

**What are the Goals and Objectives of Law Schools in Their Primary
Role of Educating Students?
What are We Educating Our Students For?**

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For me, this question first entails taking stock of the state to the world, thinking about the contribution lawyers can make to that world, and then musing on role of law schools in preparing lawyers to make that contribution¹:

An interconnected world facing many challenges.

We live in a world in which everything is connected, sometimes instantaneously. The crises of climate change, credit and swine flu graphically illustrate the power and reach of this connectedness. It is a connectedness which offers possibilities for development and peace, and poses threats to security and the environment, on a scale we are still comprehending.

According to Jeffrey Sachs, the defining challenge of the twenty-first century will be to accept our interconnectedness, 'to face the reality that humanity shares a *common fate ... on a crowded planet*'.² As Australian ethicist Noel Preston says: 'what is non-negotiable in the twenty-first century is that our perspective, our worldview, our understanding must have global dimensions. ... I speak of our response as individuals, although the character of global citizenship may also be expected of corporate actors.'³

Our 'common' fate is not looking all that promising at the moment. Sachs, among others, believes that the world's current ecological, demographic and economic trajectory is unsustainable, and that 'if we continue with 'business as usual' we will hit social and ecological crises with calamitous results'.⁴ Many agree with his analysis. Discussing our ecological trajectory and summarizing what is now well accepted science, Flannery writes that:

the climatic tipping point is the point at which greenhouse gas concentration reaches a level sufficient to cause catastrophic climate change. The point of no return is reached when that concentration of greenhouse gas has been in place sufficiently long to give rise to irreversible processes. Humanity is now suspended between the

1 This paper draws heavily on a paper I am writing with Simon Rice (ANU) on Legal Ethics in a Connected World.

2 Jeffrey Sachs *Common Wealth Economics for a Crowded Planet* (2008) 3. emphasis in original

3 Noel Preston, 'Ethics sans frontiers: the vocation of global citizenship' (2006) (Speech delivered at the 2006 Aquinas Lecture, Australian Catholic University, Brisbane Campus, 8 September 2006) <http://dlibrary.acu.edu.au/research/theology/ejournal/aejt_8/preston.htm> at 6 September 2008

4. Sachs 5

tipping point and the point of no return and only the most strenuous efforts on our part are capable of returning us to safe ground.⁵

Of course, climate change is but one of the huge challenges facing humanity. The Millennium Project has identified 15 'Global Challenges for Humanity': sustainable development, clean water, population and resources, democratization, long-term perspectives, global convergence of IT, rich-poor gap, health issues, better decision making processes, peace and conflict, status of women, transnational organized crime, energy; science and technology, global ethics (incorporating ethical considerations into decisions having global impact). The challenges, and their solutions, are all interconnected:

One of the principal findings of twelve years of research of the Millennium Project is that the most important challenges are transnational in nature and transinstitutional in solution. They cannot be addressed by any government or institution acting alone. They require collaborative action among governments, international organizations, corporations, universities, and NGOs.... Although listed in sequence, Challenge 1 on sustainable development is no more or less important than Challenge 15 on global ethics. The Challenges are interdependent: and improvement in one makes it easier to address others; deterioration in one makes it harder to address others. Arguing whether one is more important than another is like arguing that the human nervous system is more important than the respiratory system.⁶

The role of the lawyer

What do the world's interconnectedness, and the challenges facing humanity, mean for the profession and practice of law?

Today's legal practice environments are many and varied. A growing number of legal professionals work as practitioners or adjudicators in international and transnational contexts.⁷ Those who practise law in domestic firms increasingly deal with matters that cross national jurisdictional boundaries, and lawyers working for global law firms will often practise (private) international law. But for both types of practitioner the practice of law can now radiate from a local to a global perspective and back again 'with great speed.'⁸ Non-practising lawyers also are involved in many 'global' activities. Law graduates make and advise on many decisions which have a global impact, and many decisions which impact (immediately or eventually) on the 15 Global Challenges.

5 Tim Flannery 'Now or Never. A Sustainable Future for Australia?' (2008) 31 *Quarterly Essay* 25

6 Jerome C. Glenn, Theodore J. Gordon, and Elizabeth Florescu 2008 *State of the Future* (2008) 11
<<http://www.millennium-project.org/millennium/challeng.html>>

7 Pieter Bekker et al, *Report of the Task Force on International Professional Responsibility* (2007) The American Society of International Law < <http://www.asil.org/pdfs/taskforcereport.pdf>> at 30 April 2008.

8 Michael Pfeifer and Jens Drolshammer, 'Introduction: On the Way to a Globalized Practice of Law?!' (2000) 2 *European Journal of Law Reform* 391, 393.

