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An Invitation Regarding Law and Legal Education, and Imagining the Future

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/*/ This Essay is based substantially on a series of posts at <http://madisonian.net> during late December 2017. Consistent with the style used there, and in the interest of flow, I haven't cited sources or references. For anyone who wants more, I'm happy to supply pointers. I've learned a lot in conversation and reading over the last decade from many, many people. Some are well-known members of the legal education industry; some are well-known critics of that industry and/or of the legal profession. Some are futurists; some are theorists; some are researchers; some are practitioners; some are not trained as lawyers. Many are multi-talented superheroes. Still others are simply friends and colleagues with whom I've shared the occasional meal or drink off and on for decades, college friends and law school friends and family friends, with different stakes in the legal ground. What I've learned along the way is that the profession is full of people of enormous goodwill, despite their differences. Join us. The water is warm.

I.

Modern law schools were invented before modern law practice emerged.

I mean that statement as the first part of an invitation, rather than as the first part of an argument. The invitation, below and in several parts to follow, is to participate in conversations about the future of legal education in ways that integrate rather than distinguish several threads of concern and revision that have emerged over the last decade.

Conversations about the future of legal education necessarily include conversations about the future of law practice, legal services, and law itself. Some of those start with the somewhat stale questions: What are US law professors doing, what should they be doing, and why? Those questions are still relevant and important, but they are no longer the only relevant questions, and they are not the only places to start. What about other legal educators, meaning those who teach and train in legal services worlds but who don't teach the professional practice of law or the delivery of traditional legal services? What about those who are involved deeply in the production and distribution of law, legal services, and legal information but who are not, themselves, lawyers? Why start with current teachers; why not start with current or future students, or current or future clients, or current or future institutions, or current or future sets of values? Expand the communities of interest and identities of potential participants not only beyond elite US law schools, and not only beyond the private law firms that constitute BigLaw, but also beyond the US and beyond North America.

The invitation goes out, in short, to a much broader audience than US law professors, and it is framed in broad but pragmatic terms. By design, it is an invitation to action, rather than an invitation to more scholarly or research-oriented dialogue. I am sending it out on my own in the hope that there are other people out there who, like me, have been chipping away at legal education innovation in small parts for a long time, anticipating – or just speculating – that small contributions might scale or build toward a more substantial new form and vision of law and legal education. That hasn't happened. Yet. My hope is that a group of people with similar tendencies to speculate might self-organize around shared interests.

This first Part consists largely of setting out some premises and background. Four later Parts advance the agenda. The theme is change, and how to move beyond local reforms to the possibility of larger-scale

rethinking. Is it possible to reconceptualize an entirely new system of legal education, or set of systems, and then to set about enacting it? Why would one do that? What would the results look like? What would the process consist of?

Change management experts routinely talk about a standard set of steps associated with diagnosing the need for institutional change and building plans to guide transitions. Those begin with cultivating a sense of urgency; identifying the participants in developing a vision of the future (the coalition, in change management lingo); and shaping and documenting that vision. Communication and implementation follow.

I'll follow that template, though not always precisely in the standard sequence. For obvious reasons, none of this is easy. There is no reason to suppose that it is more complex in the context of legal education than it is in any other higher education context, not-for-profit context, or business context. But change management for legal education has its own distinctive challenges. First among those likely is this: The most salient feature of modern US legal education is its antiquity rather than its complexity. US law schools remain anchored in a conceptual framework that is close to 150 years old. Modern memory literally runs not to the contrary.

Start with urgency. This is a brief overview, mostly just to set the stage. A lot of lawyers and law professors and other participants in legal systems are already well-versed in these challenges and what they seem to add up to. A lot of lawyers and law professors have done the math differently or are persuaded that current challenges are less problematic. I doubt that I'll persuade them otherwise, and I'm not going to go to any lengths to defend every proposition that follows. This is neither a journal article nor a brief. But narrative flow suggests that I make the basic case. This Part will put the matter generally. Later Parts will get more specific.

Here's the general point. For several different, intersecting reasons – the economics of law practice, the economics of higher education, developments in information technology, international influences, changes to government institutions and practices, changes in the public sphere, changes in social structure (and/or revealed attributes of social structures), changes in the design of professional practice – many quarters of the legal profession shared a deep sense that something critical is upon us, that something critical is upon us particularly as law schools and law teachers, and that something critical is emerging at scale, not just in local classrooms.

What's the point of going to law school? What's the point of practicing law?
What are we trying to teach?

Today, none of those questions has a universal, self-evident, comprehensive answer, at least no answer that's concrete and practical enough that helps us understand whether our educational and training systems are set up well. The idea of a "new mission" or a "new vision" for law schools is plausibly in the air; lots of new things are happening, or at least lots of them appear to be happening. But the character and trajectory of reform is disputed and divided, and little of it is systemized either conceptually or operationally. Some parts of the legal profession are changing dramatically and quickly. Others are changing little or not at all.

