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2001: A Global Odyssey Prompted by the Merritt-Cihon Upper Level Curriculum Report of the AALS

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2001: A GLOBAL ODYSSEY PROMPTED BY THE MERRITT-CIHON UPPER LEVEL CURRICULUM REPORT OF THE AALS

KENNETH M. CASEBEER*

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* Professor of Law, University of Miami School of Law; Associate Dean 1986-87. The journal of the American Association of Law Schools (AALS) declined to publish this reply to their printing of the Curriculum Committee's findings as reported by Professors Merritt and Cihon. The reply is based on a generic market problem facing law school members of the AALS and upon the author's observations of actions taken at a number of schools and does not represent any specific faculty or its choices. This is a reply to the profession of law professors as a voice not raised by the Report of the AALS which should be considered. This is not the first time, nor is it an original idea, that the interests of law teachers and the interests of law schools are not necessarily the same even if defined in both instances by law professors. See generally Kenneth Casebeer, *Running on Empty: Justice Brennan, The Empty State, The City of Richmond, and the Profession*, 43 U. MIAMI L. REV. 989 (1989).

The lawyer is a social engineer or he is a parasite.... The aim of this campaign [*Brown v. Board of Ed.*] is to arouse and strengthen the will of local communities to demand their rights, to make sure the system shall be a system which guarantees justice and freedom for everyone.

Dean Charles H. Houston¹

I. INTRODUCTION

The speed with which we reach (with hope) toward the millennium may only be exceeded by the acceleration of the globalization of economic organization and the division of labor.² Driven by the strength of finance capitalism, we have all become spectators of the securities and equity markets.³ Law schools and professors alike check their portfolios and incomes nervously, and school administrations facing lower student enrollment internalize the short-term maximization of return logic of finance competition. It is a convergence fraught with danger for the future shape and capacity of American legal education.

Inter-American lawyers presumably anticipate globalization, but may not appreciate the inertia of most American law faculties in response. Social change inevitably reorients law school curricula, both in the weights attached to current courses and due to changes in the populations needing legal service. Anticipating, rather than responding to change usually earns a market competitive advantage, always subject to the constraints imposed by access to necessary resources. While faculties will ponder what students most need to know, and participate in debating the social justice of the new organizations made efficient to financial markets, law faculties will also need to consider their own role in the social division of labor in what they teach, research, or draft to meet such change. At the same time,

1. Statement made by Charles H. Houston in *THE ROAD TO BROWN* (William A. Ellwood, producer, California Newsreel, San Francisco, 1989). This film was presented during a lunch period session added to the schedule at an AALS annual meeting in the early 1990s.

2. Eric Hobsbawm, *The Nation and Globalization*, 5 *CONSTELLATIONS* 1 (1998).

3. New York Times Service, *Hang On! Dow Plunges 512*, *MIAMI HERALD*, Sept. 1, 1998, at 1A.

their own positions as employees, in their recognition, pay, working conditions and resources, may even be counted against them as laziness or greed. It is too late to quibble over such rhetoric. Our educational function as academic lawyers will not allow escape any longer from fighting for the working conditions and product that will respond or not, to both the new world and new markets.

In the last issue of the *Inter-American Law Review*, the *Review* honored as Lawyer of the Americas, Salvador J. Juncadella. Mr. Juncadella, in his acceptance speech,⁴ concluded:

[T]here is no doubt that the remainder of the present century and the dawning of the twenty-first century will present major challenges to the legal profession in the Americas. Lawyers must prepare themselves by assimilating new knowledge that will have to be studied and discussed in special academic training courses and seminars and in the venue of international institutions such as the Inter-American Bar Association. Universities must include these subjects in the academic and professional programs offered at their law schools.⁵

Law Students must learn more than domestic law to effectively practice domestic law. International Law, national Treaties, and transnational situations will be locally relevant no matter the geographic locale. Often legal questions will turn on transnational knowledge and choice of law, or upon international law. The legal realist in Mr. Juncadella believes the effective future lawyer will need to know the cultural and material contexts of foreign laws to effectively counsel clients on how the laws will actually apply. There is reason therefore to question how our law school curricula measure up to this timely challenge. Serendipitously, at the same time, the American Association of Law Schools recently completed a study of upper level courses currently offered across the United States.

Deborah Jones Merritt's and Jennifer Cihon's report for the Curriculum Committee of the American Association of Law

4. Salvador J. Juncadella, *The Legal Profession in a Globalized World*, 30 U. MIAMI INTER-AM. L. REV. 1 (1998).

5. *Id.* at 7.

