

Benefits from Challenge: The Continual Evolution of American Legal Education

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Colleagues and friends, it is with humility and honor that I accept the presidency of the Association of American Law Schools for 2015.

I commence my address with a salute to Dean Dan Rodriguez for his magnificent work as president this past year. His outstanding leadership has raised the profile of legal education during one of the most challenging chapters in our history. I indeed have very large shoes to fill. I also salute Executive Director Judith Areen, AALS's stellar roster of past presidents, and the extraordinarily dedicated colleagues on the executive committee for their energy and leadership. Collectively, you have contributed mightily to the association, and I consider it a privilege to work with you to continue the progress made in the past year. I would be remiss not to express my gratitude to my colleagues at the George Washington University Law School, the Wake Forest School of Law, and my many friends throughout the academy, as well as to my wonderful wife, Paulette Morant, for their invaluable support.

I have been active in the AALS for more than two decades and am deeply committed to its mission. My firm belief in the value of American legal education contributed immeasurably to my decision to accept the presidency of the association at this critical moment in history. We are indeed at a "crossroads," as Dan Rodriguez underscored so well throughout his presidency. There has never been a more salient time to demonstrate the importance of American legal education and its crucial role in a modern democratic society.

The AALS stands at the forefront of the conversation about legal education and continues to move deliberately to support academic excellence. Our core values include faculty vested in the mission of their institution, robust scholarly exchange that provides innovative insights into the efficacy of legal rules and

principles, and sensitivity to diversity of backgrounds and viewpoints. With a global market in need of critical thinkers and innovative problem solvers, the association's mission has never been more important.

My first encounter with the AALS occurred 22 years ago when, after practicing law, I scurried about the halls of the Marriott Wardman Park Hotel to interview for a law faculty position. I have since witnessed the positive impact of quality teaching, scholarship, and service, and how our work changes lives and benefits society. In the years since my entry into the academy, I have also witnessed a seismic change in the legal profession. As a result, American legal education has experienced challenges never imagined.

Today, more than ever, American legal education requires our collective dedication and innovation. You have, no doubt, heard in recent years the cry that American legal education—indeed all of higher education—is in crisis. While the severity of the crisis is subject to debate, history demonstrates the confluence of a number of elements that created a “perfect storm.” This phenomenon has had a palpable impact on American legal education and has caused some to question the efficacy of our pedagogical model.¹ I would like to take a few moments to review the elements of this perfect storm.

When I became dean of the Wake Forest University School of Law in 2007, the economy was robust with money flowing into law schools, and jobs for new graduates were abundant. All of that changed with the great recession of 2008. American legal education became caught in a conundrum of high tuitions, a depleted job market (particularly in large law firms), and students saddled with debt. The situation left the academy scrambling for normalcy. Law school applications plummeted and schools began to downsize.² Unlike economic downturns of the past, students were no longer willing to take refuge from a stagnant economy by pursuing a law degree. Many were wary of the accumulation of a six-figure debt without the promise of a job to pay for it.³

Adding to the storm has been a seemingly nonstop tide of negative press. A trio of *New York Times* articles suggested that law schools were insensitive to the realities of the market and that the value of a legal education was

1. See DAVID THOMSON, LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE 11-24 (2009) (using the term “perfect storm” to refer to the confluence of dissatisfaction with law school programs and a new generation of students prepared to leverage the advances in web technologies); Paul Campos, *The Law School Scam*, ATLANTIC (Aug. 13, 2014), <http://www.theatlantic.com/features/archive/2014/08/the-law-school-scam/375069/>; Jordan Weissmann, *Is Law School a Good Deal After All?*, ATLANTIC (July 19, 2013), <http://www.theatlantic.com/business/archive/2013/07/is-law-school-a-good-deal-after-all/277927/>.
2. Debra Cassens Weiss, “Massive Layoffs” Predicted in Law Schools due to Big Drop in Applicants, ABA JOURNAL (Jan. 31, 2013), http://www.abajournal.com/news/article/massive_layoffs_predicted_in_law_schools_due_to_big_drop_in_applicants.
3. Ben Brody, *Go to Law School. Rack Up Debt. Make \$62,000*, CNN (July 15, 2014, 11:53 AM), [http://money.cnn.com/2014/07/15/pdf/jobs/lawyer-salaries/\(study_estimates_median_law_school_debt_to_be_\\$141,000\)](http://money.cnn.com/2014/07/15/pdf/jobs/lawyer-salaries/(study_estimates_median_law_school_debt_to_be_$141,000)).

questionable.⁴ The author suggested that law schools were out of sync with the economic realities facing current students and were oblivious to the challenges confronting law graduates in a challenging job market.⁵ Other publications and blogs contributed to the angst about the value of a law degree.

