THE UNPLANNED OBSOLESCENCE OF AMERICAN LEGAL EDUCATION

Rena I. Steinzor and Alan D. Hornstein

I. INTRODUCTION

For most law schools, curricular reform is tortuous, disruptive, and occurs roughly on the schedule of a 50-year flood. It is very difficult to think of another type of institution with a comparable level of influence on public affairs that is not constantly reinventing itself, in a more or less intelligible way, at a level that will ensure overall institutional success.

Lawyers love to talk, write, read, and argue. Consequently, there is a rich literature on what is wrong with legal education and what must be done to fix it.¹ Yet it is rare to find commentary linking these deficits to the inability of law

faculties to engage in consistent, routine, and coherent curricular reform. For a group of professionals committed to notions of process as well as results, this situation is extraordinary. What was once charming eccentricity, even a praiseworthy commitment to classic educational values, has become an unacknowledged inertia that could render much of legal education as we know it obsolete in the Information Age.

Pressures to prepare students to practice more effectively in a global economy should be enough to motivate law faculties to overcome our disabilities in this arena. When the implications of the World Wide Web for the delivery of education are factored into the equation, our resistance to change appears as an unplanned but sure-fire method to hasten the obsolescence of educational values and methodologies we justifiably hold dear. It is not science fiction to imagine the profession’s social and economic roles gradually supplanted by less costly lay professionals working in interdisciplinary practice centers and educated in something akin to a correspondence school format on the Internet.

For all of these reasons, law schools should institute a process that enables law faculties to legislate curricular reform on a continuous basis, integrating such efforts with the development of long-term strategic plans. The central features of this process are: (1) a strong committee, comprised of well-respected senior and junior members of the faculty, characterized by its ability to make consensus decisions within a reasonable time frame; (2) extensive opportunities for the faculty, and to a lesser extent, alumni and students, to communicate their views on the issues to the committee and each other; (3) preparation of an objective report describing these constituencies’ different views and ample opportunities for faculty to comment on those findings; (4) circumscribed and well-defined reforms propounded by the committee, separated into integrated, digestible packages that take into account how curricular changes are interrelated with each other; and (5) willingness by the dean and the committee to insist on a vote on each reform proposal, resisting the inevitable entreaties to postpone such decisions for further study.

A process that included these elements was field-tested at the University of Maryland School of Law (“Maryland”) during the 1999-2000 and 2000-2001 academic years. While it is too soon to tell whether Maryland will manage to produce the kind of ongoing commitment to reform that we advocate, the first phase of those efforts was accomplished without the legendary bloodshed that typically accompanies fundamental curricular changes. The morning after, with few exceptions, people had the same level of respect for each other, morale had


3. Neither alumni nor students are likely to play a defining role in decision-making that is the prerogative of the faculty. However, neglecting to solicit their views and respond in some way to the most strongly felt and widely shared is both a mistake and a missed opportunity. Most schools have institutionalized convenient vehicles for alumni and student participation in school governance: they have student government organizations that place student representatives on key committees along with alumni associations and boards of visitors that meet regularly.
not suffered a body blow, and we remained as committed to teaching our students more effectively as we were before the votes were cast.

Despite the best of processes, there are likely to be those who feel strongly that particular efforts at reform are wrongheaded. Some feel this way for good reasons, others out of self-interest, and still others on the basis of mixed motives too complex to identify. This ongoing dissatisfaction is not a good reason to forego needed reform, but it underscores the need to adopt a process that is as inclusive as possible without reaching paralysis, to have members of the committee and the dean remain non-dogmatic by acknowledging the validity of dissenting views, and to solicit the dissenters to participate as fully as possible in the reformed educational program. The dean and committee should expect rear guard action by the dissenters after the fact, and should deal with it respectfully, without allowing a minority to drag the institution as a whole back over well-trodden ground.

Obviously, Maryland is not the perfect model of the average law school. Perhaps there is no such thing. The nation’s 182 accredited law schools are as diverse as the professional opportunities available to their graduates.\(^4\) They vary in size, history, quality, values, facilities, demographics, finances, and many other factors.\(^5\) The process we prescribe is adaptable to all of these different contexts because it is grounded in the realities of faculty governance—a common feature of virtually all law schools—and because it emphasizes arriving at livable compromises on curricular issues within the context of continual reform. This process should produce any one of many alternatives that is most acceptable to a school’s faculty, students, and alumni with respect both to content and pedagogy.

This Article focuses on process, as opposed to substance, for several reasons. Good process is the *quid pro quo* for continuous reform and is far easier to achieve than a single set of substantive changes. There are so many constituencies with so many ideas for redirecting the missions of legal education that good ideas are often lost in the shuffle, giving law faculties a credible excuse for either ignoring or affirmatively resisting change. It would be an enormously complex and time-consuming task to cull through all these conflicting ideas in order to develop a set of core substantive “truths.” Prescribing a one-size-fits-all substantive curriculum, even at the level of simply listing course topics, would waste paper, ink, and cyberspace.

There is one final caveat that is essential to explain before we begin. First, as committed as we are to the opportunities for institutional improvement presented by ongoing curricular reform, we emphatically do not intend to suggest that the curriculum alone determines whether a law school is a relevant and effective participant in local, national, or international affairs. For one thing, curricular reform in and of itself has a limited effect on what actually goes on in the classroom. Second, curriculum is but one of the factors that affect a


\(^5\) Id.
law school’s overall stature, real and perceived.

One metaphor that is useful to explain the first point is that the curriculum defines the number and size of the “boxes” (or courses) offered in any given academic year, but has a more limited effect on what is inside of those boxes. Or, to put it more bluntly, you can tell professors to teach a four-credit, first-year course in torts, and they will inevitably include different sets of actual materials and convey the implications of those materials in different ways. We are not aware of any law schools that attempt to standardize the content of the torts box, much less the pedagogical methods used to teach that content. On the other hand, many schools try to promote collaborative teaching in order to achieve a more uniform content in required courses, if not a uniform level of teaching skills. Further, textbooks (or “casebooks,” as they are more commonly labeled in the legal lexicon) promote some level of uniformity among schools, narrowing the possible choices of materials from hundreds to a handful.

We are not stymied by the dichotomy between the arrangement of boxes and the more complex question of what to put inside them. As we define it, a major challenge of curricular reform is to assemble the boxes in a manner likely to promote the most effective and, if possible, collaborative teaching. If designed and implemented thoughtfully, curricular reform should also make manifest the sequencing of related subjects throughout the three years of the typical law school education. Of course, we understand and to a certain extent agree with the allegation by some of our more idealistic colleagues that until the content of the boxes is changed, the effect of curricular reform will be less potent. We differ with those who take this point to a purist extreme, arguing that reform at the level of arranging the boxes is a pointless and intellectually dishonest endeavor.

As for the second limitation on curricular reform, we acknowledge that other institutional attributes, from the intrinsic talents of the student body to the scholarly productivity of the faculty to such mundane but important factors as the modernity of the school’s physical plant, have an enormous—and justified—influence on how well it contributes to public affairs. Betraying these realities, it is no small irony that energy spent on improving the curriculum typically does not translate into a higher ranking in the crude and frustrating index of law school status maintained by U.S. News & World Report. Other factors, such as

---

the scholarly reputation of the faculty, presumably based on the number and perceived quality of faculty publications, and the standardized test scores of a school's entering class have a far more obvious effect on a law school's placement in this all-important consumer reference than what goes on in its classrooms day-to-day. Nonetheless, we maintain the view that actual education is the overriding raison d'être for all law schools. However crucial other self-improvement measures may seem at any given time, neglecting curricular reform will almost certainly cause greater institutional damage over the long-run.

We begin by making the case that ambitious, ongoing curricular reform is imperative for American law schools. We then explain the threshold assumptions we have made in formulating our procedural recommendations. Some will disagree with our recommendations, and we think it only fair to give the reader the context necessary to evaluate our procedural proposals. The final section presents the elements of a process that can make law schools flexible enough to meet these challenges, without sacrificing institutional equilibrium and derailing other urgent initiatives. Although we believe ongoing curricular oversight is imperative for the modern law school, most of what we have to say involves overcoming the inertia that inhibits the beginning of that process. Once this initial hurdle is overcome, ongoing reform is far easier to accomplish.

II. THE IMPERATIVES TO REFORM

Whether they realize it or not, law schools are under extraordinary pressure from a variety of constituencies to engage in ongoing reevaluation and improvement of the education they deliver. Indeed, in light of the cumulative strength of these pressures, it is remarkable that the basic structure and content of legal education has remained so stable for so long. To be sure, most schools have instituted important innovations over the last two or three decades, most notably clinical education. Yet only a minority of students are able to participate in these admittedly expensive educational initiatives. For the

7. See id. (factoring scholarly reputation of faculty and standardized test scores into ranking).
8. See infra Part II for a discussion of the imperatives to reform.
10. See infra Part IV for a proposal for a process of curricular reform.
11. See infra Part II.B for a discussion of the criticism of traditional legal education by judges and practicing lawyers.
13. See Ninn W. Tarr, Current Issues in Clinical Legal Education, 37 HOW. L.J. 31, 36-38 (1993) (discussing dilemmas faced by law schools seeking funding for expenses of clinical education). Maryland is an exception to this generalization; it imposes a requirement that every full-time student complete a clinical course prior to graduation. See UNIVERSITY OF MARYLAND SCHOOL OF LAW STUDENT HANDBOOK 53-57 (updated Nov. 1, 2002), available at http://www.law.umaryland.edu/studres.asp (regarding "Cardin" requirement); see also Appendixes A-C.
majority of students, although particular subject matter may have changed,\textsuperscript{14} the nature and scope of their course work is very similar to what their parents, or even their grandparents, might have done.

Given the startling and rapid changes in the practice of law that have occurred,\textsuperscript{15} and will occur in the near future, curricular inertia is almost certainly the calm before a major storm. If curriculum remains an immovable object at the center of a law school's daily activities, serving in large measure to define a school's utility to the outside world, the pressures for reform could be channeled into far more drastic changes.

Four distinct but related categories of imperatives should serve as adequate motivation for a more conscientious attitude toward curricular reform: (1) the mind-boggling political, social, and economic changes just beginning to emerge as a result of the World Wide Web,\textsuperscript{16} (2) the bar's rising level of frustration over the perceived weakness of the preparation for practice offered students at most law schools,\textsuperscript{17} (3) the constant temptation for universities-at-large to turn law schools into lucrative "cash cows",\textsuperscript{18} and (4) the importance of addressing the disdain too many Americans feel for the legal profession.\textsuperscript{19}

\textit{A. The Information Age}

No development since the invention of writing has the potential to change human affairs as profoundly as the World Wide Web. Standing at the very beginning of this technological revolution, we can barely grasp its implications for our lifetimes, much less those of our children. We can predict that it will have dramatic effects on the delivery of legal education, both directly and through its effect on the delivery of legal services.

1. Delivery of Legal Services

Lawyers are among the primary gatekeepers of vital information in American society. Not only do they play a major role in writing the law, they provide the indispensable service of interpreting it for those it governs.

The World Wide Web will change these functions drastically. Law-making may become more efficient and less convoluted as the World Wide Web enhances the dissemination of information regarding how others have solved

\textsuperscript{14} For example, twenty to thirty years ago most law school curricula included agency law and very few covered environmental law. Today, the opposite is much more likely to be true.

\textsuperscript{15} Lawyers today are engaged in areas of practice never contemplated by lawyers in the 1950s, and practice with tools that alter the very nature of the work they do for their clients. See BARBARA A. CURRAN & CLARA N. CARSON, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN THE 1990S 1-25 (1994) (reporting statistical data that reflect these changes).

\textsuperscript{16} See infra Section II.A for a discussion of the challenge of the information age.

\textsuperscript{17} See infra Section II.B for a discussion of the criticism of traditional legal education by judges and practicing lawyers.

\textsuperscript{18} See infra Section II.C for a discussion of the financial pressures on law schools.

