

AN EVALUATION OF LEGAL EDUCATION'S PROMISE AND  
IMPACT IN TRANSITION COUNTRIES FROM THE  
SERBIAN PERSPECTIVE

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*The business of legal education is not merely to teach law, or to make lawyers, it is “to teach law in the grand manner, and to make great lawyers.”<sup>1</sup>*

After a decade of declining economic activity as a consequence of trade isolation, sanctions and a mismanaged macroeconomic policy, along with a complete absence of foreign investments, technological stagnation, loss of traditional markets in the world as well as those of the former Yugoslav republics following the disintegration of the SFRY, in the wake of democratic transformation of the then Federal Republic of Yugoslavia in October 2000, Serbia embarked upon a complex process of reforming its political, economic and legal systems, seeking to establish an open economic system based on the free market and a private sector, transparency and the rule of law.<sup>2</sup> Significant changes of economic policies were launched addressing privatization and foreign trade. Changes within the higher education system, and more specifically legal education were part of the overall reform.

This paper will attempt to shed some light on the recent changes achieved by the educational reform in Serbia and how the author's personal education

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1. Oliver W. Holmes, *The Use of Law Schools*, in COLLECTED LEGAL PAPERS 37, 47-48 (1920), quoted in Michael I. Swygert, *Striving to Make Great Lawyers—Citizenship and Moral Responsibility: A Jurisprudence for Law Teaching*, 30 B.C. L. REV. 803 (1989).

2. On the difficulties that Serbia faced as of 2000 in establishing the rule of law see Vojislav Kostunica, *Most dangerous path: establishing the rule of law in Serbia*, HARVARD INTERNATIONAL REVIEW Fall, 2003; Boris Begović, Dragor Hiber, *EU Democratic Rule of Law Promotion: The Case of Serbia*, Center on Democracy, Development and the Rule of Law, 2006, available at [http://cdddl.stanford.edu/publications/eu\\_democratic\\_rule\\_of\\_law\\_promotion\\_the\\_case\\_of\\_serbia/](http://cdddl.stanford.edu/publications/eu_democratic_rule_of_law_promotion_the_case_of_serbia/).

in the U.S. had an impact on some of the developments within the Faculty of Law in Belgrade and the implementation of the rule of law in Serbia.

In order to understand the system of legal education in Serbia the author will first outline its legal framework. Secondly, the author will contrast the major differences between the Serbian and American models of legal education. Thirdly, the author will point out the most recent changes at the University of Belgrade Faculty of Law curriculum. Lastly, the author will show what was the impact of her own legal education in the U.S. to the legal developments in Serbia.

#### PART ONE: SERBIAN LEGAL EDUCATION

The Law on Higher Education (LHE) regulates the system of higher education in Serbia, conditions and manner of conducting the activity of higher education, financing as well as other questions relevant for conducting this activity.<sup>3</sup> The LHE grants the right to higher education to all persons who have previously obtained grammar education, notwithstanding their race, skin color, sex, sexual orientation, ethnical, national or social origin, language, religion, political or sexual orientation, status acquired by birth, underprivileged of any sort or property status.<sup>4</sup> While the LHE regulates the general framework for higher education, individual academic faculties are given specific rights to determine the criteria for qualification and selection of the candidates for enrollment.

Legal education in Serbia is part of the higher education system. There are five state faculties in Serbia at the moment<sup>5</sup> and a number of private faculties. The oldest amongst them is the University of Belgrade Faculty of Law which has just recently celebrated the 165th anniversary of its founding.

All the law faculties in Serbia must comply with the general requirements of the LHE and are subject to inspection and supervision by the National Council for Higher Education. However, subject to the accreditation and quality assurance procedures, they have significant freedom to design the contents of the legal curricula they offer. Still, for some time, there has not been much difference between the overall systems of legal education amongst

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3. Law on Higher Education, Official Gazette of the Republic of Serbia, No. 76/2005.

4. Article 8 of the Law on Higher Education.

5. Beograd, Nis, Kragujevac, Novi Sad, Pristina.

different law faculties in Serbia.<sup>6</sup> All of them were designed to provide an all-around legal training based on positive law, legal history and legal philosophy.

## PART TWO: AMERICAN VS SERBIAN LEGAL EDUCATION

A comparison of the American and Serbian systems of legal education points out numerous differences. These include, *inter alia*, contrasts in: admissions policy, financing, length of the studies, their structure, curriculum, course materials, exam and grading policy, teaching method, and professors' profiles.<sup>7</sup>

### 1. Admissions Policy

Unlike American students, Serbian law students may begin legal studies without undergraduate degrees and most students apply to universities directly after completing high school. In Serbia, law school applicants are evaluated according to the scores achieved on their admission test and their high school grades. Law schools emphasize the evaluation of a student's knowledge gained during his or her prior education, primarily in history and literature, as well as general culture. Law school admissions examinations in Serbia do not necessarily measure students' ability to be analytical and think like a lawyer, instead, the focus is on assessing their current knowledge and willingness to learn.

Unlike the educational system in the United States, standardized testing is not a common method of examination in Serbia. Tests like the GMAT, LSAT or BAR exams are examples of examination techniques almost never applied within the Serbian educational system. Multiple-choice testing with

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6. Nowadays, private law faculties offer more specialized study programs, e.g. Business Law, Insurance Law, International Law etc. However, this fact may lead to non-eligibility of their graduates for the Bar Exam under the currently drafted Law on Bar Exam.

