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## Comparing United States and New Zealand Legal Education: Are U.S. Law Schools Too Good?

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# Comparing United States and New Zealand Legal Education: Are U.S. Law Schools Too Good?

Gregory S. Crespi\*

## ABSTRACT

*This Article offers a thoughtful comparison of the legal educational systems of the United States and New Zealand. The author highlights the significant differences between these two legal educational systems by contrasting their admissions policies, clinical programs, "law-and-economics" electives, and staffing of required courses. Based on this analysis, the author concludes that although U.S. law schools are clearly "better," such superiority may have been achieved at too high of a cost, in terms of both the substantial resources now devoted to legal education which could otherwise be applied to alternative uses and the problematic effects of the stratified legal educational system on the overall social structure of the United States. He suggests that U.S. legal education reformers should devote more attention to formulating and assessing possible alternative legal educational systems of a less expensive and more egalitarian nature.*

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## I. INTRODUCTION

In recent years, U.S. legal education has been subjected to broad-ranging criticism.<sup>1</sup> Various observers have called for substantial changes to be made in core and elective curricula,<sup>2</sup> legal writing programs,<sup>3</sup> clinical and other "skills"-training programs,<sup>4</sup> instruction in values and ethics,<sup>5</sup> admissions criteria,<sup>6</sup> financial aid programs,<sup>7</sup> faculty recruitment and evaluation policies,<sup>8</sup> and other aspects of law school operation. To one considering these issues from a purely domestic perspective, it would seem that virtually all of the foundational assumptions of the legal education enterprise are now being re-examined. If one

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1. See, e.g., Symposium, *Legal Education*, 91 MICH. L. REV. 1921 (1993); Symposium, *Civic and Legal Education*, 45 STAN. L. REV. 1525 (1993); Symposium, *The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 277 (1992); *Legal Education and Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR [hereinafter the McCrate Report]; Robert A. Stein, *The Future of Legal Education*, 75 MINN. L. REV. 945 (1991); A. Kenneth Pye, *Legal Education in an Era of Change: The Challenge*, 1987 DUKE L.J. 191 (1987); Barry Boyer & Roger Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221 (1974).

2. See, e.g., Stein, *supra* note 1, at 958-59; Pye, *supra* note 1, at 197-200; Leslie Bender, *Hidden Messages in the Required First-Year Law School Curriculum*, 40 CLEV. ST. L. REV. 387 (1992).

3. See, e.g., Natalie A. Markham, *Bringing Journalism Pedagogy into the Legal Writing Class*, 43 J. LEGAL EDUC. 551 (1993).

4. See, e.g., the McCrate Report, *supra* note 1 (studying the issue of preparing law graduates for practice).

5. *Id.*

6. See, e.g., *Hopwood v. State of Texas*, 78 F.3d 932 (5th Cir. 1996).

7. See, e.g., *id.*; Pye, *supra* note 1, at 193-95.

8. See, e.g., Pye, *supra* note 1, at 195-97; Graham C. Lilly, *Law Schools Without Lawyers? Winds of Change in Legal Education*, 81 VA. L. REV. 1421, 1468-70 (1995).

approaches legal education issues from an international perspective, however, it becomes apparent that these controversies rest on a basis of shared implicit premises that themselves merit close scrutiny, but that are rarely, if ever, called into serious question.

One can gain valuable insights concerning these implicit premises by comparing U.S. legal education with that of any of the world's other nations, particularly those industrialized nations that face similar economic and social problems. There exists recent English-language literature of modest scope that describes the legal education framework and practices followed in a number of foreign countries, and to some extent, compares the U.S. approach with those approaches taken by legal educators in various other nations.<sup>9</sup> Much can be learned from this literature, although most of it is almost purely descriptive and lacks analytical depth. As far as I am aware, however, no one has attempted to broadly compare U.S. legal education to that of New

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9. The following citations are listed in the alphabetical order of the foreign countries focused upon in the articles. See, e.g., Ross Nankivell, *Legal Education in Australia*, 72 OR. L. REV. 983 (1993); John Wade, *Legal Education in Australia—Anomie, Angst, and Excellence*, 39 J. LEGAL EDUC. 189 (1989); Joe Verhoeven & Henri Simonart, *Legal Education and Training in Europe: Belgium*, 2 INT'L J. LEGAL PROF. 45 (1995); John E.C. Brierley, *Legal Education in Canada*, 72 OR. L. REV. 977 (1993); H.J. Glasbeek & R.A. Hasson, *Some Reflections on Canadian Legal Education*, 50 MOD. L. REV. 777 (1987); Tom Latrup-Pedersen, *Legal Education and Training in Europe: Denmark*, 2 INT'L J. LEGAL PROF. 79 (1993); Sandra R. Klein, Note, *Legal Education in the United States and England: A Comparative Analysis*, 13 LOY. L.A. INT'L. & COMP. L.J. 601 (1991); Clive Walker, *Legal Education in England and Wales*, 72 OR. L. REV. 943 (1993); Jean-Claude Masclet et al., *Legal Education and Training in Europe: France*, 2 INT'L J. LEGAL PROF. 7 (1995); Eckart Klein, *Legal Education in Germany*, 72 OR. L. REV. 953 (1993); Hilmar Fenge et al., *Legal Education and Training in Europe: Germany*, 2 INT'L J. LEGAL PROF. 95 (1995); Juergen R. Ostertag, *Legal Education in Germany and the United States—A Structural Comparison*, 26 VAND. J. TRANSNAT'L L. 301 (1993); Katalin Koliath & Robert Laurence, *Teaching Abroad: Or, 'What Would That Be in Hungarian'*, 43 J. LEGAL EDUC. 85 (1993); Francis A. Gabor, *Legal Education in Hungary*, 72 OR. L. REV. 957 (1993); Thomas O'Malley, *Legal Education and Training in Europe: Ireland*, 2 INT'L J. LEGAL PROF. 63 (1995); Constance O'Keefe, *Legal Education in Japan*, 72 OR. L. REV. 1009 (1993); Jaap E. Doek, *Legal Education and Training in Europe: The Netherlands*, 2 INT'L J. LEGAL PROF. 25 (1995); C. Nicholas Revelos, *Teaching Law in Transylvania: Notes from a Different Planet*, 45 J. LEGAL EDUC. 597 (1995); George A. Critchlow, *Teaching Law in Transylvania: Notes on Romanian Legal Education*, 44 J. LEGAL EDUC. 157 (1994); Lisa A. Granik, *Legal Education in Post-Soviet Russia and Ukraine*, 72 OR. L. REV. 963 (1993); Alexander J. Black, *Separated by a Common Law: American and Scottish Legal Education*, 4 IND. INT'L & COMP. L. REV. 15 (1993); Joanne Fedler, *Legal Education in South Africa*, 72 OR. L. REV. 999 (1993); Richard de Friend, *Legal Education and Training in Europe: United Kingdom*, 2 INT'L J. LEGAL PROF. 119 (1995). See also John Henry Merryman, *Legal Education Here and There: A Comparison*, 27 STAN. L. REV. 859 (1975).

Zealand.<sup>10</sup> Such a comparison is long overdue. New Zealand's legal system reflects a very interesting adaptation of British legal institutions to unique local circumstances. Moreover, the legal education system that has evolved to train attorneys to fulfill the roles defined by those institutions provides an excellent background for framing certain central, but often overlooked, features of the U.S. approach.

There are significant differences between the legal education provided in the United States and that of New Zealand. These contrasts provide a valuable perspective from which the distinctive aspects of the U.S. approach can be better understood and assessed. This Article describes and discusses some of these contrasts and sets forth my views concerning the insights they provide regarding usually unacknowledged trade-offs inherent in the legal education enterprise, and the implications of those insights for legal education reform efforts.

