

THE CURRICULUM: PATTERNS AND POSSIBILITIES

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Complex forces shape the curriculum and pedagogy in any institution that provides legal education, and curricula inevitably differ from school to school, jurisdiction to jurisdiction, and nation to nation. This paper endeavors briefly to depict the core aspects of law school curricula and forces that shape them, sketch relevant trends in American law school curricula, summarize basic models through which instruction is provided, and offer modest proposals for strategies by which curricula might be enriched through cooperative efforts.

I. Curriculum Structure

Innovation proves most feasible if undertaken with full understanding of existing systems and past patterns of change. At the outset, it is useful to understand that with a few exceptions, American law schools operate on a two-semester system, with classes running from mid-August until December (with final examinations before the holidays), and early January through April (with final examinations in early May). Some schools also operate summer sessions for students from their own or other law schools, with enrollments fluctuating depending on the opportunities students may have for summer jobs. Full-time law programs require three years of study (defined as approximately 10-15 credit hours per semester), while part-time law programs (which may involve part-time study during the day, during the evening, or a mixture of both) typically require four years. Students have already received undergraduate baccalaureate education, with a growing number entering with work or life experience or additional graduate degrees.

American law schools vary in size and backgrounds of students and faculty, university affiliation, location, funding structure, patterns of graduate placement, and priorities. Law school accreditation determines where graduates may seek admission to practice, with graduates of law schools approved by the American Bar Association (acting on behalf of the state supreme courts in the full range of states) allowed to sit for bar examinations in the full range of jurisdictions, and graduates of a smaller number of state-accredited law schools allowed only to sit for the bar of their school's home state. Bar examinations in the several states tend to cover a certain set of basic subjects, with additional subjects varying from state to state and a growing number of states implementing an additional "performance based" examination intended to assess tasks associated with law practice. It is against this backdrop that curricula are structured, generally as the result of faculty-wide deliberation which includes approval of individual course proposals as well as overall programmatic design (relating to which courses are to be required, offered in the first year of the curriculum, or staffed by full-time or part-time personnel). Law school grading is performed in most cases directly by instructors, in many instances with a single final examination at the end of the course (although this may vary) with letter or number grades and in some instances enforced grading curves (particularly for first-year courses).

In many respects, the overall structure of the first-year American law curriculum is relatively simple and relatively uniform. Most schools would cite the goal of instructing students in "thinking like a lawyer" (commonly understood to include skills in analysis and synthesis) as the overarching goal of the first year. Schools generally seek to achieve this objective against the backdrop of a core set of required, "foundational" courses in traditional common-law subjects, including one- or two-semester offerings in torts, contracts, criminal law, and property, and a course in civil procedure. A significant number of schools include a required first-year introductory course in constitutional law (focusing on structural issues). Schools also generally require a first-year course in legal writing and research, in some instances integrating such instruction as part of a "lawyering" course that includes instruction in a broader range of lawyering skills. Most schools also require a course in professional ethics, in some instances in the first year, but more commonly in the upper division, while some use a "pervasive method" of instruction that seeks to incorporate instruction in ethics throughout the curriculum with varying degrees of success. Some schools provide students with a limited set of electives from which to choose in the spring semester of first year, in some instances in order to provide exposure to statutory analysis, perspectives from other disciplines, or simply a change of pace geared to allowing students to explore their individual interests. Substantive first-year core courses are generally taught by tenured or tenure-track faculty in large sections (ranging from 70-120 students), with the exception of a single course taught in a smaller section format (or perhaps 25-35 students) that may integrate instruction in writing or include faculty responsibilities for advising as well.

The advanced curriculum is more varied and more chaotic. A handful of courses deemed especially important for basic literacy in the law, often tested on state bar examinations, are generally offered in large lecture sections. These courses often include business organizations, evidence, wills and trusts, family law, and income tax. A wide range of electives have increasingly been offered, often as the result of the faculty's narrower scholarly interests and emerging areas of specialization within the profession. Such offerings may be taught either by full-time faculty members or nearby expert practitioners on a part-time basis. Schools have increasingly identified areas of potential concentration as a means of advising or encouraging students to proceed in a more systematic fashion as they shape their course selections in their final two years. Students commonly opt for various electives in a relatively scattergun fashion, however, depending on their changing interests, scheduling conflicts, and personal preferences regarding teaching personnel. Most schools now offer students a range of "skills" offerings including "live client" clinics, simulation courses (for example in negotiation or trial advocacy) or field placements (externships). Most law schools also require upper-division students to complete a seminar or other writing requirement.