7. On differences between different national systems of legal education and the American one see John H. Merriman, *Legal Education There and Here: A Comparison*, 27 STAN. L. REV. 859 (1975); Walter Gellhorn, *Impressions of Japanese Legal Training*, 58 COLUM. L. REV. 1239 (1958); JOHN HENRY MERRIMAN, *THE LONELINESS OF THE COMPARATIVE LAWYER*, The Hague, 1990; Gregory S. Crespi, *Comparing United States and New Zealand Legal Education: Are US Law Schools Too Good?*, 30 VAND. J. TRANSNAT'L L. 31, 40-41 (1997); Juergen R. Ostertag, *Legal Education in Germany and the United States—A Structural Comparison*, 26 VAND. J. TRANSNAT'L L. 301 (1993); Sandra R. Klein, *Legal Education in the United States and England: A Comparative Analysis*, 13 LOY. L.A. INT'L & COMP. L.J. 601 (1991); Alexander J. Black, *Separated by A Common Law: American and Scottish Legal Education*, 4 IND. INT'L & COMP. L. REV. 15 (1993); Ross Nankivell, *Legal Education in Australia*, 72 OR. L. REV. 983 (1993).

strict time constraints which often involves a number of trick questions that can only be perfected by practice and not by memorizing are not a trait of the Serbian legal education. Admissions examinations, which are equivalent to LSATs, are multiple question exams focused solely on testing the knowledge obtained primarily through memorizing the necessary materials and not necessarily through the study of practice exams. Arguably, the admissions tests in Serbia are mainly focused on actual knowledge while in the United States prospective law students have to demonstrate the ability to recognize what the examiner is actually asking in order to be able to answer the question. The reasoning behind the different testing methods could be that in the civil law system knowledge of the law is as important in the practice of law as the understanding of the court's rationale when deciding a case is for the common law lawyer. Therefore, standardized tests composed of problem questions test students' ability to spot issues that repeat themselves throughout practice exams, just like a common law lawyer needs to identify rationales from the precedent cases and apply them in his or her argument.

The law school application process in the United States is multifaceted and designed to select a student body with commitment to excellence. In addition to the required score on the admissions exam and grades from the previous education, prospective law students have to submit their personal statement, letters of recommendation, resumes and appraisals from the previously attended institutions.<sup>8</sup> Prospective American law students must demonstrate their personal interest in the study of law and describe their past achievements in many spheres of life. These descriptions demonstrate that the student is capable of overcoming the challenges that lie ahead in his or her future educational and professional life.

In Serbia, prospective students are not required to submit written illustrations of their prior experiences and abilities. The Serbian admissions system is primarily based on objective criteria rather than a subjective appreciation of the character and determination of each applicant. Arguably, admissions officials in U.S. law schools are looking for candidates with numerous talents, self-discipline, and motivation, while in Serbia, outstanding academic success is not a prerequisite.

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8. More on the admissions procedure in the U.S. see Carl E. Schneider, *On American Legal Education*, 2 *ASIAN-PAC. L. & POL'Y J.* 18, 77 (2001); Gregory S. Crespi, *Comparing United States and New Zealand Legal Education: Are US Law Schools Too Good?*, 30 *VAND. J. TRANSNAT'L L.* 31, 40-41 (1997); Sandra R. Klein, *Legal Education in the United States and England: A Comparative Analysis*, 13 *LOY. L.A. INT'L & COMP. L.J.* 601, 602-03 (1991).

It is worth noting that the prestige associated with the universities and law schools in the United States is not present in Serbia. In this regard there seems to be a certain level of discretion within the admissions procedure in the United States, where law schools may prioritize applicants from Ivy League schools or private schools unlike in Serbia where such distinctions are not present. There are many more factors that are taken into consideration when deciding upon the application of a prospective law school student in the United States than in Serbia and it could be argued that, although the selection process is more rigorous, it is at the same time less merit-based.

Unlike their Serbian counterparts, law schools in the U.S. compete to attract outstanding candidates. Law schools are ranked and praised for the opportunities they offer to their students. In Serbia, students are chosen by the universities, but students do not have the opportunity to choose amongst different schools. This lack of choice is another reason why the admissions policy is more lenient in Serbia. There is no incentive for the law school in Belgrade to select a distinguished but smaller student body, improve the quality of teaching, and raise the level of academic competition amongst brilliant students, since Belgrade does not need to compete with other law schools for its students. This, in part, accounts for the policy of the Ministry of Education who sets the number of entries each year. In any event, the number of students in entry semesters is extremely high: about two thousand.<sup>9</sup>

A comparison of the admissions procedures in Serbia and in the U.S. is skewed by the simple fact that law school applicants in the U.S. are graduate students while in Serbia they are high school graduates. Moreover, very often, prospective law school students in the U.S. have prior work experience and are often times in their mid or late twenties. Therefore, the admissions procedure in Serbia probably has more in common with the admissions procedure for undergraduate students in the U.S. Assessing the capabilities of eighteen year olds and their counterparts with much more life experience in the U.S. is a very different process. Having said that, a student's personal profile, biographical information, and standardized testing are present in the undergraduate admissions process in the U.S. also, while, as already mentioned, Serbian schools do not consider this information.

As a result, U.S. law schools have a very different student body than do the Serbian law schools in terms of the students' age profile, academic

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9. The number of graduates, on the other side, is rather smaller. About fifty percent of all entering students abandon their legal studies along the way. The reasons may be different. As one of the reasons, it has been stated that in the years of civil wars raging over the Balkans many young men have chosen to enroll at the Faculty in order to avoid or at least postpone military service.

background, and general level of maturity and experience. American law professors encounter more matured individuals who have already obtained their undergraduate degree and know how to learn in a university atmosphere, whereas Serbian professors, especially at the first year, have a heavy burden to teach students that the high school studying experience differs greatly from a university-level experience.

The difference in admissions policy truly reflects John Henry Merriman's opinion that the fundamental distinction between legal education in the United States and the European civil law countries lies in a distinction between democracy and meritocracy.<sup>10</sup> On the one hand, there is a desire to make higher education available to everyone without distinction, while on the other hand there is a desire to make the university a place in which academic merit is recognized and rewarded.

