**IALS 2013 Annual Meeting Papers**

# *Human Rights Themes in the Life of the Law School*

## Abstracts

- Jassim Al Shamsi - United Arab Emirates University Faculty of Law, UAE
- Faisal Bhabha – Osgoode Hall Law School York University, Canada
- Nora Demleitner – Washington and Lee University School of Law, United States
- Santiago Legarre – Pontifica Universidad Católica Argentina, Argentina
- Wang Lisong – Tianjin University School of Liberal Arts and Law, Taiwan
- Aymen Khaled Masadeh - The British University of Dubai, United Arab Emirates
- Ousmane Mbaye – Cheikh Anta Diop University, Senegal
- Carolyn Penfold - University of New South Wales, Australia
- Fernando Villarreal-Gonda, Facultad Libre de Derecho de Monterrey, México

**Jassim Al Shamsi - United Arab Emirates University Faculty of Law, UAE**
Written by Prof. Syed Maswood, Professor of Commercial Law, FOL, UAEU. Human Rights are those basic rights and freedoms that make our lives satisfying and meaningful. To be free from fear, free from deprivation and to have the opportunity to achieve all that we are capable of is a fundamental human aspiration. That is why human rights are sometimes called as 'natural rights'. Human rights are recognized as birth rights, which all human beings are born with simply because they are human. The reason to call them as birth rights is based on the norm that 'no one gives these rights and no one can legitimately take them away, for this sole reason they are said to be 'inalienable'.

**Faisal Bhabha – Osgoode Hall Law School York University, Canada**
Legal education is undergoing significant change, unprecedented in at least a century. The reasons for transforming approaches to teaching and training lawyers are not novel. Institutional and pedagogical reform have been a slow, but steady, project for decades, accelerated in recent years by a multitude of pressures, including from within the legal profession, market forces, the digital age, new perspectives on ethical norms, human rights, and rapidly changing demographics. A common theme, which underlies all of these changes, is the reality of social diversity in contemporary western societies.

**Nora Demleitner – Washington and Lee University School of Law, United States**
Human rights (HR) issues, which often reveal themselves from a comparative perspective, are not categorized as such in law schools though they lie beneath fundamental structural decisions. Institutional funding and access directly impact educational, social, economic – and racial -- equality. Curriculum development and coverage – in doctrinal courses and so-called "clinics"– require reflection upon the amount of resources expanded on the teaching of human rights, the connections made between human rights and related subject areas, the restriction of human rights discourse to specific courses. Student affairs regularly deal with human rights questions ranging from religious to disability accommodations. The potential for unequal gender treatment seems ever present from the selection of entry-criteria to choice of teaching modality. If these issues were categorized as human rights

issues -- rather than as questions of management, students or academic freedom -- they would be approached with different gravitas and with a defined legal framework.

**Santiago Legarre – Pontifica Universidad Católica Argentina, Argentina**
My paper will describe the way I have been teaching Human Rights law in the last three years. The paper will, subsequently, explore its advantages. The teaching system can be summed up as follows: the students are required do "draw" (broadly speaking) every major Human Rights topic of the curriculum. The "drawings" (which in reality can and do amount to more than just that) are then displayed, once a month, so that a friendly public contest takes place among the students. The professor (myself) acts as juror and renders a verdict regarding the "drawings". The award (including a price) goes to the student(s) who best achieved to reflect a given human right concept through visual devices and tools.

**Wang Lisong – Tianjin University School of Liberal Arts and Law, Taiwan**
Human rights law plays a leading role in all the subjects of law, so all the law students are supposed to study human rights law. Human rights law education can not only cultivate students' humanity spirits, but also stimulate the lasting, steady and sustainable development of our nation. Due to the insufficient teachers and funding, as well as the drawbacks of thoughts and research methods, the human rights law education in Tianjin University is not optimistic. In order to facilitate the human rights law education, there is a need to improve the curriculum design and strengthen the practical teaching process.

**Aymen Khaled Masadeh - The British University of Dubai, United Arab Emirates**
In drafting the law degree curriculum, law schools take into account the six levels of legal education, i.e. knowledge, comprehension, application, analysis, synthesis and evaluation. Teaching human rights is one of the most important topics in modern legal education throughout all the six levels.

**Ousmane Mbaye – Cheikh Anta Diop University, Senegal**
As the title suggest, the topic of this paper will turn around media and journalists in Senegal with content based on difficulties encountered since two years by a Bill on a new press code to become applicable Law. Such subject raises as we see, Human Rights issues especially freedom of expression, people's right to know implying the duty of journalists to suitably inform and so public's right to be protected from the media and finally the legal status of those who disseminate the information i.e. journalists. The interest is all the greater if one is aware that Senegal has for a long time successfully experienced democracy through a population viscerally committed to civil liberties, and this even during the colonial period. In this regard, a brief look at the past will shed a light on it. From discussions we held with Pr I. D. Thiam, specialist in Contemporary History and of Africa (1), we learn that the first local newspaper called the "Moniteur du Senegal" appeared in 1856. Moreover in the year of 1871, colonial authorities had allowed through a Decree indigenous political parties running for local government elections to use newspapers and wireless telegraph in order to submit their professions of faith. From this period up to Independence which occurred in 1960, the role of the press (which kept on growing) had been someone decisive in the awakening of Senegalese's consciousness for Independence. Nowadays, one can count about twenty five daily newspapers, more than forty magazines, eleven T-V channels (only one owned by the State), more than two thousand radio station including in this era of globalization and new form of communication the explosion of digital media, internet etc…, and working all without censorship.

**Carolyn Penfold - The University of New South Wales, Australia**
At the University of New South Wales Law School (UNSW Law), human rights has always been an important part of the curriculum. Right from its very beginning, the new UNSW Law wanted to differentiate itself from existing law schools as the 'social justice' law school

**Fernando Villarreal-Gonda, Facultad Libre de Derecho de Monterrey, México**
The legal culture of human rights emerged recently in Mexico, characterized by a deep influence of international law. The multicultural practice is an additional feature of those concerned in improving the human rights situation in the country. The growing popularity of human rights finally materialized in the constitutional reform of 2011, where human rights treaties and the pro homine principle became part of the supreme law of our nation. In addition, the panorama of violence and organized crime has triggered a revalorization of legal education through aspects that were previously left behind. Human rights matters are now positioned in a prioritized space. We wander if they offer answers to the current challenges we face in Mexico.

# Papers

- Jassim Al Shamsi - United Arab Emirates University Faculty of Law, UAE
- Faisal Bhabha – Osgoode Hall Law School York University, Canada
- Nora Demleitner – Washington and Lee University School of Law, United States
- Santiago Legarre – Pontifica Universidad Católica Argentina, Argentina
- Aymen Khaled Masadeh - The British University of Dubai, United Arab Emirates
- Ousmane Mbaye – Cheikh Anta Diop University, Senegal
- Carolyn Penfold - The University of New South Wales, Australia
- Fernando Villarreal-Gonda, Facultad Libre de Derecho de Monterrey, México
- Jukka Tapani Kekkonen, University of Helsinki, Finland
- Mauro Politi, University of Trento, Italy

# Human Rights - Role of Law Schools with Special reference to Faculty of Law - UAE University

Jassim Ali Alshamsi
United Arab Emirates University Faculty of Law, UAE
Prepared by Prof. Syed Maswood

**Universal Character of Human Rights:**

Human rights are recognized as being ***'Universal',*** which means they belong to everyone- no matter what their race, religion, caste, sex, region, or social and economic status, age is. The reason to call human rights as universal is based on their core ideas which are common to all major religions, faiths and moral codes and they ***cross national and cultural boundaries.*** Another aspect of their being universal is that they belong not only to individuals but also to communities. For instance, the people belong to a tribal community has a right to speak its own tribal language and preserve its culture, customs, traditions and its way of life, provided these do not themselves violate the human rights of others- individuals or communities.

**Human rights include, for example,**

- the right to life, which includes the right to live with dignity,
- the right to equal treatment and not to be discriminated against,
- freedom from torture
- freedom from forced labour
- freedom from wrongful arrest
- the right to a fair trial,
- freedom of information,
- freedom of thought, conscience,
- freedom of religion and faith,
- the right to privacy,
- right to free speech and expression,
- right to movement,
- freedom to associate with others and to take part in government, public and community affairs,
- right to food,
- right to housing,
- right to health
- right to a clean environment,
- right to education,
- right to work, right to equal pay for equal work, right to strike and
- right to preserve one's own culture and way of life.

**Human Rights are Interrelated and Indivisible:**

Though they are called by various names and expressions, and sometimes they are seperated into different categories- like civil and political rights, economic, social and cultural rights, every right depends on another for its fulfillment. No right can really be put into practice in isolation or compartments without the support of other rights and hence, they are said to be ***'interrelated and indivisible'.***

**Protection of Human Rights in the UAE:**

The international community, including the United Arab Emirates, has all agreed on what these rights are and what they mean. Human rights are very important because they recognize that each person is special with their own individual talents and abilities and that

no one is inferior or superior to another and this principle is the core and basic norm under the Islamic Law (The Sharia Law). Accordingly, the idea of human rights is the notion that all people are born free and equal. Everyone is entitled to live with human dignity and no one- not the State nor the community, nor the family, nor the society- has any right to discriminate or treat anyone unfairly or unjustly. The UAE has signed and ratified the two main international covenants on human rights- the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The international system of human rights has been embodied in the UAE Federal Constitution and other domestic Federal Legislations, which insist that it is the duty of the State to promote respect for all the human rights of all people equally.

**Human Rights and Role of Law Schools:**

Protecting human rights is the foundation of law. Besides including 'Human Rights' as a Major course in curriculum, we firmly believe that every Law School should apply a clinical approach to deal with every aspect of human rights. The Human Rights course at the the Faculty of Law, UAE University allows students to explore the range of opportunities available in the human rights field, at home and abroad, through hands-on experiences. The course is the hub for human rights activities at the Law School, and cooperates with student groups, faculty members, the Public Service Center and Career Services, and human rights organizations to coordinate speakers, events, summer camps, and pro bono opportunities.

**Human Rights Law Clinic:**

The Law students undergo an intrinsic and extrinsic training in association with the leading International Law Firms in the UAE. The Clinic's seminar, which lays out an analytic framework for much of the course, is combined with specially tailored exercises and simulations to introduce students to international human rights practice. Students participate in exercises and discussions to foster the development of other fundamental lawyering and advocacy skills, including interviewing techniques, fact investigation and development, project and case organization and management, legal drafting, oral and written advocacy (including media advocacy), and collaborative project work.

To bridge theory and practice, the Human Rights Clinic provides students with hands-on experience working on active human rights cases and projects. The skills-training imparted through classroom instruction and simulations is applied and tested in the context of real-world advocacy. Working in partnership with experienced attorneys and institutions engaged in human rights activism. The clinic offers students practical experience in human rights advocacy in collaboration with human rights lawyers and non-governmental organizations in the UAE and abroad. Clinic students have worked in the following areas:

- Human rights in the Middle East
- Freedom of information and expression
- Gender-based violence,
- Rights of indigenous people
- Legal literacy and empowerment
- Right to education
- Right to an effective remedy
- Rights respecting legislative reform
- Right to life and prohibition against torture
- International criminal justice and universal jurisdiction
- Corporate liability for human rights violations
- Land law and housing rights
- Transitional justice/responsibility to protect and to fulfill human rights
- Rights related to health and medical treatment
- National security in the war on terror, War Crimes, Prisoners of War, Rights of refugees, and

- Role of ICC in protection of Human rights

# TOWARDS A LEGAL PEDAGOGY OF DIVERSITY

Faisal Bhabha
Osgoode Hall Law School
Toronto, Canada

Legal education is undergoing significant change, unprecedented in at least a century. The reasons for transforming approaches to teaching and training lawyers are not novel. Institutional and pedagogical reform have been a slow, but steady, project for decades, accelerated in recent years by a multitude of pressures, including from within the legal profession, market forces, the digital age, new perspectives on ethical norms, human rights, and rapidly changing demographics. A common theme, which underlies all of these changes, is the reality of social diversity in contemporary western societies.[1]

This paper ties together a number of relevant trends and themes in contemporary legal education. It situates the call for diversity at the nexus of normative consensus around the reality of diversity and the need to foster and promote it; progressive institutional reform to re-constitute the demography of the law school; and evolving pedagogical approaches that transcend the abstractions of traditional legal education, and draw meaningful connections between theory, doctrine and practice.

The normative case for diversity has been embraced widely, if not clearly articulated in substance. This has come both from the legal profession itself, as well as from the law schools. To be sure, legal educators, housed for more than a century within academic institutions, are additionally mandated by universal diversity promotion initiatives within universities, to pursue such initiatives. The institutional reform is well known: admissions liberalization to reconstitute the student body to better reflect the demographics of the society being served by the legal profession. Additionally, some curricular reform has led to the incorporation of new, interest-oriented law school courses designed to explore different perspectives on the law (feminist, racialized, etc.).

This paper begins, then, with two claims that are descriptive. The first, is what I have just described: that diversity promotion is a universally recognized normative goal and priority within legal education and in the legal profession. The second claim is that the current state of affairs with respect to diversity issues in the law school reveals that institutional initiatives appear to have come with mixed, often bad, results. This claim is supported by reference to a variety of scholarship, citing both the empirical and lived reality that racialized law students continue, proportionately, to under-perform in law school and are more likely to drop out. According to objective indicators, minorities continue to face barriers to legal education and professional life. According to subjective accounts by minority students and faculty alike, the law school experience itself remains one of alienation and identity confusion, leading to stark choices between abandonment and assimilation.

The question remains, how to make legal education more diverse? This question begs several subsidiary (or preliminary) questions, such as: what does diversity mean? What are

[1] I use the Province of Ontario in Canada as a case study, but generalize many observations to North American law school experience broadly. Legal education and the legal profession across North American jurisdictions share many similar features and exist amid relatively comparable legal cultures, socio-political conditions and institutional arrangements.

the goals of institutional initiatives to promote diversity ? How is success measured? And finally, what is the appropriate and most effective course of action to meaningfully promote diversity? This paper will deal with each of these questions in succession, assembling the pieces to display a timely convergence between normative consensus and a fresh wave of institutional reform. Indeed, at the same time that the concept or goal of diversity in legal education requires a substantive articulation, it also requires tools for practical application. I argue that recent innovations in legal education—the shift towards greater reliance on experiential education methods—offers a useful opportunity to operationalize diversity.

This paper's prescriptive component connects these pieces and is a call for thorough and substantive integration of a diversity ethic into the concept of lawyering and lawyer identity that is produced in law schools. Whatever the reasons to promote diversity, whether political, business or moral, the concept of diversity contains core normative commitments that demand a shift in professional culture. The final part of this paper argues that the law school bears primary responsibility for, and the ability to, direct this shift in accordance with the aspirations of an equality-enhancing diversity ethic. This is a natural task for legal educators, who are responsible for embedding the norms, both of legal reasoning and of professional conduct.

This paper emphasizes the importance of curricular reform—more radical than hitherto adopted—to fundamentally change the way legal education is conceived and delivered. The embrace of experiential learning within the core of the law school curriculum is a valuable tool, blending practical experience with structured critical reflection. Through this exercise, students can come to understand not only the fact of diversity, but also the specific and varied ways that diversity prescribes not only specific behaviours and skills, but necessitates a process of acculturation that begins with, and is led by, legal educators.

By integrating principles of equality into professional ethics and practices, the law student models her professional behaviour in accordance the prioritization of equality as the normative foundation of diversity. This makes the law student and future lawyer an active agent in the process of diversity promotion, both by being acculturated within a professional ethic of diversity/equality, and also then working for constant affirmation of that ethic through mindful professional practices.

**The Normative Case for Diversity**

There is wide agreement that diversity in legal education is a priority. The reasons for why the promotion of diversity is desirable can vary, but relate centrally to principles of equality and anti-discrimination. The Canadian Bar Association spearheaded research and policy work on sex and racial equality, publishing two key reports in 1993 and 1999, respectively, calling for greater attention to diversity in the legal profession. The Law Society of Upper Canada (LSUC), the regulator of the legal profession in Ontario, Canada, has adopted diversity as a priority, as have other provincial, state and national bar associations across North America. The LSUC has carried out its own studies and implemented programs to promote diversity institutionally and within the profession. In addition to the institutional and professional recognition of the diversity priority, law faculties have also noted the diversity gaps in legal education. There is broad consensus that diversity in legal education is now a priority.

The equality interest in promoting diversity has become increasingly relevant given demographic changes over a couple of generations that have radically changed the composition of North American society. In Ontario, for example, "visible minorities" now constitute 20 percent of the population; in the city of Toronto, they are one in three. The

LSUC reports that between 2001 and 2006, the proportion of non-white lawyers rose from nine percent to 11.5 percent, still well below the composition levels of broader society. Among younger lawyers (aged 25-34), the proportion of non-white lawyers (20 percent) is on par with the provincial population figure. The profession appears to be on track to be statistically representative.

