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# ***Can and Should Human Rights Themes Impact Decision-making in a Law School?***

## **Reflections from the U.S. Perspective**

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### *I. INTRODUCTION*

Human rights are designed to protect fundamental rights, well-being, and dignity of individuals, and to some extent groups. In the United States human rights norms are often considered part of "international law," in contrast to "civil rights law" which is deemed an integral part of domestic law.<sup>51</sup> Arguably, however, civil rights law encompasses only a part of human rights law, which includes civil and political rights, often defined as protections against the overreach of governmental power, as well as economic, social, and cultural norms, which extend to claims upon government.

In U.S. law schools human rights law is being taught generally as an upper-level elective course, similar to any other area of law, with a focus on substantive rights as well as procedure. While this paper will address some of the issues connected to the teaching of human rights within the law school curriculum, it focuses largely on whether and how human rights should be lived within a law school, to what extent it should animate faculty and administrative decisions, if and how it could be used as a guide to making some of the most vexing decisions facing American law schools today, and how it may impact budgetary decisions. The ultimate question is whether human rights can be used as a guide and implemented in an educational institution. This is a particularly opportune time to raise this question as institutions of higher learning, and especially law schools, have increasingly been pejoratively called "businesses."<sup>52</sup>

Human rights issues are generally not categorized as such in law schools though they lie beneath fundamental structural decisions. If these issues were categorized as human rights issues -- rather than as questions of management, of student matters or academic freedom -- they could be approached with different gravitas and within a differently defined legal framework.

This paper will focus on four sets of questions: First, it discusses institutional funding and the selection of students in the context of access to legal education, which implicates racial, gender, and socio-economic equality. Next the paper will turn to a few student-related issues that involve select normative human rights values. Third, the paper will address resource allocations, ideological values, and questions of professional training that pertain to the teaching of human rights in law school. The last section is devoted to

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<sup>51</sup> The struggles surrounding gay rights as well as the rights of undocumented immigrants are often referred to as the new "civil rights" battles instead of being positioned as part of an international human rights movement. Those may be partially strategic choices resulting from domestic policy concerns involved in invoking non-U.S. norms and values.

Some, however, use the terms interchangeably. See New York City Commission on Human Rights ("The New York City Human Rights Law is one of the most comprehensive civil rights laws in the nation.").

<sup>52</sup> Legally most U.S. law schools remain not-for-profit enterprises, though a number of for-profit law schools exist and are accredited by the American Bar Association.

For a discussion of business models, see *THE BUSINESS OF HIGHER EDUCATION* (John C. Knapp & David J. Siegel eds., 2009).

questions of gender equity, gender mainstreaming, the debate of nature and nurture as well as structural gender imbalances in legal education.

## II. ACCESS TO LEGAL EDUCATION AND THE FINANCIAL MODEL

In the United States universities can be public or private, with virtually all of them charging tuition and fees to those enrolled. While even private universities generally receive some state and federal funding, historically the “publics” were established to benefit the higher education of state residents and were often generously financed from state tax revenue. For reasons of political philosophy but also in light of increasing pressures on state revenue, in recent years many states have dramatically decreased their funding of state universities.<sup>53</sup> Initially that led to a substantial increase in tuition for out-of-state students. Over the last few years even tuition for in-state residents has increased dramatically.<sup>54</sup>

Tuition increases for both private and public law schools have been marked over the last decade.<sup>55</sup> Nevertheless, more law schools have opened, and the number of students enrolled in law school has risen over the last few decades,<sup>56</sup> though currently enrollment is on a downward trajectory. This section will focus on the financing of law schools and the access-related questions that have arisen in conjunction with the allocation of law school scholarships and government loans. The last part of this section will then turn to a few other admissions-related matters that are not directly related to student financing.

### A. Scholarships, Loans, and Access

Students have financed their education in part through personal and family savings; through earnings, especially when they are in a part-time program; through scholarship assistance, which has also grown substantially during the last decade;<sup>57</sup> and most importantly through government loans. While law schools grant some need-based scholarships and loans, or at least tie some of their loan and scholarship programs to financial need, most scholarship money is based on “merit,” which is a short form for the combination of undergraduate grade point average (GPA) and the score on the Law School Admissions Test (LSAT). Awarding of scholarship based on such merit data is a function of the annual law school ranking by U.S. News, which assesses student quality based on these two data points.