## 2. *Financing*

Most U.S. law schools are private rather than publicly-funded institutions, whereas most Serbian law schools are state universities. Law school tuition fees in the United States are much higher than those charged by the Serbian law faculties.<sup>11</sup> Additionally, a high percentage of the student body at Serbian law faculties is given the right to free education and are exempted from paying tuition.<sup>12</sup> This type of contrast between the law school tuition fees in the two countries has an impact upon both the composition and the attitudes of the law student body. Most students in the U.S. take loans or spend their savings on the tuition and living expenses acquired during their studies.<sup>13</sup> Unlike Serbia, where students do not have such financial commitments, students in the U.S. who are willing to subject themselves to the financial burden necessary to become lawyers are more likely to have a genuine interest and passion for the legal profession. The outcome of the high U.S. tuitions is that U.S. law students have a more serious attitude towards their studies than their Serbian counterparts. Good grades are a prerequisite to get better and higher paying jobs. Therefore, students who graduate highly indebted have an additional

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10. JOHN HENRY MERRIMAN, *THE LONELINESS OF THE COMPARATIVE LAWYER*, The Hague, 1990, at 53 *et seq.*

11. Tuition at the Serbian law faculties, both state and private is not higher than \$1600 per academic year.

12. At the Belgrade Faculty of Law, 700 out of 1,800 students at the first year are financed from the state budget and do not have to pay for tuition.

13. The difficulties of financing legal education in the U.S. are elaborated in: John R. Kramer, *Will Legal Education Remain Affordable, By Whom, and How?*, 1987 DUKE L.J. 240.

incentive to achieve good results throughout their studies. Another consequence is that the lack of financial responsibility for their studies creates a spirit of disinterest in the topics being covered in Serbian law schools and poses additional challenges to professors trying to educate a large class.

### *3. Duration*

In the United States, the basic law school curriculum is a three-year course of study designed for students who already have an undergraduate degree, whereas in Serbia, the basic law school training is a four-year undergraduate degree. Law school graduates in the U.S. are immediately eligible to take the Bar Exam, while in Serbia graduates have to spend two years as practicing law clerks before they can sit for the equivalent professional qualifications exam.

### *4. Structure*

To a large extent, the structure of the legal education in Serbia consists of formal lectures, typically an organized, abstract, one-way presentation by the professor. Lectures last 45 minutes and are fairly structured. Core subjects are taught seven times a week, and sometimes nine. Students are not required to prepare or participate in any discussions. Professors do not take attendance and students are not required to attend the lectures. The number of students assigned to each lecture is so large that there is no feasible way for the professor to take attendance.

In-term control is exercised only through the “exercises,” special classes complementing the lectures for the compulsory subjects. Here students are presented with hypothetical fact situations and instructed in methods of delivering legal opinions. The purpose is mainly the application of statutes, doctrines, and cases to these factual situations. During each semester, students must take two or more examinations and one paper on these fact patterns. For each class, students are divided into smaller groups in order to facilitate the discussion between the professor and the students. These classes are designed to supplement lecture material, but often are used by professors as a chance to get to know their students, as this is the only time professors have to evaluate students' knowledge level and interest in the course.

Research papers are assigned periodically and are often the only occasion for students to carry out more in-depth research and interact closely with their professors. However, research papers are not a compulsory part of the

curriculum and normally only keen students volunteer to take on additional responsibilities.

At the end of each semester students are given the opportunity to take an exam in subjects that were covered in the previous semesters. Recently the structure changed so that most of the courses are completed within one semester, whereas in the past the majority of the courses would take a full year (two semesters) to complete. This was accomplished by dividing the subjects that were covered simultaneously throughout the year between two semesters and assigning a greater number of lectures for a particular subject per semester.

### *5. Curriculum*

A common characteristic of all state law faculties in Serbia is that they are designed to provide an all-around legal training and not one of a technical or professional type.<sup>14</sup> The bedrock of all European legal education is that legal education must provide the widest intellectual and theoretical training. Presumably, graduate programs throughout law schools in the U.S. aspire to prepare students for the practice of law, rather than to provide a well rounded education.<sup>15</sup> Therefore, graduates in the U.S. are regarded as associates in when they join law firms while in Serbia and the rest of Europe law graduates begin their careers as trainees. Unlike in the U.S., vocational training in Serbia takes place after the completion of university studies, during traineeship in a law firm or in the courts.

The program of legal studies in Serbia is very strict and oftentimes unnecessarily burdensome. Students have to cover a great number of compulsory subjects and optional courses and have very little freedom to choose their subjects of interest. Compulsory courses take up all four years of studies, with students opting for a particular field of interest in their third year. However, optional courses are added to the courses that are compulsory for all students. In all four years, the curriculum covers six compulsory courses, with students selecting four optional courses in the field they wish to specialize in. In contrast, most of the core courses are covered in the first year

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14. On the contrast, some of the private law faculties tend to offer more profiled courses such as the ones focused on business law entirely. However, they have encountered significant problems after passing the new law and in perspective of the accreditation process. It may happen that some of these faculties will not be fully accredited as to allow their graduates to take Bar exam.

15. More on this aspect practical aspect of U.S. legal education *see* Carl E. Schneider, *On American Legal Education*, 2 *ASIAN-PAC. L. & POL'Y J.* 18, 77-79 (2001).

of U.S. J.D. programs and students can choose courses in the areas that they find most interesting in the last two years. Clearly, the American system is more flexible and accommodating to the particular interests of their students.

In Serbia, the majority of the courses are considered core subjects and only a smaller number of courses are for the students to choose. Secondly, the subject matters covered by each course often explain in great detail marginally important topics. Rather than focusing on areas that are theoretically or practically essential to legal training, students have to cover an array of insignificant issues. Thirdly, a related concern is that the needlessly comprehensive requirements leave no room for expansion of existing core areas or addition of new areas that should be part of the curriculum—for example, environmental law, European law and consumer law.

There were some attempts to reform the legal studies at the Belgrade Faculty of Law so as to reduce obligatory subjects and encourage specialization through electives. However, the actual reformation was half-hearted and the grouping of electives resulted in continued utilitarian choices. Over all, the sheer number of compulsory courses and the materials covered by those courses is extensive and all-inclusive. The curriculum in the U.S. differentiates clearly between a smaller number of core courses and a larger number of electives however, in Serbia, the division is reversed.

