

The Robert H. Preiskel and Leon Silverman Lecture
in the Program on
The Practicing Lawyer and the Public Interest

LAW AND LEADERSHIP

Ben W. Heineman, Jr.

Yale Law School
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INTRODUCTION

Good afternoon – and my thanks to Harold for introducing a person only my mother would recognize.

It is a great privilege to speak to you today under the auspices of a program which honors two distinguished leaders of the legal profession – Bob Preiskel and Leon Silverman. I did not know Leon but, like so many others, have long admired his career in both the public and private sector, and his devotion to pro bono causes. Bob and I were friends of long-standing, and no one had a greater commitment to the ideals of a life in the law than Bob. Typically, at our last meeting earlier this year, still activist in mind though infirm in body, he enlisted me to work with him and support Equal Justice Works, the national organization which advances public interest law and provides public interest fellowships. We will miss him greatly.

My thesis today is that graduates of law schools should aspire not just to be wise counselors but wise leaders; not just to dispense “practical wisdom” but to be “practical visionaries;” not just to have positions where they advise but where they decide. Put another way, I wish to redefine, or at least re-emphasize, the concept of lawyer explicitly to include “lawyer as leader,” with the profession today more candidly recognizing, preparing for, and aspiring to broad roles of ultimate responsibility and accountability, roles which those with core legal training have, in fact, assumed throughout history and which Tocqueville recognized and celebrated more than 150 years ago.

Why do I advance this thesis?

- First, our society – whether national or global – suffers today from a leadership deficit. We need our brightest, broadest, toughest, most ethical, most broad-gauged to combine strong substantive visions with an ability to get things done. Surely, the graduates of this, and other great law schools, can try – and I emphasize try – to address that deficit if they are so motivated. The core competencies of law are as good a foundation for broad leadership as other training. This is not to say that the “best and the brightest” are entitled to lead – nor that they will succeed if they do. That cozy assumption has been born and has died many times, certainly, when I was a student, in a tragic war in Southeast Asia. But it is to say that those who are blessed should attempt the difficult, perhaps Sisyphean, task of leadership – but with humility about the time, effort, and discipline required, and about the difficulty and contingency of effecting important change.
- Second, the legal profession, by many accounts, is suffering from a “crisis of morale,” to use Dean Kronman’s phrase in *The Lost Lawyer*: a crisis which is “the product of growing doubts about the capacity of a lawyer’s life to offer

fulfillment....” An important dimension of this problem is the disconnect between one’s personal values and one’s professional life, especially the possible amorality of serving clients’ interests in an adversary mode. Providing leadership can certainly be an affirmation – and a testing – of one’s vision and one’s values. So providing leadership may serve both societal and individual needs.

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

Let me also be clear at the outset that my view of leadership is very capacious:

- It can be in strictly legal institutions – the bench, the bar and law schools – or in social, political and economic organizations.
- It can be in the public sector...or in the private sector...or in the non-profit sector.
- It can be in traditional institutions or in new institutions created by new leaders – it can lie in finding solutions for an existing agenda of issues or defining a whole new agenda.
- It can be in policy or in politics.
- It can be as a specialist or as a generalist
- It can be in U.S. institutions or in global ones—and it can involve U.S. citizens or the many extraordinary non-U.S. law students and lawyers who may have some U.S. experience in the law schools, the practice or both.
- It can be as an insider, using power for good ends but with inevitable compromises, or it can be as an outsider, seeking to speak truth to power without the responsibility of institutional authority.
- It can be as a person of action or as a person of the mind whose ideas as intellectuals in a professional school seek ultimately to affect action.

- And, it can have many styles and effects: command and control, collegial, managerial, exemplary, charismatic, strategic, transformational.

But, whatever the setting and whatever the style, the lawyer as leader is focused on making decisions for institutions or causes or ideas which engage the whole person, within that chosen context, and which, hopefully, have, as a driving force, the desire to make our national or global society a “better place,” however difficult to define, much less achieve.

But, is this a thesis which bends the concept of a lawyer beyond recognition? Bear with me for a moment because I have not wholly abandoned the temple nor the traditional profession – indeed my aspiration for lawyers as leaders builds on basic legal training and modes of thinking – on core legal competencies. And, importantly, it certainly contemplates the historic roles of astute lawyer and wise counselor as having high value in and of themselves and as stations on the way to leadership.

One last framing point: I view these remarks today not so much as a lecture but as bearing witness. I am here, of course, as a practitioner and, like all of us, I am a prisoner – or, on a charitable day, a beneficiary – of my experience. So, although I may talk in general terms, I am reflecting my enormously varied, some might say bizarre, career, as Harold has indicated in his introduction. In other words: I couldn’t hold a job. But that failing did allow me to sail to many corners of the world where lawyers, especially lawyers from wonderful schools like Yale, can go, if they have the wit, or in my case the luck, to voyage from public interest lawyer to general counsel of a great multi-national company, with stops along the way as test case and Supreme Court litigator and as an assistant secretary for lost causes (i.e. for policy) at the then Department of Health, Education and Welfare (now Health and Human Services).