II. International and Comparative Law: Recent Trends

A survey of upper-division courses offered during the period 1994-1997 was conducted in 1996 by the Association of American Law Schools' Committee on Curriculum and Research in an effort to discern patterns of development and change. With 83 law schools (approximately half of the member schools) reporting, the committee found that, on average, five new courses or seminars were offered at each school each year. Schools adding more courses tended to be those with stronger student credentials, more faculty members and a larger student body, a larger number of

existing advanced courses and seminar offerings, and a higher proportion of tenure-track faculty.

The top area of curricular innovation was international and comparative law, as had also been true in a 1991 survey of curricular change. One of every six new courses was international or comparative in scope, and 84% of schools responding had added at least one new international or comparative course. The largest number of courses added fell into the area of international trade, business and banking. Others areas in which 10 or more courses were reported being added included international environmental law, European Union law, international arbitration, international human rights, international litigation, and immigration or refugee law. Other courses relating to comparative and foreign law were added in a wide range of substantive topics, and some courses were offered on the legal system of a particular country. Many of these new courses were taught by visiting teachers. Student demand played no special role in the creation of such courses and relatively few of the courses incorporated a writing or skills component. The survey did not focus on other sorts of programmatic innovation (including the significant growth in the number of LL.M. programs, summer-abroad programs, and semester-abroad programs, and various types of formal and informal partnership between American law schools, their faculty members, and colleagues abroad).

III. Curricular "Niches": Venues for Change

Relying on insights about the overall structure of law school curriculum, the survey data just discussed, a rough review of a number of law school catalogues and websites, and general experience in the field, it is possible to sketch a variety of models or niches in which curricular innovation might take place. The models listed reflect the interplay of a number of institutional variables and provide a range of options for innovation as briefly described below. It may be helpful to bear these types of curricular innovation in mind in developing targeted strategies for curricular innovation in the days to come.

- • *Basic elective courses* (e.g., public international law, international business transactions, comparative law). Schools might seek to increase the number of students enrolled or structure such course as part of the foundational curriculum (first year option or requirement).
- • *Advanced specialized electives tied to substantive fields* (e.g., international intellectual property). Schools might encourage students to take either full-length offerings or special short-course "modules" that provide international or comparative insights as "capstone" in areas of substantive interest.
- • *Practice-based offerings* (e.g., immigration law clinics or international development clinics). Schools might focus clinical or externship offerings in areas relating to international or global developments or increasingly diverse American populations.
- • *Off-site specialty courses sponsored by individual schools or consortia* (e.g., summer abroad or semester abroad programs). Schools might encourage enrollment in such offerings by eliminating barriers to participation, for example, by providing

more readily-available information and encouragement, or targeted financial aid. Schools (perhaps in partnership with colleagues abroad) might also develop additional short-courses similar to "study tours" incorporated into MBA programs (either as optional add-ons to standard courses delivered during academic breaks or as free-standing offerings immediately after school ends for the summer). Assuming the availability of reliable technology, short courses from abroad might be delivered on videotape, by satellite or other advanced means.

