

## AALS Presidential Address

January 4, 2014

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Members of the House of Representatives, visitors and guests, I am glad to be with you in this setting and I am pleased and honored to be serving the Association of American Law Schools as its president for 2014. I want to thank all of my executive committee colleagues with whom I have served, both in this past year as the president-elect and in my previous stint as member of the EC. I would also like to thank the two extraordinary leaders of the association with whom I served during my time on the EC, Susan Prager and Judith Areen. I know I speak for all of us in the association in saying how grateful we have been to have able energy and leadership from these two lions and legends of legal education.

So far as my own road to this position is concerned, I am grateful to all of my colleagues in the legal academy and certainly to my friends and family for their support and guidance. In my career as a law professor, I have been a faculty member at four outstanding law schools: Berkeley, San Diego, Texas, and, for the past two years, Northwestern. These four institutions, along with my alma mater, Harvard Law School, have contributed immeasurably to what I have accomplished as a professor and an educational leader.

So here we meet again. To paraphrase the great Tennessee Ernie Ford, we're another year older and deeper in debt – or at least deeper into the chaos that is our present lot in legal education. With another year, comes another address by an AALS president about the significant challenges we face in American law schools. Leo Martinez and Lauren Robel, my predecessors as presidents, must be feeling some *déjà vu*. Lauren stood before you two years ago speaking about our effort to “imagine and reimagine our schools, our teaching, and our scholarship in light of the changing world.”<sup>2</sup> In Leo's year as president and at this meeting we focus on “legal education in the 21st century.”<sup>3</sup> Perhaps all that has truly changed of late has been the intensity of the debate. Thus we find ever new ways of expressing our angst, or worry. “Legal education at the crossroads” is my expression of this anxiety; perhaps an even more fretful turn of phrase will be on offer

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<sup>2</sup> Lauren Robel, “Association of American Law Schools Presidential Address 2012,” AALS Newsletter 2012.

<sup>3</sup> Leo Martinez, “Looking Forward: Legal Education in the 21<sup>st</sup> Century,” AALS Newsletter 2013.

next year as Blake Morant takes the reins. “Legal education in the crosshairs,” perhaps?

But there is another, less angst-filled, way to look at the matter. Let us acknowledge the crisis in our midst, the crocodile in the bathtub. But let us acknowledge, too, the opportunities these challenges present to undertake meaningful reform, to improve legal education, to address our significant challenges with an eye toward lasting effect.

Happily, this process is well underway. There are, indeed, significant changes in the air. Just as the drumbeat of criticism of our educational and business model is becoming ever louder, the ample energies of our stakeholders, our member schools and the administrators and faculties who make them up, are turning toward imaginative reform. Necessity continuing to be the mother of our invention, we see around us remarkably valuable strategies to respond to the dynamic changes in the legal profession.

It is impossible to focus in earnest on the theme of constructive reform without at least acknowledging the broad critiques of contemporary legal education. For there may be no greater influence on the functioning and performance of our member schools in the past half-decade or so than the relentless criticism of American law schools in many different fora. We may wish it otherwise, but this criticism has undoubtedly contributed to the applicant decline, even if the principal reasons for this decline are embedded in the changing job market for lawyers; it has also contributed to a *zeitgeist* of self-consciousness and occasionally even guilt among the law professoriate about our work as professors and deans and in our complicity in this present predicament.

And yet, beyond the extremism of the current attack on law schools, there remain a set of critics and of critiques that rightly point out the deeply embedded problems in our collective enterprise. Their arrows find real targets; their analyses form the basis of a predicament and problems that we need to attend to.

I have announced as the theme of my presidential year, “Legal education at the crossroads.” In one sense, this is just a general phrase that captures the point that we are facing significant challenges in our law schools. But there is another sense of this “crossroads” metaphor that is intentionally more ominous. Those of you who are fans of the Delta Blues may recall the story from Robert Johnson’s 1936 ballad.<sup>4</sup> The basic story is one of a Faustian bargain, as the blues player stands at the crossroads where four roads meet, considering whether to make the deal with the devil, a deal which gives the journeyman his great music-making skills in return for a claim on his soul. Maybe, just maybe, we are the protagonist in the story. For the opportunity to do big things, to bulk up our reputations, to achieve a high place in the pecking order, we have made choices that are misguided or, even worse, threaten to sow the seeds of our demise. In the manner of the crossroads fable, we have perhaps made our own pact with the devil, who comes to us in the earthly form of U.S. NEWS & WORLD REPORT, to do seriously wrongheaded things.