Depending on the law school’s financial resources and scholarship allocation policy, students may find it difficult to receive continuing scholarship funding for all three years when their academic performance does not meet the required threshold. While some have argued that such forfeiture is a function of the over-awarding of scholarships, it also results

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<sup>53</sup> See Jennifer May & Sandy Baum, College Board Advocacy & Policy Center, *Trends in Tuition and Fees, Enrollment, and State Appropriations for Higher Education by State* (2012); National Conference of State Legislatures, *State Funding for Higher Education in FY 2009 and FY 2010* (2011), available at [www.ncsl.org/documents/fiscal/higheredfundingfinal.pdf](http://www.ncsl.org/documents/fiscal/higheredfundingfinal.pdf).

<sup>54</sup> Kim Clark, *Tuition at public colleges rises 4.8%*, available at <http://money.cnn.com/2012/10/24/pf/college/public-college-tuition/index.html>.

<sup>55</sup> American Bar Association, *Law School Tuition 1985-2011*, available at [www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/ls\\_tuition.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf).

<sup>56</sup> American Bar Association, *Enrollment and Degrees Awarded, 1963-2011 Academic Years*, available at [www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/enrollment\\_degrees\\_awarded.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf).

<sup>57</sup> American Bar Association, *Internal Grants and Scholarships, Total Amount Awarded 1991-2010*, available at [www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/internal\\_grants\\_scholarships\\_awarded.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/internal_grants_scholarships_awarded.authcheckdam.pdf).

from the limited predictive quality of law school performance based on these two “merit” components.<sup>58</sup>

While most applicants will be admitted to some law school, some may be admitted to a more highly ranked law school without scholarship money while receiving a substantial scholarship package from a lower-ranked school. In light of the perceived importance of rankings, applicants often forgo the financial assistance in exchange for the higher ranking. A risk averse decision-maker, however, may choose the lower ranked school to minimize educational debt, especially when family resources are non-existent or very limited.

At least one of the so-called “merit” markers, the LSAT, correlates with socio-economic advantage, which is particularly true in the age of private tutors for this (and any other) standardized test. Therefore, socio-economic advantage at the outset -- including stronger educational preparation from kindergarten through college -- will likely amount to further educational advantage through admission to more highly ranked law schools, to greater choice, and even to financial advantage, as much of scholarship money is no longer tied to financial need.

The perpetuation of inequality may appear less troubling in light of the existence and proliferation of loan programs. Initially government grant and loan programs provided sufficient assistance for most students to allow them to finance their education.<sup>59</sup> With the increase in tuition, private companies stepped in to provide additional financing. Increasing concern about the practices of private loan companies, following revelations about inappropriate relationships between lender and educational institutions and a contraction in lending during the recent financial crisis, the federal government took over most of the educational loan business, which means that the U.S. taxpayer is now the guarantor and holder of vast amounts of educational debt, including law school debt.<sup>60</sup> This governmental action responds to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which outlines in Art. 13 the right to education. With the “view to achieving the full realization of this right: (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means,....”<sup>61</sup> On the other hand, the loan-based financing of higher education appears to counter the ICESCR’s goal of progressively moving toward “free education.”

Many law schools are primarily supported by their students’ tuition, and even those with substantial endowments rely on tuition revenue for at least some of their operations.<sup>62</sup> Without the existence of the government loan program that finances higher education, many law schools may be struggling to enroll students, as private loans are still difficult to procure, or may have to find ways to increase their scholarship budgets.

While separate data on loan defaults does not exist for law schools -- with the exception of a handful of free standing law schools, which are not affiliated with a university -- overall loan defaults have increased.<sup>63</sup> Recent changes in government policy that will limit loan

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<sup>58</sup> Lisa Anthony Stilwell, Susan P. Dalessandro & Lynda M. Reese, *Validity of the LSAT: A National Summary of the 2009 and 2010 LSAT Correlation Studies* (Oct. 2011).

<sup>59</sup> Some students, often those with bad credit histories, have been forced to take out private loans, usually at a higher interest rate than government loans.

<sup>60</sup> American Student Assistance, *Student Loan Debt Statistics*, available at [www.asa.org/policy/resources/stats/default.aspx](http://www.asa.org/policy/resources/stats/default.aspx).

<sup>61</sup> ICESCR art. 13(2)(c).