Part II identifies and comments briefly on some of the more obvious structural differences between the two systems of legal education. Part III will then focus in more detail upon several more specific contrasts: admissions policy, clinical education, "economic analysis of law" electives, and staffing of required courses. Finally, Part IV offers some brief conclusions concerning the insights that U.S. legal educators can obtain from reflecting upon the New Zealand experience. In brief, I conclude that if one considers U.S. legal education against the backdrop of the New Zealand experience, it suggests the interesting and somewhat disturbing possibility that while U.S. law schools are better than those of New Zealand—and likely the finest in the entire world—this excellence may have been achieved at too high a social cost. These costs include both the economic resources devoted to the law school enterprise, as well as the more intangible social costs stemming from the contribution our educational approach makes towards reproducing and reinforcing a stratified social structure.

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10. Some recent articles discuss certain aspects of New Zealand legal education and incorporate perspectives derived from the U.S. experience, but these authors had other objectives and fall short of providing comprehensive comparative assessments. See, e.g., Peter Spiller, *The History of New Zealand Legal Education: A Study in Ambivalence*, 4 LEGAL EDUC. REV. 223 (1993); Sir Kenneth Keith, *The Impact of American Ideas on New Zealand's Educational Policy, Practice and Theory: The Case of Law*, 18 VICTORIA UNIV. OF WELLINGTON L. REV. 327 (1988); D. Craig Lewis, *Observations from an Outsider*, 3 CANT. L. REV. 347 (1988); Geoffrey Palmer, *Legal Education Down Under*, 1983 SYLLABUS 14; R.G. Hammond, *Some Proposals with Respect to Legal Education in New Zealand*, 9 N.Z. UNIV. L. REV. 28 (1980).

## II. BASIC STRUCTURAL CONTRASTS

The United States obviously has a much larger legal education system than does New Zealand. There are now 178 American Bar Association-accredited law schools in the United States that grant J.D. degrees,<sup>11</sup> collectively employing slightly more than 5,000 full-time law faculty, as well as several thousand more deans and other administrators, part-time adjunct faculty, and supporting staff persons.<sup>12</sup> There are about 135,000 law students enrolled in those law schools at any one time.<sup>13</sup> The New Zealand legal education system, in contrast, consists of only five medium-sized law schools, each based within a public university,<sup>14</sup> with a combined total of approximately 123 full-time faculty on staff<sup>15</sup> and about 2,500 students enrolled at any given time.<sup>16</sup>

The U.S. legal education system is therefore roughly 50 times as large as the New Zealand system in terms of the number of full-time faculty employed and students enrolled. However, the United States has about 70 times the population of New Zealand.<sup>17</sup> Therefore, somewhat surprisingly, New Zealand

11. *A Review of Legal Education in the United States*, 1995 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR 67 [hereinafter *Review of Legal Education*]. Four law schools—District of Columbia School of Law, Roger Williams University, Texas Wesleyan University and Seattle University School of Law—operate under provisional ABA approval, and 37 law schools are not approved by the ABA. *Id.* at 14, 53, 58, 62, 64-65.

12. *Id.* at 67.

13. *Id.* at 66.

14. The five New Zealand law schools are the University of Auckland School of Law (located within the University of Auckland), the University of Canterbury School of Law (located within the University of Canterbury), the University of Otago Faculty of Law (located within the University of Otago), the University of Waikato School of Law (located within the University of Waikato), and the Victoria University of Wellington School of Law (located within the Victoria University of Wellington).

15. The University of Auckland School of Law has 33 full-time faculty members, the University of Canterbury School of Law has 21, The University of Otago Faculty of Law has 24, The University of Waikato School of Law has 20, and the Victoria University of Wellington School of Law has 25. Spiller, *supra* note 10, at 243 n.106. In addition, the Massey University Department of Business Law—not located within a law school—has an additional eight full-time faculty members. *Id.*

16. There were a combined total of 837 law graduates from the New Zealand universities in 1995: 240 at the University of Auckland, 137 at the University of Canterbury, 170 at the University of Otago, 140 at the University of Waikato, and 150 at the Victoria University of Wellington. COUNCIL OF LEGAL EDUCATION, REVIEW OF PRACTICAL LEGAL TRAINING IN NEW ZEALAND 58 (1995). Since the law student populations are distributed rather evenly over the second-year, third-year, and fourth-year classes at each of the schools, the approximate total number of law students enrolled at any given time is 2,500.

17. The current population of New Zealand is approximately 3.59 million. STATISTICS NEW ZEALAND, NEW ZEALAND IN PROFILE (1996). The current U.S.

actually has more law professors and law students per capita than the supposedly over-lawyered United States. However, a somewhat smaller proportion of New Zealand law school graduates later go on to become practicing lawyers than do law school graduates in the United States, so the annual number of new practicing lawyers produced, per capita, is roughly the same in the two nations.

Second, in the United States the basic law school curriculum is now a three-year course of study designed for students who already have a college degree,<sup>18</sup> whereas in New Zealand—as well as in most of the rest of the world, Canada excepted—the basic law school training provided by universities is a four-year undergraduate degree. As a result, U.S. law schools have a very different student body than do the New Zealand law schools in terms of the students' age profile, academic background, and general level of maturity and experience.

Third, most U.S. law schools are private rather than publicly-funded institutions,<sup>19</sup> whereas the five New Zealand law schools are all located within public institutions. Private law school tuition fees in the United States are *much* higher than those charged by the New Zealand law schools. At the Southern Methodist University School of Law (SMU), for example, the annual charge for tuition and fees for the 1996-97 academic year is slightly above \$20,000,<sup>20</sup> which is actually a bit below the average for comparable high-quality private U.S. law schools,<sup>21</sup> but is more than 14 times as much as the amount New Zealand law schools charge their students.<sup>22</sup> Perhaps partly because of the high tuition charged by their private school competitors, the

population is approximately 263 million, roughly 70 times as large. COUNCIL OF ECONOMIC ADVISORS, ECONOMIC REPORT OF THE PRESIDENT 315 (1996).

18. For an interesting and instructive history of the evolution of the post-graduate structure of American legal education, see generally ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S* (1983).

19. Of the 178 ABA-approved law schools in the United States, 102 of them are private schools. See *Review of Legal Education*, *supra* note 11, at 4-63.

20. SOUTHERN METHODIST UNIVERSITY OFFICE OF CASHIER, *FINANCIAL INFORMATION 1996-97* (1996).

21. For example, the annual tuition and fees charged by the Emory, Tulane and Vanderbilt law schools were \$20,700, \$22,076, and \$20,963 respectively for the 1996-97 academic year. EMORY UNIVERSITY SCHOOL OF LAW, *INFORMATION AND APPLICATION VIEW BOOK, 1996-97* (1996); TULANE UNIVERSITY SCHOOL OF LAW, *SCHOOL CATALOGUE 1996-97* (1996); VANDERBILT UNIVERSITY SCHOOL OF LAW, *VIEW BOOK, 1996-97* (1996). The prestigious Yale Law School's tuition and fees were \$22,692. YALE LAW SCHOOL, *FINANCIAL AID BROCHURE, 1996-97* (1996).

