

PREPARING LEGAL ENTREPRENEURS AS GLOBAL STRATEGISTS: THE CASE FOR ENTREPRENEURIAL LEGAL EDUCATION

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I. INTRODUCTION

A. Overview

This article proposes that although U.S. law schools now enjoy a unique opportunity to train the type of attorney likely to be most globally in demand throughout the twenty-first century—that is, the entrepreneurial lawyer¹—American law schools have thus far neglected this possibility and are running out of time to establish market leadership in this critical emerging area. Building on prior conceptual and empirical research, this article suggests several means by which U.S. law schools can fully capitalize on the international environment to the benefit of students and society—as well as to their own. By blending entrepreneurship pedagogy with experiential legal education in an explicitly

¹ Of course, many U.S. law schools today offer programs, including LL.M. degrees and clinics, in “law and entrepreneurship”—but these seek to train attorneys to counsel *clients* who are entrepreneurs. *See infra* notes 335-36 and accompanying text. A few programs even train attorneys to be entrepreneurial in the *business of law* (that is to say, to entrepreneurially manage law firms as business units). But no programs appear to train attorneys to take an entrepreneurial approach with respect to the *practice* of law. *See infra* notes 203-04 and accompanying text (discussing these distinctions). In light of America’s legal culture and institutions, this sense of legal entrepreneurship may seem far-fetched or unduly risky—but this article endeavors to demonstrate its absolute necessity in the cross-jurisdictional context of today’s globalized world. *See generally infra* Part II.

global and cross-cultural context, American law schools can remain at the forefront of their hyper-competitive industry. Although we recommend some reforms to the J.D., our proposals are centered on a new LL.M. degree in Global Legal Entrepreneurship. If U.S. law schools intend for American law to retain its distinguished posture in global business—and if American legal education is to remain relevant even in the United States—we must adapt our law schools to the realities of a globalized, multi-cultural world.

Our recent work argues that entrepreneurial lawyers will be highly valued in the globalized market of the 21st century.² Business executives need attorneys who can make significant, proactive contributions to the firm’s strategy, particularly in “lower rule of law” jurisdictions permeated by legal flexibilities and uncertainties.³ Entrepreneurial lawyers approach the legal market as the classical entrepreneur approaches the economic market.⁴ In so doing, the entrepreneurial lawyer creates sustainable competitive advantages for the firm.⁵ The law itself, then, can serve as a source of competitive advantage in business.⁶ The entrepreneurial lawyer seeks out and harnesses the three forms of legal flexibility that exist to one degree or another in every legal system to create these advantages.⁷ The exact nature of the opportunities for strategic legal advantage will vary by country and can be described under a business-centric “rule of law” rubric—that is, the extent to which legal flexibilities reallocate business opportunities away from the jurisdiction’s economic realm and into its legal realm.⁸ Traditionally, lower rule of law environments (which by definition entail higher potential degrees of legal uncertainties, risks, and costs) have been viewed by Western businesspeople and their attorneys in an exclusively negative light. But this type of blanket inference is in error: lower rule of law jurisdictions can in fact be more profitable venues in which to do business *precisely because* legal flexibilities allow for the legitimate utilization of the law to the individual firm’s

² See generally Justin W. Evans & Anthony L. Gabel, *Legal Competitive Advantage and Legal Entrepreneurship: A Preliminary International Framework*, 39 N.C. J. INT’L L. & COM. REG. 333 (2014).

³ *Id.*; see also *infra* Part II.C. More generally still, there is an increasing recognition among U.S. law schools that graduates must be capable of thinking like business people, and this has led some law schools to incorporate business training into their curricula. See, e.g., Natalie Kitroeff, *Lawyers Don’t Know Enough about Business*, BLOOMBERG BUSINESS (May 12, 2015, 9:25 AM), <http://www.bloomberg.com/news/articles/2015-05-12/law-schools-teach-business-to-make-graduates-more-employable>.

⁴ See generally Evans & Gabel, *supra* note 2. Entrepreneurial lawyers apply their entrepreneurial skills not to the business of running a law firm, but rather to their *practice* of law. *Id.* at 400-01 (discussing this distinction).

⁵ See generally Evans & Gabel, *supra* note 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

distinctive competitive advantage.⁹ Additionally, a new qualitative data set collected on-the-ground in China appears to corroborate empirically what our previous work posits from the conceptual vantage.¹⁰

Larry Downes correctly noted that “[l]aw is the last great untapped source of competitive advantage.”¹¹ Significantly, he also observed that “[t]o extract [competitive advantage through the law] ... the cultures of law schools and business schools ... will have to evolve mighty fast.”¹² Yet in the decade since Downes’s observation, despite such traumas as the Great Recession, the culture of American law schools has been slow to evolve.¹³ This is particularly true with respect to globalization.¹⁴ Though some observers urge that the complexities of the global economy will not increase the demand for new U.S.-trained attorneys even if the overall demand for legal services rises,¹⁵ others have specifically addressed the distinctive value that American-trained lawyers can contribute to clients in other countries armed with “globalized” legal training.¹⁶ This article does not assume that globalization will automatically represent expanded opportunities for American lawyers; indeed, we argue that U.S. attorneys and the law schools that educate them will invariably forego these opportunities unless American legal training is soon reformed.¹⁷ Although the U.S. legal education

⁹ *Id.* Still, the actual realization of the law as a source of competitive advantage requires a skilled legal entrepreneur. This paper’s chief concern is how U.S. law schools can train legal entrepreneurs.

¹⁰ See *infra* Part II.C. (discussing empirical evidence of opportunities for legal entrepreneurship in China).

¹¹ Larry Downes, *First, Empower All the Lawyers*, 82 HARV. BUS. REV. 19, 19 (2004).

¹² *Id.*

¹³ See *infra* Part III.

¹⁴ See Carole Silver, *Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S.*, 24 STAN. L. & POL’Y REV. 457, 457-59 (2013) [hereinafter Silver, *Getting Real*] (noting that although globalization now permeates business and the law, law schools have attempted to control its impact to the detriment of both students and the legal education industry).

¹⁵ See, e.g., Paul Campos, *The Crisis of the American Law School*, 46 MICH. J. L. REF. 177, 215 n.144 (2012).

¹⁶ See generally, e.g., Justin W. Evans, *The Magic Confluence: American Attorneys, China’s Rise, and the Global Value Chain*, 18 IND. INT’L & COMP. L. REV. 277 (2008) (arguing that while U.S. attorneys will not automatically benefit from global ties between China and the United States, enterprising U.S. attorneys can benefit if they approach the Chinese market strategically). If there are relatively few U.S. attorneys in global practice it is not for a lack of demand for such lawyers, but rather for the want of a *supply* of such lawyers. U.S. legal education is thus at the very crux of this paper’s subject.

¹⁷ Contrary to the fatalistic implication that it is impossible for U.S. attorneys to benefit from globalization in large numbers, we argue that it is indeed possible—probable even—if law schools prepare attorneys effectively. This article begins to develop concrete

industry faces one of the most challenging environments in its history¹⁸ and the U.S. legal profession risks the erosion of its stature internationally,¹⁹ the looming consequences of these trends are not inevitable. By better preparing their graduates for the demands of the twenty-first century, American law schools can largely ameliorate or even reverse these trends. One of the key avenues by which this can be accomplished is to prepare lawyers as global and cross-cultural strategists—that is, by preparing entrepreneurial lawyers.