I want to build on what I have just said and address four points.

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

These musings are aimed generally at law students, the profession and law schools. My hopes this afternoon are modest: not that the ideas will be accepted and adopted, but rather that they might have resonance – and stimulate reflection and discussion – among students and faculty at this unique school, too. In that regard, I should note that Dean

Kronman did an important service in raising the issue of law and leadership more than a decade ago, but that my analysis and conclusions differ markedly as I will explain at the end of this talk.

QUALITY OF MIND

We can all agree on the value of “boot camp” – of basic training in legal subjects and concepts. It is no accident that more than 100 years after Langdell and more than 50 years after the Realists, Yale Law School’s first year in 2006 (like the first year at most law schools) is still built on the four traditional subjects of torts, contracts, constitutional law and procedure (and, perhaps, property and criminal law at other schools). These courses still use cases, primarily, if not exclusively, described in appellate opinions, to elucidate legal concepts, legal reasoning, legal ambiguity, modes of argument, the importance and elusiveness of “facts,” issue spotting and the huge normative questions lurking underneath the rippling surface of lines of cases, to list just some of the lessons learned. However narrow, the analytic reasoning from the case method – and an understanding that what is outside the facts and law of the case may shape law in the future – is at the core of what makes us a profession....and what is drilled into us, perhaps to the point of ennui, during the second and third years of law school as well.

These are the scales. You can’t play the piano – much less compose a piece – until you learn them. And, I think students at the top 25 schools (and maybe at more than that), learn this basic analytical thinking well in their first year of law school.

But the question at the dawn of the 21st century is what other qualities of mind – modes of thinking – do we want in our lawyers-counselors-leaders? Let me discuss a few. Some of these qualities of mind, especially the first I will mention, are familiar to this audience, reflecting changes in thinking about law which occurred in the 20th century, often with impetus from this school, such as exploring law in action or reasoning about the implicit or explicit policy frameworks and value choices which surround rules.

But some of these modes of thinking may not seem like “traditional” legal qualities of mind at all – even as revised and restated in the post-Realist world. Nonetheless, if we want legal professionals to be not just astute lawyers but wise counselors and subsequently leaders, then they are an important and, I stress, interrelated list of “complementary competencies” which should be closely associated with the “core legal competencies” to provide a form of “professional general education.”

These qualities of mind are not, I hasten to add, without historical antecedents when reflecting on individuals, with legal training, who became leaders. Nor, as modes of thinking, are they simply the traits of “character and temperament” which Tony Kronman argued were at the core of his concept of the lawyer-statesman – civic mindedness, deliberation, experience, prudence, sympathy, detachment – important as those traits may be.

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

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

- We are seeking lawyers who, regardless of their institutional role, understand not just the importance of exposing the values in tension through systematic alternatives but also of finding a fair balance, in the ultimate course taken, between legitimate competing values. For example, a balance between the policy or risk-cost choices just mentioned. Or, on a grander scale, a balance between the values which underlie so much of American history, legal and otherwise – and which have relevance the world over: between freedom and equality, order and liberty, community and individualism, protection of private goods and advancement of social goods, cultural pluralism and national citizenship to identify just a few. We have to decide – but decisions are better informed with sure grasp of the legitimate values in tension and more durable with a fair balance of those values (if, I stress, the value is legitimate, as segregationist state laws in the post-civil war period were not).

- We are seeking lawyers who think about the ethical, reputational and enlightened self-interest of their client or the institution they are leading, not just about what is strictly legal or advantageous in the short term. In case anyone hasn’t been reading the newspapers for the past five years, a narrow view of “it is legal” isn’t always the right answer as, for example, Enron’s lawyers, Vinson Elkins, learned After the Fall. An important subject for another time, but exposing and reasoning about these issues too, is critical.

