Ama diğer taraftan tıp bilimine olan talepte sürekli bir yükseliş var.

Ben şu düşüncedeyim: Günümüzde insan ilişkileri tabii ki karmaşıklaşıyor, uyuşmazlıklar ihtilaflar artıyor. Uyuşmazlıklar arttığı sürece bu global dünyada, bence hukuk eğitimine ve hukukçuya talep giderek artacak. Yani bu anlamda ben kriz olduğunu düşünmüyorum.

Profesör Jane Ching'in belirttiği gibi, farkındalık yaratmak. Yani kamuyu, toplumu, hukuka olan gereksinim. Uyuşmazlık daha çıkmadan çözme yolunda olan gereksinime ihtiyaca farkındalık yaratmanın oluşturulması anlamında hepimize, hukuk eğitimine tabii ki görev düştüğüne inanıyorum.

Bu kısa düşüncemden sonra Profesör Moliterno'ya şunu sormak istiyorum: Inter aktif metotlardan bahsettiniz hukuk eğitiminde. Bu Inter aktif metotlar nedir? Yani bildiğimiz sanal duruşma mıdır? Onun haricinde hukuk öğrencilerine dersin içine daha fazla çekmek midir? Nasıl yollara başvuruyorsunuz? Diğer taraftan ben özellikle Birleşik Devletlerde hukuk eğitiminin ikinci lisans olarak verildiğini biliyorum. Bizim

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de bu yola başvurmamız gerekebilir mi düşüncesi açısından, Amerikan toplumunu bu ihtiyaca iten neden nedir? Onu öğrenmek istiyorum.

Çok teşekkürler.

**Prof. Dr. James MOLITERNO (Washington ve Lee Üniversitesi Hukuk Fakültesi, Virginia, ABD)**- So you asked many wonderful questions, very important questions. The most important one, I completely agree with you that every crisis, this crisis is not an ultimate crisis. This is a crisis that like every other good time of change is an opportunity to make our work better. So whenever demand for our product goes down in legal education, we should take that as an opportunity to do our work better and serve our society better. And I think that is what we will do I believe that is what American legal education will in fact do.

You asked about what kind of interactive methods. Almost every American law school class involves the students' participation. It is very very rare in American law school for the professor to be the one who speaks. There are many different techniques for doing this. Because we are a common law system, one very common, very usual technique is for the students to have read court opinions and engage in discussion of those court opinions with the professor. The professor will ask a question about why the judge did a certain thing or why the judge said this in a certain way. And the students will exchange back and forth and I know I am doing a good class when the students start to talk to each other, answer each other's questions even. So that is the most common.

But my own preference, and many many other law professors today put the students into short scenarios or role-plays. So I might go into the class wanting to talk about the law of conflict of interests in ethics, professional ethics. And I will say to a student, "Ah, young man, you are a lawyer and you have a client who has come to your office with this kind of problem." And then I will say "Now the client's father is calling you on

the telephone. Pick up the telephone” and I will engage them in a back and forth, back and forth that puts them into the role of a lawyer during the class and requires them to respond as they think a lawyer should. And I will then engage in guiding them through those responses so that they are good responses and they learn what the core legal principal is about in this example conflict of interest by actually having a conflict of interest play out in the middle of the class. So this is becoming much, much, much more common. But at the end of the day, there are almost no law classes where only the professor speaks.

*Harikulade ve çok önemli sorular sordunuz. Bunlardan en önemlisi ve kesinlikle size katılıyorum, her kriz, bu kriz yaşayacağımız son kriz değildir. Bu kriz diğer her güzel değişim zamanları gibi işlerimizi daha iyiye götürmemiz için bir fırsattır. Yani ne zaman ki hukuk eğitiminde ürünüme olan talep düşer, o zaman biz bunu işlerimizi iyiye götürmek ve toplumumuza daha iyi hizmet edebilmek için bir fırsat haline gelir. Ve bence, bizim yapacağımız da bu, inanıyorum ki Amerikan hukuk eğitiminin yapacağı şeyin bu olduğuna inanıyorum.*

*Ne tür etkileşim metotları olduğunu sordunuz. Neredeyse her Amerikan hukuk fakültesi dersi öğrencilerin katılımı içerir. Amerikan hukuk fakültelerinde konuşan kişinin yalnızca profesör olması çok, çok nadir bir durumdur. Bunu yapmanın çok farklı teknikleri vardır. Ortak hukuk sistemi olduğumuz için, en yaygın ve alışlagelmiş teknik öğrencilere, mahkeme kararı gerekçelerini okutmak ve bu mahkeme kararı gerekçelerini profesör ile tartışmalarını sağlamaktır. Sonra profesör hakimin belirli bir şeyi neden yaptığını veya neden hakimin bir şeyi o şekilde söylediğini sorar. Ve öğrenciler fikir alışverişinde bulunurlar. Ben, öğrenciler birbirleriyle derste konuşmaya başladıklarında ve birbirlerinin sorularını yanıtlamaya başladıklarında dahi doğru bir şey yaptığımdan emin olurum. Yani bu en yaygın olanıdır.*

*Ancak benim tercihim ve bugün pek çok profesörün tercihi, öğrencileri küçük senaryoların veya rollerin içine sokmaktır. Yani, ben etik konusunda menfaat çatışmaları kanunu hakkında konuşmak üzere derse girer ve bir öğrenciye “Genç adam, sen bir avukatsın ve*

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*ofisine bu tür bir problemle gelen bir müvekkilin var" derim. Sonra şöyle söylerim "Müvekkilinin babası telefonda seni arıyor. Telefonu aç. " Onları ders boyunca tekrar tekrar bu rolün içine sokarak bir avukatın vereceği cevabı bulmalarını isterim. Daha sonra verdikleri cevaplar konusunda onları yönlendirerek iyi cevaplara ulaşmalarını ve, bu örneğe göre, menfaat çatışmasının temel hukuki prensibinin ne olduğunu sınıfın ortasında gerçekten bir menfaat çatışması oyunu kurarak sağlarım. Bu durum gittikçe daha da yaygınlaşıyor; ancak günün sonunda yalnızca profesörün konuştuğu neredeyse hiçbir hukuk dersi kalmıyor.*

**F. Tom READ** - I want to thank this panel. This has been enormous panel. I am going to let them the moderator of the panel says a few words but we, you are doing what we want you to do and ask good, direct, hard questions interchange. We are going to be here for two days. If you do not get all of your answers, you can pinpoint somebody for answers. I am delighted that students are here. This is how we learn together. It has really been a good example so far. Mr. Moderator?

*Bu panele teşekkür etmek istiyorum. Muazzam bir panel oldu. Panel başkanına birkaç kelime söylemesi için sözü bırakacağım; ancak sizden ne istediyseniz onu yaptınız ve güzel, dolaysız, zor sorular sorunuz. İki gün boyunca burada olacağız. Eğer bütün sorularınızın cevaplarını alamazsanız, cevaplar için birini seçebilirsiniz. Öğrencilerin burada olmasından da memnuniyet duyuyorum. İşte bu şekilde hep birlikte öğreniyoruz. Bu anlamda şimdiye dek çok iyi bir örnek oldu. Sayın Moderatör?*

**Prof. Dr. Sacit ADALI (Oturum Başkanı)**- Ben öyle hissettim ki, bu kadar didaktik, bu kadar öğretici, bu kadar Inter aktif bir metot ikinci etap olarak kullanılıyor. Bizde daha birinci etap henüz tamamlanmadı. Nedir o? Hukuk adalet insaf meseleleri, insanın içine işletilmedi. Hukuku içselleştiremedik.

Hukuku biz cümleler, çeşitli ifadeler olarak anlatıyoruz yazıyoruz, ama uygulamada tatbik etmede zorluk çekiyoruz. İçimize gerçekten sindirebilmiş olsak, zannedirim bu metotlara bu usullere çok kolay intibak edeceğiz.

Benim arzum, henüz yapamadığımız, daha aileden başlaması gereken doğru olma dürüst olma adil olma hak yemek etik davranmak. Bunlar bizde var görünüyor, fakat Sayın Profesörün bahsettiği, çıkar çatışmaları günlük hayatımızı son derece bürüdüğü için, herkes kendi menfaatini en fazla korumaya muhtaç bir taraf olarak görüyor.

Hâlbuki ortaklığın, ortak menfaatin korunması var. Ortak menfaatin korunması, zannediyorum Türkiye’de çok zayıf olan bir düşünce. Bu faaliyetler eğitimle tabii gelişecek. Eğitimi biz tek hocanın konuştuğu ağırlıklı olan, hocanın konuşmasının ağırlıklı olduğu bir sistemde yürütüyoruz. Dolayısıyla ikinci etaba henüz geçemedik. Tabii geçmiş olan hocalarımız, geçmiş olan fakültelerimiz vardır. Yapmaya çalışıyoruz, farkındayız, fakat birdenbire de olmuyor.

Aile içindeki iletişimler, anne babanın kendi rollerin iyi oynaması. O iyi oynanmış roller içinde çocuğun kendi rolünü öğrenmesi karşılığında, dürüst bir ortamda büyümesi karşılığında, gençler bu rolleri de ortak menfaati korumak üzere gayet güzel oynayacaklar.

Bizim baş problemimiz sayın profesörlerim, zannediyorum özümseyememek, adalet duygusunu, hukuk duygusunu, hukukun üstünlüğü duygusunu özümseyememek ve kurallara tam manasıyla bağlı olamamak. Çıkar maalesef günlük hayatta en ön planda gidiyor. Biraz da ekonomik gelişmeyle de alakalı zannediyorum. Bir sistem, çok ağır bir sistem içindeyiz. Liberalizm mi diyelim, kapitalizmin vahşisi mi diyelim? Gerçekten sosyal adalete ihtiyacımız var. Bunu en küçük birim olan aileden okuldaki işletmelerden firmalardan fabrikalardan bürolardan, her taraftan fıskıran bir benimseme duygusunu inşallah bu konuşmaların neticesinde, birbirimizi etkileyen bu görüşleri ortaya koymak suretiyle, Barolar Birliğimizin tertiplemediği ve benzeri daha tertiplenecek olan faaliyetler sayesinde muhakkak ki gelişme olacak.

Ben sevgili iki konuşmacıya da, kıymetli misafirlerimize de hoş geldiler diyorum ve teşekkür ediyorum. (Alkışlar)

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**Emerius F. Tom READ (Dekan)**- Now as before the panel steps down, I am informed that our wonderful Turkish bar hosts have a special presentation to each panelist.

*Şimdi, oturumumuzu bitirmeden önce, öğrendiğim kadarıyla, harika bir ev sahipliği yapan Türkiye Barolar Birliğinin konuşmacılar için özel birer armağanı olacak.*

**SUNUCU**- Efendim değerli konuşmacılara konuşmaları için teşekkürlerimizi arz ediyorum. Kendilerine bugünün hatırası olarak birer plâket vermeyi düşündük. Ancak bunun yerine kendilerinin adına ağaç dikilmesinin daha uygun olacağını değerlendirdik ve bu nedenle TEMA'ya bağışta bulunduk. Söz konusu bağışımızın sertifikaları hazır, bunları takdim etmek üzere Türkiye Barolar Birliği Başkan Yardımcısı Sayın Av. Berra Besler'i kürsüye davet ediyorum efendim. (Alkışlar)

**Av. Berra BESLER (Türkiye Barolar Birliği Başkan Yardımcısı)**- Eğitim öğrencia açısından değil, hukuk devleti açısından bakılması da çok önemlidir. Nitekim hukuk fakülteleri yıllardır sadece öğrenim vermekte bizde, eğitimi ihmal etmektedirler. Oysa hukuk yaşayan bir bilimdir. Tıpkı tıp bilimi gibi, insanla birebir ilişkisi olan ve insana doğrudan etki yapan; biri sağlığına yapıyor, biri hayatına yapıyor bu etkiyi. Çok önemsenmesi gereken bir eğitim ve öğretim alanı olmalıdır hukuk fakültelerimiz.

Vaktiyle öyleydi, aynen sizin son ifadelerinizde buyurdunuz gibiydi, ama son yıllarda vakıf üniversitelerinin de fazlaşması dolayısıyla, bunda büyük aksaklıklar doğmaya başladı. Neden eğitim ve öğretim bir arada olsun diye çırpınırsınız? Çünkü hukuk fakültelerinden nitelikli hukukçuların yetişmesi çok önem taşımaktadır. Nitelikli hukukçular arasından, hukuk uygulayıcıları olacak olan hâkim savcı avukat ve noterlerin işlemleri doğrudan doğruya hukuk devletini etkiler niteliktedir. Bu itibarla çok önemlidir.

Bunun için ben sayın konuklarımızın ve sizin açıklamalarınızı son derece önemli buluyorum. Ama bunu bozan inanın



aileler değil, inanın hukuk fakülteleri değil, siyasi iktidar ve politikacılarıdır. Onlar da inşallah günün birinde bu hukuk eğitiminin hepimiz için yaşamsal değeri olduğunun bilincine varırlar ve biz hukuk uygulayıcıları yetiştiren ve insanlığa çok önemli olan barış huzur ve kardeşliğin temelini teşkil eden hukuk bilincini daha ilköğretimden itibaren yaşamımıza sokarız ve hukuk devletini hep birlikte yaşatırız.

Çok teşekkür ediyorum. (Alkışlar)

**Prof. Dr. Sacit ADALI (Oturum Başkanı)-** Son derece sevindirici, temennilerine katılıyorum, gayet güzel doğru ifadeler. Hepsi bizim değişim geçirmemiz gerektirdiğimizi gösteriyor.

**Av. Berra BESLER (Türkiye Barolar Birliği Başkan Yardımcısı)-** Politik ve anlayış.

**Prof. Dr. Sacit ADALI (Oturum Başkanı)-** Evet. Bir anlayış farkına inşallah ereceğiz, sağ olun.

**SUNUCU-** Sn. Profesör James Moliterno. Sn. Profesör Jane Ching.

*(Bağış sertifikaları verildi)*

Evet, sözü tekrar devrediyoruz. (Alkışlar)

**Emerius F. Tom READ (Dekan)-** You will find the next subject matter very interesting as Professor Lucille Jewel takes the stand. Think about the future, think about how rapidly the world is changing and then open your mind and hear what she has to say about what we need to be doing. It will be fascinating to you all. So I will turn it over to the panel and sit this time.

While the panel is still working with the technology, look around you. There are, all of you are very important to the future of legal education not just in Turkey. But as we look at our American and British guests all over, all of us are the ones who are going to hopefully point the way that the kind of changes in the future. There will be changes; we know there will be changes. But if we work together and keep those

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fundamental principals there our moderators talked to us about. In our minds as we make the changes will make good changes.

Then I would like to request that I have been given a great deal of sympathy as I am supposed to be the policeman but the questions are so good it is hard to stop the questions. It really is important that this interchange go on.

*Profesör Lucille Jewel kürsüde yerini alırken, bir sonraki konuyu son derece ilginç bulacağımızı belirtmek istiyorum. Geleceği düşünün, dünyanın ne kadar hızlı bir şekilde değiştiğini düşünün, zihninizi açın ve bu konuda ne yapmamız gerektiği hakkında söyleyeceklerini dinleyin. Bu konuşma hepiniz için büyüleyici olacak. Artık sırayı panele devrediyorum ve oturuyorum.*

*Panel hala teknoloji ile uğraşırken etrafınıza bakın. Hepiniz yalnızca Türkiye'deki değil her yerdeki hukuk eğitiminin geleceği için çok önemlisiniz. Ancak buradaki Amerikalı ve İngiliz misafirlerimize bakıyorum da, hepimiz geleceği değiştirecek yolu çizecek olanlar ümit ederim bizleriz. Değişiklikler olacak, bunu hepimiz biliyoruz. Ancak eğer birlikte çalışırsak ve moderatörlerimizin bize söyledikleri temel ilkeleri aklımızda tutarsak bu değişiklikler güzel değişiklikler olacaktır.*

*Ve affınıza sığınarak söylemek istiyorum ki, burada polislik yapmam gerekiyor; ancak sorular o kadar iyi ki, soruları durdurmak çok zor. Bu etkileşimin devam etmesi gerçekten çok önemli.*

**Lucille JEWEL-** Merhaba. I am going to talk to you a little bit about trends I am seeing in the United States concerning the future of the practice of law. How is the practice of law changing? How is technology impacting what we do as attorneys? And what can we expect in the future?

And my focus today is what is the future of the independent practitioner, what I am terming the "indy lawyer". And here I am talking about lawyers who decide that they want to go and practice law. They are not tethered to a firm or a company. So my research comes out of work I did in 2011, which looked at how the Internet impacted the legal profession in the United

States. And at that point, the Internet, blogs disrupted and changed the conversation about the legal profession, about legal education. And what we had out of that movement was new voices, new voices challenging the legal profession and challenging the value of a legal education. So we had stories that were growing out of the Internet about how law school was a poor investment. Going to law school was too much money and you did not get any real value out of your law degree. And that was, that opened up the conversation what Prof. Moliterno was referring to about the crisis in our legal education today.

And from that, we had some positive things, such as Prof. Moliterno's program at Washington D. C. Such as other law schools in the United States who are seeking to make legal education more relevant to what the practice of law is really like. But the bottom of line is that we are all very worried about jobs. Graduates, who are graduating from law school, the numbers are not good in terms of how many law graduates are able to get a job at a law firm or the government. So the trend is to consider what is the possibility that law graduates can go after they get their degree and go out start their own practice, become entrepreneurs and forge their own individual path into the profession? And how can technology aid this process? That is what I am most interested in looking at and that is what I am speaking with you today about. And I would be very curious to hear whether or not the same trends are impacting Turkey, in the way that they are impacting or in the similar way they are impacting the US.

So three questions I want to talk to you today about. What are the cultural and theoretical trends that are shaping the legal profession? How would a legal profession be changing to create this new style of lawyering? This new lawyer that I am seeing, what are the attributes and what do we need to do in terms of our institutional rules to foster this type of lawyering?

So let's start with some economic theories. It used to be, for most of the 20<sup>th</sup> Century, that production was maintained by

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a firm and that one business controlled the main production. Supplies, transportation everything was produced under one roof. That has changed now. Technology has changed that such that we are now in a much more fluid economy. And companies no longer control every aspect of production and they may through networks, source out those means of production so that you no longer own the warehouse, for instance, that you are shipping goods you may no longer even have control of the goods that you are selling. You are creating a network to allow third parties to sell their goods through your hub. And that is the model in a company such as Amazon.

So, with that network, more fluid means more production. We have less stability in the firm. We have less of a chance nowadays that you can go, get a job at a firm or company and have a secure career for your lifetime. Work in all aspects of the economy has become much more precarious. So in response to that we are seeing movements looking at sustainability, resilience. What can we do to ensure that our work is under our control? What can we do to make sure that what we buy remains in our community? Because there is this idea that knowing where our products come from and putting value in our community is going to be, create a more sustainable way of making a living for everyone. So, I am interested at seeing how do these theories impact the practice of law.

So, a couple of other theoretical points here about how the Internet has changed, how we practice law. The first idea of community it used to be that community was defined by the places, the physical places that you go. So what school, what club? Those institutions define your community. But now with the Internet you can go online and find likeminded individuals and form an online community. And those communities have the same attributes of sharing and that community that a physical place does. So, that has changed. Participation is another important cultural trend. And this is the idea that on the Internet everyone can participate, everyone can contribute their intellectual capital to make a product.

And Internet allows people to work together who live far apart. And this is a different kind of production and we see that open source software. And it has become very very valuable. And then there is also this idea of the Internet allowing people to make things and sell things on their own without having to go through a middleman company. So, through a website you can make things on your own and sell them and it has given rise to in the United States this very strong trend towards doing it yourself; selling things and making things independently.

And finally new technology has opened up new markets. The first trend is the idea that we are, as consumers, we want things that are specially made for ourselves; bespoke products. Number two; the Internet has opened up new kind of business called the sharing economy. Companies like Arabian Bee Task Rabbit, they allow individuals to use the Internet to make money of their access to labor or leasing out their apartment to others. So, it is a way of sharing access capital and to make additional money. Bike sharing programs is an example of sharing that has become very popular and then there is also an idea of social enterprise. The social enterprises, the idea that you are making money as a company but you are also in making money, doing good for the world. So a company like Tom's Shoes, sell shoes but they make it very obvious in their marketing that some of their profits go to helping children who cannot effort shoes to buy shoes.

And finally, the long tale is the idea that there are niche markets that do not exist before the Internet. But because the Internet allows a seller to widen the scope of customers, that is based on make money from products that are very specialized. So let me give you an example from Turkey of the long tale. So, Anatolian Rock. Have any of you heard of any of these artists on my slide? A few of you. So, in the United States if you were to go to a store selling music, you will not be able to find Anatolian Rock. But there are locations on the Internet, where people can go to, listen to and purchase this kind of music. You would not be able to make money if you opened up an

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Anatolian Rock store, where people had to walk to. But only Internet, you can have a business specializing an Anatolian vinyl records. And because there are enough people around the world with an appreciation for this niche market, you are able to actually make money. So that is an example of the long tale in Internet marketing.

OK, so that is so far in terms of law in technology one trend is seen how technology enables legal products to be packaged, mass-commodified. And basically it is a “one size fits all” situation where you, the consumer go out and buy a contract for instance. But there is no face-to-face interaction with an attorney. So I am interested in seeing how can technology bring attorneys and clients together in a one-to-one way. And I do think that technology and the trends that I have talked about, are giving rise to this potential. So indy lawyer, the independent lawyer, what are her attributes? She is independent; she does not practice through a company or a firm. She might practice with the small group of other attorneys. But she is not working at a large institution. Her focus is on helping people; solve real problems. She is, adheres to craft model of law production. So she is trying to make legal solutions that are tailored to the individual needs of the client. She embraces cooperation and she taps into the sharing economy.

In the United States, we are seeing sharing lawyers, indy lawyers, if you, this is Janelle Orsy, who practices law out of Berkeley, California and she has written a book about how the sharing economy has enabled her to drive as an independent lawyer, practicing this new type of law and helping people make business connections, you know in a cooperative economy.

So, one more thing. I have been using that term “the indy lawyer” and I just want to explain that in the United States, the term we normally use for an attorney who practices by herself or himself as a solo practitioner. And in the United States solo practitioners are viewed someone with disdain. Definitely you have more status if you work for a large firm or if you work for a leading segment of the government. But because of the

crisis in our economy, which has moved into a crisis in legal education and with the legal profession, I believe that we need to rehabilitate how we view the solo practitioner. And we want to celebrate the ideal of the autonomous lawyer going out and forging his or her own path into the profession.

So, I will close just with my ideas of how I do believe that there is space in the legal market in the United States for capturing niche markets for the long tale, creating contracts, entertainment contracts, online dispute resolution, small business transactions. If you cast your net wide enough and you use technology to bring the clients to you, I do believe there are spaces for the law profession to grow here. Thank you.

*Merhaba. Sizlerle Amerika Birleşik Devletlerinde avukatlık mesleğinin geleceğiyle ilgili gördüğüm eğilimlerden bahsedeceğim. Avukatlık mesleği nasıl değişiyor? Teknoloji bizim avukat olarak yaptıklarımıza nasıl etki ediyor? Ve gelecekte ne bekleyebiliriz?*

*Ve benim bugünkü odak noktam bağımsız uygulayıcıların geleceğinin ne olacağıdır ki ben onlara “indy lawyer” diyorum. Ve ben avukatlık mesleğini icra etmeye karar vermiş olan avukatlardan bahsediyorum. Bir firmaya veya şirkete bağlı değiller. Bu araştırma, 2011 yılında Amerika Birleşik Devletlerinde İnternetin avukatlık mesleğini nasıl etkilediği üzerine yaptığım bir çalışmanın sonuçlarına dayanıyor. Bu dönemde, İnternet, bloglar avukatlık mesleği ve hukuk eğitimi üzerine yapılan konuşmaları altüst etti ve değiştirdi. Ve bu hareketin bize kazandırdıkları yeni sesler, avukatlık mesleğine ve hukuk eğitiminin değerine meydan okuyan yeni sesler oldu. Hukuk fakültelerinin neden ölü yatırım olduğuna dair internette dolaşan hikâyelerimiz oldu. Hukuk fakültesine gitmenin çok maliyetli olduğu ve hukuk diploması almakla bir değer kazanılmadığı üzerine konuşuldu. Ve bu durum, bugün Prof. Moliterno'nun hukuk eğitimimizde kriz olarak nitelendirdiği sohbeti doğurdu.*

*Buradan olumlu Prof. Moliterno'nun bahsettiği Washington D. C. 'deki program gibi bazı olumlu çıkarımlarımız da oldu. Örneğin; hukuk eğitimi gerçekte avukatlık mesleğinin uygulamaları ile daha fazla bağlantılı olmasının yollarını arayan Amerika Birleşik Devlet-*

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leri'ndeki diğer hukuk fakülteleri gibi. Ancak, hepimiz istihdam ile ilgili oldukça endişeliyiz. Hukuk fakültelerinden mezun olan mezunların bir hukuk firmasında veya hükümette istihdamını gösteren sayılar hiç iyi değil. Yani, genel eğilim hukuk fakültesi mezunlarının diplomalarını aldıktan sonra mesleğe atılıp, kendi işlerini kurup, girişimci haline gelip bu meslekte kendi yollarını çizme olasılığını göz önünde bulundurmamak yönünde. Ve teknoloji bu sürece nasıl yardım edebilir? Bu benim en çok ilgimi çeken konudur ve bugün de size bundan bahsedeceğim. Ve aynı eğilimin Türkiye'yi, Amerika Birleşik Devletleri'ni etkilediği gibi veya benzer şekilde etkileyip etkilemediğini çok merak ediyorum.

Sizinle bugün hakkında konuşmak istediğim üç soru var. Avukatlık mesleğini şekillendiren kültürel ve teorik eğilimler nelerdir? Avukatlık mesleği yeni tarz bir avukatlık yaratmak için nasıl değiştirilebilir? Görmüş olduğum bu yeni tarz avukatlığın özellikleri nelerdir ve kurumsal kurallarımız açısından bu tarz avukatlığı desteklemek için neler yapmamız gerekir?

Ekonomik teorilerle başlayalım. 20. yüzyılın büyük bölümünde, üretim bir firma tarafından yapılıyordu ve bu işletme, aynı zamanda ana üretimi kontrol ediyordu. Kaynaklar, nakliye ve her şey tek bir çatı altında üretiliyordu. Şu anda bu durum değişti. Teknoloji bu durumu öyle değiştirdi ki, şu anda daha akıcı bir ekonomi içerisindeyiz. Ve artık şirketler üretimin her yönünü kontrol edemiyor ve kurdukları ağlar sayesinde üretimin bu aşamaları için dışarıdan hizmet alıyorlar. Örneğin, artık deponun sahibi siz olmadığınızdan, nakliye sırasında artık sattığımız mallar üzerinde bir kontrolünüz olmuyor. Üçüncü şahıslara, kendi mallarını sizin merkeziniz aracılığıyla satmaları için bir ağ yaratıyorsunuz. Ve bu Amazon gibi şirketlerin uyguladıkları model de budur.

Dolayısıyla, bu ağ ile sağlanan daha fazla akış, daha fazla üretim anlamına geliyor. Firmada daha az istikrara sahibiz. Bugünlerde bir şirket veya firmada çalışmaya başlayıp, hayatımız boyunca güvenli bir kariyere sahip olma şansımız daha azdır. Ekonominin her alanında çalışmak, çok daha riskli bir hale gelmiştir. Bunun karşılığında da, sürdürülebilirlik ve esnekliğe odaklı bazı hareketler görüyoruz. Kendi işimizin kendi kontrolümüz altında olduğundan emin olmak için ne



yapabiliriz? Satın aldığımız şeylerin kendi çevremizde kaldığından emin olmak için ne yapabiliriz? Çünkü ürünlerimizin nereden geldiğini bilmemiz ve toplumumuza bir değer katmamız, herkesin yaşamını daha sürdürülebilir hale getirecektir. Bu, nedenle bu teorilerin avukatlık mesleğini nasıl etkilediğini incelemek ilgimi çekiyor.

Buradaki birkaç diğer teorik nokta İnternetin bizim avukatlık mesleği icra edişimizi nasıl değiştirdiğidir. Başlangıçtaki toplum kavramı, gittiğiniz yer, gittiğiniz fiziki yerlerle tanımlanırdı. Yani hangi okul, hangi kulüp? Bu kurumlar bizim içinde yaşadığımız toplumu belirlerdi. Fakat şimdi, İnternet aracılığı ile, çevrimiçi olarak, benzer düşüncelere sahip kişilere ulaşım çevrimiçi bir topluluk oluşturabilirsiniz. Ve oluşturulan bu topluluklar, fiziki bir ortamda bulunmak ile aynı paylaşımcılık üzerine kurulabilir. Yani, bu artık değişti. Katılım bir diğer önemli kültürel eğilimdir. Ve İnternet üzerinden herkes katılım gösterebilir, herkes bir ürünün ortaya çıkması için kendi entelektüel kapasitesini ortaya koyabilir.

İnternet birbirlerinden uzakta yaşayan kişilerin bir arada çalışmasına olanak tanıyor. Bu farklı bir tür üretimdir ve görüyoruz ki açık kaynaklı bir yazılımdır. Ve günümüzde çok, çok değerli hale geldi. İnternetin kişilere arada aracı şirketler olmadan kendi başlarına bir şeyler yapıp satmalarına olanak tanıdığını görüyoruz. Yani bir İnternet sitesi ile kendi başınıza bir şeyler yapabilir ve onları satabilirsiniz. Bu güçlü eğilim; Amerika Birleşik Devletleri'nde kendi kendine bir şeyler yapmak, satmak ve bütün bunları bağımsız olarak gerçekleştirmek eğilimini ortaya çıkarttı.

Son olarak, yeni teknolojiler, yeni pazarlar açtı. Birinci eğilim, biz müşterilerin, özel olarak bizim için yapılmış, sipariş üzerine yapılmış ürünler istememiz. İkincisi, İnternetin paylaşımcı ekonomi olarak adlandırılan yeni bir işletme türü yaratması. Arabian Bee Task Rabbit gibi şirketler, iş bulma veya evlerini satma gibi alanlarda İnternet aracılığıyla kişilere para kazanma olanağı tanıyor. Yani bu bir çeşit erişim sermayesini paylaşarak ek gelir elde etmek. Bisiklet paylaşma, güm geçtikçe daha da popüler olan bir paylaşım örneğidir. Sosyal girişimler, yani hem bir şirket olarak para kazanıyorsunuz, hem de dünya için iyi bir şeyler yapıyorsunuz. Tom's Shoes gibi bir şirket ayakkabı satıyor; ancak pazarlamalarında karlarının belirli bir bölü-

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*münün ayakkabı alamayan çocuklara yardım amaçlı kullanıldığını açıkça beyan ediyorlar.*

*Son olarak; uzun lafın kısası, günümüzde, İnternette önce var olmayan niş pazarlar var. İnternet, satıcıya müşteri kapsamını genişletme olanağı tanıyarak, özel ürünler üzerinden para kazanmayı sağlar. Size Türkiye'den bir örnek vermeme izin verin. Anadolu Rock müziği. Herhangi biriniz slaytta yer alan sanatçıları duydunuz mu? Bazılarınız. Amerikan Birleşik Devletleri'nde bir müzik mağazasına gittiğinizde, Anadolu Rock müziği ile ilgili bir şey bulamazsınız. Ancak İnternette ilgili kişilerin bu müzik türünü dinleyebilecekleri ve satın alabilecekleri yerler var. İnsanların bizzat gelip alabilecekleri bir yerde bir Anadolu Rock müziği mağazası açarsanız, para kazanamazsınız. Ancak İnternet üzerinden sadece Anadolu plakları satmayı içeren bir iş yapabilirsiniz. Dünyada bu niş pazarı beğenen yeterince insan olduğundan, gerçekten iyi para kazanabilirsiniz. Bu da, oldukça kapsamlı bir konu olan İnternet üzerinden satış yapmaya bir örnektir.*

*Hukuk alanında kullanılan teknolojinin, hukuki ürünlerin paketlenip satışa hazır hale getirilmesi konusunda bir eğilim görülüyor. Temel olarak bu "her bedene uygun kıyafet" gibi bir durum. Tüketici, örneğin, gidip kendisine bir kontra satın alabiliyor. Ancak, avukat ile yüz yüze bir etkileşim söz konusu değil. Bu nedenle ben teknolojinin avukatları ve müvekkilleri nasıl bir araya getirdiği ile ilgileniyorum. Hem teknoloji hem de bahsettiğim bu eğilimler, bu potansiyeli ortaya çıkartıyor. "İndy lawyer", bağımsız avukat dedik. Özellikleri nelerdir? Bağımsızdır; bir şirket veya firmada çalışmaz. Küçük bir avukat grubu ile çalışabilir; ancak büyük bir kurumda çalışmaz. Odak noktası insanlara yardım etmektir; gerçek sorunları çözmektir. Hukuk uygulamalarında bir zanaatkar gibidir. Her müvekkilin isteğine göre özel olan yasal çözümler üretmeye çalışır. İşbirliğini ve paylaşımcı ekonomiyi benimser.*

*Amerika Birleşik Devletlerinde, paylaşımcı avukatlar, "indy-lawyers" görüyoruz. Burada gördüğünüz, Berkeley dışında Kaliforniya'da avukatlık yapan Janelle Orsy. Kendisi, paylaşımcı ekonominin kendisini bağımsız avukatlık yapmaya nasıl teşvik ettiğini, bu yeni avukatlık türünü icra etmek, işbirlikçi ekonomilerde iş bağlantıları kurmak konusunda nasıl yüreklendirdiğini anlatan bir kitap yazdı.*

*Bir konu daha var. "Indy-lawyer" terimini kullandım. Biz Amerika Birleşik Devletlerinde bu terimi serbest avukat olarak kendi başına çalışan avukatlar için kullanıyoruz. Amerika Birleşik Devletleri'nde serbest çalışan avukatlar pek iyi görülmez. Büyük bir firmada veya hükümetin üst makamlarında çalışırsanız, kesinlikle daha çok statü sahibi olursunuz. Ancak, avukatlık mesleğine ve hukuk eğitimine de sıçrayan ekonomik kriz nedeniyle, serbest avukatlara olan bakışımızı tekrar değerlendirmemiz gerektiğini düşünüyorum. Meleğe adım atıp kendi yolunu çizen avukatları da taktir etmek istiyoruz.*

Şimdi, Amerika Birleşik Devletlerinde hukuk alanındaki piyasada, kontrat oluşturmak, eğlence sektöründe kontrat oluşturmak, çevrimiçi uyumsuzluk halli, küçük çaplı işlemler gibi niş pazarları kapsayacak yer olduğunu içeren konuşmama burada son veriyorum. Eğer yeterince geniş bir ağ kurarsanız, ve müvekkil kazanmak için teknolojiyi kullanırsanız, avukatlık mesleğinin bu alanda da gelişeceğine inanıyorum.

*Teşekkür ederim.*

**Prof. Dr. Sacit ADALI (Oturum Başkanı)**- Ms Jewel'a çok teşekkür ediyoruz. Gerçekten uygulamanın ne kadar farklı olduğunu bize gösterdi. Şimdi sorulara geçelim. Sayın Yenisey'e söz veriyorum. Buyurun efendim.

**Prof. Dr. Feridun YENİSEY (Bahçeşehir Üniversitesi Hukuk Fakültesi)**- Sayın Lucille'e çok teşekkür ediyorum bu aydınlatıcı konuşması için. Gerçekten bizim çocuklar bir gitar yapmak istemişlerdi, bildiğiniz gitar ve internetten gitar nasıl yapılır diye tarif aldılar, oturup gitar yaptılar. Hiç marangozluk bilmezler şey yapmazlar, ama internetten her şey bulabiliyor şu anda.

Lucille'in de verdiği fikir, internetten hukukçu bulabiliyorsunuz. Kendinizin problemini çözmeye yarayan hukukçuyu, internetten arayıp buluyorsunuz ve o size gelip yardım ediyor internet üzerinden. Yepyeni bir alan hukukçular için. Fakat bizim Arabuluculuk Yönetmeliğini okudunuz mu? Arabuluculuk Yönetmeliğinde bir yasak var. İnternet motorlarına ara-

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buluculuk yaptığınızı da belirterek kendinizi koysanız, reklâm yasağına giriyor. Bizim yönetmeliği hazırlayanlar çok detaylı yapmışlar o şeyi. İngilizce tercüme ettim ben bu yönetmeliği, fakat bayağı zorlandım o kelimelerin şeyini bulmak için. O kadar ayrıntılı yasaklar koymuşlar ki. Şimdi Lucille'in getirdiği bu internet indi hukukçu bağımsız hukukçu internet hukukçusu Türkiye'de yasak maalesef. Bir avukat kendisini bu şekilde ortaya koyamayacak gibi görüyorum.

**Prof. Dr. Sacit ADALI (Oturum Başkanı)-** Sağ olun. Buyurun efendim.

**KATILIMCI-** Ben de Feridun Hocama katılmak istiyorum, katıldığımı belirtmeliyim. Şöyle ki; artık hayat sanal ortamda devam ediyor. Hayat sanal ortamda devam ettiği için, uyuşmazlık da orada çıkacak. Uyuşmazlığın tarafları da çözümü artık fiziken bir yerlere gitmeyi aştık, çözümü yine webde arayacak, internette arayacak. Dolayısıyla hocamla aynı görüşteyim dediğim gibi. Yani yasaklarla filan olmaz, hukukçu her mecra da hizmet verebilmeli.

Bizim hukukçu için farklı ihtiyaç alanları açmamız lazım ve bunların da başında web geliyor. Bahsettiğiniz gibi oyun hukuku dediniz. Oyun hukuku diye yeni bir alan çıktı. Bilişim hukuku dediğimiz alan dijital delil dediğimiz alan, artık hukukun tüm dallarını kapsar hale geldi. Dolayısıyla yasaklarla bu işin -ülkemiz örneği için söylüyorum- çözümlenebileceği düşüncesinde değilim. Bahsettiğiniz gibi er ya da geç internet hukukçularının doğması bence var olması gündemdedir.

Teşekkür ederim, çok sağ olun.

**Lucille JEWEL-** I agree. So, that was a great question. You know do we need a change in ethical rules to catch up with where we are with technology? And it sounds like Turkey has similar bans to what we have in the United States, which that as a lawyer you cannot directly solicit a client. Now, in the United States you can practice law through the Internet but it is regulated. So for Turkey, you probably would want to, I mean,

I believe that direct bans on practicing law with the use of technology is not, that is not productive. And in terms of ethical concerns, I believe that the Internet has a built-in mechanism to deal with that. If you are being unethical online then you will get a very negative online reputation. And that in itself will help police, attorneys and require them to act ethically when they do business online.

*Katılıyorum. Bu mükemmel bir soruydu. Teknolojide geldiğimiz yere uyum sağlayabilmek için etik kurallarda değişiklik yapmak gerekiyor mu? Öyle görünüyor ki Türkiye’de de Amerika Birleşik Devletleri’nde olduğu gibi avukatın müşteriye doğrudan ulaşmasını engelleyen yasaklar var. Şimdi, Amerika Birleşik Devletlerinde internet aracılığıyla avukatlık yapabilirsiniz; ancak bu belirli düzenlemelere tabidir. Türkiye için de, sanırım, teknoloji kullanarak avukatlık yapmanızı engelleyen kuralların kalkmasını istersiniz, zira bu hiç üretken bir durum değil. Etik kaygılar konusunda da, İnternetin buna yönelik kendi içinde mekanizmaları olduğuna inanıyorum. Eğer siz çevrimiçinde etik olmayan davranışlar sergiliyorsanız, internet üzerinde de kötü bir itibarınız olur. Bu da avukatlar için başlı başına bir caydırıcı olacaktır ve çevrimiçi iş yaparken etik davranmalarını sağlayacaktır.*

**KATILIMCI-** Bizde de internette avukatlık yapmak diye bir şey söz konusu değil. Yani biz internet üzerinden, UYAP üzerinde bazı iş ve işlemlerimizi, işte dilekçelerimizi, dava açma icra takiplerini yapıyoruz, ama internette avukatın reklâm yapması, gerçekten hani kabul edilir bir şey değil. Etik kuralları, yani diğer meslektaşlarına yönelik olarak etik kuralların ihlalini çok rahat doğurabiliyor. Bunu öncelikle söylemek istiyorum.

Bir de ben merak ettiğim bir şey var. Amerika Birleşik Devletlerinde özellikle serbest avukatların desteklenmesi gerektiğini vurguladınız. Hatta bazı serbest avukatların iş bula-mama ihtimalinden bahsettiniz, böyle bir şey söylediniz. Fakat Amerika Birleşik Devletlerinde şirketler aracılığıyla bu iş yürümekte. Yani aslında şirketler aracılığıyla yürüdüğü için, böyle bağımsız ofis açmanın da zor olduğu ve desteklenmedi-

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ğini düşündüğümüzde, aslında orada da sıkıntılar olduğunu algılamaktayız.

Peki, böyle bir destekleme, bakanlığın ya da işte herhangi bir kuruluşun böyle bir desteklemesi söz konusu var mı? Ya da tamamen yoksa bankalardan ticari amaçlı, bir ticari meslek gibi algılanıp, ticari faaliyet gibi algılanıp, bankalardan ticari kredi kullanılarak mı desteklenebiliyor? Bunu merak ettim.

Teşekkür ederim.

**Lucille JEWEL-** That is a wonderful question. So, if you are an attorney in the United States and going out on your own there is not a lot of governmental support for that. So, you find support through your community of other attorneys who are doing what you do. There is some law practitioners that work in an office, space together and they are able to rely on each other, they are in support even if they are not incorporated. But I do think that solo practitioners and I am seeing this, there are list servers, there are websites out there where solo practitioners can go and receive information and exchange ideas with each other and thereby, in that way, support each other and using the internet. But the problem you identified is a very important one which is that the law firm make it a much more secure way to practice law. And there is much more of a safety net there. And when you are out there on your own by yourself they can be very, very scary. I also think the other problem, at least in the United States, is that though is that law firms are shrinking in response to economic forces. There just are not that many jobs available in law firms. So if you want to enter the legal profession, at a lot of time is your only choice is to go out and try to practice law on your own.

*Bu harika bir soru. Eğer ki siz Amerika Birleşik Devletleri'nde bir avukat iseniz ve serbest çalışıyorsanız, bunun için çok fazla bir hükümet desteği söz konusu değildir. Desteği, sizinle benzer şekilde çalışan diğer avukat topluluklarından bulursunuz. Bazı avukatlar, tek bir ofiste, aynı yerde çalışır ve birlikte çalışmıyor olsalar dahi birbirlerinden destek alabilirler. Ancak inanıyorum ve görüyorum ki, serbest*

*avukatların internet aracılığı ile bilgi alabilecekleri, fikir alışverişinde bulunabilecekleri internet siteleri ve liste sunucular var ve bu şekilde internet yoluyla birbirlerine destek olabilirler. Sizin belirttiğiniz sorun oldukça önemli. Bir hukuk firması, avukatlık mesleğini icra etmek için çok daha güvenli bir yer. Bu şirketlerde daha çok bir güvenlik ağı var. Siz mesleğinizi dışarıda kendi başınıza icra ettiğinizde, bu oldukça ürkütücü olabiliyor. Diğer sorunun ise, en azından Amerika Birleşik Devletlerinde, ekonomik güçler nedeniyle küçülmeye gitmeleri. Hukuk firmalarında çok fazla istihdam olanağı yok. Dolayısıyla, eğer avukatlık yapmak istiyorsanız, bunu serbest avukatlık şeklinde kendi başınıza yapıp yapmamak sizin tercihiniz olacaktır.*

**Emeritus F. Tom READ (Dekan)**- Thank you all very much. What we are going to do is move our panel that was scheduled at 10 o'clock on with our justices and we are going to have a break right now. 15-minute break will begin right now. Thank you all so much.

As you are standing up, we also need to make the presentation to Professor Jewel. Professor Jewel we are going to have a little presentation for you right now.

*Hepinize çok teşekkür ederim. Şimdi, saat 10'da yargıçlarımızla gerçekleştirmeyi planladığımız panelimize geçeceğiz ve bunun öncesinde bir ara vereceğiz. 15 dakikalık ara şimdi başlıyor. Hepinize çok teşekkürler.*

*Siz yerinizden kalkarken, Profesör Jewel'a armağanımızı takdim edeceğiz. Profesör Jewel, sizin için küçük bir armağanımız var.*

**SUNUCU**- Evet, Sayın Profesör Lucille'e hatıralarını vermek üzere Türkiye Barolar Birliği Başkan Yardımcısı Sayın Av. Başar Yaltı'yı kürsüye davet ediyorum efendim.

*(Bağış sertifikası verildi)*

**Emeritus F. Tom READ (Dekan)**- As we gather, together and get settled in, I want to say a word or two about our speakers. This group is, we are truly honored to have with us today: Two of the most prominent American jurists. Both of

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our speakers have been chief justice of their own state Supreme Court. They are both members of their state supreme courts. Both of them are on the bench as chief justices have been very active in legal education and the issues of legal education. Let me tell you a little bit about them. It is extraordinary to have people of this importance with you.

Justice Carol Hunstein, well she serves a chief justice was also a member of the board of directors of Atlantis John Marshall Law School. She was at Hale, as wonderful chief justice of the Georgia Supreme Court. Christine Durham was chief justice of Utah Supreme Court and she has also been the chair of the legal education section of the American Bar Associations. That is the section that helps modernize rules regarding legal education and accreditation of law schools in the United States. So, you have got two incredible speakers. Both have been chief justices of their state supreme court and still sit on these supreme courts and both are deeply interested in the issues of modernizing and helping legal education solve some of its problems. So I thought it will be important for you to know about that as you hear these two speakers speak.

*Tekrar bir araya gelip, yerlerimizi alırken, konuşmacılarla ilgili olarak bir-iki şey söylemek istiyorum. Şimdiki grubumuzu bugün burada ağırlamaktan onur duyuyoruz: Amerika'nın en önde gelen iki yargıcı. Her iki konuşmacımızda kendi eyaletlerindeki Yüksek mahkemenin başyargıçları. Hepsi kendi eyaletlerindeki Yüksek Mahkemelerin üyeleri. Her ikisinde başyargıç olarak kürsüde bizzat görevdeler ve hukuk eğitimi ve hukuk eğitiminin sorunları konusunda da aktif çalışıyorlar. Size biraz onlardan bahsetmek istiyorum. Böylesine önemli kişilerle bir arada olmak olağanüstü.*

*Yargıç Carol Hunstein, bir yandan başyargıç olmakla birlikte Atlantis John Marshall Hukuk Fakültesinin de yönetim kurulu üyesi. Hale'da, Georgia Yüksek Mahkemesinin başyargıçlığını yaptı. Christine Durham, Utah Yüksek Mahkemesinin başyargıçlığını yaptı. Aynı zamanda Amerikan barolar Birliğinin hukuk eğitimi biriminin de başkanlığını yürütüyor. Bu birim, hukuk eğitimi ile Amerika Birleşik Devletlerindeki hukuk fakültelerinin akreditasyonu ile ilgili ku-*



*ralların modernize edilmesi konusunda faaliyet gösteriyor. Şimdi, iki muhteşem konuşmacımız var. Her ikisi de kendi eyalet yüksek mahkemelerinin başyargıçlığını yapmış, halen bu yüksek mahkemelerde görevlerine devam ediyorlar ve hukuk eğitiminin modernizasyonu ile sorunlarının çözümü konularına derin bir ilgi besliyorlar. Bu iki konuşmacımız, konuşmalarına başlamadan önce bunları bilmek iste-yeceğiniz düşündüm.*

**Prof. Dr. Sacit ADALI (Oturum Başkanı)-** Teşekkür ederim Sayın Profesör. Şimdi bu kısmın konuşmacısı Ms. Christine Durham.

**Justice Christine DURHAM (Utah Yüksek Mahkemesi, Utah, ABD)-** Good morning. I wish to express gratitude to our Turkish hosts and especially to Professor Yenisey, who has helped to bring us all together for this very interesting discussion. My colleague from the state of Georgia and I have the task this morning of giving you a brief overview of the ways, in which the judiciary in the United States is active in and responsible for the admission to practice and the regulation of the legal profession. This of course has great significance for legal education; because it is the standards for admission and standards for practice, for which the students in law school must be prepared. So, the work that you do in the law schools and that that we do on the bench in our country is extremely important. There are two distinctive aspects of the American system of regulation of the legal profession that I wanted to mention this morning. The first is, that the regulation of the legal profession in America belongs to the states, not to the central federal government, but to the individual sovereign states. There are 51 of us.

And from the beginning of our tradition, it has been the State Courts who have been responsible for allowing lawyers to practice in their courts and to practice law. And they have been responsible for protecting public interest and taking care of the public good in those states. So, number one; lawyer regulation in the United States belongs to the states and not to the federal government, historically and traditionally. And

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number two; it has historically and traditionally in the United States belonged to the courts, not to the legislative branch and not to the executive branch. And that is something that I think is distinctive around the world in many systems. I do not know enough about the Turkey's and hope to learn more. But in many other systems, the executive branch and the legislative branch have much more to do with the regulation of the legal profession than do the courts.

So, having said that there are two distinctive characteristics let me say just a few words more about each of them. First of all, the responsibility of the states for regulating the practice of law means that there are a number of challenges that we are facing in the United States right now with respect to the regulation of the practice. The first is the challenge to uniformity and mobility. Every state has its own standards and has its own process for admitting lawyers and for permitting them to practice. So, if you are admitted to in the state of New York, you think it is hard as foreign lawyers, to come to United States and practice. It can be, it is not terribly hard but it requires time and money and an application and sometimes a testing process just to move from the state of New York to the state of Georgia to practice law. So that's one feature of our system that we are trying to deal with. The second is of course related to and that is the need to accommodate the increasing numbers of lawyers from foreign jurisdictions outside the United States who wish to practice in our courts and our systems.

Then you have challenges to the law schools, who are preparing these students for practice. The activities that a single state may undertake, if it is a large enough state and an important enough state, may have implications for law schools all over the country. For example, the State of California -and California is an extremely large state, larger than many countries- the State Bar of California is currently considering and will likely implement significant requirements in what we call "experiential learning". You have heard a reference to that earlier this morning and we will be talking about it more in the

conference. But they are requiring a minimum number of hours spent in that particular type of education. That means that any law school in the country, from Harvard to the University of Utah, will have to provide that specified number of hours in that type of education in order for their students to be eligible to take the California Bar and practice in the State of California. So, you have this problem that the states have had historically enormous power on policy around regulation.

And then you have many challenges to the management of discipline and the protection of the public across jurisdictional lines. So that is just a quick overview of what it means for us to be a federalist system, a dual system, where the local or state governments have responsibility for managing the practice of law.

Let me speak about the second feature I mentioned. That is the fact that the regulation that the practice of law belongs to the courts and not to the legislature or to the executive branch of the government. The High Courts of each state, the State Supreme Courts, and those are the courts, which my colleague just essenced and I see it, have either constitutional or common law and historical authority over admissions to the practice of law, over lawyer regulation and that often includes regulation of the unauthorized practice of law, which although criminal offense in many states is also subject to the regulation by the courts in many states, and over lawyer discipline.

We have increasing efforts going on in our country towards more uniformity and cooperation around these kinds of issues. There is an organization in the United States known as the Conference of Chief Justices. I just essenced I was a member for many years. I was a member and the chair of the conference for a number of years. One of the things that the conference works on is trying to encourage collaboration, communication and an increase in uniformity over such issues as the practice of law so that there are not so many barriers between our jurisdictions. The Conference of Chief Justices has an administrative arm that is known as the National Center for State Courts. They

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do a great deal of research on how the states administer their courts and on how they regulate the practice of law. And that is a very useful thing.

One other thing you might be interested to know about is a recent report from the taskforce on the future of legal education sponsored by the American Bar Association. This report was issued last February and it contained recommendations to the many sectors interested in legal education. And there was this section of the report directed specifically to the State Supreme Courts, to State Bar Associations, and to other regulators of lawyers and law practices. There were a total of 6 recommendations.

I will just briefly mention three because they relate closely to the judicial branches' responsibilities. One was that the states are encouraged to establish uniform national standards for admission to practices of a lawyer including adaption of something you will be hearing about from one of the other speakers today: the uniformed bar exam, which is an examination that has been developed. It can be modified by individual states but it is intended to give a uniformed admissions exam.

The second requirement or recommendation that I will mention is a recommendation that the states reduce the number of doctrinal subjects that they test on their individual bar exam and increased testing of competencies and skills. We are hearing a lot about competency and skills in connection with legal education and we are also hearing a lot about the idea of focusing on outcomes on what law graduates can actually do when they finish law school as opposed to simply approaching law schools from what they put into legal education, focusing, instead, on what they get out of legal education. And this idea is that when lawyers are seeking admission to practice law in our states, the states should likewise be focusing on skills and competencies.

And then, the third recommendation of the ABA report is

that states should avoid imposing more stringent educational or academic requirements for admission to practice the norms that are already required by the American Bar Association standards for approval and accreditation of law schools. Now, of course, the State of California is going directly contrary to that recommendation its efforts to impose higher standards for particular type of education, for people sitting for its bar.

I would mention in addition that there are numerous, numerous state-specific experiments going on. Two that come to mind immediately come from Judge Honstein's Georgia State so I will leave it to her to speak about those. But that has to do with the ways to cope with the admission and regulation of foreign lawyers, who wish to practice law in individual states, mentoring programs for new lawyers so that when lawyers finish their legal training they have opportunities to work with more experienced lawyers modeled to significant extent on the British system of pupilages. And then, in other states, the Supreme Courts are looking at the creation of limited license categories for regulation.

You saw how many categories there were in the UK. In the United States, we just have lawyers; but we are thinking about having people who do specific tasks and only need to be licensed and regulated to do those tasks. There are projects looking at nationalizing the databases, the information sources for information about lawyers across boundaries so that their character and fitness and ethical behavior can be regulated. And then, as I mentioned earlier there is focus on the adaption of uniformed bar examinations across the United States.

We believe, in United States, that lawyers play a significant role in a democratic republic, and that they are essential in their functions to the health and the strength of the rule of law. From the founding of our nation, lawyers have played a tremendously important part in the development of our tradition and values. There are, as we are discussing at this conference, ever-increasing and enormous changes and pressure for change in our profession and in the education of

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our lawyers. But one of the things that we hope in the United States is that as we adapt to these pressures and accommodate the changes that are required for the health of our economy and our society we will not lose sight of the essential function of lawyers and the process. Thank you.

*Günaydın. Türk ev sahiplerimize ve özellikle de bu ilgi çekici tartışma için bizleri bir araya getiren Profesör Yenisey'e minnettarlığımı belirtmek istiyorum. Georgia eyaletinden meslektaşım ve ben bugün size, Amerika Birleşik Devletlerinde yargının avukatlık mesleğine kabul ve avukatlık mesleğinin düzenlenmesi konularında nasıl aktif olduğunu kısaca anlatma görevini üstlendik. Şüphesiz, bu avukatlık mesleği için büyük önem taşıyor; zira, hukuk fakültesindeki öğrencilerin hazırlanmaları gereken mesleğe kabul ve mesleğin icrasına dair standartları kapsıyor. Dolayısıyla, hukuk fakültelerinde sizin yaptığınız işle, bizim kendi ülkemizde kürsüde yaptığımız iş son derece önemli. Amerika'da avukatlık mesleğine dair düzenleme sisteminin iki ayırt edici özelliğinden bahsetmek istiyorum bu sabah size. Birincisi, Amerika'da avukatlık mesleğinin düzenlenmesi eyaletlerin sorumluluğunda; yani merkezi federal hükümetin değil, bağımsız eyaletlerin sorumluluğunda. Toplamda 51 taneyiz.*

*Geleneksel olarak, avukatların mahkemelerinde çalışmasından ve mesleğe kabulünden sorumlu olan Eyalet mahkemeleridir. Aynı zamanda bu eyaletlerde kamu yararının korunması ve kamunun iyiliğinin sağlanması da sorumlulukları arasındadır. Yani, birincisi, Amerika Birleşik Devletlerinde avukatlık mesleğinin düzenleyicisi hem tarihsel hem de geleneksel olarak federal hükümetin değil, eyaletlerin sorumluluğundadır. Ve ikincisi, tarihsel ve geleneksel olarak bu sorumluluk mahkemelerdedir, yani yasama merciinde veya yönetim merciinde değildir. Ve bence dünyadaki pek çok sistemden ayrıldığı nokta budur. Türkiye'ninki hakkında yeterince bilgi sahibi değilim ve daha fazla bilgi almak istiyorum. Ancak, pek çok sistemde, yürütme ve yasama organları, avukatlık mesleğinin düzenlenmesi konusunda mahkemelerden daha fazla sorumluluğa sahip.*

*Bu iki ayırt edici özellikten bahsetmişken, bunlarla ilgili bir kaç kelime daha etmek istiyorum. Öncelikle, eyaletlerin avukatlık mesleğini düzenleme sorumluluğu demek, bu mesleğin düzenlenmesi*

ile ilgili olarak Amerika Birleşik Devletlerinde bir kaç sorunla karşı karşıyayız demektir. Bunlardan biri bütünlük, diğeri de hareketlilik. Her eyaletin, avukatların mesleğe kabulü ve izinlerinin temini için kendi standartları ve süreçleri var. Eğer New York eyaletinde mesleğe kabul edildiyse, yabancı avukatlar olarak Amerika Birleşik Devletlerine gelip mesleğinizi icra etmenin zor olacağını düşünebilirsiniz. Zor olabilir, çok zor değildir. Ancak, New York eyaletinden Georgia eyaletine taşınmak, zaman ve para ile başvuru ve bazen de sınav süreci gerektirir. Dolayısıyla sistemimizde ilgilenmemiz gereken önemli bir nokta budur. İkinci güçlük ise bizim mahkemelerimizde ve sistemimizde mesleklerini icra etmek isteyen Amerika Birleşik Devletleri dışındaki yabancı yargılardan gelen ve sayıları giderek artan avukatların istihdamı ile ilgili.

Daha sonra, bu öğrencileri mesleğe hazırlayan hukuk fakültelerinin yaşadığı güçlükler var. Bir eyaletin üstlenebileceği etkinlikler, eğer yeterince büyük ve önemli bir eyaletse, ülkenin tamamındaki hukuk fakülteleri üzerinde etkili olabiliyor. Örneğin, oldukça büyük bir eyalet olan Kaliforniya'da eyalet barosu halihazırda "deneysel öğrenme" dediğimiz önemli gerekliliklerin uygulanması üzerinde çalışıyor ve uygulamaya hazırlanıyor. Bununla ilgili bu sabah da bir atıf yapıldı ve konferans sırasında daha da fazla konuşacağız. Ancak bu özel eğitim türüne belirli sayıda dersin ayrılması gerekliliği var. Bu demek oluyor ki, ülkedeki bütün hukuk fakültelerinin, Harvard Üniversitesi'nden Utah Üniversitesine, öğrencilerinin Kaliforniya barosunun sınavını geçebilmeleri ve Kaliforniya eyaletinde avukatlık yapabilmeleri için, belirlenen sayıda ders saatini bu eğitim türüne ayırmaları gerekecek. Yani, eyaletlerin tarihsel olarak düzenleme anlamında politikalara etki etme sorunu ile karşı karşıyayız.

Bir de disiplinin yönetimi ve kamunun yargı hattında korunması güçlükleri var. Size, avukatlık mesleğini yerel mercilerin veya eyalet mercilerinin yönettiği federal veya ikili sistem olmanın bizim için ne anlama geldiğini kısaca anlatmaya çalıştım.

Şimdi de sözünü ettiğim ikinci özellik hakkında konuşmak istiyorum. Bu da, avukatlık mesleğinin düzenlenmesinin, yasama veya yürütme organlarına değil de mahkemelere ait olması durumu. Her eyaletin yüksek mahkemeleri, Eyalet Yüksek Mahkemeleri, meslek-

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*taşımın az önce önemle bahsettiği mahkemeler, avukatlık mesleğine kabul ve avukatlığın düzenlenmesi, avukatlık disiplini ve ceza gerektiren suçların da halihazırda pek çok eyalette mahkemece düzenlenmesine rağmen, avukatlık mesleğinin ruhsatsız icra edilmesi üzerinde tarihsel bir otoriteye, ve aynı zamanda anayasaya veya ortak kanunlara sahiptir.*

*Ülkemizde daha fazla bütünlük ve bu konular üzerinde işbirliğini temin etmek amacıyla sürekli çabalar mevcuttur. Amerika Birleşik Devletlerinde Başyargıçlar Konferansı adı verilen bir organizasyon vardır. Uzun yıllardır buna üye olduğumu belirtmek isterim. Uzun yıllar hem bu konferansın üyesi oldum hem de başkanlığını yaptım. Konferansın üzerinde çalıştığı şeylerden biri de işbirliği ile iletişimi desteklemek ve yargılarımız arasında çok fazla bariyer olmamasını temin etmek amacıyla bütünselliğin artırılması. Başyargıçlar Konferansının Ulusal Eyalet Mahkemeleri Merkezi adı verilen bir yönetici kolu var. Eyaletlerin mahkemelerini nasıl yönettiği ve avukatlık mesleğini nasıl düzenledikleri üzerine oldukça fazla araştırma yapıyorlar. Ve bu çok faydalı bir şey.*

*Bilmek isteyeceğinizi düşündüğüm ir başka konu ise, Amerikan Barolar Birliği sponsorluğunda yürütülen ve hukuk eğitimin geleceğine yönelik yakın tarihli bir rapor. Bu rapor geçtiğimiz Şubat ayında yayınlandı ve hukuk eğitimi ile ilgili pek çok sektöre atıflar içeriyor. Bu raporun bir bölümünde doğrudan Eyalet Yüksek Mahkemeleri ve Eyalet baroları ile avukatlık mesleği ve avukatlık uygulamalarının diğer düzenleyicilerinden bahsediliyordu. Bu raporda toplam 6 tavsiye vardı.*

*Burada kısaca 3 tanesinden bahsedeceğim, zira bunlar yargı organlarının sorumluluklarına giriyor. Bir tanesi eyaletlerin, geliştirilmiş bir sınav türü olan ve bugün bir başka konuşmacıdan da dinleyeceğiniz bir konunun uygulamasını içeren Tek Tip Baro Sınavının uygulamaya geçilerek tek tip ulusal standartların oluşturulmasının sağlanması. Eyaletler tarafından bireysel olarak değiştirilebilir ancak tek tip bir baroya kabul sınavının verilmesi hedefleniyor.*

*Bahsetmek istediğim ikinci gereklilik veya tavsiye ise, eyaletlerin kendi baro sınavlarındaki dogmatik konuların sayısını azaltıp, ye-*



*terlik ve becerilerin test edilmesinin sağlanması. Hukuk eğitiminde yeterlik ve beceriler hakkında çok şey duyuyoruz. hukuk fakültelerine eğitime ne kattıkları yönünden yaklaşmak yerine hukuk fakültesinden mezun olduktan sonra, hukuk mezunlarının gerçekte ne yaptığı ve hukuk eğitimlerinden ne edindikleri üzerine de çok şey duyuyoruz. Ve avukatlar eyaletlerimizde mesleğe kabul edilmek için uğraşırken, eyaletlerin de beceriler ve yeterlikler üzerine odaklanmasını içeren bir düşünce bu.*

*Ve sonra, Amerikan Barolar Birliğinin raporundaki üçüncü tavsiye de eyaletlerin mesleğe kabul, Amerikan Barolar Birliğinin halihazırdaki gerekliliklerini oluşturan normlar, hukuk fakültelerinin onay ve akreditasyon standartları için daha sıkı eğitimsel ve akademik gerekliliklerin empoze edilmesinden vaz geçilmesi. Şimdi, tabi ki, Kaliforniya eyaleti bu tavsiyeye aykırı hareket ediyor ve barosuna kabul edilmek isteyenler için özel bir tür eğitim gerekliliği belirleyerek daha yüksek standartlar belirliyor.*

*Bunlara ek olarak, eyalet bazında sayısız deneysel çalışmanın yapıldığını söylemek istiyorum. İlk akla gelen iki tanesi, Yargıç Hunstein'in Georgia eyaleti. Bu konuyu kendisine bırakıyorum. Ancak bunun eyaletlerde mesleklerini icra etmek isteyen yabancı avukatların mesleğe kabulü ve düzenlenmesi ile yakından ilgisi var. Yeni avukatlar için koçluk programları var. Yani, avukatlar hukuk eğitimlerini tamamladıklarında, İngiliz çıraklık sistemi model alınarak hazırlanmış bir sistemde daha tecrübeli avukatlarla birlikte çalışma olanağı bulunuyorlar. Ve diğer eyaletlerde yüksek mahkemeler düzenlemeler için sınırlı lisans kategorileri oluşturmaya çalışıyor.*

*İngiltere'de ne kadar çok kategori olduğunu gördünüz. Amerika Birleşik Devletlerinde sadece avukatlarımız var. Ancak, özel alanlarda görevlendirilecek ve sadece bu alanda meslek icra etmek üzere ruhsat ve lisans alacak şekilde düzenleme yapmayı düşünüyoruz. Veri tabanlarının ve avukatların bilgilerinin ulusallaştırılması yoluyla, avukatlara ait bilgilerin eyalet sınırlarının ötesine geçmesi ve bu şekilde avukatların karakter ve uygunluk ve etik davranışlarının düzenlenmesi üzerine geliştirilen projeler mevcut. Ve bir de, daha önce de söylediğim gibi, Amerika Birleşik Devletlerinde tek tip bir baro sınavının uygulanması konusunun benimsenmesi üzerine çalışmalar var.*

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*Amerika Birleşik Devletlerinde, demokratik bir cumhuriyette avukatların çok önemli bir rolü olduğuna ve hukukun üstünlüğü ülkesinin salahiyeti ile güçlülüğü açısından önemli işlevlerinin olduğuna inanırız. Milletimizin kuruluşundan itibaren, avukatlar geleneklerimiz ve değerlerimizin oluşmasında oldukça önemli rol oynamışlardır. Bu konferansta da konuştuğumuz gibi, sürekli artan ve büyük değişiklikler ve hem mesleğimizde hem de hukuk eğitiminde değişim için bir baskı söz konusu. Amerika Birleşik Devletlerinde, bu baskılar doğrultusunda ekonomimizin ve toplumumuzun salahiyeti için gerekli değişiklikleri yaptığımızda, avukatların ve sürecin önemli rolünü de göz ardı edilmemesi de ümit ettiğimiz hususlardan biridir.*

**Prof. Dr. Sacit ADALI (Oturum Başkanı)-** Sayın Christine Durham'a çok teşekkür ediyoruz. Taraflardan biri olarak kendileri de ifade ettiler. Şimdi aynı taraflardan bir başka biri Sayın Carol Hunstein.

**Justice Carol HUNSTEİN (Georgia Yüksek Mahkemesi, Georgia, ABD)-** Thank you and let me say that I am delighted to once again have the opportunity to visit Turkey and to participate in programs here. Professor Yenisey has been just wonderful, as always, with his reception and we have enjoyed our relationship with the Bahçeşehir University.

Let me start by saying that the practice of law has historically been considered to be one of the three true professions. There is theology for the preservation of the spirit, there is medicine for the preservation of the body and the law for the preservation of civilization and attended world affairs. Justice Durham has given you a kind of an overview of licensing in the United States. I want to give you a little bit more specifics.

In general, it requires a four-year undergraduate degree and in just about any area where you can get a Bachelor's degree. It requires a juris-doctorate from and ABA accredited school or university. You must also pass a character and fitness review to determine if the applicant will properly assume the responsibilities of the profession and pass a bar exam that test the applicants' knowledge of the laws of the United States,

the state law including federal and state constitutional law, common law, criminal and civil practice, and sometimes, other areas. That is administered in each state.

There is a recent amendment to the rules in the state of Georgia that will allow admission to the practice of law for foreign educated lawyers to sit for the bar exam if they have successfully completed the LLM program for the practice of law in the United States and meet the other requirements of the rule. Sally Lockwood, who is our director of admissions to the bar exam in the state of Georgia, I am sure, she will talk more about that. There is also reciprocity between the states. Not all states will give reciprocal admission to a lawyer if they pass certain requirements of that particular state, which means if you pass the bar in one state, you can waive into another state with certain limitations.

As I said, not all states do practice reciprocity. Florida for one thing, all lawyers want to retire to Florida and so there is no reciprocity. They do not care where you are member of the bar. There is also pro-help, which means that if a lawyer who is admitted to the practice of law in another state has a case in the state of Georgia, there is a method for them to apply to present themselves and represent their client in that one case. They would apply to both the trial court and to the appellate courts and that happens frequently, I think in every state across the United States.

Of course, there is discipline that is administered by the court system. And our state bar in the State of Georgia may receive a complaint. We have said out the cannons that lawyers must abide by. If there is a complaint and the state bar decides that it has some evidence, many have no merit at all. If it is indicated that there may be an ethical violation, then a special master is appointed, who will then have a hearing and have both the attorney and the accusers come in and have a hearing to determine whether or not discipline is required. Then that recommendation, if there is an ethical violation that will come to the Georgia Supreme Court for disposition, the sanction that

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can be imposed ranges anywhere from a letter of admonition, which is private and just says your conduct is not acceptable, to disbarment, which means that you no longer will be able to practice law in the state of Georgia.

We also have reciprocal discipline, where the lawyer is admitted to practice in more than one state and their sanction by another state. Then, the state of Georgia can impose reciprocal discipline. I will tell you frankly that in general we impose much stricter sanctions than what our sister states do. As I said, some complaints received by the state bar may not involve ethical violation but conduct of the lawyer is still of concern.

The State Bar has developed other programs to address these issues, one of which is the voluntary free arbitration. And it is voluntary as far as the lawyers are concerned, of course. If the lawyer refuses to engage in the arbitration, then the client can bail in court. There are complaints in that fashion, which is not necessarily a good idea.

Georgia also was the very first to develop a mentoring program. And every young lawyer, who recently passes the bar in the State of Georgia, is assigned a senior lawyer, who has been approved by the Georgia Supreme Court, to guide them, not to do their cases for them, but to give them guidance, basically a professional lawyer who has been in practice for a long time, who is well-respected and they will help this lawyer to understand what the practice of law is all about.

We also have the third-year practice act, which allows students who are still in school to engage in some activity under the guidance of a lawyer. Frequently, it is with the public defender's office or with the prosecution. There are other instances where the lawyers can engage, or law students can engage with the guidance and help of a seasoned lawyer. And those are all approved by the Georgia Supreme Court. We also have internships and externships, where they can come and work at the court for course credit. Externships in Georgia, you are paid a fee. But internships are strictly for course credit.

There also, started in the United States but Georgia State does not quite have one yet, incubated programs where young lawyers who have graduated and cannot get a job, and cannot afford to start their own office, have the opportunity to have a reduced rate of office expense. And they are gathered together in a common office. And they have administrative help as well as supervision by a senior lawyer. Georgia started the professionalism program in the United States. It was felt that, that lawyers, although they were complying with the ethical rules of conducts and they were not violating those rules and were not subject to discipline, that they were not acting professionally. They were not being courteous to the court. They were not being courteous with each other. And then the idea was to win at any cost. Georgia has had that program for about 20 years now and I think now it has spread across the United States and to some other countries. To teach lawyers that it is important always that we act as professionals, we are not merchants, we do not sell goods, we are professionals and we must treat each other and the court system and our clients with the professional and morals that our parents taught us: to be honest, to be diligent, to always strive to do the best for your client and not just to win. Thank you.

*Teşekkür ederim. Türkiye'yi bir kez daha ziyaret etme ve buradaki programlara katılma fırsatı bulabildiğim için çok mutlu olduğumu söylemek isterim. Profesör Yenisey, bize harika ev sahipliği yaptı ve Bahçeşehir Üniversitesi ile kurduğumuz ilişkiden keyif alıyoruz.*

*Avukatlık mesleğinin tarihsel olarak üç gerçek meslekten bir olarak görüldüğünü söyleyerek başlamak istiyorum. Ruh sağlığının korunması için teoloji, vücut sağlığının korunması için tıp ve medeniyetin ve ilgili dünya işlerinin korunması için hukuk. Yargıç Durham size Amerika Birleşik Devletlerinde lisans alma üzerine genel bilgiler verd. Ben size biraz daha detay bilgi vermek istiyorum.*

*Genel anlamda, üniversite diploması alabileceğiniz herhangi bir alanda dört yıllık bir ön lisans eğitimi gerekiyor. Sonrasında Amerikan Barolar Birliği tarafından akredite edilmiş bir hukuk fakültesi veya üniversiteden hukuk diploması almak gerekiyor. Aynı zamanda*

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*adayın mesleğin gerektirdiği sorumlulukları yerine getirip getiremeyeceğini belirlemek için karakter ve uygunluk değerlendirmesine tabi tutuluyor. Adayın Amerika Birleşik Devletleri kanunları, federal devlet ve anayasa hukuku, ceza hukuku ve medeni hukuk ile bazen diğer alanları da içeren bilgisini ölçmek için bir baro sınavından geçmek gerekiyor. Bu, bütün eyaletlerde uygulanıyor.*

*Georgia eyaletinde, Amerika Birleşik Devletlerinde avukatlık yapabilmek için gerekli hukuk uzmanlığı (LLM) programını başarıyla bitirdiyse ve eğerki diğer kurallara da uygunluk gösteriyorsa, yabancı avukatların da avukatlık mesleğine kabulü için kanunlarda yakın zamanda bir değişiklik yapıldı. Georgia eyaletinde baro sınavına kabul biriminin yöneticisi olan Sally Lockwood, eminim ki bu konuyla ilgili daha detaylı bilgiler verecektir. Ayrıca eyaletler arasında bir mütekabiliyet söz konusu. Bir avukat bir eyaletin gerekliliklerini yerine getirdiğinde, her eyaletten mesleğe kabul yetkisi alamıyor. Yani, bir eyalette baro sınavını geçtiğinizde, bir başka eyalete bazı sınırlıklar çerçevesinde geçebiliyorsunuz.*

*Söylediğim gibi, bütün eyaletlerde mütekabiliyet bulunmuyor. Bir tanesi Florida. Bütün avukatlar Florida'dan emekli olmak istiyor ve bu nedenle mütekabiliyet yok. Nerede baro üyesi olduğunuz fark etmiyor. Bir de profesyonel yardım var. Bir eyalette mesleğe kabul edilmiş bir avukatın Georgia eyaletinde davası olması halinde, kendilerini ve müvekkillerini bu davada temsil etmelerinin bir yöntemi bulunuyor. Hem duruşma mahkemesine, hem de temyiz mahkemesine başvurabiliyorlar, ve bu Amerika Birleşik Devletlerindeki her eyalette sıkça görülen bir durum.*

*Tabi ki mahkeme sistemi tarafından yönetilen bir disiplin mevcut. Georgia eyaletinde bizim eyalet baromuz şikayet alabiliyor. Avukatların uymaları gereken temel prensiplerden bahsetmiştik. Eğer bir şikayet varsa ve baro yeterli delil olduğuna inanırsa, hiçbir yetki veremeyebiliyor. Eğer bir etik ihlali söz konusu olursa, bir uzman atanıyor ve daha sonra duruşma yapılarak hem avukat hem de itham edenler dinlenerek bir disiplin uygulamasının gerekip gerekmediğine karar veriliyor. Etik ihlal varsa ve konu Georgia Yüksek Mahkemesine intikal etmişse, cezalar işleyişinizin kabul edilebilir olmadığını ifade eden özel bir ihtardan, bir daha Georgia eyaletinde avukatlık*

*yapamayacağınız anlamına gelen barodan atılmaya kadar gidebiliyor.*

*Ayrıca, birden fazla eyalette mesleğe kabul edilmiş ancak bir eyalette men edilmiş avukatlar için mütakabiliyet disiplini var. Bu durumda Georgia eyaleti mütakabil disiplini uygulayabiliyor. Açıkça söylemek isterim ki, genellikle kardeş eyaletlerimizden daha katı cezalar uyguluyoruz. Söylediğim gibi, eyalet barosuna gelen bazı şikayetler etik ihlali içermeyebiliyor, ancak avukatın mesleğini icra edişi kaygı uyandırabiliyor.*

Bu konuları çözümlemek için Eyalet Barosu bazı programlar geliştirdi. Bunlardan bir tanesi gönüllü ücretsiz hakemlik. Avukatlar söz konusu olduğunda bu gönüllülük esasına göre yapılıyor. Eğer avukat hakemlik yapmak istemezse, müvekkil kefaletle serbest bırakılabiliyor. Bu anlamda, çok da iyi bir fikir olmamakla birlikte, gelen şikayetler var.

Georgia koçluk programı geliştiren ilk eyalettir. Georgia eyaletinde baro sınavını geçen her genç avukata, davalarına bakması için değil, rehberlik yapması için Georgia Yüksek Mahkemesinden onaylı uzun zamandır meslekte olan, saygın ve profesyonel bir tecrübeli avukat atanır. Bu tecrübeli avukat, diğer avukata avukatlık mesleğinin ne olduğunu anlaması konusunda yardımcı olur.

Ayrıca bir de üçüncü sınıfta, halen hukuk eğitimine devam eden öğrencilerin bir avukatın rehberliğinde belirli etkinlikler gerçekleştirdiği uygulamalı eğitim kuralımız bulunuyor. Sıklıkla, bu bir kamu avukatı veya savcılıkta gerçekleştiriliyor. Avukatların veya hukuk öğrencilerinin, tecrübeli bir avukatın rehberliği ve yardımı ile katılabilecekleri başka etkinlikler de mevcut. Ve bunların hepsi Georgia Yüksek Mahkemesince onaylanmış durumda. Bir de, öğrencilerin gelip mahkemede çalıştıkları ve karşılığında ders kredisi aldıkları ücretli ve ücretsiz staj uygulamamız var. Georgia'da bazı staj programları ücretli. Ama bazıları sadece ders kredisi karşılığı uygulanıyor.

Amerika Birleşik Devletlerinde başlamış olan, ancak henüz Georgia'nın uygulamaya koymadığı, mezun olup iş bulama-

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miş ve kendi işyerlerini açma maliyetini karşılayamayan genç avukatların düşük ofis masrafları uygulamasına tabi tutuldukları teşvik programları var. Bir ortak ofiste bir araya getiriliyorlar. Bir uzman avukattan da yönetsel ve rehberlik anlamında destek alıyorlar. Georgia Amerika Birleşik Devletleri'ndeki profesyonellik programının başlatıcısıdır. Etik kurallara ve işleyişe uygunluk göstermelerine rağmen, kuralları ihlal etmemiş ve disiplin suçu işlememiş olmaları kaydıyla, profesyonel davranmıyorlarsa, mahkemeye hürmet etmiyorlarsa, birbirlerine saygı göstermiyorlarsa, ne olursa olsun onları kazanmak yönünde hareket edilir. Georgia bu programı 20 yıldır uyguluyor ve sanırım halihazırda Amerika Birleşik Devletlerine ve bazı diğer ülkelere de yayıldı.

Avukatlara her zaman profesyonel davranmamız gerektiğini, tüccar olmadığımızı, ürün satmadığımızı, profesyonel olduğumuzu öğretmek için, hem birbirimize, hem mahkeme sistemine hem de müvekkillerimize ailelerimizden öğrendiğimiz ahlaki değerler çerçevesinde profesyonelce yaklaşmamız gerekir: dürüst olmak, özenli olmak, her zaman müvekkilimiz için en iyisini yapmaya çabalamak ve sadece kazanmaya odaklanmamak. Teşekkür ederim.

**Prof. Dr. Sacit ADALI (Oturum Başkanı)**- Sayın Hunstein'e çok teşekkür ediyoruz. Şimdi konuşmalar ışığında soru faslına geçebiliriz. Buyurun Feridun Bey.

**Prof. Dr. Feridun YENİSEY (Bahçeşehir Üniversitesi Hukuk Fakültesi)**- Sözü ben hep alıyorum, ama Hunstein'in en son söylediği kelimelerle başlamak istiyorum. Bir avukatın görevi, her zaman kazanmak değil. Kazanmak için her şey mubahtır fikrinin olmayacağını söyledi. Gerçekten de etik kurallarının çok önemli olduğunu görüyoruz bütün hukukçular bakımından.

Her iki konuşmacı da, baroların bağımsızlığıyla ilgili bazı görüşler ortaya koydu. Bakınız Amerika'da şunu anlıyoruz ki, hukukçunun mesleğe başlaması için, profesyonelce çalışabilmesi için, mahkeme bir işbirliği yapıyor. Mahkemeden görüş



geçiyor. Mahkeme o profesyonelliği kabul ediyor. Ne kadar eğitim almış? Ve şuna bakıyorlarmış en son anladığım kadarıyla. Uygulamalı eğitim aldığı eğitimin ne kadarını oluşturuyor? Ona göre baro avukatlık yapmasına filan izin verecek.

Fakat mesele şu: Barolar mı söz sahibi, yürütme mi söz sahibi, yargı mı söz sahibi? Yani burada baroların bağımsızlığı kavramını tartışmamız gerekiyor; avukat bağımsızlığı, baro bağımsızlığı. Baroların meslek kuruluşu olarak ülke içerisinde ayrı bir yerleri var. Bağımsız statüleri var. Fakat bir avukat da bağımsız; avukat barosuna karşı bağımsız olmalı, yürütmeden bağımsız olmalı ve müşterisine karşı, müvekkiline karşı da bağımsız statüsü var. Fakat bu bağımsızlığın ölçütü ne, nereye kadar bağımsız? Zannediyorum bunları tartışmak gerekecek.

Öğrencilerimiz için bir müjdem var. Justine Hunstein bu internshipten bahsetti. Staj yapabilirsiniz Amerika'da, hocayla tanışın yargıçla. İstanbul'dan bir öğrenci aldı, belki bir tane de Ankara'dan da kabul edebilir, sizlere bir yol açılabilir. (Alkışlar)

**Prof. Dr. Sacit ADALI (Oturma Başkanı)-** Teşekkür ederiz.

**Justice Christine DURHAM (Utah Yüksek Mahkemesi, Utah, ABD)-** It is a very interesting question as to the relationship between the courts and the bar associations. And there are at least two different systems in the United States. In my state, what is known as an integrated bar organization. And they do not exist, legally speaking, independent from the court. The court has the constitutional authority to regulate the profession and we delegate the administrative, we make the rules but we delegate the administrative functions associated with the regulation of practice to the bar organization. Now, they have some history and separate rules for providing professional support to lawyers and so far that's all they cannot do anything in those roles that the court could not do or that we could not permit them to do. In other states, there's a different situation, the court, which has the authority to regulate, sets up its own administrative system for regulatory purposes. And the bar is in the

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nature of a trade association of lawyers to provide benefits for lawyers. There is debate in our country about which system is better. Of course we all like the system we have because we have learnt how to make it work in the sense that I have made comments on that, too.

*Bir şey söylemek istiyorum. Yanıtlayabilir miyim? Bu mahkemelerle barolar arasındaki ilişkiye dair oldukça ilgi çekici bir soru. Amerika Birleşik Devletlerinde en az iki farklı sistem var. Benim eyaletimde, entegre baro organizasyonu olarak bilinen bir sistem var. ve bunların hiçbirisi, yasal anlamda mahkemeden bağımsız değil. Mahkemenin mesleği düzenlemekle ilgili anayasal bir yetkisi var ve biz yöneticileri delege ediyoruz, kuralları koyuyoruz. Ancak, baroya mesleki uygulamanın düzenlenmesi ile ilgili yönetsel işlevleri delege etmiyoruz. Şimdi, geçmişte avukatlara profesyonel destek sağlama örnekleri ve ayrı kuralları var. Ancak bu rollerde, mahkemenin yapamayacağı veya yapmalarına izin vermeyeceğimiz bir şeyi yapmıyorlar. Diğer eyaletlerde, farklı bir durum söz konusu. Düzenleme yetkisine sahip olan mahkeme düzenleme amacına hizmet etmek için kendi yönetim sistemini kuruyor. Ve baro daha çok avukatlara fayda sağlamak için bir avukatlar sendikası işlevi görüyor. Ülkede hangi sistemin daha iyi olduğuna dair bir tartışma var. Tabi ki, mevcut sistemimizi seviyoruz, çünkü yorumlarımda da belirttiğim gibi, nasıl işler hale getireceğimizi öğrendik.*

**Justice Carol HUNSTEIN (Georgia Yüksek Mahkemesi, Georgia, ABD)-** I agree with that. There are differences as far as across the states is concerned. Georgia also has an integrated bar. And it seems to as very well.

*Buna katılıyorum. Eyaletler söz konusu olduğunda bazı farklılıklar var. Georgia'nın da bir entegre barosu var. Ve gayet iyi işlediği görülüyor.*

**KATILIMCI-** Teşekkür ediyorum konuşmacılara değerli fikirlerinden paylaşımlarından dolayı. Ülkemizdeki sistemi herhalde İstanbul'daki toplantı fırsatıyla değerli misafirlerimiz tanıma imkânı fırsatı bulmuşlardır.

Ülkemizde özellikle avukatlığa geçiş anlamında hiçbir sınav olmadığını galiba duymuşsunuzdur şaşırtıcı bir şekilde. Yine hem avukatlığa, hem hâkim ve savcılığa başlama yaşının maalesef çok genç olduğunu. Maalesef diyorum, ben de çok genç bir savcı olarak başladım bu mesleğe. Bunu üzülererek ifade etmeliyim.

Bu anlamda ülkenize dönecek olursak, ülkenizde hiç sınav olmayan bir sistem olduğunu hayal ederseniz karşınıza neler çıkar? Bunu düşünebiliyor musunuz? Hiçbir sınavın olmadığı bir avukatlık sistemi veya kendi mesleğim hâkimlik savcılık için söyleyeyim. Sadece stajdan sonra, sınava başvuruların neredeyse tamamının yüzde 100'ünün başarılı bulunduğu bir hâkimlik savcılık sistemi. Böyle bir sistem sizce hukuk devletinde, demokraside nasıl bir karşılık bulur? Nasıl bir ortam doğurur. Bunu sizin ağzınızdan dinlemek istiyorum.

Teşekkürler.

**Justice Christine DURHAM (Utah Yüksek Mahkemesi, Utah, ABD)**- That's a very interesting question. As I understand the question it's what Turkish system does not require examination and did I understand you to say that almost all applicants are in fact accepted to practice law? Perhaps it is because we are such a huge country and have such high values. But, I frankly cannot imagine such a system working well for us in the sense that it is hard enough for us with our system of application, testing and review to secure lawyers who are well-trained in the substance of the law who can write clearly, who are successful advocates, who know enough about the professions they are entering such as the criminal law, domestic law, commercial law, to function effectively as lawyers. So, again it is perhaps because we like the devil we know as opposed to the one we do not. But I would find Turkish system very daunting to us from a regulatory point of view.

Bu çok ilginç bir soru. Anladığım kadarıyla soru Türkiye'deki sistemin sınav gerektirmediği ve neredeyse bütün adayların

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mesleğe kabul edildiğini mi söylemek istediniz? Belki bu çok büyük bir ülke olmamızdan ve çok yüksek değerlerimizin olmasından kaynaklanıyordur. Ancak, dürüst olmak gerekirse, mevcut başvuru sistemimizle dahi etkili avukatlar olarak çalışabilmeleri için ceza hukuku, aile hukuku, ticari hukuk gibi alanlarda yeterince bilgi sahibi olan, başarılı avukatlık yapabilen, iyi yazabilen, hukuk alanında iyi eğitim almış olan avukatları seçmek için teste tabi tutmakta ve değerlendirmekte zorlanırken, bu sistemin bizde çalışacağını düşünemiyorum. Yani, belki de kötünün iyisi hali. Ancak, Türk sistemini düzenleme açısından oldukça ürkütücü buluyorum.

**Justice Carol HUNSTEIN (Georgia Yüksek Mahkemesi, Georgia, ABD)**- It is the system that we know. And in spite of the fact that we have very strong rules and regulations before you can even take the bar, it does not necessarily mean that you are going to be the best lawyer that you will be successful professionally, or financially. I think there is a lot of difference between being a student and doing well academically both undergraduate and in law school and actually engaging successfully and being honored by your colleagues in the practice of law. I think, the system works pretty well. There are, even, in spite of that system, there are a number of people who take the bar exam who do not pass in spite of the fact that they have had a very good education. Once you are a member of the bar, you can practice in any area of the law that you choose. There is no special exam to be a prosecutor or to be a judge. As a matter of fact, in some states, in Georgia in particular, a judge can run for office and the voters will elect you or not. In general, judges get to the bench by the governor initially appointing them after going through a committee that sends names over to the government that these are the best candidates. If you pick any of these candidates, they will meet the competence and criteria required for that judicial position. But there are instances where judges are elected to the bench, sometimes from a general jurisdiction trial court, sometimes the appellant court. And they have not gone through the appointment process at all. So, some are successful, who are

appointed and some are successful, who are elected. But it is an interesting system in the State of Georgia. Once you pass the bar you can practice in any area of the law, you can become a judge and go all the way to the appellant court as Christian and I have.

