

Educating Our Students for What? The Goals and Objectives of Law Schools in Their Primary Role of Educating Students—How Do We Actually Achieve Our Goals and Objectives?

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INTRODUCTION

Should law schools go beyond producing competent and ethical lawyers? Should they train lawyers to stand up for the rule of law, to work for law reform, to be community leaders? What is the impact of globalization? Are we training lawyers for local, national, transnational, or international practice? How do we actually achieve our goals and objectives? In the post World War II era, new technologies and globalization have simultaneously on the one hand generated opportunities for expanded world commerce, communication, and cultural interchange. On the other hand, they have also generated worldwide concern over environmental, financial, commercial, and human-rights issues accompanied by creation of regional and global

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political and economic organizations, and a plethora of public and private transnational legal issues, treaties, legal guidelines, standard form contracts, alternative dispute mechanisms and domestic legislation attempting to respond to new problems and new opportunities for their creative resolution. How should our legal-education systems respond to these changes?

At a symposium on *Emerging Worldwide Strategies in Internationalizing Legal Education*,¹ John Sexton, then Dean of the New York University Law School, perceptively commented on this phenomenon. He noted the analogy between the impact of the nineteenth century industrial revolution and its technology, and the current impact of technology and globalization on law, legal institutions, and legal education. Commenting on the introduction in 1870 by Christopher Columbus Langdell of the case-law method for training students to enter the legal profession, Dean Sexton stated:

The more and more I look at the work of Christopher Columbus Langdell, the more and more I understand that the paradigm shift we see now in sovereignty, technology and information distribution was occurring then. For them, it was not a paradigm shift involving nation states but a paradigm shift involving [individual] states [of the Union] after the Civil War. It was not technology involving computers, but it was technology involving increased literacy and newspapers, the dissemination of information. For them, it was not the internationalization of markets, but the nationalization of markets. I am now beginning to re-understand what Langdell did in those terms. I guarantee you that, when he developed his method, he did not only teach Massachusetts cases.²

In today's world of many legal cultures and traditions, development of an optimal curriculum and optimal legal methodology for individual law schools amongst a range of law schools with varying asset basis is a challenge not likely to generate a single universally useful, acceptable or desirable solution. Nevertheless, one can attempt to identify the framework within which the search for such an optimal curriculum and legal methodology can best be conducted. In this context, within the spirit and findings of the International Association of Law Schools (IALS) 2007 program on *Enriching The Law School Curriculum In An Increasingly Interrelated World—Learning From Each Other* held at its

1. John Sexton, *Structuring Global Law Schools*, 18 DICK. J. INT'L L. 451 (2000). The symposium, *Emerging Worldwide Strategies in Internationalizing Legal Education*, was presented at the 2000 Annual Meeting of the Association of American Law Schools at the Marriott Wardman Hotel in Washington, D.C.

2. John Sexton, *Structuring Global Law Schools*, 18 DICK. J. INT'L L. 451, 453-54 (2000).

Suzhou, China, meeting³ and the follow-up symposium⁴ on the same subject at the 2008 Annual Meeting of the Association of American Law Schools (AALS), the following observations may be helpful.

IMPACT OF THE NEW INFORMATION TECHNOLOGY AND
GLOBALIZATION—ADJUSTING CURRICULUM AND BALANCING USE
OF METHODOLOGIES

The impact of the new information technology and globalization in the post World War II era and into the 20th and 21st centuries far exceeds the impact on law and legal institutions generated by the 19th century industrial revolution and technology. Currently, issues in which legal norms are domestically and transnationally intertwined proliferate regarding existing and yet to be created national, regional, and global political and economic structures. In addition, environmental, health law, division of power between central governments and component governmental units in individual countries and in regional organizations like the European Union, voting systems in global organizations like the United Nations, criminal and civil transnational procedural rules, international human rights conventions, and many other topics compete for attention. The need for change in public and private law generated by new 20th and 21st century technology and globalization continues unabated and expands.

The work of regional organizations such as the European Community; international conventions such as the United Nations Convention on Contracts for the International Sale of Goods⁵ and the Cape Town Convention on International Interests in Mobile Equipment,⁶ the convergence of rules taken partially from adversary and partially from non-adversary systems to establish rules of criminal procedure utilized by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Court (ICC); and the phenomena of common law- and civil law-trained lawyers both

3. International Association of Law Schools, Learning From Each Other: Enriching the Law School Curriculum in an Interrelated World, <http://www.ialsnet.org/meetings/enriching/index.html> (last visited July 12, 2010).