In its 2010 Report on Diversity, the American Bar Association (ABA) identified four arguments to support the call for greater diversity in legal education. The Democracy Argument holds that lawyers bear considerable responsibility for sustaining a democratic, rule-of-law legal order that represents the society it serves. Access to the legal system must be ensured to protect the law's democratic legitimacy. For much of the general public, lawyers are both the guardians and the gatekeepers of the legal system, instrumental in the vindication of citizens' legal rights and entitlements. The Business Argument notes the increasing expectation of clients for their lawyers and law firms to demonstrate diversity competence. This arises as a result of factors of globalization, particularly transnational trade and migration. Lawyers with cultural and linguistic proficiencies, and firms with diverse staff, are better able to meet diverse client needs.

The Leadership Argument rests on the fact that lawyers are leaders in politics and society (especially true in the United States), necessitating broad and representative access to the profession. Finally, the Demographic Argument is the most obvious: as the ethnic composition of the general population diversifies, the more important it becomes for the legal profession to do so as well.

These arguments are mutually reinforcing. Each offers a different descriptive account of a particular normative priority that enjoys wide acceptance: namely, that the legal profession should be representative of the personal and group differences that constitute the broader society. This norm of "representation" looks to the social makeup of the particular jurisdiction and asks whether there is rough demographic correlation between the demographic makeup of society and that of the constituent members of the legal profession. So, for example, if indigenous peoples constitute two percent of the Canadian population but only XX percent of the active members of the bar, then we have a representation deficit.

It is important to observe that the legal profession has always had a representation deficit.[2] Changing demographics have not produced the representation deficit; but as population diversification increases, so does the representation deficit. This widening demographic gap came amidst social changes and evolving norms beginning in the 1960s,[3] leading to the global "rights revolution".[4] In Canada, the adoption of the *Charter of Rights and Freedoms* in 1982 created a constitutional mandate to promote a particular vision of the country based on the goal of social inclusion. This was reflected in the Charter's ,[5] and the inclusion of an individual right to equality along with a shield for affirmative action.

Constitutional and legislative interpretations reflected widespread acceptance of the priority of social equality, and this produced a normative imperative to promote diversity. This shift in values underlies arguments such as those advanced by the ABA. The normative imperative, linking changing demographics to a call for representation in the profession,

[2] Backhouse
[3] cite US civil rights; international human rights; Canadian bill of rights.
[4] See Charles Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: U Chicago Press, 1998) [examining the growth of civil rights and human rights across the world, and noting a democratization of access to the courts through social activism].
[5] Joseph Eliot Magnet, "Multiculturalism and Collective Rights" (2005) 27 Sup Ct L Rev 431 at 441.

comes from a variety of perspectives. It is worth briefly summarizing the sources of the "push" towards diversity as a normative priority.

First, the professional push comes from individual, group and institutional forces within the legal profession. This push embraces the business argument, but also highlights the fact that lawyers are leaders in many field and have a broad mandate to promote the interests of justice. The profession takes seriously its monopoly over the provision of legal services, and recognizes that this privilege comes with concomitant duties. The profession claims to hold its members to a high standard of professional responsibility and integrity. This requires the profession to be attentive to shifting social and demographic forces that are bound to impact the professional lives of lawyers and the provision of legal services to the public.

Secondly, the pedagogical push comes from the law schools, where legal theory and doctrine are taught; legal reasoning and skills are developed; lawyer identity is formed; and professional opportunities are scoped and sought. The first women and minority law professors wrote of their experiences of alienation in the classroom,[6] on faculty councils,[7] in the law books[8] and in understanding the differentiated ways that law impacts on society.[9] For at least the past thirty years, North American law faculties have articulated a commitment to making law schools more representative of the society they serve, but their efforts have come with mixed results. All of Ontario's law schools have adopted diversity as an institutional goal, and various programs and initiatives have been adopted, mainly centred on admissions policies. This push has also produced modest changes in law school curricula. All of this is discussed below at greater length.

The political push recognizes that diversity is a priority in public policy, modelled within the public service sector, and promoted in the broader society through a host of initiatives designed promote healthy interactions across differences. While differences of opinion are valid and essential to a political democracy, differences based on unchangeable personal attributes, such as race, religion or gender amongst others, can prove dangerous political lightening rods and can undermine social cohesion. Political powers have an interest in ensuring smooth, intercultural relations. Acknowledging the fact of diversity in the broader society, and embracing it as a desirable political reality and objective, is now mostly a universal normative view. Because the legal profession is so closely tied to the administration of justice and the enforcement of law, the political push is not a hard sell with respect to professional, such as lawyers, who are providing important public services within a regulated monopoly.

Finally, the ethical push towards promoting diversity within the legal profession links diversity to increasing attention on professional ethics and responsibility, and access to justice. Dodek ties the importance of diversity to the legitimacy of the profession itself and of the administration of justice. The focus of this approach is on improving the ethnoracial composition of law schools and law firms to be more representative of the society in which lawyers operate, as an ethical imperative.

**Defining the Concept: Diversity as Accommodation**

The focus of this paper is on what I have called the "pedagogical push" to diversity. Before examining the forms that the push has taken and understanding what legal education offers

[6] cite
[7] cite
[8] race critique of doctrinal instruction
[9] cite

to diversity, we must first be clear about what we mean by diversity. As a descriptive concept, diversity is a statement of demographic data. As a normative priority, however, diversity is a response to exclusion. As discussed above, the demographic response is based on a widening equality gap, but is not what generated the history of exclusion. The history of exclusion in Canadian law schools, for example, has been traced to an elitist conception of the legal profession. A hundred years ago it was widely accepted that lawyers should be white, male, Protestant and English (or able to pass as such).[10] The concept of "professionalism", embedded with classist notions of "gentlemanly" demeanour and behaviour, was the standard used to define the good lawyer. In effect, it operated to exclude non-privileged people from the legal profession. Evolving ideas about equality would have a narrowing effect on the representation gap, but rapidly changing demographics would have a stronger widening effect on the representation gap. In other words, as elitist, racist and sexist ideas about individuals gave way to greater openness to representation, diversification of the general population far outpaced the gradual growth of minority members of the legal population.

The problem of exclusion, then—historically linked to systemic and institutional racism, bigotry and prejudice—was heightened by rapid demographic changes as the widening doors of access failed to keep up. What measures were adopted to remedy historical exclusion were not sufficient keep up with the pace of social diversification.[11]

Critical race and feminist scholars illustrate the link between exclusion and inequality, highlighting the experiences of women and people of colour in legal education.[12] According to these critics, exclusionary historical forces are still alive and well in legal education. They argue that the law schools continue to teach according to a standard of "whiteness", which is the norm against which all students are measured. They warn that the postures of "neutrality" or "objectivity" in the dominant modes of legal analysis taught in class operate to mask the reproduction of racial hierarchy, by way of forced white normativity.[13]

Law faculties have not been oblivious to the concerns and the critiques. Early efforts focused on admissions policies.

Some changes in curricula (perspectives courses; legal ethics)
Ethics tended to foucs on rules; perspectives are optional
This first wave of remedial efforts were a thin approach to diversity. Experiences of alienation remained prevalent, and with a diversifying student body these voices became amplified. I contrast the "thin" first wave with a more robust, or "thick" model of diversity. The thin approach aims to *accommodate*; the thick model aims to *transform*.

**Accommodation: The Thin Approach**

First-wave models of diversity promotion can be grouped into two broad categories. The first are equitable or affirmative action admissions programs. These may pursue targeted admission by members of specifically identified, historically disadvantaged groups (like blacks or indigenous people). This is based on group membership. The second included modest curriculum changes to adopt are also be equitable programs designed for individuals to provide an account of unique experience or perspective.

[10] Backhouse; Pue
[11]
[12] Cite Crenshaw, Matsuda, Delgado, Backhouse, St. Lewis. Bandhar.
[13] Younes, "Teaching White"

Critics of current law school models highlight two forms of vulnerabilities of first-wave diversity initiatives. First, they are criticised for being under-inclusive: admissions policies only open doors, but the causes of exclusion go beyond law school entrance requirements.

The limits to the thin, or accommodationist, approach to diversity in legal education can be characterized in three ways: they are front-end focused; weak in the middle; and abandoned on the back end.

***Front-end focused***

The focus on the "front end" recognizes that law schools have pursued affirmative action to transform the student body composition by altering admissions policies to increase representation of women and minority students. The rationale behind this demographic focus is obvious and understandable: it addresses the representation gap identified above. Its primary concern is with increasing access to education for members of historically excluded or disadvantaged groups. Any website of any law school in North America will proudly display photos projecting a colourful, racially diverse student body population. The appeal of diversity makes such images compelling—they are representations of the way we wish our schools, firms and courts to look.

Admission liberalization typically consists of altering the "objective" criteria in admissions standards, while allotting weight to other factors that are designed to ameliorate the strength of minority applicants' comparative profile. When diverse life experiences or perspectives are seen as strengths sufficient to bolster or complement more conventional criteria (like undergraduate marks and LSAT scores), affirmative action can provide access to law school for individuals who might never have successfully applied. More importantly, affirmative action programs provide a concrete response to the history of formal and informal exclusion. Law schools benefit by being able to demonstrate better representation, at least formally, which bolsters their popularity, marketability and democratic legitimacy.

According to Dennis, this traditional approach to diversity can provide some useful tools, but on the whole it fails to constitute an effective program for meaningful diversity promotion.[14] Commenting on American law schools, Wilson notes that cost, LSAT requirements, grading and ranking, and a weak implementation of affirmative action[15] have "combined to depress the number of minorities that are accepted and that ultimately graduate from law school and sit for the bar exam."[16]
For Oko, because affirmative admissions policies fail to address underlying social problem problems, law school diversity efforts focusing on admissions offer only band-aid solutions.[17]

Ramlackhan argues that affirmative action programs work best where they are paired with robust academic support throughout law school.[18] This helps to mitigate the limitations of affirmative action and make better the chance of achieving its goals. This argument, however, implicitly acknowledges that structural obstacles to many historically

---

[14]

[15] See *Gratz v. Bollinger*, 539 U.S. 244 (2003) in which the Supreme Court of the United States held that a "minority quota" system of affirmative action violated the constitutional rights of white applicants. In the sister case, *Grutter v. Bollinger*, 539 U.S. 306 (2003), the Court held that using race as one amongst many factors in university admission decision making was not unconstitutional.

[16] Patricia A. Wilson, "Recreating the Law School to Increase Minority Pariticpation: The Conceptual Law School" (2010) 16 Texas Wesleyan L Rev 577 at 578.

[17] Okechukwu Oko, "Laboring in the Vineyards of Equality: Promoting Diversity in Legal Education Through Affirmative Action" (1996) 23 Southern U L Rev 189 at 212.

[18] Anupama Ramlackhan, "Leveling the Playing Field in Law School: A Look at Academic Assistance Programs for Minority Law Students" (2006) J Race, Gender & Ethnicity 27.

disadvantaged students have not disappeared as a result of front-end focused diversity programs. In other words, the project of transforming the law school into place of diversity requires a diverse student body (and faculty) as a *precondition* or first step to achieving meaningful diversity, not as an end goal or indicator of success.

***Weak in the middle***

The difficulty is that much experience with affirmative action and progressive admissions initiatives shows high rates of difficulty and attrition of students admitted through such programs.[19] There remain ongoing problems of retention and completion of law school by minority students.[20] Evidence also suggests that minority students are more at-risk, more in need of academic support, more financially vulnerable, and more likely to fail the bar than non-minority students.[21] Wilson notes that amongst elite, American law schools, minorities are most often concentrated in the bottom half of their classes.[22] Poor performance in law school makes it harder to graduate and more onerous to launch a career in legal practice.

Of course, these difficulties cannot be traced causally to law school admission. But it is clear that since the introduction of targeted and liberalized admissions, the minority experience in law school has, on the whole, been shaped by the patterns of exclusion and hostility that minorities experience from the outside the law.[23]

A big part of this has been the failure of law school faculty to adequately integrate critical, counter-dominant discourses and social commentary about the law into core curriculum material. But a bigger problem lies simply within the traditional approach to law teaching, which remains mostly unchanged for over a century.[24] Despite its resilience, legal education has long been criticized for it content, form, and methods.[25] The American Legal Realists of the early 20th century highlighted the gap between theory and practice, focusing on the disconnect between appellate decision making (the focus of law school instruction) on the one hand, and the lived experience of the law applied (the reality of legal practice) on the other.

The core weaknesses in the existing model of legal education include: a curriculum rooted in appellate doctrine rather than a full contextual understanding of law in action; unengaged and outmoded methods of instruction, such as lecture and Socratic dialectic; evaluation methods that reflect a perverse ordering of lawyering knowledge and skill, placing abstract

---

[19] See, e.g., Richard Sander, "A Systematic Analysis of Affirmative Action in American Law Schools" (2004) 57 Stan L Rev 367 at 370 [suggesting that minority students would be better off attending lower ranked law schools to which they can be admitted without the need for affirmative action]. For contrary view, see William C. Kidder & Richard O. Lempert, "The Real Impact of Affirmative Action in American Law Schools: An Empirical Critique of Richard Sander's Study" (2004) 57 Stan L Rev 1855.

[20] Carole J. Buckner, "Realizing Grutter v. Bollinger's 'Compelling Educational Benefits of Diversity' – Transforming Aspirational Rhetoric Into Experience (2004) 72 UMKC L Rev 877 at 888 [linking lack of engagement with minority issues in class with feelings of alienation by minority law students].

[21] Dennis at 630 [also citing the fact that the ABA has identified students of colour as "at-risk" with respect to passing the bar examination]. See also Sander, *supra* at 426-467.

[22] Wilson at 581.

[23] See, e.g., Rachel F. Moran, "Diversity and its Discontents: The End of Affirmative Action at Boalt Hall" (2000) 88 Calif L Rev 2241 at 2283-2285 [finding issues of race and gender "largely ignored within the law school curriculum]; Walter A. Allen & Daniel G. Solorzano, "Affirmative Action, Educational Equity and Campus Racial Climate: A Case Study of the University of Michigan Law School" (2001) 12 Berkeley La Raza LJ 237 [describing a sample law school environment as replete with segregation and racial conflict].

[24] Rochette and Pue

[25] See Karl N. Llewellyn, "The Current Crisis in Legal Education" (1948-1949) 1 J Legal Educ 211 [critiquing the case study method and urging a curricular shift in law school towards the acquisition of "craft skills", an early call for clinical legal education]. See also, Benjamin Spencer, "The Law School Critique in Historical Perspective" (2012) 69 Washington and Lee L Rev [tracing 130 years of American critique of legal education's failure to adequately train putative members of the profession].

analytical reasoning at the top; and a faculty composition that is remarkably homogeneous along important social lines such as gender and ethnicity.[26] Dennis identifies problems in the way legal education is organized and taught, which has the effect of leaving stranded many of the beneficiaries of minority access to law school.[27] She notes that little is done to educate students of colour uniquely about what that means to be a lawyer of colour; and of the need to "hyper-educate" the entire student body to the needs of the culturally diverse, minority client.

All of these factors contribute to the sense that professional and institutional inertia alone are sufficient to perpetuate existing exclusionary practices in legal education. In other words, absent radical core changes to curriculum, instruction, evaluation and faculty composition, the liberalization of law school admissions alone is an ineffective means of promoting meaningful diversity.[28] Legal clinics departed from traditional forms of legal education to develop a pedagogy of professional practice that aspires to link lawyering practices to progressive social change. This vein of critique identifies traditional legal education as the source of the problem, transmitting a vision of practice that not only is unresponsive to social movements but which is counter-productive. But the critique also identifies legal education as a potential site of transformation, wherein a commitment to justice and equality can be promoted through client-centred lawyering and student-centred learning.[29] Dennis calls for a multicultural curriculum wherein instructors actively subvert stereotypes and biases and help students to see how the law operates to reinforce social, cultural and economic status markers, and also how the law can be deployed to challenge existing hierarchy and power imbalance.

***Abandoned on the back end***

Nowadays, it is not only desirable for law schools to showcase diversity, it can also be lucrative. The law school can attract the brightest stars from within racialized communities by offering a diverse and inclusive academic culture, a sampling of perspective courses with attractive titles, and a system of professional counselling and access to the lucrative job market. However, while the law school is the forum in which students are typically first introduced to the law firms, it is the firms, not the school, who determine virtually every aspect of the students' entry to professional training and employment. The law school has no power to place students or to compel firms to implement programs or make any specific decision.

In fact, law firms in Ontario (as in most jurisdictions) are not regulated at all, falling outside the regulatory power of the local law society or bar association, whose members are only individual lawyers. Law firms are unregulated businesses that profit from lawyers' monopoly over the provision of legal services. Business interests drive the employment side of the of the profession. Due to mandatory articles, every law graduate in Ontario must secure a position under the stewardship of a senior member of the profession. Thus, you have an unregulated business sector driven by a profit motive effectively in the position of admitting law graduates to the professional bar.