US law schools, for example, aren't changing themselves much. There is a fair amount of institutional innovation at the level of the individual school and/or the individual teacher. Few of those innovations spill over to other schools; few of them spill over in ways that change the institution in essential ways. For example, clinical legal education in the US is now decades old, but clinical law faculty at many law schools and across US legal education as a whole are still marginalized culturally and organizationally. The history of legal education teaches that institutional change is slow and incremental at best. Innovation and experimentation are the exception rather than the norm.

Perhaps productive incrementalism is OK; perhaps it's enough. Looking forward, law school applications and enrollments may go up a bit or down a bit; employment patterns for new graduates may continue to diversify (best outcome) or stagnate (somewhat worse). The long-term value of a current law degree can be modeled in a way to make the out-of-pocket and opportunity cost of attendance reasonable relative to the expected benefits, at least using historical data. University administrations may become steadily more accepting of the need to underwrite the cost of law schools, or modestly less so. Overbuilt and truly marginal law schools will struggle and possibly close – some have done so already. But on the whole, law schools are "prestige" units to US universities in ways that are unlikely to change. Individual faculty members have long and mostly successful histories of adapting tried-and-true teaching and training strategies to organizational, technological, and cultural change.

I'll call that pattern "riding it out suboptimally," and that's probably the most optimistic forward-looking view of the matter.

Here's a less optimistic one. To borrow part of a line from *Twelfth Night*, even if law schools aren't changing themselves, law schools may have change thrust upon them. Many law schools operate today in a delicate post-2008 equilibrium, eking out an existence supported by a lull in enrollment declines that mollifies a patient provost but that doesn't account for continuing uncertainty and possible coming traumas in the private law firm market. Over the next decade, enrollments may take another large hit; the structures of private law practice are liable to undergo substantial revision. Technology may overtake labor markets (as well as other things) dramatically, compromising placement and career development options in other ways. Even absent such a revenue catastrophe, provosts and boards may lose their patience with imbalanced law school budgets. Systems that supply student finance may change or even disappear. Despite the prestige of law schools, to university administrators law schools are small and administratively burdensome; their graduates are often mismatched with relevant labor markets; and their alumni don't give much back. As securities lawyers learn to say, there can be no assurance that the past persistence of law schools will guarantee their future thriving, or the thriving of their graduates.

Urgency is suggested not only by these "external" pressures but also by "internal" ones; there are problems of substance but also problems of process. What if the incrementalist institutions of the profession are the problem, rather than the solution? The fact that people of good faith and good will are doing their jobs, in role, may lead precisely to the barriers that need to be evaluated critically. Ordinary law faculty governance is often consumed by rent-seeking, turf-protecting, tenure and promotion goals, and a culture of regulatory compliance that consists largely of "make the minimal changes to needed to satisfy the accreditors." The exercise of deans' authority, such as it may be, is always subject to short-term demands, such as budgets, bar passage, and placement rates. ABA and AALS reviews of legal education are intended, almost by design, to avoid re-thinking the foundations of the current system. Committed participants outside that system – legal services providers and consumers, law firms, tech developers – often express "disruptive" dispositions in the interest of client service, but that attitude risks promoting educational innovation based on faddishness, trendiness, and capture of educational processes by rent-seekers. We face the Scylla of "Legal education rests on enduring, unchanging intellectual, analytical, and organizational foundations, which evolve and adapt

organically via standard institutional practices” and the Charybdis of “Legal education needs to catch up with radically changing, technologically-determined (or globally-determined, or etc.) patterns of law practice and legal services.”

II

In Part I, I tried to suggest – briefly – the case for urgency as the foundation for a change-management inspired conversation about the future of legal education.

Based on that case, my suggestion is the following. It’s the second part of the invitation promised at the start of that Part, which highlighted the time sequence of innovation in US legal institutions.

Across the discipline of legal education and across law schools, and without the blessing of appointed and delegated leaders, legal educators should act on their power to define, advance, and implement their own visions of law and legal education, in ways that make the changing conditions of the legal profession and its existing institutions relevant but not determinative. Institutional leaders and technology developers and others are legitimate and important participants in processes of developing those visions, but they don’t have – shouldn’t have — priority of place or time or interest. Those visions may well consist of a new and distinctive set of institutions and programmatic implications: Who teaches? What is taught? Who is taught, and how? Where does the teaching take place, and what outcomes are intended or anticipated? What is studied in other respects? How are these systems supported, sustainably? How do these systems fit into other systems of education, practice, and ideology, locally and globally? These are questions simultaneously about values and goals, about identity, about economics, and about institutional, social, and cultural payoffs.

Whatever legal educators do, or whatever they should do, there is little reason today to confine their efforts to internal, law faculty-specific or school-specific reform or to officially sanctioned leadership projects. Those aren’t bad things to pursue, of course. But my view is that they’re not enough, and my invitation to conversations is based on that premise. We should not simply try to diagnose the future conditions of “the legal profession,” whether those are eternal or evanescent, and then aim their efforts at reform, re-thinking, or resistance in those directions.

