

Law and Leadership

Ben W. Heineman, Jr.

Ben W. Heineman, Jr. is Distinguished Senior Fellow at Harvard Law School's Program on the Legal Profession, Senior Fellow at the Belfer Center for Science and International Affairs at Harvard University's John F. Kennedy School of Government and Senior Counsel to WilmerHale. During his career, he has served as law clerk to Supreme Court Justice Potter Stewart, a staff attorney at the Center for Law and Social Policy, assistant secretary for planning and evaluation at the Department of Health, Education and Welfare, an appellate litigator at Sidley & Austin and Senior Vice President and General Counsel and then Senior Vice President for Law and Public Affairs at GE. This essay is adapted from the author's lecture, "Law and Leadership," delivered at Yale Law School on November 27, 2006 as part of The Robert H. Prieskel and Leon Silverman Program on the Practicing Lawyer and the Public Interest

Introduction

More than ten years ago, Tony Kronman broadened discussion of the legal profession by a "back to the future" revival of the "lawyer-statesman ideal," a concept with origins in the nineteenth Century.¹ This essay takes his thoughtful analysis as a starting point and again attempts to stimulate discussion about the leadership role lawyers can and should play. But, while sharing his intent, I disagree with some of his key points and, in particular, am more optimistic about the future.

My thesis is that law school graduates should aspire not just to be wise counselors but wise leaders; not just to dispense "practical wisdom" but to be "practical visionaries;" not just to have positions where they advise but where they decide. I wish to redefine, or at least reemphasize, the concept of lawyer explicitly to include "lawyer as leader." I do this with the hope that the law schools and the profession will more candidly recognize the importance of leadership and will more directly prepare and inspire young lawyers to seek roles of ultimate responsibility and accountability than is the case today. These are roles which those with core legal training have in fact assumed throughout our history and which Alexis de Tocqueville recognized and celebrated more than 150 years ago.

Why do I advance this thesis? First, our society— national and global—suffers from a leadership deficit. We need our brightest, toughest, most ethical, most broad-gauged to combine strong substantive visions with an ability to get things done. Surely, our law school graduates can try—and I emphasize try—to address that deficit if they are so motivated. The core competencies of law are as good a foundation for broad leadership as other training. This is not to say that the "best and the brightest" are entitled to lead—nor that they will succeed if they do. That cozy assumption has been born and has died many times, certainly, when I was a student, in a tragic war in Southeast Asia. But it is to say that those who are blessed should attempt the difficult, perhaps Sisyphean,

¹Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge, Mass., 1993).

task of leadership—but with humility about the time, effort, and discipline required and about the difficulty and contingency of effecting important change.

Second, the legal profession, by many accounts, is suffering from a crisis that is “the product of growing doubts about the capacity of a lawyer’s life to offer fulfillment...”² An important dimension of this problem is the disconnect between personal values and professional life, especially the possible amorality of serving clients’ interests in an adversary mode. Providing leadership can certainly be an affirmation—and a testing—of one’s vision and one’s values. So providing leadership may serve both social and individual needs.

Third, other cognate professional schools—business and public policy—have as their explicit mission the training of students to lead in the private, public, and non-profit sectors. Surely, the products of our law schools, who are at least as talented, should also aspire to lead in those spheres, not just grow up to provide advice to today’s peers who will be tomorrow’s decision-makers in business and government. But today, law schools and professional associations may not have a broad vision of lawyers as leaders, may be ambivalent about that role. It is a small point but perhaps a telling one: my law schools’ website (Yale) does not include a statement of mission—not even “do justice” or “equal justice under law.”³ And one can read recent speeches of the distinguished presidents of the Association of American Law Schools, as I have, and find barely a word on lawyers as leaders.

My view of leadership is capacious. Leadership can occur in strictly legal institutions—the bench, the bar, and law schools—or in social, political, and economic organizations. It can occur in the public sector or the private sector or the non-profit sector. It can occur in traditional institutions or in new institutions created by new leaders. It can lie in finding solutions for an existing agenda of issues or defining a whole new agenda. It can be in policy or in politics. It can be as a specialist or as a generalist. It can be in U.S. institutions or in global ones. It can be as an insider, using power for good ends but with inevitable compromises, or it can be as an outsider, seeking to speak truth to power without the responsibility of institutional authority. It can be as a person of action or as a person of the mind whose ideas seek ultimately to affect action. And, leadership can have many styles and effects: commanding, collegial, managerial, exemplary, charismatic, strategic, transformational.

Whatever the setting and whatever the style, the lawyer as leader is focused on making decisions for institutions or causes or ideas that engage the whole person, within that chosen context, and that have as a driving force the desire to make our national or global society a “better place,” however difficult that goal is to define, much less achieve. But I have not abandoned the temple: my aspiration for lawyers as leaders builds on basic legal training and modes of thinking—on core legal competencies. And, importantly, it

²*Id.* at 2.

³ Yale Law School, <http://www.law.yale.edu> (last visited Mar. 15, 2007).

certainly contemplates the historic roles of astute lawyer and wise counselor as having high value in and of themselves and as stations on the way to leadership.