22. For the 1996 New Zealand academic year (February-November), the annual tuition and fees charged by the New Zealand law schools were approximately NZ \$1,900, which is equivalent to \$1,330. Conversations with Stuart Anderson, Dean, University of Otago Faculty of Law (January 1996).

better quality public law schools in the United States generally charge substantial tuition of approximately \$5,000 or more per year for in-state students and \$12,000 to \$19,000 or more per year for out-of-state students.<sup>23</sup> While these public school charges are considerably lower than private school tuition and fees, they still far exceed the costs of New Zealand law schools and amount to a significant sum for most individuals and their families, especially after having already paid the substantial costs of an undergraduate education.

This great disparity in law school tuition between the two countries has differential impacts upon both the composition and the attitudes of the law student population. One obvious effect of the high U.S. tuitions is to disproportionately screen out academically qualified potential applicants from less wealthy social backgrounds, except to the extent that these applicants can obtain sufficient scholarship assistance or are willing and able to draw heavily upon public or private sources of loan assistance.

Having to spend \$50,000 or more over three years on tuition alone also tends to affect the attitude of those students enrolled in private institutions. U.S. law students that are enrolled in such institutions more serious about their studies than are their New Zealand counterparts, even after allowing for the differences in age profile and socio-economic background. Even those U.S. law students enrolled in public institutions as in-state students have made quite a significant financial commitment to their legal training, at least several times that required of New Zealand students, and consequently, they generally have a more focused, vocational orientation. U.S. law students seldom regard law school as merely a socially acceptable way of marking time in a congenial college community before having to shoulder adult responsibilities, or as simply a further extension of their liberal arts education before later choosing a professional vocation. Most of them intend to, and do, become practicing lawyers. New Zealand law students, in contrast, are much younger than their U.S. counterparts and have not had to make comparable financial sacrifices to continue their education. They are thus often less committed to the goals of mastering their studies and entering into the practice of law and commonly regard their degree programs much like many U.S. undergraduates pursuing

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23. For example, the University of Texas School of Law charges \$5,500 per year tuition and fees for Texas residents, and \$12,000 for out-of-state residents, the University of California at Berkeley charges \$10,800 and \$19,200, and the University of Iowa charges \$5,166 and \$14,020. UNIVERSITY OF TEXAS AT AUSTIN SCHOOL OF LAW, APPLICATION AND BULLETIN, 1996-97 (1996); UNIVERSITY OF CALIFORNIA AT BERKELEY SCHOOL OF LAW, ANNOUNCEMENT, 1996-97 (1996); UNIVERSITY OF IOWA COLLEGE OF LAW, TUITION AND FEES AND FINANCIAL AID INFORMATION, 1996-97 (1996).



business, social science, or liberal arts majors—as general training for entry into the larger business world.

Finally, there is an obvious and pronounced stratification among U.S. law schools with regard to their academic reputations and the professional and social opportunities available to their graduates. Law school rankings are regularly published in media outlets ranging from academic journals<sup>24</sup> to the popular press.<sup>25</sup> Many persons affiliated with these schools take these rankings relatively seriously, if only because of their concerns as to the influence of such rankings upon prospective applicants, although they often feign an attitude of indifference or even disdain. The strong correlation between the range of subsequent social and professional opportunities for law school graduates and the generally perceived status of their school is so clear as to be beyond reasonable doubt.

This is simply not the case in New Zealand, where the law schools are generally regarded as roughly on par with one another in academic and social terms. There is nothing in New Zealand legal education at all resembling the intense student competition for places in the top-tier U.S. law schools, or the relentless faculty competition for positions at those schools and publication in their law journals. This contrast is quite striking to one accustomed to taking the pronounced hierarchical stratification of U.S. legal education for granted.

One result of this pervasive U.S. competition for affiliation with as prestigious a law school as possible is that the talent level of students (and, to some extent, faculties and authors published in the school-sponsored journals as well) is much more homogeneous within any particular school than is the case in New Zealand. Each U.S. school draws its students, faculty, and journal authors to a large extent from that relatively narrow talent stratum of persons who can just barely qualify for affiliation with that institution in some capacity, but not with more prestigious institutions, and the pecking order among schools that defines the contours of these academic niches is relatively stable over time. There consequently are, however, relatively large differences between the average quality of student bodies (and, arguably, faculties and published authors as well) at the different tiers of law schools. These significant differences in the academic and social environments in which aspiring young lawyers are trained and socialized for their later professional roles in this

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24. Colleen M. Cullen & S. Randall Kalberg, *Chicago-Kent Law Review Faculty Scholarship Survey*, 70 CHI. KENT. L. REV. 1445 (1995).

25. Ted Gest, *America's Best Graduate Schools: Law Schools*, U.S. NEWS & WORLD REP., Mar. 18, 1996, at 82-86.

country have far-reaching social implications. These stratification effects are completely absent from the New Zealand legal education system, where prospective student and faculty application decisions are driven largely by geographical preferences and other personal factors unrelated to relative institutional status.

Those are the most basic structural contrasts between the two legal education systems. Taken together, they emphasize the central fact that the U.S. approach to legal education is based upon delivering graduate-level, high-cost education through a relatively stratified system of schools that differ markedly in the academic, economic, and social characteristics of their faculties and student bodies, and requires a very major financial commitment on the part of most of the students. Our legal education system thereby demands not only a very substantial social commitment of economic resources, both in aggregate and per student terms, but also to some extent reproduces and reinforces existing social class stratifications. It does so by, first, segregating faculty and student populations in a hierarchical fashion on the basis of academic ability and financial capability, and second, by fostering relationships and group identities within a given school, or within a set of schools perceived as belonging to a particular tier, rather than across these segregated groups. In these regards, the U.S. approach differs dramatically from the legal education model followed in New Zealand and most of the rest of the world as well.

A very strong argument can be made that the U.S. legal education system, despite its recognized shortcomings,<sup>26</sup> produces law school graduates that are better trained to practice law and discharge the many other duties that often fall to attorneys than are the graduates of the New Zealand law schools, or for that matter the graduates of any legal education system in the world that is based upon a four-year undergraduate law degree program. It could hardly be otherwise, given the much more demanding academic pre-requisites for admission, and given the far greater resources marshalled by the law schools both in aggregate terms and on a per student basis.

It is a much closer question, however, whether the educational advantages of the U.S. system are sufficient to justify the high economic costs and problematic social consequences of its expensive, stratified system of graduate school training. Reasonable persons may disagree on whether the trade-offs incurred in taking this approach, rather than the less costly and more egalitarian approach taken by New Zealand and most other

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26. See sources cited *supra* notes 1-8.

nations, result in net social benefits. Any conclusions reached in this regard should take into account that in New Zealand a significantly greater proportion of the social costs of legal education are covered by public subsidies, rather than private tuition as in the United States. As a result, when the net social costs per graduate in the two systems are compared, the cost advantage of the New Zealand system is far less dramatic than a mere comparison of average tuition rates would suggest.

### III. SOME SPECIFIC COMPARISONS

Several additional specific differences between the two approaches to legal education are particularly interesting and revealing. These include contrasts in admissions policy, clinical education, the availability of law-and-economics elective courses, and the method of staffing large required courses.

