

PROTECTING A SPACE FOR CREATIVITY: THE ROLE OF A LAW SCHOOL DEAN IN A RESEARCH UNIVERSITY

*Alfred C. Aman, Jr.**

MOST people think that law schools train lawyers, but what we really do is *educate* lawyers. These are related projects in theory, but in practice, they can involve different constituencies, resources, not to speak of pressures, constraints and different conceptions of the role of legal education. To be sure, law schools must embrace the goal of *training* lawyers, but legal education means more than the acquisition of skills, information and techniques. Lawyers' skills are best formed in the context of a broad-based education that places law at the center of the curriculum, as a means but also an end. As a means to an end, educating lawyers is intrinsically valuable to students as future lawyers. As an end in itself, a law curriculum also educates scholars, citizens and individuals. Educating lawyers takes an engaged and creative faculty with a wide range of commitments to professionalism as lawyers, teachers and research scholars. Focusing on training alone undermines those commitments and their interrelatedness.

Some of the most significant challenges I have faced as dean—with alumni, the bar, administrators, faculty, students, staff, and campus colleagues—have to do with maintaining the value of education for its own sake, “even” in a professional school. In this essay, I describe these challenges briefly from the perspective of three related questions. My answers to all three questions begin in the premise that law schools, like universities, are in the business of producing and defending new knowledge; this premise is the strand that connects both my questions and my answers. I will make my view clear at the outset: Members of law faculties are both scholarly and professional lawyers. This is what gives law schools their distinctive attributes as institutions of learning and the law dean's role its particular character and complexity.

I. LAW SCHOOLS AND UNIVERSITIES

Are law schools more like the universities of which they are a part, or more like the legal profession? With a law school mission focused on the educated lawyer, the relationships between law schools and universities are crucial. Given law's centrality to many institutions, past and present, law schools can contribute to and are inspired by the developments and insights of many of the departments within the university. Law, as a human science, is integral to the intellectual dialogues at any research university today, and law schools can and should take an active part in these dialogues.

Edward Shils defines the role of the university in terms of “truth”:

* Alfred C. Aman, Jr. is the Dean and Roscoe C. O'Byrne Professor of Law at Indiana University School of Law—Bloomington.

Universities have a distinctive task. It is the methodical discovery and the teaching of truths about serious and important things. . . . The discovery and transmission of truth is the distinctive task of the academic profession, just as . . . the protection, within the law, of the client's rights and interests is the distinctive task of the legal profession.¹

If law schools are integral to universities, what is their particular "truth"? In the passage just quoted, Shils himself says that lawyers' truths amount to their client's rights and interests, but is it enough to project these back to the law schools, to make this their hallmark, too? Even if persuasive advocacy is at the heart of what law schools teach, delivery on that promise commits law schools to truths of other kinds—and in distinctive ways. For law schools, "truth" often is inextricably tied to contest, argument and those truths known as opinions—judicial opinions. Thus, by focusing on "truth," I do not mean some singular or fixed doctrine—quite the contrary, in fact. As in the human sciences, legal academics' search for truth requires first and foremost that the conditions of the search replicate its object—by which I mean that a multiplicity of perspectives within a diverse community of scholars and students is essential to the task, given that the law itself is multiperspectival and pertains to highly diverse purposes. Saying that truth depends on perspective does not diminish the notion of truth, or relativize it. Rather, it means that truth is *social*, and that its discovery has social prerequisites.

The very commitment to fairness means acknowledging the importance of diversity. Differences of experience and perspective are not self-evident; learning to think outside the box of one's own experience is difficult but essential. Such knowledge itself becomes a form of discovery as well as accountability—to diverse stakeholders known as claimants, clients and citizens, traditional and new users of the law. The very nature of legal scholarship—the multiperspectival approach mentioned above—demands diverse students and faculties. As deans, we can play an important role in bringing new knowers and knowledges into the law school, and new creative energies into the law. Because law is social, because it involves fundamentally human relationships in a globalizing world, it is important that we strive for student bodies and faculties that reflect and advance the rich diversity that exists in the world.