One last framing comment: in this essay, I am, in important respects, bearing witness. I write as one who “practiced” for thirty-five years and, like all of us, I am a prisoner—or, on a charitable day, a beneficiary—of my experience. So, although I may write in general terms, I am reflecting my varied, some might say bizarre, career. In other words: I couldn’t stay in a job. But that failing did allow me to sail to many corners of the world where lawyers can go, if they have the wit, or in my case the luck, to voyage from public interest lawyer to general counsel of a great multi-national company, with stops along the way as test case and Supreme Court litigator and as an assistant secretary for lost causes (i.e. for policy) at the then Department of Health, Education and Welfare (now Health and Human Services).

Building on these introductory perspectives, this essay addresses four issues:

- What are the qualities of mind of a great lawyer who can become a leader, perhaps a great leader?
- Why is a life of values so important to a life in the law—and how may values be realized most vividly as decision-maker, not as counselor?
- How can we widen the field of view about career beginnings and endings for people who have legal training, especially in an era of globalization?
- What are the implications for law students and law schools?

Quality of Mind

We can all agree on the value of “boot camp” —of basic training in legal subjects and concepts. It is no accident that more than 100 years after Christopher Columbus Langdell and more than 50 years after the Realists, the first-year curriculum at most law schools is still built on the four traditional subjects of torts, contracts, constitutional law, and procedure (and, perhaps, property and criminal law). These courses still use cases, primarily described in appellate opinions, to elucidate issue spotting, legal concepts, legal reasoning, legal ambiguity, and the importance and elusiveness of “facts,” to list just some of the lessons taught. However narrow, the analytic reasoning from the case method is at the core of what makes us a profession—and what is drilled into us, perhaps to the point of ennui, during the second and third years of law school as well.

These are the scales, as Dean Larry Kramer of Stanford has said. You can’t play the piano—much less compose a piece—until you learn them.

The question at the dawn of the twenty-first century is this: What other qualities of mind—modes of thinking—do we want in our lawyers-counselors-leaders? Some of these qualities of mind, especially the first I mention, reflect changes in thinking about

law that occurred in the first third of the twentieth century, such as exploring law in action or uncovering and reasoning about the policy frameworks and value choices which surround the structure of rules. But some of these modes of thinking may not seem like “traditional” legal qualities of mind at all—even as revised and restated in the post-Realist world. Nonetheless, if we want legal professionals to be not just astute lawyers but wise counselors and potentially leaders, then they are an important and interrelated list of “complementary competencies” that should be closely associated with the “core legal competencies” to provide a form of necessary “professional general education”—at least for the students who want a professional degree to serve as a rail pass to many destinations rather than a ticket to a particular specialty or sub-specialty.

These qualities of mind are not without historical antecedents when we reflect on individuals with legal training who became leaders. Nor, as modes of thinking, are they simply the traits of “character and temperament” that Kronman argues were at the core of his concept of the lawyer-statesman—civic mindedness, deliberation, experience, prudence, sympathy, detachment, practical wisdom—important as those traits may be.

Most generally, we are seeking lawyers who *have a creative and constructive, not just a critical, cast of mind*, who relish asking “ought,” not just answering “is,” questions. How do we—how can we—build, not just deconstruct, an argument in a brief, a regulation, a complex piece of legislation, a business plan, the agenda of an NGO, a foreign policy, a cross-border strategy for global issues like energy and the environment?

We are seeking lawyers who, in asking the “what ought we to do” questions, *can articulate powerfully a set of systematic and constructive options that expose and explore the value tensions inherent in most decisions*. Two fundamental examples: In the legislative context, what are options for balancing equity and efficiency in business regulation, or in health care reform how do we optimize low cost, high quality, and greater access? In the business context, when issues often come clothed in shades of gray, what are the alternatives for accomplishing a legitimate business goal with different degrees of legal, ethical, and reputational risk and varying direct and indirect costs?

We are seeking lawyers who, in addition to exposing value tensions, *can find a fair balance, in the ultimate course taken, between legitimate competing values*. A balance between the policy or risk-cost choices just mentioned, or, on a grander scale, a balance between the values that underlie so much of American history, legal and otherwise: between freedom and equality, order and liberty, community and individualism, protection of private goods and advancement of social goods, and cultural pluralism and national citizenship. If we are not totally cloistered, we have to make choices in our professional lives. Those decisions are better informed with a sure grasp of legitimate values in tension and more durable with a fair balance of those values.

We are seeking lawyers who *think about the ethical, reputational, and enlightened self-interest of their client or the institution they are leading*, not just about what is strictly legal or advantageous in the short term. In case anyone has not read the newspapers for the past five years, a narrow view of “it is legal” isn’t always the right

answer. This was a harsh lesson, for example, learned by Enron's lawyers, Vinson Elkins. Exposing and reasoning about these extra-legal issues is a critical function for lawyers.

We are seeking lawyers who, in making recommendations or decisions, *are capable of assessing all dimensions of risk but who are not risk-averse*. Taking chances is not a quality of mind customarily associated with lawyers but is often vital to innovation and change in the public and private sectors.

We are seeking lawyers who *have the ability to understand how to make rules realities*: lawyers who understand, *inter alia*, institutions, history, culture, resources, and psychology and who can identify, and develop, strategies to mitigate the obstacles to meaningful implementation.

