

# A Study of the Laws and Politic of Higher Education

Sawako Kato \*

## Abstract

The laws that govern education in the United States are the basis for many decisions. In this study, referring to the textbook, *The Law of Higher Education*, by William A. Kaplin and Barbara A. Lee, many different legal and political issues which affect the community and the society in the United States are examined, comparing them with those in Japan.

In session [I], "inherent authority" in postsecondary institutions, in session [II], the law and faculty, in session [III], state provision of public postsecondary education, in session [IV] constitutional power over education, and in [V], the accreditation system are examined with the discussions on past judicial precedents.

**Key Words:** Higher Education, Educational Law, the Accreditation System

## 和文要旨

教育は法律によって治められ、多くの意思決定の基盤になっている。

小論では、William A. Kaplin, Barbara A. Lee 両氏著の *The Law of Higher Education* を参考にし、アメリカの高等教育に影響を与えている様々な法律・政治的問題を取り上げ、それを日本の状況と照らし合わせながら、大学教育と法律との関わりを考察した。[I] では、大学の権限の範囲を、

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### 大学と法律についての一考察

\*加藤 佐和子

Correspondence Address: Faculty of Business Administration, Bunkyo Women's University, 1196 Kamekubo, Oimachi, Iruma-gun, Saitama 356-8533, Japan.

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[II] では、大学への法の介入の限度を、[III] では、アメリカ州政府の大学に対する権限の範囲を、[IV] では、連邦政府の大学教育運営に関わる主な権限を、[V] では、アメリカの“大学認定制度 (the accreditation system)” を考察し、それぞれ日本の現状と比較検討した。

### [I] Liability and Authority: Scope of authority

It is important, from a legal point of view, for trustees, officers and postsecondary institutions, public or private, to understand the scope and limits of their authority. In the U.S., authority generally originates from some fundamental legal source such as the constitution or statutes in the case of public institution, and articles of incorporation, sometimes in combination with some form of state license. But these sources are not all of them. An institutional fundamental authority must be construed and implemented in the light of all the sources of law including external sources—Federal and State institution, States, Administrative rules and regulations, State Common law and Foreign and international law, and internal sources—Institutional rules and regulations and the rule of case law.

In Japan, we regard the Constitution of Japan as the highest law. The system of Japanese law consists of legislation established by the nation and legislation established by a local public entity. Adding to these sources of fundamental laws, authority in postsecondary institutions is construed and implemented by the Fundamental Law of Education and the School Education Act, which are both based upon the spirit of the Constitution of Japan such as realization of equal educational opportunities. But the sources of authority are not only originated from these written laws together with Private School Law which provides the establishment, management and supervision, and school regulations or rules, but also from unwritten laws such as common law, case law, administrative prejudicial and logical law.

Though our law system is quite different from that of the U.S., in this section, I will try to discuss “inherent authority” in postsecondary institutions, focusing on disciplinary punishment by a Japanese university.

In the case, *Esteban v. Central Missouri State College*, the U.S. court ruled that the college had “inherent authority to maintain order and to discipline students” (Kaplin & B. A. Lee: 1995:77). The Japanese court holds the same standpoints; as “Academic freedom is guaranteed” in Chapter III, Article 23 of the Constitution of Japan, and autonomy in postsecondary institutions should have been admitted since prewar days.

The case of expelling from school at Nara Art National University, in 1960, illustrates this judicial attitude.

*<Nara Art National University v. a student X>*

The appellant of the final civil appeal, X, a student of Nara Art National University, was expelled from school because of cheating in the exam. X filed the suit against the president of the university, Y, but lost the suit and made an application for final appeal.

The exam was given under the proctor of D, an assistant professor, who discovered the student had cheated. The procedure of disciplinary punishment for X was taken as follows: the student guidance committee, which was met three times about this matter, produced a document admitting X's cheating, and submitted it to the faculty meeting. The faculty meeting decided X's punishment. Finally, president Y expelled X from school.

The student X protested that act of president Y was unfair because the punishment was decided only by verbal evidence of the witness D and they took only formal procedures.

The court ruled that, according to the facts as having been recognized so far, president Y gave X a chance to vindicate. The case was also thoroughly discussed by the student guidance committee and at the faculty meeting. There were no illegal procedures in this case. The court concluded that as for the disciplinary punishment, Article XXXI of the Constitution of Japan; "No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law" doesn't apply to this case. Admitting the university's inherent authority, the court dismissed the case.