Conversations should be inclusive, collaborative, and ground-up: Not only who are we, but who do we want to be?

To a significant degree, the 20th century legal profession looked and acted like it did because the practicing bar responded to an equivalent sort of vision, expressed in what law schools were doing.

Modern Harvard Law School came first, during the 1870s. “Harvard Law School” means both the school itself but also “Harvard Law School” as metonym, standing for the collection of curricular, pedagogical, and scholarly practices and beliefs that were adopted, negotiated, and extended by law teachers at Harvard and elsewhere. Harvard president Charles Eliot; Christopher Columbus Langdell; and Langdell’s colleagues locally – and eventually nationally – shared a vision of university-based education and legal education in that context. Rightly or wrongly, but powerfully, Harvard Law School and its curricular and pedagogical forms purposely expressed that vision and its values.

The large, elite American law firm came second, around the turn of the 20th century, as the products of the Harvard system merged with the needs of newly industrialized and financialized America. The predecessor of Cravath, Swaine & Moore predated the Langdellian law school, but the Cravath *system* emerged later. The consolidation of Harvard’s hegemony took a while, as did Cravath’s, and their respective paths were bumpy. But in broad outline, that sequence is the story of modern American law. The American legal profession and much of the American legal system spent the 20th century negotiating with the Harvard template. Law firms learned to make good use of the products of Harvard-style training. The law schools of the time responded, in alliance with the ABA and the AALS (and exercising power through the organizations), tuning their programs to serve the growing law firm market (via enrollment protocols) and later to align themselves with post-WWII public and institutional expectations regarding higher education (via building scholarly missions). The bar responded in turn, and so on.

Sociologists might call the result a case of “dual institutional structure.” The practices, forms, and ideologies of legal educators form one institutional pillar, and the practices, forms, and ideologies of the practicing bar form a second institutional pillar. The dynamics of institutional evolution operate independently in each case, and they operate

independently for functional, purposeful reasons, rather than as an accident of history, even while the two institutions “speak” heavily to one another.

The initial institutional independence of law schools, as couriers of legal education and of the values of the profession, is worth emphasizing. I believe that equivalent institutional independence is possible today. Law schools, law teachers, and legal educators generally have substantial power to define themselves. That enables asking macro questions about change as follows: How should “law” (and perhaps its cousin, governance) contribute distinctively to modern society and culture; what individual and institutional forms should those contributions take, and what is the place and form of legal education in those systems?

The Langdellian curricular and disciplinary model is still so entrenched in today’s law schools and in the heads of several generations of active lawyers that Langdell is, for all practical purposes, modern law’s founding father. It is possible that we have another founding moment before us. It’s foolish today simply to assume the legitimacy and virtue of the institutional forms that he bequeathed to us and that are now largely baked in to the hierarchies of ABA accreditation, AALS membership, and bar admission: the 3-year professional (JD) degree; the effectively mandatory first-year curriculum and an overall curriculum dictated by subject matter categories; comprehensive end-of-semester or end-of-academic year examinations; analytic rather than technical training as the distinctive hallmark of legal education. These are valuable, or not, via their merits rather than via their antiquity. For example, some law schools now permit applicants to rely on the GRE rather than the LSAT. Personally, I think that’s a good thing. When those students enroll, the vast majority of them will have an educational experience that resembles The Paper Chase more than most of us would like to admit. Is that wise?

The problem with the future, of course, is that it’s difficult to predict. I don’t propose to invite anyone to a conversation that is avowedly or simplistically futuristic. Our imaginations should be bold and broad, holding on to the past and past practice to the extent that doing so serves our futures (plural), but not simply because we’ve done things that way for decades. There are bigger targets in the sights of today’s legal education reformers. I don’t need to create those targets; others with great energy and vision have been pursuing them in bits and pieces over the last 10 years – at least since 2007/2008 – and in some cases longer than that. The problem that I see is

that they have been pursued largely *as* bits and pieces, independently of one another.

What if we could, in effect, convene a constitutional (small c) convention to frame a new conceptual charter for legal education that integrates these things? Who would participate, and what would they talk about?

III

Consider a possible constitutional (small c) convention about the future of law and the legal profession, and legal education in particular. The first two Parts have described the case for such a conversation. This Part concerns the subject matter. The next Part will consider the coalition of potentially interested participants.

Five themes – targets – dominate continuing conversations about the state and future of legal education, and by extension about law and the legal profession as a whole. My primary goal in this Part is to set out those themes in a thoughtful way, to suggest that they should be interwoven in future-oriented discussions, and in doing so to promote the production of actionable plans for institutional designs to support (i) prospective lawyers; (ii) law teachers, faculties, and schools; (iii) institutional leadership in higher education, the bench and bar, regulators, and organizations and institutions that consume and rely on law and legal services; (iv) developers and deployers of legal tech, legal operations, and legal services organizations; (v) the global legal community; and (vi) individuals and communities that rely on law, lawyers, and legal institutions for health, safety, security, and prosperity.