- We are seeking lawyers who, in making recommendations or decisions, are capable of assessing all dimensions of risk but who are not risk-averse. Taking chances is not a quality of mind customarily associated with lawyers but is often vital to needed innovation and change in the public and private sectors.
- We are seeking lawyers who have the ability to understand how to make rules realities: who understand, inter alia, institutions, history, culture, resources, psychology and who can identify, and develop strategies to mitigate, the obstacles to meaningful implementation.
- We are seeking lawyers who understand and respect the hurly, burly world of politics, media and power, not just the more intellectual world of policy prescriptions and legal rules. Whatever the institution or process, whether judicial, legislative or executive, whether public or private, politics underlies creation and implementation of rules or policies – and, in a democratic society, politics “legitimizes” the public decisions directly or indirectly. But, in elite schools, there is general distaste for the current bizarre amalgam of money, television, polling and candidate lack of authenticity, which Joe Klein has described so well in his recent book *Politics Lost*.
- We are seeking lawyers who are not just strong individual contributors but who have the ability to work cooperatively and constructively on teams: whether the innumerable and inevitable inter-agency task forces of government; or the cross-functional teams inside a large company; or the cross-border, multi-function teams of a difficult global transaction; or hard-edged, effective teams of multi-state or test case litigation; or the culturally sensitive teams in multi-lateral, international organizations.
- We are seeking lawyers who are not just strong team members but who can lead and build organizations: create the vision, the values, the priorities, the strategies, the people, the systems, the processes, the checks and balances, the resources and the motivation. Working on teams and leading them are interconnected: much of leadership today is not command and control of the troops but persuasion and motivation and empowerment of teams around a shared vision.
- We are seeking lawyers who in developing positions, whether in article, brief, regulation, legislation, code of corporate conduct, or myriad other rule-announcing activities, have the ability, as you know well, to understand and to draw on relevant disciplines – including economics, anthropology, history, political science, psychology, statistics, sociology, organizational theory – to increase the accuracy and sophistication of those positions. Lawyers cannot all have joint degrees, but they need the aptitude and capacity to envision the relevance and then, through expertise of others, mine these other fields of knowledge – to understand their strengths but, I must stress, also the limits of their assumptions and methods.

- Most importantly in my view, we are seeking lawyers who understand the methods of thinking and analysis taught in the business and public policy schools. I will return to this point, but I believe strongly that law, public policy and business are inseparable perspectives on almost all problems, whether public or private, and today's professionals, from whatever school they receive their formal degree, should have more than passing familiarity with intellectual angles of attack taught at the other two professional schools – or better yet, have joint degrees.
- We are seeking lawyers who have global understanding, intuition and perspective, a subject to which I will also return.
- We are seeking lawyers who can perform early in their careers as specialists so that they truly understand what analytic rigor and excellence are, but can then have the vision, breadth and inclination to be outstanding generalist/leaders later in life. For me, after many years of experience, the quintessential quality of the great generalist is envisioning and understanding the multiple dimensions of problems/issues – to define the problem or issue properly – and the ability to comprehensively and comprehensibly integrate those different dimensions into the decision or position. A great public leader must, in simplistic terms, integrate policy and politics. A great business leader must, in simplest terms, integrate the multiple internal disciplines – finance, human resources, law, engineering, marketing, sales, technology – with key outside perspectives – customers, investors, regulators, community.
- Finally, we are seeking lawyers who understand that private law and private activities can be just as important to the “public good” as public law and government activities. Of course, we need governmental action to secure social goods which the market will slight or ignore, but private institutions exist in a web of laws which must also allow them to compete and grow – because they are so central to our nation's aggregate economy, employment, technology and innovation. I only make this rather obvious point because I am concerned that at this law school there is abundant apprehension of business and market failures but insufficient appreciation of their core virtues in our society and our mixed economy.

By now, you are surely saying, that at least some of these qualities of mind may be too far removed from lawyering or too difficult to attain. But, one short response would be, look at generations of lawyers who were instrumental in changing the face of American law and American institutions: the Founders, who were extraordinary men of learning, ideas and action on a grand, historic scale; the Abolitionists who sought to remove the cancer of slavery embedded in the constitution and customs of a young nation; the Progressives, who accelerated the march to a mixed economy and were, perhaps, epitomized by Louis Brandeis; the Realist/New Dealers who were protean in their intellectual interests and their careers; those in the 40s who were present at the creation of the Soviet Union containment strategy, including a lawyer named Dean Acheson as

Secretary of State; and those who were among the leaders of the civil rights revolution in the 50s and 60s, not just on the streets, but in all three branches of government. Broad, normative, multi-dimensional views of society, not just pre-occupation with narrow rules or incremental legal change, informed those generations.

VALUES

Simply stated, I believe that professional satisfaction comes when “who you are” and “what you do” have a strong correlation. When people leave work, do they have distaste for, and distance from, what they did or do they believe it, in important part, reflects their sense of identity – of “who they are?” Of course, a sense of self comes from spheres of life outside work: family, friends, religion, community – to name a few. But, many individuals who select law, especially those who matriculate at law schools like Yale, do so because they want to express their core values in their work. They do not set out to be Melville’s *Bartleby, the Scrivener*.

That personal assertion, based on extensive experience with at least two generations, is given some indirect support in longitudinal studies of Yale law students. In one, nearly 50 percent of students surveyed five years after law school – starting with the Class of 1996 and with an overall 59 percent response rate – stated that the reason for attending law school was either to engage in the intellectual challenges of the law (29%) or to enter a career in public service (19%). Similarly, in Deborah Cantrell’s study of Yale Law School graduates from the 70s, 80s and 90s, 665 responders identified, from a list of 29 factors, what were most important to them. Heading the list were “interesting work”, “challenging work”, “work had a significant impact” and “work beneficial to others.”