- • *Interdisciplinary or cross-disciplinary opportunities* (e.g., cross-enrollment in area studies offerings or language courses or development of interdisciplinary seminars). Schools might work with other campus units or with their own foreign graduate students to tap relevant expertise and develop educational opportunities relating to international issues, strengthen ties to scholars or policymakers abroad in diverse fields, or create "problem-based" seminars (e.g., relating to business development, public health, or law reform abroad).
- • *Certificates and concentrations in international law and related subjects.* A growing number of schools are creating structured clusters of advanced course work tied to areas of legal specialization or student interests. Such clusters might include both breadth and depth requirements, and could include language proficiency and clinical or study-abroad components. They could also include development of research papers that could be shared with colleagues abroad.
- • *Informal curriculum and service-learning.* A growing number of schools support law reviews specializing in international law and related topics, international clubs and moot court programs, and symposia or speakers series. Schools are also encouraging students to engage in pro bono service and might encourage additional student involvement with immigrants or non-English speaking populations, or related non-profit groups. Such activities often provide a means of encouraging students to become interested in key issues and to pursue their interests more formally through the regular curriculum or summer jobs or internships.
- • *Integrated graduate programs.* A growing number of American law schools have created LL.M. programs for international students (more than one-third of American law schools currently have such programs). Such programs may provide law schools with a critical mass of students interested in international and global offerings as well as enriching the range of perspectives and experiences brought to bear through the curriculum with LL.M students enroll in other "standard" courses or electives.
- • *Infusion strategies involving international personnel or professional development of American law faculty.* Enrollment of students from abroad, those with international experience, and those with diverse backgrounds expands the range and depth of perspectives brought to bear in the full range of law courses. Opportunities for visits by law faculty from abroad either as teaching personnel or scholars in residence likewise infuse the curriculum with significant insights. Opportunities for law faculty throughout the world to spend structured time abroad teaching, pursuing research efforts, or engaging in professional service lead to fresh insights, result in deeper commitments to pursuing such work over time, and build informal networks that can endure over time. Other strategies for cost-efficient

professional development (e.g., coverage of international or comparative topics in yearly professional meetings or special workshops) are also important to encouraging faculty to develop new insights that ultimately affect the curriculum.

- • *Pervasive methods.* Incorporation of international and comparative perspectives through targeted coverage of selected international topics in standard courses or assignment of more extensive supplemental readings are of great ultimate importance if students are really to develop an appreciation for global developments and diverse perspectives. The experience with teaching legal ethics by the pervasive method suggests however, that it is not easy to implement such a pervasive approach in practice since faculty often assume that others will take responsibility for such innovation or believe that they lack requisite expertise. It may be possible to move forward, nonetheless, if efforts are made to develop and disseminate targeted supplemental course materials (ideally developed collaboratively with colleagues from abroad) and adequate incentives and opportunities exist to lead faculty to take incremental steps in that direction.

IV. Strategies for Innovation: Some Modest Proposals

Would that the world would change overnight to embody collective aspirations for shared understanding, effective collaboration, and mutual respect. In the meantime, what may be most helpful is hard-headed realism and a coherent set of strategies for incremental change toward those ends.

As noted above, there are many models available for curriculum enrichment. Unfortunately, there are impediments as well. Institutional realities must be faced. In many law schools, a basic or extended array of course offerings with an international focus draw relatively student enrollment because student interests are dispersed across a very wide range of elective offerings while being tempered by pragmatic desires to secure readily available employment opportunities or complete courses tested on state bar examinations. Faculty members juggle competing priorities, often allocating time and energy toward scholarly projects rather than curricular innovation or feeling no personal impetus to move beyond well-established fields of expertise. Administrators struggle to deploy scarce financial, space, or personnel resources, lack stamina to press for curricular innovation in the face of institutional inertia and competing claims for enhancement of developing skills offerings or initial courses in fast-breaking new fields (such as bioethics or technology and the law). International faculty and students may find it difficult to locate opportunities or support for scholarly work, teaching, or study abroad.

In the face of these challenges, it seems particularly important to find and pursue targets of opportunity that take into account existing incentive structures. A few ideas are noted below.

- • *Collaborative Development of Targeted Supplemental Course Materials.* It is likely that individual faculty members will continue their individual efforts to develop advanced electives relating to international or comparative topics, but more could be done to enrich the basic curriculum if a collaborative strategy were employed. For example, it would be possible to convene a yearly series of summer institutes (or perhaps two weeks' duration) which would bring together

approximately a relatively small team of faculty members from law schools around the world, chosen on the basis of proposals and relevant expertise, to work in a structured way on development of targeted course materials suitable for integration into many required or foundational courses. Resulting materials could then be broadly distributed, perhaps with the support of a major publisher or in partnership with major casebook authors, and perhaps through posting on-line.