Schools (AALS) on upper level curricula⁶ points to numerous such decisions that law school faculties will be forced to make as we enter the new millennium. I do not wish to argue about any of the reported findings, but rather the purpose of this reply is to highlight an entirely different danger for law schools revealed in what was missing in the report, and in what was evidently not motivating the survey or data examination.

The reporters list the questions asked, and hope that "this report will provide a starting point for schools evaluating their second- and third-year courses. The upper-level curriculum often grows haphazardly, without institutional design."⁷ First, I agree with the observed conclusion of haphazard growth. Second, albeit for different reasons, I agree as well with their suggestion that successful schools need large faculties to meet more sophisticated market demands on lawyers. And, I have little to say about many other suggestions and inferences. However, I disagree with the study's most pervasive assumption, its naturalist fallacy—taking conventional practices as representative of truth or as foundational.

Simply put, the first-year/upper-level divide is a legal fiction, the perpetuation of which contributes to an already existing attack on education in general, and law school faculties in particular.⁸ In this context, continuing to assume a core first year and haphazard upper division entraps law schools looking at their institutional agendas.

Part II of this reply outlines the confluence of material forces that lawyers and scholars will face in the new millenium—from sweeping global social changes, to the realities of law school budgets, to the mundane and periodic surveys of curricular studies. Part III describes the need for new curricular assumptions in a global era. Part IV predicts that new student interest in marketable knowledge demanded by social change will affect the structure of curricular change. Part V proposes basic lessons for change in the new legal era. This reply

6. Deborah Jones Merritt & Jennifer Cihon, *New Course Offerings in the Upper-Level Curriculum: Report of an AALS Survey*, 47 J. LEGAL EDUC. 524 (1997). For a list of recent literature on the subject, see *id.* at 569 n.149.

7. *Id.* at 525.

8. See generally Jean R. Sternlight, *Symbiotic Legal Theory and Legal Practice: Advocating a Common Sense Jurisprudence of Law and Practical Applications*, 50 U. MIAMI L. REV. 707 (1996).

concludes by calling for faculty participation in shaping how law meets the future needs of the legal profession.

II. MACRO, MICRO INCENTIVES AND THE FALLACY OF THE FIRST-YEAR/UPPER-LEVEL DIVIDE

In the finance era, educational micro-management, especially professional educational institutions competing for fewer students, will inevitably bow to market and political pressures to justify the school's product by virtue of market responses. The need to maximize return on dollars otherwise investable in short term options promotes parallel cost concerns in universities, often opposed to promoting knowledge for its own sake (or basic research) when the two goals collide. Traditionally, schools compete for prestige in the market for students, and succeed in the market for entering lawyers, in what is hoped to be a spiral upward rather than a chasing of the dog's tail. In the alternative, they seek to control a local or regional market of replacement of the local lawyer pool.⁹ Of course, many schools choose both strategies to some extent. The shadings are not crucial to the damage of assuming a core first-year and a haphazard upper division curriculum.

Under either school identity, the generic macro pressure for global and domestic market product differentiation increases the incentives to locally produce new videos, home pages, and glossies that advertise the law school's niche or ambition. This emphasis on consumption strategies and short term advertising return, luring the entering students to attend, and the first employers to buy the lawyer-product, in the end adds only marginally to what is the school's actual product. There are profound consequences to consumption strategies, especially when combined with budgetary pressures. Faculty members are asked to hold salaries and costs down and expand time spent in fundraising, student counseling and supervising, in public and bar relations, and in administration. The "added roles" strategy tends to make faculty members perceive their social roles in the division of labor as limited to that of employees in the legal sense, further manifesting the symptoms of the attack on legal education, and diverting attention in curricular decision-making

9. Very roughly, these market strategies could be labeled *research, multi-jurisdictional law schools* and *teaching, limited jurisdictional law schools*.

toward budgetary priorities rather than the substantive objectives of our work.