We are seeking lawyers who *understand and respect the hurly burly world of politics, media and power*, not just the more intellectual world of policy prescriptions and legal rules. Whatever the institution or process, whether judicial, legislative, or executive, whether public or private, politics underlies the creation and implementation of rules or policies. In a democratic society, politics legitimizes the public decisions directly or indirectly. But, among many professionals, there is general distaste for that current bizarre amalgam of money, television, polling, and candidate phoniness that Joe Klein describes.⁴

We are seeking lawyers who are not just strong individual contributors but who *have the ability to work cooperatively and constructively on teams*: whether the innumerable and inevitable inter-agency task forces of government; or the cross-functional teams inside a large company; or the cross-border, multi-function teams of a difficult global transaction; or hard-edged, effective teams of multi-state or test case litigation; or the culturally sensitive teams in multi-lateral, international organizations.

We are seeking lawyers who are not just strong team members but who *can lead and build organizations*: create the vision, the values, the priorities, the strategies, the people, the systems, the processes, the checks and balances, the resources, and the motivation. Working on teams and leading them are interconnected: much of leadership today is not command and control of the troops but persuasion, motivation, and empowerment of teams around a shared vision.

We are seeking lawyers who, in developing positions, whether in an article, brief, regulation, legislation, code of corporate conduct, or a myriad other rule-announcing activities, *have the ability to understand the value, and limits, of related disciplines*—including economics, anthropology, history, political science, psychology, statistics, sociology, and organizational theory—to increase the accuracy and sophistication of those positions. Lawyers cannot all have joint degrees, but they need the aptitude and capacity to envision the relevance and then, through the expertise of others, mine these

⁴ Joe Klein, *Politics Lost: How American Democracy Was Trivialized By People Who Think You're Stupid* (New York, 2006).

other fields of knowledge—to understand their strengths and the limitations inherent in their assumptions and methods.

Most importantly, we are seeking lawyers who *understand the methods of thinking and analysis taught in the business and public policy schools*. Law, public policy, and business are inseparable perspectives on most problems. Today's professionals, from whatever school they receive their formal degree, should have more than passing familiarity with intellectual angles of attack taught at the other two professional schools—or better yet, have joint degrees.

We are seeking lawyers who *have global understanding, intuition, and perspective*.

We are seeking lawyers who can *perform early in their careers as outstanding specialists* so that they truly understand what analytic rigor and excellence are, but can *then have the vision, breadth and inclination to be outstanding generalist/leaders* later in life. The quintessential quality of the great generalist is envisioning and understanding the multiple dimensions of issues—to define the problem or issue properly—and the ability to comprehensively integrate those dimensions into the decision. A great public leader must integrate policy and politics. A great business leader must integrate the multiple internal disciplines—finance, human resources, law, engineering, marketing, sales, technology—with key outside perspectives—those of customers, investors, regulators, community.

Finally, we are seeking lawyers who *understand that private law and private activities can be just as important to the public good as public law and government activities*. We need governmental action to secure social goods that the market will slight or ignore, but private institutions exist in a web of laws that must also allow them to compete and grow—because they are so central to our nation's aggregate economy, employment, technology, and innovation. I only make this rather obvious point only because I am concerned that, at some law schools, there is abundant apprehension of business and market failures but insufficient appreciation of the core virtues of enterprise and markets in our society and our mixed economy.

By now, you are surely thinking, some of these qualities of mind may be too far removed from lawyering or too difficult to attain. One short response would be to look at generations of lawyers who were instrumental in changing the face of American law and American institutions: the Founders, who were extraordinary men of learning, ideas, and action on a grand scale (e.g., James Madison and John Marshall); the abolitionists, anti-slavery officials, and authors of the post-civil war amendments who sought to remove the cancer of slavery embedded in the constitution and customs of a young nation (e.g., Charles Sumner, Abraham Lincoln, the post-war amendment writers in the Congress); the Progressives, who accelerated the march to a mixed economy (e.g., Louis Brandeis); the Realist/New Dealers who were protean in their intellectual interests and their careers (e.g., William Douglas and Felix Frankfurter in their pre-Court careers); those in the 1940s who were present at the creation of the Soviet Union containment strategy (e.g.,

Dean Acheson); and those who were the leaders of the civil rights revolution in the 1950s and 1960s, not just on the streets, but petitioning, or participating in, all three branches of government (e.g., Thurgood Marshall, Emmanuel Celler, Burke Marshall). Broad, normative, multi-dimensional views of society, not just preoccupation with narrow rules or minor legal change, informed those generations (even though grand change sometimes had to occur step by step).

Values

Simply stated, professional satisfaction comes when “who you are” and “what you do” have a strong correlation. When people leave work at the end of the day, do they have distaste for, and distance from, what they did, or do they believe that it reflects their sense of identity. A sense of self comes from spheres of life outside work, but many who select law as a career do so because they want to express their core values in their work. They do not set out to be Herman Melville’s *Bartleby the Scrivener*.