\textsuperscript{19} See infra Section II.D for a discussion of the challenge of the disrepute of the legal profession.
similar legislative problems. This development could make law at all levels of
government more consistent and transparent—a positive development, but
nevertheless a major change from the existing patchwork of federal, state, and
local requirements. At the same time, the dramatic expansion of accessible
information could make many policy and governing choices far more complex,
changing the intrinsic nature of the political process as lawmakers and law
interpreters grapple with potentially overwhelming amounts of information that
must be sorted, evaluated, and analyzed.

By making information more readily available to lay people, the World
Wide Web has the capacity to sharply diminish the perceived need for lawyers-
as-interpreters. Entrepreneurs with foresight have already begun to establish
web sites that offer inexpensive self-help to lay people in such areas as family
law, consumer law, sales of realty, and other common problems of everyday
life. 20 By marketing low-cost services to large groups of individual consumers,
savvy entrepreneurs will decrease the demand for conventional legal services.
These developments have their positive aspects. For example, they may
dramatically increase access to the legal system by those low-income and middle-
income people who are chronically under-served now. Nevertheless, they are
also likely to require modification of law school curricula to prepare graduates
for emerging new modes of practice.

Of course, it is also likely that new forms of competition within the market
for legal services will occur, as non-legal professionals push the envelope of what
is and is not the practice of law. The legal representation of large institutions
already depends on consultation with a wide array of other professional experts,
such as financiers, bankers, developers, engineers, scientists, medical doctors,
and computer technicians. Having those other groups capture clients by
promising to solve their problems without resort to the judicial system is far
more feasible than it was two decades ago.

Unfortunately, the profession is already off on the wrong foot in this arena,
taking a strikingly myopic position regarding the ethics of multidisciplinary
practice. The American Bar Association (ABA) warns its members to avoid
such illicit liaisons at the same time that other categories of professionals pose a
growing competitive threat. 21 It seems obvious to us that modern practice
requires an array of disciplines capable of solving the client’s problem. Rather
than insisting that other professionals remain outside the legal establishment,
free to challenge the bar’s role with impunity, the best way to meet those

20. See, e.g., FreeAdvice.com: The Easy to use Site for Legal Information, at
http://freeadvice.com (last visited Sept. 17, 2002) (offering information about legal rights on more than
125 topics to consumers and small businesses). Software such as Quicken Lawyer 2002 is available for
sale online, which enables consumers to create their own will, living trust, power of attorney, executor
documents, and other legal forms. See Nolo: Law for All, at http://www.nolo.com (last visited Sept. 17,

21. See No Multidisciplinary Practice for Now: ABA House of Delegates Refuses to Consider
voted against allowing lawyers to join and share fees with other disciplines because of concern that
such changes may not benefit public interest and could compromise current legal ethics).
challenges is to bring other professionals into the law school and the law office. Conversely, lawyers and law students are well served by educational opportunities that enhance their ability to understand and communicate with other professional disciplines.

A second source of pressure for change is the obvious fact that the World Wide Web will accelerate the already fast pace of the globalization of business and, consequently, law practice. By expediting communication within multinational corporations, the Internet will not only accelerate their overall growth, but expand the markets within which they must compete. Scrutiny of corporate performance by worldwide investors, as well as regulators in the countries where they do business, will broaden in scope and deepen in effect. The demand on corporate lawyers and their outside counsel to master the implications of such changes will also explode the amount of information they must assimilate. These developments will create new opportunities for employment of law graduates at the same time that they amplify opportunities for malpractice.22

Finally, access to information is likely to change the rules governing the legal protections that apply to information. Lawyers have spent enormous amounts of time and energy gathering, analyzing, and setting conditions on exchanges of information, either in the context of litigation or other complex business transactions. As the World Wide Web expands the flow of information, their ability to protect their clients' proprietary rights will erode. Lawyers must learn how to combat these trends, which is the most obvious reason for the rapid growth of intellectual property law over the last half-decade.23

The free flow of information presents dramatic challenges to principles of individual autonomy and privacy that are a centerpiece of American democracy. We are only beginning to realize that unprecedented invasions of individual and institutional privacy and security are made possible by the new technology. As


commerce over the World Wide Web rapidly expands, the prospect that merchants or others will compile dossiers on individual citizens without their consent is disturbing.\textsuperscript{24} The web also has the potential to increase economic fraud by international networks of "fly-by-night" salespeople who would be virtually impossible to track once they closed shop in one location and moved on to another.\textsuperscript{25} The specter of youthful "hackers" invading computer systems that support the nation's most vital commercial and military networks is another aspect of the problem,\textsuperscript{26} as is the serious risk that millions of home computers may be exposed to similar threats. The periodic outbursts of computer "worms" and "viruses" also preoccupy large institutions dependent on computers.\textsuperscript{27} Lawyers are the logical, if not the only, group to assume responsibility for designing frameworks to ensure that these threats are prevented, to the maximum extent possible, without trampling privacy principles and the operation of a free marketplace for goods, services, and ideas.

The preceding litany skims the surface and may well omit other important implications. Our real point is that all of these implications deserve systematic and explicit consideration by law school faculties and administrators, not just in the context of upgrading technical resources available within the school, but in the far more important context of preparing their graduates to practice law in this new world.

2. The Delivery of Legal Education

As in the case of law practice, the Information Age is a double-edged sword for the delivery of legal education, presenting opportunities to achieve benefits and court disaster. As a threshold matter, the World Wide Web has changed the nature of the first-year class. Entering classes are now comprised of students who completed their high school and college years with access to the Internet. In the near future, most law students will not be able to recall a world without computers, as well as easy access to the World Wide Web and its vast resources. Already, entering students are extraordinarily sophisticated in their use of these tools.

\textsuperscript{24} See Gavin Skok, \textit{Establishing a Legitimate Expectation of Privacy in Clickstream Data}, 6 MICH. TELECOMM. & TECH. L. REV. 61, ¶2 (May 22, 2000), at http://www.mtllr.org/volsix/skok.html (arguing that Fourth Amendment question is raised by monitoring of "clickstream" data used to gather information on a web user).


For those who have been taught how to gather, evaluate, distill, and analyze research results, the World Wide Web is an incredible, awe-inspiring advance over traditional research methodologies. It enables students to analyze problems in more depth, and with more efficiency, than older generations ever dreamed possible. For those who have not received that foundation of training, the World Wide Web is full of pitfalls, exacerbating shortcomings that can prove crippling to success as a student or practitioner.

The Internet catapults the user into specific cul-de-sacs of useful, but undigested information. Without understanding where these cul-de-sacs are located within the broader field of the human endeavor, less competent students may arrive at shallow, even erroneous analyses. It is as if paratroopers were airlifted to a specific street in a war zone, but did not know what town the street was in, what state the town was in, what country the state was in, and, ultimately, why the war was being fought. Legal educators have long faced the challenge of helping their students to have a broad perspective, as well as the ability to synthesize bits and pieces of information into larger theories. The power of the World Wide Web underscores the importance of this task.

Beyond its effect on students’ research skills and analytic capacity, the communications revolution has expanded the potential for distance learning to supplement or supplant classroom learning at all levels of education, especially graduate schools, where students presumably are sophisticated enough to keep order in the classroom without a professor’s physical presence. Once again, the virtual classroom has double-edged implications for legal education. On one hand, relieving students (especially evening students) of the burden of commuting would broaden their access to legal education. Costs would presumably go down as larger groups of students were included without the associated burden of maintaining an elaborate, full-size physical plant. It would be more feasible to arrange specialized offerings taught by experts living and working at a great distance from the law school’s physical plant, enriching the texture and depth of student course work.

On the other hand, as distance learning gains traction, it could undermine some of the more important values of the traditional system. Distance learning could represent the death knell for more expensive educational formats, especially clinical law offerings that require face-to-face communication and low student-teacher ratios. Opportunities for students to make personal contact with their professors are already too scarce; distance learning would further endanger the development of such mentoring relationships.

Distance learning may impose a premium on those among us who are dynamic speakers and are more adept at putting on a show that keeps students amused in large groups, as opposed to reflective teaching styles that place more emphasis on drawing small groups of students into the exploration of complex subjects. While the large-class persona will never lose its importance to traditional legal education, it is likely to be an indispensable qualification for faculty participating in distance learning, diminishing the range of skills available within law faculties to the detriment of education overall.

Conceivably, these trends could be ameliorated, or even avoided altogether,
if legal educators manage distance learning wisely. The World Wide Web could alleviate the economies of scale that mandate large classes in the traditional law school, allowing small groups of students and faculty to convene virtual seminars that extend reflective learning. Once again, this outcome will depend on curricular innovations that develop at least one step ahead of distance learning on a larger scale.

B. Town Versus Gown

The intense criticism of traditional legal education by the bench and bar, and the academy's equally ferocious response, are nothing new, although the debate has erupted with unprecedented harshness over the last decade. These tensions are attributable to the profoundly different motivations that animate the members of each community, producing discord that rapid changes in the market for legal services have intensified.

In large measure, academics do not pursue their vocation for the money, but rather because we prefer the autonomy of teaching and writing to the demands of practice, especially private practice. We guard jealously our prerogatives to write and teach what we please, invoking well-established principles of academic freedom to shame critics out of our way. We are suspicious that the practicing bar is intent on reducing what we teach to the least common denominator of mundane practice, an outcome we feel would deprive us of intellectual fulfillment in the classroom.

Academics lack corporate ties and we earn less money than our contemporaries in private practice. Perhaps defensively, some of us harbor disdain for the high fees and large salaries typical of the large firm. These reactions exacerbate our desire to march to our own, as opposed to the private bar's, inner drummer.

In contrast, many practicing lawyers feel varying degrees of impatience with the academy's esoteric pursuits. They also sense that many academics disdain their methods of earning a living. They perceive that many of the problems afflicting legal education are attributable to academics' poor attitude toward the practice of law. Depending on the degree of distress they experienced while

28. Of course, members of the academy have also contributed thoughtful analyses of the deficits of legal education. See, e.g., the symposia issues cited supra note 1. We confine this discussion to critiques by the private bar to underscore the external pressures on law schools to constantly reinvent themselves.

29. See, e.g., Edwards, supra note 1, at 34-37 (excoriating academics for perpetuating "disjunction" between legal education and the legal profession).

30. Some 72.9% of practicing lawyers apply their trade in private firms. See CURRAN & CARSON, supra note 15, at 24.

31. We base these admittedly judgmental statements on four decades of combined experience in the academy.

32. See Edwards, supra note 1, at 36-57 (arguing that legal academics pursue abstract theories rather than topics of practical use in the real world).

33. Id.

34. See, e.g., GLEN DON, supra note 1, at 217 (explaining how academics "look down" on the
earning their juris doctor degrees, too many lawyers view their preparation for practice as marginally useful and even counterproductive.35

Private practitioners must have as their first priority earning a living. Cutthroat competition afflicts the larger firms based in the bigger cities, interfering with other motivations and goals.36 In this environment, leisurely contemplation of legal theories and principles seems a luxury, and delivery of financially and substantively successful services paramount.

This financial angst is amplified by the profession's extraordinary increase in diversity in the last two or three decades.37 Diversity has increased both with respect to the characteristics of individual lawyers (e.g., race, gender, ethnicity, culture, class background, and political beliefs) and with respect to the dramatic enlargement of legal specialties and related bodies of law.39 The constraint of treating colleagues with respect because they are part of one's immediate social community has evaporated for many, if not most, urban practitioners.40 While we applaud the departure of this privileged and often exclusive network, the profession has yet to develop alternative methods to foster social accountability and communication.

The World Wide Web has intensified the bar's frustration with legal educators. For the largest law firms, the Internet has accelerated entry into a "brave new world" where practice is global, intensifying competition for multinational corporate clients and producing even greater financial pressure.41 At the other end of the spectrum lie the small and mid-size firms where the general practitioner still prevails, catering to the needs of individual and small business clients. In either context, the bench and bar complain, students are unprepared

practice of law); see also Edwards, supra note 1, at 34 (explaining that faculty members consider themselves "academics first and lawyers only by the sheerest of happenstance").

35. We base this statement on conversations with dozens of former students who, of course, were not referring to their experiences in our classes.