Another element of the perfect storm has been ubiquitously negative perceptions of lawyers. Our profession has had a perennial problem with image. The common perception of lawyers has often been less than flattering, and often derogatory. The plethora of lawyer jokes reinforces this image.⁶ A heart-stopping example of the negative public image of lawyers in popular culture can be seen in the blockbuster film “Jurassic Park,” in the scene that shows a Tyrannosaurus Rex pursuing human prey. The lawyer is the first in the group to be devoured.⁷ Indeed, when I viewed the movie in a theater, the audience erupted in applause at the sight of the lawyer meeting his demise.

The perfect storm has had devastating impacts. Fewer individuals are applying to law schools. The latest figures of the Law School Admissions Council (LSAC) revealed that the academy has experienced an approximate thirty percent drop in applicants during the past four years.⁸ In fact, the number of people applying to law school today equals the number of applicants in 1977.⁹ There has been a commensurate drop in the number of individuals taking the Law School Admission Test (LSAT), with the steepest decline among students with highest LSATs.¹⁰ The data suggest that many college graduates no longer see a legal education as a path to professional fulfillment.

The present state of American legal education raises pivotal questions: What is the relevance of legal education in this complex and global market? Has its value diminished in light of the significant investment required to pursue a law degree? Perhaps more seminal, is American legal education adaptable to ensure that it properly equips students with the tools needed to succeed in a global marketplace?

4. See David Segal, *Is Law School a Losing Game?*, N.Y. TIMES (Jan. 8, 2011) [hereinafter Segal, *Losing Game*], http://www.nytimes.com/2011/01/09/business/oglaw.html?pagewanted=all&_r=0; David Segal, *Law School Economic: Ka-Ching!*, N.Y. TIMES (July 17, 2011), <http://query.nytimes.com/gst/fullpage.html?res=9A0CE0DC1E3DF934A25754CoA9679D8B63>; David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011) [hereinafter Segal, *Lawyering*], <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html>.

5. See Segal, *Losing Game?*, *supra* note 4.

6. There are scores of books devoted solely to “lawyer jokes.”

7. JURASSIC PARK (Universal Pictures 1993).

8. Daniel O. Bernstine, *The State of Law School Admissions: Where Are We in 2014?*, 83 BAR EXAMINER 12 (2014).

9. *Id.*

10. *Id.*

Despite questions of value, the need for quality legal education has never been more acute. The competitive global market requires professionals who can think critically and provide innovative solutions to complex problems. American legal education has long addressed this need. Now the perfect storm has become an accelerant for change and innovation. Of course, the academy is no stranger to change. In fact, American legal education has been in a constant state of evolution throughout history.

Recall that legal education in America began with the birth of our nation. During the 18th century, individuals who sought to become lawyers were trained and sometimes mentored by practicing attorneys.¹¹ This system of apprenticeship not only imparted substantive knowledge of the law, but also inculcated an appreciation for the professionalism required of a successful lawyer. Professionalism in this context embodied the recognition of the significance of the human dynamic and the historic responsibility of lawyers to foster society.¹²

The duty of lawyers to promote societal good predates Colonial America. My study of the legendary Sir Thomas More, Lord Chancellor of England during the reign of King Henry VIII, reveals that truly responsible lawyers represented their clients adroitly and assisted less fortunate citizens who lacked representation.¹³ This more altruistic mandate has remained an important tenet of the legal profession.

John Adams, the second president of the United States, whose father wanted him to enter the ministry, decided to become a lawyer. He recognized that the legal profession provided a living and the important opportunity to foster the democratic principles of a fledgling nation.¹⁴ President Adams believed that a great democracy was one in which every person, regardless of his or her status or popularity, was entitled to justice and representation.¹⁵ A free and democratic society required nothing less.