In this case, the procedure was the point to judge whether it was illegal or not. In fact, there is no rule about procedure for disciplinary punishment for students in School Law. It is referred to only in Article XI; "Presidents and teachers may punish children or students if they think it necessary for educating them under the provision of the competent authorities", and in Article XII of the Rule for School Operation; "The president (including dean who are delegated by the president in a university) has authority for punishment of expelling or suspension from school." And also in VIVII; "A president has the authority to decide on a student's entrance, withdrawal, change of schools, study abroad, temporary absence from school and graduation".

Universities need to have own rules about the procedure for punishment in the school regulations or other regulations.

*<Toyama National University v. Six students>*

In a similar case in 1977, six students of Toyama National University took action against the President because of breach of the legal act of giving credit. In the judgement, the court held that the University formed a part of a special community apart from our society. So the problem of giving credits is left to the independent judgement of the university and it is no suitable for judicial judgement.

<Discussion>

In both cases, the court admitted the inherent authority in postsecondary institutions. But as I've quoted before, there's no clearly expressed authority in the laws themselves; they only refer to whom has the authority to made a decision. In order to avoid the abuse of this authority, we must pay attention to whether a decision-maker is acting within the scope of authority or he is authorized to do so. It is unfair if punishment is taken without any legal procedure. Therefore, to avoid the abuse of authority, as Kaplin and Lee explains in their book, "a postsecondary institution should careful organize and document its authority and the delegation of this authority among institutional offices, employees, and organization" (A. Kaplin & B. A. Lee: 1995 : 79).

[II] The Law and Faculty: Grades, credits and degrees

In the United States, "courts are more deferential to academia when evaluation of academic word is the issue, believing that such evaluation resides in the expertise of the faculty rather than court" (Kaplin & B. A. Lee: 1995 : 465). It is the same in Japan when we see the past judicial precedent.

Before we start our discussion, we should first look at the educational system in Japan to know the fundamental attitude of the court.

The practical administration and management of higher education is defined in the School Educational Law and the Official Requirements for the Inauguration of a College, issued by the Ministry of Education. The School Educational Law says that "the president of a university provides for the student's entrance, expulsion from school, change of school, study abroad, temporary absence form school and graduation, after having discussed such matters in the faculty meeting" (Chapter V, Article 67). The Official Requirements for the Inauguration of a College provides that "universities provide a number of credits for each lecture" (Chapter VI, Article 21). Thus, in Japan grades, credits, and degrees are left of the university's self-discretion on the basis of the ministerial ordinance.

<The case of Toyama National University in 1977>

Six students of Toyama National University, Xs, attended the lectures by Professor A. But the dean of the Economics Department, in September, 1996, suspended A from attending the faculty meetings and in December of the same year, also suspended the lectures of A. The dean gave instructions to the students to take alternate lectures. Xs continued to attend lectures by A and took his exam. A handed in the list of the students' records to the Dean. But the university, on the basis of the school code and regulation, did not accept the credits. Finally, Xs filed a suit against the defendant Y for the illegal act of giving and canceling the credits. At the first and second trials, the courts dismissed the case holding that the qualifying of credits was an internal problem in the special authority and beyond the judicature. The plaintiff filed the final appeal, but the Supreme Court dismissed it with the same reason as follows:

- 1) Universities have independent rule apart from the general public. So, a dispute of universities is to leave the independent decision of the university and is not appropriate for the judicial procedure.
- 2) A university, public or private, is an institution for educating students and making research. The school code or regulation would regulate the things which are needed in order to pursue this aim. Each institution has authority to practice it and forms a special community apart from the common society. The decision is left to the independent judgement of the university unless it relates to the order of the common society.

Thus, the court insisted that the problem of the credits was an inner problem of the university, apart from permission of the entrance or graduation problems, which would influence the order of the common society.

<Discussions>

Fundamentally I agree with the court's attitude that the decision about these problems resides in the expertise of the faculty rather than the court. But I believe there is the possibility that a university will abuse the discretion in some cases. And if a university abuses their discretion on grades, credits or degrees, it violates The Constitution of Japan, Chapter III, Article 26: "All people have the right to receive an equal education correspondent to their ability, as provided by law".

As in the case of Toyama National University, it seems that the case stemmed from the internal trouble among the teaching staff though it isn't clearly indicated in the judicial precedent about the reason why the Dean suspended lectures by Professor A. Whatever the

reason is, the lectures given by Professor A should have been kept open, at least until the end of the term, in case some students wanted to attend them.