*Bu bildiğimiz bir sistem. Baro sınavına girmeden öncesine yönelik güçlü kurallarımız ve düzenlemelerimiz olmasına rağmen, bu en iyi avukat olacağınız, profesyonel ve finansal olarak daha başarılı olacağınız anlamına gelmiyor. Bence, hem ön lisansta hem de hukuk fakültesinde başarılı olup akademik anlamda iyi bir performans sergilemekle, avukatlık mesleğinde başarılı olup meslektaşlarınızca saygı görmek arasında çok fark var. Bu sisteme rağmen, çok iyi eğitim almış olsalar da baro sınavından geçemeyen pek çok kişi var. Bir kez baroya kabul edildiğinizde, seçtiğiniz herhangi bir hukuk alanında çalışabilirsiniz. Bir savcı veya yargıç olmak için özel bir sınav yok. Gerçekte, bazı eyaletlerde, özellikle Georgia'da bir yargıç başkanlığa oynayabilir. Delegeler sizi seçebilir veya seçmeyebilir. Genel anlamda, yargıçlar kürsüye bir komite tarafından iyi olduklarının hükümete bildirilmesi üzerine, vali tarafından atanır. Bu adaylardan herhangi birini seçerseniz, bu yargı makamı için gerekli yeterliğe ve kriterlere sahip olmaları anlamına gelir. Ancak, yargıçların kürsüye bir duruşma mahkemesinden veya bazen de temyiz mahkemesinden atandığı durumlar da vardır. Aday gösterilme sürecinden geçmeyebilirler. Dolayısıyla, atanarlardan bazılarının başarılı olabileceği gibi, seçilenlerden de bazıları başarılı olabilir. Ancak bu Georgia'daki sistem, ilginç bir sistemdir. Baro sınavını geçtiğinizde, hukukun herhangi bir alanında çalışabilirsiniz; yargıç olabilirsiniz ve Christian ile bende olduğu gibi bir anda yükselebilirsiniz.*

**Justice Christine DURHAM (Utah Yüksek Mahkemesi, Utah, ABD)**- I am thinking more about your question. To some extent I suspect that cultural values matter a great deal. We rely on objective criteria. They do a decent job, by no means, a perfect job of getting qualified people in professional law. But we have bad lawyers. We have lawyers who get licensed and who are not competent lawyers. And some, I wonder, I do not know enough about Turkey, but I wonder if you have

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developed a cultural expectation that no one will apply unless they have those aspirations and values to perform at a high level. And perhaps that's why this system works for you. But, I suspect that the cultural expectations have a big impact on any system.

*Sorunuz üzerinde bir az daha düşündüm. Bir noktaya kadar, kültürel değerlerin de çok önemli olduğunu düşünüyorum. Biz objektif kriterlere güveniyoruz. İşe de yarıyorlar, her koşulda avukatlık mesleğine nitelikli insanların girmesini sağlıyorlar. Ancak, kötü avukatlarımız da var. Lisans alıp yetkin olmayan avukatlarımız da var. Ve bazıları, merak ediyorum, Türkiye hakkında fazla şey bilmiyorum, ancak yüksek düzeyde performans sergilemek için istek ve değerlere sahip olmadıkları sürece hiç kimsenin uygulamayacağı kültürel bir beklentiniz olup olmadığını merak ediyorum. Ve belki de, bu sistemin burada işe yaramasının nedeni de budur. Ancak, bence, kültürel beklentilerin bir sistem üzerinde büyük etkisi vardır.*

**Justice Carol HUNSTEIN (Georgia Yüksek Mahkemesi, Georgia, ABD)-** I agree with that and as I said there are students who have gone through undergraduate school, gone through law school but they apply to take the bar in the State of Georgia or in any other state and they have to go through the fitness review to determine whether or not, in spite of the fact that they have been successful academically that they have the moral character to be a member of the bar. And there are those who are denied membership. They are not allowed to take the bar exam at all because they did not pass the fitness exam.

*Size katılıyorum ve söylediğim gibi ön lisans alıp, hukuk eğitimi gördükten sonra Georgia'da veya bir başka eyalette baro sınavına girdiklerinde akademik anlamda çok başarılı olmalarına karşın baro üyesi olmak için ahlaki karaktere sahip olup olmadıklarını belirlemek amacıyla uygunluk değerlendirmesine tabi tutulan öğrenciler var. Ve üyelik başvurusu reddedilenler var. Uygunluk sınavını geçemedikleri için baro sınavına kabul dahi edilmeyenler var.*

**KATILIMCI-** Teşekkür ederim. Tabii her ülkenin kendine has birtakım gelenekleri var. Biz Türkiye'de başlangıçta bir tek

İstanbul Hukuk Fakültesi, daha sonra Cumhuriyetten sonra Ankara Hukuk Fakültesi de kuruldu. Uzun yıllar iki hukuk fakültesiyle yürüdü. Dolayısıyla başlangıçta kâtiplikten gelen dava vekilleri de olmuştur geçmişinde. Ama bugün hukuk fakültesi sayısı çok fazla arttığı için, mutlaka bunun bir sınavla yapılması yönünde Barolar Birliği başta olmak üzere tüm barolar mücadele veriyor. Üniversitelerde de aslında bu yönde bir eğilim var. Çünkü kim iyi öğrenci yetiştiriyor? Bunu yarışmayla ortaya koymak arzusu içerisindedir.

Ancak hemen şunu unutmayın: Bizim sistemimizde üniversiteye girerken bir merkezi sınavla giriliyor. Yani öyle kolay girilmez. Hâkimlik sınavına girerken de, yine aynı şekilde sınav vardır. Şimdi yine mevcut sistemi bile istense iyileştirmek çok kolaydır. Benim sorum da o konuda. Bizde avukatlık stajı bir yıldır, bunun altı ayı mahkemelerde geçer. Sizde de böyle midir sistem? Yani belli bir kısmı hâkimlerin stajı gibi, bizde hâkimler de staj yapar, öyle hâkim savcı olabilirler. Yani doğrudan otomatik hâkim savcı olma diye bir şey istisnadır. Ancak üniversite doçent ve profesörleri için bir istisna vardır; birinci sorum bu.

İkincisi, acaba sizin sisteminizde adli müzaheret, adli yardım konusu var mıdır? Var ise, baronun bir avukata adli müzaheretten bir görev vermesi halinde, yani ücretsiz avukatlık hizmeti veya bizde olduğu gibi Adalet Bakanlığının düşük bir para vermesi durumunda kişi bunu kabul etmez ise, bu bir disiplin suçu mudur sizin sisteminizde? Onun ötesinde acaba disiplin cezalarını barolar mı verir, yoksa mesela Fransa'da olduğu gibi mahkemelerin bir birimi mi verir? Nasıl sistem işliyor? O konuları öğrenmek istiyorum. Çünkü ilk sorduğum soru, Versay baro başkanlarından bir tanesinin kabul etmemesi üzerine, Avrupa İnsan Hakları Mahkemesinin davayı reddetmesiyle de ilgilidir. Bunu da kısaca açıklamış olayım.

Teşekkür ederim.

**Justice Christine DURHAM (Utah Yüksek Mahkemesi, Utah, ABD)-** Thank you very much professor for those two

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very significant questions. As to the first point, I think you do make a very good point, which explains another extremely significant difference between the system in Turkey and the system in the United States, mainly that you have been screening applicants at the beginning at the university level throughout the system and then you screen into the judiciary and the prosecutorial system. We have a very different system. Almost everyone who wants to, who can figure out a way to make it work economically can go to college. And things have changed recently because jobs are getting scarce, but the availability of student loans have made it, federally subsidized student loans made it possible for pretty much anybody who wants to go to law school and can get in, there are standards to get in, gets to be a lawyer.

And we have no similar system of screening or training for individualized disciplines as Justice Honstein was pointing out. In theory, and each state has its own system for selecting. So you have got 51 different systems on the state side, and then the federal government has its own system for selecting prosecutors and judges. So, and we do not get to intern as judges, we get to go and practice on the bench and the lawyers get to go and practice on their clients, which is one reason why mentorships are more important than connection with all the lawyers.

I am very glad you asked about the legal aid. It is a problem we are wrestling in the United States. It is a terrible problem. In the criminal system, every accused person has a constitutional right to lawyer and the government will pay. The rates are low but they tend to get pretty adequate representation. On the civil side, we have very little support for civil legal aid. In response to that, the courts have been very aggressive in recent years in establishing aspirations and in some cases requirements for lawyers to provide unpaid support for civil legal aid, we call it pro-bono contributions.

Only one state, however, the State of New York has this far made it a requirement for professionalism to provide pro-



bono services. So, in New York, if you do not provide your fifty-hours-a-year, you could be disciplined. And the discipline would be imposed by the Supreme Court through whatever mechanism it has established. In our state, it was a fight; just to get a requirement incorporated into the rules that the lawyers report how many hours they were spending on pro-bono. The next step is that we are requiring them to serve. And I hope I can get that done before I retire.

*Bu iki önemli soru için çok teşekkür ederim Profesör. İlkine yönelik olarak, Türkiye’de ve Amerika Birleşik Devletleri’ndeki sistemler arasındaki farklılıkları ortaya koyan çok iyi bir noktaya değindiğinizi belirtmek isterim. Aslında sizin sisteminizde, adaylar üniversite düzeyindeyken izleniyor ve daha sonra da yargı ve adalet sisteminde izliyorsunuz onları. Bizim çok farklı bir sistemimiz var. İsteyen ve ekonomik anlamda bunu karşılayanın bir yolunu bulan herkes kolej [ön lisans] eğitimine girebilir. İstihdam zorlaştığından son dönemde bazı değişiklikler oldu. Ancak, öğrenci kredileri, federal düzeyde sağlanan öğrenci kredileri, isteyen herkesin hukuk fakültesine girmesine ve avukat olmasına, belirli standartlar çerçevesinde olanak tanıdı.*

*Bizim, Yargıç Hunstein’in belirttiği bireysel disiplinler için eğitim veya izleme sistemimiz yok. Teoride, her eyaletin kendi seçme sistemi var. Eyaletler açısından 51 farklı sistemimiz var ve federal hükümetin de yargıçları ve savcılarını seçmek için kendi sistemi var. Biz yargıçlar staj yapmıyoruz. Biz kürsüye çıkıp orada uygulama yapıyoruz. Avukatlar gidip müvekkileri ile uygulama yapıyorlar. Bu da diğer avukatlarla iletişimden ziyade koçluk sisteminin ne denli önemli olduğunu ortaya koyuyor.*

*Adli yardımı sormanıza çok memnun oldum. Bu bizim Amerika Birleşik Devletlerinde mücadele ettiğimiz bir sorun. Berbat bir sorun. Ceza sisteminde, suçlanan herkesin anayasal bir hak olarak avukat talep etme hakkı var ve bunun ücreti devlet tarafından karşılanıyor. Ücretler düşük, ancak temsil edilmek konusunda işe yarıyor. Sivil alanda, sivil adli yardım için çok az desteğimiz var. Bunu çözmek için, mahkemeler teşvik edebilmek adına son yıllarda oldukça agresif davranıyor. Bazı durumlarda avukatların ücretsiz sivil adli yardım sunma durumu var. Biz buna hayır amaçlı yardım diyoruz.*

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*Yalnızca bir eyalette, New York'ta, hayır amaçlı adli yardım profesyonellik için bir gereklilik olarak karşımıza çıkıyor. Yani, New York'ta eğer yılda 50 saatlik süreyi ayırmazsanız, disipline gidebiliyorsunuz. Disiplin de, kurulu mekanizmasına bağlı olarak Yüksek Mahkemece uygulanıyor. Bizim eyaletimizde, avukatların kaç saatlik hayır amaçlı adli yardım yaptıklarını kurala bağlamak tam bir mücadele konusu. Bir sonraki aşama, bu hizmetin zorunlu hale getirilmesi olacak. Umarım, emekli olmadan bunu başarabilirim.*

**Justice Carol HUNSTEİN (Georgia Yüksek Mahkemesi, Georgia, ABD)-** As far as legal aid is concerned there are federal monies that come to the states. That is provided by the US congress. There is also state money. And we do have, in Georgia, we have Atlanta legal aid, which takes care of the metropolitan area. And then we have Georgia legal aid, which basically takes care of the rural areas. It, I do not feel, is completely adequate. Unfortunately, there are a lot of people who would qualify for legal aid who, but the system, at least Georgia legal aid, is I think overburdened and it is very difficult for everyone to get the help that they need. Recently, there was a huge controversy.

That was started by May I am proud to say, that every lawyer should pay X number of dollars a year in addition to their bar dues. With that money going directly to the legal aid to be shared by Atlanta legal aid and Georgia legal aid. That has not necessarily come to pass the bar association has decided they wanted to find other ways to raise some fund. But, I think, it is, I think, it is part of being a lawyer that you have to help, whether it is pro-bono, helping people who cannot afford an attorney on your own individually or supporting legal aid. So, everyone has the opportunity to participate in their justice system. If there are those who are excluded from participating in their justice system to resolve their disputes then I think that is a failing of the justice system. Everyone needs to have the opportunity to have their disputes resolved, sort of fighting in the street. So, it is, I think it is a very important aspect. Anything that, in Georgia, it is only voluntary, there is no commitment,

at least yet. There is no requirement that you participate with a certain amount of pro-bono working every year although there are certain numbers of lawyers who do it voluntarily, on a regular basis.

*Adli yardım anlamında, eyaletlere gelen paralar var. Bu ABD kongresi tarafından sağlanıyor. Ayrıca bir de eyalet parası var. Ve bizim Georgia'da şehir bölgesine bakan Atlanta adli yardımımız ve kırsal alanlar için de Georgia adli yardımımız var. Kanımca, çok da yeterli değil. Ne yazık ki, adli yardım hak eden çok kişi var, ancak sistem, en azından Georgia adli yardım sistemi, bence fazla yüklenmiş durumda ve herkesin ihtiyacı olan yardımı almasını temin etmek çok zor. Son zamanlarda büyük bir ihtilaf var.*

*Gururla söyleyebilirim ki, bunu başlatan benim. Şöyle ki, her avukatın, baro aidatlarına ek olarak yılda X dolar ödemesi gerekiyor. Bu para doğrudan adli yardıma giderek Atlanta ve Georgia adli yardımları arasında paylaşılıyor. Bu henüz daha barodan geçmedi ve fon yaratmanın başka bir yolunu aramaya karar verdiler. Ancak, bence, hayır amaçlı yardım olsun, avukat maliyetini karşılayamayan insanlara şahsen yardım etmek veya adli yardıma destek olmak yardımcı olmak avukat olmanın bir parçası. Yani, herkesin kendi yargı sistemine katılma şansı var. Eğer uyuşmazlıklarını halletmek üzere kendi yargı sistemlerine erişemeyen insanlar varsa, bence bu adalet sisteminin çökmüş olması demektir. Herkesin sokakta kavga etmek gibi uyuşmazlıklarını çözme hakkı vardır. Bence bu çok önemli bir konu. Georgia'da bu henüz gönüllülük esaslı, en azından henüz bir bağlayıcılık yok. Bazı gönüllü avukatlar bunu düzenli olarak yapıyor olsa da, her yıl belirli bir oranda hayır amaçlı adli yardım yapmanız gerektiği gibi bir kural yok.*

**Emerius F. Tom READ (Dekan)**- Thank you. This illustrates how important these subjects are. Your questions are so good and the responses are so great. It is wonderful; meanwhile, the poor policeman, who is trying to move the program on. What we are going to do is have the next session on bar exams and admissions start right now. We will finish that session so we would be only one session behind before the lunch. I know it is going slower, but this is so important and the questions are

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so important that I hope you will bear with us. So, if we have the presentations and Sally Lockwood can get herself ready to come up.

*Teşekkür ederim. Bu da, bu konuların ne kadar önemli olduğunu gösteriyor. Sorularınız çok iyi ve yanıtlar da harika. Harikulade, ancak bu arada zavallı polisin programı yürütmesi gerekiyor. Şimdi, baro sınavları ve kabul konusundaki bir sonraki oturumu hemen başlatacağız. Oturumu bitirince, öğle yemeği öncesinde sadece bir oturum geride kalmış olacağız. Yavaş gittiğimizin farkındayım, ancak bu o kadar önemli ve sorular da o kadar önemli ki, umarım bize katlanırsınız. Evet, armağanımızı takdim ettikten sonra Sally Lockwood mikrofonu almak üzere hazırlanabilir.*

**SUNUCU-** Teşekkürler efendim. Türkiye Barolar Birliği adına hatıraları takdim etmek üzere Sayın Genel Sekreterimiz Av. İzzet Güneş Gürseler'i kürsüyü teşriflerini arz ederim.

*(Bağış sertifikası verildi)*

**Emerius F. Tom READ (Dekan)-** Thank you. Well, Feridun, we have been all overruled. You and I have been overruled. The lunch is ready and waiting. And it is important, I guess, for the logistics that we do have the lunch now. Sally, we have got you up here and now we have got to take you back down again. This does show that democracy may be slow we move along. It is going to be lunch now folks.

*Teşekkür ederim. Feridun, hükmümüz geçersiz kılındı. Senin ve benim hükmümüz geçersiz kılındı. Öğle yemeği hazır ve sizi bekliyor. Ve sanırım, lojistik açıdan öğle yemeğini şimdi yememiz önemli. Sally, seni buraya aldık ve şimdi tekrar yerine almak zorundayız. Bu da gösteriyor ki, biz ilerlerken, demokrasi de yavaş ilerliyor. Şimdi öğle yemeği başlıyor arkadaşlar.*

**SUNUCU-** Öğle yemeğimiz bir alt katta gerçekleştirilecektir. Bir saatlik bir öğle yemeği aramız var. Saat 12. 45'te salona doğru hareket ediyoruz efendim, 13. 00'te başlayacağız.

*(Öğle Arası verildi)*

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*Altıncı Oturum*



**Av. Güneş GÜRSELER (Oturum Başkanı)-** Sevgili konuklarımız, Amerika'dan, İngiltere'den gelen değerli konuklarımız; şimdi çok değerli bir üstadımızı, meslektaşımızı, Sally Lockwood'u sizlere tanıtmaktan onur duyuyorum. Kendisi Georgia Supreme Court nezdinde baro kayıtları direktörü. Bize baro sınavları noktasında, eyalet baro sınavları noktasında bilgi verecek, Amerika'daki uygulamayı anlatacak.

Tabii benim başlarken ondan şöyle bir ricam var. Belki konuşmasının sonunda soru almak yerine, ben başta bir ondan yönlendirmeme yapmama izin vermesini rica edeceğim. Bize daha ayrıntılı anlatabilirse, yani şunu öğrendik çünkü ve bugünkü konuşmalardan. Amerika'da önce bir başka alanda, örneğin matematik alanında yapmıştı değerli misafirimiz. Yükseköğrenim yapıldıktan sonra üç yıl hukuk eğitimi bunun üstüne yapılıyor. Üç yıl hukuk eğitiminden sonra baroya sınav geliyor.

Baro sınavı nasıl oluyor? Bizim yıllardır tartıştığımız bir şey var. Biz tabii 69'dan beri yasamızda sınav var, ama yapamıyoruz sınavı. Bir sürü nedenlerle. Biz sınavı test mi, yani çoktan seçmeli mi yapalım diye tartışıyoruz. Mülakat mı olsun, klasik yazılımı olsun diye tartışıyoruz. Bakanlık mı yapsın, barolar mı yapsın diye tartışıyoruz. Barolar Birliği yapsın diye tartışıyoruz. Üniversiteye giriş sınavı gibi mi olsun diye tartışıyoruz ve şimdi de bir yasa taslağı tartışmamız var.

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Orada da bize yol gösterici olması için, Sayın Lockwood'dan şunu rica ediyorum. Hukuk fakültesini bitirip, baroya geleni hangi aşamalardan geçirerek sınavı yapıyorsunuz? Bir de kendisinin unvanı Georgia Supreme Court, Georgia Yüksek Mahkemesi nezdinde baroya kabul sorumlusu. Bu yüksek mahkeme nezdinde baroya kabul ne demek? Yani biz Amerika'da, özellikle Georgia'da yüksek mahkemeye girebilecek avukatlar farklı mı diye anlamalıyız? Yoksa hayır, bütün avukatlar baro sınavını başaran avukatlar yüksek mahkemede dava takip edebilirler, bu bir kayıt usulüdür diye mi anlayabiliriz?

Belki çok özür dilerim yönlendirme oldu, ama böyle gidersek daha da anlaşılır diye umuyorum. Tekrar hoş geldiniz, mikrofon sizin.

**Sally LOCKWOOD (Georgia Baroya Kabul Bürosu, Georgia, ABD)**- Thank you. "İyi Günler". Good afternoon. I am delighted to be here as well and I want to express my thanks to our Turkish host and our new friends. I bring you greetings from the 56 United States jurisdictions with their bar admissions authorities. There are 56 jurisdictions, the 50 states, the district of Colombia and five US territories and we all have bar admissions offices. Each of this may do a bit differently and that is what I am going to explain and try to answer the moderator questions today.

Now where of those 56 jurisdictions getting assistance? Some of those jurisdictions are getting technological assistance from right here in Ankara. ILG Technologies which is out of mountain of California as well as Ankara, provides the IT support, the software, the online application system and the management system that the Georgia Supreme Court, Office of Bar Admissions as well as for other jurisdictions Illinois, Missouri, Indiana and New Jersey use. I would like to introduce the president of that company ILG Technologies Barış Osman and his coworker Tuğba Şaman are here with us today. I will tell you that without the support of ILG, there is no way our office could have managed the huge numbers of applicants we have experienced in the last two years without adding more staff. So, I am very grateful to ILG Technologies.



So this is an example of globalization. There is an admissions authority in every jurisdiction. But there is no national admissions authority as Justice Hunstein pointed out. There is an entity called The National Conference of Bar Examiners but it has no admitting authority. It serves as a resource for all of the 56 jurisdictions of the United States. It develops tests that we use; it conducts educational programs for us on testing and grading and character and fitness investigations. It publishes every year something, called "The Comprehensive Guide to Bar Admission Requirements". It is an online resource and [ncbx.org](http://ncbx.org), I think that information is in your outline, but it gives the specific requirements in every United States, all 56 jurisdictions. And this is a very useful resource to have because the requirements differ from jurisdiction to jurisdiction. It provides information on the requirements as well as the processes that each jurisdiction uses.

Now, they have developed a test called the "Uniform Bar Examination". And that is composed of multiple-choice questions, a multistate performance test and multistate essay exams. And that is, that Uniform Bar Exam is now used in 14 jurisdictions in the United States, not including Georgia but including Utah. We actually, in Georgia, use about three forces of that but I will tell you in a few minutes why we have our own local law state specific component. But it anyway the Uniform Bar Exam has a huge advantage in that if you take that in a state that recognizes it, that score can be transferred to another state that recognizes it. And you would not have to take the bar exam in the second state. There would be portability of scores and that is a huge advantage. But again it is a product developed by the National Conference of Bar Examiners but each jurisdiction can choose whether to adopt it; 14 so far have.

Now, admission in every US jurisdiction has to meet two standards. One is a character and fitness standard and a competence standard. The purpose of requiring applicants to meet both types of standards is to protect the public from incompetent or unethical lawyers. The proper functioning

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of the legal system depends on honesty and a competence of lawyers and judges. Professor Feridun Yenisey is pointed out the lawyers are the foundation of the rule of law.

Character and fitness. What do we mean? Does the applicant possess the requisite, honesty and trustworthiness, that is the character expected? The morals? And does the applicant demonstrate the requisite, diligence, reliability and good judgment? That is the fitness to practice law.

And then, the other standard is competence. Does the applicant demonstrate a minimum level of competence, a minimum level of competence in identifying legal issues and a statement effect such as any lawyer must be able to, engage in a reasonable analysis of the issues presented by those facts and arrive at a logical conclusion by the application of fundamental legal principals in a manner that demonstrates a thorough understanding of the principals? So that is what we are looking at in competence.

So, how do we assess character and fitness and competence? To evaluate character and fitness, we investigate the background of each applicant for admission to practice in Georgia. To evaluate competence, we test applicants with a bar examination. Every applicant must achieve a passing score in order to be admitted. This is a dreaded two or three-day examination that is mentally and physically exhausting for both the applicants and the administrators. It is no picnic for us either, I might add.

Every jurisdiction conducts a character and fitness investigation and a bar exam for all those who want to be admitted to practice but each jurisdiction may do it a bit differently. So, it is important to check the comprehensive guide, the online version of the comprehensive guide. So that you will know which is required in each jurisdiction.

Now in Georgia, the Supreme Court of Georgia has delegated to two boards; the authority to make decisions about

new attorney admissions and the court appoints all members of both boards. There is a board of bar examiners. That board determines if an applicant is competent to practice law. That board is in charge of the bar examination itself. Then the board to determine fitness of bar applicants determines if an applicant possesses the requisite character and fitness to be admitted to practice. Both investigation in the bar examination are conducted pursuant to rules promulgated by the Supreme Court of Georgia, not the legislature, the Supreme Court of Georgia. The Supreme Court has the authority to regulate the practice and admission to practice.

Bar admission in the United States is a two-step process; certification of character and fitness and passing the bar exam. Now in Georgia, you must accomplish the certification of fitness first. You must receive that certification before you can sit for the exam.

In some jurisdictions such as New York it is the opposite. You sit for the exam and only after you pass it do you undergo the character and fitness investigation. In Georgia, we think we have it right. First you must show that you are a good person and then you show that you are a competent lawyer.

The Georgia fitness board consists of 10 members. 7 are lawyers, 3 are not lawyers. They represent the public reserve. Currently one is a psychiatrist, one is a business consultant and one is a community volunteer. In the Georgia board of bar examiners, the ones who write and grade the bar exam are all engaged in the practice of law. They are all lawyers, all six. The two boards act separately and independently; but both boards are served by the office of bar admissions, which is an arm of Supreme Court of Georgia.

Now what are the educational requirements for the admission to the practice of law in Georgia. As Justice Hunstein explained, one must first show that one has an undergraduate degree from an accredited college or university, four-year degree, usually four years. And then the graduate degree, the

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degree in law, JD, from a law school approved by the American Bar Association. Law school is a graduate program in the US. Now recently, at the request of the board of bar examiners, the Supreme Court of Georgia amended the educational requirements to allow foreign educated lawyers, to sit for the Georgia bar exam. Of course, you would not have a degree from an ABA school, but you would have the right to sit for the exam if you had satisfactorily completed a LLM degree, a specialized LLM degree in the practice of law in the United States.

A foreign educated lawyer is one, of course, educated at a law school outside of the United States and its territories and authorized to practice law. There is a particular LLM that makes curricular criteria specified by the board to equip foreign lawyers to sit for the exam and practice in the United States. The adoption of the rule demonstrates the recognition by the Georgia Supreme Court that the world is growing smaller and more connected every day. In fact, Georgia offers one of the most supportive legal environments for the international arbitration in the world including arbitration-friendly courts and legislation as well as a welcoming environment for foreign lawyers. As just as Hunstein says, our experience judiciary embraces a system of international arbitration as vital to global commerce.

Now there is another path to admission to practice in Georgia that does not require attaining LLM and the practice of law in the United States and that is the waiver process. A foreign educated lawyer may ask for a waiver of the rule requiring a degree for an ABA law school.

Citizenship. An applicant to the Georgia Bar does not have to be a citizen but must document legal status in the United States throughout the application and admission process.

Character and fitness investigation. The raw material of the character and fitness investigation is the online application developed by ILG for us. It is very long, it is very intrusive. It

asks questions about education, residence history, employment history, academic history, practically in an academic misconduct, any criminal history, credit history, any serious mental health issues, any serious health problems, any drug or alcohol problems, personal and employment references. The staff investigates these areas and verifies all the information, then brings the application to the fitness board for review. This is where ILG has become so helpful. The fitness board reviews the application to make a determination whether or not the applicant should be certified to the Supreme Court for admission. We currently receive approximately 2000 applications a year. 80% of those sail through, no problems. The board looks carefully at the conduct for problem areas.

Now what are the problem areas that those 10 to 20% show? Lack of candor is the number one issue in Georgia and in every other United States jurisdictions. So to say, admitting, omitting or minimizing past misconduct. Number two, drugs and alcohol. Their criminal act, a societal problem and perhaps the indication of abuse or addiction. Number three unsatisfactory personal credit. Lawyers are responsible for their client funds and if they cannot manage their own, that is a signal, they are a problem for the fitness board. If there had been credit issues in the past and applicant must shows six months consecutive months of on time payment as agreed to with the creditor. And the fourth area is the academic misconduct, especially plagiarism.

Of the 2000 applicants we receive every year, we interview approximately 40 of those who have shown problem areas. Eventually, we deny perhaps five or six every year. Now if they receive a tentative order of denial, they have the right to hearing before hearing officer appointed by the court. And if the hearing officer sides with the fitness board then the applicant has the right to appeal to the Supreme Court of Georgia. So there are due process rights if one is denied fitness certification.

OK, once one has the fitness certification in hand, one has it own way to the bar exam. All right, the bar exam in Georgia

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is a two-day exam. In several jurisdictions that can be two and a half days or maybe three days but in Georgia it is only two days. It is given twice a year, in February and July. It is the same in every jurisdiction; it is in the same week in every jurisdiction. The July exam is larger; because that captures the people who graduated from law school in May. The February exam is smaller. The first day of the exam consists of four essay questions on Georgia law. This is what happens in Georgia. The bar examiners think it is important that the applicants know what the Georgia law is on a variety of topics. There is some 14 topics on which these questions can be based. Now, if we were a uniform bar exam state, instead of the 4 Georgia essays, we would have six shorter essays written by the National Conference of Bar Examiners.

What is an essay question? It is a narrative description of a legal problem, about which specific questions are asked. It calls for a narrative response and essay and present, ask you to present a balanced analysis that applies the law to the facts and reaches a conclusion. All US jurisdictions have an essay part of the bar exam. The second part of the first day of the exam consists of two multi-state performance test items. This is the product of the National Conference of Bar Examiners. It is an open-book performance test. This is what it looks like. You are given a file and a library of materials. In other words, you do not have to come up with the law. You are given the law, the statutory law and the case law, the regulatory law of the fictional jurisdiction and ask to apply the law to the facts.

Now, if we were an UBE State, we would have the multistate performance test, we would have the essays and then the third part is the multistate bar exam. That is 200 multiple-choice questions. 100 in the morning, and 100 in the afternoon. All jurisdictions except two; Louisiana and Porto Rico, use the UBE. About 1400 people take the July exam, about 600 take the February exam. The pass rate for July is 70 to 80% the pass rate for February is lower, 50 to 60% because those tend to be more repeat takers. If you have not passed after three times, your

chances of passing go down but you can take it as many times as you like.

There is a multistate professional responsibility exam. That is a separate exam that is administered in the testing sites and that is an exam on the rules of professional conduct. But it is not included in the two-day exam. Once one has passed the exam, one receives a certificate of eligibility for admission; one takes that to a trial judge, a superior court judge and becomes sworn into practice by an oath. And then one registers with the state bar of Georgia and becomes subject to the Georgia rules of professional conduct. If you do not pass, you can take the exam over and over again. We have had one person who has taken it about 30 times.

All jurisdictions have an admission process similar to this. Where once you pass, you take an oath and swear to uphold the constitution of your state and the constitution of the United States. Thank you.

I don't believe I did answer the questions. So once you are admitted to practice in Georgia, there is a separate admission to the appellant courts, court of appeals and Supreme Court. But it is simply a request to be admitted; it is not an extensive process. Once you admitted and registered with the state bar Georgia you are eligible then to be admitted to the Bar of the Supreme Court and a court of appeals. And, most lawyers do that in fact we have, we call the mess swearing in ceremonies, where you sworn into everything at the same time. Many of law schools responses those.

Have I answered all your questions Mr. Moderator?

*Teşekkür ederim. "İyi Günler". Tünaydın. Ben de burada olmaktan memnuniyet duyuyorum ve hem Türk ev sahiplerimize hem de yeni arkadaşlarımıza teşekkürlerimi iletmek istiyorum. Sizlere 56 Amerika Birleşik Devletleri yargısının ve baro kabul mercilerinin selamlarını getirdim. %6 yargı makamı, 50 eyalet, Kolombiya bölgesi ve 5 Birleşik Devletler bölgesi; hepsinde baro kabul daireleri var. Bun-*

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ların her biri biraz farklı işleyişe sahip olabilir ve ben de bugün bunları açıklayacak ve moderatörün sorularını yanıtlamaya çalışacağım.

Bu 56 yargı mercii nereden yardım alıyor? Bu yargı mercilerinin bazıları, buradan, Ankara'dan teknolojik destek alıyor. Georgia Yüksek Mahkemesi, Baro Kabul Dairesi ve Illinois, Missouri, Indiana ve New Jersey yargı mercileri, Hem Kaliforniya'da hem de Ankara'da bulunan ILG Teknolojileri tarafından sağlanan bilişim teknolojileri desteğini, yazılımları, çevrimiçi başvuru sistemini ve yönetim sistemini kullanıyor. Bu şirketin, ILG Teknolojileri'nin yöneticisi, Barış Osman ve çalışma arkadaşı Tuğba Şaman da bugün bizlerle ve onları size takdim etmek istiyorum. Şunu söylemeliyim ki, ILG'nin desteği olmadan, geçtiğimiz iki yılda büromuzun çok sayıda başvurusu, personel sayısını arttırmadan yönetmesi mümkün olmayacaktı. Bu nedenle ILG Teknolojileri'ne müteşekkirim.

Bu, bir küreselleşme örneğidir. Her yargı mercisinde bir kabul birimi vardır. Ancak, Yargıç Hunstein'in da belirttiği gibi, ulusal bir kabul mercii yok. Ulusal Baro Sınavı Konferansı adı verilen bir birim olmakla birlikte, buna bağlı bir kabul mercii bulunmuyor. Bu birim, Amerika Birleşik Devletlerindeki 56 yargı mercii için bir kaynak görevi görüyor. Her yıl "Kapsamlı Baro Kabul Gereklilikleri rehberi" adı altında bir yayın yapıyor. Bu çevrimiçi bir kaynak ve, ncbx.org, sanırım elinizdeki özetle bu var, ancak her eyaletteki 56 yargı mercii için özel gereklikleri belirliyor. Bu aynı zamanda son derece faydalı bir kaynak, zira gereklikler yargıdan yargıya değişiklik arz ediyor. Hem gereklikler hem de bütün yargı mercilerinin kullandığı muameleler hakkında bilgi veriyor.

Şimdi, "Tek Tip Baro Sınavı" adı altında bir test geliştirdiler. Bu test, çoktan seçmeli sorular, çok aşamalı bir performans testi ve çok aşamalı yazılı sınavlardan oluşuyor. Yani, Tek Tip Baro Sınavı, halihazırda Amerika Birleşik Devletlerinde, Georgia değil ama Utah dahil olmak üzere 14 yargı mercisinde kullanılıyor. Biz, aslında Georgia'da bunun üç bölümünün kullanıyoruz, ancak neden kendi eyaletimize özel bir bileşen kullandığımızı size bir kaç dakika içinde anlatacağım. Ancak, her şekilde, Tek Tip Baro Sınavının büyük bir avantajı var; zira, bu sınavı, bu sınavı tanıyan bir eyalette girerseniz, yine bu sınavı tanıyan bir başka eyalette de sınav sonucunuz geçerli oluyor. Diğer



eyalette tekrar baro sınavına girmek zorunda kalmıyorsunuz. Sınav sonuçlarının aktarılabilirliği söz konusu ve bu büyük bir avantaj. Ancak, bu Ulusal Baro Sınavı Konferansı tarafından geliştirilen bir ürün olmakla birlikte her yargı mercii bunu kullanıp kullanmamakta kendi seçimini yapıyor; halihazırda 14 tanesi kullanıyor.

Şimdi, her bir ABD yargı mercisinde kabul için iki standardın karşılanması gerekiyor. Biri karakter ve uygunluk standardı diğeri de yeterlik standardı. Başvuranların her iki standarda da uygunluk göstermesinin istenmesindeki amaç, toplumu yetersiz veya etik olmayan avukatlardan korumak. Hukuk sisteminin doğru işlemesi dürüstlük ile avukat ve hakimlerin yeterliğine bağlıdır. Profesör Yenisey, avukatların hukukun üstünlüğünün temeli olduğunu söylemişti.

Karakter ve uygunluk. Ne anlama geliyor? Başvuru sahibi gerekli dürüstlük ve güvenilirlik düzeyine, yani istenen karaktere, ahlaki değerlere sahip mi? ve başvuru sahibi gerekli özen, güvenilirlik ve iyi değerlendirme gerekliliklerini karıştıyabiliyor mu? Bu avukatlık mesleğine uygunluk.

Ve sonra, diğer standart ise yeterlik. Başvuru sahibi, minimum bir yeterlik düzeyine, yani, her avukatın yapabilmesi gerektiği şekilde hukuki konuları belirleyebilmek, bu gerçeklerin ortaya koyduğu konularsa mantıklı analizler yapabilmek ve temel hukuki prensipleri, derinlemesine yaklaşım içeren bir tutumla uygulayarak mantıklı sonuçlara varabilmek hususlarında minimum bir yeterlilik düzeyine sahip mi? Yeterlik hususunda dikkate aldığımız konular bunlar.

Karakter ve uygunluk ile yeterliği nasıl ölçüyoruz? Karakter ve uygunluğu değerlendirmek için, Georgia'da mesleğe kabul etmeden önce bütün adayların geçmişlerini araştırıyoruz. Yeterlik için ise, adayları baro sınavına tabi tutuyoruz. Her adayın kabul edilmek için geçer not alması gerekiyor. Bu hem adaylar, hem de uygulayıcılar için, zihinsel ve fiziksel açıdan yorucu iki veya üç günlük bir sınav halinde uygulanıyor. Şunu eklemeliyim ki, bizim için de hiç piknik yapmaya benzemiyor.

Her bir yargı mercii, mesleğe kabul edilmek isteyenler için bir karakter ve uygunluk araştırması ile baro sınavı uygulaması yapıyor.

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*Ancak, her yargı mercii bunu farklı şekilde uygulayabiliyor. Dolayısıyla, kapsamlı rehberi, kapsamlı rehberin çevrimiçi versiyonunu okumak önemli. Bu şekilde her bir yargı mercii için gerekliliklerin neler olduğunu bilebiliyorsunuz.*

*Halihazırda Georgia'da, Georgia Yüksek Mahkemesi yeni avukat kabulü için karar mercii olarak iki kurul delege etmiş bulunuyor ve her iki kurulunda üyelerini mahkeme atıyor. Bir baro sınavı hazırlayıcıları kurulu var. Bu kurul, bir avukatın avukatlık mesleğini icra edebilecek yeterlikte olup olmadığına kara veriyor. Baro sınavından da bu kurul sorumlu. Ayrıca, baro adaylarının uygunluğunu belirlemek için oluşturulan kurul da adayın mesleğe kabul için gerekli karakter ve uygunluğa sahip olup olmadığına kara veriyor. Baro sınavlarındaki her iki araştırma da, Georgia Yüksek Mahkemesinin, yani parlamentonun değil Georgia Yüksek mahkemesinin yürürlüğe koyduğu kurallar çerçevesinde yapılıyor. Yüksek Mahkemenin hem avukatlık mesleğini hem de mesleğe kabulü düzenleme yetkisi var.*

*Amerika Birleşik Devletlerinde baro kabulleri iki aşamalı bir süreç: karakter ve uygunluk sertifikasını almak ve baro sınavını geçmek. Halihazırda Georgia'da, önce uygunluk sertifikasını almayı başarmanız gerekiyor. Sınava girmeden önce bu sertifikanın alınması gerekiyor.*

*New York gibi bazı yargı mercilerinde bu tam tersi şekilde uygulanıyor. Önce sınava giriyorsunuz ve ancak sınavı geçmeni halinde karakter ve uygunluk araştırmasına tabi tutuluyorsunuz. Georgia'da, biz daha doğru yaptığımızı düşünüyoruz. Önce iyi bir insan olduğunuzu kanıtlamak zorundasınız, daha sonra yeterli bir avukat olduğunuzu kanıtlamak zorundasınız.*

*Georgia uygunluk kurulu 10 üyeden oluşuyor. Bunların 7 tanesi avukat, 3 tanesi değil. Onlar kamuyu temsil ediyor. Şu anda, biri psikiyatrist, bir iş danışmanı ve diğeri de toplum gönüllüsü. Georgia Baro Sınavı Kurulunda, baro sınavını hazırlayan ve değerlendirenlerin tamamı avukatlık yapıyor. Hepsi, avukat, altısı da. İki kurul birbirlerinden ayrı ve bağımsız şekilde hareket ediyor; ancak, her iki kurula da Georgia Yüksek mahkemesinin bir kolu olan baro kabul bürosu tarafından hizmet sağlanıyor.*

*Şimdi, Georgia'da avukatlık mesleğine kabul için gerekli eğitim koşulları neler? Yargıç Hunstein'in da açıkladığı üzere, bir adayın önce akredite edilmiş bir kolej veya üniversiteden dört yıllık, genellikle dört yıllık, bir diplomaya sahip olduğunu göstermesi gerekiyor. Ve sonra, Amerika Barolar Birliği tarafından onaylanmış bir hukuk fakültesi diploması sunması gerekiyor. Şu anda, son dönemde, Baro Sınavı Hazırlayıcıları kurulunun isteği üzerine, Georgia Yüksek Mahkemesi, yabancı avukatların da baro sınavına girebilmesi için eğitimsel koşullarda değişiklik yaptı. Tabi ki, bir Amerika barolar Birliği onaylı okul diploması gerekliliğiniz yok; ancak, eğer bir hukuk eğitimi diplomanız varsa, hukuk eğitimi uzmanlığı diplomanız varsa, Amerika Birleşik Devletlerinde baro sınavına girip avukatlık yapabiliyorsunuz.*

*Yabancı bir ülkede eğitim almış bir avukat, doğal olarak Amerika Birleşik Devletleri dışında bir hukuk fakültesinden diploma almış ve avukatlık yetkisine sahip olan avukatı ifade ediyor. Yabancı avukatların Amerika Birleşik Devletlerinde baro sınavına girip avukatlık yapabilmesi için kurul tarafından belirlenmiş hukuk eğitimine yönelik bir müfredat var. Bu kuralın benimsenmesi, dünyanın her geçen gün küçüldüğünün ve daha birbirine bağlandığının, Georgia Yüksek Mahkemesi tarafından tanındığı anlamına geliyor. Aslında, Georgia, tahkime uygun mahkemeleri ve yasaları ile yabancı avukatları kucaklayıcı ortamı ile dünyada uluslararası tahkim açısından en destekleyici hukuki çevrelerden birini sunuyor. Yargıç Hunstein'in da belirttiği gibi, küresel ticaret için hayati önemi olan bir uluslararası tahkim sistemini benimseyen bir yargımız var.*

*Şu anda, Georgia'da, Amerika Birleşik Devletlerinde bir hukuk diploması veya avukatlık yetkisi gerektirmeyen bir kabul yolu daha var ve bu da "feragat" işlemi. Yabancı bir ülkede eğitim almış bir avukat, Amerika Barolar Birliği tarafından onaylanmış bir diploma gerektiren kanundan feragat talebinde bulunabiliyor.*

*Vatandaşlık. Georgia barosuna başvuran bir avukatın vatandaş olma zorunluluğu yok; ancak Amerika Birleşik Devletlerinde yasal bir statüye sahip olduğunu hem başvuru hem de kabul aşamasında ortaya koyması gerekiyor.*

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*Karakter ve uygunluk araştırması. Karakter ve uygunluk araştırmasının hammaddesini ILG'nin bizim için geliştirdiği çerçimeci bir başvuru oluşturuyor. Çok uzun, çok detaylı. Eğitim, ikamet geçmişi, çalışma geçmişi, akademik geçmiş, uygulamada yetkiyi kötüye kullanmak üzerine akademik geçmiş, adli sicil, kredibilite geçmişi, ciddi zihinsel sağlık konuları, ciddi sağlık konuları, uyuşturucu veya alkol sorunları, kişisel veya profesyonel referansları da içeren sorular soruluyor. Memurlar bu alanlarda inceleme yapıyor ve her türlü bilginin doğrulamasını yaparak uygunluk kuruluna sunuyorlar. Bu ILG'nin en çok yardımcı olduğu kısım. Uygunluk kurulu başvuruyu değerlendirip adayın Yüksek Mahkemece kabul edilip edilmeyeceği üzerine bir karar veriyor. Halihazırda yılda 2000 civarında başvuru alıyoruz. Bunların yüzde 80'i kabul ediliyor, sorunsuz bir şekilde. Kurul sorunlu alanlardaki hususları dikkatle inceliyor.*

*Geriye kalan yüzde 10 ila 20'de görülen sorunlar neler? Dürüst olmamak Georgia ve her Amerika Birleşik Devletleri yargı mercii için önemli konulardan biri. Geçmişteki görevi kötüye kullanma durumlarını kabul etmek, engellemek veya en aza indirmek amacıyla dikkate alınıyor. İkincisi, uyuşturucu ve alkol. Bunların suç teşkil edecek şekilde ve toplumsal sorun yaratacak şekilde kullanımı ve belki de bağımlılık veya ihlal boyutu. Üçüncüsü yetersiz kişisel kredibilite. Avukatlar, müşterilerinin maddi kaynaklarından da sorumlular ve eğer kendilerininkini iyi yönetemiyorlarsa, bu uygunluk kurulu için bir tehlike sinyali anlamına geliyor. Eğer geçmişte kredi sorunları yaşandıysa, adayın kredi veren kuruluşa üst üste altı ay boyunca zamanında ödeme yapmış olması şartı aranıyor. Dördüncü alan ise, akademik anlamda kötüye kullanma, özellikle fikir/eser hakkı ihlali.*

*Her yıl başvuru aldığımız 2000 aday arasından, sorun tespit ettiğimiz yaklaşık 40 tanesiyle mülakat yapıyoruz. Duruma göre, yılda beş veya altı tanesini reddediyoruz. Eğer geçici redde maruz kaldırlarsa, mahkeme tarafından atanacak bir dava memuru önünde dava hakları var. Eğer dava memuru uygunluk kurulu ile örtüşen bir karar verirse, aday Georgia Yüksek Mahkemesinde temyize gidebiliyor. Yani, eğer uygunluk sertifikası konusunda bir aday reddedildiyse, takip edebileceği muameleler de var.*

Evet, bir aday uygunluk sertifikasını elde ettikten sonra, baro sınavına girebiliyor. Georgia'daki baro sınavı iki günlük bir sınav. Pek çok yargı merciinde iki buçuk veya üç gün olabiliyor; ancak Georgia'da iki günlük bir sınav var. Yılda iki kez Şubat ve Temmuz aylarında uygulanıyor. Her yargı merciinde aynı şekilde, aynı haftada uygulanıyor. Temmuz sınavı daha kapsamlı; çünkü sadece Mayıs ayında hukuk fakültesinden mezun olanla yönelik uygulanıyor. Şubat sınavı ise daha küçük. Sınavın ilk günü Georgia hukuku üzerine iki yazılı sınavdan oluşuyor. Georgia'daki uygulama bu. Baro Sınavı Hazırlayıcıları pek çok konunun Georgia kanunlarında nasıl geçtiğinin aday tarafından bilinmesinin önemli olduğunu düşünüyorlar. Bu soruların temel aldığı 14 konu var. Eğer biz de bir Tek Tip Baro sınavı uygulayan eyalet olsaydık, 4 Georgia yazılı sınavı yerine, Ulusal Baro Sınavı Konferansı tarafından hazırlanan altı tane daha kısa yazılı sınav sorumuz olacaktı.

Yazılı sınav sorusu nedir? Hakkında özel soruların sorulduğu bir hukuki problemin yazılı anlatımıdır. Yazılı bir cevap, bir makale şeklinde yanıt gerektirir ve sizden kanunun gerçeklere uygulanmasını içeren dengeli bir analiz yapmanız ve bir sonuca ulaşmanız beklenir. Sınavın ilk gününün ikinci kısmı iki çok aşamalı performans testinden oluşur. Bu, Ulusal Baro Sınavı Konferansı tarafından hazırlanır. Kitapların açık tutulduğu bir performans testidir. Bu şekilde görünüyor. Size bir dosya ve materyaller kütüphanesi veriliyor. Diğer bir deyişle, kanunları yazmanız gerekmiyor. Kanunlar, devlet yasaları ve içtihatlar, kurgusal yargının düzenleyici kanunları size veriliyor ve sizden kanunu gerçeklere uygulamanız isteniyor.

Şimdi, eğer biz bir Tek Tip Baro Sınavı (TTBS) uygulayan eyalet olsaydık, çok aşamalı performans sınavı, yazılı sınavların yanı sıra, üçüncü olarak da çok aşamalı baro sınavımız olacaktı. Bu da 200 çoktan seçmeli sorudan oluşuyor. 100 sabah, 100 öğleden sonra. Louisiana ve Porto Rico olmak üzere iki yargı merciü hariç, diğerleri Çok Aşamalı Sınavı uyguluyor. 1400 kişi Temmuz sınavına giriyor. 600 kişi Şubat sınavına giriyor. Temmuzda geçme oranı %70-80; Şubat ayında geçme oranı daha düşük, %50-60, çünkü bunlar sınavı tekrar girenler olabiliyor. Üç kez sınavı geçemezseniz, kazanma şansınız düşüyor; ancak sınavı istediğiniz kadar girebilirsiniz.

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*Çok aşamalı bir eyalet sorumluluk sınavı da var. Bu ayrı bir sınav. Bu bir test merkezinde uygulanıyor ve mesleki kuralları içeriyor. Ama bu iki günlük sınava dahil değil. Sınavı geçenler, kabule uygunluk sertifikası alıyor. Bu sertifikayla bir duruşma hakimine veya yüksek mahkeme hakimine gidilip yemin edilerek yeminli olarak göreve başlanıyor. Sonra, Georgia Eyalet barosuna kayıt yaptırılıyor ve Georgia mesleki kurallarına bağlı hale geliniyor. Sınavı geçemezseniz, tekrar tekrar girebilirsiniz. 30 kez giren birsi olmuştü.*

*Bütün yargı mercilerinin buna benzer bir kabul işlemi var. Bir yerde sınavı geçtiğinizde, kendi eyaletinizde yemin ederek hem eyaletinizin hem de Amerika Birleşik Devletleri anayasasının kanunlarına tabi olursunuz. Teşekkür ederim.*

*(Alkışlar)*

*Bir soruyu yanıtladığımı düşünmüyorum. Georgia'da mesleğe kabul edildiğinizde, diğer mahkemelere, temyiz mahkemelerine ve yüksek mahkemeye kabul için ayrı bir işlem var. Ama bu basitçe bir başvuru yapmak şeklinde, çok detaylı bir işlem değil. Bir kez Georgia Eyalet barosuna kabul edildiğinizde ve kayıt yaptırdığınızda, Yüksek Mahkeme Barosuna ve temyiz mahkemelerine de kabul edilirsiniz. Ve, aslında bizdeki çoğu avukat bunu toplu yemin töreni dediğimiz, her şeye aynı anda yemin edilen bir törenle yapıyor. Hukuk fakültelelerinin çoğu bunu uyguluyor.*

*Bütün sorularımızı yanıtladım mı Sn. Moderatör?*

**Av. Güneş GÜRSELER (Oturma Başkanı)-** Çok teşekkürler. Değerli meslektaşlarım, değerli konuklarımız; Sayın Lockwood'a sorusu olan var mı? Soruları alayım. Şöyle, nasıl zor bir süreçten geçtiğini Georgia'da ve diğer eyaletlerde gördük. Özellikle benim altını çizmek istediğim şu: Bu kabul kurulunun değerlendirdikleri, bizim 5. maddenin c bendinin Anayasa Mahkemesinde ihlali ve karardaki tartışmaları hatırlattı. Avukatlığa engel bir halinin çevresinde bilinmek koşuluunu, Anayasa Mahkememiz kaldırdı. Yeni taslakta işte bu anlatılan görüşler hepimize uyarıcı olma durumunda.

Sorusu olan varsa buyursun efenim. Buyurun Başkanım.

**KATILIMCI-** Ben de aslında tam bu noktada soracaktım. Oradaki değerlendirmeyi kuruluşlar neye göre, yani bu işte bizde karşılığı şey olan; işte çevresinde iyi olarak bilinen, yani bu göreceli bir kavram. Bu göreceli kavramı hangi veriler kullanılarak yapılıyor? Bu verilerin güvenilirliği nasıl nereden sağlanıyor? Bunu merak ettim.

Bir de kompozisyonundan bahsetti. Bu kompozisyonun, yani yazılı olarak herhalde yapılan bir kompozisyon. Algıladığım kadarıyla orada da hukukçunun muhakeme gücünü ölçmeye yarayan bir şey olduğu mu? Yani böyle mi algıladım.

Teşekkür ederim.

**KATILIMCI-** Ben de sayın misafirimize hoş geldin diyorum. Kabul şartları arasında alkol ve uyuşturucudan bahsetti. Merak ettiğim için soruyorum. Örneğin, bir aday karşınıza geldi, ben günde bir duble viski içiyorum ya da günde bir bira içiyorum. Bu adayı kabul ediyor musunuz etmiyor musunuz?

**Sally LOCKWOOD (Georgia Baroya Kabul Bürosu, Georgia, ABD)-** That is all I ever had. First let me go back to the first question.

*Bu benim bütün hayatım boyunca içtiğim miktar. Önce ilk soruyu yanıtlayayım isterseniz.*

**Prof. Dr. Feridun YENİSEY (Bahçeşehir Üniversitesi Hukuk Fakültesi)-** Şimdi Türkiye’de bir sınav deneyimimiz oldu. Sonra vazgeçildi, şimdi tekrar sınavların getirilmesi isteniyor, ama buna en çok tabii öğrenciler taraftar olmadılar benim tecrübem bu oldu.

Fakat ben şunu sormak istiyorum. Bu soruları kim hazırlıyor? Soruyu hazırlamak en önemli mesele zannediyorum. Üç ağır kademededen geçen bir sınav düzeni var, ama buraya problem çözümü soruluyor. O problemlerin hazırlanması gerekiyor. Yine test usulü var dediniz, 100 tane ve öğleden sonra 200 tane daha. Yine o soruların hazırlanması çok önemli.

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Türkiye’de bu tartışma konusu oldu. Soruları kim hazırlayacak, nerede saklayacak, kime verecek? Bunlar önemli konular.

Bir de teknoloji meselesi var. O teknolojiyi merak ediyorum. Teknolojinin şeyi ne burada? Ne kadar çok yardım ediyor size ve hakikaten ilginç, Ankara’dan bir firmanın Amerika’daki sınavlar için teknoloji üretmesi burada duyduğum ve şaşırdığım bir şey oldu, ilginç.

**Sally LOCKWOOD (Georgia Baroya Kabul Bürosu, Georgia, ABD)**- OK, there are a lot of questions and I am going to ask the moderator to help me make sure I respond each of them. I will start with the last one. Actually, ILG, Barış Osman’s company, is not the one that helps with the exams. It helps with the character and fitness questionnaire, which is quite extensive as we have said, it goes into all of those background areas and it enables us we ask information about their education history, their criminal history, their mental health history, their employment history and when that information comes from the applicant then it automatically generates inquiries that go out to the schools, the employers, the personal references, anyone that is mentioned in their application so that is the refinement that we have seen with technology.

Now the bar exam itself is handed out on paper. But they input the answers, 90% of them they input the answer on their own laptops using a program from a different company that is used by about 41 jurisdictions in Georgia, in the United States where they input it through software that closes them out of every other applications, closes them out, blocks their ability to connect to the internet until the exam is over. Then the answers are uploaded to a secure server and sent to our printer and those questions, the answers is send out to the bar examiners to grade.

Who writes the essay questions? The bar examiners, the board of bar examiners, the six people. Each of them writes one of the four essay questions, the two other members actually grade the performance test. The performance test is a product



of the National Conference of Bar Examiners. It asks, it test skills. It tests whether you can write a letter, it may ask you to write a letter to a client a draft a closing argument, a draft of complaint, a draft of memorandum. But you do not have to know what the law is, the law is given to you. But you have to separate the relevant facts from the irrelevant and show that you can perform the task that is required, which is a task that any newly-admitted lawyer would be ask to perform.

Let's see, what else. You were asking about the essay questions. Yes, they do ask you to spot the issues, identify the issues, apply the law as you understand it to those issues and draw a conclusion. They don't want you to just say well it could be this or it could be that. They want you to say the law in Georgia is so and so. Then applying that law this would be the answer to the question.

Now you asked about if you only had two or three drinks. What do we use to determine whether there is an alcohol or drug-related problem? We have fingerprints done and we get the criminal history. If there is a string of alcohol related defenses, public intoxication, driving under the influence of alcohol one time when you were in college in 18 years old, no problem. If in law school you have been arrested for driving under the influence of alcohol, if you had a public intoxication offense, then that would raise problems for the fitness board and we would ask you to file a statement of your alcohol use. If we will still concern, we had one applicant who said drink between 3 and 36 beers a week. Well is it 3 or is it 36? Anyway that person is sent out what we call an alcohol evaluation. Our expense, we send them to a psychiatrist or a psychologist to do an independent medical evaluation. If treatment is recommended then we table that application for treatment.

As I said we have about 2000 applicants a year. We finally deny 5 or 6. But in between there, a lot of them are delayed, two to four hundred are delayed because they have had problems in the past. We try to work with them and give them time to rehabilitate. The Georgia Supreme Court has a case

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on rehabilitation for bar admission purposes and that cases to show rehabilitation you have got to show that you recognize the problem, you have taken steps and learn the lessons and achieve going beyond that and given back to society.

So we look for rehabilitation and we hope that people learn through the process. We have people who come back to us and say "I was very angry that you tabled my application. But I am so glad I learned so much from going through treatment and it has made my life so much better. " So they want to be lawyers, that's enough in Georgia if they will do what is required through the character and fitness process. But no, we never ask them how many drinks a day do you have. We just ask whether they have a history in the criminal justice system related to alcohol.

*Tamam, çok soru var ve hepsini yanıtladığımdan emin olmak için moderatörden yardım isteyeceğim. Son soruyla başlayacağım. Aslında, ILG, Barış Osman'ın şirketi bize sınavlar konusunda yardımcı olmuyor. O bize, daha önce de söylediğim gibi oldukça kapsamlı olan karakter ve uygunluk anketi konusunda yardımcı oluyor. Bütün özgeçmiş alanlarına hitap ediyor ve adayların eğitim geçmişi, adli sicili, zihinsel sağlık geçmişi, iş geçmişi gibi konularda soru soruyor. Bu bilgiler adaydan geldiğinde de otomatik olarak okullara, işverenlerine ve kişisel referansları ile bu ankette ismi geçen herkese anketler gidiyor. Teknolojinin bize sağladığı gelişme budur.*

*Şimdi, baro sınavı basılı olarak dağıtılıyor. Ancak yanıtlar, Georgia ve Amerika Birleşik Devletlerinin 41 yargı mercii tarafından kullanılan bir başka firmanın programı ile adaylar tarafından kendi laptopları üzerinden giriliyor. Bu program bir yazılım aracılığı ile her sınav sürecinde, sınav tamamlanuncaya kadar adayın Internet üzerinden başka yerlere bağlanmasına engel oluyor. Daha sonra yanıtlar güvenli bir sunucuya aktarılıyor ve bizim yazıcımıza gönderiliyor. Bu yanıtlar da baro sınav sorumlularına değerlendirilmek üzere gönderiliyor.*

*Bu yazılı sınav sorularını kim yazıyor? Sınav sorumluları, sınav sorumluları kurulu, altı kişi. Her biri dört yazılı sorusundan birini yazıyor. Diğer iki üye de performans testini derecelendiriyor. Performans*

*mans testi Ulusal Baro Sınavı Kurulu'nun bir çalışması. Sorularla beceriler test ediliyor. Dilekçe yazıp yazamadığınızı test ediyor. Sizden bir müvekkilinize bir kapanış konuşması içeren bir mektup veya bir dilekçe ya da tutanak yazmanız istenebiliyor. Ancak, kanunun ne olduğunu ilmek zorunda değilsiniz. Kanun size veriliyor. Ancak, ilgili gerçekleri ilgisiz olanlardan ayırt etmeniz ve size verilen ve mesleğe yeni başlayan bir avukatın yapması gerekebilecek olan görevi yapabilir olduğunuz göstermeniz gerekir.*

*Bakalım, başka ne var. Yazılı sorularını bilmek istiyordunuz. Evet, sizden sorunları tespit etmenizi, belirlemenizi ve anladığınızı şekliyle kanunları bu sorunlara yönelik olarak uygulamanızı ve bir sonuca varmanızı istiyorlar. Sadece şu olabilir, bu olabilir şeklinde yanıtlamanızı istemiyorlar. Sizden "Georgia kanunlarına göre bu böyledir" demenizi istiyorlar. Sonra da bu kanunun uygulaması da sorunun yanıtını oluşturuyor.*

*Şimdi, bir-iki içki içtiğinizde ne olduğunu sormuştunuz. Alkol veya uyuşturucu sorunu olup olmadığını belirlemek için ne kullanıyoruz? Parmak izi alıyoruz ve adli sicil istiyoruz. Eğer alkolle ilgili savunma, toplum içinde huzur bozacak düzeyde alkol kullanımı, alkollü araba kullanma gibi konular 18 yaşında bir kez üniversitede yaşandıysa, sorun yok. Eğer alkollü araç kullanırken göz altına alındıysanız, toplum içinde huzur bozacak düzeyde alkol kullandıysanız, o zaman bu uygunluk kurulu için sorun olarak nitelendirilebiliyor ve sizden alkol kullanımınızla ilgili bir savunma yazmanızı istiyoruz. Eğer kaygımız halen devam ediyorsa; bir adayımız haftada 3 ile 36 arası bira içtiğini belirtmişti. 3 mü 36 mı? Her neyse, bu kişi alkol değerlendirmesi dediğimiz işleme tabi tutuldu. Masrafını kendimiz karşılayarak bağımsız tıbbi değerlendirme yapan bir psikiyatrist veya psikoloğa gönderiyoruz. Eğer tedavi önerilirse, o zaman tedavi süresince bu başvuruyu erteliyoruz.*

*Söylediğim gibi yılda 2000 başvuru alıyoruz. Sonuçta 5 veya 6sını reddediyoruz. Ancak bu süreçte pek çoğu erteleme alıyor, iki veya dört yüz kadarı, geçmişte sorun yaşadıkları gerekçesiyle erteleniyor. Onlarla ilgileniyor ve rehabilitasyon için zaman veriyoruz. Georgia Yüksek mahkemesinin baro kabulü için adı verilen bir rehabilitasyon prosedürü var. Bu durumlarda, rehabilite olduğunuzu gös-*

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*termek için, sorunun farkında olduğunuzu, ilerleme kaydettiğinizi, ders aldığınızı ve bunun ötesine geçmeyi başardığınızı ve topluma kazandırıldığınızı göstermeniz gerekiyor.*

*Yani rehabilitasyon istiyoruz ve bu süreçte insanların ders almasını umuyoruz. Bize gelip "başvurumu ertelediğinizde size çok kızmıştım. Ama tedavi olurken çok şey öğrendiğim için çok mutluyum ve hayatım daha iyi bir hale geldi. " diyen insanlar var. Georgia'da avukat olmak istediklerinde, karakter ve uygunluk sürecinin gereğini yerine getirmeleri yeterli. Ancak, hayır, onlara günde kaç içki içtiklerini sormuyoruz. Sadece onlara alkolle ilgili cezai hukuku kapsayan bir geçmişleri olup olmadığını soruyoruz.*

**Av. Güneş GÜRSELER (Oturum Başkanı)-** Çok teşekkür ederiz. Böylelikle başkanımızın sorusu da kabul kurulunun hangi ölçülerle hareket ettiği yolundaki sorusuna da cevap vermiş oldunuz. Çok teşekkür ederim.

Şimdi diğer konuşmacı Sayın Profesör Kathleen Burch'a geçeceğiz.

**KATILIMCI-** Merhabalar, öncelikle çok teşekkür ediyorum tüm sunumlara, bize böyle bir fırsat tanıdığınız için. Ben Gazi Üniversitesi Hukuk Fakültesi üçüncü sınıf öğrencisiyim. Tam da bu sınav noktasında bir farklılığı daha dile getirmek istedim, Amerika'yla Türkiye arasındaki sistemde.

Amerika'daki sistemde insanlar öncesinde başka bir eğitim daha alıyorlar. Yani matematik, fizik, psikoloji gibi ve bu sınavı geçemedikleri takdirde ellerinde başka bir meslekleri daha oluyor icra edebilecekleri. Bizde böyle bir durum söz konusu değil. Yani ben hukuk öğrencisiyim ve öncesinde herhangi bir eğitimim de söz konusu değil başka bir alanda.

Peki, yani biz bu sınavı geçemediğimiz takdirde mesela ne olacak? Ben sadece bunu burada dile getirmek istedim. Tekrar teşekkür ediyorum. Bu düzenlemeyi de bu çerçevede yapabilmemiz için, belki bir ses olurum diye söylemek istedim.

Bize bu fırsatı tanıdığınız için tekrar teşekkür ederim. (Alkışlar)

**Av. Güneş GÜRSELER (Oturum Başkanı)-** Teşekkür ederim. Sorunun bize olduğu anlaşıldı Sayın Lockwood çok teşekkürler.

**Sally LOCKWOOD (Georgia Baroya Kabul Bürosu, Georgia, ABD)-** Thank you very much.

*Çok teşekkür ederim.*

**F. Tom READ-** We have the presentation.

*Şimdi armağanımızı takdim edeceğiz.*

**SUNUCU-** Sayın Lockwood'a ve Sayın Genel Sekreterimiz Güneş Gürseler'e hatıralarını vermek üzere Başkan Yardımcısı Sayın Av. Başar Yaltı'nın kürsüyü teşriflerini arz ederim.

*(Bağış sertifikaları verildi)*

**F. Tom READ -** As our moderator takes his seat, the next subject is quite an important one. We are going to have only one speaker in this subject and this is Professor Kathleen Burch from Atlanta John Marshall Law School. And this subject is really at the core of the academy. And the importance of the professors who teach, having the academic freedom to operate and teach in the way that they think best for students. It is quite an important subject, a delicate subject and sometimes a very difficult subject to explain to outsiders. So Mr. Moderator take over.

*Moderatörümüz yerini alırken, bir sonraki konumuz oldukça önemli bir konu. Bu konuda sadece bir konuşmacımız var ve o ada Atlanta John Marshall Hukuk Fakültesinden Kathleen Burch. Bu konu akademinin temelini oluşturuyor. Öğretimi gerçekleştiren profesörlerin önemi, işleyişte ve öğretim açısından öğrenciler için en iyisinin ne olduğuna dair akademik özgürlüğe sahip olmaları, çok önemli. Oldukça önemli bir konu, hassas bir konu ve bazen yabancılara anlatması çok güç olan bir konu. Evet, Sayın Moderatör, söz sizde.*

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**Av. Güneş GÜRSELER (Oturum Başkanı)-** Ben dün İstanbul'daki oturumu da katıldım ve Kathleen Burch'u İstanbul'da dinledim Sayın Profesörü. Akademik özgürlük konusunda çok önemli şeyler anlattı. Tabii Türkiye'de akademik özgürlüğün ne kadar geçerli olduğunu, üniversite rektörlerinin bir telefonla görevden alındığını bildiğimiz için, kendisinin akademik özgürlük konusunda anlatacakları çok önemli. Artı tabii bir ayrımı da vurgulayacaktır. Devlet üniversiteleri ve özel üniversiteler ayrımı var Türkiye'de. Her ikisindeki akademik özgürlük de çok farklı.

Buyurun Sayın Burch.

**Prof. Dr. Kathleen BURCH (Atlanta John Marshall Üniversitesi Hukuk Fakültesi, Georgia, ABD)-** Thank you very much. I am very pleased to be here today and thank you all for your warm hospitality. I am going to focus on as has been said on academic freedom. It is important to the university and faculty governance. And it is important to the public good especially for law faculties and the development of law.

In order to understand the role of academic freedom to the faculty governance and public good, we must first understand what academic freedom is. To understand the importance of the academic freedom, we must understand the role of the university in society. From the founding of the first university, the role of the university has been to attain universal knowledge. The way university attains or requires knowledge is through the faculty. The faculty is the primary asset of the university. In order for the university to acquire knowledge, the faculty must be free to search for that knowledge.

Faculty search for knowledge to the research, publication of that research and dialogue with faculty from other universities. That dialogue occurs in private communications, letters and e-mails and other online platforms and through conferences such as this one. Because universities need faculty to engage in research in order to fulfill the universities role and attain the universal knowledge, it is contrary to the interest and goals

of the university to limit the research of faculty. Moreover, because the purpose of faculty research is to search for universal knowledge, the protections of the academic freedom should be universal and protect the faculty regardless of where they reside, what they teach or on the topic of the research.

To understand academic freedom it is helpful for us to understand what academic freedom is not. Academic freedom is not for the faculty to do as they please. Academic freedom does not protect all faculty speech. Academic freedom protects the acquisition and dissemination of knowledge. Knowledge is power. Knowledge expands frontiers to scientific discovery. Knowledge helps us to understand our culture and the culture of others. It helps us to be tolerant. Knowledge fuels economic development. Most importantly knowledge prepares individuals for participation in the political process.

Knowledge and thus academic freedom is necessary for free and democratic society. Academic freedom for law faculty is necessary to the development and stability of the rule of law. Since the 18<sup>th</sup> century, academic freedom has protected university faculty whose research and knowledge, sorry research and search for knowledge threatens the authorities by questioning Orthodox and sanction knowledge.

Academic freedom also protects faculty from the tyranny of public opinion. Those of threatened academic freedom in from whom faculty have needed protection, have included government, religious leaders and owners and trustees of private institutions. More recently, at least in the United States, threats to the academic freedom have come from students, the public and corporations that fund research or otherwise affiliated with the university. Academic freedom is necessary because it protects a search for truth. The truth and the advance of knowledge are key ideas at any theory or definition of academic freedom. When truth is censored or suppressed that truth cannot add to the universe of human knowledge.

In 2006, the parliament assembly of the Council of Europe

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noted that history has proven the violations of academic freedom and university autonomy have always resulted in intellectual relapse and consequently in social and economic stagnation. The road history secular and religious authorities have prevented the expression of ideas and have either prohibited or punished those who have asked questions because those ideas and questions contradicted to beliefs of those currently in power. Some examples of those who have suffered from a lack of academic freedom include Socrates, Galileo and Giordano Bruno. For more recent examples in the United States, we can look to the efforts to prohibit communists from teaching and state owned universities and to efforts by the state governments to prevent the teaching of evolution in university classrooms. For more recent examples in Europe, we can look to the efforts of governments and formal communists block countries to censor the universities.

By the end of the 18<sup>th</sup> century, universities have become dedicated to the pursuit for truth through scientific discovery. The university or the academy came to mean a community of scholars and the idea of academic expertise began with the medieval universities so that judgment of scholarly competence belongs to a body of scholarly masters.

Academic freedom starts with the concept that the university is not an ordinary business venture. And that faculty are not engaged in purely private employment. Faculties are appointees responsible to the public for fulfilling the social function of the university, which is to produce new knowledge. Knowledge results in the work of faculty acting on their capacity with professional experts and in the discipline of their area of expertise. To produce true knowledge faculty required an unlimited freedom to produce, to pursue inquiry and publish its results. In order for the universities to fulfill its mission and advance human knowledge, faculty must have independence of thought and speech.

Academic freedom is the freedom to pursue the scholars' profession according the standards of the profession. The



standards of the profession are a continuation of the medieval universities' demand that the academy judges on to the quality control mechanism of pro-review. Academic freedom is not the same as the intellectual freedom. Intellectual freedom is usually enjoyed by everyone; students, faculty, employees and perhaps even the general public. Academic freedom is limited to the faculty. Academic freedom protects four distinct but interrelated areas. First, freedom of research and publication, second freedom of teaching, third freedom of intramural expression and fourth freedom of extramural expression.

First, the freedom of research and publication. The freedom to research allows the individual faculty to identify the subject matter of their research within accepted professional norms to choose the research methodology they will use. The freedom of research cannot further the universities mission for the knowledge unless the research is also published. Publication places the research in the public domain to become part of the ongoing debate producing new knowledge for the public.

The freedom of research and publication encompasses faculty speech on matters within the faculty's expertise. Freedom of research and publication includes publication in traditional journals and books. It also includes publication in new media sources such as electronic journals or other online sources and presentations and conferences and other meetings as well as testimony before legislative bodies and comments on draft or pending pieces of legislation or regulation. Freedom of research and publication also includes comments to the media if the comments are within the individual faculty's area of expertise. An example would be when a TV station calls and asks for an expert comment upon the case that was recently filed in the courts or the effect of the recent decision of the Supreme Court.

Second, the freedom of teaching. The freedom to teach is a right that is balanced between the freedom of the individual faculty in the classroom and the prerogative of the university their faculty's expertise to design and implement curricular

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requirements. The design of curricular requirements has accomplished to the faculty committees system. The implementation of the curricular requirement is done through the prereview process. Through this faculty system the university can require faculty to satisfy curricular requirements in the courses they are assigned to teach. Faculty, however, retain the freedom to choose the pedagogical method they will use to meet the curricular requirements. The freedom to further teach furthers the freedom to research and publish. To the extent that faculty free to disseminate the results of their research to the general public, they must be free to disseminate these results to their students.

The freedom to teach is an aspect of professional expertise. Faculty are deemed experts both in their scholarly discipline and in their pedagogical technique. Because one of the purposes of the university education is to change students to think for themselves and to think intelligently. The freedom to teach provides students with the opportunity to emulate faculty who model independent thought in the classroom. The freedom to teach support and is supported by the freedom research and publish. The freedom to teach is limited by faculty governance, which is exercised through preview and the establishment of curricular requirements. Faculty governance is in term protected by the freedom of intramural speech.

So what is intramural speech?

*Çok teşekkür ederim. Bugün burada olmaktan çok mutluyum ve sıcak misafirperverliğiniz için hepinize teşekkür ederim. Belirtildiği gibi akademik özgürlük üzerine konuşacağım. Hem üniversite hem de fakülte yönetimi açısından çok önemli. Ve hem hukuk fakülteleri hem de hukukun gelişmesi için kamu yararı açısından da önem taşıyor.*

*Akademik özgürlüğün fakülte yönetimi açısından rolünü anlamak için, önce akademik özgürlüğün ne olduğunu anlamalıyız. Akademik özgürlüğün önemini anlamak için, üniversitenin toplumdaki yerini anlamalıyız. İlk üniversitenin kuruluşundan bu yana, üniversitenin görevi evrensel bilgiyi edinmektir. Üniversite bilgiyi akademisyenle-*

*rinden edinir veya bekler. Akademisyenler üniversitenin birincil varlığıdır. Üniversitenin bilgi edinmesi için, akademisyenlerin bu bilgiyi araştırmakta özgür olmaları gerekir.*

*Akademisyenler, bilgiyi araştırmak, araştırmayı yayınlamak ve diğer üniversitelerin akademisyenleriyle diyalog kurmak yoluyla araştırırlar. Bu diyalog özel iletişimde, mektuplarda, e-postalarda, diğer çevrimiçi platformlarda ve bunun gibi konferanslarda gerçekleşir. Üniversite, görevini yerine getirmek ve evrensel bilgiyi edinmek için, akademisyenlerinin araştırma yapması gerektiğinden, akademisyenlerin araştırmalarını sınırlandırmak, üniversitenin çıkar ve hedeflerine ters düşer. Dahası, akademisyenlerin araştırma amaçları evrensel bilgiyi edinmek olduğundan, akademik özgürlüğün korunması da evrensel olmalı ve nerede olurlarsa olsunlar, ne öğretiyor olurlarsa olsunlar veya araştırmamanın konusu ne olursa olsun, akademisyenler korunmalıdır.*

*Akademik özgürlüğün ne olmadığını bilmek, akademik özgürlüğü anlamakta bize yardımcı olur. Akademik özgürlük, bütün akademisyenlerin ifade biçimini korumaz. Akademik özgürlük bilginin edinilmesini ve yayılmasını korur. Bilgi güçtür. Bilgi, öncülerini bilimsel keşfe götürür. Bilgi, kültürümüzü ve başkalarının kültürünü anlamamıza yardımcı olur. Toleranslı olmamıza yardımcı olur. Bilgi ekonomik gelişmeyi hızlandırır. En önemlisi, bilgi bireyleri siyasi sürece dahil olmaya hazırlar.*

*Bilgi ve dolayısıyla akademik özgürlük, özgür ve demokratik bir toplum için gereklidir. Hukuk fakültesi için akademik özgürlük, hukukun üstünlüğü prensibinin gelişmesi ve istikrarı için gereklidir. 18. Yüzyıldan beri, akademik özgürlük, Ortadoks ve yaptırım gerektiren bilgiler üzerindeki araştırmaları ve bilgileri, pardon, araştırma ve bilgi arayışları yetkililer için bir tehdit oluşturan akademisyenleri korumuştur.*

*Akademik özgürlük, akademisyenleri aynı zamanda kamuoyunun hükmünden de korur. Akademik özgürlükleri tehdit edenler ve akademisyenlerin korunması gereken merciler, hükümetler, dini liderler ve özel kurumların sahipleri veya vekilleri olmuştur. Yakın zamanda, en azından Amerika Birleşik Devletlerinde, akademik özgürlüğe*

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*karşı tehdit oluşturanlar, öğrenciler, toplum ve araştırmayı finanse eden kuruluşlar ile üniversitenin bir şekilde ilişkide bulunduğu diğer merciler olmaktadır. Akademik özgürlük gereklidir; çünkü, gerçeklerin araştırılmasını korur. Gerçekler ve bilginin ilerlemesi, akademik özgürlüğe dair bütün tanım ve teorilerin kilit noktalarını oluşturur. Gerçekler sansüre uğradığında veya baskılandığında, o gerçek insan bilgisinin evrenine katkı sağlayamaz.*

*2006'da, Avrupa Birliği Parlamentosu toplantısında, tarihte akademik özgürlüğün ve üniversitenin otonomisinin ihlal edildiği her koşulda entelektüel gerileme ve bununla birlikte sosyal ve ekonomik durgunluk yaşandığı belirtilmiştir. Tarih boyunca, laik ve dindar yetkililer fikirlerin ifade edilmesine engel olmuş ve soru soran kişileri, fikir ve soruları iktidardakilerle ters düştüğü gerekçesiyle cezalandırmıştır. Akademik özgürlüğün yokluğundan zarar görenlere Sokrat, Galile ve Gordano Bruno örnek gösterilebilir. Amerika Birleşik Devletlerindeki daha güncel örnekler için, komünistlerin öğretmenlikten veya devlet üniversitelerinden atılması ile eyalet yönetimlerinin üniversite sınıflarında değerlendirmenin öğretilmesine engel olma çabalarını gösterebiliriz. Avrupa'dan örnekler için ise, hükümetlerin ve eski komünist bloğu ülkelerinin üniversitelere sansür uygulamasından bahsedebiliriz.*

*18. yüzyılın sonuna doğru, üniversiteler, gereceği bilimsel keşiflerle aramaya yönelmişlerdir. Üniversite veya akademi bilim adamları topluluğu anlamına gelmeye başlamış ve akademik uzmanlık düşüncesi bilimsel yeterliğin değerlendirilmesinin, bir grup bilim uzmanına bırakıldığı ortaçağ üniversiteleriyle başlamıştır.*

*Akademik özgürlük, üniversitenin sıradan bir istihdam yatırımı olmadığı ve akademisyenlerin sadece özel istihdamla ilgilenmedikleri kavramı ile ortaya çıkmıştır. Akademisyenler topluma karşı üniversitenin yeni bilgi üretme işlevini yerin getirmekle sorumlu olan atanmış kişilerdir. Bilgi, profesyonel uzmanlarla, kendi uzmanlık alanlarının disiplini içerisinde kapasiteleri doğrultusunda akademisyenlerin çalışmaları sonucunda ortaya çıkar. Gerçek bilgiyi üretebilmek için, akademisyenlerin sınırsız bir üretim, araştırma ve sonuçlarını yayınlama özgürlüğüne sahip olması gerekir. Üniversitelerin*

*misyonlarını yerine getirebilmeleri ve insan bilgisini geliştirmeleri için, akademisyenlerin düşünce ve ifade özgürlüğüne sahip olmaları gerekir.*

*Akademik özgürlük, bilim adamlarının mesleklerini, mesleklerinin standartlarına göre icra edebilme özgürlüğüdür. Uzmanlık alanının standartları ortaçağ üniversitelerinin, akademinin saf değerlendirme için kalite kontrol mekanizması yürütmesi talebinin bir devamı niteliğindedir. Akademik özgürlük entelektüel özgürlükle aynı şeyi ifade etmez. Entelektüel özgürlük genellikle herkesçe yaşanır; öğrenciler, akademisyenler, çalışanlar ve belki de toplumun geneli. Akademik özgürlük akademisyenlerle sınırlıdır. Akademik özgürlük, bizim dört bağımsız ancak birbiriyle bağlantılı alanımızı korur. Birincisi, araştırma ve yayınlama özgürlüğü, ikincisi öğretme özgürlüğü, üçüncüsü kurum içi ifade özgürlüğü ve dördüncüsü de kurum dışındaki ifade özgürlüğüdür.*

*Birincisi, araştırma ve yayınlama özgürlüğü. Araştırma özgürlüğü, akademisyenlere kabul edilmiş profesyonel normlar çerçevesinde araştırmalarının konusunu bireysel olarak belirleme ve kullanacakları araştırma metodunu seçme olanağı tanır. Araştırma özgürlüğü, araştırma yayınlanmadığı sürece üniversitenin misyonunu ileriye taşıyamaz. Yayın, araştırmayı kamusal alana taşıyarak toplum için yeni bilgi üretilmesini sağlayan sürekli tartışmalara yol açar.*

*Araştırma ve yayın özgürlüğü, akademisyenlerin uzmanlık alanı olan konularda kendilerini ifade edebilmelerini sağlar. Araştırma ve yayın özgürlüğü kapsamında geleneksel dergi ve kitaplarda yapılan yayınlar da yer alır. Aynı zamanda elektronik dergiler ve diğer çevrimiçi kaynaklar gibi yeni medya kaynaklarında yapılan yayınlar ile birlikte, konferans ve toplantılarda yapılan sunumları, hukuk mercilerinde tanıklık etme, taslak veya beklemedeki kanunlar ve düzenlemeler üzerine yapılan yorumları da kapsar. Araştırma ve yayın özgürlüğü, akademisyenin uzmanlık alanında olması halinde, medyaya yapılan yorumları da içerir. Örnek olarak, bir televizyon kanalının, bir uzmanı arayarak, mahkemedeki güncel bir dosya üzerine veya Yüksek Mahkemenin yakın tarihli bir kararı üzerine yorumunu istemesi verilebilir.*

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*İkincisi öğretim özgürlüğü. Öğretim özgürlüğü, akademisyenlerin sınıftaki özgürlüğü ile üniversitenin, akademisyenlere müfredatın gerektiği şekilde tasarlanıp uygulanması konusunda tanıdığı özgürlük arasında dengelenen bir haktır. Müfredatın gerektirdiklerini tasarlanması fakültenin komite sistemi tarafından gerçekleştirilir. Müfredatın uygulanması da ön değerlendirme süreci ile gerçekleştirilir. Bu fakülte istemi ile, üniversite, akademisyenlerden kendilerine atanan derslerin müfredatla ilgili gerekliliklerini yerine getirmelerini isteyebilir. Ancak, akademisyenler, bu müfredat gerekliliklerini yerine getirebilmek için hangi pedagojik yöntemleri kullanmak istediklerini kendileri seçerler. Daha fazla öğretim özgürlüğü, araştırma ve yayınlama özgürlüğünü daha ileri taşır. Akademisyenler araştırma sonuçlarını yayınlama konusunda ne kadar özgürse, bu araştırma sonuçlarını öğrencileriyle paylaşmakta da o kadar özgürdür.*

*Öğretim özgürlüğü bir profesyonel uzmanlık alanıdır. Akademisyenler hem bilimsel disiplinlerinde hem de pedagojik tekniklerinde uzman kabul edilirler. Üniversite eğitiminin amaçlarından biri öğrencileri kendileri için düşünmek ve zekice düşünmek yönünde değiştirmek olduğundan, öğretim özgürlüğü, öğrencilere sınıfta bağımsız düşünceyi modelleyen akademisyeni özümseme olanağı tanır. Öğretim özgürlüğü araştırma ve yayınlama özgürlüğü tarafından desteklenir. Öğretim özgürlüğü, fakülte yöneticileri tarafından, ön değerlendirme ve müfredat gerekliliklerinin belirlenmesi konusunda kısıtlanabilir. Fakülte yönetimi de fakülte içerisinde ifade özgürlüğü ile korunmaktadır.*

*Kurum içi ifade nedir?*

**F. Tom READ** - Kathy, at this point before we do intramural speech, we have the technological problem of hooking up the folks at in Minnesota. You have arrived at five minutes, too and that is the time to take the ten minutes break so we can set up the technology for the Skype, in here. So this is so important, we want you to emphasize where we break. We break right in intramural speech, review it. We are going to come back and handle it with the questions. This is very important. We just have this technology and it is going to be set up.

*Kathy, bu noktada, kurum içi ifade konusuna gelmeden, Minnesota'daki arkadaşlarımıza bağlanmak konusunda bir teknolojik sorunuz var. Sen henüz beşinci dakikandasın ve şu anda on dakika ara verme zamanı. Bu sürede Skype için teknik aksamı düzenleyeceğiz. Şu çok önemli, nerede kaldığımızı hatırlamanızı istiyorum. Kurum içi ifade de kaldık, düşünün. Geri döndüğümüzde sorularla bunu ele alacağız. Çok önemli. Şimdi bu teknolojiye ilgileneceğiz ve onu kuracağız.*

**Prof. Dr. Kathleen BURCH (Atlanta John Marshall Üniversitesi Hukuk Fakültesi, Georgia, ABD)-** Tom are we going to do the next panel on between or just setting up the technology?

*Tom, bir sonraki panele geçiyor muyuz, yoksa sadece teknik kurulumu mu yapıyoruz?*

**F. Tom READ -** We are just going to do everything on the program and unfortunately we are interrupting you right now but you will begin right after we finish the technology you will begin, OK? So I think, what do you think about the whole panel right now before you come back. OK we will do that whole panel, the Skype thing is going to be on and then we will bring in Kathy back, that sounds good. Thank you.

*Programdaki her şeyi yapacağız ve ne yazık ki, seni bölmek durumunda kaldık ama teknolojik sunumu bitirir bitirmez tekrar başlayacaksınız. Tamam mı? Bence buraya geri gelmeden önce panel hakkında ne düşündüğünüzü bir gözden geçirin. Tamam mı? Bütün panel gerçekleştireceğiz, bu Skype çalışacak ve sonra Kathy tekrar kürsüye çıkacak, kulağa iyi geliyor. Teşekkür ederim.*

**Av. Güneş GÜRSELER (Oturum Başkanı)-** Şimdi bağlantıyı sağlayabilecek arkadaşlar gelecek, ondan sonra Sayın Burch devam edecek.

**Mehmet KONAR (William Mitchell College of Law) -** Teşekkür ederiz hocam. Adım Mehmet Konar Steinberg. Ben Amerika'da doğdum ama annem ve babam Türk. Onun için

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biraz Türkçe biliyorum, ama çok az. Onun için, affedersiniz ben İngilizce kullanacağım olur mu? Haydi.

I am very happy to be with you today. I am professor of law at William Mitchell College of Law. I teach in the area of constitutional law. And I am also serving as the Vice Dean of the College with my colleague Eric Genas. You may heard the name Eric Genas before. I believe he is a good friend of Professor Yenisey. Eric Genas apologizes. He is unable to be with you today. He has another meeting and obligation he must attend to. But I am very happy to talk to you about Willisam Mitchell College of Law and to talk to you a little bit about our new, what we are calling Hybrid Program.