<sup>62</sup> Universities with large endowments have come under attack for spending too small a percentage from it. The endowment spending policy may also raise questions about equality and access that are, however, beyond the scope of this paper.

<sup>63</sup> Libby A. Nelson, *Default Rates Continue to Climb, Mostly* (Oct. 1, 2012), available at [www.insidehighered.com/news/2012/10/01/two-year-default-rates-student-loans-increase-again](http://www.insidehighered.com/news/2012/10/01/two-year-default-rates-student-loans-increase-again).

repayment to a percentage of one's income and allow all debt to be cancelled after 20 years, or 10 years if one serves as a government lawyer or works for a not-for-profit agency, may decrease the likelihood of defaults.<sup>64</sup> While this loan forgiveness program does not make higher education "free," it makes it subsequently easier for graduates to manage their debt load.

Some, however, have criticized these policies as privileging the wealthy rather than serving the most disadvantaged. The definition of privileged appears to extend to almost anyone who is able to obtain a professional degree. Critics have also indicated concern that graduate schools may be more inclined to increase their tuition in light of the federal loan forgiveness program, as borrowers will be less concerned about cost of attendance.<sup>65</sup>

The story of expanded enrollment and government-backed financing should have increased access to legal education across the entire socio-economic spectrum and through all racial group in the United States. The reality, however, is different. Even though racial diversity has increased in American law schools,<sup>66</sup> a recent study has indicated that socio-economic diversity has decreased over time.<sup>67</sup> As socio-economic equality has fared worse than racial equality, largely racial minorities of economic means have benefitted from the diversification of law schools over the last few decades.

In all respects, the government's current approach to lending accords with the American conception of equality of opportunity and appears to guarantee access to even a professional education for everyone. While the government program provides at least financially a level playing field, one must wonder why the results are relatively disappointing.

Law schools must ask themselves what their obligations are, if any, to increase access, especially as they are the secondary beneficiaries of the governmental lending policy. How do their scholarship policies, based on "merit," restrict access? To what extent should law schools consider societal distribution of resources in their scholarship policies? To whom does the law school's responsibility run: Is the ultimate fiduciary responsibility to the school's current students and the alumni who base the value of their education at least in part on the ranking of their school? Is it therefore the school's obligation to maximize rankings and disregard need in its allocation of scholarships and grants? If a school were to consider human rights values, likely it would have to build its access policies in different ways to assure minority students and socio-economically disadvantaged students equal access.

Even if rankings are not a consideration for a law school, as may be the case for those at the bottom of the current rankings regime, do they have an obligation to counsel meaningfully those who seek a legal education with respect to their potential future financial liabilities? Or is there any obligation on their part to restrict lending – which a school can do in part through the determination of the cost of living expense – perhaps in turn impacting its ability to attract students?

Socio-economic rights always raise question as to the allocation of limited resources to the neediest. From a societal perspective applicants to law schools and law students are among

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<sup>64</sup> For a description of the program, see [studentaid.ed.gov/repay-loans/understand/plans/income-based](http://studentaid.ed.gov/repay-loans/understand/plans/income-based).

<sup>65</sup> See Jason Delisle & Alex Holt, Education Policy Program – New America Foundation, *Safety Net or Windfall? Examining Changes to Income-Based Repayment for Federal Student Loans* (Oct. 2012).

<sup>66</sup> American Bar Association, *First Year and Total J.D. Minority Enrollment for 1971 to 2011*, available at [www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/jd\\_enrollment\\_1yr\\_total\\_minority.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_minority.authcheckdam.pdf).

<sup>67</sup> Richard H. Sander, *Class in American Legal Education*, 88 DENVER L. REV. 631 (2011).

the more privileged, those who hold a college degree and therefore have already a substantial advantage in the work place. Within a university, therefore, questions may arise as to the allocation of resources to the law school as compared with the undergraduate student population or other graduate programs whose students may be less likely to be fiscally remunerated throughout their career. On the other hand, in light of the importance of the legal system to the American structure of government, is there a special obligation on a university to assure and support the education of future lawyers? As the U.S. Supreme Court re-iterated in *Grutter v. Bollinger* the importance of education in the context of democratic governance,<sup>68</sup> at least public universities could be assumed to have some obligation to offer training for lawyers.