On the other hand, it can be said that students in Serbia gain deeper understanding of the law as a social tool, the historical and philosophical background of the social science of law, its origin and development through the centuries than their counterparts in the U.S. This is because most of the subjects in the Serbian first year of study are not purely legal. They provide a broad introduction to the study of law. Legal history, Roman law, introduction to the law, and legal philosophy are mandatory classes for all students. It is considered crucial for the students to grasp wider aspects of the law, including its role in society, its relation to society, the historical development of the law, and the interplay between law and ethics, among others. In the opinion of one American professor, first year law students at the University of Belgrade have more sophisticated understanding of the relationship of the law to society, the historical underpinnings of the law, the impact of the foreign law, and the operation of law in the society, than American law school graduates.<sup>16</sup>

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16. ALAN WATSON, *THE SHAME OF AMERICAN LEGAL EDUCATION*, Dosije, Belgrade 2005, at 175. Alan Watson is Ernest P. Rogers Professor of Law and Distinguished Research Professor at the University of Georgia Law School. He has several honorary doctorates from Universities in Europe and South Africa.

### 6. *Course Materials*

Generally, American professors rely heavily on case books in their classes. These books include a number of cases relevant for the topic, and a list of questions to be discussed in class. Students are supposed to spot and understand legal holdings from the text of the case. Case books do not outline the main principles of the subject and do not provide overall theoretical background. For those reasons, American students often lack understanding of the nature of the rationale, legal development behind it, weight of the legal doctrine, the authority of the law from another jurisdiction, etc. In Professor Watson's view:

*It is the students themselves who are expected to build up a picture of law from the few generally disconnected scraps available to them and with virtually no tools. Students are left to guess what the editors' view of the law is rather than getting to what the law is all about.<sup>17</sup>*

In Serbia, case books are rare. Instead, course books are comprehensive materials which outline basic principles and peculiarities of the law, including legal doctrine, opposing arguments, and comparative law. Case books are used only as a supplement to the basic materials and are not the main source of a student's knowledge on the topic. For that reason, students often lack understanding of how to apply the basic principles to different factual patterns even as they are exposed to a heavy burden of understanding different legal doctrines and the positions of different legal jurisdictions.

### 7. *Exam and Grading Policy*

Most of the exams at the Serbian law faculties are oral. Written exams are rare, and exist in the form of elimination rounds prior to oral exam. Exams often consist of three randomly chosen questions from the list of questions that were covered during the semester. Depending on the professor's style of examination, the student may or may not have a chance to show a deeper understanding of the course material. It is necessary to correctly answer all three questions to pass the exam. The grades are not assessed by the level of knowledge of other students but depend on the thoroughness and presentation of each individual student. The impression and confidence demonstrated by

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17. *Ibid.* at 34.

the student presenting are almost as important as the substance of the answer. Grades are not scaled and there is no such thing as “the curve.” Instead of letter grades, student are graded by numbers from 5-10, where 5 is equivalent to fail, and 10 is equivalent to A+.

The examination method in the U.S. is very different. Most of the exams are written test exams and usually involve essay type questions. Exams are anonymous and grading is generally based upon a curve with a forced mean and a predetermined standard deviation.<sup>18</sup> Hence, the American model encourages competition among students and greater objectivity in awarding grades. Since there is no limit to high grades and best grades cannot be “used up,” Serbian students are not competing against each other. Therefore, the grading system encourages collaboration and support amongst students. Students are more likely to help each other, advise each other and share their knowledge openly with their colleagues. Although grades are important for a future career, they are not considered crucial for students’ future employment prospects. Consequently, students are relieved from the tremendous amount of stress, anxiety and pressure to get the highest grades on their examinations—feelings that their American counterparts often face.

Exam policies in the two countries differ in another respect also. Serbian students are entitled to take exams until they pass, whereas American students are entitled to sit for an exam only once a year. There are four exam periods per year in Serbia—namely in January, April, June and September. Additional exam terms are granted upon students’ request in October. As a result students have less pressure to pass the exams the first time and often repetitively “try their luck.” The number of students that are examined on a particular day is therefore large and waiting for a turn often takes hours. Keeping in mind that the exam period never lasts less than one week, and some last for as long as four (June and September), the academic year in Serbia is often interrupted with periods of examinations. Students become even less interested in their classes, since they are focused on the exams. This also interferes with professor’s duties to lecture, examine, and conduct research all at the same time. Arguably, the lenient approach to the number of times that the student is eligible to sit for an exam is one of the main flaws of educational system in Serbia. The length of studying is often prolonged and students on average take seven years to complete the four year program.

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18. Sandra R. Klein, *Legal Education in the United States and England: A Comparative Analysis*, 13 *LOY. L.A. INT’L & COMP. L.J.* 601, 621 (1991).

### 8. *Teaching Methodology*

In Serbia law professors use the systematic presentation of assigned materials for a particular subject. This method was developed in the medieval period, and it mainly involves lecturing by the instructor without an open discussion in the lecture-room. In contrast, in the U.S., an interactive method of teaching is preferred and Socratic discussions are a commonplace.<sup>19</sup> Legal education entails the learning of methods specific to the practice of law, including skill in legal analysis, the ability to distinguish the relevant from the irrelevant, the ability to deal with a large mass of facts, the ability to bring together persuasive arguments on any side of a legal question, and the ability to think constructively about societal and human problems and their solutions. The approach taken to one's problems and their solutions is more important than the content of the solution.<sup>20</sup> It seems that the Serbian model of teaching has neglected these basic premises and has failed to recognize the advantages of the Socratic Method, which incites the thought process as well as the learning of law. Hence, *ex cathedra* lectures in Serbia are often not intellectually challenging and depend heavily on the oral skills of the professor. If a professor is not capable of keeping students interested and holding their attention, students may easily get bored and lose focus on the presentation.

On the other hand, some American students find the Socratic Method a humiliating and stressful experience.<sup>21</sup> Often times this method may slow down the class discussion because the student in the hot seat is not responding to the professor in a way that is most conducive to sharing knowledge. Professor Watson claims that the Socratic Method actually means teaching by terror.<sup>22</sup> Consequently, instead of being bored in classes as Serbian students, American students may experience other problems such as nervousness or anxiousness. Therefore, students may find difficulty in following the discussion as they wait for the inevitable moment when they will be called on.

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19. Carl E. Schneider, *On American Legal Education*, 2 ASIAN-PAC. L. & POL'Y J. 18, 79 (2001); Arthur D. Austin, *Is the Case Method Obsolete*, 6 WM. & MARY L. REV. 157 (1965).