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<sup>4</sup> The song, “Cross Roads Blues,” is a staple of the Blues repertory. “I went down to the crossroads,” Mr. Johnson wails, “and fell down on my knees, asked the Lord up above for mercy, save poor Bob if you please.”

I hope during the course of this year we will explore both senses of this “crossroads” theme. While considering how we can best adapt to changes in our professional environment, I hope as well that our inquiry will run to a deeper place. Like the Faustian parable of the blues player, I hope we will consider how our deliberate choices have negatively impacted our students and the legal profession of which we are a central part.

Let me turn for a few minutes to the nature of the problems we face.

What we face is what some shrewd policy analysts labelled memorably “wicked problems.”<sup>5</sup> These are problems which defy easy resolution in that they reflect, as Harvard’s Richard Lazarus describes it, “enormous interdependencies, uncertainties, circularities, and conflicting stakeholders implicated by any effort to develop a solution.”<sup>6</sup> Another group of policy analysts advanced this same line of thinking by noting that there are a species of these problems that can be labelled “super wicked problems.” These bear the same set of difficulties, but, in addition, these are problems which worsen over time, so that the longer it takes to address the problem, the harder it will be to do so. And, in addition, those tasked with solving these problems are those who contributed to causing the problems or, in any event, have built-in incentives to neglect reform and to keep fresh solutions at bay.<sup>7</sup>

When viewed through this frame, I think it apparent that we in contemporary legal education are beset by super wicked problems.

How do we get to the fruitful task of tackling these problems? First, by asking the right set of questions. There are matters of perception and of reality; both are meaningful. Think about framing our constructive project around four fundamental questions:

How do we combat the perception that our academic programs and educational content are ill-suited to the contemporary legal profession and to the fundamental task of preparing our law students to perform at a high level in their legal careers?

How do we ensure that our academic programs do indeed perform these tasks well and are sufficiently adaptive to shifts and changes in the legal profession?

How do we combat the perception that our academic programs are not worth the costs to our students?

Are our academic programs truly worth the cost and, further, how can we meet the

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<sup>5</sup> See generally Jeff Conklin, Dialogue Mapping: Building Shared Understanding of Wicked Problems 3-40 (2006); Horst W.J. Rittel & Melvin M. Webber, “Dilemmas in a General Theory of Planning,” 4 POL’Y SCI. 155, 160-69 (describing “wicked problems”).

<sup>6</sup> Richard J. Lazarus, “Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future,” 94 CORNELL L. REV. 1153, 1159 (2009).

<sup>7</sup> Id. at 1160.

challenge of educating law students efficiently and with due regard to the burdens of student debt?

These are our central questions and they frame our obligations and aspirations as law schools.

It is fitting in this forum to acknowledge the yeoman efforts of our colleagues, deans, professors, and administrators, who have been working in concrete ways on solutions to these super wicked problems. Innovation and experimentation is all around us. Great energy is being directed to the question of how to marry teaching of substantive doctrine with legal theory, historical perspectives with empirical analysis. Law schools with diverse missions, performing in a framework of what our colleague John Garvey memorably called a few years back “institutional pluralism,”<sup>8</sup> work on how to strike the right balance in our curricula content among local, national, and even cross-national law. Energy is being devoted to new modalities of skills training and experiential learning. Thanks to the creative work of clinical law professors, we will look back on this era as perhaps the heyday of clinical education in American legal education. And high-level, high-impact legal scholarship thrives in this innovative era as well. This is something about which we should be proud, not defensive, and something which we should support, not shrink from. In this forum, a few years back, my friend and colleague, Rachel Moran, noted the remarkable impact of our scholarly endeavors, insisting that “transformative scholarship may largely be understood by noting what it is not: it is neither arcane nor disinterested. It engages real-world problems in ways that those charged with solving such problems can understand.”<sup>9</sup>

That said, I don’t want to leave you with the Panglossian impression that everything is peachy and that the problem is one of a lack of suitable attention, that our critics simply don’t see what is going on around them. Some of the most interesting and potentially most transformative developments in legal education are truly new, and like new ideas, await dissemination and publicity. They are in every way experiments, ideas that emerge from bold choices, often borne of necessity, and always of acute imagination, made by our faculty, administrators, alumni, and, yes, occasionally even by a dean.

So far as the content of these experiments are concerned, I will note just a few developments which, for my money, have the potential to be the sort of “disruptive innovations,” that may help accomplish real change in the long run. The first I will mention is the impact and significance of technology on our law schools. This has two dimensions, the first being the exposure of our students to the powerful impact of information technology on legal practice. In his recent book, *Tomorrow’s Lawyers*, Richard Susskind draws an interesting lesson from Moore’s Law, by way of Google engineer Ray Kurzweil.<sup>10</sup> From the observation that every couple of years the processing

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<sup>8</sup> John Garvey, “Institutional Pluralism,” AALS Newsletter, February 2008.