36. See Patrick J. Schiltz, On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession, 52 VAND. L. REV. 871, 899-903 (1999) (stating that members of large firms are obsessed with making money and thus work long hours and are under great pressure to obtain new clients, prompting unethical behavior and lack of collegiality). Schiltz argues that these pressures contribute to a trend of poor health and general unhappiness within the profession, and that these problems would be reduced and lawyers' personal and professional lives would become more fulfilling if they were willing to make less money in order to pursue a more balanced life. Id.


38. See CURRAN & CARSON, supra note 15, at 4 (reporting that in 1951, 1960, and 1971 women were only three percent of the lawyer population and in 1991, twenty percent, and that it is projected that women will make up forty percent of the lawyer population by 2020).

39. See supra note 15 and accompanying text for a discussion of the expansion of legal practice into new areas.

40. See infra note 62 and accompanying text for a discussion of American legal education's arguably deleterious effect on the legal profession.

41. See supra note 22 and accompanying text for a discussion on the impact of globalization on future legal opportunities.
to deliver services to clients without extensive additional post-doctoral training.\footnote{See Steven C. Bahls, Preparing General Practice Attorneys: Context-Based Lawyer Competencies, 16 J. LEGAL PROF. 63, 64-66 (1991) (reporting on serious concerns regarding competency of new lawyers, especially those who go into solo practices or small firms).}

These disparate grievances put law school administrators and faculty in a paradoxical position. Gearing education to small firm, general practice needs would only compound the problems perceived by large firms. In some places, it may be possible to respond to one or the other constituency. But for most schools, an uneasy effort to find a middle path is the only alternative.

How much of this frustration is fairly placed at the doorstep of legal education is a function of the degree to which faculties continue to teach legal doctrine as the primary focus of the law school course.\footnote{See infra Part III.B for a discussion of "doctrine versus theory versus skills."} Precisely because of the rapid evolution and growing complexity of the law in the most popular specialties, such as administrative law, international law, intellectual property, corporate, and securities law, law schools are doomed to failure as soon as they represent that they can teach enough doctrine to equip their graduates for practice in any field without a steep post-graduation learning curve. As specialization becomes the norm and the law grows increasingly complex, training young lawyers is a far more daunting task than it was two or three decades ago. These challenges are compounded by the recent trend among leading large firms to pay entry-level associates outlandishly high salaries,\footnote{See, e.g., Rex S. Heinke, Putting Associate Salaries into Perspective, L.A. LAW., July-Aug. 2000, at 12 (reporting on panel discussion that L.A. Bar hosted regarding substantial increases in associate salaries); Gail Peshel, Salary Wars in the New Millennium, CBA RECORD, Feb.-Mar. 2001, at 36 (reporting that very large firms in California, New York, and Chicago pay new graduates $105,000 to $140,000 and offer bonuses for working certain numbers of billable hours).} producing intense economic pressure for young lawyers to "pay their own freight."\footnote{See GLENDON, supra note 1, at 27-28 (explaining economic pressures that drive large firms to expect new associates to perform billable work immediately upon their arrival).} The bar's patience with the inevitable need to train young associates has worn thin, and law schools bear the brunt of their frustration that new lawyers are not immediately prepared to perform billable work in the highly specialized, complex areas of law that are emphasized in large firms.

Deans, of course, are caught between these two constituencies, expected on the one hand to shield faculty from inappropriate influences by overwrought alumni, and on the other, to make their law schools useful to those who control the financial resources they need to prosper. The pressures are somewhat different for deans of public schools and those of private institutions, although not enough to make a significant difference in their overall sensitivity to the complaints of the bar. Only a few powerhouses among the elite schools have sufficient endowments to escape these pressures, and even they are probably more vulnerable than they choose to acknowledge publicly.

There have been two noteworthy and related campaigns to reform legal education over the last decade. The best-known was spearheaded by an American Bar Association (ABA) Task Force charged with studying "the full
range of skills and values necessary for a lawyer to assume professional responsibility for handling a legal matter,” with its final work product commonly referred to as the MacCrate Report.\textsuperscript{46} The Task Force was established on the premise that deep division exists between the bar and the academy and the group’s mission was to narrow that division by articulating new goals for legal education.\textsuperscript{47}

Despite the Task Force’s effort to be diplomatic in the introduction, the report caused an uproar within the academy.\textsuperscript{48} It identifies eight “skills” that must be inculcated in law students in order to prepare them for successful practice: (1) problem solving, (2) legal analysis and reasoning, (3) legal research, (4) factual investigation, (5) communication, (6) counseling, (7) negotiation, and (8) litigation and alternative dispute-resolution procedures.\textsuperscript{49} Leaving little to the imagination of the academy, the report presents eighty pages of definitions and explanations regarding how these skills should be understood, exercised, integrated, and applied.\textsuperscript{50}

In an effort to forestall the inevitable criticism that it is merely trying to turn law schools into “trade schools,” devoid of principles or morality, the MacCrate Report asserts that its selection of these specific skills are based on what should be the four prevailing “values” of the legal profession: (1) provision of competent representation; (2) striving to promote justice, fairness, and morality; (3) striving to improve the profession; and (4) encouraging professional self-development.\textsuperscript{51} For the most part, this effort to justify the itemization of essential skills fails, with the relationship between the lofty goal of pursuing justice and the mundane skill of interviewing clients remaining unarticulated. Yet, the MacCrate Report remains influential in the continuing debate over the content and quality of legal education.\textsuperscript{52}

A second, related campaign to reform legal education was launched by Harry Edwards, Chief Judge of the federal Court of Appeals for the D.C. Circuit and a tenured professor at both the University of Michigan and Harvard law schools.\textsuperscript{53} As a veteran academic with superb credentials in the world of practice, Judge Edwards commands significant attention. Writing for the Michigan Law Review, he minces no words, pronouncing that “[t]oo many law

\textsuperscript{46} See generally MacCrate Report, supra note 1 (analyzing legal education).

\textsuperscript{47} MacCrate Report, supra note 1, at 3-8 (describing gap between the expectation of practicing lawyers and legal educators as to what knowledge and skills graduates should have prior to entering the profession).


\textsuperscript{49} MacCrate Report, supra note 1, at 138-41.

\textsuperscript{50} Id. at 141-221.

\textsuperscript{51} Id. at 140-41.

\textsuperscript{52} See Margaret Martin Barry et al., Clinical Education for This Millennium: The Third Wave, 7 CLINICAL L. REV. 1, 20-21, 44 (2000) (explaining MacCrate Report’s significance in development of clinical education).

professors are ivory tower dilettantes,”

Judge Edwards challenges his former colleagues in academia to eliminate the “growing disjunction between legal education and legal practice,” targeting not just classroom education, but the scholarship that informs it. He is contemptuous of the increasingly specialized, esoteric scholarship produced by law professors and their disciples, student law review editors, whom he accuses of being intent on applying such disciplines as economics and sociology to legal problems. Judge Edwards demands a return to “practical scholarship,” which he defines as writing that will instruct the practicing bar, guide judges and other decision makers in the resolution of disputes, and advise legislatures and other policymakers regarding law reform. He further connects the irrelevance of contemporary scholarship to a failure to teach legal doctrine in the classroom, with the result that newly-minted lawyers have a shallow and fragile grasp of the underlying principles and fundamental rules that govern law practice in the real world.

Last but not least, Judge Edwards chides legal educators for perpetuating—and in some instances producing—the profession’s callow and amoral pursuit of financial rewards, to the detriment of its historic and essential commitment to the “public interest.” He associates the esoteric nature of legal scholarship with the bar’s abandonment of the disadvantaged and victimized, in essence accusing legal educators of withdrawing from the battle to ensure access to justice, leaving their students to the mercy of the worst of the profession’s practitioners.

Others have taken up this theme, arguing that American legal education bears much of the blame for the gradual erosion of legal practice as an “honorable profession” and its emergence as a competitive, rancorous “trade.” According to this line of reasoning, the elite law schools that serve as a model for their lower-ranked counterparts are especially afflicted by the esoteric irrelevance of scholarly pursuits. The result is that law schools have abandoned

54. Edwards, supra note 1, at 36.
55. See id. at 35 (stating that “most faculty members (and certainly most of the youngest and most ambitious). . . . are generally disdainful of the practice of law.”).
56. Id. at 34.
57. Id. at 34-35, 56-57.
58. Id. at 42-43.
59. Edwards, supra note 1, at 57.
60. Id. at 73-74.
61. Id. at 73.
62. See ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 2-7 (1993) (arguing that legal profession suffers from collapse of “lawyer-statesman” ideal, due in part to failure of law schools to shape legal ideals that give meaning to life in the law); Carl T. Bogus, The Death of an Honorable Profession, 71 IND. L.J. 911, 919-22 (1996) (arguing that the profession has deteriorated to the point that “lawyer-technicians” concerned only about firm profitability have shouldered aside “lawyer-statesmen” like Atticus Finch).
63. See Edwards, supra note 1, at 36-57 (arguing that “elite” law faculties have become pre-
the field of law practice to the voracious amorality of the large firm, which places far more emphasis on profitability than civilized practice and the historic public service obligations of the bar.64

Of course, prominent members of the academy dispute these critiques. Some assert that teaching students the law in a manner informed by other disciplines is the only way to make them aware of the grievous harm that lack of access to the legal system can wreak on the disadvantaged.65 These commentators document the significant commitment of resources many law schools have made to clinical education, and accuse the bar of ignoring these efforts to address its concerns.66 Academics further contend that the rote learning of superficial skills will produce even more shallow and ineffective practitioners.67 They say that legal educators should focus on the far more challenging and useful work of teaching students to analyze legal issues critically, express that analysis with competence, both orally and in writing, and develop from experience a strong sense of legal ethics and professional responsibility.68

Other professors are more impatient, waving off the bar’s concerns with the argument that law schools are well-suited to inspire intellectual pursuits, and that the practicing bar should assume the responsibility for what they derisively describe as “skills training.”69 At the threshold, these commentators do not accept the notion that skills training, in isolation, is important to the development of a competent lawyer, and they resent the suggestion that law professors, many of whom have very little practice experience, should use their valuable time in such a mundane enterprise.

Defenders of the academy point out that legal education took a fork in the road many decades ago, departing from the medical school model of thrusting higher-level students into the world of practice so that they may complete their

occupied with “impractical” scholarship); Alex M. Johnson, Jr., Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice, 64 S. CAL. L. REV. 1231, 1238-39, 1241-43, 1251-53, 1260 (1991) (contending that elite law schools are focused on producing future members of the academy and neglect preparation of students for practice). Johnson decries the “large firm” pursuit of financial success at the expense of principled practice, and urges legal educators to provide students with a more complete picture of the diverse opportunities that await them. See also Graham C. Lilly, Law Schools Without Lawyers?: Winds of Change in Legal Education, 81 VA. L. REV. 1421, 1445-54 (1995) (arguing that faculty detachment from practice of law at nation’s elite law schools has rendered legal education marginal to the profession’s battle over ethics and financial greed).

64. Lilly, supra note 63, at 1447, 1450.

65. George L. Priest, Social Science Theory and Legal Education: The Law School as University, 33 J. LEGAL EDUC. 437, 437-41 (1983) (arguing that cross-disciplinary study makes legal scholarship more, not less, relevant).

66. See Lilly, supra note 63, at 1424 (arguing that current law students are as able as their predecessors and many have some basic practice skills acquired through clinical programs).

67. See Edwards, supra note 1, at 58-60.

68. Id. at 42-43, 57, 66-67.

69. See David Barnhizer, Of Rat Time and Terminators, 45 J. LEGAL EDUC. 49, 56-57 (1995) (proposing that bar examination be reduced or eliminated and that time and money spent by students in preparing for bar examination be used to fund professional training academies).
education under close supervision and on the front lines.\textsuperscript{70} They dismiss the MacCrate Report's recommendations as impractical to the point of being ludicrous, arguing that the enormous price tag of shifting law students into small clinical groups is unfeasible for even the best endowed law schools.\textsuperscript{71}

Considering the merits of these points and counterpoints is well beyond the agenda of this Article. What should be obvious from the intensity of the debate is that the bar and the academy will continue to argue over methods and goals into the foreseeable future. At best, the tremendous energy generated by such discussions will be channeled into reforms that take into account the overall character of each individual school, as well as the need to balance all of its strengths and weaknesses.