The coming millennial decisions will thus aim at two potentially conflicting goals: first, creating demand for additional students via self-imposed, symbolic marketing of the timemark/benchmark; second, producing a program of education that anticipates future social, and therefore legal, changes. The actual progress made on the latter goal determines how much of the first will be pure puffery, and thus likely to lose in any serious market shakeout. Alas, both decisions will be made by faculties defensively, against the short term orientation of global finance capitalism, and the accompanying corporate culture of racing to the bottom, or downsizing.¹⁰

When the market meets legal realism we see with greater clarity that curriculum means what professors do in fact with their students, in formal interaction and otherwise. Yet at the same time, faculty members seem unusually reluctant to understand that their increasing institutional treatment as employees is but a symptom of the standard labor squeeze inevitable in even sensible downsizing. In the law school context, the labor squeeze may result in additional course or course/article loads, reduction-in-force (no hiring, buyouts, collapsed lines), wage givebacks, changes in working conditions, reduced research support, budget cuts, library reduction, larger secretarial pools, self-insurance, and added administrative duties over students. Any educational insider or legal realist must concede that the real curriculum of what the teachers do and what students actually treat seriously, will be substantially affected if all the labor questions are imposed by central administrations, or even decided voluntarily in downsizing mode.

Labor (employee, faculty) questions are never simply matters of pecuniary self interest. Faculty members at least should be concerned about what is to be done, what they in fact will do after the deluge. This should force greater self consciousness about the program of training, of education of lawyering in the political-economic reality of global markets. What kind of skills

10. On the self-consciousness of law schools experimenting with a change in their curriculum facing globalization see John B. Attanasio, *The Globalization of the American Law School*, 46 J. LEGAL EDUC. 311 (1996). See generally RUTH COLKER, *AMERICAN LAW IN THE AGE OF HYPERCAPITALISM: THE WORKER, THE FAMILY, AND THE STATE* (1998).

and knowledge do our students need? How will the bulk of the graduates maintain an economic base?

Whatever the extent of these pressures taken on their own merits, law faculties engaged in education service delivery should not be viewed normatively as if universities were a bank or a factory. That is, we should first ask—what legal product in training entry lawyers for new social challenges are we actually producing through our curriculum? And we should do so for both educational and economic reasons. It is in this context that the core first-year and the haphazard upper division assumption should be repudiated.

For those employees of law schools who aspire to be a faculty in a distinct sense, a working group capable of the traditional social function of the university in a free society, they must do more of course. Yes, courses need to be changed in content to meet the new demands of social change. Yes, the structure of required courses to sequential alternatives must change to adequately prepare new skills and knowledge. But perhaps most importantly, faculties will need to defend the importance of research to the content of teaching, substantively and pedagogically. I mean this as more than keeping current and cutting edge to enrich class sessions and materials. Research and knowledge must be more visible as part of effective strategic representation, practiced within multiple jurisdictions, perhaps simultaneously.

For schools competing to remain research and multi-jurisdictionally oriented, the faculty must directly and explicitly relate the content and purpose of faculty research to the content and process of training lawyers. They will have to defend the proposition that training students as professionals means teaching a lifetime commitment to acquiring useful knowledge for the client's representation. Students need to believe in the necessity and skill of research and information control as indispensable to their program of study and, incidentally, in the effect it has on the lawyer's own economic survival. To this end, schools will have to explain an interactive set of curricular choices to students who need more, rather than less, classroom experience to compete in the brave new world. In short, a research or university type law school faculty can no longer afford a liberal, laissez faire, unexplainable, upper-Level laundry list.

A realistic curricular program for the next period should maintain two principles of focus: (1) substantive knowledge—what can the graduating lawyer market to the community?; and (2) product differentiation—what do we offer to students choosing schools?

III. THE GLOBAL IS LOCAL: FINANCE CAPITALISM AND SUBSTANTIVE KNOWLEDGE

The global is local, and the local better be global.¹¹ Financial capital seeking maximization of short term return, and indifferent to nation-states, heavily disciplines product and labor markets world-wide¹², often unpleasantly in already developed economies. Nonetheless, at the end of the day, production of goods and services will be located somewhere, and trade between population centers less mindful of borders, will be important to community prosperity, stability, and perhaps, survival.¹³ Competing as a culture, as a nation-state, or as a trade bloc, means competing as labor pools constituting these production/trading communities.¹⁴ The better trained the labor pool, the more stable and successful will be the region of population, in short, the community, a competition for which we seem nationally unprepared.¹⁵ The better the lawyers planning within each community represent group interests in community competitiveness, the more prepared the labor pool will be to attract global interest. All local lawyers and local legal business will either understand the new world incentives or contribute to a collective lack of competitiveness.

