

LECTURE # 5 – AMERICAN LEGAL EDUCATION

In today's class we will deal with the subject of legal education in the US and tomorrow will go into lawyer regulation or admission of lawyers into the Bar, the name for the legal profession. In many cases the subjects are related because today one cannot become a member of the legal profession in the US unless one has a law degree from a University. It's necessary to go through legal education in the US before one can become licensed as a lawyer.

Legal education started in America with being simply something that a person did by studying with and learning from another older lawyer. He went into a law office and read law they would say. He would sit down at a desk and help draft papers, help read documents, help read law cases and books, and help the lawyer in general and after several years he would be recommended by that lawyer to become a lawyer in the Bar and the judges would give him a practical test, to see if he knew how to draft a Deed, draft a Pleading for court, defend a criminal in court, and that would be his test for admission to the Bar. That went all the way through the 1800's and was strongly influenced by the American frontier spirit, the spirit of men and women who were not educated, did not have time or money for education, came from humble and poor beginnings, and were often farmers. So were they going to insist on a university education? Were they going to want their lawyers to be university educated? Of course not. Sometimes farmers and poor people do want their children to be better educated than they are and to receive university educations, but for the most part the attitude and the spirit of 19th century America, the whole period of the 1800's, was anti-elitist, anti-aristocratic, and anti-university, and favored people being able to learn on their own how to be lawyers. So someone who was just a little better talker than the next person and a little bit smarter than the next person could be a lawyer.

This was not any-man-his-own-lawyer, which was the attitude of the colonial period, if you'll remember from Reading #2 we had in Lecture #2, US Legal History. That was 1600's and 1700's. They had come a little bit past that by the time America was formed in 1789 at the time of the Constitution. By then lawyers were people who could help people but didn't have to go through a strict university education or difficult Bar examination proving that they knew a lot of things about law. This went on all the way through the 1800's to the point where in the late 1800's and early 1900's universities started offering law degrees. And they were Bachelor's degrees, much like in Europe, a basic university degree with a major or specialty in law. One of our most famous trial lawyers was named Clarence Darrow. Darrow worked with his father on a farm, hated farming, and he often said he went off to law school and got a Bachelor's degree in law and became a lawyer because he hated work. He was a lawyer for many laborers and people who were factory workers and he often said, "I am a friend of the working man, but I would much rather be his friend than be one."

In any event, as universities started offering law courses, more and more states started offering law courses in their state universities and law schools started offering law courses and pretty soon requirements started in each of the 50 states for an examination and a license to practice law in that state. If you're going to be licensed in that state, you had to have proof that you are ethical and that you haven't violated any law and that you don't have a criminal background. And second, you have to prove that you know something about the law. In the early 1900's you still might go to a Bar examination and prove you know how to draft Deeds, Pleadings, papers that lawyers normally draft, you might have to prove you know what to say to defend a criminal in court, but as time went on and before the mid 1950's and even in the early 1900's, the Bar examination, which is the examination to prove that that you are going to be licensed to practice law, became a written exam that asked you to state all the different rules and laws and answer questions about subjects you would learn in law school. So it became more important if you wanted to become a lawyer, that you go to law school. And more and more lawyers went into law school to become lawyers, and more and more states started giving Bar examinations based on the information you would read in books in the law schools in the universities. This is why, I would say, many people think the old process of becoming licensed to become a lawyer in any of the 50 states was captured by the universities and university academic law professors, because to become a lawyer today you must take an examination in every state in which you want to be able to practice law. I, for instance, am a lawyer in the state of Ohio and in the state of Florida. In each state I had to take a separate examination, neither of them related to each other, neither of them at the same time. I had to pass and answer questions about all the laws in that state and in general - because the laws do vary from state to state in the US and each state has its own Constitution.

The Bar examiners today often make the majority of their test based on questions and materials that the students studied when they were in law schools. Neither in law school education nor in the Bar examinations that one must take to become licensed as a lawyer today, is there any practical experience required. In other words, you never draft a Deed in law school to convey real estate. You never draft a Pleading in law school to represent someone in court. You never do that in a Bar examination. Never is anyone asked in a Bar examination what they would do to represent someone, to defend someone in court. This is very strange because it is about the only profession that does that and does not require practical experience and practical knowledge to become licensed in that profession. Wouldn't we be surprised if a medical doctor and physician did not have to prove in an exam he knew something about medicine, how to cure people, what medicine to administer, and how to administer it, and if he is a surgeon, how to cut someone, and where to cut him. I wouldn't want a doctor operating on me who just simply answered written questions on an examination. I'd want someone who knew practical medicine. The same is true with architects. Do you want someone becoming licensed as an architect to design buildings and do architecture for houses, buildings, and so forth, if he doesn't prove that he knows

how to actually draw and draft the documents that are necessary to make blue prints to design and build a building?

And so, we find that in American law schools, not only do we have 4 years of university education, we add on 3 years of university education for law school post graduate work – it is a JD degree in law. We now have not just a Bachelor's degree required of someone to become a lawyer in the US, but every state requires not only a 4 year bachelor's degree at a college or university, but then a 3 year degree from a law school. Only in 2 of the 50 states is there any requirement that before one is licensed to practice law, one must go and intern and study and learn what the courts do and what lawyers do in practice and those states are Delaware and Vermont, 2 relatively small states, but sophisticated states that want lawyers to be able to do more than just read books and answers questions like they do inside a university classroom. Remember, however, one of the good things about our federal system with one central government and 50 state governments, all 50 with much independence, is that the 50 states can be laboratories for one another. The 48 are watching these 2 with practical interning requirements to see how it works and if it does, other states will adopt it.

The subjects studied in American law schools are the basics in the 1st and 2nd years:

1. Contracts
2. Criminal Law
3. US Constitutional Law
4. Property Law
5. Civil Procedure
6. Business Associations
7. Legal writing and Legal method (the common law system and administrative procedures)

Electives in 2nd and 3rd year:

1. Income Tax
2. Securities Regulation
3. Debtor and Creditor Rights (Lecture 14 in this course)
4. Administrative Law (Lectures 9, 10, 11, & 12 in this course)
5. Evidence