So let me tell you a little bit first about the college. William Mitchell is 114 years old, is the oldest private law school in the state of Minnesota. The law school has a very proud tradition of graduating lawyers who have gone on to serve in very important positions, one of whom you may heard of is Chief Justice Warren Burger who served as the Chief Justice of the United States Supreme Court. He is one of our graduates.

One of the things that William Mitchell is most known for is providing two things. First of all, training in legal skills. So more than simply providing training in legal doctrine but also providing excellent training in legal skills speaking with clients, making arguments to courts and so forth. The other thing that William Mitchell is very well known for providing access to the legal education. And by that I mean broadening the number of people who are able to obtain a legal education. And in this connection I want to talk to you about our new Hybrid Program.

Our Hybrid Program will use Internet technology similar to what we are using today but in the more advanced state. You will use this technology to make it possible to study the law and earn a United States law degree a juris doctor or JD or LLM degree, either of those degrees by spending most of your



time using the Internet. Students will spend about most of the semester, we will say, using the computer to interact with their professors and to interact with their other fellow students. At the end of the semester students will come to our campus and there will be special lectures. Also, more importantly, there will be an opportunity to participate in simulations. And by simulations and referring to situations where we ask students to pretend to interview a client or to pretend to make an argument to a judge. And, these are important parts of the education that we use in William Mitchell, this is very experiential component.

So again students spend, let me back up. In each semester we spend up 14 weeks together. In the first semester students would spend about 12 weeks studying in the online computer environment and would come to the William Mitchell campus for about one week of very intensive face-to-face interactive work. And this pattern repeats over the course of the entire law school experience so that by the end of 8 semesters or 4 years a student has earned a juris doctor. If a student is earning a LLM degree it is a much shorter program obviously then that. Also there is a possibility that for all students who have earned a law degree for example in Turkey, it may be possible to accelerate the programs so that a person would be able to earn a JD degree in less than 4 years.

The value of the JD degree is the person can sit for the bar exam then almost any state in the United States. In some cases it is also possible to use a LLM for that purpose but that is a much more restricted option. So, this is what I want to explain to the participants in the conference of this new program.

Just a little bit more background. This is the first program of its kind that has been approved by the American Bar Association. American Bar Association is responsible for accrediting law schools in the United States. And this is the first ABA approved Program of its kind combining online education with the traditional methods. And we are very proud of having

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earned that first approval. We are sure others will follow in of course but that is OK, that is the way education works. And, we are very proud to be leading the way. So with that I would be glad to answer if there are any questions from the audience or from Feridun Hocam or anyone else. I will tell you at this moment, I cannot hear anything but hopefully we can fix the technology and be able to do that. So any questions I will be happy to answer at this time.

*Bugün sizlerle olmaktan çok mutluyum. Ben William Mitchell Hukuk Fakültesinde hukuk profesörüüyüm. Anayasa hukuku dersi veriyorum. Aynı zamanda, meslektaşım Eric Genas ile birlikte Fakültenin Dekan yardımcısıyım. Eric Genas ismini daha önce duymuş olabilirsiniz. Sanırım kendisi, Profesör Yenisey'in iyi arkadaşı. Eric Genas sizden özür diliyor. Bugün sizlerle olamadı. Katılması zorunlu olan bir başka toplantı çıktı. Ama sizinle William Mitchel Hukuk Fakültesi ve biraz da Hibrit program adını verdiğimiz yeni programımız hakkında konuşmaktan memnuniyet duyacağım.*

*Size biraz fakülteden bahsedeyim. William Mitchell 114 yaşında. Minnesota eyaletinin en eski özel hukuk fakültesi. Hukuk fakültesinin çok önemli görevlere gelen mezunlar vermek gibi bir geleneği var. Bunlardan birinin adını duymuş olabilirsiniz: Başyargıç Waren Burger. Amerika Birleşik Devletleri Yüksek Mahkemesinin Başyargıçlığını yaptı. Kendisi bizim mezunlarımızdan biridir.*

*William Mitchel iki önemli şeyi sağlamasıyla bilinir. Birincisi hukuk becerileri eğitimi. Yani basitçe hukuk doktrini eğitimi vermekten öte, müvekkillerle konuşmak, mahkemelere argüman hazırlamak gibi hukuki beceriler konusunda da mükemmel bir eğitim verir. William Mitchel'in tanındığı bir diğer husus ise hukuk eğitimine erişim olanağı tanınmasıdır. Bununla, hukuk eğitimi alan insan sayısının artırılmasından bahsediyorum. Ve bu bağlamda size yeni Hibrit programımız hakkında bilgi vermek istiyorum.*

*Hibrit programımızda, bugün kullandığımıza benzer ancak daha ileri düzeyde bir Internet teknolojisi kullanılıyor. Bu teknolojiyi hukuk eğitimi almak, yani, JD veya LLM diplomaları elde etmek ve bu iki diplomalardan herhangi birisini zamanımızın çoğunu Internet*

üzerinde geçirerek Amerika Birleşik Devletlerinde hukuk diploması sahibi olmaya olanak tanımak için kullanıyorsunuz. Öğrenciler, sömestrlerinin çoğunu, bilgisayar kullanıp, profesörleri ve diğer öğrencilerle etkileşim içerisinde geçiriyorlar. Sömestr sonunda, öğrenciler kampüsümüze gelerek özel derslere katılıyorlar. Daha da önemlisi, simülasyonlara katılma şansları oluyor. Simülasyonlar aracılığıyla, vakalara atıfta bulunuyor ve öğrencilerden bir müvekkil görüşmesi yapmalarını veya bir yargıca argüman sunuyormuş gibi yapmalarını istiyoruz. Bunlar, William Mitchell'da uyguladığımız eğitimin önemli parçaları; bu oldukça deneysel bir bileşen.

Ve yine, öğrenciler zamanlarını şöyle geçiriyorlar. Her sömestrde, 14 haftayı birlikte geçiriyoruz. Birinci sömestrde, öğrenciler 12 hafta çevrimiçi bilgisayar ortamında çalışıyor ve bir hafta da William Mitchell kampüsüne gelerek yüz yüze yoğun bir interaktif çalışma gerçekleştiriyorlar. Bu örüntü bütün hukuk eğitimi boyunca devam ediyor. 8 sömestr sonunda 4 yıllık bir öğrenci hukuk diploması alıyor. Eğer öğrenci LLM diploması alıyorsa, tabi ki bundan daha kısa bir program oluyor. Ayrıca, Türkiye'de hukuk diploması almış bütün öğrencilerin de programlarını hızlandırma seçenekleri var. Bu şekilde bir öğrenci 4 yıldan daha az bir üsrede JD diploması alabiliyor.

JD diploması ile kişi Amerika Birleşik Devletlerindeki her eyaletin baro sınavına girebiliyor. Bazı hallerde, bu amaçla bir LLM de kullanılabilir, ancak bu daha çok sınırlı bir seçenek. Benim bu konferansta bu yeni program ile ilgili açıklamak istediklerim bunlar.

Biraz daha bilgi vermek gerekirse, bu Amerikan Barolar Birliği tarafından onaylanmış bu türdeki ilk program. Amerika Birleşik devletlerinde, hukuk fakültelerinin akreditasyonundan Amerikan Barolar Birliği sorumlu. Ve bu da, çevrimiçi eğitimi geleneksel yöntemlerle birleştiren bir program olarak Amerikan Barolar Birliği tarafından onaylanmış ilk program. Bu ilk onayı almış olmaktan guru duyuyoruz. başkalarının da bizim yolumuzu izleyeceğinden eminiz, ancak bunda bir sakınca yok, eğitim bu şekilde işliyor. Biz yolu açmış olmaktan gurur duyuyoruz. şimdi, katılımcıların veya Feridun Hocamın soruları varsa yanıtlamaktan memnuniyet duyuyorum. Şu anda herhangi bir şey duyamıyorum ama umarım teknolojik altyapıyı halledip bunu yapmayı başarabiliriz. Sorunuz varsa, bunları yanıtlamak isterim.

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**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)-** Evet, değerli konuşmacımıza, Mehmet Konar Beye çok teşekkür ediyoruz, güzel bir sunum yaptı, bizleri bilgilendirdi. Sorularınız varsa kendisine sormak istediğiniz. Zafer Beyin bir sorusu var.

**KATILIMCI-** Evet, bugünkü toplantıdaki tüm sunum yapanlara çok teşekkür ediyorum öncelikle, böyle bir organizasyonu bize sağladıkları için de aynı zamanda düzenleyicilere.

Sorum şöyle; teknik bir soru aslında, esasa ilişkin değil, merakımdan soruyorum. Online hukuk eğitimi veriyorsunuz, aynı zamanda örgün olarak da hukuk eğitimi veriyorsunuz. Bu iki farklı eğitim sisteminde öğrencilerin derse devam zorunluluğu var mı? Devam etmemeleri halinde dersleri geçip geçmemeye ilgili bir yaptırım uyguluyor musunuz? Umarım anlaşılmıştır sorum.

**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)-** Duyabildiniz mi Sayın Konar?

**Mehmet KONAR (William Mitchell College of Law) -** Thank you for your question. I apologize I only heard parts of the question but as I understood, the question is about the form of the program as opposed to the specific content of the program. We hope that the program will be flexible so that it will work well for students, who are located different places around the United States but also different places around the world. That is one of our objectives. Pardon me. So with that in mind we expect to be able to offer our online programs in a way that allow students to do most of that work at a time that is suitable to them. And this is one of the major differences between this kind of program and a more traditional program is that much of the learning can occur by means of the computer at the time that the student is ready to learn. So for example, certainly there will be lectures and discussions of the kind we are having now in real time, we will have that component as well. But we would accept to offer lecture more than once so that students can pick the time that works for them. Similarly in some of the content, we will use video technology for

example. So that if a professor wants to provide a lecture to his or her students, it can be provided by video that the student can then watch when he or she is ready to watch the video rather than having to come to class at a specific time, the student will be able to access the materials at a time that works for that student.

Finally, with respect to the portion of the program that is on our William Mitchell campus, it is very important that the students be able to attend during that one week here on the campus and we hope that by reducing, suggest, one week the time that the students are required to be on campus and this will make it more accessible, more flexible for more students. Of course there will be students who become ill, who have travel disruptions and so forth. And those kinds of students would of course try to accommodate as best we can just that happens in the other kind of educational environment. I hope that answers to the gentleman's question.

*Sorunuz için teşekkür ederim. Sorunuzun sadece belirli bölümlerini duyduğum için özür diliyorum, ama anladığım kadarıyla, soru programın özel kapsamına karşın biçimiyle ilgili. Programın esnek olmasını ümit ediyoruz ki Amerika Birleşik Devletlerinde ve dünyanın herhangi bir ülkesindeki öğrencilerin hepsi tarafından başarıyla yürütülebilir. Bu amaçlarımızdan birisi. Pardon. Şimdi diğer yandan, çevrimiçi programlarımızı öğrenciler için kendilerine uygun olan çalışmalarını yürütecekleri şekilde vermeyi ümit ediyoruz. Bu da, bu tür bir program ile geleneksel bir program arasındaki farkı oluşturuyor. Öğrenmenin çoğu bilgisayar aracılığıyla öğrencinin öğrenmeye hazır olduğu zamanlarda gerçekleştiriliyor. Örneğin, şimdi yaptığımız gibi gerçek zamanlı pek çok ders veya tartışma olabilecek ve bu bileşeni de dahil edebileceğiz. Ancak, dersi birden fazla kez vermeyi planlıyoruz ki öğrenciler kendilerine en uygun zamanı seçebilsinler. Benzer şekilde, içeriğin bazı bölümleri için video teknolojilerinden faydalanacağız. Şöyle ki, bir profesör öğrencilerine ders vermek isterse, bunu video aracılığı ile yapabilecek ve öğrenci daha sonra, sınıfa gelmek yerine, izlemeye hazır olduğunda, kendisine uygun saatte ders materyallerine erişebilecek.*

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*Son olarak, programımızın William Mitchell kampüsünde gerçekleşen kısmında, öğrencilerin bir hafta süreyle katılımı ve kampüste olmaları çok önemli. Öğrencilerin kampüste geçirmeleri gereken süreyi bir haftaya indirgeyerek bunun daha erişilebilir, esnek ve daha fazla öğrenciye hitap edebilen bir program olmasını sağladığımızı umuyoruz. Tabi ki rahatsızlanan, seyahat engeli olan öğrenciler olacaktır. Bu tür öğrenciler için de diğer eğitim ortamlarında olduğu gibi, elimizden geldiğince ihtiyaçlarına cevap vermeye çalışacağız. Umarım bu beyefendinin sorusuna cevap teşkil etmiştir.*

**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)**- Sanıyorum anlaşıldı cevap değil mi? Gayet açıklayıcı bir cevap oldu teşekkür ediyoruz sayın sunucumuza. Başka bir soru var mıdır acaba? Buyurun.

**KATILIMCI-** Aslında yapılmak istenen internetten uzaktan eğitim almak aslında önemli bir şey ve zor bir şey olduğunu düşünüyorum. Ancak bildiğim kadarıyla Hocam da eğer bir sürçülisan edersek bizi affetsin, ama bildiğimiz kadarıyla Amerikan sisteminde jüri sistemi var. Jüri sisteminin olduğu bir sistem içerisinde uzaktan eğitim alınarak avukatlık mesleği ne kadar yeterli düzeyde yerine getirilir diye aklımda bir şey oldu.

Teşekkür ederim. Yani bir soru işareti oldu. Hocam cevaplarsa memnun olurum. Teşekkürler.

**Mehmet KONAR (William Mitchell College of Law)** - Thank you, that is excellent, something we are thinking all the time. First of all, at least in the United States technology such as hybrid technology we are using now is becoming more common even in the courts that judges, jurists, may hear from lawyers by means of technology. We feel it is important that our students be able to have a full command of a technology and be able to use it to its maximum. But that is not everywhere, that is certainly a minority of the situation. In the majority of the situations, you are correct, students are still rather lawyers, still have to be able to interact with human beings face to face, be able to shake their hand, speak to them

in the same room and so forth. And that is why we believe it is very important that the program should not be completely online. That is why we have divided the program between the online portion and a very intensive program, which happens on the William Mitchell campus. During that one week that the students are on the campus, they are working with our professors in a very hands on way to learn how to speak, as we discussed before, how the speak to clients, how to speak the jurors, how to interact with judges and other professionals, other lawyers for that matter. And it is a very intensive time on our campus. We have, the plan is for the students to be busy for about 56 hours during that week. So, very full days when they are on our campus filled with person-to-person human interaction. And we hope that, adding this piece along with the online education produces something greater that cannot be achieved with traditional education. That is our hope. I hope I have answered the gentleman's question.

*Teşekkür ederim, bu mükemmel bir soru. Her zaman üzerinde düşündüğümüz bir şey. Öncelikle, en azından Amerika Birleşik Devletlerinde, şimdi kullandığımız Hibrit teknoloji gibi teknolojiler hali hazırda mahkemelerde de, yargıç ve jüri üyelerinin teknoloji yoluyla avukatları dinlemeleri şeklinde yaygınlaşıyor. Öğrencilerimizin de bu teknolojinin kullanımına hakim olmaları ve en üst seviyede kullanabilmeleri gerektiğine inanıyoruz. Ancak bu her yerde almayor ve bu durum azınlıkta. Çoğu halde, haklısınız, öğrenciler avukat olacaklar, insanlarla etkileşim içerisinde olabilmeli, el sıkışabilmeli, aynı odada konuşabilmeliler. Bizim programın tamamının çevrimiçi olmaması gerektiğine inanmamızın nedeni de bu. Bu nedenle bu programı çevrimiçi bölüm ve William Mitchell kampüsünde yoğun program şeklinde tasarladık. Bu bir hafta içerisinde, öğrenciler kampüste bulunuyor, profesörlerle uygulamalı çalışmalar yaparak, daha önce de konuştuğumuz gibi, nasıl konuşmaları gerektiğini, müvekkilleriyle nasıl konuşmaları gerektiğini, jüri üyeleriyle nasıl konuşmaları gerektiğini, yargıçlarla, diğer profesyonellerle ve diğer avukatlarla nasıl etkileşime geçmeleri gerektiğini öğreniyorlar. Bu, kampüste geçen oldukça yoğun bir program. Öğrencilerin o hafta boyunca toplam 56 saat kampüste çalışmalarını sağlamayı planlıyoruz. Yani, kampüsü-*

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*müzde birebir insan etkileşimi içeren dolu dolu günler geçiriyorlar. Umuyoruz ki, bu parçayı da çevrimiçi eğitime ekleyerek, geleneksel eğitimle elde edilemeyecek şeyler etmeyi umuyoruz. Umudumuz bu yönde. Umarım beyefendinin bütün sorularını yanıtlayabilmişimdir.*

**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)-** Sanıyorum anlaşıldı cevap, teşekkür ediyoruz. Evet, bir soru daha.

**Prof. Dr. Feridun YENİSEY (Bahçeşehir Üniversitesi Hukuk Fakültesi)-** Mehmet benim bir sorum var size.

**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)-** Tercümandan bir rica var, Türkçe sorabilir miyiz diyor, çünkü tercüme yapacaktım.

**Prof. Dr. Feridun YENİSEY (Bahçeşehir Üniversitesi Hukuk Fakültesi)-** Evet, Türkçe soracağım. Şimdi bu size takdim edilen program 4-5 sene evveline dayanan bir girişimdir. John Solsteng, Eric Canus ve Mehmet Konar Streenberg, Bahçeşehir Üniversitesine geldiler uzun süreler ve bu programı yapmaya çalıştık.

Yapmak istediğimiz şey şuydu: Eğitimin bir kısmı Türkiye’de, bir kısmı Amerika’da olursa, öğrenciler için masrafı azaltan bir eğitim oluyor; fakat konu itibariyle içeriği Amerikan hukuku. Yani buradan en sonda bir Juris Doctor hukuk doktoru, Amerikan hukukuna göre hukuk doktoru unvanını alacak olan kişiler veya LLM şeyi alacak. LLM aldığı vakit de Amerika’da baro imtihanlarına girebiliyor.

Şimdi, bunun bir de ters şeyini düşünün, öbür türlüünü düşünün. Öbürü de şu: Türkiye’ye bir profesör getirip, Amerikan profesörü getirip, Amerikan hukukunu Amerikalı profesörden dinlemek ve online olarak da diğer eğitimleri yine vermek ve biz bunu şimdi Atlanta John Marshall Law School ile düşünüyoruz, diğer üniversitelerle düşünüyoruz. Yani birkaç model var bu arada. Ya hocaların çoğunu buraya getirmek burada ders verdirmek ve Amerika’da da geçirmesi gereken belli zamanlar var öğrencinin standartlara göre. Onu orada tamamlatmasını sağlamak ve bütün amaç dünya hukukçusu



yaratmak, bütün dünyada avukatlık yapabilecek yeteneklere sahip insanlar yetiştirmek. İşte bu modellerden bir tanesi Mehmet beyin modeli ve Amerikan Barolar Birliğinden de bunun onayını aldılar.

Tebrik ediyorum ve umuyorum ki beraber çalışacağız. Çok teşekkürler Mehmet.

**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)-** Evet, Hocamıza teşekkür ediyoruz. Başka bir soru daha var galiba.

**KATILIMCI-** Bizi pek ilgilendirmiyor, ama merakımdan soruyorum. Peki, lisans programını tamamlamak için bir sınav veya ölçme ve değerlendirme yok mudur? Yani dünyanın her tarafından öğrencisi veya bir katılımcı oluyor sanıyorum üniversiteye. Peki, bunların mezuniyeti nasıl sağlanıyor? Lisansı nasıl veriyorlar, sınavları nasıl oluyor? Bunları çok merak ettim.

**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)-** Evet, Sayın Konar herhalde her iki soruya aynı anda cevap verecektir.

**Mehmet KONAR (William Mitchell College of Law) -** So, as I understand the question refers to how do we ensure that students from different parts of the world go through their examinations in a fair way. And certainly that is one of the issues that we have to be careful about. The examination process includes that time when the students are on the campus with us. So we actually have them with face-to-face and can begin to assess their abilities: Have they learned the doctrine? Are they able to apply the doctrine in the skills? So some of the assessment happens when they are on the campus but also with modern educational technology with some of the very advanced educational platforms such as the kind of we will be using, it is possible to create online assessments as well. So there will be a combination of online assessments as well as assessments when the students are with us on the William Mitchell campus.

Let me also just very briefly thank Professor Yenisey for his kind comments and I am sure everyone on the audience are

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aware of Professor Yenisey's wisdom that he brings to legal education. He has been an important figure, important person for us to work with over the years. And I completely agree with him that the objective here on our side and I think the objective of the people in the room there in Ankara is to begin to think about how do we create world lawyers. That is a wonderful phrase that I heard Professor Yenisey use. And it is one that I claim to use as well. That is the direction that the law is going. Law across borders I think is the future and hopefully we can collaborate in the future to make that happen.

*Anladığım kadarıyla soru, dünyanın farklı yerlerindeki öğrencilere sınavların nasıl adil bir şekilde uygulanmasını sağlandığı üzerineydi. Ve kesinlikle bu bizim son derece dikkatli davranmamız gereken bir konu. Sınav süreci, öğrencilerin bizimle birlikte kampüste geçirdikleri süreyi kapsıyor. Dolayısıyla, yüz yüze gelebiliyor ve yeteneklerini ölçmeye başlayabiliyoruz: Doktrini öğrenmişler mi? Doktrini becerilere uygulayabiliyorlar mı? Değerlendirmenin bir kısmı öğrenciler kampüsteyken yine modern eğitim teknolojisi ile gerçekleştiriliyor. Bizim kullanacağımız gibi bazı gelişmiş eğitim platformlarıyla, çevrimiçi ölçme de yapmak mümkün. Yani, çevrimiçi ölçme ile öğrencilerin bizimle William Mitchell kampüsünde oldukları sürede yapılan ölçme kombine edilecek.*

*Profesör Yenisey'e de bu nazik yorumları için teşekkür etmek istiyorum. Eminim ki buradaki herkes Profesör Yenisey'in eğitime kattığı bilgeliğinin farkındadır. Kendisi çok önemli bir şahsiyet ve bizim yıllardır birlikte çalıştığımız önemli bir kişi. Ve kendisine tamamen katılıyorum. Bizim açımızdan bakıldığında ve Ankara'da bu salondakiler açısından da amaç dünya avukatlarını nasıl yetiştireceğimizi düşünmek olmalı. Profesör Yenisey'in kullandığını duyduğum bu ifade, bence harika bir tabir. Ben de bunu kullanmayı istiyorum. Hukukun gittiği yön de budur. Sınır ötesi hukuk, bence gelecek demek ve umarım gelecekte bunu gerçekleştirebilmek için işbirliği yaparız.*

**Prof. Dr. Arzu OĞUZ (Oturma Başkanı)-** Evet, bir soru daha alabiliriz.

**Duygu ÖZER SARITAŞ (Anadolu Üniversitesi Hukuk Fakültesi)-** Biz Anadolu Üniversitesi olarak yıllardır açık öğretim sistemi içerisinde yer alıyoruz ve birebir ders veriyoruz. Son birkaç yıl içinde ise, webinar üzerinden ders anlatıyoruz. Ders anlatanlardan biriyim. 45 dakikalık ders süreleri içerisinde, haftanın belli günlerine online bağlantı yaparak, öğrencilere ders anlatıyorum. Temel hukuk, borçlar hukuku olmak üzere iki ders anlattım şu ana kadar.

Aynı zamanda televizyon programları yaparak, öğrencilere bir açık sınıf kavramımız var. Bir de 20 dakikaya sığdırılmış modül derslerimiz var. Bir televizyon odasına giriyorsunuz ve kameraların karşısında önceden hazırladığınız metni konuşuyorsunuz. Orada hiç interaktif bir etkileşim yok, sadece televizyon programı. TRT Okul vasıtasıyla yayınlanıyor, ama webinar üzerinden oturum açılıyor. Bir moderatör yardımcım var, o bana oturumumu açıyor, kaydediyorum aynı zamanda oturum boyunca. Öğrenciler ekranın sağ tarafında yazışıyorlar ve konuşuyoruz.

Önceleri biraz tepkiliydim, çünkü sınıfta ders anlatmayı seviyorum, etkileşim halinde olmayı seviyorum, hareket halinde olmayı seviyorum, öğrenciye temas etmeyi seviyorum, yüz yüze görmeyi seviyorum, ama açık öğretimin sistemi, hani çok uzaktan eğitime ulaşma olanağı olmayan, çeşitli nedenlerle öğrenciye ulaşmak olduğu için, bu yolun mantıklı olabileceğini ya da iş hayatında olan insanların da eğitimlerini tamamlamak istemelerini anlayışla karşılamıştım.

Fakat hâlâ hukukla ilgili, biz daha önce üniversitede de bunu tartıştık. Hukuk eğitiminin uzaktan olmasıyla ilgili çok ciddi çekincelerim var. Bir yandan hukuk eğitimini iyileştirmeyi düşünüp, bir yandan da; hani diyoruz bir yandan uygulamaya yönelik hukukçular yetiştirelim, sadece akademik başarılı değil. Uygulamada çözüm üreten. Bunun için de bir formasyon kazandırmamız lazım.

Diyorsunuz ki, toplumun etkileşmesi lazım, insanın etkileşmesi lazım. Hani yoğun programlar da yaptığınızı söylüyorsunuz.

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nuz bir hafta içerisinde üniversitede. Belki hani uygulamaya yoğunluk vererek ya da o etkileşimi sağlayarak olabilir. Dünya hukukçusu da şu anlamda hukukçu olabilir dünya hukukçusu. Belki çok iyi bir teknik sorun çözen anlamında olabilir. Yani kendi ülkesi dışında diğer ülkelerin de hukukuna hâkim olup, problem çözebilen olabilir, ama acaba bizim hukuk eğitimiyle ulaşmak istediğimiz, o bahsettiğimiz ahlaki değerlere etik değerlere formasyona sahip hukukçular olabilir mi diye düşünüyorum.

Bir haftalık acaba yoğunlaştırılmış. . . Çünkü hocayı tanımak, çok önemli hocalardan ders almak, ondan bir stil kapmak, üslup kapmak da çok önemli. Tabii ki çağa uydurmak gerektiğini düşünüyorum, ama dediğim gibi bir yandan da formasyon almış hukukçular yetiştirmek, işte demokratik sürece hukuk devletine katkıda bulunan öğrenciler yetiştirmek yerine, daha çok acaba teknisyen hukukçular mı yetiştiririz diye de düşünüyorum.

Biz de bu konuyu tartıştığımız için önem veriyorum. Yani üniversite olarak acaba hukuk eğitimi de uzaktan olabilir mi diye düşündüğümüz için. Bu kadar, kısa bir korsan bildiri gibi oldu, kusura bakmayın. Sanırım sesli düşünmek istedim, sizin ne düşündüğünüzü de öğrenmek istedim.

Teşekkür ederim.

**Prof. Dr. Arzu OĞUZ (Oturma Başkanı)-** Doğrusu aynı yorumu ben de yapmıştım Hocama.

**Mehmet KONAR (William Mitchell College of Law) -** I think it is an excellent question professor and it is something that all legal professions should be deeply be concerned about. When we think about legal education we think about three aspects. We think about the core knowledge that all students need to know to be lawyers in other words understanding the doctrine. We think about the core skills are they able to interact with other lawyers, interact with judges, interact with juries and so forth. But the third element is very important and that is the core values. How do we ensure that the students that we

are graduating not only have the doctrine and the skills but also the values to be as you say, ethical lawyers, lawyers who are full of integrity and this is a very important consideration. And your question I think is whether or not it is feasible or whether it is possible to provide those values to students to assess whether they have those values, on a predominantly online environment.

One of the advantages of our program is that it will be the online portion, I should say. It is that it will be very interactive. So although there will be, as I described before, those moments when students are watching video, similar to the videos that you described in your program, and there will be moments that are similar to the webinars that it sounds like you already using as well, I commend you for your innovation in that area, students who will also be interacting with each other in small groups online, there will be interacting with their professors on a regular basis online. And then of course as I described a few times, they will come to the campus and your question was about whether one week is enough to assess that whether the student is obtaining the values necessary to be a thoughtful and honest lawyer.

Remember that it is not just one week. It is one week over 8 semesters and so the students come again and again and again and again. And I think that over the course of 4 years we will be in a position to assess whether these students are deriving from our program the kinds of values they need to be ethical lawyers. There is a very important and very vital question and it is one that we should all be thinking about, in my opinion, whether we teach in a traditional setting or whether we teach in a setting that uses technology it is always going to be very important question to make sure that we are providing that ethical background. And I think that as long as thinking about it, as long as we do not lose track of the very important question that the professor has posed. Then I think we will continue to serve our students well. I hope that answers the professor's question.

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Bence bu mükemmel bir soru profesör ve bütün hukuk alanlarında derinlemesine değerlendirilmesi gereken bir husus. Hukuk eğitimi dediğimizde, aklımıza üç boyut geliyor. Bütün öğrencilerin avukat olabilmek için bilmeleri gereken temel bilgiler, diğer bir deyişle, doktrinin anlaşılması aklımıza geliyor. Temel beceriler aklımıza geliyor; diğer avukatlarla, yargıçlarla, jüri üyeleriyle ve diğerleriyle etkileşime geçebiliyorlar mı? Ancak, üçüncü boyut, çok önemli. Temel değerler. Mezun ettiğimiz öğrencilerin yalnızca gerekli doktrin ve becerileri değil aynı zamanda değerleri de kazanıp kazanmadıkları, sizin deyişinizle etik avukatlar, yani tamamıyla dürüst olup olmadıklarından nasıl emin oluruz? Bu oldukça önemli bir konu. Ve sorunuz sanıyorum ki, daha çok çevrimiçi olan bir ortamda öğrencilere bu değerleri kazandırmanın ve bu değerleri kazanıp kazanmadıklarını ölçmenin uygulanabilir veya mümkün olup olmaması üzerineydi.

Bizim programımızın avantajlarından birisi de çevrimiçi bölümünün olması diyebilirim. Yani interaktif olacak olmamız. Daha önce de belirttiğim gibi, öğrencilerin video izleyecekleri, sizin programınızla ilgili anlattıklarınıza benzer videolar olacağı, sizin de halihazırda kullandığımızı ifade ettiğiniz internet tabanlı seminerlerin kullanılacağı gibi, ki bu alandaki yenilikleriniz için sizi tebrik ediyorum, öğrencilerin birbirleriyle küçük gruplar halinde çevrimiçi etkileşimi sağlayacakları, profesörleriyle düzenli olarak çevrimiçi görüşmeler yapabilecekleri ortamlar da olacak. Ve tabi ki, bir kaç kez ifade ettiğim gibi, kampüse gelecekler. Sorunuz da bir haftanın öğrencilerin düşünceli ve dürüst bir avukat olup olmayacağını ölçmek için yeterli bir süre olup olmadığı üzerine.

Hatırlatmak isterim ki, bu sadece bir hafta değil. 8 sömestrede bir hafta. Yeni öğrenciler tekrar tekrar geliyorlar. Bence, 4 yılın sonunda bu öğrencilerin bizim programımızdan etik avukatlar olabilmeleri için gerekli değerleri edinip edinmediklerin ölçülebilir durumda olacağı. Çok önemli ve hayati bir soru var ve bunun üzerine hepimiz düşünmeliyiz kanımca. Geleneksel bir ortamda mı yoksa teknoloji kullanılan bir ortam da mı öğretim yapmalıyız sorusu, gerekli etik altyapıyı sağlamamızı teminat altına alabilmek için oldukça önemli bir sorudur. Ve bence, bunu düşünürken, diğer yandan da profesörün sorduğu çok önemli soruyu da unutmamalıyız. Sonrasında

*öğrencilerimize en iyi hizmeti sunmaya devam ederiz. Umarım bu profesörün sorusuna yanıt teşkil etmiştir.*

**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)-** Herhalde başka bir soru yok, olsa bile artık diğer konuğumuza geçelim diye düşünüyorum. Aramızda Georgia'dan bir konuğumuz var. Atlanta John Marshall Üniversitesi Hukuk Fakültesinden Profesör Jeffrey Van Detta. Eminim o da sizlere çok hoşlanacağınız bir sunum yapacak. Buyurun söz sizin.





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*Yedinci Oturum*



**Prof. Dr. Jeffrey Van DETTA (Atlanta John Marshall Üniversitesi Hukuk Fakültesi, Georgia, ABD)-** Thank you very much Madam chairperson and I want to thank all of you who have attended today and come to this group to talk and exchange ideas about legal education and our respective countries in the world. It is my great pleasure to continue the dialogue here today about online, the role of online legal education in the world of legal education. And I have a fair amount of experiences. I have been teaching online courses for at least 14 years. I probably have talked more online law courses than any other law school professors from the United States likely to meet. I have watched technology evolve, I have watched the teaching pedagogy that goes along with delivery of the courses online evolve considerably. And the trepidations that I have witnessed in this room, trepidations that I have had witnessed in the United States as well. I heard a good deal of them a number of years ago.

Now I am going to, let me see here, I am going to move through something that I normally would have stopped over but I am going to advance to a doubter of online legal education. And that is US Supreme Court Justice Ginsburg, who in 1998 proclaimed a sort of bewilderment at the idea of educating lawyers online. That seemed to her that, you know you could use videos and you could have them, you know post them assignments online but she was unpersuaded that you actually could conduct the entire program of legal education online. Well, I am here to tell you that you can do this, it can be successful. You can ensure that your students are both competent and ethical.

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The only difference between the physical classroom and the virtual classroom is a difference of technique. But when it is done correctly it can accomplish not only as much as it can be accomplished in physical classroom but, as one who has taught for 15 years in the physical classroom and 14 years in the online classroom, I can tell you that there are advantages to the online classroom that you do not have in the physical classroom. And I will describe some of these in a moment. What I wanted to say, leading into this is that, after Justice Kinsburg made that preannouncement in 1998, there was a law school in the United States still there it is called Concord Law School and it was the first online law school the one that she was expressing doubt and particular about. Well, in 9 years later this group of Concord Law School graduates went to the United States Supreme Court to be sworn into practice before Justice Kinsburg. So the Wheel has come to a full circle online at legal education. And in doing so, the pedagogy in teaching approaches to online education have evolved a great deal.

Much of the online teaching I have done is extraordinarily interactive. And the professor and the student interact in real time in a classroom, it is a virtual classroom. And one of the wonderful thing you can do in online classroom is that you can have private conversations with students in your class while you are addressing and going back and forth with one student in front of all the other students in the sense of being virtually in front of them. You can have one main conversation and you can be having a private conversations with other students. About things that they do not understand or things that confuse them or whatever else they need to communicate. Or you can communicate with them if they have been unusually quiet during the class. It is an amazing way to actually reach out and get inside the heads of the people that you are teaching. That can go on and on all day about that technology, I can talk about it individually with you if you would like.

I would like to talk a little bit though about a role for online education that provides what I would like to think is a bridge between your bar here in Turkey, my bar in the United

States, in the 56 jurisdictions of the United States and the bars of countries throughout the world. And what I want to, in particular, mention to you is a program that is the result of the pragmatic practical international experience in business that are founder and former chairman of our board Doctor Michael Morton, who is with us here today raised with the faculty around 2008 and what he had been hearing from business people and lawyers and other countries is they would really like to have an opportunity to gather particularly online so that they could discuss aspects of American law, to talk about American law, to talk about what works in American law, what maybe does not work as well in American law. And we simply have a place for that conversation to occur. He charged us, the faculty with the responsibility of developing a program that provides a global form for American legal studies. And that is the program that this slide summarizes and describes. This is the product of about 3 or 4 years of work and we now have the program open running.

And it has some interesting advantages. I want to tell you what it does what it does not. Because I want to be quite clear. In the United States the LLM degrees that Ms. Lockwood from the Georgia Bar Examiners discussed with you, that qualify a foreign lawyer to take a bar exam are a very small number of LLM degrees. There are probably a couple of, I would say at least a 100 different types of LLM degrees available across the 200 law schools in the United States. But the kind of LLM degree that the Georgia Bar Examiners and the New York Bar Examiners and the California Bar Examiners are looking for to qualify a foreign educated lawyer to sit for the bar examination is one that is focused on preparing the lawyer to practice law in the US and that means getting into the legal system of the United States. Now I am going to go back here and you know I hardly need to tell you that you know we come from two different legal systems and when you come to the US to study law, you are coming to a country that started as a purely common law jurisdiction except for the parts that were Spanish and French holdings in Florida and Louisiana, where the civilian tradition obtained.

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The United States still builds itself as a common law jurisdiction although we depend more on statutory regulations and case law than ever before and many many areas of the law. So one of the things that is important is to find a program that will help if you are interested in bar admission in the US to help you bridge that gap between the two legal systems. And this program that I am explaining to you now, does not want to qualify you to take a bar examination. It is to help you to learn about American law and to make a decision an intelligent and well-informed decision about whether it is in your best interest and in your professional carrier's best interest to go to the US and either study in the JD Program as described by my colleagues from William Mitchell, or to study one year in an advanced LLM study of US law practice.

This gives you an opportunity in other words to sit in your office or your home and not disrupt your life and get a very good crossection of American law not just what the laws are but how the laws work. And for that I just want to take you on a brief tour of one of the courses that we offer in this American legal studies program. It is called American Constitutionalism. And what this course is designed to do is to take you through a variety of topics that really demonstrate how the American constitution system works. And it is fairly complex because we have state constitutions as well as the federal or the US constitution. And we have carefully selected topics from constitutional law.

Covering something as you see here in our week 4, 5 and 6, topics on this screen shot that is comes right from the course in our online platform. We cover some topics, most American law students do not get to look at their constitutional law course. We cover topics about for example the relationship between state constitutions and the federal constitution, which is too often not looked at carefully during American law students' education. And we also talk about the influence of technology on constitutional law; it is called the American Constitutionalism Movement. And it is a way for people United States together

and talk informally and what are called Informal Constitutional Convictions about changes they would like to see made in the constitution. It is very interesting and cutting edge kinds of conversations that the American Constitutionals have and if you were here for Prof. Jewels' program this morning about the Future and the Independent "Indy Lawyer", this kind of idea comes from that same area. When we have this program one of the most important pieces of it is our discussion forum where we have students, at their own pace, at their own time post responses to questions that require some thought and analysis of what they have been reading about for that unit. And you can see, here is the example of some of the postings, they are very extensive, they are very well thought out. The Professor gives extensive feedback in an outline grade book with the student.

And some other thing I want to mention to you about online education. You know, online education is creeping into the breaking model classroom as well. I communicate with my large group of students who are attending, these are JD students, attending law school. I probably do have of my communication with them online because that is what they want. They want to e-mail me at 2 o'clock in the morning and they expect me probably within a few hours to respond and I always do. We have other online platforms where we do certain kinds of things including taking examinations, getting feedback returned. So the economy that you may have in your mind between online education and classroom education is largely starting to disappear. So really what we have before as an array of educational technics that we can bring to bear on the common problems that we need to address in educating our lawyers for the 21<sup>st</sup> century.

But I just want to share with you at the end of my remarks here; this is an example of one of our students. She is a Supreme Court Justice in the Pacific Island Nation of Palau. She is obviously thousands of miles away from Atlanta. Her jurisdiction consists of both a pallet work and trial jurisdiction;

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she has the all trials. I think she recently tries first felony murder case they had in Palau in about four or five years; it is a big deal, and it took a lot of time. She could not pursue her interest in studying more about American law and keep her job in Palau without what we provided to her, which is the online American legal studies program. We are coming now to the end of the first class that we enrolled in the program that will be graduating very shortly here. And so our student here from Palau is both literally and figuratively crossing the finish line of our first program.

So this is our web portal where you can read more about the, I should say read more about the program that is the program that we qualify to take the bar exam should you decide to do that after perhaps studying in our online American legal studies program.

The basic message I want to leave with you is that we have bridges to continue to build with one and other. Even after this conference adjourns we will just go home and had pleasure in what we have discussed and had pleasure good fellowship we had together but now we have ways to stay much more closely in touch with each other and ways because of the digital world to allow us to develop legal education in exciting ways. I think this is not the time, particularly in the United States, to find fault with legal education because it is not everything that we want to be yet, to quote the great American writer Mark Twain, the reports of the death of the legal education in the US are greatly exaggerated. I think this is a time where legal education will be renewed and rejuvenated like a Phoenix. And I think it will be an amazing time to be a law teacher and an amazing time to be a law student.

For those of you who may have an interest in reading and more details of my thoughts and research in this area, you see on the screen a slide for an article that I published at the South Carolina University Law School's, International Law and Business Journal and if any of you would like to copy that article, I am happy to e-mail to you into dialogue with you



about the study and about this area whether you are a law faculty, you are member of the practicing bar or you are a law student here in Turkey. And I thank you very much for your attention and time.

*Çok teşekkür ederim sayın başkan. Bugün katılan, bu gruba gelip konuşan, dünyanın çeşitli ülkelerindeki hukuk eğitimi hakkında fikir alışverişi yapan herkese teşekkür etmek istiyorum. Bugün burada hukuk eğitimi dünyasında çevrimiçi eğitimin rolü üzerinde diyalogu devam ettiriyor olmaktan memnuniyet duyuyorum. Ve bu alanda oldukça fazla tecrübem var. En az 14 yıldır çevrimiçi dersler veriyorum. Herhalde Amerika Birleşik Devletlerindeki herhangi bir hukuk fakültesi profesöründen daha fazla çevrimiçi ders vermişimdir. Teknolojinin evrimini izledim. Derslerin çevrimiçi verilmesiyle birlikte evrim geçiren öğretim pedagojisini izledim. Ve bu salonda tanık olduğum korkular, aslında Amerika Birleşik Devletlerinde tanık olduklarımla benzer. Bir kaç yıl önce bende de çok vardı.*

*Şimdi bahsedeceğim konuda, aslında durmam gerekir, ancak size çevrimiçi hukuk eğitimine şüpheyle yaklaşan birisinden bahsetmek istiyorum. Bu da Amerika Birleşik Devletleri Yüksek Mahkemesi Yargıcı Ginsburg. Kendisi, 1998 yılında, avukatların çevrimiçi eğitim almaları fikrini dehşetle karşılamıştı. Vidoların kullanılabileceğini ve öğrencilere çevrimiçi ödevler verilebileceğini düşünüyordu; ancak, bir hukuk eğitimi programının bütünüyle çevrimiçi olarak yürütülmesi konusunda ikna olmamıştı. Ben burada, bunu yapabileceğinizi ve başarılı olabileceğini söylemek için bulunuyorum. Öğrencileriniz hem yetkin hem de etik olmalarını sağlayabilirsiniz.*

*Fiziki anlamda bir sınıfla sanal bir sınıf arasındaki tek fark, teknik farklılığıdır. Ancak, doğru yapıldığında yalnızca fiziki anlamda bir sınıfta yapılanların tamamını yapabilmekle kalmazsınız. 15 yıl bizzat sınıfta, 14 yıl da sanal sınıfta ders vermiş biri olarak söyleyebilirim ki, çevrimiçi sınıfta, fiziki anlamda sınıflarda sahip olduğunuzdan daha fazla avantaja sahipsinizdir. Birazdan bunların bazılarını açıklayacağım. Bu noktaya varmadan önce belirtmek istediğim şu ki, Yargıç Kinsburg 1998 yılında bu açıklamayı yaptıktan sonra, Amerika Birleşik Devletlerinde Concord Hukuk Fakültesi diye bir okul vardı, halen de var. Ve bu fakülte ilk çevrimiçi hukuk fakültesiydi; kendisi de bu*

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*fakülte hakkında şüphelerini dile getiriyordu. 9 yıl sonra, Concord Hukuk fakültesinin mezunları Amerika Birleşik Devletleri Yüksek Mahkemesine giderek Yargıç Ginsburg'ün huzurunda yemin edip mesleğe kabul edildiler. Yani hukuk eğitiminde tekerlek turunu tamamlamıştır. Ve bu şekilde, öğretim pedagojisinin çevrimiçi eğitime yaklaşımı da evrim geçirdi.*

*Benim çevrimiçi eğitimlerimin çoğu olağanüstü interaktif geçer. Profesör ve öğrenci bir sınıfta gerçek zamanlı olarak etkileşim içinde olurlar, sanal bir sınıfta. Ve çevrimiçi sınıfta yapabileceğiniz harika şeylerden biri de bir yandan sanal olarak sınıfın karşısındaymış gibi, tek bir öğrencinin karşısında durabilmeniz, tek bir öğrenciye hitap edebilmeniz ve sınıfınızdaki öğrencilerle özel görüşme yapabilemenizdir. Bir ana konuşmayı yaparken, bir yandan da diğer öğrencilerle özel konuşma yapabilirsiniz. Bu anlamadıkları, kafa karışıklığına neden olan veya iletişim kurmak istedikleri herhangi bir konuda konuşabilirsiniz. Veya sınıfta olağandışı bir şekilde çok sessizlerse, özelden görüşebilirsiniz. Öğrettiğiniz kişilere ulaşıp zihinlerinin içine girebilmek için harika bir yoldur. Teknolojiyle ilgili bütün gün konuşabiliriz, isterseniz bunu sizinle bireysel olarak da görüşebiliriz.*

*Biraz da çevrimiçi eğitimin Türkiye'deki baro, Amerika Birleşik Devletlerindeki benim üyesi olduğum baro, Amerika Birleşik Devletlerindeki 56 yargı mercii ve dünyadaki diğer ülkelerin baroları arasında, bir köprü olarak nitelendirebileceğim pozisyonu hakkında konuşmak istiyorum. Ve size özel olarak, bugün aramızda bulunan kurucumuz ve eski yönetim kurulu başkanımız olan Dr. Michael Morton'ın, bu alandaki pragmatik pratik uluslararası tecrübelerinin bir sonucu olarak 2008'de ortaya koyduğu bir fikirden oluşturulmuş bir programdan bahsediyorum. Kendisi, diğer ülkelerdeki işadamlarından ve avukatlardan çevrimiçi bir platformda Amerikan hukukunun boyutlarını tartışmak, Amerikan hukuku hakkında konuşmak, Amerikan hukukunda işe yarayan ve yaramayan kısımlar hakkında konuşmak istediklerini duyması üzerine bu sohbetin gerçekleşeceği bir yerimiz oldu. Biz akademisyenleri görevlendirerek Amerikan hukuk araştırmaları üzerine küresel bir form oluşturacak bir program geliştirmemizi istedi. Bu yansıda bu programın tanımı ve özetini görüyorsunuz. Bu 3-4 yıllık bir çalışmanın ürünü ve şu an programımız çalışır durumda.*

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Bunun bazı ilginç avantajları var. Ben size ne yapabildiği ve ne yapamadığını anlatacağım. Amerika Birleşik Devletlerinde, Georgia Baro Sınav Kurulundan Sn. Lockwood'un size bahsettiği yabancı bir avukatın baro sınavına girebilmesini sağlayan LLM diploması, LLM diplomalarının küçük bir kısmını oluşturuyor. Amerika Birleşik Devletlerindeki 200 hukuk fakültesinde en az 100 farklı LLM diploması olduğunu söyleyebilirim. Ancak, Georgia, New York ve Kaliforniya Baro Sınavı Kurullarının yabancı bir ülkede eğitim almış bir avukatın baro sınavına girmesine izin vermeleri için gerekli olan, bir avukatı Amerika Birleşik Devletlerinde avukatlık yapmaya hazırlayan, yani Amerika Birleşik Devletlerindeki hukuk sistemine girmesini sağlayan türü. Şimdi buraya geri döneceğim. Söylememe gerek yok tabi, biz farklı iki hukuk sisteminden geliyoruz. Amerika Birleşik Devletlerine gelip hukuk eğitimi almak istediğinizde, halen sivil geleneğin hüküm sürdüğü Florida ve Louisiana'daki İspanyol ve Fransız arazileri hariç, tamamen bir ortak hukuk yargı sistemi ile yola çıkmış bir ülkeye gelmiş oluyorsunuz.

Eskiden olduğundan çok daha fazla ve daha çok hukuk alanında yasal düzenlemelere ve dava hukukuna bağlı olmamıza rağmen, Amerika Birleşik Devletleri halen bir ortak hukuk yargısı yapısında devam ediyor. Dolayısıyla, önemli olan şeylerden biri de, Amerika Birleşik Devletlerinde baroya kabul edilmekle ilgileniyorsanız, iki hukuk sistemi arasındaki boşluklara köprü kuracak bir program bulmak olacaktır. Size şu anda açıkladığım bu program, size baro sınavı için yeterlik kazandırmıyor. Size Amerikan hukukunu öğrenme ve eğer Amerika Birleşik Devletlerine gidip avukatlık yapmak istiyorsanız, William Mitchell'daki meslektaşlarımın bahsettiği JD programının mı, yoksa bir yıllık Amerika Birleşik Devletleri avukatlık mesleği eğitimi olan LLM mi edinmeyi tercih etmeniz profesyonel kariyerinizin faydasına olacağı üzerine zekice ve iyi bilgilendirilmiş bir şekilde karar vermenize olanak tanıyor.

Diğer bir deyişle, ofisinizde veya evinizde otururken, hayatınızın akışını bozmadan, sadece kanunların neler olduğunu değil, nasıl işlediklerini de kapsayacak şekilde bir Amerikan hukuku kesiti görmenizi sağlıyor. Buradan sizi Amerikan hukuk bilgileri programında verdiğimiz dersler konusunda kısa bir gezintiye çıkarmak istiyorum. Bunun adı Amerikan Anayasacılığı. Bu dersin tasarlanmasındaki amaç

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ise Amerikan anayasa sisteminin nasıl işlediğini bir kaç konu üzerinden göstermek. Oldukça karmaşık; zira bizde hem eyalet anayasaları hem de federal veya Amerika Birleşik Devletleri Anayasası var. Anayasa hukukundan konuları da titizlikle seçtik.

Buradaki ekran fotoğrafından da göreceğiniz üzere 4, 5 ve 6. Hafta konularımızda bu derse çevrimiçi programımızda yer veriliyor. Çoğu Amerikalı hukuk öğrencisinin anayasa hukuku dersinde görmediği konulara değiniyoruz. Örneğin, Amerikan hukuku öğrencilerinin eğitimleri boyunca çok da dikkatle incelemeyeceği, eyalet anayasaları ile federal anayasa arasındaki ilişkiye değiniyoruz. Ayrıca teknolojinin anayasa hukuku üzerindeki etkisini konuşuyoruz. Bunun adı da Amerikan Anayasacılık Hareketi. Amerika Birleşik Devletlerinde yaşayan insanların bir araya gelerek resmi olmayan yoldan Gayri Resmi Anayasal Hükümler dersinde anayasada görmek istedikleri değişiklikleri konuşabilmelerine olanak tanıyoruz. Amerikan Anayasacılarının bu sohbetleri oldukça ilgi çekici ve keskin oluyor. Eğer bu sabah Profesör Jewels'ın gelecek ve bağımsız "indy-lawyer" avukatlar hakkındaki sunumunu dinlediyseniz, bu tür fikirlerin de bu alandan çıktığını görebilirsiniz. Programımızın en önemli parçalarından biri de, öğrencilerin kendi hayat akışlarında, kendi saatlerinde sorulara üzerinde çalıştıkları ünite hakkında belirli bir düşünce ve analiz gerektiren cevaplar verdikleri tartışma forumumuz. Burada, bazı yanıtlardan örnekler görebilirsiniz. Oldukça kapsamlılar. Çok iyi düşünülmüş yanıtlar. Profesör de öğrenci ile birlikte bir özet değerlendirme kitabı hakkında detaylı geribildirimde bulunuyor.

Çevrimiçi eğitimle ilgili olarak sizinle paylaşmak istediğim bir şey daha var. Bildiğiniz gibi, çevrimiçi eğitim artık sınıftaki eğitim modelinin içine sızıyor. Hukuk fakültesinde okuyan bir grup JD öğrencimle iletişim halindeyim. Onlarla iletişimimi çevrimiçi yürütüyorum; zira böyle olmasını istiyorlar. Bana sabahın 2sinde e-posta göndermek isteyebiliyorlar ve bir kaç saat içinde de yanıt vermeme bekliyorlar. Ben de her zaman bunu yapıyorum. Ayrıca, sınava girmek, geribildirim almak dahil olmak üzere belirli bazı şeyler yaptığımız başka çevrimiçi platformlar da var. Çevrimiçi eğitim ile sınıfta eğitim arasında zihninizde oluşturduğunuz ekonominin ortadan kaybolduğunu görüyoruz. Yani, aslında elimizde bir teknikler yelpazesi var ve

bunları 21. Yüzyılın avukatlarını yetiştirmekte yaşadığımız sorunların çözümünde de kullanabiliriz.

Sözlerime son vermeden önce sizinle bir öğrenci örneği paylaşmak istiyorum. Bu bayan bir pasifik ada ülkesi olan Palau'nun Yüksek Mahkeme Yargıcı. Atlanta'dan binlerce mil uzakta yaşıyor. Yargı sisteminde hem dosya işleri hem de duruşmalar var; bütün duruşmalar onda. Sanırım son zamanlarda dört-beş yıl önce Palau'da gerçekleşen ilk ağır ceza gerektiren cinayet üzerinde çalışıyor. İşi çok zor ve çok zamanını aldı. Hem Amerikan hukukuna olan ilgisinden hem de Palau'daki işinden vazgeçmedi ve bizim ona çevrimiçi olarak sunduğumuz Amerikan hukuk bilimleri programına devam etti. Şimdi birinci sınıfın sonuna yaklaştık ve bu programdan yakın zamanda mezun olacak. Yani, öğrencimiz Palau'dan hem gerçek hem de mecazi anlamda ilk programımızın bitiş çizgisine ulaşmış durumda.

Bu bizim internet portalımız. Burada program hakkında daha fazla bilgi bulabilirsiniz. Baro sınavına katılacak yeterliğe erişmek istiyorsanız, belki öncesinde Amerikan hukuk bilimleri programımıza katılmak ve bu programı incelemek isteyebilirsiniz.

Aklınızda kalmasını istediğim temel mesaj, birbiri ardına inşa etmeye devam etmek istediğimiz köprülerimizin olduğudur. Bu konferanstan sonra dahi, evimize gidip tartışıklarımızdan mutluluk duyacağız, kurduğumuz iş arkadaşlığından mutluluk duyacağız. Ancak, artık birbirimize daha yakın olmamızı sağlayan yollar var. İçinde yaşadığımız dijital dünya bize hukuk eğitimini heyecan verici yollara götürmemizde yardımcı olacaktır. Sanırım şimdi, özellikle de Amerika Birleşik Devletlerinde hukuk eğitimine kusur bulmanın zamanı değil,, çünkü istediğimiz her şeye henüz sahip değiliz. Büyük Amerikalı yazar Mark Twain'den bir alıntı yaparak Amerika Birleşik Devletlerinde hukuk eğitiminin ölüm raporları oldukça abartılmış durumda demek istiyorum. Bence, şimdi hukuk eğitiminin yenilenme ve Anka Kuşu gibi yeniden doğma zamanı. Ve bence bir hukuk eğitimcisi ve öğrencisi olmak için de harika bir zaman.

Bu alandaki düşüncelerim ve araştırmalarım hakkında daha detaylı bilgi sahibi olmak isteyenler, ekrandaki yansıda Güney Carolina Üniversite Hukuk Fakültesinin Uluslararası Hukuk ve İş Dergisinde

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*yayınlanan makaleme bakabilirler. Bu makalenin bir nüshasını ister-seniz size e-posta ile göndermekten veya Türkiye’de ister hukuk eği-timcisi, ister baro üyesi, ister hukuk öğrencisi olun, bu alanda ve bu çalışma hakkında sizinle diyalog kurmaktan memnuniyet duyarım. İlginiz ve zaman ayırdığınız için hepinize teşekkür ederim.*

**Prof. Dr. Arzu OĞUZ (Oturma Başkanı)-** Evet. Profesör Jeffrey Van Detta’ya çok teşekkür ediyoruz. Sunumu bize yeni açılımlar getirdi. Ayrıca genel olarak bu oturumda artık hukukun ve hukukçunun yerel olarak görülmekten çıkılıp, daha evrensel düzeyde görülmeye başladığının da işaretlerini alıyoruz. Bu da beni aynı zamanda çok mutlu ediyor.

Eminim kendisinden daha detaylı bilgiler almak istersiniz. Bu nedenle sorularınız vardır. Evet, bir soru var orada.

**KATILIMCI-** Teşekkür ederim öncelikle değerli bilgilerinizden dolayı. Ben online hukuk eğitiminin sonuçlarına çıktıklarına ilişkin bir karşılaştırmalı çalışma var mı? Eğitimin başarısını ölçülemeye ilişkin. Onu öğrenmek istiyorum.

Teşekkürler.

**Prof. Dr. Jeffrey Van DETTA (Atlanta John Marshall Üniversitesi Hukuk Fakültesi, Georgia, ABD)-** Actually, we do have comparable outcomes and we have studies that show this in a number of ways and I am happy to share details of it with you online or however we can after this. I do not have the paper work to show you now but I can make a comment or two about that going back in my presentation very briefly. The online law school that I referred to has graduated graduates since 2002 that is the first class graduate. It is a 4-year JD program per time. And these folks have been becoming members of California Bar by passing the California Bar examination and at any rate that is consistent with the American Bar Association accredited law schools. So there are quite a few folks that have become lawyers who otherwise absolutely would not have had a chance at a legal education because of this.

And one of these individuals is this man right here Ros Mitchell who was an adult learner. I mean he was someone who was 40 years old when he started at law school. He was not able to attend a law school where he lived and worked. So he went to the online law school. And when he finished he went to, not California where these the online law school being in California their graduates can take the California Bar. He went to Massachusetts and presented himself to the board of bar examiners. And they were little wildered. What they so was about, that seen anyone from the school before. What eventually happened is that the Supreme Judicial Court of Massachusetts looked closely at the legal education that he received which was typical of that schools and they, in this ruling, in this case mutual verses board of bar examiners direct to the board of bar examiners to allow him to take the bar exam. They found, the total package of the person- what he had done in life, what has his character and fitness amended to, what his aspirations were and what his education was as online- to be sufficient. And they made some very nice comments about the education in that case. So he went on to come the first member of the Massachusetts Bar who had been educated entirely online. There are more studies that get into, this is an electoral information, I realize, I suspect you are looking for very clear statistical correlations and there is more information that has been done on that. I just do not have it at my fingertips.

*Aslında karşılaştırılabilir sonuçlarımız var ve bunu göstermek için pek çok çalışma yaptık. Bunların detaylarını daha sonra sizlerle çevrimiçi ortamda ya da nasıl isterseniz paylaşmaktan memnuniyet duyarım. Ancak şu an yanımda bu belgeler yok ve sunumuma değinerek bir iki örnek verebilirim size. Size bahsettiğim çevrimiçi hukuk fakültesi, 2002'den beri mezun veriyor. 4 yıllık bir JD programını kapsıyor. Bu mezunlar Kaliforniya baro sınavını Amerikan barolar Birliğinin akredite ettiği bir derece ile geçerek Kaliforniya Barosuna üye oluyorlar. Bu nedenle, hukuk eğitimini bir başka yerde alamadıkları için avukat olamayacak olan, ancak bu şekilde olmayı başaran pek çok kişi var.*

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*Bu kişilerden biri de, burada gördüğünüz Ross Mitchell. Kendisi bir yetişkin öğrenciydi. Yani hukuk fakültesine başladığında 40 yaşındaydı. Yaşadığı ve çalıştığı yerde bir hukuk fakültesine giremedi. Bu nedenle de çevrimiçi hukuk fakültesine gitti. Bitirdiğinde ise, Kaliforniya'da yer alan bu okulu bitirenlerin gittiği yere, yani Kaliforniya barosuna gitmedi. Massachusetts'e gitti ve kendisini sınav kuruluna tanıttı. Biraz hayrete düştüler. Daha önce bu okuldan biriyle karşılaşmamışlardı. Massachusetts Yüksek Mahkemesi, aldığı hukuk eğitimini inceledi ve diğer hukuk fakülteleriyle aynı olduğunu gördükten sonra doğrudan baro sınavına alınmasına izin verilmesini baro sınav kuruluna bildirdi. Kişiye bir bütün olarak baktıklarında, hayatı boyunca neler yaptığına, karakter ve uygunluk durumunun nasıl değiştiğini, isteklerinin neler olduğunu incelediklerinde, çevrimiçi olarak almış olduğu eğitimin yeterli olduğuna karar verdiler. Bu eğitim türü hakkında oldukça olumlu yorumlarda bulundular. Sonra yoluna devam etti ve Massachusetts barosunun tamamen çevrimiçi eğitim almış ilk üyesi oldu. Daha detaylı çalışmalar da var, bu sadece seçtiğim bir tanesi. Anladığım kadarıyla siz kesin istatistiki korelasyonlar görmek istiyorsunuz ve bununla ilgili oldukça fazla bilgimiz var. Sadece şu an yanımda değil.*

**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)-** Evet, başka bir soru, verilen cevaba ilişkin bir yorum. . . Buyurun.

**Prof. Dr. Feridun YENİSEY (Bahçeşehir Üniversitesi Hukuk Fakültesi)-** Online eğitim ve yüz yüze eğitim tartışılıyor. İstanbul Üniversitesinde ders verdiğim yılları hatırlıyorum, daha sonra Marmara'da. Çok büyük bir salonda 1000 talebinin aşağı yukarı bulunduğu bir konferans salonunda konferans veren bir hoca ve dinlemek durumundasınız anlattığımızı. Öyle bir konuşacaksınız ki, sizi öğrenci uyumadan dinlesin. Kendi aralarında konuşmasınlar.

Şimdi bu tür bir konferans biçiminde ders anlatmakla, online eğitim arasında pek fark görmüyorum. Orada da direkt temas kuramıyorsunuz, 600-700 kişiyle. Fakat küçük sınıflarda ders vermek, 20 kişilik 15 kişilik sınıflarda, öğrenciyle çok yakın temas kurulabiliyor, tanışılabilir. Ama çok kalabalık sınıflarda ders veren hocayla, online ders veren hoca arasında



pek bir fark yok galiba. Online çok avantajları da olabilir. Çok uzaktan insanlara ulaşmak imkânına kavuştuğu için vesaire, ama her ikisinin de iyi ve kötü tarafları var tabii ki.

Bu temas, karşılıklı temas meselesi hukukta ve ceza hukukunda bilhassa çok önemli. İstanbul'da da bir tenkitim oldu, SEGBİS uygulamasına Türkiye'de. SEGBİS dediğimiz şey, sesli ve görüntülü video nakli suretiyle sorgu, sanık sorgusu yapmak. Bir sanık bir yerde yakalanmış, hâkim önüne çıkartılması gerekiyor. Habeas corpus hakkı var. Bedenin hâkim önüne çıkartılması gerekiyor. Fakat sizin Ceza Muhakemesi Kanununda yapılan 94. madde değişikliğiyle, video konferans ile hâkimin önüne götürülüyor. Acaba bu uygun bir metot mu? Bence değil, bilhassa ağır suçlarda değil. Kuzunun olmadığı yerde keçiye Abdurrahman Çelebi derlermiş hikâyesi. Kötünün iyisi belki video konferans yoluyla sorgu yapmak ders vermek, ama şeyin yerini tutmamalı. Esası yok etmemeli. Onun için hibrit programlar daha iyi gibi düşünüyorum.

(Alkışlar)

**Prof. Dr. Arzu OĞUZ (Oturma Başkanı)-** Evet, buna verecek bir yanıtınız var mı?

**Prof. Dr. Jeffrey Van DETTA (Atlanta John Marshall Üniversitesi Hukuk Fakültesi, Georgia, ABD)-** Well I defer certainly to Professor Yenisey's great wisdom and I respect greatly what he has accomplished in education and I would just offer the prospective that there are, when we talk about online education, it is a very broad of phrase to use. Because it encompasses all kinds of technology some of which are very simple and allow very limited real time contact and others that out there, that are used that I have used, are very complex and require and allow because of the number of features they have face to face kind of contact online where you can see the student, the student can see you. There is a function called "pass the microphone" that if you ask the student a question as I will be doing here into my mean microphone, I can press a button and pass the microphone to a student who then can answer and all

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of the classmates will hear this at the same time and then I can respond and we can actually have a conversation.

We also can do this what are called “moderated online classrooms”. These are classrooms that may or may not have video or sound but they have two-way written communication. And a main area that I call the main posting board or main dialogue appears that we type and send in our contributions. And also you have smaller instant, those of you who have used instant messaging with your phones or your computers that you can have a dialogue box by carrying on conversations of several other people at the same time. Well, the platform allows for that, too. So if I am asking a question to other students who is then responding and another student thinks of a third question that I should have asked or something that student should have said, they can send that to me privately or they can say I do not really understand Prof. Van Detta what Mr. Smith is saying. Can you type me a few more things about that. So I can understand that. It is very interesting that the breath and death of what is available on online education.

And I have taught in Hybrid Programs, I have taught entirely online programs, I have taught entirely breaking border programs and they are really, I would have just leave you with the thought that they are coming into a very fast and rapid conversions, where eventually I think we will be looking at education not in the sense of their being a physical school or any lecture hall, any classroom. I think we are going to look at it as what technologies we are going to bring together to bear on the education of particular students and particular disciplines. That is sort of we are little predictive at this conferences I understand, we had predictions back 2001. So, I will make a prediction here in 2014 that the next time we have one of these conferences at least, not the next time but when we have another one that let’s say 5 or 10 years where this one is, I think we will see of a great deal of convergence in the way that education is delivered and the traditional classroom will be a memory rather than a reality.

*Profesör Yenisey'in bilgeliği önünde saygıyla eğiliyor ve eğitim alanındaki başarılarına büyük saygı duyuyorum. Sadece bir başka açıdan bakmanızı rica ediyorum. Çevrimiçi eğitim dediğimizde, oldukça geniş bir kavramdan söz ediyoruz. Çünkü her türlü teknolojiyi kapsıyor. Bunlardan bazıları çok basit ve sınırlı sürede gerçek zamanlı iletişime olanak tanıyor. Benim ya da başkalarının kullandığı pek çok farklı teknoloji de var. Bunlar biraz karmaşık, zira içerdikleri özellikler sayesinde öğrenciyle çeviri içi ortamda yüz yüze iletişim kurmanızı sağlıyorlar. Öğrenciyi görebiliyorsunuz, o da siz görebiliyor. "Mikrofonu uzat" diye bir fonksiyon var ve bu fonksiyonla, şu an benim konuşurken mikrofonumun düğmesine basabileceğim gibi, bir düğmeye basarak mikrofonu öğrenciye verebiliyorsunuz. Öğrenci sizi yanıtıyor ve katılan bütün öğrenciler de aynı anda duyup yanıt verebiliyor. Bir anda gerçek bir sohbet içerisine giriyorsunuz.*

*Bir de "yönetilebilir çevrimiçi sınıflar" dediğimiz ortamlarda da bunu yapabiliyoruz. Bu sınıflarda video ve ses olmayabiliyor; ancak iki taraflı yazılı sohbet gerçekleşiyor. Ana pano adını verdiğim bir genel alan var ve katılımcılar yazdıkça, yorumları bu ana panoda yayınlanıyor. Bir de anlık mesajlaşma yöntemi var. Telefonunuz veya bilgisayarınızda anlık mesajlaşma uygulamaları kullanıyorsunuz. Aynı anda bir çok kişiyle sohbet edebileceğiniz sohbet pencereleri kullanılıyor. Bizim platformumuzda da bu mümkün. Örneğin ben öğrencilere bir soru sorduğumda ve öğrencilerden bir yanıt verdiği sırada, bir diğeri bana özelden anlık ileti gönderip aklına gelen üçüncü bir soruyu sorabiliyor veya bana sormam gerektiğini düşündüğü bir soruyu hatırlatabiliyor, veya "Profesör Van Detta, Bay Smith'in söylediğini anlayamadım. Bana bununla ilgili bir kaç şey yazar mısınız?" diyebiliyor. söylediğiniz anlayamadım diyebiliyor. Çevrimiçi eğitimde sınırların nereler olduğunu görememek oldukça ilgi çekici bir durum.*

*Hibrit programlarda, tamamen çevrimiçi olan programlarda, sınır ötesi programlarda ders verdim. Bu programlarla ilgili olarak size söyleyebileceğim, çevrimiçi eğitimin gerçekleştiği yerin fiziki anlamda bir okul, bir konferans salonu veya bir sınıfta olabileceğinden farklı hızda soru sorulmasına olanak tanımalarıdır. Bence belirli öğrenciler ve belirli disiplinlerin eğitiminde hangi teknolojileri bir araya getirip*

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*kullanacağımıza bakmamız gerekir. Bu tür konferanslarda biraz öngörülü davranıyoruz, bunu anlayabiliyorum. 2001 yılında da öngörüklerimiz vardı. Şimdi, 2014 yılında, burada bir öngöründe bulunmak istiyorum. Bir daha böyle bir konferans düzenlediğimizde, belki bir sonrakinde değil ama 5-10 yıl içinde tekrar bir araya geldiğimizde eğitimin uygulanış şeklinde kapsamlı değişiklikler olduğunu göreceğiz ve geleneksel sınıflar o tarihte bir gerçek değil birer anı olacaklar.*

**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)-** Teşekkürler. Son bir soru daha alalım, o da Muharrem Hocamızın sorusu olsun.

**Prof. Dr. Muharrem KILIÇ (Akdeniz Üniversitesi Hukuk Fakültesi Dekanı)-** Muharrem, Muharrem Kılıç. Soru değil, yorum olacak, ama mümkün olduğu kadar kısa tutacağım. Aslında yarınki konuşmada bu nitelik nicelik gerilimi çerçevesinde aslında bu konulara değinecektim, ama kışkırtıcı oldu bu online hukuk öğretimi. İstanbul'da da kısmen dinledik. O açıdan kendimi tutamadım.

Şimdi nitelik malumunuz sorunu tartışıyoruz, daha çok işte özellikle Türkiye ölçeği bağlamında hukuk öğretimi açısından baktığımız zaman temel sorunsal, hukuk öğretiminin niteliğinin hangi ölçüde nasıl geliştirilebiliriz? Bunun üzerine odaklanıyoruz. Az önce bir Anadolu Üniversitesinden değerli öğretim üyesi arkadaşımız da dile getirdi. Bu bağlamla, sanki paradoksal bir biçimde tersyüz olan ya da ters düşen bir durum var. Bir taraftan da hem nitelik kaygısını ön planda tutuyoruz, ama bir taraftan da hibrit programların değerinden öneminden bahsediyoruz; mutlak surette önemli.

Aslında sorun, şey arasında, çağın gereklilikleriyle, yine işte dayatan küreselleşen bir ortamda bunun gereklilikleriyle, tradisyonel ya da geleneksel eğitim öğretim yöntemleri arasındaki çatışmadan belki kaynaklanıyor.

Ben kişisel kanaatimi kısaca ifade etmek istiyorum. Hukuk öğretimi tıp öğretimi gibi ya da işte veterinerlik dış hekimliği gibi özellikli bir alan. Özellikli alan oluşu, kanun koyucu da bunun farkında. 2547'de tek tür diploma veren bir program,

hepimizin malumu olduğu üzere, bunun üzerinde duruluyor düzenleme konusu yapılmış.

Şimdi bu düşünceden hareketle baktığımız zaman, bu özellikle alanın usta çırak ilişkisi tabiri caizse korunması gerekiyor. Bu dokunun, bu yapının korunması gerekiyor. Burada belki hani online hukuk öğretimi çerçevesinde bazı şeyler görselleştirilerek aktarılabilir, ama az önce Feridun Hocam da ifade etti, geniş katımlı sınıflarda amfilerde de birtakım güçlükler var, temas imkânı olmuyor filan dedi, ama sonra da habeas corpus ilkesi çerçevesinde bunun şey yapılması. Ben öğrencinin öğretim hakkı çerçevesinde bu ilkeyle de belki benzeşerek, öğrencinin öğretim üyesini, hocasını, ustasını bizatihi görmesi, kişisel olarak temas edebilmesi, onun hal ve tavrını, duruşmasını jestini mimiğini bizatihi müşahade etmesi, görmesi gerektiği kanaatindeyim. Çünkü bunların her biri akademik kariyeri ya da işte gelecek kariyeri itibariyle öğrencinin zihninde, imaj dünyasında olumlu katkılar sağlayacağını düşünüyorum.

Bir de son olarak tacit knowledge denilen örtük bilgi dediğimiz bir bilgi türü var. Formel bilginin yanı sıra bunun dışında da bu etkileşim çerçevesinde, kişisel temas çerçevesinde öğrencinin, hukuk öğrencisinin, bu öğretimi alan kişinin de etkilendiği, etkileşime girdiği ve öğrendiği birtakım örtük bilgi alanları söz konusu. Onun için bu örtük bilgi alanını da ıskalamamak adına, online hukuk öğretimi üzerinde hibrit öğretim yöntemleri üzerinde daha derinlikli, bu boyutları nitelik sorunu ve bu örtük bilgi yanı da göz önünde bulundurulacak müzakere edilmesinin, daha çok tartışılmasının gerekli olduğunu düşünüyorum.

Teşekkür ediyorum.

**Prof. Dr. Arzu OĞUZ (Oturum Başkanı)-** Evet. Teşekkür ediyoruz. Hem size sunumunuz açısından, hem yapılan yorumlar ve sorular açısından. Ancak oturumlar biraz sarktığı için, ben bir mazeretim nedeniyle aranızdan ayrılmak zorundayım. Ancak bu özrü de bir fırsata dönüştürmek istiyorum. 22 ve 23 Mayıs tarihlerinde Ankara Üniversitesi Hukuk Fa-

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kültesi ve Noterler Birliği olarak Uluslararası Enerji Hukuku konulu bir sempozyum düzenliyoruz. Web sayfalarında bu sempozyumla ilgili bilgiler mevcut. Hepinizi oraya bekliyoruz.

Ben şimdi o sempozyumun düzenlenmesiyle ilgili çıkan aksaklıkları gidermek üzere maalesef aranızdan ayrılmak zorundayım. Feridun Yenisey Hocamız programa devam edecek. İyi günler diliyor ve verimli bir sempozyum temenni ediyorum.

(Alkışlar)

**Prof. Dr. Feridun YENİSEY (Bahçeşehir Üniversitesi Hukuk Fakültesi)**- Ankara Üniversitesine çok teşekkür ediyoruz. Bizi kırmadı ve geldi ve kaldığı için çok teşekkürlerimizle, sağ olunuz. Tom Reed, you have the floor.

*Tom Reed, söz sizde.*

**F. Tom READ** - We thank our moderator very much and Professor Van Detta. Before you leave, you are going to get a presentation here. So, stay right here.

*Oturum başkanımıza teşekkür ediyoruz. Profesör Van Detta, sahnedan inmeden önce size bir armağan takdim edilecek. Burada durunuz.*

**SUNUCU**- Evet, değerli konuşmacılarımıza ve oturum başkanımıza plâketlerini takdim etmek üzere Türkiye Barolar Birliği Yönetim Kurulu Üyesi Sayın Av. Gülcihan Türe'nin kürsüyü teşekkürlerini arz ederim.

(Bağış sertifikaları verildi)

**F. Tom READ** - Kathleen could you come up and finish yours now? Well Kathleen is coming up. Can you remember what happened is when the technology came through for Minnesota we had to break her up? She is going to finish her remarks about academic freedom before we go on to the next panel. So Kathy I let you bring them up quickly to where we were and let you finish your remarks. Thank you.

Kathleen gelip şimdi sunumunu bitirebilir misin? Evet Kathleen geliyor. Teknoloji devreye girip Minnesota'ya bağlandığımızda konuşmasını bölmek zorunda kaldığımızı hatırlıyor musunuz? Bir sonraki panele geçmeden önce, akademik özgürlükle ilgili sunumunu tamamlayacak. Kathy, nerede kaldığımızı hızlıca hatırlatıp sunumunu bitirebilirsin. Teşekkür ederim.

**Prof. Dr. Kathleen BURCH (Atlanta John Marshall Üniversitesi Hukuk Fakültesi, Georgia, ABD)-** Thank you Tom. So just to get us back to where we were, I have been talking about the four different parts of academic freedom. The freedom to research and publish, the freedom to teach, we had discussed both of those. And I was moving on to the freedom of intramural expression. So we will start there. And then I am going to give you some examples of current day issues that we have with regard to academic freedom. And then I would like to come back to a comment that has been made by several of you regarding quality of faculty and talk a little bit about how academic freedom and quality of faculty intersect.

So, freedom of intramural expression. Intramural expression encompasses faculty speech that does not involve disciplinary expertise; that is scholarship or teaching. But it is instead about the action policy or personnel of the faculty members' home institution. Intramural expression encompasses speech about the home institution whether stated to the media or during a faculty meeting, committee meeting or other conversation. It is academic freedom, academic freedom's protection of intramural speech that protects faculty governance. In relation to the universities' administration and board of trustees, faculty have an equal and independent place within the university. Faculty can comment on or criticize any policy, assist in the selection of administrators, set admission standards and set curricular changes. Faculty governance is a joint endeavor among the faculty as a group.

The freedom of intramural expression protects the individual faculty from his colleagues for statements made

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during the preview process, during committee or faculty meetings and during other conversations and communications regarding the business of the university. The freedom of intramural speech also protects the individual faculty from university administrators for statements made that are critical of administration policies. Academic freedom presupposes that universities serve public interest and promote the common good. As such, universities should not merely further arbitrary private interests. The common good is derived to open debate and discussion. Faculty, by virtue of their educational training, expertise, institutional knowledge and commitment have an indispensable role to play in ensuring that debate is open and robust and that the university continues to serve the public. Thus, the intramural expression that is protected is faculty speech that furthers the debate about whether the university is serving the public good.

The freedom of intramural speech protects speech that takes place within the walls real or virtual of the university. The freedom also protects speech that takes place outside of the wall of the university. The key to determining whether the faculty speech is intramural speech is whether the speech concerns the university.

Extramural speech, concerns speech that is typically about matters of public concern that are unrelated to scholarly expertise or institutional affiliation. The freedom of extramural expression is justified in three ways. First, the university should not limit or artificially define the faculty expertise. Second, extramural expression must be protected to prevent universities from penalizing politically outspoken professors in order to appease powerful interest such as donors who disagree with the faculty speech. Third, faculty can promote knowledge and model independent thought in the classroom only if they are actively and imaginatively engaged in their work.

Freedom of extramural expression prevents censorship, which, in turn, creates an atmosphere where faculty will



actively engage in the pursuit of new knowledge. The freedom of extramural speech is speech that is not within individual faculty's expertise and is not about the faculty's home institution but it must concern a matter of public concern that is issues of social, political or other interests to the community. A matter of public concern does not include purely private matters. So, some examples; if an individual faculty who is an expert in public international law, write an article for the newspaper that criticize his home institution's admissions policy, that speech is protected by the freedom of intramural speech. If that same faculty writes an article for the newspaper that criticizes a law that requires a national task to graduate high school that speech is protected by the freedom of extramural speech. If that same faculty member is an expert in human rights law and writes an article on whether article ten of the European Convention of Human Rights protects the right of access to the Internet as well as the right of speech on the Internet, that speech is protected by the freedom to research and publish.

So some of the problems we have been seeing in around the world is with outspoken faculty members who have been criticizing their government. We have let's say Prof. Andrea Subav from Russia, who wrote an article comparing Russian policy on Crimea to Nazi Germany Annex of Austria and he was criticized by his home institution, the Moscow State Institution for international relations. He was told that he should either resign or be fired. After refusing to resign, he was terminated. On the other hand of the spectrum, we have Prof. Gyle Zuben from Taiwan, who was criticizing the wealth gap on mainly in Chinese and using the cost of TX as a way to show what that wealth distribution was, he received much back flash on the Internet, lots of negative comments; but his home institution took no action.

We have Prof. Rachel Slowcom from the United States who commented upon the United States government shut down, criticizing the shutdown of this part of the Tea Party or Republican's fault. When students complained about that she

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was forced to apologize to our students and take that language out of her communications with the students. We have also had problems with public universities who have clinical programs. So, you have heard today about experiential learning. We have had several public universities in the United States, whose clinics have either sued or criticized government policies and there has been pressure by the state governments that fund those institutions for them to shut down or limit the types of cases that the clinic takes and allows students to work on.

So why are the concepts of academic freedom important to some of the issues that you all raised earlier this morning about the number of new law faculty here in Turkey? And it has to do with the quality of faculty. So, in order for the pro-review process that is protected under academic freedom to work, you need to start their law faculty with a core group of qualified faculty members who understand both have expertise both in their doctrinal area, as well as expertise in teaching. Because it is going to be these individuals who mentor the new faculty that you can hire as your universities grow. That pure-review process that becomes part of your quality control mechanism within your law faculty itself.

And so academic freedom is important in protecting the faculty but it is also important to the institution because you need to make sure that the faculty you are hiring on the frontend of this process are qualified faculty in order for this process to work appropriately.

All right. So if there is questions I will be happy to take questions at this point. If not we can move on to the next panel.

*Teşekkürler Tom. Nerede kaldığımızı bir hatırlayalım. Akademik özgürlüğün dört farklı boyutundan söz ediyorduk. Araştırma ve yayınlama özgürlüğü, öğretim özgürlüğü. Bu ikisinden söz ettik. Kurum içi ifade özgürlüğüne geçmek üzereydim. Dolayısıyla buradan başlayacağım. Sonrasında size akademik özgürlükle ilgili bazı güncel örnekler vereceğim. Daha sonra ise, çoğunuzun dile getirdiği akademisyenlerin nitelikleri konusunda bir yorumda bulunacağım ve aka-*

demik özgürlük ile akademisyenlerin niteliğinin nasıl birbirleriyle örtüştüğünü anlatacağım.

*Kurum ifade özgürlüğü. Kurum içi ifade, uzmanlık alanı, yani burs veya öğretim gibi konularda yapılan konuşmaları değil, öğretim üyesinin kurumunun politikaları veya personeli ile ilgili konuşmaları kapsar. Kurum içi ifade, medyada, akademisyenler toplantısında, komite toplantısında veya diğer sohbetlerde gerçekleşmiş olması fark etmeksizin, çalışılan kurum ile ilgili yapılan konuşmaları kapsar. Akademik bir özgürlük, yani akademik özgürlüğün kurum içi konuşmalarda fakülte yönetimini koruması durumudur. Akademisyenler, üniversitede, üniversite yönetimi ve mütevelli heyeti ile eşit konumda ve bağımsızdırlar. Akademisyenler, herhangi bir politika hakkında yorum veya eleştiri yapabilir, yöneticilerin seçiminde yardımcı olabilir, kabul standartlarını oluşturabilir ve müfredat değişikliği yapabilirler. Fakülte yönetimi, akademisyenlerin bir grup halinde oluşturdukları ortak bir girişimdir.*

*Kurum içi ifade özgürlüğü, değerlendirme sürecinde, komite veya fakülte toplantılarında ve üniversitenin işleyişiyle ilgili diğer sohbet ve iletişimler söz konusu olduğunda, akademisyenleri bireysel anlamda meslektaşlarına karşı korur. Kurum içi ifade özgürlüğü, üniversitenin yönetim politikalarını eleştiren ifadeler söz konusu olduğunda akademisyenleri üniversite yönetimine karşı korur. Akademik özgürlük, üniversitelerin kamu yararına hizmet etmelerini ve ortak menfaatleri desteklemeler gerektiği varsayımını benimser. Dolayısıyla, üniversiteler keyfi özel çıkarlara yönelmemelidir. Ortak menfaatler, tartışma ve münazaralarda ortaya çıkar. Eğitimleri, uzmanlıkları, kurumsal bilgi ve bağlılıkları dolayısıyla akademisyenlerin münazaraların açık ve sağlıklı bir şekilde yürütülmesi ile üniversitenin kamuya hizmet etmeye devam etmesini sağlamakta kaçınılmaz bir rol oynarlar. Bu bağlamda, kurum içi ifadenin korunması, üniversitenin toplum yararına hizmet edip etmediğine dair tartışmaları içeren akademisyen konuşmalarının korunması anlamına gelir.*

*Kurum içi ifade özgürlüğü, üniversitenin gerçek veya sanal duvarları arasında gerçekleşen konuşmaları korur. Özgürlük aynı zamanda üniversite duvarları dışında kalan yerlerde yapılan konuşmaları da korur. Bir akademisyenin konuşmasının kurum içi konuşmaya*

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*grip girmediğine, üniversite ile ilgili olup olmadığına bakılarak karar verilir.*

*Kurum dışı ifade, toplumu ilgilendiren konularda, akademik uzmanlık alanı ile ilgisi olmayan konularda veya kurumsal ilişkilerde görülen ifadelerdir. Kurum dışı ifade özgürlüğü üç nedenle makul görülebilir. Birincisi, üniversitenin akademisyenin uzmanlık alanını sınırlandırmaması ve yapay olarak tanımlamaması gerekliliğidir. İkincisi, üniversitelerin, akademisyenin konuşmasına katılmayan bağışçılar gibi güçlü çıkar gruplarını tatmin etmek amacıyla politik konuşmalar yapan profesörleri cezalandırmalarına engel olunabilmesi için kurum dışı ifadenin korunması gerekir. Üçüncüsü, akademisyenler, ancak alanlarında aktif ve yaratıcı bir şekilde çalışabilirlerse bilgiyi destekleyerek sınıfta bağımsız düşünmeye örnek teşkil edebilirler.*

*Kurum dışı ifade özgürlüğü, sansüre engel olarak, akademisyenlerin daha sonra yeni bilginin edinilmesinde aktif rol almalarını sağlayan ortamın yaratılmasına olanak tanır. Kurum dışı ifade özgürlüğü, akademisyenin kendi uzmanlık alanında veya akademisyenin kendi kurumu hakkında olmayan ifadelerdir; ancak, sosyal, politik veya toplumun yararına olan diğer konular gibi alanlarda toplumu ilgilendiren bir konuyla ilgili olmalıdır. Toplum ilgilendiren bir konu, tamamıyla özel konuları içermez. Bir kaç örnek vermek gerekirse; kamu uluslararası hukukunda uzman olan bir akademisyen kendi çalıştığı kurumun öğrenci kabul politikası üzerine bir gazetede eleştiri yazısı yayınlarsa, bu yayın, kurum içi ifade özgürlüğü kapsamında korunur. Aynı akademisyen bir gazetede liseden mezun olmak için ulusal düzeyde bir ödev yapılmasını gerektiren bir kanunu eleştirirse, bu yayın kurum dışı ifade özgürlüğü kapsamında korunur. Aynı akademisyen, insan hakları konusunda da uzmansa ve Avrupa İnsan Hakları Sözleşmesi 10. Maddesinin hem internete erişim hem de internet üzerinde ifade hakkı üzerine bir makale yazarsa, bu yayın araştırma ve yayın özgürlüğü kapsamında korunur.*

*Dünyada hükümetlerini eleştiren bazı açık sözlü akademisyenlerin sorun yaşadıklarını görmekteyiz. Örneğin, Rusya'da Rus politikasını, Nazi Almanyası'nın Avusturya'ya uyguladığı kırım ile kıyaslayan bir makale yazan Profesör Andrea Subav, kendi kurumu olan Moskova Uluslararası İlişkiler Devlet Kurumu tarafından eleştiriye*

uğradı. Kendisinden istifa etmesi istenerek aksi taktirde kovulacağı ifade edildi. İstifa etmeyi reddedince, kendisini bitirdiler. Diğer taraftan, Tayvanlı Profesör Gyle Zuben, Çinliler arasındaki varlık farkını eleştirdi ve varlık dağılımını göstermek için de TX'in bedelini örnek verdi. Bunun üzerinde internet üzerinde tepkilere ve olumsuz yorumlara maruz kaldı; ancak, çalıştığı kurum bununla ilgili herhangi bir şey yapmadı.

Amerika Birleşik Devletlerinde Profesör Rachel Slowcom, hükümetin düşürülmesi üzerine yorum yaparak Çay Partisi'nin düşürülmesinin Cumhuriyetçilerin hatası olduğuna dair bir eleştiri yayınladı. Öğrenciler bununla ilgili şikayette bulununca, öğrencilerinden özür dilemek ve öğrencileri ile bir daha bu konuda konuşmamak zorunda bırakıldı. Klinik programları olan devlet üniversitelerinde de sorunlar yaşadık. Bugün deneysel öğrenmeden bahsedildi. Amerika Birleşik Devletlerinde, klinikleri hükümet politikalarını eleştiren veya dava eden devlet üniversitelerinin, kendilerine finansman sağlayan eyalet hükümetleri tarafından baskıya ve öğrencilerin üzerinde çalışması için kliniklerine aldıkları vakaların yasaklanması veya türlerinin sınırlandırılması kararına maruz kaldığına tanık olduk.