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

“Lawyers according to a Johns Hopkins study are 3.6 times more likely to be depressed than the average among 105 occupational groups....Only 29 percent of lawyers in an ABA study reported that they were “very satisfied” professionally. Work by Lawrence Krieger indicates that law students enter law school emotionally as healthy as other graduate and professional students, but become disproportionately less happy, less satisfied, less stable and more depressed – apparently because the dissonance between the internal value system students bring to law, and the external cues embedded in their education and their profession.” And Dean Kronman argued in *The Lost Lawyer* that the crisis of morale in the profession stems from “a growing sense among lawyers,

generally, that ...[the] yearning to be engaged in some lifelong endeavor that has value in its own right can no longer be satisfied in their professional life.”

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

Beyond that, lawyers may find that the task “of serving clients,” regardless of the clients’ issues, advances a conception of justice, and that conception of service may suffice. Further still, there are “cause lawyers” whose identification with clients’ issues or status – for example, civil rights, civil liberties, human rights, reproductive rights, gender equality, environmental protection, the “un- or under-represented” – may suffice.

My point today is not to judge these different convergences of “values” and “professional action” – indeed in an era when people will change jobs during the course of a career, so may they emphasize different personal values at different times and find different roles provide professional satisfaction. Nor do I in any way intend to diminish the fundamental legal role of providing services to the vast array of institutions and individuals who need them nor to say that the lawyers’ personal values are superior to the values of individuals in need of legal services.

My point instead is that a life of values is central to professional satisfaction and that an extremely important way to live a such life of values is by providing leadership, not advice; to be the client, not just serve the client; to set the course as “practical visionaries,” not just provide “practical wisdom” about what the course might be. Without defining terms further today, I personally hope such leadership simultaneously can be progressive and tough-minded, visionary and effective, humane and realistic, . But whatever.....for the person, deep personal engagement, the deep expression of one’s self and one’s values, can come (although surely won’t always come) from the ultimate responsibility and accountability for an institution or organization or school of thought that matters.

In my own experience, now approaching forty years, there is no more engaging convergence of who you are and what you do than having that leadership responsibility and accountability. Certainly, in my own life, serving as a leader, not just counselor, in big government, big law and big business, has been enormously challenging – seeking to deal with extremely complex problems, to build organizations and to make choices about law, policy and politics that advance public and private interests, but always I hope serving some concept of societal good.

To take one modest example: trying to determine the best way to conduct business with integrity in China, a society bursting with opportunity but rife with corruption, conflicts of interest, autocratic rule of man, not law. Or to take another: at a time when business in society issues are at the fore, trying to define corporate citizenship and to make decisions about what ethical steps a company should take beyond what is required by the spirit and letter of formal financial and legal rules. For most of my career, I have been fortunate beyond words to meet my test of life: I have really liked to get up in the morning. And this was especially true when I had the good luck and great privilege of trying to lead important institutions.

CAREERS

If we are to utilize the qualities of mind I have discussed and if we are to aspire to live a professional life of values, then we need to broaden our conception of what constitutes a “career” for someone who graduates with a degree in law.

First: a descriptive perspective. To some degree, this is already happening. We know anecdotally that professionals entering the workplace are not likely to be “lifers” – to spend their whole career with Cravath or GM or the Foreign Service or the ACLU. For a wide variety of reasons, many professionals will have many different careers. I, for one, am now in my seventh.

That common sense observation is, again, born out by, among other sources, Deborah Cantrell’s Yale longitudinal study of Yale Law graduates from the 70s, 80s and 90s. On average, surveyed graduates held about 3 jobs, with 45 percent having at least four jobs, and almost a quarter having five jobs. Similarly, the broader “After the JD” study of 4,000 graduates from the class of 2000, conducted by the American Bar Foundation, among others, found that, excluding clerkships, more than a third of the graduates had changed jobs once three years out, and 18 percent had already changed twice.

On the other hand, about 90 percent of Yale law graduates’ first and second jobs are in a traditional legal practice: firms, prosecutors, public defenders, public interest lawyers, law clerks, lawyers in executive branch departments and corporate counsel. This is consistent with the results of the “After the JD” study. This is as it should be. I believe deeply in the value of the craft – of practicing at the highest standards as a professional lawyer. As I have suggested, success as a specialist, especially the hard-edged practice of law, is vital to later success as a generalist.

But, there is also value in changing jobs, as the careers of Yale Law graduates seems to reflect. Such a change involves taking risks, learning new organizations and cultures and, most importantly, developing different perspectives on problems because of different institutional roles.