How can law schools contribute to the social reconstruction to come? What kind of skills can a lawyer provide? What kind of

11. William Twining, *Globalization and Legal Theory: Some Local Implications*, in 49 CURRENT LEGAL PROBLEMS 1, 3 (M.D.A. Freeman ed., 1996).

12. "But if globalization has to adjust to local particularities, of which 'nations' are an important subvariety, particularities are much more powerfully affected by globalization and have to adjust to it or be eliminated by it." Hobsbawm, *supra* note 2, at 2. See also Ray Marshall, *The Implications of Internationalization for Labor Market Institutions and Industrial Relations Systems*, in RETHINKING EMPLOYMENT POLICY 205 (D. Lee Bawden & Felicity Skidmore eds., 1989).

13. See generally Katherine Van Wezel Stone, *Labor and the Global Economy: Four Approaches to Transnational Labor Regulation*, 16 MICH. J. INT'L L. 987 (1995).

14. Stephenie Overman, *Skilled States Lure New Business*, HUM. RESOURCES MAG., Jan. 1994, at 61-2.

15. See generally WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996).

law and lawyering will be needed—perhaps even more of the lawyer as social engineer proclaimed by Dean Charles Houston? Urban populations will need job flexibility, maximizing every person's human capital, to prepare to do the higher technology work associated with decentralized manufacturing, a series of jobs rather than a career, and geographically diffuse service functions.¹⁶ Capital and finance also demand more servicing and high tech production—good jobs in the new era.¹⁷

But to keep these highly mobile jobs, the labor available will have to be the best trained and most productive. More stable jobs of providing for local quality of life will only support the size and quality of life proportional to the competitive strength of the community's labor value to the existing global market. Higher educational performance generally must be matched by improvements to infra-structure, transportation, justice in housing and health, and support for trade. It is the labor pool more than the individuals as entrepreneurs which will determine competitive health of the locale.¹⁸ Urban population concentrations failing to meet the skill challenge *and* the accompanying social challenge will not be the destination of growth, trade, business location, and convention.¹⁹ In the information age, who needs to go *there*. The global bottom line is after all, if there is no job, move. If there are no jobs, close (law schools not excepted).

IV. THE LOCAL IS GLOBAL: MARKETING LEGAL PROGRAMS OF SKILLS

Fee for service can only currently deliver quality legal strategy economically to a very wealthy population or elite corporations. The country cashed out its equity in the eighties, both personal and corporate, and business needs such skills less as a percentage of graduation employment. A vast mass of the

16. See generally Paul L. Knox, *Globalization and Urban Economic Change*, 551 ANNALS AM. ACAD. POL. & SOC. SCI. 17 (1997).

17. For an examination of the changes in constitutional law interpretations demanded by the global economy see Kenneth M. Casebeer, *The Power to Regulate Foreign Nations in a Global Economy and the Future of American Democracy* (Sept. 1998) (unpublished manuscript, on file with the *Inter-American Law Review*).

18. Gary Becker, *The Adam Smith Address: Education, Labor Force Quality, and the Economy*, BUS. ECON., Jan. 1992, at 7-12.

19. Jack Lyne, *The Skills Gap: U.S. Work-Force Woes Complicate Business-Location Equation*, SITE SELECTION, Aug. 1992, at 642.

population cannot afford adequate legal services on this basis. This much is not news.

This situation will be made much more acute combined with the dislocations of much of our population in the coming re-tooling of social relations necessitated by the global economy. Political responses will pressure legal changes even more. Under pressure from creditors, vast numbers will need legal advice under changing, pro-credit legal regimes. Conundrum: demand without supply.

As a matter of cost, professionalism will change as most law graduates will have to develop low over-head, cooperative administrative infrastructure for individual or small-group generated client bases, fixed cost or pre-paid. Some organizations will have ready made institutional pooling of service costs (pre-paid plans, union or corporate benefit based services, in-house work). Many will have to be developed around expertise and empathy. Home owners associations, environmentalists, industry groups, etc. need knowledgeable, and therefore flexible, representatives. Only a substantive knowledge of the technology, and views of such groups will win positions representing these clients, and the accompanying personal business that will come with it.²⁰ That is, most graduates will need the skills and the substantive knowledge of practices which generate a set of conflicts defining an area of law to maximize the strategic representation of an interest group. And while the representation is local, the law will be multi-jurisdictional.