---

[26] Spencer supra. Even as most faculties now have strong female representation and we have seen numerous female law school deans across the country, the

[27] Dennis

[28] See Sander, supra [arguing that it might even be counter-productive].

[29] See Janet E. Mosher, "Legal Education: Nemesis or Ally of Social Movements?" (1997) 35 Osgoode Hall L J 613; and Lucie E. White, "The Transformative Potential of Clinical Legal Education" (1997) 35 Osgoode Hall L J 603 at 605.

As discussed, the numbers in Ornstein's ground-breaking research suggest modest and slow change in the diversity direction at all levels of legal practice. There is plenty of cause for concern in closer analysis of the data.[30] At the general level, the places where diversity inadequacies remain virtually unchanged are at the top of institutional power. Whether in the law firms, the law schools or the judiciary, racial and ethnic minorities are not only underrepresented, they are virtually absent.[31]

Law school commitments to diversity offer the promise of a self-fulfilling career in the law, in a legal culture which celebrates difference and accommodates a multitude of perspectives. However, when students encounter the profession, they face the reality that the forms of transformation that the law schools quite sincerely hope to engineer have not yet been realized. The students' disappointment deepens when they realize that the promise is not only unrealized, but is unachievable in the current model of legal education. Thin diversity is exposed as a cosmetic alteration that offers only limited and partial remedy for historical inequality.

**Assessing Thin Diversity: Accommodating Accommodation?**

Accommodation works to increase access to legal education for members of historically excluded groups, enabling them to move from "outsider" status to insider. However, this approach does not subvert the insider-outsider dichotomy. Rather, it reinforces it, putting many students of colour in the position of selecting a "bleached out" professional identity that smothers and eventually extinguishes personal identity markers of difference from the dominant norm (embedded with patterns of historical white, upper-class, male privilege).[32]

The alternative to assimilating to a norm to which one does not easily identify, is a law school life of isolation and professional marginalization.[33] Students who wish to develop critical postures, based on their personal or group-identified experience with the law, often fail to receive sufficient support from faculty or classmates. Teachers dismiss as "irrelevant" many social policy or normative questions, justified on a narrow view of law as positive doctrine. Meanwhile, fellow students cast off these "identity" or "interest" based politics as distractions by minorities and feminists with an axe to grind. Dominant assumptions and power relations, both in the law and in legal pedagogy, are not only left intact, but are strengthened by the marginalization of these voices.

For the minority student, upon coming to understand that the entire knowledge system being transmitted in law school—from the method of reasoning to the underlying facts and ingrained values of the law—privileges a particular perspective that treats the minority student as an "outsider", the rational choice is stark: assimilate or drop out and quit.[34] Indeed, the appeal of assimilation is powerful, even though it is not always an empowering choice. According to Wilkins:

---

[30] E.g., the data illustrates for the first time clear evidence of massive disparities between different social groups, such that some minorities are statistically over-represented in law school, while others are under-represented.
[31] Cite report on Fed Court judges; Carasco hum rts complaint vs U Windsor; Ornstein re law firms.
[32] See Sanford Levinson, "Identifying The Jewish Lawyer: Reflections on the Construction of Professional Identity" (1992-1993) 14 Cardozo L Rev 1577 at 1601 [describing the process by which lawyers are taught and trained as a socializing process designed to "make otherwise irrelevant what might be seen as central aspects of one's self-identity."]
[33] Brenna Bhandar, "Always on the Defence: The Myth of Universality and the Persistence of Privilege in Legal Education" (2002) 14(2) Can J Wom & L 341 at 351 [describing one effect of dominant pedagogical practices as treating the "concerns, interests, and views of students who do not conceive of the law as a set of ahistorical, natural principles" as illegitimate and irrelevant to the study of "real law"].
[34] Bhandar at 351. See also Younes, *supra* at X.

> bleached out professionalism stigmatizes lawyers who are different from those who created existing professional norms, discourages identity related innovations in professional practices, and delegitimates the kind of integrated self-consciousness that promotes individual growth, collective organization, and service to others…[35]

The assimilated student gains greater access to the core services offered by the law school: doctrinal instruction; credentialing; and employment opportunities, in addition to important social networks and professional cachet. The unassimilated student not only loses these benefits, but must struggle to maintain an individualist status or hold membership in a counter-dominant group. This is made even more difficult where such identity is positioned in opposition to all that is valued in the law by the dominant groups in law school. For example, the aboriginal student who holds a strong identity as a First Nations may find, in first-year law school, a broadly alienating education in a way that non-First Nations students would ever imagine.

Consider that the entire realm of Canadian public law, being based on British Crown power and a European constitutional order, might be viewed as contested, or even illegitimate. The strongly self-identified First Nations student may wish to explore issues of legitimacy underlying the constitution, Natural Law or pre-law interrogations, and normative questions far removed from the core curriculum material. In criminal law class, that student may wish to understand better the composition of the prison system, or look at cases from the civil courts and regulatory agencies making findings about police racism and abuse of power. In property law, again, underlying legitimacy issues and normative presumptions unstated may be evident to the First Nations Student but ignored by the instructor, and dismissed by fellow students.

These intersections of law, politics and policy tend either to be ignored or awkwardly taken on as "special interest" topics. The innovation of policy/perspectives courses provided a welcome response to the need for "safe spaces" for marginalized law students to explore issues of personal identification with the law and other issues of shared interest without the hostility of the lecture-based doctrinal classroom to questions of social impact of law. It created a baseline expectation—a slim hope for a place in law school, if not complete or meaningful inclusion. While perspective courses were an important step and have, in cases, helped minority students feel vindicated and included, when topics are taught as a "special interest" or "perspective", they tend to give the impression of redundancy or irrelevance. Some of found that the perspective course tends to entrench the marginalization of those perspectives, confirming student perceptions of "core" and "peripheral" elements to legal education.

Minority students know from long experience that critiquing the traditions of the legal profession, highlighting the colonial heritage of the common law, exposing the racial and differential impact of law enforcement, or calling out the insensitivities of dominant law firm culture and its prevalence in the law school classroom, are all lines of argument certain to be strongly resisted in class discussion. Faculty members who wish to cover critical discourses in the law seek to strictly manage the classroom content around these issues, keenly aware of the challenge of trying to facilitate a constructive dialogue about such

[35] David B. Wilkins, "Beyond 'Bleached Out' Professionalism: Defining Professional Responsibility for Real Professionals" in Deborah L. Rhode, ed *Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation* (Oxford, Oxford U Press, 2000) 207 [Describing the normative aspiration that holds lawyers should "bleach out" their personal identities in order to adopt a "neutral" lawyer role. Wilkins contests the value and viability of this approach for black lawyers in the United States].

fraught issues as gender and criminal sexual assault, anti-Semitism and university free speech, or race and policing. "Neutral" positions on such issues are often difficult to locate, leading to adversarial positioning on topics of deep emotional and personal resonance for many students.

The result is that difficult conversations about important topics are generally avoided in law school, under existing pedagogical methods.[36] To the racialized student, this is evidence of the continued prevalence of racism in the law, and of the law school's part in sustaining and reproducing it. The claim, then, that law schools participate in the reproduction of racism is not a qualitative likening of contemporary practices to the colour bar that previously did everything to keep students of colour out. Systemic racism today is linked directly to the factors that give rise to the individual appeal of assimilation or self-erasure: that is, the resilience of norms and values that dominate legal education, the qualities that constitute the "good lawyer", and the experiences that are valued or devalued in legal analysis.

Thin diversity, the accommodation approach, does not offer the means to alter the existing norms of legal education. Rather, it helps gain admittance for many who would be otherwise excluded and gives them the opportunity to assimilate. For some, this opportunity may be a great choice and an entry to a successful career.[37] However, for many others, it presents the impossible choice between quitting and self-erasure. For this reason, despite a generation of affirmative action programs in the United States, scholars observe that not much has changed in relation to racial equality.[38] Legal education is still, on the whole, an exercise in the production of "cookie cutter" lawyers,[39] with strong pressure towards individual self-erasure.[40]

Accommodation, or thin diversity, creates the conditions to allow for the outsider to become an insider, both in terms of gaining admission to law school and in having the opportunity to adopt the dominant model of professional identity, both of which have the effect of narrowing the representation gap. Success is therefore measured by the extent to which the outsider law student is able to assimilate to the standard norm, in terms of identity, perspective, skills and knowledge.

Thin diversity fails to dislodge the legacy of dominant "whiteness" in legal education. While minorities may find ways to assimilate to the dominant model, for many, such a decision comes at great personal cost. The unifying theme in the reflections and scholarly literature looking at issues of race and minority identity in law school is that the choice between assimilation and marginalization is not an adequate response to the legacy of exclusion in legal education. Only those willing to incur the personal cost of bleaching out will have a chance, and even then evidence suggests that many who wish to assimilate are unsuccessful.

### *Thick Diversity: The Transformation Approach*

To overcome the insufficiency of thin diversity measures, it is clear that to promote diversity robustly, law schools will no doubt have to continue to work to diversify law school

[36] Rose Voyvodic, "Advancing the Justice Ethic Through Cultural Competence" presented at the Fourth Colloquium (Windsor: Law Society of Upper Canada, 2005), online: http://www.lsuc.on.ca/media/fourthcolloquiumvoyvodic.pdf [discussing law school pedagogy and cultural competence].
[37] Wilkins
[38] cite Spencer
[39] Younes, cite. For the opposing view, that uniformity in the constituent members of the professional corps of lawyers is a public policy good, see…
[40] Armstrong and Wildman

classrooms, both in terms of admitting minority students as well as appointing minority faculty. But it has become clear that the benefits of diversity do not flow automatically upon changing demographic representation. Diversity as a program of reversing historical inequality is not a simple matter of demographic adjustment. Rather, while changing class composition is a necessary component, it is but a partial and preliminary measure towards truly transforming the law school.

However, more of the same will not resolve the underlying tensions. Greater academic support and the introduction of "perspectives courses" have been important to provide for minority student needs and appeal to their interests. However, these types of accommodation measures offer false comfort: while they may ease the student's entry to and passage through law school, they do not provide a vehicle for deep engagement within the law school about diversity issues, nor do they resolve for the minority student the homogenizing tendency within conventional legal pedagogy.

This necessitates an approach to teaching and training that integrates critical voices within legal education and scholarship, and embraces the pedagogical centrality of pluralist narratives in legal history, doctrine, analysis and reasoning. A transformational approach critically examines foundational questions, such as what it means to "think like a lawyer". The importance of pluralist and counter-dominant approaches to what thinking like a lawyer means, and the possibilities for future professional modelling, have been inadequately developed. This seems to be where diversity demands the most: in the acceptance and celebration that there are different ways to think and behave as a lawyer. The first step, then, must be to subvert the notion of a single, monolithic model of lawyering.

But once the idea of "thinking like a lawyer" has been opened up, the next step is to re-conceptualize the kind of lawyer that the law school will produce. If diversity demands the celebration of difference as a way of promoting equality, there must be some content to the kinds of differences that are celebrated within the diversity paradigm. Normative writers have focused on infusing the reconstructed lawyer model with a commitment to justice, equality and "do no harm".[41]

How this is achieved involves tailoring legal education to shift the model of lawyering, and change the characteristics of professional self-image. In order to do this, I propose using the same methods that the law schools have always employed. If we accept that in producing lawyers, the law school in fact produces a particular model of lawyer, given that a "neutral" image simply cannot be projected. It is in presenting the possibility of a lawyer identity to which any student can ascribe or aspire. This is where diversity can be embedded as a defining professional characteristic and ethic, and can have an effect in shaping the future of the profession. From disincentives to applying to patterns of attrition to career choices made, the dynamics of racial and ethnic minorities in relation to law school can be fundamentally altered if a plausible reform agenda were to be initiated that completely re-conceptualizes the normative model of lawyering taught in law school.

**Diversity Pedagogy**

[41] See, e.g., David Tanovich, "Law's Ambition and the Reconstruction of Role Morality in Canada" (2005) 28 Dal LJ 267 [articulating an approach to ethical responsibility rooted in the promotion of justice]; see also Rosemary Cairns Way, "Reconceptualizing Professional Responsibility: Incorporating Equality" (2002) 25 Dal LJ 27 [proposing an "equality seeking ethic" as a core professional responsibility]. See also, Duncan Kennedy, "The Responsibility of Lawyers for the Justice of Their Causes" (1987) 18 Texas Tech L Rev 1157 [urging a "do not harm" ethic].

The goal of diversity pedagogy is a conceptual re-orientation of what it means to think like a lawyer. The aspiration of thick diversity is working toward a shift in consciousness and lawyer identity. This means moving beyond the focus on ameliorating the position of "minorities" or "outsiders", but rather on changing the underlying conditions that create insiders and outsiders. This means improving the quality of education to include diversity not only as a series of positivist measures designed to promote a normative goal (i.e. to close the representation gap); but also as a fundamental shift in consciousness, ideas and values in matters at the core of the law school's mandate: professional identity; knowledge transmission; case analysis and legal reasoning; and employment preparation.

This shift in lawyer modeling begins with subverting the norm of what it means to think like a lawyer. It then moves to re-conceptualizing the kind of lawyer that the law school will produce. To achieve this, I propose using the same methods that the law schools have always employed. The law school chooses the knowledge, skills and priorities that define and constitute the law. The law school also transmits and assimilates the norms, behaviours and ethics that shape the professional identity. Thus, if we accept that it is the law school that establishes the normative lawyering model, acting as the site of identity formation and acculturation, the law school in fact produces a *particular* model of lawyer. This is where diversity can be embedded as a defining professional characteristic and ethic.

Diversity pedagogy, then, seeks to incorporate these truths in how legal educators both teach substantive law, and model the exercises of legal reasoning and practice. The process of promoting diversity needs to move beyond thinking about how to make the dominant legal establishment more accessible to "outsiders", to a more concentrated focus on revising and re-orienting the meaning and function of lawyering. This involves a pedagogical and administrative re-orientation to producing an institutional culture, reflected in curriculum, that is expressly and comprehensively built on equality-positive assumptions.

Such a normative diversity program based on principles of equality and broad inclusion generates what can be called diversity pedagogy. Diversity pedagogy is both a theoretical and practical program.[42] While I do not seek to prescribe a specific set of pedagogical instruments, exercises or experiments to implement the general prescriptions offered here, there are two broad goals that should be embedded in any program of diversity pedagogy. How these methods are applied in any given law school setting is a matter for local and particular consideration.

### *Choosing and defining professional norms*

The challenge of diversity in legal education is to subvert the dominance of the inherited model of what it means to "think like a lawyer", critically assess what is valuable in that model (and what is not), and then work on improving approaches to legal education to reflect the professional norms that constitute the normative model of a lawyer. In their joint study on the state of legal education at the beginning of the 21st century, Annie Rochette and Wesley Pue write:

> Employing only moderate poetical licence, it could be said that nothing fundamental distinguishes present educational practices from those of Toronto in 1968, Vancouver in 1945, Winnipeg in 1920, Halifax in 1900, or

[42] I am articulating the theoretical basis on which a pedagogy of promoting meaningful and impactful diversity norms could, and in my view should, be pursued. The task of experimenting with implementing theory is another project altogether. As a teacher who attempts to implement ideas of diversity pedagogy, my theoretical frame is certainly informed and shaped by my experiences in the classroom.

> Oxford in 1885. Contemporary common law legal education takes its form from schemes launched by elite Anglo Canadian lawyers a century ago.[43]

The traditional form of legal education helped reinforce the dominant culture of the profession, described as being through most of its history, "xenophobic, elitist and generally aligned with capital interests against ordinary citizens."[44] Responding to this legacy with unabashed repudiation, scholars in the emerging field of Canadian legal ethics call for fundamentally re-conceptualizing the role of the lawyer in the legal system and society, with necessary implications for legal education.[45]

My work, though not strictly a project about legal ethics, is informed by, and contextualized within, this body of literature. My conclusions and prescriptions necessarily implicate issues of professional identity and responsibility both in the education context and more broadly in the profession.

The hard sell need not be made with respect to establishing an interplay between professional education and professional culture. There is constant reciprocal influence between the law schools and the legal profession. The firms rely on law faculties to supply their existing business systems by producing quality graduates. But they also turn to the law schools to tell them where the law is headed. The extent of law school influence over the *future* of the profession is often misgauged or underemphasized in the face of the dominance of the constituent members of the profession (large firms in particular) over the *present* professional zeitgeist.