Akademik özgürlük kavramı, Türkiye'de yeni hukuk fakültelerinin sayısı ile ilgili olarak bu sabah dile getirdiğiniz sorunların bazıları açısından neden önem taşımaktadır? Bu akademisyenlerin niteliği ile ilgilidir. Akademik özgürlük kapsamında korunan profesyonel değerlendirme sürecinin işlemesi için, yeni hukuk fakülteleri hem kendi alanının uzmanı hem de öğretim uzmanlığına sahip olan nitelikli akademisyenlerden oluşan bir çekirdek grupla kurulmalıdır. Zira, üniversitelerini büyüdükçe yeni istihdam edilecek akademisyenleri de bu bireyler yetiştirecektir. Bu profesyonel değerlendirme süreci, sizin kalite kontrol mekanizmalarınızın da bir parçası haline gelecektir.

Dolayısıyla, akademik özgürlük akademisyenlerin korunması için önemlidir; ancak aynı zamanda kurum için de önem taşır. Zira, bu sürecin doğru işleyebilmesi için, istihdam ettiğiniz akademisyenlerin de nitelikli olmaları gerekir.

Evet. Sorunuz varsa, bu noktada sorularınız alabilirim. Yoksa, bir sonraki panele geçebiliriz.

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**OTURUM BAŞKANI-** Çok teşekkür ediyoruz Sayın Profesör Kathleen Burch'e. Şimdi sorularınızı alabiliriz. İsterseniz.

**KATILIMCI-** Öncelikle Kathleen'den kendi adıma özür diliyorum. Salonun tam dolu olduğu, ülkemizin akademisyenlerinin salonda olduğu bir süreçte programın sekteye uğratılıp, salonun boşalmasından sonra, bugün belki en önemli konumuzun salonun boş olarak dinlenmesinden dolayı kendi adıma üzgünüm.

Bir Amerikalı hukukçudan Bruno'yu duymak, Sokrates'i duymak, Galileo'yu duymak beni mutlu etti. Sabahtan beri bütün katılımcıları dinliyorum, inanın sizin getirdiğiniz bakış açısını hiçbir hukukçu getiremedi. Benim daha önce sorduğum bir soru vardı, ilk sabahki katılımımda. Ben insancıl hukuku sormuştum, bana cevap verilmedi. Pazarlama mantığıyla geliştirilen, yani insanların çantalarını alıp, eyalet eyalet dolaşım dava arayabilecekleri bir sistem öğütlendi.

Bugün size dile getirdiğiniz akademik özgürlük, bizim ülkemizde maalesef yok. Bizim ülkemizde üniversitelerde önce asistanlar hocaların çantalarını ve sınav kağıtlarını taşımakla meşguldürler, asla bilimsel düşünme ve bilimsel bir tez geliştirmelerine izin verilmez. Ama sizin ülkenizde de bu akademik özgürlüğün olmadığını biliyoruz. Yani sizin ülkenizde de 1950'lerde McCarthy döneminde cadı avının başladığı dönemlerde, bir sürü bilim adamının üniversitelerden atıldığı, açlığa mahkum edildiği, hatta linç girişimleriyle baş başa kaldığı gözlemlenmiştir.

Sizin bugün ülkenizde, Amerika Birleşik Devletlerinde biraz gerçi dile getirdiniz, siz gerçekten özgür bir şekilde müktedir iktidarı hukuksal yönde eleştirebiliyor musunuz? Bugün dünyada dayatılan bütün hukuksuzluklara karşı, aslında Amerika Birleşik Devletlerinin evrensel bir hukuk yıkımına yol açtığını, kendi hukukunu bütün dünyaya dayattığını, özellikle üçüncü dünya ülkelerinin üzerinde bir hegemonya kurduğunu, kendi ülkenize karşı kendi kürsülerinizde makaleler yazarak eleştiri yapabiliyor musunuz? Sağ olun.

**Prof. Dr. Kathleen BURCH (Atlanta John Marshall Üniversitesi Hukuk Fakültesi, Georgia, ABD)-** The concept of academic freedom has intersections with free speech as well. So, the question of whether or not I personally have academic freedom to criticize my government, the answer to that is yes. I work for a private institution so there is no government actor there.

If I were to work for a public institution, I would still have academic freedom. As a matter of fact, the academic freedom, the concepts of academic freedom we developed in order to protect public university faculty from government. And so there is protection. In the United States we have additional first amendment free speech law in jurisprudence that protects faculty, public universities as well. In Turkey and in the European Union you have Article 10 of the European Convention.

And I wrote an article several years ago for, that was published in Bahçeşehir University, which compared the academic freedom in Turkey under the European Convention to the academic freedom in the United States. And once we have the domestic law components to academic freedom, there is a difference in what is protected in the United States versus what is protected in Europe. And if there is complaints with the European Convention then arguably faculty in Europe have much more academic freedom than faculty in the United States who work for public universities.

The question then becomes, of course, is whether each country is complying with Article 10 of the European Convention on Human Rights. I do not know if this is what was meant by your comment that there maybe not academic freedom to Turkey, which if that is true and I know there have been a couple of cases that touch upon academic freedom that you have made it to the European Court of Human Rights. That is very sad. It is sad because there was a time when the Sultan actually wrote academics in Europe at the start of World War II asking them to please come to Turkey and to teach here

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and to research here in order to build the academic institutions of Turkey. And so it would be a great loss if that goal has not been fulfilled.

*Akademik özgürlük kavramının ifade özgürlüğü ile de örtüştüğü noktalar vardır. Benim hükümetimi eleştirebilecek akademik özgürlüğümün olup olmadığı sorusunun yanıtı, "evet". Ben özel bir kurumda çalışıyorum, dolayısıyla burada bir hükümet yetkilisi yok.*

*Eğer bir devlet üniversitesinde çalışıyor olsaydım da akademik özgürlüğüm olurdu. Aslında akademik özgürlük, akademik özgürlük kavramını geliştirmemizin nedeni devlet üniversitelerinin akademisyenlerini hükümetten korumaktı. Yani, bir koruma söz konusu. Amerika Birleşik Devletlerinde, ifade özgürlüğü kanununda devlet üniversitelerindeki akademisyenleri de koruyacak bir değişiklik yaptık. Türkiye’de ve Avrupa Birliğinde ise Avrupa Sözleşmesinin 10. Maddesi söz konusu.*

*Bir kaç yıl önce, Bahçeşehir Üniversitesi için, Avrupa Sözleşmesi kapsamında Türkiye’deki akademik özgürlük ile Amerika Birleşik Devletlerindeki akademik özgürlüğü karşılaştıran bir makale yayınladım. Akademik özgürlükle ilgili iç hukuk bileşenlerine baktığımızda Avrupa’daki ile Amerika Birleşik Devletlerindeki akademik özgürlükle korunan hususlar arasında farklılıklar görüyoruz. Eğer Avrupa Sözleşmesi ile ilgili şikayetler söz konusu olur ise, Avrupa’daki akademisyenlerin Amerika Birleşik Devletlerindeki devlet üniversitelerinde çalışan akademisyenlerden daha fazla akademik özgürlüğe sahip olduklarını söyleyebiliriz.*

*Bu durumda soru her ülkenin Avrupa İnsan Hakları Sözleşmesinin 10. Maddesinin gereğini yerine getirip getirmediği oluyor. Yorumunuzla kastettiğiniz bu muydu, bilemiyorum. Türkiye’de akademik özgürlüğün olmadığını söylediniz. Eğer doğruysa, ki akademik özgürlüğün ihlaline dair bir kaç dava için Avrupa İnsan Hakları Mahkemesine başvurulduğunu biliyorum, bu son derece üzücü bir durum. Oldukça üzücü, çünkü bir zamanlar, 2. Dünya Savaşı’nın başında, Padişahın Avrupa’daki akademisyenlere yazı yazıp, Türkiye’ye gelmelerini ve burada akademik kurumların kurulabilmesi için öğretim ve araştırma yapmalarını rica ettiğini biliyoruz. Eğer bu hedefe ulaşılmadıysa, bu çok büyük bir kayıp demektir.*



**OTURUM BAŞKANI-** Yusuf Hocam size de bir söz vereyim. Buyurun.

**Prof. Dr. Yusuf KARAKOÇ (Dokuz Eylül Üniversitesi Hukuk Fakültesi Dekanı)-** Sabahtan beri burada değerli konukların sunumlarını dinliyorum. Bir, bu toplantıyı düzenleyen bütün kurum ve kuruluşlara teşekkür ediyorum; iki, konuşmalarıyla bizleri aydınlatan değerli konuklara da ayrıca teşekkür ediyorum.

Akademik özgürlük özerklik denildiğinde, herhalde bir akademisyenin de kalkıp burada Türkiye'deki akademik özgürlükle ilgili bir konuyu dile getirmesinde yarar olduğunu düşünüyorum. Avukat bir meslektaşımız, Türkiye'de akademik özerklik olmadığını, asistanların hocalarının çantalarını taşıyarak işe başladığını söyledi. Ben çeyrek yüzyılı aşmış bir akademisyen olarak, hiçbir hocanın çantasını taşımadım, şu anda da hiçbir asistanıma çantamı taşıtmıyorum. Böyle bir şey yok, bu bir şehir efsanesidir ve geçmişte kalmıştır. Kaldı ki kendimizden büyük hocaların ya da büyüklerimizin çantalarını taşımaktan da her zaman onur duyacağımızı da belirtmek istiyorum. Bunu da her zaman herkesin yapması gerektiğini de düşünüyorum.

Dolayısıyla o çanta taşıma meselesini, böyle istihza konusu, özerkliğin engelleyicisi olarak görmek değil, bence aslında asistanların eğitim sürecinin bir parçası olarak görmenin doğru olduğunu düşünüyorum.

Şeye gelince, değerli konuğumuz akademik özerkliğin unsurlarından bahsetti. Ben bu konulardan bahsedilince, kendi kurumumu ve kendimi düşündüm. Bu zamana kadar benim derste ne anlattığı, nasıl anlattığım konusu hiç takip edilmedi. Ben 5 yılı aşkındır bir fakültede dekan olarak görev yapıyorum. Hiçbir arkadaşımın derste müfredatının nasıl hazırlandığını, dikkat edin müfredatın hazırlanmasını bile müdahaleci bir şekilde izlemedim. Benim de bu zamana kadar hiçbir müfredatım hiçbir yöneticim tarafından izlenmedi.

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Milletlerin tarihlerinde belirli dönemlerde sorunlar yaşanmıştır. Amerikan toplumunda da yaşanmıştır, Avrupa'da da yaşanmıştır, bizde de yaşandı. Askeri ihtilal dönemleri dışında üniversiteden atılmış, araştırma yaptığı için araştırma yöntemini kendisi belirlediği için, araştırmasını yayınladığı için üniversiteden atılmış insan sayısı belki birkaç tane vardır ya da yoktur. Şüphesiz her yerde zaman zaman bazı sorunlar yaşanabilir, ama bu sorunları sanki genelmiş gibi takdim etmek hiçbir zaman doğru değildir.

Bu zamana kadar hiçbir akademisyen bir açıklama yaptı diye, herhangi bir takibe uğramamıştır. Benim kurumum açırsından söylüyorum. Ben Dokuz Eylül Üniversitesi'nde böyle bir şeyi hiç duymadım, hiç yaşamadım, kendim de yaşamadım yaşadığına da şahit olmadım. Ancak dünyanın her yerinde şüphesiz ki devletler zaman zaman güvenlik özgürlük tercihi bulabilirler, bazen güvenlik özgürlükten öncelenebilir. O dönemlerde şüphesiz ki bazı sınırlamalar konulabilir. Özerkliğin ne olmadığını tanımlayarak özerkliğin ne olduğunu anlamak gerek demişti sayın konuşmacı. Gerçekten önce özerkliğin ne olmadığını bilmemiz lazım. Özerklik hiçbir zaman keyfilik değildir, özerklik hiçbir zaman başkalarına küfretmek değildir, özerklik hiçbir zaman hiçbir kontrolden geçirmeden düşüncelerimizi ifade etmek değildir. Şüphesiz ki her şeyin bir ölçüsü, bir sınırı vardır. Bizim ülkemizde de akademisyenlerin kural olarak, istisnalar her yerde her zaman bulunabilir, tabii ki bizim ülkemizde de vardır. Kural olarak dünyanın neredeyse en özerk akademisyenleri olduğunu sanıyorum.

Salona bakarsanız, akademisyenlerimizin ne kadar özerk olduğunu görürsünüz. Bu toplantıya devam etmemek özerkliği bile vardır akademisyenlerimizin.

Saygılar sunuyorum. (Alkışlar)

**OTURUM BAŞKANI-** Teşekkürler, Yusuf Hocama da bu anlamda. Would you like to answer?

*Yanıtlamak ister misiniz?*

Prof. Dr. Kathleen BURCH (Atlanta John Marshall Üniversitesi Hukuk Fakültesi, Georgia, ABD)- I am not sure there was a questionnaire. But I would like to say one thing is Professor Yenisey, I don't see him in the room, he has often told me or several times at least, about a research project that he did in Bahçeşehir on the quality of what was happening in the criminal court system here in Turkey. Because there had been much criticism of the court system as not being efficient or fair and/or effective and he said that the research that they compiled actually established that it was, if I understood him correctly. So we see I believe you told me about another time they did a research project and actually came up critical to the government. And there has been no backlash to him regarding those reports but he works for a private university at this point when those came out. He also has told me of a situation where there was an article written critical of government activity. That would be extramural speech but there was no place to publish, because no newspaper would publish that information. So sometimes there is academic freedom but there is not a place to publish that. I guess I would just say one thing with regard to the carrying the bags. Perhaps we should think of it is a metaphor and that the younger faculty are carrying the bags that means learning from their older faculty as mentors.

*Bunun bir soru olup olmadığından çok emin değilim. Ancak şunu belirtmek isterim ki, Profesör Yenisey, sanırım şu an salonda değil, bana Bahçeşehir'de Türkiye'deki ceza mahkemelerinde olanların niteliği üzerine yaptığı bir araştırmadan bir kaç kez bahsetmişti. Yargı sisteminin etkili ve/veya adil olmadığına dair çok fazla eleştiri olduğu zaman, yaptığı çalışmanın sonucuna göre, eğer doğru anladıysam, bunun doğru olduğunu söylemişti. Sanırım siz de bana bir kez yapılan bir araştırma sonucunda hükümetin eleştirildiğini ilettiniz. Bu bildirileri ile ilgili olarak kendisine karşı bir tepki olmadı. Tabi i o zaman da bir özel kurumda çalışıyordu. Bana, yine hükümetin çalışmasının eleştirildiği bir başka makaleden söz etmişti. Bu aslında kurum dışı ifade özgürlüğü kapsamına girer. Ancak, yayınlamadığını; zira bu bilgiyi yayınlayacak bir gazete bulamadığını belirtmişti. Bazen akademik özgürlük vardır ama bunu yayınlayacağınız bir yer bulamazsınız.*

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*Çantaların taşınması konusunda bir şey söylemek istiyorum. Sanırım bunu, genç akademisyenlerin, daha yaşlı akademisyenlerden bir şeyler öğrenmeye çalıştıklarını ifade eden bir mecaz olarak algılamalıyız.*

**OTURUM BAŞKANI-** Çok teşekkür ediyorum. Aslında bu bölünmüş oturumu çok fazla bölmek de istemiyordum, ama son bir soru o zaman.

**Prof. Dr. Muharrem KILIÇ (Akdeniz Üniversitesi Hukuk Fakültesi Dekanı)-** Teşekkür ediyorum Sayın Hocam. Şimdi tabii Descartes'ın da ifade ettiği gibi açıklık-seçiklik çok önemli kavram dünyamızda. Bu çerçevede tabii İngilizce de ya da Amerikan kültüründe belki sıkıntı yok, ama akademik özgürlük ile *freedom and academic autonomy*, akademik özerklik arasındaki farkı belki başlangıçta ifade edilmedi, onu belki kendi bağlamlarında bir sorun yok, ama bizim açımızdan önemli. Onu şey yapabilirler mi? Akademik özgürlük ne, akademik özerklik ne?

İkinci sorum, sunumunda değerli hocamız üniversite bir işletme değildir dedi. Fakat görebildiğim, *ranking* dereceye giren, sıralamada dereceye giren Amerikan üniversitelerinin... Ne kadar doğru olur bilemiyorum. Bu sıralamada dereceye giren Amerikan üniversitelerinin ilk yüzde 500'de çoğunluğunun, yani aşırı genellemenin tabii ki darası düşülmesi gerekiyor, ama çoğunluğunun işletme mantığıyla hareket ettiğini, piyasanın gerekleri doğrultusunda bir araştırma, işte fonlamadan tutun da, eğitim öğretim süreçlerindeki temel hedefleri amaçları doğrultusunda baktığımız zaman böyle bir şey var. Bunun peki akademik özgürlük anlamında yarattığı handikap nedir? Buna ilişkin daha somut şeyler söyleyebilir mi?

Son olarak bir de öğrenciden kaynaklı, piyasadan artı öğrenciden kaynaklı da akademik özgürlüğün kısıtlanma durumlarının nasıl olabileceğini söyledi konuşumuz hocamız. Bu öğrenci tehdidi, akademik özgürlüğü nasıl tehdit eder? Öğrenci boyutundan ya da öğrenci tarafından nasıl bir tehdit söz konusudur? Somut bir şekilde ifade ederse, üç soru sordum.

Teşekkür ediyorum, sağ olun.

**Prof. Dr. Kathleen BURCH (Atlanta John Marshall Üniversitesi Hukuk Fakültesi, Georgia, ABD)-** So the autonomy versus freedom. That really goes to, they are very connected; so, academic's autonomy allows the academic to choose the area of their expertise and to choose the methodology so long as the research methodology used in their area of expertise and their teaching methodologies meets industry standards. Industry standards are the rest of the academy. So that is where you come back and you take a look to see whether or not that teacher was being effective.

The university as a private institution. When we take a look at our top universities; Harvard, Yale they are private they are not for profit. So while they usually, actually most of them do not make money from their tuition. They make their money through raising fund through endowments and by getting government funds from research. I do not want to go into government funding and private funding from private cooperation can be pinged upon academic freedom. I will answer those questions outside during the break or tomorrow. But the tension between the private institutions and academic freedom is when you are a for-profit institution or you have a donor who does not like the speech of the faculty members and puts pressure on administration to terminate the faculty member who is speaking out against their interest. Dean Reed actually has an experience that he can share with you outside of the session during break or tomorrow about a time when he was dean when that actually happened how he handled that.

With regard to the students what we see actually they are using the online media that Prof. Jewel spoke about earlier and because online is such a powerful tool, we see that students can use the online media to complain about faculty members and because universities want to keep students as a income stream or to maintain them as happy so they stay and do not transfer out. We see that the students can sometimes use online media to bully faculty members and to get them to change the way they are teaching. That is when the faculty, when we need the

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administration to support the faculty member that the faculty member is actually working in their area of expertise in order to teach the students what they need to know.

I think we need to move on for time. I am happy to answer whatever questions you have. My Turkish is not existent so we will need someone who will translate for us but I am happy to answer any questions people have either during the break or tomorrow during tomorrow sessions.

*Yani özerkliğe karşı özgürlük. Bu iki kavram birbirleri ile gerçekten bağlantılı. Yani akademik özerklik, bir akademisyene kendi uzmanlık alanını, ve kendi uzmanlık alanında kullanılabilir olması şartıyla kullanacağı araştırma yöntemi ile endüstriyel standartlara uygun öğretim metodolojilerini belirleme olanağı tanır. Endüstri standartları da diğer akademisyenlerdir. Yani bu noktada geriye dönüp o öğretmenlerin etkili olup olmadığına bakarsınız.*

*Özel bir kurum olarak üniversite. En iyi üniversitelerimize baktığımızda, Harvard ve Yale'in özel ancak kâr amacı gütmeyen üniversiteler olduklarını görüyoruz. Yani, çoğu, öğrenci ücretlerinden para kazanmıyor. Bağışlar veya araştırmaya yönelik devlet fonlarından para elde ediyorlar. Şimdi devlet finansmanı veya özel ortaklıklardan gelen özel finansmanın akademik özgürlüğe zarar verebileceği konusuna girmiyorum. Bu soruları ara verildiğinde dışarıda veya yarın yanıtlayabilirim. Ancak, özel kurumlarla akademik özgürlük arasındaki bağlar şu şekilde gerilebilir: örneğin siz kâr amaçlı güden bir kurumsunuzdur ve öğretim üyelerinin konuşmalarını beğenmeyen bir bağışçınız vardır. Bu bağışçı yönetime kendi çıkarlarına ters düşecek şekilde konuşan akademisyeni bitirmesi konusunda baskı uygular. Dekan Reed'in aslında ara verildiğinde dışarıda veya yarın dekan olduğu dönemde gerçekleşen bir olayın ne olduğu ve bununla nasıl başa çıktığını sizlere aktarabileceği benzer bir tecrübesi var.*

*Öğrencilerle ilgili olarak ise Profesör Jewel'in bu sabah bahsettiği çevrimiçi medyayı kullandıklarını söyleyebiliriz. Çevrimiçi ortam çok güzel bir araç. Öğrencilerin çevrimiçi medyayı, akademisyenleri şikayet etmek için kullanabiliyorlar. Zira üniversiteler, gelir kaynaklarını düşünerek öğrencilerin kaybetmek istemiyorlar ve öğrenciler*

*memnun etmek istedikleri için onları okuldan atmıyorlar. Görüyoruz ki öğrenciler, çevrimiçi medyayı bazen akademisyenlere zorbalık uygulamak ve öğretim yöntemlerini değiştirmeye zorlamak için kullanıyorlar. Bu durumda akademisyenler, bizler, bu akademisyenin aslında öğrencilere bilmeleri gerekenleri öğretebilmeleri için uzmanlık alanları kapsamında çalıştıklarını ifade etmek şeklinde bir yönetim desteğine ihtiyaç duyuyoruz.*

*Sanırım zaman darlığı nedeniyle devam etmek durundayız. Her türlü sorunuza yanıtlamaktan memnuniyet duyuyorum. Türkçe bilmediğim için bize tercüme yapacak birisi gerekiyor; ancak ara verildiğinde veya yarın sabahki oturumlarda, sorularınızı yanıtlamaktan mutlu olacağım.*

**OTURUM BAŞKANI-** Efendim çok çok teşekkür ediyoruz. Gerçekten çok önemli bir konu, çok temel bir konu akademik özgürlük meselesi, ama vaktimiz de gerçekten çok daraldı.

Şimdi bu temel konudan dijital çağa geçiyoruz hemen, bu biraz önce kesilmişti. Dijital çağda hukuk eğitiminde, sırada Sayın Profesör Jessica Rubin var. Şimdi kendisinden sınıfta başlayan stajla ilgili olarak konuşmasını dinleyeceğiz. Buyurun.

**Emerius F. Tom READ (Dekan)-** While he is fixing the computer, the title of this presentation by Professor Luna and Professor Rubin is the classroom as an apprenticeship and it is an example of teaching skills as well as doctrine in the classroom.

*Bilgisayar düzenlenirken, Profesör Luna ve Profesör Rubin'in şimdiki sunumlarının stajyerlik sınıf konusunda olacağını ve sınıftaki öğretim becerilerinin yanı sıra doktrinden de örnekler verileceğini belirtmek istiyorum.*

**Prof. Dr. Jessica RUBİN (Connecticut Üniversitesi Hukuk Fakültesi, Hartford, Connecticut, ABD)-** Merhaba, benim adım Jessica Rubin. Burada sizlerle olmaktan çok mutluyum. That is all I can do. Thank you. That is all. Thank you for inviting us and for the wonderful conversation today. We have heard very

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interesting trends in the legal market and in legal education. I would like to focus in on classroom teaching. And we have heard earlier that there is a growing emphasis on skills and teaching skills. I would like to speak with you about an example on how to integrate skills instruction, specifically business transactional skills instruction into the law school experience and how to do that early in the law school experience.

The way that I propose doing it is by taking students through a simulated or fake business transaction and through this transaction, I hope to teach my students the skill, the very important lawyering skills of interviewing, counseling, negotiating and drafting agreements.

I think it is very important to teach this early in law school for two reasons. The first reason is that especially in Turkey where law students are young and early in their education and also in the US where they are also young, it is very important to cultivate these interpersonal skills. They have not had life experiences to form these skills so they need it from us as teachers. The second reason why I think it is important to introduce these skills early is so that our students can revisit and refined these skills in their later course work.

So why do I think is important to teach transactional skills, three reasons. The first is that historically in the United States, legal education has focused on preparing students to be litigators. Our students, throughout their three years in a JD program in the US, are taught how to write legal arguments, they are taught and given practice on how to make oral arguments and they are really set up and trained to be litigators. Very little emphasis has been placed on teaching students how to be transactional or business lawyers.

So I think it is important to fill this gap and it is something that is being done more at law schools right now. I also feel that, in my practice as a business lawyer, law students were entering the practice with very little ability to conduct business transactions. And whether or not lawyers practice litigation or



transaction work they need very much to understand the law of running a business. So that is my second reason. The third reason why I choose to take my students through a transaction is so that they can have an experience of representing one client through that client's business life. And I think it is very important for law students to understand that we do not represent a client for a short period of time, a snapshot, but instead represent in over their life cycle.

So, how did I design this course and offer it as a suggestion for you to think about? I do it in the first year of our program and I do with a large group of students, usually about 50 students. So one challenge is how to give practical experience and feedback to a large group of students. The way one way that I have designed the course is that I make the student act as lawyers through the course and I force them whether they like it or not to work with partners. So I have teams. I have them work through one business transaction and represent a client.

Where do I get the client? I have the benefit of working with a large group of adjunct faculty members who are practicing lawyers in our community who work for the law school as adjunct faculty. And they come in and they work with our students and they act as the client in doing so they are able to train our students by giving them critic or feedback on how the students interrupted with the adjuncts as clients.

What are my goals in teaching this kind of course? As I said, I want to teach them how to be transactional lawyers. I also want them to be comfortable representing a client over the course of that client's life. And by giving the student one exercise or one problem to work on through whole semester, I find that we can go deeper and better into the law and the facts and the relationship with the client. So, I find it overall it is a better, richer student experience.

What does my course look like? As I said, it is a large class. I use adjunct faculty for two ways. I use the adjunct faculty to be the client so the source of factual information for the students

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as they go through the semester. But they are also teachers. So they give critique and grade to the students on the students' performance.

I run the course alternating between lectures where I deliver substantive legal information to the students and I send them out to do exercises or practice interviews, meetings with their adjuncts. The exercises teach the students basic skills of interviewing, counseling, negotiating and drafting and again they work on a sustained deal.

What kind of law do I cover in the course? I need to teach them enough substantive law, so that they can go forward and represent their adjuncts' client. So we start by talking about the kind of business entities that a client might need to form whether its cooperation, a limited partnership or, you know, what best entity would suit this client. And then so that would be my lecture to them going through the manual of business entity options. And then they would go out in a small meeting and meet with their adjunct client and talk about what business entity this should form.

They come back to me the following week and I give them a lecture on the law, the substance of law and contract law on how you buy and sell assets. Then they go and interview and counsel their client and so on. So we hit a few substance of area choosing a business entity: How to buy and sell assets. What kind of legal issues arise when you buy and sell real property? What kind of legal issues and contract issues arise when you try to convey intellectual property, patents, copyrights, trademark? And finally what sort of legal issues and contract issues come up when you try to buy or sell environmentally challenged property?

So, the students each week get a little bit about substantive law and contract drafting instruction from me and then they go out and interview and counsel their adjunct client. After several weeks of doing that they then have enough information and authorization from their client so that they can start

negotiating against other teams of students on the opposite side of this transaction.

So I am setting them up for a fake transaction where they have to negotiate against other student lawyers. And finally draft a contract from the four of them reflecting the transaction. An important thing that I have come to realize in this course is that, my students like all of our students care deeply about how they are evaluated. So evaluating my students in this course I am sure never to evaluate them on the result of their negotiation. They do not pass or fail my course based on how good of a deal they got. Instead I evaluate them based on how receptive they have been to critique on technique how their technique has involved over the course.

Finally, I also have learned that well I love having students work in teams and collaborate and I think it is very realistic. A lot of American students really do not like being evaluated based upon collaborate work only. So I do provide, separate from this transaction, I do provide all of my students with the “opportunity”, I call it, but it is really a final exam but I phrase it as an opportunity for them to shine their individual performance. I found that it is important to balance in a collaborative work and individual work in evaluating the students. So, that is the basis for my evaluation of the students.

And finally I want to speak a little bit about challenges that I see in having a course like this. The first issue that comes up is a good course for first year law students in any program. As I started up, I think it is important to get this skills taught early. I know from some of my students, they feel like it is too much too soon. So, something to think about appropriate timing of an intensive course like this.

The second thing is to consider whether or not a course like this should be required or whether it should be elective for the students. The third challenge in a course like this is always the question of grading or how we evaluate students. I have handed over some discretion of grading to my adjunct instructors and

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so there is a risk that there is not consistent grading in a course like this. Also the balance between grading on collaborative work and individual work pretends a challenge.

Fourth the course a lot of work and the question always becomes “is it worth what the students get out of it and is it fair for students to have more work in a course like this than other courses?” And finally, the issue of collaborative work: Do students like it? Should they be graded upon it? And, should they have any discretion over who their partners have been?

These are all issues that I have played with over the years and I have tried it both ways, I have no firm belief on these five issues and that is why they have question marks next to them. But I did want to highlight them as all challenges executing a course like this.

So, I look forward to any questions that you might have for me and thank you for your attention.

*Merhaba, benim adım Jessica Rubin. Burada sizlerle olmaktan çok mutluyum. Bizi davet ettiğiniz için ve bugün burada yaptığımız güzel tartışma için çok teşekkür ederim. Hukuk piyasası ve hukuk eğitimi ile ilgili çok ilginç eğilimler duyduk. Ben sınıftaki eğitime odaklanmak istiyorum. Yine bugün, beceriler ve becerilerin öğretilmesi üzerine giderek artan bir vurgu olduğunu da dinledik. Şimdi sizinle, özellikle profesyonel işlem becerilerinin hukuk fakültesindeki tecrübelerle nasıl aktarılacağı ve bunun hukuk fakültesinin ilk yıllarında nasıl yapılabileceği başta olmak üzere, becerilerin öğretime nasıl entegre edilebileceğinin bir örneği üzerinde konuşmak istiyorum.*

*Bu konuda benim önerdiğim yöntem öğrencilerin temsili veya sahte bir profesyonel işleme dahil edilmesidir. Bu işlem yoluyla öğrencilerime avukatlık mesleğinin önemli becerilerinden olan mülakat, danışmanlık, uzlaşma ve sözleşme hazırlama becerilerini kazandırmayı umut ediyorum.*

*Bunun hukuk fakültesinin ilk yıllarında öğretilmesinin çok önemli olduğunu düşünmemin iki nedeni var. Birinci neden, özellikle hukuk öğrencilerinin oldukça genç ve eğitime erken başlamış oldukları*

*Türkiye’de ve yine genç oldukları Amerika Birleşik Devletlerinde bu kişilerarası becerilerin işlenmesi çok önemli. Bu becerileri oluşturmak için herhangi bir hayat tecrübeleri olmadığından bunu bizden alamaya gereksinim duyuyorlar. Bu becerilerin erken yaşta kazandırılmasının önemli olduğunu düşünmemin ikinci nedeni, bu şekilde öğrencilerin bu becerileri daha sonraki derslerde hatırlayıp geliştirebilecek olmaları.*

*Profesyonel işlem becerilerinin öğretilmesinin önemli olduğunu düşünmemin üç nedeni var: birincisi, tarihsel olarak Amerika Birleşik Devletlerinde hukuk eğitiminin öğrencileri duruşma avukatlığına hazırlamasıdır. Bizim öğrencilerimiz, Amerika Birleşik Devletlerindeki JD programları süresince, nasıl hukuki argümanlar yazabilecekleri, sözlü argümanları nasıl geliştirebilecekleri üzerine öğrenim görüp uygulamaya tabi tutuldular. Birer duruşma avukatı olmak üzere çok iyi hazırlanıp eğitildiler. Öğrencilere nasıl profesyonel işlem avukatları olabileceklerinin öğretilmesine ise çok az vurgu var.*

*Bu nedenle bu boşluğun doldurulmasının çok önemli olduğunu ve daha çok hukuk fakültelerinde bu boşlukların bulunduğunu düşünüyorum. Bir iş avukatı olarak kendi alanımda da hissettiğim, profesyonel işlemlerle ilgili çok az şey bilerek mesleğe atılma konusudur.*

**OTURUM BAŞKANI-** Çok teşekkür ediyoruz Sayın Rubin’e. Eğer sorularınız varsa, özellikle bu çok ilginç konuda öğrenme becerileri, uygulamaya yönelik becerilerin arttırılması ve öğrenmenin bu şekilde gerçekleştirilmesi çok değişik bir yöntem. Uygulama açısından da çok önemli, öğrenme açısından da çok önemli. Gerçekten bizim için de çok önemli bir deneyim oldu. Varsa bu konudaki sorularınızı alabiliriz, yoksa geçeceğiz.

Buyurun Yusuf Hocam.

**Prof. Dr. Yusuf KARAKOÇ (Dokuz Eylül Üniversitesi Hukuk Fakültesi Dekanı)-** Amerika Birleşik Devletlerinde hukuk öğrenimi bir lisans öğreniminden sonra başlıyor ve hukuk fakülteleri üç yıllık bir sürede öğretimlerini tamamlıyorlar. Tabii burada sabahdan beri yapılan konuşmalardan, daha çok öğretimden ziyade eğitim yapıldığı ortaya çıktı. Çünkü hukuk fa-

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külteleri daha çok bizdeki hukuk fakültelerinden farklı olarak, avukat yetiştirme amacına yönelik eğitim öğretim yapıyorlar.

Her fakülte mezunu her baro sınavına giremiyor. Baro sınavından önce de ya da avukatlık kaydının yapılmasından önce de herhangi bir, bizdeki gibi staj süreci filan yok. Dolayısıyla bütün hem bilgiyi aktarma, hem de beceriyi kazandırma bu üç yıllık süre içerisinde gerçekleştirilmesi gerekiyor.

Sayın konuşmacı dedi ki, birinci sınıfta beceri kazandırma konusunda acaba erken mi oluyor diye itirazlar yapıyor dedi. Biz liseden mezun çocukları birinci sınıfta Amerikalıların yaptığı gibi, daha bilgilendirmeden beceri kazandırmaya kalkarsak, onlardan olumlu bir sonuç almamız, verimli bir öğretim ve eğitim sağlamamız mümkün olmayacak demektir. Dolayısıyla her iki hukuk sisteminin farklılığı ve fakültelerin amaçlarının farklılığı, bizde hâkimlik ve savcılık için ayrıca bir staj döneminin varlığı dikkate alındığında, tabii ki bu eğitim öğretim sistemlerinin farklılığını anlamak gerektiğini düşünüyorum.

İkinci lisans olarak hukuk eğitimi yapıldığında bile, birinci sınıfta beceri kazandırmak için erken itirazlarının yapıldığı yerde, bizim dördüncü sınıf öğrencilerine bile beceri kazandırmamızın erken olduğu itirazıyla karşılaşmamız kaçınılmaz olur gibi geliyor bana.

Teşekkürler ediyorum.

**OTURUM BAŞKANI-** Teşekkür ederim. Anladığım kadarıyla bir soru değil, yorum var. Yorum için de çok teşekkür ediyorum. İhsan Bey, son olarak İhsan Beye verirseniz, buyurun.

**Dr. İhsan BAŞTÜRK (Yargıtay Cumhuriyet Savcısı)-** Sabah bahsettim, ama bir savcı olduğumu hatırlatmak istiyorum. Şimdi Sayın Hocama aynen katılıyorum tamamen görüşlerine. Hukuk eğitimi dediğimiz şey ve bu olgunun çıktıkları. Nedir bu çıktılar? Avukatsanız dava dilekçesidir, savunma dilekçesidir; hâkim ya da savcıysanız, hâkimin mahkemenin oluşturduğu karardır; savcının açtığı dava belgesidir bizim iddianame dediğimiz şey. Bu çıktıkları üretebilmek için, hukuka uygun şekilde

temel insan haklarının korunmasına uygun şekilde ortaya koyabilmek için, bu sizin bahsettiğiniz sisteminizdeki bağımsız yeteneklerin kabiliyetlerin geliştirilmesi güçlendirilmesini gerçekten çok önemsiyorum ve Türk yargı uygulamasından birisi olarak, bizde maalesef ve maalesef bu eksikliğin inanılmaz derecede ortaya çıktığını, bahsettiğim çıktılardan o belgelerden gördüğümü, somut olarak gördüğümü, üzülenek gördüğümü ifade etmek istiyorum.

Bu anlamda bence Türk hukuk fakültelerinin de eğitimde kişisel yeteneklerin geliştirilmesine yer verilmesine ihtiyaç var diye düşünüyorum. Benim de gerçekten genç hukukçu arkadaşlara bir araya geldiğimizde sohbet ettiğimizde tavsiye ettiğim şey şu oluyor. Değerli meslektaşlar diyorum, yani öncelikle çok okuyacağız, çok çok okuyacağız, her şeyi okuyacağız, hukuk dışından da okuyacağız, hukuk metinleri okuyacağız ve böylelikle yazmaya başlayacağız. O çıktılarını o kararlarını o dilekçelerini en iyi şekilde ortaya koymanın yolu, bahsettiğiniz gibi kesinlikle sizin sisteme hak veriyorum, ilk sınıflardan başlayarak hukuk eğitiminde bu yeteneklerin geliştirilmesine ağırlık vermek.

Teşekkür ederim.

**OTURUM BAŞKANI-** İhsan Beye de yorum ve katkıları için çok çok teşekkür ediyoruz. Şimdi hemen diğer konuğumuza geçiyorum. Diğer konuğumuz Profesör Bruce Luna. Şimdi yine Atlanta John Marshall Üniversitesi Hukuk Fakültesinden hocamızın sunumu. . .

**Prof. Dr. Bruce LUNA (Atlanta John Marshall Üniversitesi Hukuk Fakültesi)-** Thank you for the opportunity to be here. As a former Japanese interpreter, I feel the need to thank our interpreters here today for their hard work.

Let me begin by saying that prior to becoming a law professor, I was a practitioner for 10 years, I was a corporate lawyer. And my experiences as a corporate lawyer formed how I teach my classes. I will say that, as you have heard today from my colleagues, there are great changes going on

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in American legal education that center around how do we go about creating practice-ready attorneys from the law school. There have been externships, clinics and separate skills-based classes that are designed to train our law students to be able to practice upon graduation.

From my perspective, we also need to go a step further, and I know you will hear from some of my colleagues later today discussing how they do this as well, I, as a, having a corporate background, I teach commercial law and business law classes at my university. And what I try to do is to integrate the skills that I thought junior associates needed into my classroom as I am teaching the doctrine. So that hopefully when they take my class and pass my class and pass the bar, they will be able to practice immediately in that area of law if that is what they end up doing following their graduation.

So today I just want to briefly, very briefly for your sake, kind of tell you about how my classes are structured. As a business lawyer who became a law professor, part of my ideas was trying to identify “What are the skills I want to see in my students at the end of my class?” and I primarily divide them into 4 parts: There is the ability to write a draft contracts, there is the need to have business skills to understand what the clients’ business needs are. And of course there is the need for professionalism as an attorney entering that legal profession as well as ethics that every lawyer needs to learn to be trained in. At the end of the day, I hope that all my students will graduate, pass the bar and become colleagues of mine that I can be proud of and that is my goal when I teach.

So in my class, primarily I teach commercial law and business law courses. So as I am teaching the law in related areas I am actually giving them assignments as well to draft documents that are related to the subject matter at hand. So for example, I am teaching about landing law, I have them draft how law agreement to see how the law has informed the practice of law. They reinforce each other. And I find that as we intergrade skills into doctrinal classes, the skills portion helps



reinforce and inform the students that they learn the lots of I think better.

With respect to business skills, there is a great divide between being a corporate lawyer and then understanding the client's needs in the markets and the industries of the client's work in. There is a language to be a transactional lawyer or corporate lawyer. And I try to integrate into my classroom as I am teaching these courses about what a client of business client expects from their attorney. So, a lot of the work is trying to get our student to understand how to translate business concerns into contractual terms and then how these, how to negotiate the differences between business issues and legal issues.

Professionalism I think is a challenge of to inform on any student from I guess a law professor's perspective. The way I do in my classroom is, I, in some respects, take on the persona of a law partner training junior associates, junior attorneys. And informing them what I expect from them as young attorneys right for the beginning of class in law school so that by the time they have graduated and pass the bar they already have that internal competence and comfort professional skills in negotiating interactions with clients as well as senior attorneys. Because more and more in today's legal profession in the United States, many law students are graduating and starting their solo practices. I also try to integrate my classes the needs of the economics of the solo practitioner.

And finally, one of the great concerns we have is training our students to be ethical as lawyers. In my experience as a corporate lawyer, often times our business clients found being a corporate attorney to be in hinderence. So, part of the problem is resisting the pressure from the business class to push the boundaries what was legal and perhaps when it times would be illegal. So being able to be comfortable in managing ones client to negotiate what is proper behavior and to not be convinced by client to do things that would cross the ethical lines. That is also something I try to part to my students as I am teaching a doctrinal course. Now how do I go by actually doing

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that is a very difficult process and it takes a lot of time and consideration. I will not say that I am able to do this in every class. But as an example of my teacher commercial law class typically between 50- 70 students about three hours a week and what I try to do is as Prof. Moliterno discussed earlier this morning, we uses critique method by teaching our students how to read court opinions and how the law has developed in our common law states through the reading of court opinions.

So as we are teaching our students and discussing with our students how court opinions involved in a lot of law works. I will take examples from those opinions and ask our students to fix the problems that we have hand. If there is an issue was drafted I ask them to fix that contract by redrafting the relevant provisions. And by that, I think the format, they are learning some other drafting skills necessary as an attorney as well as the law itself. I, in addition, usually give examples of commercial contracts and as them annotated which centrally means going by through contract line by line to understand how a contract is structured, what the terms are and then again to see how the terms on a contract are often times besides the business points or reflection of the law itself.

And then also at the end of every class I typically have a written exam or quiz. I do not know how a Turkish classroom is, but most students in American law schools have laptops in the classrooms to take their notes. And all I see is the back of laptops on the scene of a classroom and I am never quite sure if they are taking notes or if they are on Facebook or e-mailing their friends. And to try to use against them to make the technology a method of learning, I will give quizzes usually from a client-based perspective of what you do in this situation and ask them to write the quick e-mail letter to a hypothetical client, myself, and e-mail it to me. And after class, I will go through it, trying to understand the assess the student's answers in terms of did they understand the issues that I was trying to teach and then also use it as a method for teaching them professionalism in the communication with clients. That

is just one way of handling my annoyance at seeing students maybe not necessarily focusing on the class.

During my classes I briefly imagined I will give writing assignments based on the subject matter at hand. I will basically leave it at that, you can have I think the copy of this PowerPoint at the end of this thing.

As for assessments, again I typically try to assess my students from the perspective of a senior attorney trying to train a junior attorney. So my final exams are typically structured as issues that have to be resolved by writing a letter to client. So you are obviously from a doctrinal perspective they are struggling to answer a legal issue. But also I am trying to give them an opportunity to structure a letter and show me how they would communicate to a client in a professional manner. And then as I tell them, I will grade them based on my comfort level as a corporate attorney. If their work product, their final exam answers, are something comfortable enough to give to a hypothetical client, they get a good grade. If they have issues with it that our problems of professionalism or understanding the law maybe they do not get as good a grade. And if it is something that it clearly unacceptable and would never go to a client then they get a bad grade. Part of our jobs I think as law professors are to be gatekeepers to the practice of law and it is kind of hard position to be here. But we also have to, you know, protect you know the future potential clients. And again at the end of the day, I want my law students graduate, pass the bar and be colleagues of mine in the future.

And then last but not least for the students to understand the economics of law practice, I typically make them actually hypothetically build their time in my classroom as well as build their time in the drafting assignments. So they can get a sense of something: How much time is needed to put something together for a client? How much would you charge for that? Is that too much? In that way, I think I am giving them summary of world experience so when they get into actual practice, they will actually have some history experience to be comfortable

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with becoming lawyers immediately upon graduation.

I really look forward to meeting you and actually talking with you. And I hope after this you will come up to me or I will find you and we can discuss how your classes work and maybe share some ideas. Thank you very much.

**OTURUM BAŞKANI-** Çok çok teşekkürler, gerçekten çok ilginç, çok değişik bir yöntem. Herhalde hiç şimdiye kadar düşünemezdim ben. Öğrenci olarak acaba avukat ne kadar para alır, bunu nasıl yansıtmalıdır? Burası çok ilginçti. Evet, sorularınız varsa hemen alabiliriz, yoksa diğer bölüme geçeceğiz. İsterseniz arada da sorabilirsiniz.

Peki, o zaman teşekkür ediyorum bu oturum açısından da. Evet.

**F. Tom READ -** We are going to have the presentations now of the awards. And then we are going to try something that is experiential in how to present a symposium. And we are going to make a major change here and see if you all can adopt to it and I think it will help us and get us back on time.

**SUNUCU-** Sayın konuşmacılarımıza teşekkür ederiz. Kendilerine plâketlerini vermek üzere Türkiye Barolar Birliği Yönetim Kurulu Üyesi Sayın Gülcihan Türe'yi kürsüye davet ediyorum. Ufak bir not; Kathleen bu toplantının hazırlanmasında en yoğun çaba sarf eden kişilerden biri, kendisini de plâketini almak üzere kürsüye davet ediyorum.

*(Bağış sertifikaları verildi)*

**SUNUCU-** On dakikalık kısa bir ara vereceğiz. I have a quick note for our international guests. As you know, we will arrange your airport transfer tomorrow. In this case please find my colleagues Beste and write your flight times at the list he carry out. OK?

**Emerius F. Tom READ (Dekan)-** As people are getting adjusted, we notice that the audience is deeming they are were very tired, very important other things. So we are going to try

something to see if that works for those of you who remain so that we can at least get just the one of the the other talks were about. We are going to ask all the speakers, from all the remaining panels to come up and set up to the podium. All the speakers from the remaining panels please come up.

So, folks if I can have your attention, please. Can I have your attention, please? Folks. For those remaining, we are going to have some fun here. It is very important to try at least for you to understand, when we print the materials for what some of the other colleagues were going to talk about, we ill pull up enough chairs for all the colleagues. Then I am going to ask each colleague to basically give us a two minutes summary of the important points they were going to make in their talks. Each will go through with that and you can ask any of them questions on any of their topics including questions on the last topic. Everybody understand? We will try and see if we can make this work. Well they are getting settled we ring the bell and see if we can bring other people back in the room.

**SUNUCU** - 10 dakikalık kısa bir ara vereceğiz.

*(Ara verildi)*



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### *Sekizinci Oturum*





**Prof. Dr. Çağlar ÖZEL (Oturum Başkanı)**- Şimdi son oturumu açıyoruz, bugünün son oturumunu. Konuklarımız kısaca konularıyla ilgili olarak sunumlarını yapacaklar.

**James Moliterno** - Good afternoon. Thanks to the party who have stayed for the end. So we were told to give two minutes and say something interesting, something provocative. My talk this afternoon would have been about my law school's new curriculum but I am going to give you each a business card and you can learn about it on the internet, you can learn about it on our website. What I would like to say in my minute and half left is that I have had the great fortune of working in law faculties and law schools in 14 countries around the world now. Everywhere I go, I talk about interactive teaching methods, because that is what I do at home. And I am always told you cannot do that here if I am in in Thailand, Indonesia, in Czech Republic, in Spain wherever it is. I am told you cannot do that here, the students are used to just listening, they will not interact with you, they will not enjoy that. Everywhere I have gone, however they love it. The students, as soon as they are given an opportunity to participate, to get active, to play roles, to engage in the learning process, they love it. And so anything I could ever do to work with any of you who are interested in pursuing those goals in your classes, I volunteer. Please, be in touch with me but I promise you, if you engage in more interactive teaching methods with your students, they will engage and they will love it. Thank you.

**John Bloom** - Good afternoon. My name is John Bloom. I am from Boston College Law School. My plan this afternoon was to talk to you about judicial trainings that I was doing, that I have been doing with judges in Bosnia-Herzegovina. And the provocative thing that I would like to say this afternoon is for the

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whole conference we have been talking about legal education as if it is confined to law school, either the law school building or online. But as we all know, legal education is continuant. It continues beyond the three or four or however many years of law student is in law school and goes beyond into professional education, judicial education etc. One of the things that I have learned through conducting judicial trainings is that I can use many of the same teaching methods that I use with my own students in Boston College Law School with judges not only in the United States but in countries like Bosnia-Herzegovina. And indeed, I had the pleasure just last week of talking to a group of Turkish, judges who were visiting my law school about the training programs that I have been conducting. So, basically what I just want to Wrap up by saying is, we all know that we should never stop learning and even when we become a professor or a dean, we should continue keeping our minds open and continuing our legal education.

**YABANCI KONUK** - Very quickly, we need to interact more. My law students in the United States do not understand the rest of the world so well, and so every year we bring law students to Turkey and engage in the field study. And we invite Turkish law students to join us in summer legal studies program at the University of Vienna. The more we interact again the more we interact the better we understand each other and we began to understand how small are differences are and how great are similarities are. And we all get better governors, better leaders, better lawyers when we interact and spend time together.

**YABANCI KONUK** - Hello. So the second panel that I was going to speak today was with the experiential learning. And my focus is on partnering with nongovernment organizations, either nonprofit cooperations or NGO's. So we are looking for groups that are serving underserved populations and then providing legal services. And the program that I have put together particular is one that trains students in what makes a good case. So, many times in law school, we give the students

even in our experiential learning the client that is already, there the problems that have already been identified. That does not help the students learn how do you ask the right questions, do the right kind of research to determine whether or not your client actually has a cause of action a claim or something of that nature. So the program that I work with is with the American Several Liberties Union in Georgia. And our students actually do the research on the people who have contacted the ACOU ask the ACOU to take their cases. And the students contact those clients, the potential clients research their cases and see if there is actually a cause of action there and then the legal commmitte of the ACOU make a determination as whether or not on that case will go. The nice thing about partnering with NGO is not only can you give the students litigation experience but you also have the students usually mostly NGO's also have a legislative, lobbying section. So, the students get to learn how you make law through the legislator as well as how to communicate with these rights and obligations are to the community so they are speaking to the general public as well. And it is a nice way to bring together all of different kinds of the things that lawyers do in practice.

**YABANCI KONUK** - I would like to speak very briefly about using a flexible, small course to add skills to any other doctrinal courses. Specifically modeled after a natural sciences laboratory course, I use lab courses to add skills instruction to various doctrinal courses. So for example, a student taking a family law course could add on a family law lab course in which the student would negotiate a custody agreement, draft financial affidavits and engage in other skills practice that would complement and apply the substantive doctrinal knowledge being told in the doctrinal course. It is important in any kind of skills instruction to think broadly about the skills. Traditionally we have always focused on writing and research as the basic skills. But now experiential education is encouraging learning of many more important lawyering skills like problem solving, team work, leadership, oral presentation, interviewing, counseling and negotiating. So, this lab course is a flexible and

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effective way of teaching of a variety of skills to complement doctrinal course work.

**REBECCA CUMMINGS** - Good afternoon. I am Rebecca Cummings from Atlanta John Marshall Law School. I am an associate professor. And I was going to speak today about my teaching philosophy in my doctrinal classes that is developed out of the theories of active learning based on some literature by Bronwell and Ison. And the idea behind this philosophy is that students retain more of a deep understanding of topics, if in addition to reading and hearing, they speak and do. So they of course need to begin by reading and then hearing a lecture in some way, but then allowing some time for them to speak and do helps them retain material. So for example, I might set aside 15 minutes in a 90-minute class where I ask the students who have just been discussing the case how could the parties have prevented this conflict. And I will give them 5 minutes to, on their own, quietly write and reflect and think. Then I ask them to pair up with one or two other students and compare their thoughts to speak to each other. And then we have a short class discussion. So, it is a break in a typical lecture for the students to have a chance to speak if not to the whole class to one or two colleagues and it helps them retain a deeper understanding. Thank you.

**LAUREEN CONTENTO** - Merhaba. My name is Lauren Contento. And I am here to talk to you about, well I would have talk to you about case reading skills and the importance of case reading skills. First, I want to say "Üzgünüm ancak Türkçe bilmiyorum" so thank you very much for letting me talk to you in English at this presentation. I teach skills in the US of all kinds and I am really passionate about doing so. I also teach abroad fairly frequently and I have to agree with the first gentlemen who spoke that foreign students are very interested in interactive learning and interactive teaching and active learning. So I am happy to talk to you more about that later. If I had had a chance I would have talk to you about something that I think might be some more provocative. And that is the

importance of teaching students about cases and how to use understand read cases even in civil law jurisdictions. So, with the rise of global commerce, the rise of global education, it becomes important for all of us to become world lawyers and for all of us to know and understand the legal systems of the lawyers who we will be dealing with in other countries. I also have wanted to talk to you about strategy for teaching students how to read cases, students of all stripes, what other students in law school or judges or lawyers who are going for continuing legal education. That I will have to wait for another time but I hope that you will come to me at a break or at lunch tomorrow and I am happy to talk about all of this with you in much more detail. Thank you.

**ELIZABETH MEGALY** - Hi everyone. Thank you for hosting this wonderful conference and for allowing to speak with you in this modified format. My name is Elizabeth Megaly. I am an associate professor of law at Severna Law School. And I also directs the legal skills and professionalism program there. Today I was slated on the reading cases globally panel and my part of that presentation I was with Laureen and Joan and I am a little disappointed that you will not get to hear full extend because I thought that we had a really nice energy together. But if I had one take away from my part of that presentation it would be to impress upon you the importance of reading cases even in civil code countries. And I have three reasons why I think that is important for lawyers even in countries where there is no requirement to follow a president. The first point is related to the learning process and the way that our brains develop. And I think that learning how to read cases properly trains the brain to facilitate sophisticated and advanced problem solving and thought processes. So as attorneys, your ability to problemsolve under any kind of legal system would be improved if you understand how to break down a case, rebuild it from the component parts and make evaluations of the law under new circumstances. So, it is an internally beneficial process. Second lawyers, who can use cases, can make persuasive legal arguments more persuasively so you can still use a president even if

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it is not binding and even if it is not any requirement that any court follow it. And then third looking ahead as a visionary even in civil code countries, the judicial systems that consider president can cultivate integrity of process which of course will land credibility to the systems. And in listening to some of the questions from the audience today, I think that is a concern moving forward here in Turkey and I have heard that in other countries as well as how do we preserve an integrity of process. And I think that learning the history judicial decision making and then using that process is a way to build credibility within a judicial system. Thank you.

**JEFFREY VAN DETTA** - I am Jeffrey Van Detta from Atlanta John Marshall Law School and my topic was going to in the day which show was build on trains and national legal services in globalized economies. I was really going to talk about qualifying LLM degree program in the United States. Why I think those kinds of programs are actually required by the general agreement on trade and services and even if not required are really for the benefit of global commerce and the nations involved. And I was going to describe maybe a little bit contrary to what I heard from my colleague Willy Mitchell this morning that the LLM qualifying degree, when one earns that, is actually a very valuable way to enter law practice in the United States. Well it is true that not every state recognizes it the important states recognize it, California, New York, Georgia and several others, I will not go down the whole list, but it is about 8 states. But that was one part of what I was going to say to you. What I really want to say to you now, is the incredible humility with which I appear before you. I am here as much to learn from all of you. As you are together anything from what I say. You are the inheritors of a great legal tradition that is far older than our country, that has withstood the test of time. You are in the part of the world where the civil law was born and it remains the dominant legal system in the worlds. And it is astonishing how little American lawyers really know about it, my colleague Proffessor Hug from Loyola Law School in New Orleans, that

is the one jurisdiction in the country of United States that teaches at least in the United States that teaches a civil law as a prominent part of the curriculum and they also do so important recall. But I come here humbly to learn about your laws, your ways, your triumphs and I am so impressed with the students in the faculty of the law schools here, I cannot thank enough Prof. Dr. Yenisey for making all of this possible welcoming us in a sense of fellowship and professional collaboration that I have never seen alike as much anywhere else. I have been privileged to teach several Turkish law students at our law school who have come over in an exchange program that Prof. Dr. Yenisey established with us. And I see the same thing here as I saw in the classroom from their Turkish law students. I love your law students. They have an eagerness and a passion for justice and for actually contributing the betterment of your country, that is breathtaking. And I will wish and I have actually held up the Turkish law students as an exam to my American students to say this is what you need to aspire, to embrace in becoming a lawyer. It is not about you, it is not about money, it is about service; service to your community, service to your country, service to the entire world. And I think that no matter what kinds of different educational traditions; laws, politics, culture all of that really is surface, where we are all united and we come together particularly as lawyers and particularly with the wonderful members of the Turkish Bar as well as the professors here. I cannot thank the Union of Bar Associations nearly enough for hosting us here in Ankara. But what brings us alltogether, you can find in the words of the institutes of Justinian that are the basis of course the civil law legal education, that the leading principals that we all aspire to achieve our to live honestly not injure another and to give each his own. And those three fundamental principals are really what the find, the seeking of the truth and justice. And I am incredibly honored that you have lent us your ears and given us an opportunity to speak with you and I really looking forward to learning more from you over the next days as we continue these proceedings.

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**Prof. Dr. Çağlar ÖZEL (Oturum Başkanı)**- Efendim gerçekten, ben de burada olmaktan, bu onuru birlikte sizlerle yaşamaktan çok mutlu olduğumu söylemek istiyorum. Böyle bir güzel grubun ortasında oturmak ayrı bir onur, onu da söyleyeyim.

Konuşmacılarımız, evet konuşmacılarımız konuşmalarını tamamladılar bu anlamda.



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7 Mayıs 2014

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**Dokuzuncu Oturum**



**SUNUCU-** Türkiye Barolar Birliği Atlanta John Marshall Hukuk Fakültesi ve Bahçeşehir Üniversitesi Hukuk Fakültesi tarafından ortaklaşa düzenlenen “21. Yüzyılda Hukuk Eğitimi” etkinliğimizin son gün etkinliklerine hoş geldiniz.

Programımıza başlamadan önce ufak bir hatırlatma yapmak istiyorum. Bildiğiniz gibi aramızda çok sayıda Amerikalı konuğumuz var, onlar soru soracaklar, cevap alacaklar, arada konuşma yapacaklar. Bu nedenle ihtiyacı olan kişiler için kulaklık almalarını tavsiye ederiz. Girişte kulaklıklarımız bulunmakta.

“*Hukuk Fakültelerinde Nicel Durum*” başlıklı oturumumuzu gerçekleştirmek üzere, oturum başkanı ve Ankara Barosu Başkanı Sayın Av. Sema Aksoy, Prof. Dr. Muharrem Kılıç, Prof. Dr. Şahin Akıncı ve Prof. Dr. Kudret Güven’in kürsüyü teşriflerini arz ederim. (Alkışlar)

**Av. Sema AKSOY (Oturum Başkanı)-** Değerli konuklar, hepimizi saygıyla selamlıyorum, günaydın efendim. Bu hafta boyunca İstanbul’da başlayıp, Ankara’da bugün noktalanacak olan hukuk eğitimi konulu panel ve etkinlik gerçekten hepimiz için büyük bir ışık kaynağı olacak. İnanıyorum ki önümüzdeki döneme bu konu daha da tartışılacak. Çünkü biraz önce Sayın Genel Sekreterimiz Güneş Beyle de konuşurken, çok eski bir gazeteyi getirmiş sararmış arşivlerden, o zaman da yapılmış bu panel. Daha herhalde çok da yapılacak.

Hukuk eğitimi yıllardır tartışılan bir konu ve tabii barolar olarak da bizi doğrudan ilgilendiriyor. Kıymetli konuklar, Ankara Barosunda biz 12 bin üyeye ulaştık ve şu anda son birkaç yıldır özellikle her hafta 40-50 stajyer arkadaşımıza ruhsat veriyoruz. Büyüyoruz, ama bu niteliksiz bir büyüme. Staj eğitimi konusunda gittikçe güçlüklerle karşılaşılıyor. Sonuçta hukuk eğitiminin niceliği, niteliğini doğrudan ilgilendiriyor.

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O bakımdan biz geçen sene özellikle, 2013 yılı YÖK kontenjanlarıyla ilgili ciddi bir eleştiri getirdik Ankara Barosu olarak. Hatta ÖSYM ve YÖK'e kontenjanların tarafımıza bildirilmesi için bir başvuru yaptık. Gizli belgedir diye bize göndermediler açıkça. Arkasından itiraz ederek bilgi edinme hakkı kapsamında bu bilgilere ulaştık. Birazdan sizinle arada onları da paylaşmak istiyorum.

Hukuk eğitimi ne kazandırıyor bize hukukçulara? Ben geçen hukuk fakültesinde konuşurken de şunu söyledim. Aslında hukuk eğitimi; hem hukuktur, hem mantıktır, hem sosyolojidir, hem psikolojidir, hem matematiktir. Bunların hepsi hukuk eğitiminin içinde olmalıdır. Biz şu anda Türkiye'de hem fakülte eğitimi sırasında, hem staj eğitimi sırasında ne yazık ki çağdaş eğitim düzeyine ulaşabilmiş değiliz. Bu konuda Ankara Barosu olarak büyük gayretler içerisindeyiz. Umut ediyorum ki, önümüzdeki dönem hayalimizi biraz daha gerçekleştirerek, uygulamalı staj eğitimine ağırlık vermeyi planlıyoruz yeni alınan yerimizde. Türkiye Barolar Birliği tarafından bize tahsis edilmiş olan binada staj eğitimini; duruşma salonları, büro ortamları da yaratarak, stajyerlerimizin uygulamalı eğitim almasını sağlamaya çalışacağız.

Benim sesim bugün biraz gitti, ama adalete feda olsun sesim dedim. Çünkü Anayasa Mahkemesinin önünde gitti. O gün nöbet tutan arkadaşlarımın çoğunun sesi bugün böyle. O bakımdan özür diliyorum, çok fazla konuşurken sıkıntı yaşıyorum biraz rahatsızım.

Çok değerli konuklarımız var bugün katkı koyacak. Konuklarımız yarımşar saat konuşacaklar. Arkasından katkı sunmak isteyen, sunum yapmak isteyen siz değerli konuklarımıza söz vereceğiz efendim. Kiminle başlayalım efendim? Kudret Hocam sizinle başlayalım mı? Öyle mi? Peki, Muharrem Hocam buyurun.

**Prof. Dr. Muharrem KILIÇ (Akdeniz Üniversitesi Hukuk Fakültesi Dekanı)-** Öncelikle teşekkür ediyorum Sayın Başkan. Değerli konuklar, kıymetli meslektaşlarım, kıymetli öğ-

rencilerimiz, Amerika'dan buraya gelip gerçekten şu üç günlük program içerisinde yoğun bir bilgilenme tecrübe kazanma noktasında, özellikle Amerikan hukuk sistemi hukuk eğitimiyle ilgili doyurucu bilgiler sunmaları yönüyle gerçekten güzel bir etkinlik. Doya doya yaşıyoruz bu şöleni etkinliğin bize sağladığı faydayı.

Öncelikle bu çerçevede teşekkürlerimi sunmak istiyorum. Gerçekten hukuk eğitimi konusu, Türkiye'nin belki işte yaklaşık asra yakın olan, bir asırlık bir tarihsel geçmişi olmakla birlikte, her ne kadar zaman zaman tartışma konusu olmakla birlikte, yeterince işin esasına dönük, işin özüne dönük, niteliğine dönük tartışmaların literatürel bir düzeye kavuşmaksızın yapıldığını görüyoruz. Yani yeterince bu konuların ele alınmadığını ne yazık ki görüyoruz.

Hâlbuki bunun tarihsel geçmişi itibariyle baktığımız zaman, hem Avrupa hukuk kültürü hukuk camiası akademiası içerisinde, hem de Amerikan hukuk kültür ve camiası akademiası içerisinde bu konuların, hem monografik düzeyde hem de süreli yayın biçiminde bu konu üzerinde yoğun bir emeğin sarf edildiğini, entelektüel düzeyle ilginin yoğunlaştığını görüyoruz.

Fakat sevindirici olan taraf şu: Son belki işte son 10 yıldır bu konuya olan ilgi yavaş yavaş canlanmaya başladı. Tek tük, az önce Barolar Birliği Genel Sekreterimiz Güneş Bey 73 yılında stajyer avukat iken hukuk öğretimine ilişkin olarak yazmış olduğu makalesini gösterdi. Gerçekten tabii ki bireysel ya da tekil anlamda çabalar girişimler, bu bilince sahip olan entelektüellerimiz düşünürlerimiz meslektaşlarımız söz konusu. Fakat tek çiçekle bahar gelmeyeceği için, bunu kolektif anlamda kurumsal düzeyde sahiplenilmesi, bu problematikin üzerinde yoğunlaşılması büyük önem arz ediyor; özellikle kurumsal açıdan bu konunun sahiplenilmesi önemli.

O açıdan Türkiye Barolar Birliğini, Bahçeşehir Üniversitesi'ni, Feridun Yenisey Hocamın değerli katkılarıyla gerçekleşen bu çabayı yürekten kutluyorum. Bu teşekkürlerimi sunduktan

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sonra, bu serüvenin sürecin geçen yıl Akdeniz Üniversitesi Hukuk Fakültesi öğretim olarak geçen yıl gerçekleştirmiş olduğumuz Birinci Hukuk Öğretimi Kongresini, hukuk fakülteleri bazında sürdürülmesi adına bir milat başlangıç olarak da bekle değerlendirebiliriz. Daha öncesinde yapılmış olan projeler söz konusu. Barolar düzeyinde, Barolar Birliği düzeyinde yapılan çalıştaylar kongreler söz konusu, bunların kitaplaştırılması söz konusu, ama bunlar bir elin parmak sayısını geçmediğini ifade etmiş olalım ki, mevcut durumu tespit ettikten sonra üzerine ne söyleyebiliriz, ne koyabiliriz, neyi tartışabiliriz? Bunun üzerinde durmak gerekiyor.

Ben bu sunumumda üniversite kavramı üzerinde; çünkü malumunuz olduğu üzere hukuk öğretimi bir mesleki öğretim değil, lisans düzeyinde gerçekleşen bir öğretim. Bizim hukuk kültürümüzde, hukuk yapımızın ortaya çıkmasında katkı sağlayan ya da bunu gerçekleştiren üniverster yapı söz konusu. O açıdan üniversite kavramına ilişkin bir girizgâh yapmanın uygun olacağı kanaatindeyim. Bu takip edenler açısından malumunuz ya da hepimizin malumu olduğu üzere, Amerikan hukuk camiasında, Amerikan yüksek öğretim sistemi içerisinde bu lisans değil lisansüstü bir öğretim niteliğinde formunda verilmekte. Böylesi bir hukuk öğretimi gerçekleşmekte, bizde lisans düzeyinde bir öğretim; bu da üniverster çatı altında, akademanın üniverster yapısı altında gerçekleştirilen bir eğitim olduğunu ifade etmem gerekiyor öncelikle.

Şimdi baktığımız zaman hukuk öğretimi, karakteristik özelliklerinin de altını çizmek adına, dün tartışmalar bahsinde kısmen değinmiştim. Baktığımız zaman modern üniversite kavramının doğuşuyla birlikte, çok kadim bir alan hukuk öğretimi hukuk eğitimi. Baktığımız zaman tıpla eşzamanlı bir şekilde aynı anda ortaya çıktığını ifade edebiliriz. Bu noktada bizi tarihsel olarak geriye dönük olarak baktığımız zaman, bizim gideceğimiz nokta Bologna Üniversitesi 1088, modern üniversitenin kuruluş tarihi.

Daha sonra 12. yüzyıl üniversiteleri, işte Oxford ve Paris üniversitelerinde de hukuk öğretiminin, hukuk eğitiminin

hem bir meslek adamı bir hukukçu, pratisyen ya da hukukçu yetiştirmek adına, hem de tıp alanında bir tıp uygulamacısı yetiştirmek adına, tabip yetiştirmek adına bu iki kadim alanın ortaya çıktığını görüyoruz. Şimdi bu denli bir tarihsel arka planın olduğunu bu noktada görüyoruz.

Burada tabii ki sadece bir meslek adamı, meslek insanı yetiştirme kaygısıyla hareket edilmediği, bunun yanı sıra bilimsellik kaygısının da ön planda olduğunu görüyoruz. Bu çaba çerçevesinde hukuk bilimine dair, sadece bir meslek adamı değil hukuk bilimine dair bir birikime ya da yetkinliğe sahip olan hukuk bilimcisi yetiştirmeyi de amaçladığını, tabiri caizse bilimin bilim için yapıldığı bir konseptin felsefenin olduğunu ifade edebiliriz.

Sonrasında bu modern üniversite kavramını 11. yüzyıla dayandırmakla birlikte, tabii ki doğallıkla tarihsel süreç içerisinde birtakım tarihsel kırılmalara eşlik eden kurumsal dönüşümlere tanık oluyoruz. Bu çerçevede baktığımız zaman 17. yüzyıl sanayi devrimiyle birlikte üniversiter yapıda, üniversitenin akademik dokusunda bir dönüşümün yaşandığını görüyoruz. O da bilim için bilim demiştik az önce. Daha çok sosyal bilimsel alanlar, metafizik alan felsefi alanın yanı sıra doğa bilimlerinin merkezleştiğini, üniversiter yapı içerisinde başat bir konuma geldiğini görüyoruz.

Bu tarihsel dönüşüm, kırılmaya eşlik eden tarihsel dönüşüm de kurumsal dönüşümün evrildiği nokta itibariyle baktığımız zaman, burada özellikle aydınlanma sonrası dönemde modern üniversite kavramındaki dönüşümün geldiği nokta, özellikle Kant'ın akıl örgütlenmesi ya da akıl merkezli bir yapılanma olarak nitelendirdiği üniversite kavramının, Humboldt Üniversitesiyle 19. yüzyılda varlık bulduğunu, 1809'da Humboldt Üniversitesi felsefesinin kurgulandığını, mimarisinin ortaya konulduğunu ve ete kemiğe büründüğünü görüyoruz.

Burada eklenen şey Alman felsefesinin temel unsurlarından bir tanesi, kültür kavramı icatlarından bir tanesi de kültür kavramı, Kant'ın akıl kavramına, akıl merkezli örgütlenme olarak

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nitelendirdiği üniversite kavramına Humboldt'la birlikte kültür kavramı ya da Alman felsefesiyle birlikte kültür kavramının eklemlendiğini görüyoruz.

Şimdi bu iki kavram etrafında, akıl ve kültür kavramı etrafında bir öbeklenme, bir kurumsallaşmanın olduğunu görüyoruz. Bu bir anlamda üniversite tarihi, yüksek öğretim tarihi açısından bir nitelendirmeyi de, bir sınıflamayı da beraberinde getiriyor. Humboldtçu üniversite modeli ya da Avrupa'da yaygın bir biçimde kabul edilen Humboldtçu üniversite modeli olarak karşımıza çıktığını görüyoruz.

Bunun temel niteliği akıl ve kültür merkezli olması, elitist bir niteliğe sahip olduğunu görüyoruz. Yani az sayıda öğrenciye, nitelikli sayıda öğrenciye hukuk öğretiminin özelde ve genel anlamda yükseköğretimin, yükseköğretim arzının yapıldığını görüyoruz.

Şimdi bu üniversite modelinin karşısında, Amerikalı meslektaşlarımız da burada, bunun karşısında Amerikan yükseköğretim modelinin karşımıza çıktığını görüyoruz. Bunu Bill Readings'in metinlerinden görüyoruz, yükseköğretime ilişkin yazmış olduğu metinlerden görüyoruz. Mükemmeliyet ya da mükemmellik kavramının merkezileştiği bir yükseköğretim sisteminin, Amerikan yükseköğretim sisteminin ya da modelinin ortaya çıktığını görüyoruz.

Bu açıdan bakınca, bu ikisi arasında akademik yapıyı, akademik dokuyu, dün tartışıldı mesela akademik özgürlüğü ve kurumsal özerkliği; akademik yapının ya da yükseköğretim birimlerinin kurumlarının özerkliğinin esas alındığı bir felsefi yapının olduğunu görüyoruz. Bu açıdan bakınca, bu iki yükseköğretim modeli arasında, Humboldtçu modelle Amerikan modeli arasında bir çatışmanın olduğunu tabiri caizse görüyoruz.

Bu çatışma neticesinde, tabii ki yoğun bir rekabet ortamı, ekonomik koşullar, ağır ekonomik koşulların da varlığı nedeniyle, Humboldtçu yükseköğretim modelinin, üniverster mo-



delin bir anlamda bir yapı bozumuna uğradığını görüyoruz. İster istemez kendisini ekonomik koşulların baskısı çerçevesinde, Avrupa üniversite modelinin Amerikan üniversite modeli doğrultusunda bir evrilme yaşadığını ifade edebiliriz.

Şimdi Türk yükseköğretimi açısından baktığımız zaman, mevcut dinamikler ne? Hukuk öğretimi bunun bir parçası olarak başta ifade etmiştik. Bu açıdan bakınca, özellikle iki dünya savaşı sonrasında, özellikle de ikinci dünya savaşı sonrasında baktığımız zaman, bu tarihsel kırılmalara bir yenisinin eklendiğini görüyoruz. Elitist niteliğinin ön planda olduğunu söylemiştik, arz noktasında kısıtlılığın olduğunu söylemiştik. Özellikle ikinci dünya savaşı sonrasında hem savaş ortamının yaratmış olduğu travma problem, hem toplumsal yapıdaki problemlerin izale edilmesi, ortadan kaldırılması, hem de ekonomik anlamda iyileşmenin temin edilmesi, sosyal refahın sağlanması anlamında birtakım girişimlerde ülkeler bazında, başta Amerika olmak üzere bu öğretimin elitist niteliğinin daha kitleselleşerek yaygınlaştığını görüyoruz. Kitlesel anlamda, kitleselleşmiş bir yükseköğretim alanı ya da düşüncesinin egemen olduğunu görüyoruz. Bunun en bariz örneğinin tabii ki Amerika olduğunu söyleyebiliriz.

Şimdi Türk yükseköğretimi açısından baktığımız zaman, bu durumun, bu kitleselleşme noktasındaki; az önce de ifade etmiştim köken itibariyle Humboldtçu üniversite modelinin yükseköğretim modelimizde benimsendiğini görüyoruz. Hukuk öğretimi alanında benzer bir şekilde Ernst Hirsch'in mesela Akdeniz Üniversitemizde onun adına merkez de kurmuştuk, burada bunu da sizlerle paylaşmak istiyorum. Baktığımız zaman, bu akademik çevrenin camianın katkısıyla, bu modern üniversite yapısının Humboldtçu üniversite algısı çerçevesinde Türk yükseköğretim alanında yapılaştığını söyleyebiliriz.

Şimdi kitleselleşme tabii ki beraberinde bir niceliksel bir durum malumunuz olduğu üzere kitleselleşme, beraberinde bir nitelik sorununu *-ki, tartıştığımız nokta bu-* beraberinde getirdiğini görüyoruz. Kitleselleşme, çok sayıda öğrencinin, çok sayıda okullaşma oranı itibariyle, yüzde 50'nin üzerinde bir

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okullaşma oranına tekabül eden bir durum olduğunu hepimiz biliyoruz. Bu anlamda kiteselleşmenin doğallıkla bir nitelik sorunu yaratacağını ifade etmiş olmamız gerekiyor.

Kiteselleşme aşaması yükseköğretim literatüründe, yazılan yükseköğretime ilişkin yazılan eserlerde bir sonraki evre aşama olarak evrenselleşme düzeyi ifade ediliyor. Burada okullaşma oranlarının hayli artması sadece bununla sınırlı değil, bu çerçevede uluslararasılaşma ya da uluslararası düzeyde, uluslar üstü düzeyde yoğun bir mobilizasyonun; yabancı öğrencilerin gelip gitmesi, yabancı öğretim üyelerinin, hatta yabancı demiyoruz yurtdışından farklı öğretim üyelerinin, farklı ülkelerden akademisyenin mobilizasyonunu ifade eden ya da bunu realize eden bir sistem olduğunu ifade etmemiz gerekiyor.

Kiteselleşme noktasında Türk yükseköğretimi açısından baktığımız zaman, bir tarihsel gecikmişlik söz konusu. Çünkü ikinci dünya harbinin hemen, savaşın hemen akabinde en bariz örneklerinden bir tanesi Güney Kore'dir, kiteselleşme noktasında yoğun bir açılımın olduğunu görüyoruz.

Mesela 50 milyon nüfusa sahip olmakla birlikte Güney Kore'de, yaklaşık 400 civarında üniversite olduğu ifade ediliyor ve bunun çok kısa sürede, 50'li yıllar sonrasında, 60'lı 70'li yıllarda bu rakama bu sayıya ulaştığı ifade ediliyor. Bu açıdan bakınca mesela, tabii ki nüfus ölçeği, işte ülkenin yüzölçümü itibariyle baktığımız zaman hacmi itibariyle baktığımız zaman belki kıyaslamak doğru değil, ama Amerika'da mesela -*Amerika ziyaretimiz de oldu*- baktığımız zaman üniversite sayısı noktasında net bir rakamın telaffuz edilemediğini görüyoruz. Yaklaşık 3 bin, burada Amerikalı meslektaşlarımız var. Eğer bu konuda bilgi verilerse de seviniriz. 3 bin 4 bin civarında, farklı rakamlar telaffuz ediliyor. Üniversite yükseköğretim kurumu olduğu söyleniyor.

Şimdi öyle olunca, Türk yükseköğretimi açısından temel göstergeler itibariyle, bu genel tablo içerisindeki durum nedir? Baktığımız zaman 50 milyonluk Güney Kore'de ve yaklaşık olarak az önce de ifade ettim, 50 yıla yakın bir süreç içerisinde

baktığımız zaman bu rakamlara ulaşıldığını görüyoruz, kitleselleştiğini görüyoruz. Bu açıdan Türk yükseköğretimi açısından her ne kadar nitelik sorununu beraberinde getirse de, nitelik sorunuyla ciddi anlamda bizleri yüzleştirse de, yükseköğretim alanında bu kitleselleşme noktasındaki eğilimin gerekliliğine şahsım adına kanaat getirdiğimi ya da bu kanaate sahip olduğumu sizlerle paylaşmak istiyorum.

Bugün itibariyle baktığımız zaman oldukça dinamik bir süreç yaşıyoruz. Özellikle 2007 sonrasında, yaklaşık olarak 10 yıldır bu yoğun dinamik süreç devam ediyor yükseköğretim alanında. Üniversite sayısı itibariyle güncelleme yaptım, 176 üniversitenin olduğunu tespit etmiş durumdayız; Türk yükseköğretim alanında. Her kente bir üniversite kurma, belki bu noktada kentin gelişmişlik düzeyi, sosyokültürel yapısı itibariyle bunun doğru olmadığını savunun öne süren, işte Hakkari’de Şırnak’ta üniversite mi olurmuş gibi birtakım argümanlar da geliştiriliyor söyleniyor. Saygı duyuyorum, ancak bir anlamda bunlar birbiriyle eşzamanlı bir şekilde, birbirini besler bir biçimde ortaya çıktığımız, birbirini desteklediğini, birbiriyle tabiri caizse karşılıklı etkileşim biçiminde geliştirdiğini görüyorum.

Ben mesela memleketim Isparta, üniversitesi kurulduktan sonra *-92 yılında kuruldu-* Isparta’nın gelmiş olduğu durumu, kendi memleketimin gelmiş olduğu durumu görüyorum. Toplumun üniverster yapıya, akademik çevreye, öğrenciye bakış açısındaki iyileşmenin, tabiri caizse sosyal rehabilitasyonun nasıl temin edildiğini, periferide nasıl gerçekleştirildiğini görüyorum ve iyi bir noktaya da geldiğini görüyorum.

İlk kuruluşu esnasında tabii ki çok az sayıda hocayla, sınırlı sayıdaki hocayla, belki nitelik düzeyi itibariyle kısıtlı da olsa, eğitim öğretim süreçlerinin yapıldığını gerçekleştirildiğini görüyorum. Nitekim Dokuz Eylül Üniversitesi, Ege Üniversitesinin kurulmasında da bugün çok değerli üniversitelerimiz, belli bir birikime akademik anlamda eğitim öğretim niteliği itibariyle yüksek bir düzeye sahipler. Bunların da kuruluş evrelerinde benzer argümanların, benzer tepkilerin ortaya çıktığını

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görüyoruz. Fakat tarihsel akış içerisinde bunlara ayak diremenin, bunlara karşı çıkmanın çok reel bir bakış açısı olmadığını düşünüyorum.

O açıdan her ne kadar nitelik sorunu olsa bile, temelde her kente bir üniversite kurma modelinin ya da algısının politikasının yerinde olduğunu söylemek istiyorum. Burada yapılması gereken şey şu: Üniversite yapı ile kent tabiri caizse metafiziğinin, sosyokültürel yapısının uyumlaştırılması noktasında, merkezi hükümetin, merkezi yapının ya da ilgili yerel yapının bu noktada gereken adımları makro ve mikro ölçekte politikalar geliştirerek, bu doku uyumunu sağlayacak önlemler tedbirler almaları gerektiğini ifade etmeliyim.

Şimdi sayılara göstergelere bakıyorduk. Öğretim elemanı itibarıyla, bunun içerisinde okutmanı öğretim görevlisi tümü, öğretim üyesi de dahil profesör doçent yardımcı doçent, 141.674 sayısının karşımıza çıktığını görüyoruz. Peki, öğrenci sayısı itibarıyla baktığımız zaman Türk yükseköğretimi alanında ne kadar bir sayı söz konusu? Yaklaşık 5,5 milyon civarında, 5 milyon 599 bin 961 öğrencinin olduğunu görüyoruz. Bu sadece lisans düzeyinde değil, hem ön lisans hem de lisansüstü düzeydeki öğrenci sayısı olarak karşımıza çıkıyor.

Şimdi yükseköğretim alanındaki net okullaşma oranı itibarıyla baktığımız zaman yüzde 40'lara, yaklaşık yüzde 38,5 civarında bir okullaşma oranının olduğunu görüyoruz. Fakülte sayısı itibarıyla genel anlamda baktığımız zaman 1475 *-burada sadece hukuk fakülteleri değil, az sonra o rakamları da vereceğim paylaşacağım sizinle-* olduğunu görüyoruz.

Burada hukuk öğretimindeki nitelik sorunu tartışılırken, burada tartışılması gereken nokta eğitim öğretim müfredatından, sadece niceliksel anlamda sayının çokluğu ya da kontenjan sorununa odaklanmak yerine; bu da tabii bir sorun alanı olarak karşımıza çıkıyor. Burada tartışılması gereken temel parametrelerden bir tanesi, eğitim öğretim müfredatı, öğrenci ve akademisyenlerin mobilizasyonu, öğrenci sayısı gibi durumların da problemlerin de tartışılmasının gerekliliğinin olduğunu söyleyebilirim.

Bu çerçevede belki formüle edilmesi gereken temel sorulardan bir tanesi, hukuk fakültesi sayısının artması ve merkezi bir biçimde *-az önce de ifade edildi-* belirlenen yükseköğretim kurulu tarafından belirlenen kontenjan sayıları, tahsis edilen kontenjanlar, öğrenci kontenjanlarının arttırılması ile hukuk öğretiminin niteliği arasındaki ilişki. Acaba sayıca artışın, kontenjan artışının nitelik noktasında nasıl bir sorunsal ya da problematik yarattığına dair bir tespitin yapılmasının gerekli olduğunu ya da bunun tartışılmasının gerekli olduğunu ifade etmek istiyorum.

Farklı bir biçimde eğer bunu soracak olursak, bu fakülte ve öğrenci sayısı, öğrenci kontenjanı noktasındaki nicelik durumu ile kalite arasında, hukuk öğretiminin kalitesi arasında doğrudan bir korelasyon söz konusu mu? Eğer söz konusu ise, sadece bununla mı sınırlı, yoksa bunun yanı sıra başkaca parametreler de göz önünde bulundurulmalı mı? Şeklinde sorular temel sorular olarak karşımıza çıkıyor.

Şimdi hukuk eğitimi, hukuk fakültelerinin sayısal verileri, temel göstergeler itibarıyla baktığımız zaman şu sayısal göstergeleri de sizlerle paylaşmak istiyorum. Öncelikle hukuk fakültesi sayısı enteresan bir şekilde tartışmalı. Şimdi burada sorsak, dün mesela bir akademisyen arkadaşımınla, ilgili olan bir arkadaşımınla konuştuk. İşte 75 rakamını telaffuz etti. Benim tespit edebildiğim kadarıyla, 2013'ün Kasım ayında bir kitap çıkarmıştım, orada bir derleme yapmıştım. Ona ilave 2 fakülte ismi tespit edebildim. İşte Resmi Gazeteden bakıyoruz, web sayfalarından bakıyoruz, 2 vakıf üniversitesinin eklendiğini gördüm. Benim elimdeki rakamlar eğer doğru ise 73 olduğunu söylemeliyim.

Bu noktada vakıf üniversiteleriyle devlet üniversiteleri arasındaki sayısal farka da işaret etmek istiyorum bu noktada. Devlet üniversitesi hukuk fakültesi sayısının 32 olduğunu söylemeliyim. Vakıf üniversiteleri hukuk fakültesi sayısının ise 41 olduğunu söylemek istiyorum. Bu noktada 73 hukuk fakültesi söz konusu. Az önce de 2007 tarihini vermiştim. 2007 tarihinde bu rakam 19'u devlet 15'i vakıf olmak üzere 34 iken, bugün

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rakamın 73'e, yaklaşık iki katına 7 yıl içerisinde çıkarıldığını görüyoruz.

İstanbul ve Ankara tabii hukuk fakültelerinin yoğunlaştığı yerler. İşte rakamlar yine eğer güncelliği konusunda sorun yoksa İstanbul'da yaklaşık 25, Ankara'da 30 civarında bir hukuk fakültesinin mevcut olduğu rakamlarını tespit edebildik.

Peki, öğretim üyesi –*öğretim elemanı demiyorum*- sayısı itibariyle baktığımız zaman, yardımcı doçent yani hukuk fakültelelerinde eğitim öğretim süreçlerinin aktif sükeleri itibariyle baktığımız zaman doçent ve profesör, bu rakamın –*bu rakamda belki çok az da bir artış olabilir, çünkü Kasım ayının rakamlarıydı bu benim tespit edebildiği*- 1102, ama çok da artışın olduğuna ihtimal vermiyorum. Belki 10'lu 20'lu rakamlar şeklinde oynayabilir. 1102 öğretim üyesinin, bu az önce sözünü etmiş olduğum 73 hukuk fakültesinde. Tabii bunlardan bazılarının, belki işte 7-8 civarında hukuk fakültesinin –*listesi var, ama onlarla vakit kaybetmek istemiyorum*- eğitim öğretim süreçlerine başlamadığını, fiilen eğitim öğretim yapmadıklarını, yani öğrenci almadıklarını gördüğümüzü söylemeliyim.

Peki, hukuk fakültelerinde bulunan toplam öğrenci sayısı tespit ettiğimiz rakamlar 47. 582, yaklaşık 50 bin öğrencinin aktif bir biçimde hukuk fakültelerinde eğitim öğretim gördüğünü ifade edebilirim. 2013 yılı kontenjan rakamları itibariyle baktığımız zaman, işte en zirve noktası hukuk fakültelerindeki kontenjan itibariyle baktığımız zaman yaklaşık 50 bin olduğunu görüyoruz, 47. 582 öğrencinin aktif bir biçimde hukuk öğretimi aldığını ifade etmem gerekiyor.

2013'teki rakam 15. 236 hukuk fakültelerine tahsis edilen rakamın, öğrenci kontenjanının 15. 236 olduğunu görüyoruz. Bazı yükseköğretim alanlarına fakülteler açısından doluluk oranı; mesela kontenjan tahsis ediliyor, ama doluluk oranı yüzde 60'lara 50'lere tekabül ediyor. Hatta temel bilimlerde daha düşük rakamlara tekabül ediyor. Fakat hukuk alanında enteresan bir biçimde çok yoğun bir ilgi söz konusu, yüzde 100 kontenjanların dolduğunu görüyoruz. Onun için vakıf yükse-

köğretim kurumlarının bu noktada çok daha istekli ve iştiyaklı olduklarını, yani hukuk fakültesi açmak ve kontenjanlarını arttırmak noktasında çok iştiyaklı olduklarını görüyoruz.