The MacCrate Report's single greatest flaw may be the assumption that there is a single set of recommendations that can be implemented at all law schools with positive results beyond some relatively minimal level common to any effective legal pedagogy. The diversity of law schools, and their response to the demands of alumni and other constituencies, can never be—and should never be—monolithic. The most important goal is not to arrive at a single set of substantive solutions, but to ensure that faculties, deans, alumni, the bench, and the bar understand each other well enough to negotiate reform, with all participants conscious of the implications of those decisions. Oversimplification of such complexities can only tempt faculties to ignore such demands, distancing their schools from the world of practice at a time when legal education is increasingly vulnerable to forces outside the profession.

In fact, it is conceivable that when we look back on this period twenty or thirty years hence, we will discover that the most troubling result of the debate over the MacCrate Report is that it distracts legal educators and practitioners from the implications of those larger and more significant pressures. From that perspective, quibbling about who should teach students how to interview their clients or deliver a closing argument may well appear as useful as rearranging the proverbial deck chairs on the Titanic.

\textit{C. Gown Versus Gown}

At the same time that the practicing bar urges law schools to devote more resources to skills training in the relatively expensive context of clinical or

\textsuperscript{70} See Costonis, \textit{supra} note 48, at 174-77 (1993) (stating that the medical model has been rejected as inappropriate for the legal profession because of expense and lengthy time requirements); James E. Moliterno, \textit{Legal Education, Experiential Education and Professional Responsibility}, 38 WM. & MARY L. REV. 71, 82-94 (1996) (tracing history of experiential learning, including reasons medical education developed into more experiential education than did legal education).

\textsuperscript{71} See Costonis, \textit{supra} note 48, at 191-92 (criticizing MacCrate Report for ignoring trade-offs inherent in implementation of its recommendations, including increased tuition, less financial aid, reduced course offerings, slowing the introduction of specialized curriculum, and larger class size); Christopher T. Cunniffe, \textit{The Case for the Alternative Third-Year Program}, 61 ALB. L. REV. 85, 113-18 (1997) (noting that MacCrate Report's recommendations for stronger clinical programs come with large price tag).
similar courses, university administrators, who have ultimate authority over law school deans and budgets, continue efforts to enlarge the law schools’ role as a "cash cow" for its sister schools. The most notorious example of this phenomenon is the unsuccessful battle to oust Dean Judith Areen at Georgetown University Law School. The President of Georgetown University, confronted by a deficit at the medical school of nearly $60 million, insisted on a transfer of funds. When Dean Areen resisted his demands, the University did not renew her contract, provoking an outcry from the law school’s alumni and students that culminated in her reinstatement. Areen is an especially well-regarded dean, as well as a prodigious fund raiser, and the attempt to oust her was therefore seen for what it was: an unadorned raid on law school revenues. Other deans may not fare so well in similar circumstances.

Why are these developments, which again are only the most recent manifestation of a lengthy history of such conflicts, relevant to curricular reform? The financial crunch that will confront law schools over the next couple of decades, largely as a result of competition from the delivery of distance learning to paraprofessionals and revenue demands by the larger university, will force their faculties to deliver education more cheaply. Without careful planning, creative efforts to do more with less, and a sound process for evening out the impact of these financial pressures on the institution as a whole, ad hoc adaptations are inevitable, almost certainly resulting in large classes throughout the curriculum and a diminution in more expensive forms of instruction, including clinical courses, special seminars, and legal writing offerings.

There may well be ways to achieve economies of scale in certain aspects of legal education, preserving resources for those extraordinarily valuable portions of the curriculum. The real point is that if law faculties do not find such opportunities themselves, and instead leave the shaping of the curriculum to crisis responses by law school administrators, the outcome is likely to exacerbate not only the dissatisfaction of the practicing bar with legal education, but their own professional fulfillment.

D. A Profession in Disrepute

Justice Sandra Day O'Connor has defined a "profession" as an occupation that "entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market." Measured by those values,
the legal profession is in the advanced stages of disrepute.

A 1993 poll conducted by the *National Law Journal* and West Publishing Company found that when parents were asked which of eight professions they would recommend to a son or daughter, only five percent said law.\(^*\) Thirty-one percent of respondents agreed with the statement that "lawyers are too interested in money;" twenty-seven percent agreed that lawyers file too many unnecessary lawsuits; and twenty-six percent agreed that lawyers manipulate the legal system without regard for right or wrong.\(^*\) A poll conducted by the American Bar Association in the same year found that lawyers' favorability rating was forty percent, compared to teachers (eighty-four percent), pharmacists (eighty-one percent), police officers (seventy-nine percent), doctors (seventy-one percent), accountants (sixty percent), and bankers (fifty-six percent).\(^*\) The only other professionals in the survey that fared worse than lawyers were stockbrokers (twenty-eight percent) and politicians (twenty-one percent).\(^*\) Matters have not improved in the years since. A 1999 Harris Poll ranked law firms last of sixteen institutions, with only ten percent of the public expressing a "great deal of confidence" in them; these results were reiterated in the most recent poll on the subject, performed in 2001.\(^*\)

Obviously, there are many factors that produce such results, from actual events like the O.J. Simpson trial to the portrayal of lawyers on television and in the movies. As discussed earlier, those who decry the death of law as an honorable profession blame legal educators for abandoning the field in the battle to restore ethical and social responsibility.\(^*\)

Reexamination of what we are and are not doing to ensure that our students are engaged in an honorable profession is long overdue. Instruction in ethics and "professionalism" is a component of the curriculum at most law schools, but it is rare to find such a course that is not perceived as a requirement that must be endured grudgingly by students and taught reluctantly by faculty.\(^*\) Too often,

---


79. *Id.* at 22.


81. *Id.*


83. See *supra* notes 62-64 and accompanying text for a discussion of the criticism of traditional legal education as contributing to the erosion of legal practice as an honorable profession.

84. Once again, we base this statement on our combined experience of forty years in legal academics and our attendance at innumerable conferences of the American Association of Law Schools.
these courses are confined to a rote review of the Canons of Ethics, as opposed to the manifestation of the ethical dilemmas that lawyers face in practice. Yet it is the rare person among us who does not take satisfaction in the notion that the effort we pour into what we do in the classroom will produce graduates able to make a positive contribution to both social welfare and that elusive but paramount value—justice. Curricular reform is the best venue to develop courses that will inspire students to question the characteristics of the legal system that so trouble the public.

III. THRESHOLD ASSUMPTIONS

The reform process we propose is intended to be value-neutral; in other words, it could be applied at any school regardless of its concept of its overall mission, the content of its curriculum, or the characteristics of its faculty. As mentioned in the Introduction, we took this approach because it would be impossible to find a single set of substantive changes that would be useful to most schools. Rather, the one indispensable attribute of successful reform is a process that allows faculty to adopt solutions that meet the needs of their individual school.

That said, there are three substantive judgments that inform our conclusions about the reform process. By presenting them upfront, we hope to persuade the reader that they provide a valid foundation for successful curricular reform.

A. Pluralistic Solutions

Law school faculties are diverse in practical experience, commitment to scholarship, pedagogical outlook, skill in teaching, and, perhaps most important, energy levels. Like many other legal institutions, law school faculties have different generations of members—those hired three or four decades ago and nearing retirement, those hired during the boom years of law practice during the late seventies and early eighties, and those hired within the last decade and especially the last few years, when law school hiring has become more competitive.85

Most professors take the work they do in the classroom seriously, as a fair measure of their contribution to the development of the nation’s intellectual capital. Nevertheless, we have seen that some of our colleagues resist curricular change in part because it would require more work in the classroom than they wish to deliver, diminishing the energy devoted to scholarship, public service, or private pursuits. In our experience, some faculty members are cynical about the efficacy of reform. They argue that the tenure system and academic freedom ensure individual autonomy in the classroom, making curricular reform a waste of time because faculty will continue to do what they wish. Others believe that attention paid to curriculum and pedagogy is a waste of time in any event; they

85. We base this statement on the experience of Maryland’s appointments committee over the last several years, as well as informal conversations with members of counterpart committees at other schools. This phenomenon has not yet emerged in media accounts of the profession.
content that what determines a teacher's success are individual skills and knowledge. Some of our colleagues have argued that curricular reform should not be a priority in comparison to the faculty's scholarly output. Finally, some others said that curricular reform is too expensive because it is likely to result in more subjects that must be taught.

Most law schools are struggling to keep pace with demands to raise faculty salaries, update aging infrastructure, and recruit desirable staff, faculty, and students. Their faculties inevitably have strong beliefs about the appropriate priorities among these desiderata. Arrayed against other pressing needs, curricular reform can seem an esoteric, easily postponed exercise.

For all of these reasons, any level of institution-wide curricular reform must be premised on the development of pluralistic, imperfect compromises that quell just enough of these objections and underlying anxieties to get the proposal passed. To put the point bluntly, there is no such thing as pedagogical gospel in curricular reform. Like a legislature, reformers must find the compromise that will accomplish the most educationally while attracting sufficient agreement from voting faculty members. In this, as in so many other endeavors, the perfect—or at least any individual faculty member's vision of the perfect—is the enemy of the achievable good.

For example, some reformers may be convinced that clinical education is a far superior way to educate students. They may believe that the third year of law school could most profitably be spent at an outside legal organization under the close supervision of dedicated faculty members like themselves. In the lexicon of legislative bodies, this approach would be "dead on arrival" at virtually every one of the nation's 182 accredited law schools. To enhance clinical education at their schools, reformers must engage in the kind of negotiation and compromise that permit legislatures to make forward movement, whether anyone admits to such crassly pragmatic approaches to reform efforts.

Other reformers may believe that because most of the jobs available to graduates are in the business sector or deal with business matters, a law school's required curriculum should be trimmed of "perspective" courses involving theories of jurisprudence, as well as courses dealing with various aspects of public law. This version of reform may attract a bare majority of a given faculty, but would leave so many others upset and discouraged as to retard the institution's development for years to come.

The necessity of pluralistic compromise is amplified by the traditional law school management structure, which functions in disregard of modern management theories. Unlike senior management of most other private and public sector entities, deans are able to make life uncomfortable for tenured faculty, but can discharge professors only for offenses that would be deemed beyond the pale in any other context. The obvious implications of these

86. See Cunniffe, supra note 71, at 94-126 (arguing that off-site clinical experiences are an essential addition to legal education).

87. Once again, we base this statement on our experiences, especially Professor Hornstein's service as both an associate and an acting dean.
realities are that it is impossible to force professors to do things they do not want to do.\textsuperscript{88} For those impervious to the dean's disapproval, there is very little incentive to compromise other than the strong instinct not to be isolated amongst one's colleagues.\textsuperscript{89}

However radical and profound the changes imposed on legal education by the Information Age and other recent developments, the tenure system is likely to be one of the last attributes of traditional law schools to fall in the face of these admittedly powerful forces. Contemporary challenges in other areas of higher education have eroded tenure as an indispensable component of higher education.\textsuperscript{90} Because of their orientation toward legal process, contractual rights, and their ability to articulate their grievances and obstruct administrative initiatives, law faculties are far more likely to mount a successful rebellion against such efforts than their colleagues in the humanities or even medicine, making law schools one of the last bastions for preservation of a strong tenure system. In sum, we assume faculty governance will remain the context of curricular reform for the foreseeable future, and the process we propose is designed to make the best of that fact.

\textit{B. Doctrine Versus Theory Versus Skills}

As a \textit{bona fide} Baby Boomer and an almost-Boomer,\textsuperscript{91} we have witnessed the explosion of administrative law over the last 30 years. Entire bodies of law, such as the nation's environmental protection regulatory system, did not exist when we were in school. The law changes so rapidly that loose-leaf and electronic services are the only way to stay informed of new developments. These realities make us committed members of the large and growing group of professors who believe that the overriding mission of legal education is to teach students the structure of the law in key areas, as well as how to think critically and learn from their own experience, eclipsing the traditional preoccupation with the mastery of the particulars of legal doctrine. Whether doctrine is presented in

\textsuperscript{88} We recognize that it is easier said than done to compel people to do distasteful tasks at any institution, but law schools are undoubtedly at the far end of this spectrum.