For example, odd as it may sound, I was a better general counsel of a huge multinational corporation – General Electric – because I had been both a public interest lawyer at the beginning of my career and then assistant secretary for planning and evaluation at the Department of Health, Education and Welfare. The lessons I learned in those positions – from true collaboration and collegiality, to the importance of balancing legitimate competing values, to the centrality of politics and media in many legal and policy processes, to the complex options analysis of difficult policy problems – made me more broad-gauged and more effective than if I had come to my General Counsel position as a New York corporate lawyer, much less as a GE careerist. When Jack Welch offered me the general counsel’s job, I reminded him that, at the time, I was a constitutional litigator, was not a corporate lawyer, had not worked a single hour for GE and knew, literally, no one in the Company. He smiled and said: “Great. I want a fresh view and someone who’ll turn the place upside down. You’ll figure it out.”

But, if we accept not just the fact of, but also the value in, law graduates having multiple careers, then we should also, I believe, broaden the view of what those careers may be. In the three decade Yale longitudinal study, only 3.4 percent of the law graduates are employed in a tantalizing “other” category in Job 1. But, interestingly, about 15 percent are in the “other” category by Job 4 and Job 5—even more tantalizing.

I would suggest, then, that, in addition to the “traditional” legal jobs, we think about other types of positions.

- A broader view of governmental jobs. In addition to the offices of the Attorney Generals, U.S. Attorneys, District Attorneys, Legal Advisors, there are a huge variety of federal state and local positions which law graduates may occupy – policy or operational jobs in other executive branch departments or agencies such as Treasury, State, Defense, Health and Human Services, the FCC, the FDA, the EPA, AID or the offices of governors and mayors and their respective cabinet departments. In addition, key legislative or committee staff either in Congress or state legislatures are positions of potentially great importance and influence but generally ignored or disparaged by graduates of “elite” law schools.
- A career in politics. Very few graduates of this and other leading law schools are willing to take on the enormous risk and challenge of elective politics – and then, albeit with some reason, bemoan the state of our polity at endless dinner parties in countless professional or academic centers. Both elective and executive jobs in places where elite students don’t reflexively go may provide tremendous opportunities: look at Dick Blumenthal, Connecticut Attorney General or Eliot Spitzer, New York Governor nee Attorney General or Corey Booker, Mayor of Newark or Senator Barack Obama who began his political career in the Illinois state senate.
- Jobs in multi-lateral institutions: from the general purpose (like the UN or the OECD) to the finance and development (like the World Bank or the International Monetary Fund or Export-Import Bank to the European Bank for Reconstruction

and Development) to security and law (NATO, Interpol, the World Court) to other specialized agencies (like the World Health Organization).

- Jobs in non-profit, non-governmental organizations (NGOs) which are not strictly legal – there is now a vast array of such entities, beyond public interest law firms, addressing major issues like human rights, education privacy, poverty, health, environment, corporate governance, corporate social responsibility, cultural development – but all with need for core competencies in understanding rules, issue analysis, the operation of institutions and politics.
- Jobs in the private sector which are not just legal jobs: business development, executives in foreign nations, government policy and government relations positions and, ultimately, core profit and loss business leadership in large public firms or small entrepreneurial ones.

Of equal importance, we should broaden our view to consider both the traditional legal and non-traditional positions in the context of the pressing global issues of our time. In my era, we were moved and influenced by the American “rights” revolution. Today, law graduates are, of course, seeking careers in an era of significant change in global trends, issues, relationships and institutions.

Let me illustrate with a few salient examples.

- First, how, consistent with our history and values, do we meet the challenges of global security: terrorist groups; state-sponsored terrorism; threats of nuclear, chemical, biological and cyber weapons; evolving relations between developed and developing powers; multi-lateral security institutions and alliances; U.S. weapons, resources and institutions; homeland security; and public diplomacy and perception of U.S. power and policy.
- Second, how do we address the multiple issues of an integrating global economy: the world trade agenda; regional economic integration and development in North America, the EU, the Asian countries and Africa; competition and integration between regions and nations (EU-US, US-China, US-India, China-India); the convergence or harmonization of international commercial law (tax, antitrust, privacy, labor, direct investment); the role and resources of multi-lateral financing and development agencies; and, most fundamentally, economic development in failed, failing, fragile and rising nations.
- Third, as a companion of economic development and integration, how can we build institutional infrastructure to deal with critical national and multi-lateral issues and trends. For example: state-building in less developed nations to create durable, transparent and accountable economic, social, political and legal institutions. Or, as other examples: institutions at nation

state or international level to deal with a host of pressing global issues from human rights to discrimination against women and exploitation of children to demographic change (population growth/loss, aging, urbanization, migration) to energy and environment to shortages of food and water to corruption and other international crime (drugs, piracy, human trafficking) to poverty to health to education to religious and ethnic conflict to transforming developments in technology, including information technology.

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

All these pressing issues are about policies, laws, rules and institutions in national, regional or global society, with complex public-private dimensions, myriad interdisciplinary considerations – with a self-evident need for leadership on policy, politics and implementation/administration. Someone will have to provide the vision and the wisdom and the energy to lead. And such leadership will require many skills and multiple perspectives. No one is totally suited for such tasks, but no one is better suited than a lawyer with broad training and experience.