Education is a process of socialization.[46] It embeds a particular set of values, norms and practices—what we call a professional culture. Law faculties not only produce and transmit dominant knowledge about legal theories, systems, institutions, rules and principles. Legal education is also an initiation into a constituency, a professional body. Therein lies a culture, laden with values, norm and priorities. No education is ever "neutral" or "objective".[47]

The law school chooses the knowledge, skills and priorities that define and constitute the law. Honesty requires accepting the responsibility that legal education either entrenches the status quo or transforms it. For this reason, a transformative aspiration is central to the "thick" conception of diversity. Diversity pedagogy is both a normative position, that affirms the dignity of all experiences and identities as a response to historical exclusion. It is also a factually realistic depiction of present social conditions, including demographic variation and entrenched power imbalances. It is necessary for legal educators to be self-revealing about the different narratives of law's meaning and impact. Rejecting the norm of neutrality, diversity pedagogy accepts that the law is primarily positivist; and any deontology is contested at best. Pluralism is the necessary corollary to equality when considering the intersection of globalization, multiculturalism, and liberal-democratic ideas of individual freedom and dignity.

More than twenty years ago, Crenshaw described what she called the myth of "perspectivelessness".[48] She found this to be a fatal flaw at the core of traditional legal education. Her experience as a racialized woman teaching in a law faculty provided the

---

[43] Rochette and Pue

[44] Pue

[45] See e.g. Allan Hutchinson

[46] Freire

[47] Freire

[48] Crenshaw. See also Bhandar [myth of "universality"]

experiential setting and familiar grounding to articulate a compelling account of racial exclusion within legal reasoning, institutions and the academy. There is a sufficient body of work now to accept as sound and persuasive the notion of a broadly shared experience of racial antagonism and exclusion stemming from the conventional ways in which the law is created, reproduced, interpreted, applied and taught.

The pervasiveness of law's complicity in reproducing patterns of racial exclusion white privilege is at times muted by the embrace of formal equality. The idea of law's neutrality, stated to promote "equal" treatment by way of objective decision making and sameness, helps continue to mask the prevalence of differential impact of unequal systemic factors. Formal equality accepts the important moral view that all persons are, at least theoretically, equally capable of realizing or fulfilling any goal reasonably available to any other person. The problem with formal equality, however, is that it does little to affect the starting position of individuals in the world, which we know empirically to be closely tied to the degree of self-realization and sustainability. Formal equality fails to attack the underlying norms and systems that create exclusion in the first place.

For these reasons, the transformation approach to diversity must embrace the rejection of "perspectivelessness" as a normative frame, or default position, in legal instruction. False notions of "neutral" or uninvested legal analysis rest on an internalized, constructed, self-referential concept of "objectivity" that simply reflects vested interests; namely, the concerns, interests and privileges of the founding fathers of the legal profession.[49] It does so by holding to the idea that legal analysis can be taught without directly addressing conflicts of individual values, experiences and world views. Subverting the notion of legal objectivity or neutrality is the first step in creating space to recognize and incorporate the full panoply of human experience.

***Transmitting norms, behaviours and ethics***

The goal of transforming norms in legal education has profound implications. It necessitates a critical assessment of what it means to "think like a lawyer" because it challenges the inherited model of the lawyer and, necessarily, the skills and traits that mark the "good" lawyer.[50] Lawyers have a privilege that requires embedding responsibility. The LSUC enforces rules of professional conduct. Embedding the culture of professional responsibility begins in law school. Teachers are the guardians for endowing the privilege of lawyer identity, before the LSUC takes on the role of governing the practise of professional responsibility.

The teacher-student relationship has been theorized heavily. Critics of traditional models of legal education argue that excessive focus on hierarchy—the use of techniques like Socratic lecturing, for example—highlight existing power imbalances based on race and gender and do nothing to empower minority law students. Freire discussed overcoming what he called the "teacher-student contradiction". This is not, in my view, about erasing the line between pupil and professor. It does not advocate abolishing the contradiction, but rather seeks to reconcile the poles of contradiction. It is not about creating absolute equality or aspiring to a pure, non-hierarchical, democratic ideal in the classroom. It is about exposing and re-aligning power dynamics in the classroom.

[49] Crenshaw

[50] Tanovich; Farrow

The model of diversity that this paper proposes would expect responsible use of authority by the law teacher, and the acceptance of "teacher as guide" by the student. In this matrix, the law teacher avoids authoritarianism, and practises solidarity with the student, investing in a process of different, though mutually reinforcing roles, whereby both teacher and student are enriched. The teacher shares the burden of embedding a sense of professional responsibility in the student, while demonstrating through practice an equal commitment to his or her own pedagogical responsibility.

**Implications of diversity pedagogy the law school classroom**

The following are the key indicators and goals of a curriculum shift towards integrating diversity thoroughly through all aspects of legal education and administration.

*Deconstructing power relationships*. Law schools can realign power. Empower students not just with the credential of a law degree, but with a consciousness of diversity involving professional responsibility, ethics, empathy and competence. This portrays the lawyer as an agent of change.

*Subvert the myth of universality*. Allow different voices, allow each person to be their own lawyer rather than make a lawyer out of them.

Stimulate *culture shift* in the profession organically through training students to nurture the lawyer within, to be agents of change within the profession and to realize the transformative potential of their social and political role in the broader society. As opposed to reading law as a body of fixed and determinate text, this kind of diversity invites students to view the law as a tool, as an instrument of change.

*Make lawyers better communicators* who translate the law to clients. In this sense, diversity necessarily incorporates themes of cultural sensitivity and global awareness.

Under this model, the student is encouraged to connect in a personal way with the most basic tradition of the legal profession: the pursuit and promotion of justice. What emerges from this model is a model of professional competence and skill that includes the following qualities: emotionally intelligent (as opposed to dispassionate); experientially informed (as opposed to abstracted and artificially "neutral"); empathetic and personally invested (as opposed to detached and indifferent); critical and creative (not just within established doctrinal boundaries, but also in theory and practice); and as such, not in search of ethical rules to obey, but rather seeking participation in an ethical culture.

# *Can and Should Human Rights Themes Impact Decision-making in a Law School?*

## Reflections from the U.S. Perspective

Nora Demleitner
Washington and Lee University School of Law, United States

### *I. INTRODUCTION*

Human rights are designed to protect fundamental rights, well-being, and dignity of individuals, and to some extent groups. In the United States human rights norms are often considered part of "international law," in contrast to "civil rights law" which is deemed an integral part of domestic law.[51] Arguably, however, civil rights law encompasses only a part of human rights law, which includes civil and political rights, often defined as protections against the overreach of governmental power, as well as economic, social, and cultural norms, which extend to claims upon government.

In U.S. law schools human rights law is being taught generally as an upper-level elective course, similar to any other area of law, with a focus on substantive rights as well as procedure. While this paper will address some of the issues connected to the teaching of human rights within the law school curriculum, it focuses largely on whether and how human rights should be lived within a law school, to what extent it should animate faculty and administrative decisions, if and how it could be used as a guide to making some of the most vexing decisions facing American law schools today, and how it may impact budgetary decisions. The ultimate question is whether human rights can be used as a guide and implemented in an educational institution. This is a particularly opportune time to raise this question as institutions of higher learning, and especially law schools, have increasingly been pejoratively called "businesses."[52]

Human rights issues are generally not categorized as such in law schools though they lie beneath fundamental structural decisions. If these issues were categorized as human rights issues -- rather than as questions of management, of student matters or academic freedom -- they could be approached with different gravitas and within a differently defined legal framework.

This paper will focus on four sets of questions: First, it discusses institutional funding and the selection of students in the context of access to legal education, which implicates racial, gender, and socio-economic equality. Next the paper will turn to a few student-related issues that involve select normative human rights values. Third, the paper will address resource allocations, ideological values, and questions of professional training that pertain to the teaching of human rights in law school. The last section is devoted to

[51] The struggles surrounding gay rights as well as the rights of undocumented immigrants are often referred to as the new "civil rights" battles instead of being positioned as part of an international human rights movement. Those may be partially strategic choices resulting from domestic policy concerns involved in invoking non-U.S. norms and values.

Some, however, use the terms interchangeably. *See* New York City Commission on Human Rights ("The New York City Human Rights Law is one of the most comprehensive civil rights laws in the nation.").

[52] Legally most U.S. law schools remain not-for-profit enterprises, though a number of for-profit law schools exist and are accredited by the American Bar Association.

For a discussion of business models, see THE BUSINESS OF HIGHER EDUCATION (John C. Knapp & David J. Siegel eds., 2009).

questions of gender equity, gender mainstreaming, the debate of nature and nurture as well as structural gender imbalances in legal education.

## *II. ACCESS TO LEGAL EDUCATION AND THE FINANCIAL MODEL*

In the United States universities can be public or private, with virtually all of them charging tuition and fees to those enrolled. While even private universities generally receive some state and federal funding, historically the "publics" were established to benefit the higher education of state residents and were often generously financed from state tax revenue. For reasons of political philosophy but also in light of increasing pressures on state revenue, in recent years many states have dramatically decreased their funding of state universities.[53] Initially that led to a substantial increase in tuition for out-of-state students. Over the last few years even tuition for in-state residents has increased dramatically.[54]

Tuition increases for both private and public law schools have been marked over the last decade.[55] Nevertheless, more law schools have opened, and the number of students enrolled in law school has risen over the last few decades,[56] though currently enrollment is on a downward trajectory. This section will focus on the financing of law schools and the access-related questions that have arisen in conjunction with the allocation of law school scholarships and government loans. The last part of this section will then turn to a few other admissions-related matters that are not directly related to student financing.

### *A. Scholarships, Loans, and Access*

Students have financed their education in part through personal and family savings; through earnings, especially when they are in a part-time program; through scholarship assistance, which has also grown substantially during the last decade;[57] and most importantly through government loans. While law schools grant some need-based scholarships and loans, or at least tie some of their loan and scholarship programs to financial need, most scholarship money is based on "merit," which is a short form for the combination of undergraduate grade point average (GPA) and the score on the Law School Admissions Test (LSAT). Awarding of scholarship based on such merit data is a function of the annual law school ranking by U.S. News, which assesses student quality based on these two data points.

Depending on the law school's financial resources and scholarship allocation policy, students may find it difficult to receive continuing scholarship funding for all three years when their academic performance does not meet the required threshold. While some have argued that such forfeiture is a function of the over-awarding of scholarships, it also results

---

[53] *See* Jennifer May & Sandy Baum, College Board Advocacy & Policy Center, *Trends in Tuition and Fees, Enrollment, and State Appropriations for Higher Education by State* (2012); National Conference of State Legislatures, *State Funding for Higher Education in FY 2009 and FY 2010* (2011), available at www.ncsl.org/documents/fiscal/higheredfundingfinal.pdf.

[54] Kim Clark, *Tuition at public colleges rises 4.8%*, available at http://money.cnn.com/2012/10/24/pf/college/public-college-tuition/index.html.

[55] American Bar Association, *Law School Tuition 1985-2011*, available at www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf.

[56] American Bar Association, *Enrollment and Degrees Awarded, 1963-2011 Academic Years*, available at www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf.

[57] American Bar Association, *Internal Grants and Scholarships, Total Amount Awarded 1991-2010,* available at www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/internal_grants_scholarships_awarded.authcheckdam.pdf.

from the limited predictive quality of law school performance based on these two "merit" components.[58]

While most applicants will be admitted to some law school, some may be admitted to a more highly ranked law school without scholarship money while receiving a substantial scholarship package from a lower-ranked school. In light of the perceived importance of rankings, applicants often forgo the financial assistance in exchange for the higher ranking. A risk averse decision-maker, however, may choose the lower ranked school to minimize educational debt, especially when family resources are non-existent or very limited.

At least one of the so-called "merit" markers, the LSAT, correlates with socio-economic advantage, which is particularly true in the age of private tutors for this (and any other) standardized test. Therefore, socio-economic advantage at the outset -- including stronger educational preparation from kindergarten through college – will likely amount to further educational advantage through admission to more highly ranked law schools, to greater choice, and even to financial advantage, as much of scholarship money is no longer tied to financial need.

The perpetuation of inequality may appear less troubling in light of the existence and proliferation of loan programs. Initially government grant and loan programs provided sufficient assistance for most students to allow them to finance their education.[59] With the increase in tuition, private companies stepped in to provide additional financing. Increasing concern about the practices of private loan companies, following revelations about inappropriate relationships between lender and educational institutions and a contraction in lending during the recent financial crisis, the federal government took over most of the educational loan business, which means that the U.S. taxpayer is now the guarantor and holder of vast amounts of educational debt, including law school debt.[60] This governmental action responds to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which outlines in Art. 13 the right to education. With the "view to achieving the full realization of this right: (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means,…."[61] On the other hand, the loan-based financing of higher education appears to counter the ICESCR's goal of progressively moving toward "free education."

Many law schools are primarily supported by their students' tuition, and even those with substantial endowments rely on tuition revenue for at least some of their operations.[62] Without the existence of the government loan program that finances higher education, many law schools may be struggling to enroll students, as private loans are still difficult to procure, or may have to find ways to increase their scholarship budgets.

While separate data on loan defaults does not exist for law schools – with the exception of a handful of free standing law schools, which are not affiliated with a university -- overall loan defaults have increased.[63] Recent changes in government policy that will limit loan

---

[58] Lisa Anthony Stilwell, Susan P. Dalessandro & Lynda M. Reese, *Validity of the LSAT: A National Summary of the 2009 and 2010 LSAT Correlation Studies* (Oct. 2011).

[59] Some students, often those with bad credit histories, have been forced to take out private loans, usually at a higher interest rate than government loans.

[60] American Student Assistance, *Student Loan Debt Statistics*, available at www.asa.org/policy/resources/stats/default.aspx.

[61] ICESCR art. 13(2)(c).

[62] Universities with large endowments have come under attack for spending too small a percentage from it. The endowment spending policy may also raise questions about equality and access that are, however, beyond the scope of this paper.

[63] Libby A. Nelson, *Default Rates Continue to Climb, Mostly* (Oct. 1, 2012), available at www.insidehighered.com/news/2012/10/01/two-year-default-rates-student-loans-increase-again.

repayment to a percentage of one's income and allow all debt to be cancelled after 20 years, or 10 years if one serves as a government lawyer or works for a not-for-profit agency, may decrease the likelihood of defaults.[64] While this loan forgiveness program does not make higher education "free," it makes it subsequently easier for graduates to manage their debt load.

Some, however, have criticized these policies as privileging the wealthy rather than serving the most disadvantaged. The definition of privileged appears to extend to almost anyone who is able to obtain a professional degree. Critics have also indicated concern that graduate schools may be more inclined to increase their tuition in light of the federal loan forgiveness program, as borrowers will be less concerned about cost of attendance.[65]

The story of expanded enrollment and government-backed financing should have increased access to legal education across the entire socio-economic spectrum and through all racial group in the United States. The reality, however, is different. Even though racial diversity has increased in American law schools,[66] a recent study has indicated that socio-economic diversity has decreased over time.[67] As socio-economic equality has fared worse than racial equality, largely racial minorities of economic means have benefitted from the diversification of law schools over the last few decades.

In all respects, the government's current approach to lending accords with the American conception of equality of opportunity and appears to guarantee access to even a professional education for everyone. While the government program provides at least financially a level playing field, one must wonder why the results are relatively disappointing.

Law schools must ask themselves what their obligations are, if any, to increase access, especially as they are the secondary beneficiaries of the governmental lending policy. How do their scholarship policies, based on "merit," restrict access? To what extent should law schools consider societal distribution of resources in their scholarship policies? To whom does the law school's responsibility run: Is the ultimate fiduciary responsibility to the school's current students and the alumni who base the value of their education at least in part on the ranking of their school? Is it therefore the school's obligation to maximize rankings and disregard need in its allocation of scholarships and grants? If a school were to consider human rights values, likely it would have to build its access policies in different ways to assure minority students and socio-economically disadvantaged students equal access.

Even if rankings are not a consideration for a law school, as may be the case for those at the bottom of the current rankings regime, do they have an obligation to counsel meaningfully those who seek a legal education with respect to their potential future financial liabilities? Or is there any obligation on their part to restrict lending – which a school can do in part through the determination of the cost of living expense – perhaps in turn impacting its ability to attract students?

Socio-economic rights always raise question as to the allocation of limited resources to the neediest. From a societal perspective applicants to law schools and law students are among

[64] For a description of the program, see studentaid.ed.gov/repay-loans/understand/plans/income-based.
[65] *See* Jason Delisle & Alex Holt, Education Policy Program – New America Foundation, *Safety Net or Windfall? Examining Changes to Income-Based Repayment for Federal Student Loans* (Oct. 2012).
[66] American Bar Association, *First Year and Total J.D. Minority Enrollment for 1971 to 2011*, available at www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_minority.authcheckdam.pdf.
[67] Richard H. Sander, *Class in American Legal Education*, 88 DENVER L. REV. 631 (2011).

the more privileged, those who hold a college degree and therefore have already a substantial advantage in the work place. Within a university, therefore, questions may arise as to the allocation of resources to the law school as compared with the undergraduate student population or other graduate programs whose students may be less likely to be fiscally remunerated throughout their career. On the other hand, in light of the importance of the legal system to the American structure of government, is there a special obligation on a university to assure and support the education of future lawyers? As the U.S. Supreme Court re-iterated in Grutter v. Bollinger the importance of education in the context of democratic governance,[68] at least public universities could be assumed to have some obligation to offer training for lawyers.