Hukuk öğretiminde bu nicelik sorununa ilişkin temel hatlarıyla, acaba hangi sorun alanları var? Nicelik nitelik bağlamında tartışılacak ve çözüm önerileri neler olabilir? Bunu başlıklar halinde sizlerle paylaşmak istiyorum.

Bu açıdan bakınca en temel problematik, yüzleştığımız, idari görevimizin de olması hasebiyle yüzleştığımız en temel problem alanı, ne yazık ki akademisyen ya da akademik profil noktasında nicelik düzeyinde *-nitelik demiyorum bakın-* sayısal olarak yetersizliğin söz konusu olduğunu görüyoruz. 73 hukuk fakültesi var, 1102 öğretim üyesi var. Belki bir oranlama yapıldığı zaman *-sayısal olarak belki yüzde 30'lara tekabül ediyor-* belki rakam itibarıyla hani çok belki şey değil, ama ne yazık ki merkez periferi ayrımı çerçevesinde İzmir Ankara İstanbul gibi yerlerde metropollerde bir öbeklenmenin, bir yoğunlaşmanın olduğunu görüyoruz.

Fakat periferi *-tırnak içerisinde bu ifadeyi kullanıyorum-* hukuk fakültelerinde bu sayının ne yazık ki çok limitli sınırlı olduğunu, az sayıda öğretim üyesiyle, 6 sınırı var yükseköğretim kurulu tarafından belirlenen. 6 öğretim üyesine sahipseniz, hukuk öğretimine başlayabilirsiniz. Hukuk fakülteniz açıktır, fakat öğretime 6 öğretim üyesi koşulunun yer aldığını görüyoruz. Bu asgari koşulla eğitim öğretim yapan birçok Anadolu'da hukuk fakültesinin olduğunu ne yazık ki görüyoruz. Kendi temel alanı olmamakla birlikte, o temel alanda ders veren hocaların olduğunu ne yazık ki çaresizlikten ötürü olduğunu ne yapıyoruz? Görüyoruz.

Bu noktada yapılması gereken şey; akademik insan kaynağının, beşeri sermayenin hızla geliştirilmesi, sayıca arttırılması, nitelik olarak arttırılması gereklilik arz ediyor. Yani doktorasını bitirmiş yetişmiş akademisyen sayısının arttırılması bununla ilgili olarak bir politikanın geliştirilmesi gerekiyor.

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Lisansüstü noktasında, bir cazibe söz konusu değil. En başarılı öğrencilerimiz hâkimlik savcılık, işte hâkim savcılık mesleği ya da avukatlık mesleğini tercih ettiğini görüyoruz. Akademisyen bulmakta, nitelikli öğrenci kazanmakta, akademiye kazandırmakta çok ciddi bir güçlüğü olduğunu ne yazık ki görüyoruz. Bunun daha cazip edici hale gelmesi ise, özlük haklarının iyileştirilmesi, burs olanaklarının arttırılması, çalışma koşullarının iyileştirilmesinin gerekli olduğunu, nitelik düzeyinin arttırılmasında gereklilik olduğunu ifade etmemiz gerekiyor. Bunun cazibesinin arttırılmasının gerekli olduğunu söylemem gerekiyor.

Az önce de ifade ettim; öğretim üyelerinin ya da öğretim elemanlarının dağılımındaki dengesizliğin ortadan kaldırılması gerekiyor. Periferide Anadolu'nun herhangi bir kentinde var olan yükseköğretim kurumuna hukuk fakültesine olan cazibenin artması, öğrencinin orayı tercih etmesi, öğretim üyesinin orada var olabilmesi, yaşayabilmesi adına, daha makro ölçekte, kentin sosyoekonomik yapısının geliştirilmesi; tiyatrosunun, sosyal olanaklarının arttırılması gerekiyor. Şu doğru bir şey değil: İşte belli mahrumiyet bölgelerinde özlük hakları iyileştirilsin, hocaların maaşlarını arttıralım. Bu palyatif bir çözüm olmakla birlikte, asıl yapılması gereken, o kentin kent kültürünün bütün olanaklarıyla, bütün sosyal donatılarıyla birlikte geliştirilmesinin büyük önem arz ettiğini ifade etmem gerekiyor.

Dün de tartışılan bir konuydu; konvansiyonel tabiri caizse öğretim araçlarının, hukuk öğretimi bağlamında kullanılması. Bu noktada dün de tartışıldığı için, dijital öğretim uzaktan öğretim noktasında, benim dün kişisel kanaatimi de ifade ettim. Bu noktada hukuk öğretiminin kadim niteliği itibariyle tababet ilmi, eksilerin değişimiyle tıp ilmiyle bir benzeşimin söz konusu olduğunu görüyoruz. Usta çırak ilişkisinin mutlak surette burada gerçekleştirilmesi, doğrudan temasın, hocayla öğrenci arasında olmasının gerekliliğini ifade ediyoruz.

Burada Evans Giliana'nın tercümesi de yapıldı "Akademisyenler ve Gerçek Hayat" diye. Burada bir ifadesi var, çok ente-



resan bir şekilde bu uzaktan öğretim yöntemlerinin, öğretim üyesinin akademik ifade özgürlüğünü kısıtladığını ifade ediyor. Diyor ki: *“Bu tarz bir öğretim, içeriğin sistematik düzenlenmesinden çok, bir tarz ve kişilik meselesi olan öğretim hünelerine sahip bireylerin, keşifçi pedagojilerinin zarar görmesi pahasına, belli bir dersler seti ortaya koyar”* diyor.

Burada doğrudan, *-dün de ifade etmiştim-* örtük bilgi dedim. Hocanın duruşundan, tavrından, konuşmasından, jestinden ve mimiğinden, örtük bir biçimde bir bilgilenme, bir bilgi akışı söz konusu olacak iken, dijitalize edilmiş bir öğretim ortamında bunun temin edilmesinin mümkün olmadığını ve Giliana'nın ifadesiyle, bunun akademik ifade özgürlüğünün sınırlandırma potansiyeline sahip olduğunu ifade etmek istiyorum.

Çokça dile getirilen bir şey, az önce Sayın Başkanım da ifade etti. Bir felsefeye çağrı yapmamız gerekiyor. Hukuk felsefecisi olduğum için bunu söylemiyorum. Mesleki *-tabiri caizse-* kayırmacılık adına, faşizanlık adına bunu söylemiyorum. Gerçek anlamda, hakikaten baktığımız zaman bir felsefesizliğin olduğunu görüyoruz.

Sadece bunun teorik bir hukuk kültürü dersi olarak periferide yer alan hukuk müfredatı içerisinde, işte çeşni kabilinden bulunması yerine, doğrudan dogmatik hukukçuların, pozitif hukuk alanında ders veren değerli hocalarımızın da bu bilinçle dogmatik hukukun kuramsal boyutuna, dogmatik hukukun felsefi boyutuna arka planına dair bir bilgilendirmenin, bilgi akışının olması gerektiğini ifade etmek istiyorum. Bu noktada Hırş'e tekrar atıf yapacak olur ise, hukuk felsefesi aynı zamanda ticaret hukuku kürsüsü hocası olmakla birlikte duayeni olmakla birlikte, aynı zamanda hukuk felsefesi alanında, hukuk sosyolojisi alanında hem bir monografi yazması ve ilgili olması. Bu noktada calibi dikkattir. Hukuk felsefesinin temel hedefinin amacının da, hukuk nedir sorusuna, hukuk nasıl olmalıdır sorusuna cevap arayan bir alan olduğunu ifade ettiğini görüyoruz.

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O açıdan bakınca, insandaki tekil olarak insanda, çevresindeki olguları anlama yorumlama anlamlandırma saikine merakına güdüsüne sahip olduğu için, bu noktada baktığımız zaman, bir hukukçunun da bu merakla bu saikle, hukuk nedir sorusunu sürekli bir biçimde zihninde tutması gerektiğini ifade ediyoruz. Bununla ilgili çok belki söylenecek şey vardı, not da almıştık, ama vaktimiz yeterli değil.

Ne yazık ki bu noktada sadece hukuk öğretimi açısından değil, mesleki uygulayıcılar; avukatlar, hâkim savcılar açısından da, meslektaşlarımız açısından da böylesi bir talebin olmadığını görüyoruz. Hâkimlik savcılık sınavında mesela sorulmaz, ne bileyim böylesi bir lisansüstü eğitim öğretime girişte sorulmaz buna ilişkin bir felsefi beklenti, hukukun felsefi boyutuna, ne olması gerektiğine dair bir beklenti içerisinde ne yazık ki pratik anlamda değiliz.

Hâlbuki düşünsel olanın her zaman öncelikli olduğunu biz söylüyoruz. Önce teorinin olması gerektiğini, yani mimari bir yapıda önce bir mimari planın olması gerektiğini hepimiz biliyoruz. Bu noktada ne yazık ki tekniker düzeyinde, teknisyen düzeyinde kaldığını görüyoruz. Bu sadece teorik bir alan değil, pür teorik bir alan değil pratik bir faydasının yararının da olduğunu görüyoruz bunun ki, isimlerini zikredemeyeceğim şimdi filozoflarımız, hukuk filozoflarımızın da bunu dillendirdiklerini görüyoruz. Çünkü bu hukukun özü; dün de ifade edildi, adalet kavramı, hakkaniyet kavramı, hak kavramı, yani tümel alana dair bir bilgilenme, sadece bilgi değil bir bilinçlenme imkânı da temin eden bir şey. Bu bilinçlenmeye sahip olmayan teknisyenin acaba ne ölçüde hukukun temel idealitesini gerçekleştireceğini ifade etmemiz gerekiyor.

Einstein'ın bir sözü var: *“ Sorunları onları yarattığımız bakış açısından kalkarak çözümlenmez, bakarak çözümlenmez mümkün değil. ”* Bir ceza hukukçusu sorunu, ceza hukuku perspektifinden, ceza kanunlarından sadece salt olarak hareket ederek bunu çözümlenmesi mümkün değil. Pozisyonunu perspektifini bakış açısını bu noktada değiştirmesi dönüştürmesi gerekiyor.

Kazuistik bir biçimde hukuk sistemimiz de böyle değil. Bütün sorunsalları sorunları dermeyeran etmesi, düzenleme konusu yapması mümkün değil. Detaylardan hareketle tümelin bilgisine, genelin bilgisine gidebilecek bir entelektüelatiye sahip olmalıyız ki, gittikçe artan çoğalan kompleks hale gelen hukuk sorunlarını hukuksal sorunları çözebilecek detaylardan tümele gidebilecek bir zihni yapıya, bir hukukçu zihnine sahip olmamız gerektiğini ifade etmek istiyorum.

O açıdan hukukun meslekileşmesine hep birlikte karşı durulması gerekiyor. Bu noktada hukukçu prototipi tabii, yetkin hukukçu tipolojisinde de değişiklik söz konusu. Neyse soru cevap kısmında ortada da tespit ettiğim dört nokta var, acaba neler olmalı?

Sabrınızı biraz zorladım, sabırla dinlediğiniz için teşekkür ediyorum. Saygılar sunuyorum. (Alkışlar)

**Av. Sema AKSOY (Oturum Başkanı)-** Kıymetli Hocama çok teşekkür ediyoruz. Hocam kitleselleşmenin nitelik sorunu yarattığından bahsetti ve gerçekten çok önemli veriler verdi bize. Bu arada kıymetli Hocamın çok yararlandığım bir eseri var, size de söylemek isterim. *“Türk Yükseköğretiminde Hukuk Fakültelerine İlişkin Durum Tespiti”* burada bütün fakültelerin tek tek irdelendiğini ve hem nicelik ve hem nitelik anlamında değerlendirildiğini görüyoruz. Hakikaten çok yararlanılması gereken bir eser.

Efendim şimdi aslında nicelik, monolog halinde süren ilişkileri getiriyor bir taraftan. Çünkü hukuk fakültelerindeki öğrenci sayılarının artmasıyla, artık sınıflarda monolog halinde yürüyen bir eğitim görüyoruz. Sadece öğretmenlerimizin bize anlattıklarıyla yetinen, karşılıklı diyaloglara giremediğimiz, karşılıklı müzakereler yapamadığımız bir eğitim sisteminde de elbette ki eğitimin eksik kalacağı çok açık ortada.

Aslında bizim kültürümüzde monolog yaşam var. Bir bakıyorsunuz bu çocuklukta başlıyor. Çocuklar anne babalarıyla monolog ilişki içerisindedeler. Hep anne baba konuşuyor, çocuk

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konuşmuyor. Sen sus bakalım, beni dinle deniliyor ve oradan başlayan bu ilişki, öğrenci hayatında öğretmenin karşısında devam ediyor ve arkasından toplumsal yaşamın içerisinde müzakere kültüründen yoksun, uzlaşma kültüründen yoksun insanlar olarak hayata katılıyoruz.

Bakıyorsunuz, siyasette de siyasetçiler bütün partilerin grup toplantılarına bakın, monolog halinde yürüyor. Siyasi liderler çıkıyor, sadece konuşuyor ve iniyor. Bu partilerin parti meclis üyeleri yok mu? Milletvekilleri yok mu? Yani aynı eğitimdeki öğretimdeki sistem gibi, monolog halinde yaşadığımız bir hayatın içerisindeyiz. Öncelikle bunu kökten başlayarak kırmamız lazım. Ta çocukluktan başlayarak kırmamız lazım. Çocuklarımızla konuşmaya, diyalog halinde müzakere halinde sorunları çözmeye başladığımız anda, aslında yaşamın diğer alanlarındaki sorunlarımızı da çözeceğimizi düşünüyorum. (Alkışlar)

Efendim aramızda çok sayıda Türkiye'nin her yerinde gelen baro başkanlarımız var. Her birini tek tek saygıyla selamlıyorum, hoş geldiniz kıymetli başkanlarım. (Alkışlar)

Şimdi sıra Selçuk Üniversitesi Hukuk Fakültesi hocalarımızdan Sayın Prof. Dr. Şahin Akıncı'da. Buyurun Hocam.

**Prof. Dr. Şahin AKINCI (Selçuk Üniversitesi Hukuk Fakültesi)-** Teşekkür ediyorum Sayın Başkan. Çok kıymetli baro başkanlarım, değerli hocalarım, çok kıymetli meslektaşlar, sevgili öğrenciler, değerli hazirun; hepinizi saygıyla selamlıyorum.

Öncelikle bu toplantıyı düzenleyenleri tebrik ediyorum ve emeği geçen herkese şükranlarımı sunuyorum. İnşallah bu tür toplantıların sayısı artar, karşılıklı görüş alışverişlerinde bulunuruz. Çünkü yıllardır konuşuyoruz hukuk eğitimiyle ilgili, herkes bir katkı sağlıyor mutlaka, fikrini beyan ediyor, ama her toplantıda problemler konuşuluyor. Çok ciddi problemlerimiz var ve bu problemler de ancak konuşarak görüşerek tartışarak çözülecek; bu toplantılara ne kadar çok ihtiyaç olduğu ortada.

Ben pek aslında alışkın değilim böyle sunumlar yapmaya, fakat bazı şeyleri sizlerle paylaşmak için böyle bir sunum hazırladım. Çok da sevmiyorum. Neden sevmiyorum? Çünkü sunum yaptığımız zaman, insanlar hep oraya bakıyor size bakmıyor. Göz teması sağlamakta zorlanıyoruz. Teknolojiyi biraz kullanıyorum, ama gençler kadar da değil. O yüzden teknolojinin azizliğine uğrarsak, hata yaparsak da kusura bakmayın.

Ben toplantının bugünkü aşamasına katılabildim, önceki günler ders programım yoğundu. İstifade etmeyi arzu ederdim, ama ne yazık ki mümkün olmadı. Sayın Gülcihan Hanım ile ilk görüştüğümüzde, böyle bir konuyu önermiştim. Aslında daha önce muhtelif toplantılarda değişik konularda tebliğlerim oldu. Fakat naçizane bir çalışma yaptım, kendi fakültemde öğrencilerimle alakalı. Onlara birtakım sorular yönelttim. Biraz aslında amatörce bir çalışma, ama ilginç sonuçlar çıktı. Ben bunları sizlerle paylaşmayı ve bunlar üzerinde birtakım yorumlar yapmayı tercih ettim. Müsaadenizle bu konudaki önce hem neden böyle bir konuyu seçtim, hem de nereye varmak istiyoruz? Bunları bir paylaşmak istiyorum.

Şimdi benim görebildiğim kadarıyla, tabii herkes çok değerli katkılar yapıyor sunuyor, hukuk eğitimiyle ilgili yıllardır bir şeyler söylüyoruz, ama ben de dahil olmak üzere pek çoğumuz birtakım gözlemlerimize dayalı olarak yorumlar yapıyor değerlendirmeler yapıyoruz. Acaba bu gözlemlerimiz ne kadar doğru? Şimdi hukuk eğitiminin yeniden yapılandırılmasıyla ilgili çok değişik şeyler konuşuluyor. İşte 2 artı 3 mü olsun, 5 yıla mı çıksın? Efendim önce bir yüksekokulu bitirsin, ondan sonra mı gelsin öğrenci? Üniversiteye girişte, hukuk fakültesine girişte Türkçe matematikle mi öğrenci alalım sosyalle mi alalım? Vesaire gibi aslında önemli konuları konuşuyoruz, tartışıyoruz. Belki bu noktalarda radikal kararlar alınacak, ama acaba öğrencinin hukuk fakültesindeki başarısını etkileyen temel faktörler nelerdir? Bunlarla ilgili ciddi anket çalışmaları, ciddi bilimsel çalışmalar, istatistiksel çalışmalar acaba yapıldı mı? Ben çok rastlayamadım göremedim, bu noktada başarıyla bu bahsettiğim hususlar arasındaki bağlantıyı araştıran çalış-

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malar çok göremedim. Belki buna bir önyak olur diye böyle bir şeyi paylaşmayı uygun gördüm.

Bu noktada bahsettiğim gibi, mesela araştırılması gereken konulardan bir tanesi. Bir kere bazı şeyleri biz ön kabul olarak alıyoruz kabul ediyoruz. Bunlar ne kadar doğru, ne kadar yanlış? Elimizde ciddi veriler yok. Matematik puanıyla hukuk fakültesine giren öğrencilerin daha başarılı olacağı yönünde hepimizde bir ön kabul var. Acaba bu doğru mu? Doğruysa ne oranda doğru? Yani iddia edildiği gibi gerçekten yüksek oranda mı etki ediyor? Yoksa abartılacak kadar değil mi?

Yaş ile acaba, öğrencinin yaşıyla başarı arasında bir doğru orantı var mı? Yani 17-18 yaşına gelen bir öğrenci mi daha iyi algılıyor meseleleri, yoksa 20-22 yaşındaki öğrenciyi hukuk fakültesi birinci sınıfa kaydetsek daha mı çok şey öğretebiliriz, algı düzeyi daha mı yüksek olur? Buna ilişkin bir çalışmamız var mı? Acaba bir yüksekokulu bitirenler veya Adalet Meslek Yüksekokulundan gelenler mi daha başarılı? Yoksa normal liseden mezun olarak gelenler mi daha başarılı? Derse devamlı başarı arasında bir doğru orantı var mıdır yok mudur? Öğrencinin dersi sevmesi, dersten korkması başarıyı ne ölçüde etkiler?

Hep söylüyoruz, yine kalabalık sınıflarda nitelikli eğitim verilemiyor diye. Ben de aynı kanaatteyim. Aslında kalabalık sınıflar başarıyı düşürüyor, ama ne oranda düşürüyor? Daha örnekleri çoğaltmak mümkün.

Ben bir küçük anket yaptım, bu sene vize imtihanlarında. Bunu aslında kendimi ölçmek için yapmıştım. Amacım şuydu: Acaba ben hoca olarak faydalı olabiliyor muyum öğrenciye? Şunu görmek istedim: Acaba derse devam eden öğrencilerle, devam etmeyen öğrenciler arasında başarı oranı noktasında bir fark var mıdır yok mudur? Eğer dersi dinleyen öğrenciyle, dinlemeyen öğrenci arasında başarı noktasında fark yoksa ya da çok cüzi bir fark varsa; birinin ortalaması 50 iken, öbürününki 60 çıkıyorsa, ben o zaman hoca olarak varlığımı sorgulamak zorundayım. Ben hoca olarak öğrenciye bir katkı yapamıyorum demektir. Kitap okuyan da aynı başarıyı, derse gelmeyen

de aynı başarıyı sağlıyor, gelip orada beni dinleyen de aynı başarıyı sağlıyor.

Ben aslında bunu görmek istedim ve birkaç soru sordum öğrencilere. Derse devam durumunuz nedir? Dersin işlenişini nasıl buluyorsunuz ve bir de fakülteye nasıl girdiklerini sormuş idim. Öğrencilere de şunu söyledim. Dedim ki, bu hiç başka bir amaçla kullanılmayacak, samimi cevaplar verin lütfen dedim ve önemli ölçüde de samimi cevaplar aldığımı inanıyorum.

Sınıfın vize notu ortalaması *-bu bir test imtihanı idi-* 58,95 çıktı. Ders borçlar hukuku genel hükümler dersi, bu arada onu da belirteyim. Normal öğretim, Selçuk Üniversitesinde ikinci öğretim de var, ben sadece normal öğretime giriyorum. Bütün derslere girdim diyen öğrenciler 23 kişi, not ortalaması bunların 71,48 çıkmış. Birkaç derse girmedim diyenlerin 66,25, büyük bir çoğunluğuna girdim 64,16 vesaire gördüğünüz gibi aşağıya doğru iniyor. Hiçbirine girmedim diyenlerin 50,50.

Şimdi hiçbirine girmedim diyen öğrencilerin not ortalamasının 50 çıkması beni rahatsız etti, derse hiç girmeyen bir öğrenci 50 alıyorsa, geçmek için işte gerekli not 50-60 vesaire, demek ki bu öğrenci geçiyor. O zaman burada bir problem var demektir.

Fakat bu esnada asistan arkadaşların da yardımıyla, dersi alttan alanları ayıkladık. Alttan alan öğrenci, daha önce o dersi almış olan, devam etmiş olan öğrenci. Onları kararsızlara attığımız zaman, biraz daha böyle tatminkâr bir sonuç çıktı. Kararsızlara ayırdığımız zaman, hiçbirine girmedim diyenlerin not ortalamasının 45,52 olduğunu gördük. Ama benim için yine de çok fazla tatmin edici değildi.

Bu arada 425 kişi ankete katıldı. Tabii 425 kişi çok bir sayı değil, ama Türkiye genelinde seçim anketlerinin ortalama 2 bin kişiyle yapıldığı ve önemli ölçüde doğru sonuçlara yaklaşıldığını düşünürsek, çok küçümsenecek bir sonuç da değil.

Dersin işleniş aslında burada anlatmak istediğim o değil, ama işte mükemmel, çok iyi, iyi, fena değil vesaire. Burada da

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dersi seven öğrencilerin biraz daha başarılı oldukları görülüyor. Kötü diyen de çıkmış, bir tanesi 32 almış. Çok kötü diyen çok şükür çıkmamış. Bir öğrenci girmesem de olurmuş diye cevap vermiş, o da 20 almış. Hakikaten girmese de olurmuş. Çok kötü diyen hiç girmemiş zaten, sıfır almış o da.

Asıl paylaşmak istediğim burada, şimdi yatay geçişle geldim diyen öğrenci 4 öğrenci var. Bunların 83 ortalaması olduğunu gördüm. Genelde en yüksek notlar yanlış hatırlamıyorsam 94-95 filandı, 100 alan maalesef çıkmadı, ama bu öğrencilerin, 4 öğrencinin ortalaması 83'tü. En yüksek ortalamayı bunlar tutturuyor.

Liseden sonra girdim diyen 342 öğrenci var, bunların not ortalaması 61,11. Dikey geçişle geldim diyenler. Bunlar biliyorsunuz Adalet Meslek Yüksekokulunu bitirerek, birtakım hukuk derslerini alarak gelmiş olanlar, bunlar 51,70. Aftan geldim diyenlerin ortalaması 48. Bir de dikey geçişle gelmedim, fakat ikinci yüksekokulum diyenler var veya fakültem diyenler var. Malum biliyorsunuz, işte Amerika'da bir yüksekokulu bitirerek hukuk fakültelerine giriliyor, başarı artıyor filan diye konuşuyoruz. Acaba biz de bu nedir? Bunu bir sorgulamak istedim. Bunların not ortalaması da 47,80 çıkmış. Farabiyle gelen 2 öğrenci 50, cevap vermeyenler var, 50,50.

Sonra liseden sonra fakülteye giren öğrencileri ayıkladık. Acaba bunların başarı oranı nedir? Liseden sonra fakülteye giren öğrenciler, derse devam durumlarına göre; tamamına girdim derslerin diyen 19 öğrencinin 72,2 çıktı. Birkaç derse girmedim diyenler 65,4 ve gördüğünüz üzere doğru orantı şeklinde iniyor. Hiçbirine girmedim diyenler 23,8. Bu beni çok rahatlattı. Demek ki dersime girmeyenler, yani gruplara ayırdığımız zaman derse girmeyenler dökülüyor. O zaman dedim çok şükür, ben boşu boşuna derse girmiyormuşum. İlk sonuçlar hakikaten biraz benim için sıkıntılıydı.

Bu arada derse devam durumuyla ilgili cevaplara numara verdik bu çalışmaya yaparken. Derslerin tamamına girdim diyenler 1, birkaç derse girmedim diyenler 2, büyük çoğunluğu-



na girdim 3, yaklaşık yarısına girdim 4, üçte birine girdim 5, sadece birkaç derse girdim diyenler 6, hiçbirine girmedim 7 ve 8 numara da kararsızları ifade ediyor.

Derse devam durumuna göre tüm sınıfın devam ortalaması 4,42 çıktı. 4 hatırlatayım, yaklaşık yarısına girenler, 5 yaklaşık üçte birine girenler. Liseden sonra fakülteye girenlerin devam ortalaması 3,15. Yani bunlar yaklaşık yarısına girenlerle, büyük bir çoğunluğuna girenlerden oluşuyor.

Dikey geçişle gelenlerin devam ortalaması 6,2, yani bunlar sadece birkaç derse girmişler. Neden öyle? Çünkü bunlar çalışıyorlar. Adalet Yüksekokulunu bitirmişler, çoğu adliyelerde çalışıyor, devam edemiyor. Birkaç tanesiyle görüştüğüm de olmuştu, hocam devam edemiyoruz, ama ne yapalım filan diye yanıma gelenler de oldu.

Bir fakülte veya bir yüksekokulu bitirenlerin ortalaması ise 5,7, yani arada 0,5'lik bir fark var. Dolayısıyla dikey geçişle gelen öğrencilerle, dikey geçişle gelmeyen, ancak bir yüksekokulu bitirmiş olan öğrencilerin devam durumlarını ortalama olarak 6 şeklinde alabiliriz diye düşündük.

Böyle olunca bu devam durumu 6 olan bu öğrencileri, yine devam durumu 6 olan lise çıkışlı öğrencilerle mukayese ettik, fakat tablo değişti. Devam durumu 6 olan lise çıkışlıların ortalaması 32,5'a düşerken, yüksekokul mezunu olanlar 47,8, dikey geçişle gelenlerin ortalaması 51,7. Yatay geçişle gelenlerin durumu; bunlar geldikleri fakültede başarılılar. Bu başarı durumlarını aynen yeni geldikleri fakültede de devam ettirmişler. Devam durumları 4 öğrenci, 1-3-3 ve 6, bunların ortalaması 83.

Şöyle bir değerlendirme yapabiliriz diye düşünüyorum bütün bu sonuçlardan sonra. Bir kere eşit oranda devam edenleri baz aldığımız zaman, Adalet Meslek Yüksekokulu mezunları diğerlerine göre daha başarılı gibi görünüyorlar. Ondan sonra bir yüksekokulu bitiren, bir fakülteyi bitirenler var ki, bu bizim gözlemlerimizi, şahsi olarak benim gözlemlerimi doğrulayan bir sonuç. Bu noktada başarı ile başarı arasındaki ilişkinin araş-

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tırılması da gerekiyor. Zira bu öğrenciler, daha başarılı çıkan öğrenciler biraz daha yaş oranları yüksek olan öğrenciler. Devam durumuyla başarı arasında bir doğru orantı varmış gibi görünüyor.

Şimdi bunu borçlar hukuku dersinde böyle bir sonuç çıktı, ama yani derse devamla başarı oranı arasında bir doğru orantı. Acaba bu bütün dersler için söylenilebilir mi? Bütün hocalar için söylenilebilir mi? Ben Roma hukuku dersine de giriyorum. Yeni de girmiyorum, galiba 19 yıldır Roma hukuku dersleri anlatıyorum. Aynı çalışmayı Roma hukuku dersinde de yaptım. Fakat bu kadar yüz güldürücü sonuçlar çıkmadı. Zaman olmadığı için onları paylaşamıyorum. Orada makas daraldı. 10-15-20 puanlık farklar çıktı devam edenle etmeyenler arasında.

Ben kendi kendime şöyle bir kılıf buldum tabiri caizse başarısızlığıma. 4 tane şubeye Roma hukuku anlatıyorum. Bizde öğretim ve ikinci öğretim var, öğrenci sayısı arttığı için şubelere bölündü. Dolayısıyla 4 şubeye giriyorum. İnanın anlatığım dersten ben sıkılıyorum. Aynı şeyleri dön oraya anlat, dön öbür tarafa anlat sıkılıyorum. Bu muhtemelen öğrenciye de yansıyor. Sebep bu olabilir, ama acaba tek sebep bu mudur? Bunun araştırılması lazım. Ben bunun üzerinde kendi adıma durup düşünceğim. Belki ileride bunun nasıl telafi edebiliriz? Bunun çarelerine bakmaya çalışacağım. Yani borçlar hukukunda başarılı görünüyorum kendi adıma, ama Roma hukukunda da bir başarısızlığım ortaya çıkıyor. Bunu sorgulamam lazım.

Buradan şöyle bir sonuç da çıkardım, katılırsınız katılmazsınız bilemiyorum. Bir kere Adalet Meslek Yüksekokulundan gelen öğrenciler biraz daha başarılı görünüyor dedim. Benim yaptığım gözlemler de bunu teyit ediyor. Benim şahsi kanaatim, hukuk fakültelerine öğrenci alınırken, işte 2 artı 3 mü olsun, 5 yıl mı olsun tartışılıyor. Ben bunu yazdım da bir makale konusu da yapmıştım. Bana göre doğru olan, önce Adalet Yüksekokuluna öğrenciyi almak, sonra yapılacak bir imtihanla hukuk fakültesine almak. Bu tedrici olabilir, yani birdenbire kesin bir geçiş doğru değil, ama zaman içerisinde bir yandan liseden, bir yandan Adalet Yüksekokulundan öğrenci alırken,

Adalet Yüksekokulundan girecek öğrencilerin sayısını arttırırız arttırırız ve belli bir aşamadan sonra liseden hiç öğrenci almayabiliriz.

Neden bunu söylüyorum? Adalet Yüksekokulunda biz temel hukuk derslerini veriyoruz. Çocuk sıfır hukuk bilgisiyle gelmiyor. Bir başka bölüme gelen öğrenci, mesela bir mühendisliğe gelse, mühendislik derslerine aşına olarak gelir. Biraz matematik, biraz fizik kimya vesaire lisede görmüştür. Ama hukuka gelen öğrenci sıfır bilgiyle geliyor. Biz birtakım kavramları orada verme imkânına sahip olacağız.

İkincisi, bir kısım temel dersleri Adalet Meslek Yüksekokulunda verebiliriz. Felsefecilerin çok şikâyet ettiği genel felsefe dersi, sosyoloji dersi vesaire orada verebiliriz. Sonra hukuk fakültesinde biraz daha fazla yer açılır ve daha derinlemesine konuları anlatabiliriz. Koyamadığımız dersleri koyabiliriz ve uygulayıcıların şikâyet ettiği uygulamaya yönelik dersleri de koyabilecek yerimiz açılabilir diye düşünüyorum. Ama bu sadece böyle bir tek çalışmaya dayanılarak bu sonuca ulaşmak da doğru değil. Bu tür çalışmaların artması lazım ve benim kanaatim şu: Bu aslında zor bir çalışma değil, YÖK'ün bunu yapması lazım. YÖK soruları hazırlar, elinde istatistik uzmanları vardır, bu konuda bilim adamları vardır. Bütün fakültele-re gönderir, öğrencilerinizin işte nerelerden geldiğini bildirir, başarı durumlarını bana bildirin diye YÖK pekâlâ çok sağlıklı sonuçlara ulaşabilir. Elimize çok sağlıklı anketler, sağlıklı istatistikler geçebilir ve biz de biraz ezbere değil de, elimizdeki bu sayısal verilere dayanarak konuşma imkânına sahip oluruz.

Bu noktada bununla bağlantılı olarak, vaktimiz elverdiği ölçüde biraz nitelikli akademisyen meselesine de temas etmek istiyorum. Konuyla bağlantısı nedir diyeceksiniz, bağlantısı şu: Ben bu anketi kendimi sorgulamak için yaptım. Yani acaba benim derse katkım nedir? Ben bir hoca olarak katkı sağlıyor muyum sağlayamıyor muyum? Aslında bu soruyu bütün öğretim üyelerinin sorması lazım, ben çoğunun da sorduğunu düşünüyorum, ama ne yazık ki sormayanlar da var.

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Biraz iğneyi kendimize dürtelim. Yani hukuk eğitimini konuşurken tartışırken, biz hocalar genellikle işte sistemi sorgularız, kendi dışımızdaki birtakım unsurları bazen itham ederiz, ama kendimizi sorgulamak genelde pek aklımıza gelmez.

Şimdi düşünün 300-400 kişilik bir sınıf. Bazı derslerde A dersinde 300-400 kişilik sınıf. Hukuk fakültelerin çoğunda malmunuz yoklama alınmıyor. Üçte ikisi doluyor, bazılarında tamamı doluyor, ama düşünün bazı derslerde 10 kişi dersi takip ediyor. 10 öğrenci de geçiyor, geriye kalan 300 öğrenci de geçiyor. O hocanın durup, kendisini sorgulaması lazım. Eğer herkes mezun oluyorsa, ben burada hoca olarak bir katkı sağlayamıyorum demesi lazım.

Gayet güzel değerli konuşmacılar, Sayın Başkanım da, Muharrem Hocam da temas etti. Tabii vakıf üniversitelerinde de problem var, devlet üniversitelerinde de var. Ben bir vakıf üniversitesinde de üç yıl dekanlık yaptım. Orada da bizzat yaşadım bazı problemleri. Evet, sayısal olarak hoca problemimiz var, ama sadece nicelik değil, nitelik problemimiz de var.

Şimdi kimse alınmasın güvenmesin. Bir hoca derse giriyor, kitaptan satır satır okuyorsa, bir hoca giriyor çocuklar *"kusura bakmayın bu benim uzmanlık alanım değil ben 30 sene önce gördüm bunu, unuttum bu dersi, ben de sizinle birlikte öğreneceğim"* diyor. Mesela bir miras hukuku gibi teknik bir derse giriyorsa bir hoca, bunu diyebiliyorsa. Bir hoca derse giriyor kitabın altını çizdiriyorsa, şu cümlemin altını çiziniz üstünü çiziniz. Bir diğeri derse giriyor, kitabı ezberlemiş, ezberi bozulmasın diye soru bile sordurmadan ezberden okuyorsa. Bir diğeri bizim yaptığımız gibi bilgisayara yüklemiş, satır satır oradan okuyarak ders anlatıyorsa, artık bunun bir sorgulanması lazım diye düşünüyorum.

Öğrencilerimiz ilkokuldan itibaren iyi bir öğretmen arayışına giriyorlar. Neden? Hep hedef iyi bir fakülte. İyi bir ilköğretim, iyi bir ortaöğretim, affedersiniz yarış atı gibi çocuklarımızı koşturuyoruz, iyi bir fakülteye girsin diye. Hedefinde hukuk fakültesi var kazanıyor, amacıma ulaştım diyor. Gözün-

de büyütülmüştür, hocayı gözünde büyütmüş, profesörü gözünde büyütmüş, fakülteyi gözünde büyütmüş, sınıfa giriyor tam bir hayal kırıklığı. Bahsettiğim tarzda hoca derse giriyor, ne dediği belli değil. Öyle hocalar biliyorum ki, Adalet Yüksekokulu öğrencisi bile, biz bundan bir şey anlamıyoruz diyor, bırakın hukuk fakültesi öğrencisini. O zaman burada ciddi bir kalite problemi var demektir.

O zaman bir kere hocaların kendini sorgulaması lazım, bu bir; ikincisi, hocaların başarısını ölçen rekabetçi bir sistem kurmamız gerektiğine inanıyorum. Şimdi ben diyorum ki ben çok iyi hocayım. Öyle başım yukarıda dolanıyorum fakülte koridorlarında, benden büyük hoca yok. Kim söylüyor bunu? Hangi bilimsel veriye dayanarak, hangi çalışmaya dayanarak, hangi ölçüye dayanarak ben kendime bu unvanı veriyorum? Yok.

O halde öyle bir sistem kuralım ki, şimdi radikal bir çözüm önereceğim, fakültelerin de başarısını görelim, hocalarında başarısını görelim. Öğrencilerimiz tercihte bulunurken neye bakarlar? Puanı bakarsınız değil mi? Puanlar hiçbir şey söylemez size aslında. O puanlar aldatıcıdır. Puanın yüksek olması, fakültenin kaliteli olması gibi bir anlam çıkarmamıza neden oluyor. Biraz da dersane hocaları bu şekilde öğrencilerimizi yanlış yönlendiriyor. Puanı bakıyoruz, ama acaba hangi fakülte kaliteli hukukçu yetiştiriyor? Bunu biliyor muyuz? Hayır, bilmiyoruz.

Şimdi avukatlık imtihanının filan gelmesi konuşuluyor tartışılıyor. Ben biraz daha radikal bir adım atacağım ve diyorum ki; bunu biz sadece avukatlıkla hâkimlikle savcılıkla sınırlandırmayalım. Biz hocalar dersimizi anlatalım, imtihanlarımızı yapalım. Öğrenci mezun olma amacına gelsin. Bu çözümüm sadece hukuk fakülteleri için değil, mümkünse tüm fakülteler için geçerlidir. O aşamada Almanya'da olduğu gibi bir devlet imtihanı yapalım. Tüm temel derslerden öğrenciler bir kez daha girsinler, ama objektif olmak kaydıyla, soruların belli fakültelere hazırlanmaması kaydıyla. Sorular belli fakültelere hazırlanıldığı zaman, ister istemez o fakültelerin mezunları avantajlı konuma geçiyor, alışkın oldukları sorular çıkıyor. Bir

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havuz oluşturursunuz, her fakülteden soru alırsınız, gerekirse her hocadan soru alırsınız. Objektif bir imtihan yapalım, bunun sonuçlarını açıklayalım.

Hatta fakülteleri başarılarına göre sıralayalım. Hangi fakültelerin mezunları daha başarılı olmuş? Onu herkes görsün. Hatta bugünkü bilgisayar teknolojisi içerisinde imkân dahilindedir, hocaların başarısını görmek mümkün. Profesör Şahin Akıncı'nın borçlar hukuku dersine giren öğrenciler borçlar hukuku sorularından yüzde kaç başarılı olmuşlar? Onu da görelim. Ondan sonra ben başarısızsam dekan bana hesap sorsun. Başarısız olan vakıf üniversitesini öğrenci tercih etmesin, başarısız olan devlet üniversitesinin fakültesinden rektör hesap sorsun. YÖK başkanı rektörden hesap sorsun.

Bakınız, özel ilköğretim okulları, hatta ortaöğretim kurumları genel olarak devletten daha başarılıdır. Neden? Çünkü onların başarılarını ölçme imkânımız var. İşte adı o kadar çok değişti OGS filan, işte ortaöğretim giriş sınavı vesaire, artık unuttuk o kadar çok değişti ki sistem. Bir ülkenin eğitim sistemini, bir ülkeyi mahvedecekseniz eğitim sistemini bozun, sürekli değiştirin. Maalesef o noktaya geldik. (Alkışlar)

Çok değişti, bu yüzden hatırlayamıyorum. Bu imtihanlarda öğrencinin başarısını görme imkânı mümkün, okulların başarısını görmenin imkânı mümkün. Veliler bakıyorlar, hangi okul üniversiteye ne kadar öğrenci sokmuş, liseye ne kadar öğrenci sokmuş? Onu görüp, ona göre tercihte bulunuyor. Pek çok özel okul daha başarılı olduğu için, insanlar devlet okuluna bedava olduğu halde çocuğunu göndermiyor da, yüksek paralar ödeyerek gidip oraya kayıt ettiriyor. Ama üniversitelerde, ne üniversitenin başarısını ölçecek, ne hocaların başarısını ölçecek bir sistem yok. Dolayısıyla herkes kendisine kendi fakültesi en büyük fakültedir, en nitelikli fakültedir, her hoca en kaliteli hocadır. Bir kere bunun bir değişmesi lazım.

Bu çözüm önerimi YÖK kabul eder mi? Asla kabul etmez. Buna gelebileceklerini zannetmiyorum. Bu tartışmaya açmak için söylüyorum, tartışılması lazım. Kesin doğrudur da demi-

yorum, eksik tarafları vardır, yanlış tarafları vardır, ama en azından tartışılması gerekir diye düşünüyorum.

Çok yüksek müsaadenizle, bununla ilgili açıklamalarımı burada bitiriyorum, ama bir hikâyeden yola çıkarak bir şeyi daha paylaşıp, sözlerime son vereceğim. Şimdi hukuk öğretimi yapıyoruz, ama bizim eğitim de yapmamız lazım. Ben çok iyi borçlar hukuku öğretebilirim, çok iyi ceza hukuku öğretebilirsiniz, çok iyi idare hukuku öğretebilirsiniz, ama yetiştirdiğiniz öğrenciye adalet hissini verememişseniz, ahlaklı olmayı erdemli olmayı dürüst olmayı faziletli olmayı öğretememişseniz, öğrettiğiniz o bilgiler o mezunların elinde tehlikeli bir silaha dönüşür. Onun için hocanın, ben dersimi anlatır çıkar giderim, gerisi beni ilgilendirmez deme hakkı yoktur.

Unutmayalım ki, Hitler'in gaz odalarını yapanlar, çok bilgili mühendislerdi, atom bombasını yapan da öyle. (Alkışlar)

Güncel olaylarla da biraz bağlantı kurarak, bağlantıyı ben kurmayayım siz kurarsınız zaten. Çok bilinen, hepinizin bildiği bir hikâyeyi paylaşmak istiyorum müsaadeniz. Fatih Sultan Mehmet'in Rum mimarla yargılanması olayı, bilmeyenler için hatırlatayım.

Bir cami inşaatı yaptıracaktır İstanbul'u fethettikten sonra cihan padişahı, büyük sütunlar getirttirir, ama bu sütunların deprem olduğu zaman dayanıklı olmayacağını düşünen mimar, bunların biraz kesilmesini ister kestirir. Bunu duyunca cihan padişahı çılgına döner ve elinin kesilmesine karar verir, eli kesilir.

Rum mimar Hıristiyan'dır, buna çok içerler kadiya şikâyet eder dava açar. Şimdi düşünebiliyor musunuz? Vatandaş bile değil, tebaa ve Müslüman bir ülkede Hıristiyan tebaa. Padişahı dava etme cüret ve cesaretini kendinde görebiliyor. Demek ki öyle bir adalet duygusu aşlamış ki tebaasına, sen korkma diyor, padişahı bile dava edebilirsin. Buradan çıkaracağımız birinci ders bu. O halde öyle bir adalet sistemi kurmak zorundayız ki, en mazlum en gariban en fakir insan bile, en güçlü en kudretli insanı dava edebilsin.

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İki, kadı padişahı huzuruna davet ediyor. Hakkında şikâyet var, yargılayacağım diye. Cihan padişahı, ben işte şuraya şuraya hükmeden; Osmanlı padişahları öyledir, fermanlarını öyle yazarlar biliyorsunuz. Filancanın filancının oğlu Sultan Mehmet Han, sen kimsin ki beni ayağına çağırıyorsun demiyor, gidiyor ayağına, sen kimsin demiyor. O zaman hiçbir yöneticinin, hiçbir hâkime, hiçbir savcıya sen kimsin deme hakkı olmamalıdır. (Alkışlar)

Alkışlarınızdan, bu konularda hepinizin dertli olduğunuzu anlıyorum. Üç, kadı tarafları dinledikten sonra, Fatih'in haksız olduğuna karar veriyor ve elinin kesilmesine hükmetmiyor. Şimdi şöyle düşünebilirdi kadı; ben Müslüman'ım, padişah da Müslüman, öbürü de Hıristiyan. Bu padişah İstanbul'u fethetmiş padişah, daha bir sürü fetih gerçekleştirecek, ben bunun elinin kesilmesine hükmedersem, fetihler yapamaz devlet zarar görür, din zarar görür, İslam zarar görür bundan dolayı. Ben burada kayırayım, padişahı himaye edeyim, Müslüman dindaşımı kayırayım filan diyebilirdi. Yani kendince kutsal bir amaç belirleyip, bu kutsal amaç için adaletten sapabilirdi. Adaletten sapmıyor. Çünkü adalet her türlü kutsal amacın üstündedir. O halde öğrencilerimize bunu öğretmek zorundayız; adaletin her türlü kutsal amacın üzerinde olduğunu. Öğrencilerimize, bir tarafta kanun bir tarafta dosya, bunun dışına çıkmamayı öğretmek zorundayız.

Ben şunu söylüyorum öğrencilerime: Bir partiye mensup olabilirsiniz, bir cemaate, bir tarikata, bir gruba mensup olabilirsiniz, bir dininiz olabilir, ama hukukçu olarak bunlardan kendinizi soyutlamak mecburiyetindediniz. Bütün bunlardan kendinizi soyutlayacaksınız. Hatta böyle biraz İslami kimliğiyle ön plana çıkanlara şunları söylüyorum. İslam'da kul hakkı kavramı vardır, adalet kavramı, kul hakkı kavramı her şeyin üstündedir. Görebildiğim kadarıyla İncil'de de öyledir, Tevrat'ı bilemiyorum, inceleme imkânım olmadı. Kul hakkı ne yazık ki bazı çevrelerce yanlış anlaşılıyor. Bazı Müslüman kardeşlerimiz, kul hakkını Müslüman hakkı olarak algılıyorlar. Bazıları, benim partime mensup olanların hakkı, bazıları



benim cemaatime, benim tarikatıma mensup olanların hakkı. Hayır, Hıristiyan'ın hakkı da kul hakkıdır eşittir Müslüman'la, Ateistin hakkı da kul hakkıdır, putperestin hakkı da kul hakkıdır, hatta hayvanların hakkı da, ayırım gözetemezsiniz.

İşte kadı bu ayrımı yapmıyor. Biz bunu öğrencilerimize öğretmek zorundayız. Böyle bir ayırım yapmadan hükmünü veriyor ve hikâyenin sonu. Kararı verdikten sonra cihan padişahı diyor ki; vallahi padişah diye beni kayırsaydın eğer, kılıcını çekiyor, bu kılıçla kafanı uçururdum. Bu konuda rivayetler biraz muhtelif. Bir rivayete göre minderin altından güzünü çıkarıyor kadı ve diyor ki; eğer padişahım diye benim hükmüme riayet etmeseydin, fermanıma boyun eğmeseydin, ben de bu güzle senin kafanı patlatacaktım diyor. İşte bize bunu diyebilecek cesarete sahip hâkimler lazım, savcılar lazım. (Alkışlar)

Gerekirse en zalim hükümdarlar karşısında bile kellesini ortaya koyabilecek hâkimler ve savcılar lazım. Bunları öğretmemiz gerekiyor, bunları anlatmamız gerekiyor.

Amerika'da, hepiniz bilirsiniz Bill Clinton Monica Levinsk olayı, gazetelere yansıdı. Savcının karşısına çıktı, 4 saat ifade verdi diye basında yazdı. Vay be dedik biz de, koskoca devlet başkanı, dünyaya hükmeden adam savcının karşısına çıktı 4 saat ifade verdi. Verecek. Eğer bunlara özeniyorsak, geçmişimizle tarihimizle böyle gurur duyuyorsak, bunlar sözde kalmamalı, iyi şeyleri örnek alacağız. Clinton'u da örnek alacağız, Fatih'i de örnek alacağız ve biz hocalar olarak, biz büyükler olarak gençleri, genç hukukçuları adalet duygusu yüksek, dini diyanetini, cemaatini şuyunu buyunu şahsi çıkarlarını bir kenara bırakan bir hukuk savaşçıları olarak yetiştireceğiz, yetiştirmek zorundayız.

Hepinize saygılar sunuyorum. Teşekkür ediyorum. (Alkışlar)

**Av. Sema AKSOY (Oturum Başkanı)**- Kıymetli Hocama çok teşekkür ediyoruz. Eleştirel bir bakış açısıyla, hem üniversiteleri hem akademisyenleri ve eğitimi sorguladı. Almanya'da bir araştırma yapılmış. Toplumsal geçmiş kalıplarının, hâkimlerin

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verdiği kararlar üzerindeki etkisi tartışılmış araştırılmış. Çok önemli bir araştırmadır gerçekten. Hakikaten toplumsal geçmiş kalıpları, dinsel inançlar, geldiği etnik kültür veyahut da yaşam kültürü ve aile yapısı vesair etkilerin, hâkimlerin kararlarında etkili olduğu sonucuna varılmış.

Şimdi tabii hukukçuların evrensel düşünmesi gerçekten çok önemli; evrensel düşünemeyi öğretemediğimiz takdirde, zaten gerçek hukukçuluktan bahsetmek mümkün değil. Bakıtığımız zaman, biz hukuk fakültelerinden sonraki sürece, aslında Hocam çok önemli bir konuya değindi, sınav konusuna. Kıymetli Hocam, aslında o sınavda iki kademeli biliyorsunuz, Avukatlık Kanununda getirilmeye çalışılan. Birincisi staja girişteki sınav; belki sizin söylediğiniz amaca hizmet edecektir. Çünkü üniversitelerin kalitesini ölçecek. Bir bakacaksınız ki belli üniversitelerden gelen öğrenciler staja kabul edilemeyecekler. O birinci aşama, sizin söylediğiniz konuyu sanıyorum biraz telafi edecek nitelikte. İkinci aşama da, staj eğitiminden sonra avukat olabilmek için getirilen bir sınav aşaması.

Hukuk eğitiminde cesaret vermeyi, karşı çıkmayı ve evrensel düşünmeyi öğretmek lazım; biz barolar olarak tabii ki elimizden geleni yapıyoruz staj eğitiminde avukatlık eğitiminde. Fakat hâkim ve savcıların staj eğitimlerinin ben tamamen bir devlet memuru mantığıyla yürüdüğünü düşünüyorum. Adalet akademilerinde tek kalıp halinde yetişmiş, davranış biçimleri, yürüyüşleri, oturuşları bile artık kalıplaşmış, robot şeklinde hâkimler çıktığını görüyoruz. Bu enteresan bir şey, yani biz aynı sıralardan mezun olduğumuz arkadaşlarımızı kimi zaman tanıyamaz hale geliyoruz. O staj aşamasında öğretilenlerden dolayı, ben bunu bir avukat arkadaşımın duymuştum. Hâkim stajyeri arkadaşın *“artık seninle görüşemeyiz, ben hâkim oluyorum sen avukatsın”* dediğini biliyorum; şimdi bu mantık yanlış bir mantık.

Biz hâkim savcılar ve avukatlar olarak hep birlikte adaleti arıyoruz ve birimiz eksik olduğumuz takdirde adaleti bulmakta zorlanıyoruz. Onun için hep birlikte evrensel düşünebilirsek tartışabilirsek, işte o noktada adaleti de bulacağız inşallah.

Şimdi Başkent Üniversitesinin çok değerli dekanı Sayın Hocamız Prof. Dr. Kudret Güven'e sözü bırakıyorum. Buyurun Hocam.

**Prof. Dr. Kudret GÜVEN (Başkent Üniversitesi Hukuk Fakültesi Dekanı)**- Çok teşekkür ederim Sayın Başkan. Saygıdeğer konuklar, sevgili öğrenciler; hepinizi sevgiyle saygıyla selamlıyorum.

Benim konu itibariyle, esas itibariyle bana verilen konu daha doğrusu çağın talepleri karşısında hukuk müfredatı, yani okutulacak derslerin yeniden tespiti gibi bir konu. Ama ben de hukuk eğitimiyle ilgili genel bazı değerlendirmeler yapayım, ondan sonra esas konuma geçeyim diye düşünüyorum. İzin verirseniz hukuk eğitimiyle ilgili bazı endişelerimi, sayın konuşmacıların daha evvel belirttikleri hususlardaki benzer düşüncelerimi veya ayrıştığım noktaları ifade etmeye çalışayım.

Şimdi hukuk eğitimi son zamanlarda bildiğiniz gibi kamuoyunu ve özellikle hukukçuları tabii ki ilk planda fazla ilgilendirir oldu ve hukuk eğitimi nasıl olmalı gibi bir sorguyla, bu tür bir sürü çalışmalar yapılmaya başladı. Biz hukuk fakültesi dekanları bile zaman zaman bir araya gelip, bu konuları konuşma yoluna gittik.

Esas itibariyle niye buna ihtiyaç duyuluyor? Şimdiye kadar hukuk eğitimi çok mu iyiydi de, bundan sonra kötü oldu? Filan gibi bazı sorgulamalardan sonra, ben şöyle bir kanaate sahibim. Hukuk eğitimi nasıl olur diye bizi kaygılandıran konuların çoğu, aslında bizim hukuk eğitimimizle ilgili değil, uygulamayla ilgili. Yani son zamanlarda yargıda rastladığımız sorunlar, bizim hukuk eğitiminin nasıl olması lazım geldiği gibi bir soru işaretini kafamızda canlandırmaya yol açtı.

Peşinen şunu söyleyeyim: Tabii ki, her bilim dalı zaman içinde gelişir, biz de zaten hiç merak buyurmayın geliştiriyoruz. Zaman içinde gelişen şartlara ayak uyduruyoruz. Toplumun dünyanın ihtiyacı olan veya konuştuğu üzerinde kafa yorduğu konularda dersler koyuyoruz. Bunu öğrencilerimize

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aktarıyoruz. Geleceğe dönük, sadece bugüne değil, geleceğe dönük bildiğimiz tüm doğruları öğrencilerimize aktarmaya gayret gösteriyoruz.

Şundan emin olun ki, her öğrenci mezun olduğu zaman gayet idealist, gayet hukuk alanında nasıl faydalı hizmetler yapacak, nasıl çalışacak? Hem kendini nasıl geliştirecek, hem topluma nasıl faydalı olacak? Gibi kaygılarla mezun oluyor. Üç-beş sene sonra biz bu öğrencileri arkadaşlar, bir yerde rastladığımızda tanıyamaz duruma geliyoruz. Toplumun bazı sıkıntıları maalesef her alanda olduğu gibi, hukuk fakültesi mezunları, hukuk mesleğine adım atmış; ister hâkim olsun ister avukat olsun, hukuk mesleğine adım atmış hukukçuları da, hukuk fakültesi mezunlarını da etkiliyor.

Arkadaşlar bileşik kaplar esasını hepimiz biliriz. Yani bu ülkenin doktoru çok iyi yetişiyor, mühendisi çok iyi yetişiyor, efendim bilmem iktisatçısı işletmecisi felsefecisi çok iyi yetişiyor da, hukuk öğrencisi mi kötü yetişiyor. Genel olarak bir seviye düşüklüğünden bahsedebiliriz, ama bu sadece hukuk fakültesi mezunlarına münhasır, sadece hukuk fakültesi mensuplarının sorunu değil. Genel olarak eğitimimizde bir sorun var.

Nedir bu sorun? Bir defa alttan çok zayıf öğrenci karşımıza geliyor. Yani ilkokuldan başlayarak bozulan, ortaokul ve lisede perçinlenen ve okuduğunu anlayamayan veya anladığını ifade edemeyen, iki satır yazı yazmaktan kaçınan bir öğrenci kimliğiyle karşı karşıyayız.

Bu öğrencinin eline en iyi kitabı da verseniz durum böyle, en iyi hocayı da derse soksanız maalesef durum böyle. Neden? Çünkü dediğim gibi ilk ve ortaöğretim lise öğretim seviyesi maalesef çok düşük. Siz kimi alırsanız alın, en iyi puanla öğrenci alan fakültelerde de aynı sorun var, en düşük puanla öğrenci alan fakültelerde de aynı sorun var. Yani kumaş bozuk olunca, diktiğiniz elbise işe yaramıyor. Aldığınız et kokmuş olursa, yaptığınız yemek yenmez oluyor. Dolayısıyla bir defa sorunlarımızı, uygulamada karşılaştığımız sorunları, sadece

ve sadece hukuk fakültelerinin sırtına yükleyip, hukuk fakültelerini sorgulayıp, sanki onlar bu işi biraz yanlış yapıyorlarmış gibi algılamak ve algılatmak bir defa doğru değil.

Bunu özellikle söylüyorum. Çünkü öğrencilerimiz zaman zaman moral bozukluğu içine düşüyorlar. Yani aldıkları eğitimin sanki boş olduğu, kendilerine bir şey vermediği, 4 senelerini neyse, 4 yılda mezun olurlarsa, hazırlığı filan da koyarsanız 5 yıl, boşa geçen zamanmış gibi sanki görüyorlar. Değil, yani olay aşağıdan itibaren takip edilecek bir silsile halinde maalesef kötü bir malzemeyle. Kötü derken, kusura bakmayın yani öğrenci kalitesi itibarıyla söylemiyorum, kötü bir malzemeyle önümüze gelen bir tabloyla karşı karşıyayız.

Yani bir defa buralarda bu toplantılarda doğruyu söylememiz lazım, hesaplaşmamız lazım, neyin nerede başladığını ve nerede sonlandığını da çok iyi ortaya koymamız lazım.

Hukuk fakülteleri süttten çıkmış ak kaşık mı çok mu iyi? Çok mu iyi eğitim veriyor veya hangileri iyi veriyor hangileri kötü veriyor? Hepsi mi çok iyi? Arkadaşlar, hukuk fakülteleri, biraz evvel Sayın Kılıç'ın da ifade ettiği gibi, işte 73 filan dediniz değil mi Hocam? Ben dün yine internet sayfalarını şöyle bir dolaştım, YÖK'ün sayfasına girdim, yeminle söylüyorum rakam tespit edemedim. Bir YÖK düşünün ki, size hangi dalda ne kadar hukuk fakültesi olduğunu, hangi dalda ne kadar fakülte olduğunu tespit edememiş.

Bir seferinde de bir doçenti arıyordum ben, kendisini doçent diye tanıtıyormuş. Doçent olmadığını bana birisi fısıldadı, YÖK'ten tespit edemedim. Doçent olmuş mu olmamış mı? Yani böyle bir karmaşa halinde bir kuruma maalesef bağlıyız. Keşke Sayın Başkan burada olsaydı da, şu ifadeleri karşılıklı konuşsaydık, yemekte sohbet edebilseydik. Ben anti parantez şunu söyleyeyim: Aylardır randevu almaya uğraşıyorum, Sayın YÖK Başkanımızdan randevu alamamış bir dekanım. Dekanına randevu vermeyen bir YÖK sistemiyle karşı karşıyayız. Bunu da ifade etmemde yarar var.

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Arkadaşlar, hukuk fakültelerinin kendinden kaynaklanan sorunlar gibi gördüğüm, ama temelinde yine bu sistemden kaynaklanan problemler şunlar. Bunların da altını kısaca çizeyim, ondan sonra kendi ana başlıklarına geçeyim.

Bir defa hukuk fakültelerinin, sadece bizim değil başkaca, yani sosyal bilim dallarında da öyledir, tek enstrümanı öğretim elemanıdır. Binalarımız kötü olsun, öğrencilerimizi sığdıracak sınıflarımız olmasın, bahçede de ders yaparız biz. Ama eğer yeterli ve hocamın söylediği gibi, belli bir standartta yetişmiş öğretim elemanımız yoksa yani hem nitelik hem nicelik itibariyle iyi öğretim elemanına sahip değilsek, doğru dürüst eğitim yapamayız. Bugün en iyi ihtimalle, işte 73 filan dedi hocam. Bu sayıda bir hukuk fakültesi olduğunu düşünün, bu sayıda profesör yok, bu sayıda doçent yok. Yardımcı doçent sayısı biraz fazla, yardımcı doçentlerin de nasıl yetiştiğini anlatsam, herhalde akşamı filan buluruz.

Bir kısmı çünkü yurtdışına doktora gönderiliyor. Orada yaptıkları doktora gelip önümüze sunduklarında, ben şahsen hiçbirinin bu ülkenin gerçeklerine uymayan, bu ülkenin ihtiyaçlarına uymayan konularda yazılmış kitaplar olduğunu görüyorum. Kendileri mi yazdı, yazmadı mı, dilleri iyi mi kötü mü? Onları da tartışabiliriz. Yani benim artık bugün hiçbir yüksek lisans veya doktora öğrencime vermediğim konuları, yurtdışında bu gönderdiğimiz ve deve yüküyle para ödediğimiz evlatlarımıza veriyorlar ve hiç de dönüşte benim işime yaramayan konularda bir kitap daha şöyle veya böyle yazılmış oluyor.

Dolayısıyla bu şartlar altında benim öğretim elemanı açığımı, hem nitelik hem nicelik itibariyle karşılamadığım takdirde, doğru dürüst bir hukuk fakültesi eğitimi yapma imkânımın olmadığını her yerde söylüyorum.

Arkadaşlar, zaten akademisyenlik eskiden çok cazip bir meslek iken, yani hep okulu dereceyle bitirmiş olan öğrencilerin heveslendiği, dilleri sağlam, iyi bir eğitim almış, iyi bir ortaöğretimden lise eğitiminden gelmiş öğrencilerin heveslendiği bir konuyken, şimdi maalesef açılan araştırma görevlisi sı-

navlarına çoğu zaman başvuran dahi olmuyor. Niçin? Devlette de bu var, vakıf üniversitelerinde de bir miktar var. Maalesef ekonomik imkânlar akademisyenliğin cazibesini ortadan kaldırmış durumda. Yani bir araştırma görevlisinin alacağı ücretle geçinemeyeceğini düşünen bir genç, ne kadar iyi yetişmiş olursa olsun bu mesleğe girmekten kaçınmaktadır. Dolayısıyla artık akademisyenlik, iyi öğrencilerin vasıflı öğrencilerin, iyi donanımlı yetişmiş karşımıza gelmiş olanların değil, vasat öğrencilerin geldiği başvurduğu bir dal olarak maalesef karşımıza çıkmaktadır.

Arkadaşlar, ileri aşamalarda da, yani bir doçentin bir profesörün dahi belli merhaleleri aşamaları geçerken dahi, eskiden olduğu kadar yeterli özeni göstermediği gayreti göstermediğini görmekteyiz. Neden? Arkadaşlar, maalesef onlara da sağlanan ekonomik imkânlar, belli bir standartta yaşamalarına imkân vermediği için, akademisyenler de maalesef dışarıya uğramıştır. Yani ek iş yapmak suretiyle, ek ücretli derslere gitmek suretiyle, nerede daha çok yüksek ücret veren okul varsa; Kıbrıs mı, bir başka şehirdeki üniversite mi? Oralara gitmek suretiyle para kazanmanın derdine düşmüştür. Dolayısıyla böyle bir yapıda, siz hangi hocanın derse doğru dürüst hazırlanarak girdiğini düşünebilirsiniz ki? Hangi öğretim elemanının çok iyi yetişerek, artık belli bir noktaya geldiğini söyleyebilirsiniz?

Arkadaşlar şundan emin olabilirsiniz ki, üniversiteleri ve hukuk fakültesini, hukuk fakültelerinin eğer bir problemi varsa, bunu yaratan bizleriz. Bizler derken, üniversite düzeni, mevcut siyasi yaklaşımlar, üniversitelerin fikri alınmaksızın sürekli üniversite ve fakülte açmalar ve bunun da hiçbir müsebbibinin bulunmaması. Yani siyasilere söylediğinizde YÖK istiyor, YÖK'e söylediğinizde, niye bu kadar hukuk fakültesi açıyorsunuz diye, ne yapalım siyasi tasarruf deyip boynunu büktüğü bir ülkede, maalesef sıkıntılar bitmez. Biz daha bunları çok konuşuruz. Çok konuşuruz, çünkü hiçbir şekilde bu yaralara parmak basmak veya bunların ne olduğunu öğrenmek ve buna çözüm üretmek isteyen bir siyasi iradenin bulunmadığını aklımızdan çıkarmayalım.

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Arkadaşlar, ben konuma geçeyim, şahsi bu konudaki görüşlerimi ifade ettikten sonra. Hani son zamanlarda sarf edilen bir söz var; halkın istediği yere kadar demokrasi diye. Arkasını getirmeseler bu bir slogan olmaktan öteye geçmese de, biz de toplumun istediği ihtiyaçlara, dünyanın yönelmelerine paralel olarak derslerimizi düzenliyoruz.

Şahsen ben 9 yıldır bir fakültenin sorumluluğunu taşıyan bir insan olarak, her üç-beş senede bir gerek Türk üniversitelerindeki hukuk fakülteleri, gerekse yabancı ülkelerdeki hukuk fakültelerindeki dersleri şöyle bir masaya yatırıyorum. Bizden farklı ne okunduğunu tespit ediyorum ve buna ihtiyacımız var mı? Şunu da ders programımıza koysak acaba iyi olur mu diye bir sorgulamadan sonra, gerekiyorsa bu dersleri programlarımıza koyuyorum.

Yani baktığımız zaman, yani hukuk fakültelerini artık tıkladığınızda karşınıza çıkıyor biliyorsunuz. Baktığımız zaman üç ayağı beş yukarı, hukuk fakültelerimizin eğitim programları birbirini tutuyor. Yani çok da fark yok. Bazen ilk yeni kurulan vakıf üniversitelerinde pek ayağı yere basmayan programlar karşımıza çıkmışsa da, çok az krediyle yürütülen programlar gördükse de, onlar da daha sonra işte çeşitli çevre baskılarıyla programlarını düzelttiler, belli bir noktaya getirdiler. Dolayısıyla bugün iddiayla söylüyorum, benim hukuk fakültemin programıyla, Avrupa'daki bir hukuk fakültesindeki program birbirinden farklı değil. Dolayısıyla yani anlattığımız dersler öğrencilerimize aktardığımız konular itibariyle bir eksikliğimizin olmadığını söyleyebilirim.

Biraz kendi fakültemden, koyduğum derslerden, biraz da daha sonra da yapılabilir diye düşündüğüm dersler itibariyle bir sıralama yapmamız mümkündür. Şimdi birazdan onları size aktaracağım, ama şunu söyleyeyim. Bu bizim her zaman yapabileceğimiz, kendi fakültemizin bünyesinde halledeceğimiz bir konu olduğu için, en kolay yapabileceğimiz husustur. Yani bir ders programını biz belirlemekte, tespit etmekte hiç bir zorluk çekmiyoruz. En kolayı ders müfredatının belirlenmesidir.



Dolayısıyla bu konuda, yani diğer arkadaşlarımın da zorlandığını zannetmiyorum, ama örnekleme olsun diye, hani ileride daha da koymayı düşündüğümüz dersler var mıdır sorusunun cevabı olarak şöyle bir sıralama yapmak mümkündür.

Bir defa metodoloji çok önemli. Yani bunu hukuk fakültelemizin birincil olmazsa olmaz ihtiyacı olarak görenlerdenim. Bunu yüksek lisans programlarına koyan fakülteler var. Bir dönem de ben Gazi Üniversitesinden Başkent Üniversitesine geçtim. Gazi Üniversitesi yüksek lisans programlarında da metodoloji dersi vardı. Şimdi var mı yok mu bilemiyorum. Murat Bey belki beni aydınlatır.

Metodoloji çok önemli; çünkü somut olaylara soyut kuralların uygulanmasının yöntemini, biz daha ilk sınıflardan itibaren öğrencilerimize anlatmak isteriz. Bunun yöntemini bilemezsek, anlatamazsak öğrencilerimiz maalesef okuduğu bir kanun metnini anlamaktan ve uygulamaktan uzak bir noktaya düşer diye düşünüyorum.

İnsan hakları artık giderek önem kazanan bir konu olarak karşımıza çıktı. İnsan hakları biliyorsunuz, belki işte 70-80 senedir konuşulan ve Avrupa İnsan Hakları Sözleşmesiyle de 60 yıldır ciddi bir metne sahip bir uluslararası sözleşme. Ama biz bunu maalesef hukuk hayatımıza çok fazla sokamadık. Bir zamanlar insan hakları denildiği zaman herkesin tüyleri diken diken olurdu. İnsan haklarını siyasi slogan olarak kullananlar belli bir siyasi görüşün adamı gibi yaftalanırdı ve insan hakları dersi seçimlik bir ders olarak, işte 5-10 senedir ya okutuluyor ya okutulmuyor.

Arkadaşlar, oysaki bildiğiniz gibi 2004 yılında Anayasamızın 90. maddesinde yapılan bir değişiklik, uluslararası sözleşmeler iç hukuk kurallarının da üstüne çıkan bir işlerliği sahip kılındı. Yani iç hukuk kurallarıyla uluslararası sözleşmeler çatıştığı zaman çeliştiği zaman iç hukuk kurallarına değil, uluslararası sözleşmelere öncelik tanınır şeklindeki mealen ifade ettiğim Anayasa hükmüyle, biz artık Avrupa İnsan Hakları Sözleşmesi de dahil olmak üzere, uluslararası sözleşmeleri bir temel norm olarak kabul ettik.

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Eğer bu irademize sahipsek, bu irademizde samimiysek ve yasa koyucu bu değişikliği göstermelik Avrupa Birliğini kandırmak amacıyla değil de, samimi olarak düzenlemişse, bu hükme mutlak surette abanmak bunu kullanmak zorundayız. Bu suretle ancak iç hukukumuzda uygulamamızda sağlanan veya görülen olumsuzlukları düzeltme imkânına sahip olabiliyoruz.

Son zamanlarda yüzümüzü güldüren uygulamalar, hep Avrupa İnsan Hakları Sözleşmesinden kaynaklanan yargı uygulamalarıdır. Dolayısıyla artık insan hakları dersi, yükselen bir değer olarak ve daha da önemsenerek belki daha da ders saati vesairesi arttırılmak suretiyle ve de bu içerikle. Yani sadece bir uluslararası sözleşme hüviyetinde değil de, iç hukuk kurallarının da yerine geçebilecek özellikte ve önemde bir ders olarak algılatılmak üzere öğrencilerimize aktarılmak zorundadır.

Arkadaşlar, temel hak ve özgürlükler bizim anayasa hukukumuzda bildiğiniz gibi kısa biçimde, işte anlatılan konular olarak şimdiye kadar karşımıza çıktı. Ama dikkat ettiğiniz zaman, son zamanlarda bireysel başvuru hakkının, yani temel hak ve özgürlüklerin etkin korunması bağlamında Anayasa Mahkememizin verdiği karar yüzümüzü güldürdü. Hani bilinen hikâyeye var ya. “Berlin’de hâkimler var” sözüyle ifade edilen, “Ankara’da hâkimler var” dedirtecek bir yaklaşımla Anayasa Mahkememizin bireysel başvuru hakları konusunda takındığı tavır bizi çok etkiledi. Dolayısıyla artık temel hak ve özgürlüklerin sadece ve sadece anayasa hukuku içinde bir kısım olarak bölüm olarak okutulmasından değil, başlı başına bir ders olarak ve bunun etkin korunmasının da sağlanması bağlamında bireysel başvuru hakkıyla bağdaştırılır biçimde okutulmasını ben şahsen öngörüyorum.

Arkadaşlar, bugün sadece ülkemizin değil, dünyanın önemli bir sorunu var. O da mültecilerin ve sığınmacıların maalesef ortaya koyduğu ve insanlık adına çok acınası bir problem var. Mültecilik ve sığınmacılık son zamanlarda kendi ülkesindeki savaş, işte tabii afet veya mevcut yönetimin baskısı suretiyle toplu halde başka ülkelere göç eden, ülkesini ağlaya ağlaya bı-

rakan insanların korunması ihtiyacıyla ortaya çıkan bir hukuk dalı. Bugün mülteci hukuku ve sığınmacılarla ilgili bir hukuk dersinin mutlak surette hukuk fakültesi programlarına ben konulmasını öneriyorum.

Arkadaşlar, biraz evvel söylemeyi unuttum. Biz ders programlarımızı yaparken, öğrencilerimize hiç sormuyoruz. Yani nasıl bir ders istersiniz diye, bu konuda Şahin Hocamın da söylediği gibi bir sürü konuda hiçbir yaptığımız ampirik araştırma yok, ama bu konuda da yaptığımız araştırma yok. Yani öğrencilerimiz acaba nasıl bir ders istiyor sorgulamasını hiç yapmıyoruz. Mülteci hukuku dersini ben kendi fakülteme koydum ve bunu niye koydum biliyor musunuz? Bir öğrencimin talebi üzerine koydum. Çünkü öğrencilerimiz genç nesil, taze kan, dünyaya başka türlü bakabilir. Dolayısıyla onların önerileri bizi bu şekilde bir ders içeriği belirleme konusunda, müfredat belirleme konusunda bir motivasyon sağlayabilir. Dolayısıyla bu dersin de ben mutlak surette hukuk fakültelerinde önemli bir ders olarak okutulması gerektiği kanaatimi serdediyorum.

Arkadaşlar, biz ceza hukukunu bildiğiniz gibi, benim yaşımında olanlar bilir. Hümanist ceza hukuku anlayışıyla okuduk. Bilmiyorum Sayın Yenisey Hocam da o ekipte herhalde yer almıştır. Rahmetli Hocamız Faruk Erem Hocamız derdi ki, bir suçlunun üstünü kazıdığınız zaman, altından bir insan çıkar, bunu hiç unutmayın derdi. Kuşkusuz, buna inanıyoruz. Ama son zamanlarda yaşadığımız bazı olaylar, benim suç mağdurlarının da en az suçlu kadar korunması gerektiği yolunda bir anlayışa sahip olmama yol açtı.

Bu nedenledir ki, viktimonoloji, yani mağdurun korunmasına ilişkin bir hukukun mutlak surette hukuk fakültelerinde okunmasına taraftarım. Yani kuşkusuz suçlu da insandır, onun da insan hakkı vardır, onu da koruyalım. Onu koruyacak mekanizmalar geliştirelim, ama mağdurları da bu arada ne yapmayalım? Unutmayalım. Çünkü hepimizin gördüğü, son zamanlarda kadınlara, son zamanlarda çocuklara, gerek cinsel gerekse sair yollarla yapılan şiddet ve tecavüz olayları hepimizin canını sıkıyor ve yakıyor. Bunlara uygulanan ceza-

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lar çok düşük olduğu gibi, infaz yasalarımız itibariyle de kısa süreli bunların dışarıya çıkarılması yoluyla, tekrar aramıza bir bomba gibi, saatli bomba gibi düşmelerine yol açabiliyor. Dolayısıyla arkadaşlar, viktimoloji günümüzde de çok önem arz ediyor, gelecekte de giderek önem kazanacak bir ders olarak benim şahsen önerebileceğim bir hukuk dersi anlamını kazanıyor.

Arkadaşlar, hava ve uzay hukuku; artık hani Atatürk'ün nur içinde yatsın güzel bir sözü vardı "*istikbal göklerde*" diye boşa söylenmemiş bir laf, ama biz tabii onun söylediği pek çok lafı artık dile getirmekten bile kaçınıyoruz. Gerçekten insanlığın geleceği uzayda arkadaşlar. Bugün büyük ülkeler, zengin ülkeler, uzaya gönderdiği hava araçlarıyla övünüyorlar, orada yaptıkları araştırmalarla, bilimsel araştırmalarla övünüyorlar. Belki bir süre sonra ayda veya başka gezegenlerde dolaşan dünya insanı olacak ve bunun da bir hukuku olacak arkadaşlar.

Bugün zaten uzaya gönderilen birtakım cisimler itibariyle dahi ortaya çıkan çeşitli hukuki problemler var. Bunları bile biz bugün çözümleyebilecek hukuk bilgisine sahip değiliz. Ben bunu fakültemin programına koydum, ciddi ciddi okutmak için hoca arıyorum, bulamadım arkadaşlar. Bir asker binbaşı yanılmıyorsam Amerika'da hava ve uzay hukuku konusunda doktora yapmış; fakat şu anda İzmir'de görevli. Ankara'ya geldiği zaman peşine düşeceğim ve okutmak için onu derse davet edeceğim. Gerekiyorsa iki-üç misli de ücret ödemeyi taahhüt edeceğim. Çünkü bulamıyoruz arkadaşlar. Yani bu konularda bizim insan yetiştirmemiz lazım. Yani ben üniversite çağım da bu konularda öğrencime bilgi aktarabilirsem, onlar da belki daha sonra yurtdışına gittiklerinde, klasik konularda değil de, bu konularda da doktora yüksek lisans yapma heyecanına veya merakına sahip olabilirler. Dolayısıyla bu da benim hukuk fakültelerinin müfredatlarında şimdiden yer alması gerektiğine inandığım bir ders olarak bulunuyor.

Arkadaşlar, biz ticaret hukukunu her dalıyla, beş kitabıyla okutuyoruz. Tabii ki ticaret hukuku çok önemli, iç ticaret diye ifade edilirdi eskiden. İstanbul Hukukta iç ticaret dış tica-

ret diye ayrılmıştı zamanında diye hatırlıyorum. Yanılıyorsam beni düzeltin Hocam. İç ticareti yapıyoruz. Yani ticaret hukukunun dediğim gibi tüm kitaplarını, hele değişen binlerce sayfa haline gelen bu temel kanunu didik didik edip, öğrencilerimize aktarıyoruz. Fakat dış ticaret konusunda maalesef okuttuğumuz ders çok az, yok hemen hemen, pek çok fakültede yok.

Oysaki uluslararası ticaret dış ticaret arkadaşlar, iç ticaretten bence biraz daha önemli. Neden? Çünkü savaşta bile devletler birbirinden mal alıp satıyor veya benim tacirim savaşta bile bir başka ülkeye ihracata bulunup, ülkeye döviz kazandırabiliyor. Dolayısıyla dış ticaret dersinin de veya adı uluslararası ticaret olabilir, mutlak surette hukuk fakültelerinde, öyle seçimlik ders filan olarak değil, düzgün kredilerle okutulabilen bir ders olarak bulunmasında yarar umuyorum.

Arkadaşlar, yine finansman hukuku benim öteden beri hukuk fakültelerinde okutulması gereken bir ders olarak düşündüğüm bir konu. Arkadaşlar, biliyorsunuz Türkiye şimdiye kadar *-inşallah bir daha yaşamayız-* her 10 senede bir, 20 senede bir veya daha kısa aralıklarla ekonomik krizler yaşadı. Adı ekonomik krizdi, ama bence hepsi finansal krizdi. Yani finans sektörünün yarattığı krizlerdi. Amerika'daki kriz dahi, Amerika'dan başlayan Avrupa'ya da gelen krizin de arkasında finansal faktörlerin sektörün olduğunu biliyoruz. Yani bir ekonomik değerden birkaç kez, yani 10'lara 20'lere varan likidite edilmiş değer üretmek suretiyle değer üreten bir Morgate sistemiyle başlayan bir krizi dünya maalesef yakında yaşadı.

Dolayısıyla finansmanın ben ekonomik bir konu olmasından ziyade veya en az onunla eşdeğer olacak biçimde hukuki bir konu da olduğunu düşünüyorum. Dolayısıyla bizim gelecekte öğrencilerimize, 21. yüzyıla elverişli bilgilerle onları mezun edebilmek için sunacağımız bir ders de bu finansman hukuku olarak karşımıza çıkmakta diye düşünüyorum.

Arkadaşlar, bilişim hukuku yine çok önemli bir ders. Son zamanlarda yani mahkemelerden gösterilen ihtiyaçtan esinlendim bunu ifade ederken. Bilirkişilik yapmakta yeterli do-

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nanıma sahip öğretim elemanı dahil, mahkemeler bilirkişi bulamadıklarını ifade ediyorlar. Yani bilişim hukukunun bu önlenemez sınırlandırılmaz gelişmesi karşısında, bu hukukun bu hukuk dalının çok önemli bir hal aldığı, bir içerik kazandığını söylemek için alim olmaya gerek yok.

Dolayısıyla bilişim hukukunun da, şimdi bazı fakültelerde var bende de var, hani seçimlik ders filan gibi okutulur olmaksızın çıkarılıp, zorunlu bir ders olarak ve çok ciddi boyutuyla ele alınması ve okutulması gerekir diye düşünüyorum.

Son olarak da, karşılaştırmalı hukuk arkadaşlar bizim önemsedüğümüz, önemsememiz gereken bir hukuk olmak durumunda. Neden? Çünkü iç hukuk kurallarımızı, kendi kurallarımızı biliriz bilebiliriz öğrenebiliriz, ama kendi kurallarımızın başka hukuk kuralları karşısındaki durumuna tespit etmek bilmek, bize başka bir ufak kazandırır diye düşünüyorum. Dolayısıyla karşılaştırmalı hukuk dersinin son derece önemli bir ders olarak algılanması ve hukuk fakültelerinde bunun bir ana bilim dalı olarak muhafaza edilip, bunun her hukuk fakültesi programında yer alması gerektiğine inanıyorum.

Evet, saygıdeğer konuklar, bu liste uzayabilir, bu listeye birkaç öneri daha yapılabilir, ama ben şunu hemen ifade edeyim. Çünkü bir de bazen öyle bir düşünce de hâkim oluyor, zaman zaman hukukçular da söylüyor. Mesela diyorlar ki hukuk fakültelerinde okutulan dersler, belli bir organ tarafından, belli bir kurum tarafından belirlensin, fakültelere bildirilsin. Yani tek tip bir eğitim programı ortaya çıksın gibi düşünenler de var. Ben asla buna taraftar değilim. Çünkü zaten bizim idari bir özerkliğimiz kalmadı; bildiğiniz gibi üniversiteler ve fakülteler olarak. Hiç olmazsa akademik özerkliğimiz ders programlarımızda yer alan program değişiklikleri, çeşnisi, rengi bakımından devam etsin. Dolayısıyla bizim söylediklerimiz sadece öneri olarak kabul edilsin. Asla bunlar mutlaka bir programda bulunması gerekir gibi bir anlayışın asla kabul edilmemesini veya öyle algılanmamasını ifade etmek istiyorum.

Hepinize teşekkür ediyorum beni dinlediğiniz için. (Alkışlar)

**Av. Sema AKSOY (Oturum Başkanı)-** Sayın Hocam çok teşekkür ederiz. Kıymetli Hocam, modern çağdaş eğitim sisteminin nasıl olması gerektiği, müfredatının nasıl olması gerektiğinin altını çizdi. Bunu söylerken, bir taraftan ben de Ankara Barosu olarak gururlandım. Çünkü biz bu sene içerisinde Ankara Barosunda uzay ve hava hukuku kurulunu kurduk, göç hukuku kurulunu kurduk ve göç hukukunu özellikle ve bilişim ve internet hukukunu bu yılki hukuk kurultayı programında uluslararası nitelikte tartıştık. Hakikaten çok çok önemli konular. Çok teşekkür ediyorum kıymetli Hocam.

Kıymetli konuklar, konuşmacılarımız sunumlarını yaptılar. Şimdi soru ve katkı bölümüne geçiyoruz. Çok uzun olmamak kaydıyla, beşer dakikalık bir katkı konulabilir, bir yarım saatlik süremiz var. Buyurun efendim.

**Prof. Dr. Feridun YENİSEY (Bahçeşehir Üniversitesi Hukuk Fakültesi)-** İlk sözü ben aldım, çok teşekkür ediyorum bu toplantı için. Bu üç günlük bir toplantı, İstanbul'da başladı, dün devam etti, bugün de sonlanacak. Fakat sonlanmayacak, çünkü devam edeceği müjdesini de aldık. Kasım ayında devamı gelecek olan bir toplantı.

Dünyada ve Türkiye'de hukuk eğitiminin geleceğinin benzer problemlerle uğraştığını gördük. İlk iki günlük toplantıda uluslararası alandaki sorunlar ortaya konuldu. Burada çok sayıda Amerikalı eğitimci var. Onlardan istifade etmemiz gerekiyor. Bugün öğleden sonraki oturumda da yine dünkü gibi bir panel haline getirebilirsek, bütün konuşmacıları çıkartıp, hep soru soralım ve tartışalım. Bizdeki problemler, dünyanın da problemi aynı zamanda; eğitim ve ölçme.

Şimdi ölçme konusu tartışıldı ilk tebliğlerde. Bu ölçmeyi kim yapıyor? Eğitimin iyi olup olmadığını kim değerlendiriyor? Önce hoca kendisi değerlendiriyor, bunu gördük. Hocanın yaptığı bir değerlendirmeden bahsettiniz. Fakat talebe mezun olduktan sonra bu değerlendirmeyi yargı yapmaya başlıyor. Nasıl bir ürün ürettiniz hukuk fakültesi olarak? Ve soruyoruz barolara, yargıya. Nuri Beyle sabahleyin konuştuk ayaküstü.

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Dedi ki Nuri Bey, hâkimin takdir yetkisini iyi öğretmemişsiniz dedi. Hâkimlerin karar verirken takdir yetkisi.

Bir de halka soruyoruz, nasıl hizmet alıyorsunuz hukukçulardan diye. Yani bir hukukçuyu değerlendiren ilk başta hocası, daha sonra da tatbikat değerlendiriyor hocayı ve asıl dünya değerlendiriyor. Bir Türk hukukçusu uluslararası arenada gidip de bir müzakere yaptığında, onun hukuk bilgisini uluslararası hukukçular değerlendiriyor. Bu nedenle bir hukukçu yetiştirirken daima şuna bakmamız lazım: Neye göre bir hukukçu yetiştiriyoruz? Nereye doğru yetiştiriyoruz hukukçuyu?

Fatih Sultan Mehmet'in örneğini verdiniz daha sonrası için. Şimdi Avrupa İnsan Hakları Mahkemesi Türkiye aleyhinde bazı kararlar verdi biliyorsunuz. Yargı kararları yerine getirilmediği için, adil yargılanma hakkı ihlali vermişti. Acaba bu kadının kararı yerine getirildi mi? Fatih'in kolu kesilmiş mi? Ama mesele şu: Bir de yargının yerine getirilmesi meselesi var. Mutlaka kesinleşmiş mahkeme kararlarının infaz da edilmesi söz konusu olacaktır.

Bakınız burada benim eski öğrencilerim var. Hukuk eğitimiyle ilgili bir konuşma yapıyoruz. Diyarbakır'a ilk giden hocalardanım. Konya Selçuk'a ilk gidenlerdenim. O zamanlar Diyarbakır için bayağı bir eleştiri vardı. Uçan hocalar kötü öğrenciler filan deniyordu. Fakat bugün Diyarbakır mezunlarının çok iyi yerlere geldiklerini gördük ki, bugün Diyarbakır Baro Başkanı Diyarbakır mezunu, başka yerlerde çok iyi yükselenler var. Bu halen de salonda şu an öğrencim olan kişilerden de var. Kıbrıs'tan gelen çocuklarımız var, İstanbul Üniversitesinden var ve diğer yerlerden var.

Mutlaka hepimiz de ileride üst mevkilere geleceksiniz. Fakat kendinizi yetiştirmeniz gerekiyor. Hukuk size sadece temel bilgiler verebilir. Bir hukukçuyu yapan kendisidir. İleride kendi kendinizi yetiştirmeyi de bilin. Bu da ek bir bilgi olarak aklınızda kalsın.

Teşekkür ederim. (Alkışlar)



**Av. Sema AKSOY (Oturum Başkanı)-** Hocama çok teşekkür ediyorum, çok değerli katkıları için. Güneş Bey buyurun efendim.

**Av. Güneş GÜRSELER (Türkiye Barolar Birliği Genel Sekreteri)-** Benim iki tane sorum var. Yalnız biraz önce Hocam da Sayın Akıncı'nın eksik bıraktığı Fatih konusunu gündeme getirdi. Yabancı konuklarımız için de bence bir açıklama olsun. Mimar o kararın şokuyla çok sarsılıyor ve davadan vazgeçiyor. Çok yüklü bir tazminata karar veriyor kadı ve kadı tabii İstanbul'un ilk kadısı Hızır Bey. Konuklarımız artık İstanbul'a dönüp de, bugün müze olan mahkeme binasını göremezler, ama Üsküdar Belediyesi o binayı Adalet Tarihi Müzesi yaptı ve olay Evliya Çelebi'nin seyahatnamesinde de bütün ayrıntılarıyla var.

