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Curricular Responses to Globalization

Dean John E. Sexton*

My mandate today is to speak about the globalization of the core law school curriculum, something that has been taking place at NYU Law School today and which I understand has also been starting to be adopted at other law schools around the country.

Let me say, at the outset, something that I said at greater length in another panel and about which I have written elsewhere. The notion of examining globalization, both in its external reality and its internal reality, is a notion that will more and more drive itself into the heart of what law teachers do over the next five, ten, twenty years. There is an external reality that is unstoppable by the monopolistic devices that the ABA and the American legal education establishment are trying to employ. It will happen and it will force us internally to think much more about what we are doing—something we have indulged in avoiding. We are the most self-indulgent group of academics that I have encountered in my forty years of teaching. We teach what we want, when we want to do it, the twenty-eight weeks a year that we do it. In addition, we have essentially imposed on our students a three-year residency requirement to take the bar exam. This is not going to last. The changes that I expect to see in US legal education does not make any difference to older people like me but it makes a lot of difference to those of you who are going to be around ten years from now, twenty years from now, when our product is going to be judged based upon what it is rather than the doors it opens.

It is my view that there is a coherent case that can be made for a diversified three-year J.D. program. That obviously will include a first-year curriculum. I think a key move will be re-examination of the first year curriculum and an abandonment of what I call the coverage method. Christopher Columbus Langdell is well known to us. The person that is not well known to us, or at least to all of

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us, is Christopher Columbus Langdell's boss, Charles Elliott, on whom I did my doctoral dissertation. Elliott invented what, in my generation, was called the Harvard classics, the five-foot shelf he called it. You give me five feet of your bookshelf. This was when people read and you let me put the books there, and you read them and you will be cultured. Langdell took this idea and brought it into the first-year curriculum. The shelf is not five feet long anymore and what's more, its content changes very, very rapidly so no one can really keep up with it with the reading, so there is going to have to be a kind of paradigm shift in what we do and how we think.

One of the new ways of thinking that becomes available to us through the external forces of globalization is the internal move towards incorporating globalization as an opportunity to teach a whole set of things. Clearly, law produced by other sovereigns or even super-sovereign organizations such as in the field of public international law, is growing in importance and must be dealt with in today's law school. But more importantly in my view, globalization presents the opportunity to take something that we have taught well for a long time—legal reasoning—and expand it. You know, we have always talked about thinking like a lawyer, and that has always meant two skills to most of us. One was a close reading of cases with a very rigorous intellectual discipline that comes with that.

The other skill is to be able to articulate in very clear terms our views. What globalization will force upon us is building on those skills but also the additional skill of hearing and listening, because more and more we will come to see the role of the lawyer as that of communicator. The language conversation that we had earlier on this panel is very probing of that particular notion, and I think is illustrative of the kind of opportunity that globalization presents as a curricular matter. Frank Upham used to teach a course that required bilingualism in English and Japanese. There would be twenty students in the class and he would break them up into five teams of four each and give them the same complex document in one language or the other and say to them, "You can't talk to each other. Talk among your group and come in with a team translation from one to the other," and they would come in with five widely different translations. Of course this was not a language course but a pedagogical device on what are the pitfalls in the language systems and the legal systems that lead to these differences in the translation. More and more I think that globalization will force us into a kind of paradigm shift of what we do.

This shift of course will have ramifications inside the first-year core curriculum because we are going to move away from the labels that we associate with the doctrinal courses today into something that looks very, very different. As a start, a kind of intermediary device, we have begun to develop teams of people who begin in the mainstream courses to integrate the perspective of cultural humility that is at the heart of the lesson to be learned from globalization. This has been alluded to earlier in the panel.

I think one of the key intellectual moves that is made by beginning to develop curricula in response to the phenomenon of globalization is a certain amount of an appreciation of other legal systems. One of the opportunities globalization presents is an opportunity to view our system in the context of the wisdom of other systems. And I think that beginning to think about contract law as Peter Friedman talked about it, or civil procedure which is my area, or property law which is Frank Upham's area, and to begin integrating deeply examples from other systems that raise the fundamental questions that are not asked inside of our system. Every system taken alone is a closed system, so when you move outside of the system and look back into it you ask questions that may not get asked inside the system. So when I was teaching Constitutional Law to a group of foreign-trained LL.M. students, I had them read the American Constitution. I did not have the wisdom as Adrien Wing did to have them read the South African Constitution, as well. But the first question that came in that class was from a South American student who asked me "Where is the provision in the Constitution to suspend the Constitution?" That notion came as cold water to an American thinker about this.

Or when we had Albie Sachs, who was one of the architects of the South African Constitution at the Law School, I remember his looking at the students in my American Constitutional Law class and saying to them, "You Americans are so obsessed with the intent of the framers." He said, "I am a Justice on the South African Supreme Court and I helped write the South African Constitution and I have had to deal with cases where I didn't remember my intent about what I wrote." And all of a sudden you sit there and you wonder how useful it is for us to be looking deeply into the intent of the framers of our constitution.

That same kind of awakening comes when one moves outside your system, and I think we are going to have integrate that notion of moving outside the box into each of the first-year courses. Beginning a year and a half ago, we asked for a single volunteer, subject neutral, from among the first year doctrinal faculty

members. We have four first-year sections. And we asked for a volunteer from each of those four sections who would commit himself or herself to integrating global perspectives into his or her course. So, for example, Frank Upham did it in Property; Dick Stewart and Eleanor Fox did it in Torts; I think Barry Adler did it in Contracts. This was designed to bring in this larger perspective. After running that drill for one year we then asked for a second volunteer in each of the sections. So we now have global elements and perspectives being introduced in up to two of the five core courses. This is an intermediate step to the new and radical curriculum that we are going to be developing. And in a way it is a mere image of what Peter Friedman talked about.

I want to close with one point that has been implied but I think it is useful to make explicit: It is critical that we integrate into the cannon the global perspective about which we are talking here. There are all kinds of signals that go out from that. It is also critical that we view what goes on in the classroom in these courses as just the beginning of a conversation that continues and reaches its fulfillment outside of the classroom. That means, of course, having faculty members who are engaged with students and accessible to them. It also means creating an environment in which the students educate each other. And we should not underestimate the value of students from diverse cultures in that last stage. We now have three hundred full-time students at N.Y.U. from I think fifty or sixty different countries. Twenty percent of our student body are from abroad—half of them are in the J.D. program, half are in LL.M programs. They are living in the residence halls together, they are cooking meals together and they are talking about what goes on in their class together. In these ways, they are doing as much to educate themselves about the cannon of Contracts and Torts and Property and Civil Procedure as we are doing in the classroom. That simple device which is revenue neutral or revenue enhancing should not be underestimated in this process.