If U.S. law schools are going to continue to thrive, they must offer prospective students greater value. To accomplish this, law schools must train attorneys in nascent areas of opportunity. Cross-border practice is now a widely acknowledged source of opportunity, but another emerging area has garnered less attention: the role of attorneys as business strategists, particularly in cross-jurisdictional and cross-cultural settings. Attorneys who can craft sustainable competitive advantages for clients across cultures and jurisdictions will be among the most successful and highly demanded lawyers anywhere. And the law schools that train these lawyers will be similarly well-suited to the competitive demands of *their* environment. Professor Larry Ribstein has noted that “tomorrow’s practitioners may be earning money from academic subjects imported into the law-school curriculum such as philosophy, jurisprudence, psychology, history, linguistics, computer science, and empirical analysis.”²⁰ This article agrees, but proposes that the most significant of these imported areas will be *entrepreneurship*.

strategies for making preparation of this sort a reality.

¹⁸ See *infra* Part III.

¹⁹ The preeminence of U.S. law schools in attracting the best foreign students is now being challenged, particularly by European and Australian universities. Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 *CARDOZO J. INT’L & COMP. L.* 143, 172-75 (2006); see also International Section, *Exorbitant Privilege*, *THE ECONOMIST*, May 10, 2014, at 59 (noting that the dominance of U.S. and English law and lawyers in cross-border business is eroding, particularly with respect to issues concerning choice of law and means of dispute resolution).

²⁰ Larry E. Ribstein, *Practicing Theory: Legal Education for the Twenty-First Century*, 96 *IOWA L. REV.* 1649, 1666 (2011). Law schools have embraced interdisciplinary initiatives to a relatively high degree for some time; this has enabled law schools to better “help young lawyers identify appropriate roles for themselves within the profession now, and in the future,” and “by better making students aware of the array of applications of their law degree in the workforce, law schools will be better able to attract students during both good times and bad.” Linda R. Crane, *Interdisciplinary Combined-Degree and Graduate Law Degree Programs: History and Trends*, 33 *J. MARSHALL L. REV.* 47, 56 (1999).

B. Rethinking the Core Functions of Law Schools

“Legal education has traditionally focused on instructing students how to ‘think like lawyers’”²¹ Understandably, with few exceptions, this focus has so far been directed almost exclusively toward teaching students to “think like lawyers” within the U.S. context. Counselors in the twenty-first century must indeed “think like lawyers”—but in the context of the cross-cultural, multi-jurisdictional domains of a highly globalized environment.²²

Professor Hoffman notes that “there has been a long-running internecine war within legal education between those who believe the purpose of law school is to train students in the theory of the law and those who [favor] preparing students for the practice of law,” and that theory-advocates have thus far carried the day.²³ Yet “teaching theory” in the law really amounts to training students in a particular method of analysis—an important skill, to be sure, but hardly the only skill that lawyers use.²⁴ Employers and clients are increasingly expecting new law graduates to possess the practical skills that will enable them “to work in partnership with other professionals and have insights into areas other than law, in order to properly service clients with multilayered and complex issues.”²⁵

Institutions of higher education now vie for students in a very competitive environment.²⁶ “Providing students with the analytical skills

²¹ Larry O. Natt Gantt, II, *The Pedagogy of Problem Solving: Applying Cognitive Science to Teaching Legal Problem Solving*, 45 CREIGHTON L. REV. 699, 700 (2012); accord Peter Toll Hoffman, *Teaching Theory Versus Practice: Are We Training Lawyers or Plumbers?*, 2012 MICH. ST. L. REV. 625 (2012).

²² James R. Maxeiner, *Learning from Others: Sustaining the Internationalization and Globalization of U.S. Law School Curriculums*, 32 FORDHAM INT’L L. J. 32, 34-35 (2008) (“Our foreign law experts need to know what it means to think like a lawyer in different foreign systems.”).

²³ Hoffman, *supra* note 21, at 625.

²⁴ *Id.* at 626-28. Hoffman notes the Garth-Martin survey of legal skills, in which legal reasoning was one of the top skills used by lawyers in practice, but also that “there were a number of other skills lawyers also considered important and believed they could have been, but were not, taught in law school.” *Id.* at 644.

²⁵ Ross Hyams, *Multidisciplinary Clinical Legal Education*, 37 ALT. L. J. 103, 103 (2012); accord Deanell Reece Tacha, *Training the Whole Lawyer*, 96 IOWA L. REV. 1699, 1701 (2012) (“[L]aw schools must do more to prepare students for the actual practice of law”).

²⁶ Robin Anderson, Brooke R. Envick & Prasad Padmanabhan, *A Practical Framework for the Continuous Advancement of Entrepreneurship Education*, 4 AM. J. ECON. & BUS. ADMIN. 65, 65 (2012) (noting that students increasingly must demonstrate complex problem-solving abilities as a condition for stable employment and that universities must respond accordingly to distinguish themselves from their own increasingly sophisticated competitors).

necessary to ‘think like lawyers’ by teaching them to read and dissect appellate decisions may no longer be sufficient to meet the demands of the legal marketplace,”²⁷ Professor Cassidy has noted, and yet “[a]lthough all signals presently point toward preparing more ‘practice ready’ lawyers, how exactly this will be accomplished remains to be seen.”²⁸ We think very highly of Professor Cassidy’s proposals, but offer one more: training lawyers to be entrepreneurial, which will involve both theoretical and experiential elements.²⁹ Significantly, those in favor of empowering law students with practical skills are not arguing against theory, but rather support the merger of “learning to think like a lawyer” with an understanding of how that thought is applied in the service of actual clients.³⁰ The proposal for entrepreneurial legal training offered in this paper is no less cerebral than the prevailing trends in legal education, as there still is no teacher like experience.

C. The Practical Global Element’s Emergence (and Future) in Legal Education

Shortly after World War II, Harvard Law professor David Cavers effectively forecast the rise of entrepreneurial lawyers in the international law realm. “Ordinarily,” he observed,

[I]n discharging [the] counseling function, the lawyer has many avenues to explore, a variety of competing interests to identify and appraise, a number of alternatives to assess in working out ways for the accommodation of these interests. Within limits set by the law and using the instrumentalities it provides, [the lawyer] can seek to establish new patterns of relationships, new processes for preventing or resolving conflicts, new ways of

²⁷ R. Michael Cassidy, *Beyond Practical Skills: Nine Steps for Improving Legal Education Now*, 53 B.C. L. REV. 1515, 1516 (2012).

²⁸ *Id.* at 1517.

²⁹ See *infra* Part III.

³⁰ Hoffman, *supra* note 21, at 645. A similar debate has played out in entrepreneurship education. See generally *infra* Part III.D (discussing general precepts of entrepreneurship education). Although some in the entrepreneurship academy have resisted action learning because of its perceived hostility to theory, action learning in fact does not separate theory from practice. Thus, in neither field are proponents of practical education hostile to theory. See Claire M. Leitch & Richard T. Harrison, *A Process Model for Entrepreneurship Education and Development*, 5 INT’L J. ENTREPRENEURSHIP BEHAV. & RES. 83, 92 (1999).

order for his client and for those with whom his client deals. In this work there is much room for lawyer-made law.³¹

Significantly, Cavers also noted that “[i]n international legal studies, these considerations have special force” because

The ‘law’ is likely to be uncertain; the range of alternatives wide; and the opportunities for resort to lawyer-made law many. Whether [he or she] is an adviser to a government office or to a private business concern, the lawyer is likely to have a creative function to perform which will oblige [him or her] to reckon with many factors that fall outside the traditional compartments of International Law and Comparative Law.³²

The global environment, like the domestic environments of many jurisdictions, is favorable to entrepreneurship—including, as Cavers implied, to entrepreneurship in the law.³³

In his 1953 comments, Cavers also noted that a “willingness to recognize [the creative] functions of the lawyer as relevant to legal education gives rise to difficulties no law school has fully solved, and the processes of change thus inspired have in the main been molecular and interstitial.”³⁴ By the 1970s, it was clear that global attorneys “should be competent to give advice on the laws of more than one country and must be able to evaluate the relative legal advantages of particular business decisions as they are affected by the laws of one country or

³¹ David F. Cavers, *The Developing Field of International Legal Studies*, 47 AM. POL. SCI. REV. 1058, 1063-64 (1953). Cavers’ arguments concerning the lawyer’s creation of new patterns, processes, and ways of order are intrinsically entrepreneurial—see *infra* Part II (arguing that attorneys must be entrepreneurial to realize their full potential as business strategists)—and also arguably imply that the lawyer reduces transaction costs in the process—see, e.g., Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L. J. 239 (1984) (arguing, *inter alia*, that attorneys add value to any transaction in which they reduce the transaction costs that are assumed away as a conceptual matter for purposes of the capital asset pricing model).

