

“OUT OF THE BOX” THINKING ABOUT THE TRAINING OF LAWYERS IN THE NEXT MILLENNIUM*

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TWO months ago, the Association of American Law Schools convened 48 legal educators from six continents to discuss legal education. The participants, each an academic leader in his or her country, represented an elite sector of the law school world. Nonetheless, the description of schools and curricula provided by participants displays an astonishing variety of form: the smallest school has 40 students, the largest over 40,000; some accept students after secondary school, others only after a university education; some operate under regulatory schemes that govern the degree-granting process, others in a *laissez-faire* environment; some qualify their graduates *ipso facto* for law practice, others (as in the case in the United States) provide only a predicate for a competency exam, which in turn qualifies successful candidates for law practice, and still others operate without regard for competency exams.

Given the extraordinary collage presented in Florence by elite academics, it is difficult to imagine the picture that would emerge from a conference that brought together representatives of every element of legal education—especially if the words “legal education” were taken to include all who teach about the law (whether in what we would call law schools, or continuing legal education classes, or certificate programs, or paralegal training).

The extraordinary variety found in legal education is reflected in law practice, whether viewed narrowly from an American perspective or more broadly from a global one. There is a rich literature on the stratification of legal work in complex economies like the United States; and, even in these typically highly regulated environments, there is as much separating those who operate under the single generic title “lawyer” as there is separating the street peddler from the CEO of Bloomingdales, though both are “merchants.”

In the face of such variety, it is daunting to take up the task of “thinking outside the box” about the future of legal education. I do so with caution, and with a very important caveat: my comments, though informed by the general context I have described, will focus primarily on the future of legal education as it characteristically is offered today in accredited American law schools. As you will see, even given that limitation, the picture is complicated enough.

As I approach my topic, there is a lesson to be learned from the variety of educational forms and legal practice found at the May AALS conference. In this age, consumers drive product development, and they demand products differentiated by price. These maxims are as true for services as they are for widgets—and legal

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education is a service industry. Ultimately, powerful forces will trump policies and rules designed to preserve and protect old orders—including those that sail under the flag of professionalism—unless those old orders can justify their existence.

Seizing on the fact that American law students complete all—or almost all—of their required courses by the end of their first year of law school and that virtually all second and third year courses are elective, several commentators (perhaps most notably Judge Richard Posner) have argued that our American three year graduate programs should be reduced to two years, at most. The logic of this position is that the burden is on educators to justify the expense imposed by the third year of study (at some schools, as much as \$40,000, not counting lost income).

Whether one accepts or rejects this particular attack, it is difficult to resist the notion that one dominant motif of the coming decades will be diversification—diversification in the delivery of legal services, diversification in the levels of professionalism (and hence the cost) associated with delivery of particular legal services, and (ultimately) diversification in legal education. Therefore, I see as inevitable a move within the narrow world of American legal education in the direction of the variety in legal education one sees today throughout the world.

We will see major changes in both the structure and the content of legal education. In my view, it is likely that before the decade ends, we will not insist upon a three-year graduate legal education as a predicate to taking the bar; fewer students will be pursuing general degrees in law (our JDs) than will be pursuing specialized degrees (featuring the kind of curriculum we associate today with our LLMs); there will be a variety of certification processes (analogous to, but not the same as, our bar exams) leading to practice in specialties at various levels of a much more stratified profession; and, even while the number of law schools offering the three-year graduate version of legal education will shrink, the number of schools offering some form of instruction in law will increase dramatically (with perhaps as many as half of them operating completely online).

As the process unfolds, the central question increasingly will become: Is there something special about what we associate with the three year graduate model of legal education that we should maintain even in the face of this movement to diversification? I believe that there is, but I also believe that reflection and vigilance will be necessary if we are to notice and maintain what we consciously or subconsciously cherish about what we now do. A second question, less important than the first but also significant, will be: How, if at all, will we assure the quality of this much more diversified product? I will return to these questions in some detail later.