The concept of being a lawyer should encompass the broadest kind of leadership because our core skills, properly conceived, of understanding how values, rules and institutions interrelate with social, economic and political conditions is as central to the demands of leadership as any other professional or disciplinary background. And many of the roles I have suggested a moment ago provide great opportunities to learn about this complex set of interactions – and to prepare for possible assumption of leadership responsibility.

We need heroes and heroines for this broader concept, not just from the past but also from the present. Just think for a moment about people associated with this law school: a Bill Drayton, who founded Ashoka, sponsor of social entrepreneurs in less developed societies; a Bill Clinton, who became a president; a Bob Rubin, who became head of a great financial institution and then Treasury Secretary; a Patricia Wald, who was public interest lawyer, DOJ assistant attorney general, distinguished federal judge and then international jurist in war-crimes trial; a Gus Speth, who was a founder of NRDC, government official and is now an expert on international environmental issues and Yale Dean in the School of Forestry and Environmental Studies; or a Harold Koh, a seminal voice on international human rights in government and in the academy.

Or just in my recent experiences in the corporate world. I hired a brilliant young lawyer from Williams and Connolly to be GE litigation counsel: he then went to another business as General Counsel and then to Pfizer as General Counsel. He was recently chosen as the new Pfizer CEO at age 50. He must now deal with the most fundamental public/private issues of a stressed pharmaceutical industry: of research and development,

of affordability, of transparent testing both pre-and post clearance, of the propriety of direct to consumer advertising, of a business model under pressure from health cost control, of differing regulatory regimes across the globe and, ultimately, of the industry's crisis of credibility. All these and more affect an industry which, in theory, has a vital role in saving lives but which has somehow found itself as unpopular in public opinion surveys, and with regulators, as the tobacco industry, which destroys lives.

Perhaps someone could create such a course to instruct, broaden and inspire law students....I have no doubt that Professor Plutarch is working on that project right now.

A last comment on careers: the ever-present student concern about money which, like sex in the Victorian era, may not always be discussed straight up. The diversity and variation of careers certainly allows graduates to spend part of their professional lives in settings where they can develop net worth, while still devoting other parts of their careers to service. And leadership can be in institutions which are remunerative. But, my main point today is simply that a degree from Yale Law School allows you to take risks – you will be sought after not just tomorrow but the day after tomorrow. It gives you a ticket for a successful trip across multiple careers blessed, as I'm sure you are, with imagination, character and motivation.

IMPLICATIONS FOR LEGAL EDUCATION

So, you might ask, what does this have to do with Yale Law School and legal education?

The answer from this audience could be: not much. Yale is ranked first. It has great students of breadth, depth and ambition who will find their own way in many types of jobs and who will, when the time comes, assume positions of leadership – just as generations before them have done. The faculty is superb. A reading of the course catalogue reveals a curriculum which has characteristic Yale policy breadth and which may inculcate, in one way or another, some of the qualities of mind I argue for – and which may train students, in one way or another, for the broader types of careers I note. Some will, in other words, argue for a “buffet theory” of the current Yale Law School. Great variety of students, great diversity and talent in the faculty: people will, in many different ways and with great success, pursue their intellectual and career interests as they see fit.

But, without pretending to be an expert on legal education in general or legal education at Yale in particular, let me not accept that position but instead ask a few questions and offer a few thoughts on the mission of law schools – at Yale and elsewhere – in light of my professional experience and my comments today.

Most sweepingly, can, or should, Yale Law continue to teach the “core legal competencies” but be more explicit about the range of careers which lawyers may have and more systematic about the range of “complementary competencies” which are important. Should Yale pioneer in developing a concept of “general professional

education” – a “major” in basic legal education but with “minors” in business and public policy or other disciplines – to serve those who will be astute practitioners, wise counselors but most, importantly, leaders? Can Yale, so well situated by its past and its present, be more explicit about what is implicit – the role of its graduates as leaders across a broad spectrum of institutions or movements – and more structured in its offerings if not its requirements?

First, cases.

- Should the law school develop complex, interdisciplinary cases studies, akin to those used in business and public policy schools, to illuminate the multiple dimensions of issues and processes, the inherent dilemmas and choices in decision, the constraints malleable and rigid? These would have the richness of institutional role, institutional setting, particular time and place, the relationships with other actors, identification of a broad array of relevant factors etc. They would be more open-textured than appellate cases of law school, and they put students in different legal and leadership roles. The subjects are almost infinite. The chairman of the Judiciary Committee deciding how to run Supreme Court confirmation hearings; the assistant secretary for Human Rights at the State Department, seeking to make his or her concerns more central to Department or Administration action; the general counsel of a multi-national company developing a strategy for doing business in China? The issues in such cases can range from the highest legal theory to the most practical (but very important) questions of implementation.
- Can there be more emphasis on creating, rather than critiquing? Can students be asked to write more opinions, regs, legislation, memoranda of understanding, basic deal documents, IRS opinion letters, policy agendas for key agencies, a plan for an environmental NGO, etc. This is a powerful way to require students to think about what intellectual disciplines and perspectives are necessary to make their product fit reality to the extent possible, be political and be capable of implementation. An example at Yale is the China Law Center, which leverages American knowledge and effort, including student effort, to help the Chinese develop proposals for law reform across critical substantive areas.