Questions of how far any social responsibility extends are particularly pertinent in a global world. Should law schools limit scholarship money, for example, to U.S. residents? Are there any individuals outside the United States to whom a special duty may run, such as citizens of countries in which the United States is militarily engaged? Or should a law school award merit assistance based solely on LSAT results and undergraduate GPA, if ascertainable, to assure that it recruits the best from anywhere?

Ultimately, the question we have to ask is whether any organization has any obligation toward the values we would like to see honored beyond those formally mandated. Does a law school have any responsibility to the greater good rather than just to itself, a question corporations are increasingly facing in the international human rights realm? As universities are not only businesses but also serve as role models and educators, should they have to ask these questions publicly in order to demonstrate their participation in a vibrant human rights discourse to their students?[69]

*B. The Influence of Licensing Bodies on Access*

As law is a regulated profession, individual state licensing authorities make decisions about bar admission in the United States.[70] A major component of these admission decisions, in most states, are examinations designed to test substantive knowledge and some skills. The results of these have been challenged, as they appear to show racially disparate results. Nevertheless, they continue to be in use. This is particularly troubling as failing the bar examination has a long-term impact on a person's career.[71]

Another major component of bar admission is the so-called "character and fitness" test. The process is shrouded in secrecy, and appears to be largely within the discretion of the examining committee members.[72] In the end the outcome may be correct, as it is in so many group decisions, but concerns remain about the transparency of such decision-making.

Law schools consider character and fitness determinations in their admissions process, in light of their perception of how the committee operates, though that varies by state. Prior criminal records, for example, will frequently lead to the exclusion of an otherwise viable candidate for law school on the assumption that he would likely not be

---

[68] 539 U.S. 306 (2003).
[69] Cp. Amartya Sen, *Human Rights and the Limits of Law*, 27 CARDOZO L. REV. 2913 (2006).
[70] *See* National Conference of Bar Examiners online at ncbex.org. It is well beyond the scope of this article to comment on the fact that more than 50 jurisdictions hold such authority, with many state bar rules continuing to reference those admitted to practice in another U.S. state as "foreign attorneys." *See* Virginia Rules of Professional Conduct (any attorney not licensed in the state of Virginia is a "foreign lawyer").
[71] Jane Yakowitz, *Marooned: An Empirical Investigation of Law School Graduates Who Fail the Bar Exam*, 60 J. LEGAL EDUCATION 3 (2010).
[72] Conversation with Christopher McGrath, member of the New York Committee on Character and Fitness, spring 2012.

admitted to the state bar. On the other hand, some schools may be too aggressive in their exclusionary policies, with law school candidates misreading admission to law school as identical with admission to the bar.

Specific questions by both institutions have a particularly disparate impact. How relevant are arrest records, especially as we know that in many jurisdictions they show racial disparities not reflective of crime rates? Even convictions, though individually justified, evidence racial and socio-economic (and to a lesser extent gender) bias. In a country in which tens of millions of people have arrest and conviction records, does it not constitute inappropriate discrimination based on status to deny them admission to legal education and ultimately the legal profession? As those records are racially disparate, especially with respect to African-Americans, law schools have to consider carefully in whose interest they are operating when excluding applicants with an arrest or conviction record from admission.

### *C. Special Students and Access*

Other access issues closely connected to bar admission pertain to non-U.S. citizens. While state bars now admit non-citizens and permanent residents, the admission of those on non-permanent visas and especially those without documented status remains disputed.[73] Should law schools admit such students, assuming they know of the status issue (which is changeable), or rather decline admission as they may assume that such graduates will ultimately not be admitted to practice law? While these are practical and philosophical concerns, students with disabilities may raise resource questions.

Schools are mandated under the American against Disability Act not to discriminate against those with disabilities and to provide appropriate accommodations once those students are admitted. As this accommodation frequently creates costs for schools, admission of students who need substantial accommodations raises substantial resource questions. How should limited resources by expanded? Should school administrators be permitted to exclude a student with substantial disabilities because they do not consider the school adequately prepared for such a student? This could occur, for example, with respect to physically handicapped students admitted to institutions whose buildings had not been retrofitted under current law. Or would such a decision be an obvious violation of human rights obligations, designed to protect solely the school (rather than the individual)?

Questions of access remain challenging but other human rights issues lurk in other core institutional areas as well, especially as some of the challenges existing at the admissions stage continue later.

## III. *THE ROLE OF THE OFFICE OF STUDENT AFFAIRS*

Student affairs offices tend to see students from a very different vantage point than faculty members. They are often a place of last resort to which students turn when faced with personal and academic challenges. Therefore, the mission of these offices has to be focused on serving the needs of individual students, though they also play an institutional role, which includes meeting budgetary goals and helping assure strong bar passage.

### *A. Freedom of Religion*

Student affairs frequently face human rights questions directly – as do human resource offices when employee matters are involved. The right to religious freedom, guaranteed by numerous human rights treaties, occasionally raises complaints in law schools. For

[73] Justin Storch, *Legal Impediments Facing the Nonimmigrants Entering Licensed Professions*, 7 THE MODERN AMERICAN 12 (2011).

example, to what extent do law school class schedules have to consider students' religious choices? This may become particularly relevant for schools that have broad religious diversity as days of worship differ. On the other hand, those schools may have developed institutional responses that are more difficult to institutionalize at schools with a small number of religiously diverse students.

Other questions that also arise in connection with religious freedom pertain to the need for individual prayer rooms; to the integration of attendance rules with religious holidays; to the scheduling of make-up classes. Is taping or now podcasting of classes a sufficient accommodation, or should rescheduling a class be mandated to accommodate students who cannot attend for religious reasons? Religious minority groups who celebrate holidays during the semester may pose particular challenges.

Presenting a solution to some of these issues that accommodates one group may lead to conflicts with other religious groups: May necessary make-up classes be scheduled on Sundays, which even in a country that is largely Christian may be less of a religious holy day for most Christians than for example Friday evening would be for observant Jews?

Conflicts between religious accommodations and other values are also conceivable: May a Christian student who takes his religion very seriously always be excused from working on Sundays (as a student work-study worker in the law library), necessitating that a single parent student always work on Sundays, even though that would be the only day she could otherwise be at home with her young child?[74] With human rights norms recognizing the importance of religious freedom, conflicts are inevitable and have been widely debated, albeit not generally in the context of law school administration.

*B. Disability Accommodation*

Accommodation of student disabilities begins in the admissions process but becomes an active issue during the student's attendance. While some disabilities are diagnosed and well-known at the time of application to law school, others develop during law school. What are a school's human rights obligations in this situation?[75]

Should a law school facilitate a student's graduation, even when admission to the bar appears doubtful? Will a school's obligation to accommodate a student evolve during a student's time at the school, i.e., may it be heightened in the student's final semester as compared to the first few weeks of school? How would – and should -- the financial obligation the student incurs play into a school's decision-making, if at all?

Student affairs offices at least implicitly must consider the resources required to accommodate disabilities. To what extent is an institution obligated to assist an individual it has accepted? In a world of limited resources, should those be expended to maximize the number of those most likely to succeed, or is there an obligation to assist those most in need? The most challenging practical issues pertain to the "reasonableness" of accommodations. Are there any disabilities that would allow a law school to argue that it is unreasonable to expect them to be accommodated because of certain professional skills expected later?

[74] Gendering the single-parent student may raise eyebrows. It is not only designed to reflect social reality but also to raise a potential conflict between freedom of religion and gender discrimination. *See infra* Section V.

[75] *See* Convention on the Rights of Persons with Disabilities. The right of education and to "reasonable accommodations" is set out in Article 24.

Beyond issues that pertain to individual students, law schools are asked to make curricular decisions, including the question of whether and how to teach international human rights law.

### *IV. CURRICULUM DEVELOPMENT AND COVERAGE*

Human rights education is a crucial way to inform and distribute knowledge about human rights values. Despite the wide availability of lesson plans, it remains generally limited, at least in elementary and secondary public schools, which are likely to focus more on traditional areas of "civil rights." In law school curricula, human rights courses remain separate from civil rights, as they continue to be considered generally "outwardly" focused despite their occasional "intrusion" into American courts or the U.S. justice system.[76]

One curricular question is how to teach human rights. Should it be integrated into different courses or rather be a single course? The traditional method of teaching "legal ethics" or "international law" throughout the curriculum has generally been considered a failure. Should there be a discussion of non-U.S. standards when U.S. law is at issue? As human rights norms are generally not directly enforceable in U.S. courts and dispute resolution in non-U.S. tribunals, such as the Inter-American Commission, remains limited to a handful of practitioners, would such allocation of teaching resources and time be inappropriate as it would detract from U.S.-based processes? On the other hand, should law schools consider themselves potential change agents, and therefore expose their students to different, albeit non-binding sources of law, potentially to make them more creative legal practitioners?

In addition to the traditional classroom based courses, almost all U.S. law schools now offer clinical courses, in which law students represent live clients under the supervision of a law faculty member/practitioner. Clinics are highly desirable learning opportunities but they are viewed as expensive, as the generally recommended student-faculty ratio is substantially smaller than is deemed appropriate for large lecture courses.

Today's clinics are largely designed for pedagogical purposes, though some also argue for clinics to fill community needs for legal representation. Most of the clinics originally were focused on general poverty law as well as representation in criminal cases. Over time, however, they have expanded and focused on ever more specialized areas of law, including tax, veterans' benefits, and immigration. Many clinics emphasize individual case resolution while others include reform litigation, policy reports, and a limited type of lobbying.

Only a few law schools run clinics that are called "human rights clinics," though their focus may vary. Generally more highly ranked and better endowed law schools operate these clinics. While they explicitly focus on human rights issues, relevant issues often arise in other clinics as well, and in some cases may lead to the use of human rights arguments or even recourse to non-U.S. human rights dispute resolution mechanisms.[77] It is much more likely, however, that non-human rights clinics do not consider such avenues.

---

[76] Examples are litigation surrounding the Alien Tort Claims Act, which provides a cause of action in U.S. courts even though the violation of human rights occurred abroad and was inflicted on foreign citizens. Occasionally, cases that either came out of or are ultimately destined for U.S. tribunals include a human rights component. Among the examples is extradition to the United States, often challenged because of anticipated human rights violations in the United States. *See, e.g.,* Case of Babar Ahmed and Others v. United Kingdom (Applications nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09), Sept. 24, 2012 (denial of request to stop extradition to the United States because of potential prison condition); Soering v. United Kingdom, 161 Eur. Ct. H. R. ser. A (1989)(extradition to United States rejected because of so-called "death row phenomenon").

[77] Columbia Law School's Human Rights clinic represented Jessica Lenahan Gonzalez in front of the Inter-American Commission of Human Rights.

As all clinics are comparatively expensive, the selection of one substantive area constitutes a substantial resource allocation. Is it defensible to select human rights as a substantive law area of choice? Many of the human rights clinics focus on cases that arise in the United States and therefore allow students to learn using generally underutilized and underappreciated tools to help with dispute resolution or to attract attention to a particular issue. For that reason, human rights clinics may not only be defensible but most desirable as they develop lawyers with a broader set of dispute resolution tools at their disposal.[78]

In general, U.S. law students would benefit from greater exposure to human rights norms, especially as they may inform interpretation of domestic law and allow for additional procedural tools. On the other hand, such clinics may prepare students less directly for the job market than other (domestic) clinics might, a substantial consideration in the ultra-competitive job market today's law graduates face. Ultimately, an institution of higher learning will have to decide, based on its mission, what value such an international human rights clinic could and would add to the students' immediate learning experience and long-term professional development.

Many human rights issues of practical and pedagogical nature run through a law school. The final section will focus on one – gender – that remains salient and continues to pose challenges for legal education.

## V. *GENDER DISPARITY IN LAW SCHOOLS AND THE LEGAL PROFESSION*

Women have made substantial gains in American society over the last few decades. They are in a position to control child bearing; they have displaced men in the number of college and graduate degrees earned;[79] they have moved into professional positions and hold highly remunerated positions in the world of business. Unequal outcomes continue, however, in politics and the economy, and the workplace remains gendered. The lack of equality in such situations gets increasingly ascribed to women's desires and interests rather than direct or indirect discrimination.

### *A. The Student Body*

In law schools the number of female students had risen to fifty percent but appears to be now on a limited but almost steady decline so that it currently is around 46%.[80] In the job market, positions quickly become unequally distributed: After a few years women find themselves more in government or in-house lawyer positions than in major law firms, let alone as equity partners or part of the firm's management committee.

Why may the number of women attending law schools not have permanently risen to fifty percent or even above? On the LSAT male test takers have, over the years, scored marginally higher than female test takers.[81] The reverse is often true for undergraduate grade point averages. Therefore, the decision which credential to weigh more substantially

---

[78] Clinics that are focused on immediate community needs may absolve the state and the local bar from helping to provide necessary resources to address a crucial community need.

[79] National Center for Education Statistics, *Fast Facts*, available at nces.ed.gov/fastfacts/display.asp?id=72.
[80] American Bar Association, *First Year and Total J.D. Enrollment by Gender 1947-2011*, available at www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf.
[81] Susan P. Dalessandro, Lisa A. Stilwell, Jennifer A. Lawlor & Lynda M. Reese, Law School Admissions Council, *LSAT Performance with Regional, Gender, and Racial/Ethnic Breakdowns: 2003-2004 Through 2009-2010 Testing Years (TR10-03)* (Oct. 2010).

will have an impact on the number of women admitted and likely on the number of women ultimately enrolled at a law school.

With the economic downturn, many law schools have witnessed a decrease in female applicants and/or number of women enrolled. The explanation as to the decrease in women applicants remains disputed, though some have postulated that the amount of debt a student may incur is more likely to deter female than male applicants. Others believe that family investments may continue to favor men, which is a rational choice as men still earn more than women. If these theories were accurate, should schools consider awarding larger scholarships to women to entice them to attend law schools?

Women as a group continue to be found disproportionately in caring and nurturing professions. Even in law they tend to cluster in courses addressing the needs of children and families and choose career paths accordingly. They may, however, be equally interested in business and corporate law if steered in that direction. Should schools consider requiring such courses to assure that both male and female students are exposed to them? At the same time, should men be required to take the courses that are more likely to be attended by women?

Today discrimination against women takes more subtle forms than in the past. Much exclusion and disparate treatment occurs almost inadvertently. Women may be more reluctant to seek out mentors; they may be called on in class less frequently; their contributions to discussions may be valued less. It may be those subtle signs of discouragement that steer women away from certain areas of legal practice.

*B. Faculty and Staff*

Law schools continue to display a gendered employment structure themselves. Women are often found in many lower level support positions and dominate certain administrative departments, such as student affairs. On the other hand, computing services and IT continue to be run largely by men. On the academic side, men are predominantly represented in tenure-track and tenured faculty positions. Contract faculty positions, especially in the legal writing area but also in clinic programs, are often staffed disproportionately by women.[82] As many schools are potentially facing long term decreases in student numbers, they will not replace departing faculty members which could lead to an increase in women faculty as older faculty are more likely to be male. On the other hand, replacements may be contract rather than tenure-track faculty.

Whether women prefer to teach in the legal writing and clinical areas because of greater student contact or whether they are more likely to shun research are open questions. The impact on students, however, is often not lost. They intuitively grasp power structures and begin their professional careers seeing fewer women than men in powerful positions in their educational institutions.

*C. Larger Communities*

Universities are a part of the communities in which they are located and of a national and global society. As women continue to suffer from disadvantage, law schools could actively engage in their communities to help remedy these inequalities and raise awareness

[82] American Bar Association, *Total Male Staff and Faculty Members 2010-2011* & *Total Female Staff and Faculty Members 2010-2011*, available at www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_staff_gender_ethn.authcheckdam.pdf.

of students and staff. Faculty may present data and legal solutions with respect to the continuing unequal status of women in the United States despite laws designed to combat inequality. They can engage in pro bono projects and clinical work and rally student organizations to address community-specific issues and larger societal concerns.

## *VI. CONCLUSION*

Human rights are not solely theoretical, supranational constructs. The values that support them are norms that may underlie crucial decisions educational institutions face. Labeling them human rights concerns may indicate the stakes at issue and focus attention on these matters in an unprecedented way. There are no easy solutions but a commitment to address matters in this way can go a long way to operationalize human rights in the daily lives of institutions and individuals.

# The Art of Human Rights: Enriching the Life of the Law School through Drawings and other Visual Resources

Santiago Legarre
Pontifica Universidad Católica Argentina, Argentina

## I *In general*

In the life of the Law School, focus on the "visual" can operate at three different levels: learning, teaching, and examining (legal concepts). My main interest in this paper is to explore the latter level, "examining", broadly considered so as to encompass evaluation in general. Furthermore, that interest is pinned down here to the area of constitutional rights and human rights in general, even though the conclusions reached can (and should) likely be extrapolated to other areas of the law.