Before I do that, let me take a few moments to sketch some of the trends which, in my view, will force the major changes I have described. I will focus initially on those trends that will undermine our commitment to a three year course of study, reserving for the moment my comments on the content of courses offered within the structure that ultimately will emerge. I do this in part because structure affects content; but also because there are ways in which American legal education can be viewed as largely devoid of content. Almost two thirds of the courses taken by most law students in their three years at our schools are untethered by content: after the first year, students are free to study what they please. So liberated are we from the notion that there is a canon of substantive content which law students must absorb

that in many of our schools students are permitted, indeed encouraged, to satisfy a healthy part of their graduation requirements outside the law school. The effect of this liberation from content is that, at least at present, content seems to be following structure. Thus, I begin by highlighting the trends that will undermine the single feature of American legal education on which there is near unanimity, the three-year course of study. Later I will discuss the content of whatever course of study may be appropriate.

The first, and perhaps most important, trend worth noting is globalization. At the broadest level, we can be certain that over the next century the world will become smaller and increasingly interdependent; we can be sure that law will provide the basis of economic interdependence and the foundation of human rights. The rule of law will permeate an emerging global village, touching societies it never has touched. And, importantly, the success of this new community will depend in large part upon the integration and accommodation of disparate traditions through law.

There are many levels at which globalization and legal education intersect. Since our graduates will practice in a globalized world, they will have to know how the reality of globalization affects the way legal rules operate, and they must develop a set of techniques for mediating within a much more complex sovereign system.

Still more to our point, the process of globalization is bound to raise questions about the unusual structure of American legal education. For example, today clients are represented in the same transaction by lawyers from American law firms who are graduates of American law schools and by lawyers from European firms who are products of a much more typical legal education, consisting of five years of education after secondary school. These clients report that the American trained lawyers and those trained elsewhere bring comparable skills to the table. This observation, if true, will become more palpable as the American and European firms begin to hire lawyers from each other's pools—and these lawyers begin to practice side by side as associates and partners. Ultimately, this assimilation will beg the question: Is value added by the extra years of training (and the extra cost) invested by the products of the American system?

Even as globalization transforms the world of law in ways that challenge the structure of American legal education, two developments in the world of practice raise additional questions. The first is the increasing tendency toward specialization in practice. Recent years have witnessed the growth, at a dizzying rate, of specialization. Today, no one lawyer can hope to master the full range of legal problems and challenges confronting lawyers; thus, specialization. The result: more and more lawyers have become technicians, with an intense focus on an area of expertise but little sense of common enterprise with specialists in other areas.

Side by side with this increased tendency toward specialization is the trend toward the consolidation of lawyers and other practitioners into common enterprises offering clients one-stop service. The magnitude of this development is staggering, initially but not exclusively in the sophisticated practice areas, which have attracted the large accounting firms. The total number of lawyers at the Big Five accounting firms now dwarfs the number of attorneys at the five largest law firms in the world. For example, Arthur Andersen has employed more than 3,600 attorneys, 2,800 practicing law outside the United States and another 750 law school graduates in the United States working in tax and corporate finance. Moreover, the legal staffs of the

Big Five are expanding about 30% a year. One accounting firm suggests it will more than triple its legal professional staff in the next five years with a goal of over \$1 billion in business by that year. "The mission is to be a top-five global law firm by reputation as well as size," says the firm's spokeswoman.

The trends toward a more specialized bar and toward the consolidation of multiple professional services in single entities may be attributable, at least in part, to the same underlying cause: the desire of both sophisticated and unsophisticated consumers of legal services (and of other professional services, for that matter) to obtain maximum service and efficiency. Sometimes, a specialist will deliver the economy—and this could be true whether the transaction is complex or routine. Other times, either because the client requires a blend of professional advice, or because a consolidated provider can reduce the costs of identifying and monitoring the appropriate specialist, a provider of multiple professional services will deliver the economy; again, this could be true for both the high-end and the low-end client.

If, in fact, specialization and professional consolidation are driven by client demand, their growth will be accelerated in a globalized economy. The bar outside the United States already is more comfortable with both trends than is the American bar; and, notwithstanding the vote to the contrary by the House of Delegates of the American Bar Association in New York last week, it is hard to imagine the American bar maintaining the *status quo* in the face of significant business migration to other lands.