In the 19th century, the legendary Christopher Columbus Langdell, dean of the Harvard Law School, established the principle of law as science and promoted the “case method” of instruction. That legal template, which continues to be used extensively today, requires professors to stimulate students to think critically and logically.¹⁶

11. See Sean P. Farrell, *The Lawyer's Apprentice*, N.Y. TIMES (July 30, 2014), <http://www.nytimes.com/2014/08/03/education/edlife/how-to-learn-the-law-without-law-school.html>.

12. *Id.*

13. See Blake D. Morant, *Lessons From Thomas More's Dilemma of Conscience: Reconciling the Clash Between a Lawyer's Beliefs and Professional Expectations*, 78 ST. JOHN'S L. REV. 965 (2012).

14. See generally DAVID McCULLOUGH, *JOHN ADAMS* (2001).

15. *Id.*

16. See Bruce A. Kimball, *Christopher Langdell: The Case of an "Abomination" in Teaching Practice*, NEA HIGHER EDUC. J., Summer 2004, at 23, 24 (detailing the development of the case method).

Although the Langdellian model has dominated our educational landscape,¹⁷ American legal education has continued to evolve. Skills-based instruction has become more salient, evidenced by the fact that clinical legal education has become *de rigueur* in law schools.¹⁸ Toward the end of the 20th century, and responding to critiques from the profession, law faculties have placed greater emphasis on communication skills.¹⁹ Today, we find an acceleration of this evolution prompted by elements of the perfect storm.

Challenges brought on by the perfect storm have prompted innovation. The current tough times have compelled us to think more creatively about pedagogy and curriculum. The academy's continued evolution has led to more dynamic programs that produce adroit professionals who can better function in a complex global market.

Many of the new programs that have emerged during these challenging times explore the intersection of classroom doctrine and real-world problems.²⁰ Experiential education in many different forms, including clinics, externships, and internships, have emerged in law schools across the country. These programs also inculcate tenets of professionalism. The term "professionalism" conjures many different themes—from thoroughly understanding one's craft to working well with diverse constituents and contributing to society through volunteerism. It essentially embodies an appreciation of human interaction and the inherent importance of relationships. As a result, professionalism remains a critical ingredient of success for law school graduates.

Innovative new programs offered at AALS member schools continue to mount. For example, Notre Dame Law School, the University of Illinois College of Law, and a number of other law schools offer semester-long externships in major cities around the country.²¹ The University of Denver Law School has partnered with the University of Colorado Law School to develop a legal residency program for graduates during their first year of practice.²² Law schools at the University of Montana, Temple University, Wake Forest University, Indiana University-Bloomington, and the George Washington University offer creative programs that introduce first-year students to the intricacies of legal practice and the professionalism required to be successful. Some of these programs include practicing lawyers and judges in some aspect of the instruction.²³

17. *Id.*

18. See generally Laura G. Holland, *Invading the Ivory Tower; The History of Clinical Education at Yale Law School*, 49 J. LEGAL EDUC. 504 (1999).

19. *Id.*

20. See generally Michelle Weyenberg, *25 Innovative Ideas*, PRELAW, Oct. 1, 2013, at 30.

21. *Id.* at 34.

22. *Id.* at 31.

23. *Id.* at 31-33; Lisa Snedeker, *Wake Forest Law Requires First-Year Student to Take Inaugural Professional Development Course*, WAKE FOREST SCH. L. (Aug. 15, 2013), <http://news.law.wfu.edu/2013/08/professional-development-course-for-first-year-students-required-for-first-time/>;

Other innovations seek to add value and tackle costs. A number of law schools offer flexible degree programs that allow individuals to accelerate their study, while others allow students to augment their legal studies with degrees and certificates and complementary programs.²⁴ Other law schools have implemented cost reductions to minimize tuition.²⁵ The use of technology has increased dramatically, thereby expanding the opportunities for experiential instruction.²⁶ Other law schools have integrated international elements into their J.D. programs, thus preparing students for the global market that awaits them.²⁷

The array of new programs continues to expand, and I look forward to highlighting these and others during my year as president. In some ways, American legal education has come full circle. It began with the apprenticeship model in which the educational experience was primarily experiential, and then became a primarily classroom-based experience. It now moves back to embrace an ever-growing array of experiential opportunities.