The following passage by psychologist Kendra Cherry sums up well the distinction between the first two levels referenced above:

> While aligning teaching strategies to learning styles may or may not be effective, students might find that understanding their own learning preferences can be helpful. For example, if you know that visual learning appeals to you most, using visual study strategies in conjunction with other learning methods might help you better remember the information you are studying.[83]

In effect, the first logical step regarding the relevance of the visual approach has to do with using it yourself when you study —assuming that you came to the conclusion that you are a "visual learner". As you know, VARK theorists propose a quadripartite classification of learners. The acronym VARK stands for Visual, Aural, Read/write, and Kinesthetic sensory modalities that are used for learning information. This model was designed in the late 80s by Neil Fleming and it has received some acceptance and a lot of attention.[84]
I am not much of an expert in educational psychology so I would rather remain agnostic as to the definitive merits of VARK theory. But you don't need to buy into it to understand that, for example, you are a visual learner, i.e., one who "would rather see information presented in a visual rather than in written form."[85] So if you come to the conclusion that you learn better by seeing than by reading, you will naturally tend to study through charts, diagrams, and illustrations —and you should!

Half way through my law degree I realized that I was a visual learner (even though I didn't quite put it like that then). It is truly amazing for me to compare and contrast now the notes I made then in order to prepare my final exams. The notes and summaries from my first years are plagued by full sentences and paragraphs. By contrast, the notes from my last years of law school lack all proper writing and syntax; they are a bunch of arrows pointing at correlations; drawings; charts: the kind of thing, by the way, that only I could understand. Indeed, while my notes for the first years of the law degree were quite

[83] Kendra Cherry, "VARK Learning Styles: Visual, Aural, Reading and Kinesthetic Learning", at http://psychology.about.com/od/educationalpsychology/a/vark-learning-styles.htm?r=et, last visited on 10 December 2012.
[84] See http://www.vark-learn.com/english/page.asp?p=categories, last visited on 10 December 2012.
[85] Kendra Cherry, cit.

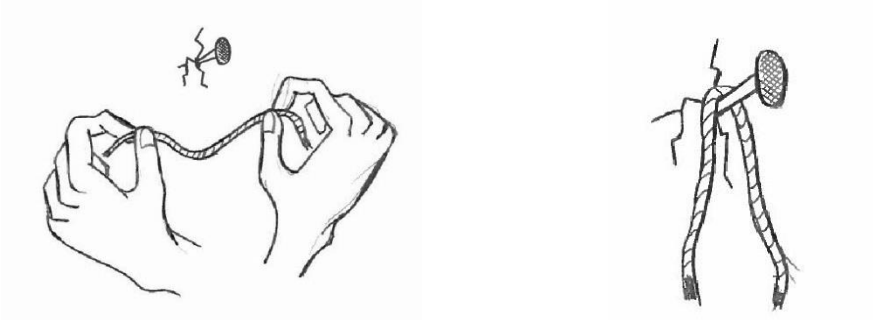
palatable to my friends, who used to borrow them, the same was not true of the later notes: no one wanted them at all for the obvious reason that they were… indecipherable. Now, as Ms. Cherry suggests in the passage quoted above, it is one thing to accept that if you are a visual learner you are likely to be better off studying through visual resources, and quite a different one to conclude that teaching strategies ought to be aligned with students' learning styles. This is especially the case given that you will not only have visual learners in your classroom but also, ex hypothesi, representatives of other VARK categories. In any event, and without foreclosing the possibility of using visual devices for purposes of teaching some human rights questions, I will focus in the next section on the third level I had announced at the opening of the paper: the evaluation of the students' understanding of human rights concepts.

**II *Evaluation of human rights concepts through visual devices***

Let me share with you a real story —my own story of how I ended up using visual tools with a view to evaluating law students' understanding of human rights concepts. I have taught full-time since 1995, which means that I have been teaching full-time for 18 years. The reason I clarify this is not for you to think that I am old; or for you to think that I look younger than I really must be. The reason is that it was about time I came up with a smart idea from my many years of teaching experience. A few years ago I came up with such an idea, I hope. This is how it happened.

In 2010 I found myself in the situation where, to be honest with you, I was a bit bored with my teaching. (If you have been teaching for a while, perhaps you will not find that disclosure too surprising.) I had taught Constitutional Law and Human Rights Law for many years. I decided that to not get frustrated —and for my students not to notice my incipient boredom— I had to introduce something new into the classroom. (The students are those who are more harmed by their teacher's boredom, it should be noticed in passing.) So I came up with the idea of drawings.

The idea dawned on me when, during one of the German lessons I attend at the Goethe-Institut, professor Wolfgang Tichy explained the meaning of the proverb "the extremes meet" —a proverb meaning that antagonistic positions often have much in common, a proverb more common in other languages than in English, as it seems—… by means of a drawing. He drew something like this on the board:



These pictures,[86] I think, speak for themselves —this is the nice thing about pictures. But let me briefly explain to you what they mean...
[*Here I will explain orally, in a few words, how these pictures illustrate the proverb "the extremes meet".*]

[86] I thank much Max Cernello, an attorney quite interested in visual tools, for drawing these pictures at my request.

So one day I came to class and I told the students: "For next week you will have to draw a map". The objective of this exercise was for them to *show* me the structure of my country's judiciary, at both the local and the federal level. I had the impression that having them draw a map would: i) give them a suitable tool for explaining the concept of the judicial power and the interrelations between the local and the federal judiciary; ii) help them to better understand and remember that concept and those interrelations. Both things, I must say, proved to be true. Indeed, one student even said on reflection that what he had learnt through drawings was by far what he had remembered the most.

As an incentive for the students, I told them that I would award prizes for the best drawings. I also explained that by "drawings" I didn't mean just drawings: they could use any visual device and they would be assessed based on creativity and the limited use of words.

It goes without saying that I had to start thinking about good prizes. Several colleagues and friends gave me suitable books that ended up in the hands of the winners. I also got them limited subscriptions to journals and law reviews. I finally found a culminating prize for the best "drawing" of the whole year. I wrote to my colleagues who run the International Youth Leadership Conference and they generously agreed to offer a scholarship each year for one of my students to attend the extraordinary event that takes place in Prague every winter. Two of my winning students have already participated in the conference. Their feedback makes it clear that a good drawing is well worth the effort: it can be worth a visit to the most beautiful city in the world!

In my second year using drawings for the purpose of assessing comprehension of legal concepts, I introduced some additional dimensions. First, I started to use the tool to evaluate difficult human rights dilemmas, such as the tensions between the right to privacy and compelling state interests. I remember that one of the best drawings illustrating this tension was one of a kite divided into four quarters, each of which contained different levels of state intervention in private life.[87]

Second, I tried to solve a quantitative problem: the number of drawings I had to consider for evaluation purposes was too high. If I was going to give adequate consideration to each one of them, which was required at least by the fact that I was going to be awarding prizes, including a scholarship to attend a conference in Prague, I needed a filter to reduce the number of works I reviewed. To this end, I appointed two teaching assistants (students from the previous year, who knew how and why I used drawings, having produced them themselves) to evaluate drawings according to the following system. The TAs handle the first round of evaluation such that only half of the students participating in the drawings contest make the cut. The other half is eliminated. Only the victorious half makes it into the second round of the contest, where the professor (i.e., yours truly) performs the evaluation and awards the prizes. (Normally there is a first, a second, and a third prize.)

Third (and partly thanks to this new system), I started to use the students' drawings to teach some topics I encountered in reviewing their works (and deciding to whom will the awards go). It is much easier to teach some difficult concepts with drawings as the starting point, even if to correct mistakes in the pictures. And, believe me, my working materials were *very* good, very ingenious drawings. I think it will probably be a universal experience that if you do this kind of contests you will find out, to your surprise, that you had many

[87] On the tensions between the police power and constitutional rights (a more general instance of the problem mentioned in the text) see the Appendix to this paper.

hidden artists in your class. Therefore, you will end up with some fantastic drawings to work with, which will make it easier to shed light upon obscure realities and concepts.

Last, I decided to have some of the contests take place at my university's small art gallery. The curator kindly agreed to this, and so from time to time my students and I have class in the art gallery, where they bring their drawings and I explain some topic and award the corresponding prizes. Of course this is quite thrilling for the students. Not only do they display their own home-made art in a museum —on its floor, that is to say— but they also have the opportunity to visit an art gallery, sometimes for the first time in their lives. They certainly did not expect this when they signed up for their Constitutional Law course!
All in all it has been a great experience. I have the joyful role of contributing inadvertently to developing the hidden talents of my students, plus the notable responsibility awarding prizes without knowing much about art myself.

**III *Visual tests***

The third year of using drawings for purposes of assessing the comprehension of constitutional law and constitutional rights came with a new twist. In 2012 I used for the first time drawings… on tests.

Given that the students had consistently practiced explaining concepts through pictures during two semesters (first in "Constitutional Law" and subsequently in "Constitutional Rights") I thought that the time was ripe for my method to be tested on tests. Even though this new use was going to be fair (given that prior practice), I decided to offer it as an option so that those with less artistic inclinations would not feel prejudiced by the system. Consequently, in the last written exam of the second semester (corresponding with "Constitutional Rights") the students were allowed to choose to answer half of the questions through drawings. Those who opted to do so would have the advantage of being given extra time to draw their answers. This was a minor incentive that I decided to introduce in order to shift the balance towards visual answers, though the students could likely discern my inclination to (perhaps unconsciously) reward those who elected to draw.
Well, be that as it may, half of the students decided to draw. They did so really well and also did really well on the exam. I was utterly delighted. Let me tell you what the exam was about and how the students drew their answers.

One of the questions that could be answered by drawing pictures asked about differences between two theories concerning the constitutional right to privacy[88] —theories that also apply, by and large, to the human right to privacy as recognized by several international documents.[89] In US Constitution Law, as well as in Argentine Constitutional law, to mention but a couple of examples, these theories are sometimes called "spatial" and "decisional".[90] The theories don't really matter for our purposes, except to illustrate how students who drew their answers approached the task. Consider these two examples.

[88] See, for example, article 19 of the Argentine constitution of 1853: 'The private actions of men which in no way offend order and public morality, nor harm a third party, are reserved to the judgment of God only, and exempt from the authority of the magistrates […].'
[89] See e.g. article 8.1 of the European Convention on Human Rights: 'Everyone has the right to respect for his private and family life, his home and his correspondence.'
[90] For a thorough account of the spatial theory of the constitutional right to privacy see Louis Henkin, 'Privacy and Autonomy', 74 Columbia Law Review 1410, 1411 y 1424 (1974); a useful account of the decisional theory can be found in *Justice* Blackmun's dissent in the United States Supreme Court case *Bowers v. Hardwick* 478 U.S. 186, 204 (1986).

**Slide 1**
[*Comment on Belen and Sofia's drawings, whose scanned copies will feature on this slide*.]
That a significant portion of the students chose to draw their answers is telling, as is the fact that they generally performed satisfactorily (even though most of the students that are within the group of drawers are not what one could call natural born artists). I think that the experiment —testing my method on tests— passed the test. Perhaps next year will bring a new opportunity to further test its outer limits.

## IV *The Foremost Enemy of the Visual: the Visual*

I will conclude by noting a contrast. Insofar as it is true that visual tools have great advantages for learning about, teaching, and examining legal concepts —in particular, in the area of human rights—, it is also true that other visual tools can detract from the efficacy of teaching. If drawings can effectively convey complex situations within Constitutional Law, the presence in the classroom of electronic devices can certainly distract the drawers.

There is now the ever increasing availability of the Internet in the classroom, be it through Wi-Fi, iPads, BlackBerrys, iPhones or other Smartphones. Furthermore, law schools pride themselves in this increased availability of wireless technology. As a result, students experience a daily temptation —an irresistible temptation, most of the time— to navigate the web during classes.

I sometimes offer my students an analogy between the current situation in the classroom and the Star Wars trilogy —though we all know that it is no longer a trilogy. The first part, as you might remember, is called "A New Hope", where we first meet Luke Skywalker et al.. The new hope is, for the bored professor, PowerPoint presentations, projected on a screen in a darkened classroom. The second part of my modified version of the saga is "The Students Strike Back". Here the students, tired of watching slides on a screen, bring their own screens to the classroom: their laptops coupled with Internet availability provide for an amusing alternative to what is happening on the main screen. On your own little screen you can, in hiding, check your email, read the New York Times, play a game or even watch Star Wars or some other movie. Surely this couldn't last? Well, I don't know about that, but some professors couldn't stand the shame and hence the last installment of the trilogy: "The Return of the Prof", in which the teacher decided to turn on the lights of the classroom, gaze at the students in search of eye contact and talk to and with them.

Whether you like my analogy with Star Wars or not, and whether the *status quo* regarding Internet in the classroom should change or not, methods like the one that I have suggested in this paper help counterbalance the problem posed by the unlimited availability of technological resources. Given that drawings are no less visual than what is happening on a screen the odds are that they might succeed in keeping people's attention better than the mere rhetoric of a speech.

I hope that by further exploring the virtues of drawings and pictures for the purpose of teaching human rights concepts, we will be able to offer our students a higher quality legal education.

# Human Rights Education

Ayman Masadeh*
The British University of Dubai, UAE

In drafting the law degree curriculum, law schools take into account the six levels of legal education, i.e. knowledge, comprehension, application, analysis, synthesis and evaluation. Teaching human rights is one of the most important topics in modern legal education throughout all the six levels.

Most law schools tend to update their curriculum by making more emphasis on international human rights. The UN Global Compact's ten principles[91] in the areas of human rights, labour, the environment and anti-corruption are taught in different subjects as follows. In the Arab world, which is referred to by some writers as MENA- Middle Eastern and North African countries, human rights are taught under local and international texts. For example, political rights are usually taught in the course of constitutional law while freedom of speech is usually taught in both courses of constitutional law and public international law. The subject of international organizations is usually taught under a separate course in most law schools in the region.

Human rights issues related to labour law have recently received more attention from law professors involved in developing law curriculums. For example, most law schools started developing courses that deal with the conventions of the Arab Labor Organization, such as Convention No. 7 for 1977 on Safety and Hygiene; Convention No. 13 for 1981 on the Working Environment; Convention No. 15 for 1983 on Wage Fixing and Protection; Convention No. 17 for 1993 on the Employment of the Disabled; etc.

Environmental law topics are still immature in law schools' curriculum across the region. Having said so, it is fair to note that many conferences have recently been held to discuss issues related to the environment at large. Perhaps the recent Doha Climate Change conference is a good example. This will hopefully have positive impacts on law curriculums across the region. Currently, environmental law is taught as an elective course or as part of the public international law course.

What should be taught in human rights courses at law schools? There is no definite answer to this question. The answer depends on what human rights education students received at their general education, i.e. primary and secondary school levels. Some states include human rights subjects in school curriculums at the very early stages. Pre-school and lower primary school students may receive human rights education on various topics, such as confidence and social respect; resolving conflicts; confronting discrimination; appreciating similarities and differences; fostering confidence and self-esteem; building trust; creating classroom rules; understanding human rights; introducing children's rights, etc. At the

[91] Available at http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html . These principles are "Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2: make sure that they are not complicit in human rights abuses. Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; Principle 4: the elimination of all forms of forced and compulsory labour; Principle 5: the effective abolition of child labour; and Principle 6: the elimination of discrimination in respect of employment and occupation. Principle 7: Businesses should support a precautionary approach to environmental challenges; Principle 8: undertake initiatives to promote greater environmental responsibility; and Principle 9: encourage the development and diffusion of environmentally friendly technologies. Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery."

upper primary school and secondary school, the following topics can be taught: protecting life – the individual in society; war, peace and human rights; government and the law; freedom of thought, conscience, religion, opinion and expression; the right to privacy; the freedom to meet and take part in public affairs; social and cultural well-being; discrimination; the right to education; development and the environment; economic development and interrelatedness; business and human rights; understanding the united nations; creating a human rights community, etc.[92]

The law school should develop its own curriculum in light of the general knowledge of human rights that law students obtained at their primary and secondary school levels. In the Arab region, law schools should carry more responsibilities on their shoulders due to the lack of (or weak) human rights education at the school level. Normally law students start learning human rights from scratch when they start their law degree. This will require law schools to provide a number of human rights courses in their curriculum.

Law curriculum in most regional law schools includes 47 courses, almost 15 of which are related to general knowledge in language, computer skills, national history, etc. As law schools are left with less than 35 law courses for their entire LLB degrees, it will be extremely challenging to offer more than one course in human rights. To overcome this obstacle, a number of law schools offer multi-human rights courses as elective ones. Students who are interested in human rights can select two or more courses related to human rights. In the point of my view, this may not be the best practice. It is submitted that human rights are taught at the primary and secondary school levels. As a temporary solution, human rights can be covered in specialized human rights law courses and as part of other law courses. Needless to say that human rights public awareness should be promoted by local and international NGOs. Most universities in the region offer a general legal awareness course to all university students in which students have the chance to acquire some human rights awareness.