#### A. Admissions Policy

The two legal education systems follow quite different approaches in selecting their students. One would expect this to be the case, of course, when comparing graduate and undergraduate programs. In the New Zealand system, there is virtually open admission to the universities for all high school graduates. Admission to law school is an internal university process that takes place at the beginning of the second undergraduate year. This admissions process is competitive and based primarily upon student performance on a first-year legal system survey course offered at each university. This course is generally open to all entering undergraduates.<sup>27</sup>

In the U.S. system, in contrast, students are competitively selected for admission by law schools from their applicant pools based primarily upon the students' undergraduate transcripts, application essays, letters of recommendation, and scores earned on a national, predominantly multiple-choice Law School Admissions Test (LSAT). Other factors such as ethnic diversity objectives and alumni relations often play a part as well. U.S. law

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27. See, e.g., UNIVERSITY OF OTAGO, FACULTY OF LAW HANDBOOK 10 (1996); UNIVERSITY OF AUCKLAND SCHOOL OF LAW, SCHOOL OF LAW STUDENT HANDBOOK 59 (1996). At least one of the New Zealand law schools no longer offers open enrollment to all students for the introductory legal systems course, and students are competitively selected for the opportunity to enroll in that required law prerequisite from an excess of applicants that is more than double the existing classroom capacity. UNIVERSITY OF AUCKLAND SCHOOL OF LAW, SCHOOL OF LAW STUDENT HANDBOOK 57 (1996).

schools have real difficulties in making these admissions decisions in a principled and reliable fashion. It is a common practice for admissions officers to simplify the selection process by first having the national Law School Data Assembly Service (LSDAS) calculate a numerical index score for each applicant—usually based upon an algorithm that gives roughly equal weight to their undergraduate grade-point average and LSAT score—as a first classificatory step on the basis of which many, if not most, applicants are summarily accepted or rejected. For the remaining applicants, the admissions officers (and, in some institutions, faculty as well) then take into account various other considerations, such as applicant essays and recommendations, ethnic and other diversity objectives, alumni relations concerns, and applicant financial capability, in a more individualized fashion. SMU, for example, which annually receives over 2,000 applications each year for about 250 places in the first-year class, initially classifies the applicants into one of three categories (admit/further review/reject) on the basis of a weighted index of undergraduate grades and LSAT score and then engages in closer scrutiny of the “further review” collection of applicant files to make the remaining admissions decisions.<sup>28</sup>

Obviously, much individual applicant information is overlooked in making such aggregate quantitative preliminary assessments. First of all, the undergraduate universities that students have attended differ greatly in quality and in their grading criteria. The undergraduate programs pursued by the different applicants also vary greatly in difficulty. Finally, the LSAT has well-known cultural biases and other limitations as a predictor of future professional success that make it dubious to rely so heavily upon it in assessing applicants. As a result of these difficulties, the U.S. law school admissions process is concededly rather subjective, and admissions officers make numerous Type I errors (admitting students whose later law school and career performance indicate that they should have been denied) and Type II errors (denying students whose later performance elsewhere indicates they should have been admitted). Moreover, given the stratification of law schools and the consequent differential access to academic experiences and subsequent professional and social opportunities, the adverse consequences for a student who is denied admittance to a particular school that should have accepted her and has to attend a lower-tier school can be long-lasting, if not permanent.

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28. I am familiar with these SMU procedures from the recent years that I have spent as both Chairman and as a member of the SMU law faculty committee overseeing the admissions process.

The New Zealand law school admissions system compares quite favorably to these procedures in terms of admitting the most academically qualified of the applicants. Most college students there have the opportunity to take a legal systems survey course,<sup>29</sup> and those students admitted to law school on the basis of their performance in that course have demonstrated their ability to handle law school course work.<sup>30</sup> New Zealand law school admissions officers are thus largely spared from having to infer applicant capabilities for the study of law on the basis of grades of uncertain merit achieved in courses with perhaps only a tangential relation to law or on the basis of a single time-pressured, predominantly multiple-choice test.<sup>31</sup>

### B. Clinical Education

The second specific difference involves the different approaches taken toward providing clinical education opportunities in the two countries. I think the U.S. approach provides better opportunities for the students than that followed in New Zealand, although I appreciate the nature of the constraints that make it difficult or impossible for New Zealand law schools to implement that approach.

29. *But see supra* note 27.

30. It should be recognized that the New Zealand commitment to a multicultural society is reflected in a system of express quotas for law school admission which abridge the principle of selection on the basis of academic merit, and by which a certain representation of various minorities in law school is assured. For example, the University of Auckland School of Law selects 425 students from the approximately 900 applicants for enrollment in the first-year legal systems course. Of that number 331 are selected solely upon academic criteria, but up to 49 places are allocated to Maori applicants, including five places for mature Maori applicants who need not pass even the minimal general entrance examination criteria, up to 20 places for indigenous "Pacific Island" residents, up to three places for disabled students, and up to two places for international students.

Two hundred seventy students from this group of 425 legal systems enrollees are later selected at the beginning of the second undergraduate year for formal admission into the law school, with 201 places to go to the best qualified students, but up to 32 places are held for Maoris, up to 13 places for Pacific Islanders, up to two places for disabled students, and up to two places for international students. UNIVERSITY OF AUCKLAND SCHOOL OF LAW, SCHOOL OF LAW STUDENT HANDBOOK 57-60 (1996). The other New Zealand law schools apply comparable affirmative action-type quota criteria as well when selecting among second-year applicants to their programs.

31. It would be quite interesting if something analogous to the New Zealand admissions approach could be implemented in U.S. legal education, but it does not appear feasible to do so. Our law schools are not in a position to require a "legal systems" undergraduate course of all of their applicants, who come from a very broad range of colleges and universities, and even if they could do so the severe comparability problems between graduates of different undergraduate schools would remain.

The U.S. legal education system is characterized by almost universal law school sponsorship of faculty-supervised clinics through which students represent clients *pro bono* on a variety of civil and criminal matters. The clinical program at SMU is a fairly typical example.<sup>32</sup> That law school has about 750 J.D. students enrolled at any one time and approximately 40 full-time faculty on staff. The school operates a civil clinic, a criminal clinic, and a tax clinic. The clinical staff includes two full-time civil clinicians, one full-time criminal clinician, two part-time adjunct criminal clinicians, one part-time adjunct civil clinician, and one part-time adjunct tax clinician. SMU has thereby committed a total of three full-time faculty slots to the clinics—about 7.5% of the full-time faculty—as well as some additional funds for the adjunct clinicians and the other support staff and office supplies.

The clinicians at SMU generally do not teach any regular non-clinic electives, but together they supervise about fifty clinical students per semester.<sup>33</sup> The students enrolled in these clinics conduct client interviews, engage in discovery for litigation, draft and file pleadings and motions, and make court appearances—including jury and non-jury trials—under faculty supervision. The clinicians also, among other activities, hold “skills” development sessions for their students, review and discuss their written and advocacy performances, and oversee student preparation of journals and summaries of their experiences.

There is therefore a definite “academic” component to the clinic experience meshed with the practical training. The students generally regard their clinical work as quite valuable for their development of legal skills. It has proven to be a particularly valuable experience for a significant set of students who are disenchanted with theoretical classroom courses after almost twenty years in school, but who are motivated and often excel when given the opportunity to engage in activities with immediate real-world consequences.

In New Zealand, there generally are opportunities for students to do voluntary clinical work with off-campus legal organizations,<sup>34</sup> and this fact is generally called to their attention

32. That school, however, may be somewhat atypical of U.S. law schools in that it has a unitary tenure-track system for both clinicians and non-clinical faculty, and it has different tenure-track faculty members directing each of the civil and criminal clinics.

33. This number includes about 25 civil clinic students, 15 criminal clinic students, and 10 tax clinic students per semester. The students enrolled in the criminal clinic during a given semester receive six academic credits, the civil clinic students receive five credits, and the tax clinic students receive four credits.