- • *Multi-Faceted Professional Development Strategy.* The AALS could commit to include a segment on international or comparative topics as part of every annual meeting, with tapes of relevant program segments to be made available on a "package" basis for purchase by American law schools who seek to undertake more comprehensive efforts to help faculty members incorporate international and comparative insights throughout the curriculum. Such tapes could be marketed at a rate that would allow similar "packaged" tapes to be distributed to schools abroad or through streaming audio or video on the web at no additional cost. Colleagues in other nations might do likewise. The AALS could also develop an intensive week-long summer professional development program similar to its "new ideas for experienced teachers" program, designed to bring together a group of American and international law faculty to revise or develop course materials and teaching strategies designed to integrate international and comparative lessons or perspectives into standard courses. The AALS may also be able to develop strategies for securing scholarship funds to cover the costs of international faculty members who wish to attend its professional development programs.
- • *Facilitation of Scholarly Partnerships, Academic Visits, and Collaboration of Other Sorts.* Faculty members often report that international linkages spring up as a result of personal contact with colleagues from abroad who share common scholarly interests. It may be possible to facilitate such partnerships by creating an on-line system for posting requests for information on particular topics (such as appear in the New York Book Review for scholars undertaking writing projects), or short summaries of work in progress (inviting colleagues from elsewhere to make contact). Faculty might also be encouraged to post summaries of lectures they have given on international or comparative law topics as a way of identifying others near and far who may have shared interests but not know each other's more informal work. Similarly, it may be possible to create an on-line system through which faculty who would like to undertake visits abroad could make their interest known. The AALS or others with interest and capability (perhaps "Jurist," the International Law Institute, or another similar site) could also create a more extensive set of links off a common website to provide access to relevant resources for faculty wishing to develop supplemental curricular materials or pursue scholarly interests of this sort. The AALS might also explore possible partnerships with the Association of American Law Librarians who might assist such an undertaking.

Collective steps might also be taken to plan ahead in order to avoid potential problems in the future.

- • *Documenting and Understanding Good Practices in LL.M. Programs.* A growing number of law schools have created LL.M. programs as a means of providing educational opportunities for students from abroad as well as increasing revenues in tight financial times. Often such programs spring up in individual law

schools working in relative isolation, with a much less well-developed set of norms and practices than exist for J.D. programs. Graduate programs can sometimes function on a parallel track that primarily allow graduate students to enroll in standard courses without effective strategies for integrating such students into the educational enterprise or providing helpful transitional support. In coming years, it seems likely that more such programs will incorporate "distance education" components that could provide important insights for other aspects of legal education. Work with international students enrolled in such programs may also provide important insights regarding other aspects of curricular reform. As the number of such programs has grown, it will be important to reflect upon and share insights about pitfalls, while identifying and explicating "good practices" in order to assure high-quality educational experiences and accountability in the years to come. Such efforts should not be incorporated into a bureaucratic regulatory structure, but instead should proceed within a collaborative structure, perhaps through a taskforce under the auspices of the AALS. Ideally, the task force's work would include gathering insights from programs outside the United States that have had extensive experience providing advanced education for students from abroad.

- • *Shared Commitment and Accountability for Progress.* With the rising tide of interest in globalization and international legal education, during a time of competing demands on scarce resources, it is important to think carefully and flexibly about the extent to which different initiatives are pursued on the level of individuals, schools, consortia, or regional, national, or international scales. While no easy answers are possible, it will be important to realize efficiencies of scale and benefits of collective insight, without creating undue delays or engaging in battles over "turf." To maintain momentum, it will also be important to develop collective commitment to make measurable progress that goes beyond ad hoc initiatives that too often result in recurring opportunities to "reinvent the wheel." While working on this paper, it was sobering to return to minutes taken at a 1994 conference of American and African legal educators in Nairobi, Kenya. Much was learned, great good will was generated, and sound strategies were envisioned (including some very similar to those outlined here). It will be important on the occasion of the upcoming conference to outline concrete objectives and strategies, with benchmarks and commitments for action that yield in both short-term improvements and longer-term achievements. Only in this way can we be sure that we create patterns of collaboration for the future in which the great promise of current possibilities is realized.