Educating lawyers for the kind of advocacy that understands the processes of change in the law takes a university and its truths. Thus, law schools, as integral parts of their universities, share in the "distinctive task" of "methodical discovery and the teaching of truths," as Shils puts it.² This is the *faculty's* role. The faculty is constantly moving between theory and practice, the court and the classroom, examining the law as doctrine, theory, social process and effects (among other things). Legal academics research the law for its sources and circuitry of meaning and power, as a human science as well as a means of social ordering and reform.

Another way in which a law school's "truths" resemble those of the university is in the fundamental connection between teaching and research. Teaching and

1. EDWARD SHILS, *THE CALLING OF EDUCATION: THE ACADEMIC ETHIC AND OTHER ESSAYS ON HIGHER EDUCATION* 3 (Steven Grosby ed., 1997).

2. *Id.*

research are not in competition, but are two sides of the same coin. As Shils has also noted:

[U]niversities do and ought to educate for those occupations which demand of their practitioners a mastery of a coherent body of organized knowledge, a capacity to assess evidence and a readiness to look at situations afresh. A university education should not have as a task to prepare students for occupations which deal with routine tasks. It should offer education for those occupations which require a knowledge of fundamental processes, principles and methods of analysis.³

This attention to the fundamental ideas that form the foundations of basic frameworks of thought is what connects teaching and research. These ideas do not compete, but reinforce each other's creativity and accountability. A research focus in the law school raises our expectations of the importance of teaching. The kind of excitement that students relate to in the classroom is often closely related to the excitement a teacher generates as she or he does battle with, is critical of, and proposes visions alternative to the existing law. Challenging our students, ourselves, and the assumptions behind the law with which we deal is the makings of the kind of classroom experience that yields highly analytical thinking, and a critical cast of mind that enables students to be creatively constructive in their own work. A creative research focus enables students to understand how alternative legal structures and new approaches to problems can be developed and implemented.

Teaching and research require freedom and independence. The late and distinguished political scientist, William Riker once said (to the trustees of his university, the University of Rochester) that being a professor is about "the zeal for explanation upon explanation."⁴ This kind of zeal calls for independence from preordained interests, be they client interests or intellectual interests. The classroom is one literal form this space of freedom can take; so is the faculty member's office or study; so are the faculty seminar, the library, the printed page and computer screen. Academic freedom and tenure are important elements of this space, shielding the professoriate both from external pressures and the sometimes-heavy weight of "conventional wisdom."

Such freedom is essential, not just because researchers need freedom from distractions and constraint, but because it is in this state of freedom that individuals can experience the kind of creative solitude necessary for responsible scholarship. This is not unlike the kind of solitude that Thomas Merton argued for nearly 50 years ago, writing about the oppression of totalitarianism:

[S]ociety depends for its existence on the inviolable personal solitude of its members. Society, to merit its name, must be made up not of numbers, or mechanical units, but of persons. To be a person implies responsibility and freedom, and both these imply

3. *Id.* at 5-6.

4. William Riker, Speech on the Occasion of the Installation of President Sproull as Chief Executive Officer of the University of Rochester (June 1975) (on file with author).

a certain interior solitude, a sense of personal integrity, a sense of one's own reality and of one's ability to give himself to society—or to refuse that gift.⁵

In many ways, universities—and law schools, too—provide this productive solitude for society, not just for students and faculty while they are at work. I read Merton's description of solitude and its importance for individuals as having significant parallels for the importance of research for professors individually and for the institutions of which they are a part. The research aspect of a professor's duties is an opportunity to take the long view of one's own field and to think creatively about change, reform, and the role of law. It is this very process of reflection that creates the possibility of new knowledge. Whether or not a breakthrough occurs, the process of reflection has independent value in itself. For Merton, the stakes were high (he phrased them in the generic masculine pronoun of his day):

When men are merely submerged in a mass of impersonal human beings, pushed around by automatic forces, they lose their true humanity, their integrity, their ability to love, their capacity for self-determination. When society is made up of men who know no interior solitude it can no longer be held together by love: and consequently it is held together by a violent and abusive authority....⁶

Indeed, scholarly processes, values, and goals create an institution that differentiates the academy from almost all other institutions, especially, but also most subtly, from those whose primary purpose is to produce capital. Our product is, again, new knowledge. Solitude is not withdrawal, but creative space for engagement.