In our world, these trends portend significant challenges to the present structure of legal education, American style. First, in a world where specialization is prized, a law school experience consisting of a "general" first year followed by two years of unguided electives must be justified as preparing the student for a desired mission. Second, in a world where talented graduates without law degrees can move into high prestige, challenging and financially rewarding careers in consolidated professional entities where they can "counsel" clients, three years of law school training must be justified—both to the prospective student who must pay the tuition and to society, if society is to continue erecting rules that support the existence of such an educational structure. In neither case is it obvious, if it is true at all, that the American model of legal education, at least as presently constituted, will be justified to most inquirers.

The challenges to our world from globalization, specialization, and professional consolidation are magnified by the growing importance of technology. Without doubt, the technological revolution will transform the way we research, the way we teach, and even the way we relate to each other as colleagues. From computers to the Internet, new technologies create the possibility of a world liberated from traditional constraints of time and space—a world in which access to research materials stored around the world will be comprehensive and instantaneous; in which national and international chatrooms can exist among academics, world leaders, and political dissidents; and in which such conversations can continue around the clock.

Technology surely will reshape our concept of the classroom. Students increasingly will be comfortable with computer-based learning and research, and less comfortable with printed material; professors who rely primarily on printed

materials will appear narrow-minded, and ultimately foolish. Now familiar ways of transmitting information in the classroom will become at least partially outmoded.

And, of course, by reshaping our concept of the classroom, technology also will reshape the delivery of education. In a cost-conscious world, and in a world where advocates of technology-based education argue that an education in cyberspace offers pedagogical advantages as well as cost advantages over our traditional "fixed facility" version, it will be impossible to stifle the development of at least some schools in cyberspace that educate some elements of the profession. These developments, like the other trends I have noted, will challenge us to justify the basic structure and form of the education we offer, especially as it differs from legal education elsewhere.

Arthur Levine, the President of Teachers College at Columbia University, recently analogized the moment at which we educators now find ourselves to the moment described by Henry Adams in criticizing his college for providing an eighteenth century education as the world was plunging toward the twentieth century. Adams believed that, in the space of only a few years at the end of his century, education had fallen 200 years behind the times. Levine, for his part, opines that economic and technological pressures are, as he puts it, "likely to force those of us who shape the academy not only to adapt our institutions, but to transform them." In this transformation, he asserts, the emphasis will be on "convenience, service, quality and affordability;" moreover, there will be "little demand for ivy," because students will "gravitate toward online instruction, with education at home or in the workplace."

Levine quotes an entrepreneur as offering him the following account of higher education: "You're in an industry which is worth hundreds of billions of dollars, and you have a reputation for low productivity, high cost, bad management, and no use of technology. You're going to be the next health care: a poorly managed nonprofit industry which is overtaken by the profit-making sector." From this, Levine concludes: "Colleges and universities are not in the campus business, but the education business." He predicts what he calls "a great convergence in knowledge-producing organizations" such as publishers, television networks, libraries, museums and universities. For him, the University of Phoenix is the harbinger of what will become the norm, with firms hiring the finest faculty from the most prestigious campuses to offer premium degree programs over the Internet.

I shudder when I read such views from one of our leading educators. A learning community in cyberspace is different from (and in some ways inferior to) the learning community we have in our schools today. The depersonalization of the educational process inherent in Levine's view of education—and the concomitant devaluation of inspiration and serendipity—is striking. Still more, the reduction of researchers and thinkers to what Levine calls "content people" is downright chilling. I have no doubt that transformations of the sort described by Levine will be necessary—and even desirable—in the more diversified educational world which is our future. The question is whether they will occupy the entire educational landscape, and the answer we provide will shape the structure of legal education in the future.

There is one other general trend of note. I refer here to American society's (and possibly contemporary humankind's) deep need for immediate gratification,

manifested particularly in a devaluation of long-term advantages in favor of short-term rewards. This general social trend will affect legal education more subtly than the other trends I have noted, but it will affect it profoundly. For the moment, the best external example of the deleterious impact of this phenomenon is medicine. As the economics of medical care develop, basic medical research and research hospitals are being compromised in the rush to lower short-term costs. This is dangerous and shortsighted. I see an analogy in law.