To represent the group interest competitively, the lawyer will need more than knowledge of substantive law—how to do what the client wants. He or she will need substantive knowledge of the interest defining the group. For the products liability bar, engineering and statistics literacy means more than courtroom personality. In general, macro-economics of trade may become more important than micro-theory of the firm. Community development of housing, transportation, and employment patterns becomes necessary to land use and property law, for reasons of the increasing costs of decentralized

20. For a parallel argument met by dual degree JD/MBA, "operational" business executives with legal training seem to rise faster than those with a J.D. only, see Robert Eli Rosen, *Lawyers in Business* (1998) (unpublished manuscript, on file with the *Inter-American Law Review*).

service delivery, let alone social justice. Again, the global constrains the local, and the local plays out in the global arena.

To compete successfully, students will need at least three full years of serious course work. They will need efficient course sequencing and interdisciplinary options to put together a more personal portfolio, aimed toward attracting clients more than employers. In addition, existing bar association members tend to prefer more opponents than competitors, especially in times of increasingly fewer job openings in traditional law firm practices.

V. ORBITAL SUGGESTIONS FOR RESEARCH, MULTI-JURISDICTION LAW SCHOOLS

Law schools competing on the premise that their students prepare to practice in all areas of the country and internationally, will succeed if they offer a coherent plan of courses which: (1) provide a background to core legal subject matters accounting for internationalization; (2) emphasize trade law; and (3) help build the intellectual superstructure of trading between population centers defined by the quality and differentiation of mass labor pools. The latter is an integral part of the first to the extent that major percentages of employment of law school graduates will still depend on local need for lawyers. For schools to compete beyond the locality and for job expansion prospects locally, new learning and skills must be matched to the new social structures that prosper.

Local legal subject matters will need to: (1) reflect international and transnational interaction; and (2) adapt to and shape new social relations demanded by global markets. Transnational legal events will demand knowledge of the foreign law application contexts as well. Nation-states will not immediately disappear, and thus negotiation of international regimes and institutions may directly change any current local practice. To meet these needs, I suggest various changes in the standard law school curriculum.

A. *Internationalize the Basic Curriculum*

As the Merritt-Cihon study confirms, most law schools follow some variation of the split between the foundational first-year and the upper-tier curriculum. Schools tend to lead with the

Langdellian, legal and common law case reasoning during the first year, and then follow with two years of skills and knowledge used to operate within the administrative law of the market-state.²¹ Thus, there is a divide between first-year core classes and upper-level classes. Some may defend the rationality of this divide on a new version of the private (first-year)/public (upper-level) distinction, even though the public-private distinction has been thoroughly destroyed in recent years.²² More generally, following Bach, ever more intricate, course embroidery of the artificial divide following the first year, blurs lines. Bridges emerge between the two curricula, but as the study suggests, haphazardly.²³ Perhaps little damage would be done by doing away with the legal fiction.

Moreover, the study clearly documents that the international area continues to increase in many law schools.²⁴ The content of a coherent curriculum should not continue the first-year/upper-level distinction. Rather than the addition of course titles, it is more important to focus on the interrelating content of course offerings. It is internationalizing the core curriculum rather than adding international courses to the curriculum which transnational practice seeks. This can be undermined by the material milieu which is the context of curricular planning.

Law schools facing downsizing cannot afford the luxury of starting from scratch. As a compromise, therefore, the curriculum needs to work with available resources, and must have some kind of beginning. It is still necessary to account for common law decision-making. Indeed a revised first-year may appear similar in format to the existing one. However, there is a danger to this compromise beyond replicating a new intro/upper divide. That is, the burgeoning number of international courses, currently developed in specialized legal contexts of law, cannot be simply forced in earlier in the curriculum. Re-doing traditional course contents to switch their entire primary focus to a pervasive global view might serve the students better and

21. But see Merritt & Cihon, *supra* note 6, at 567 for the view that more focus on the areas of legislation and administration is needed.

22. See generally Jennifer L. Johnson, *Public-Private-Public Convergence: How the Private Actor Can Shape Public International Labor Standards*, 24 *BROOK. J. INT'L L.* 291 (1998).

23. Merritt & Cihon, *supra* note 6, at 566.

24. "Sixty-two schools added a total of 180 courses on international law. These courses spanned almost every substantive area in the curriculum. . . ." *Id.* at 539.

become a goal, but would be very expensive in both human and monetary terms if accomplished with radical speed.