There is a purposeful sense in which legal education stands in here for higher education generally.

The five themes are:

1. Economics.

Holding all other aspects of today's legal system constant, the economics of training for and entering the profession are terrible. The number of law students in the US as a whole still exceeds the number of entry-level positions that pay enough to permit students comfortably to service the debt currently associated with obtaining a law degree. Institutions and

mechanisms that underwrite that debt are fragile; I regularly hear alerts from various sources that subsidized loans are about to dry up.

The economics of operating a law school today are terrible. With high fixed costs, smaller student bodies, and limited endowments, many law schools today fail to cover their operating costs. That's true despite the fact that the economic premise of the Langdellian law school is enormously favorable to the school and to its university parent. Twentieth century law schools were (and most 21st century law schools today still are) in the mass production business. In the required first year course, one law professor addresses a classroom of between 50 and 100 students, with trivial amounts of one-to-one tutorial style teaching. Pedagogically, that's a terrible model, but in the 20th century law firm world, it did the job.

Today, as the professional world gets more pluralistic, the failures of the pedagogy are exposed – and still, many law schools can't turn an operating profit. I don't assume that law schools should turn an operating profit; Ph.D programs in the humanities and the social sciences don't turn an operating profit, either. Yet the university underwrites them anyway, for the most part. I'm fully aware of the traumatic changes in doctoral education and professional advancement in arts and sciences. The point is that universities traditionally offer history degrees because of the cultural importance of research and teaching in history, not because the history department is a profit center. What does a more pluralistic law school curriculum and pedagogy look like, and how does that get paid for?

The economics of access to legal services and justice are notoriously bad. Far too few individuals and small businesses can afford conventional representation necessary to enable them to obtain justice (criminal cases), and/or access to government services and benefits, and/or fair and timely resolution of even modestly-sized disputes. Meanwhile, at the top of the economic pyramid, the economics of law practice have shifted decisively in ways that favor large institutional clients over their outside counsel, largely because the expense of compliance and even moderate-size civil litigation has gotten so large. Will more large law firms wobble in the next decade? Will more large firms disappear, or reorganize other than as law-only partnerships?

There is no reason in principle that these overlapping and intersecting concerns will align in a way that gets the right people in school, trains them in the first (and reasonable cost) ways, and puts them to work helping

people and communities in need. Management-oriented professionals and provosts look at these problems and ask: what's the value proposition for new lawyers? What's the business model for law schools? Welfarists look at these problems and wonder: How should the cost of justice – a public good – be distributed across society? Are there ways productively to align those questions and answers, and other relevant ones?

2. Technology and organizations.

Macro changes in the institutions of law practice and legal services are driving micro changes to ways in which lawyers practice and in which legal services and legal information is provided to society and to clients. The sum of what follows is simply but importantly a story of institutional heterogeneity. Changes at both macro and micro levels drive economic fragility and instability (theme 1) but they also drive changes in what legal services are needed, where they are needed, and who supplies them and how (this theme 2). What's cause and what's effect here is a complicated story. My point here is only that the macro changes are happening, and they're accompanied by substantial effects at micro levels.

Changes are partly (and obviously) technological, focused on the pace and scale of advances in digital networks and data collection and modeling. Larger-scaled deployments of technology across all domains of legal services mean that the productivity of a given lawyer in a large organization is increasing – thus decreasing the need for additional lawyers, assuming fixed or nominal rates of growth overall. Faster than we might wish, advances in computation will make complex legal information and services accessible to many people – firms and individuals – at relatively modest cost.

Changes are partly geographic. Even local business and governments are intertwined with international and global partners to a growing extent. The legal work, the people doing the work, and their professional parents (both service-side and client-side) no longer need to align geographically to the degree that was long assumed. Large organizations of all types are re-deploying employees and partners around the US and around the world in new patterns. Small organizations are rarely isolated from the behaviors of larger players. In Pittsburgh, where I live, lawyers work from home offices, telecommuting to offices in West Virginia that partner with colleagues officed in Menlo Park, supporting clients located in Wisconsin. The “local”

in the local legal profession supported by the local or regional law school is eroding, slowly but steadily.

Macro changes are partly organizational. Large law firms are slowly “de-leveraging” away from the Cravath model, partly driving and partly responding to demands for greater efficiency and accountability by large corporate clients. That dynamic addresses only one facet of the profession, but spillover effects have large impacts on employment markets for new lawyers and for innovation in legal tech and legal operations, among other things. Change of all sorts is diffused through the profession and through society at uneven rates.

Let us not overlook counterpart technological, geographical, and organizational changes that are transforming higher education generally, meaning the universities in which most US law schools are housed.