In one study of Yale law students, nearly 50 percent of those surveyed five years after law school stated that they attended law school to engage in the intellectual challenges of the law (29 percent) or to enter a career in public service (19 percent). Similarly, in Deborah Cantrell’s study of Yale Law graduates from the 1970s, 1980s, and 1990s, 665 responders identified the factors that were most important to them. Heading the list were “interesting work,” “challenging work,” “work had a significant impact” and “work beneficial to others.”⁵

In the contemporary profession, the disconnect between what you do and who you are exists for many. The Cantrell Study of Yale Law graduates shows an incongruence between the factors lawyers considered important in their careers and the actual presence of those factors in their work. For example, lawyers thought “significant impact” was important, but it was not something that characterized their careers to the same degree.⁶ In accepting an award at a public interest law dinner in 2006, Dean Katharine Bartlett of Duke Law School described a number of disturbing studies:

Lawyers according to a Johns Hopkins study are 3.6 times more likely to be depressed than the average among 105 occupational groups.... Only 29 percent of lawyers in an ABA study reported that they were “very satisfied” professionally. Work by Lawrence Krieger indicates that law students enter law school emotionally as healthy as other graduate and professional students, but become disproportionately less happy, less satisfied, less stable and more depressed—

⁵Career Development Office, *What Yale Law School Graduates Do: A Summary of CDO’s 5th Year Career Development Survey, Classes 1996-2000* (Oct. 2005), <http://www.law.yale.edu/documents/pdf/CDO_Public/cdo-summary_memo_96_00.pdf>. Summary findings of the longitudinal study of Yale Law graduates from the 1970s to the present were presented by lead researcher, Deborah Cantrell, at the Fall, 2006 Yale Law School Alumni Week-End (hereinafter Cantrell Study (on file with author, Arthur Liman Center for Public Interest Law, Yale Law School)).

⁶ See Cantrell Study, *supra* note 4.

apparently because the dissonance between the internal value system students bring to law, and the external cues embedded in their education and their profession.⁷

Kronman argues that the crisis of morale in the profession stems from “a growing sense among lawyers, generally, that ...[the] yearning to be engaged in some lifelong endeavor that has value in its own right can no longer be satisfied in their professional work.”⁸

To be sure, other commentators and studies might paint a less grim picture of the profession.⁹ But many would agree that the congruence between personal values and professional actions is vital to professional satisfaction and worthy of personal and academic reflection. This congruence can take many forms. For those whose fundamental value is wealth, a lucrative law practice may suffice. For those who enjoy combat, being a successful litigator may suffice. For those who enjoy technical mastery, being a highly successful specialist or sub-specialist in one of the laws many domains may suffice.

Beyond that, lawyers may find that the task “of serving clients,” regardless of the clients’ issues, advances a conception of justice and that such a conception of service may suffice. Further still, there are “cause lawyers” whose identification lies with clients’ issues or status may suffice..

My point is not to judge these different convergences of values and professional action. Indeed in an era when people will change jobs with some frequency, so may they emphasize different personal values at different times and find that different roles provide professional satisfaction. Nor do I intend to diminish the fundamental legal role of providing services to the institutions and individuals who need it; nor do I say that the lawyers’ personal values are superior to the values of individuals in need of legal services.

My point instead is that a life of values is central to professional satisfaction and that one way to live a such life is to *be* the client, not just serve the client; to set the course as leaders and practical visionaries, not just provide advice and practical wisdom about what the course might be. Without defining terms further, I hope such leadership can be progressive and tough-minded, visionary and effective, humane and realistic. Deep personal engagement, the deep expression of one’s self and one’s values, can come from the ultimate responsibility and accountability for an institution or organization or school of thought that matters.

⁷ Kathleen T. Bartlett, Dean, Duke University Law School, Remarks at the Equal Justice Works Awards Dinner (October 19, 2006).

⁸ Kronman, *The Lost Lawyer*, *supra* note 1, at 3, 354 (stating that the legal profession is facing an “identity crisis of immense—if largely unacknowledged—proportions”).

⁹ See, e.g., Elain McArdle, *Bridge-Building For the Future: A First of its Kind Research Center Readies Lawyers for a Changing Profession*, *Harvard Law Bulletin* (Fall 2006), at 17, available at <>.

In my professional experience, which began in 1971, there has been no more engaging convergence of “who you are and what you do” than having that leadership responsibility and accountability. Serving as a leader, not just counselor, in big government, big law. and big business, has been enormously challenging.

For example, at GE I tried to determine the best way to conduct business with integrity in China, a society bursting with opportunity but rife with corruption, conflicts of interest, and the autocratic rule of men, not law. When business in society issues were at the fore, I sought to define corporate citizenship and to make decisions about what ethical steps a company should take beyond what was required by the spirit and letter of formal financial and legal rules. For most of my career, I have been fortunate to meet my test of life: I have really liked to get up in the morning, looking forward to my work. This was especially true when I had the good luck and great privilege of *trying* to lead important institutions.

Careers

To utilize the qualities of mind I have discussed and to create the full range of opportunities to live a professional life of values, it is necessary to broaden our conception of what constitutes a career for a person who graduates with a law degree.

If we look at the issue from a purely descriptive perspective, this is already happening. Professionals now entering the workplace are not likely to be “lifers.” Many professionals will have many different careers. That common sense observation is borne out by the “After the JD” study of 4,000 graduates from the class of 2000, which found that, excluding clerkships, more than a third of the graduates had changed jobs within three years out, and 18 percent had already changed twice.¹⁰ Other studies show that graduates who are out of law school longer have changed jobs more often, and migrated into less traditional legal positions.¹¹

There is value in changing jobs. Such a change involves taking risks, learning new organizations and cultures and, most importantly, developing different perspectives on problems because of different institutional roles. For example, odd as it may seem, I was a better general counsel of a huge multinational corporation because I had been both a public interest lawyer and then an assistant secretary for planning and evaluation at the Department of Health, Education and Welfare. The lessons I learned in those positions—from true collaboration and collegiality, to the importance of balancing legitimate

¹⁰ Ronit Dinovitzer et al. Nat'l Ass'n for Law Placement and Am. B. Found., *After the JD: First Results of a National Study of Legal s 53* (2004), Career available at <www.abf-sociolegal.org/afterjd.ajd.pdfhtml> (hereinafter *After the JD*). On average, surveyed graduates held about 3 jobs, with 45 percent having at least 4 jobs, and almost a quarter having 5 jobs. Cantrell Study, *supra* note 4.