³² Cavers, *supra* note 31, at 1064.

³³ Cf. Evans & Gabel, *supra* note 2.

³⁴ Cavers, *supra* note 31, at 1064. Though law schools have proven highly resistant to modifying their operations on the basis of external needs (see *infra* Part III), the advancement of international law as an academic discipline has often been driven by changing conditions in the world. See, e.g., *id.* at 1072 n.25 (“The development of international legal studies in the United States in [the 1940s and 50s] owes much to the reinforcement of our faculties by European law teachers who came here to escape Nazi aggression.”). Today, of course, much more so than in Cavers’ time, globalization moves people and ideas across boundaries as a matter of course.

another.”³⁵ Yet along many crucial dimensions, little has changed in the academy since Cavers’ time. U.S. law schools today still teach globalization “as an intellectual matter rather than as an experiential matter.”³⁶ This is disquieting, since today’s globalized economy demands lawyers who are creative and entrepreneurial to their cores. The market’s needs have created a new value proposition for American law schools.³⁷

Still, contemporary sources from academic commentaries to the popular press have noted the ongoing need for—and lack of—creative lawyers.³⁸ “If you thought that law schools would be immune from the impact of the [Great Recession],” notes one such source, “think again. As the legal profession scraps for work among increasingly demanding clients who want to hire experienced lawyers, law firms want to recruit graduates who are already fully equipped for practice.”³⁹ Very simply, “[t]he role of the lawyer is to deliver solutions for their client, not to focus too much on the law itself.”⁴⁰ Employers and clients prize three particular attributes in new law graduates: applied legal experiences (such as clinics),⁴¹ the interdisciplinary ability to work with others outside of the law—particularly with businesspeople⁴²—and innovativeness.⁴³

³⁵ See M. Sean McMillan, Remarks, *Practicing Transnational Law: The Nature of the Business, Opportunities for Entry, and the Relevance of Contemporary Legal Education*, 67 AM. SOC’Y INT’L L. PROC. 245, 256 (1973).

³⁶ Silver, *Getting Real*, *supra* note 14, at 469.

³⁷ See generally, e.g., Rosalyn Higgins, *Teaching and Practicing International Law in a Global Environment: Toward a Common Language of International Law*, 104 PROC. OF THE ANN. MEETING OF THE SOC. OF INT’L L. 196 (2010). “In all professions, those who are just beginning need educating in the intellectual life ahead of them, and those who are practitioners need . . . to be exposed to continuing education.” *Id.* at 196. International law and the subjects it governs develop at a furious rate; international lawyers can become set in their ways of thinking; the tools of international law change rapidly; and international law governs much more than it once did. For all of these reasons, the legal education industry must account for changes in the world’s major trends. *Id.*

³⁸ See generally Adam Palin, *Innovative Law Schools: Listing Analysis*, FINANCIAL TIMES, Nov. 11, 2013.

³⁹ Adam Palin, *Innovative Law Schools, Firms Clamour for Law Graduates with Practitioner Skills*, FINANCIAL TIMES, Nov. 15, 2013, at 2.

⁴⁰ *Id.* (quoting Nigel Savage).

⁴¹ *Id.*

⁴² *Id.*; see also Sarah Murray, *North American Innovative Lawyers: Learn from Experience*, FINANCIAL TIMES, Nov. 21, 2013, at 11. The ability to work with and to lead businesspeople is particularly important for Western attorneys advising Western executives. See Schumpeter, *Bumpkin Bosses*, THE ECONOMIST, May 10, 2014, at 70 (contending that the leaders of Western companies are, in at least some respects, more parochial and less globally minded than is commonly assumed); see also RICHARD SUSSKIND, TOMORROW’S LAWYERS 113 (2013) (noting that “[l]awyers of the future will need to diversify to stay in business . . . by becoming increasingly multidisciplinary,” and

Examples of the legal applications of entrepreneurial skills are available in both the domestic context of the United States⁴⁴ as well as abroad,⁴⁵ but continue to be scarcer and less comprehensive and systematic than one would expect in light of clients' global needs.⁴⁶ While "law schools need to align legal education more closely with the realities of law practice or the gap will be closed by other institutions," it is also apparent that "[t]hose law schools that are able to take this step, particularly those other than the elite schools, will gain a competitive edge in attracting students and placing them in good jobs."⁴⁷ Curricular reform will be necessary at most law schools in order to render students more practice-ready⁴⁸ and prepared for the global economy.⁴⁹ This paper thus adopts Professor William Reynolds's premises as its core assumptions: "law

that this multidisciplinary breed of lawyer must be supported by appropriate training); Evans & Gabel, *supra* note 2, at 397-98 (noting that legal entrepreneurship on the global or cross-border scope is intrinsically a multidisciplinary exercise).

⁴³ Palin, *supra* note 39, at 3 (quoting Timothy Endicott). See also Reena Sen Gupta, *Firms Take the Lead on Ideas*, FINANCIAL TIMES, Nov. 21, 2013, at 4 (noting that the best lawyers are "becoming an intrinsic part of the creative process"); Reena Sen Gupta, *Central to Enterprise*, FINANCIAL TIMES, Nov. 21, 2013, at 16 (noting that creative companies are hiring attorneys "who are less defined by the traditional parameters of the legal profession. In effect, they are less risk averse and themselves more willing to innovate."); Richard Waters, *Cracking the Case*, FINANCIAL TIMES, Nov. 21, 2013, at 18 ("[B]usiness as usual is no longer enough. It takes creative thinking to fit new opportunities into old legal, regulatory and business norms.").

⁴⁴ See, e.g., Ed Hammond, *Ensuring a Done Deal*, FINANCIAL TIMES, Nov. 21, 2013, at 6 (illustrating how U.S. attorneys can help foreign clients to navigate the U.S. legal system and marketplace).

⁴⁵ E.g., Jude Webber, *Pioneer Spirit Across Borders*, FINANCIAL TIMES, Nov. 21, 2013, at 22 (reporting on the application of U.S. legal skills and innovations to very complex transactions in Latin America).

⁴⁶ See, e.g., Nora V. Demleitner, *Stratification, Expansion, and Retrenchment: International Legal Education in U.S. Law Schools*, 43 INT'L L. NEWS 1 (Spring 2014) (noting that in the international law context, the profession demands that law schools produce "practice-ready lawyers," and that this requires interdisciplinary competencies); James E. Moliterno, *The Future of Legal Education Reform*, 40 PEPP. L. REV. 423, 429-30 (2013) (urging that the skills taught by law schools must expand beyond their historical scope, as creativity is a required core competence for lawyers today).

⁴⁷ Stephen J. Friedman, *Why Can't Law Students Be More Like Lawyers?*, 37 U. TOL. L. REV. 81, 81-82 (2005).

⁴⁸ *Id.* at 87.