Amidst all of this, in what respects (if any) should the 20th century JD program continue to be the default mode of professional training for new legal professionals?

3. Professional preparation.

For at least 25 years, dating to the MacCrate Report, the organized bar has reliably pushed law schools to do more to prepare new lawyers to enter the profession with basic training as practitioners. The contemporary version of this argument, expressed largely in the Carnegie Report of 2007 and in recent changes to ABA accreditation standards, focuses largely on how law schools should build “experiential education” into their curricula.

Law schools have accommodated these arguments in part but also have deflected them in part, balancing them against the traditional role of professional education in developing critical analytic skills. The accommodation may be expansive, introducing new lawyers to technology-deployment skills and management and business skills. The training argument may expand beyond the traditional three-year degree, asking more broadly about the character and role of professional legal education. Should legal education continue to be centered exclusively in law schools? What about technical schools of narrower sorts, or undergraduate education? Should law schools continue to be parts of universities? If not, in either case, what does a more plural institutional environment look like?

A narrower accommodation focuses on traditional legal education as preparation for the bar exam. For many law schools, and especially for public law schools, bar examination success rates offer important measures of public accountability, to public funders and others, and institutional accountability, to provosts and boards. There is some slice of legal education that properly prepares graduates to practice law in some traditional or conventional sense. But substantial numbers of graduates today will never practice or will practice only for a nominal length of time. How should resources be allocated to prepare all graduates for the great diversity of careers – even law-related careers – that they are likely to enter and choose over time?

4. Professional identity.

The Carnegie Report also consolidated and accelerated a movement among legal educators and practitioners to cultivate a mode of legal education clustered around identity rather than professional practice. The long-standing questions that framed the legal profession and law schools – “what should (new) lawyers be able to do, and what should they know?” – are supplemented, even displaced in part, by new questions: What or how should (new) lawyers be? The Carnegie Report framed these in terms of “professional identity,” a path that often leads to ethics, professional responsibility, service, and access to (and provision of) justice and that also leads to leadership development and emotional intelligence, among other things. Each of those topics is itself the subject of diverse interpretations, approaches, and implementations. Does “leadership for lawyers” take us back to a 19th century vision of the citizen lawyer’s role in the community? Does it offer training and support for lawyers who are likely to become manager/leaders of modern legal businesses, both large and small? Does it entail skills in strategic development and visioning that are often little in evidence in modern organizations of all sorts – and even in community engagement and personal development? In the pathways to professional development and practice, and in a professional environment that is increasingly heterogeneous, where do those ideas (and ideals) belong?

5. Law itself.

Economic, organizational, and technological changes open windows onto dialogues about the nature of law, the rule of law, and the character of legal systems. That’s not only a comment about the character, practices, and durability of formal, long-standing legal and political institutions, that is,

branches of government, the administrative state, international legal institutions, and so on. It's also a comment about the relationships between law and governance. I sometimes casually contrast the accepted story of the American Founding Fathers of the 18th century with the emerging story of the Founding Fathers of the 21st century: Gates, Jobs, Bezos, Brin and Page, and Zuckerberg. Naming those names is a partly-serious way of capturing an obvious but critical and enduring question about the rise and power of technology generally and platforms and algorithms specifically in mediating – even directing, in some cases – an enormous swath of contemporary human experience.

Those are governance challenges, not merely legal challenges. Governance challenges in the digital networked space are only going to get larger and more complex. Scholars have begun to provoke us by synthesizing visions of lawyers and the legal profession in this newly-mediated environment with a vision of the role of law in society (should each platform get to claim the power to offer a law-ish ruleset?), and by re-drawing links between the character of law and human flourishing in its broadest sense. Much less work has been invested in the institutional payoffs of those conceptual questions. What should a trained lawyer be able to do and know in this new environment? Does it continue to make sense to frame that question in terms of “lawyers,” a word that evokes a very analog sort of problem-solving, dispute-resolving, counsel-providing humanistic modality? Should we discuss that question and its answers in descriptive as well as in normative terms? Does the 21st century need “law schools” as those were conceived in the 19th century and grew to maturity in the 20th century? Maybe it does. If so: why?

IV

This Essay concerns the future of law, the legal profession, and legal education. It emphasizes the relevance and significance of independent conversations on the topic among legal educators; the need comprehensively to integrate several siloed conversations; and the role of individual law faculty and others in this project, in addition to the usual list of deans and other professional leaders.

The intuition driving the Essay is this. If done well, imaginatively and carefully, then extending, distilling, and combining conversations in each of those five domains described in the last Part should lead not only to

conceptual frameworks for action but also to actionable guidance itself, drawn from multiple perspectives and looking to multiple audiences. A new constitution for legal education should be more than values and aspirations. It should be something closer to a strategic plan for future strategic planning at the local level. What do institutions and strategies and practices – plural, not singular – actually look like, and to whom?