4. See Symposium, *Achieving Optimal Use of Diverse Legal Education Methodologies*, 26 PENN ST. INT'L L. REV. 834 (2008).

5. United Nations Convention on Contracts for the International Sale of Goods, adopted Apr. 11, 1980, S. Treaty Doc. No. 98-9, 1489 U.N.T.S. 3, 19 I.L.M. 668, available at <http://www.uncitral.org/en-index.htm> [hereinafter CISG].

6. For a helpful discussion of the Roy Goode, *The Cape Town Convention on International Interests in Mobile Equipment: A Driving Force for International Asset-Based Financing*, 36 UCC L.J. 1 (2003); John Atwood, *The Status of the Mobile Equipment (Cape Town) Convention—Arrival of an International Registration System*, 39 UCC L.J. 75 (2006).

comfortably citing cases, statutes, codes, and regulations as authority in proceedings before the European Court of Justice (ECJ) all involve utilization of concepts and procedures borrowed selectively from civil- and common-law traditions. These are just a few examples of many areas of law in which convergence, harmonization, and in some instances unification⁷ is occurring from which teaching materials can be obtained to develop the students' professional skills and sensitivity to current policy issues. Legal educators worldwide encounter challenges in striving to develop teaching materials and methodologies for training students who will be the future practitioners and molders of public policy to identify and respond to such important substantive, procedural, and public and private law issues. How do we identify an optimal curriculum, and how do we choose an optimal legal methodology for achieving our goals?

The conference on *Enriching The Law School Curriculum In An Increasingly Interrelated World—Learning From Each Other*⁸ and the transcript of the follow up symposium on *Achieving Optimal Use of Diverse Legal Education Methodologies*⁹ at the 2008 Annual Meeting of the AALS provides information on possible answers to these queries. The task of balancing advantages and disadvantages in arriving at an optimal use of diverse legal-education methodologies was addressed at these conferences. A balanced use of case law, case problem, lecture, simulation, clinical and other methodologies was discussed. Such discussions in the context of the history and legal cultures of individual law schools can facilitate optimal use of available assets and existing social and cultural patterns. The “integrated” model for development of a “transnational” curriculum involves inclusion in the curriculum of a basic “transnational law” course. The “pervasive” method of introducing international- and comparative-law perspectives into legal education involves the introduction of international- and comparative-law components into each of the traditional courses already in the curriculum. A combination of these two approaches is a possibility. In addition, international competence can be enhanced by facilitating interaction amongst students from varying legal cultures in planning summer, exchange, and LL.M. programs.

7. Louis Del Duca, *Developing Global Transnational Harmonization Procedures for the Twenty-First Century—The Accelerating Pace of Common and Civil Law Convergence*, 42 TEX. INT'L L.J. 625 (2007).

8. See International Association of Law Schools, *Learning From Each Other: Enriching the Law School Curriculum in an Interrelated World*, <http://www.ialsnet.org/meetings/enriching/index.html> (last visited July 12, 2010).

9. See Symposium, *Achieving Optimal Use of Diverse Legal Education Methodologies*, 26 PENN ST. INT'L L. REV. 834 (2008).

CURRENT PROGRAMS IN THE UNITED STATES TO DEVELOP OPTIMAL CURRICULUM AND BALANCED LEGAL METHODOLOGIES—MOVING BEYOND CHRISTOPHER COLUMBUS LANGDELL'S CASE LAW METHODOLOGY

Introduction in 1870 of the case method by Christopher Columbus Langdell at the Harvard Law School served for over 100 years as a basic pattern for law-school curricula throughout the United States. Although it is still used as the primary teaching methodology in the first year of law school in the United States, the call for change has been strongly articulated¹⁰ and the implementation of change is underway.

Harvard Law School recently announced changes in its first year curriculum which are the most significant since the introduction of the case method by Langdell. Courses have been added in “international and comparative law, legislation and regulation, and complex problem solving—areas of great and ever-growing importance in today’s world.”¹¹ These courses

will better prepare our students to think about and practice in a legal world in which regulations and statutes play an equal or more important role in the creation and elaboration of law as do court decisions; in which transactions and interactions among parties are increasingly global in nature; and in which economic, cultural and