It is important for universities that they should carefully make rules or regulations about giving grades, credits and degrees and practice them fairly. On the other hand, on such case that a university abuses the right of students to receive equal education, discussion in courts would be necessary.

### [III] The Law and the State Government:

#### State provision of public postsecondary education

##### Scope of state authority over public postsecondary education

The legal state authority to regulate over public postsecondary education is broad. In matters concerning postsecondary education, state functions which include regulating funding, planning, and coordination, are performed through such agencies as boards of regents, state wider planning or coordinating boards, departments of education or higher education, institutional licensure boards or commissions, and State Approval Agencies. By performing these functions, various problems arise connected with state provision.

##### System variation in type and organization

As for the type and organization, public postsecondary education systems vary from state to state. As Kaplin and Lee explain, “the state universities, state colleges, teachers colleges, community colleges, technical schools and vocational schools are established by the state constitution, by legislative acts, or by a combination of the two” (A. Kaplin & B. A. Lee: 1995 : 673-4).

##### Responsibilities

The designated body in a state, such as Board of Higher Education, Commission on Higher Education, Board of Regents, Regents, Board of Educational Finance, or Board of Governors bears statewide responsibility for at least some aspects of its postsecondary system.

Most such boards have some responsibility for planning, program review and approval, and budget development for the institutions under their control or within their sphere of influence, and adding these, the development of databases and management information

systems or the establishment of new degree granting institutions.

#### **Governing boards and coordinating boards**

Depending on their functions, boards can be classified into two groups: “governing boards” which work directly with the institutions for which they are legally responsible for management and operation and “coordinating boards” which may sometimes work with the institutions, but have less responsibility for them.

#### **Legal status of the institutions**

From a legal point of view, the status of the institutions in the public postsecondary system not only varies from state to state but also may vary as well as from institution to institution within the same state. Therefore, as for dealing with problems of legal authority, “one must distinguish statutory institution from constitutional institution and within these basic categories, carefully examine the terms of the provisions granting authority to each particular institution” (A. Kaplin & B. A. Lee: 1995:674). State constitution and statutory provision may also grant certain authority over an institution to state governing board or some other agency or official.

#### **Legal source**

It is important to determine the division of authority among the individual institution, the statewide governing or coordination body, the legislature, the governor, and other state agencies or officials.

Public institutions established by state statute, such as “state agencies” “public corporation”, or state “political subdivision”—are often subject to an array of state legislation applicable to state-created entities. For example, statutorily based institutions are subjected to states’ administrative procedure acts and other requirements of state administrative law.

On the other hand, a public institution established by state’s constitution such as a “public trust”, an “autonomous university”, a “constitutional university”, or a “constitutional body corporate”—can enjoy considerable freedom for state legislative control and usually are not subject to state administrative law.

Thus, when a discussion concerning problems of postsecondary education arises, one should examine not only the relevant statutes or constitutional clauses, but the statewide governing or coordinating body, the legislature, the governor, and the state agencies or

official.

<Discussion>

As I have examined, the allocation of authority over public postsecondary education is not clear in the United States. Therefore, it is difficult to determine who holds the ultimate authority to make various critical decisions concerning public postsecondary education. This is caused by not only the difficulties dealing with the problems of funding, employment, or civil right which are discussed at the federal level, but also by the complexities of the variation of system in type and organization.

In Japan, system in type and organization is the same throughout the country. The main source of this matter is Educational Law. As for the postsecondary education, other legal sources are the Law for the Official Requirements for the Inauguration of a College and Law for the Establishment of Public Schools. We have the same discussion as the United States concerning employment, funding, and civil right in every institution that relates to the Constitution of Japan, but many legal problems which may arise concerning the system of postsecondary education can be easily settled, because the legal sources are the same in all of Japan.

Thus, when we think of it from a legal point of view, the fact that states have the greatest reservoir of legal authority over education complicates the issue. On the other hand, when we see it from an educational point of view, it has some advantages; it produces the variety in education. And I believe having variety is important for education. It is not without saying that, as we are all different from each other, we need different education.

Now in Japan, our uniform education is questioned from many aspects. I happened to find such an article in today's issue. According to the Asahi Newspaper, on August 9th, 1999, The Ministry of Education begins to reconsider public university system; they are beginning to reconsider the system of establishment of all public universities, which now are controlled by the Ministry of Education, and are planning to make new independent administrative corporation by giving up the control by the government. I support this reformation because if public universities will be independent from the government, they can pursue original ways of education, being free from the control of the Ministry of Education.