⁴⁹ Gloria M. Sanchez, *A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal Language of the Major U.S. American Trading Partners*, 34 SAN DIEGO L. REV. 635, 640 (1997) ("The paradigm shift that is occurring in the legal profession due to globalization should be the impetus for a concomitant paradigm shift in legal education.").

schools should train students to solve problems for clients,”⁵⁰ and, consequently, changes in the legal profession and in the academy’s external environment should motivate corresponding changes to legal education.⁵¹

D. The Paper’s Organization

The preceding discussion intimates the ideas to which this paper transitions in Part II: as many previous observers have urged, American law schools must better prepare graduates for the realities of practice—but such preparation must reflect and integrate globalization at its core. Law schools must train lawyers to be entrepreneurial. What this requires pedagogically is addressed in Part III. Part IV considers the form that these goals would assume in law schools by discussing specific reforms to the conventional J.D. degree, as well as a new, specialized LL.M. degree focused on the training of legal entrepreneurs. Part V considers the administrative and logistical issues surrounding our proposal, while Part VI examines the implications of such reforms for accreditation and the bar exam. Part VII concludes the paper.

II. LEGAL ENTREPRENEURSHIP AS A REFLECTION OF THE GLOBAL ENVIRONMENT

Academe now widely accepts (or at least begrudgingly acknowledges) that the forces of globalization exercise a significant impact on graduates and the institutions that educate them.⁵² Numerous observers have commented on the need for practical global exposure among students, including law students.⁵³

⁵⁰ William L. Reynolds, *Back to the Future in Law Schools*, 70 MD. L. REV. 451, 453 (2011).

⁵¹ *Id.* at 457.

⁵² A few scholars in the post-World War II era foresaw the emerging global environment. See, e.g., Joseph L. Kunz, *A Plea for More Study of International Law in American Law Schools*, 40 AM. J. INT’L L. 624 (1946) (urging, in the aftermath of World War II, that international law was a vital subject for law curricula, and noting numerous challenges, including few qualified faculty to teach in the area, that few students were taking international law, and that international law was an elective). “We need practitioners of international law, attorneys who are experts in international law But the study of international law at [l]aw [s]chools will have even deeper significance. It will give the law students a more complete legal education than was thought possible, hitherto, under the ‘pressure of practicality.’” *Id.* at 626.

⁵³ See, e.g., William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 493 (2013) (“[T]he types of education that will attain the highest valuation are complex problem-solving skills that enable law school graduates to communicate and collaborate in

Although globalization has been characterized in a variety of ways, this paper proposes a set of reforms to legal education partly on the basis of our previous conceptual and empirical studies. Thus, in describing the legal profession's external environment, the demand for legal entrepreneurs, and the skills required of attorneys, this paper will employ our prior work⁵⁴ as the principal frame of reference.

A. The Environment into Which Law Students Now Graduate

We have heretofore noted certain characteristics of “the external environment,” but only with respect to law graduates’ general job prospects and the competition underway in the legal education industry. In contrast, this section of the paper is concerned with arriving at an understanding of the external environment with respect to the opportunities and demands that confront attorneys globally. Before we can articulate a sensible program of legal study for today’s law graduate, we will need to know what sorts of skills are in demand and why.

Since its inception, the era of globalization has brought forth a tremendous (and still growing) volume of business across national boundaries and across cultures. Unsurprisingly, considerable differences persist throughout the world’s legal systems with respect to substantive legal rules and generalizable legal principles, and there exists an even more profound divergence among legal systems’ basic institutional features and the legal cultures that shape and influence

a highly complex, globalized environment”); Silver, *Getting Real*, *supra* note 14 at 457-59, 467-68 (noting that law schools have resisted globalization’s reach despite the fact that globalization’s impact is not limited to lawyers who practice in large multi-national firms); Cassidy, *supra* note 27, at 1522-23 (arguing that “[o]ur graduates increasingly will be practicing in a global environment,” and thus, “[t]he social, political, economic, and legal consequences of globalization must be better understood and addressed in legal education,” and, moreover, America’s current legal education system inadequately prepares lawyers for cross-jurisdictional practice); Robert E. Lutz, *Reforming Approaches to Educating Transnational Lawyers: Observations from America*, 61 J. LEGAL EDUC. 449, 452 (2012) (“Globalization is also a primary force behind curricular reforms that seek to prepare students to function as lawyers in a transnational legal world”); Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 57-62 (2000) (noting that global “developments have inevitable implications for the evolution of the practice of law, for legal education in general, and for clinical legal education in particular” and arguing that clinical legal education has a great opportunity to help prepare students to meet the needs of global practice); Sanchez, *supra* note 49, at 635 (noting that “[t]he globalization process has given rise to the development of transnational law practice”).

⁵⁴ See generally Evans & Gabel, *supra* note 2.

them.⁵⁵ This reality prompts the question of how the international executive or the chief legal counsel of a global firm is to make strategic sense of these differences. Otherwise stated—which features across and within the world’s legal systems are the most important to the individual firm’s pursuit of competitive advantage, and why?

The oft-cited notion of “the rule of law” is our starting point in answering these questions. Many definitions of “the rule of law” have been proposed over time, but virtually none approaches the concept directly from the businessperson’s perspective.⁵⁶ For a firm, one of the most strategically impactful features of a legal system is the nature of its flexibilities.⁵⁷ Three forms of flexibility are present to some degree in every legal system: “substantive ambiguities, which exist in the language of the laws themselves; enforcement ambiguities, which result from finite resources, imperfect information, and discretion; and systemic ambiguities, which are kindled in the dynamic interrelationships of the constituent parts of the rule of law process.”⁵⁸ An inverse relationship exists between the degree to which a country observes the rule of law and the degree to which its laws and legal system are characterized by flexibility.⁵⁹ Thus, “high rule of law” countries are characterized by relatively low degrees of legal flexibility (that is, the legal systems of high rule of law places supply greater certainties and guarantees).⁶⁰ “Low rule of law” countries are the opposite, exhibiting relatively substantial degrees of these legal flexibilities.⁶¹

For the business executive’s purposes, the rule of law is best viewed as the process whereby a jurisdiction’s legal system interacts with the other forces of its environment (namely, the jurisdiction’s economic, political and cultural institutions) in the pursuit of the goals defined for it by the society it endeavors to govern.⁶² More particularly, the rule of law “is the degree to which state institutions supply, or fail to supply, certainties in the rules governing economic

⁵⁵ See *id.* at 340-42 (discussing the law and its relevance to international business); *id.* at 347 (arguing against the position that globalization will result in the convergence of laws, legal systems, and cultures).

⁵⁶ *Id.* at 365-67 (discussing competing conceptions of the rule of law).

⁵⁷ Of course, a legal system’s flexibility is by no means its only dimension. Most legal systems in the world today are extraordinarily complex. Our model does not assume away the myriad other features of the legal system; rather, we focus on flexibility because it is the single overriding feature that most strongly drives the potential for sustainable competitive advantage through the law. See generally Evans & Gabel, *supra* note 2.

⁵⁸ *Id.* at 382; see also *id.* at 372-82 (discussing these three forms of flexibility in detail).

⁵⁹ *Id.* at 383-84.

⁶⁰ *Id.* at 384-85.

⁶¹ *Id.* at 385-86.