Second, joint degrees and relations with other departments and schools.

- Is it necessary to work with Yale’s School of Management to have an integrated JD-MBA, rather than giving a somewhat disjointed joint degree so long as the student has taken enough courses in each school? As many of you know, SOM has just completely rewritten its curriculum to focus on the integration of different business disciplines in systematic approaches to key internal and external processes, e.g. employee relations, sourcing and managing funds, the customer, state and society. These interdisciplinary, integrated courses are perfect structured for a policy, legal and ethical dimension – and for very creative collaboration between the two schools in the interest of broader professional education for

students at both schools. As a statement from SOM on its reforms puts it: “In the last thirty years, while the management profession has changed, management education has not. . . .today managerial careers cross the boundaries of function, organization and industry, as well as cultural and political borders. Even managers in large organizations must be entrepreneurial in the sense that their success depends on their ability to synthesize disparate information, analyze competing functional priorities and draw together and coordinate resources and individuals in a context that is often fluid and decentralized.”

- I should note that, in a similar vein, the Harvard Business School and Harvard’s Kennedy School of Government have very recently announced that they will develop a genuinely integrated curriculum for MBA-MPP students. As a recent *Financial Times* article (November 16, 2006) about the international public sector noted: “. . .the next generation of public sector employees is going to be more business savvy. Growing numbers of staff at multi-lateral institutions, government departments and . . .[NGOs] are going back to school – to business school.”
- Is the joint JD-MPP degree with the Woodrow Wilson School a viable alternative for all the students who wish to pursue it? Is it desirable, and possible, to create, as Stanford Law is doing, a joint JD-MPP at Yale alone, in addition to the Wilson School program, drawing on the “virtual” public policy school which exists within the distinguished departments in Yale University itself?
- Is there enough true team teaching with colleagues in SOM or other professional schools (like the Medical School or Forestry and Environmental Studies) or other departments (like history, economics, political science, psychology, anthropology) where professors can engage and argue and illuminate in real time and with each other the different perspectives with which most important issues must be viewed?
- Most controversial of all, why shouldn’t it be possible to get a JD-MBA or JD-MPP or a JD and environmental science masters or a JD-MA in other disciplines in just three years with truly integrated programs – or three years plus a summer? Without launching yet another critique on the second and third year of law school, I submit that the enormously talented students at this law school – and other outstanding law schools – could easily handle the challenge of acquiring the necessary disciplines inherent in the different approaches in the different professional schools or departments. I will not attempt to address today possible concerns of the Association of American Law Schools or state bar examiners – but I surmise that, if there were a will, this problem could be resolved. The bar exam would still stand as a tollgate to the license to practice if that is the direction a joint degree holder chooses to go.

Third, globalization.

- Are the current courses on international law addressing the most important globalization issues? I truly believe that every matter on my global issues list – from global security, to global economic integration to global institution building to address other critical trends and issues – are fit subjects, indeed vital subjects, worthy of law school attention. To take just one example: because it is some combination of economic development and state-building, what could be more important than sustained, multi-faceted attention to the broad issue of development in those failed, failing, fragile and rising nations which have so much of the world's population and potential – and are homes to so many of its problems.
- It need hardly be said that these global courses, properly conceived, are the perfect venues for interdisciplinary integration and team teaching whether an exploration of existing international law, developing international law or law, broadly defined, as a central but hardly exclusive element in addressing pressing globalization trends and issues.
- Is it possible that law students could be given credit for a semester abroad, just as they are in college, if they have the requisite language skills? What a marvelous experience it would be to study at the great universities of Tsinghua or Oxford or Heidelberg?
- Is it possible that law students and faculty could actually travel abroad together for a winter session or part of a semester? As part of its curriculum reform, the School of Management has a required two-week international experience at the beginning of January, 2007, with students and faculty doing case studies in 10 nations, including Argentina, China, India, Japan and South Africa.

Fourth, careers.

- Are the faculty and the career development office generating a broad enough range of summer job and entry-level job opportunities in non-traditional settings like NGOs or multi-lateral institutions or the private sector or legislative institutions or executive branch positions beyond the strictly legal – not just in the U.S. but across the globe?
- Does it make sense to have courses and studies on career issues in the legal profession – both the past and the future (there are myriad issues worthy of study like diversity, globalization, relations between inside and outside counsel, career aspirations, longitudinal research on actual career experience)? I know I dare not let these words drop from my lips, but Harvard Law School is seeking to address some of these issues through its Program on the Legal Profession. And, again, the Yale School of Management is trying to build an explicit examination of careers (as well as faculty mentoring) into its new first year curriculum, including an

explicit examination of periods of stability and periods of transition and of processes for building human, social and economic capital (business school speak for money) which make career changes possible.