34. For example, at the University of Otago Faculty of Law students have the opportunity to do volunteer work with the Dunedin Community Law Centre or the Ngai Tahu Maori Law Centre, and this fact is called to their attention by the law

by the law school catalogues.<sup>35</sup> No academic credit, however, is given for this work, and no faculty supervision is provided to ensure that any clinical experience has a "academic" component to it. The post-graduate, one-semester Institute for Professional Legal Studies course required for bar admission in New Zealand<sup>36</sup> is not comparable to a typical U.S. clinical course, since it is essentially a classroom course focusing on teaching basic transaction documentation and routine litigation procedures and it is not designed to serve as a "hands-on" clinical experience.<sup>37</sup>

My conclusion as to why the New Zealand law schools have not embraced the idea of law school-sponsored clinical instruction is that, while such clinics would obviously provide valuable experience for their students and their establishment has been recommended by knowledgeable outside observers,<sup>38</sup> they would present several significant problems for the law schools' faculties and deans.

First, there is the cost. A law school clinic is very resource-intensive per student credit-hour when compared to most classroom lecture instruction (although perhaps not when compared with smaller seminar classes) since the nature of clinical work necessitates a considerable amount of one-on-one contact and supervision and thus limits clinician student loads. A typical clinician will generate only about one-third as many student credit-hours as do regular "stand-up" lecturers who generally have much larger classes.<sup>39</sup> A relatively comprehensive law school clinical program would probably require at least two civil clinicians and one criminal clinician, as well as some supporting adjuncts and other staff persons. It would probably only service on a regular basis about one current full-time regular faculty member's "worth" of students, in terms of student credit-hours generated. That would mean a net loss of at least two faculty slots withdrawn from elective courses, unless the law

school catalogue. UNIVERSITY OF OTAGO FACULTY OF LAW, FACULTY OF LAW HANDBOOK 40-41 (1996).

35. *Id.*

36. Under New Zealand law for a person to be "qualified for admission as a barrister and solicitor" that person must hold an L.L.B. degree and have passed the Institute of Professional Legal Studies course. Law Practitioners Act, 1982, § 44(1) (1992) (N.Z.); COUNCIL OF LEGAL EDUCATION, REVIEW OF PRACTICAL LEGAL TRAINING IN NEW ZEALAND 10 (1995); UNIVERSITY OF OTAGO FACULTY OF LAW, FACULTY OF LAW HANDBOOK 33 (1996).

37. See generally COUNCIL OF LEGAL EDUCATION, *supra* note 36, at 37-55.

38. See, e.g., D. Craig Lewis, *Reflections from an Outsider*, 3 CANT. L. REV. 347 (1988).

39. Of course, the actual number of student *contact* hours provided by clinical faculty may equal or even exceed that provided by regular classes, since clinical supervision obviously involves much more direct contact with students than do most lecture-oriented classes.

school could obtain sufficient additional funding from its parent university for two new faculty slots. Such law school faculty expansion is unlikely to occur in the near term, as New Zealand is currently undergoing a program of steadily contracting state support for its public institutions in general and its universities in particular. Of course, a less ambitious clinical program that relied primarily upon simulations and externships could provide some clinical opportunities for students with a lesser commitment of faculty time.

Second, it is difficult to recruit good clinicians. To have the background to be an effective clinical instructor a person needs to be a good lawyer with probably at least five years of experience in practice, be able to work well with students, and have an "academic" orientation to law. Such broadly talented people are hard to lure away from their (usually) successful private or public practices.

Third, it can be difficult to fully integrate clinicians into the regular faculty. Clinicians tend to be very practice-oriented and are also busy supervising students. They therefore usually (although not always) cannot do as good or as much theoretical scholarship, conventionally defined, as mainstream faculty. There is a constant controversy within U.S. law faculties concerning whether to subject clinicians to the normal publication standards applied to other faculty members for tenure and promotion purposes or instead to apply more lenient standards or utilize non-tenure fixed-term contracts. If one of these latter options is chosen, the problem is presented as to how to avoid having clinicians regarded by other faculty as second-class citizens and how to handle requests from clinicians who may wish later in their careers to shift to a non-clinical classroom teaching and research role.

Finally, a law school clinic can potentially provoke some unpleasant conflicts between the law school and certain members of the local bar. A full-scale clinical program is somewhat like a law firm with fifteen to twenty lawyers, in terms of the number of cases taken. Large law firms will not usually offer any objections to the establishment of a local law school clinic. In fact, large firms tend to favor such clinics, because they provide good training for the firms' prospective new recruits and are not regarded as competition for the firms' particular clientele. However, one must consider that *pro bono* clinics may well take some potential clients away from small firms and sole practitioners, who obviously will have trouble competing with free legal services of the same nature as they are attempting to provide for compensation. This potential conflict is not a significant problem for the many U.S. law schools which are located in the midst of relatively large concentrations of population and lawyers.



It does, however, pose more serious concerns in the New Zealand context, where the density of population is much less. In particular, two of the five New Zealand law schools are located in small metropolitan areas of approximately 100,000 persons each.<sup>40</sup> These communities may each have only a few hundred practicing attorneys, many of whom are engaged in solo or small firm general practice and may be directly impacted by the clinical provision of *pro bono* services on a significant scale. This conflict can be mitigated, of course, if clinics make special efforts to represent primarily those clients whose particular disputes or financial limitations make them unattractive to the private bar and who would thereby be represented inadequately, if at all, in the absence of clinical representation.

### C. *Economic Analysis of Law Electives*

A third significant difference between legal education in the two countries is the complete lack of course offerings in law-and-economics in New Zealand law schools,<sup>41</sup> as compared to their relative ubiquity in U.S. law school curricula.<sup>42</sup> This situation is

40. The University of Otago Faculty of Law is located in Dunedin, which has a metropolitan area population of approximately 114,000. Waikato University School of Law is located in Hamilton, which has a metropolitan area population of approximately 156,000. STATISTICS NEW ZEALAND, NEW ZEALAND IN PROFILE (1996).

41. The law schools of the Universities of Auckland, Canterbury, and Waikato do not even list such a course in their catalogues. Victoria University of Wellington has had a "Law and Economics" law faculty elective listed in its catalogue in recent years, but that course was not offered during the 1995 or 1996 academic years. Similarly, the University of Otago Faculty of Law has had a "Law and Economics" law faculty elective listed in its catalogue for some time, but that course has not been offered for at least the past several years.

Several of these universities offer "Economic Analysis of Law" electives elsewhere in their curricula, but these courses are targeted at economics majors with strong economics backgrounds, and are taken by relatively few law students. For example, the Economics Department of the University of Canterbury had 22 students enrolled in its Economic Analysis of Law elective in 1996, but only one of these students was majoring in law. Interviews with Alan Woodfield, Department of Economics, University of Canterbury.

Such courses are also offered by the Economics Department at the University of Auckland, and by the School of Management Studies at Waikato at both the graduate and undergraduate level, but with similarly quite small law student enrollments. For example, at Waikato only one out of 11 students enrolled in the graduate elective in 1996, and no more than six out of 45 students enrolled in the undergraduate elective in 1995, were law students. Interviews with Peter Fitzsimons, School of Law, University of Waikato (May 1996).