Legal research—by which I mean serious thinking about what the law should be, not the parody of serious research evoked by the phrase “yet another law review article”—legal research has no tangible payoff obvious to the public whose lives are most affected by the laws discussed. Consequently, it has no broad-based powerful constituency defending its necessity. Yet, at a time when law is spreading as it is, and when the fundamental premises of our laws are being challenged, serious thinking about the law is vital. The place where such thinking occurs best is the academy. As we react to the various trends I have described, we must beware of the tendency to sacrifice the long-term gain of research for the short-term gratification of cost reduction.

Let me now change direction. Having forecast a challenge to the teaching and research functions of the American law school at the most fundamental level, I return now to the question I raised at the outset: Is there something special about the three year graduate model of legal education, which we should strive to maintain even in the face of the inevitable movement to diversification in educational product offered by legal education? As I said, I believe that there is, but reflection and vigilance will be necessary if we are to notice and maintain what we consciously or subconsciously cherish about what we do.

The reflection to which I refer will entail an examination of what it is we seek to do with our schools, and an articulation of the ways in which the structure and content of our educational programs fit our goals. The goal, structure and content produced will not be the same for every law school offering a three-year graduate legal education; but, in the world of diversification that I have described, schools that choose to offer such a program will succeed only if it has a rationale for it.

Happily, in conferences like this, the conversation on how we should adapt to the changes around us has already begun. This is not surprising. What is surprising is that, in the face of seismic change in the world of practice, it has taken so long for the conversation to begin—and that our pedagogy has remained unchanged for over 100 years. True, the last three decades have seen the development of clinical legal education and interdisciplinary work; but these pedagogies have matured within the traditional framework, with the actual change being at the margins.

This remarkable conservatism ought to betoken the existence of a well entrenched and well articulated educational goal, which in turn would explain the enduring shape of the structure and content. What, then, is this well entrenched goal?

In America, a society without a state religion, law and lawyers always have played a special role. America is a society based on law and forged by lawyers. The law is our great arbiter, the principal means by which we have been able to knit one nation out of a people whose chief characteristic always has been diversity. Just as the law has been a principal means for founding, defining, preserving, reforming, and democratizing a united America, America's lawyers have been charged with

setting the nation's values. In our society, the role of the lawyer is that of a fiduciary for and conscience of the civil realm—for if lawyers do not play that role, nobody will.

The role of the lawyer in American society and the shape of American legal education always have been closely linked; and our vision of each has evolved not merely on parallel lines, but as intertwined strands. George Wythe of Virginia, the mentor of Thomas Jefferson and John Marshall, was widely hailed as embodying the standard to which lawyers of the time aspired. At Jefferson's suggestion, Wythe, a scholar steeped in both the humanities and all of the areas of practice, was named the first professor of law at an American school.

From that start, American law schools have sought to produce graduates capable and worthy of serving the ideal Jefferson and Wythe personified. This, in my view, continues to this day to be the usually unarticulated entrenched goal of law schools in the United States. In service of this goal, our schools have sought to instill a respect for the rule of law and a sense that law is a product of reason, not power. To that end, our curricula have moved well beyond teaching lawyering skills and legal reasoning, ultimately marrying elements of student training and the work of research faculty in law development and reform.

No matter how diversified the world of legal education becomes, it will be important to maintain and nurture law schools and degree programs designed to inculcate these values and to produce graduates who will serve society in the role I have described. However, it would be wrong to assume that programs designed in service of that end will be identical to what our American law schools are offering today.

Now is the time to sketch the content of the emerging curriculum. As I do so, let me emphasize that I am *not* attempting to freeze specific courses in place. In fact, it is my assumption that the subject matter of law, especially in an age of globalization, is so expansive and ever changing that we must abandon the "coverage" paradigm—that is, we must abandon the notion that there is a certain, fixed body of doctrine that *must* be covered. The rules of today are likely to be radically different from the rules five years from now, and even today the rules of one jurisdiction (let alone one country) frequently are radically different from the rules of another. In the days of Charles Elliot and Langdell, learned men could produce the next generation's learned men by assigning them a five-foot shelf of books to read; that is not a possibility today.

