

# THE STRUCTURE OF ACCREDITATION SYSTEMS

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## Abstract

*Accreditation systems can be analyzed in terms of choices in three dimensions. One dimension is **purpose of accreditation**, where purpose may relate to program quality or quality of outcomes. The second dimension is **types of accreditation norms** used to achieve the purposes of the system. There are five principal types of norms: process quality norms; output norms; power allocation norms; self-determination norms; and consumer protection norms. The third dimension is **degree of regulation**, which relates to prescriptiveness or extensiveness of regulation. A sound accreditation system will make choices along each of these three dimensions. Understanding possible accreditation structures helps in the design and revision of accreditation systems, and aids in the analysis of them.*

## I. INTRODUCTION

In a forthcoming article,<sup>1</sup> I develop a set of concepts and a framework for understanding law school accreditation systems. The concepts and framework presented there are grounded in a view of law school accreditation systems as regulatory systems designed to promote one or more purposes involving quality, through regulatory methods selected from a well defined portfolio. The focus of that article was law school accreditation in the United States, although the analysis was intended to have wider application. And, indeed, organizations in other countries are considering the adoption or revision of accreditation or quality assurance systems.<sup>2</sup> In this paper, I briefly review the analytical framework set out in that prior article and describe its potential use in developing or revising law school accreditation systems.

## II. THE PURPOSES OF ACCREDITATION

In developing an accreditation system, there are three major dimensions, or domains, from which one makes choices, in order to build the content of the system. Those dimensions are *purpose of accreditation*, *types of norms used*, and *degree of regulation*. We shall describe them in turn.

With regard to purpose of accreditation, the generally recognized fundamental purpose system is *ensuring quality*. But this statement of purpose is too abstract, and in order for it to have practical value, the meaning must be refined.

One way is to take the focus to be ensuring *quality of educational program*. The current ABA Standards take this as dominant purpose, framing it as ensuring “a sound program of legal education.” As is stated in the Preamble (emphasis added):

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<sup>1</sup> *The Architecture of Accreditation*, 96 IOWA L. REV. \_\_\_\_ (2011).

<sup>2</sup> See, e.g., Council of Australian Law Deans, Standards for Australian Law Schools Final Report, *available at* [http://www.cald.asn.au/docs/Roper\\_Report.pdf](http://www.cald.asn.au/docs/Roper_Report.pdf).

The Standards for Approval of Law Schools of the American Bar Association are founded primarily on the fact that law schools are the gateway to the legal profession. *They are minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education.* Consistent with their aspirations, mission and resources, law schools should continuously seek to exceed these minimum requirements in order to improve the quality of legal education and to promote high standards of professional competence, responsibility and conduct.<sup>3</sup>

However, specifying the purpose simply in terms of quality of educational program is not enough for a full clarification. To begin, there remains a question of the scope of “educational program.” For example, the ABA Standards, despite the general language concerning soundness of “program of legal education,” are in fact concerned only with assuring a sound program of *J.D. education*. The Standards have little concern with the quality of LL.M. programs or of any other degree or non-degree program that a law school might offer.<sup>4</sup> In addition, there remains a question of what is encompassed in “ensuring.” In particular, a program-focused accreditation system can be concerned to greater or lesser degrees with assuring present program quality or ensuring continued or improved program quality in the future. The ABA Standards are concerned primarily with present quality, and this focus on the present, rather than the future, has been a frequent source of criticism.

The second possible choice for refining quality-related purpose is ensuring *quality of outcomes*. This possible choice reflects the fact that law school is or can be instrumental, a means to an end. An accreditation system might take as its dominant focus, for example, ensuring that graduates pass a bar examination or achieve other certification within two years of graduation. It might do so either because of concern with protecting student expectations about outcomes, or because of concern to protect society’s (or a sub-group’s) ability to rely on law schools to produce graduates with a certain level of competence, knowledge, or experience. An accreditation system having an outcomes-related focus would be very different from a system with a strong focus on program.