[92] For further information, please see the UN publication titled "Teaching Human Rights: Practical Activities for Primary and secondary Schools", available at http://www.ohchr.org/Documents/Publications/ABCChapter1en.pdf

# The hard delivery of a press code in Senegal

Dr Ousmane Mbaye
Faculty of Law, University of Dakar Senegal

As the title suggest, the topic of this paper will turn around media and journalists in Senegal with content based on difficulties encountered since two years by a Bill on a new press code to become applicable Law. Such subject raises as we see, Human Rights issues especially freedom of expression, people's right to know implying the duty of journalists to suitably inform and so public's right to be protected from the media and finally the legal status of those who disseminate the information i.e. journalists. The interest is all the greater if one is aware that Senegal has for a long time successfully experienced democracy through a population viscerally committed to civil liberties, and this even during the colonial period. In this regard, a brief look at the past will shed a light on it. From discussions we held with Pr I. D. Thiam, specialist in Contemporary History and of Africa (1), we learn that the first local newspaper called the "Moniteur du Senegal" appeared in 1856. Moreover in the year of 1871, colonial authorities had allowed through a Decree indigenous political parties running for local government elections to use newspapers and wireless telegraph in order to submit their professions of faith. From this period up to Independence which occurred in 1960, the role of the press (which kept on growing) had been someone decisive in the awakening of Senegalese's consciousness for Independence. Nowadays, one can count about twenty five daily newspapers, more than forty magazines, eleven T-V channels (only one owned by the State), more than two thousand radio station including in this era of globalization and new form of communication the explosion of digital media, internet etc…, and working all without censorship.

Many observers do believe today that media's involvement to the different steps of the electoral process (matching by the way the need of transparency) explains why transitions of power have been peaceful in Senegal these last years. It's in this context that the idea arose to develop a press code which corresponds the best which the current level reached by the press. Two remarks are in order at this point: first to say that the desire for a new code is an initiative of the journalists and secondly that the bill has been developed by the journalists themselves in collaboration with officials of the Departments of Justice and Communication and members of the Civil Society. Once approved by journalists and as promised by the Head of Executive at that time, the draft was submitted unchanged on the Parliament desk.

Despite all this, for nearly two years over the bill has not been passed by parliamentarians and is therefore not entered into force. Both the old and the new legislature (elected however only since June 2012) are reluctant to adopt it. It's on this precise point that this paper focusses in order to highlight why that draft disturbs, theme which will be articulated around successive points freely chosen in order to make the reading as simplest as possible since this papers is more to be seen as a simple report of legal news than a basic law article.

1) **Positive law of the press and human Rights standards in Senegal** :From what has been already learned, one can assume with some confidence that in Senegal press is considered as a public good by both of populations that rulers who recognized its usefulness. What is effectively the case. In fact, the legal regime currently applicable to the press i.e. press organs and the profession of journalism is based on General Principles from various sources but certainly all tending towards the same goal: the principle of a free press. Human right by its nature and major form of freedom of expression that she embodies, the freedom of press is enshrined first in the Declaration of the Rights of Man and of Citizen of 1789

(article 11), the Universal Declaration of Human Rights of 1948 (article 19), both Declarations incorporated in the Preamble of the Constitution of Senegal which felt the need to reaffirm it in its interior provisions (article 8). In addition to these founding Texts, we must also mention the African Charter on Human and People's Rights (article 9), the Declaration of Rights and Duties of journalist of Munich (1971) and finally the UNESCO codes, all instruments adopted and ratified by Senegal (2). The idea of raising the notion of free press to the rank of fundamental freedom is easily understandable if is taken into account the sensitive nature of its main object i.e. information. Indeed, if the definition of human Right is adjacent to the freedom of the press, is that it is not only because of the one who is called to receive that information i.e. the human being? Since the information conveyed by the press is deemed in general as contributing positively to teaching, education and human development, is that the well informed man does not become a responsible citizen then? Seen like that, here is a principle deeply rooted in moral values suitable to establish and consolidate democracy and the State of Law in that it also plays an important role in the promotion of Human Rights values (exposing for instance Human Rights violations in a given country, offering an arena for different points of view to be heard in a public discourse, etc.).
However, all things being relative by nature, the media can in a certain way constitute a threat for the functioning of democracy in a country. It will be the case if for example media because misused would incite xenophobic hatred and violence against vulnerable categories of people or if they unfairly abuse the privacy and integrity of individuals causing thereby enormous and irreparable damage. Here is touched the real conflict with on the one hand the need to respect right of citizens to be informed (which justifies the power granted to the media to work freely) and on the other hand the obligation incumbent to every State to safeguard the dignity of these same citizens including national security or antiterrorism interests. If the degree of freedom of the press will be measured on a scale depending on the weight given to one option over the other, the fact remains that it explains the tendency of some States to set legal restraints on journalism. Initially prescribed by almost all the founding Texts these limitations need to be examined.

2) **About some journalists' concerns**: At a domestic level in Senegal, it's in the Criminal Code and the Criminal Procedure Code that we find out provisions related to press offenses and their punishment. Because of their nature, these laws worry local journalists who see them as detrimental with the human rights values. To illustrate it, let us take a brief example of how some offenses as the dissemination of false news and the defamation are handled in courts:
   - When a journalist is charged for the first offense, he no longer has the guarantees offered by the General Principles of Criminal Law since provisions relevant for this offense establish not only an assumption of guilt rather than a presumption of innocence but even more favor the continued detention of the accused rather than promoting the benefit of the provisional release (3).

   - Same for the charge of defamation. During the trial, it will not be incumbent on the Prosecution to prove the guilt of the journalist, it's rather to the latter to prove his innocence and he is not allowed proving it by all the means. Moreover, the defendant is confined within very short time limits to prove the veracity of the facts alleged as defamatory (maximum of ten days). The consequence being that the risk is great to see journalists convicted not necessarily because it has been proved that they defamed but only because they have been put legally in the impossibility to give evidence of the truth above all in a country where there is no law on free access to information or verification from public bodies for instance. So, no place for the principle of freedom of proof.

3) **The main ambition of the new code press draft**: Launched in 2005 and finalized in 2010, the draft organizing the world of the press contains around 300 articles which cover all the areas: newspapers, radios, T.V, online press, self regulation, administrative and criminal sanctions etc. Among the various and somehow interesting innovations introduced by the draft, we will focus on the one which deals with what has been called "decriminalization" of press offenses and which, according to observers, would have created the enactment paralysis of the draft. In clear, less than a decriminalization in the strict sense of the word, it's more about a "disincarceration" that journalists ask in case they commit press offenses. Said brutally, do not go to jail for press offenses whatever it might be is journalists main concern, these latter being called to be punished solely through the payment of fines already fixed in their amount by the draft (4) Technically, as we see, the criminal nature of the press offense remains since fines only punish criminal offenses. In one view, the concern of the journalists on this particular point seems to be legitimate. In today world, imprisonment does not appear as appropriate for press offenses and is seen with difficulty in a democratic society. In parallel, the draft lets also appear a set of new procedural rules which aim at shortening the statute of limitations for an indictment and lengthening the deadlines in case of incrimination.
However, it's also again here at that very point that we can discover some hesitations from parliamentarians to adopt that draft. According to our sources (aren't we in journalism?), parliamentarians fear to remove the penalty that constitutes imprisonment but above all its deterring feature. By deleting it, they imagine that some journalists moved by the pursuit of sensationalism that allows selling quickly and a lot easily contravene ethical journalism because only risking financial penalties. To this argument, others add that one of the serious problems of the press in Senegal is the lack of training of many persons who have invested the professional world of the press. Even if it does exist high level schools of journalism and excellent journalists, the sector has long been and even today considered as the place of refuge for people who have not been able to complete their initial choice of studies which was not journalism of course. The risk feared by opponents of the draft is hence to see press agents ignorant of any ethics because untrained with a feeling of being overprotected citizens.

## Notes

(1): Prominent academic at Cheikh Anta Diop University, Mr Thiam is also a political activist and has been Vice President at the National Assembly up to its term in June 2012

(2): At the domestic level, the first statute organizing the press is the Act of April 11th 1979

(3): According to Article 139 sections 1 and 2:

- "On the basis of requisitions duly reasoned by the Prosecution, the Examining judge must issue order against any person charged with the tort of publishing false news"

- "The request for the interim release of a detained temporarily for the offense of spreading false news will be declared inadmissible if the prosecution is opposed by requisitions duly motivated"

(4): The amount of the fixed fines oscillates from 100 US Dollars to more than 60,000 US Dollars.

# Human rights and experiential learning in a Law School Curriculum

Carolyn Penfold
Head of School of Law, UNSW Australia

At the University of New South Wales Law School (UNSW Law), human rights has always been an important part of the curriculum. Right from its very beginning, the new UNSW Law wanted to differentiate itself from existing law schools as the 'social justice' law school. Upon its inauguration in 1972, the founding Dean, Hal Wooten, stated
[A] law school should have and communicate to its students a keen concern for those on whom the law may bear harshly, either because they cannot afford its services, or because it does not sufficiently recognise their needs, or because they are in some way alienated from the rest of society.

However, when teaching a Bachelor of Laws program in Australia there are limits as to how one university can distinguish its curriculum from another. All law graduates have specific areas of learning required for admission to practice, and human rights and social justice, as such, are not seen as core areas for this purpose. Legal system, criminal law, contracts, torts and commercial law, public, constitutional and administrative law, procedural law and professional practice are identified as essential, while other topics are seen as optional only. How then do we ensure that students understand both the content and the importance of human rights issues when it is not seen by admission bodies as an essential area of learning?

Right from the beginning, at UNSW Law we worked to imbue the whole curriculum with an overarching social justice and human rights bent. We tried to teach law not just as something that 'is,' but to have students thinking also about why it is what it is, whether it should be as it is, how else it could be, how it could move from what it is to what it could be, and what would be the pros and cons of the various answers given.

Thus we tried to teach law not as static, but rather as a construct as amenable to influence from future lawyers as from past and present lawyers. We tried to teach students not to say ' this is how I found it,' but rather to take responsibility for identifying injustices and opportunities for improvement, and actually working for change where appropriate.
It was understood that it would be difficult to convince students to do that if teachers were not practicing what they were preaching. But fortunately staff were practicing what they were preaching. Writing, speaking, making submissions, volunteering, demonstrating, and disseminating information concerning human rights and social justice were key activities of staff of UNSW Law. An alternative entry scheme for Indigenous students was established, along with ongoing support during law studies. The Aboriginal Law Centre (now the Indigenous Law Centre), the Diplomacy Training Centre, and the Australian Human Rights Clearing House (now the Australian Human Rights Centre) were established. With many academic staff involved in these centres and activities students saw their teachers not just talking but doing.

Fast forward 40 years. The 'social justice law school' celebrated 40 years of history in 2011, and took the opportunity not only to celebrate its past, but also to chart its future. We wanted to ensure that after 40 years UNSW Law still embodied the values we claimed to hold, incorporated best practice in legal education, and taught in a way appropriate to the modern world. We took this opportunity to conduct a total review of the curriculum of the Bachelor of Laws and Juris Doctor programs.

UNSW Law identified many changes occurring in both the theory and practice of legal education, including a renewed interest in pedagogy, a commitment to research which involves students and which addresses key contemporary issues, the increasing relevance of international issues, and concerns about the preparation of graduates for professional responsibilities. Academic legal education had gone through two phases – a professional period, in which teaching was delivered by practising lawyers, and an academic period, in which most legal academics were more likely to have academic qualifications than practising certificates. More recent activity however suggests a move into a third phase, in which both an academic research focus and a knowledge of law in practice interact and are both valued. These new developments in legal education have had to take into account the many changes in the legal environment, including the internationalisation of legal issues, changes in legal markets, moves away from judicial decisions to increased regulation in all its forms, growing concern about professional ethics and values, increasing attention to international responsibilities regarding human rights; and the increasing significance of non-curial dispute resolution.

UNSW Law responded to the changing legal environment by modernising its curriculum while preserving its historical strengths. Since its inception in 1971, UNSW Law had a sensitivity to the role of law in serving the whole of society, a commitment to learning as an interactive process, an active engagement in processes of law reform, and a commitment to social justice as part of a lawyer's professional identity. We wished to ensure these strengths were retained while moving forward.

The review took two years to complete, and opened every part of the curriculum to examination. While, as mentioned above, some content in the law degree is 'required' for admission to practice, there are no restrictions as to how or where that content is covered. Thus while we needed to include certain content, it could be moved around to ensure a sensible and well integrated curriculum, and did not limit us to offering certain courses nor restrict the order in which the topics were covered. The curriculum review was coordinated by a working group but involved the whole law school community.

At the highest level, the major result of the curriculum review was the decision to identify what we considered the most important themes in legal education, and to imbed these across the curriculum. The introduction of these themes did not call for particular courses or content, but rather required a curriculum where all undergraduate students were exposed to the values that UNSW Law believed in, and gave students opportunities to further their experiences and activities in these areas. A number of these themes overlap but have been articulated separately. The five themes identified are:

1. Indigenous Legal Issues
2. Human Rights, Justice and the Rule of Law
3. Environment, Class, Gender, Race and Disability Issues
4. Experiential Learning
5. Personal and Professional Development

The second theme, Human Rights, Justice and the Rule of Law, is described as follows:
A distinctive feature of UNSW Law is its commitment to the understanding and furtherance of human rights, justice and the rule of law. This commitment is clearly demonstrated in all the things we do: teaching, research and service to the community. The consistency of this theme across the courses in the core curriculum is complemented by its carry over into our elective and clinical programs and also the work performed by our research centres. Clearly, it is easy to write such statements, but it is harder to ensure the words are reflected in practice. However, I will now outline a number of ways in which UNSW law

incorporates Human Rights into its curriculum. While I state them separately, all the following are different methods of achieving the one aim, that is, the integration of human rights across the curriculum.

1. Human rights in the core curriculum.

Human rights concepts are included in the core curriculum, beginning with the very first core course "Introducing Law and Justice," and continuing throughout the core from years 1 to 5 (UG) and 1-3 (JD). The thematic approach calls for all teachers to plan and design courses with human rights and social justice issues in mind, and to ensure that the themes are treated as an essential part of the curriculum and not as additional or peripheral topics.

Numerous core courses have been overhauled to take account of the identified themes, and teachers across years have come together to ensure an integrated approach to each theme. One of the most important aspects of incorporating this theme into the core is that all students encounter it, not only once but as an integrated and essential part of the curriculum. It avoids the problem of teaching human rights only to students who elect to enrol in human rights electives, which often leaves teachers 'teaching to the converted,' and non-converts entirely untouched.

2. Human rights in elective courses

Numerous elective courses deal with human rights issues. Importantly however, because all students have encountered human rights issues in the core curriculum, elective courses can go beyond merely descriptive or survey courses and deal in depth with specific areas of human rights. Thus the elective courses are designed to enable students to acquire more specialised doctrinal, theoretical and practical expertise in this area. Such courses include International Human Rights, Law and Social Justice, Criminal Process: A Human Rights Framework, Human Rights in the Global Economy, Transnational Business & Human Rights, Transnational Policing & Human Rights and International Law of Equality & Discrimination.

3. Human rights in experiential courses.

One of the themes identified above was 'experiential learning.' UNSW Law places great emphasis on giving our students opportunities for real world and practical learning, and this includes experiential learning in the area of human rights. Clinical legal education is already well-developed as a core part of the curriculum at UNSW, and we are currently developing more clinics, internships and related opportunities in the largest program of its kind in Australia. Our commitment is signalled by the appointment of a dedicated Director of Experiential Learning and hiring of more clinical staff in KLC. We are now in the enviable position of having sufficient opportunities available for every UG and JD student to undertake an elective experiential activity.

The heart of our clinical program, Kingsford Legal Centre (KLC), has a distinctive combination of service provision, teaching and learning, and public education and policy advocacy.

In addition, students can undertake experiential and clinical electives devoted specifically to issues in the practice, protection and furtherance of human rights and justice, such as the Human Rights Internship Program, Human Rights Clinic, Social

Justice Internship Program, Australian Journal of Human Rights Internship, and the Human Rights Defender Internship.

The latter two internships also demonstrate how teaching and research in the areas of human rights and justice directly intersect in UNSW Law. Both the Australian Journal of Human Rights and the Human Rights Defender are published by, and record the activities of our Australian Human Rights Centre. The AHRC aims to promote public awareness and academic scholarship about domestic and international human rights standards, laws and procedures through research projects, education programs and publications. It brings together practitioners, research fellows and student interns from Australia and internationally to research, teach and debate contemporary human rights issues.

UNSW Law has also employed a specialist Director for a new Human Rights Clinic and Refugee Rights Project. In 2012 it introduced a New York summer school in human rights, and in 2013 a South African human rights clinical program.

There is often concern that developments like this are at the cost of students' doctrinal ability. At UNSW Law we believe that students will learn doctrine better by engagement with practice. Experiential learning is rigorously assessed, and some teaching will continue to be delivered in the classroom as it has been before, to ensure students not only have these experiences, but are able to make sense of them in a structured and connected way.