To say that we must abandon the "coverage" paradigm is not to say that it does not make any difference which courses are taken by a student; this is the mistaken premise of the elective system as it now operates in our schools. My view, by contrast, is that there are skills and styles of thinking and acting that must be learned; and, if the student is to be the type of lawyer conjured by the American notion of the lawyer, he or she must become versed in the application of those skills in various contexts. The content of the curriculum is produced, then, by mapping the skills and styles of thinking and acting across the contexts in which they are to be applied, with ascending levels of complexity. To use jargon, what I propose looks like a "distribution requirement." Let me offer, in headline fashion, what I believe will be the essential clusters of content.

First, the students must learn legal reasoning and the close analysis of text, skills taught well in the traditional method. Thus, the traditional method should continue to occupy a major part of the first year curriculum and part (though a much smaller part than at present) of the second and third year curricula. It is clear that our students today are able to master the basics of legal reasoning and the close analysis of cases and statutes in two (or at most three) semesters of study; therefore, devoting more than this time to inculcating these skills is wasteful.

Second, the doctrinal subjects treated in any given student's curriculum should expose the student to a spectrum of major manifestations of law—common law, statutory law, constitutional law, and procedure. This likely will mean a dramatic reallocation of the time spent on courses in the first year, with the common law courses attracting less attention (perhaps being merged in some way) and statutory and regulatory courses getting more attention. After the first year, the student should be required to take an advanced course that builds on the basic course in each of these four modalities. The identity of the substantive topic chosen for advanced study—that is, whether the analyzed statute, for example, is a tax statute, an environmental statute or a labor law—should be irrelevant. The object is to teach the student the skills of legal reasoning and textual analysis as applied across modalities of law.

The exposure to various modalities of law built into this system is not meant to create, and will not create, a specialized expertise in an area, though the student may choose to move in a particular direction by selecting particular substantive courses in satisfaction of the requirement. If, as a separate matter, a law school generates "tracks" in which students can choose to specialize (perhaps with a certificate awarded to mark the effort), it will have created a different, albeit useful, educational product from the one I am describing.

Thus far, what I have described employs at the core the elements of the traditional model of American legal education. But a weakness in that model must be noted. Insofar as the goal is to produce the kind of lawyers I have described, the focus (as in the traditional method) on the study of law through cases (read that, the study of law as a reified and abstract discipline) encourages detachment from the concrete situations confronting the real people whose lives create the cases—a tendency of increasing concern to those who view law as a special calling.

Two helpful antidotes to this tendency in the traditional method have emerged over the last three decades. The first is what I will call the "situation method" of instruction; the second is interdisciplinary instruction. Let me talk a bit about each.

The best-known form of the "situation method" of instruction is clinical instruction. Traditional clinics are only part of the picture, however. Across the curriculum a pedagogy is developing that places students in concrete situations—whether through role playing or some other device. Real people don't find themselves in cases; they find themselves in situations. Lawyers don't encounter their clients in written opinions; they encounter them in situations. Reading a case does not reveal the special problems involved in conferring with clients, investigating factual allegations, planning a litigation strategy, drafting pleadings, conducting discovery, drafting motions, negotiating a settlement, or conducting a trial. Understanding doctrine is one thing; understanding these facets of the lawyer's work is another.

Or, at another level, even the close reading of an appellate opinion misses the human element of the lawyer's job. In appellate decisions, the parties are faceless actors seen through a cold, settled factual record. The student gets no sense of the human drama of the situation. How, for example, does a lawyer interact with a client? How does a lawyer provide guidance, both legal and moral? When and how should a lawyer say "no" to a client? How does a lawyer confront the possibility of taking action that does not violate any law, but that does offend the underlying spirit of the law—for example, using discovery to exhaust an adversary?