¹¹ Only 3.4 percent of the graduates are employed in a tantalizing “other” category in Job 1. But, interestingly, about 15 percent are in the “other” category by Job 4 and Job 5. Cantrell Study, *supra* note 4.

competing values, to the centrality of politics and media in many legal and policy processes, to the complex options analysis of difficult policy problems—made me more broad-gauged, with better peripheral vision, than if I had come to my general counsel position as a New York corporate lawyer, much less as a GE careerist. When Jack Welch offered me the general counsel’s job, I reminded him that, at the time, I was a constitutional litigator. I, was not a corporate lawyer, had not worked a single hour for GE and knew, literally, no one in the company. He smiled and said: “Great. I want someone who’ll take an unbiased look and turn the place upside down. Go figure it out.”

If we accept not just the fact of, but also the value in, law graduates having multiple careers, then we should also broaden (or, perhaps, reiterate) the view of possibilities to include at least the following ideas

A broader view of governmental jobs. In addition to the offices of the Attorney Generals, U.S. Attorneys, District Attorneys, and Legal Advisors, there is a variety of federal, state, and local positions which law graduates may occupy. In addition, key legislative or committee staff, either in Congress or state legislatures, are positions of potentially great importance and influence but generally ignored or disparaged by graduates of elite law schools.

A career in politics. Many law school graduates bemoan the state of our polity at endless dinner parties in countless professional or academic centers. But, starting at the bottom in politics, as local selectman, state representative, or state senator, is still the place where people must serve if they are to become the mayors, governors, and senators who play such an important role in our political culture.

Jobs in multi-lateral institutions. Such organizations have a broad array of goals: from general purpose (like the UN or the OECD) to finance and development (like the World Bank, the International Monetary Fund, Export-Import Bank, or the European Bank for Reconstruction and Development) to security and law (NATO, Interpol, the World Court) to other specialized objectives (like the World Health Organization).

Jobs in non-profit, non-governmental organizations (NGOs) that are not strictly legal. There are many such entities, beyond public interest law firms, addressing major issues like human rights, education privacy, poverty, health, environment, corporate governance, corporate social responsibility, cultural development, but all with need for core competencies in the assessment of rules, issues and the operation of institutions.

Jobs in the private sector that are not just legal jobs. These include business development, coordinating executives in foreign nations, government policy and government relations positions and, ultimately, core profit-and-loss business leadership in large public firms or small entrepreneurial ones.

We should broaden our view to consider both the traditional and non-traditional legal positions in the context of the pressing global issues. In my student era, we were moved and influenced by the American “rights” revolution. Today, law graduates seek

careers in an era of revolutionary change in global trends, issues, relationships, and institutions.

Let me illustrate with a few examples. First, how do we meet the challenges of global security: terrorist groups; state sponsors of terrorism; threats of nuclear, chemical, biological and cyber weapons; evolving relations between developed and developing powers; multi-lateral security institutions and alliances; U.S. weapons, resources and institutions; homeland security; and public diplomacy and perception of U.S. power and policy?

Second, how do we address the issues of an integrating global economy: the world trade agenda; regional economic integration and development in North America, the EU, the Asean countries and Africa; competition and integration between regions and nations (EU-US, US-China, US-India, China-India); the convergence or harmonization of international commercial law (tax, antitrust, privacy, labor, direct investment); the role and resources of multi-lateral financing and development agencies; and economic development in failed, failing, fragile and rising nations?

Third, as a companion of economic development and integration, how can we build institutional infrastructure, at the nation-state or international level, to deal with critical, global issues and trends: state-building in less developed nations to create durable, transparent, and accountable economic, social, political, and legal institutions; human rights; discrimination against women and exploitation of children; demographic change (population growth/loss, aging, urbanization, migration); energy and environment; shortages of food and water; corruption and other international crime (drugs, piracy, human trafficking); poverty; health and education; religious and ethnic conflict; and transforming developments in technology, including information technology?

Fourth, how do we manage private transnational economic entities, now as powerful as many nations, to attain high performance with high integrity, to advance important and legitimate private interests but also to act in the public interest?

All these pressing issues are about policies, laws, rules, and institutions in national, regional, or global society, with complex public-private dimensions, myriad interdisciplinary considerations, with a self-evident need for leadership on policy, politics, and implementation/administration. Someone will have to provide the vision, wisdom, and energy to lead. Such leadership will require many skills and multiple perspectives. No one is totally suited for such tasks, but no one is better suited than a lawyer with broad training and experience. Properly defined, the lawyer's core skills of understanding how values, rules, and institutions interrelate with social, economic and political conditions is central to the demands of contemporary leadership. Many of the roles I suggested provide great opportunities to learn about this complex set of interactions and to prepare for possible assumption of leadership responsibility.

We need heroes and heroines for these broader careers, not just from the past but also from the present. Students need to understand how those with law degrees became social entrepreneurs, founders of public interest law firms, heads of important non-governmental advocacy institutions, forceful social critics, leaders of transnational corporations, venture capitalists, respected executives in multi-lateral public institutions, leaders of financial services firms, heads of foundations, and presidents of universities as well as presidents of the United States and Supreme Court Justices.