I think that allowing states to have the greatest reservoir of legal authority over

education in the United States is good for education.

#### [IV] The Law and Federal Government: Constitutional powers over education

The Federal Government has many constitutional powers over many matters concerning education. Whenever an activity happens in the range of one of these federal powers, the federal government has authority over it.

The major federal power sources applicable to education are 1) Spending power, 2) Taxing power, 3) Commerce power, and 4) Civil rights enforcement powers. In this section, I will examine the range of these powers and the source of these authorities.

##### 1) Spending power

According to the textbook, "The current federal involvement in education stems primarily from Congress's power (under Article I, Section, Clause I) to spend its funds for the 'general welfare of the United States'" (A. Kaplin & B.A. Lee: 1995 : 712).

But this spending power of the federal government to regulate postsecondary education does not cover every matter. The government has its spending power in that it establishes of the purposes and conditions for its expenditure for funds of postsecondary education. However, educational institutions aren't necessarily subjected to this law if fund recipients do not accept the funds, they need not to be subject to federal requirements.

As we can see in the interpretation of the cases in the book, *The Law of Higher Education* on page 713, as for the spending power, states seem to be given benefits in their dealing with the federal government.

##### 2) Taxing power

The tax power has been generally construed to permit tax measures with substantial regulatory effect. As in the case of *Allen v. Regents of the University System of Georgia*, (1938), a case which concerned an admissions tax that the federal government had levied on State College football games, the tax power to postsecondary education is substantial. Public institutions are treated differently from private institutions, because public institutions have immunity from federal taxation of their sovereign functions and the federal tax laws.

Though most postsecondary institutions are eligible to attain tax-exempt status under

the Internal Revenue Code, the way to attain the status differs from public to private institutions. “If the institution is public, it must demonstrate that it is apolitical subdivision of a state under 26 U.S.C. Section 115 and related provision or, alternatively, that it is immune from taxation under the constitutional doctrine of intergovernmental immunities.” “If the institution is private, it must satisfy the statutory definition established by 26 U.S.C. Section 501(c)(3) by showing that it is” (A. Kaplin & B. A. Lee: 1995 : 776).

### 3) Commerce power

The source of the federal authority on commerce power is derived from Article I, Section 8, and Clause 3 of the Constitution. The power concerns the regulation of activities that influence interstate or foreign commerce. As the range of this power extends to many matters concerning education, it interacts with many laws.

According to the selection for analysis by Kaplin and Lee, the following laws and acts apply to the main issues of postsecondary education.

#### **Acts apply to the issues of relations of employer and employees**

*Occupational Safety and Health Act*: This act requires a private institution to “furnish to each of [its] employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm” (A. Kaplin & B.A. Lee: 1995 : 716). OSHA doesn’t apply to public institutions of higher education, which are subject to state occupational safety and health laws.

*Labor-Management Relations Act* : “It protects the employees of covered employers in the exercise...of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection (29 U.S.C § 151)” (A. Kaplin & B.A. Lee: 1995 : 718). Public institutions, which are not subject to the LMSRA, are often subject to similar legislation at the state level.

*Fair Labor Standards Act*: It establishes “the minimum hourly wage and the piece-work rates as well as overtime pay requirements for certain nonsupervisory employees” (A. Kaplin & B. A. Lee: 1995 : 719).

Religiously affiliated institutions must also comply with this law because the FLSA has no exemption for them.

*Employee Retirement Income Security Act*: It establishes “standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans” (A. Kaplin & B. A.

Lee: 1995 : 722).

*Employment discrimination laws:* “The federal government also directly regulates employment discrimination under several other statutes. Primary among them is Title VII of the Civil Rights Act of 1964, amended by the Civil Rights Act of 1991.” (A. Kaplin & B. A. Lee: 1995 : 724)

#### **Immigration laws**

*The United States Code and the Immigration and Nationality Act*

There are many the satiates and regulations for many citizen of foreign countries, who come to the United States to study, teach, lecture or do research at American higher education institutions. They are codified in Title 8 of the United States Code and in the Immigration and Nationality Act.

#### **Laws governing research on human subject**

*The Federal Food, Drug and Cosmetic Act*

“Federal law regulates scientific and medical research, especially research on human subjects and genetic engineering... . The Food and Drug Ministration’s regulations cover research on any product” (A. Kaplin & B. A. Lee: 1995 : 740).