## 4. Human rights teachers in the core program.

As discussed above, we have embedded human rights concerns across the curriculum. An important aspect of this is that specialists in human rights also teach within the core program, and not just in courses identified as 'human rights' courses. Thus currently we have human rights specialists teaching in numerous core courses, including Introducing Law and Justice, Torts, Lawyers Ethics and Justice, and Criminal Law. This helps to ensure that human rights is seen as part of law more broadly and not only as a separate specialised area. It also ensures the integration of human rights into such courses and avoids perceptions of human rights as an 'add-on' to what is really important.

## 5. Human rights events and activities in the law school

UNSW Law staff have always been active in the Human rights area, and continue to be so. Their real and continuing involvement in the area demonstrates to students the importance we place on this. The existence of the numerous Centres including the Australian Human Rights Centre, publications on human rights issues through the centres and by individual members of staff, hosting of visitors and public speakers from local, regional and international institutions concerned with human rights, and more generally the involvement of UNSW Law's human rights specialists in public affairs, evidence the commitment of UNSW law to the area.

UNSW Law is a rich institution in a rich country where human rights activists are not endangered. I do not suggest for a moment that every law school could or would want to embrace UNSW's approach to integrating human rights into their law curriculum. However, for those who are interested, there are some aspects of our

program which could probably be more easily introduced than others. For example, including human rights issues in existing core courses is less difficult than introducing new courses, and ensures all students engage with the issue whether or not they choose to. Bringing issues to life with stories, case studies, films, or field trips can enliven student interest in the area, and need not be expensive. Finally, teaching staff who demonstrate a personal commitment to the issues at hand will convince students of their importance in a way that merely 'telling them' may not. So although human rights is not seen as an essential area of learning for admission to legal practice in Australia generally, UNSW Law does treat human rights as an essential area of learning. Our aim is that no student should complete a law degree at UNSW Law without a good grounding in human rights and social justice issues, and to this end it integrates these issues into every aspect of the law curriculum.

# The professionalization of lawyers through a Center for Human Rights: The *Facultad Libre de Derecho de Monterrey* Experience

Fernando Villarreal-Gonda
Facultad Libre de Derecho de Monterrey, México
*Ivonne GARZA, Fernando VILLARREAL and Juan GARZA*

The legal culture of human rights emerged recently in Mexico, characterized by a deep influence of international law. The multicultural practice is an additional feature of those concerned in improving the human rights situation in the country. The growing popularity of human rights finally materialized in the constitutional reform of 2011, where human rights treaties and the *pro homine* principle became part of the supreme law of our nation. In addition, the panorama of violence and organized crime has triggered a revalorization of legal education through aspects that were previously left behind. Human rights matters are now positioned in a prioritized space. We wander if they offer answers to the current challenges we face in Mexico.

It has been three years since *Facultad Libre de Derecho de Monterrey* created a Center for Human Rights.[93] The initiative came from a small group of professors and students. This project has been essential in the learning process of students in our Law School.

Since the beginning, being part of the Center for Human Rights has meant much more than just participating in any other academic activity. Through the implementation of a dynamic and relaxed functioning strategy, and the direction of young professors, the Center for Human Rights has been able to combine different creative elements that are attractive to our students. The consequence is a deep sense of belonging to the Center and its work. Students value the different perspectives that the Center uses to address law matters. In most instances, they dispel the stereotype of lawyers: the formal-dressed one who creates a distant relationship with its clients, works long hours at an enclosed space and is totally indifferent to his/her surroundings. An environment of caring and empathy is promoted. Professors and students create close relationships through their work. Activities are organized in a horizontal coordination. All members have the same level of responsibility and involvement. Thus, in this healthy working environment important achievements have been made.

The Center's activities focus on the following:

1. Panels and continuing legal education

Discussion panels and continuing legal education programs bring together current controversial issues and experts in discussions that attract the community. This activity *per se* constitutes a way in which human rights are promoted. The experience has showed that trial lawyers, students and scholars may share their knowledge and experience. This area of the Center has also enabled the construction of networks with other law schools and domestic human rights organizations.

2. Model United Nations and Moot Court Competitions

Model United Nations and Moot Court Competitions are an opportunity to teach and learn in a different and innovative way. They offer students new tools, knowledge and skills that shape unusual professional profiles. They allow opening their minds and rethinking the interaction between domestic and international law. For law professors, competitions are an

[93] Contact: centrodederechoshumanos@fldm.edu.mx ; facebook.com/CDHFLDM ; @CDH_FLDM

opportunity to engage, from the academic arena, in the construction of new visions of the world.

Assuring a mix of practice and theory, the study of case law enhances and promotes group tasks that force students to confront real life situations in real life conditions. From different perspectives and expectations, competitions ensure the creation of new dynamics and relations that eventually influence the way politic, economic, social and legal practices interact around the globe.

Moot Courts and Model United Nations competitions are an entertaining challenge. Even though the processes of preparation and organization imply diary work and enormous efforts, such activities provide a global perspective and a wide range of network of students and scholars who meet in this type of events. The identification of clear objectives and the harmonization of ideas from all the actors in the institution have been essential in the implementation of this academic activity.

Three years ago, our law school started participating in the Inter-American Human Rights Moot Court Competition, organized by American University Washington College of Law. In 2012 we achieved a 6$^{th}$ place (109 universities participated in the competition). We have now expanded our participation to international Model United Nations Contests –Harvard University this year- and other Moot Court competitions such as the Francisco Suárez, organized by Universidad Javeriana in Bogota, Colombia.

*3. Inés Fernández and Valentina Rosendo Scholarship*

In 2012, the Center created the *Inés Fernández and Valentina Rosendo Scholarship* with the purpose of generating a fund to provide students with resources to participate in the Inter-American Human Rights Moot Court competition organized by American University and a six-month internship at the Inter-American Court of Human Rights. We firmly believe that the experience obtained in both the internship and the competition will be relevant in the academic and professional lives of people involved.

*Inés Fernández* and *Valentina Rosendo* are victims of human rights' violations perpetuated by the Mexican military forces. Their cases were brought up to the Inter-American Court of Human Rights, were the violations were recognized and the Mexican State was condemned to reparation. Both are now human rights promoters and defenders in the country. Their names were chosen to fulfill two objectives: to honor them for their courage and tenacity towards the defense of human rights, and to set an inspiring example for students.

The Center for Human Rights has transformed the dynamics of our law school. Students are now more conscious about human rights issues. The Human Rights elective has also been introduced to the academic program. Human rights never have been more popular.

The current social and legal situation in Mexico forces us to keep up with innovations in legal education. The creation of a Center for Human Rights is one of the many possible ways in which law schools can accomplish this objective. For *Facultad Libre*, the risk taken has brought us to the discovery of a new legal path full of positive rewards, in which we hope to keep on walking for a long time.

## Human rights themes in the life of the law school

Jukka Kekkonen
University of Helsinki, Finland

Summary

(1). Human rights themes should evidently have a central place in the curriculum of the law schools. However it is important to underline that a point of departure in the academy is excellency in research and teaching based on research. From this perspective a fundamental starting point to all the law schools is in laying the basic foundations of high class research. This means granting sufficient material resources as well as creating a stimulating academic atmosphere. Without these prerequisites, the academy has very little to offer except advocating good things. But that is pure politics and not the key task of the academic community.

(2). Taking seriously the point of view of human rights means – or might mean - challenging demands for the planning of the curriculum. In my view it must lead to a situation in which issues of social justice and societal and global responsibility are stronger than today present in teaching. It also means that the so called general jurisprudential subjects like legal history, sociology of law and comparative law should play a bigger role than today in legal education. This has been, and is during significant budget cuts in the academy it is even more, an issue of controversy.

(3). Finally it is important to observe that – in spite of growing significance on the issues of human rights – our world is not necessarily moving to a more just direction where the respect of human rights is strengthening. On the contrary, there seems to be tendency towards growing inequality in many nation states and also in the global level. For these reasons we should be critical to all discourses that promote evolution. And even more critically, we should observe, what are the tendencies and practices in the field of human in all nations. Rhetoric and practice might distance from each other.

# Human Rights and the Role of Law Schools

Mauro Politi,
University of Trento, Italy

It is far from my intention to address, or even try to summarize, the wide range of issues that are up for discussion in this Conference. These are just a few thoughts that started to cross my mind at the time when I believed I could personally attend. Needless to say, I wish all of you and the IALS every success, and I am really grateful to Nerina Boschiero for having involved me in the project of the annual meeting of the Association.

1. In my view, there are two key questions that deserve attention, and I am sure that they will be both amply debated in Mysore. Why teaching human rights in law schools is so important today ? Which are the legal aspects of human rights protection that are crucial and unavoidable for every meaningful and effective educational effort ?

On the first point, one reason appears to be clear and I presume that colleagues would agree on the basis of their experience. Young generations have never been so interested in the research and study of human rights protection at national and, especially, at international level. Which means interest in normative developments and mechanisms to ensure compliance with and respect for the rule of law. Speaking of my field, when making choices regarding a paper, a thesis, or a doctoral dissertation, more and more often students prefer nowadays to deal specifically with human rights subjects. But even when they are working on general aspects of current international law (use of force, environmental law, international economic law, international justice, law of international organizations), the tendency remains to give prominence to those aspects that relate to the protection of fundamental rights of the individual. For example, in dealing with the use of force, the attention is frequently focused on notions such as "humanitarian intervention" and "responsibility to protect". More generally, the U.N. role in the field of human rights is the object of increasing review and scrutiny in light of the activism of its various organs, including the Security Council. With respect to international justice a strong interest is shown for individual accountability for the most heinous crimes, the rights of victims, or the human rights dimension of certain judgements of the ICJ.

On the other hand, educating the young generations to the culture of human rights is a tremendous responsibility of teachers and scholars. At the risk of stating the obvious, today's students are the lawyers, academics, law-makers and diplomats of tomorrow. If we want to see further substantial progress in establishing norms to protect basic human rights, and providing for effective mechanisms of compliance by States and individuals, the enthusiasm of the youngest needs to be accompanied and encouraged by the wisdom and dedication of those entrusted with guidance. This requires, in the first place, an analysis and explanation of the main political aspects of human rights as they are revealed by recent events and developments. In fact, while today's international community is characterized by an increasing awareness of human rights values, we are witnessing, at the same time, the persistence of the most blatant violations of fundamental rights of the individual. Up to the point that sometimes it looks like a sort of race of competition is taking place between the process of setting more stringent rules and a new intensity and new forms of attacks against these same rights. The gap between the two phenomena has been perhaps progressively reduced, but is far from having been filled. Without any intention to indicate one or another group of States as the major responsible, there is no doubt that some

regions of the world, and some quite powerful States are not particularly sensitive to human rights culture. But also the attitude of a number of other influential countries, those who often make of respect for human rights their distinctive emblem, often fluctuates between a policy that even contemplates military intervention to protect civilians in humanitarian emergencies, mild support for movements aimed at affirming democracy and individual freedoms, and substantial restraint in confronting big violators of human rights, whenever political expediency so requires.

3. Against this background, teaching human rights in a law school presents a special challenge. In my view, the main task is to help examining legal issues keeping in mind the surrounding political interests, and trying to discern the principles on which a widespread agreement has emerged within the state community, from trends not yet consolidated in generally accepted rules and mechanisms, as well as from elements of practice that just started to indicate a way forward. This brings me to spend a few words on the second question to which I referred to, namely on some of the key subjects that should be brought to the attention of law students.

In terms of substantive provisions, it goes without saying that States' responsibilities in human rights protection should be the natural point of departure of any teaching effort, on the basis of existing customary and treaty norms, including first and foremost the principles of so-called jus cogens. Specific attention should then be given to developments in legislation and case-law showing how new categories of fundamental rights seem to emerge as widely recognized by the international community. For example, the right of victims of international crimes to obtain justice and seek reparation from those responsible for the criminal conduct (as progressively elaborated , for instance, by the jurisprudence of the International Criminal Court, under the provisions of the Rome Statute). Or the right of women not to be subject to any form of violence, in particular domestic violence, as recently recognized by the Istanbul Convention on preventing and combating violence against women, adopted in the framework of the Council of Europe. Building on this latter point, the increasing role and influence of regional systems of human rights protection (especially the European and Inter-American systems) in the formation of customary rules is another area of considerable interest. Furthermore, I believe that the classic distinction between human rights norms and international humanitarian law needs to be in part revisited and presented in a perspective that underlines the clear trend of these two categories to overlap. Many of the gravest violations of human rights occur during international and (especially) non-international armed conflicts. On the other hand, humanitarian law is increasingly dealing with infringements of basic human rights in times of peace, and today's accepted notion of crimes against humanity is emblematic of such evolution. In other words, there is an entire body of rules and principles aimed at defending and guaranteeing the fundamental rights and the dignity of every person that is in the process of mutation and advancement towards a comprehensive legal system where the remaining gaps will hopefully be filled under the pressure of States' and the world public opinion growing sensitivity to human rights values.

4. I have already mentioned a couple of areas that attract the interest of students: the notion and implications of the so-called "responsibility to protect", and the role of international justice in human rights protection. Let me make some additional remarks on these subjects. With regard to R2P, the contradictory elements that are offered by recent state practice (Libya, Mali, as opposed to inaction where the political risks are too high, like in Syria) seem to reinforce the conclusions reached by the 2012 report of the UN

Secretary-General according to which while "the concept has been widely accepted" controversy still persists "on aspects of implementation, in particular with respect to the use of coercive measures to protect population".

Therefore, examining the relationships, in law and practice, between non-coercive and preventive measures on the one side, and military intervention on the other, appears to be a crucial step for determining the "state of the art" and possible normative developments in this field. For its part, international justice has become a fundamental tool to prevent and repress violations of human rights, not only as a result of the role played by specialized (regional) human rights courts, but also of the establishment of criminal tribunals to punish individuals responsible for the gravest crimes of international concern. The ad-hoc Tribunals for the former Yugoslavia and Rwanda, the International Criminal Court and the various hybrid Tribunals, such as those for Sierra Leone and Lebanon are well-known examples of this latter development. Moreover, the same ICJ case-law has been recently characterized by a number of judgments dealing, directly or indirectly, with issues of State violations of human rights and humanitarian law (Bosnia v. Serbia, 2007; Germany v.Italy 2012).

Now, while each of these judicial bodies has its own specific competence, the overall degree of protection of human rights cannot but be enhanced by the existence of a greater chance of jurisdictional review of alleged violations. Also, the "progressive" reading of human rights norms accepted by some courts (in particular human rights courts) may influence at times the decision-making of other courts and tribunals with a different scope. However, judicial scrutiny is not always synonymous of a real advancement in interpreting and applying human rights provisions. This is especially evident in the case of the ICJ jurisprudence that I incidentally mentioned. But one should also look carefully at other examples. Most recently, the ICTY Appeals judgement in the case of Gotovina and Markac has been widely criticized for its restrictive reading of the notion of unlawful artillery attacks against civilians. Also, it will be extremely interesting to see how the International Criminal Court will interpret the principle of complementarity in the case of Saif Al-Islam Gadafi, and whether considerations of respect for due process will lead to the admissibility of the case before the ICC. In sum, the way international justice deals with human rights issues is, from various standpoints, another key test for any legal assessment of the level of protection of these rights in today's world.

5. One final aspect that should also be emphasized as a matter for further inquiry and discussion is the ever increasing role of civil society and non-governmental organisations in shaping the international system to protect human rights. This, both in terms of elaboration of
relevant norms and the subsequent monitoring of States' compliance with accepted obligations. Again, I am talking about a subject that is usually quite appealing to students and young graduates, in view of the "revolutionary" idea that it tends to convey: namely that today's international legal framework in some areas is not only the result of the will of States and governments, but also of the action and stimulus of groups of individuals representing the "true underlying interests" of the communities concerned. At the same time, we know that in some cases this "utopia" has already become reality, precisely where human rights protection and respect for international humanitarian law are at stake. One of the most striking examples relates to the establishment and activity of the International Criminal Court. The Rome Statute is commonly described as the first case in history of an important multilateral treaty negotiated and adopted with the active involvement of NGOs. And, in fact, the negotiating process culminated with the Rome Conference cannot be fully

understood without considering the inputs given and the positions taken by non-governmental organizations on key legal issues. Moreover, nowadays NGOs continue to exercise a constant monitoring of the Court's activity and effectiveness, as well as the degree of States' cooperation and assistance provided to the ICC. And, for their part, most States and regional organizations which support the ICC (for instance, the European Union) are extremely attentive to make sure that they are perceived as acting in consonance with the objectives and requests of the civil society. Now, the obvious question is where this evolution will be heading to; and, in particular, whether we are coming close to some sort of institutional involvement of non governmental organizations in the treaty-making process relating to human rights protection

As I said, these are just a few notes that intend to outline some aspects of the fascinating subject that will be discussed in Mysore. I hope that they could still be of some help and I wish you again a very successful meeting