Fifth, institutions.

- Because career diversity is going to involve institutional diversity – and organizations are a fundamental vehicle for rule implementation – would it make sense to have organizational theory and behavior be a more explicit part of the course offerings: exploring the differences between public, private, non-profit, international institutions of all shapes and sizes? An important and related issue is the internal governance of institutions: this is a subject – whether the Executive Branch or the ACLU or GE – which is of signal importance and which seems right at the center of a lawyer’s interests and potential expertise and should include modes of ethical, not just legal, reasoning in various organizational settings.
- Similarly, a point closely related to the theme of this talk: would it make sense to teach leadership styles? There is a robust literature arising out of real situations which is interesting and provocative, not just platitudinous. Leaders, and their styles, matter – at least in every institution I’ve ever been in.

Sixth, the profession.

- Perhaps it has always been true, but the world is changing at a breathtaking pace – and those of us in the world of practice are often facing new issues and, for better or for worse, breaking new ground. Should the school be spending more time determining how it can increase its interaction with those outside the academy to the enrichment of both?
- Certainly one time-honored way is to have people from the world of practice be guest lecturers in courses. I cannot say how much it is done today; I can say it can probably be done much more with great benefit to all.
- Another time honored way is to have leading practitioners be adjunct professors. New York and Boston, and even Washington, are not that far away. And Fairfield, GE’s headquarters, is 40 minutes away. I mention that because we have world class experts in a variety of areas as “the lawyers’ lawyers” – and John Samuels, one of the leading tax lawyers in the world, has taught tax here with great rigor, vision, worldly perspective and, I believe, success. Again, the question is probably not whether the school does it, but whether it does it enough.
- Would it make sense, with respect to almost all courses, to hold roundtables periodically (end of the year, every eighteen months) with key practitioners to discuss trends, problems, politics, issues over the horizon? I believe the corporate group and Middle East law center do this.

- Importantly, what is the professional schools faculty's view of the profession itself and of professional practice – narrowly or broadly defined? Certainly, there is literature from within the law schools themselves, decrying the increasing distance between the professoriate and the profession. For example, in *The Yale Law School and the Sixties*, Laura Kalman described Harry Wellington's concern in the next decade that the professors viewed the profession as philistine and that gap between the "two cultures" was ever widening

Finally, methods of change.

- What processes of change are appropriate for a successful and tenured faculty with fierce pride in their intellectual autonomy? Is it just individual choice or is there a broader consensual institutional process which can continually rethink and refresh and recommend new paths through self-directed re-orientation or through new hires? Again, I will just pose the question but, as you know better than I, it is one being debated anew in many centers of higher education – at both the collegiate and graduate levels.

VISION

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

I have sought to argue this afternoon that graduates of law schools, to live a life of values in the profession, should define problems broadly and define their roles broadly: ultimately as leaders with responsibility and accountability. I am arguing for an explicit enlargement of what being a lawyer can mean – or at least a return to, and explicit reemphasis of, lawyers as leaders, a role lawyers have played in the past and, if we survey the landscape, play today.

Like this lecture, Dean Kronman's 1993 meditation on the profession, *The Lost Lawyer*, sought to change and broaden the view of the profession by a "back to the future" revival of the concept of a "lawyer-statesman," with its origins in the Nineteenth Century. But, there are also many differences between our views. His valued traits do not go far enough toward what I would call broader qualities of mind or modes of thinking. Although he starts the book with a brief nod to the historical fact of lawyers as political leaders, his dominant suggestion at the end is about wise counseling, not leadership. He spends much of his time critiquing private firms, the courts and the academy and spends little time on the vast array of institutions and opportunities where leaderships is possible – from legislative and executive positions to corporations to NGOs to global institutions. Perhaps the biggest difference is that Dean Kronman is a pessimist: "I have reached a gloomy conclusion. I do not think the lawyer-statesman can be revived, at least at an institutional level."

In deference to, but in disagreement with, Kronman's thought-provoking book, I was tempted to call this talk: "The Found Lawyer." Because I am optimistic, I believe in

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

It is all about our willingness to take the risks of addressing the felt needs of the time. For example and of special relevance to this audience, I commend to you Bob Gordon's short chapter on the realists who taught at Yale Law and then had leadership positions in the New Deal which is found in the book of essays entitled *The History of the Yale Law School*. They waged a mighty struggle of ideas and action. Were they always right? No. Did they always succeed? No. Did they have important lives trying to lead on big issues? Yes.

Let me end with a few lines from "Ulysses," a poem by Alfred, Lord Tennyson. This is Ulysses' interior monologue, as an old man, reflecting on his past and on his future:

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

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

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

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

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

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

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

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

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

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

Thank you so much. I am very grateful for your attention this afternoon.