The "situation method" forces the student to grapple with the problem on the ground. But we have not come close to exhausting the potential of this instruction form. For example, today clinics or internships too often focus on skills training. This revival of the old apprentice method of legal education can be useful, but it does not serve the larger interests I have in mind. The "situation method" should *not* be used simply for skills training. It should be used to teach that a lawyer is counselor, investigator, negotiator, advocate, and even moral authority; that the way she uses the law should take cognizance of the person's identity with whom she is dealing and the context in which she finds herself; and, most of all, that in real life a lawyer constantly finds herself in circumstances where she must serve society, even while serving her client.

This "situation method" should be used throughout law school. A pyramid of "situation method" courses should begin in the first year by placing students in simulations demanding that they perform various lawyering roles; the second year should continue this process; and the third year should present an array of courses (in diverse subject matter areas) in which students (under faculty supervision) would represent clients in actual cases. The hallmark of each stage should be an emphasis on broad issues of planning and attention to the lawyer's role. In a perfect world, to ensure that these remain the dominant themes of the courses, these courses would be taught by full-time faculty members (who also supervise the cases), and each faculty member involved would be assigned only eight or ten students for the year. Such restrictions, though expensive, are necessary if instruction in the "situation method" is to contribute all that it can to legal education.

The second style of legal instruction that has emerged as an important supplement to the traditional method is interdisciplinary instruction. Since law is a derivative discipline, courses must draw on other disciplines to explain how rules have developed and should develop. Law is not received dogma, and we should not teach it as such. Many law professors already teach their courses in this broader context; but it is imperative that this approach become the standard.

Interdisciplinary work not only clarifies for law students how we derive our legal rules, it also potentially provides a useful antidote to legal specialization in law by pressing law students into new areas of inquiry. It may be that we never again will see the ideal captured in the classic Jeffersonian and Tocquevillian notion of a lawyer. Nonetheless, if we view lawyers as occupying a special place in civil society, we should expect our lawyers to discern and study the connections between law and other great disciplines.

I trust that each of the curricular elements I have traced thus far, including both the situation method and interdisciplinary studies, is familiar. Perhaps the structure

I propose is novel, but it should not be surprising. There are other elements of what I see that may not spring to mind as easily.

We should look first at the phenomenon of globalization. Clearly, as I said earlier, our graduates must master the techniques of dealing with law in the context of globalization; so, this adds an element to the curriculum spectrum I am outlining. I mean here to go farther, however—to highlight the opportunity globalization presents us to think about law and the role of lawyers in a way that expands the skill set of our students and connects to the special role for lawyers that animates an American legal education.

American law and its lawyers already are playing a pivotal role in the unfolding process of globalization. The United States has developed the world's most elaborate legal system; our Constitution is an important model for compacts governing the relationship of governments to their citizens; and American commercial law is providing a reference point as others develop their own legal regimes.

The fact that capital markets are becoming standardized and homogenized is only one part of the landscape. We should not expect that the globalization of law will lead to its widespread standardization. Even under the regime of Justice Joseph Story's decision in *Swift v Tyson*,¹ a regime that sought to foster the standardization of law in the American federal system, there was no grand homogenization of law—and that attempt faced only the relatively narrow pluralism represented in nineteenth century America. The chances of uniformity coming to dominate the legal landscape of the globe are not very high; the nation state interests involved in globalization implicate profound notions of sovereignty. They do not operate simply at the level of the commerce clause.

Moreover, it would be wrong for Americans to assume (as they are wont to do) that the development of the rule of law worldwide will consist simply of replicating American law. Even the casual observer of America's domestic debates about reforming its legal system, whether at political gatherings or at bar meetings, will find the world's interest in our system a bit ironic—for, just as the world's interest in us is peaking, Americans have come to see flaws in our system.

In this context, the fact that American law is being used as a model by others at the very time that we are reexamining its premises is more fortuitous than ironic. As we are called upon to consider the serviceability of American legal ideas and institutions in a range of settings, and for peoples of diverse cultures and values, we will be forced to question premises of our system that have escaped scrutiny until today—and to do so with a cultural humility uncharacteristic of Americans. With the collaboration of colleagues from around the world, we can probe more fundamentally not only whether our legal rules may be acceptable for others, but also how acceptable they have proved for us—how well we are doing when we are tested by much broader standards of effectiveness and durability, and by more encompassing concerns and aspirations.