### III. TYPES OF ACCREDITATION NORMS

A second dimension of choices is that of types of accreditation norms relied on to achieve the given purposes. Any regulatory system must choose which of the available kinds of regulatory tools it will use to influence conduct in the relevant domain.

There are five principal types of norm that might be used in law school accreditation systems.<sup>5</sup> These are: (a) process quality norms; (b) outcome norms; (c) power allocation norms; (d) self-determination norms; and (e) consumer protection norms. These five categories are practical and functional categorizations of means for effecting accreditation-related purposes.

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<sup>3</sup> See ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2010–2011 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, at viii [hereinafter ABA STANDARDS].

<sup>4</sup> ABA STANDARDS, *supra* note 3, Interpretation 308-2, provides that:

Acquiescence in a degree program other than the first degree in law is not an approval of the program itself, and, therefore, a school may not announce that the program is approved by the American Bar Association.

<sup>5</sup> The article on which this paper is based identifies four additional types of norms that, while important in the operation of an accreditation system, are less significant for purposes of analysis and categorization.

*Process quality norms* are based on a view of law school as an educational process, and on a strategy for achieving quality-related purposes that involves prescribing characteristics of the process. Such norms prescribe, for example, student qualifications, faculty characteristics and responsibilities, characteristics of facilities, and content and function of the library. An example in the ABA Standards is the norm prescribing essential parts of the curriculum.<sup>6</sup> Some or all norms of this type are often called “input” norms. However, that term is not the best one because many, if not most, norms of this type deal with operational aspects of a system (e.g., facilities) that are not usefully labeled “inputs.”

Extensive use of process quality norms is closely associated with a dominant purpose relating to program quality. The reason is that these types of norms deal mainly with core aspects of the educational program—for example, curriculum or teaching quality—or else with environmental factors—such as classroom facilities—that can contribute to or detract from the quality of the educational program.

A second type of norm is the *outcome norm*. For example, an outcome norm may require that a law school’s graduates, in the aggregate over a specified period, achieve a minimum level of success on bar examinations.<sup>7</sup> Extensive use of norms of this type would be congruent with an outcome-based purpose for the accreditation system. Norms of this kind could be tailored to measure the relevant desired outcomes. However, outcome norms and outcome purpose are not identical, and outcome norms can properly be used in systems with a dominant program quality purpose. For example, they can be used to assess the quality of aspects of the program by measuring the results relating to those aspects, and holding the law school accountable.

A third type of norm is the *power allocation norm*. Institutions of higher education can be viewed as collections of interest groups, each of which competes with others to realize the group’s respective goals. Sometimes those goals are self-serving; sometimes they advance institutional or social purposes. A power-allocation norm can calibrate the competition among groups as a way to promote the dominant purpose of the accreditation system, or achieve other ends. The rationale for using them as regulatory tools is that the persons empowered will be able to act to promote core goals or values, partially or wholly shielded from adverse action by other persons or groups that might seek to advance contrary purposes or values. An example of a power allocation norm is one requiring tenure or security of position for a dean.<sup>8</sup> Such a norm adjusts the power of a dean relative to those who could cause his or her termination—in particular, the university administration—in order to help the dean promote the purposes of program quality against potential opposition or even threats.

An accreditation system that makes substantial use of power allocation norms might be viewed as akin to a constitution. Just as with a constitution, an accreditation system that relies extensively on power allocation norms will allocate authority, responsibility, and rights, thereby creating a framework for ongoing operation and for institutional evolution. Power allocation norms can replace process quality norms by setting up a general structure for a law school and then leaving it to the participants in the law school to resolve how the quality goals will be achieved.

A fourth type of norm is the *self-determination norm*. Such a norm governs an institution’s determination of its own mission, values, goals, and measures of success. One example of such a norm in the ABA Standards is the requirement that law schools engage in regular strategic planning and

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<sup>6</sup> ABA STANDARDS, *supra* note 3, Standard 302(a).