⁶² Evans & Gabel, *supra* note 2, at 367-71 (discussing the nature of the rule of law).

activity.”⁶³ Significantly, while the “rule of law reveals the [average] extent to which the firm must allocate resources to legal activities in the pursuit of economic opportunities . . . it also represents a range of opportunities for value creation unique to the individual firm.”⁶⁴

Not all firms will be impacted equally by the legal flexibilities that are pervasive in lower rule of law jurisdictions. Some firms will hire legal counsel capable of harnessing the three forms of legal flexibility to create advantages that are distinctive or altogether unique to the firm.⁶⁵ In contrast to most scenarios in higher rule of law environments, the advantages culled from legal flexibilities in lower rule of law places typically are shrouded in causal ambiguity, and are therefore far more likely to be sustainable.⁶⁶ The skill of the attorney in a low rule of law place thus extends beyond the operational effectiveness that ordinarily drives legal strategy and legal superiority in high rule of law places.⁶⁷ Attorneys in low rule of law places effectively act as institutional entrepreneurs, such that their utilization of legal flexibilities readily translates into competitive advantages for the client.⁶⁸

Harnessing the law for sustainable competitive advantages is not easy, however, and is unlikely to result solely from the application of today’s conventional U.S. legal education. Instead, a new breed of attorney is needed to meet the demands of the global environment described here: the entrepreneurial lawyer.⁶⁹ Legal entrepreneurs approach the law (of any jurisdiction) as though it is a marketplace, akin to the manner in which the classical business entrepreneur approaches the economic marketplace.⁷⁰ Legal entrepreneurship is an inherently multi-disciplinary exercise that moves beyond the classical lawyer’s perceived boundaries.⁷¹ All other things equal, the firm has greater potential latitude in lower rule of law places to define its position within the jurisdiction’s legal

⁶³ *Id.* at 394.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 413-15.

⁶⁷ In high rule of law places, legal advantages achieved through operational effectiveness can seldom be converted into sustainable competitive advantages. Evans & Gabel, *supra* note 2, at 373, 413-15.

⁶⁸ *Id.* at 404-08 (discussing the entrepreneurial lawyer as an institutional entrepreneur). What it means to exploit a given legal opportunity will depend upon the nature of the particular opportunity. *Id.* at 403.

⁶⁹ *See generally id.*

⁷⁰ *Id.* at 397.

⁷¹ Evans & Gabel, *supra*, note 2, at 397. Of particular importance is the entrepreneurial lawyer’s ability to function as a strategist for the firm, bridging the traditional lawyer’s training, predisposition, priorities, vocabulary and worldview with those of the traditional executive. *Id.* at 335, 363-64.

nebula.⁷² Seeking out this competitive position “is the purpose of legal entrepreneurship and is the driver of legal competitive advantage.”⁷³ “Legal entrepreneurship” is thus “best viewed as the process of achieving a distinctive, sustainable position in the economic market (that is, a competitive advantage) by the deliberate and innovative exploitation of one or more legal flexibilities.”⁷⁴ Legal entrepreneurs add value to the firm by managing legal transaction costs,⁷⁵ lowering the legal risks and costs of doing business in a given jurisdiction (particularly in lower rule of law places, where the average risks and costs imposed by legal flexibilities are higher in proportion to the greater scope and frequency of the flexibilities),⁷⁶ and by enabling the firm to act with a greater degree of “legal confidence” in the presence of legal ambiguity and uncertainty than can the firm’s competitors.⁷⁷ By fulfilling these functions, the legal entrepreneur enlarges the expected value of the firm’s economic activities relative to the expected value of the same activities for the firm’s competitors, most of whom will lack entrepreneurial lawyers.⁷⁸ This is the core essence of legal competitive advantage.⁷⁹

B. The Skills Needed of Entrepreneurial Lawyers

Entrepreneurial lawyers apply many of the classical entrepreneur’s skills⁸⁰ to the legal context. Thus, for example, legal entrepreneurs create and pursue new opportunities⁸¹ “by assuming the risks associated with uncertainty.”⁸² Legal entrepreneurs, like classical entrepreneurs, are defined by uncertainty and innovativeness.⁸³ Legal entrepreneurs must be capable of cross-cultural

⁷² *Id.* at 399.

⁷³ *Id.* at 399.

⁷⁴ *Id.* at 401.

⁷⁵ Evans & Gabel, *supra*, note 2, at 418-21; *see also generally* Gilson, *supra* note 31.

⁷⁶ Evans & Gabel, *supra* note 2, at 418-21.

⁷⁷ *Id.* at 418-21.

⁷⁸ *Id.* at 420.

⁷⁹ *Id.* at 420-21.

⁸⁰ No universal agreement exists among scholars as to a single, precise definition of entrepreneurship. The academic entrepreneurship literature thus identifies and debates a wide range of skills and characteristics that may define entrepreneurship. Still, many dominant themes are identifiable, and our understanding of legal entrepreneurship comports with most of these major strands within the entrepreneurship literature, although many of these strands assume distinctive forms in the legal context. *Id.* at 395.

⁸¹ Evans & Gabel, *supra* note 2, at 395-96.

⁸² *Id.* at 395.

⁸³ *Id.* at 395-96.

lawyering, working effectively in teams, and managing risk well.⁸⁴ They embrace persistent problem-solving, ambiguity and failure, opportunity orientation, creativity, and calculated risk-taking.⁸⁵ Of course, the entrepreneurial lawyer is talented at recognizing opportunities in the law for legitimate advantage.⁸⁶

Legal entrepreneurs are culturally astute, or “globally literate.”⁸⁷ The best entrepreneurial lawyers also possess the most important skills related to cultural literacy: they are capable social actors who build relationships with legal decision-makers.⁸⁸ Entrepreneurial lawyers are capable of acquiring and interpreting information.⁸⁹ They are skilled risk managers and operate with a mindset of purposeful innovation.⁹⁰ The entrepreneurial lawyer is both flexible and adaptive,⁹¹ both patient and aggressive.⁹²

Few if any people in the world can be said to possess all of these features at a functional level at any given time. Thus, the preceding paragraphs offer a brief description of the idealized entrepreneurial lawyer. To the extent that legal education can impart these skills and mindsets, together with an appreciation for their distinctive application to the legal context and their unique applications in specific cultural and institutional environments, law schools will fill a major void in the market and will reap considerable advantages.

Before turning to the pedagogical ramifications of this framework, we first briefly consider the important question of whether any empirical evidence exists to corroborate what we have thus far said concerning the nature of legal entrepreneurship. As it turns out, at least one representative lower rule of law country—the People’s Republic of China—offers important qualitative evidence in support.

C. Empirical Support for Legal Entrepreneurship: The Case of China

In January 2014, the authors traveled to China and conducted nearly 30 in-person interviews of expatriate and People’s Republic of China (P.R.C.)

⁸⁴ *Id.* at 408.

⁸⁵ *Id.* The executives for whom legal entrepreneurs work must also be willing to take sensible risks. Evans & Gabel, *supra* note 2, at 421.

⁸⁶ *Id.* at 408-09.

⁸⁷ *Id.* at 409.

⁸⁸ *Id.* at 409-10.

⁸⁹ While not the only way, this is one major avenue by which legal entrepreneurs lower legal costs and legal risks. *Id.* at 410-11.

⁹⁰ Evans & Gabel, *supra* note 2, at 411.

⁹¹ *Id.*

⁹² *Id.* at 417.

attorneys and business leaders.⁹³ The purpose of these interviews was to begin to assess the empirical validity of our prior conceptual research⁹⁴ and, in particular, its applicability to the Chinese market.⁹⁵ In sum, we found substantial evidence in support of our conceptual model.⁹⁶ The participants were particularly supportive of the notion of legal entrepreneurship in China and of the positive aspects of legal flexibilities.⁹⁷

Numerous participants confirmed that in China, legal flexibilities need not be wholly negative but instead can afford attorneys the opportunity to pursue creative (though still legitimate) ends for the client.⁹⁸ The attorney's judgment is important, however, because the mere existence of legal flexibility does not legitimize every conceivable activity.⁹⁹ Thus, one of the most important attributes in an entrepreneurial lawyer is *discretion*—the ability to discern which flexibilities can be used, in which ways, and under which circumstances.¹⁰⁰ Firms *must* be flexible to succeed in China, but not to the point of abandoning principles or engaging in corrupt or other illegitimate behaviors.¹⁰¹ For attorneys new to China,

⁹³ We employed open-ended interview questions, beginning with the same basic set of questions, one of which was for attorneys, and the other of which was for managers and executives. *See generally* HERBERT J. RUBIN & IRENE S. RUBIN, *QUALITATIVE INTERVIEWING: THE ART OF HEARING DATA* (1995) (providing advice on the parameters of effective interviewing for purposes of collecting data).