Benim sorum şu, iki tane. Birincisi, İstanbul'daki ilk oturumda da Amerikan Barolar Birliğinin İstanbul'daki temsilcisi Amerikan Barolar Birliğinin akreditasyon yetkisini anlattı. Hatta çok ilginç bir örnek verdi. Çin'deki bir hukuk fakültesine akreditasyon vermişler. Acaba değerli hocalarımız Türkiye Barolar Birliğinin de arayış içinde olduğu bu akreditasyon konusunda, hukuk fakültelerinin akreditasyonu konusunda ne düşünürlər.

Amerikan Barolar Birliğine atıf yapmışken, yine Sayın Akıncı'nın açtığı Clinton konusunda, baroların etkinliği konusunda bir örnek vermek istiyorum. Clinton bu Monica olayında ifade verdi sonunda aklandı. Fakat barodan atılacağı için, barodan istifa etmek durumunda kaldı. 76'da da Nixon Watergate skandalı nedeniyle New York Barosundan atıldı. Tabii Amerikalıların yanında ukalalık olmasın, yanlışımız varsa onlar düzeltirler.

Diğer sorum da, biraz Muharrem Hocam söz etti. Hukuk eğitimi konusunda sürekli arayışlar var. En son ve bence daha ciddi aşamada olan bakanlığın oluşturduğu bir hukuk eğitiminin yeniden yapılanması komisyonu var. O komisyon 5 yıllık bir eğitim, ilk 2 yılın sonunda sınav, başarılı olanlar ikinci 3 yıl

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devam edecek. O 5 yılın sonunda da genel bir sınavla, yüzde 70 puanla başarılı olanlar adalet sektörüne, adalet mesleğine, yargı mesleğine geçecekler gibi bir çalışma var. Bunu değerlendirir misiniz?

Teşekkür ederim.

**Prof. Dr. Şahin AKINCI (Selçuk Üniversitesi Hukuk Fakültesi)-** Çok teşekkür ediyorum. Öncelikle eksik bıraktığım kısmı tamamladığınız için. Biraz zaman darlığından, biraz da işin doğrusu o sonuç kısmını söylemeyi unuttum. Katkılarınızdan dolayı teşekkür ediyorum.

Akreditasyonla ilgili evet ciddi problemlerimiz var. O konuda Barolar Birliğinin inisiyatif alması doğru olabilir. Şu anda yalnız asıl problem görebildiğim kadarıyla akreditasyondan önce denklikle ilgili problemler yaşanıyor. Çok somut bir örnek, birebir bildiğim bir örneği müsaadenizle paylaşayım. Denklikle alakalı bütün üniversiteler için, bütün fakülteler için YÖK gelen öğrenciyi inceliyor, notlarına vesaireye bakarak bir karar veriyor. Hukuk fakültelerinin malumunuz özel bir durumu var. Avukatlık Kanunuyla Hâkimler Savcılar Kanunundan kaynaklanıyor. Her iki kanunda da, üniversite denk olsa bile, yabancı bir üniversiteden mezun olanların Türkiye’de hâkim savcı ya da avukatlık mesleğine girebilmeleri için, vermeleri gereken fark dersleri vermeleri lazım şeklinde hüküm var.

Bu fark dersleri kim belirleyecek? YÖK belli fakülteleri belirliyordu. Şu anda bütün fakültelelere verdi mi bu yetkiyi? Çok iyi bilemiyorum. YÖK bu noktada inisiyatifi üzerine aldı. Şimdi benim bildiğim iki örnek, geçen yıl yanlış hatırlamıyorsam, bir yılı geçmiş de olabilir. Biri İngiltere Kiel Üniversitesinden, öbürü Hollanda’dan mezun olmuş gelmiş, denklik için başvurmuş iki öğrenci. Bunlarınkini inceliyor YÖK ve 17 tane fark ders çıkarıyor.

Bu şu demek: Bütün fakülteyi yeniden okuyacaksınız anlamına geliyor. Ama daha ilginç olanı şu: Mezun oldukları fakültelelere vesaireye bakmıyor. İsviçre’den de mezun olsa,

Almanya'daki bir fakülteden de mezun olsa aynı dersler. Bu öğrenciler dava açtılar Danıştay'da ve gerekçe olarak da dediler ki, bizim mezun olduğumuz fakültelerde aldığımız derslere bakılması lazım. Yani YÖK'ün bu kararına göre İsviçre'de bir hukuk fakültesinde borçlar hukuku medeni hukuk okuyarak gelmiş olan öğrenci, bu dersi yeniden alacak demektir. Halbuki biz borçlar hukukunu, medeni hukuku, usul hukukunu oradan aldık, bu doğru bir şey değil.

Danıştay haklı buldu bu itirazları, yürütmeyi durdurma kararı verdi. Sayın Hocamın bahsettiği mahkeme kararlarının uygulanması meselesi. YÖK mahkeme kararını uyguladı. Dedi ki, tamam ben mezun olduğunuz fakültelere bakarak yeniden değerlendirme yapıyorum. Önce 17 ders demişti, itiraz üzerine *-onu söylemeyi unuttum-* itirazlar üzerine YÖK 11 derse indirdi. Yürütmeyi durdurma kararından sonra, güya kararı uyguladı, 19 derse çıkardı. Kararı böyle uyguladı ve şu anda henüz Danıştay kararını vermiş değil. Akreditasyonla ilgili ben bunu paylaşmak istedim.

5 yıla çıkarılması, ben onu çok doğru bulmuyorum. Çünkü 2 artı 3 yıl dediğiniz zaman hukuk fakültelerinin çok tercih edileceğini düşünmüyorum. Çünkü öğrenci girecek, 2 yıl sonra hukukçu mu olacak, ön lisans diploması mı alacak mezun olacak bilemiyorum. Ben demin paylaştım, yani benim kanaatim böyle yapmak yerine, lise eğitimini niye 4 yıl yapıyoruz? Lisede biz ne öğretiyoruz ki öğrenciye? Liseden bir yıl kırpalım, üniversiteye hazırlıyoruz, oradan bir yıl azaltalım. Aslında bütün bölümler için böyle olmasında fayda var. Mühendislikler için de böyle. Düşünün hiç elektrik dersi görmemiş bir öğrenciyi elektrik mühendisliğine alıyorsunuz, sıfırdan öğretiyorsunuz. Öyle olmak yerine 2 yıl siz ona yüksekokulda elektrik dersi öğretip, mühendisliğe alsanız daha başarılı olmaz mı? Olur. Öncesinde hukuk için de böyle bir yapılandırmaya gidersek, zaten bir yıl uzatmış olacağız. Bir yıl liseden kısmak suretiyle, sanki böylesi bana daha uygun gibi geliyor. Benim kanaatim bu.

Teşekkür ediyorum.

## 21. YÜZYILDA HUKUK EĞİTİMİ

**Prof. Dr. Muharrem KILIÇ (Akdeniz Üniversitesi Hukuk Fakültesi Dekanı)-** Teşekkür ediyorum. Öncelikle akreditasyon konusunda sistem itibariyle baktığımız zaman, tabii Amerikan yükseköğretim sistemi daha karmaşık, kendi içerisinde akreditasyonun temin edilmesinde. . . Akreditasyondan kastımız, hem eğitim öğretim süreçlerinin akademik süreçlerin şey yapılması, çıktı kontrolünün de bir anlamda temin edilmesini sağlıyor yükseköğretim kurumlarında.

Fakat bizim sistemimizde, Türk yükseköğretim sisteminde akreditasyonun işleyişi şöyle; ne yazık ki sadece girdi kontrolü yapılıyor. Yani ÖSYM merkezi bir sınavla girdi kontrolü yapılmış oluyor, akreditasyonun önemli unsurlarından bir tanesi. Fakat çıktı kontrolü yapılmıyor. Yani mezun olanı, mesela Almanya'da olduğu gibi, fakülte'deki dersleri tamamlamış olmanız yeterli değil, ayrıca o mesleği icra edebilmeniz için de, hukuk diploması olması salt olarak o alana ilişkin o formasyonla yapabileceğiniz mesleği icra etmenize imkân sağlamıyor. Onun için ekstra bir çıktı kontrolüyle sınava tabi tutuluyorsunuz.

Bu açıdan bakınca, mesela burada tek akreditasyon merci yükseköğretim kurulu. Bu nokta maalesef, hani özerk bir alana açılmadı, sivil alana açılmadı ya da kurumlara kurullara açılmadı, ama Amerika'da var. Özel şirketler var, Amerikalı hocalarımız da ifade edebilirler. Onlar bu akreditasyon işlerini yapıyor. Yani herhangi bir yükseköğretim kurumu diyor ki, beni bir akredite et diyor. Süreç parametreleri belli, o açıdan akredite olan kurumlar, kendi istekleriyle olan kurumlar açısından tabii ki bu bir artı değer. Seçilirken öğrenciler tercih ederken bu onlar için bir pozitif değer olarak karşımıza çıkıyor.

Bizde bunu YÖK bütünüyle kontrol altında tutuyor merkezi bir biçimde. Programların açılması da bu akreditasyon sürecinin bir parametresidir. Program açılmasında, fakültenin açılmasında yine bu bir parametredir. Diyor ki, mesela 6 öğretim üyesi olmaksızın eğitime öğretime başlayamazsın diyor, ama birçok konuda, mesela bu yanlış hatırlamıyorsam 15-13 civa-

rındaydı. Her ana bilim dalında hoca olmaksızın eğitim öğretimi başlayamaz denirken, sonra bunu YÖK kısa süre içerisinde revize etti düşürdü 6'ya. Bu da tabii nitelik açısından sorunlara yol açıyor.

Bu düşünülebilir, yani yükseköğretim sisteminin bütününe dair sistematik bir dönüşümle olabilir. Barolar Birliği, niye mesela en azından şey konusunda, avukatların mesleğe kabulü, staja kabulü noktasında yapacağı düzenlemeyle der ki mesela, diploma notu şunun altında olanlar avukatlık stajına şey yapamayacaklar gibi birtakım girdi kontrolü yapabilirler ya da sınav yapabilirler her neyse. Bu da bir anlamda akreditasyon sürecinin bir parçası olarak değerlendirilebilir.

Bir kere şunun, bu istihdam noktasındaki iş garantisi açısından baktığımız zaman, bir kere hukuk mesleği. . . Şunu söylüyorum ben: Yani öncelikle hukuk mesleği, hukuk öğretimi cazibeli olmaktan, cezp edici olmaktan çıkarılmalı. Yani insanlar neden bu kadar yüzde 100, İngiltere'de mesela bir gittiğimizde, adamlar şaşırıyorlar, nasıl oluyor bu kadar kişi, 2,5 milyon üniversite kapılarında. Bilmem işte hukuk öğretimi açısından baktığımız zaman kontenjanların yüzde100'ü ne kadar arttırılsa da doluyor. Bunun Saiklerini sebeplerini araştırmamız lazım. Burada en büyük bence temel saik hareket noktası ya da işte problem olarak gözüken şey; hukuk öğretiminin sonrasında her mezunun mutlak surette iş garantisinin olması. Tıp alanında da bu söz konusu, ama hukuk öğretimi alanında böyle bir şey olmamalı.

Bir kere her mezun olan, ister özel sektörde çalışsın, ister başkaca alanlarda çalışsın, ister ticaret yapsın, ama eğer bu hukuki formasyonla bir meslek icra edecekse, hâkim savcılıkta var, avukatlık için de mutlak surette bir kontrol mekanizmasının, çıktı kontrolünün mutlak surette yapılması gerekiyor ki, bu temin edilebilsin.

Eğitim süresi, bakanlıkta evet var. Ben kısmen işte kulaktan dolma bilgilerle öğrendiğim kadarıyla, 3 artı 2 ya da 2 artı 3 şeklinde bir formülasyon söz konusu. Biraz Alman hukuk sis-

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temine benzer bir şey. Burada mesela Amerikan sistemi de göz önünde bulundurulabilir. Amerikan sisteminde, anlattı değerli hocalarımız; yani bir lisansüstü öğretim. Matematiği bitiriyor, fiziği bitiriyor, doğa bilimlerinden, fen bilimlerinde, sosyal bilimlerde, sağlık bilimlerinde, hiç önemli değil. Bir lisans diplomasına sahip olan kişi, sonrasında bunu bir lisansüstü programmış gibi hukuk öğretimi alıyor. Ya da İngiliz sisteminde hiç önemli değil, o baronun staj programından geçen, ister iktisat mezunu olsun, o staj süreçlerini başarıyla tamamlayanlar hukuk mesleğini icra edebiliyorlar.

Bu açıdan bu iki sistem de göz önünde bulundurulabilir. Benim kişisel kanaatim; mutlak surette hukuk eğitiminin 4 yıla hapsedilmesi, gerçekten kifayetsiz yetersiz. Bir ön olgunlaşmayı gerektiriyor. Şaşıyorlar, dünyada iki yerde olduğunu biliyorum; bir Türkiye, bir Arjantin. Yanlışsam tashih edilsin. Mezun olanlar hemen mesleğe atılabiliyorlar.

Onun için bunun yaşça da bir olgunluk olması gerekiyor. Ceza yargılamasında, işte diyelim ki ağır ceza üyesi oluyor, hemen işte stajı bitirmiş ilk atandığı yerde mesela çok meslektaşımız var biliyoruz. Hayati bir noktada, karar verici mercide olması açısından bu yaş olgunluğunun kürsü hâkimliği açısından belli bir olgunluğunun temin edilmesi adına, hukuk öğretimi sürecinin uzatılması asgari 5 yıla çıkarılması ya da lisansüstü programı olarak dizayn edilmesi. Mutlak suretle stajların yeniden ele alınması; hem avukatlık, hem hâkimlik savcılık stajlarının bu olgunlaşmayı temin edecek düzeyde zenginleştirilmesi uzatılması gerektiğini düşünüyorum.

Teşekkür ediyorum.

**Prof. Dr. Kudret GÜVEN (Başkent Üniversitesi Hukuk Fakültesi Dekanı)-** Ben de kısaca bir şey söyleyeyim Sayın Başkan izin verirseniz. Ben kısaca şunu söyleyeyim: Biz zaman zaman hukuk fakültesi dekanları da bir araya geldiğimizde, bu 4 yıllık sürenin hukuk fakültesi gibi ağır veya kapsamlı bir eğitim için yeterli olmadığını düşünüyoruz.

Yani 5 yıla çıksın diyeli 20 küsur sene oldu hocalarımız. Yalnız işte karar verilemedi. Yani 1 artı 4 mü olsun, 4 artı 1 mi olsun? Yoksa işte sizin de buyurduğunuz gibi 2 artı 3 mü olsun filan. Yani bu tabii ciddi bir sorun yaratır, çok iyi değerlendirmemiz lazım. Sadece sürenin uzatılması, kaliteyi veya içeriği neyse zenginleştirici bir faktör değil.

Akreditasyondan ben yanayım, çünkü biraz evvel de ifade edildi. 6 öğretim üyesi yeterliydi bir vakıf üniversitesi veya devlet üniversitesi açılması için, sonra YÖK bunu genişletti denildi. İşte bu genişletme olayları, maalesef bizim istikrarsız ve ilkesiz bir yönetim anlayışımızın ortaya koyduğu bir hastalık. Yani neyse aranılan koşullar, bundan taviz vermememiz lazım.

Hatta şunu biliyorum ben: Hocalarım da rastlamışlardır, vakıf üniversitelerine, diyelim ki yeni bir fakülte açılacağı zaman, devlet üniversitelerindeki bazı hocalardan oraya ders vereceğine dair taahhüt alınmaktadır. Bu taahhüt bile yeterli sayılmaktadır. Oysaki o hoca daha sonra asla oraya ne gidiyor, ne kadrosundan ayrılıyor veya başka bir şehre gidiyor filan.

Yani dolayısıyla biz kendimizi aldatmayalım. Eğer akreditasyondan gerçekten yanaysak, bunun ölçülerini çok iyi koyup, bunu sonuna kadar takip edelim. Mesela bu akreditasyonun bir de önemli ortaya koyabileceği şey şudur. Mesela özellikle vakıf üniversitelerinde araştırma görevlisi alma mecburiyeti yüklemek, belli sayıda araştırma görevlisi çalıştırma mecburiyeti yüklemek lazım. Bazı vakıf üniversitelerine bakıyorum, ya 1 tane ya 2 tane araştırma görevlileri var. Halbuki üniversitelerin birincil görevi, akademik kadroya adam yetiştirmektir. İster senin kadronda dursun, ister başka üniversiteye gitsin. Yani bunu ben iftiharla söylüyorum. Başkent Üniversitesinin şu anda 17 araştırma görevlisi var. Bir kısmı ayrılıyor, başka fakültelerin işine yarıyor, ama kalan bize ait oluyor.

Anlatabiliyor muyum? Yani akreditasyon olsun, fakat dediğim gibi sonuna kadar uygulamak şartıyla.

Ben teşekkür ederim.

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**Av. Sema AKSOY (Oturum Başkanı)-** Buyurun hanımefendi.

**Yrd. Doç. Dr. Duygu Özer SARITAŞ (Anadolu Üniversitesi Hukuk Fakültesi Öğretim Üyesi)-** Aslında belli bir soru değil. Söylemek istediğim birkaç nokta var sorudan ziyade ve aslında eleştirmek istediğim noktalar var. Belki tepki de alacağım, ama yine de söylemek istiyorum.

Her şeyden önce trafikte olduğumuzu düşünelim. Trafikte-siniz ve trafik akıyor ve siz trafikteki bir araçsınız ve öndeki araca sürekli korna çalılıyorsunuz. Sizin önünüzdeki de daha sonrakine korna çalılıyor ve aslında daha yukarıdan baktığımız zaman ne görüyoruz? Aslında o trafiği tıkayan araçlardan biriyiz, önümüzdeki değil, onun önündeki değil, o sorunun bir parçasıyız.

Ben akademik camiada olan biri olarak, yeni bir yardımcı doçentim, her aşamadan geçmiş biri olarak şunu söyleyebilirim. Ben, benden önceki hocalar, hatta benimle birlikte öğretim üyesi olup, asistanlığını unutan hocalar sayesinde bu trafiğin, bu akademik hayatın yürümediğini düşünüyorum.

Diyorsunuz ki, bunda hemfikirim. Yani çağı yakalamak konusunda, akademik insan kalitesini yükseltmek konusunda, sayıyı yükseltmek konusunda, bunlarla hemfikirim. Ama gördüğüm şu ki; biz sorunun bir parçası olarak, sorunu yaratan bir parça olmak yerine, hep bir şeyleri öteleştiriyoruz. Durumumuzu bile öteleştirip, meşrulaştırıp, buna katkıda bulunuyoruz.

Nasıl yapıyoruz bunu? Her şeyden önce Hocam dedi ki, asistan işte dedi, artık dedi daha niteliksiz, yabancı dili az olan, hani niteliksiz asistanlar geliyor ve akademiye tercih ediyor ve öncekilerden örnek verdiniz. Daha önceki akademisyenlere baktığımız zaman, benim hocalarım emekli olmuşlar ya da sonrası, akademik bir şey daha önce bir sınıfa mensup olan bir şeydi. Yani daha varlıklı insanların çocukları akademik oluyordu, çünkü ekonomik yetersizlikler var. Köylü Mehmet Efendinin gelip çocuğu tabii ki akademik olmuyor, tabii ki kolej-



lerden mezun olan, tabii ki ailesinin ekonomik durumu güçlü olan insanlar, dil de var yeterlilikleri de var ve orada kalıyorlar ve devam ediyorlar ve çok nitelikli hocalar haline geliyorlar.

Şimdi ekonomik sınıflarımız değişti Türkiye’de. Ya üst var, yal aşağı sınıf var, orta sınıf çok az kaldı, ama akademisyen olmak isteyen gençlerin kesinlikle niteliksiz olduğunu düşünmüyorum. Neden? Çünkü bunlar gelip rasgele fakülteye girmiyorlar ki. Her şeyden önce dil puanları var, ortaöğretim başarı puanları var, başka aşamalardan geliyorlar. Yani akademik olarak öğrenci olarak zaten belli bir standartta olan öğrenci oraya geliyor.

Bir de ÖYP sistemi var, öğretim elemanı yetiştirme programı. Bunun bir sürü dezavantajını sayabilirim, bir sürü zorluklarını sayabilirim, ama ben kendim gördüm ki, eğer bu sistem olmasaydı, kendi fakültemde dahi alınamayacak asistanlar vardı. Yani bu sistemle tamamen eşit koşullarda gelen pırıl pırıl çocuklar var. Niye bu çocuklar akademisyen olarak alınamazlar? Uzun saç, küpe, kılık kıyafet. Burada bir sürü genç arkadaşı görüyorum, koridorda da konuştum, ne kadar şıksınız. Öğrencisiniz, evet; birinci sınıf öğrencisi, ikinci sınıf üçüncü sınıf öğrencisi. Şık gelin denilmiş ve bir kalıba girip gelmişler. Hepsi belki de Amerikan dizilerinden fırlamış avukatlar gibi görünüyorlar çok şıklar. Birinci sınıf öğrencisi belki böyle bir şekil olmak zorunda değil. Olabilir, ama olmak zorunda değil.

Biz asistanlara ne yapıyoruz, araştırma görevlilerine ne yapıyoruz? Kaldı ki hocalara ne yapıyoruz? Diyoruz ki sen belli bir şekli gir önce, dün de bahsedilmişti. Tamam, o bir metafor çanta taşımak, ama görünmeyen cam tavanlar var üstte. Diyorsunuz ki usta çırac ilişkisi içerisinde ne yapalım. Tamam, usta çırac ilişkisinde ben sizin akademik kariyerine yön vereceğim, ama bunun kuralları var. Şöyle davranmak zorundasın. Belki şöyle şöyle ayak oyunları yapmak zorundasın, şu şu gruplara girmek zorundasın. Üniversiteler tamamen bir Bizans olduğunu Türkiye’de biliyoruz. Bu çok konuşulur.

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Bir diğer husus ise, hocam dedi ki; girdiler ve çıktılar. Artık yani bunu duymaktan bıktım. Hayat bir proje, her şey bir proje, herkesin projeleri var. Girdiler var ve çıktılar var. Yani bir şeyin çıktısı yoksa seni dikkate almıyorlar. Bunu şöyle ifade ettiniz belki de ya da yanlış anladım, haddimi aştıysam. . .

Diyorsunuz ki, öyle tezler yazılıyor ki işimize yaramıyor. Ben bir sosyal bilimci olarak bu dünyada, bu gökyüzünün altında keşfedilmemiş neyi keşfedeceğim? Yeni ne koyabilirim diye düşünüyorum ya da bir Roma hukuku çalışan biri olarak, Cumhuriyet dönemi vergi sistemi yazdım. Kimin işine yarayacak Roma cumhuriyet dönemi vergi sistemi? Yani bir akademik çalışmanın işe yarayıp yaramadığını biz nasıl öğreneceğiz? Bunun kıstası ne? Ya da bir akademik personelin derste ne kadar verimli olup olmadığını, bunu kim bilebilir, nasıl ölçebiliriz? Yani bütün bunları kendime de soruyorum aslında. Bunlar böyle bir sıkıntı gibi geliyor.

Ben diyorum ki, sonra işte tezlerden bahsediyorsunuz, yurtdışına sermaye harcadığımızdan bahsediyoruz. O çocuk yurtdışına giderken niye sahipsiz kalsın ki? Hocası takip etsin, iletişim halinde olsun. Yani seçeceği konuları belirleyelim birlikte, takip edelim. Gerçekten sorumluluk alalım. Niçin hocalar sorumluluk almıyor deniyor, ekonomik nedenler. Ne yapsın hocalar, bu maaşla ancak bu kadar çalışıyoruz. Hayır, ben bunu etik bulmuyorum, bunu ahlaksızlık olarak buluyorum. Bir yerde kadrosu var, etiketi var, doçent profesör, kartvizit bastırıp dağıtıyor, diğer tarafta da piyasaya iş yapıyor. O zaman okulu bırakacak. Bırakacak, gitsin bilirkişilik yapsın, gitsin avukatlık yapsın. Ben hayatımı devam ettirmek için bilirkişilik yapıyorum, avukatlık yapıyorum, o yüzden derslere çalışamıyorum, öğrencilerime zaman ayıramıyorum. Bırakın, asistanıma zaman ayıramıyorum diyorsa, bir kişisel ahlakını, akademiye duyduğu inancı bağlılığı bir konuşsun.

Tamam, kabul ediyorum, ama bir seçim yapmak zorundayız diye düşünüyorum.

**Av. Sema AKSOY (Oturum Başkanı)-** Duygu Hanım 10 dakika oldu, çok teşekkür ediyorum, artık sunuma dönüştü. Katkınız için teşekkür ederiz. Celalettin Bey buyurun.

**Celalettin SOLMAZ-** Hukukçu ve siyaset bilimciyim. Başta Türkiye Barolar Birliği Başkanı Av. Prof. Dr. Metin Feyzioğlu'na ve yönetimine, ayriyeten Prof. Dr. Feridun Yenisey Hocama baba dostu aynı zamanda kendisi, böylesi bir önemli konu üzerinde katkılarından dolayı çok teşekkür ediyorum Bahçeşehir Üniversitesine ve siz değerli hocalarıma özellikle çok teşekkür ediyorum.

Benim kendi bir tezim var, bilmiyorum katılır mısınız katılmaz mısınız? Ben Hocamla da konuştum dün itibariyle. Şöyle bir durum var; hani vakıf üniversiteleri, Muharrem Hocam kendisi de söyledi, 73 tane üniversite var dedi. Vakıf üniversiteleri de açıldı dedi, devlet üniversiteleri de açılıyor dedi. Hatta ben şöyle diyorum; bazı vakıf üniversiteleri devlet üniversitelerinden daha kaliteli. Bunlar mesela Bilkent Üniversitesi, Başkent Üniversitesi, Çankaya Üniversitesi gibi üniversiteleri daha kaliteli görüyorum ben.

Neden bu üniversiteler birbiriyle, yani çifte diploma olabilir, çift diploma olabilir. Hocalar sonuçta oraya da gidiyor, öbür tarafa da. . . Hem kalite artar, öğrencinin kalitesi artar diye düşünüyorum. Yani bir araya gelip, böyle bir protokol imzalayıp anlaşarak destek vermeleri olur mu diye özellikle bütün hocalarıma soruyorum, bu bir.

İkincisi, ben 4 yılda kalmasından yanayım üniversitelerin. Fakat hem bizim Türkiye Barolar Birliğinin ve Ankara Barosunun gayretleriyle olan Adalet Bakanlığına göndermiş olduğu staja alım, ilk önce staja başlarken sınav olması ve stajı bitirme sınavı olması mükemmel bir durum. Ben buna tamamen katılıyorum, bunun olmasından yanayım. Kalitenin de artacağına inanıyorum. Hukuk sisteminde özellikle avukatların çok önemli olduğuna inanıyorum. Avukatlara sahip çıkılması gerekir. Avukatların özellikle şu dönemde siyasi bir ortamda ben şunu görüyorum: Dik duran, sağlam duran bir yer varsa o da

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Türkiye Barolar Birliği ve ona en büyük destek olan baromuz Ankara Barosu ve baro başkanlarının, buradaki bulunan bütün baro başkanlarının da, özellikle hukuk sisteminde. . . Sadece hukukçu denildiği zaman hukuk eğitimi değil, hukuk herkese lazım, hukukun üstünlüğü var. Bu doğrultuda ben siyasette de yani belli konuşmaları gerektiğine inanıyorum.

En son sözüm olarak da, herkes için adalet, adalet için avukat olduğuna inanıyorum.

Çok teşekkür ederim, saygılar sunarım.

**Av. Sema AKSOY (Oturma Başkanı)-** Buyurun efendim.

**Prof. Dr. Yusuf KAKARUŞ (Dokuz Eylül Üniversitesi Hukuk Fakültesi Dekanı)-** Bazı konuları açıklığa kavuşturmak için söz aldım, muhtemelen kapanışta da tekrar söz alma ihtiyacı duyacağım, öğleden sonraki oturumda.

Onlardan biri denklikle ilgili konudur. Denklik konusunu YÖK berbat etmiştir kelimenin tam anlamıyla. Çünkü şu anda Türkiye’de denklik veren, en çok denklik belgesi veren fakülte bizim fakültemizdir. Gelenler İstanbul’a gelir, oradaki bürolarda çalışır, bir kısmı da Ankara’da bürolarda çalışır, ama denkliği nedense Dokuz Eylül Üniversitesi Hukuk Fakültesinden alırlar.

Geçmişte denklikle ilgili şöyle bir uygulama vardı. Ben dekan olmadan önce fakültemizdeki uygulamayı anlatıyorum. Transcriptlere bakılırdı, transcriptlerde bizim fakültede verdiğimiz derslerin adı olan dersler muaf tutulur, diğer ne kadar ders varsa, neredeyse ortak sorumlu dersler de dahil, onlardan gelenler sınava tabi tutulurdu.

**YABANCI KONUK-** At ten or eleven or twelve other countries, during which I have listened for very long time to lawyers blaming professors about all the problems in their legal system and professors blaming lawyers about all their problems in their legal systems. And it seems, as though it is something that every legal culture, professors, lawyers, judges

have to go through. Everyone does it. We did it and still do it sometimes in the United States. But what I promise you, is you will never solve any of the problems you are talking about as long as all you do is blame one another. If all the professors say it is the lawyers' fault, and lawyers say it is the professors' fault, you will never even start to solve any of the problems.

We still have many problems in the United States; many, many problems. And we have not solved all of them. But, it is only when you decide you are finished blaming each other and start working together as partners; as people who are all interested in seeing quality justice. Everyone in this room, I believe, wants quality justice in Turkey. And it is only when you start to decide that you should be partners in this that you could even begin to start solving the problems.

*On, on bir veya on iki farklı ülkede katıldığım konferanslarda, hukuk sistemlerindeki sorunlarla ilgili olarak profesörlerin avukatlara, avukatların da profesörlere yönelttikleri suçlamaları içeren uzun konuşmalar dinledim. Görünen o ki, bu, her hukuk kültürünün, profesörlerin, avukatların, hakimlerin geçirmek durumunda kaldığı bir süreç. Bunu herkes yapıyor. Biz de yaptık ve halen Amerika Birleşik Devletlerinde zaman zaman yapıyoruz. Ancak, sizi temin ederim ki, tek yaptığınız birbiriniz suçlamak olduğu sürece, bu konuştuğunuz sorunların hiçbirini çözemeyeceksiniz. Eğer bütün profesörler suçu avukatlara, avukatlar da profesörlere atarsa, sorunları çözmeye dahi başlayamayacaksınız.*

*Bizim Amerika Birleşik Devletlerinde halen çok, pek çok sorunuz var. Ve henüz hepsini çözemedik. Ancak, nitelikli adaleti görmek isteyen kişiler olarak birbirinizi suçlamayı bırakıp paydaşlar olarak birlikte çalışmaya başladığınızda bunu başarabilirsiniz. İnanıyorum ki, bu salondaki herkes Türkiye'de nitelikli adalet istiyor. Ve ne zaman bu yolda paydaş olmanız gerektiğine karar vermeye başlarsanız, o zaman sorunlarınızı da çözmeye başlayabilirsiniz.*

**Av. Ali AYDIN (Oturum Başkanı)**- Thank you very much.

*Çok teşekkür ederiz.*

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**YABANCI KONUK (2)-** May I, May I add a brief comment?

*Kısa bir yorum ekleyebilir miyim?*

**Av. Ali AYDIN (Oturum Başkanı)-** Please.

*Lütfen.*

**YABANCI KONUK (2)-** I would like to add a brief comment in support of the last comment and ask a question for all of you in the panel; perhaps not to be answered today, but to be considered. I have long experience in the section on legal education and admissions to the bar of the American Bar Association, which devotes itself to the future of legal education and undertakes accreditation of American law schools. The distinguishing characteristic of that section is that it is pretty much equally populated by lawyers, by professors and the academics and by judges. So, I really want to underscore the ...

*Bir önceki yorumu destekleyecek şekilde kısa bir yorum yapmak ve bu panelin tüm katılımcılarına belki bugün yanıtlanmayacak, ancak daha sonra dikkate alınacak bir soru sormak istiyorum. Benim hukuk eğitimi ile kendisini hukuk eğitiminin geleceğine adanmış olan ve Amerikan hukuk fakültelerinin akreditasyonunu üstlenmiş olan Amerika Barosuna kabuller ilgili bölüme dair uzun yıllara dayanan tecrübem var. Bu bölümün ayırt edici özelliği ise neredeyse eşit sayıda avukat, profesör, akademisyen ve hakimlerden oluşması. Dolayısıyla özellikle altını çizmek isterim ki. . .*

**YABANCI KONUK (2)-** You've got lawyers, you've got judges, you have the academy and then you have the government, which it appears to me, has a great deal of control over those respective elements. So my question is where could you create commissions, committees, organizations that would be devoted to dialogue between those entities to find solutions for the problems you face.

*Avukatlarınız var, hakimleriniz var, fakülteniz var ve bir de bana göre bütün bunların kontrolünü yüksek oranda elinde bulunduran hükümet var. Şimdi, sorum ise şu: karşılaştığınız sorunlara çözüm bulmak amacıyla diyalog kurma odaklı komisyonlar, komiteler ve organizasyonları nerede oluşturabilirsiniz?*

**Av. Ali AYDIN (Oturum Başkanı)**-Thank you.

*Teşekkür ederiz.*

**YABANCI KONUK (2)**- Thank you very much.

*Çok teşekkür ederim.*

**Av. Ali AYDIN (Oturum Başkanı)**- Teşekkür ediyoruz. Oradan bir arkadaşımız var, mikrofon oradayken.

**Av. Fatih TOPRAK**- Lisansı yurtdışında okudum, Almanya'da okudum. Sonra fakülteyi bitirdim, Türkiye'de avukatlık yapmak istediğim için Türkiye'ye geldim. Türkiye'de fark dersleri sınavına girdim, hatırı sayılır bir üniversitenin. Sınavı girdim başarısız oldum. Ben hani çok da çalıştım, kitaplara çalıştım, birçok farklı kaynaktan çalıştım. Sonra öğrencilerden birine dedim ki, siz nasıl çalışıyorsunuz ne yapıyorsunuz? Biz dedi ağabey şey yapıyoruz, gidiyoruz fotokopi alıyoruz çalışıyoruz işte geçiyoruz, benden de fazla not almışlar. Aldım fotokopileri çalıştım ve geçtim.

Ben şahsen Türkiye'de, yani fotokopiyle sınav geçilen bir hukuk sisteminde, hukuk sisteminin gelişeceğine inanmıyorum fakültelerde. (Alkışlar)

Bilim araştırmayı gerektirir. Biz sınavlara hazırlanırken 4-5-6, çok farklı kaynaklardan yararlanıyoruz. Yani baro başkanlarımızın, üniversite hocalarımızın bu konuda görüşlerini merak ediyorum.

Teşekkür ederim.

**Av. Ali AYDIN (Oturum Başkanı)**- Ben bu soruya cevap değil, bir yorum olduğunu düşünüyorum. Bu soruya cevap verme noktasında heyetten de müsaadenizi istiyorum cevap verilmesin, ama güzel bir soru, bence saptama son derece yerinde. Cevaba hacet olmadığını düşünüyorum.

Şuradan arkadaşım buyurun.

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**Cansu DEMİR-** Atılım Üniversitesi Hukuk Fakültesi ikinci sınıf öğrencisiyim. Öncelikle hoş geldiniz diyorum. İki gündür biz konferansı arkadaşlarımla birlikte takip etmeye çalışıyoruz. Herkes konuştu kürsüde; baro başkanları, profesörler, dekanlar, bir tek biz öğrenciler konuşmadık. Siz verdiğiniz eğitimi bize anlattınız, biz de aldığımız eğitimi size anlatalım istedik, kaygılarımızdan bahsedelim istedik ve birkaç not aldım. Biraz uzun olacak kusura bakmayın.

Öncelikle devlet üniversitelerindeki hukuk fakültelerinde yabancı dil eğitiminin yetersizliğinden bahsedeceğim. Ben özel üniversite öğrencisiyim. Özel üniversitelerde hazırlıktan sonra verilen İngilizce eğitiminin mesleki hayatta bana bir fayda sağlayacağını düşünmüyorum. Çünkü hazırlıktan sonra İngilizce eğitimi verilmiyor özel üniversitelerde. Biz Avrupa İnsan Hakları Mahkemesi gibi uluslararası oluşumlara üye olan Türkiye’de, hukuk fakültesi öğrencilerinin dil öğrenmesi gerektiğini düşünüyoruz. Türkiye’nin dil bilen avukatlara ihtiyacı olduğunu düşünüyoruz.

Diğer bir konumuz hâkimlik ve savcılık sınavında yapılan mülakatlar. Bu mülakatlarda siyasi görüş, din, mezhep, etnik köken gibi etkenler başta olmak üzere, adaylara yönelik yapıldığı iddia edilen ayrımcılık bizlerde çok büyük kaygıya yol açıyor. Biz üniversite öğrencileri olarak hepimiz aynı fikirdeyiz. (Alkışlar)

Ayrıca şu anda görev yapmakta olan yargı görevlilerinin siyasi iktidar tarafından paralel ve paralel olmayan şekilde ayrıma tabi tutulması, hem hukuk devletinin hem de bizim aldığımız eğitimin ruhunu pek teşkil etmiş, ters düşüyor diye düşünüyoruz. (Alkışlar)

Diğer bir nokta, artık gerçek sayısını kimsenin bilmediği hukuk fakülteleri tabii ki. Biz dekanlarımızdan bu konuda net bir duruş sergilemelerini talep ediyoruz. Artık duruşları biraz net olsun istiyoruz. Avukatlık mesleğiyle ilgili artık Barolar Birliğinin yaptığı çalışmaların karşılık bulmasını istiyoruz artık. Bizim en büyük temennimiz bu, şu anda hukuk fakülteleri öğrencileri olarak.



Tabii ki en büyük sorunumuz, hem öğretim kadrosunun hem de fiziki koşullarının tam olarak oluşturulmadığı tabela hukuk fakülteleri. Oradan mezun olan öğrencilerin mesleki açıdan çok da donanımlı olacaklarını düşünmüyoruz. Hukuk fakültesi olmakla hukukçu olmak takdir sizin, aynı şey değil tabii ki. Böyle düşünüyoruz biz. Birçok fakültede derslerin önemlik okutulmasından hepimiz şikâyetçiyiz.

Şöyle bitireceğim; bizler sorgulayan ve üreten bir eğitim istiyorum. Ülkemiz için üreten bireyler olmak istiyoruz. Hazır kalıplar içinde ezberci bir eğitim değil, tez antitez ve sentezin egemen olduğu bir eğitim istiyoruz. (Alkışlar)

**Av. Ali AYDIN (Oturum Başkanı)-** Arkadaşlar teşekkür ederim. Bu sorudan ziyade bir bildiri oldu, manifesto tarafı da vardı. Ben saygı duyuyorum, kısmen katılmadığımı ifade edeyim. Aynı ayrı cevap vermek durumunda kalmak bizi iyi bir noktaya götürmeyebilir. Bunlar kişisel değerlendirmelerdir saygı duyarım, ama şu konuda şunu açık ve net ifade edeyim. Yani eğer siz hâkim savcı olmak istiyorsanız ya da kamuda görev almak istiyorsanız, tabii ben sınav komisyonunda değilim, ama açık ve net ifade ediyorum, mümkün olduğu kadar objektif kriterler değerlendirilmeye çalışılıyor.

Ben şunu söyleyeyim: Kendi baro yönetim kurulundan bir arkadaşımıza ben çok ısrar ettiğim halde, idari hâkimlik sınavında mülakatta kaybetti. Yani benim her şeyiyle bildiğim tanıdığım, dolayısıyla speküle edilen birçok konu var. Bu konuların objektif değerlendirmelerden uzak olduğunu düşünüyorum. Birçok arkadaşımız, adalet akademisinde de gözlemleyebilirsiniz. Kılığıyla kıyafetiyle, herhangi bir ayrımcılığı, dünya görüşüyle mümkün olduğu kadar uğratılmıyor.

Basında çıkan birtakım olaylar var, yani ajite edilen olaylar var. Onların sebepleri noktasında, bir tanesi bizim kendi meslektaşımız, avukatlıktan geçen bir arkadaşımız. Açık ve net ifade edeyim, çok yanlış bir ajitasyonla, yanlış bilgi vererek kamuoyunu manipüle etmeye kalkıştılar; bu son derece talihsiz bir durum. Diğer bir bayan arkadaşımız geçen

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yıl intihar etti mülakatı geçemediği için. Bu da onun dünya görüşüyle filan alakalı değil, yani hakikaten alkol bağımlısı bir arkadaşımız, açık ve net ifade edeyim. Allah rahmet eylesin, yakınlarının hissiyatlarına hürmetsizlik etmek istemem. Hâkimlik savcılık yapma imkân ve kabiliyeti olmayan bir arkadaşımızdı ve sınavlarda başarısız olmuştur bitirme sınavlarında. Bu kadarla yetineyim müsaadenizle, başka soruya geçmek istiyorum.

Buyurun.

**KATILIMCI-** Öncelikle şunu söylemek istiyorum. Bu hâkimlik savcılıkta mülakatları yapanlar cübbe giydirecekleri insanları seçiyorlar, ama o insanları seçerken kendileri cübbe giymiyorlar. Bu cümleyi söylemek istiyorum. Ardından misafirlerimize, saygıdeğer misafirlerimize bir soru yöneltmek istiyorum.

Öncelikle hoş geldiniz. Şimdi Türkiye’de Erasmus programları var, yani dünyada Erasmus programları var, ama Türkiye’de hukuk fakültelerinde bu programlar çok az. Biz bunları insanlara yönelttiğimiz zaman bu soruları, bize diyorlar ki her ülkenin kendine göre bir hukuku vardır, bu hukuk çerçevesinde diğer ülkeden alabileceğiniz herhangi bir şey yok diyen insanlar bile çıkabiliyor karşımıza. Ama ben hukukun bir sosyolojisi, bir felsefesi olduğunu biliyorum, buna hepimiz hukukçular olarak inanıyoruz. Hukuk hiçbir zaman ulusal değil evrenseldir. Hukuk normları ulusal olabilir, ama hukuk her zaman için evrenseldir.

Bunun için Amerika’da ya da Avrupa’da staj programlarının açılmasını istiyorum. Yani kanunları nasıl uygulayabileceğimiz açısından Amerika’dan Avrupa’dan alabileceğimiz çok şey olduğunu düşünüyorum. Aynı şekilde oradan gelecek insanların da bu tür ülkelerden, Türkiye gibi ülkelerden alabileceği çok şey olduğunu düşünüyorum. Böyle bir fikriniz var mı? Böyle bir şey yapmak ister misiniz? Buna önyak olmak ister misiniz diyorum. Teşekkür ediyorum.

**Prof. Dr. Jane CHING** - Thank you. I am the one person on stage who is not from either Turkey or the United States. I am from Britain. So, I am European. I know what Erasmus means. My university has an Erasmus program with a Turkish university. So, maybe, we need to be asking more people, as you have just done, to partner. Because; I absolutely agree. They are incredibly valuable programs and incredibly useful to share information not just about what lawyers do, but different ways of teaching and different ways of learning. And I think, they are very, very important. So, not just for students, but maybe for academics as well, and for lawyers.

*Teşekkür ederim. Şu anda sahnede bulunup da Türkiye veya Amerika Birleşik Devletlerinden olmayan tek kişi benim. Ben İngiltere'den geliyorum. Dolayısıyla, ben bir Avrupalıyım. Erasmus'un ne demek olduğunu biliyorum. Benim üniversitemin bir Türk üniversitesiyle birlikte yürüttüğü bir Erasmus programı var. Dolayısıyla, belki de sizin şimdi yaptığınız gibi, bizim de daha fazla kişiden paydaş olmasını istememiz gerekiyor. Çünkü, size kesinlikle katılıyorum. Bunlar son derece değerli programlar ve yalnızca avukatların ne yaptığı ile değil farklı öğrenme ve öğretme yolları ile de ilgili bilgi paylaşımı yapabilmek için son derece faydalılar. Ve bence, çok, çok önemliler. Yani, sadece öğrenciler için değil, belki akademisyenler ve avukatlar için de.*

**YABANCI KONUK (1)**- I just wanted to mention that I work with two excellent European universities that have very active Erasmus programs that I recommend them both to you. One of them is in Check Republic, in a city called Olomouc. It is the Palacky Faculty of Law. And the other one is in Madrid, Spain. And it is called Instituto Empreza. Those are two universities that I work with every year and have very close colleagues on their faculties. They have wonderful very active Erasmus programs. And if it is possible to partner with them, I would certainly introduce you to the people on their faculties who could help you.

*Sizlere her ikisini de tavsiye etmek istediğim oldukça aktif Erasmus programları olan iki mükemmel Avrupa üniversitesi ile birlikte çalıştığımı belirtmek istiyorum. Bir tanesi Çek Cumhuriyetinin Olomouc*

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*adlı bir şehrinde. Palacky Hukuk Fakültesi. Diğeri de İspanya'Nın Madrid şehrinde. Ve adı da Instituto Empreza. Bunlar benim her yıl birlikte çalıştığım üniversiteler ve kadrolarında çok yakın olduğum meslektaşlarım var. Buralarda oldukça aktif yürütülen harika Erasmus programları var. Ve eğer onlarla paydaşlık yapmak mümkünse, sizi kadrolarında size yardımcı olabilecek kişilerle kesinlikle tanıştırebilirim.*

**OTURUM BAŞKANI-** Teşekkür ediyoruz, Sayın Başkan görevi bana devretti. Soru. . Var mıydı?

**YABANCI KONUK (2)** - I am not sure if I am supposed to respond but I think in United States we benefit greatly by having exchange students in faculty from abroad, come and work with our students, and see how we teach and how, and how law, what legal education is in the United States. All of us benefit from that. The problem in United States is cost. So, unlike in many countries, the cost is extremely high for our students and also for foreign students to come and try to go to law school, even on a loan or a JD program in United States. That's why I think we have fewer international students than we really should. I wish that there I is a way to fix that problem. But, unfortunately, I am not the one to do it.

*Ben buna yanıt vermeli miyim, emin değilim ama bence Amerika Birleşik Devletlerinde biz üniversitelerimize yurtdışından gelen, öğrencilerimizle birlikte çalışan, nasıl öğretim yaptığımızı ve Amerika Birleşik Devletlerindeki hukuk eğitimini gören değişim programı öğrencilerinden büyük oranda faydalanıyoruz. Bundan hepimiz yararlanıyoruz. Amerika Birleşik Devletlerindeki sorun maliyet. Yani, pek çok ülkelerin aksine, Amerika Birleşik Devletlerinde, bir krediyle veya JD programı ile dahi olsa gelip bir hukuk fakültesine gitmenin hem bizim öğrencilerimiz hem de yurtdışından gelen yabancı öğrenciler için oldukça yüksek maliyeti var. Aslında olması gerekenden daha az yabancı öğrencimizin olmasının nedeni de bence bu. Bu sorunu çözenin bir yolunun olmasını isterdim, ama bunu yapacak kişi ben değilim.*

**OTURUM BAŞKANI-** Trabzon Başkanımızın sorusu, yabancı konuklarımızın ülkelerinde nasıl avukat olunduğu, yani hangi sınavlardan vesaire. Bilmiyorum ben de dün yoktum, ben de açıkçası merak ediyorum. O zaman bu konuda tek bir söz almak isteyen yabancı konuğuma fırsat vereyim. Buyurun.

**Tom READ** – As I take the microphone and have listened all day to the conversation, all day yesterday, we have focused only on the problems, the problems and the problems. And there are many problems in our system and in your system. We have learnt from one another. But I want to give you an inspirational story to show that these problems can be overcome.

Professor Dr. Yenisey sent us a student in Texas, and then I was the President Dean of the South Texas College of Law. Her name was Mübeyyet. I will not tell you her last name. Mübeyyet came and spent a semester with us. She was very bright. She learnt how to ask questions. She worked very hard. And at the end of the exams, she performed in a large class, second, she was, she was the second highest paper in the class. And she, this was a second language for Mübeyyet. Then Mübeyyet was so interested that we asked one of our members of the Trustees, who is Chief Justice of the State of Texas, to help Mübeyyet. He wrote recommendation letters, we wrote them. She went and got an LLM at the University of Texas. Then she did so well there. Then the Chief Justice of the Supreme Court of Texas took her as a clerk for two years. Longer than most, because; she was that good.

There are great minds in Turkey. There are great people who have extraordinary ability in your country. Yes, you have problems. But as you open up and as you work as has been suggested by my colleague, all branches of the legal education working together and providing opportunities. There are many, many more Mübeyyets out there. And there are ways to get them into the United States and get them into Europe. If that would be helpful, we also need to send our best students

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to you to learn from you. There are ways we can cooperate. And so far, it has been a seminar of problems. Let me hold out this inspiration and try to suggest you to find ways to find those Mübeyyets and move them up so that they can succeed in the world. Not only Turkey needs them, the rest of the world needs people of that incredible intellectual ability.

*Dün bütün gün, ve bugün bütün gün konuşmaları dinlemiş biri olarak mikrofonu aldığımda görüyorum ki biz sadece sorunlar, sorunlar ve sorunlar üzerinde durduk. Ve hem bizim sistemimizde hem de sizin sisteminizde pek çok sorun var. Birbirimizden öğrendik. Ama ben bu sorunların nasıl aşılabileceğini göstermek için ilham verici bir hikaye anlatmak istiyorum.*

*Profesör Doktor Yenisey bize, Teksas'a bir öğrenci gönderdi. O zaman ben Güney Teksas Hukuk Fakültesinin dekanıydım. İsmi Mübeyyet'ti. Soyadını söylemeyeceğim. Mübeyyet geldi ve bizimle bir sömestr geçirdi. Çok zekiydi. Nasıl soru soracağını öğrendi. Çok çalıştı. Sınavların sonunda, kalabalık bir sınıfta ikinci oldu, sınıftaki ikinci en iyi sınav kağıdı onundu. Ve bir de, bu Mübeyyet için ikinci bir dilde idi. Sonra, Mübeyyet o kadar ilgiliydi ki, aynı zamanda Teksas Eyaletinin Başhakimi olan Mütevelli Heyetimizin bir üyesinden, Mübeyyet'e yardımcı olmasını rica ettik. Tavsiye mektupları yazdı, biz de yazdık. Teksas Üniversitesi'nin Hukuk Fakültesine kabul edildi. Sonra orada çok başarılı oldu. Daha sonra Teksas Yargıtayının Başhakimi iki yıl boyunca onu katip olarak çalıştırdı. Pek çoğundan daha uzun bir süre; çünkü o kadar iyiydi.*

*Türkiye'de harika beyinler var. Ülkenizde olağanüstü yeteneklere sahip harika insanlar var. Evet, sorunlarınız var. Ama dışa açıldığımızda ve meslektaşımın da önerdiği şekilde hukuk eğitiminin bütün branşlarının birlikte çalışıp fırsatlar yaratmasını sağladığımızda. Dışarıda çok, pek çok Mübeyyet var. Ve onları Amerika Birleşik Devletlerine veya Avrupa'ya göndermenin yolları var. Eğer faydası olacaksa, biz de en iyi öğrencilerimizi size yollayıp sizden bir şeyler öğrenmelerini sağlamalıyız. İşbirliği yapmanın yolları var. Ve şimdiye kadar, bu bir sorunlar semineri oldu. İzninizle bu ilham verici hikaye ile size bu Mübeyyetleri bulmaya çalışmanızı ve dünyada başarılı olabilmeleri için onları yukarılara taşımanızı önermek istiyorum.*

*Onlara sadece Türkiye'nin ihtiyacı yok, dünyanın geri kalanının da olağanüstü entelektüel becerilere sahip insanlara ihtiyacı var.*

**Av. Ali AYDIN (Oturum Başkanı)-** Feridun Hocam size en son söz vermek için, uygun görürseniz. Sorular bittiyse tabii ki döneceğim. Var mı sorumuz? Hocam Prof. Dr. Feridun Yeni-sey Hocam, buyurun efendim.

**Prof. Dr. Feridun YENİSEY (Bahçeşehir Üniversitesi Hukuk Fakültesi)-** Şimdi ben en son söz almış olmayayım, çünkü en son söz için ben Yusuf Beyden rica ettim. Dünkü ve bugünkü toplantıları bir özetleyen konuşma yapacak. Ben sadece bir görüş açıklamak istiyorum eğer müsaade ederseniz.

Şimdi Mehmet Beyi dinledim, dinlerken de Sulhi Dönme-zer Hocam konuşuyormuş gibi hissettim. Hocamın hep söylediği bir laf vardı. Derdi ki bana; sen öyle bir balıksın ki, denizi bilmiyorsun derdi. Öyle bir balık ki öğretim üyeleri, tatbikatı bilmiyor. Maalesef bugün Türkiye böyle; yani ben şahsımda o eleştirinizi çok yerinde olarak görüyorum.

Biz teori olarak kalıyoruz, pratik bambaşka geliyor. Fakat teoriyle pratiği birleştirmek gerekmez mi? Yani niçin bu farklılık var, neden çok büyük bir makas var? Şu anda burada mı bilmiyorum, ceza usul hocalarını lanetleyen arkadaşımız çıktı galiba. Haklı, öğretemiyoruz. Avukatlığı öğretemiyoruz. Fakat Berra Hanım dedi ki, avukatlığı öğretmek fakültenin görevi değil, hukuk fakültesinin görevi değil dedi. Fakat ikisinin meczetmek gerekmez mi? Hem teoriyi, hem de çocuk çıktığı vakit nerede duracağını, nasıl yapacağını, tatbikatı da bilerek çıkması gerekiyor hukuk fakültelerinden. Yani hukuk fakültelerinde eğitimin mutlaka değişmesi gerekiyor. Teoriden vazgeçemeyiz. Hukukun temel prensiplerini bilmeyen bir hukukçu olamaz. Fakat tatbikatı da bilmesi gerekiyor.

Bu nedenle Amerikan hukuk sisteminden imreniyorum. Önce avukatlık yapıyor hocalar, sivrilen kişiler akademisyenliğe geçiyorlar yani hocalığa geçiyorlar daha sonra. Fakat hocalığa geçtikten sonra da, sürekli yayın yapması isteniyor. Her

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sene üç tane esaslı makale yayınlaması gerekiyor. Hoca olduktan sonra artık durmuyor.

Çok büyük bir değişim geçirmemiz gerekiyor. Profesör Tom Read 10 senedir Türkiye'ye geliyor. Kansas Üniversitesiyle birlikte de yaz okulları yapıyoruz. 10-12 tane öğrenci geliyor, 4 tane Amerikalı hoca geliyor ve Türkiye'de Amerikan hukuku öğretiyorlar kendi öğrencilerine. Bu arada da 8-10 tane Türk öğrenci katıyoruz aralarına. Emin olun Türk öğrenciler ezilmiyor. O Amerikalı öğrencilerin arasında ilk defa öğrendikleri Amerikan hukuku dersini özüksüyorlar ve başarılı oluyorlar. İşte bahsettiği Mübeyyet bir örnek.

Biz kendi kendimizi eleştirmeliyiz ve çok teşekkür ediyorum eleştirileriniz için hocalara karşı. Dün yoktunuz, ben bunu söyledim. Dedim ki, hoca olarak ben eleştiriliyorum ve bir işkence örneği verdim dün. Bir Alman mahkemesi beni bilirkişi olarak kabul etmedi, polislere ders verdiğim için. Şimdi de bütün herkes hocaları da eleştiriyor haklı olarak. Fakat bir bütün konuşma yapılması gerekiyor dediniz siz. Değişik branşların bir araya gelerek, bu sorunu çözmeleri gerekiyor. İşte bu ortam, bu ortam; bugün burada ilk üçüncü adım belki atıldı, fakat devam etmesi gerekiyor bunun. Öğrencilerle birlikte çalışmamız gerekiyor.

Yine Kıbrıs'a lafı getirip de bitireyim. 10-15 sene evvel Diyarbakır tartışılıyordu. Uçan hocalar Diyarbakır'a gidiyor, ne kadar kötü filan deniyordu. Fakat bugün Hacettepe'nin dekanı Diyarbakır mezunu, birkaç kişi daha var böyle çok iyi bildiğim; Danıştay'da vesaire sayısız. Bu insanlar kendilerini yetiştirdiler. Bu eleştiriler onlara bir stimülasyon verdi. Çok sayıda kitap okudular, eğittiler kendilerini ve bu Kıbrıs çocukları da böyle. Şimdi ben Kıbrıs'ta derse gidiyorum, 15'te bir filan gidiyorum ve kendi kendime bugün sordum, neden gidiyorum acaba diye. Bunun cevabını veremedim. Çünkü ben Amerika'ya da derse gidiyorum, her sene bir ay Amerika'da derse gidiyorum. Atlanta'da derse gittim, her sene bunu yapıyorum.



Neden bu yaşında acaba kalkıp da Kıbrıs'a gidiyorum? Emin olun para için değil. Yani bunun ucunda para yok. Neden barolara geliyorum? Her baroya geldim aşağı yukarı, beni ağırlamayan baro yok galiba burada. Burada bir idealistlik var galiba. Bir şeyler vermek istiyoruz. (Alkışlar)

Eminim ki bir ilerleme yaptık. Yani Türkiye'de hukuk eğitimi 10 sene evveline kadar mutlaka daha yüksektir. Daha da iyi olacağını bekliyorum. Bunun için hep birlikte çalışmamız gerekiyor. (Alkışlar)

**Av. Ali AYDIN (Oturum Başkanı)-** Feridun Beye çok teşekkür ediyoruz. Buyurun Başkanım.

**KATILIMCI-** Efendim önce yabancı konuklarımıza hoş geldiniz diyorum, buraya teşrif eden herkes için, Sayın Hocamı da özellikle tekrar görmekten memnuniyetimi ifade ediyorum.

Şimdi sayın bakanlık temsilcisi arkadaşımız burada. Yani bakanlığı temsilen değil, ama konuyla ilgili olarak. Sayın Bakan olsaydı ona da arz ederdim. Gerçi bu salonda söyledim kendisine de, onun için rahat konuşabiliyorum. Şimdi pratikle teoriyi kaynaştırmak için, staj süresi var. Staj süresinin bir bölümü adliyede, bir bölümü de avukat nezdinde yapılan staj bölümü. Bu pratikte teorinin kaynaşması, avukatın mesleğini icra ederken davranışından hitabetine kadar, kapıyı çalıp içeri girmesinden duruşuna salonda oturacağına kadar geçen süreyi kapsayan bir süre bu.

Fakat maalesef, işte baro başkanı arkadaşlarımız, ben 30 yılı epey devirdim avukatlıkta. Adliye stajında avukat stajyerleri hâkimler için böyle bir parazit gibi bir şey algılanıyor. Yanlarına yaklaştırmıyorlar, dosyaları teslim etmiyorlar. Dosya bakmak isteyen avukat stajyerinin başına mübaşiri dikiyorlar, dikkat et aman ne olur ne biter şeklinde bir güvensizlik var. Bu demin her ne kadar akademideki Sayın Başkan Yardımcımız, saygı duyuyorum mutlaka ki onun tespitleri öyledir, onun uygulaması da öyledir, kendi düşüncesi ve ideali de öyledir, ondan şüphem yok. Ama maalesef uygulamada nasıl oluyor-

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sa avukata karşı bir soru işareti açılmasını gerektirir bir eğitim verildiğini düşünüyorum.

O sebeptendir ki, hâkim ve savcı yanında staj yapan avukatların sürekli dışlandığı. Bazı hâkim hiç gözüme görünme diyor. Bazı hâkim seni duruşmada görmedim diyor ve stajını yapıyor 4 ay 5 ay. Örneğini yaşadık, somut örnekleri var.

Şimdi ben şunu arz etmek istiyorum. Bakanlıkta yetkili arkadaşlarımız, özellikle akademide avukat stajyerleri de hukukun bir parçası değil mi? Avukatlar hukukun bir parçası değil mi? Bunları bir yabancı gözüyle görüp, onları en azından staj süresince sorgu yöntemini, duruşma yöntemini, sanıkla davalıyla davacıyla muhatap olma yöntemini, bunları dinleme yöntemini, zabıt tutma yöntemini bunlarla beraber yapsalar ne olur? Yani stajyer orada sadece süresini dolduran getiren, ondan sonra ne oluyor? Avukat oldum diyor. Bu staj süresinin çok iyi, staj eğitim merkezleri o yönü itibariyle, Sayın Mehmet Bey de diğer baro başkanı arkadaşlarım da bu işi biliyorlar. Biz bunu çok önemsiyoruz. Yani staj eğitim merkezi konusunu çok önemsiyoruz. Biz özellikle akademideki başkan yardımcısı arkadaşımızdan özellikle istirahat ediyorum. Mutlaka sizden kaynaklanan bir şey yok, ona inanıyorum, samimiyetinize de inanıyorum, ama o ders verenlerin veya anlatanların, avukatların da adaletin tecellisine katkı sağlayacak kadar adalet duygusunu teşekkül etmiş olduklarını göz ardı etmemelerini diliyorum, saygılar sunuyorum efendim. (Alkışlar)

**Av. Ali AYDIN (Oturma Başkanı)-** Sayın Başkanım teşekkür ederiz. Soru var mı efendim? Buyurun Yusuf Bey.

**Prof. Dr. Yusuf KAKARUŞ (Dokuz Eylül Üniversitesi Hukuk Fakültesi Dekanı)-** Hazirunu saygıyla selamlıyorum. Öncelikle böyle bir güzel toplantıyı, önce İstanbul'da başlatıp, iki gündür de Ankara'da devam ettiren ve buna öncülük yapan Barolar Birliğine, bu arada bu toplantılara ve Türkiye'de hukuk eğitimine öğretimine gerçekten canı gönülden yıllardır katkıda bulunan Değerli Hocam Feridun Yenisey'e, yabancı konuklarımıza içten teşekkürler ediyorum.

İki gündür toplantının başından sonuna bir anlık bile ayrılmadan toplantı salonunda bulunan biriyim. Ben şu an itibariyle Dokuz Eylül Üniversitesi Hukuk Fakültesinde bir öğretim üyesi, aynı zamanda 5 yılı aşkın bir süredir de bu fakültenin dekanlığını yürütmekteyim.

“*Hukuk öğretimi ve hukukçu eğitimi*” başlığı altında Barolar Birliğinin geçmişte yaptığı toplantıları biliyorum. Bizim kendi fakültemizin yaptığı uluslararası bir kongreyi biliyorum. Geçen yıl Antalya’da yapılan toplantıyı, yine geçen yıl Hâkimler Savcılar Yüksek Kurulunun Antalya’da yaptığı toplantıyı ve işte dört gündür de bu toplantıyı biliyorum. Kasım 2014’te, yani bu yıl Kasım ayının ikinci yarısında Hacettepe Üniversitesi Hukuk Fakültesi de yine aynı konuda bir toplantı yapacak.

Bu toplantıların büyük bir ekseriyetinde bulundum. Bir kısmında organizatör olarak bulundum, bir kısmında konuşmacı olarak bulundum, bir kısmında da öyle katılımcı olarak bulundum.

Bu toplantılarda toplantıları oluşturan meslektaşların sayısal çoğunluğuna bağlı olarak, bazen yargı bizzat hâkimler adına eleştirildi, avukatlar ve akademisyenler hâkimleri eleştirdiler. Bazen belki avukatları eleştirdik, ama en az eleştirilen bu yargının üç sacayağından biri avukatlar oldu. Çoğu zaman da hâkimler de avukatlar da kamuoyu da hukuk fakültelerini eleştirdiler.

Bu iki günlük toplantıda avukatlar en azından son oturumda, sayın baro başkanları öncülüğünde ve Barolar Birliğinin yöneticileri öncülüğünde avukatlar kendilerini eleştirdiler. Epey bir şekilde de bazen öğrencilerimiz aracılığıyla, bazen şahşlarımız yöntemlerimiz aracılığıyla akademisyenler eleştirildi, ama dün baştan sona Amerika Birleşik Devletlerinde bu işin nasıl yürütüldüğü burada enine boyuna anlatıldı ve tartışıldı.

Değerli konuklar da söylediler yabancı konuklarımız, içlerinden birtakım konuşmacılar da bunu ifade ettiler, sorunlar benzer sorunlar. Aynı demiyorum, çünkü aynılık farklı bir anlam ifade eder. Benzer sorunlar, çünkü insanız, insanlık tarihi

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adaleti arayış tarihidir. Ancak bu adalet tarihine bakarsanız, biraz da vahşet tarihi niteliği taşır. Adaletle ulaşmak için hem doğuda hem batıda çok olumsuz birtakım olaylar da yaşanmıştır, ama arayış devam edecek. Daha insani bir adalet arayışı devam edecek. Bu adalet arayışında şüphesiz ki birinci belirleyici konumda olan yargı mensuplarıdır, yargı mesleğini icra edenlerdir. Bu yargı mesleğini icra edenler de avukatlardır, hâkimlerdir, savcılardır. Ancak bu mesleği icra edenleri yetiştirenler ise fakültelerdir.

Kıta Avrupa'sındaki sistem farklıdır. Kıta Avrupa'sının kendi içinde farklılıkları vardır. Anglosakson sistemi Kıta Avrupa'sından farklıdır. Çünkü benimsedikleri hukuk sistemleri; biri kurula dayalı hukuk sistemi, biri içtihadı dayalı ilkeye dayalı hukuk sistemidir. Dolayısıyla bu mesleği icra etmesi istenilen arzu edilen kişilerin yetişmesinde farklılıkların olması doğaldır. Amerika Birleşik Devletlerinde eyaletler arasında bile farklılıkların olduğunu dikkate aldığımızda, şüphesiz ki ülkemizle Amerika Birleşik Devletleri arasında birtakım araçlarda yöntemlerde farklılıkların olması doğal karşılanması gerekir.

Tabii yargı mesleği dediğimizde, bu mesleği icra eden hâkimlerin, savcılardan, avukatların bir arada bu sorunları tartışmasında yarar var. Çünkü bunlar birbirlerinin hasımları, birbirlerinin rakipleri değil, birbirleriyle dayanışan, birbirleriyle anlaşan uzlaşan, paylaşan paydaşlar olarak bu görevleri icra etmeleri gerekir ki, adalet gerçek anlamda tecelli edebilsin, o umudu taşıyabilelim. Ama zaman zaman şüphesiz ki, demin sözlerimin başında da belirttiği gibi, meslek grupları birbirlerini eleştiriyorlar, birbirlerine karşı belki çok yaygın olmamakla birlikte olumsuz tavırlar sergiliyorlar. Dolayısıyla bu ortaklık paydasında buluşmayı zaman zaman zorlaştıran durumlar ortaya çıkabiliyor. Ama umutsuz olmamak gerekiyor.

Bir kere şunu unutmamak gerekiyor: Hukuk mesleği eve ekmeğe götürmek için yapılacak bir meslek değildir. Bu hâkimler savcılar için de böyledir, bu avukatlar için de böyledir. Bu mesleğe uygun insanların ancak bu mesleklerde faaliyet göstermesi gerekir. Sınavların her meslek için hem staja kabul, hem de mesleğe kabul için gerekli olduğu kaçınılmazdır. Mülakatın

hem avukatlık mesleğine kabul için, hem hâkimlik savcılık mesleğine kabul için zorunlu olduğunu unutmamız gerekir. Evimize bir temizlik elemanı almak istediğimizde bile, onun kim olduğunu araştırdığımız bir yerde, adaleti teslim edeceğimiz, bazen insanın hürriyetini teslim edeceğimiz, bazen malvarlığını teslim edeceğimiz hâkimin savcının avukatın mülakatsız mesleği kabulünü düşünmek mümkün değildir.

Sorun mülakatta değil, belki mülakatın yapılış tarzındadır. Değiştirilmesi gereken de o tarzdır. Amerikalı meslektaşlarımız dediler ki, bazı eyaletlerde sınav öncesi, bazı eyaletlerde de sınav sonrası mesleğe uygunluk belgesi arıyoruz ve orada bir uygunluk komisyonu var. Bu komisyonda 10 kişi var, 3'ü avukat filan değil. Psikiyatrist var dediler. Bizde de bu mesleğe kabul aşamasında mutlaka öyle bir komisyonun kurulması ve öyle bir uygunluk belgesinin alınması gerekir.

Biliyorsunuz hâkimler savcılar için ömür boyu garanti vardır. Mesleğe kabul ettikten sonra görevini değiştirebilirsiniz, ama hâkimlik savcılık unvanını kural olarak alamazsınız, maaşını ödemek zorundasınız. Dün bir hukuk fakültesi öğrencisi, Amerika'da hukuk öğrenimi ikinci lisans dedi. Ondan önce bir lisans mezunu oluyorlar, kendilerinin bir uzmanlığı bir mezu niyeti var bir işleri var, ama Türkiye'de hukuk fakültesi öğrenimi birinci lisans. Sınav geleceği zaman bunu da dikkate alın dedi. Biz o sınavda başarısız olursak ne olacak diye sordu.

Ben de döndüm, işsiz kalma endişesi mi taşıyorsun dedim. Sadece gülümsedi. Belli ki öyle bir kaygısı var. Şu anda hukuk fakültesi sayısı belli değil. Hukuk fakültesine kabul edilen öğrencilerin gerçekten bir taban puanı filan yok. Doğru, Sema Hanıma ben vakıf üniversitesi dekanları çok cesur demişti. Sonra işinize son verirler filan demiştim, ama Erzurum'da yapılan toplantıda bu taban puan konusunu ben de dile getirmiştik. Taban puan yok, girişi belirsiz, çıkışı belirsiz, hiçbir şey olamazsam avukat olurum mantığıyla hukuk fakültesinden mezun olmak doğru bir şey değil. Şu anda 80-90 bin arasında avukat olduğunu söylüyorsunuz. 10 yıl sonra bu avukat sayısının 200 bin olacağını unutmayın.

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Amerika’da yüzde 30 hukuk fakültesi kapanma tehlikesiyle karşı karşıya denildi. Amerika’da hukuk mesleğinin krizi yaşanıyor denildi. Ekonomiler daralırken, bu meslekleri icra edenlerin krizi kaçınılmazdır. Türkiye için de böyle olacaktır. Bugün 80 bin avukatın gereği gibi meslekten kazanç sağlayamadığı bir dönemde 280 bin avukatın kazanç sağlamasını beklemek, ham bir hayaldir. Sınav hem girişte, hem çıkışta olmalıdır.

Gelelim bu hukuk fakültelerinden beklentilere. Bir, galiba hukuk fakülteleri fena mezun vermiyor her şeye rağmen. Hele hele Trabzon Barosu Başkanını dinleyince, bayağı iyi mezunlar vermiş hukuk fakülteleri. Haklı, belki onun döneminde hukuk fakültelerinin sayısı azdı, öğretim üyeleri çoktu ve kaliteli öğretim yapıyordu. Hocalar kürsüde ve mesai saatleri içerisinde, en azından mesai saatleri içerisinde fakültede oldukları için, öğrenciler onları görerek eğitiliyorlardı. Ancak şunu asla unutmayın: Hukuk fakülteleri meslek yüksekokulu değildir. Hukuk fakülteleri akademik öğrenim yapan yerlerdir. Hukuk fakültelerinde öğrenim yapılır, hukuk fakülteleri akademik bilgi aktarır. Hukuk fakültesi öğrencisi öğrencidir. Eğitimi staj merkezleri yapacak. Adalet akademisi yapacak, Barolar Birliği yapacak, baro yapacak. Avukatlık hukuku dersi hukuk fakültelerinde zorunlu ders olsun talebi olmuştur. Bizim fakültemiz de bir zamanlar zorunlu dersti, şu anda belki seçimlik ders olarak seçilen bir ders de değil.

Şunu unutmayın: İktisatta bir kural vardır. Dört unsuru bir araya getirirseniz üretim yaparsınız. Neymiş onlar? Emek, sermaye, müteşebbis, bir de hammadde. Talebi yoksa bunları bir araya getirince neyi üreteceksiniz, niye üreteceksiniz? Öğrencilerden dinlemek gerekiyor. Bence bundan sonra yapılacak ilk toplantı, hukuk fakülteleri öğrencilerinin hukuk öğretimini tartışma toplantısı olmalıdır. Bunu artık hangi birim yapar onu bilemiyorum. Bunu mutlaka sağlamamız gerekiyor. Onların ne talep ettiğini çoğu zaman dinlemiyoruz. Ama şunu unutmayın: Öğrenciler de çok şey talep etmiyorlar. Bakmayın talep ettiklerine şu anda, talep eden öğrencilerin bir grubunun burada olduğuna.

İstanbul Üniversitesinde ilk derste, bir ticaret hukuku dersinde kürsü halinde huzura çıkıyorlar. Hoca diyor ki, arkadaşlar haberiniz olsun, bu derste anlattıklarımız sınavda sorulacak. Bütün herkes kâğıtların üzerine yumuluyor, söz şu: Çok çalışacaksınız. Hepsi geri dönüyor. Yani öğrencinin talep ettiği şudur: Sınavda soracağınız soruyu öğrenciye söyleyin, cevabını da yazdırın, ondan başka bir şey istemez.

Şu anda doğrudur, hukuk fakülteleri öğrencileri fotokopiyle sınava hazırlanır ve o hazırlıklarıyla da başarılı olurlar. Öyle sanıyorum Ankara'da ve İstanbul'da ve benim görev yaptığım İzmir'de çoğu fotokopiciler hukuk fakültelerinin etrafındaki çoğu fotokopiciler, kitap basıp satan yayıncılardan daha çok zengindir. Niye? Çünkü üzgünüm, talebi var da ondan. Öğrenci kitap almıyor, öğrenci hocayı tanımıyor, öğrenci hocayı dinlemiyor. Yani siz bazen allameyi getirseniz, bırakın hani bizim gibi sıradan hocaları, öğrencinin umuru değil. Sınavda çıkacak soruyu soracak mı, cevabını verecek mi?

Pratik çalışmalarımız eskisi gibi değil. Şimdi pratik çalışmalarda biz olayı da kendimiz yazıyoruz, cevabı da kendimiz veriyoruz. Öğrencinin katılması yok. Hoca diyor sen cevabı ver, ben yazayım. Beklenti bu, üzgünüm. Ama tabii ki hem nalına vurmamız, hem mihına vurmamız gerekiyor ve bu sorunları hepimiz birlikte aşmamız gerekiyor. Yani bizim hâkimleri avukatları eleştirmekle varacağımız bir yer yok. Hâkimlerin bizi avukatları eleştirerek varacakları bir yerler yok. Dolayısıyla hepimiz bir arada bu gemideyiz. Bu işi şüphesiz ki önce hukuk fakültesindeki misyonu belirleyerek, oradaki müfredatın kapsamını belirleyerek, oraya gelen öğrencinin belki kalitesini belirleyerek, mezun olanın nasıl bir sınava tabi olacağını belirleyerek ve özellikle de meslek adamı olacak mezunlarımızın mutlaka ve mutlaka. . . Avukatlar için Barolar Birliği öncülüğünde, hâkim ve savcılar için de mutlaka Adalet Akademisi öncülüğünde, amaca elverişli eğitim yöntemlerini uygulamak suretiyle mesleğe uygun oluşu sağlamak zorundayız. Başka çaremiz yok.

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Şu anda bu sene 15. 420 öğrenci hukuk fakültelerine kayıt oldu. Önümüzdeki yıl ben 18 bin bekliyorum. 20 bin olabilir. Söylüyorum, Hâkimler Savcılar Yüksek Kurulunun Antalya'da yaptığı toplantıda verilen rakam şu idi. YÖK'ü temsilen gelen bir mevkidaşım kürsüde dedi ki, 200 ilâ 220 bin öğrenci hukuk fakültelerini tercih ediyor, YÖK ne yapsın?

Şimdi orada da bir çelişki var. Daha doğrusu bir garip durum var. O da şu: Hepimiz çocuklarımızın yükseköğrenim yapmasını istiyoruz. Doğru mu? Açıkta kalmamasını istiyoruz. Hatta iyi fakültelere gitmesini istiyoruz, ama dönüyoruz diyoruz ki bu kontenjanlar bu kadar arttı? Burada da yüzde 10'unu bile, şu anda tercih edenlerin yüzde 10'unu bile hukuk fakültelerine almıyoruz.

Ben kontenjan artmasından dolayı çok muzdarip olan bir dekanım. Tam 5 yıldır, 15 Kasım'larda işte şu kadar öğrencimin oturacak yeri yok diye feryat eden bir dekanım. Şu anda 3 öğrencimden 2'sinin oturacak yeri yok ve benim 2400 öğrencim var. Gelecek yıl, bir dersin sınavını bir günde yapacak sınav kapasitem yok, ama öbür tarafa da bakıyorsunuz öğrenci tercih ediyor, tercih etmek istiyor. Yani işimiz çok kolay değil. Dolayısıyla bu çok kolay olmayan işleri, çok kolay çözmemiz de mümkün değil. Biz epeyce tartışmamız gerekiyor.

Aslında bilgimiz tecrübemiz, yurtdışı örneklerimiz epeyce arttı. Bir-iki böyle toplantı daha yapıp, bütün paydaşların bir arada olduğu; bu toplantıda mesela hâkimler eksik, az sayıda bu anlamda söylüyorum. Bütün paydaşların toplandığı, özellikle öğrencilerin neler beklediğini öğrendiğimiz bir-iki toplantı sonrasında, bence bir çalıştay yapıp, sonunda bir karara varmamız gerekiyor.

Dikkat ettim, her konuşmacı sonunda *-ben de oraya geleceğim ve sözlerimi bitireceğim-* sonunda merkezi çözümden yana oldu. Çünkü standardımız yok denildi. Standart oluşturabilmemiz için, merkezi çözüm gerekli. Bu şu anlama geliyor: Bir, hukuk fakültelerinden mezun olanlara aynı meslekleri icra edecekler-



se -ki, etmeleri gerekiyor ediyorlar- o zaman her fakültenin asgari aynı dersleri, içeriklerini kendileri farklılaştırabilirler, ama aynı dersleri okutmaları gerekir. Yani mutlak zorunlu dersler. Fakülteler kendileri zorunlu dersler oluşturabilirler, bu derslere ilaveten. Bir de şüphesiz ki her fakültenin bulunduğu bölge, elindeki imkânlar nispetinde seçimlik derslerle kendini renklendirebilir.

Bu standartları yakalayamadığımız ve birbirimize benzeşir durumlar oluşturamadığımız zaman, eşit şartlarda yarışamayan mezunlar vermiş oluruz. Onların da şüphesiz ki olumsuz yansımalarını hep birlikte yaşarız diyor, hepinize saygılar sunuyorum. (Alkışlar)

**Av. Ali AYDIN (Oturum Başkanı)-** Yusuf Karakoç Beye çok teşekkür ediyoruz. Tabii niçin tercih ediyorlar Hocam? Çünkü burada garanti bir avukatlık var. Yani bu garanti avukatlığı kaldırdığımız zaman, bu talebin de süratle düşeceğine ben yürekten inanıyorum. Yani sorun bu kanaatimce. Evet, güzel bir konuşmaydı teşekkür ediyorum.

Şu paydaşlık konusuna canı gönülden katılıyorum. Açık ve net ifade edelim. Antalya’da Haşim Kılıç Bey ifade etmişti, niye burada avukatlar barolar yok? Biz bunu baştan beri ifade ediyoruz. Niye burada Adalet Bakanlığı yok, HSYK yok? Yani ben biraz HSYK’den farklı bir algıyla burada olduğumu biliyorum. Çok teşekkür ediyorum nezaketinize o manada. Ama hakikaten biz, yani ne bakanlığın kendi ürettiği yürüttüğü projelerde, ne de Barolar Birliğinin projelerinde diğer paydaşlarımızı çoğunlukla bulamıyoruz. Önemli sorunlardan bir tanesinin bu olduğunu da ifade edelim.

Sayın katılımcılar, Türkiye Barolar Birliğine, John Marshall Hukuk Okuluna ve Bahçeşehir Üniversitemize hepinize bu güzel toplantıları tertip ettiğiniz, katıldığınız, katkı verdiğiniz için bütün konuklarımıza yerli yabancı, ben teşekkür ediyorum.

Efendim inşallah daha güzel, daha verimli, çok verimli olduğuna ben inanıyorum, ama hakikaten Yusuf Beye tekrar

## 21. YÜZYILDA HUKUK EĞİTİMİ

atıfta bulunmak istiyorum. Bu toplantıların arttırılması lazım, öğrenci arkadaşlarımızın beklentileri kanaatleri nedir, gençliğin tavrı nedir? Hakikaten avukat meslektaşlar avukat oluyor, ama avukatlıktan başka işler yapıyorlar, çünkü geçinmeleri mümkün değil. Onların sistemden beklentisi nedir? Hâkim savcı arkadaşlarımızın içinde bulunduğu şartların ortaya konulması bakımından onların da kendisini ifade edebilecekleri ortak ortamların inşallah tesis edilmesi ümidiyle, hepinize selam saygı ve muhabbetlerimi sunuyorum.

Teşekkür ederiz efendim. (Alkışlar)

**SUNUCU-** Tüm konuşmacılarımıza değerli katkıları için çok teşekkür ediyoruz. Oturumumuzda konuşma yapan kişilere plâketlerini takdim etmek üzere yönetim kurulu üyemiz ve aynı zamanda Türkiye Barolar Birliği Başkan Yardımcımız Av. Berra Besler'i kürsüye davet ediyorum. (Alkışlar)

HSYK Üyesi Sayın Av. Ali Aydın, Adalet Bakanlığı Kanunlar Genel Müdürlüğü Daire Başkanı Sayın Doç. Dr. Mustafa Taşkın, Adalet Akademisi Başkan Yardımcısı Sayın Hâkim Rifat İnanç, Antalya Baro Başkanı Sayın Av. Alper Tunga Bacanlı, Bursa Baro Başkanı Sayın Av. Ekrem Demiröz, Trabzon Baro Başkanı Sayın Av. Mehmet Şentürk. (Alkışlar)

*(Bağış sertifikaları verildi)*

"21. Yüzyılda Hukuk Eğitimi" konulu uluslararası konferansın gerçekleşmesinde emeği geçen çok değerli kişileri plâketlerini takdim etmek üzere Türkiye Barolar Birliği Başkan Yardımcısı Sayın Av. Başar Yaltı'yı kürsüye davet ediyoruz. (Alkışlar)

Bahçeşehir Üniversitesi Öğretim Üyesi Sayın Prof. Dr. Feridun Yenisey, Bahçeşehir Üniversitesi Öğretim Üyesi Sayın Prof. Dr. Frank Tom Read ve Türkiye Barolar Birliği Yönetim Kurulu Üyesi Sayın Av. Gülcihan Türe.

*(Bağış sertifikaları verildi)*

Değerli katılımcılarımızı fotoğraf çekimi için sahneye davet ediyoruz.

21. YÜZYILDA HUKUK EĞİTİMİ

Ek 1 / Appendix 1

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*The Evaluation Criteria for Law Education*  
*Hukuk Eğitimi İçin Değerlendirme Kriterleri*



## **UNION OF TURKISH BAR ASSOCIATIONS**

### **EXECUTIVE COUNCIL OF THE DEANS OF FACULTY OF LAW OF LEGAL EDUCATION, MONITORING AND EVALUATION CENTRE CRITERIA DETERMINED AT THE LEVEL OF BACHELOR DEGREE ON THE DATE OF 10 FEBRUARY 2015**

#### **THE EVALUATION CRITERIA FOR LAW EDUCATION**

A. The recommended minimum compulsory evaluation criteria are as follows:

1. Minimum number of faculty members; there should be 8 faculty members in each one of the branches of public law and private law and therefore there should be minimum 16 full time and permanent faculty members in total.
  2. Minimum number of research assistants; there should be 8 research assistants in each one of the branches of public law and private law and therefore there should be minimum 16 research assistants in total.
  3. Maximum number of students per lecturer should be 30 (not only per faculty member but the research assistants will also be taken into account).
  4. Compulsory core lectures given under the departments which are required by the Council of Higher Education in law faculties are to be in the curriculum. The designation of the Council of Higher Education with regard to the lectures to be compulsory will be taken as a basis.
  5. Minimum number of materials in the field of legal science should be 10.000.
- B. Other than the abovementioned basic and minimum measures, the criteria below are recommended to improve the quality of law education

## 21. YÜZYILDA HUKUK EĞİTİMİ

1. At least %25 of the whole curriculum should be comprised of elective courses
2. Human rights lecture should be compulsory
3. Such education areas as library, reading hall, classes/lecture halls should be at an optimum level to meet the needs of the students
4. An independent law library other than the compulsory number of books and a library
5. Having at least one agreement within the Erasmus program or being included in another international program
6. Existence of LL.M and PhD programs (each program will be evaluated separately)
7. Success rate of those who have taken judge-prosecutor-attorney exams (written exams will be taken as a basis in exam success.)
8. Offering preparatory education in foreign language
9. Presence of the practice and legal clinic lectures in the curriculum which are listed below as examples:
  - o Moot court
  - o Pre-training and practice lectures (could be taught under different names such as legal practices, practical studies)
  - o Street law practices for the groups in need or live client clinic or legal drafting practices
  - o Lectures for Professional Writing Skills
10. Presence of the research and skill based lectures in the curriculum which are listed below as examples:
  - o Lectures on diction and elocution

- o Methodology of law, legal research lectures
  - o Attorney and notary law
  - o Mediation, arbitration and conciliation lectures
  - o Law courses in foreign language
11. Deontological lectures should be in the curriculum
  12. Field courses of the professions to be given by Practitioners (not basic education lectures, but attorney, notary or the other profession and practice lectures)
  13. Having a research and application centre, unit or institute in the field of law within University
  14. Having a faculty journal
  15. Having at least 5 national or international law databases/ programs.
  16. Students' participation in national or international competitions in the field of law
  17. Presence of a law related club/society
  18. Organising scientific meetings at least twice a year





**TÜRKİYE BAROLAR BİRLİĞİ**  
**HUKUK EĞİTİMİNİ İZLEME VE DEĞERLENDİRME KU-**  
**RULU İLE DEKANLAR KONSEYİ TARAFINDAN 10**  
**ŞUBAT 2015 TARİHLİ TOPLANTIDA BELİRLENEN**  
**HUKUK EĞİTİMİ İÇİN DEĞERLENDİRME KRİTERLERİ**

- A. Asgarî zorunlu değerlendirme kriterleri olarak şunlar önerilmektedir
1. Asgari öğretim üyesi sayısı: Kamu hukuku bölümünde 8, özel hukuk bölümünde 8 olmak üzere asgarî 16 tam zamanlı ve kadrolu öğretim üyesi bulunması.
  2. Asgari araştırma görevlisi sayısı: Kamu hukuku bölümünde 8, özel hukuk bölümünde 8 olmak üzere asgarî 16 araştırma görevlisi bulunması.
  3. Her bir öğretim elemanına (sadece öğretim üyesi değil, aynı zamanda araştırma görevlileri de dikkate alınacaktır) düşen öğrenci sayısı en fazla 30 olmalıdır.
  4. YÖK tarafından hukuk fakültelerinde bulunması zorunlu olan anabilim dalları altında verilmesi zorunlu olan temel derslerin müfredatta yer alması. Hangi derslerin zorunlu olarak okutulması gerektiği konusunda YÖK'ün belirlemesi esas alınacaktır.
  5. Kütüphanede bulunan hukuk bilimi alanındaki asgari eser sayısı 10.000 olmalıdır.
- B. Yukarıda belirtilen temel ve asgarî ölçüler dışında, hukuk eğitiminin kalitesini artırmak bakımından aşağıda belirtilen kriterler önerilmektedir
1. Tüm müfredatın en az % 25'inin seçimlik derslerden oluşması
  2. İnsan hakları dersinin zorunlu olması
  3. Kütüphane, okuma salonu, derslik/amfi gibi eğitim alanla-

## 21. YÜZYILDA HUKUK EĞİTİMİ

rının öğrencinin ihtiyaçlarını karşılayacak düzeyde bulunması

4. Zorunlu kitap sayısı ve kütüphane dışında bağımsız hukuk kütüphanesi bulunması
5. Erasmus programı dahilinde en az bir anlaşması olması veya diğer bir uluslararası programa dahil olması
6. Yüksek lisans ve doktora programının bulunması (her bir program ayrı ayrı değerlendirilecektir)
7. Hakimlik-savcılık-avukatlık sınavında girenlerin başarı oranı (Sınav başarısında yazılı sınavlar esas alınacaktır.)
8. Yabancı dilde hazırlık eğitimi imkânının sunulması
9. Aşağıda örnek olarak belirtilen uygulama veya hukuk kliniği derslerinin müfredatta yer alması:
  - Farazi dava
  - Önstaj ve uygulama dersleri (hukuk uygulamaları, pratik çalışmalar gibi farklı isimler altında verilebilir)
  - İhtiyaç gruplarına hukuk eğitimi verilmesi (Street Law) veya görüş bildirilmesi (Live client clinics) ya da kanun hazırlama (Legal Drafting)
  - Mesleki Yazmaya Becerisine Yönelik Dersler
10. Aşağıda örnek olarak belirtilen araştırma ve beceri geliştirme derslerin müfredatta yer alması:
  - Diksiyon ve Güzel Konuşma Dersleri
  - Hukuk metodolojisi, hukuki araştırma dersleri
  - Avukatlık ve noterlik hukuku
  - Arabuluculuk, tahkim ve uzlaştırma dersleri
  - Yabancı dilde hukuk dersleri

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11. Meslek etiğine yönelik derslere yer verilmesi
12. Uygulamacıların mesleğe yönelik alan derslerini vermesi (temel eğitim alanlarının değil, avukatlık, noterlik veya diğer meslek ve uygulama dersleri)
13. Üniversite bünyesinde hukuk alanında araştırma ve uygulama merkezi, birimi veya enstitüsüne sahip olma
14. Fakülte dergisinin olması
15. Ulusal veya uluslararası en az beş hukuk veri tabanı/programına sahip olma
16. Öğrencilerinin hukuk alanında yurt içi ve yurt dışı yarışmalara katılması
17. Hukukla ilgili kulübün/topluluğun bulunması
18. Yılda en az iki bilimsel toplantı düzenlenmesi



21. YÜZYILDA HUKUK EĞİTİMİ

Ek 2 / Appendix 1

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**AMERİKAN BAROLAR BİRLİĞİ'NİN  
HUKUK FAKÜLTELERİNİN AÇILMASINA DAİR  
STANDART VE KURALLARI  
BÖLÜM 3 VE BÖLÜM 4 TÜRKÇE ÇEVİRİSİ  
2014-2015**

*Prof. Dr. Havva Karagöz*



**Standart 301. HUKUK EĞİTİMİ PROGRAMININ HEDEFLERİ**

- (a) Hukuk Fakülteleri, öğrencileri baroya kabul edilmeye ve hukuk mesleğine etkili, etik ve sorumlu bir şekilde katılmaya hazırlayacak titiz bir programa sahip olmalıdır.
- (b) Hukuk Fakülteleri, bu hedeflere ulaşmayı sağlayacak öğrenim kazanımlarını belirlemeli ve ilan etmelidir.