This discussion notes the ever-present student concern about money, which, like sex in the Victorian era, may not always be discussed candidly. Law school programs to defer or forgive loans for those who go into public service or take lower paying jobs need to expand to cover more students more meaningfully. Those that exist do give young lawyers early career choices beyond the often-stultifying life of being an hours-driven associate in a large firm. These early career alternatives often provide more responsibility and more experience than the associate's existence. Moreover, diversity and variation of careers allows graduates to spend part of their professional lives in settings where they can develop net worth, while still devoting other parts of their careers to public service. The basic point is that those who excel at law school can take career risks. They will be sought after not just tomorrow but the day after tomorrow. Excellence in law school gives them a ticket for a successful trip across multiple careers if they are also blessed with character and motivation.

Implications for Legal Education

Some readers might argue that my perspective takes us beyond (far beyond?) the bounds of lawyering and has few implications for legal education. The quality of law students has never been higher. Law schools, of course, have offerings beyond those centered on cases: courses analyzing policy, providing clinical experience, exploring the relationship between law and other disciplines. Almost regardless of what is taught in law school, students of this generation, like students of generations past, will find their own way and, when it is their generation's time, they, too, will assume positions of leadership.

Without being an expert on legal education and while admiring much that law schools offer, let me disagree with that position. I believe law schools should do much more. In light of my professional experience and the points outlined above, let me ask questions and offer thoughts on the following topics to give that belief texture and content.

First, *cases*. Should law schools develop complex, interdisciplinary case studies, akin to those used in business and public policy schools, to illuminate the multiple dimensions of issues and processes, the inherent dilemmas and choices in decision, the constraints malleable and rigid? These cases would have the richness of an institutional role, institutional setting, and particular historical moment- factors relevant to decision or action and more. They would be more open-textured than appellate cases, and they would put students in different legal and leadership roles than the appellate judge. The subjects

are almost infinite. They might focus on the chairman of the Judiciary Committee deciding how to run Supreme Court confirmation hearings; the assistant secretary for Human Rights at the State Department seeking to make his or her concerns more central to Department or Administration action; the general counsel of a multi-national company developing a strategy for doing business with integrity in China. The issues presented in such cases can range from the highest questions of theory to the most practical (but very important) questions of implementation.¹²

Can there be more emphasis on creating, rather than critiquing? Can students be asked to write more opinions, regulations, legislation, memoranda of understanding, basic deal documents, IRS opinion letters, policy agendas for key agencies, plans for an environmental NGO, and the like? Requiring creation of a positive work product is a powerful way to require students to think about what intellectual disciplines and perspectives are necessary to solve problems: how can the proposal fit reality to the extent possible; how can it appeal to appropriate constituencies and become a governing norm; and how can it be implemented?

Second, *relations with other departments, schools, and joint degrees*. Is there enough true team teaching with colleagues in other professional schools (like business and public policy) or other departments (like history, economics, political science, psychology, anthropology) where professors can engage and argue and illuminate together, *in real time*, the different perspectives with which most important issues must be viewed?

Is it possible to work with the university's business school to develop a truly integrated JD-MBA degree rather than giving a fractured joint degree if the student has just taken enough courses in each school? Do current scholarship and tenure standards make it hard, if not impossible, for law or business school professors to break out of their silos and cooperate closely with professors in a cognate professional school on joint degree programs? How can those barriers be broken down?

The Yale School of Management (SOM) rewrote its curriculum to focus on the integration of traditional business disciplines (marketing, corporate finance, sales, technology development) in systematic approaches to key internal and external business processes (employee relations, sourcing and managing funds, the customer, state and society). These interdisciplinary courses (in a business school sense) proceed from the premise that leadership is about integration of different perspectives that apply to the same problem. As a statement from SOM on its reforms puts it:

“In the last thirty years, while the management profession has changed significantly, management education has not...[T]oday managerial careers cross the boundaries of function, organization, and industry, as well as cultural and

¹² Compare William M. Sullivan *et al.*, *The Carnegie Foundation for the Advancement of Teaching, Educating Lawyers: Preparation for the Profession of Law 6*, (San Francisco, 2007) (making similar recommendation), with Kronman, *The Lost Lawyer*, *supra* note 1, at 120 (very cramped view of non-legal case method used in business schools).

political borders. Even managers in large organizations, must be entrepreneurial in the sense that their success depends on their ability to synthesize disparate information, analyze competing functional priorities, and draw together and coordinate resources and individuals in a context that is often fluid and decentralized.”¹³

These courses are structured to accommodate easily a legal, policy, or ethical dimension, and, if followed at other business schools, are excellent vehicles for creative collaboration between law and business schools to broaden professional education for students at both.

In a similar vein, the Harvard Business School and Harvard’s Kennedy School of Government have announced plans to develop a genuinely integrated curriculum for MBA-MPP students. The importance of the effort is unquestioned. As a Financial Times article noted about the international public sector: “[T]he next generation of public sector employees is going to be more business savvy. Growing numbers of staff at multilateral institutions, government departments and...[NGOs] are going back to school—to business school.”¹⁴

A similar need also exists for truly *integrated* joint JD-Masters in Public Policy or Masters in Public Administration degrees. For universities without a public policy school is it possible to offer, as Stanford Law is doing, a joint JD-MPP degree by creation of a “virtual” public policy school from the university’s diverse social science departments?