⁹⁴ *See generally* Evans & Gabel, *supra* note 2.

⁹⁵ China was selected as a start to validating our conceptual model for a few reasons. First, China is universally acknowledged as an extremely important player in the global economy of today. As a starting point in verifying our previous research, China represents an important marketplace. Second, China's is a highly flexible legal system and is in many respects representative of low rule of law jurisdictions. And third, the authors have some familiarity with China's culture, history, political apparatus, and legal system. This familiarity afforded us the ability to ask more precise and (we believe) revealing questions of those we interviewed.

⁹⁶ *See generally* Evans interview notes (on file with author).

⁹⁷ *See generally* Evans interview notes (on file with author).

⁹⁸ Evans Interview No. 1, Jan. 6, 2014; *accord* Evans & Gabel, *supra* note 2, at 336, 393, 418-22. The parameters set by our Institutional Review Board require that we not disclose the identities of interviewees unless specifically authorized by the interviewee to do so. We neither sought nor received such approvals, and so we are reporting the outcomes from these conversations anonymously.

⁹⁹ Evans Interview No. 2, Jan. 7, 2014; *see also* Evans & Gabel, *supra* note 2, at 336-37 (confining the scope of our conceptual model of legal entrepreneurship to legitimate activities).

¹⁰⁰ Evans Interview No. 4, Jan. 7, 2014; *see also* Evans & Gabel, *supra* note 2, at 403, 408-09.

¹⁰¹ Evans Interview No. 2, Jan. 7, 2014. Indeed, one very long-standing expatriate attorney in China expressly told us that those firms and attorneys who lack flexibility and adaptability will not last long in China; the ability to be flexible and to use flexibilities in

one must try to learn how Chinese institutions function as quickly as possible, taking care not to assume that a Western-style continuity will prevail across time.¹⁰² Ironically, although non-Chinese attorneys may be limited in the extent to which they can effectively engage in legal entrepreneurship when they are new to China (on account of their lack of experience), P.R.C. attorneys often fail to engage in effective legal entrepreneurship because Chinese law schools typically do not teach students how to think critically or creatively.¹⁰³ This clearly suggests a gap that Western-trained expatriate attorneys, including American lawyers, could fill,¹⁰⁴ particularly in collaboration with P.R.C. experts.

One corollary to these ideas is that the entrepreneurial lawyer must be able to analyze the “gray zone,” knowing “how far” in the utilization of a legal flexibility is “too far.”¹⁰⁵ In a legally flexible environment such as China, this is tantamount to being able to assess accurately the risks attendant to legal flexibilities.¹⁰⁶ Beyond flexibilities and information asymmetries, the dynamism and volume of Chinese law also contribute to the considerable level of complexity of legal matters in China.¹⁰⁷ The best attorneys, and particularly in-house counsel, help the firm to navigate and reconcile these issues.¹⁰⁸

One experienced P.R.C. attorney opined that Westerners tend to achieve higher levels of comfort with Chinese institutions as they gain exposure and experience.¹⁰⁹ Flexibilities are often deliberately built into the law so that officials

the law for the client is absolutely indispensable. Evans Interview No. 4, Jan. 7, 2014. Other commentators corroborated this from the managerial perspective. *E.g.*, Evans Interview No. 6, Jan. 8, 2014. One business executive noted that the legal and institutional environments in China are highly flexible and that a firm’s strategy must to some extent be aligned with the environment if it is to have any hope of succeeding. Evans Interview No. 9, Jan. 10, 2014. *See also* Evans & Gabel, *supra* note 2, at 336-37 (confining the scope of our conceptual model of legal entrepreneurship to legitimate activities).

¹⁰² Evans Interview No. 3, Jan. 7, 2014.

¹⁰³ Evans Interview No. 13, Jan. 14, 2014. This interviewee is a Chinese attorney, educated in China, with many years of law practice experience in China.

¹⁰⁴ *See generally* Evans, *The Magic Confluence*, *supra* note 16 (suggesting myriad functions through which U.S. attorneys can add value to transactions in China).

¹⁰⁵ Evans Interview No. 4, Jan. 7, 2014.

¹⁰⁶ Numerous interviewees offered strategies for legal and strategic risk management in China. *E.g.*, Evans Interview No. 4, Jan. 7, 2014; Evans Interview No. 7, Jan. 8, 2014; Evans Interview No. 9, Jan. 10, 2014. Although a full assessment of legal risk management is beyond the scope of this article (and will be addressed in our future work), it is clear that the entrepreneurial lawyer must be capable of accurately assessing and coping with legal risks. *Accord* Evans & Gabel, *supra* note 2, at 411 (discussing the entrepreneurial lawyer as a risk manager).

¹⁰⁷ Evans Interview No. 8, Jan. 9, 2014.

¹⁰⁸ *Id.*; *see also* Evans & Gabel, *supra* note 2, at 418-21 (discussing the means by which entrepreneurial lawyers add value to the firm).

¹⁰⁹ Evans Interview No. 10, Jan. 13, 2014.

enjoy some latitude in their interpretation and enforcement.¹¹⁰ In this particular interviewee's experience, most officials want to do justice to the spirit of the law or regulation in question.¹¹¹ This suggests another important function of the entrepreneurial lawyer in China: public relations.¹¹² The entrepreneurial lawyer must be capable of speaking with officials and business partners in the right way, of helping the official to understand the benefits that the client's business brings to the locality, and of understanding the official's concerns.¹¹³ Effective communication with officials can also aid the lawyer in forecasting new policy directions.¹¹⁴

The entrepreneurial lawyer must not only understand but also *accept* the local culture in order to provide sound counsel under legally flexible conditions,¹¹⁵ since legal flexibilities tend to amplify the impact that culture exerts on legal outcomes.¹¹⁶ Cultural competence is as important a driver of business and legal success in China as any skill.¹¹⁷ In particular, the ability to collaborate with experts who are native to localities within China is crucial.¹¹⁸ Thinking "like a lawyer" remains important in China—but the attorney must remain open-minded, be less risk averse than in the West, and be willing to actively embrace flexibility.¹¹⁹ In China, the best attorneys' advice accounts for the law but is as much business-oriented as it is shaped by the law itself.¹²⁰ The old saying about

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*; accord Evans & Gabel, *supra* note 2, at 408-10. One consultant with whom we spoke urged that expatriate lawyers in China must really "do their homework" in determining how to interpret a given law, and that this investigation very often involves talking with individuals who are both expert in the substantive area of regulation as well as in the locality at issue. Evans Interview No. 16, Jan. 15, 2014. See also Evans & Gabel, *supra* note 2, at 408-09.

¹¹⁴ Evans Interview No. 12, Jan. 13, 2014.

¹¹⁵ *Id.*

¹¹⁶ See Evans & Gabel, *supra* note 2, at 380-82 (discussing systemic flexibilities).

¹¹⁷ Evans Interview No. 12, Jan. 13, 2014; see also *infra* Part III.F. (discussing the teaching of soft skills such as cultural competence); see generally Evans & Gabel, *supra* note 2 (noting the numerous ways in which culture impacts legal entrepreneurship and the importance for the entrepreneurial lawyer to be culturally competent).

¹¹⁸ Evans Interview No. 9, Jan. 10, 2014.

¹¹⁹ Evans Interview No. 1, Jan. 6, 2014; accord Evans & Gabel, *supra* note 2, at 417, 421. Another interviewee expressed the same idea somewhat differently: expatriate attorneys should not measure foreign countries by their own standard or worldview; instead, the expatriate attorney must have a strong sense of curiosity and open-mindedness—a willingness to understand another culture by seeing the world through the eyes of that culture. Evans Interview No. 7, Jan. 8, 2014; accord Evans Interview No. 15, Jan. 14, 2014.