42. Of the 153 listed law professors who teach law and economics courses, 78 are currently teaching the subject. ASSOCIATION OF AMERICAN LAW SCHOOLS, AALS DIRECTORY OF LAW TEACHERS, 1995-96, 1153-54 (1995). This information understates the number of law professors qualified to teach the subject, and probably the number of courses offered as well, since it omits many noted law and economics scholars including, among others, Henry Hansmann, Mark Kelman, Duncan Kennedy, and

puzzling given the political developments in New Zealand since the implementation of "Rogernomics" social policies beginning in 1984. In that year, David Lange of the Labour Party was elected as Prime Minister, and with Roger Dougus as the principal architect of change the government subsequently repudiated longstanding social welfare state policies favored by earlier regimes. New Zealand has moved quite dramatically over the past twelve years to embrace market-oriented, efficiency-enhancing "user pays" policies in many areas of social life. A law-and-economics course has as its primary objective helping law students develop greater facility in exactly the forms of economic reasoning and vocabulary that are now the standard conceptual framework and language used by top policymakers in that country. Lawyers there now need to be able to converse fluently in economic terminology to represent their clients effectively in some fora and also need to be equipped to reflect critically upon the assumptions that underly using market competition and economic efficiency as central normative criteria. One would think that the New Zealand law schools would have made it a high priority to offer such courses, but they have not. It is a major gap in their curricula when compared to the opportunities generally available to U.S. law students in this regard.

I believe that this deficiency stems from a combination of factors, including financial constraints that make it difficult to hire qualified teachers for these courses, resistance within law faculties to embrace courses that some faculty perceive to have a right-wing bias and that displace traditional legal classifications with economic concepts, and resistance from economics departments that fear losing students to such electives.

First of all, the New Zealand education system is not currently producing a pool of potential law faculty candidates who have the ideal background of a law degree, a Ph.D. degree in economics, and teaching experience in both fields that best qualifies one to teach these broad-ranging and pedagogically challenging interdisciplinary courses. None of that country's universities offers a joint J.D./Ph.D. or L.L.M./Ph.D. program that would allow a motivated person to obtain both of those credentials in as little as five or six years of post-graduate study—as do, for example, a number of the leading U.S. universities. If one seeks to obtain both of these graduate degrees in New Zealand, one must complete the two degree programs separately and sequentially, which is a long-term and expensive undertaking. As a result, very few New Zealand residents have

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George Priest. Such courses are quite often titled the "Economic Analysis of Law" rather than "Law and Economics."

obtained both credentials. Moreover, those who have done so may be reluctant to accept academic appointments in New Zealand, since they generally have attractive private sector opportunities that offer substantially higher initial compensation than entry-level academic positions and promise better long-term prospects for amassing significant wealth.

For at least the next few years, therefore, the faculty best qualified to teach these law-and-economics courses would most likely have to be imported, probably largely from the United States, since it is the only nation where the pool of qualified candidates is of significant size. U.S. law schools, however, offer compensation packages that are much more generous than those provided by New Zealand law schools to faculty of comparable expertise and experience.<sup>43</sup> Such imported faculty would therefore be quite expensive to hire if internationally competitive salaries had to be paid.

Moreover, in recent years, the New Zealand government has been increasingly subjecting its universities to the same sort of efficiency-oriented restructuring that much of the rest of the society has already undergone. The universities are thus currently caught in an uncomfortable financial squeeze. On one side, they face a continuing gradual reduction of government subsidies for education, which must be replaced by higher student tuition fees and other sources of revenue that can be developed. On the other side, there is student resentment of recent sharp tuition increases and growing resistance to further significant increases, as evidenced by vigorous public demonstrations and other forms of student protest.

Law schools are certainly not exempt from these increasingly severe financial constraints, and it will be a challenge to their

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43. U.S. law schools currently pay entry-level salaries roughly in the range of \$50,000 to \$65,000 to candidates with such strong interdisciplinary qualifications. The overall median full-time law professor salary in the United States, all ranks combined, is now approximately \$83,000. OFFICE OF THE CONSULTANT ON LEGAL EDUCATION TO THE AMERICAN BAR ASSOCIATION, CONSULTANT'S DIGEST 6 (1995). In New Zealand, in contrast, a typical law school faculty member of Senior Lecturer rank (roughly comparable to a tenured Associate Professor in the United States) would receive an annual salary of NZ \$65,000, or approximately \$45,000 when measured in U.S. currency.

Moreover, the supplementary retirement contributions generally paid by U.S. universities to the accounts of their faculty members are quite generous by New Zealand standards, and Americans have further opportunities for making deductible personal contributions to tax-deferred retirement savings accounts not available in New Zealand. SMU, for example, contributes annually to a faculty member's tax-deferred retirement account a sum equal to 10% of his before-tax income, so long as the faculty member also makes the maximum personal tax-deductible contribution allowed by law (5% of before-tax income) to that account. No comparable opportunities for tax avoidance are available under New Zealand law.

deans and faculties simply to maintain their existing staffing and programs unscathed in such an environment. Under these circumstances, bringing in expensive specialists from abroad to offer new law-and-economics electives would be difficult, even if there were fairly widespread support for such an initiative.

Moreover, supporters of such hiring are likely to encounter opposition to the introduction of law-and-economics courses into law school curricula based upon grounds other than their possible impacts upon law school budgets. Some of this opposition may arise within the law faculties themselves and be brought to bear upon faculty and deans in their curricular decision-making. In addition, further opposition may come from economics departments located in the university business schools, making itself felt more at the higher levels of university governance than at the faculty level.

Doubtless there are some legal academics in New Zealand who would oppose adding law-and-economics electives to their curriculum, despite their judgment that those courses would be of some value to their students, simply because they are not convinced that such courses will be of sufficient value to justify their inclusion at the expense of other current offerings or potential curricular additions. However, given the arguments noted above that can be made for the special relevance and value of economic analysis-oriented electives, I doubt that such reluctant opposition based on the perceived greater value of other potential curricular offerings is very widespread or intensely felt. I suspect that most of the law faculty resistance to introducing such courses, apart from that based upon the previously noted financial concerns, is of a more "political" character.

There is a fairly widespread perception among New Zealand academics that the conventional framework of assumptions and values through which the economic analysis of law is generally conducted has a strong status quo bias, and that its primary normative criterion of wealth maximization over-emphasizes the efficiency advantages of markets and unduly minimizes their distributional shortcomings. Persons with such convictions tend to regard law-and-economics analyses as being of doubtful validity, viewing them largely as rhetorical ploys invoked by those toward the conservative pole of the political spectrum to further entrench their vested interests.<sup>44</sup>

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44. I will not offer in this short essay any opinion on the merits of this critical position. I will say that my experience is that people's views in this area are usually deeply grounded in their basic ideological orientation and are quite resistant to change through argumentation and evidence. I have published several recent articles that address in various ways some of the heated controversies surrounding the foundational assumptions of the economic analysis of law. *See, e.g.*, Gregory S.

One would expect persons who are generally opposed to giving greater sway to market forces as social co-ordination mechanisms also to have reservations about adding such courses to the curriculum. The law-and-economics framework certainly emphasizes the power of market forces to bring about efficient resource allocations, and highlights the inefficiencies and other unintended adverse consequences that often result from governmental efforts to supersede market mechanisms or redistribute wealth. Critics of such courses may feel—with some justification—that their favored proposals for various forms of state intervention or redistribution of wealth are more likely to receive favourable political action if they are debated in the traditional legal language of “rights,” “duties,” and “equitable concerns” rather than if assessed by the criteria of economic efficiency and their impact on economic growth and international trade competitiveness. These dissenters may therefore elect to oppose curricular innovations, such as the introduction of law-and-economics courses, that would serve to encourage such a change in the discourse through which social policy is made.<sup>45</sup>

The other potential source of political opposition to such electives within the university community stems largely from the more prosaic grounds of departmental turf and budgets. Under the current framework of state funding of university education in New Zealand, school and departmental budgets are linked,

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Crespi, *Does the Chicago School Need to Expand its Curriculum?*, 22 L. & SOC. INQUIRY (forthcoming 1997); Gregory S. Crespi, *Putting the Chicago School Debate in Proper Perspective*, 22 L.J. SOC. INQUIRY (Forthcoming 1997); Gregory S. Crespi, *Teaching the New Law and Economics*, 25 U. TOL. L. REV. 713 (1994); Gregory S. Crespi, *Microeconomics Made (Too) Easy: A Casebook Approach to Teaching Law and Economics*, 91 MICH. L. REV. 1560 (1993); Gregory S. Crespi, *Market Magic: Can the Invisible Hand Strangle Bigotry?*, 72 B. U. L. REV. 991 (1992) (reviewing RICHARD A. EPSTEIN, *FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS* (1992)); Gregory S. Crespi, *The Mid-Life Crisis of the Law and Economics Movement: Confronting the Problems of Nonfalsifiability and Normative Bias*, 67 NOTRE DAME L. REV. 231 (1991).