#### **Law governing animal research**

*The Animal Welfare Act:* It “governs the treatment of animals used for research in or substantially affecting interstate or foreign commerce” (A. Kaplin & B.A. Lee: 1995 : 744-5).

#### **Others**

*Federal Trade Commission Act:* It prohibits covered entities from “using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce” (A. Kaplin & B.A. Lee: 1995 : 768).

*Americans with Disabilities Act:* It “provides broad protection for individuals with disabilities in five area: employment, public accommodation, state and local government services, transportation, and telecommunications” (A. Kaplin & B. A. Lee: 1995 : 772).

*Family and Medical Leave Act:* It “applies to all organizations that have employed fifty or more employees, within a radius of seventy-five miles, for each working day during each of twenty or more weeks in the preceding year” (A. Kaplin & B. A. Lee:

1995 : 773).

*The Sherman Act, The Clayton Act and The Federal Trade commission Act*: Each of these focus on different types of anticompetitive conduct. “[The SA] prohibits every contract, combination... Or conspiracy in restraint of trade or commerce. [The CA] concerns price discrimination, exclusive dealing arrangements and mergers. [The FTCA] prohibits unfair methods of competition” (A. Kaplin & B. A. Lee: 1995 : 762).

In addition to these laws or acts, according to the rapid development of information and technology, more complicated issues have been rising. Especially as for copyright and trademark laws, which have been discussed in Congress many times; amendment laws have been passed and new regulations are established in every few years.

#### 4) Civil right enforcement powers

“These powers derive from the enforcement clauses of various constitutional amendments, particularly the Fourteenth Amendment” (A. Kaplin & B. A. Lee: 1995 : 714). Among the issues concerning civil rights, problems of discrimination are frequently taken up in postsecondary education. “The federal government has no less than nine major employment discrimination statutes and one major executive order” (Kaplin: 1995 : 197). Title VII of the Civil Right Act of 1964 is the most comprehensive and is most frequently used for these matters.

These powers are also the basis for various civil rights regulatory statutes that have some application to postsecondary education; for example, problems of sex, race, disabilities, and academic freedom.

#### <Discussion>

As we have seen, Constitutional power over education extends over a wide range. Besides, when we think of the relevancy to state powers, the sphere of application of the federal power becomes more complicated.

Concerning spending power, the federal government is less influential than the states. Taxing power may be greater over private than public institutions. In the federal tax laws, public and private institutions are treated differently.

Constitutional powers over Commerce and Civil rights enforcement are influential over postsecondary education. As we are in the middle of the highly advanced info-oriented society, new and more complicated issues are arising not only in the United States but all over the world. It should be important to think of these problems from the federal level.

I think the range or degree of Constitutional power over postsecondary education in the United States is enough to keep good autonomy of every university and have good balance with the state power.

## [V] Accrediting Agencies: The accreditation system

### The Accrediting Agencies

There are various education associations, such as the American Council on Education, the Association for Student Judicial Affairs, and the National Association of College and University Attorneys which are private rather than governmental entities and whose legal statuses are shaped by state corporate law and the common law of “voluntary associations”. These education associations develop many kinds of relationships working with one another in such cases as memoranda of understanding and consortium agreements.

Among these education associations, the ones, which are very concerned with postsecondary institutions are the educational accrediting agencies. Educational accreditation is conducted by private associations rather than by a ministry of education or other government agency. The private accrediting agencies have played especially important roles in postsecondary education: they developed and maintained standards for postsecondary education. This accreditation system has gained considerable influence over individual institutions and programs seeking to obtain or preserve the accreditation.

There are two types of accreditation.

- 1) Institutional accreditation—“applies to entire institution and all its programs, departments and schools” and “is granted by six regional agencies—membership associations composed of the accredited institutions in each region”. “Each institution is subject to the jurisdiction of only one agency” (A. Kaplin & B. A. Lee: 1995 : 873).
- 2) Program accreditation—“applies to a particular school, department, or program within the institution, such as a school of medicine or law, a department of chemistry, or a program in medical technology... [It] may also apply to an entire institution if it is a free-standing, specialized institution, such as a business school or technical school whose curriculum is all in the same program area... [It] is granted by multitude proliferating “specialized” accrediting agencies, which may or may not be membership associations and are often sponsored by the particular profession or occupation whose educational programs are being accredited. The jurisdiction of these specialized agencies is nationwide” (A. Kaplin & B. A. Lee: 1995 : 873).