¹²⁰ Evans Interview No. 7, Jan. 8, 2014. This was one of the most eloquent

China—that nothing is easy, but nothing is impossible, either—holds as true today as it has in the past.¹²¹ The entrepreneurial lawyer combines these considerations across the law, business, and culture to offer the best and most innovative counsel possible.¹²²

Of course, we recognize that not all jurisdictions that might be labeled “low rule of law” are the same: every jurisdiction will boast a certain set of characteristics that is, to some degree, distinct from every other jurisdiction in the world. Nevertheless, these data confirm the basic validity of our prior conceptual research with respect to at least one of the world’s most important flexible legal jurisdictions, and it seems likely that most or all other jurisdictions in the world that are characterized by similar flexibility would invite consonant opportunities for legal entrepreneurship, subject to the vicissitudes of the locality and its institutions.

III. THE PEDAGOGICAL IMPERATIVES OF LEGAL ENTREPRENEURSHIP

We now have some idea of the skills required to become an entrepreneurial lawyer and why those skills are crucial in the cross-jurisdictional context. Law schools have a clear strategic opportunity to meet an emerging market demand in the training of entrepreneurial lawyers. The question now becomes—how should law schools respond? More particularly, Part III explores how law schools can successfully blend an updated legal pedagogy and curriculum (particularly with respect to its international, experiential, and cultural elements) with entrepreneurship pedagogy, which has traditionally fallen within the prerogative of business schools.

A. General Considerations on “Teaching Law” and the Legal Education Industry’s Woes

The notion that law schools should produce practice-ready graduates is not new, as Austin Abbott argued in 1893, even before the Socratic Method took root in law schools as a means for instructing the theory of law.¹²³ Other

expressions we heard of the notion of legal entrepreneurship.

¹²¹ Evans Interview No. 3, Jan. 7, 2014.

¹²² See Evans & Gabel, *supra* note 2, at 397-98 (characterizing legal entrepreneurship as an inherently interdisciplinary exercise).

¹²³ “It appears to me that in a professional school we should adopt as far as practicable professional methods of study, rather than academic methods.” Austin Abbott, *Existing Questions on Legal Education*, 3 YALE L. J. 1, 14 (1893).

commentators over time have similarly argued for some measure of practical skill development in the law curriculum.¹²⁴ By extension, law faculty must have at least some measure of practical experience in the law to teach effectively, for “[l]aw, as it looks to the theorist in his study and law as it looks to the lawyer in consultation or the court room, are often radically different things.”¹²⁵ One early observer declared that “[t]he law schools of this country have never faced their problems. Like most institutions coming down from generation to generation, they have been slow to inquire into the original justification of their plans and programs, or to seek to learn whether what was once justified still retained its reason for being.”¹²⁶ Consequently, legal education soon evolved largely without regard to key stakeholders: “Our law teaching is too much a teaching of . . . fixed conceptions with inadequate consideration of whether the reasons behind the conceptions still exist as applicable to modern conditions of social and economic life.”¹²⁷ Even before the era of globalization, the question for law schools was “entirely the practical one of what body of principles and rules should the student familiarize himself with in order to become an effective practitioner,” with the recognition that “[t]hese may be different in different jurisdictions and at different times in the same jurisdiction.”¹²⁸

Undoubtedly, the legal academy has progressed along many dimensions since these observers’ time.¹²⁹ Moreover, these concerns are wide-spread throughout higher education and are not limited solely to legal education.¹³⁰ Yet

¹²⁴ See, e.g., James B. Brooks, *Legal Ethics*, 19 YALE L. J. 441, 442 (1910) (arguing that law schools must prepare practice-ready lawyers).

¹²⁵ Floyd R. Mechem, *The Opportunities and Responsibilities of American Law Schools*, 5 MICH. L. REV. 344, 348 (1907). Mechem’s observation holds even for high rule of law places like the United States, of which he was writing. Cf. Evans & Gabel, *supra* note 2, at 372 (noting that the formal law, or law in theory, is often very different from the law in practice, and that this is especially true in lower rule of law jurisdictions).

¹²⁶ William Carey Jones, *The Problem of the Law School*, 1 CAL. L. REV. 1, 1 (1912); cf. Notes, 11 HARV. L. REV. 114 (1897) (asserting “the permanence of the methods of legal education instituted” in that early era).

¹²⁷ Eugene A. Gilmore, *Some Criticisms of Legal Education*, 7 A.B.A. J. 227, 227 (1921). This concern appears equally true today as well: U.S. law schools focus so narrowly on training students to think theoretically and only for the U.S. context that their graduates are not prepared to add value as strategic thinkers in the global context.

¹²⁸ Albert M. Kales, *An Unsolicited Report on Legal Education*, 18 COLUM. L. REV. 21, 24 (1918).

¹²⁹ See, e.g., Carl J. Circo, *Teaching Transactional Skills in Partnership with the Bar*, 9 BERKELEY BUS. L. J. 187, 217-31 (2012) (reviewing the academic discourse concerning transactional skills education and noting advances in transactional legal education).

¹³⁰ See, e.g., Andrew Czuchry, Mahmoud Yasin & Maria Gonzales, *Effective Entrepreneurial Education: A Framework for Innovation and Implementation*, 7 J.

many of the present troubles in the legal practice and legal education industries are directly (and are often almost exclusively) attributable to law schools' own failure to adapt to the dynamics of their environment.¹³¹

ENTREPRENEURSHIP EDUC. 39 (2004) (noting that higher education in general lacks the flexibility that private businesses use to compete worldwide by better adapting to uncertainty and change).

¹³¹ Various commentators have predicted (correctly, it would seem) a period of painful readjustment for law schools, although various causes are identified, and various prescriptions for the legal education industry's responses are recommended. See, e.g., SUSSKIND, *supra* note 42, at 136 (“[W]e are training young lawyers to become 20th-century lawyers and not 21st-century lawyers.”); Richard W. Bourne, *The Coming Crash in Legal Education: How We Got Here, and Where We Go Now*, 45 CREIGHTON L. REV. 651 (2012) (arguing that law schools are undermined when their universities redirect their tuition revenues to non-law-school ends, but that law schools must still extricate themselves from the present crisis, and prescribing fixes); Campos, *supra* note 15 (arguing that the present law school model is unsustainable due to the factors enumerated); Cassidy, *supra* note 27 (acknowledging the charge that legal academics have long overemphasized the theoretical at the expense of the practical, and suggesting proposed reforms); Gregory M. Duhl, *Equipping Our Lawyers: Mitchell's Outcomes-Based Approach to Legal Education*, 38 WM. MITCHELL L. REV. 906, 907-08 (2012) (noting the tenuous and uncertain circumstances confronting the U.S. legal education industry); Gantt, *supra* note 21, at 706-07 (noting the numerous complaints over time “that law schools do not adequately prepare students for the daily realities of law practice” and that law schools must teach critical thinking and cognitive skills); Beverly Petersen Jennison, *Beyond Langdell: Innovating in Legal Education*, 62 CATH. U.L. REV. 643, 643 (2013) (noting failed attempts by law schools to address their challenges); Michael Kelly, *A Gaping Hole in American Legal Education*, 70 MD. L. REV. 440, 446 (2011) (urging that law schools are obligated to educate applicants on the conditions prevailing in the legal industry); Richard A. Matasar, *The Viability of the Law Degree: Cost, Value, and Intrinsic Worth*, 96 IOWA L. REV. 1579, 1580, 1589 (2011) (arguing, *inter alia*, that legal education must be judged on the basis of the quality of its outputs, not its inputs); Kyle P. McEntee, Patrick J. Lynch & Derek M. Tokaz, *The Crisis in Legal Education: Dabbling in Disaster Planning*, 46 MICH. J. L. REFORM 225, 225 (2012) (noting the baleful state of affairs in the legal industry and urging that legal education must be reformed without delay); John McKay, *Un-apologizing for Context and Experience in Legal Education*, 45 CREIGHTON L. REV. 853, 854-56 (2012) (noting the many recent criticisms of legal education and that most law schools continue to produce lawyers unequipped for practice); Deborah Jones Merritt & Daniel C. Merritt, *Unleashing Market Forces in Legal Education and the Legal Profession*, 26 GEO. J. LEGAL ETHICS 367 (2013) (contending that law schools are on an unsustainable track that can be remedied only by bona fide competition); James E. Moliterno, *The Future of Legal Education Reform*, 40 PEPP. L. REV. 423 (2013) (noting the myriad negative consequences of the legal profession's unresponsiveness and that “[i]legal education has not been much better than the profession itself at innovation”); Deanell Reece Tacha, *The Lawyer of the Future*, 40 PEPP. L. REV. 337 (2013) (noting, *inter alia*, that “[i]ntrospection is the order of the day for legal education and the legal profession” due to the conditions now prevailing in