10. See Dean Claudio Grossman, *Building the World Community: Challenges for Legal Education*, 18 DICK. J. INT’L L. 441 (2000). In an article entitled *A Case for Another Case Method*, 60 VAND. L. REV. 597 (2007), Harvard Professors Todd Rakoff and Martha Minow strongly recommend utilization of a problem methodology using complex problem cases to supplement the traditional case-law methodology for developing skills needed for successful lawyering in an increasingly interrelated twenty-first century world. At the outset they lament excessive reliance on the traditional case law methodology as follows:

The plain fact is that American legal education, and especially its formative first year, remains remarkably similar to the curriculum invented at the Harvard Law School by Christopher Columbus Langdell over a century and a quarter ago. Invented, that is, not just before the Internet, but before the telephone; not just before man reached the moon, but before he reached the North Pole; not just before Foucault, but before Freud; not just before *Brown v. Board of Education*, but before *Plessy v. Ferguson*. There have been modifications, of course; but American legal education has been an astonishingly stable cultural practice.

Todd D. Rakoff and Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 597 (2007).

11. Then Dean Elena Kagan, HLS Faculty (now Associate Justice of the United States Supreme Court) Unanimously Approves First-year Curricular Reform, Oct. 6, 2006, http://www.law.harvard.edu/news/2006/10/06_curriculum.php. See also Todd D. Rakoff and Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 597 (2007).

technological changes call upon the best lawyers to become skilled in system design, problem solving and creative approaches to issues.¹²

As these curricula and legal methodologies evolve in response to changing societal needs, it is important to note the distinction between the Socratic Method and Langdell's "case method." The two are not synonymous. The Socratic Method was the "engine" Langdell chose to power his case method.¹³ The Socratic Method can also be successfully utilized not only in working with cases, but also in working with statutes, codes, administrative regulations and problems.

Lawyers from the civil-law world tend to "assess the Socratic method—at least when it extends beyond first year of law school—as a kind of massive overkill and a waste of precious classroom time that could be put to better use."¹⁴

Quite to the contrary, the Socratic Method properly used provides three very important benefits:¹⁵

- A) it gives professors the ability to teach large bodies of students in an active manner;
- b) it is instrumental in teaching cognitive skill development—to teach students to "think like a lawyer"; and
- c) it helps students to hone their verbal skills.

Balanced use of the Socratic Method in conjunction with lectures and other methodologies in working with statutes, codes, administrative regulations and problems as well as cases generates interaction between teachers and students. It also requires close attention and vicarious participation on the part of all students in the classroom discussion since any one of them might be called upon at any time to participate in the teacher-student exchange. The Socratic Method facilitates teacher-student dialogue and communication. It produces an active, as distinguished from a passive, learning process.

12. Then Dean Elena Kagan (now Associate Justice of the United States Supreme Court), HLS Faculty Unanimously Approves First-year Curricular Reform, Oct. 6, 2006, http://www.law.harvard.edu/news/2006/10/06_curriculum.php (quoting Professor Martha Minow).

13. Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?* 43 CAL. W. L. REV. 267, 271 (2007).

14. HERBERT HAUSMANINGER, *THE AUSTRIAN LEGAL SYSTEM* 93 (1997).

15. Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?* 43 CAL. W. L. REV. 267, 271 (2007).

The depth and scope of the interest of United States legal educators in developing adjustments in both curricula and methodology in their legal-education procedures to meet the needs of an increasingly interrelated world is illustrated by the Symposium on *Emerging Worldwide Strategies in Internationalizing Legal Education*¹⁶ held at the Association of American Law Schools Annual Meeting in January 2000. Addressing the subject of internationalizing legal education in the United States, Dean Robert Clark (Harvard) proposed¹⁷ *inter alia* inclusion of international, comparative, and transnational law components in traditional law courses such as contracts, torts, property, etc., to enrich the curriculum by supplementing international, comparative, and transnational courses. Dean Claudio Grossman (American University) *inter alia* vigorously challenged the almost exclusive use of the case law methodology and called for a more balanced methodology in preparing lawyers to meet challenges in an increasingly globalized world.¹⁸ Dean John Sexton (New York University) *inter alia* discussed his “global law school” concept and the manner in which different types of law schools might respond to the challenge and opportunities of globalization.¹⁹ Dean Frans Vanistendael (Leuven—and a founder and then immediate past president of the European Law Faculty Association) addressed *European Community Erasmus and Socrates Programs, Creation of the European Law School Association, and The Bologna-Sorbonne Declaration of 1999 re Structure of Legal Education in Europe and 5 Year Program Possibility*.²⁰ Professor Sang-Hyun Song (Seoul National University) addressed²¹ *Korean Students in U.S. Law Schools and Foreign Students at Seoul National University Law School*; Csilla Kollonay Lehoczky (Head of Department of Legal Studies at Central European University in Budapest) addressed²² *Cumulative Effects of International Legal Education in the Shaping of Legal Systems of Central and Eastern Europe*; Dean John Attanasio (Southern Methodist

16. See Symposium, *Emerging Worldwide Strategies in Internationalizing Legal Education*, 18 DICK. J. INT'L L. 411 (2000).