Some things can be done within existing resources. For example: starting with thirty credits in the first year, subtract four credits for research and writing advocacy, and three credits for an *Introduction to Law and Everything* course, the remaining twenty-three or -four credits should further internationalize subject matters. The understanding of international law still depends on knowledge of traditional first-year subject divisions; thus, four credits each of Torts (wrongs), of Contracts (promise and remedies), and of property (use of resources), and five credits of Civil Procedure (complete view of trial practice) seem minimal. The Federal system of civil adjudication itself is an important topic for international players. Only slight but important content changes in the existing courses to introduce the international context would leave these credits quite recognizable. Four credits will be a minimal amount for an introductory Administration of Justice course—introducing criminalization, custody, control, crimes, and rudiments of constitutional procedures. The remaining two credits could be an introduction to International Law, probably restricted to customary law ideas. I would prefer to begin U.S. Constitutional law as part of a six credit requirement bridging into the second year to introduce judicial review and basic separation of powers. Public International Law requires knowledge of American separation of national powers, and it would be best for Constitutional Law to precede, rather than correspond to the public international aspect of such law.

I would seem to simply replicate the new Langdellians.²⁵ But no, because the first-year is intentionally sequenced into the second in terms of coherent background of future courses. The question is one of requirements or core rather than arbitrary temporal limits. As tort and contract contexts, and property and crime contexts, crossover; so civil adjudication procedure interacts with constitutional law, and constitutional law with international law. What has been examined thus far, is the basic structure of the nation-state, and thus an important predicate to a full understanding of International Law. A four-credit Introduction to International Law course, offered in the fall

25. Thomas C. Gray, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1 (1983).

semester of the second year, would address both the law of nations and the burgeoning of Public International regimes. To maximize course sequencing from this point onward, sensible students will predictably take four credits of Corporate Organization, and three credits of administrative or criminal procedure. The sensible generalist will, within the remaining 42-45 credits, add three or four credits of Federal Courts/Jurisdiction, before three credits of Conflicts; also, Evidence (both proof and procedure), Commercial Law, and International Business Transactions. Then, introductions to areas of practice will serve as prelude into a specific curricular to assist the student to find a local (not necessarily local to the school) market niche—Labor Law, or Tax, or Trusts & Estates, or Domestic Personal Law, etc.

The point is that two-thirds of the standard curriculum of the 1970s onward will need to be covered for basic legal literacy in a capitalist and globalized world. To be more, students will need to count on getting through these basics efficiently in order to maximize the value of any intended advanced practice concentration. Such additions may be modular groups of two or three or four course sequences to be linked with one or more of the second year courses, or to be matched with advanced counseling, litigation, and alternative dispute resolutions.

B. Develop Model Course Tracks to Guide Student Choice Geared to the Faculty's Strengths

Professors Merritt and Cihon demonstrate the importance of faculty size to the obvious greater ability to develop strengths in both the admission and career entry markets. Product differentiation enhances competitive strength in both markets. But more is needed from society's changing population. To fulfill our academic role we should anticipate how to make that future responsibly meet our democratic commitment, an assumption I hope is shared. That premise alone suggests that new legal knowledge and skills should be consciously pursued which will also *make* markets for people with legal training. This job is too large for most, if not all, tuition-driven law schools by themselves. Links to other faculties, within and without the home institution, will be necessary. For regional and other reasons, of course many law schools already have such faculty

strengths. But as the authors argue:

If courses are becoming more specialized because students need to acquire such advanced knowledge to succeed in their chosen areas of practice, then the implications for legal education are grim. Extreme specialization might force out of existence all schools except those large enough to support the full array of courses needed by the next century's students. Alternatively, schools might try to specialize in particular subjects, but this would force students to choose legal specialties before entering law school.²⁶

I would rather assume that the trick is to relate specialized and advanced modules or sequences of such specializations to the basic internationalized courses without recreating the first-year / upper-level divide. The difference between the internationalized basic requirements and student specialization will hit largely in the second-third year border, and in any event, third-year courses will need student sequencing efficiency within the second year to get any kind of market trained specialization. Beyond the obvious substantive gain in the substance of the academic program, this approach confronts and repudiates the almost universal law student belief in the first-year/upper-level divide, which itself contributes to more time hustling off campus, to less attention to class sessions, to the "why the third year?" ennui. Otherwise, coupled with traditional practitioner suspicion of knowledge training, the divide lends credence to a quite robust downsizing atmosphere.²⁷