\textsuperscript{89} An organizational chart for the typical law school, might look like this:

\begin{verbatim}
Faculty
  -
Dean
  -
Faculty
\end{verbatim}

\textsuperscript{90} See Brent Staples, Editorial, \textit{The End of Tenure?: When Colleges Turn To Migrant Labor}, N.Y. \textit{Times}, June 29, 1997, § 4, at 14 (presenting data showing that only twenty-five percent of America's 1.2 million college teachers are tenured). Only forty percent of full-time faculty who do not have tenure are eligible to apply for it, down from sixty percent two decades ago. See also ANDREA BERGER ET AL., \textit{INSTITUTIONAL POLICIES AND PRACTICES: RESULTS FROM THE 1999 NATIONAL STUDY OF POSTSECONDARY FACULTY, INSTITUTION SURVEY} iii-viii (Sept. 2001) (reporting 1998 national statistics on faculty composition), available at http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2001201.

\textsuperscript{91} Professor Steinzor was born in 1949; Professor Hornstein in 1945.
the guise of learning rules of common law or memorizing precise statutory or regulatory requirements, we believe the time for this myopic approach has come and gone.

An important corollary of this belief is that preparation of students for the bar exam is only a secondary purpose of legal education. No respectable law faculty would systematically drop from the curriculum the ten or so subjects most frequently addressed by the exam, in part because their subject matter provides the foundation for other areas of law, but neither would we instruct students that matriculation through all those courses is essential, much less sufficient, to ensure their success. As Professor Walter Gellhorn explained thirty-six years ago:

When law faculties expand their offerings because scholarly work in this or that field should be available to a person seeking to become a well-trained modern lawyer, they well know that only a fraction of their graduates will in fact benefit from the newly included course or seminar—and yet nobody grieves for the non-participants as though they had been condemned to failure. A “well-trained modern lawyer” is not necessarily the product of instruction in every facet of the professional work he may ultimately be called upon to do. Everyone recognizes, in short, that able persons can learn without being taught.92

Proponents of the “teach analytic thinking” philosophy would not go so far as to contend that it does not matter what courses you take in law school so long as you are enjoying yourself. Rather, to quote one of our colleagues,93 it is essential for students to get “a matrix in their heads” with respect to such crucial topics as torts, contracts, property, procedure, constitutional, administrative, and comparative law. By matrix, we mean a clear understanding of the intellectual framework and essential principles that prevail in these broad areas.

For example, students must study the concept of “duty” in the law of negligence, but should not be forced to memorize the business relationships that give rise to liability to customers in the state where they are studying. They must study the definition and implications of the concepts of “offer” and “acceptance,” but need not be required to recite verbatim the related provisions of the Uniform Commercial Code.94 Students must understand why courts defer to an expert agency’s judgment by invoking the “arbitrary and capricious” doctrine, but can safely leave to practice their discovery of the “spin” any given state’s highest court has given this standard of review.95 In each case, of course, the study of doctrinal detail, precise statutory language, judicial gloss, and similar

93. The Maryland faculty has a tacit agreement not to quote the statements of specific individuals made in the heat of the moment during the curricular debate. Professor Marley Weiss has given us specific permission to use this particularly vivid phrase, which should become enshrined in the lexicon of legal educators.
material may serve as a vehicle for more important learning. Within the next
decade or two, the overriding role of legal education will become teaching
students how to recognize and characterize a client's predicament, using what
they learned in law school as both a framework for analysis and a roadmap to
effective legal research.

Having diminished the importance of doctrinal details to a sound legal
education, except as a vehicle for learning legal analysis or other fundamentals,
we should ask how law schools can best use the resources liberated as a result.
This judgment should be the focus of the curricular reform debate. Whether a
faculty presides over education at an elite school dedicated to preparing students
for their roles as leaders of government and industry, or has the more humble
goal of providing regional businesses and individuals with solid, ethical
practitioners, conscious efforts to improve curriculum and pedagogy are critical.

Our views on the importance of analytical skills instead of doctrine mean
that the process we propose is structured to take a "blue sky" approach to the
precise attributes of curricular elements, required or elective. The reform
process should reexamine the reasons any course is included in the "core" or
required curriculum, articulating what the subject matter contributes to a
student's overall education and whether it truly is as indispensable as we have
assumed. Within the constraints of making choices that attract the support of a
substantial plurality of a school's constituencies, no particular course, credit
allocation, or sequence of subjects should achieve the status of a "sacred cow"
that blocks schools from continuous reevaluation of their priorities.

C. Compelling Omissions

The rarity of comprehensive curricular reform means that most schools are
still teaching most of the same first-year subjects as they did thirty, forty, or fifty
years ago. The vast majority of top schools have consolidated or "semesterized"
these courses, reducing them from two to one semester and trimming a credit or
two in order to make room for new required and elective subjects. Unfortunately, the law in several areas has developed at a far faster pace than
these modest changes. Consolidating first-year courses, in the absence of more
profound reforms, does not provide enough space in the schedule nor faculty
resources for adequate coverage of these new topics.

96. By "required curriculum," we mean offerings that must be completed as a condition of
graduation. "Elective curriculum" means all other offerings. Courses removed from the first category
are usually transferred to the second.

97. Report of the University of Maryland Law School Curriculum Committee on Options for
Reforming the Law School Curriculum app. C (April 10, 2000) [hereinafter Maryland Report] (copy on
file with authors) (presenting chart comparing first-year curricula of top law schools). Once traditional
courses like torts and contracts are consolidated, schools may need to add more advanced versions of
core traditional courses for those wishing to study such subjects in greater depth. For example, a torts
course could be consolidated from a two-semester, five-credit required offering to a one-semester,
four-credit offering, with the result that most teachers would drop some topics, such as intentional
torts, products liability, or defamation. Given the importance of some of these subjects to
contemporary law practice, schools might consider adding advanced electives in those areas.
The pent-up demands produced by the historic avoidance of curricular reform cannot be met by adding credits and lengthening the time spent on legal education. Even if a school had adequate faculty resources, the addition of four courses to the elective curriculum would invariably result in either lower enrollments in other courses or the addition of another semester of law school, a proposal that, even if not doomed to failure, would generate controversy so draining that nothing else would get done. Reformers are therefore in the challenging position of revising the content and pedagogy of existing courses, reshuffling to produce an integrated package of offerings that do not subject the faculty as a whole to punishing overwork.\(^{98}\)

The list of subjects not covered or inadequately covered by the typical curriculum is impressive. To be sure, many schools offer elective survey courses covering the rudiments of some of these emerging topics. We do not argue here that these survey courses in specialized areas of practice must be moved to the required curriculum, but rather that these areas receive insufficient attention throughout the curriculum. While one might quibble with some items on the following list, it is inarguable that these topics have become more important to the modern lawyer than, say, the mailbox rule in contract law, the distinction between larceny by trick and embezzlement in criminal law, or the distinction between easements by prescription and easements by grant in the law of property.\(^{99}\)

---

\(^{98}\) Any experienced academic would acknowledge that teaching abilities vary widely within most faculties and that an important role of any deans' office is to put the worst teachers in places where they can do the least harm. As a result, there is a real danger that better teachers will shoulder a disproportionate burden as a result of curricular reform. For example, introducing small, first-year sections to deliver instruction in legal analysis, writing, and research could impose more work on the strongest teachers, because deans are unwilling to entrust this crucial introductory course to weaker faculty members.

\(^{99}\) The mailbox rule states that a contract is created at the moment the acceptance is dispatched. Restatement (Second) of Contracts § 63 (1979). The relatively instant methods of communication utilized in today's business world such as e-mail and facsimile have somewhat diminished the relevance of whether the acceptance of a contractual agreement becomes effective upon dispatch or upon receipt. See Allan E. Farnsworth, Contracts 182 (2d ed. 1990) (arguing that mailbox rule has substantially no application to relatively instantaneous methods of communication). Embezzlement involves a fraudulent conversion of the property of another by one who is already in lawful possession of that property. See John M. Brumbaugh, Cases and Materials on Criminal Law and Approaches to the Study of Law 248-57 (2d ed. 1991) (discussing extension of larceny offenses to include breaches of trust lacking element of trespass, now known as embezzlement). In contrast, larceny by trick occurs when the defendant gains possession of property by fraud or deceit. Id. at 275-86. The distinction between the two is that for larceny, the defendant needs only to take and carry away the property of another, whereas for embezzlement, the defendant must convert the property, depriving the owner of a significant part of its usefulness. The distinction is less significant in today's world because most jurisdictions have statutes that consolidate these offenses. See John Wesley Bartram, Note, Pleading for Theft Consolidation in Virginia: Larceny, Embezzlement, False Pretenses and §19.2-284, 56 Wash. & Lee L. Rev. 249, 251 (1999) (stating that most states have statutes that consolidate the three basic theft crimes of larceny, embezzlement, and false pretenses). An easement by grant is an easement created expressly by a writing; at common law, a grantor of land could not reserve an easement in a third party by deed. Generally, this rule is rejected today. Restatement of Property § 472 (1944).
The most conspicuous omissions include: administrative law and procedure, international and comparative law from both a public law and a private law perspective, intellectual property law, advanced business transactions, and the role of science and other quantitative methods in formulating legal decisions and social policies. Other areas receiving short shrift are theories of practice—i.e., theories behind the application of such indispensable skills as client counseling and negotiation (sometimes described as the identification and development of non-litigation solutions to legal problems), legal writing, and the nuances of trial and appellate practice.

In our view, the single most important item on the list is the development of effective legal writing programs, although for the sake of our credibility, we hasten to add that by legal writing we most emphatically do not mean the mastery of rules of grammar and punctuation. As we envision it, writing in law school is the understanding of legal analysis in concrete form, in order to provide a vehicle for critique and improvement. It cannot be separated from the analysis it substantiates. Thus, effective writing instruction means teaching students how to perform rigorous analysis. Students must learn how to construct an argument that is persuasive and either correct under existing law or, if there is no law directly on point, creative in its use of related doctrine. They must be able to write clearly without obscuring the issues in a flood of legalistic jargon. They must know how to assess the audience and determine the purpose and scope of the document. They must be able to work with precedent, as well as work around it. While such talents are crucial in any context of law practice, the globalization of business places a premium on effective legal analysis because it requires the communication of ideas in writing, across time and space, without the assistance of shared cultural norms. To the extent that materials must be translated, clear writing forestalls further misinterpretation.

Repeated opportunities to apply the law to a set of facts and to practice tempered advocacy in writing are vital to the ultimate goal of teaching students to think critically, and are not replicated in most other areas of the curriculum. No one could seriously argue that filling ten blue books with brief answers to tortured hypotheticals makes a significant contribution to the development of lifelong critical thinking. Moot court and trial practice courses too often emphasize oral communication, a worthwhile talent that is not fungible with effective communication in writing, in part because, even with videotaping, it is too condensed to provide an effective vehicle for teaching substantive analysis. Clinical education can make a significant contribution in this area, though clinical teachers may need additional training in the effective teaching of legal writing and research.

Unfortunately, in our experience, expansion of legal writing instruction is among the most difficult reforms to accomplish. The trend is to delegate this admittedly time-consuming and challenging task to writing teachers who have few of the protections or intrinsic respect offered by tenure. Striking the right balance between placing demands on tenured faculty, often in the context of

100. See supra Part II.A.1 for a discussion of the globalization of business and law practice.
first-year "legal method" courses, and using resources to hire a cadre of legal writing specialists should be a priority as curriculum committees engage in continuous reform.

Obviously, the addition or expansion of offerings dealing with these complex topics has implications for the deployment of law school resources. We are not suggesting that all can be incorporated at once or, for that matter, within a few years. As time marches on, however, deficits in these areas become more and more acute, lending ongoing curricular reform both urgency and a sense of purpose. The process we advocate in the last section of this Article is designed to establish an ongoing reexamination of omissions and priority-setting, enabling the curriculum as a whole, not just to respond, but to anticipate the most important legal, economic, and social trends.