17. See Robert C. Clark, *Bases and Prospects for Internationalization of Legal Education in the United States*, 18 DICK. J. INT'L L. 429 (2000).

18. See Dean Claudio Grossman, *Building the World Community: Challenges for Legal Education*, 18 DICK. J. INT'L L. 441 (2000).

19. See John Sexton, *Structuring Global Law Schools*, 18 DICK. J. INT'L L. 451 (2000).

20. See Frans J. Vanistendael, *Blitz Survey of the Challenges for Legal Education in Europe*, 18 DICK. J. INT'L L. 457 (2000).

21. See Sang-Hyun Song, *Korean Students in U.S. Law Schools and Foreign Students at Seoul National University Law School*, 18 DICK. J. INT'L L. 467 (2000).

22. See Csilla Kollonay Lehoczky, *Preparing Students for International Legal Practice and Improvement of Their Legal Systems*, 18 DICK. J. INT'L L. 473 (2000).

University School of Law) addressed²³ *Partnerships, Joint Ventures and Other Forms for Building Global Law Schools*; Assistant Dean Charles Cramton (Cornell Law School) addressed²⁴ *Joint Degree Programs*; and Charlotte Ku (Executive Vice President and Executive Director at the American Society of International Law) addressed *American Lawyers and International Competence*.²⁵

Representatives from the Universities of Michigan, Pacific McGeorge, Columbia, Villanova, Georgetown, and American addressed the topic of *Techniques To Internationalize The First Year Curriculum*²⁶ in a Symposium held at the January 2006 Association of American Law Schools Annual Meeting. Included among their suggestions are the following:

- Use of a mandatory transnational-law course to develop specialized skills needed for twenty-first century law practice as a building block for further advanced courses or as minimal exposure for students who will not be enrolled in such courses. Professor Mathias Reimann refers to this as the “separation model.”²⁷ It puts together “in an overarching theme the emergence of a more complex world which is not the traditional law of nations anymore.” Professor Reimann and his colleagues have offered this type of course for the past six years at the University of Michigan Law School.
- Incorporation of transnational materials into traditional first-year courses (e.g. contracts, torts, property). Professor Reimann refers to this as “the integration model.”²⁸ In his presentation, Professor Frank Gevurtz describes the preparation of supplements to existing first-year books which will enable law professors to implement internationalization without unduly extending the volume of material already covered.²⁹ He also comments on use of the “integration” approach at the University of the Pacific

23. See John B. Attanasio, *Partnerships, Joint Ventures and Other Forms for Building Global Law Schools*, 18 DICK. J. INT'L L. 483 (2000).

24. See Charles Cramton, *Joint Degree Programs*, 18 DICK. J. INT'L L. 489 (2000).

25. See Charlotte Ku and Christopher J. Borgen, *American Lawyers and International Competence*, 18 DICK. J. INT'L L. 493 (2000).

26. See generally Symposium, *Techniques To Internationalize The First Year Curriculum*, 24 PENN ST. INT'L L. REV. 801 (2006).

27. See Mathias W. Reimann, *Two Approaches to Internationalizing the Curriculum: Some Comments*, 24 PENN ST. INT'L L. REV. 805 (2006), 805 ff.

28. *Id.*

29. See Frank Gevurtz, *Incorporating Transnational Materials into Traditional Courses*, 24 PENN ST. INT'L L. REV. 805 (2006), 818 ff.

McGeorge School of Law.³⁰ A detailed description of this very useful series is found at <http://www.westglobalissues.com>.³¹

- Introduction of a new course called *Lawyering in Multiple Legal Orders*. Professor Katerina Pistor stated that “this title reflects the basic ‘philosophy’ of the course, mainly that legal practitioners will invariably work in more than one legal order, a concept that is not unfamiliar to lawyers practicing in federal systems, such as the United States.”³² She further stated that the course enables students “to navigate an even more complex world, where different foreign legal jurisdictions may be relevant for resolving a particular case, or where international treaties or conventions need to be consulted.”³³ The course also sensitizes students to the fact that “lines not only between common and civil law, but also between comparative and international law are blurring.”³⁴ This course was offered at Columbia Law School beginning in the fall semester of the 2006-2007 academic year and is co-taught by Professor Pistor and Professor George Bermann.