<sup>9</sup> Rachel Moran, “Transformative Law,” AALS Newsletter, March 2009.

<sup>10</sup> See generally Ray Kurzweil, *The Singularity is Near* (2005).

power of computers essentially doubles, while its costs halve, Susskind declares that “if we can see the day in which the average desktop machine has more processing power than all of humanity combined, then it might be time for lawyers to rethink some of their working practices.”<sup>11</sup> He goes on: “It is simply inconceivable that information technology will radically alter all corners of our economy and society and yet somehow legal work will be exempt from any change.”<sup>12</sup> The impact of information technology on the economic and legal world in which our students are entering is undeniable; it is both significant and admirable that many of our member schools are engaging this new reality in fruitful ways.<sup>13</sup> Moreover, technology is providing us with opportunities to enrich the educational experience in our law schools. To be sure, these initiatives take many different forms. The classic venue of doctrinal legal instruction through in-class instruction via a modified Socratic method is being rethought through the rise of the so-called flipped classroom.<sup>14</sup> This may well be a radical change, although there is a part of me that thinks that Socrates would have welcomed this development, as it would create more space for illuminating give-and-take between professors and their informed students. Experimentation with online courses and even some online degree programs has created avenues of innovation and, yes, new sources of revenue. While time will tell whether new devices such as MOOCs will represent creative adaptation,<sup>15</sup> the debate has surely shifted away from the question whether technology will place a key role in reforming legal pedagogy to precisely how technology will impact how we teach, how we reason, how we practice law. For those who fret that law schools are hiding away from the rapid disruptions that are reshaping the landscape of higher education, there is no better example of a contrary hypothesis than how law schools are looking at the potentialities and impact of technology.

Another interesting development is the reconfiguration of what we might call the temporal structure of legal education. We are taking a fresh look at whether the six-semester structure of post-graduate legal education is the right one – or, to put it more

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<sup>11</sup> Richard Susskind, *TOMORROW’S LAWYERS* 11 (2013).

<sup>12</sup> *Id.*

<sup>13</sup> I demur on the particulars of law school initiatives in this regard, in that any effort to list law school projects will inevitably leave out some key innovators. Judging by the expanding depth and breadth of novel uses of information technology in our law schools, we are surely in the midst of an exciting new world of law school innovation.

<sup>14</sup> See, e.g., Pascal-Emanuel Gobry, “What is the Flipped Classroom Model and Why is it Amazing?,” *Forbes Online*, December 11, 2012.

<sup>15</sup> See, e.g., Stephen Colbran & Anthony Gilding, “MOOCs and the Rise of Online Legal Education,” 63 *J. L. EDUC.* 405 (2014),

precisely, whether it is right for all law schools, all jurisdictions, all law students. Not all of us agree, to be sure, that this rethinking is sensible. I had an op-ed in the NEW YORK TIMES with Sam Estreicher a few months back in which I signed on in support of the initiative being pushed in New York for credentialing after two years,<sup>16</sup> only to hear from my good friend and former president of this august association, Michael Olivas, that this was, and I quote, a “poopy-headed idea.” But, wherever you look, there are examples of engagement in our member schools with the hard question of whether the temporal structure of legal education makes good sense. In recent years, we see the emergence of accelerated programs, of so-called 3+3 arrangements (arrangements whereby a student spends three years in an undergraduate setting, before turning to three years of law school), of novel joint and dual degrees, of extended externships, partnerships with law firms, businesses, and even legal process outsourcers, and other innovative devices. Time will tell whether these experiments will bear fruit. And it is not wholly up to us and our member schools to think outside the box. After all, these particular experiments take place within the shadow of accreditation standards that make innovation difficult and expensive, to say the least. But that law schools are being pushed by key opinion leaders to reconsider the basic temporal model is, to me, a welcome development.