There exists voluminous literature concerning the proper role of economics in legal education and analysis. Two major symposia collections published in the early 1980s provide a particularly good introduction to this literature. See Symposium, *The Place of Economics in Legal Education*, 33 J. LEGAL EDUC. 183 (1983); Symposium on *Efficiency as a Legal Concern*, 8 HOFSTRA L. REV. 485 (1980).

45. Such essentially political opposition may not always be articulated in such a candid fashion. The current financial constraints pressing upon legal education in New Zealand conveniently provide a plausible and factually neutral ground on which to oppose the addition of such electives. Those faculty that have essentially political objections to such courses, but who for whatever reasons are reluctant to risk transmuting a routine faculty curricular debate into a potentially divisive clash over first principles, can thereby disingenuously invoke financial constraints as a basis for their opposition and thus avoid having openly to frame the question in more political and controversial terms.

sometimes quite directly and immediately, to the size of course enrollments. A law-and-economics elective taught by a professor with full academic credentials in law could well prove to be quite attractive to many students, including, most obviously, the numerous students in New Zealand pursuing joint law/commerce majors, as well as economics majors or business majors with some interest in legal questions. Many of the students enrolling in such courses would likely do so in lieu of taking an additional economics elective, particularly a law-and-economics course offered elsewhere in the university by a faculty member who lacks the advantage of formal legal training. This shift in enrollment patterns could cost the economics departments (and their respective parent business schools) a significant amount of state funding. One might therefore expect economics departments to be inclined to take a dim view of such courses being offered by law faculties. This is particularly likely to be the case if those courses are being taught by law faculty without Ph.D. degrees in economics and if an alternative economic analysis of law course is offered elsewhere in the university by a fully credentialed economist. Under those circumstances, the opposition could be articulated in principled fashion in terms of departmental responsibility for maintaining appropriate standards of excellence in instruction taking place in their discipline, rather than in the more self-serving and less persuasive rhetoric of departmental budget impacts.

My conclusion, therefore, is that there are at least two significant reasons why none of the law schools in New Zealand are now offering law-and-economics courses despite the likely popularity of such courses and their obvious value to students. First, it would be a relatively expensive undertaking to offer these courses at a time when law school budgets are very tight. Second, there would probably be significant opposition of an essentially political character to such courses that would arise both within and outside of law faculties, although such opponents might be less than fully candid as to their true concerns. I have written elsewhere about how these obstacles might be overcome.<sup>46</sup>

#### D. *Staffing of Required Courses*

Finally, there are very different approaches followed in the two countries concerning the staffing of the basic law school required courses. I believe that the United States approach here

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46. See Gregory Crespi, *Filling a Gap in New Zealand Legal Education: The Economic Analysis of Law*, 8 OTAGO L. REV. 559 (1996).

is superior, although I recognize that this is a complicated comparison involving many factors and that reasonable persons may reach different conclusions.

SMU follows the typical United States approach to teaching these basic courses. SMU divides its 250 first-year students taking the required courses into 3 sections of 80 to 85 students each. Each section is assigned to a single professor for each required class, such as contracts, torts, etc., and that professor gives all the lectures, prepares and grades his own examination, and schedules and conducts any supplementary review sessions or tutorials she deems appropriate to hold.

In New Zealand, in contrast, the law schools generally schedule only one large lecture section for each required course and assign approximately three faculty members to that section, each of whom lecture to the section for only part of the year.<sup>47</sup> Most law school faculty members also conduct one or more weekly small-group tutorial sections associated with one of the required courses. The three main faculty members taking responsibility for a large lecture section provide the other faculty with tutorial support materials and jointly prepare and grade the final examinations.

The U.S. approach seems to have two major advantages. First, and most obviously, it allows for much smaller lecture classes, making more class discussion and feedback possible. It is almost impossible to have any meaningful class discussion or engage in Socratic inquiry when there are upwards of 200 or more students in the room, and the New Zealand instructor has no real choice but to regularly lecture for the full class period.

Secondly, and to me more importantly, the U.S. approach allows and encourages each professor teaching a required course to define his own subject matter coverage and develop his own pedagogical approach, without being subjected to the severe constraints of having to coordinate his choice and sequencing of topics, his teaching style, and his examination format with two other colleagues. The required courses are taught in a manner comparable to upper-level electives, albeit with generally larger class sizes. The diversity of content and pedagogical style that best befits legal education in a postmodern, multicultural world is thereby encouraged and preserved in the crucial beginning courses where students are particularly attentive to their instructors and are inclined to absorb and internalize the implicit norms of the profession as communicated by those instructors. The U.S. approach also enables each professor to present her

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47. See, e.g., UNIVERSITY OF OTAGO FACULTY OF LAW, FACULTY OF LAW HANDBOOK 10-11 (1996).

course in a comprehensive and integrated manner from beginning to end, which avoids the inevitable gaps and redundancies of team-teaching and gives students the opportunity to grasp her full, overarching concept of the subject matter and its relation to other fields.

I concede that there are several advantages to the New Zealand approach of one large section and associated small tutorial groups. First of all, it requires less work of each of the three main professors than is required of a single instructor under the U.S. approach, since each professor only has to lecture for part of the year. However, this time savings is at least partially offset for the faculty as a whole by the substantial added tutorial responsibilities involved in this framework. Another advantage is that the New Zealand professors can specialize to a greater extent in those aspects of the subject they will teach in their portion of the lectures, which should help them develop a deeper understanding of those areas, thereby both improving their teaching and aiding them in their related research and scholarship efforts. The weekly tutorial meetings connected with each large lecture section, at least in theory if not always in practice, do provide a helpful small-group discussion environment and close faculty interaction that is often not available to U.S. law students outside of their first-year legal writing sections or occasional upper-level seminar electives. Finally, if a student does not respond well to the particular pedagogical style of a professor teaching a large section, he does not have to endure that professor for an entire semester or year under this approach. The New Zealand approach to course staffing thus does have its merits. On balance, however, I think the curricular diversity and pedagogical advantages I have noted of having several smaller sections each taught completely by one faculty member outweigh the advantages of the New Zealand approach.

#### IV. CONCLUSION

Overall, these specific contrasts between the two systems as to admissions policy, clinical education, law-and-economics electives, and course staffing further emphasize the different possibilities and constraints of graduate versus undergraduate education and of low-cost versus high-cost education. If admission to a program of law school study is an internal undergraduate affair taking place within a single university, then consistent pre-requisite programs which provide excellent admission criteria can be utilized. Graduate schools generally do not have this luxury of imposing meaningful standardized admissions criteria. On the other hand, administrators of



graduate programs need not concern themselves very much with the inter-departmental turf conflicts that pervade and complicate undergraduate education. Finally, a well-financed legal education system can allow schools to make decisions concerning clinical programs and advanced elective offerings primarily on an academic basis rather than on budgetary grounds.