This Part concerns the possible coalition of actors. Who should participate in mapping this out, and what concerns, opportunities, and barriers are theirs to explore?

1. Future lawyers.

What do law students / prospective law students / recent law graduates think? The target and participant audience here also consist largely of pre-law advisors, admissions and financial aid professionals, and career services professionals. What should they be thinking (and what questions should they be asking) that they aren't? Just about every law professor today hears some version of "should I go to law school?" from family, friends, and more than a few undergraduates. That's an important and meaningful question, but it's flawed in this naked form, and so the answers are inevitably incomplete.

The question is usually asked with reference to the modified Langdellian law school of today, and/or with reference to the legal employment market that's visible right now. The question is usually not asked with reference to what the career of a new law graduate is likely to look like over the next 50 years. What can we say now about the future of law and law school that distinguishes law from other professional and career options? I doubt that law is any less uncertain, but are there ways in which the uncertainty associated with a legal career differs from the uncertainty associated with other careers? Is that information something that we, as teachers and professionals, can use productively?

2. Law faculty and other law teachers.

The question here is not what individual teachers should do but rather what those who want to can do, and how. Law professors should do what is right and best for their students and, by extension, for the profession and society, whether they are full-time classroom, clinical, or legal writing faculty. (The siloed character of contemporary US legal education, which

often leads to rent-seeking both inside and outside individual law schools, is an important problem in itself.) Does that mean adapt and evolve, or stay true to time-honored teaching practices?

Accepting that law deans often have limited power to effect change, and looking to faculties, it is obvious that faculty preferences for change, willingness to change, and the skill set associated with change are distributed unevenly on a given faculty. Acting as a faculty at a law school is rife with collective action problems. For those with a “change” mindset and skill set, bureaucracy, delay, legacy institutional and political commitments, ideological and personality conflicts all pose barriers to action. Acting individually or in small groups, many change-oriented faculty believe that they lack the tools or the agency to adapt teaching and curricula meaningfully to new professional worlds, or, if they have agency within their own spheres, lack the tools or the agency to scale their work effectively by sharing it with others.

Yet there are ways to move forward. Should one move silently and cautiously, or publicly and provocatively? Should one ally with internal fellow-travelers or build support and reinforcement with colleagues elsewhere? What part or parts of the change equation should one engage with, and what part or parts of the stay-the-course approach are worth investing in? What does the law faculty of the future even look like, in terms of training, expertise, status, and contribution?

And what about the contributions of law teachers who are not associated with US law schools, or who are not associated with law schools of any sort? My instinct is that they are in the tent, so to speak.

3. Professional leadership.

Including students and faculty is a more or less “bottom up” strategy. More conventional and traditional change management in the legal profession is to look for change developed and promulgated via for “top down” interest-based or “stakeholder-based” leadership. That includes the American Bar Association; regulators in state bars; law school deans; managing partners of law firms; leaders of the bench; corporate chief legal officers and general counsel; insurance carriers; executive directors, presidents, and board chairs of leading nonprofits and NGOs. They and the entities that they work for and represent may have direct purchasing power and/or regulatory authority that can move markets in various ways,

especially over longer time frames. They have invested a lot of time and effort in “legal education reform” efforts, particularly MacCrate and Carnegie.

The concern is that experience over the last three decades, and especially over the last 15 years, suggests that much of their influence has been exercised, for better or worse, to moderate or stifle adaptation and change rather than promote it. So as not to re-commit the sins of the past, the “top-down” perspective to include here should include not only traditional players but also individuals and organizations who have not been part of the traditional leadership-driven conversation. The point is that law and legal education are parts of larger systems; re-thinking law and legal education means thinking inclusively about those systems.

Consider, for example, university provosts and their equivalents (in universities without an office of the provost, the officer to whom the law dean reports). In a small number of cases, former law professors and former law deans serve as provosts or as presidents/chancellors. In those cases, it is reasonable to assume that they possess a useful working knowledge of legal education and how it is like and unlike other academic disciplines and professional schools. (That doesn’t mean that they will necessarily go out of their way to help out the law school; law deans-turned-provost or president may be motivated to treat their former colleagues with extra equal treatment.) In many cases, the provost comes from a different part of the university and has no way to understand the strengths and weaknesses of the law school – except in conversation with the local law dean.

4. The legal tech (and law-business) community.

Legal tech, legal operations, and legal services providers appear to be the only parts of the legal profession writ large that have upward, growth-oriented trajectories in terms of revenue and hiring. Executives, managers, developers, and investors in these communities are critical parts of this broad conversation. That’s not because they’re experts in visions of the future of law; rather, it’s because they often are not and can thrive as economic engines because they have little need to pay deep attention to plural values. They often appear to have little to no understanding regarding how their planning interacts with the legacy professional structures that they are (nominally) trying to “disrupt.” “Disrupting” a profession and a related system of professional education and norms is not like “disrupting” a market that produces and distributes widgets.