20. Marcel Storme, *The consequences of European unification for legal education in the member states*, EUROPEAN REVIEW, Vol. 9, No. 2, 2001, at 137.

21. Quotations from WATSON, *supra* note 16, at 16-17. On a critique on Socratic Method see also Sandra R. Klein, *Legal Education in the United States and England—A Comparative Analysis*, 13 LOY. L.A. INT'L & COMP. L.J. 601, 628-631 (1991); June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011, 1014 (1989); Frank R. Strong, *The Pedagogic Training of a Law Faculty*, 25 J. LEGAL EDUC. 226, 235-36 (1973).

22. WATSON, *supra* note 16, at 25.

Even though the Socratic Method in its purest form may not be the best way to convey knowledge, it should be kept in mind that this method has certain advantages. Open discussion gives students an opportunity to learn in a different manner than straight forward lecturing. It forces students to develop other skills such as critical thinking, confidence, mental agility, the ability to “think on your feet,” and the ability to deal with high-pressure situations. All these skills are necessary for lawyers, both in America and Serbia.

### *9. Professors' Profile*

American law professors think of themselves, very seriously, as teachers. Obviously, every professor everywhere is a teacher. But those who have studied in Europe will agree that continental professors do not concentrate very much on their students. They study, write, and lecture, and thus, they teach. Professors work in a professor-oriented rather than a student-oriented atmosphere, and have few direct obligations to the learners who sit at their feet.<sup>23</sup> As a result of the student-professor ratio, and the traditional university hierarchy, professors usually maintain a distance from their students. Personal attention and availability to students, the hallmark of the American approach, are exceptions within Serbian faculties.

In Serbia, tenure does not depend on the teaching qualities of a professor. Instead, the main focus is on his or her academic and scientific ability. Hence, there is a strong contrast between Serbia and the U.S. in terms of evaluating teaching qualities of a professor. Whereas in the U.S. the tenure of a professor generally depends on professor's teaching qualities, similar requirements did not exist in Serbia until recently. Only with the recently enacted LHE has made student evaluation of teaching competency relevant for a professor's academic advancement.

## PART THREE: REFORM OF THE UNIVERSITY OF BELGRADE FACULTY OF LAW CURRICULUM

The Belgrade Faculty of Law was established in 1841 as part of the University of Belgrade and is one of the largest law faculties in the region. Since its founding, the Faculty has produced almost 50,000 law graduates,

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23. Walter Gellhorn, *Impressions of Japanese Legal Training*, 58 COLUM. L. REV. 1239, 1240 (1958).

around 1,200 *magistri iuris* and 830 *doctores iuris*, as well as hundreds of specialists in various areas.<sup>24</sup> A great many Faculty of Law alumni have become recognized experts and scholars in all branches of law, law professors and high ranking government officials.<sup>25</sup> All the faculties of law, established subsequently in Serbia, Montenegro and in other parts of the former Yugoslavia were created using the University of Belgrade Faculty of Law as a guide.

Starting with the 2003/2004 school year, the Faculty undertook significant efforts to improve academic quality of research and education in accordance with the Bologna Declaration from 1999 and the Follow-up Documents from Prague and Berlin, with the aim of integrating itself into the European Higher Education Area.<sup>26</sup> These efforts resulted in a large-scale reform of the law school curriculum and teaching methods.

The process of curriculum reforms has been initiated in order to secure:

- a. Attractive and ambitious university education on all levels, making an effort to reduce brain drain,
- b. A modernized higher education to cover the need for scientific and professional knowledge,
- c. Efficient teaching and training of university teachers,
- d. A coherent higher education system all the way from the undergraduate to the doctoral level in accordance with the Bologna Declaration.

The reform of teaching methods has been initiated with the aim to provide students with a more practical insight in the legal issues they will encounter in practice once they graduate. The backbone of this reform lies in the belief that the law faculty must not just teach law, it must train lawyers. This has resulted in a higher number of legal clinics and moot court opportunities offered to law students.

24. Mirko Vasiljević, 165 godina, p. 10, in Miodrag Jovanović (Ed.), *Sto šezdeset pet godina Pravnog fakulteta Univerziteta u Beogradu, 1841-2006*, Beograd 2006.

25. The University of Belgrade Faculty of Law has had amongst its faculty members some of the most eminent experts in various legal disciplines, as well in a range of other social sciences (economy, sociology, philosophy, political science, legal history etc.). Amongst them, there have been 19 members of the Academies of Sciences, 15 rectors of the University of Belgrade, six judges of the Constitutional Court of Serbia, as well as several dozens of high government officials—prime ministers, deputy prime ministers and ministers, Ambassadors etc.

26. These documents require Faculties to develop transparent and coherent curricula, provide the ECTS for the equal assessment of studies, enable mobility among students and professors, take care of an effective quality assurance and the recognition of study achievements made abroad. It is believed that this process will increase the competitiveness of European institutions of higher education in a globalising world.

A three-cycle system of studies has been introduced; the first lasting four years (providing a bachelor's degree), the second lasting one year (providing a masters degree) and the third lasting for three years (providing a doctoral degree). The undergraduate studies include mandatory courses and a selection of three major streams of study: judicial-administrative, business law, and legal theory, as well as a number of elective courses which students can choose according to their personal interests and preferences. The courses available to each year of study can be found in Appendix A.

The master's program encompasses two basic areas of law: the business law program and the administrative-judicial program. The courses available to each year of study can be found in Appendix B. For the master's degree mandatory practical training in courts, state administration or private companies has been introduced, in addition to a 30-50 pages paper requirement.

The Faculty has also introduced the ECTS system, new standards for the mandatory literature, rules for evaluating students' pre-exam obligations, the diploma supplement, and other measures aimed at conforming to the European standards in higher education, their strict implementation in the system of teaching and evaluation, as well as quality assurance and control. In addition, the Faculty now offers a number of courses in foreign languages (English and French) on all levels of study.

The 2006/07 generation of students has commenced legal studies this past October in accordance with the newly established system in which each course lasts one semester only. What the impact of this new system will be and how it will adjust to the differences between different models of legal education outlined in section two of this paper, only time will tell.