C. *Modularize Different Kinds of Practice Skills to Fit Course Specialization Tracks*

One skills program does not fit all sizes of course specialization, nor provide vehicles for merging procedural and substantive knowledge. This approach should be taken as opposed to assuming more litigation sections as a default for the mass of law students, students who are thereby labeled ordinary job candidates, with little comprehension of how skills match knowledge preparation. The content of such decisions I wish to

26. Merritt & Cihon, *supra* note 6, at 568.

27. See generally Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191 (1993).

bracket here, with the proviso that the modules reflect the changes in market and social relations apparent in the global economy. For example, more attention should be paid to production and marketing co-operatives, and agency, within corporate courses; more attention to treaties, and arbitration involving all employees, are needed in labor groupings, etc. Also, new social arrangement of transportation to work areas, adequate housing and education, trade support, etc., make planning, development of legal instruments, and representation in negotiation increasingly needed skills in group representation.

D. Develop Internally, or Through the Rest of the University, the Ability to Take Course Work Appropriate to Build Client Bases

Some courses remain obvious candidates for extra-legal learning: economics of the firm, and of trade statistics, psychology, etc., and might be provided in-house. Others—medical and environmental sciences, sociology—may depend on other parts of the university or outside resources. Llewellyn's list of law actors²⁸—the future realist and the strategist—will need to know what they are talking about, not just how to talk about something, or how to introduce it surreptitiously. Dual degrees may become more attractive to the market, but require obviously greater investment.

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Finance global capitalism is here. Areas of population concentration and regionalized cities will adapt to local production needs as necessary to support the labor force. But that labor force will be unstable unless the investment in human capital and global technology in any viable area is sufficient to support the trade in the global system necessary to sustain that labor force. This outcome remains less likely if individual client representation does not include the community interest in planning for community competition, and reflect the interdependence of individuals that global markets demand of competitive labor pools. Efficiency and self-interest, if nothing

28. Karl N. Llewellyn, *The Normative, the Legal and the Law Jobs: The Problem of Juristic Method*, 49 YALE L. J. 1355 (1940).

else, will require raising the material welfare and participation of all workers in a democratic society. As labor produces all wealth, trade-labor pools determine the terms of trade. In the great depression, the population could not afford to subsidize profiteers offering substandard wages. In the global future, the population can not afford to subsidize profiteers perpetuating substandard training, thus undermining efficient community trading prospects. Lawyers will be needed for new institutional practices, and more of the unserved middle will need affordable legal services. Both training needs are best served by a larger, not a smaller, faculty size. As possible, both needs would also be served by better student-faculty ratios, but this is secondary to size in resourcing the global-community orientation in training.

Schools will probably not, on the other hand, be able to train well in all fields of legal developments. Some have already focused on environment, on health care delivery, on public interest, and many develop business concentrations by numbers of faculty alone. The market seemingly will force greater specification of strengths, rather than doing all areas well. Students will need to be convinced that more attention toward maximizing three years of training and research will make them more competitive and in demand. Research and knowledge are still the basis of sound strategy. Students must learn this as the self interest which connects the faculty as academics to the faculty as teachers of strategic representation.

But this vision of legal realist education has been proposed before, and ignored.²⁹ It may well be that schools will respond by retrenching their own horizons, becoming teaching schools for replacements in the local bar.³⁰ In such schools, regardless of the number of articles published, research will have coincidental relation to the actual curriculum, geared as it will be to the demands of the local bar. Schools will less aspire to training the adaptable lawyer who will compete in a national market for scarce elite jobs, and to tend to parochial business interests, or to meet the need for currently under-represented populations. That

29. *The Place of Skills in Legal Education*, 45 COLUM. L. REV. 345 (1945) (1944 Report of the Committee on Curriculum, AALS, Karl Llewellyn, Chair). Ironically, Llewellyn's Committee was facing massive curricular change forced by post-war conversion meeting the New Deal revolution.

30. I do not mean to imply that this choice is somehow less honorable, but that it is different with regard to faculty size and contractualized duties.

outcome if universalized through market pressures will be disastrous for the role of law training as part of social justice, and therefore to the need for legal training itself. And as the local becomes globalized by material incentives, local bar schools may even prove to be functional oxymorons.

If it so happens, faculties will be looking around wondering why their work site has been changed so much. Self interest meets group interest when the question becomes will we just stand there as employees, deer-eyed in the onrushing train of a wider world, or will we do what needs to be done to deliver legal services to citizens needing a more, not less, democratic society-in-fact?