Questions of how far any social responsibility extends are particularly pertinent in a global world. Should law schools limit scholarship money, for example, to U.S. residents? Are there any individuals outside the United States to whom a special duty may run, such as citizens of countries in which the United States is militarily engaged? Or should a law school award merit assistance based solely on LSAT results and undergraduate GPA, if ascertainable, to assure that it recruits the best from anywhere?

Ultimately, the question we have to ask is whether any organization has any obligation toward the values we would like to see honored beyond those formally mandated. Does a law school have any responsibility to the greater good rather than just to itself, a question corporations are increasingly facing in the international human rights realm? As universities are not only businesses but also serve as role models and educators, should they have to ask these questions publicly in order to demonstrate their participation in a vibrant human rights discourse to their students?<sup>69</sup>

### *B. The Influence of Licensing Bodies on Access*

As law is a regulated profession, individual state licensing authorities make decisions about bar admission in the United States.<sup>70</sup> A major component of these admission decisions, in most states, are examinations designed to test substantive knowledge and some skills. The results of these have been challenged, as they appear to show racially disparate results. Nevertheless, they continue to be in use. This is particularly troubling as failing the bar examination has a long-term impact on a person's career.<sup>71</sup>

Another major component of bar admission is the so-called "character and fitness" test. The process is shrouded in secrecy, and appears to be largely within the discretion of the examining committee members.<sup>72</sup> In the end the outcome may be correct, as it is in so many group decisions, but concerns remain about the transparency of such decision-making.

Law schools consider character and fitness determinations in their admissions process, in light of their perception of how the committee operates, though that varies by state. Prior criminal records, for example, will frequently lead to the exclusion of an otherwise viable candidate for law school on the assumption that he would likely not be

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<sup>68</sup> 539 U.S. 306 (2003).

<sup>69</sup> Cp. Amartya Sen, *Human Rights and the Limits of Law*, 27 *CARDOZO L. REV.* 2913 (2006).

<sup>70</sup> See National Conference of Bar Examiners online at [ncbex.org](http://ncbex.org). It is well beyond the scope of this article to comment on the fact that more than 50 jurisdictions hold such authority, with many state bar rules continuing to reference those admitted to practice in another U.S. state as "foreign attorneys." See Virginia Rules of Professional Conduct (any attorney not licensed in the state of Virginia is a "foreign lawyer").

<sup>71</sup> Jane Yakowitz, *Marooned: An Empirical Investigation of Law School Graduates Who Fail the Bar Exam*, 60 *J. LEGAL EDUCATION* 3 (2010).

<sup>72</sup> Conversation with Christopher McGrath, member of the New York Committee on Character and Fitness, spring 2012.

admitted to the state bar. On the other hand, some schools may be too aggressive in their exclusionary policies, with law school candidates misreading admission to law school as identical with admission to the bar.

Specific questions by both institutions have a particularly disparate impact. How relevant are arrest records, especially as we know that in many jurisdictions they show racial disparities not reflective of crime rates? Even convictions, though individually justified, evidence racial and socio-economic (and to a lesser extent gender) bias. In a country in which tens of millions of people have arrest and conviction records, does it not constitute inappropriate discrimination based on status to deny them admission to legal education and ultimately the legal profession? As those records are racially disparate, especially with respect to African-Americans, law schools have to consider carefully in whose interest they are operating when excluding applicants with an arrest or conviction record from admission.

### *C. Special Students and Access*

Other access issues closely connected to bar admission pertain to non-U.S. citizens. While state bars now admit non-citizens and permanent residents, the admission of those on non-permanent visas and especially those without documented status remains disputed.<sup>73</sup> Should law schools admit such students, assuming they know of the status issue (which is changeable), or rather decline admission as they may assume that such graduates will ultimately not be admitted to practice law? While these are practical and philosophical concerns, students with disabilities may raise resource questions.

Schools are mandated under the American against Disability Act not to discriminate against those with disabilities and to provide appropriate accommodations once those students are admitted. As this accommodation frequently creates costs for schools, admission of students who need substantial accommodations raises substantial resource questions. How should limited resources be expanded? Should school administrators be permitted to exclude a student with substantial disabilities because they do not consider the school adequately prepared for such a student? This could occur, for example, with respect to physically handicapped students admitted to institutions whose buildings had not been retrofitted under current law. Or would such a decision be an obvious violation of human rights obligations, designed to protect solely the school (rather than the individual)?