#### PART FOUR: THE IMPACT OF AMERICAN LEGAL EDUCATION IN SERBIA

Based on the experiences of a number of junior faculty members at the University of Belgrade Faculty of Law, the impact of the American legal education on the legal education in Serbia is outstanding. Assistant professors who are currently teaching have completed their LL.M. degrees at various law schools in the US: Duke, Harvard, Brooklyn Law School and George Washington University. In my personal view, studying at the University of Pittsburgh Law School gave me a different perspective on my Serbian education and a new guidance in my professional career as a professor at the University. First of all, it enabled me to evaluate all the peculiarities of the Serbian system of legal education, and its qualities and flaws in contrast to the American model. Secondly, it gave me an opportunity to extend my

knowledge of the respective area of law that I now teach in Belgrade. Thirdly, and most importantly, it helped me improve teaching methodology for my classes by exposing me to the Socratic Method, and consequently it has helped me develop a better course for my students. Last but not least, it got me involved in the Willem C. Vis International Commercial Arbitration Moot competition, which I consider as one of the key aspects of my work at the Belgrade Faculty of Law.

### *1. Impact on Serbian Students*

Serbian students have benefited from their professor's American education in a number of ways. Primarily by interacting with the professors who have been exposed to the Socratic method of teaching and are willing to implement what they have been exposed to during their studies in the U.S. Also, new opportunities have been created for students in Serbia, such as participation in the moot court competitions.

#### *A. Socratic Method*

In comparison to the European method of teaching, lectures in the U.S. often involve open discussion between professors and students. Arguably, the time in class is best spent by probing a discussion, not by lecturing. By doing so, the professor enables students to engage in presenting and understanding the subject-matter of the course, he motivates students and makes the class more stimulating. The Socratic Method encourages classroom discussions and teaches students to think like a problem-solving, analytical, and creative lawyer.<sup>27</sup> The theory behind the Socratic Method is simple: students think and learn better when they are required to think through and figure out answers to questions than when a teacher tells them the answers. Socratic teaching offers the professor another reward. It is boring to lecture year after year on the same topic. But Socratic discussions can be actively interesting, since the professor never knows just what his students will say and thus where the discussion might lead.

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27. For more on the Socratic Method see Carl E. Schneider, *The Socratic Method and the Goals of Legal Education: With Some Thoughts Inspired by Travel*, *Hogaku Kyoshitsu* 180 (1995); Mary K. Kearney & Mary B. Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 *TEMP. L. REV.* 885 (1991); Steven A. Childress, *The Baby and the Bathwater: Developing A Positive Socratic Method*, 18 *LAW TEACHER* 95 (1984).

Those who have experienced Socratic Method as students have implemented it at the Belgrade Faculty of Law, adjusting its main principles to their practical needs. In Serbia, the Socratic method is complemented with a short introduction on the main concepts and rules as they developed, then followed by a discussion of a few cases selected to illustrate the rules.

The reactions of students are positive. They are delighted by the new teaching method which is praised in the course evaluation forms. Consequently, it leads to the increased lecture attendance.

### *B. Moot Courts*

American legal education of Belgrade faculty members has generated yet another benefit for Belgrade students. Law students have been offered a new opportunity to participate in various moot court competitions. In this respect, Belgrade Law Faculty is indebted by the support provided by Pitt Law. Due to the financing and training provided by our Pittsburgh colleagues, the Belgrade team has been a successful participant of the Vis Moot competition for four consecutive years.

Participating at the competitions represents hard work for everyone involved, both coaches and students, and at the same time provides unique practical and educational training, different from anything else offered at the Faculty. Different skills are developed through mooting: ability to identify legal issues which arise in a factual situation, ability to formulate concise submissions in relation to such legal issues and to present those submissions to a court or tribunal in a convincing manner.

Overall, Serbian legal education does not encourage team work. Therefore, mooting is a unique opportunity for students to learn how to work in teams and share responsibilities. At the same time, it incites their initiative and leadership skills. Students also perceive participating in the Moot as an excellent position for easier access to the job market and postgraduate studies. For example, Vis Moot Court Alumni had no obstacles in continuing legal education at universities in the West, such as the Central European University in Budapest in Hungary, the University of Leuven in Belgium, the University of Nottingham in England, the University of Pittsburgh in the U.S., and the University of Amsterdam in Holland, often with full scholarships. The ones focused on the practice of law rather than on the academic work are now employed among the most prestigious corporate law firms and consulting firms in Serbia.

The success of the first moot court team from the Faculty of Law in Belgrade (at the Willem C. Vis Moot) was acknowledged by both the Faculty

and the general public, including participation in TV shows, newspaper reports, radio shows, and web reports. The success also opened doors for students to participate in many other competitions. Belgrade Faculty now offers students a chance to take part in various moot courts on topics ranging from International Commercial Law and Arbitration to International Public Law, Humanitarian Law, International Criminal Law, Human Rights and European Jurisprudence.

### *2. Impact on other Faculty members*

Having recognized the advantages of the Socratic Method, many young faculty members have applied it in their classes. There are certain hardships associated with the Socratic Method which caused a level of skepticism amongst the teaching staff. For example, the Socratic Method is best suited for case discussions, which is not common-place in the study of law in the civil law system. However, even civil law jurisdictions have cases, and statutes can readily be taught by inventing cases that pose illuminating problems about interpreting a statute. The Socratic Method is gradually being introduced by an increasing number of faculty members. Also, teaching materials that reprint judicial opinions, devise hypothetical cases, and set problems for students to resolve and questions to reflect on are nowadays more frequently published in Serbia and used in classes. Unfortunately, lectures, unlike exercises, often involve over-sized groups of students who are not afforded a chance to participate in the discussions. Hence, it is difficult to apply the Socratic Method when teaching such large groups. This is also true for the core courses that are taught to large groups of students in the U.S.