IV. FORESTALLING OBSOLESCENCE: THE PATH TO A MODERN CURRICULUM

A. The Realities of Faculty Governance

In our experience, curricular policy decisions are made through a process of faculty governance that includes at least all tenured professors and very often all full-time faculty members. The dean can influence the outcome of such debates but would risk mutiny if she attempted to impose reforms unilaterally. Of course, there is a fine line between policy-oriented reforms and the nuances of their implementation, with implementation a clear prerogative of the dean's office. It is often difficult to generalize about the location of this line; at schools that are functioning well, deans and faculty, especially committee chairs, routinely compare notes about where each thinks the line lies.

Faculties are typically organized into committees, sometimes charged by the dean with accomplishing certain tasks during the forthcoming academic year. In addition to curriculum committees, the vast majority of schools have appointments committees to make hiring decisions, promotions committees to oversee the tenure process and the retention of non-tenured faculty, admissions committees to oversee the process of culling student applications, and administrative committees to manage internal affairs, such as student disciplinary proceedings. Schools also create temporary committees on special topics, such as performance of a self-study in conjunction with ABA accreditation.101

The influence of committees varies among schools, depending on such factors as the strength and management style of the dean, the composition of the committee, the reputations of the committee's members within the school, the degree to which its proposals are viewed as controversial, and the ingrained institutional culture that defines the faculty's dynamics as a decision-making body. The committee process typically moves very slowly, especially in areas

like curricular reform where there are no external deadlines for action\textsuperscript{102} and each individual faculty member has a proverbial "dog in the fight."\textsuperscript{103}

Earlier we suggested that law school faculties are self-selected groups of people who value autonomy enough to forego the financial rewards of private practice.\textsuperscript{104} This central trait has many implications for the formulation of an effective, continuous process to accomplish curricular reform.

On the positive side, faculties consist of bright and exceptionally articulate people who do not wither in the face of a rigorous, substantive debate. Faculty members are generally familiar with the underlying principles of majority voting and \textit{Robert's Rules of Order}.\textsuperscript{105} Most know, at least intellectually, that agreeing to disagree is the ultimate fallback in a system that depends on management by a committee-of-the-whole.

Most professors take pride in their work within the classroom. Even those who view teaching as a necessary evil that is the \textit{quid pro quo} for their pursuit of scholarship are not immune to the humiliation of poor student reviews. A small minority are not motivated by anything that happens in the classroom, good or bad, but typically lack the numbers or the influence to block a strong reform effort.

Despite these positive attributes, the commitment to autonomy has several negative implications for effective faculty self-governance. Academics frequently are unwilling to behave like legislatures on important issues that affect the institution as a whole. Instead, until some rough consensus emerges, non-urgent decisions are discussed at great length or left to simmer in the background. Faculties are often reluctant to vote on decisions, preferring to avoid change altogether. While they honor the concept that robust debate among people with diverse views exemplifies a healthy academic institution, their commendable desire for civility and community may lead to squeamishness about making decisions when they are closely divided. Similarly, respect for the autonomy of colleagues can lead to a reluctance to impose reforms that trigger deep disagreements, including claims that the changes violate that autonomy. Faculty members fear that debates over important substantive issues that are resolved in a manner that upsets a minority of colleagues may inspire resentments that fester for years. Unfortunately, this sensitivity does not always translate into civility during a debate. Rather, the security of tenure and the lack of incentives to submerge personal preferences to the will of the group produce

\textsuperscript{102} Decisions regarding student admissions, faculty promotions, and faculty hiring all have deadlines imposed either externally or by internal rules adopted by the law school.

\textsuperscript{103} As discussed \textit{infra}, Part IV.B.4, most law schools have a strong tradition of relying on committee work in making decisions. To be sure, committee recommendations trigger controversy, but very much like a legislature, the threshold assumption is that the larger body will defer to the committee's work. Deference is significantly more difficult to achieve in the context of curriculum reform because most members of the faculty are directly affected by those decisions.

\textsuperscript{104} See \textit{supra} text accompanying notes 30-34 for a discussion of the attributes of academics.

\textsuperscript{105} See \textsc{Henry M. Robert, Robert's Rules of Order} (Sarah C. Robert et al. eds., Scott, Foresman & Co. rev. ed. 1990) (suggesting basic procedures for organizing debates and making decisions in democratic body).
vituperative exchanges that further deter expeditious decision-making.

Because curricular reform has the potential to provoke significant changes in workload, it provides fertile ground for the emergence of these negative traits, to the point that they may overwhelm the positive characteristics of intelligent people who are accustomed to articulating their views persuasively. By demanding that new courses be invented and old courses changed, curricular reform is viewed as the ultimate assault on autonomy, earning for the process its reputation as a painful bloodletting that should be avoided. Some faculty simply are not interested in doing the additional work, either because they view it as marginally useful or because they resent the burden on their personal time. Some faculty argue that expending resources on curricular reform is not nearly as important as committing resources to other aspects of a school’s internal life—encouraging scholarship is the most prominent alternative.

In sum, the central challenge for the design of a reform process that can overcome these impediments is to avoid provoking a critical mass of faculty to oppose the final package for primarily selfish or empathetic reasons. The key ingredient in a successful process is a suitably lengthy, well-advertised, collaborative, yet carefully structured debate of the issues. A highly organized process that limits the scope of potential changes and affords multiple opportunities for discussion allows momentum for reform to build. We propose a process consisting of four distinct steps, referring to our experiences at the University of Maryland for illustrative purposes.

B. Four Steps

1. Appointing the Committee

Several considerations affect the selection of law school committees. The first step is to select a chair, often the person who will shoulder not only the administrative burden, but the substantive burden of developing policy, conducting empirical research, recruiting candidates, and whatever other activities are assigned to the committee. To say the least, not everyone is suited for this work. Workload is one consideration, temperament another, and reputation among the faculty a crucial third.

At Maryland, the dean sought to relieve the burden of a long-standing chair of the Curriculum Committee by tapping a relatively junior\textsuperscript{106} member of the faculty who was tenured but had no obvious pedagogical agenda. Her status as a relatively ignorant agnostic on curricular issues proved helpful throughout the early stages of the process because she was perceived as a facilitator, rather than an advocate, in all areas except clinical education, where she typically teaches. Because Maryland had already made a substantial commitment of resources to clinical offerings and has a national reputation in the area, this bias was not seen as debilitating. Qualification as a scholar was an important characteristic to

\textsuperscript{106} Professor Steinzor is junior in time of service if not in age, having graduated from law school in 1976, but not entering academia until 1994.
clinch the choice, making the chair a workable “bridge figure” between clinical and traditional, or “stand-up” faculty.

There are clear advantages to choosing as chair a person without a reputation or ideology to uphold. Indeed, the only other more important characteristics for a chair are ability and willingness to work hard and a personality that is perceived as at the low end of the spectrum for flamboyant or dogmatic advocacy.

As for the remainder of the committee, deans try to honor faculty preferences on the undoubtedly sound theory that people are less likely to work at what they do not like. They typically endeavor to create a diverse and balanced membership, with representatives of key internal constituencies represented in rough relation to their number and clout among the faculty as a whole. Thus, committees may include senior and junior members, white members and members of color, a balance of genders, classroom and clinical teachers, and faculty who are more classroom-oriented offsetting the views of those preoccupied with scholarship.

Deans are criticized if they ignore these delicate politics and understandably are interested in avoiding such friction. Unfortunately, however, it is impossible to accomplish continuous reform, especially when a school must overcome the weight of institutional inertia, with a committee that is more than modestly dysfunctional. If balancing constituencies cannot be accomplished without undermining the overriding goal of assembling a competent group, representative politics must become a lower priority.

We are aware that the phrase “modestly dysfunctional” smacks of psychobabble and we use it in a very limited way. Other committees may try to achieve consensus recommendations to the faculty and succeed more often than not. Because they must meet external deadlines, however, they are compelled to make decisions, consensus or not. As we have discussed, curriculum committees do not operate within the constraints of such deadlines and may find it difficult to make decisions without achieving virtually unanimous support among the committee. Or, to put the problem another way, if a strong minority of the committee does not believe that ongoing, significant reform is absolutely necessary, it is both easy and costless for them to disrupt the collaborative process. A committee comprised of members who are angry or demoralized with regard to the institution in general, at odds with the dean, or doctrinaire in their commitment to specific pedagogical ideologies is virtually certain to fail.

As discussed further below, the committee itself must be unified, not in the sense of having a single mind, but rather with enough internal momentum and respect for each other to resolve these disputes without exacerbating the schisms among the larger faculty. Committees must be prepared to change proposals in response to comments from the faculty at large, as well as alumni and student representatives. They must remain flexible and imaginative throughout the formal consideration of their recommendations.

107. See infra Part IV.B.3 for a discussion of the proposal period.
Maryland's Curriculum Committee was composed of several faculty members with a longstanding interest in curricular reform, as well as a few new recruits. A minority of members had a long history of debating these issues; none were particularly close friends. Simply by spending many hours together discussing what the problems were and how to solve them, the Committee developed a strong sense of camaraderie and respect. Interestingly, some of these hours were spent in face-to-face meetings, but many others were spent exchanging e-mail that examined all aspects of the issues. This ability to communicate almost instantly and as extensively as one wished, without the constraints of meshing schedules and traveling to a central location at a set time, was extraordinarily useful. As controversies heated up and other faculty members criticized the committee, its process, and its recommendations, e-mail became a place to ventilate frustration, break the tension with inside jokes, and strengthen the committee's sense of its overall mission.

Members of the faculty who are talented at working collaboratively, genuinely concerned about the quality of legal education, and willing to work significantly harder to achieve reform are too often few and far between. We can only hope that we have made a persuasive case for deploying a disproportionate share of such limited resources to curricular reform.

2. The Study Period

At least a semester, and preferably a full year, should be committed to the study of curricular reform options. This approach has significant implications for the use of very limited institutional resources. Because most faculty members are presumably interested in how the curriculum is structured, discussions should be scheduled at times when everyone is available to meet. Yet other priorities compete for the small number of hours when no or few classes are held, such as routine meetings of the faculty as a whole, faculty and outsider presentations of scholarly work, and meetings to discuss appointments, promotions, and tenure. Because decisions about how to allocate institutional resources like meeting time are administrative, curricular reform should proceed with the dean's firm support for the process.

Once an institutional commitment is made to hold a series of "common time" discussions of curricular reform, the committee must think long and hard about how best to define the frequency, duration, format, and agenda of such meetings. Meeting too often—more than six to eight times per year—risks undermining faculty goodwill and attendance. Meeting too little, perhaps two or three times yearly, risks accusations that the process is a sham and smacks of an effort to "railroad" reform. Meetings that last much more than ninety minutes are more difficult to schedule and very wearing in the context of a group that typically does not practice sophisticated meeting management skills. Nevertheless, given the propensity of many law professors to speak at considerable length, meeting for much less than ninety minutes is unlikely to result in a sense that all had an opportunity to be heard.

Determining format and agenda is the most challenging procedural issue.
Ideally, the person chairing the meeting should not participate actively in the discussion, and yet must be someone who is capable of pushing for clarification and exerting some control over those who are monopolizing the conversation. She must have a sophisticated understanding of the controversies likely to arise, but be willing to forego an opportunity to convince others of the wisdom of her views.

The agenda for the meetings should be announced early and often. Constant iteration of what the committee has decided to do, how the process will work, and what questions people should consider in formulating their views are crucial. In the end, the committee must convince the faculty that it has sponsored a fair, open, and exhaustive deliberative process. If it does not, those who ultimately disagree with its recommendations may be able to derail reform by raising procedural objections even if they fail to persuade a majority to join them on substantive grounds.

At Maryland, a Faculty Forum luncheon is scheduled each week of the school year and five of these were selected as the primary fora for curricular debate. Over the course of several months, the Curriculum Committee publicized the dates assigned by the deans’ office and confirmed the schedule several times. In advance of each session, the Committee circulated a memorandum explaining the issues that would be discussed at that particular session. An example of those memoranda appear in Appendix A of this Article.