It's worth emphasizing that despite the practical importance of this community, its growth exposes not only mismatches between the needs of that community and the teaching and training norms of legal education, but also conflicts regarding values and goals. Traditionally-minded law schools need not and should not automatically defer to the interests of legal tech or legal ops. How to negotiate those intersections will take patience and care. The profession and its related structures have cultural and institutional inertia built up over centuries. Earlier in this series, I emphasized the relevance of the past, not because of the value of history as such but because the persistence of past practice may – at times – suggest present and future value(s). Human practices matter; human values matter, too. That inertia will not simply melt away in the face of cheaper, nimbler competition, even if that inertia means that current professional institutions – including those critical values – may need to be recalibrated somehow in light of modern needs.

Recall the five themes from Part II. Transitions will happen in institutions and practices oriented to each of those themes. Will they happen herky-jerk, or smoothly? Indifference in the legal tech/legal ops world (at worse) or naivete (at best) with respect to how their innovation impacts the people on the ground – clients and communities as well as lawyers – bodes ill for the long-term health of the justice system, including legal professionals as well as communities, clients, and citizens. It may also bode ill for the long-term sustainability of either legal tech, or law itself. Or perhaps both. If an “artificially intelligent” service can write a better brief (and that functionality is getting better), and an “artificially intelligent” service can adjudicate a dispute (those services are already operating, in places), then why have lawyers at all? That's not a rhetorical question.

5. The demand / user / client side.

Categories 1 through 4 above each offer a flavor of the “supply side”: Lawyers, service providers, and the institutions that produce, house, and sustain them should look critically at the design of their own institutions. A newly integrated, constitutional vision of law, legal education, and the legal profession should spend at least an equivalent amount of time considering the interests, goals, and needs of the individuals, communities, and institutions that use law and legal services – that need access to them, that depend on them, that assume their existence in order to achieve their own aims. This is a broad and pluralistic perspective of its own, and in practice

it should be broken down into more focused, more clearly defined targets. Lots of people and lots of institutions and organizations need law and need lawyers. Society as a whole needs lawyers who examine it critically, not only lawyers who advance their clients' causes.

But not everyone who needs legal services needs a lawyer. Not every mode of legal services delivery must involve "law" or person-to-person counseling in a classic or humanistic sense. (At the same time, the alienating character of modern digital platforms puts a tremendous premium on the non-analytic services offered by human lawyers. This is why emotional intelligence is such a hot topic in the bar, and among some law professors.) It has long been true that adjudication and dispute resolution are often the tails that wag the legal services and legal education dogs. As much as people (individuals, small companies, large companies, non-profits, governments) need access to courts, a huge number also need access to effective, reliable, and trustworthy planning techniques. In writing about economic development issues, I've used a baking metaphor sometimes to distinguish between the "divide the pie" function of lawyers and the "grow the pie" function of lawyers. The legal profession should train, support, and reward both types of legal bakers.

6. Global interests

Last but by no means least is the global legal community itself. The jurisdictional barriers that have divided the community of legal professionals in one US state from all of the others, replicated on a country by country scale, have been falling away in practice as matters of substance if not necessarily matters of form. In some countries, barriers limiting business collaborations between licensed lawyers and other professions have been eliminated or nearly so. Even in jurisdictions that retain traditional lines between law practice and business practice, the largest employers and providers of legal services are often not traditional law firms, but organizations within larger consulting practices. Even in US states, a growing number of "legal" functions have been removed from exclusive control by the licensed bar.

In short, the economic and organizational changes facing the US legal profession are neither unique to the US nor caused by pressures and interests that are organic only to the US. And yet: the long-standing, 20th century American project of exporting the model of the US justice system and related systems of professional training and practice to other countries

— essentially, exporting the Langdellian model as a tool of democratization and law reform — still has a lot of supporters. It’s been effective. An integrated conversation about the future of the law and lawyers should include teachers and practitioners and leaders and regulators from outside the US as well as within it, subdivided, as the client/demand side audience should be, in appropriately narrow and concrete ways.

V

In this Essay about how to advance a large-scale, integrated conversation about the future of legal education, as a foundational project that links up with equivalent questions about law and the legal profession, the previous Parts have raised questions about the urgency of the project, about the identities of potential participants, and about the character of the topics to include. This Part concludes.

What about research and scholarship?

I’ve left this topic for the end in order to raise it myself rather than respond later. In earlier, smaller conversations about legal education, I’ve learned that “what about scholarship?” is either a key objection to the sort of conversation I propose (as in: “the entrenched Langdellian mass production model of legal education does a nice job of reserving to me a lot of time to produce high-impact normative legal scholarship”), or a key mode of indifference (as in: “the scholarly functions of legal education are of little concern to students, practicing lawyers, or future clients”).