Scholarly solitude, and the research it enables, involves long time frames, independence, and recognition that the major payoff may not emerge until well into the future. Further, and perhaps more important, scholarship involves an assumption that one can be, and indeed almost always must be, critical. New ideas challenge the status quo; they upset apple carts; and, especially in law, they often posit normative goals.

Scholarly solitude requires resources, independence, a commitment to the long term and, most important, the kind of institutional environment that makes it clear that such contemplation is highly valued. It is an environment that increasingly today may seem almost anachronistic as some schools seek to finance their operations with partners interested in highly visible and often short-term goals. One often reads these days about the pressures to capitalize financially and almost immediately on new knowledge, and the potential risks to a full and free exchange of ideas. I believe that it is the dean's primary role to ensure that scholarship flourishes by helping faculty balance these pressures and, to the extent possible, supporting research materially and as pedagogy in the classroom. The university's fundamental conception of the university in society may be changing, but teaching and research remain at the heart of law schools' missions no less than for the research universities of which they are a part.

5. THOMAS MERTON, THOUGHTS IN SOLITUDE 12-13 (1956).

6. *Id.* at 13.

II. THE MARKET AND INDEPENDENCE

Law schools are also affected by the economic forces, rhetorics, and demands for accountability faced by the universities of which they are a part. In part II, accordingly, I consider law school and university finances and governance, as well as their respective mandates and missions. Universities and law schools' varied means of securing financial resources entail new partnerships and goals. These, in turn, create new demands for accountability. In many instances, as new engagements, these are healthy and even desirable, but the pull of accountability to external constituencies can risk setting false limits on scholars' creative scope and independence. How much independence is necessary for law schools? How much is too much? As we engage in a variety of approaches to attract and then get the most from our resources (including new technologies), there is always the question: "To what end?"

Like all institutions in society, universities and law schools have been and will continue to change. The societies from which law develops also continue to change—increasing in diversity, developing new technologies, becoming increasingly transnational in outlook, among other things. In the United States and elsewhere, people seek to understand and apply law in new ways. Interdisciplinary approaches to law are especially useful for considering appropriate legal approaches to transnational issues, such as the environment, human rights, or trade. The collapse of any meaningful distinction between global and local in so many contexts where lawyers work now means that a very useful way of conceptualizing our roles as teachers is in preparing our students to be global professionals. One does not need to practice law in a foreign country or as an international lawyer to be a global professional. Increasingly, local clients seek to do business around the world. The global economy and the increasing fluidity of borders in relation to the movements of capital, services, goods, and people require new conceptualizations of law's role and the nation-state. It is no surprise that joint degrees between law schools, business schools, public policy schools, as well as departments of telecommunication or environmental sciences (among others) are increasingly common, and, as at our law school, increasingly popular, in large part because of the way the global economy and the technology that drives it are reshaping businesses, law, law firms, government and non-governmental organizations.

In focusing on these global, interdisciplinary aspects of law, I believe that one of the most important goals we can have as deans is to encourage the kind of intellectual environments necessary for faculty to create the theoretical frameworks that will enable students to assess the world that is still ahead of them and to evaluate critically changes that neither they nor we can, as yet, foresee in a process of life-long learning. The interdisciplinary aspects of legal education, coupled with doctrinal research and doctrinal understandings of the law, are all important means for providing law students with the kinds of sophisticated analytical tools that will hold them in good stead throughout their careers. This is what a research-oriented faculty can provide.