The Committee chair ran these faculty fora, calling on people, asking pointed questions on occasion, and keeping detailed notes regarding what was said. She adopted the procedure of announcing a list of everyone who had requested a chance to speak several times during the course of the session so that people knew they could lower their hands because they had succeeded in catching her attention. This procedure also convinced the more considerate faculty members to keep their comments short so that everyone could be heard. Sessions began and ended on time. While such details may sound petty, cumulatively they were crucial to the perception that discussions of curriculum could be well organized and focused without deteriorating in tone or substance.

It had been so long since Maryland had conducted a comprehensive review of the curriculum, and there was sufficiently widespread cynicism about the faculty’s ability to work together to resolve such questions, that the Committee decided to take one final step. The chair assumed the job of conducting individual meetings with virtually all faculty members; in the end, only a handful were missed because of scheduling difficulties. The ground rules for the interviews were that no one’s views would be attributed to them by name unless they wished for such identification. People were encouraged to be candid and specific, and to discuss both what they did not like about the curriculum and any ideas they had about appropriate reforms.

The interviews were organized once again around a specific set of questions, with the interviewer shifting emphasis among them depending on the specific faculty member’s areas of teaching interest. The questions used by the Committee Chair to structure these interviews appear as Appendix B to this Article. The first several questions solicited the interviewee’s views on broad
educational goals, both personal and for Maryland as a whole. This approach was suggested by a faculty member who was concerned about having a shallow discussion that focused on only superficial issues like course subjects and credit allocations, without reaching a more profound exploration of what the institution should be striving to achieve pedagogically. At the time he made this comment, some of his colleagues expressed concern that negotiating a consensus on educational values and goals would take several decades and might never be accomplished. Yet no one was willing to speak in favor of a superficial, vacuous inquiry. Soliciting and describing people's views on these relatively cosmic questions became an acceptable alternative.

One last benefit of soliciting individual views deserves mention. Many people are less defensive, more humorous, less prone to engage in rhetorical filibusters, and more flexible intellectually when they are conversing one-on-one or in small groups. The opportunity to explain grievances that had been festering quietly for many years, as well as the sense that the Committee chair was interested in their opinions, moderated the attitudes of cynicism and resentment that posed a significant challenge to effective reform. The perception that some faculty members were unjustifiably successful in protecting their pedagogical turf had caused deep-seated tensions that were corrosive for the institution as a whole. Many believed that specific aspects of the curriculum (for example, first-year instruction) were so old-fashioned and wrong-headed that they undermined good teaching in the upper-class semesters. Several interviewees had very good concrete ideas on how to accomplish reform. A surprising degree of consensus emerged on certain threshold points, such as the need to consolidate standard, two-semester required courses into one semester, which allowed the Committee to much more easily envision the type of reform package that would both improve the academic program and "sell."

The results of the interviews were an important component of the Committee's final report on the results of its year-long study: a hefty, 200-page document that was distributed at the end of the 1999-2000 school year.108 Obviously, there is no way to determine how many faculty members actually made their way through the full report, but from a purely procedural standpoint, its availability convinced most people that the Committee had been diligent about consulting with the faculty as a whole.

Obviously, all of these efforts consumed large amounts of time and were an unusually heavy burden on members of the Committee. Its members persevered because they became very interested in the substantive issues at stake and gradually realized that the momentum for reform was building. The Committee enjoyed the dean's consistent support for such efforts, and she regularly asked the Committee Chair to comment at routine faculty meetings regarding the progress of this work.

108. See supra note 97 for a discussion of the Maryland Report.
3. The Proposal Period

A comprehensive, well-organized report explaining the results of the study period should reveal the framework of possible reform. One or two strong points of consensus are likely to emerge, and they can serve as a primary motivation to accomplish more comprehensive reform. At Maryland, for example, there was widespread consensus that it did not make sense to offer first-year courses like torts, contracts, and civil procedure over two semesters, especially because different faculty members often taught the same section in fall and spring, and coordination was difficult. The result was that students were exposed to two different teaching styles and points of substantive emphasis, in theory a good result that was defeated in most cases by duplication, contradictory instruction, and wasted effort on transition between semesters. In some cases, professors demanded that students purchase different textbooks, an expense they justifiably resented. The fact that the majority of peer law schools had long since dropped this cumbersome arrangement and that faculty felt pressure to make room in the curriculum for new subjects solidified support for this change.109

This consensus on the importance of consolidation and the strong dissatisfaction with the existing approach, gave the Curriculum Committee an opportunity to propose other, more controversial reforms of the first-year curriculum.110 Faculty unhappy with one or the other of these changes soon discovered that the sequence of courses and assignment of credits was a relatively intricate affair and that changes required recalibration of the delicate balance of offsetting factors considered by the Committee. To illustrate these relationships, we have included a chart summarizing the Committee's final proposal as Appendix C of this Article.

For example, proponents of exempting civil procedure from consolidation, retaining it as a two-semester course, soon discovered that this arrangement would mean moving other requirements to the second year, delaying and in some cases defeating students' efforts to complete a sequence of specialized, elective courses. Those who wanted appellate advocacy to remain in the second semester discovered that this placement would frustrate the Committee's goal of having students study a single case through the development of a theory of the case, trial on the merits, and appeal to a higher court; this approach was a cornerstone of its proposal to offer a three-semester course, begun in the first semester entitled "Legal Analysis, Writing, and Research"—or LAWR I, LAWR II, and LAWR III.

As important as strong agreement is to building momentum for change, the committee must project a willingness to consider modifications to its proposal. At the initial proposal stage, the perception that the committee is intransigent

109. See Maryland Report, supra note 97, app. C (summarizing status of first-year curricula at other schools).

110. Like other law schools, Maryland schedules most of its required courses during the first year. In the first phase of reform, the Committee confined itself to this discreet set of courses, leaving consideration of upper-class curricular issues to another year. That process is ongoing.
has the potential to stir up a backlash among the faculty, giving those fearful of change or opposed to specific changes an opportunity to disrupt the process.

To project flexibility, a curriculum committee could propose more than one alternative, even designing alternative packages of reform proposals in order to emphasize educational trade-offs. The disadvantage of this approach is that it invites other faculty members to further tinker with the options, creating a confusing array of possibilities that could bog down the process. Multiple proposals also imply that the committee does not have an opinion regarding which approach is pedagogically better, making it potentially more difficult for the committee to persuade the faculty to follow its leadership.

At Maryland, the Committee frequently discussed the advantages and disadvantages of these approaches, ultimately concluding that it made the most sense to forward a single, unified proposal. The most important factor in this decision was the Committee's consensus that its proposal was substantively superior to other alternatives. Consequently, we saw no point in proposing alternatives that were not as good for solely political purposes.

Not every detail of the proposal enjoyed the heartfelt support of each member of the Committee. Logrolling and opportunist compromise were necessary before the group could sign off on the proposal as a whole. Members of the Committee met one-on-one behind closed doors to exhort each other to find common ground. The success of this effort to produce a public show of unity depended not only on the Committee's delicately balanced membership but also on its year-long experience in working through the possible options. In short, curricular reform requires patience, compromise, a commitment to the bottom line of achieving final action, and a working relationship grounded in common experiences that unify the group, without rendering doctrinaire.

4. The Decision-Making Period

As explained earlier, law school faculties meet periodically, with the frequency, length, tone, and content of the meetings determined by the institution's culture and the management style of the dean. It is difficult to have an extended meeting during the semester because faculty have overlapping teaching times and their presence is frequently required outside the institution at conferences, meetings, or, for clinical faculty, in court. For all these reasons, until curricular reform becomes a relatively routine, ongoing activity, scheduling the final decision-making session requires careful thought.

Those unable to attend can protest their lack of due process. Depending on the length of the typical meeting and the level of controversy engendered by the committee's proposal, "mark-up" of the Committee's proposals may extend to a second session, leaving time for the negotiation of compromises, but also allowing disagreements to fester and deepen. Members of the curriculum committee, by then worn out with the effort of producing a saleable package, can

111. See supra Part IV.B.1 for a discussion of appointing the committee members.
112. See supra Part IV.B.2 for a discussion of faculty meetings during the study period.
start to sway under the pressure of dealing with challenges by the remainder of the faculty, losing their ability to think and react strategically.

At Maryland, the final vote was scheduled during a half-day meeting held soon after the last class of the first semester, before faculty scattered for the holidays, toting boxes of blue examination books to grade. Once again, this date was advertised frequently, beginning months in advance. Lunch was offered, with the announced intention that it be served at the end of the deliberations.

The Curriculum Committee spent several hours debating whether to request that its reform package be considered first on an up-or-down vote, with amendments permitted only if a motion to accept the package failed. The Committee had several arguments for this approach. First, the overall process was a model of extensive consultation and an effort to address legitimate concerns. The Committee had already circulated a “straw proposal,” eliciting written and oral comments from the faculty and revising details of its proposal accordingly. The process had been sufficiently lengthy and deliberative that faculty dissidents could not fairly argue that they were precluded from expressing their views.\(^\text{113}\)

Maryland, like many schools, has a strong tradition of depending on committee work to develop such proposals. The alternative, trying to consider all potential changes at meetings of the faculty as a whole, represents a commitment of institutional resources and personal time that the vast majority of faculty members are not willing to make. In general, the perspective that animates the committee process is that the faculty as a whole has spent far less time considering the pros and cons of the issues than individual members of the relevant committees. For these reasons, a majority of faculty members generally support committee decisions, although this majority may not rise to the level of a “supermajority” needed to sustain fundamental curriculum reform.

Finally, from a purely pragmatic perspective, taking amendments was likely to produce such disruption of the carefully balanced credit allocations that the modified package would have to be revised again to make it work administratively.\(^\text{114}\) This result would mean many more months of work, as the Committee attempted to rearrange the courses and recalculate appropriate credit allocations, with no assurance that the faculty would accept the new formulation next time around. Members of the Committee, having spent close to two years on the project, were intent upon avoiding this method of tabling their recommendations, and agreed privately that if the package failed to achieve approval it might be time for a new committee to pick up this effort.

Despite these rationales for a “closed rule” that permits debate but

\(^{113}\) Had the Committee opted for presenting several alternative packages to the faculty, the argument that it was entitled to an up-or-down vote between them would have had more weight. In that context, no one would be limited to choosing a single vision of a new curriculum, but instead would have the freedom to choose among prefabricated, integrated proposals that were administratively feasible. The Committee’s decision to back a single proposal therefore mitigated against changing the traditional process that allows participants to discuss and amend proposals.

\(^{114}\) See Appendix C for proposed credit allocations.
forecloses amendments until the package as a whole is considered, the audacity of insisting on a single up-or-down vote cannot be underestimated, and remained problematic for members of the faculty who were strenuously opposed to aspects of the Committee’s package, and even to some who agreed on the merits. Although up-or-down votes occurred frequently by default because no one had the inclination to amend a proposal, no one could remember an historical instance of the Maryland faculty foreclosing its members from trying to change a committee proposal. For better or worse, faculties do not view themselves as legislative bodies, but rather believe they are inspired by a higher calling as intellectuals committed to individual autonomy. Given this tradition, the Committee recognized that even faculty members who supported the substance of the proposal might become so offended at the unprecedented effort to close off debate that they would derail the process or end up bitter and resentful at its conclusion. In the final analysis, it was going to be difficult enough to call for a vote without risking a mutiny over how that vote should be structured.

Ultimately, the dean and Committee chair backed off an explicit declaration that amendments would be ruled out-of-order, although they argued energetically that the Committee was entitled to a vote on its package before amendments were offered and discussed. Various faculty members proposed postponement of the vote, arguing that such momentous decisions should not be made hurriedly and that further study could produce a consensus for reform, as opposed to a divisive final decision on the merits. The dean indicated that she would ask for the “yeas and nays” regardless, believing the Committee deserved one vote on its proposal.

In the end, Maryland’s Faculty Council voted 2:1 in favor of the final package, as modified by “legislative history” on specific points that were negotiated at the meeting. A few professors were discouraged, and a few others were very angry. But for most of this group, these frustrations were generalized, as opposed to resolving into pointed resentment of the dean or Committee members. The large margin of the vote indicates a low level of sympathy for postponement of the vote, although the dean could have accomplished the delay by siding with those advocating it. By resisting this impulse to make an interim peace, she avoided compounding the faculty’s, and especially the Curriculum Committee’s, reluctance to engage in ongoing reform.