**Standart 302. ÖĞRENİM KAZANIMLARI**

Hukuk Fakülteleri, en azından aşağıdaki hususlarda yetkinlik sağlayacak öğrenim kazanımları belirlemelidir:

- (a) Maddi hukuk ve usul hukuku bilgisi ve anlayışı
- (b) Hukuki analiz ve akıl yürütme, hukuki araştırma, problem çözümü, hukuki konularda yazılı ve sözlü iletişim
- (c) Hukuk sistemine ve müvekkillere karşı gerekli profesyonel ve etik sorumluluğun üstlenilmesi
- (d) Hukuk mesleğinin bir üyesi olarak mesleğe yetkin ve etik katılım için gerekli diğer profesyonel yetiler.

**Yorum 302-1**

*Standart 302(d) bakımından, diğer profesyonel yetiler, Hukuk Fakültesi tarafından belirlenir. Bunlar arasında mülakat yapma, danışmanlık, müzakerelerde bulunma, olay tespit ve analizi, duruşma uygulaması, belge hazırlama, uyuşmazlık çözümü, hukuki çalışmaların organizasyonu ve idaresi, işbirliği, kültürel yeterlilik ve öz-değerlendirme gibi çeşitli yetiler sayılabilir.*

**Yorum 302-2**

*Hukuk Fakülteleri, kendi hukuk eğitim programlarına uygun olarak ek öğrenim kazanımları da belirleyebilir.*

## 21. YÜZYILDA HUKUK EĞİTİMİ

### Standart 303. MÜFREDAT

(a) Hukuk Fakülteleri, öğrencilerin az azından aşağıdaki hedeflere tatmin edici bir şekilde ulaşmasını sağlayacak bir müfredat sunmalıdır:

- (1) Hukuk mesleğinin ve üyelerinin sorumlulukları, değerleri, hedefleri, yapılanması ve tarihine sağlam bir giriş teşkil edecek en az iki kredi saatlik bir ders,
- (2) İlk yılda bir ve ilk yıldan sonra da en az bir adet öğretim üyesi gözetiminde yazı çalışması,
- (3) Toplamda en az altı kredi saatlik bir veya daha fazla deneyimsel ders. Deneyimsel dersler, simülasyon dersi, hukuk kliniği veya saha çalışması şeklinde olmalıdır. Bu şartı sağlamak için ders öncelikle deneyimsel bir yapıda olmalı ve:
  - (i) doktrin, teori, beceriler ve hukuk etiğini bir araya getirmeli; öğrencileri Standart 302'de belirtilen profesyonel becerilerin bir veya daha fazlasını uygulamaya yöneltmeli;
  - (ii) öğretilen profesyonel becerilerin altında yatan kavramları geliştirmeli;
  - (iii) Öğrencinin performans göstermesi için birçok fırsat sunmalı;
  - (iv) Öğrencinin kendi kendisini değerlendirmesine imkan tanımalı.

(b) Hukuk Fakülteleri, öğrencilerin aşağıdakileri gerçekleştirmesi için imkan sağlamalıdır:

- (1) hukuk klinikleri ve saha çalışması/çalışmaları;
- (2) hukuk alanındaki kamu hizmeti etkinlikleri dahil olmak üzere öğrencilerin karşılıksız hukuk hizmetlerine katılımı.



**Yorum 303-1**

*Hukuk Fakülteleri öğrencilerin bir dersi bu Standart kapsamındaki birden fazla yükümlülüğü sağlamak için kullanmasına izin veremez. Örneğin yazı çalışması içeren ve üst sınıflardaki yazı dersi yükümlülüğünü (bkz. 303(a)(2)) sağlayan bir ders, aynı zamanda Standart 303(a)(3)'te belirtilen deneysel ders yükümlülüğüne sayılamaz.*

**Yorum 303-2**

*Bir yazı çalışmasının zorluk düzeyi değerlendirilirken dikkate alınacak ölçütler, öğrencilere verilen yazı projelerinin sayısı ve niteliği, öğrencilerin yazılarının değerlendirmesinin biçim ve kapsamı, herhangi bir yazı için öğrencilerin hazırlamaları gereken taslak sayısıdır.*

**Yorum 303-3**

*Amerikan Barolar Birliği Model Profesyonel Meslek İlkeleri kural 6.1, avukatların özellikle de maddi durumu yetersiz kişilere ve bu kişilere hizmet veren kuruluşlara ücretsiz hizmet vermesini desteklemektedir. Buna ek olarak, avukatların hukukla ilgili alanlarda ücret karşılığı olmadan kamu hizmetinde bulunması da teşvik edilmektedir. Standart 303(b)(2)'nin yerine getirilmesi amacıyla, Hukuk Fakültelerinin kural 6.1'de belirtilen öncelikleri içerecek şekilde öğrencileri ücretsiz hizmetlere yönlendirmesi desteklenmektedir. Ayrıca, Hukuk Fakülteleri, öğrencilerin Standart 303(b)(2)'ye uygun şekilde öğrencilikleri boyunca en az 50 saat ücretsiz hizmette bulunmasını kolaylaştırıcı imkanlar sunmaya teşvik edilmektedir. Ücretsiz hizmetlerin ve kamu hizmetlerinin Standart 302'de öngörülen sonuçları gerçekleştirecek şekilde yapılandırılması gerekli değildir. Hukuk alanındaki kredisiz inisiyatifler de programın bir parçası olduğu sürece, Standart 303(b)(2) kredili ücretsiz imkanların da Hukuk Fakültesi programına sokulması imkanını dışlamamaktadır.*

**Yorum 303-4**

*Hukuk alanındaki kamu hizmeti etkinlikleri arasında şunlar sayılabilir: (i) kişi hak ve özgürlüklerini ve kamu hürriyetlerini korumayı ve güvence altına almayı hedefleyen topluluk ve kuruluşlara yardım*

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*etmek; (ii) hukuki danışmanlığı karşılayacak maddi durumu olmayan yardım kuruluşlarına, dini kuruluşlara, eğitim kuruluşlarına, resmi kuruluşlara yardım etmek; (iii) başka şekilde bu bilgileri alma imkanı bulunmayan kişilere adaletle, hukukla ve hukuk sistemi ile ilgili bilgi verilen etkinliklere katılmak; (iv) hukuki kuruluşların adaleti yerine getirme fonksiyonlarını ve hukukun üstünlüğünü geliştirecek etkinliklere katılmak.*

### **Standart 304. SİMÜLASYON DERSLERİ VE HUKUK KLİNİKLERİ**

- (a) Simülasyon dersleri, öğrencilere gerçek bir müvekkil olmaksızın şu nitelikleri taşıyan bir deneyim sağlamaktadır:
- (1) bir müvekkili temsil etmek veya danışmanlık yapmak veya öğretim üyesi tarafından kurgulanan veya uyarlanan bir olay çerçevesinde diğer avukatlık görevlerini ifa etmek,
  - (2) aşağıda sayılan unsurları içermek:
    - (i) Öğrencinin performansının öğretim üyesi tarafından doğrudan izlenmesi
    - (ii) Bir öğretim üyesi tarafından performans ile ilgili geri bildirim verilmesi ve öz değerlendirme yapılması
    - (iii) Öğrencilere sınıf içinde ders verilmesi
- (b) Hukuk Kliniği, (1) bir veya daha fazla gerçek müvekkil içeren ve (2) aşağıdaki özellikleri taşıyan bir avukatlık deneyimi sağlamaktadır:
- (i) Bir müvekkili temsil etmek veya danışmanlık yapmak;
  - (ii) Öğrencinin performansının öğretim üyesi tarafından doğrudan izlenmesi
  - (iii) Bir öğretim üyesi tarafından performans ile ilgili geri bildirim verilmesi ve öz değerlendirme yapılması
  - (iv) Öğrencilere sınıf içinde ders verilmesi.

**Standart 305. SAHA ÇALIŞMALARI VE DİĞER SINIF DIŐI ÇALIŐMALAR**

- (a) Hukuk Fakülteleri, saha çalışması programı, farazi dava, doğrudan araştırma ve hukuk dergisi çalışmaları dahil olmak üzere, düzenli olarak yapılan derslere katılım içermeyen çalışma ve etkinliklerin lisans diploması için kredili olarak sayılmasını kabul edebilirler.
- (b) Bu derslerin kredisi, gerektirdikleri zaman ve çalışma ve öğrencinin deneyiminden beklenen eğitim kalitesi ile orantılı olmalıdır.
- (c) Her öğrencinin başarısı, bir öğretim üyesi tarafından değerlendirilmelidir. Uygun bulunduğu hallerde diğer Fakültelerin öğretim üyeleri de öğrencilerin denetimine katkı sağlanması için kullanılabilirler.
- (d) Çalışma ve etkinlikler, Fakültenin müfredatın onaylanmasına ilişkin kuralları çerçevesinde önceden onaylanmalı ve fakültenin müfredat onaylama usulleri çerçevesinde periyodik olarak gözden geçirilmelidir.
- (e) Saha çalışması programları aşağıdaki unsurları içermelidir:
- (1) Amaç ve yöntemlerin net bir açıklaması ve uygulanan program ile bunların arasındaki ilişkinin gösterilmesi;
  - (2) Öğrencilerin ulaşabileceği, program hedeflerine ulaşabilmesi için programa yeterli zaman ve dikkati ayıran, Fakültede ders veren ve programı denetleyen öğretim üyeleri dahil olmak üzere yeterli eğitim kaynakları;
  - (3) Saha denetçisi ve bir öğretim üyesini de içeren, her bir öğrencinin akademik performansını değerlendirmek üzere açıkça belirlenmiş bir yöntem;
  - (4) Saha denetçilerin seçilmesi, eğitilmesi, değerlendirilmesi ve kendileriyle iletişim kurulması için bir yöntem;
  - (5) 3 ve üstü kredi saatlik saha çalışmalarında denetimin ve

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öğrencinin çalışmasının uygunluğu dahil olmak üzere öğrencinin eğitiminin kalitesini temin etmek amacıyla; öğretim üyesi denetçi, Fakülte yönetimi, saha denetçisi ile düzenli iletişim;

(6) Öğrencilerin saha çalışmasına katılmadan önce lisans diploması için gerekli 28 kredi saatini başarıyla tamamlaması gerektiğine dair kural;

(7) Seminer, düzenli dersler veya diğer rehberli etkinlikler şeklinde öğrencilerin yaptıkları saha çalışması üstünde düşüncelerini sağlayan imkanlar. 3 ve üstü kredi saatlik saha çalışmalarında bu imkan sürekli olarak tanınmalıdır.

(f) Saha çalışması programı yürüten her Fakülte, programın eğitim hedeflerini tarif eden bir açıklama geliştirmek, yayınlamak ve öğrenci ve saha denetçilerine iletmek zorundadır.

### **Yorum 305-1**

*Düzenli iletişim, bizzat ziyaret ederek yüz yüze veya öğrencinin eğitiminin kalitesini temin edecek diğer bir iletişim yoluyla yapılabilir.*

### **Yorum 305-2**

*Hukuk Fakülteleri, öğrencilere karşılık aldıkları bir saha çalışması programı için kredi veremezler. Bu yorum, saha çalışmasına ilişkin öğrencinin yaptığı makul masrafların ödenmesini engellemez.*

## **Standart 306. UZAKTAN EĞİTİM**

(a) Uzaktan eğitim dersi, öğretimin üçte birinden fazlasında öğrencilerin öğretim üyesinden ve birbirlerinden ayrı olduğu; öğrenciler arasındaki ve öğrencilerle öğretim üyesi arasındaki düzenli iletişimin teknoloji yardımıyla simültane olarak veya olmayarak sağlandığı derstir.

(b) Uzaktan eğitim dersinin kredilendirilmesi; dersin akademik içeriğinin, dersin verilmiş yönteminin ve öğrencinin perfor-

mansının değerlendirilmesinin Fakültenin müfredat onaylama sürecinden geçirilmesine bağlı olmalıdır.

- (c) Hukuk Fakülteleri, uzaktan eğitimin kalitesinin sağlanması için gerekli teknolojik yeterliliğe, insan gücüne, bilgi kaynaklarına ve imkanlara sahip olmalıdır.
- (d) Hukuk Fakültelerinin uzaktan eğitimi kredilendirmesi ve bu krediyi Standart 310(b)'de belirtilen 64 kredi saatlik düzenli sınıf içi derslere ve öğretim üyesi ile doğrudan eğitime sayması için aşağıdakilerin gerçekleşmesi gerekmektedir:
- (1) Öğrencilerin öğretim üyesi ile ve diğer öğrencilerle düzenli ve anlamlı şekilde iletişim kurma imkanının bulunması;
  - (2) Öğretim üyesinin öğrencilerin çalışmasını düzenli olarak gözlemlemesi ve bununla ilgili öğrencilerle iletişim kurması;
  - (3) Dersin öğrenim kazanımlarının Standart 302 ile uyumlu olması.
- (e) Fakülte, bu Standart'ta belirtilen dersler için öğrencilere lisans diploması için toplamda 15 kredi saatten daha fazla kredi tanımamalıdır.
- (f) Fakülte, öğrenciler lisans diploması için gereken 28 kredi saati tamamlamadıkça, öğrencileri bu Standart'ta düzenlenen derslere kaydetmemelidir.
- (g) Fakülte, uzaktan eğitim alan öğrencilerin kimliklerini doğrulayabilecek etkili bir yöntem geliştirmek ve aynı zamanda öğrencilerin özel yaşamının gizliliğini korumak zorundadır. Eğer bu doğrultuda ek masraflar çıkacaksa, öğrenciler bununla ilgili olarak derse kayıt anında bilgilendirilmelidir.

### **Yorum 306-1**

*Uzaktan eğitim derslerini desteklemek amacıyla kullanılacak teknolojik imkanlar örnek olarak aşağıdakileri içerebilir:*

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- (a) İnternet;
- (b) Tek yönlü veya çift yönlü açık yayın, kapalı devre, kablolu yayın, mikrodalga, geniş bantlı hatlar, fiber optik, uydu, kablosuz iletişim araçlar;
- (c) Sesli veya video konferans;
- (d) Eğer paragraf (a), (b) ve (c)'de belirtilen teknolojilerin biri ile bağlantılı olarak kullanılıyorsa video kasetler, DVD'ler, CD-ROM'lar.

### **Yorum 306-2**

*Standart 306(g)'de açıklanan öğrencinin kimliğini doğrulama yöntemleri, sınırlı olmamak kaydıyla şöyle sayılabilir: (i) Güvenli giriş şifresi, (ii) gözetmenli sınavlar ve (iii) öğrencinin kimliğini etkin şekilde doğrulayabilecek diğer teknolojik yöntemler. Doğrulama sürecinin bir parçası olarak, Fakülte, derse kaydolan öğrencinin derse devam eden ve sınava giren öğrenci olduğunu doğrulamalıdır.*

### **Standart 307. AMERİKA BİRLEŞİK DEVLETLERİ DIŞINDAKİ ÇALIŞMALAR, ETKİNLİKLER VE SAHA ÇALIŞMALARI**

- (a) Hukuk Fakülteleri, (1) Konsey tarafından kabul edilen Kurul ve Usuller çerçevesinde onaylanan Birleşik Devletler dışındaki çalışma ve etkinlikler için ve (2) Standart 305'teki gereklilikleri taşıyan ve Konsey tarafından kabul edilen Kurul ve Usuller çerçevesinde onaylanan çalışma ve etkinlikler ile bağlantılı olmayan Birleşik Devletler dışındaki saha çalışmalarını için kredi verebilir.
- (b) Bu çalışma veya etkinliklerin toplam kredisi, lisans diplomasının gerektirdiği toplam kredilerin üçte birini aşamaz.

### **Yorum 307-1**

*Konsey tarafından kabul edilen üç kriter; Amerikan Barolar Birliği Onaylı Hukuk Fakülteleri'ndeki Yabancı Yaz ve Ara Tatil Programlarının Onaylanmasına Dair Kriterler, Amerikan Barolar Birliği*

*Onaylı Hukuk Fakülteleri'ndeki Dönemlik ve Yıllık Yurt Dışında Eğitim Programlarının Onaylanmasına Dair Kriterler, ve Yabancı Kurumlarda Yapılan Çalışmaların Kredilendirilmesi Kriterleri'dir.*

**Yorum 307-2**

*Standart 307 kapsamında, Fakültenin müfredat onaylama süreci doğrultusunda onaylanmış ve esasen Fakültede verilmekte olan bir ders kapsamında kısa süreyle Birleşik Devletler dışında bir ülkeye ziyaret yapılması, Birleşik Devletler dışında çalışma olarak kabul edilmemektedir.*

**Standart 308. AKADEMİK STANDARTLAR**

- (a) Hukuk Fakülteleri; başarı, akademik dürüstlük, mezuniyet ve okuldan uzaklaştırma konuları dahil olmak üzere makul akademik standartlar düzenlemeli, yayınlamalı ve bunlara bağlı kalmalıdır.
- (b) Hukuk Fakülteleri, öğrencilerin başarısını veya mezuniyetini etkileyebilecek eylemlere karşı yazılı kurallar koymak, bunları ilan etmek ve bunlara uymakla yükümlüdür.

**Standart 309. AKADEMİK DANIŞMA VE DESTEK**

- (a) Hukuk fakülteleri öğrencilerine fakültenin akademik standartları ile mezuniyet şartlarını etkin bir şekilde iletebileceği ve ders seçiminde öğrencilere kılavuzluk edebilecek bir akademik danışma hizmeti sunmalıdır.
- (b) Hukuk fakülteleri öğrencilerine hukuk eğitimini bitirmek, mezun olmak ve hukuk mesleğinin bir üyesi olmak için makul bir imkan tanıyan akademik destek sistemine sahip olmakla yükümlüdür.

**Standart 310. DERS ÇALIŞMALARI İÇİN KREDİ SAATLERİNİN BELİRLENMESİ**

- (a) Hukuk fakülteleri ders içi çalışmalarına katkı yapacak kredi saatlerinin belirlenmesi için yazılı prensipler benimsemelidir.

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(b)Kredi saati aşağıdakilere makul ölçüde eşdeğerde olan çalışma miktarıdır:

- (1)15 hafta boyunca haftalık bir ders saatinden ya da doğrudan fakülte dersinden ve iki saat ders dışı öğrenci çalışmasından az olmayan ya da daha farklı bir zaman aralığında gerçekleştirilen aynı miktardaki çalışma,
- (2)En az yukarıdaki fıkrada aranan çalışma miktarına eşdeğer olan ve kurum tarafından düzenlenen simülasyon, saha çalışması, klinik, eş-müfredatla ilgili ya da kredi saatlerinin doldurulmasını hedefleyen başka akademik çalışmalar dahil olmak üzere başka aktivitelerde gerçekleştirilmiş çalışma miktarı.

### Yorum 310-1

*Bu kuralın gerçekleştirilmesi için 50 dakika bir saatlik ders ya da fakülte dersi için yeterlidir. "Bir saat"lik sınıf dışı öğrenci çalışması 60 dakikadır. 15 haftalık dönem 1 haftalık final sınavı dönemini de içerebilir.*

### Yorum 310-2

*Ders çalışması ders saatinin, fakülte dersinin ya da 310 B'de belirtilen öğrencinin sınıf dışı çalışmasının asgari miktarından az değilse, fakülte herhangi bir zamana yayılan her ders çalışması için kredi saati belirleyebilir.*

## Standart 311. AKADEMİK PROGRAM VE AKADEMİK TAKVİM

(a)Hukuk fakülteleri 140 günden az olmayan ve fakültede derslerin ve sınavların düzenli bir şekilde planlandığı bir akademik takvime sahip olmalıdır. Hukuk fakülteleri okuma dönemleri ve ara tatilleri için uygun bir zaman ayırmalıdır; ancak bu zamanlar 140 günlük akademik yıl şartı için dikkate alınmayacaktır.

(b)Hukuk fakülteleri bir mezuniyet şartı olarak 83 kredi saatinden az olmayan bir eğitim döneminin tamamlanmasını



aramakla yükümlüdür. Bu kredi saatlerinden en az 64'ü düzenli bir şekilde planlanmış sınıf derslerine ya da fakülte derslerine katılım gerektirmelidir.

- (c) Hukuk fakülteleri lisans derecesi için öğrenim süresinin 24 aydan az olamayacağını, ancak istisnai durumlarda öğrencinin hukuk fakültesine ya da kredi transferinin kabul edildiği bir başka hukuk fakültesine başlamasından itibaren 84 ayı geçemeyeceğini zorunlu tutmakla yükümlüdür.
- (d) Hukuk fakülteleri, mezuniyet için aramış olduğu toplam kredi saatinin yüzde 20'sini aşacak şekilde ders kaydı yapmasına izin vermemelidir.
- (e) Hukuk öğrencisinin sadece hukuk fakültesine kayıt olduktan sonra yapmış olduğu ders çalışması için verilen notlar lisans derecesinde dikkate alınabilir. Bir ön-kabul programında yapılan çalışmaya lisans derecesinde not verilmeyecektir.
- (f) Hukuk fakülteleri düzenli derse katılımı şart koşan prensipler benimsemekle yükümlüdür.

### **Yorum 311-1**

*Hukuk fakültesi 140-gün şartı için haftada beş ders gününden fazlasını kabul edemez.*

### **Yorum 311-2**

- (a) Kural 311 (b) bakımından düzenli olarak planlanmış ders oturumlarına ve fakülte dersine ait 64 kredi saatinin hesabında, aşağıdakiler hesaba katılabilir:
  - (1) Düzenli olarak planlanan ders oturumlarına ya da fakülte derslerine katılım ile kazanılan kredi saatleri,
  - (2) Kural 304'e uygun olarak düzenlenen simülasyon dersi ya da hukuk kliniğine katılım ile kazanılan kredi saatleri,
  - (3) Kural 304'e uygun olarak uzaktan eğitim ile kazanılan kredi saatleri, ve

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- (4) Kural 307'ye uygun olarak ABD dışındaki bir ülkedeki hukukla bağlantılı eğitim ve aktivitelere katılım ile elde edilen kredi saatleri.
- (b) Kural 311 (b) bakımından, düzenli olarak planlanmış ders saatlerine ve fakülte dersine ait 64 kredi saatinin hesabında, aşağıdakilerle sınırlı olmamak üzere başka bir ders çalışması hesaba katılmayacaktır:
- (1) Kural 305'e uygun olarak, sınıf dışında saha çalışmasında ve diğer eğitimlerde kazanılan kredi saatleri,
- (2) Hukuk fakültesi ile bağlantıda olan başka üniversitelerin departman, okul ya da yüksekokullarında ya da bir başka yükseköğretim kurumunda kazanılan kredi saatleri,
- (3) Hukuk dergisi hazırlama, moot court ya da farazi dava yarışması gibi eş müfredata ait aktivitelere katılım ile kazanılan kredi saatleri,
- (4) Kural 307'deki hukuk bağlantılı olmayan eğitim ya da aktivitelere uygun olarak ABD dışındaki bir ülkedeki hukukla bağlantılı eğitim ve aktivitelere katılım ile elde edilen kredi saatleri.

### Yorum 311-3

*Bir öğrencinin olağanüstü koşullar sebebiyle 311(c)'de belirtilen 84 aylık süre sınırlamasını aştığı takdirde, hukuk fakültesi öğrencinin dosyasına uygun bir görevli tarafından imzalanan ve hukuk fakültesinin kabul ettiği olağanüstü koşulların açıklandığı bir açıklama yazısı eklenir. Bu olağanüstü koşullar, örneğin, öğrencinin eğitimine hastalık, aile kaynaklı zorunluluklar, ya da askeri hizmet olabilir.*

### Yorum 311-4

*Standart 311(c) bakımından, hukuk fakültesine başlangıç tarihi, normal olarak, öğrencinin herhangi bir kurumda hukuk eğitimine başladığı tarihtir. Örneğin, eğer bir hukuk fakültesi bir başka kurumdan kredi transferine izin veriyorsa, öğrenim süresi, öğrencinin transfer kredisinin kabul edildiği kurumda öğrenime başlaması ile başlamaktadır. Eğer hukuk fakültesi, Standart*

305'te kabul edildiği üzere, ABD dışında bir başka hukuk fakültesinden gelen bir öğrenciyi kabul ederse, ancak verilen kredi ile orantılı olan zaman Standart 311(c)'de yer alan öğrenim süresi olarak kabul edilecektir.

### **Standart 312. MAKUL ÖLÇÜDE KARŞILAŞTIRILABİLİR İMKANLAR**

Birden fazla bölüm ya da program sunan hukuk fakültele-ri, tüm öğrencilerinin, fakültede verilen hukuk eğitimine, tam zamanlı öğretim üyeleri tarafından verilen derslere, öğrenci hizmetlerine, eş-müfredat programlarına ve diğer eğitim olanaklarına erişimde makul ölçüde denk fırsatlara sahip olmasını sağlamakla yükümlüdür. Fırsatların tamamen aynı olması aranmamaktadır.

### **Standart 313. LİSANS DERECEŚİ DIŐINDAKİ PROGRAMLAR**

Hukuk fakültesi,

- (a) Fakülte tamamen onaylanmadığı/açılmadığı,
  - (b) Konsey programa onay vermediği ve
  - (c) Program, hukuk fakültesinin hukuk eğitimi programını yürütürken Standartlara uymasını engellediği
- sürece, lisans derecesi dışında bir program sunamaz.

#### **Yorum 313-1**

*Lisans derecesi dışında bir başka programın açılmasına onay verilmesi, tek başına programın kendisine onay verildiği anlamına gelmez; bu yüzden hukuk fakültesi programın Konsey tarafından onaylandığını duyuramaz.*

### **Standart 314. ÖĞRENCİNİN ÖĞRENME SÜRECİNİN DEĞERLENDİRİLMESİ**

Hukuk fakültesi, öğrencinin öğrenimini ölçmek ve geliştirmek amacıyla müfredatında hem biçimsel hem de genel de-

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ğerlendirme metotlarını kullanmalı, ayrıca öğrencilere anlamlı geri bildirimlerde bulunmalıdır.

### **Yorum 314-1**

*Biçimsel değerlendirme metotları, bir dersin ya da öğrencinin eğitim döneminin farklı noktalarında alınan ve öğrencinin öğrenimini geliştirmek için anlamlı bir geri bildirim sağlayan ölçütlerdir. Genel değerlendirme metotları bir dersin ya da öğrencinin hukuk eğitiminin sona eren herhangi bir kısmında alınan ve öğrencinin öğreniminin derecesini gösteren ölçütlerdir.*

### **Yorum 314-2**

*Hukuk fakültesi herhangi bir derste birden fazla değerlendirme metodu uygulamayabilir. Değerlendirme metotları genel olarak okuldan okula farklılık gösterir. Standart 314, hukuk fakültelerini belirli bir değerlendirme metodu kullanma yükümlülüğü altına sokmamaktadır.*

## **Standart 315. HUKUK EĞİTİMİ PROGRAMININ GELİŞİMİ, ÖĞRENME ÇIKTISI VE DEĞERLENDİRME METOTLARI**

Hukuk fakültelerinin dekanları ve öğretim üyeleri; fakültenin eğitim programını, öğrenme çıktısı ve değerlendirme metotlarını sürekli olarak değerlendirmek ve bu değerlendirmenin sonuçlarını, öğrencinin öğrenme çıktısına ilişkin yetkinliklerinin düzeyini belirlemek ve müfredatı geliştirmek için kullanmak zorundadır.

### **Yorum 315-1**

*Öğrencinin hukuk fakültesindeki öğrenim sonuçlarına ilişkin yetkinliklerinin ne düzeyde olduğunu ölçmeye yarayan metotlar örnek olarak; okulun her bir öğrencinin başarısını ölçmek için Standart 314 uyarınca tuttuğu kayıtların değerlendirilmesi, öğrencilerin öğrenim portföylerinin değerlendirilmesi, öğrencilere verilen eğitimin yeterliliğinin değerlendirilmesi, öğrencinin temel derslerdeki ve farklı bilgi ve yetileri ölçen diğer derslerdeki*

*performansı, baro sınavı sonuç verileri, bölüm yerleştirme verileri, avukatların, hakimlerin ve mezunların incelemeleri, ve farklı okul ya da yerlerden hakim, avukat ve ya hukuk profesörleri tarafından yapılan öğrenci değerlendirilmeleri gibi metotları içermektedir.*

**Standart 316. BAROYA KABUL**

(a) Kural 301(a) bakımından hukuk fakültelerinin baro sınavındaki başarı oranı, aşağıda belirtilen şartlar gerçekleştiğinde yeterli kabul edilecektir:

(1) Hukuk fakültesinden son beş takvim yılında mezun olan öğrenciler açısından:

(i) Baro sınavına giren mezunların %75i ve ya daha fazlasının ya da

(ii) Bu takvim yıllarından en az üçünde mezun olan ve baro sınavına katılan öğrencilerin %75'inin baro sınavını geçmiş olması gerekmektedir.

(1) inci ve (i),(ii) maddelerde belirtilen koşullara uyulduğunu göstermek amacıyla, hukuk fakülteleri, her sene mezunlarının en az %70'inin baro sınavı başarı sonuçlarını açıklayabilecek ölçüde ve olabildiğince farklı bölgelerden alınan baro sınavı başarı sonuçlarını raporlamak zorundadır. Bu sonuçlarda bölgeler en fazla mezunun baro sınavına girmiş olduğu bölgeden başlayarak en azının girmiş olduğu bölgeye doğru sıralı olarak belirtilmelidir.

(2) Son beş takvim yılının üçüne ya da daha fazlasına ilişkin olarak, fakültenin raporladığı katılanların baro sınavına ilk girişlerindeki senelik başarı oranı, söz konusu bölgelerde baro sınavına giren ABA onaylı hukuk fakültelerinin mezunlarının baro sınavına ilk girişlerindeki başarı oranından 15 puan aşağısında yer almamalıdır.

(2) inci maddede belirtilen koşullara uyulduğunu göstermek amacıyla hukuk fakülteleri, her sene baro sınavına ilk girişteki başarı oranına ilişkin bilgileri, mezunlarının en az

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%70'inin baro sınavı başarı sonuçlarını gösterebilecek ölçüde ve olabildiğince farklı bölgelerdeki baro sınavı başarı sonuçlarını içerek şekilde raporlamak zorundadır. Bu sonuçlarda bölgeler en fazla mezunun baro sınavına girmiş olduğu bölgeden başlayarak en azının girmiş olduğu bölgeye doğru sıralı olarak belirtilmelidir. Eğer birden fazla bölge rapor edilmişse, raporlanan bölgelerdeki sonuçların ağırlıklı ortalaması kullanılacaktır.

- (b) Bir hukuk fakültesi bent (a), (1) ve ya (2)'deki şartlara uyulduğunu gösteremediği takdirde bu Standarda uymamış kabul edilir.
- (c) (b) bendi uyarınca uygunluk şartlarını taşımayan ve "Hukuk Fakültesi Açılmasına İlişkin Usuller'in 13(b). maddesinde belirtilen 2 yıllık sürede uyumu sağlayamayan bir fakülte, süresiye uzatmayı talep etmek için ortaya makul bir gerekçe koymalı ve aşağıdaki delilleri sunmalıdır:
- (1) Baro sınavlarına hem ilk defa hem de daha sonraki seferlerde girenlerle ilişkin olarak fakültenin baro sınavı başarı oranlarındaki durumu: başarı oranındaki açık bir gelişme okulun lehine, düşüşte olan ya da değişmeyen sonuçlar ise aleyhine olarak değerlendirilecektir.
  - (2) Hukuk fakültesinin baro sınavı başarı oranlarının şartların altında olduğu ilk zamandan itibaren ve (a) bendinde belirtilen oranların üzerinden geçen sürenin uzunluğu: kısa süre fakültenin lehine, daha uzun süre ise aleyhine olarak değerlendirilecektir.
  - (3) Okulun baro sınavının **geçilmesi** sorununa yönelik yapmış olduğu faaliyetler, özellikle hukuk fakültesinin akademik olarak zorluğu/titizliği ve akademik desteği ile baro sınavına hazırlık programlarının ispat edilmiş değeri ve etkinliği: baro sınavındaki başarı sorunlarına ilişkin olarak gerçekleştirilen katma değer olduğu, efektif, sürdürülebilir ve yaygınlaştırılmış aktiviteler hukuk fakültesinin lehine; etkisiz ya da çok az etkide bulunan programlar ile kısıtlı hareketler ise hukuk fakültesinin aleyhine olarak değerlendirilecektir.

- (4) Hukuk fakültesinin baro sınavına ilk girişlerinde başarılı olmayan öğrencilerine yardım için gerçekleştirmiş olduğu çaba: hukuk fakültesinin etkili ve sürekli çabaları okulun lehine dikkate alınacaktır; buna karşı etkisiz veya sınırlı çabalar ise aleyhine olarak değerlendirilecektir.
- (5) Hukuk fakültesinin hukuk eğitimine daha geniş bir katılımın olmasını sağlama çabasını akademik zorluğu/tizliği koruyarak gerçekleştirmesi: sürekli ve anlamlı çabalar hukuk fakültesinin lehine, buna karşı kesintili veya sınırlı çabalar okulun aleyhine olarak kabul edilecektir.
- (6) Başka ABA onaylı hukuk fakültelerine geçiş yapan öğrencilerin baro sınavını geçeceğine ilişkin kanıtlanabilir olasılık: baro sınavını geçmesi kuvvetle muhtemel öğrencilerin geçişleri, okulun başarılı öğrencilerini tutmak için danışmanlık gerçekleştirmesi ve diğer uygun çabaları göstermesi şartıyla okulun lehine kabul edilecektir.
- (7) Hukuk fakültesinin kontrolü dışında olan ancak fakülteyi ilgilendiren geçici durumlar: örneğin işleyişi engelleyen bir doğal felaket ya da ilgili baro sınavını/sınavlarını başarmak için aranan düzeyin ciddi bir şekilde arttırılmış olması.
- (8) Hukuk fakültesinin göstermiş olduğu ve takip ettiği misyonuyla uyumlu olan, fakültenin baro sınavı başarı oranlarındaki yetersizliğini ve fakültenin bunları geliştirmek için gösterdiği çabayı açıklayabilecek diğer etkenler.

## BÖLÜM 4 ÖĞRETİM ÜYELERİ

### Standart 401. ARANAN NİTELİKLER

Hukuk fakülteleri, fakültenin belirtilen misyonuna ve Standart 301 ve 302'deki şartlarla tutarlı bir hukuk eğitimi programını sürdürmeye uygun niteliklere ve deneyime sahip olan öğretim üyelerinden oluşmalıdır. Öğretim kadrosu, eğitimlerinden anlaşılacağı üzere, yüksek seviyede uzmanlığa, öğretim

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veya uygulama deneyimine, öğretimde etkinliğe, akademik araştırma ve yazma deneyimine sahip olmalıdır.

### **Standart 402. ÖĞRETİM KADROSUNUN BOYUTU**

- (a) Hukuk fakülteleri, Standartların gerekliliklerini yerine getirebilmek ve eğitim programının hedeflerini gerçekleştirebilmek için yeterli sayıda tam zamanlı öğretim üyesini bünyesinde barındırmalıdır. Tam zamanlı öğretim kadrosunun boyutunun bağlı olduğu ölçütler şunlardır:
- (1) Öğrenci sayısı ve öğrencilerin öğretim üyeleriyle birebir görüşme ve onlara danışma imkânı,
  - (2) Eğitim programının mahiyeti ve kapsamı,
  - (3) Öğretim üyelerinin öğretim yükümlülüklerini düzgünce yerine getirebilme, akademik araştırma yapma ve fakültenin yönetimine, hukuk mesleğine ve kamu hizmetlerine etkin biçimde katılabilmek imkânı.
- (b) Tam zamanlı bir öğretim üyesi, birincil profesyonel uğraşı hukuk fakültesiyle ilgili olan; akademik yıl boyunca çalışma zamanının tamamını esasen Standart 404 (a)'da tanımlanan sorumluluklarını yerine getirmeye harcayan; eğer varsa, dışarıdaki profesyonel faaliyetleri asıl akademik ilgi alanıyla ilişkili veya öğretim üyesinin araştırmacı veya eğitmen olarak kabiliyetini zenginleştiren ve bu faaliyetleri hukuk mesleğinin ve genel olarak kamunun hizmetinde olup öğretim üyeliğinden kaynaklanan sorumluluklarını engellemeyen kişidir.

### **Yorum 402-1**

Bir hukuk fakültesinin Standartlara uygun olduğu belirlenirken, tam zamanlıya denk öğrenci sayısının tam zamanlıya denk öğretim üyesi sayısına oranı dikkate alınır.

- (1) Öğrenci/Öğretim üyesi hesaplamasında, tam zamanlıya denk öğretmenler daimi kadrolu olacak şekilde istihdam



edilenler veya buna eşdeğer olanlardır ve her biri 1 (bir) sayılırlar. Bunlara aşağıda belirtilen “ek eğitim kaynakları” eklenir. Fakültenin ek eğitim kaynağı olarak istihdam edeceği öğretmen sayısı, hiçbir sınıra tabi değildir. Ancak bu kaynaklara 1’den az değer biçilir ve bu hesaplama çerçevesinde bu ek kaynakların toplamı tam zamanlı öğretim üyelerinin %20’sini geçemez.

(A) Ek eğitim kaynakları ve her kategoriye verilen orantılı ağırlıklar şu şekildedir:

(i) Kadrolu olarak istihdam edilme olasılığı olan ve tam zamanlı kadrolu öğretim üyelerinin sahip olduklarının ötesinde görevleri olan öğretmenler: 0,5

(ii) Tam zamanlı üyeler kadar ders veren kadrolu olarak tam zamanlı istihdam edilme olasılığı olmayan klinisyenler ve hukuki yazım eğitmenleri: 0,7

(iii) Ders veren geçici istihdam edilen öğretim üyeleri veya emekli profesörler, ders veren tam zamanlı kadroya geçme olasılığı olmayan idareciler, ders veren kütüphaneciler, üniversitenin diğer birimlerinden ders verenler: 0,2

(B) Bu normlar ek eğitim kaynaklarının katkılarını etkin biçimde değerlendirmek için bir çerçeve oluşturmak için seçilmiştir. Yukarıdaki kriterlere uymayan öğretim üyeleri çalıştıran fakültelerde hesaplamalar, yukarıdaki kriterlere kıyasen yapılır. Bu ağırlıklı ortalama sistemi her zaman bir öğretim üyesinin fakülteye olan katkısını yansıtmayabilir. İstisnai durumlarda, fakülte bu ağırlıklı sistemin öğretim üyelerinin fakülteye katkısını yansıtmadığını kanıtlamaya çalışabilir.

(2) Öğrenci/öğretim üyesi oranını saptamak amacıyla, bir dönemde on krediden daha az ders alan öğrencilerin tam zamanlı, bir dönemde on üç krediden fazla ders alan öğrencilerin yarı zamanlı sayılmaması şartıyla öğrenciler tam veya yarı zamanlı olarak fakülte tarafından belirlenir. Yarı zamanlı öğrenci, 2/3 öğrenci sayılır.

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- (3) Eğer varlıkları lisans programının kaynaklarının yetersizliğine neden olan yüksek lisans, doktora öğrencileri veya diploma almayacak öğrenciler varsa, o programın değerlendirilmesinde fakültenin şartları dikkate alınır.

### **Yorum 402-3**

*Öğrenci/öğretim üyesi oranı, hukuk fakültesinin Standartlar'a uyumunda dikkate alınır.*

- (1) 20:1 veya daha az oranlar hukuk fakültesinin Standartlar'a uyduğunu gösterir. Ancak tam zamanlı öğretim üyesi kadrosunun büyüklüğü ve görevlerinin Standartlar'a uyup uyumadığı değerlendirilirken eğitime ilişkin etkiler de incelenecektir.
- (2) 30:1 veya daha yüksek oranlar, hukuk fakültesinin Standartlar'a uymadığını gösterir.
- (3) 20:1 ve 30:1 arasında bir oran olması durumunda veya 30:1 üstündeki bir oranın yarattığı karineyi çürütmek için, değerlendirmede okul programındaki eğitim kalitesi, sınıf boyutu, küçük sınıfların uygunluğu ve seminerler, öğrenci öğretim üyesi iletişimi, sınavlar ve notlandırma, akademik katkılar, kamu hizmetleri, yönetim sorumluluklarının yerine getirilmesi ve hukuk fakültesinin misyonunu gerçekleştirme kapasitesi dahil tüm eğitim kaynaklarının etkileri dikkate alınacaktır.

### **Yorum 402-3**

*Başka bir okulda tam yüklü bir ders veren tam zamanlı bir öğretim üyesi, iki fakültede de tam zamanlı öğretim üyesi sayılabilir.*

### **Yorum 402-4**

*Düzenli olarak hukuk mesleğini icra etmesi veya bir hukuk bürosu veya bir işyeri ile süregelen bir ilişkisi olması, öğretim üyesinin tam zamanlı öğretim üyesi olmadığı yönünde bir karine yaratır. Eğer hukuk fakültesi, bu öğretim üyesinin öğretime, araştırmaya, kamu hizmetine tam zamanlı bağlılığını, öğrenciler için her zaman ulaşılabilir*

*olduğunu ve fakültenin yönetimine tam zamanlı bir öğretim üyesinden beklendiği ölçüde katıldığını ispatlarsa, karine çürütülebilir.*

### **Standart 403. ÖĞRETİM ÜYELERİNİN EĞİTİCİ ROLÜ**

- (a) Tam zamanlı öğretim üyeleri, fakültenin müfredatının önemli bir kısmını öğretmelidir. Bu kısım her bir öğrencinin ders yükünün üçte birini içerir.
- (b) Hukuk fakülteleri,, öğrencilere herkesin etkili eğitim vermesini güvence altına alır.
- (c) Hukuk fakülteleri, öğretim programını zenginleştirmek için, tecrübeli avukatlar ve hakimlere de yer vermelidir. Bu kişilerden düzgün faydalanmak adına bu kişiler yönlendirilmeli, gözetim ve değerlendirilmeye tabi tutulmalıdır.

#### **Yorum 403-1**

*Tam zamanlı öğretim üyelerinin öğretim sorumluluğu fakültenin her bir bölümünde veya programında (tam zamanlı, yarı zamanlı, hafta sonu gibi) öğretilen derslerin kredisine göre belirlenir. Bir kişinin birincil profesyonel uğraşı hukuk fakültesindeyse, Standart 403 (a) kapsamında o kişi tam zamanlı öğretim üyesi sayılır.*

#### **Yorum 403-2**

*Eğitimin etkinliğini teminat altına alma önlemleri şunları içerebilir: Etkili eğitim için bir fakülte komitesi, sınıf ziyaretleri, derslerin videoya çekilip eleştirilmesi, öğrencilerin değerlendirmelerinin kurumsal teftişi, etkili eğitim hakkında seminerler, hukuk eğitimi metodolojisinde yaratıcılık bursu verilmesi. Bir hukuk fakültesi, tüm öğretim üyelerini yönlendirmeli, gözetim altında tutmalı, belirli aralıklarla değerlendirmeli, onlara rehberlik etmelidir.*

### **Standart 404. TAM ZAMANLI ÖĞRETİM ÜYELERİNİN YÜKÜMLÜLÜKLERİ**

- (a) Hukuk fakülteleri, tam zamanlı öğretim üyelerinin eğitime, akademiye, hukuk fakültesine, fakülte dışı profesyonel faaliyetlerine dair yükümlülüklerine ilişkin bir politika belir-

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lemelidir. Bu politika tek biçimlilik üzerine kurulmamalıdır. Ancak aşağıda sayılan noktaları açıklığa kavuşturmalıdır:

- (1) Öğretim üyelerinin eğitime ilişkin yükümlülükleri: Fakülte derslerinin ciddi bir kısmını üstlenmeleri, derslere hazırlanmaları, öğrencilerin danışmaları için hazır olmaları, akademik danışmanlık yapmaları, öğrencilerin ve diğer üyelerin fikirlerini özgürce söyleyip paylaşabilecekleri bir ortam yaratmaları.
- (2) Araştırmalar ve burslar ve bursların kullanımında dürüstlük: Öğrenci araştırma görevlilerinin düzgün çalıştırılması, diğerlerinin katkılarının göz ardı edilememesi ve öğretim üyelerinin alanlarındaki yeni gelişmelerle iç içe olması.
- (3) Fakülteye ve üniversiteye karşı sorumluluklar: Fakülte yönetimine katılmak
- (4) Mesleğe karşı yükümlülükler: Baro ve yargı organlarıyla işbirliği
- (5) Kamuya karşı yükümlülükler: Yardım niteliğindeki (bedelsiz) faaliyetler
- (b) Hukuk fakülteleri, her bir öğretim üyesinin yukarıdaki standartlarda yer alan yükümlülüklerle ne ölçüde uyduğunu düzenli olarak denetler.

### **Standart 405: PROFESYONEL ÇEVRE**

- (a) Hukuk fakülteleri, uzman bir akademik kadro çekecek ve barındıracak koşulları sağlamalıdır.
- (b) Hukuk fakülteleri, akademik özgürlüğe ve kadroya ilişkin belirli bir politikaya sahip olmalıdır.
- (c) Hukuk fakülteleri, tam zamanlı klinik öğretim üyelerine kadroya eşdeğer koruma sağlayan bir statü sunabilmelidir. Fakülte bu kişilerin tam zamanlı öğretim üyelerine yakın yükümlülükler üstlenmesini talep edebilir. Ancak bu Standart, seminerler ya da kısa süreli eğitim programlarındaki görevlendirmeleri kapsamaz.

(d) Hukuk fakülteleri, akademik özgürlüğün korunduğu ve Standart 302 (a)(3)'teki şartların yerine getirildiği bir hukuki yazım eğitimi verilebilmesi amacıyla, yukarıda belirtildiği gibi güvenli bir statü dahilinde hukuki yazma tekniği eğitmeni istihdam etmelidir.

### **Yorum 405-1**

*Öğretim üyelerinin ne kadarının kadrolu olacağına dair bir yüzde sınırı, her koşulda Standartları ihlal eder.*

### **Yorum 405-2**

*Hiçbir öğretim üyesi, üniversite pazarlık biriminin üyesi olmamalıdır.*

### **Yorum 405-3**

*Hukuk fakülteleri, adayları terfi ettirmek, kadroya almak veya güvenli başka bir statü vermek için kapsamlı bir değerlendirme sistemi kurmalı ve bu sistem öğretim üyelerine açık yazılı ölçüt ve usuller içermelidir.*

### **Yorum 405-4**

*Bir üniversitenin parçası olmayan bir hukuk fakültesi, işe alınma, görevden alınma, kadroya atanma, terfi edilme hakkında bir üniversitenin parçası olan hukuk fakülteleri ile eş derecede adil ve denetime tabi ilkeler koymalıdır. Öğretim üyeleri ve dekan bir aday hakkında olumsuz bir görüş bildirdilerse, adayın rektöre, başkana ya da yönetim kuruluna başvuru yapma hakkı olmalıdır.*

### **Yorum 405-5**

*Dekan veya öğretim üyeleri değerlendirme takvimleri için sorumluluk hususunda karar almışlarsa ve takvim yetkililerce ilan edilmişse, fakültenin üyelerinden bu takvime uyulmasının talep edilmesi akademik özgürlüğü ihlal etmez.*

### **Yorum 405-6**

*Kadroya eşdeğer güvenceli statü, ayrı bir kadro imkanını ve yenilenebilir uzun dönem sözleşme programını ifade eder. Ayrı bir kadro*

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*imkanında, klinik öğretim üyesi, tam zamanlı öğretim üyesine benzer bir deneme süresi sonrasında kadroya alınabilir. Kadronun üyeye ihdas edilmesinden sonra, kişi kadrodan sadece haklı sebeplerle çıkartılabilir. (Örneğin, klinik programın sonlandırılması)*

*Yenilebilir uzun dönem sözleşme programı şu şekilde düzenlenir: tam zamanlı öğretim üyesine benzer bir deneme süresi sonunda (ki bu sürede kısa dönemli sözleşmelerle istihdam edilebilir) klinik programda çalışan öğretim üyesinin hizmetlerine son verilebilir veya kendisine uzun dönemli yenilenebilir bir sözleşme önerilir. Bu düzenlemede "uzun dönemli sözleşme", en az beş senelik, yenilenebilir veya akademik özgürlüğü koruyan başka bir şekilde düzenlenmiş sözleşme anlamında kullanılmıştır. İlk sözleşme döneminde veya yenilemeden sonra, sözleşmeye sadece haklı sebeple son verilebilir. Haklı sebep klinik programın sonlandırılmasını veya programın içeriğindeki değişiklikleri de kapsar.*

### **Yorum 405-7**

*Tam zamanlı klinik öğretim üyelerinin tam zamanlı diğer öğretim üyelerininkine benzer olan yükümlülüklerinin yerine getirilip getirilmediğini tespit etmek adına, akademik araştırma ve öğretim konusundaki uzmanlıkları klinik öğretim üyelerinin yükümlülükleri ışığında değerlendirilmelidir. Hukuk fakültesi klinik öğretim üyelerinin azli, terfii, iş güvenliği için ölçütler geliştirmelidir.*

### **Yorum 405-8**

*Bir hukuk fakültesi klinik öğretim üyelerine, tam zamanlı diğer öğretim üyelerine makul derecede benzer ölçüde komiteler, toplantılar vb. araçlarla fakülte yönetimine katılma imkanı tanınmalıdır.*

### **Yorum 405-9**

*Bu Standartın (d) fıkrası, hukuki yazı öğretmenleriyle kısa dönemli sözleşme yapılmasını veya hukuk fakültelerinin tam zamanlı öğretim üyesi adaylığı için gözetim altında eğitim deneyimi kazandıran programlar açmasını engellemez.*

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EK - 3 / Appendix 3

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*Hukuk Fakültesi Öğrencileri Gözünden  
Hukuk Öğrenimi*





Çalışmalarımızdaki amacımız yıllardır değerli hocalarımızın konuşup tartıştığı Hukuk eğitimi ile ilgili sorunlara bir de öğrencilerin gözünden bakmak öğrencilerin tespit ettiği sorunlara değinmektir. Hocalarımızın yıllardır uğraştığı bu konuya farklı bir bakış sunmak bir nebze de olsa katkı sağlamaktır. Hedefimiz ise bu sorunları daha önce hocalarımızın yaptığı gibi dile getirmek ve makul çözüm önerileri sunmaktır. Süleyman Demirel Üniversitesi Hukuk Fakültesi Hukuk ve Adalet Kulübü olarak en çok dikkatimizi çeken mevzular ise şunlardır: Eğitimin süresi, insan kaynakları planlaması, Osmanlı ve Roma'da hukuk eğitimi, müfredat sorunu, hukukta hazırlık eğitimi, aşamalı hukuk eğitimi, Bologna sürecinin getirileri ve sonuçları, ihtisaslaşmanın zamanı ...

### **Hukuk Eğitiminin Bugünkü Sorunları için Geçmişten Gelen Çözümler**

Günümüzde ülkeler insanların her açıdan güvenle yaşamalarını sağlamak için hukuk standartlarını en yüksek düzeye çıkarmaya uğraşmaktadır. Bu amaçla devlet, hukukun mutlak üstünlüğünü hakim kılmak için kendisini pozitif hukuk metinleriyle sınırlandırmıştır. Bu sınırları muhakemesiyle belirginleştirecek ve güçlendirecek olan bağımsız ve tarafsız yargıdır. Yargı içinde çeşitli alanlarda çalışan -hukuku uygulayan ve hukuk yaratan- kişilerin derin hukuk bilgisi ve yenilikçi hukuk algısına sahip olmaları, evrensel hukuk değerlerinin gelişmesi açısından son derece önemlidir. Bugün fakülteler bahsedilen nitelikleri (derin hukuk bilgisi ve yenilikçi hukuk algısı) kişilere çeşitli akademik düzeylerde kazandırarak hukukçular yetiştirmektedirler.

Hukuk eğitiminin içeriğini ve yapılışını sadece şimdiye veya geleceğe göre belirlemek hukuku ileri hale getirir; fakat gelenekleri yok sayarak kurgulanmış bu eğitime tâbi olarak yetişen hukukçular, içinde yaşadıkları topluma yavaş yavaş yabancılaşırlar. Benzer şekilde toplum da kendi değerlerini yok sayan hukuk sistemine yeterince saygı duymaz. Toplumların

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-özellikle hukukun adaleti sağlamaktan uzaklaştığı dönemlerde- geçmişin adalet ölçütlerini özlemeleri ve geçmişlerine öykünmelerinin kaynağı burada aranabilir. Kısaca hukuk sistemleri ilerencilik adına toplumların köklü değerlerinden kopuk olarak kurulmamalıdır. Bu açıdan hem hukuk hem de hukuk eğitimi geçmişteki hukuk pratikleri de göz önünde bulundurulacak düzenlenmelidir.

Ülkemizde uygulanan hukuk eğitiminde de birçok sorunla maalesef karşılaşmaktadır. Yetkililer bu konuda sürekli olarak bugünün ve geleceğin çözümlerine başvurmakta, adeta hukuk ve eğitim geçmişte hiç yokmuş gibi davranmaktadır. Oysaki her ülkede olduğu gibi Türkiye’de de geçmişe dayanan ciddi bir hukuk kültürü mevcuttur.

Örneğin birçok tarihçi tarafından uzun süre adaletle hükmettiği teslim edilen Osmanlı devletinde uygulanmış hukuk eğitiminde bugünün sorunları için ilham veren birçok çözüm tespit edilebilir. Sorunlar için geçmişten gelen muhtemel çözümleri ortaya koymak şüphesiz ki hukuk biliminden önce tarih biliminin ve eğitim bilimlerinin alanına girmektedir. Sayılan disiplinlerde araştırma yapacak akademisyenlerin asgari düzeyde hukuk kavrayışına sahip olmaları ortaya çıkacak çözümlerin de etkinliğini ciddi ölçüde arttıracaktır.

*Hıdır KIRKICI*

### **Bologna Sürecinin Getirileri ve Sonuçları**

Küreselleşmenin ve toplumların etkileşim içinde olduğu bilgi çağının doğal bir sonucu olarak diğer bazı bilim alanlarında olduğu gibi, hukuk alanında da eğitimin bazı talep ve ihtiyaçlara cevap verebilecek dinamik bir yapıya kavuşturulması ön plana çıkmıştır. Bu yeni yapılanmalara paralel olarak, 4 Mayıs 1998 tarihinde dört büyük Avrupa ülkesi tarafından

Sorbannie Bildirgesiyle başlatılan ve Avrupa da yüksek öğretim alanında etkili olan Bologna Süreci büyük bir hızla birçok ülke tarafından kabul edilmiştir. Eğitim sistemimizde köklü değişimlere yol açan ve hukuk eğitimi için uygulamaya konulmasıyla birlikte müspet menfi birçok sonuçlar doğuran bu sisteme ülkemiz 2001 tarihinde dahil olmuştur. Ancak bu sistemin uygulamaya konulmamış veya yanlış yada eksik olarak uygulama bulabilmiş olan; bir hukukçu profilinin nasıl olacağı, hukuk eğitimindeki dil, hazırlık ve müfredat sorunlarının en aza indirgeneceği, öğrencilerin gelecek kaygısı gütmeyen iyi bir şekilde eğitimini tamamladığı ve avrupa da serbest olarak çalışma imkânı sunan bu sistemin daha uygulama bulamamış birçok olumlu yanlarıyla uygulanıp iyi bir hukuk eğitimi verilmesi gerekmektedir. Ulusallasmanın bir sonucu olarak ülkemizin hukukçularının da rekabet gücü yüksek, muhakeme edebilen ve çözümler sunabilen bir yapıda bulunması gerekir, hiç şüphesiz bununda tek yolu iyi bir eğitimidir.

*Oğuz KOÇ*

Küreselleşme ve uluslararasılaşma süreci ülkelerin rekabet gücü yüksek daha kaliteli hukukçular yetiştirme ihtiyacını doğurmuştur. Toplumlardaki bu gelişmelerle Avrupa Ortak Hukuku oluşmaya başlamış, Avrupa hukuk anlayışı bir kez daha tarihsel bir yapı değiştirme süreciyle karşı karşıya gelmiştir. Türkiye de bu gelişmelerin uzağında kalamamış hukuk eğitimindeki eksiklikleri gözden geçirme ve yenilenme ihtiyacıyla kendi yapısına ve şartlarına uygun bir değişim hareketi yürütme yolunda bir adım atmıştır. Bu adım atılırken şüphesiz hedeflerden biri de diğer Avrupa Devletlerinde yükseköğretim alanında gözlemlenen gelişmeleri takip etmektir. Avrupa'da yüksek öğretim alanında etkili olan ve gelişmelere yol veren en önemli hareket ise Bologna Süreci'dir. Bologna Süreciyle belirlenen ve hayata geçirildiği takdirde olumlu sonuçlar doğuracak hedefler Türkiye'de hukuk eğitimine başarılı bir şekilde

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entegre edilememiş ve yansımaları istenen sonuca ulaşamadığını ortaya koymuştur.

İyi bir hukukçu entelektüel bilgi birikimi açısından fark yaratmalıdır, hukuk etiğine sahip olmalıdır, araştırmayı sevmelidir, muhakeme yeteneğine sahip olmalıdır ve yabancı dil bilmelidir. İyi bir hukukçu dünya çapındaki gelişmeleri izlemek ve onlara uyum sağlamak durumundadır. Bahsettiğimiz iyi hukukçu profiline ulaşmada Bologna Süreci'nin ülkemiz hukuk öğretim sistemine doğru bir şekilde uygulanarak öngörüldüğü hedefleri gerçekleştirmesi büyük katkılar sağlayacaktır.

*Hazal ÖNCEL*

ÜLKE	EĞİTİM SÜRESİ	İHTİSASLAŞMA ZAMANI	SINAV SİSTEMİ	DÖNEMLİK / YILLIK	BİTİRME TEZİ/SINAVI	STAJ
İNGİLTERE	3+1 YIL	EĞİTİM SONRASINDA	YAZILI+SÖZLÜ	YILLIK	VAR (SINAV)	VAR [1(eğitim içinde)+2(eğitim dışında)]
ABD					VAR (SINAV)	YOK
FRANSA	4 YIL	EĞİTİM SIRASINDA	YAZILI+SÖZLÜ	YILLIK	VAR (SINAV)	VAR
İTALYA	4 YIL	EĞİTİM SIRASINDA	SÖZLÜ	YILLIK	VAR (TEZ)	VAR
PORTEKİZ	5 YIL	EĞİTİM SIRASINDA	YAZILI+SÖZLÜ	DÖNEMLİK	YOK	VAR
BELÇİKA	3+2 YIL	EĞİTİM SONRASINDA	YAZILI+SÖZLÜ			VAR
YUNANİSTAN	4 YIL	EĞİTİM SONRASINDA		DÖNEMLİK	YOK	
İSVİÇRE				DÖNEMLİK + YILLIK		VAR
AVUSTURYA	4 YIL	EĞİTİM SONRASINDA			VAR (STAJ SONUNDA)	VAR
ALMANYA	5,5 YIL	EĞİTİM SIRASINDA	YAZILI+SÖZLÜ	YILLIK(?)	VAR (SINAV)	VAR
İSPANYA	4 YIL	EĞİTİM SONRASINDA	YAZILI	DÖNEMLİK	YOK	VAR

### Hukuk Öğrenimi ve Diğer Ülkeler

Şu an Türkiye'nin hemen her şehrinde hukuk eğitimi veren gerek devlet olsun gerek vakıf olsun birçok üniversite bulunmaktadır. Hukuk öğretiminde yapılabilecek reformları değerlendirirken dünya ülkelerindeki sistemleri de incelemek gerekmektedir. Bu bağlamda da Türkiye'deki hukuk eğitimi

ile dünya ülkelerindeki hukuk öğretimi arasındaki farkların derlenmesi gerekir. Bu karşılaştırma yapıldığında dikkat çeken bazı başlıklar ortaya çıkmaktadır. Bunlar: verilecek olan eğitimin süresi, eğitimde ihtisaslaşmanın yeri, sınav sisteminin yazılı veya sözlü olarak düzenlenmesi, derslerin verilme şeklinin dönemlik veya yıllık olarak ayrımı, öğretimi tamamlamak için gerekli olan bitirme tezi veya sınavının varlığı ve son olarak öğrenim sonunda staj yapmanın gereklilikleri ve eğer varsa staj süresi ile zamanıdır. Bu başlıklar Avrupa'dan Asya'ya, ülkeden ülkeye farklılık göstermektedir. Bu başlıklar ışığında Türkiye'deki hukuk öğretimini pozitif şekilde etkileyebilecek olan kriterler belirlenmelidir. Kanımızca bu değerlendirme uzman kişilerin danışmanlığı altında hukuk öğretimi gören öğrencilerin de fikirlerinden yararlanılarak oluşturulmalıdır.

*Eylül Banu ÇEVİK*

*Rabia YILMAZARSLAN*

### **Hukuk Felsefesi Sosyolojisi Dersleri ve Muhakeme Problem Çözme Yeteneği Eğitimi**

Hukuk eğitimi alan öğrenci sadece hukuku uygulamak ve tutarlı bir sistem oluşturmak adına onu yorumlayamak için değil muhakeme, mantık, hukuk kültürü, toplumsal birikim, dil, yorum vs. gibi hukukun aslını anlayabilecek ve dahası toplumsal düzeni sağlayacak hukuku üretmek için yetiştirmelidir. Hukuk eğitimi amacı yalnızca hukuku uygulayacak ve tutarlı bir sistem oluşturmak adına onu yorumlayacak kişiler yetiştirmek yerine; muhakeme, mantık, hukuk kültürü, toplumsal birikim, dil, yorum vs. gibi hukukun aslını anlayabilecek ve dahası toplumsal düzeni sağlayacak hukuku üretecek hukukçular yetiştirmeyi planlayan Hukuk Fakülteleri bu yeteneklerde kişi yetiştirmek için Hukuk Felsefesi ve Sosyolojisi dersini sadece felsefe ve sosyoloji tarihi öğretmenin ya da teorik bilgi

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vermenin haricinde kişiye üretici düşünme ve yapılandırıcı kurama uygun düşünme tarzı kazandırmayı amaçlamalıdır. Bu tarz bir eğitim alan hukuk öğrencisi hem mesleğinde hem de hergün yeni gelişmelerle karşılaşılacak hukuk alanında daha verimli bir hukukçu olabilir.

### **Hukukta İnsan Kaynakları Planlaması Dersi**

Öncelikle bu fikirde bizlere büyük destek veren Vahdettin Aydın hocama teşekkür ederim. Gün geçtikçe fakülte ve öğrenci sayısı artan hukuk alanında, öğrencileri meslekle ilgili bilmedikleri hakkında bilgilendirmek için bir bakıma hukuk kariyeri bilgilendirmesi dersi olan İnsan Kaynakları Planlaması Dersi hukuk alanındaki bazı sorunların çözümünü gerçekleştirebilir. Hukuk fakültesinden mezun olan bir öğrenci çok geniş bir meslek yelpazesine karşılaşmaktadır. Bu çeşitlilikte öğrencinin seçiminde zorluklara yol açmaktadır. Türkiye Barolar Birliğinin verilerine göre

31.12.2011 rakamlarına göre Ülkemizdeki avukat sayısı 74000 olarak tespit edilmiştir.

31.12.2014 rakamlarına göre Ülkemizdeki avukat sayısı 86981 olarak tespit edilmiştir.

3 yıl gibi bir sürede 12981 avukat artışı olmuştur.

Bu ciddi artış bile öğrenci yönlendirilmesinin ne kadar önemli olduğunu gözler önüne sermektedir. Bu yönlendirmeler hukukun daha kontrollü ve düzenli gelişebilmesinde büyük katkı sağlayacak adımlardır.

*Mehmet KALKIR*

### Hukuk Klinikleri ve Arabuluculuk Eğitimi

Ülkemizde hukuk eğitiminin göze çarpan eksiklerinden biri; öğretimin dört yıl boyunca sadece teorik aşamasında kalmasıdır. Uygulamalı hukuk dersi adı altında bir ders verilmekte ancak hukuk öğrencileri hukuk öğrenimi bittikten sonraki adıma tam olarak hazırlanmamaktadır. Bugün onlarca hukukçu mezun olduğunda ne yapacağını bilmeden mezun olmaktadır. Öğrenciler teoride öğrendiklerini mezun olur olmaz bilmedikleri ve inceliklerini öğrenemedikleri bir iş hayatında uygulamaya çalışmaktadır. Pratikte verilmesi gereken bilginin öğrenim esnasına yerleşmiş olmayışının bir eksikliği olarak bu sonuç karşımıza çıkar; fakat bu eksiklik öğrenim gördükleri esnada uygulamalı bir ders ile giderilebilir.

Yurt dışındaki hukuk öğrenimlerinde daha yaygın olup ülkemizde de son yıllarda özel üniversitelerin verdikleri eğitimi daha kaliteli hale getirmek için müfredatlarında yer verdikleri "hukuk kliniği" adında bir ders bulunmaktadır. İşte bu dersin öğrenimi daha kaliteli kılıp, işini daha iyi bilen birer hukukçu olarak mezun olmayı sağlayacağı için geliştirmek ve uygulamaya koymak istediğimiz projemiz kapsamında inceledik. Hukuk kliniğinin detaylarına fazla inmeden öğrenimde yer alırsa nasıl olacağından bahsetmek istiyorum.

Öğrenciler derslerde öğrendiklerini gündelik hayata uygulama şansı bularak öğrendikleri bilgileri nasıl ve ne şekilde kullanacaklarını, kendilerine danışan insanlara nasıl yardımcı olacaklarını, dilekçeler yazmayı, hitap şeklini yani kısacası avukat olmanın inceliklerini öğrenecektir. Günümüz hukuk öğrencileri bu aşamayla mezun olduktan sonra yaptıkları staj döneminde karşılaşmaktadır. Bu da geç kalınmış bir adım olmaktadır. Gelişmiş toplumlara baktığımızda hukuk sistemlerinin daha ileri seviyede olması hukuk öğrenimine verdikleri önemden ve kaliteli eğitim sağladıklarından gerçekleşir.

Ülkelerin hukuk sistemine değinmişken hukuk alanında en büyük sıkıntılardan biri de davaların çokluğudur. Çözülmeyi bekleyen o kadar çok dava var ki. Bunun en büyük sebebi de

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uyuşmazlıkları anlaşmazlıkları çözme yoluna gidilmeden doğrudan dava yoluna gidilmesidir. Arabuluculuk adı verilen bu çözüm sistemi de gün geçtikçe ülkemizde önem kazanmaktadır. Ancak bir sistemi daha iyi kurmak istiyorsanız onu temelden sağlam tutar ve onu iyi bilen nitelikli kişiler yetiştirirsiniz. Bu nedenle hukuk öğrenimi esnasında öğrencilere arabuluculuk eğitiminin uyuşmazlıklarda çözüme gitme yolunun yerleştirilmesi gerekir. Öğrenim esnasında çözüm yollarını ve arabuluculuğu öğrenen bir hukukçu mezun olduğu zaman bunu uygulamada sorun yaşamayacaktır. Zaten ülkemizde arabulucu avukatlık yapılmaktadır ancak henüz gelişmekte olan bir alan ve işin sistematığı ve temel mantığı öğrenim esnasında verilirse hem bu alanda daha çok ilerleme kaydedilir hem bu kadar çok dosya yükü oluşmaz hem de iyi hukukçular yani gerçek anlamda hukukçular yetişir.

Özge ŞENTÜRK

### **Hukuk Öğreniminde Müfredat Sorunu ve Uzmanlaşma**

Hukuk öğreniminde müfredat sorunu ve uzmanlaşmanın gerekli olup olmadığı ve nasıl olması gerektiği konusunu ele alırsak: Gerçektende tüm bilimlerde olduğu gibi hukuk bilminde de bir küreselleşme gerçeği bulunmakta. Türkiye bir yandan Avrupa Birliğine uyum çabası içindeyken diğer yandan da ulusal hukuktan da vazgeçmeme durumu içindedir. Yine de hukuk eğitimini modernleştirmek gerekmektedir. Öğretim, program, öğretim üyesi ve öğrencilerin arasındaki bir ortak iyi ve birlikteliğin gerçekleşmesi gerekmektedir. Program konusunda her hukuk fakültesi kendi kapsamında, akademik kadrosuna, o kişilerin yönelimlerine göre ve ayrıca bilimsel çerçevede, asgari gerekliliklerini tartışarak kendi programlarını kendileri belirlemelidir. Programların bir kısmına seçimli dersler konulmalı, bu seçimli derslerin sayısı arttırılmalıdır. Öğrenciler kendi ilgi alanlarına göre bu dersleri seçerek belirli



bir alanda uzmanlaşma yoluna başvurabilirler. Bu sayede ileriki zamanlarda çeşitli mezun profillerine sahip olmak mümkündür. Öğrencilerin üniversite yıllarındayken geleceğe yönelik eğilimlerini belirlemeye katkı sağlanmış olmaktadır. Ayrıca öğretim üyelerinin bu sürece katkıları büyük önem taşır. Öğretim üyesi ders yılı başlamadan önce sıklığıyla hangi hafta, hangi konuyu işleyeceğine kadar, ve hangi kaynaktan yararlanacağına kadar bir programı öğrenciye ulaştırabilir. Ayrıca daha ders yılı başından itibaren asgari birinci hafta hangi sayfaların okunacağını bildirip derse başlamalıdır. Bu şekilde öğrenciler bilgilendirilmiş olur. Derslerin anlaşılması ve kalıcılığına katkı bu sayede sağlanmış olunabilir. Belirtmek gerekir ki öğrencilere büyük bir görev düşmektedir.

*Hatice ÇOBAN*

### **Hukuk Fakültesinde Hazırlık Senesi ve Önhazırlık Dersleri**

Üniversitelerde hazırlık süreci olarak bilinen mevzu yabancı dil ağırlıklı geçen bir senedir.

Hukuk eğitimi öncesi verilecek yabancı dil eğitimi mezun oluncaya kadar geçecek sürede önemini yitirebilir hatta yavaştan unutulabilir. Bu şekilde olacağına hazırlık süreci olarak eğitime yalnız yabancı dil değil hukukun başlangıç dersleri, olan medeni, anayasanın genel esaslarıyla, sosyal bilim dersleri olan felsefe sosyoloji ve metodolojiyle hukuka sağlam temeller atmamıza sebep olur. Böylece hukuka belli donanım sahibi olarak başlangıç yapmış oluruz. Sonuç olarak düşünceleri ortaya çıkarıp onu kullanmayı öğrenen hukuk öğrencisi hazırlık sürecini atlatıp birinci sınıfa başladığında daha donanımlı olmanın verdiği özveriye tüm senelere pay ederek üstüne koya koya giden eğitim sonucu mezun olacaktır. Böylece ders adetinin cüzi miktarını azaltsada yine ders yükünün sene içinde diğer derslere verilecek önemini de artırıyor. Artan zamanda araştırmaya tartışmaya ayırabilecek. Dersleri

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not için yahut okulu bitirmek için öğrenmeyecek gerçek ihtiyacı olduğu ve kendinden istenilen kişi olmak için öğrenecek. Hukuk fakültesine başlamadan evvel bir yıllık hazırlık eğitimi verilip verilmemesi noktasında ciddi tartışmalar mevcuttur. Yanlız yabancı dil eğitimi veren üniversitelerde uluslararası düzeyde hukukcu için ne kadar yeterli eğitim verildiği yine tartışmalar dahilindedir.Şöyle ki verilen yabancı dil eğitimin mesleki tarza yönelik olması önem arz etmektedir.Hazırlık sürecini yalnız yabancı dille sınırlandırmadan Sosyal bilim dersleri ile hukukun temel dersleri bu döneme kaydırılması zammınızca elzem hale gelmiştir.Hukuk felsefesi hukuk sosyoloji ve hukuk metodolojisi gibi dersleri bu dönemde ayrıntılı bir şekilde işlenmelidir.Yine hukuka giriş dersi,anayasanın genel esasları dersi ve medeni hukuk dersleri bu dönemde işlenmelidir.Daha çok düşünmeye tartışmaya araştırmaya itecek şekilde öğrenciler yönlendirilmelidir.Muhakeme yetisinin artması için yorum yöntemleri hususunda yazılı ve sözlü ölçüm ön plana çıkarılmalıdır.

*Rasim Selim TORUN*

Yukarıda değindiğimiz hususlar biz öğrencilerin gözlerine takılan noktalardır. Bu hususların çoğunda hatta neredeyse tamamında değerli hocalarımızın görüşleri olup nacizane biz de bir şeylere değinmek istedik. Elimizde mevcut imkanlarla yaptığımız araştırmalarda, fikir alışverişlerinde ve çalışmalarda edindiğimiz bilgileri kısaca özetleyip birleştirdik. Bizlere olan desteğiniz ve ilginiz için çok teşekkür ederiz. Sürçü lisan ettiyse affola...

*Yaşar Kürşad BAŞPINAR*

21. YÜZYILDA HUKUK EĞİTİMİ

Ek 4 / Appendix 4

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*Legal Education in Turkey*

**Julian LONBAY**

*Birmingham Law School, The University of Birmingham, England*

**Musa TOPRAK**

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## Historical Background\*

### The Legal System and Legal Education in the Ottoman Era

The legal system at the time of the Ottoman Empire was naturally under a heavy influence of Sharia law, but the legal system of the Ottoman state exceeded the requirements of Sharia law because of a principle known as *örf* which gave power to the monarch to act as a legislator in areas relating to governance of the state.<sup>1</sup> *Örf* (the term might be translated as custom) declares that matters solely regarding the governing the state are outside the scope of the Sharia. Traditionally the legal system in the Ottoman state left private law, mostly civil law, to Sharia because of the *örf* principle. Public law was a unique system depending more on custom than Sharia.<sup>2</sup>

The Ottoman Empire had different religious and ethnic groups under its sovereignty, these groups were called *millet*s and the same rules were applied to them; they were ruled by their religious authorities on issues regarding to civil law and they had to obey *örf* on the issues related to public law. The *millet* system was dependent on religion, there were three main *millet*s: Rum (Greek), Jewish and Armenian.<sup>3</sup> The Ottoman state recognized the rights of *millet*s with a decree of the Emperor (*berat*). Each *millet* had the right to choose their religious leader

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\* This article is an extended version of the paper which has been published on "Legal Education in Asia", Eleven Pub., The Hague, 2014

<sup>1</sup> Halil İnalçık, *Osmanlı'da Devlet, Hukuk, Adalet*, (State, Law and Justice in the Ottoman) Eren Yay. İstanbul, 2000, p. 27

<sup>2</sup> Id.

<sup>3</sup> We must stress that the notion of *millet* is a concept that emerged in the fifteenth century and it was dependent on religion not ethnicity; Serbians, Bulgarians, Romanians and even Arab Orthodox people were considered members of Rum (Greek) and Assyrians were considered members of Armenian *millet*s.

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according to their own religion's orders. The religious leader had the right to manage community property, to regulate masses, rituals and other religious activities and to collect a certain amount of tax from their community. Beside that, community members' private affairs such as marriage, divorce and inheritance was handled by their religious leaders according to their religion.<sup>4</sup>

Thus the Ottoman Empire had a pluralistic legal system.<sup>5</sup> On the private issues the subjects of the Sultan had to obey their own religious rules, whereas the authority to sanction behaviour in criminal law belonged to the state in most cases. Very limited exceptions had allowed religious leaders or councils to punish their members on the issues related to practice of religion: apart from these exceptions on the issues of public law there was a centralized system to be applied all over the Empire.

As a result of this divided legal system, legal education was also divided. Legal education was left to religious organizations that trained their judges under their own rules not limited to, but, especially regarding civil law. The understanding of a *kadi* court was dependent on the skills of the Islamic judge, called *kadi*. The purpose of the hearing was making sure that the *kadi* understood the actual facts of the case. When he truly understood what had happened, he was able to tell where this case stood in Sharia law. If we speak in modern terms there was no room for legal description in the *kadi's* presence. Both sides were supposed to tell the facts and leave the legal analysis to the *kadi*. For this reason there was no need for prosecu-

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<sup>4</sup> Gülnihal Bozkurt, "İslam Hukukunda Zimmilerin Hukuki Statüleri (Statutory Positions of Dhimmis in Islamic Law)" *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi* V. 3 1987, p.115

<sup>5</sup> Akyılmaz points an interesting example to show the characteristic of Ottoman Law. According to Hanefi jurists pork and wine were not subject to ownership as they had no legal value, but they could be accepted as goods and subject to property claims if at least one side of the affair was a non-Muslim. Gül Akyılmaz, *Tanzimattan Önce ve Sonra Osmanlı Devleti'nde Gayrimüslimlerin Hukuki Statüsü* (Legal Status of Non-Muslims in Ottoman State, Before and After Administrative Reforms), *Yeni Türkiye Ermeni Sorunu Özel Sayısı II*, Vol. 38, 2001, p. 671.

tors or lawyers in the religious courts so the legal training was aimed solely to train judges to adjudicate mainly on civil law issues. According to the *millet* system religions were able to regulate themselves and they had authority over their people. Dependent on the type of religion there were various councils to decide on the issues related to religion. Councils had the right to decide on religious issues with only a limited authority to apply criminal sanctions. For the other issues regarding public law and administration, the Ottoman state had an elite school in Istanbul, inside the palace of the Sultan in Topkapı (Istanbul) called Enderun. This school trained high officers for the state, for both civil and military purposes. The school covered the functions of military academy, political sciences, fine arts, law and literature faculties.<sup>6</sup> The length of education in the Enderun School was fourteen years. The Enderun school was different from other schools of the period because its aim was not to educate a limited elite, such as members of royal family but it was aiming to train ordinary people.<sup>7</sup> Enderun was designed to fulfil the needs of the Palace and students were also working at different positions in the Palace depending on their age, rank and abilities. Enderun was founded in 1460 and was closed in 1909 but it had lost its importance by the nineteenth century.<sup>8</sup>

Legal education was sponsored by religious schools called *Medressehs*: the first such formal school was established in 1304 at İznik.<sup>9</sup> In the Ottoman era legal education was based on the *fiqh* (in Turkish; *fıkıh*) system in the schools of law and admi-

<sup>6</sup> Hüseyin Özdemir, "Osmanlı'da Kamu Yönetimi ve Memuriyet (Public Administration and State Officers in Ottoman) <[www.sizinti.com.tr/konular/ayrinti/osmanlida-kamu-yonetimi-ve-memuriyet.html](http://www.sizinti.com.tr/konular/ayrinti/osmanlida-kamu-yonetimi-ve-memuriyet.html)>

<sup>7</sup> To secure the royal family's power and authority Enderun School was banned for the ethnically Turkish people to protect the royal family; Ottoman rulers preferred to take Christian boys and convert them to İslam. This way the high officers of the Empire who were once Christian boys had no family links to any powerful Turkish families of the era and had no other loyalties but to the Ottoman family.

<sup>8</sup> Ülker Akkutay "Enderun Mektebi", (Enderun School) *Osmanlı Eğitim Sistemi*, Vol V, 1999, Ankara, p.189

<sup>9</sup> Kenneth Redden, *Legal Education in Turkey*, İstanbul, 1957, p. 10.

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nistration. *Fiqh* is a concept of Islamic law, which is an expansion of the *Sharia* expounded in the Quran, often supplemented by tradition (*Sunnah*) and implemented by the rulings and interpretations of Islamic jurists (*Ijma*).

### Westernization Efforts in the Ottoman Empire, 1839 Administrative Reforms

The Ottoman Empire was starting to lose power by the seventeenth century and in the nineteenth century rulers of Ottoman state understood that they had to make fundamental changes to avoid a total collapse. Administrative reforms were announced on 3 November 1839 with an Imperial Decree (*Tanzimat Fermanı*, Firman of Reforms) marking the start of the reformist movements in the Ottoman Empire. The main legal characteristics of the reforms were the translation of the main laws from West European countries and at the same time, a codification of the Islamic law.

The process of translation and codification continued until the first years of Turkish Republic which means for almost a hundred years. There was a debate of West and East, European and Asian laws over the domination on legal structure of Ottoman state. Far-sighted pro-Turkish state reformists argued that, despite its very good aspects Islamic Law was no longer satisfying the needs of the Empire and it was not possible to make the Islamic law sufficient for the purposes of the Ottoman Empire.<sup>10</sup> On the other hand conservatives were defending Islamic law stating that Islamic law was strong enough to be applied to all matters and there were no need to take codes from Europe by reception. Conservatives were also accepting that there were serious problems in the legal area, but they believed that Islamic law was forgotten and its practice was wrong; remembering Islamic Law and returning to the true practice of it was supposed to solve all the problems of

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<sup>10</sup> Coşkun Üçok, *Türk Hukuk Tarihi Dersleri*, (Turkish Legal History Courses) İstanbul 1946, p. 140.



the Ottoman Empire.<sup>11</sup> When we look back to the legal history of Ottoman Empire at nineteenth century we can see that this debate of reformists, who wanted reception and the translation of Western Europe codes, and conservatives, who wants to freshen up the Islamic law and try to figure out the remedies for its correct application, fills the whole century: on some issues the reformists were successful and on some other issues the conservatives came forward. This century-old debate was ended with the establishment of the republic, with a certain victory of the progressive side.

The beginning of the modern epoch may be dated from the *Tanzimat* in 1839 when under guise of the 're-organization' we can observe the start of some distinction between the law of the state and Islamic religious law, a distinction that marks a critical departure from classical Islamic conceptions. In 1850, a Code of Commercial Law based upon the French *Code de Commerce* was introduced, followed in 1865 by a Maritime Code of similar origin. In 1856, a penal code of considerable amplitude (265 articles) was promulgated, again substantially based upon French law after a couple of more limited attempts in 1835 and 1846; and in 1866, there was a reform of penal procedure, which prepared the way for the acceptance, in 1879, of a code largely reproducing the French Code of Criminal Procedure.<sup>12</sup>

As a part of these efforts in 1880 a separate school of law was established attached to Ministry of Justice.<sup>13</sup> As we explained briefly, the Ottoman rulers were trying to create a synthesis of Islamic rules with Western understanding of law. As a matter of fact in modern Arabic *fiqh* now means jurisprudence, either religious or secular and in Ottoman legal education practice, *fiqh* was no more solely a concept of Sharia but it was a combination of different courses, which are: Procedure of *fiqh* (*Usul-i fiqh*), Civil Law (*Mecelle*), Wills and Testaments and Law of

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<sup>11</sup> Id.

<sup>12</sup> C. J. Hamson, "The reception of Foreign Law in Turkey", Vol. IX, No. 1, *UNESCO International Social Science Bulletin*, 1957 p. 9-10

<sup>13</sup> Redden, p. 10.

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Succession (*Vasaya* and *Feraiz*), Land Law (*Ahkam-ı arazi*) and Foundations Law (*Vakıflar*) All these courses were given in a dogmatic and theological way with an understanding based on the middle ages.<sup>14</sup>

Koprulu states that, it never occurred to the lecturers to get rid of the Sunni-Hannafi compliers' schematic lists by exploring more old legal and historical resources. Because Islamic law, like other systems, is a historical entity but they had never understood it that way, and studies in western countries were remained unknown even for the most famous and modern masters of law of that era.<sup>15</sup>

In the administrative reforms era, the Ottoman state put significant efforts to make major innovations in judicial organization. They accepted new codes, some translated from Europe and some codifications of Islamic law. But the old judges (*kadi*) were working alone without the assistance of lawyers and prosecutors and they had been trained under Islamic law only. It was not an option to abolish them and found new courts from scratch because, as we explained, Islamic law still had a significant value and implementation in the Empire. Thus, reformist rulers of the Empire on the one hand were trying to found new courts and raising well-trained judges, and bringing new legal institutions such as the prosecutor's office and lawyers, and, on the other hand they were also trying to fix the Sharia courts. However, the results of these efforts were too late and rather inefficient. Having these two very separate legal systems together caused major struggles on the issues of duty and power; beside that, at first Muslim jurists training according to new Western law were reluctant and slow to act, thus slowing down the development of the judicial organization. However we can see at the end of the nineteenth century, there was a judicial system, which was very similar to the modern judicial organization.<sup>16</sup>

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<sup>14</sup> Fuad Köprülü, *Ortazaman Türk Hukuki Müesseseleri*, (Turkish Legal Institutions in the Middle age) İstanbul, 1937, p. 15- 16

<sup>15</sup> Id.

<sup>16</sup> Coşkun Üçok&Ahmet Mumcu, *Türk Hukuk Tarihi*, (Turkish Legal History), Ankara Üniversitesi Hukuk Fakültesi Yayınları, Ankara 1976 p. 330,

In the Ottoman state there was only one school of law, founded in 1880 in Istanbul, until 1907. In 1907 three more schools of law were opened in Konya, Bagdad and Salonika.<sup>17</sup> Even though it was stated that these schools were secular,<sup>18</sup> most of the lessons taught in the schools were dependent on Islam. The so-called secularity of these schools meant the difference of these schools from religion schools (*medreses*). The staff and students of Bagdad and Salonika schools were transferred to Konya after the Ottoman Empire lost those territories. The Konya school of law was closed in 1919.<sup>19</sup> The Istanbul school of law continued to work until 1933 when it was transformed into a faculty of Istanbul University.

### Foundation of the Turkish Republic: Revolution and Reception

The reforms were not enough to keep the Ottoman Empire united; because the state was shaped under the deep influence of religion it was impossible to stop the nationalist movements neither with brute force nor by giving them some rights or even autonomy. Ottoman intellectuals tried to use the concept of *ummah* as a tool of Pan-Islamism but they were surprised to discover that the Muslim nations under Ottoman rule desired independence as much as Christian nations. World War I was the last blow to the weak Ottoman state. At the end of the war the Ottoman state had signed a peace treaty with Allies, and certain parts of Anatolia had been occupied: the resistance movement against occupation was declared to be an illegal uprising by the Ottoman state and it turned into a war of independence. Mustafa Kemal Atatürk, who was once an Ottoman general turned into the leader of the Turkish independence movement, was declared a rebel by the Sultan and was condemned to death by the Ottoman state.