These are not the only forces driving change in universities and law schools, nor the only goals. During the past 10-15 years many schools have been subject to

various degrees of financial stress. As the costs of education have risen, funding, especially in the public sector, has declined. Tuition in both the private and public sectors has risen considerably. The consequences of low tax policies, coupled with increasing public skepticism with respect to public spending in general, have encouraged a variety of new partnerships at state schools and, of course, increased the focus of public institutions on private fundraising. Such developments expand universities' constituencies and accordingly, the range of input. No matter where new sources of financial support come from, everyone wants to know more about their use and effectiveness. Indeed, boards of trustees, private donors and other private providers of funds are now significant stakeholders in the university. The increased pressures for better measurement and accounting that result can be beneficial, especially if they are keyed to the special mission of a research university. Managing the differences in short-run versus long-run calculations is not just the individual faculty member's job; it is also central to what deans do. Deans are often in the position of explaining to new constituencies the importance of research as fundamental to university life. Notions like tenure, academic freedom, and long-term research might seem almost anachronistic to people working in industry and law firms, and such conversations can reach the fundamentals very quickly.

Today, as everyone knows from commentary in the media and elsewhere, many calls for change in the university in one way or another involve criticism of the research mission. Some critics argue that faculty have made bad choices, devoting themselves to research questions that matter little to society at large. In his *Scholarship Reconsidered* report, for example, Ernest Boyer specifically advocates more applied research.⁷ Similarly, in *We Scholars: Changing the Culture of the University*, David Damrosch notes a tendency for disciplines to become increasingly specialized and segmented.⁸ In Damrosch's view, arcane scholarship by definition is largely irrelevant to those outside the increasingly narrow subfields that produce it. Other critics attack the integrity of the researchers, as in *Profscam: Professors and the Demise of Higher Education* by Charles Sykes.⁹

Some authors, however, take a broader view of these challenges in their analysis of the various calls for change. Some see these criticisms and the changes they produce in some universities as being of a piece with a larger global framework, one that highlights accountability, relatively instant payoffs and the need to be "self-financing." As Sheila Slaughter and Larry Leslie point out in their book, *Academic Capitalism*, globalization drives four trends, all of which pose risks to the academic ethic:

Globalization has at least four far-reaching implications for higher education. First is the constriction of moneys available for discretionary activities such as postsecondary

7. See generally ERNEST BOYER, *SCHOLARSHIP RECONSIDERED: PRIORITIES OF THE PROFESSORiate* (Carnegie Foundation for the Advancement of Teaching 1990).

8. See generally DAVID DAMROSCH, *WE SCHOLARS: CHANGING THE CULTURE OF THE UNIVERSITY* (1995).

9. See generally CHARLES J. SYKES, *PROFSCAM: PROFESSORS AND THE DEMISE OF HIGHER EDUCATION* (1988).

education. Second is the growing centrality of techno-science and fields closely involved with markets, particularly international markets. Third is the tightening relationships between multinational corporations and state agencies concerned with product development and innovation. Fourth is the increased focus of multinationals and established industrial countries on global intellectual property strategies.¹⁰

What are the implications of these shifts in view of the ways we conceptualize the university and, in particular, law schools as components of research universities? For some critics, the accountability debate points to a definition of excellence that is largely market driven. For others, it means that there are new financial realities that simply require a leaner, more efficient approach to what universities traditionally do. Deans must manage the difference between these approaches. If the focus is solely on funding to the exclusion of the question—to what end?—then independence and a commitment to scholarship risk being undercut. Markets respond notoriously to short-term pressures and factor only what can be easily costed out and assessed. On the other hand, long-term goals are no escape from funding pressures, but the payoff is a more independent faculty and a wider range of intellectual and pedagogical commitments.

Funding and the long term are not necessarily incompatible. Deans have an opportunity to teach various constituencies outside the university (and sometimes within it) about the fundamental value of long-term research in relation to new knowledge and academic freedom. Indeed, this is as it should be. In our fundraising efforts, we are asking for the kinds of investments in education that have long-term effects and can, quite literally, change the world. In so doing, law school deans can help fund the research missions of their institutions and also protect and preserve a space for the creative pursuit of new ideas. I believe it is possible for educational institutions to change and do what is necessary to succeed financially without compromising the fundamental role of the university as a source of new knowledge in society. This can occur only if we both reinvent our approaches to financing and rededicate ourselves to articulating why universities exist in the first place.

III. PRESERVING A SPACE FOR SCHOLARLY SOLITUDE

Let us now turn more specifically to the role of the law school dean, as I see it, given the contexts of the law school in the university, and the university in the marketplace. What can a dean do to maintain and enhance the law school as a place of creativity and learning?