Questions of access remain challenging but other human rights issues lurk in other core institutional areas as well, especially as some of the challenges existing at the admissions stage continue later.

## III. *THE ROLE OF THE OFFICE OF STUDENT AFFAIRS*

Student affairs offices tend to see students from a very different vantage point than faculty members. They are often a place of last resort to which students turn when faced with personal and academic challenges. Therefore, the mission of these offices has to be focused on serving the needs of individual students, though they also play an institutional role, which includes meeting budgetary goals and helping assure strong bar passage.

### *A. Freedom of Religion*

Student affairs frequently face human rights questions directly – as do human resource offices when employee matters are involved. The right to religious freedom, guaranteed by numerous human rights treaties, occasionally raises complaints in law schools. For

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<sup>73</sup> Justin Storch, *Legal Impediments Facing the Nonimmigrants Entering Licensed Professions*, 7 THE MODERN AMERICAN 12 (2011).

example, to what extent do law school class schedules have to consider students' religious choices? This may become particularly relevant for schools that have broad religious diversity as days of worship differ. On the other hand, those schools may have developed institutional responses that are more difficult to institutionalize at schools with a small number of religiously diverse students.

Other questions that also arise in connection with religious freedom pertain to the need for individual prayer rooms; to the integration of attendance rules with religious holidays; to the scheduling of make-up classes. Is taping or now podcasting of classes a sufficient accommodation, or should rescheduling a class be mandated to accommodate students who cannot attend for religious reasons? Religious minority groups who celebrate holidays during the semester may pose particular challenges.

Presenting a solution to some of these issues that accommodates one group may lead to conflicts with other religious groups: May necessary make-up classes be scheduled on Sundays, which even in a country that is largely Christian may be less of a religious holy day for most Christians than for example Friday evening would be for observant Jews?

Conflicts between religious accommodations and other values are also conceivable: May a Christian student who takes his religion very seriously always be excused from working on Sundays (as a student work-study worker in the law library), necessitating that a single parent student always work on Sundays, even though that would be the only day she could otherwise be at home with her young child?<sup>74</sup> With human rights norms recognizing the importance of religious freedom, conflicts are inevitable and have been widely debated, albeit not generally in the context of law school administration.

#### *B. Disability Accommodation*

Accommodation of student disabilities begins in the admissions process but becomes an active issue during the student's attendance. While some disabilities are diagnosed and well-known at the time of application to law school, others develop during law school. What are a school's human rights obligations in this situation?<sup>75</sup>

Should a law school facilitate a student's graduation, even when admission to the bar appears doubtful? Will a school's obligation to accommodate a student evolve during a student's time at the school, i.e., may it be heightened in the student's final semester as compared to the first few weeks of school? How would – and should -- the financial obligation the student incurs play into a school's decision-making, if at all?

Student affairs offices at least implicitly must consider the resources required to accommodate disabilities. To what extent is an institution obligated to assist an individual it has accepted? In a world of limited resources, should those be expended to maximize the number of those most likely to succeed, or is there an obligation to assist those most in need? The most challenging practical issues pertain to the "reasonableness" of accommodations. Are there any disabilities that would allow a law school to argue that it is unreasonable to expect them to be accommodated because of certain professional skills expected later?

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<sup>74</sup> Gendering the single-parent student may raise eyebrows. It is not only designed to reflect social reality but also to raise a potential conflict between freedom of religion and gender discrimination. *See infra* Section V.

<sup>75</sup> *See* Convention on the Rights of Persons with Disabilities. The right of education and to "reasonable accommodations" is set out in Article 24.



Beyond issues that pertain to individual students, law schools are asked to make curricular decisions, including the question of whether and how to teach international human rights law.

#### IV. CURRICULUM DEVELOPMENT AND COVERAGE

Human rights education is a crucial way to inform and distribute knowledge about human rights values. Despite the wide availability of lesson plans, it remains generally limited, at least in elementary and secondary public schools, which are likely to focus more on traditional areas of "civil rights." In law school curricula, human rights courses remain separate from civil rights, as they continue to be considered generally "outwardly" focused despite their occasional "intrusion" into American courts or the U.S. justice system.<sup>76</sup>

One curricular question is how to teach human rights. Should it be integrated into different courses or rather be a single course? The traditional method of teaching "legal ethics" or "international law" throughout the curriculum has generally been considered a failure. Should there be a discussion of non-U.S. standards when U.S. law is at issue? As human rights norms are generally not directly enforceable in U.S. courts and dispute resolution in non-U.S. tribunals, such as the Inter-American Commission, remains limited to a handful of practitioners, would such allocation of teaching resources and time be inappropriate as it would detract from U.S.-based processes? On the other hand, should law schools consider themselves potential change agents, and therefore expose their students to different, albeit non-binding sources of law, potentially to make them more creative legal practitioners?