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<sup>17</sup> Ekrem Buğra Ekinci, Konya Hukuk Mektebi ve Osmanlılarda Hukuk Öğrenimi (Konya Law School and Legal Education in Turkey) *Tarih ve Medeniyet* V. 58 January 1999 p. 50

<sup>18</sup> Redden, 1957 p. 20

<sup>19</sup> Ekinci, p. 52

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The nationalist movement set up a government in Ankara and eventually succeeded in defeating occupiers in Anatolia: they announced the foundation of the Turkish Republic. The rulers of the new state were intending to clear all the remaining vestiges of the old regime. They believed that it was not possible to rule by religious rules and the failure of the reforms, which caused the doom of the Ottoman state, was because of trying to create a synthesis between the two systems. The facts showed that it was not possible to reach technological advances of Western civilizations without accepting the Western life style and Western thinking. The new state aimed to change the people and encourage them to adopt the Western lifestyle. Everything related to daily life had to change; new laws were adopted to change clothing, measurements, the calendar, and the alphabet. In 1925 Atatürk announced the prohibition of any kind of head-dresses, both religious and ethnic, to encourage the use of the Western hat, and explained the reason for this ban with these words:

“We have to be civilized persons in every aspect. We have suffered much. The cause for this is the misunderstanding of the world situation. Our opinions, our thoughts will be civilized from head to toe. We shall not take heed of nonsensical words. Look at the entire Turkish and Islamic world, in what grave and difficult situation they are because their ideas and thoughts are not adapted to the reforms made imperative by civilization. Our regression and our recent disaster stem from this as well. If we have rescued ourselves in 5 or 6 years, it is the result of our mental changes. We cannot stop any more. We shall definitely progress because we are obliged to do so. Our nation must clearly know that civilization is like a fire that can burn and harm the people who are unacquainted with it. We shall take our proper place in the civilization family, we are now a member of, and we shall protect and enhance it.”<sup>20</sup>

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<sup>20</sup> Higher-Education System in Turkey <<[www.kultur.gov.tr/EN,31613/civilization.html](http://www.kultur.gov.tr/EN,31613/civilization.html)>> ,

The reforms of the young republic were pointing to a revolution. The abolition of the Ottoman Sultanate then Caliphate, the withdrawing of the *millet* system and the acceptance of equality of each citizen regardless of religion or sex, the banning polygamy and finally the acceptance of laicism had completely changed the legal system.

One might think that following a 600-year-old state, the young republic must have inherited a lot of its legal system or legal education, but the fact is, beside its attempts to receive Western law, the Turkish Republic denied everything about the Ottoman system and tried to adopt a Western legal system as quickly as possible. For the reasons explained very briefly above, Turkish Republic cut all the ties with the legacy of Ottoman Empire by choice. The new, young Turkish generations were not even able to read the old alphabet. The young Turkish Republic changed all the major legal codes. Hamson states<sup>21</sup>:

There was a fundamental revolution in Turkey after the first world war and that country decided to start so far as possible from a clean sheet with a complete reception of West European law. The great innovation of the revolution of the 1920's was to make a clean sweep, to take over en bloc, though by way of selection, an entire system of European law.

In particular it is a mistake to exaggerate the effect of the revolution, however thorough-going in some respects that may have been. Turkey did not in 1925 quite suddenly change from a mediaeval Ottoman despotism into a modern democratic state. The Turkish experience does not warrant the belief that any such startling and dramatic transition is possible. From our point of view it is necessary to remember that Western law has been in process of being received into Turkey, however imperfectly or partially, for a period of at least one hundred years.

The Turkish Republic differs from the Ottoman state in the point that they were not trying to adopt Western law to a Tur-

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<sup>21</sup> Hamson, 1957 p. 9

## 21. YÜZYILDA HUKUK EĞİTİMİ

kish *mode de vie*, but they were trying to adopt Turkish lifestyle to Western law. After the revolution there was no legal plurality in the Turkish state. The unified, secular, law was applicable to all citizens of the Republic.

But creating a new understanding is not simple; at first, the National Parliament of Turkey established commissions to accept the new codes, after long discussions on the issues of: preparation of the civil code, the founding new courts after abolishing the Sharia courts, the new education code, The Minister of Justice of the young Republic, Mahmut Esat Bey, delivered a famous speech saying that: “what we need is not a reform, but a revolution”<sup>22</sup> and announced that the commissions set up to accept new codes would not work anymore. Because the commissioners were trained under the old system, their legal understanding were an obstacle to the creation of new laws; they were still trying to create a synthesis of Islamic law and Western law. The government decided on a complete reception of Western law, which meant that commissions were not supposed to adopt the rules but only translate them. The failing of the commissions also uncovered the need for a new law school. Ankara decided to found a new school to train new jurists only in Western Law.

In three years from 1926 to 1929 the National Parliament accepted many major laws<sup>23</sup> and changed many aspects of daily life. To support these changes a law school was founded in Ankara in 1925. The new state was taking the new law school seriously; because they had no building in Ankara they let the school use the building of the Grand National Assembly for

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<sup>22</sup> Uçok, Mumcu, Bozkurt, 1976, p. 375

<sup>23</sup> Uçok *et al.* lists the reception of the major codes: in 1926, Civil Code and Code of Obligations from Switzerland, Penal Code from Italy, Commercial Code from Germany and Italy, in 1927, Civil Procedure Code from Canton de Neuchatel, Switzerland, Criminal Procedure Code from Germany in 1929, Maritime Code from Germany, Bankruptcy and Enforcement Code from Switzerland, Tax Law mainly Germany, Uçok, Mumcu, Bozkurt, 1976, p. 376, 377

the first two years.<sup>24</sup> Prof. Dr. Kansu, Rector of the Ankara University telling about those days in his opening speech for the academic year 1945-46:

[T]he first attempt on opening a law school in Ankara was in 1922 and the National Parliament decided to discuss the matter in future because the Education Commission stated that 'the state has no funds and no buildings even for elementary schools'. Ankara Law School had to wait for two more years to be opened.<sup>25</sup>

Ankara Law School's first academic staffs demonstrates the urge to create a western law school and the difficulties of finding professors who had adequate knowledge and training.<sup>26</sup>

Ağaoğlu Ahmet Bey (Deputy of Kars) - Professor of Conditional Law

Akçuraoğlu Yusuf Bey (İstanbul) - Professor of Political Sciences

Bahaeddin Bey (Lecturer in Darülfünun) - Professor of Criminal Law and Law of Criminal Procedure

Tevfik Kâmil Bey (Deputy of İstanbul) - Professor of Roman Law

Cemal Hüsnü Bey (Deputy of Gümüşhane) - Professor of Economics

Cemil Bey (Lecturer in İstanbul University Lecturer in Darülfünun) Professor of International Law

Hasan Bey (Deputy of Trabzon) - Professor of Finance

Refik Bey (Sıhhiye Vekili) - Professor of Forensic Medicine

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<sup>24</sup> Ed. Doç. Dr. Dogan Atılgan Rektörlerimizin Eğitim Yılı Açıs Konusmaları, (Opening Speeches of Our Rectors) 1946-2004 Ankara, 2003, p. 5

<sup>25</sup> Id.

<sup>26</sup> Ertuğrul Akçaoğlu, Ankara Üniversitesi Hukuk Fakültesi'nin Kuruluşu ve İlk Günleri, (Foundation and the First Days of the Ankara University Law Faculty), TBB Journal, V. 80, p. 375, 2009

## 21. YÜZYILDA HUKUK EĞİTİMİ

Saraçoğlu Şükrü Bey (Deputy of İzmir) - Professor of Theoretical Economics

Şükrü Kaya Bey (Deputy of Mentеше) - Professor of Schools of Economics

Şevket Mehmet Ali Bey (Legal Adviser of İş Bank) - Professor of Commercial Law

Sadri Maksudi Bey (Former President in exile of Idel-Ural) - Professor of Turkish Legal History and Legal History

Süheyp Nizami Bey (Managing Director of Ziraat Bank) - Professor of Administrative Law

Mahmut Esat Bey (Minister of Justice) - Professor of History of Revolutions

Mustafa Fevzi Bey (Deputy of Saruhan) - Professor of History of Fıkıh

Veli Bey (Legal Advisor of Ministry of Foreign Affairs) - Professor of Civil Law

Yusuf Kemal Bey (Deputy of Sinop) - Professor of Economics

### **Holocaust:**

#### **Effects of the Exiled German Law Professors in Turkey**

An awful event of the history lent help from an unexpected quarter; Jewish law professors had to flee from the Holocaust, and the young Turkish Republic accepted them despite the objections of the Nazis. The German law professors made the final changes to the Turkish legal system, building on the hundred years of Turkish efforts to westernization of Turkish Law and its legal education system.

Ernst Hirsch, one of these exiled professors, was already in Istanbul and then he started to work in Ankara. He tells in his memoirs of the situation of the Ankara Law Faculty when he arrived in Ankara:<sup>27</sup>

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<sup>27</sup> Ernst E. Hirsch, *Anılarım, (Memoirs)* Ankara, 2012, p. 330



When I arrived in Ankara the so-called faculty of law was actually a vocational school with a dormitory attached. The school was founded as to train judges of future by Atatürk himself in 1925, and National Parliament turned the school into a vocational school by a commentary decision in 1926. In time everybody started to name the school as 'faculty' also the budget laws mention the school as 'faculty' but actually there had been no change in its legal status. Faculty of Law had no authority to deliver doctorate and associate professor titles. When I was speaking with the Minister, I had mentioned this issues and he replied 'if you are willing to do the most of the work, we should.'

*Darülfunun*<sup>28</sup> in Istanbul was closed in 1933 and Istanbul University took its place. The aim of this change was to get rid of the *Medrese* spirit from the University and renew it with "the Ankara spirit."<sup>29</sup> Hirsch, Schwarz, Koschaker and so many other scholars who had to flee from Germany under the Nazi regime, found refuge in Turkey, and they helped Turkey a lot in its efforts to create Western-style universities.

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<sup>28</sup> Darülfunun means house of sciences, as a part of Ottoman's westernization efforts it was founded in 1900; Konya, Bagdat and Istanbul law schools become a part of it in time.

<sup>29</sup> Hirsch, 2012, p. 225

## Current Legal Education System

### General Organization of Universities

There are two types of universities in Turkey; universities owned by state and the not-for-profit foundations (so called private universities). All universities are public entities with scientific autonomy under the protection of Constitution.<sup>30</sup>

#### Higher Education Council (YÖK)

Turkish universities exist in a very centralized system. The Code of Higher Education number 2547 adopted in 1981, by the National Security Council which was the body that replaced the national parliament after the coup d'état for the first period of martial law, aimed at reorganising the higher education system.<sup>31</sup> All higher education bodies were reorganized as universities with a hierarchical understanding. All universities were divided into faculties, faculties divided into sections, sections divided into departments and departments divided into disciplines.<sup>32</sup> Even though the Constitution states that there should be academic autonomy<sup>33</sup> because all of these bodies have to follow the decisions of the higher bodies and the universities have to obey the Higher Education Council (in Turkish

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<sup>30</sup> Article 130 of the Turkish Constitution explains the rights and duties of the Universities, secures the members of the University by declaring that management and supervisory bodies and academic staff cannot be removed from their office unless the decision of competent bodies of university or YÖK. Constitution states that budgets of the universities will be prepared by themselves and be approved by YÖK than will be presented to Ministry of Education and the budgets gets into force according to rules and procedures of central administration.

<sup>31</sup> The 4th article of the Higher Education Code states the aims of the higher education. Which give us an idea about the characteristic of the Code; among other aims the Code clearly states that, the purpose of higher education is to educate students to raise as citizens who "have national, moral, humanistic, spiritual and cultural values of the Turkish nation, bearing the honour and happiness of being a Turk" (art. 4/a-2), "holds interest of the society above personal interest, filled with love of family, country and the nation" (art. 4/a-3).

<sup>32</sup> Same order is applied in graduate schools with institutes instead of faculties and vocational training with vocational schools.

<sup>33</sup> Constitution Article 130

*Yüksek Öğretim Kurulu*, hereinafter YÖK). YÖK's decisions there is in fact a strict centralising bureaucracy. In this hierarchical structure all academic staff are subordinate to the head of their own disciplines who is under the head of sections. Thus there is almost no room left for the members of academy to act according to their own will which degrades academic autonomy as all have to follow YÖK's decisions. This code has been heavily criticized since then but has not had any major changes to it, unlike many of the Codes accepted after the coup d'Etat.<sup>34</sup> The main tool for the reorganization of the higher education system was the Higher Education Council known as YÖK). YÖK has a major role in the higher education system of Turkey; its role is so important that the Code of Higher Education is often abbreviated as the Code of YÖK, which is a common mistake.

Even though each university has its own decision-making procedures, which are explained below, YÖK has three main tools to control universities. First the budgets of the universities are subject to YÖK's approval,<sup>35</sup> second YÖK has the duty to inspect the universities and carries out this function through the board of inspection,<sup>36</sup> and third YÖK has the power to decide the number of chairs for academic staff<sup>37</sup> and the numbers of the students to be admitted to each Faculty.<sup>38</sup> YÖK also has the power to open, to merge or to close the faculties, institutes, departments and branches in a university<sup>39</sup> but this excessive power remains unnecessary because of the three powers we have mentioned.

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<sup>34</sup> In 2012 YÖK announced that they are working on a new Code of Higher Education, they organized panels and discussions and they even founded a section on the official web site: [yeniyasa.yok.gov.tr](http://yeniyasa.yok.gov.tr)

<sup>35</sup> Code no. 2547 article 7/k

<sup>36</sup> According to Code no. 2547 article 8/a, Board of Inspection is a dependent body of YÖK has a to carry out inspection functions. Board of Inspection has 10 members, YÖK decides 8 members of it; YÖK appoints 5 professors directly and chooses 1 member for each among the 3 candidates suggested by Supreme Court, Council of state and Court of Accounts. This article also gives a chair to the Ministry of Education and Chief Office of the Turkish Armed Forces.

<sup>37</sup> Code no. 2547 article 7/f

<sup>38</sup> Code no. 2547 article 7/h

<sup>39</sup> Code no. 2547 article 7/d-2

## 21. YÜZYILDA HUKUK EĞİTİMİ

YÖK has 21 members<sup>40</sup>: 7 members are directly appointed by the President of the Republic consisting of former rectors and academic staff; 7 are selected by the Council of Ministers (Cabinet) from among distinguished, high ranking civil servants; and 7 are selected by the Inter-University Council from among professors who are not already members of that YÖK. The selections of members by the Council of Ministers and the Inter-University Council are subject to approval of the President of the Republic. Each member is appointed for a renewable term of four years. The President of the Republic appoints the President of YÖK from among the Council members.

Nine members of the Council are elected to an Executive Board to carry out day-to-day functions of the Council. Members of the YÖK continue to their work in their institutions but the members of Executive Board get appointed on a full-time basis.

### Inter-University Council

The Inter-University Council is the body that decides on academic issues. The Council consists of the rectors all of the universities, one professor from each university selected by the senate of that university and a professor from Turkish Armed Forces selected by the Chief Office of TAF.<sup>41</sup> The Inter-University Council offers recommendations to YÖK and universities on issues related to teaching, research or publications. The Council decides on the conditions for the obtaining of doctorates and on the conditions of associate professor (entrance) examinations. Article 65 of the Higher Education Code authorizes YÖK to issue regulations in almost every area related to higher education with two exceptions. According to article 65/b the Inter-University Council has the power to issue regulations about the principles of the graduate and post-graduate (second and third cycle) education and on academic matters related to the practice of Code 2547.

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<sup>40</sup> Code no. 2547 article 6/b

<sup>41</sup> Code no. 2547 article 11

Rectors of universities hold the presidency of the Council for one year, presidency is taken in turn depending on the age of the University.

### Universities

There are two types of universities in Turkey; universities owned by state and by not-for-profit foundations (so called private universities) as mentioned above. All universities, including so called private universities, are public entities and the National Parliament must adopt a code of law in order to found a university. There are 172 universities in Turkey, 102 of them are owned by state and 70 of them are owned by foundations.<sup>42</sup> The total number of vocational training school and undergraduate students is 4,112,687 (2,238,988 male and 1,873,699 female).<sup>43</sup> 534,055 students (244,224 female and 289,831 male) graduated in the 2011 academic year.<sup>44</sup>

### Rector

The Rectors of the state universities are appointed by the President of the Republic by a three phased election process. The process starts with an election in each university. Academic staff (professors, associate professors and assistant professors) of the universities has the right to vote; and each university sends the name of the six candidates in order of the votes they received in the election. YÖK shortlists the candidates to three names regardless of the vote they had in the university election. In the last step of the process, the President chooses one of the three nominees. YÖK has been criticized as having no objective criteria for shortening the lists to three names.<sup>45</sup>

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<sup>42</sup> <[www.yok.gov.tr/web/guest/universitelerimiz](http://www.yok.gov.tr/web/guest/universitelerimiz)

<sup>43</sup> <[www.osym.gov.tr/dosya/1-60426/h/5onlisanslisansduzeyogrencisay.pdf](http://www.osym.gov.tr/dosya/1-60426/h/5onlisanslisansduzeyogrencisay.pdf)

<sup>44</sup> <[www.osym.gov.tr/dosya/1-60395/h/1ogrencisayozettablosu.pdf](http://www.osym.gov.tr/dosya/1-60395/h/1ogrencisayozettablosu.pdf)

<sup>45</sup> There are several occasions that YÖK has changed the list, as an example we can look to the elections in Giresun University in 18 June 2010. 88 votes have been used in this small University and the first candidate had 31 votes, the other votes were 29, 21, 4, 2 and 1. YÖK decided to leave out the first two candidates and decided a short list with the candidates who had 21, 4 and 2 votes. After the withdrew of the candidate who had two

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Also the President has been criticized for the same reason.<sup>46</sup>

According to Code of Higher Education, rector's duties and powers are:<sup>47</sup>

President of the university boards,

Executes the decisions of higher education boards

Decides about the suggestions of the university boards,

Informs the Inter-university Council upon the educational activities, scientific researches and publications of the university,

Determines on the budget, investment program and vacant positions,

To inspect and supervise all units of the university and its staff at every level

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votes YÖK had to put another name to the list and they decided to add the candidate in the last place who had only one vote. (from the national newspaper *Milliyet* 19.03.2012) <[gundem.milliyet.com.tr/tek-oy-alan-aday-yok-listesine-girdi/gundem/gundemdetay/19.03.2012/1517063/default.htm](http://gundem.milliyet.com.tr/tek-oy-alan-aday-yok-listesine-girdi/gundem/gundemdetay/19.03.2012/1517063/default.htm)

<sup>46</sup> There are also several occasions that President has decided not to appoint the candidate who had the majority, as an example we might mention the elections of Gazi University, which is one of the three main universities in Ankara, 1740 votes has been counted in election and at the last of the process President appointed the candidate who was in the fifth place with 188 votes. <[siyaset.milliyet.com.tr/ректор-atamasinda-gul-den-uc-surpriz/siyaset/siyasetdetay/08.07.2012/1564242/default.htm](http://siyaset.milliyet.com.tr/ректор-atamasinda-gul-den-uc-surpriz/siyaset/siyasetdetay/08.07.2012/1564242/default.htm) Ministry of National Education replied to a parliamentary question and stated that the current President had appointed 32 Rectors after elections. In this process YÖK has decided not to present 11 candidates in the first place of the list even though they had the majority of the votes. The President appointed 18 candidates who had the majority of the votes and has decided not to appoint 14 candidates even though they had the majority. In percentage %56 of the appointed Rectors had the majority in the elections of the Universities.

<[www.abbasguclu.com.tr/egitim/ректор\\_atamalarinda\\_gul\\_mu\\_yoksa\\_sezer\\_mi\\_daha\\_demokrat.html](http://www.abbasguclu.com.tr/egitim/ректор_atamalarinda_gul_mu_yoksa_sezer_mi_daha_demokrat.html)

<sup>47</sup> Code no. 2547 article 13/b

### Senate

The Senate is the academic body of the university. Under the rector's presidency, the Senate consists of vice-rectors of the university, deans of the faculties and one academic staff designated by the faculty board for three years per each faculty, and heads of the institutes and vocational schools. The Senate meets at least twice a year; in the beginning and the end of each academic year. The Senate's duties and powers are:<sup>48</sup>

To decide upon the basics of the education, scientific research and publications of the university.

To prepare drafts of the codes of law or regulations which interests the whole university or to deliver opinion on the drafts.

To prepare draft regulations to present to the approval of the rector or to deliver opinion on the drafts.

To decide upon the academic calendar.

To deliver honorary academic titles.

To decide about the objections to the boards of faculties, institutes and vocational schools.

To chose members of the Executive Board of the university.

### Executive Board

The executive board of the university consists of deans and three academics who have been assigned to it by the university Senate for four years. The rector is the president of the executive board, vice-rectors have the right to sit in the meetings but they do not have right to vote. The executive board is an administrative body and it helps the rector in his administrative duties.<sup>49</sup>

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<sup>48</sup> Code no. 2547 article 14/b

<sup>49</sup> Code no. 2547 article 15

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### Faculty Administration

#### Dean

The dean is the head of the faculty and its sub-units. The rector of the university suggests the names of three candidates to the YÖK, which may or may not be from the academic staff of the relevant faculty and might not even be from the relevant field. YÖK appoints a dean from this list for a term of three years, though it is possible to be reappointed at the end of each term of office.

The dean is the head of all boards and units of the faculty and is responsible to the Rector to ensure the full use of the faculty's academic capacity, to take necessary security precautions, to present social services to students, to maintain education, research and publications on a regular basis, and to inspect and supervise all activities in the faculty.<sup>50</sup>

#### Faculty Board

Faculty board is an academic body and the equivalent of the university senate at faculty level. The dean of the faculty is the president of the board and it consists of the heads of the sections, heads of institutes and vocational schools - if there are any attached to the faculty - three professors, who have been elected by professors; two associate professors, who have been elected by associate professors; and one assistant professor, who has been elected by the assistant professors. They all get elected for a three-year term. The faculty board meets at the beginning and at the end of each academic year. The board decided the basis of the faculty's activities on education, research and publication, academic calendar of the faculty and elects members to the executive board of the faculty.<sup>51</sup>

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<sup>50</sup> Code no. 2547 article 16

<sup>51</sup> Code no. 2547 article 17



### Executive Board

The executive Board of the faculty consists of three professors, two associate professors and one assistant professor who have been elected by faculty board and the dean is the president of the board. The executive board is an administrative body to help the dean on administrative duties. This board is also authorized to accept students entering from another Faculty or university and may then decide which of the previous courses on that student's transcript to accept and to decide all the matters related to education or examination in the faculty. We must note that, the board's authority to accept students is only for the students who are already enrolled to a faculty. Because of the centralised system neither universities nor the faculties have authority to accept any student who is going to be enrolled for the first time.

### Legal Education for Paralegals

#### Vocational Training

VET in Secondary Education: Vocational High School (Lycée) of Justice

Vocational High Schools of Justice (in Turkish; *Adalet Meslek Lisesi*) are four year schools that follow the eight year compulsory primary education. Vocational High Schools of Justice (herein after lycée<sup>52</sup>) aim to educate their students at secondary school level, in according to general principles of Turkish National Education system. The graduates of the VHS of Jus. gain the necessary information and skills to be employed as court clerks and correction officers and other middle and low-level positions in the justice bureaucracy. The lycées work under the Ministry of Education according to Code number 5450.<sup>53</sup>

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<sup>52</sup> Ministry of Education prefers to use the term "high school" for this secondary level school, but we prefer the term *lycée* as it is close to Turkish name of the school; *Adalet Lisesi* (Justice Lycée) and to make a difference with the vocational high school of justice in the higher education level.

<sup>53</sup> Code no: 5450 is adopted on 26.01.2006, published in Official Gazette dated 03.02.2006 numbered 26069

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Lycée is accepts students by means of a nation wide centralised exam carried by the Student Selection and Placement Center (herein after with its Turkish acronym; ÖSYM). There are 27 lycées in Turkey and they had 5,006 students (2,300 male and 2,706 female) in the 2012/13 educational year.<sup>54</sup> Successful candidates of the centralised exam must comply with the following conditions in order to be registered in the Lycée;<sup>55</sup>

To be a Turkish citizen

To be graduated from primary school

Must have good health and physical condition

Shall not have suspended her/his education after primary education

Shall not be registered to any secondary school

Shall not be married, engaged or divorced

Twelve years of education is compulsory in Turkey. The students of lycée start from the ninth grade. Lessons become more specific to vocational matters each year. In the twelfth year students spend two days at lycée and receive practice training three days a week.<sup>56</sup> The main purpose of these schools is to prepare students for the employment exams of Ministry of Justice. Those who succeed in that exam start to work in the Ministry, indeed graduates from lycée are favoured by the Ministry.<sup>57</sup> The graduates of the lycée may also apply to the central university entrance exam, as an advantage to the graduates of the lycée, they have the right to continue to Vocational High School of Justice without any exams, which is a two year high school, with possibility to continue to Faculties of Law at universities.

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<sup>54</sup> National Education Statistics, Published by Official Statistic Programme, Turkish Ministry of National Education and Turkish Statistical Institute, Ankara, 2013, p. 151

<sup>55</sup> <<ttogm.meb.gov.tr/haber.php?go=tamhaber&haberid=37>

<sup>56</sup> <kizlarinegitimi.meb.gov.tr/files/doc/sorularla\_cok\_amacli\_liseler.pdf>

<sup>57</sup> <ttogm.meb.gov.tr/haber.php?go=tamhaber&haberid=37>

### VET in Higher Education: Vocational High School of Justice

The Vocational High School of Justice (VHS of Jus.) is a two-year high school that aims to educate and prepare its students for administrative duties in the legal field. Students get classes of introduction to main areas of law, criminal, civil and administrative procedure laws, documentation and office administration. They are usually employed in courts, enforcement and bankruptcy offices, correction facilities, legal offices and in the offices of notaries. It has been reported that, especially in recent years, the legal departments of private companies and banks are hiring graduates of VHS of Jus.<sup>58</sup>

In the Turkish higher education system high schools are placed under faculties thus naturally VHS of Jus are placed under law faculties. 4,103 students (2,089 male and 2,014 female) are enrolled to these schools at the moment.<sup>59</sup>

Successful students have a possibility to continue to law school. OSYM runs a centralised exam called the Vertical Transfer Exam, Law Faculties accept student from VHS of Jus depending to their GPA and their grades in the Vertical Transfer Exam. This right stands as an important advantage when it is considered in 2013, 1,923,033 students undertook the university entrance exam<sup>60</sup> and law faculties only offered some 10,500 seats.<sup>61</sup>

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<sup>58</sup> <[istanbuluniversitesi.hukukfakultesi.gen.tr/admyo/tarihce.asp](http://istanbuluniversitesi.hukukfakultesi.gen.tr/admyo/tarihce.asp)>

<sup>59</sup> <[www.osym.gov.tr/dosya/1-60400/h/14ogretimalanonlisansogrencisay.pdf](http://www.osym.gov.tr/dosya/1-60400/h/14ogretimalanonlisansogrencisay.pdf)>

<sup>60</sup> <[www.osym.gov.tr/belge/1-14917/2013-osysye-basvuran-aday-say-ilari-16012013.html?vurgu=%c3%b6%c4%9frence+say%c4%b1s%c4%b1](http://www.osym.gov.tr/belge/1-14917/2013-osysye-basvuran-aday-say-ilari-16012013.html?vurgu=%c3%b6%c4%9frence+say%c4%b1s%c4%b1)>

<sup>61</sup> <[www.osym.gov.tr/dosya/1-60399/h/13ogretimalanonlisansogrencisay.pdf](http://www.osym.gov.tr/dosya/1-60399/h/13ogretimalanonlisansogrencisay.pdf)>

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### Curriculum of the İstanbul University Faculty of Law, Vocational High School of Justice<sup>62</sup>

#### I. YEAR (I. SEMESTER)

COMPULSORY COURSES	Hours
Introduction to Public Law	3
Introduction to Administrative Law	2
Introduction to Private Law -I-	3
Keyboard Skills -I-	3
Turkish Language -I-	2
The Principles of Atatürk and the History of Turkish Revolution -I-	2
The History of Art -I-	2
Foreign Language -I-	2
Computer Skills -I-	3
Introduction to Accounting -I-	2
Justice Psychology	2
Introduction to Tax Law	2

#### I. YEAR (II. SEMESTER)

COMPULSORY COURSES	Hours
Civil Procedure Law	3
Administrative Trial Law	2
Introduction to Private Law -II-	2
Introduction to Commercial Law	2
Keyboard Skills -II-	3
Turkish Language II	2
The Principles of Atatürk and the History of Turkish Revolution -II-	2
Foreign Language -II-	2
Computer Skills -II-	3
Introduction to Accounting -II-	2
Advocacy Law	2
Introduction to Documentation	2
SELECTIVE COURSES	
The Law of Judicial Organisation	2
The Law of The Police and Its Organisation	2

<sup>62</sup> <[istanbuluniversitesi.hukukfakultesi.gen.tr/admyo/english.asp](http://istanbuluniversitesi.hukukfakultesi.gen.tr/admyo/english.asp)>

## 21. YÜZYILDA HUKUK EĞİTİMİ

### II. YEAR (III. SEMESTER)

<b>COMPULSORY COURSES</b>	<b>Hours</b>
Introduction to Criminal Law	2
Introduction to Execution Law	3
Keyboard Skills -III-	3
Forensic Medicine	2
The Law of The Processes and the Organisation of Court Offices	2
The Law Of Notices	1
Computer Skills -III-	3
Introduction to Accounting -III- (Cost Accounting)	2
Introduction To Banking Law	2

### II. YEAR (IV. SEMESTER)

<b>COMPULSORY COURSES</b>	<b>Hours</b>
Introduction to Criminal Procedure Law	2
Introduction to Bankruptcy Law	2
Keyboard Skills -IV-	3
Computer Skills -IV-	3
Introduction to Accounting -IV- (Managerial Accounting)	2
The History of Art -II-	2
Introduction to Management	3
Introduction to Execution of Penalties Law	2
Basic Banking Processes	2

### Higher Education

There are 4,353,542 (1,978,343 female and 2,375,199 male) students enrolled to a higher-education institutions in Turkey.<sup>63</sup> Roughly 900,000 students are admitted to university in Turkey every year. When we take out vocational school students and open education students the number of students who are admitted to a four-year undergraduate school in last academic year is 337,291 (174,004 female and 163,287 male).<sup>64</sup> There are 172 universities in Turkey, 102 of them are owned by state and 70 of them are owned by foundations.<sup>65</sup> Access to university is organized via a centralized examination system run by the Student Selection and Placement Centre (ÖSYM). ÖSYM is a public body with administrative and financial autonomy and related with Turkish Higher Education Council (*Yükseköğretim Kurulu - YÖK*).<sup>66</sup> The ÖSYM was a de facto organization of YÖK until 2011. In 2011, the Centre has been totally reorganized after a cheating scandal in the university entrance exam.<sup>67</sup>

#### Access to University

The examination (*Yükseköğretime Giriş Sınavı* or YGS) takes the form of a multiple-choice test in several subjects, some of them compulsory and others reflecting a choice of specialisation (in literature, sciences, *etc.*) by the student. The marks they obtain as well as the relevance of the subjects for the university education they would like to pursue will condition their access to the university and degree subject of their choice. Not unlike

<sup>63</sup> <[www.osym.gov.tr/dosya/1-60395/h/1ogrencisayozettablosu.pdf](http://www.osym.gov.tr/dosya/1-60395/h/1ogrencisayozettablosu.pdf)>

<sup>64</sup> Id.

<sup>65</sup> <[www.yok.gov.tr/web/guest/universitelerimiz](http://www.yok.gov.tr/web/guest/universitelerimiz)>

<sup>66</sup> Code no: 6147art. 3

<sup>67</sup> "ÖSYM head resigns after cheating scandal" news from Today's Zaman newspaper, published on 22.09.2010, <[www.todayszaman.com/news-Detail\\_getNewsById.action;jsessionid=B8C4BD40DB929AF2221565B-FE158D8B3?p.No=15&category=103&dt=2010&newsId=222312&columnistId=0](http://www.todayszaman.com/news-Detail_getNewsById.action;jsessionid=B8C4BD40DB929AF2221565B-FE158D8B3?p.No=15&category=103&dt=2010&newsId=222312&columnistId=0)>

many other countries, law is considered a noble subject and a desirable occupation and competition for entry into the best law faculties of the country is strong. At the moment 40,439 students (19,619 female and 20,820 male) are enrolled in Turkish law faculties. The university law degree usually takes four years to complete.

### First Cycle: Undergraduate (Bachelor's) Degree in Law

Law Faculties have no authority to select the students who are going to enrol in their school.<sup>68</sup> The ÖSYM handles all examination and placement issues. In accordance with the numbers of students that YÖK has assigned to faculties, the ÖSYM asks students for a preference form and places students depending their success ratings. For example last student placed to Ankara University Law Faculty was in 5,360th place from among 1,920,000 students. The best law faculties accept only the candidates with the highest grades. Law faculties can set the level of grades necessary for admission but they cannot control the numbers of students admitted. Some law faculties have seen the number of students to be admitted massively increased (Gazi: from 150 students to 300 in 2008, Ankara: from 400 to 600 students, again in 2011, to 800 students) at very short notice. No additional state funding is attached to the extra students. The private law schools can recoup costs from students (who pay fees of 16,800TL/annum at Başkent University in Ankara, which goes up to 33,000 TL in İstanbul). This is not an option open to state law faculties where the fees are set at approximately 400TL/annum. This situation gives clear cause for concern. Law faculties are increasingly unable to fulfil their educational mission.

Fifteen years ago there were just four law faculties. In 2010 there were 47 law school, 22 in state universities and 25 in pri-

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<sup>68</sup> Faculties have an authority to accept students who are already enrolled to another law faculty. See title 4.b "Faculty Board"

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vate universities.<sup>69</sup> There are now 68 law faculties currently able to accept students in Turkey.<sup>70</sup> 36 in state universities and 32 in private universities.

The remaining faculties are still waiting for YÖK accreditation. In addition 10%-15% of the law graduates training as lawyers come from Turkish Cypriot universities. There are four law faculties in the (territory known in Turkey as the) Turkish Republic of Northern Cyprus for a population of about 100,000-150,000 inhabitants. These universities are alleged to be of a lower level in quality of education than Turkish universities.

The expansion of law degree providers, necessary to accommodate a young and growing population, has however threatened the quality of academic education received by students. There are considered to be too few law professors with good qualifications. YÖK has set up minimum standards for university lecturers that are enshrined in statutes, namely, to have a masters degree and a PhD, proficiency in a foreign language and a track record of publications (books and articles) in Turkey and abroad. Apart from these minimum standards, there exists no other assessment system related to the qualifications and practice of the university lecturers. There is also insufficient financial wherewithal for the university law faculties who often have numbers of student increased with no automatic increase in funding levels.

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<sup>69</sup> Prof. Dr. Yasemin Işıktaç - Dr. Sercan Gürler, General Report of the Turkish National Legal Education System prepared for the 18th International Congress on Comparative Law : The Role of Practice in Legal Education held in Washington during July 25 – August 1, 2010 is based on the information which has been collected from the Law Schools all around Turkey, available at <[journals.istanbul.edu.tr/tr/index.php/hukuk/article/download/17155/16415](http://journals.istanbul.edu.tr/tr/index.php/hukuk/article/download/17155/16415)>

<sup>70</sup> There is no officially confirmed number of the law faculties in Turkey. Ministry of Justice and Union of Turkish Bar Associations stated that they have officially applied to YÖK to get the official number, but YÖK is failed to provide it. This number 68 is taken from ÖSYM placement guide by counting the law faculties in this official guide, which does not include new law faculties that are not accepting students yet. <[dokuman.osym.gov.tr/pdfdokuman/2012/OSYS/2012OSYSKONTKILAVUZ.pdf](http://dokuman.osym.gov.tr/pdfdokuman/2012/OSYS/2012OSYSKONTKILAVUZ.pdf)>



Research from 2009 shows that the number of students per academic staff in the law faculties is 37, but the number of students per academic staff ranges from 12 to 70 in state law faculties.<sup>71</sup> According to ÖSYM's official statistics there are 853 persons, working as academic staff in the 2011-2012 academic year in Turkey.<sup>72</sup> According to same statistics the total number of students is 40,439 which shows us that the number of students per academic member of staff has increased to 47.

### The Curriculum

The law programmes are not themselves regulated by YÖK nor does the Ministry of Justice, or Ministry of Education prescribe what is taught. There is no formal mechanism for input from the Union of Turkish Bars into the curriculum of university legal education necessary to obtain to qualify as a lawyer, unlike, for example, the role of the Joint Academic Stage Board of the Solicitors Regulation Authority and the Bar Standards Board in England and Wales in issuing a statement on what constitutes a 'qualifying law degree' and guidance to providers of recognised legal education. Academic independence is considered sacrosanct although concerns have been voiced about political interference in the appointments of senior university officials. It seems that the cooperation between the Bar, judiciary and academics teachers, which could improve the quality of legal education, has not been sufficiently developed. Perhaps the examination for Judges has influenced the content of the law degree in Turkey.

University legal education is said to be of a rather theoretical character, lacking any practical application of the law. The personal relationship between the professor and students is mostly lacking and there is relatively little learning in small groups. The classes have a form of formal lectures *ex cathedra*

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<sup>71</sup> Fahrettin Demirag & Hasan Çiftçi, Faculties of Law and Legal Education in Turkey, TBB Journal, V.91, 2010, p. 272, 273

<sup>72</sup> <[www.osym.gov.tr/dosya/1-60416/h/29lisansogretimalan.pdf](http://www.osym.gov.tr/dosya/1-60416/h/29lisansogretimalan.pdf)>

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without any significant interaction on the part of the audience or their active participation in a discussion. Furthermore, only written exams are being carried out which deprives the students of the opportunity to acquire at least the basic oratorical skills. There exist no debating clubs similar to those existing in the British system, although there exist some but not many moot courts. The practical skills are deemed to be acquired by young lawyers only later, during the training preparing to the profession of judge, prosecutor or advocate.

The promotion of learning of foreign languages is not at a sufficient level. Some private law schools insist on knowledge of a second language prior to admission. Some courses in private universities are conducted in English language and at all states universities, English courses are compulsory for one year.

The law degree lasts for four years but often takes longer to achieve. Students are allowed to retake a year but the main rule is that they must graduate in a maximum of seven years. Before 2011 students were expelled from the faculties at the end of seventh year, but this has changed with amendment to Article 44 of the Code of Higher Education. Such students are now allowed to continue with their education on condition that they pay extra fees and are treated like an external student, with the right to sit exams, but not to receive tuition. A student who fails to graduate in seven years loses the rights given to students, i.e. Social Security rights. We might say students who fail to graduate in the given time have a status similar to external students. Grading is done by continuous assessment as well as by end of year exams, although the latter are changing fast to semester exams following the Bologna Process.

There is no internal mechanism to object to the grades awarded. If a student feels unjustly graded he or she may sue the university. The Court will request the marking scheme from the University and alternate professors will re-mark the exam script. There is no final grade at the end of the degree but the

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student must have achieved 240 ECTS credits according to Bologna Process. Universities are allowed to decide for additional requirements, for example to graduate law faculties in Istanbul Kültür University and Başkent University students must collect 240 ECTS credits and to have a 2.00/4.00 GPA.

### CURRICULUM OF BAŞKENT UNIVERSITY FACULTY OF LAW<sup>73</sup>

First Term (Fall)		T	P	C	ECTS
ATA101	ATATÜRK'S PRIN. AND THE HIST. OF THE TURKISH REP. I	2	-	2	2
ENG131	ACADEMIC ENGLISH I	4	-	4	5
LAWXXX	NON-DEPARTMENTAL ELECTIVE COURSES 1	2	-	2	4
LAWXXX	NON-DEPARTMENTAL ELECTIVE COURSES 2	3	-	3	4
LAW104	INTRODUCTION TO LAW	3	-	3	4
LAW113	CIVIL LAW I (GENERAL PRINCIPLES AND LAW OF PERSONS)	4	1	4	5
LAW123	CONSTITUTIONAL LAW I (FUNDAMENTAL PRINCIPLES)	3	-	3	4
TÜRK101	TURKISH I	2	-	2	2
Second Term (Spring)		T	P	C	ECTS
ATA102	ATATÜRK'S PRIN. AND THE HIST. OF THE TURKISH REP. II	2	-	2	2
ENG132	ACADEMIC ENGLISH II	4	-	4	5
GSBHSH	FINE ARTS ELECTIVE/FIRST AID	-	2	1	1
LAWXXX	NON-DEPARTMENTAL ELECTIVE COURSES 3	2	-	2	4
LAWXXX	NON-DEPARTMENTAL ELECTIVE COURSES 4	3	-	3	4
LAW114	CIVIL LAW II (FAMILY LAW)	4	1	4	5
LAW124	CONSTITUTIONAL LAW (THE TURKISH CONS. LAW)	3	-	3	4
LAW136	ROMAN LAW	3	-	3	3
TÜRK102	TURKISH II	2	-	2	2
Third Term (Fall)		T	P	C	ECTS
ENG231	ACADEMIC ENGLISH III	4	-	4	5
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 5	1	2	2	4
LAWXXX	ELECTIVE COURSES IN ENGLISH 6	2	-	2	4
LAW213	LAW OF OBLIGATIONS I (GENERAL PROVISIONS)	3	1	3	5
LAW235	CRIMINAL LAW I (GENERAL PROVISIONS)	3	1	3	4

<sup>73</sup> <<http://angora.baskent.edu.tr/ankaraweb/katalog/katalog.php>>

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LAW257	HISTORY OF TURKISH LAW	3	-	3	3
LAW263	ADMINISTRATIVE LAW I	3	1	3	5
Fourth Term (Spring)					
ENG232	ACADEMIC ENGLISH IV	4	-	4	5
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 7	1	2	2	4
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 8	1	2	2	4
LAW214	LAW OF OBLIGATIONS II (GENERAL PROVISIONS)	3	-	3	3
LAW238	CRIMINAL LAW II (GENERAL PROVISIONS)	3	1	3	3
LAW256	EUROPEAN UNION LAW	2	-	2	3
LAW264	ADMINISTRATIVE LAW II	3	-	3	4
LAW286	PUBLIC FINANCE	3	-	3	4
Fifth Term (Fall)					
ENG315	TRANSLATION I	2	-	2	2
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 9	1	2	2	4
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 10	1	2	2	4
LAW351	LAW OF TAXATION	3	-	3	3
LAW355	PHILOSOPHY OF LAW (JURISPRUDENCE)	2	-	2	3
LAW361	PROPERTY LAW I	3	1	3	4
LAW371	LAW OF OBLIGATIONS (SPECIAL TERMS)	4	1	4	4
LAW381	LAW OF CIVIL PROCEDURE I	3	1	3	3
LAW391	COMMERCIAL LAW (COMMERCIAL UNDERTAKING)	3	-	3	3
Sixth Term (Spring)					
ENG316	TRANSLATION II	2	-	2	3
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 11	1	2	2	4
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 12	1	2	2	4
LAW314	CRIMINAL LAW (SPECIAL PROVISIONS)	4	1	4	4
LAW358	SOCIOLOGY OF LAW	2	2	2	4
LAW362	PROPERTY LAW II	3	-	3	3
LAW382	LAW OF CIVIL PROCEDURE II	3	1	3	4
LAW392	COMMERCIAL LAW II (BUSINESS COMPANIES)	3	1	3	4
Seventh Term (Fall)					
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 13	1	2	2	4

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LAW411	FORENSIC MEDICINE	2	-	2	3
LAW427	HUMAN RIGHTS	2	-	2	3
LAW465	PRIVATE INTERNATIONAL LAW I	3	-	3	4
LAW467	LABOR LAW	3	-	3	4
LAW471	LAW OF ENFORCEMENT AND BANKRUPTCY I (ENFORC.)	3	1	3	4
LAW481	COMMERCIAL LAW I (NEGOTIABLE INSTRUMENTS)	3	1	3	4
LAW491	LAW OF CRIMINAL PROCEDURE I	3	-	3	4
Eighth Term (Spring)					
		T	P	C	ECTS
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 14	1	2	2	4
LAWXXX	DEPARTMENTAL ELECTIVE COURSES 15	1	2	2	4
LAW434	GENERAL PUBLIC LAW	3	-	3	3
LAW450	LAW OF SUCCESSION	4	1	4	4
LAW466	PRIVATE INTERNATIONAL LAW II	3	-	3	3
LAW468	COLLECTIVE LABOUR LAW	3	-	3	3
LAW472	LAW OF ENFORCEMENT AND BANKRUPTCY II (BANKRUPTCY LAW)	2	-	2	3
LAW482	COMMERCIAL LAW II (INSURANCE LAW)	2	-	2	3
LAW492	LAW OF CRIMINAL PROCEDURE II	3	-	3	3
Departmental Elective Courses					
		T	P	C	ECTS
LAW268	VICTIMOLOGY	1	2	2	4
LAW272	INTELLECTUAL PROPERTY RIGHTS	1	2	2	4
LAW273	TURKISH ECONOMY	1	2	2	4
LAW275	PARLIAMENTARY LAW	1	2	2	4
LAW276	ECONOMICS OF THE EUROPEAN UNION	1	2	2	4
LAW277	THE FORMS OF GOVERNMENT	1	2	2	4
LAW278	EUROPEAN LAW OF HUMAN RIGHTS	1	2	2	4
LAW279	CONSUMER RIGHTS	1	2	2	4
LAW281	CONSTITUTIONAL ADJUDICATION	1	2	2	4
LAW288	PROCUREMENT LAW	1	2	2	4
LAW290	TURKISH POLITICAL HISTORY	1	2	2	4
LAW363	LAW OF CONSTRUCTION	1	2	2	4
LAW364	LAW OF CAPITAL MARKET	1	2	2	4
LAW365	INFANCY LAW	1	2	2	4
LAW366	TAX APPLICATIONS	1	2	2	4

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LAW367	LAW OF LAND AND CADASTRE	1	2	2	4
LAW369	FOUNDATION LAW	1	2	2	4
LAW372	BANKING LAW	1	2	2	4
LAW373	ADMINISTRATIVE PROCEDURE LAW	1	2	2	4
LAW374	PROTECTION OF CULTURAL PROPERTY	1	2	2	4
LAW375	LAW OF SPORT	1	2	2	4
LAW376	TURKISH TAX SYSTEM	1	2	2	4
LAW377	ANIMAL RIGHTS	1	2	2	4
LAW378	ARBITRATION/CANCELATION	1	2	2	4
LAW379	LAW OF LOCAL ADMINISTRATIONS	1	2	2	4
LAW384	PUBLIC PROPERTIES	1	2	2	4
LAW432	SOCIAL SECURITY LAW	1	2	2	4
LAW442	MARITIME LAW	1	2	2	4
LAW473	LAND LAW	1	2	2	4
LAW474	FOREIGN BUSINESS LAW	1	2	2	4
LAW475	PRESS LAW	1	2	2	4
LAW476	INTELLECTUAL AND INDUSTRIAL PROPERTY LAW	1	2	2	4
LAW477	LAW OF COMPETITION	1	2	2	4
LAW479	ENVIRONMENTAL LAW	1	2	2	4
LAW483	INTERNET LAW	1	2	2	4
LAW484	ADVOCACY AND PUBLIC NOTERY LAW	1	2	2	4
LAW485	LAW PRACTICE II	1	2	2	4
LAW486	LAW PRACTICE I	1	2	2	4
LAW487	MILITARY PENAL LAW	1	2	2	4
LAW488	REFUGEE LAW	1	2	2	4
LAW493	HEALTH LAW	1	2	2	4
LAW494	LAW OF COOPERATIVE COMPANIES	1	2	2	4
LAW496	LAW OF ELECTION	1	2	2	4
Non-Departmental Elective Courses					
		T	P	C	ECTS
LAW191	INTRODUCTION TO PHILOSOPHY	2	-	2	4
LAW192	INTRODUCTION TO SOCIOLOGY	2	-	2	4
LAW193	ECONOMICS I (MICRO ECONOMICS)	3	-	3	4
LAW194	ECONOMICS II (MACRO ECONOMICS)	3	-	3	4

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LAW237	HISTORY OF CIVILIZATION	1	2	2	4
LAW258	ACCOUNTING II	1	2	2	4
LAW265	ACCOUNTING I	1	2	2	4
LAW283	INTRODUCTION TO BUSINESS	1	2	2	4
LAW294	INTERNATIONAL ECONOMIC ORGANIZATIONS	1	2	2	4
LAW296	ECONOMIC DOCTRINES	1	2	2	4
LAW357	INTERNATIONAL POLITICAL INSTITUTIONS	1	2	2	4
LAW359	POLITICAL SCIENCE	1	2	2	4
LAW368	JUDICIAL PROCEDURAL WRITING	1	2	2	4
LAW478	FOREIGN POLITICS AND DIPLOMACY	1	2	2	4
LAW489	HISTORY OF POLITICAL OPINIONS	1	2	2	4
LAW498	INTERNATIONAL TRADE	1	2	2	4
Elective Courses in English					
		T	P	C	ECTS
LAW239	LAW AND ECONOMICS	2	-	2	4
LAW291	INTERNATINAL LAW	2	-	2	4
LAW349	CRIMINOLOGY	2	-	2	4
LAW370	LEGAL CONCEPTS	2	-	2	4
LAW436	INTERNATIONAL CRIMINAL LAW	2	-	2	4
T:Theoretic P:Practice C:Credit ECTS:European Credit Transfer System					

## Second and Third Cycle: Master's and Doctoral Degrees in Law

Social Science Institutes are in charge of graduate level education. The separation was one of the steps during the foundation of YÖK after the 1980 coup, and it has been criticized as being designed to weaken the faculties. The institutes are in charge of graduate level education and even though legally they have the possibility of hiring their own staff, institutes usually do not have academic staff and use the faculties' academic staff. In practice institutes are running administrative duties and leave the academic part to faculties' members as it should be. Yet the administrative distinction creates problems, because all of the decision making process is separated from faculties, and academic areas are separated as sections under institutes. Like university entrance exam, there is a centralized entrance exam to be used for the entry process to graduate education, called the Academic Personnel And Postgraduate Education Entrance Exam (ALES) carried out by ÖSYM. But with a difference to undergraduate education, ÖSYM is not responsible for the placement, and institutes have right to chose their students. To apply for master's and doctoral degrees candidates must also be successful in the Foreign Language Exam (YDS) also organised by ÖSYM. Each institute takes students on an average of oral exam results carried out by institutes, the results of ALES and YDS exams and the GPA of the student. Some graduate degrees are open only to law graduates though most of them are open to all who hold an undergraduate degree but it is difficult for a non-law graduate to pass the oral entry exams.



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MASTER IN CIVIL LAW WITH THESIS<sup>74</sup>**

First Term (Fall)		T	P	C	ECTS
LAWGXXX	ELECTIVE COURSE I	3	-	3	7
LAWGXXX	ELECTIVE COURSE II	3	-	3	7
LAWGXXX	ELECTIVE COURSE III	3	-	3	7
LAWG514	LATEST DEVELOPMENTS ON TRADE LAW	3	-	3	9
Second Term (Spring)		T	P	C	ECTS
LAWGXXX	ELECTIVE COURSE IV	3	-	3	7
LAWGXXX	ELECTIVE COURSE V	3	-	3	7
LAWGXXX	ELECTIVE COURSE VI	3	-	3	7
LAWG598	SEMINAR	-	-	-	9
Third Term (Fall)		T	P	C	ECTS
LAWG597	PRO-THESIS	-	-	-	30
Fourth Term (Spring)		T	P	C	ECTS
LAWG599	THESIS	-	-	-	30
Elective Courses		T	P	C	ECTS
LAWG509	ALTERNATIVE DISPUTE RESOLUTION	3	-	3	7
LAWG510	ALTERNATIVE DISPUTE RESOLUTION PROCESSES II	3	-	3	7
LAWG526	CONSUMER LAW	3	-	3	7
LAWG542	RECENT DEVELOPMENTS IN INSURANCE CONTRACT LAW	3	-	3	7
LAWG566	GUARANTY LAW	3	-	3	7
LAWG576	DEVELOPMENTS IN THE PERSONAL RIGHTS	3	-	3	7
LAWG577	INNOMINATE CONTRACTS IN LAW OF OBLIGATIONS	3	-	3	7
LAWG581	SUPERFICIES	3	-	3	7
LAWG588	LIABILITY OF THE HEAD OF FAMILY	3	-	3	7
LAW518	SHAREHOLDERS RIGHTS IN JOINT STOCK COMPANIES	3	-	3	7
LAW521	LAW OF ADVERTISEMENT	3	-	3	7
LAW523	PROTECTIVE AND PROVISIONAL MEASURES	3	-	3	7
LAW525	STANDARDIZED TERMS OF CONTRACT	3	-	3	7

<sup>74</sup> <<http://angora.baskent.edu.tr/ankaraweb/katalog/katalog.php>>

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LAW532	TRUST RESPONSIBILITY	3	-	3	7
LAW596	LATEST DEVELOPMENTS ON THE LAW OF OBLIGATIONS	3	-	3	7

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First Term (Fall)		T	P	C	ECTS
LAWGXXX	ELECTIVE COURSE I	3	-	3	7
LAWGXXX	ELECTIVE COURSE II	3	-	3	7
LAWGXXX	ELECTIVE COURSE III	3	-	3	7
LAWG548	DEVELOPMENT OF HUMAN RIGHTS IN TURKEY	3	-	3	9
Second Term (Spring)		T	P	C	ECTS
LAWGXXX	ELECTIVE COURSE IV	3	-	3	7
LAWGXXX	ELECTIVE COURSE V	3	-	3	7
LAWGXXX	ELECTIVE COURSE VI	3	-	3	7
LAWG598	SEMINAR	-	-	-	9
Third Term (Fall)		T	P	C	ECTS
LAWG597	PRO-THESIS	-	-	-	30
Fourth Term (Spring)		T	P	C	ECTS
LAWG599	THESIS	-	-	-	30
Elective Courses		T	P	C	ECTS
LAWG536	COMMERCIAL CRIMES AND PUNISHMENTS	3	-	3	7
LAWG543	DISSOLUTION CASES OF POLITICAL PARTIES	3	-	3	7
LAWG544	FREEDOM OF EXPRESSION	3	-	3	7
LAWG545	LOCAL GOVERNMENTS LAW	3	-	3	7
LAWG546	PROCUREMENT LAW	3	-	3	7
LAWG547	ANALYSIS OF TAX LAW	3	-	3	7
LAWG549	TYPES OF GOVERNMENTS	3	-	3	7
LAW568	GENERAL THEORY OF CRIME	3	-	3	7
LAW571	EUROPEAN UNION	3	-	3	7

<sup>75</sup> <<http://angora.baskent.edu.tr/ankaraweb/katalog/katalog.php>>

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LAW583	CRIMES AGAINST GOVERNMENT ADMINISTRATION	3	-	3	7
LAW585	PRESS LAW	3	-	3	7
LAW592	CRIMINAL RESPONSIBILITIES OF HEALTH CARE WORKERS	3	-	3	7
LAW593	CRIMINOLOGY	3	-	3	7
LAW594	ATTEMPT CRIMES	3	-	3	7
T:Theoretic P:Practice C:Credit PRE:Precondition ECTS:European Credit Transfer System					

## Professional Training

### Professional Training for Judges and Prosecutors:

#### Initial Training

The Justice Academy of Turkey (TAA) is the body responsible for the initial training of judges and prosecutors. The TAA is a public body with scientific, administrative and fiscal autonomy.<sup>76</sup> Law graduates must first pass a centralized written exam, again organized by ÖSYM, and then pass an oral exam organized by the TAA. Oral exams are handled by a committee of seven persons. The Undersecretary of the Ministry of Justice (MoJ) holds the chair of the committee and four of the six other members of the committee come from the MoJ. The candidates who are successful in the exams earn the title *candidate judge/prosecutor* and can start their career officially, with payment and Social Security entitlements. The initial training takes two years and consists of two parts each taking one year. Trainee judges and prosecutors get trained together in the first part of the training. In the second part, training differs for *judge candidates* and *prosecutor candidates*. The training also differs for administrative judges.

To apply to the centralized exam persons must:<sup>77</sup>

be a Turkish citizen;

be in good mental and physical health;

be under 30 years old, (35 for those holding a doctoral degree);

be a law graduate (for those applying to administrative judges; those holding a undergraduate degree from political sciences, administrative sciences, economics, finance may apply with the condition to prove they had enough legal courses in their curriculum);

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<sup>76</sup> Code of Law no: 4954, art. 4

<sup>77</sup> <[www.taa.gov.tr/dosya/mevzuat/adliidariyazili.pdf](http://www.taa.gov.tr/dosya/mevzuat/adliidariyazili.pdf)>

have no military obligations,

have no criminal record (except negligence crimes),

Not be known as disreputable

Initial (pre-service) training covers interactive training programmes for the candidate judges and prosecutors in civil and criminal judicial work. The TAA can also carry out training for the military judiciary (upon the demand of Ministry of National Defence), trainee lawyers (upon the demand of Union of Bar Association) and candidate notaries (upon the demand of Union of Turkish Notaries). The TAA has dormitory facilities and candidates stay in the facilities during their training in the Academy.

The TAA describes the phases of the training as:<sup>78</sup>

1. Pre-service training programs are composed of two stages. Each stage has two terms.

The First Stage begins when candidates are recruited as trainee judges and public prosecutors and it is composed of a preparatory and a general probation term. The training program is common for all candidates at this stage.

a. Preparatory Training

Period: 4 months

Location: Turkish Justice Academy

b. General Probation

Period: 8 months

Location: One month with the Chief Public Prosecutor's Office

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<sup>78</sup> <[www.taa.gov.tr/31-egitim-merkezi-mudurlugu-meslek-oncesi-egitim-bolum-koordinaturlugu.html](http://www.taa.gov.tr/31-egitim-merkezi-mudurlugu-meslek-oncesi-egitim-bolum-koordinaturlugu.html)>

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One month with other judicial divisions

Three months with Criminal Courts

Three months with Civil Courts

The Second Stage begins when trainees are appointed as candidate judges and public prosecutors it is composed of duty probation the final-stage training. At this stage, training programs differ for judges and prosecutors.

a. Duty probation

aa. For the judges,;

Period: 8 months

Location: 3 months with Criminal Courts

3 months with Civil Courts

2 months with the Court of Cassation

ab. For the public prosecutors

Period: 8 months

Location: 3 months with the Chief Public Prosecutor's Office

3 month with Criminal Courts

2 months with the Court of Cassation

b. Final Training

Period: 4 months

Location: Turkish Justice Academy

Pre-Service Training for Administrative Judge Candidates

This training is composed of three terms.

a. Preparatory Training

Period: 4 months

Location: Turkish Justice Academy

b. Probation

Period: 16 months

Location: 6 months with the Council of state

4 months with Administrative Courts

4 months with Tax Courts

1 month with Regional Administrative Courts

1 month with Provincial Governorships

c. Final Training

Period: 4 months

Location: Turkish Justice Academy

3. Pre-Service Training for Civil, Criminal and Administrative Judge Candidates coming from Private Practice

This training is composed of two terms.

a. Preparatory Training

Period: 3 months

Location: Turkish Justice Academy

b. Final Training

Period: 3 months

Location: Turkish Justice Academy

(The training program differs for Candidates who will work at Civil Courts)

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### Continuous Training

Responsibility for the continuing training of judges and prosecutors belonged to Justice Academy until the reorganization of High Council of Judges and Prosecutors (HSYK) in 2010 with Code of Law no: 6087. HSYK still uses the staff and the personal of TAA for continuing training of judges and prosecutors. There is no compulsory continuing training for judges and prosecutors, nor a regular regime of training in place.

Judges must ask for the HSYK's permission to join a training course. The first chamber of the HSYK has right to approve the requests of judges and prosecutors who would like undertake further training.<sup>79</sup> We must also mention that EU funded projects resulted increasing the numbers of training course available. HSYK as the partner of six different projects in 2013.<sup>80</sup>

### Professional Training for Lawyers

#### Initial Training

Completing an apprenticeship period is one of the conditions set by Article 3 of the Advocacy Act<sup>81</sup> to qualify as an *avukat*. Article 15 of the Advocacy Act provides that the overall duration of this apprenticeship period is one year: the first six months are spent in courts under the authority of judges and prosecutors and the second are spent in a law office under the supervision of an *avukat* with at least five years of experience. It is further prescribed in Article 23 of the Advocacy Act that the apprenticeship period must be served without any interruption. However, some individuals with legal experience of a prescribed duration obtained in courts as judges or prosecutors, in academia or in government agencies can apply to be exempted from the apprenticeship period.<sup>82</sup>

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<sup>79</sup> <[www.hsyk.gov.tr/uyeler/1dairegorevleri.html](http://www.hsyk.gov.tr/uyeler/1dairegorevleri.html)>

<sup>80</sup> <[www.hsyk.gov.tr/dis-iliskiler.html](http://www.hsyk.gov.tr/dis-iliskiler.html)>

<sup>81</sup> Advocacy Act no:1136, adopted on 19.03.1969, published in Official Gazette dated 07.04.1969 numbered 13168

<sup>82</sup> Article 4 Advocacy Act.



## Application and Character and Fitness Check

Candidates must first apply in writing to the Bar Association where they will serve their apprenticeship. Pursuant to Article 17 of the Advocacy Act, their application must include originals and certified copies of their qualifications, a personal statement that the candidate is free of any circumstances deemed incompatible with the practice of *avukat*<sup>83</sup>, the written consent of an experienced *avukat* with whom apprenticeship will be served and a character reference drawn up by two *avukatlar* practicing with the relevant Bar Association. Article 4 of the Advocacy Apprenticeship Regulations further requires evidence of identity, of residence in the district of the bar association in which registration is sought as well as a criminal record check and medical evidence that they do not suffer from a physical or mental handicap hindering them from practising advocacy permanently ‘in an appropriate manner’.

After receiving the letter of application, the President of the Bar Association will assign one *avukat* enrolled with the Bar Association with the task of investigating whether the apprentice candidate possesses the requisite qualifications for admission into the profession of *avukat* and whether he or she is engaged in any activities incompatible with advocacy. This *avukat* will prepare a report on the outcome of the investigation and submit it to the Bar within a period of fifteen days. The Bar Association may also require further medical evidence if it deemed it necessary.

Once the Bar Association is satisfied with the application, there will be a so-called ‘announcement’ phase,<sup>84</sup> whereby the application will be made publicly known, and everyone is given the opportunity to object to the candidate’s application. Only then could the Bar Association enter the candidate in the apprenticeship list.

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<sup>83</sup> Article 3(f) and 5(a) Advocacy Act.

<sup>84</sup> Article 7 of the Advocacy Apprenticeship Regulations.

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### The First Stage of Training

After being admitted into the apprentice roster, the candidate has to apply to the Judicial Committee in order to begin his or her apprenticeship with courts. Sequence and periods of apprenticeship are then regulated by Article 12 of the Advocacy Apprenticeship Regulations:

“Apprenticeship with courts and judicial offices will be served in the following sequence and periods:

- a) Public prosecutors’ offices: One month.
- b) High criminal court: One month.
- c) Criminal court of first instance: Fifteen days.
- d) Criminal court of peace: Fifteen days.
- e) Civil court of peace: Fifteen days.
- f) Civil court of first instance (including commercial, business, property records courts): One-and-a-half months.
- g) Enforcement court and enforcement office: One month.

The judicial committee may change this sequence at its discretion and may allow an apprentice to serve with commercial, business or property records courts upon his/her request.

If there are administrative tribunals in the district of the Bar Association where apprenticeship is served, the apprenticeship will be served fifteen days each with public prosecutors’ offices and administrative tribunals.”

The core tasks that the apprentice is obliged to undertake are specified in Article 13 of the Advocacy Apprenticeship Regulations: the apprentice must attend trials, on-site viewings, investigations and the debating and writing of the decision. He or she has to study the files and decisions given to him/her and will prepare reports.

Practical prescriptions on the supervision of the apprenticeship are also given in Article 13. According to this, it is provided for the keeping of an apprenticeship book and an atten-

dance sheet in the Justice Hall<sup>85</sup>; the apprenticeship sheet has to be signed by the apprentices every day. However, there are indicated specific events that can exempt the apprentices from signing the attendance sheet, such as conferences, panel discussions, and symposiums organized by the Bar Association; in such cases the apprentices have to provide documentation supporting their excuses.

It is then provided that upon the completion of each of the two periods of apprenticeship, a report has to be prepared, showing the apprentice's days of absence, if any; the assignments given to the apprentice, his or her general level of interest and performance and the apprentice's propensity to observe the principles and rules of profession. According to Article 24 of the Advocacy Act, the first report has to be completed by the judges and prosecutors with whom the apprentice served the first period, whereas the host *avukat* will issue two reports, one at the end of the third month and a final one.<sup>86</sup>

A good point is that there is a compulsory scheme of lectures, conferences and seminars for trainee lawyers. However, this provision is not always effective. According to Articles 22<sup>87</sup>

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<sup>85</sup> See a sample of such a document in App.2.

<sup>86</sup> Apprenticeship reports Article 24 - <Amended as per Article 2178/5 dated 30 January 1979>

Apprenticeship will be served under the supervision of the judicial committee, the bar association, and the host *avukat*.

The judges and public prosecutors with whom the apprentice serves will issue a report evaluating his/her performance as an apprentice, professional interest, and moral character.

The host *avukat* will issue a report at the end of the first three months and a final one at the completion of the apprenticeship period evaluating the performance of the apprentice, his/her professional interest, and moral character.

<sup>87</sup> Apprentice training duty of the Bar association Art. 22 -

Every Bar association conducts apprentice training activities within its own organization in order to produce independent and free *avukat* who are dedicated to the principles of the profession, capable of resolving real-life issues in the light of the principle of the state of law and the rules of the supremacy of law, and operating as one of the constituents of jurisdiction with the goal of achieving just and effective jurisprudence.

Bar associations may form apprentice training units for discharging the duty of training apprentices assigned to them as per the provisions in the Advocacy Act and the Regulations in the light of scientific principles and on a regular basis. The establishment, operation, powers and responsibility

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and 23<sup>88</sup> of the Advocacy Apprenticeship Regulations issued by the Union of Turkish Bars, the local Bars are in charge of organising specific training activities and apprentice training of at least 120 hours in the course of a one-year attorney apprenticeship term will be given at the apprentice training units under an annual training program prepared and announced in advance. Moreover, at least sixty hours of this training period will be regularly allocated to the principles and rules of the profession and ‘the attorney in practice.’

However, it seems that the system of supervision over this stage of apprenticeship and, particularly, over the attendance to courses and seminars organized by the local bars, is lacking effectiveness: there is not a real control on attendance by the trainee *avukat* to the events, and this provision seems not to be completely applied in practice.

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ities, and other affairs of these units will be defined by house regulations to be adopted by the general assembly of each bar association as provided for in these Regulations.

For apprentices serving their apprenticeship with bar associations lacking the necessary and sufficient means to offer apprentice training on a systematic and scheduled basis, this training will be given at the apprentice training units to be established in Ankara by the Union of Turkish Bars. The establishment, operation, powers and responsibilities of these units will be defined by regulations to be prepared by the Council of the Union of Turkish Bars.

The training to be given to apprentices at apprentice training units will be counted towards the period of apprenticeship to be served with an *avukat* and may not be interpreted as being contradictory to the rule of non-interruption of apprenticeship.

<sup>88</sup> Article 23 -

Ensuring the service of apprenticeship in a manner compliant with the “Purpose” Article of these Regulations, providing apprentices with a knowledge of Advocacy Act and professional rules, and developing their skills of applying professional knowledge to real-life situations make up the basic principle of *avukat* apprentice training.

In view of this principle, apprentice training of at least one-hundred-and-twenty hours in the course of a one-year *avukat* apprenticeship term will be given at the apprentice training units under an annual training program prepared and announced in advance. At least sixty hours of this training period will be regularly allocated to the principles and rules of the profession and “the *avukat* in practice.”

Additionally, bar associations will prescribe in the house regulations they will prepare the manner how apprentice training will be conducted and the topics to be covered, taking into consideration the particular characteristics of their local area. Seminar activities will also be conducted and cultural activities such as panel discussions and symposiums organized.

### Second Stage – Apprenticeship within a Law Office

Part four of the Advocacy Apprenticeship Regulations of the Union of Turkish Bars deals with the second six-month period of training, which takes place within a law office.

Article 23 Advocacy Act “Serving the apprenticeship and the duties of the apprentice”

The apprentice is under the obligation to attend hearings together with the *avukat*, to conduct the *avukat*'s business with courts and administrative offices, to manage lawsuit files and correspondence, to participate in training activities organized by the Bar Association, and to perform other tasks assigned by the Council of the Bar Association and to be designated in regulations. Apprentices have to abide by the rules of the profession and the principles set forth in regulations.

### Rules concerning the second stage of training

After having completed the training with the Court, the trainee starts the second part of his training which takes place at a law office. Article 14 and 15 set the conditions required for an *avukat* to be able to become a trainer.

According to Article 14:

The remaining six months of advocacy apprenticeship will be served with an *avukat* enrolled with the bar association, having a minimum seniority of five years in the profession (including the length of service spent as prescribed in Article 4 of the Advocacy Act) and having an independent office. Apprenticeship may be served within a lawyer partnership if an *avukat* having these qualifications is available in the partnership.

Thus, as stated in Article 14, having a minimum of five years in the profession and having an independent law office are the two conditions required for the *avukat* who wants to be a trainer.<sup>89</sup>

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<sup>89</sup> Article 15 sets further conditions for becoming an *avukat*-trainer:

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It is the duty of each respective Bar association to decide whether the *avukat* with whom the training will be completed possesses the qualifications provided for in the above-mentioned regulations.<sup>90</sup>

Article 16 sets up the framework and the rules for the commencement of the training. The Council of the Bar Association has to provide a “letter on the commencement of training with an attorney” which contains the necessary guidelines for the training. This letter shall contain

[...] information on the apprentice training program and request cooperation in ensuring the apprentice’s participation therein, stating also the precautions to be taken to ensure that the apprenticeship is served in compliance with the provisions in the Regulations, and the rules of training and evaluation that must be applied.

The obligations of the trainer are listed in article 17 of the Advocacy Apprenticeship Regulations of the Union of Turkish Bars.

The *avukat* is obliged to

train the apprentice to become an independent and free *avukat* dedicated to the principle of the supremacy of law and the principles and rules of the profession, and capable of applying his/her legal knowledge to specific cases.

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Firstly, “the *avukat* with whom apprenticeship will be served must not be the subject of a decision to initiate final investigation for an offense constituting an impediment to Advocacy, or punished with a fine or dismissal from employment by a decision of the disciplinary board which has become final during the last five years”.

Secondly, “the *avukat* with whom apprenticeship will be served will be identified by the president of the bar association in the event that the *avukat* with whom apprenticeship is currently being served is prohibited from practice as a precaution by a decision of the disciplinary board in accordance with Article 153 of the Advocacy Act”.

<sup>90</sup> Cf Article 21:

“The Council of the Bar Association or, if authorized, the apprenticeship board will also inspect throughout the apprenticeship period whether apprenticeship is being served in accordance with the training goals prescribed in the “Purpose” Article of these Regulations and the rules of the profession”.

This is a very interesting provision, especially the part concerning “the independent and free *avukat*” stipulation. This obligation is important in a country where attorneys complain about the difficulties and the pressure they face in their everyday activities and where corruption can be present. The respect of this provision is also controlled by the Council of the Bar association that has the power able to inspect throughout the training period whether the training is completed in accordance with the rules of the profession.<sup>91</sup>

In order to respect this obligation, Article 17 provides for a list of tasks imposed on trainee lawyers: The trainee has to accompany the *avukat* during prison consultations, has the possibility to follow-up contacts with the court and administrative offices and prepares lawsuit files and correspondence.

The trainer has finally a duty to supervise the participation, the regular attendance and satisfactory performance of the trainee in the training activities of the Bar Association.

Also, similarly to the first part of the apprenticeship training, the training has to be completed without interruption.<sup>92</sup>

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<sup>91</sup> Article 21 *Id.*

<sup>92</sup> Article 18 provides: “The apprentice will attend and observe trials in the company of the *avukat* provided that this does not interfere with the apprentice training activities. The apprentice may appear as counsel in the trials in the courts stated in the Advocacy Act with the written consent of the *avukat*.”

The apprentice will conduct business in courts and administrative offices prepare lawsuit files, carry out research as may be needed, manage correspondence, conduct enforcement proceedings, and participate actively in the stages of enforcement law. Apprentices will be under the obligation to comply with the principles and rules of the profession and the rules in the Regulations in serving their apprenticeship.

Apprenticeship is served without interruption. The days of absence with a valid excuse will be authorized to be served to completion by the decision of the chairperson of the judicial committee in the case of apprenticeship with courts, and the decision of the Council of the bar association in the case of apprenticeship with an *avukat*, provided that an application to that effect is made during the one month following the cessation of the excuse.

In the presence of a valid excuse, the president of the bar association may grant the apprentice a leave of absence not to exceed thirty days by receiving also the opinion of the *avukat* with whom the apprenticeship is being served and the apprenticeship board.

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Article 19 sets the tasks that the trainees may perform. Thus, the trainee may, with the written consent and under the supervision and responsibility of his or her supervisor

attend hearings concerning the court actions and other business being conducted by their host *avukat* in civil courts of peace, criminal courts of peace, and enforcement courts as well as conduct business at enforcement offices.

Article 19 specifies that this power will terminate with the issuance of the training completion certificate or deletion from the apprentice roster.

It is then provided in Article 20 that the supervisor has to issue two reports: the first one at the end of the three months and the second upon full completion of the training period (the last report will be the final one).

According to Article 20, the reports

will evaluate the attendance of the apprentice, interest in the profession, propensity to observing the principles and rules of the profession, the trials participated in, the work conducted with a certificate of authorisation, research and practical work done, and similar activities.

The Turkish training system is very similar to several European Member States systems. For instance, the French system also requires six-month training in a law office.<sup>93</sup> In a similar way as in Turkey, the French supervisor is required to have a minimum of four years (five years in Turkey) experience in order to be a trainer. The French trainee has very similar duties as the Turkish trainee: he has to attend meetings with clients, hearings in front of different courts, prepare lawsuit files, carry

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An apprentice in military service who is on leave of absence from his military unit may continue serving his apprenticeship in civilian attire from where he left off.

<sup>93</sup> Cf la loi n°71-1130, 31 déc. 1971, art.12 et le décret n°91-1197 du 27 novembre 1991, article 57 and article 58 and le décret 2004-1386 2004-12-21 art. 49 I.



out research as may be needed, manage correspondence, conduct enforcement proceedings.

One difference is the lack of remuneration during training. The Turkish system not only does not provide for any remuneration during the training in a law firm but it prevents the trainees from engaging in any other job activity. According to article 5-(d) of the Advocacy Act, it is an impediment to admission into the profession “*to be engaged in occupations not compatible with the profession of avukat*”. Trainees are not usually paid during this training. Union of Turkish Bars pays for each trainee to ensure their access to the Social Security System. . In the French system, trainees are paid a fraction of the minimum wage depending on the size of the law firm and they can benefit from the Social Security System through their firm. Many young lawyers and law students complain about the lack of income and of access to Social Security during the apprenticeship which is difficult to bear when at the same time outside employment is prohibited. Violation of this rule can result in the apprentice being refused access to the Bar.<sup>94</sup>

As in many countries, there is no organised system of selection, review and inspection of the trainers for the apprenticeship other than drawing up a list of available firms. There are no on-site inspections or review of what the trainees are doing or should be doing. As a result the quality of the training depends very much on the trainer’s motivation and availability. The large numbers of trainees that must be processed by the apprenticeship system every year make it difficult to ensure a certain degree of harmonisation between the different experiences of each apprentice and to set high minimum standards.

As pointed out by Julian Lonbay in his scoping visit report<sup>95</sup>:

There seems to be no detailed requirements as to what should be covered in the training

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<sup>94</sup> See Lonbay, et al, *Experts’ Report on the Legal Education and Training System in Turkey* (2010), see <papers.ssrn.com/sol3/results.cfm>

<sup>95</sup> Id.

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Trainers must report on the trainees after three months when they should have been exposed to the main principles arising from court cases and been able to follow case files and can include debt collection work

The second three months should include preparing a case, writing a petition to the court of appeal and debt collection.

There seems to be little training prescribed regarding transactional work, office accounts, and no formal courses on matters such as interviewing skills, how to plead *etc.*

Many trainees are sent to collect debts and other time-consuming but not particularly formative tasks (though some such training would seem desirable)

### Continuing Training

As the Council of Bars and Law Societies in Europe indicated in 2006<sup>96</sup>

*Continuing training is of great importance to lawyers and their clients. For everyone seeking legal advice, it is important that their lawyer is familiar with the latest developments in the fields in which they practise. The CCBE recognises this importance, and therefore considers that all lawyers in Europe should participate in Continuing (Professional) Training programmes, and that the Bars and Law Societies of the CCBE should all develop, in their own specific way, programmes and/or regulations for Continuing Training.*

Continuing training refers to training that is undergone after the completion of professional training for the purpose of maintaining, perfecting and assuring the quality of the service provided to end users, whether it is obligatory or not. Training for a recognized specialised status and its maintenance is also included here. In those countries in which additional training

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<sup>96</sup> CCBE Model Scheme for Continuing Professional Training  
<[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/en\\_training\\_ccbe\\_mod1\\_1182247022.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_training_ccbe_mod1_1182247022.pdf)>

or exams are compulsory in order to have a right of audience before superior courts the training undertaken for that aim shall be considered continuing education.

There is no compulsory continuous or permanent training for lawyers in Turkey.. Most lawyers we had the chance to interview told us about the need of a continuous training and how difficult it was to carry it out and to implement it.

Continuing Professional Development is a duty of the Union of Turkish Bars<sup>97</sup> and could be developed along the lines

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<sup>97</sup> *Part Nine/Union of Turkish Bars/Section One/General Provisions.*

**Duties of the Union:**

**Article 110:** *The duties of the Union of Turkish Bars are the following:*

1. *Ensuring the precipitation of a majority opinion by finding out the respective opinion of each bar association in matters concerning bar associations by means of mutual discussions.*
2. *Promoting the professional of Advocacy by coordinating the efforts of bar associations in order to reach a common goal.*
3. *Safeguarding the interests of large of the members of bar associations and the ethics, order, and traditions of the profession.*
4. *Strengthening professional ties by introducing Turkish bar associations and their members to each other.*
5. *Making efforts to have bar associations established in every province capital to instill in citizens a conviction as the necessity and benefits of having their lawsuits filed and cases defended thorough the agency of lawyers.*
6. *Disseminating recommendations and publications to have the laws developed and enforced in keeping with the requirements of the country, and developing preliminary drafts if necessary.*
7. *Voicing its views with authorities in matters concerning bar associations.*
8. *Submitting reports covering its views and ideas on legal and professional topics queried by the Ministry of Justice, agencies with judicial or legislative power, and bar associations.*
9. *Taking all kind of measures to encourage and ensure the professional development of lawyers.*
10. *Cooperating with the Ministry of Justice and judicial authorities in order to have court opinions systematically compiled and published.*
11. *Making efforts toward the realization of the rights conferred, and the thorough and honourable discharge of the duties imposed upon lawyers by statutes.*
12. *Setting up libraries, publishing periodicals, organizing conferences, and offering incentives to the creation of original translated works to heighten the scientific and professionals levels of the members of bar associations.*
13. *Hold occasional meetings to discuss solutions and measures for rendering the profession more attractive and reaching the stated goals in this area.*
14. *Displaying an interest in, and making contact with boards and organizations related to jurisprudence in the country.*
15. *Keeping the contact with foreign bar associations, lawyers' unions, and legal institutions and participating in international conferences.*
16. *Defining and recommending the mandatory rules of the profession.*
17. *( Added as per article 4667/59 dated 2 May 2001) Defending and safeguarding the supremacy of the law and human rights, and promoting the functionality of*

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suggested by the Council of Bars and Law Societies of Europe (CCBE) in its Recommendation and Model Rules on continuing training. This is an ongoing process across Europe with many states (*e.g.* Denmark, France, Italy and Austria) recently adopting modes of continuing legal education obligations for lawyers. In France, continuing training has been in existence for a long time but only became mandatory a few years ago. It is compulsory and regulated.<sup>98</sup> Each lawyer is responsible for his own personal legal training and he has to prove to his Local Bar association, at the end of each year, that he has fulfilled his obligation.

### Analysis and Future Possible Developments in Turkish Legal Education

Any discussion on Turkey cannot evade the issue of its application for European Union (EU) membership. Turkey achieved candidate status in 1999. It has since October 2005 opened negotiations with the EU on a variety of chapters of what constitute the *acquis communautaire*, *i.e.* the body of primary and secondary legislation that makes EU law. Some parts of the *acquis* would have an impact on the legal and education training system and would need to be taken into account in any discussions over reforms.

However, EU membership does not mean (and has not meant for current Member States) uniformity of approach as far as legal education and training systems are concerned. Some countries would strongly favour an academic education of considerable length while others put more emphasis on vocational skills acquired through taught courses and/or training periods. Likewise, some countries have a common system for

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*these concepts.*

18. *Exercising other powers conferred by statutes."*

<sup>98</sup> Articles 13, 14-2, 17-11° et 21-1 de la loi n° 71-1130 du 31 décembre 1971 modifiée, articles 85 et 85-1 du décret n° 91-1197 du 27 novembre 1991 modifié, décision à caractère normatif n°2008-001 adoptée par l'Assemblée générale du Conseil National des Barreaux le 16 mai 2008.

legal and judicial professions while the separation is strictly enforced in others. Most countries would have examinations and/or other quality assurance mechanisms set at various stages of the initial and training period but not all.<sup>99</sup>

EU membership has nevertheless meant that internal market principles are applied to the legal profession and in particular the principle of mutual recognition of professional legal qualifications, however diverse the routes to qualifying are between Member states.

Directive 89/48/EEC on mutual recognition of professional qualifications,<sup>100</sup> recently replaced by Directive 2005/36/EC on the recognition of professional qualifications,<sup>101</sup> has provided for an equivalence examination (or an adaptation period) enabling lawyers qualified in one Member State to re-qualify in another one without having to start from the beginning. There is currently no system in Turkey that enables a foreign lawyer to re-qualify as a Turkish *Avukat* (indeed, Turkish citizenship is actually a condition for qualifying as a lawyer) and this would need to be reviewed.

Likewise, the European Court of Justice decision in the 2003 *Morgenbesser* case provides that 'would-be' lawyers who are not fully qualified as a member of a legal profession coming from one Member state but in the process of doing so, can request access to legal training in another Member state.<sup>102</sup> The

<sup>99</sup> For a comparative overview of legal education and training systems in Europe, please refer to the work of the CCBE Training Committee: CCBE Comparative Table on Training of Lawyers in Europe: <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/comparative\\_table\\_en1\\_1183977451.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/comparative_table_en1_1183977451.pdf)>

<sup>100</sup> Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration: <[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0048:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0048:EN:HTML)> .

<sup>101</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications: <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/02005L0036200701011\\_1190190901.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/02005L0036200701011_1190190901.pdf)> .

<sup>102</sup> Case C-313/01 *Christine MORGENBESSER v Consiglio dell'Ordine degli avvocati di Genova* [2003] ECR I-13467. See also CCBE guidelines on the *Morgenbesser*

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only current form of pre-qualification recognition of equivalence in Turkey is done at the academic level (mainly for law degrees coming from the territory known in Turkey as the Turkish Republic of Northern Cyprus) but this would need to be extended to post-university education and training as well.

The Sorbonne-Bologna Process, which consists of a structural alignment of higher education across Europe towards a bachelor-masters-doctorate structure (The '3 - 5 - 8' rule), may also impact on the Turkish legal education and training system and particularly on the structure of the law degree.<sup>103</sup> The Sorbonne-Bologna Process is not strictly confined to the EU but rather open to Council of Europe Member states that are also party to the European Cultural Convention of the Council of Europe. Turkey became a signatory to the 1998 Bologna accords in 2001. Although the implementation of the Process has been uneven across EU member states and is yet to impact on some Member States' legal education systems, this factor should be considered in any debates on reforming the Turkish legal education and training systems.<sup>104</sup>

The operation of the Lisbon Agenda has meant, *inter alia*, that the EU is creating a European Qualification Framework which national qualification frameworks will be latched into thus allowing a clearer view of the equivalence of educational qualifications in Europe. This is having a significant impact on the way the legal professions are viewing education and training, as it requires national frameworks that establish learning outcomes for particular educational programmes. The emphasis is in establishing what individuals can 'do' once they

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case: <[www.ccbe.org/doc/En/morgenbesser\\_guidance\\_en.pdf](http://www.ccbe.org/doc/En/morgenbesser_guidance_en.pdf)>.

<sup>103</sup> For further information on the Sorbonne-Bologna Process, please refer to the various websites set up for the conferences taking place every two years: Berlin 2003 <[www.bologna-berlin2003.de](http://www.bologna-berlin2003.de), Bergen 2005> <[www.bologna-bergen2005.no/](http://www.bologna-bergen2005.no/), London 2007 <[www.dcsf.gov.uk/londonbologna/](http://www.dcsf.gov.uk/londonbologna/) and Leuven/Louvain-la-Neuve 2009> <[www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/index.htm/](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/index.htm/)> .

<sup>104</sup> For information on the implementation of the Sorbonne-Bologna Process in Turkey, please refer to: <[www.bologna.gov.tr/index.cfm?action=index&lang=TR](http://www.bologna.gov.tr/index.cfm?action=index&lang=TR)> (Turkish version) or <[www.bologna.gov.tr/index.cfm?action=index&lang=EN](http://www.bologna.gov.tr/index.cfm?action=index&lang=EN)> (English version).

have completed a course rather than how long they have been learning.

Despite the impact of EU membership and of the Sorbonne-Bologna Process on EU Member States, diversity rather than uniformity in the legal education and training process reflects the true picture and is likely to remain so for the foreseeable future. There has however been an impetus to share and develop best practice among the members of the CCBE and the work of its Training Committee is of great relevance to the subject of this report. The CCBE has 32 full members (EU and European Economic Area (EEA) Member states and Switzerland), three associate members (Turkey, Croatia and Serbia) and 9 observer members (mostly from the Western Balkans and Former Soviet Union areas).

The CCBE has over the years adopted recommendations (a) on the training of lawyers, namely the 2000 CCBE Resolution on training for lawyers in the EU<sup>105</sup> and, adopting the approach of the above-mentioned European Qualification Framework, the 2007 CCBE Recommendation on Training Outcomes for European Lawyers<sup>106</sup> and (b) on continuing education, namely, the 2003 CCBE Recommendation on Continuing Training<sup>107</sup> the 2006 CCBE Model Scheme on Continuing Training<sup>108</sup> and the CCBE Resolution on Continuing Legal Education of November 2013.<sup>109</sup>

Among the more recent recommendations, the 2007 CCBE Recommendation on Training Outcomes for European Lawyers sets out the knowledge, skills and competences to be expected of newly-qualified lawyers along three sections:

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<sup>105</sup> <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/form\\_enp\\_df1\\_1183977205.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/form_enp_df1_1183977205.pdf)> .

<sup>106</sup> <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/EN\\_Training\\_Outcomes1\\_1196675213.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf)> .

<sup>107</sup> <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/ccbe\\_recommendation\\_1\\_1183977067.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/ccbe_recommendation_1_1183977067.pdf)> .

<sup>108</sup> <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/en\\_training\\_ccbe\\_mod1\\_1182247022.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_training_ccbe_mod1_1182247022.pdf)> .

<sup>109</sup> [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/29112013\\_EN\\_CCBE\\_res1\\_1386580122.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/29112013_EN_CCBE_res1_1386580122.pdf)

## 21. YÜZYILDA HUKUK EĞİTİMİ

Who lawyers are? (knowledge and understanding of ethics and professional rules);

What lawyers do? (theoretical and practical knowledge that lawyers should have in order to perform their functions);

How lawyers should work (technical skills necessary to perform the functions of a lawyer more effectively).

The 2006 Model Scheme on Continuing Training aims to provide practical assistance to CCBE members in setting up a continuous professional education system. In the CCBE's words, "it offers a framework for the development of guidelines or regulations on continuing training, covering *inter alia* the activities that can qualify as continuing training and credits systems".<sup>110</sup>

Although these recommendations are not mandatory, they represent best practice in the CCBE Member States and should also be taken into account in the debate to reform the Turkish legal education and training system.

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<sup>110</sup> CCBE Press Release, 7 December 2006, <[www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/pr\\_0706\\_enp-df1\\_1182235901.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/pr_0706_enp-df1_1182235901.pdf)>.



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