Arguing for the primacy of the research mission of a law school may not sound like the most direct answer to recent criticisms and market realities, especially given the practical, financial pressures on most universities and law schools today. But I believe it is a direct answer, and a necessary one, given the prevalence of an “efficiency discourse” in society at large, in these days of increasingly globally competitive environments. Given the combined graduate and professional aspects of legal education, law school deans are in a good position to experience and

10. SHEILA SLAUGHTER & LARRY L. LESLIE, *ACADEMIC CAPITALISM* 36-37 (1997).

appreciate the various critical rhetorics of universities (both positive and negative) that are now commonplace. In this complex environment, giving top billing to creating and preserving the conditions in which faculty can flourish amongst each other and their students is the best way I know of resolving differences among constituencies, prioritizing scarce resources, and answering to the range of accountabilities implicit in the question: "To what end"?

Focusing on the congruence between the research mission of universities and law schools provides coherence to the multiple tasks deans undertake and the variety of constituencies with which they interact. Fundraising is now one of a dean's major responsibilities, but simply asking for money in the abstract does not go very far—and it shouldn't. Those capable of and willing to make major investments in our schools need to know how and why these investments matter. The long-term nature of endowed funds are very much of a piece of the long-term nature of a school's research goals. Sharing the exciting work of faculty colleagues with potential donors is one of the best ways I know of showing them how useful their support will be, as well as making them feel pride in their institution. Similarly, a dean's role in admissions can and should be inspired by the value of diversity as an end itself, and research integral to the mission of the law school and the university. New knowledge is being created inside and outside the classroom; this means we wish to recruit students with the intellectual ability to take full advantage of the faculty and other resources the law school can make available. The admissions process also brings "new knowers" of the law into the system, thereby accelerating the generation of new knowledge. Career services offices also benefit when employers are aware of the students' excellence and the ways they are challenged intellectually—harbingers of ways that they will think and perform creatively in practice. Indeed, a law school dedicated to new knowledge, by definition, produces creative educated lawyers capable of conceptualizing and solving old and new problems in creative ways. Finally, it is the research mission of the law school that links it directly and in the most productive and creative ways to the university campus, its various departments, and the university's own research mission. In short, I see law schools as part of the intellectual fabric of the university and the world at large.

The research mission also drives a number of other decanal approaches to practical matters, such as compensation, research leaves, teaching loads, opportunities for colloquia, and interdisciplinary opportunities as important ways of deepening our knowledge of law through collaboration and synthesis with faculty in other departments and at other universities. The interdisciplinary aspects of legal education today provide deans with multiple opportunities for bridge building throughout the university, as well as finding ways of facilitating the development of faculty in relationship to expertise that exists outside the law school. Indeed, some of the tasks deans have include the encouragement of integrative law approaches that seek to incorporate the insights of other disciplines in meaningful ways. Exposure to other departments on campus is important, but beyond that, collaborations that draw faculty from different disciplinary points of view into the same kinds of analytical problems can yield new syntheses that are exciting, advance the respective literatures of all of the participating disciplines, and create new collaborative, ongoing collegial relationships.

Concretely, this means asking faculty colleagues: "With whom do you wish to be in dialogue? Who should know about your work and whose work do you wish you knew better?" In this way, we often build interdisciplinary conferences around issues and scholars that further our own faculty members' research agendas. Such conferences enable all involved, from law and other disciplines alike, to learn more than they could from their own disciplines alone. In the end, it is often the ability to integrate different disciplinary strands of thought that give the best chance of contributing to the advancement of new knowledge and the creation of new frameworks and perspectives. Lawyers are law schools' best known product, but it takes a university to create the environment necessary to truly "train" lawyers by *educating* them.