In addition to the traditional classroom based courses, almost all U.S. law schools now offer clinical courses, in which law students represent live clients under the supervision of a law faculty member/practitioner. Clinics are highly desirable learning opportunities but they are viewed as expensive, as the generally recommended student-faculty ratio is substantially smaller than is deemed appropriate for large lecture courses.

Today's clinics are largely designed for pedagogical purposes, though some also argue for clinics to fill community needs for legal representation. Most of the clinics originally were focused on general poverty law as well as representation in criminal cases. Over time, however, they have expanded and focused on ever more specialized areas of law, including tax, veterans' benefits, and immigration. Many clinics emphasize individual case resolution while others include reform litigation, policy reports, and a limited type of lobbying.

Only a few law schools run clinics that are called "human rights clinics," though their focus may vary. Generally more highly ranked and better endowed law schools operate these clinics. While they explicitly focus on human rights issues, relevant issues often arise in other clinics as well, and in some cases may lead to the use of human rights arguments or even recourse to non-U.S. human rights dispute resolution mechanisms.<sup>77</sup> It is much more likely, however, that non-human rights clinics do not consider such avenues.

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<sup>76</sup> Examples are litigation surrounding the Alien Tort Claims Act, which provides a cause of action in U.S. courts even though the violation of human rights occurred abroad and was inflicted on foreign citizens. Occasionally, cases that either came out of or are ultimately destined for U.S. tribunals include a human rights component. Among the examples is extradition to the United States, often challenged because of anticipated human rights violations in the United States. See, e.g., *Case of Babar Ahmed and Others v. United Kingdom* (Applications nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09), Sept. 24, 2012 (denial of request to stop extradition to the United States because of potential prison condition); *Soering v. United Kingdom*, 161 Eur. Ct. H. R. ser. A (1989)(extradition to United States rejected because of so-called "death row phenomenon").

<sup>77</sup> Columbia Law School's Human Rights clinic represented Jessica Lenahan Gonzalez in front of the Inter-American Commission of Human Rights.

As all clinics are comparatively expensive, the selection of one substantive area constitutes a substantial resource allocation. Is it defensible to select human rights as a substantive law area of choice? Many of the human rights clinics focus on cases that arise in the United States and therefore allow students to learn using generally underutilized and underappreciated tools to help with dispute resolution or to attract attention to a particular issue. For that reason, human rights clinics may not only be defensible but most desirable as they develop lawyers with a broader set of dispute resolution tools at their disposal.<sup>78</sup>

In general, U.S. law students would benefit from greater exposure to human rights norms, especially as they may inform interpretation of domestic law and allow for additional procedural tools. On the other hand, such clinics may prepare students less directly for the job market than other (domestic) clinics might, a substantial consideration in the ultra-competitive job market today's law graduates face. Ultimately, an institution of higher learning will have to decide, based on its mission, what value such an international human rights clinic could and would add to the students' immediate learning experience and long-term professional development.

Many human rights issues of practical and pedagogical nature run through a law school. The final section will focus on one – gender – that remains salient and continues to pose challenges for legal education.

#### V. GENDER DISPARITY IN LAW SCHOOLS AND THE LEGAL PROFESSION

Women have made substantial gains in American society over the last few decades. They are in a position to control child bearing; they have displaced men in the number of college and graduate degrees earned;<sup>79</sup> they have moved into professional positions and hold highly remunerated positions in the world of business. Unequal outcomes continue, however, in politics and the economy, and the workplace remains gendered. The lack of equality in such situations gets increasingly ascribed to women's desires and interests rather than direct or indirect discrimination.

##### A. The Student Body

In law schools the number of female students had risen to fifty percent but appears to be now on a limited but almost steady decline so that it currently is around 46%.<sup>80</sup> In the job market, positions quickly become unequally distributed: After a few years women find themselves more in government or in-house lawyer positions than in major law firms, let alone as equity partners or part of the firm's management committee.