As the facilitators of international commerce and trade, of global transactions and multilateral agreements, lawyers are central to attempts to design a more sustainable, secure and equitable world. Law is at the heart of global cooperation in the face of crisis. International negotiations to address global problems will be informed by international law; agreements will be cast in international law, and international law will be used against non-complying nations. In Justice Kirby's words, '[p]utting it quite bluntly, without international law and its institutions the evolution of humanity is most seriously endangered.'⁹

Of course, most lawyers are not 'international law' lawyers. But lawyers play a critical role – in any industrial economy of whatever politics – in ensuring social certainty and stability. They do this through their design of process, documentation and rules that give predictability to social and commercial transactions. The business of lawyers is now, more than ever, writ large on the international stage. Current international commerce and politics requires law and lawyers as much as domestic commerce and politics has done for centuries. As the world becomes smaller there will be an increasing need for professionals who are skilled in nurturing transactions and mediating disputes between different national, economic, ethnic and cultural groups.¹¹

Lawyers can play an important role in helping avert the worst of the possible future scenarios confronting us. Lawyers are often well-placed to mitigate or prevent (rather than facilitate!) harmful conduct. Some lawyers will choose to work directly in areas such as renewable energy, sustainable development or women's rights, but it is not just these lawyers whose actions will have an impact. Whether a lawyer is practising commercial law in Montreal, litigation in Mumbai or administrative law in Melbourne, the interconnectedness of today's world means that the repercussions of our own actions and those on behalf of clients can (and in many cases do) reverberate across the globe and back again.

The role of the law school

In light of this, law schools face the challenge of educating for global citizenship. As well as educating students to understand law in all its national, international and transnational forms, this will involve encouraging students to recognize humanity's common fate and so take a global perspective in their future work. It also entails fostering in students a professional ethic that is relevant to a world where borders and boundaries no longer confine the consequences of lawyer's actions; a world in which everything is interconnected and our actions and those of our clients can have repercussions far beyond what we may originally envisage. The current dominant ethical paradigm of the adversarial advocate is not up to this task and students should be introduced to other legal ethical models which have more guidance to offer.¹²

9. Justice Michael Kirby, 'Take Heart – International Law Comes, Ever Comes' in Ustinia Dolgopol and Judith Gardam (eds), *The Challenge of Conflict, International Law Responds* (2006) 283, 296

11 Peter Murray & Jens Drolshammer, 'The Education and Training of a New International Lawyer' 2 *Eur J L Reform* 505, 54

12 see eg Christine Parker & Adrian Evans *Inside Lawyers Ethics* (2007) 21 - 39

But an intellectual recognition of the world's connectedness is not enough. The challenge for Law Schools is to equip students to put a global ethic (and their legal knowledge) into practice. Educating students to understand *themselves* is key. We need to educate lawyers who are 'emotionally intelligent', who understand themselves as people:

Emotional intelligence is what enables us to manage ourselves and our relationships with others so that we can truly live our intentions. ...Our emotional intelligence is our level of awareness of how our emotions affect all our thoughts and behaviour.¹³

We need to educate for self awareness/ emotional intelligence, not just so that our graduates will be more likely to be happy (though that in itself is a worthy goal in a depressed profession), but because they will be more effective lawyers. For example, as noted, lawyers often make, or advise on, important decisions (including those with global consequences). In the past, lawyers have been told to 'think like a lawyer', overlook emotions and make 'rational' decisions. It is now clear that we cannot make a decision without engaging our emotions/instincts, even if we don't realize we are doing this. Further:

it has also become clear that listening to your instincts is just a part of making good decisions. The crucial skill, scientists are now saying, is the ability to think about your own thinking, or metacognition, as it is known. Unless people vigilantly reflect on how they are making an important decision, they won't be able to properly use their instincts, or know when their gut should be ignored. Indeed, according to this emerging new vision of decision-making, the best predictor of good judgment isn't intuition or experience or intelligence. Rather, it's the willingness to engage in introspection, to cultivate ... "the art of self-overhearing."¹⁴

The 'art of self overhearing' forms part of the practice of reflection. Equipping our graduates with the skills of reflection will deepen their learning, about the law and about themselves.¹⁵ It is another key to equipping them to do their bit to address the enormous challenges faced by our interconnected world.

13 Colin James ' Seeing Things as We Are – Emotional Intelligence and Clinical Legal Education.' 8 *Int'l J. Clinical Legal Educ.* (2005) 123, 133

14 Jonah Lehrer, *The Next Decider*, Boston.Com, 5 October 2008
http://www.boston.com/bostonglobe/ideas/articles/2008/10/05/the_next_decider/ viewed 13 May 2009

15 Karen Hinett, *Developing Reflective Practice in Legal Education*, UKCLE
<http://www.ukcle.ac.uk/ukcleadm/resources/reflection/index.html> viewed 13 May 2009