The differential availability of law-and-economics courses in the law school setting across the two systems can be partially explained by the financial and turf conflict factors noted above. However, the lack of such electives in New Zealand legal education appears to stem at least as much from broad differences in social attitudes within law faculties and academia generally concerning the merits of utilizing "economic" criteria for social decision-making than from differences in the structure of legal education.

The different approaches taken in staffing required courses do not appear to be necessary consequences of the underlying structural features of the two systems, but seem more to reflect an uncritical replication of the practices following elsewhere in both nations' university systems. The use of large lecture sections and associated small tutorial groups is characteristic of introductory undergraduate courses in both New Zealand and the United States, while it is not utilized for graduate-level education in either country.

U.S. legal education is regularly subjected to sharp criticism by domestic observers.<sup>48</sup> When it is compared to the quite different contours of the legal education that is offered in New Zealand, however, it seems clear that the U.S. system is "better," at least in the limited sense of being better financed and providing a broader range of learning opportunities to a better educated entering student body. Moreover, the performance of the New Zealand legal education system is generally representative of those of developed countries which have undergraduate-oriented legal education systems. It is thus hard to avoid the conclusion that the U.S. legal education system (along with the similarly structured Canadian legal education system), for all of its flaws, is probably the finest in existence.

However, a brief comparative analysis such as presented here suggests that this excellence is achieved at a relatively high social cost, both in the narrow economic terms of the resources consumed per graduate produced and in terms of the more intangible social costs stemming from the contribution that a large, highly stratified network of expensive, elite, graduate-level educational institutions makes toward reproducing and

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48. See *supra* note 1.

reinforcing a stratified social class structure. Most of the current U.S. debate concerning issues of legal education focuses upon what marginal changes should be made in, among other things, core curricula, legal writing programs, skills training courses, and loan repayment schemes to improve an already outstanding educational system.<sup>49</sup> This debate is grounded on the implicit premise that the existing overall level of resource commitment to legal education and the current provision of that education through a highly stratified system of graduate law schools are appropriate foundational principles that need not be called into serious question. A comparison of our approach with that followed in New Zealand, however, focuses attention upon those premises and raises troubling questions as to their validity.

I would therefore suggest that a relatively overlooked thread in the debate concerning legal education reform be given greater emphasis. I think that perhaps the most important issue currently facing U.S. legal education is the difficult question of whether the current level of excellence has been obtained at too high a cost, both in terms of the possible alternative uses of the resources now devoted to legal education and the problematic effects of that stratified educational system on our overall social structure. This question has received relatively little serious attention to date. This is perhaps partly because most of the informed critics of legal education have to some extent a vested interest in its perpetuation as a relatively well-financed, graduate-school enterprise. It may also be, however, that many of these critics have simply not given serious consideration to the relatively low-cost, undergraduate-oriented alternative followed in New Zealand and elsewhere. More attention needs to be paid to the possibility that, despite the obvious social value of good legal services, the United States might be better off, all things considered, if it had a "worse" legal education system.

Given this possibility, more thought should be given by reformers to formulating and assessing possible alternative legal education mechanisms of a less expensive and more egalitarian nature. Such a comprehensive effort is beyond the scope of this short article. However, let me offer in passing a few brief comments and suggestions.

One obvious approach would be to create additional legal education opportunities for students that are based upon the legal education model adopted by New Zealand and most of the rest of the world. In order to move significantly in this direction, it would be necessary to first press for relaxation of existing ABA law school accreditation requirements and state bar admission

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49. See *supra* notes 2-4 & 7.

standards so as to allow more enterprising colleges and universities to offer accredited four-year (or perhaps five-year) undergraduate law study programs that would qualify their graduates to sit for bar examinations and be admitted to practice if successful. The ABA, under strong pressure by the federal government<sup>50</sup> and by unaccredited law schools<sup>51</sup> to modify its accreditation practices and standards to mitigate their anticompetitive consequences, has recently made significant changes in those practices and standards<sup>52</sup> to conform them to the terms of a consent decree reached with the Department of Justice in 1995.<sup>53</sup> Those changes, however, fall well short of permitting the accreditation of undergraduate legal education programs.

Another option along the same general lines of relaxing restrictive educational and bar admissions requirements would be to encourage universities to provide concentrated, Internet- or video tape-based one or two year correspondence legal education programs to college graduates who may wish to become attorneys, but who are for financial or other reasons not interested in conventional classroom law school training, and to modify the ABA accreditation and state bar licensing standards to endorse these programs. Some of the steps taken by the Massachusetts School of Law and other unaccredited programs to offer lower cost graduate legal training are clear moves in this direction<sup>54</sup> which may lead to further steps if the ABA opposition can be overcome. Such new vehicles for providing legal education would, of course, have to be accompanied by more comprehensive governmental,

50. The ABA on June 27, 1995 entered into a consent decree with the Department of Justice in which it agreed to significantly alter its accreditation practices and standards with regard to salaries and compensation and transfer credits for students from unaccredited schools. Steven A. Holmes, *Justice Dept. Forces Changes in Law School Administration*, N.Y. TIMES, June 28, 1995, at A1. A Final Judgment enjoining the ABA from collecting compensation data and using for accreditation purposes, from refusing to accredit proprietary schools, and from placing certain restrictions on transfer credits was entered in that proceeding on June 25, 1996. *Legal Notice*, A.B.A. J., October 1996, at 133, 133-36.

51. The Massachusetts School of Law, denied accreditation by the ABA in 1993, filed an antitrust lawsuit against the ABA in 1994 alleging that the accreditation criteria are anticompetitive. *Massachusetts School of Law v. American Bar Ass'n*, 846 F. Supp. 374, 376 (E.D. Pa. 1994). That suit was dismissed on August 29, 1996 by the granting of the ABA's motion for summary judgment. Mark Hansen, *Judge Rules ABA Has Right to Accredite*, A.B.A. J., November 1996, at 32, 32.

52. James Podgers, *House Oks Law School Standards*, A.B.A. J., October 1996, at 107, 107.

53. See *supra* note 51.

54. See, for example, the discussion of the Massachusetts School of Law program contained in Debbie Goldberg, *Low-Cost Law School Tests Bar Association Standards*, WASH. POST, April 11, 1995, at A3.

bar association, or other private mechanisms than now exist for assuring the quality of legal services and disseminating to consumers of legal services accurate information as to the nature and extent of the training undergone by the attorneys they may elect to hire.

Legal education reformers in the United States can thus learn a great deal from the New Zealand experiences. That Experience suggests a number of alternatives to the reforms commonly discussed. One must recognize, however, that proposals for such dramatic and far-reaching changes in our approach to legal education and professional qualification would doubtless generate intense political controversy, as is indicated by the ABA and practitioner opposition to even relatively modest relaxation of accreditation criteria. The opposition would almost certainly be expressed primarily in terms of the need to uphold high professional standards of training and conduct to protect the public from incompetent representation. Of course, that opposition would also be energized in large part by the economic interest of existing members of the bar in limiting competition for their clients from lower-cost providers of legal services. The debate of such proposals would likely resemble in many ways the controversies that surrounded the initial development of the graduate-school model of legal education in the United States in the early 20th century, which took place against the background of efforts by significant numbers of recent Irish and continental European immigrants to qualify for legal practice, and thus encroach upon formerly largely Anglo-Saxon preserves.<sup>55</sup>

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55. STEVENS, *supra* note 18, at 172-204.