In this regard, perhaps the most profound impact of globalization on the enterprise of legal education can be captured in the word "humility." Discovering a premise that unconsciously shaped one's thinking is a dramatic moment intellectually, and

1. 41 U.S. 1 (1842).

the repetition of such discoveries should instill intellectual humility and a reluctance to assume that there is a single right answer.

This is connected deeply, by the way, to what sometimes is called domestically the diversity agenda. The educational justification for diversity is that a diverse learning community generates additional content in the learning conversation—that new and different voices, if heard, bring different and valuable viewpoints into the conversation. To the extent that we embrace, at the core of legal education, a more global view of what we study, it will have the important effect of deepening the conversation.

Thus, at NYU, in the traditional canon of common law courses in the first year, at least two courses in each of the student sections now are taught from materials reworked to take account of globalization. Now, this initiative is *not* about introducing comparative law into the first year program; rather, it is about introducing a perspective into the study of law, a perspective that embraces the kaleidoscopic nature of law formation, operation, and practice.

Ultimately, variations of a truly global curriculum will illustrate this point more overtly. Even now, for example, my colleague Frank Upham, who is an expert on Japan, teaches a course that requires the students to be bilingual in Japanese and English. The course is not a language course, but a course in Property. Limiting the enrollment to twenty students, he divides them into five groups, with four students in each group. The groups are given a complex document dealing with some notion in property—the same document for all five groups. The students' task, consulting within the group as a team, but not discussing the assignment across groups, is to translate the document from Japanese to English, or vice versa. When the five groups present their consensus translations in class, the students discover wild variations among the groups. Thus begins a conversation about the assumptions of the legal systems, and the absence of words and concepts (even within the narrow discipline of law) in one culture that are fundamental in another. This powerful new pedagogy displays as never before the unstated premises of each legal system.

A similar shift in perspective—and, I believe, ultimately in pedagogy—follows the simple move of integrating representatives of different countries into our student bodies and, most importantly, into our traditional courses. For example, two years ago, as I taught Constitutional Law to a group of about fifty students from thirty different countries, I was startled when, as we discussed the first assignment (a quick read of the Constitution), the first question asked in class, as it happens, by a South American student, was: Where in the Constitution is the provision for suspending the Constitution? Now, that thought does not come unbidden to an American student; but, once articulated, the question leads directly to a beautifully different conversation about what constitutional governance means.

A quite separate but important pedagogical opportunity flows from studying law in a situation where it is being developed *tabula rasa*. A fact of our historical moment is that some societies literally are inventing legal concepts anew. Thus, nations that never have known the legal concept of private property are in the process of developing such a concept. By studying law development in such living laboratories, we can ask: What *ought* Property Law be? Such a question probes concretely deep notions that previous generations studied only in the abstract, if at all.

Let me add one final point about what I see emerging in the curriculum of law schools that seek to produce the classic ideal of the American lawyer. It is a point related to, but independent of, what I have said about globalization.

If there is one word that describes a lawyer, functionally, it is “communicator.” It is the lawyer’s task to communicate, whether by writing a contract, or making an oral argument. Lawyering—regulatory interpretation, statutory analysis, counseling clients and negotiating with their partners and adversaries—is about words, and meaning, and communication, and understanding.

As lawyers begin to deal not in a relatively narrow cultural band, which (for all its pluralism) the United States continues to be, but in a globalized environment with vast cultural differences, lawyers must be even more aware of the malleability of language and ideas. No matter how the French try to resist it, “Coca-Cola,” “McDonald’s” and the like will provide an overlay or veneer of familiarity and understanding; but, there will be a profound underlay, where communication can be turned on its head by misunderstanding.

Lawyers always have been trained in careful reading and precise writing. However, they have not been trained in careful listening; indeed, in some ways traditional legal education discouraged listening—especially to voices that did not speak in the language of law or, to be more exact, in the language of familiar law.