### *3. Impact on the Curriculum Reform*

It goes without saying that an American legal education has enabled its beneficiaries to obtain better positions in the Faculty environment. They now hold certain positions within the Faculty that grant greater responsibilities, such as the ones related to international cooperation. Moreover, U.S. graduates have become an invaluable component of any committee engaged in the reform of the legal education at the Faculty since 2003. This position has enabled them to advocate for an improved academic environment, and to propose the incorporation of advantageous teaching methods they have experienced while studying in the U.S. These include establishing legal clinics, introducing more optional courses, developing a wide scale of moot courts for students, organizing job fairs etc. Also, these young faculty

members have lobbied for the implementation of the new IT capabilities, such as improving the Faculty web site, providing lecture materials and handouts on-line, and modernizing teaching tools and equipment as to enable PowerPoint presentations in the lecture theatres. E-learning and distance learning systems are currently being developed. In addition, this initiative has resulted in the creation of a souvenir store where, for the first time, students can purchase T-shirts and sweat shirts with the university logo, thus promoting a sense of belonging to their educational institution.

#### *4. Impact on the Legal Community*

The U.S. experiences of junior Belgrade faculty members have enabled a closer cooperation amongst the Serbian private sector, the Bar Association and the students at the Faculty. This had started with personal contacts and individual scholarships given to the best students participating in the international competitions, and gradually emerged as the first Job Fair at the Faculty in May 2006. More importantly, the Faculty has established the Career Centre, with a goal to create career opportunities and to assist hundreds of graduates in making career decisions.

#### *5. Impact on the Development of the Rule of Law*

On the eve of the October 2000 change of regime, Serbia purported to have many institutions of standard market economy and the rule of law. However, the codified law suffered from a multitude of flaws and was often not implemented. The state and policy informally and illegally took over the role of all-powerful arbitrator with decisive influence on all economic flows.<sup>28</sup>

Following the October 2000 changes, Serbia has manifested a strong commitment towards developing a civil society based on the rule of law and transition to functioning market economy.<sup>29</sup> When, after over ten years of economic mismanagement and regional conflicts, the new democratic government took office in January 2001, its primary objective was to stabilize

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28. Boško Mijatović claims that there was a legal anomy or lawlessness in Serbia at that time. See Boško Mijatović, *General Overview of Transition in Serbia*, pp. 16-17, in BORIS BEGOVIC ET AL., *FOUR YEARS OF TRANSITION IN SERBIA*, Center for Liberal Democratic Studies, Belgrade 2005.

29. Serbia and Montenegro had a history of a relatively open society when compared to other Soviet states. As a result, the citizens of Serbia and Montenegro are relatively worldly, educated and well-traveled compared to other post-Soviet states. They also tend to have a more pro-Western orientation. See USAID/SERBIA AND MONTENEGRO TRADE ASSESSMENT, FINAL REPORT, Apr. 22, 2005, at 10.

and transform the economy, and to restore Serbia's position in the international community.<sup>30</sup> This objective included integration into the international economy,<sup>31</sup> economic growth and membership in the WTO, as well as the rapprochement and integration of Serbia into the EU. To that end, the Government set out to reform the economic policy, laws and institutions, as required for the accession to the WTO and integration into the EU, launch appropriate monetary and tax strategies to achieve macroeconomic stability, streamline public financing and tax policy in order to increase public revenues and ensure transparency, liberalize price and foreign trade policies, install a new pension system, reform the competition policy, accelerate privatization, create favorable conditions for investments, encourage employment, liberalize capital flows, and arrange debt rescheduling. Experiences gained in the U.S. were utilized to accomplish the abovementioned goals.

In 2000, the Serbian administration was outdated and staffed with people from the old regime who had a trouble coping with new tasks and an open market philosophy. On the other hand, the ruling parties of Milosevic's opposition were composed of inexperienced personnel, which was reflected in their inability to fill numerous governmental positions with skilled and qualified individuals. Various international organizations offered their assistance, including: USAID, EAR, the World Bank, OSCE, OECD, UNDP, and others. However, domestic capacity was lacking. Serbia craved for young intellectuals with both Serbian and Western education. It turned out to that U.S. graduates of Serbian origin were a perfect fit for this rather difficult assignment.

In September 2002, I started working as the legal consultant for the USAID sponsored WTO Accession Project for Serbia & Montenegro. My main duties were to consult with the Serbian government with respect to the WTO accession process. This included preparing complex legal documents relevant for the WTO accession, responding to the questions coming from the WTO members regarding Serbian foreign trade system, and preparing Serbian trade negotiations strategy. Also, my tasks included reviewing and commenting on the existing legislation relevant to the WTO accession

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30. Some of the more significant hurdles that the new government had to overcome were: a sharply reduced output since 1989 (production by half and exports by two-thirds), substantially reduced investments, high unemployment rates (estimated at over 30%), high inflation rate (120%), a large number of refugees and displaced persons, a doubled number of the poor, strong presence of the gray economy and corruption, and high internal and external debt (about 20 billion euro).

31. In recent years the country has rejoined the International Monetary Fund, the World Bank and the European Bank for Reconstruction and Development.

process, reviewing and commenting on the amendments drafted by the relevant governmental entities and more importantly, participating in the drafting of the new legislation and amendments as a member of the legal committee of the Government. The education and training that I gained in the U.S. helped me to understand the goals of the ongoing reform. The insight into the American legal system and economic policies made it easier for me to implement the free market principles in the commercial and trade legislation.

During my work at the USAID WTO Project, many aspects of foreign trade have been deregulated, customs duties have been significantly reduced, pricing policy was considerably liberalized, the government has demonstrated its wish to create a favorable investment environment, and the tax system has been substantially reformed. A number of new laws, fully complying with WTO rules, have been passed, revised, or amended, with several others expected to be adopted soon.<sup>32</sup>

Nevertheless, the economy is still facing major problems, mostly resulting from regional conflicts (especially the one in Kosovo), international isolation and sanctions.<sup>33</sup> Consequently, Serbian exports of goods in 2003 were lower than in 1998. It is estimated that direct damage from the bombing in 1999 reaches U.S.\$30 billion, which is approximately the value of the country's GDP in 1989.<sup>34</sup>

Serbia's accession to the WTO is an important priority for the Serbian Government. In view of the purpose and importance of this organization for the world trade it is clear that the Government is resolved to assume an active role in implementing the WTO's objectives and to offer its contribution to the revival and development of the world economy. However, the strongest impetus for reforms in Serbia is the EU accession process and regional cooperation through free trade agreements. Both are served by efforts on creation of the South East Europe Free Trade Area. In that respect I have been

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32. The most important legislation I was specifically involved in drafting is the recently enacted Foreign Trade Law (enacted in November 2005) and the set of intellectual property related laws (enacted from Nov 2005 to May 2006).