Why may the number of women attending law schools not have permanently risen to fifty percent or even above? On the LSAT male test takers have, over the years, scored marginally higher than female test takers.<sup>81</sup> The reverse is often true for undergraduate grade point averages. Therefore, the decision which credential to weigh more substantially

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<sup>78</sup> Clinics that are focused on immediate community needs may absolve the state and the local bar from helping to provide necessary resources to address a crucial community need.

<sup>79</sup> National Center for Education Statistics, *Fast Facts*, available at [nces.ed.gov/fastfacts/display.asp?id=72](http://nces.ed.gov/fastfacts/display.asp?id=72).

<sup>80</sup> American Bar Association, *First Year and Total J.D. Enrollment by Gender 1947-2011*, available at [www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/jd\\_enrollment\\_1yr\\_total\\_gender.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf).

<sup>81</sup> Susan P. Dalessandro, Lisa A. Stilwell, Jennifer A. Lawlor & Lynda M. Reese, Law School Admissions Council, *LSAT Performance with Regional, Gender, and Racial/Ethnic Breakdowns: 2003-2004 Through 2009-2010 Testing Years (TR10-03)* (Oct. 2010).

will have an impact on the number of women admitted and likely on the number of women ultimately enrolled at a law school.

With the economic downturn, many law schools have witnessed a decrease in female applicants and/or number of women enrolled. The explanation as to the decrease in women applicants remains disputed, though some have postulated that the amount of debt a student may incur is more likely to deter female than male applicants. Others believe that family investments may continue to favor men, which is a rational choice as men still earn more than women. If these theories were accurate, should schools consider awarding larger scholarships to women to entice them to attend law schools?

Women as a group continue to be found disproportionately in caring and nurturing professions. Even in law they tend to cluster in courses addressing the needs of children and families and choose career paths accordingly. They may, however, be equally interested in business and corporate law if steered in that direction. Should schools consider requiring such courses to assure that both male and female students are exposed to them? At the same time, should men be required to take the courses that are more likely to be attended by women?

Today discrimination against women takes more subtle forms than in the past. Much exclusion and disparate treatment occurs almost inadvertently. Women may be more reluctant to seek out mentors; they may be called on in class less frequently; their contributions to discussions may be valued less. It may be those subtle signs of discouragement that steer women away from certain areas of legal practice.

#### *B. Faculty and Staff*

Law schools continue to display a gendered employment structure themselves. Women are often found in many lower level support positions and dominate certain administrative departments, such as student affairs. On the other hand, computing services and IT continue to be run largely by men. On the academic side, men are predominantly represented in tenure-track and tenured faculty positions. Contract faculty positions, especially in the legal writing area but also in clinic programs, are often staffed disproportionately by women.<sup>82</sup> As many schools are potentially facing long term decreases in student numbers, they will not replace departing faculty members which could lead to an increase in women faculty as older faculty are more likely to be male. On the other hand, replacements may be contract rather than tenure-track faculty.

Whether women prefer to teach in the legal writing and clinical areas because of greater student contact or whether they are more likely to shun research are open questions. The impact on students, however, is often not lost. They intuitively grasp power structures and begin their professional careers seeing fewer women than men in powerful positions in their educational institutions.

#### *C. Larger Communities*

Universities are a part of the communities in which they are located and of a national and global society. As women continue to suffer from disadvantage, law schools could actively engage in their communities to help remedy these inequalities and raise awareness

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<sup>82</sup> American Bar Association, *Total Male Staff and Faculty Members 2010-2011 & Total Female Staff and Faculty Members 2010-2011*, available at [www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/l\\_s\\_staff\\_gender\\_ethn.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/l_s_staff_gender_ethn.authcheckdam.pdf).

of students and staff. Faculty may present data and legal solutions with respect to the continuing unequal status of women in the United States despite laws designed to combat inequality. They can engage in pro bono projects and clinical work and rally student organizations to address community-specific issues and larger societal concerns.

*VI. CONCLUSION*

Human rights are not solely theoretical, supranational constructs. The values that support them are norms that may underlie crucial decisions educational institutions face. Labeling them human rights concerns may indicate the stakes at issue and focus attention on these matters in an unprecedented way. There are no easy solutions but a commitment to address matters in this way can go a long way to operationalize human rights in the daily lives of institutions and individuals.