For those who were most dissatisfied with the result, the final stage of the Maryland reform process resembled the corruption of legislative logrolling in its worst form. This group, which certainly has legitimate concerns regarding the content and scope of reform, argued that voting in a way that transforms faculty into winners and losers also destroys the collegiality of the consensus process followed most of the time at most schools. This argument overlooks the price paid for demanding consensus as a prerequisite for action: institutional paralysis on issues like curriculum reform where forging true consensus is impossible. We believe the price of inaction in this arena is too high and that the admittedly gentler, less disruptive approach of achieving consensus must be sacrificed. But it is important to note that Maryland has an institutional culture on the pleasant end of the civility continuum, making the price paid for action occasionally
bearable.

The Committee’s repeated assurances that the proposed new curriculum was not carved in stone, would be subject to continuous review and evaluation, and would be changed if it did not live up to its promise or proved too burdensome to implement, may have persuaded some of those who were reluctant to support the package. More important, however, we believe the implicit commitment to continue monitoring operation of the reformed curriculum provides the impetus for the sort of review and reevaluation that is essential if the academic program is to continue to provide a viable and useful preparation for modern law practice.

That said, we must acknowledge that had a closer vote been cast, postponement of the decision should have become a more attractive option. Attempting to implement curricular reforms that pass by only a narrow margin would be extremely difficult under the typical laissez faire framework of law school governance, especially if the dissidents represented a critical mass of faculty members who would ordinarily implement the reforms.

V. CONCLUSION

Law schools are under enormous, cumulative pressure to change the way they deliver legal education. They are in an unusually vulnerable position because of the uncertainty created by the staggering innovations of the World Wide Web, combined with the demands of the private bar, the agenda of the larger university, and the public’s low regard for the profession. For all of these reasons, continuous curricular reform is a necessity and not just an option.

The alternative is to have a school’s educational priorities determined inadvertently by the vagaries of student demands regarding “hot” specialties like sports law, by the complaints of alumni that young associates must be better equipped as writers, negotiators, or trial advocates, or by the law school’s appointments committee, which has extraordinary influence on curricular content without ever explicitly considering such issues as part of its mandate.

This Article argues that continuous reform of curricula is the only way law schools will be able to respond to the changing needs of their particular consumers. Of course, most schools already engage in some tailoring of their educational agendas. The key difference advocated here is to acknowledge continuous change as a positive value, as opposed to a painful, unrewarding, interminable duty to be avoided at all costs.
APPENDIX A

MEMORANDUM REGARDING FACULTY MEETING DURING THE STUDY PERIOD

To: Faculty

From: Rena Steinzor, Chair, Curriculum Committee
       Edward A. Tomlinson, Chair Emeritus

Date: September 28, 1999

Re: Faculty Forum on October 6: Required Courses at the University of Maryland School of Law

On October 6, 1999, we will hold the first faculty forum on the curriculum. The subject will be required courses, as defined further below. We will moderate the discussion, which will inform not only the participants, but also the report the Committee will write and submit to the faculty by the end of the year. If you are unable to attend the lunch on October 6 and have views to contribute, please let Rena know so she can interview you before writing the report.

Because we plan to have a few more faculty fora on these issues, and wish to have a comprehensive discussion of a discrete area each time, we have organized the agenda for this lunch very carefully. “Required courses” are courses that students must take in order to graduate with two key exceptions. First, we will leave to another day the discussion of so-called “experiential learning” coursework, presented primarily under the auspices of the Clinical Law Office and the Legal Theory and Practice program. Second, we will consider the writing component of such classes as Legal Method in a separate session that will review the issues raised by the writing component of all our courses. Please see the list of required courses, attached for your convenience.

In recent memory, the faculty has not engaged in an ambitious effort to conduct structured discussions on such important topics. One key to making the best use of our time together is to focus and organize the conversation. We ask that you give the Committee the benefit of the doubt at this point and follow our lead on how the agenda is presented. The alternative is a process that is chaotic at best, and that will make it much more difficult for us to produce the written report we all need to review in a timely manner.

We have developed the following questions to “jump start” the conversation:
1. Why do we offer the basic required courses (contracts, torts, property,
civil procedure, and constitutional law) in two installments? Are there advantages to offering these basic courses in one semester?

Should we reduce or enlarge the hours allotted to any of the required courses? If we do reduce the credit hours for the required courses, what adjustments should be made in the upperclass curriculum?

Why do we require some courses in the upperclass years rather than in the first year? Specifically, should Legal Profession be offered earlier or later in a student’s education? (The course is taught in the first year for the Evening Division and in the second or third year for the Day Division.)

*Reasons for offering the courses in two installments include students’ need for two semesters to digest the material; asking faculty to teach and students to take 4 or 5 credits of a single topic in one semester is too much; students need the feedback of an early exam. Reasons to consolidate include the advantages of a concentrated learning experience; fewer exams to administer and grade; efficient use of limited faculty resources; avoiding inconsistencies (lack of “fit”) between the first and second installments.*

2. Should we require additional courses? What should they be? Are there downsides to requiring additional coursework that we should consider?

Conversely, are there courses we should drop as requirements?

*Additional required courses might include evidence, an international or comparative law course, as Marley Weiss has suggested, or business courses like tax, business associations, sales, and secured transactions. Downsides include leaving students less time to take such featured concentrations as environmental and health law. Candidates for courses that could be dropped might include criminal procedure and legal profession.*

3. Given the constraints on our resources, what is an acceptable upper range in class size for required courses (excluding the small section)? 50-75? 75-100? More? If we believe that we should make a commitment to keep class size in such courses in the lower ranges, what can we do to conserve resources to make such an approach possible, and how high a priority should this effort be?
REQUIRED COURSES AT THE UNIVERSITY OF MARYLAND
SCHOOL OF LAW

Day Division
First Year:
Civil Procedure I and II (2 and 3 or 3 and 2)
Contracts I and II (2 and 3 or 3 and 2)
Property I and II (2 and 3 or 3 and 2)
Torts I and II (2 and 3 or 3 and 2)
Criminal Law (3)
Legal Method (2)
Introduction to Appellate Advocacy (1)
Constitutional Law I (3) (70% of class)
Cardin (3) (30% of class)
29 credits total

Upper-class Years:
Constitutional Law I (30% of class)
Cardin (3) (70% of class)
Constitutional Law II (2)
Criminal Procedure (2)
Legal Profession (3)
10 credits total
39 GRAND TOTAL

Evening Division
First Year:
Contracts I and II (2 and 3 or 3 and 2)
Property I and II (2 and 3 or 3 and 2)
Torts I and II (2 and 3 or 3 and 2)
Legal Method (2)
Legal Profession (3)
20 credits total

Upper-class Years:
Civil Procedure I and II (2 and 3 or 3 and 2)
Constitutional Law I (3)
Constitutional Law II (2)
Criminal Law (3)
Criminal Procedure (2)
Introduction to Appellate Advocacy (1)
16 credits total
36 GRAND TOTAL
APPENDIX B

November 30, 1999

QUESTIONS FOR CURRICULUM COMMITTEE INTERVIEWS

NOTE: Each interview should take no more than 45 minutes.

1. What subjects have you taught over the last five years? (Are there any others you taught consistently and will return to again?)

2. Are you satisfied with the way those courses are set up: e.g., number of credits, location in curriculum, enrollment, content? If not, why not?

3. What are your two or three major educational goals (i.e., the “take home” message you hope students will comprehend) for each course?

4. Please name the (a) five skills and (b) five broad concepts that every law student should possess before leaving law school.

5. Do we require the right courses, award the right number of credits, and place the courses in the right places within our curriculum? If not, why not?

6. What is the “core curriculum” of courses that should be offered every year?

7. How important are the specialty programs (clinic, health, environment, and perhaps intellectual property) to Maryland’s (a) national reputation, and (b) actual quality as an institution? Do you think we emphasize the right ones, or should we add programs or de-emphasize the ones we have?

8. What direction should we take in teaching writing at Maryland? How should we make the existing program grow?

9. What about “experiential learning”—which aspects of our programs are successful and which need to be changed?

10. What principles would you apply to the delicate question of getting core courses covered and allowing faculty to teach their interests?
11. If you could make any modifications you liked to the law school curriculum, regardless of resources and traditional ways of doing things, what would they be? (Possible prompt: how has the practice of law changed in the last 30 years and what changes in the curriculum are desirable as a result?)

12. Are there any changes you hope we will not make as a result of this curricular review? Why?
APPENDIX C

CHART SUMMARIZING PROPOSED CHANGES TO REQUIRED CURRICULUM

Day Division Schedule

**Fall Semester, First Year**

<table>
<thead>
<tr>
<th>Course</th>
<th>Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contracts</td>
<td>4</td>
</tr>
<tr>
<td>Torts</td>
<td>4</td>
</tr>
<tr>
<td>Property</td>
<td>4</td>
</tr>
<tr>
<td>Legal Analysis, Writing, &amp; Research (LAWR I)</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>15 credits</strong></td>
</tr>
</tbody>
</table>

**Spring Semester, First Year**

<table>
<thead>
<tr>
<th>Course</th>
<th>Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Procedure</td>
<td>4</td>
</tr>
<tr>
<td>Constitutional Law: Structure</td>
<td>3</td>
</tr>
<tr>
<td>Criminal Law</td>
<td>3</td>
</tr>
<tr>
<td>Legal Analysis, Writing, &amp; Research (LAWR II)</td>
<td>3</td>
</tr>
<tr>
<td>Limited Elective (including LTP to fulfill Cardin)</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>16 credits (of which 13 are required)</strong></td>
</tr>
</tbody>
</table>

**Fall Semester, Second Year**

<table>
<thead>
<tr>
<th>Course</th>
<th>Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Law: Individual Rights</td>
<td>3</td>
</tr>
<tr>
<td>Legal Analysis, Writing, &amp; Research (LAWR III)</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>5 credits</strong></td>
</tr>
</tbody>
</table>

**Upper-class Years**

<table>
<thead>
<tr>
<th>Course</th>
<th>Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Profession</td>
<td>2 to 3</td>
</tr>
<tr>
<td>Advanced Legal Research</td>
<td>1</td>
</tr>
<tr>
<td>Advanced Writing Requirement(^i)</td>
<td></td>
</tr>
<tr>
<td>Cardin Requirement(^ii)</td>
<td></td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>3 to 4 credits</strong></td>
</tr>
</tbody>
</table>

**Total Number of Required Credits:**

| Credits: 36-37 (not including Cardin)                    |         |

---

\(^i\) To satisfy this requirement, a student must complete a research paper of substantial quality in connection with a seminar or course or through independent written work. The Committee is not recommending a specific credit minimum or maximum for the Advanced Writing Requirement.

\(^ii\) The Committee is not recommending a specific credit minimum or maximum for Cardin Requirement offerings.
### Evening Division Schedule

#### Fall Semester, First Year
- Contracts or Torts: 4 credits
- Criminal Law: 3 credits
- Legal Analysis, Writing, & Research (LAWR I): 3 credits
**Total:** 10 credits

#### Spring Semester, First Year
- Contracts or Torts: 4 credits
- Constitutional Law: Structure: 3 credits
- Legal Analysis, Writing, & Research (LAWR II): 3 credits
**Total:** 10 credits

#### Fall Semester, Second Year
- Civil Procedure: 4 credits
- Property: 4 credits
- Legal Analysis, Writing, & Research (LAWR III): 2 credits
**Total:** 10 credits

#### Spring Semester, Second Year
- Constitutional Law: Individual Rights: 3 credits
**Total:** 3 credits

#### Upper Class Years
- Legal Profession: 2 to 3 credits
- Advanced Legal Research: 1 credit
- Advanced Writing Requirement\(\text{iii}\): 6 to 7 credits
**Total Number of Required Credits:** 36-37 credits

**Total Credits Required for Graduation:** 85 (Both Divisions)

---

iii To satisfy this requirement, a student must complete a research paper of substantial quality in connection with a seminar or course or through independent written work. The Committee is not recommending a specific credit maximum or minimum for this Advanced Writing Requirement.