33. Other major problem areas include: a third of the population lives below the regional poverty line, and 10% below the national poverty line of USD 2.40 per day; average wages amounting to USD 250 per month in 2004; external debt currently estimated at around 61% of the GDP; employment in the informal economy estimated at over a third of overall employment; and refugees and internally displaced persons numbering 377,731 and 200,000 respectively (578,000 in total), according to the 2001 census.

34. 24 bridges were destroyed, 36 damaged; direct damage to electric power industry was around USD 270 million, the damage to the telecommunications systems was estimated to around USD 75 million; to remote heating systems around USD 5.3 million. Total direct damage to commercial facilities was around USD 2.9 billion. Total loss of the human capital was estimated to USD 2.3 billion.

called by the EU sponsored Policy and Legal Advice Center to evaluate the current framework of bilateral free trade agreements between eight countries of South Europe (Serbia and Montenegro, Albania, Bosnia & Herzegovina, Bulgaria, Croatia, Macedonia, Moldova and Romania)<sup>35</sup> and to propose further changes in order to allow undisturbed flow of trade between these countries, reduction of non-tariff barriers, provide for efficient dispute settlement mechanism.

Furthermore, in January 2006 I was asked to review the pertinent legislative framework for export and help the Serbian Ministry for International Economic Relations in cooperation with the Policy and Legal Advice Center to prepare the National strategy for export promotion.<sup>36</sup> The seriousness of the trade deficit meant that our work was of great importance for Serbian economy. I am still involved in the drafting of the National strategy for export promotion while a number of emergency measures that were recommended by our team are currently being implemented.

The enactment of modern legislation is not sufficient without proper implementation. For this reason I have been asked several times to participate in the seminars for education of judges, attorneys, ministry staff and others who are entrusted with the implementation of the new legislation. In addition, I have contributed in educating the general public by commenting on these new legal and economic developments in the most prestigious Serbian daily newspaper—Politika.

In conclusion, it is evident that much of the recently carried out reforms in Serbia could not have been possible had it not been for the young academics with Western legal educations. Consequently, the impact of the American model of legal education in Serbia has been rather significant. As the country is opening up and becoming a part of the globalized world, educational experiences abroad are implemented more effectively than ever before.

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35. Currently, there are approximately 30 bilateral free trade agreements signed in the region, whereas another seven are expected to be signed in the near future. Additionally, considerable efforts have been made on creation of a single regional free trade system, which would significantly increase investments and ease the whole process.

36. WORLD BANK, SERBIA AND MONTENEGRO, REPUBLIC OF SERBIA, AN AGENDA FOR ECONOMIC GROWTH AND EMPLOYMENT, December 6, 2004. The causes of the high trade deficit should be sought in the present structure of the economy and the previously pursued economic policy. Despite the good intentions and some positive results (macroeconomic stability, curbed inflation), the reform policy has not yet sufficiently contributed to an increase in production, change of its structure and a substantial export growth.

Realization of the need to replicate what can be applied in Serbia is present in all areas of education. Legal education is particular to each nation; however the method of teaching and the support systems that should be provided for the students are universal across the world. Arguably, neither the American nor the Serbian system of legal education is superior. They both have their strengths and weaknesses. A clear cut transplant of the American model is not possible, but implementation of its strengths with modifications and improvements in line with Serbian legal culture has proved rewarding. The same applies for the overall reform of the rule of law.

Complete unification of the legal systems is not possible and diversity of legal cultures has to be maintained, but cross cultural ideas and philosophies can be applied concurrently. Implementing contemporary American principles of education, free market and democracy within the Serbian legal system has produced great results and I believe there are still more to come.

### **Appendix A**

The first year courses are: Introduction to the Law and Legal Philosophy, Roman Law, Comparative Legal History, Foreign Language, Constitutional Law, National Legal History, Sociology and Computer skills relevant to the practice of law.

The second year courses are: Introduction to Civil Law and Property Law, Family Law, Political Economy, Criminal Law, Inheritance Law and an optional course from one of the streams of study: Criminology (judicial-administrative stream), Economic Law (business law stream), Political System (legal theory stream).

The third year courses are: Administrative Law, Criminal Procedure, Company Law, Contract Law, International Public Law, Law of European Integrations, an optional course from one of the streams of study: Criminalistics (judicial-administrative stream), Securities Law (business law stream), Canon Law (legal theory stream) and one elective from the list of courses including: Rhetoric, Court Psychology, Autonomous Law, Parliamentary Law, Gender Studies, Media Law, Diplomatic Law etc.

The fourth year courses are: Trade Law, Labor Law, Tax Law, Civil Procedure, Intellectual Property Law, two optional courses from one of the streams of study: Legal Medicine and Organized Crimes (judicial-administrative stream), Transport Law and White Collar Crime (business law stream), Political and Legal Theories and Legal Philosophy (legal theory stream) and one elective from the list of courses including: Environmental law, Moot Court, International Relations, International Humanitarian Law, International Labor Law, Writing Legal Documents etc.

### **Appendix B**

The business law masters program includes the following courses: International private Law, International Commercial Law, Arbitration Law, Foreign Legal Terminology, Economic Policy, Insurance Law and two electives from the list of courses including: Legal Clinics, Telecommunications Law, Competition Law, Banking Law, Energy Law, Economic Analysis of Law, Accounting for Lawyers, Business Ethics, Internet Law, Bankruptcy Law, Legal Philosophy, Legal Methodology etc.

The administrative-judicial masters program includes the following courses: International private Law, International Criminal Law, Administrative Procedure, Foreign Legal terminology, Human Rights, Public Finance and Budget Law, and two electives from the list of courses including: Juvenile Criminal Law, Legal Clinics, Law of Notaries, Medical Law, Legal Ethics, Legal Methodology, Legal Philosophy etc.