Most controversial of all, why shouldn’t it be possible to get a JD-MBA, JD-MPP/MPA, or a JD-MA in other disciplines in three years with truly integrated programs? Without launching yet another attack on the second and third year of law school, I submit that talented students at many law schools could, in that time frame, handle the challenge of acquiring the necessary disciplines inherent in the different approaches in the different professional schools or departments. I will not attempt to address possible concerns of the Association of American Law Schools or state bar examiners—but I surmise that, if there were a law school will, this problem could be resolved. The bar exam would still stand as a tollgate to the license to practice if that is the direction a joint degree holder chooses to go. Such a reform could make three years of professional school consistently exciting and challenging.

Third, *globalization*. Are the current courses on international law addressing the most important globalization issues? I believe that every matter on the global issues listed above are fit subjects, indeed vital subjects, worthy of law school attention. To take one example: because it is some combination of economic development and state-building, what could be more important than sustained, multi-faceted attention to the broad issue of development in those failed, failing, fragile, and rising nations which have so much of the

¹³ Yale School of Management, Yale SOM Core: A New Curriculum, <http://mba.yale.edu/MBA/curriculum/som_core.shtml> (last visited Mar. 16, 2007).

¹⁴ John Murray Brown and Sarah Murray, FT Report- International Public Sector Recruitment: A Merging of Cultures, Fin. Times, Nov. 16, 2006, at 1.

world's population and potential—and are homes to so many of its problems? It need hardly be said that these global courses, properly conceived, are the perfect venues for interdisciplinary integration and team teaching, with professors from other professional schools and departments.

Can we make the law school experience more international? Is it possible for law students to receive credit for a semester abroad, just as they could in college, if they have the requisite language skills. What a marvelous experience it would be to study at the great universities of Tsinghua or Oxford or Heidelberg? Is it possible that law students and faculty could actually travel abroad together for a winter session or part of a semester? As part of its curriculum reform, the Yale School of Management has a required two-week international experience, beginning January 2007, with students and faculty doing case studies in ten nations, including Argentina, China, India, Japan and South Africa. Could law schools emulate this model?

Fourth, *careers*. Are law school faculties and career development offices generating a broad enough range of summer and entry level job opportunities, not just in the United States but across the globe—in non-traditional settings like NGOs or multi-lateral institutions or the private sector or legislative institutions or executive branch positions beyond the strictly legal?

Does it make sense to have courses and studies on career issues in the legal profession? The Program on the Legal Profession at Harvard Law School, for example, is seeking to address some of these issues. And, as an analogy, the Yale School of Management's new curriculum builds an explicit examination of careers (as well as faculty mentoring) into its first-year courses, including analysis of periods of stability and periods of transition and of processes for building human, social and economic capital (business school speak for money) which make career changes possible.¹⁵ Importantly, to provide inspiration for students about possibilities, why not a course on the careers, intellectual history and pragmatic approaches of those with legal training who have had a striking impact on public and private institutions and on society?

Fifth, *institutions*. Because career diversity involves institutional diversity, would it make sense to have organizational theory and behavior be a more explicit part of the law school course offering? A related issue is the internal governance of institutions. This subject is at the center of a lawyer's interests and potential expertise. It need hardly be said that governance failings are the source of many of today's scandals and dysfunctional organizations.

Similarly, would it make sense to teach leadership styles? There is a robust literature arising out of real situations. Leaders, and their styles, matter—at least in every institution I've ever been in.

Sixth, *the profession*. Perhaps it has always been true, but the world is changing at a breathtaking pace—and those of us in the world of practice are often facing new

¹⁵ Yale SOM Core, *supra* note 15.

issues of law, policy, and ethics and, for better or for worse, breaking new ground. Should the law schools systematically evaluate and increase their interaction with those outside the academy to the enrichment of both? Certainly one time-honored way is to have people from the world of practice be guest lecturers in courses. I cannot say how much it is done today; I can say it can probably be done much more with great benefit to all.

Another time-honored way is to have leading practitioners as adjunct professors. Many law schools are close to great centers of law practice and can draw on top lawyers. Again, the question is probably not whether law schools do this, but whether they do it enough. One solution, of course, is to have courses co-taught by a professor and a distinguished practitioner. Would it make sense, with respect to many legal subjects, to periodically hold roundtables with key practitioners to discuss trends, problems, politics, and issues?

What is the view of law school faculties of the profession and the practice of law. There is literature from within the law schools themselves, decrying the increasing distance between the professoriat and the profession, between the legal scholarship which is rewarded by tenure and the teaching of students who will go out into the profession. More than twenty years ago, a prominent dean expressed concern that the professors viewed the profession as philistine and that gap between the two cultures was ever widening. Is this statement true today, or has the situation deteriorated?¹⁶

Seventh, *methods of change*. What processes of change are appropriate for successful and tenured faculties with fierce pride in their intellectual autonomy? Is it just up to individual professors to address questions of broader cases, professional school integration, and globalization? Or is there a broader, if consensual, institutional process that can continually rethink the mission of law schools and go in new directions through self-direction of existing faculty or through new hires? Are older professors, successful in their ways, prepared to allow a new generation to define law school attainment in different ways? This issue of how to reconcile the demands of scholarship with the demands of teaching—and how institutional change should occur—is, as the readers of this Journal know far better than I, being debated anew in many centers of higher education at both the collegiate and graduate levels.¹⁷