- Incorporation of transnational materials into legal writing, lawyering and advocacy courses. Professor Diane Penneys

30. *Id.* at 814.

31. See West Academic Publishing, Global Issues Series, <http://www.westglobalissues.com> (last visited July 13, 2010). The Global Issues series with Franklin A. Gevurtz as Series Editor, includes the following:

- Global Issues in Civil Procedure by Thomas Main
- Global Issues in Constitutional Law by Brian K. Landsberg, Leslie Gielow Jacobs
- Global Issues in Contract Law by John A. Spanogle, Jr., Michael P. Malloy, Louis F. Del Duca, Keith A. Rowley, and Andrea K. Bjorklund
- Global Issues in Corporate Law by Franklin A. Gevurtz
- Global Issues in Criminal law by Linda Carter, Peter J. Henning, Christopher L. Blakesley
- Global Issues in Family Law by Ann Laquer Estin, Barbara Stark
- Global Issues in Labor Law by Samuel Estreicher
- Global Issues in Legal Ethics by James E. Moliterno, George Harris
- Global Issues in Property Law by John G. Sprankling, Raymond R. Coletta, M.C. Mirow

Development of the Global Issues series and in depth discussion of the “integration” approach can be found in Franklin A. Gevurtz, Linda E. Carter, Julie A. Davies, Brian K. Landsberg, Thomas O. Main, Michael P. Malloy and John G. Sprankling, *Report Regarding the Pacific McGeorge Workshop on Globalizing the Law School Curriculum*, 19 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 267 (2006).

32. See Katharina Pistor, *Lawyering Across Multiple Legal Orders—Rethinking Legal Education in Comparative and International Law*, 24 PENN ST. INT’L L. REV. 809, 809 (2006).

33. *Id.*

34. *Id.* at 810.

Edelman advocated for this incorporation model based on her more than twenty years of experience in teaching similar courses first at Brooklyn Law School, and then at Villanova University. Professor Edelman shared her insights on how to most effectively implement this approach by offering specific recommendations regarding the choice of materials and teaching techniques.³⁵

- Introduction of a *Law in a Global Context* course. This course was offered as a one-week program to first-year students at Georgetown beginning in the first week of the second semester of the 2006-2007 academic year. Dean Alex Aleinikoff reported that this course is “an intensive program for integrating transnational perspectives into the first year curriculum. . . .” Students will work with a single, complicated transnational legal problem that relates to one of the first-year courses taken during the first semester.³⁶
- Incorporation of international components into the first-year curriculum. This is being done by Professor Claudio Grossman at American University Washington College of Law as part of a larger program to present legal phenomena to students as a totality, rather than in isolated units like torts, civil procedure, constitutional law, and environmental law.³⁷

The challenge of adjusting curricula and methodology and making other adjustments in legal education in the United States to address the problems and opportunities created by an increasingly interrelated world has been addressed in several other recent forums which are noted to facilitate ready reference.³⁸

35. See Diane Penneys Edelman, *Internationalizing Legal Research, Writing and Trial Advocacy*, 24 PENN ST. INT'L L. REV. 829, 830 (2006).

36. See T. Alexander Aleinikoff, *Law in a Global Context: Georgetown's Innovative First Year Program*, 24 PENN ST. INT'L L. REV. 825, 825 (2006).

37. See Claudio Grossman, *Integrating International Law into the First-Year Curriculum*, 24 PENN ST. INT'L L. REV. 835 (2006).

38. Symposium, *Globalizing Legal Education—Educating Lawyers for Transnational Challenges*, 23 PENN ST. INT'L L. REV. 741 (2005); Symposium, *Globalizing Legal Education—Transnational Law: What Is It? How Does It Differ From International Law and Comparative Law?*, 23 PENN ST. INT'L L. REV. 795 (2005); Symposium, *Developing Mechanisms to Enhance Internationalization of Legal Education*, 22 PENN ST. INT'L L. REV. 393 (2004); Symposium, *Continuing Progress in Internationalizing Legal Education—21st Century Global Challenges*, 21 PENN ST. INT'L L. REV. 1 (2002); Symposium, *Working Together: Developing Cooperation in International Legal Education*, 20 PENN ST. INT'L L. REV. 1 (2001).