Research and scholarship are parts of the current environment. To me, that fact means this is yet another complex topic with overlapping sets of functional premises and audiences and constituencies rather than an excuse to bash or dismiss interests and participants.

Law professors of the moment are professors, which means that they are expected to research and to write. Many of them, anyway. Law teachers often self-select into academic careers precisely because they want to research and write. Some teachers don’t — they don’t opt in for that reason; they don’t want to research or write. Many in the current system have mixed motivations.

Instead of criticizing (or embracing) that aspect of the current system, can it be turned into an important part of the forward-looking conversation? How do those preferences, and the resulting scholarship, matter — if at all?

How (if at all) should a new system shape and/or reward a different set (or sets) or preferences? What's the scholarship good for, to whom, and who should pay for it and how? Legal scholarship isn't an undifferentiated domain (or it need not be); how might those questions be answered differently with respect to different sorts of work? Should research and scholarship be produced by the same people who teach, in the traditional (by the lights of the latter 20th century) teaching/service/scholarship triad? This isn't a search for a business model; as with the questions posed earlier, it's a search for a sustainable vision.

Lots of law professors produce scholarship that, like much academic writing in general, is meant primarily to be read only by their colleagues. Lots of law professors (many of the same law professors) produce scholarship (often the same scholarship) that does what academic research and scholarship often do: It moves the knowledge and policy plates of the world mostly incrementally and tectonically. Only rarely does it affect the environment in volcanic or seismic bursts. The field covered over the previous four Parts may be read to suggest or encourage more action than that, to expect that the action take place more regularly and more quickly, and to prioritize the interests of living, breathing people in the classroom and the courtroom and the community. Those Parts may be read at least implicitly to disparage the proverbial and sometimes meandering life of the mind.

So, I want to be sure that the topic is explicitly on the table. Personally, I'm a big believer in the research and scholarly mission of academic lawyers. What's more, I tend to write with longer time scales in mind; I'm often at the more conceptual end of the scholarly spectrum. But my preferences, of both sorts, simply beg the question, or questions. Important micro conversations about legal research and legal scholarship are in many respects microcosms of macro conversations about the purposes of law schools, law, and the profession. What's it for? Who should participate, who should benefit, and how, and when? How should it be supported? Don't miss the implied macro questions about disciplinary boundaries (what's law? what's history? what's literature? what's sociology or economics or political science or engineering, computer science, or design?) and about institutional formations (what collections of subjects belong in a "law school" and/or in some other school or department or even not in a university at all?

Law professors themselves have been asking some versions of those questions for roughly a century. There is no reason to expect them, or anyone else, to stop now. But both their antiquity and their unresolved status are, I think, important indicators of the fact that none of these questions have any fixed answers. There is no optimality here. There is only the hard work of developing the pragmatics of a system or systems best tuned for the roads ahead.

I'll end with this:

I haven't answered the macro questions that I described in the very first Part of this Essay. I can imagine someone having read this far and still wondering, "but what's his vision?" It's the typically defensive law professor reaction: "So what?," waiting to be given the payoff rather than signing on to help with the lifting. I've put my own vision of the future out there on line (twice, in fact, and both versions are sitting on SSRN). I've written about change management in legal education from the point of view of the individual teacher rather than from the perspective of the field as a whole. This time, it's different. I'm pleading my own case only in the sense that I'm floating an invitation to participate in a shared deliberation of a sort that rarely happens, and of a sort that does not seem to be happening otherwise right now.

My hope is that the Essay contributes to the start of a bigger, continuing dialogue. Hopefully, I've put enough on the table in terms of questions and related provocations to generate one or more sustainable follow-on conversations and perhaps more. Some, I hope, will be face to face; others will be virtual. (Anyone interested in contributing should contact me directly.) No doubt some people – perhaps many – will disagree with some of what I've written. My premises are wrong, or my framing of themes and questions is incomplete, or I've overlooked some massively important topic. (The academic in me anticipates the objection that I haven't cited everyone. Or anyone.) That's OK. As I wrote at the outset: The initial three steps are to develop the sense of urgency; to build the coalition of participants; and to develop the vision. Or visions.

You can't predetermine the vision, then sell it to the participants. That's why I'm not peddling a vision here. Visions both emerge from and are worth what they look like in practice. The visioning and change management effort that I have in mind is worth the time invested if it builds on and produces actionable outcomes. I have a few outcomes to offer on my own, in the form

of what I've actually put into practice myself, in my little corner of this world. I am irrevocably committed to few of those.

Finally, and despite the occasionally grim tone of the Essay, I'm more optimistic about the future than one might otherwise think. I do believe that the present pathways of legal education run substantial risks of failure or worse, irrelevance, based on their lack of utility. I also believe that our collective power to shape our own futures – and that of law and the legal system – is immense. I've tried to make the case that the time is right. Agree or disagree, circle back to me with comments, or run with all or any part of this on your own, with friends and colleagues. Or both.

Engage!