### State and federal laws

State and federal laws in a number of important ways restrict the powers of private associations. “State Corporation law may restrict the structures and procedures through which an association may operate. The common law of voluntary association may superimpose upon the association’s own standards and procedures a general obligation to act reasonably and fairly, especially toward its members, and may also require that the association follow its own rules” (A. Kaplin & B. A. Lee: 1995 : 871). Also, Federal and state antitrust laws restrict anti-competitive or monopolistic association activities.

### Legal status of accrediting agencies

The accrediting agencies have been influential over educational statutes of postsecondary education in an important way. But over the years, the discussions about their roles and the debate about accreditation itself have been continuing. Much of it has concerned accrediting agencies’ relationships with the federal government or has focused on various roles and responsibilities of accrediting agencies.

Traditionally these associations are regarded as voluntary associations. As they are private, “accrediting agencies owe their existence and legal statutes to state corporation law and to the common law of “voluntary” (or private) association.... Their powers are enforced through private sanctions embodied in their articles, by laws and rules” (A. Kaplin & B. A. Lee: 1995 : 873).

### Related cases: procedural fairness in common law

It is required for institutions to take procedural due process before denying, withdrawing, of refusing to renew their accreditation.

In the case of *Parsons Collage*, *Marjorie Webster*, and *Marlboro Cooperation*, the court opinions suggest some limits on the authority to deny or withdraw accreditation. In the case of *Parsons*, the court defined rudimentary due process to include under common law standard.

- 1) an adequate opportunity to be heard
- 2) a notice of proceedings
- 3) a notice of specific charges
- 4) sufficiently definite standards of evaluation
- 5) substantively adequate reasons for the decision

In the case *Marjorie Webster*, the appellate court considered the association’s nonprofit criterion because of the assumption that the profit motive is inconsistent with education.

The court concluded that “‘substantial deference’ should be accorded the association’s judgement regarding the ends that it serves and means most appropriate to those ends” (A. Kaplin & B. A. Lee: 1995 : 879).

In the case of *Wilfred Academy et al. v. Southern Assn. of Colleges and Schools*, the district court holds that “the duty of good faith and fair dealing is breached whenever an accrediting agency violates fundamental ‘fairness’ which in return requires that accrediting decisions be ‘reasonable’” (A. Kaplin & B. A. Lee: 1995 : 880).

### Requirement

In the courts’ view, accrediting agencies are still not subject to the full controls of states and federal governments. Rather, the courts require that an accrediting agency should follow its own rules. Courts also require that agencies have to exercise their power reasonably with an even hand, or fairly, and accord with the public policy of the jurisdiction.

### <Discussion>

Until now, a number of cases have discussed whether accrediting agency decisions are “state actions” or not. And in the courts it is questioned whatever the decisions of accrediting associations were “arbitrary and unreasonable” and whether they were supported by “substantial evidence.” It seems to me it is valid that in Emery’s case the court concluded that “procedural fairness is a flexible concept to be considered case by case” (A. Kaplin & B. A. Lee: 1995 : 881).

We don’t have the system of accrediting agencies in Japan. In the United States, accrediting agency have assumed an important role and they are an influential power over postsecondary education. When I learned about this system, I was surprised by two points. First, accrediting agencies are almost private and they are required to be subjected to their own institutional rules or regulation rather than by common law and federal law. As I’ve mentioned previous sections, Japanese education is controlled at the national level. We can’t imagine that some private educational association will play an important role in education. But after I considered this idea, I wondered whether the problems of education in Japan arose because the Japanese government has total control over all educational systems. Because I think that uniform education has both advantages and disadvantages. Secondly, thinking of the public benefits of accreditation, there seems to be considerable benefits. As Kaplin and Lee mention in their book, “the states rely on the agencies’ assessments when

they exempt accredited institutions or programs from various licensing or other regulatory requirements. “Private societies may use professional accreditation in determining who is eligible for membership. Students, parents, and guidance counselors may employ accreditation as one criterion in choosing a school. And postsecondary institutions themselves often rely on accreditation to determining the acceptability of transfer credits, and in determining what academic credentials will qualify persons to apply for particular academic positions” (A. Kaplin & B. A. Lee: 1995 : 874). Now in Japan, when we choose a school, we rely on the name value or the data of difficulty for entrance examination which cram schools pronounced. If we can employ accreditation as one criterion, we can see a school from a different light, not just employing a personal evaluation for a school. It will be one of important criterion for us to evaluate schools. And I’m sure it would produce the good result that the present severe competition for the high level or famous school would be reduced. I support the accrediting system of the United States.

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