The last development I want to mention is one reflected in some interesting developments in the universities of which most of our member schools are a part. There is underway a significant rethinking in how we conceive of interdisciplinary education in the modern university and in how professional schools engage in the critical task of educating and training professionals who will do interdisciplinary things in their careers. Twenty years from now, I believe we will look back on how universities train individuals to become lawyers, doctors, businesspeople, and engineers and will wonder why we clung so tightly to the idea that these professionals should be trained in silos, with only episodic connections among these schools and departments. Likewise, we will look upon the legal profession and wonder why there was such a scrupulous separation between the institutions of large law firms and businesses, in their economic structures and in their scheme of incentives. Indeed, we might see the concept of the “practice of law” as at least incomplete, as the legal work and other situations in which entrepreneurs and business leaders are deploying so-called legal analysis is being carried out by individuals who are not lawyers in the narrow sense. Many of our member schools are deeply engaged in these questions of how best to negotiate the law-technology-business interface.<sup>17</sup> Our law schools are building into our curricula business and leadership skills; we are exposing our students to the complex dimensions of technology, regulation, and business strategy; we study legal analytics and look to harness the power of big data in the practice of law and of business; and we are recognizing, albeit with heavy doses of skepticism and caution,

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<sup>16</sup> Daniel B. Rodriguez & Samuel Estreicher, “Make Law Schools Earn a Third Year,” NEW YORK TIMES, A21, January 17, 2013.

<sup>17</sup> I reflect on this development in a post on my Northwestern Law blog, “Word on the Streeterville.” <http://deansblog.law.northwestern.edu/2013/10/17/law-business-technology-interface-professional-schools-under-the-microscope/>

the reconfiguration of traditional legal practice through legal outsourcing and the ubiquitous impact of globalization on our functioning. Many of our member schools are closely engaged with this project of rethinking interdisciplinary professional education, of breaking down these silos and of imagining new modalities of legal training and education – and, if you will indulge me in a bit of radicalism – of considering whether legal education in the future will not be only about turning law students into licensed attorneys, but about training a diffuse group of smart, savvy students in law and legal analysis, in order to pursue a diversity of careers and, in the process, in democratizing law and legal practice.

So, these are just a few ways in which imaginative law schools are tackling these super wicked problems. There are certainly other wonderful examples as well. One of the central characteristics of these sorts of problems is that those who are tasked with the principal responsibility for solving these problems are those who were deeply responsible for creating these problems in the first place. This is real; no two ways about it. Reform doesn't just happen because it is right that it happen; progress isn't preordained. Growing up a few miles up the road from Disneyland, I had the chance to spend some time at that theme park, and my favorite ride was the “carousel of progress.” It's basically a machine-driven wheel that circulates while animatronic families chart through four scenes the technological advances of the 20th century, from the hand-cranked washing machine, to the radio, to the automatic dishwasher, and then to high-definition television and virtual reality games. It was a memorable perspective, leaving the audience with a sense that progress simply happens, as the wheel ever turns and with the help of the ghost in the machine.

But, of course, our world doesn't operate that way. There are human beings who turn the levels; and the path of progress is an unstable one. But what ought to give us reason for hope and for optimism is that it is truly in our collective interest in getting these super wicked problems solved and, moreover, we have great wisdom in the community of our member schools and in the thousands of talented faculty and administrators who will achieve progress through their ingenuity and commitment to excellence.

Confronting the challenges we face in legal education requires constructive contributions by a mélange of institutions. And it requires that we collaborate with these organizations and they with us. No one is the spokesperson of all that we do and aspire to do in legal education; each organization contributes its own expertise in its own way. We are on a journey down a turbulent river indeed. There are many stakeholders in this trip down the rapids. We partner with well-intentioned organizations in order to better understand at least the shape of the river, if not its “million trifling variations...”<sup>18</sup>

Progress will surely require collective effort and energy from a broad array of individuals, including many of you in this room tonight. Certainly the leadership of the association, which includes the members of our executive committee and the executive director of the association and her staff, is central. What I ask of all of you, and ask you to ask of your colleagues, is your help in shaping our association's agenda in the coming

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<sup>18</sup> Mark Twain, Life on the Mississippi (1883) (“You've got to know the shape of the river. Do you mean I've got to know all the million trifling variations of shape?”)

months and years and in helping us in making real change. Legal education has its vigorous critics; AALS, too, has its critics. With regard to legal education more generally, what we need now is constructive engagement with these critics and with the super wicked problems which have generated these complex critiques. We also need to forge a compelling narrative that articulates what we know to be the case and that is that legal education in the United States is healthy, imaginative, and self-reflective. Legal education trains law graduates for diverse careers in a complex civil society and contributes to the successful performance of the institutions that safeguard our society's essential values and virtues. American legal education is the envy of the world not because we say so, but because we can point to extraordinary leaders and transformative institutions that have advanced the well-being of citizens, secured rights for the disadvantaged, and given students meaningful careers as lawyers and as ambassadors for justice. This inspiring narrative, actively communicated, is essential to our prosperity; indeed, perhaps to our very survival. As an association and a community of lawyer-educators, we have much work to do. Let's get to work.