<sup>7</sup> E.g. ABA Interpretation 301-6 (requiring minimum levels of either first-time bar passage or eventual (often called “ultimate”) bar passage on the part of graduates.

<sup>8</sup> E.g., ABA STANDARDS, *supra* note 3, Standard 206(c) (requiring that the dean normally have a tenured faculty position).

assessment.<sup>9</sup> Another example is the standard requiring a law school to have policies regarding full-time faculty members' responsibilities in teaching and other areas.<sup>10</sup>

The fifth type of norm is the *consumer protection norm*. Use of this type of norm is based on a view of students as consumers of educational services and serves the goal of protecting them as such. Extensive use of consumer protection norms may be associated with a strategy of enabling consumers to make informed choices, based on knowledge of relevant characteristics of schools and on how well the schools achieve relevant goals, as a means to hold schools accountable for meeting quality purposes. This is especially true with respect to one type, *consumer disclosure norms*. An instance of a consumer disclosure norm in the ABA Standards is Standard 509, requiring publication of basic information about the school, the program, and certain student outcomes.

#### IV. DEGREE OF REGULATION

The third dimension of choice in developing accreditation systems is degree of regulation. Within this dimension are questions such as how much regulation there should be in the system, how prescriptive the various standards should be, how much control the accrediting agency should assume over legal education, and how much autonomy or unregulated space schools should have in deciding how to educate students, run operations, and meet competition.

Degree of regulation can seem fundamental and dispositive of a wide range of other issues. In part, this is because the question of how a system of law school accreditation should be organized might seem tantamount to a set of questions of the type: how much prescription should there be regarding library collection, how much prescription should there be regarding admission practices, and so forth, down a list of aspects of law school structure and operation. In effect, the view that degree of regulation is fundamental involves an implicit model of an accreditation system as one in which the system lays down requirements about a well defined set of topics, relating principally to the operation of the law school and its educational program. The set of topics creates an outline of law school organization and operation—indeed, an outline of the model law school—and the major policy question is how detailed this outline should be.

As the prior discussion shows, however, an accreditation system need not consist of a list of prescriptions about the program and aspects of it. Hence, we now turn to a brief discussion of the range of possible systems.

#### V. TYPES OF ACCREDITATION SYSTEMS

The current accreditation system for U.S. law schools constitutes one that reasonably may be characterized as having a dominant focus on current J.D. program quality; as using mainly process quality norms, and secondarily power allocation and self-determination norms; and as adopting a moderate degree of regulatory oversight.

One way to appreciate the range of potential systems is to build on current strands in discussions of law school accreditation in the United States. Thus, one alternative would be to premise a system on ensuring current quality of all degree programs offered by a law school (whether or not the degrees are directed toward law practice); continue to rely mainly on process quality norms; and adopt a lower degree

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<sup>9</sup> ABA STANDARDS, *supra* note 3, Standard 203.

<sup>10</sup> ABA STANDARDS, *supra* note 3, Standard 404(a).

of regulation. Or, to take another example, a system might be focused more heavily on promoting improvement of the quality of a J.D. program; rely mainly on outcome norms and self-determination norms; and adopt a lower degree of regulation. Or, to take yet another approach, a system might take as its dominant purpose quality in outcomes relating to bar passage and legal employment; rely mainly on outcome and consumer protection norms; and adopt a low degree of regulation. Any of these three approaches would yield a different type of accreditation system than now exists for U.S. law schools. Still other approaches are at least conceptually possible.

It is doubtful that any one approach can credibly claim to be inherently superior to the others. The actual or perceived virtues or vices of an accreditation system will depend on preferences concerning goals and ultimate purpose; preferences for and experience with various regulatory approaches; and an assessment of costs and benefits of various degrees of regulatory oversight. Still, appreciating the range of possibilities and alternatives can better inform the process of developing and revising accreditation systems.