At our law school, we have built bridges between and among various schools and departments within our own university, and beyond our school as well. These points of intersection can be as simple as inviting people from different parts of campus for lunch to meet law school faculty members, to facilitating and helping plan and carry out creative interdisciplinary conferences, courses, degree programs, and journals. At our school, we have three journals—the *Indiana Law Journal*, the *Federal Communications Law Journal*, and the *Indiana Journal of Global Legal Studies*. These are all integral to the search for new knowledge. As a faculty editor of the *Indiana Journal of Global Legal Studies*, a faculty and student edited law journal devoted to issues involving globalization, I have been, from time to time, involved in the planning and editing of the many symposia we have published. This kind of organizational and conceptual work helps me stay in touch with my own field as well as work closely, in a substantive way, with law faculty and others on our campus and beyond.

Increasingly, many of the bridges being built between departments and disciplines extend to other universities in other parts of the world. Creating and maintaining global intellectual links between our law school and law schools throughout the world have also been an important part of my role as dean. I believe that such new and creative partnerships with scholars and schools throughout the world are not just luxuries, but necessities. There are many ways for the links to occur—exchanges of faculty and students among universities in various parts of the world—we have several at our school in various countries, including China, France, Germany, Kazakhstan, Spain, and the United Kingdom—semesters abroad, distance education courses, video conferencing, jointly taught seminars where a portion of the seminar is taught by one or more professors from law schools from other parts of the world and a portion is taught by faculty on the premises. These are all ways of adding new perspectives and global approaches to a law school. More important, they are ways of encouraging collaboration, conversation, and creative scholarship.

On our campus, joint degree programs are also increasingly important. Joint degrees offer opportunities for faculty and students for integrative and synthetic analyses that can yield new kinds of scholarship. Joint degrees should, whenever possible, involve joint teaching. Law students can learn a great deal from such collaborations among faculty and students. To be in the classroom with students in the environmental sciences, for example, as well as law students, and to have professors from both disciplines exchange views and ask tough questions of each

other yields a multiperspectival approach to law and policy, stimulating students and putting them in creative dialogue with each other.

In my view, the dean's role in all of this is to be facilitative, encouraging, and alert to the benefits that can flow from these kinds of interactions. Personally, I have found it essential to stay engaged with scholarship and continue to be actively involved in research and writing. It is an effective way to participate in the creation of an atmosphere in which scholarly creativity and its classroom components remain at the top of an institution's priorities, and it is a pleasure as well. Teaching, of course, is also an important part of what deans do. In terms of hours, though, deans often spend more of their time teaching outside the classroom, especially highlighting the important and fundamentally practical reasons why the research mission of law schools is so important, and how it affects every aspect of the school's life.

CONCLUSION

In this essay, my premise is that the fundamental goal of a university law school is the creation of new knowledge. Of necessity, this implies long-term goals, experimentation, critique, and, increasingly, an interdisciplinary approach to scholarship that involves many other aspects of the university, that is, other departments and schools. Over the years, this very basic role of the law school, as with the university, is frequently subject to fresh demands for justification. It has been a difficult decade for committed, creative research-oriented institutions, but the challenges have never been more worthwhile.

Part of my optimism comes from my good fortune in having gone to a university, the University of Rochester, and then a law school, the University of Chicago, that took students seriously, no matter what their economic background. As the first child in my family to go to college, much less law school, my education introduced me to worlds I had neither known nor dreamed of. There was nothing pre-ordained about the educational journey I took. At the schools I attended and at the time I was there,¹¹ if you were up for the quest—the quest for new knowledge, ideas and discovery of all kinds—nothing else seemed to matter. You were exposed to the quest for discovery in almost every class you took. My professors talked about the books they were writing. They often challenged us with their views or findings, testing them in class—testing themselves and us neophytes. Although the “teaching versus research” discourse was not yet in vogue, research and teaching were clearly faces of the same coin. These learning opportunities were all new to me, and I found the quest exciting and liberating—exciting because of the chance to learn; liberating because of the chance to grow and to become the person I hoped to be. These experiences are more important to me now than ever before and they have remained at the core of my enthusiasm for this job. I continue to believe in what I learned then: democracy depends on liberal universities' commitment to new knowledge through research, teaching, and a diverse campus community.

11. I graduated law school in 1970. According to the 1999-2000 AALS Directory of Law Teachers, over 50% of sitting deans today graduated in the 1970s and another 31% in the 1960s.