I see us developing a curriculum geared to helping our Tocquevillian lawyers listen, because the listening skill connects not only to the altruism and humility, which we hope will characterize society’s fiduciary, but also to fundamental notions of democratic governance. The beginnings of a course on listening can be found in a course developed by two of my colleagues, cognitive psychologist Jerome Bruner and Peggy Davis. The course is organized around the question: How do lawyers come to think, speak and hear the way they do? Carol Gilligan and Anna Deavere Smith have just joined the team for the course. Carol brings her interest in the ways in which the voices of women are heard; Anna brings her remarkable capacity to cause us, through her theater, to hear voices we are unaccustomed to hearing. Add to the mix the work of someone like Derrick Bell on hearing across racial divides and the work of those in the Global Law School initiative, and the possibilities emerge for a serious curriculum designed to teach “listening skills” and the importance of listening.

Technology will play a role in all of this. Given what I said earlier, it will not surprise you that I believe the essence of the value-laden education we seek for our lawyers must derive from the inspiration that comes only in human contact between mentor and student. This contact begins in the classroom and continues, at its best, in conversations and projects outside of class. Still, technology can supplement this process in valuable ways—by augmenting classroom presentations, by adding otherwise unavailable resource materials, by introducing into the conversation professors and students at distant locations, and by obliterating the limitations imposed upon the conversation by time and space. Technology therefore will be a powerful weapon in the hands of gifted teachers; and, if used properly, it will enhance the educational experience.

Let me summarize what I have sketched as the curriculum of three-year graduate law programs designed to produce the lawyer/leader who is the object of American legal education as I understand it.

- (1) The traditional method, albeit dispensed in smaller classes, will continue to be used to teach rigorously the skills of legal reasoning and close analysis of text.
- (2) The doctrinal subjects in any given student's program will expose the student, both at the introductory and advanced levels, to at least four modalities of law: common law, statutory law, constitutional law, and procedure. The first year courses may come to have labels that reflect this distribution rather than historical categories, and there will be a shift in emphasis in the first year from common law courses to courses on statutes and the regulatory state.
- (3) The "situation method" of instruction will permeate all the years of law school, as will the emphasis on integrating other disciplines into the study of law.
- (4) The phenomenon of globalization and the importance of integrating global perspectives into our thinking about law also will permeate the course of study.
- (5) A new element of the curriculum will emerge, one designed to develop in students an ability to listen, and especially to hear voices and perspectives they are unaccustomed to hearing.
- (6) Technology will supplement this educational process in significant ways.

Reasonable persons can differ over whether this curriculum commands three years, or two, or four. My own view is that three years is about right for adequate coverage and gestation; if anything, three years may not be enough.

With these thoughts in mind, let me turn briefly to a closing point about the role of regulation in this process. In this essay I have attempted to sketch the trends that will press legal education to a much more diversified model—one that will reflect, even in the United States, the kind of diversification we saw at the Association of American Law Schools conference in Florence. I also have attempted to sketch a view of a three-year graduate model of legal education, which might be useful in this new context.

Changes in legal education will happen—there will be a multiplication of forms, and there will be an increased variety in the delivery of legal services. This diversity of forms will provide greater access to legal services, spread across a broader spectrum of the population. The question then will be: How much of this training will the legal education establishment appropriate as its own? In a way, all training in law is legal education in some form or another. What model of regulation will the establishment pursue? One model would use the approach that the American Securities and Exchange Commission uses with securities. Another would employ the approach taken by many societies in regulating restaurants—minimum standards, but nothing more. Still another model would take a "best practices" or "seal of approval" approach; this presumably would entail new sets of standards, each appropriate for a particular niche in a more diverse educational and practice world.

I am, as I said, agnostic on these issues. I leave final resolution for others and another day. I do believe that each of us is a fiduciary in the common enterprise of education, and that as such we must insist constantly—at least at the institutional

level—that there be an articulation of the basis of what each school offers to its students and the profession. The goal of each school might be different from that of others, but each school must be asked to articulate a considered purpose, which purpose would explain in general each course, each requirement, and the activities of each professor against that purpose (with room for occasional experimentation on an untested idea).

What I have tried to do is describe one important element of the diversified world of legal education that is emerging, a version of the three-year graduate model of legal education that I believe will be useful and important even in tomorrow's world.