Finally, *a vision of general professional education*. Most sweepingly, can, or should, law schools continue to teach the core legal competencies but be more explicit about the range of careers that lawyers may have and more systematic about the range of complementary competencies that are important for such career variation? Should law schools pioneer in developing a concept of general professional education—a major in

¹⁶ Laura Kalman, *Yale Law School and the Sixties: Revolt And Reverberations* 312 (Chapel Hill, N.C., 2005); Kronman, *The Lost Lawyer*, *supra* note 1, at 353 (law schools “now encourage a style of scholarly work that is increasingly remote from—even hostile to—the concerns of practicing lawyers”).

¹⁷ See, e.g., Harry R. Lewis, *Excellence Without a Soul: How A Great University Forgot Education* (New York, 2006).

basic legal education but with minors in business and public policy or other disciplines—to serve those who will be astute practitioners, wise counselors, actors in non-legal positions, and, ultimately, leaders?

Vision

How one defines problems has controlling impact on how one addresses them.

I have sought to argue that law school graduates should define problems broadly and define their roles broadly: ultimately as leaders with responsibility and accountability. This is an issue for individuals, for law schools and for the profession. It requires a change in how we think about the being a lawyer and how we train people for a career following professional education. But, the vision is soundly rooted in our history: regardless of legal education or the profession's pronouncements, lawyers have played a variety of leadership roles in the past and, if we survey the landscape, continue to do so today.

As this essay does, Kronman sought to stimulate debate in the profession and the law schools about law and leadership. I admire his careful, thoughtful, and original views, but, there are also many differences between our positions. His valued leadership traits do not go far enough toward the broader qualities of mind or modes of thinking that I believe lawyers as leaders must possess.¹⁸ He emphasizes the lawyer's skill in careful case by case development of the law;¹⁹ I believe that law-making (indeed, the making of many types of rules governing behavior) must be viewed in its many forms, including the lawyer's creative role in establishing broad, comprehensive policy frameworks (within which interstitial rules develop). Although he starts his book with a brief nod to the historical fact of lawyers as political leaders, his dominant recommendation at the end is about wise counseling not accountable leadership. He spends much of his time critiquing private firms, the courts, and the academy and spends little time on the vast array of institutions and opportunities where leadership is possible—from legislative and executive positions to corporations to NGOs to global institutions. Perhaps the biggest difference is that Kronman is a pessimist: "I have reached a gloomy conclusion. I do not think the ideal of lawyer-statesman can be revived, at least at an institutional level."²⁰

¹⁸ Kronman, *The Lost Lawyer*, *supra* note 1, at 155 ("ensemble of dispositional attitudes"), 159, 161, 356 ("character"), 367, 372.

¹⁹ *Id.* at 375.

²⁰ *Id.*, at 7.

•

In deference to, but in disagreement with, Kronman's thought-provoking book, I was tempted to call this essay "The Found Lawyer." I am optimistic. I believe in an individual's moral agency. I believe that institutions can be changed, or important new ones created. I believe today's issues are so vast and so challenging that it is a wonderful time to be blessed with legal training and to go out and take on the enormous challenges of a difficult world—with ambition tempered by humility at the complexity, difficulty, discipline, and self-sacrifice inherent in the task. If law firms are merely huge money machines, change them, or start smaller firms that are real partnerships of like-minded lawyers who care more about the quality of the practice than money, or start a hybrid firm, or create or lead an NGO, or go head a corporate law department or a corporation itself, or plan a life in public service, including elective politics, .or be a true citizen of the world in a multi-lateral institution, or be a powerful voice of social criticism. Most importantly, take on the big issues of the contemporary world, or redefine what are the big issues.

It is all about willingness to take the risks of addressing the felt needs of the time. Were the lawyers in the past, who had transformative impact, always right? No. Did they always succeed? No. Did they have important lives trying to lead on big issues? Yes.

Let me end with a few lines from "Ulysses," a poem by Alfred, Lord Tennyson which expresses the spirit of this essay far more eloquently and concisely than I can. This is Ulysses' interior monologue, as an old man, reflecting on his past and on his future.

I cannot rest from travel: I will drink
Life to the lees; all times I have enjoyed
Greatly, have suffered greatly, both with
Those that loved me, and alone: on shore, and when
Through scudding drifts the rainy Hyades
Vexed the dim sea...

For always roaming with a hungry heart
Much have I seen and known: cities of men
And manners, climates, councils, governments,
Myself not least...

Yet all experience is an arch wherethrough
Gleams that untravelled world....

To follow knowledge like a sinking star,
Beyond the utmost bound of human thought...

[Now] there lies the port; the vessel puffs her sail:
There glooms the dark broad seas...

Some work of noble note, may yet be done...

The lights begin to twinkle from the rocks;
The long day wanes; the slow moon climbs....

...Come, my friends,
'Tis not too late to seek a newer world...

To sail beyond the sunset, and the baths
Of all the western stars...
It may be that the gulfs will wash us down;
It may be that we shall touch the Happy Isles
And see great Achilles, whom we knew.

...that which we are, we are;
One equal temper of heroic hearts,
Made weak by time and fate, but strong in will
To strive, to seek, to find, and not to yield.