Critiques of the academy will undoubtedly continue and should be welcomed as the academy continues to evolve. I recognize that the academy's evolution is neither complete nor as swift as some critics would like. Some maintain that American legal education remains staid, with only modest changes to the dominant Langdellian model.²⁸ While the speed of change remains debatable, there is little doubt that law schools across the country are constantly seeking ways to adapt to today's challenging environment.

The continuing evolution of American legal education ensures the fostering of programs that Mary Jo White, secretary of the U.S. Securities and Exchange Commission, says will provide lawyers with the opportunity to use

Your Personalized Pathway: Inns of Court, GEO. WASH. U. L. SCH., <http://www.law.gwu.edu/News/newsstories/Pages/InnsOfCourt.aspx> (last visited Jan. 14, 2015); *Skills & Simulation*, GEO. WASH. U. L. SCH., <http://www.law.gwu.edu/Academics/curriculum/Pages/Skills.aspx> (last visited Jan. 15, 2015); *Doctor of Jurisprudence (JD)*, IND. U. SCH. L., <http://law.indiana.edu/degrees/jd/curriculum.shtml> (last visited Jan. 15, 2015).

24. See Delece Smith-Barrow, *Determine if a Two-Year Law School Program is a Good Fit*, U.S. NEWS (Apr. 18, 2013, 9:00 AM), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2013/04/18/determine-if-a-two-year-law-school-program-is-a-good-fit> (pointing to Dayton, Drexel, and Pepperdine as law schools with accelerated study options).
25. See Delece Smith-Barrow, *Experts: Financial Planning Key for Law Students Despite Tuition Cuts*, U.S. NEWS (Mar. 18, 2014, 9:02 AM), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2014/03/18/as-law-schools-reduce-cost-experts-say-financial-planning-still-key>.
26. See John Schwartz, *This is Law School?*, N.Y. TIMES (Aug. 1, 2014), <http://www.nytimes.com/2014/08/03/education/edlife/socrates-takes-a-back-seat-to-business-and-tech.html>; see also Monica Bay, *Big Law Whipped for Poor Tech Training*, LAW TECH. NEWS (May 22, 2013), <http://www.lawtechnologynews.com/id=1202601218054> (discussing study by Kia Motors corporate counsel D. Casey Flaherty that highlights poor technical competency of lawyers).
27. See THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION (Jan Klabbers & Mortimer Sellers eds., 2008).
28. See Segal, *Lawyering*, *supra* note 4.

skills to uplift and give back to society.²⁹ The experiential programs and *pro bono* opportunities in most law schools both offer assistance to disadvantaged clients and inculcate in students the historic, but not always recognized, duty that lawyers owe to society.

Innovation, however, must not result in the abandonment of other important missions. Law schools must continue their vital roles as critics of law through the scholarship they produce. As Robert Post, dean of the Yale Law School, said in his speech at the AALS Luncheon during the 2015 annual meeting, “[the academy is] the only institution [that can] look both internally and externally at the law.”³⁰

Although the challenges confronting law schools remain, the resolve to meet them has never been stronger. We must not retreat to mere survival, but work concertedly to foster the dynamism that comes from the academy’s continual evolution.

It will be my privilege to work with our many colleagues, both within and outside the academy, to foster and highlight the exciting evolution of American legal education. As John Adams observed more than 200 years ago, lawyers stand as architects of a functional democracy.³¹ This credo galvanizes our resolve, supports the worthiness of our cause, and demonstrates the essentiality of American legal education. Many thanks indeed for your support, energizing commitment, and steadfast determination.

29. Mary Jo White, chairwoman, U.S. Sec. & Exch. Comm’n, Showcase Speech at Association of American Law Schools Annual Meeting (Jan. 3, 2015).

30. Robert C. Post, dean of Yale Law School, “Academic Freedom and Legal Scholarship” at the Association of American Law Schools Annual Meeting (Jan. 4, 2015).

31. See McCullough, *supra* note 14.