Significantly, employers and clients “increasingly look to law schools to do the initial [practical] training that once occurred in the [law] firms themselves,” and, thus, “[l]aw schools that continue to focus on training students in legal analysis and skills work will be in demand, because the schools will be performing a role that employers will likely find useful for the future.”¹³² For law schools, “[e]xpenditures on skills training and clinics will provide real educational value to students, not just a fancy brand name or high school ranking. If schools spend money on the educational needs of students rather than on status seeking, the schools will have a real chance at prospering, even in today’s cramped marketplace.”¹³³ “Intensive opportunities for real-life practice” produce the type of law graduates who are now in demand.¹³⁴ “If law schools cannot educate and produce competent attorneys, then we have no place educating them at all. . . . [T]he idea that we need to graduate students who can function as practicing attorneys clearly deserves a place at the table,” Professor Jennison writes.¹³⁵

Despite these calls,¹³⁶ however, most law schools have committed relatively few resources to experiential and practical-skills initiatives, though most

the legal industry); Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 4 J. LEGAL EDUC. 598, 599 (2010) (noting that the present environment is “causing legal employers to put a premium on job candidates with practical skills,” and that law schools must produce such lawyers to survive in the future); Daniel B. Bogart, *The Right Way to Teach Transactional Lawyers: Commercial Leasing and the Forgotten “Dirt Lawyer,”* 62 U. PITT. L. REV. 335 (2000) (arguing that law schools generally fail to prepare law students for transactional practice, and that “[l]aw schools should correct this curricular failure”); Clark D. Cunningham, *Should American Law Schools Continue to Graduate Lawyers Whom Clients Consider Worthless?*, 70 MD. L. REV. 499 (2011) (noting numerous accounts of new law graduates’ woeful unpreparedness for law practice and that “among jurisdictions related to the common-law tradition, the United States is almost unique in not requiring rigorous practice preparation between the law degree and bar admission”). See generally the recent book-length critiques of the legal education industry—e.g., STEVEN J. HARPER, *THE LAWYER BUBBLE* (2013); BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012). But see Bryant G. Garth, *Crisis, Crisis Rhetoric, and Competition in Legal Education: A Sociological Perspective on the (Latest) Crisis of the Legal Profession and Legal Education*, 24 STAN. L. & POL’Y REV. 503 (2013) (expressing doubt that the shifts underway in the legal industry and legal education are as substantial as other commentators perceive). Compare Garth, *supra*, with William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461 (2013) (predicting dire consequences for the legal education industry absent substantial reforms).

¹³² Bourne, *supra* note 131, at 696.

¹³³ *Id.*

¹³⁴ Tacha, *Training the Whole Lawyer*, *supra* note 25, at 1702.

¹³⁵ Beverly Petersen Jennison, *Beyond Langdell: Innovating in Legal Education*, 62 CATH. U. L. REV. 643, 670 (2013).

¹³⁶ For more on the need to better connect legal education with practical skills and employers’ needs, see generally Neil J. Dilloff, *Law School Training: Bridging the Gap*

are spending nominally in these areas.¹³⁷ Disturbingly, “[a]lthough administrators often acknowledge these gaps, they view correctives as luxuries that students can ill afford.”¹³⁸ Still, “[m]uch can be accomplished with existing resources through case histories, problems, simulations, cooperative projects, and interdisciplinary collaboration. The problem is less that these approaches are unaffordable than that *they are unrewarded*.”¹³⁹

In the meantime, the globalized economy has wrought negative consequences on U.S. law schools as a result of their inflexibility and immobility. U.S. law schools are facing increasingly intense competition from global rivals in other regions, most notably the European Union.¹⁴⁰ The need for reform remains compelling, as “[p]aralysis in a dynamic environment is as dangerous as unreflective change.”¹⁴¹

Most advocates of augmenting the practical training in today’s law curriculum are not hostile to theory. Globalized markets “are making new demands on and offering new options to law graduates. As once-reliable Big Law and other traditional law jobs disappear, law schools must figure out how to serve the legal-services market from which they have been insulated for so long,”¹⁴² Professor Larry Ribstein argued:

[L]aw schools do not face a choice between theory and practice. Rather, they face for the first time the need to provide the type of education the market demands instead of serving . . . law professors’ preferences. Legal education must respond to these demands by providing not just practice skills suited to the existing market for legal services, but also the knowledge and skills that enable law graduates to function in the new legal-information market. Ironically, this calls for the application of many theories now developing in law schools.¹⁴³

between Legal Education and the Practice of Law, 24 *STAN. L. & POL’Y REV.* 425 (2013).

¹³⁷ This is true, for example, in clinical legal education. See generally Barry, Dubin & Joy, *supra* note 53 (examining the academy’s resistance to experiential learning).

¹³⁸ Deborah L. Rhode, *Rethinking the Problem, Reimagining the Reforms*, 40 *PEPP. L. REV.* 437, 449 (2013).

¹³⁹ *Id.* (emphasis added); see also *id.* at 454 (noting that the most influential voices in legal education today lack a consensus on what to do about the legal education industry’s problems—or that a problem even exists).

¹⁴⁰ Claudio Grossman, *Raising the Bar: US Legal Education in an International Setting*, 32 *HARV. INT’L REV.* 16, 16-17 (Fall 2010).

¹⁴¹ *Id.* at 18.

¹⁴² Ribstein, *supra* note 20, at 1652.

¹⁴³ *Id.*

B. Teaching International Law and Globalization

Most law schools now offer some measure of global exposure—most often, international and comparative course offerings and study abroad options.¹⁴⁴ On the whole, however, international and comparative law programs have not prepared students for transnational practice.¹⁴⁵ Although the global environment has changed dramatically since World War II, many of the old explanations for international law’s slow curricular evolution still command traction today.¹⁴⁶ Effectively preparing students for global practice will require that law schools “change their focus and perspective from national to global. . . . Educational efforts themselves have to be internationalized.”¹⁴⁷ Like the area of

¹⁴⁴ Diane Penneys Edelman, *Educating and Qualifying Transnational Lawyers: A U.S. Perspective*, 46 INT’L L. 635, 635 (2012). See also Robert E. Lutz, *Reforming Approaches to Educating Transnational Lawyers: Observations from America*, 61 J. LEGAL EDUC. 449, 452-54 (2012) (noting survey that indicates multiple efforts to prepare students across U.S. law schools, but that few of these are coordinated within law schools or with the profession). Law schools offer summer study programs abroad, expanded curricula, professorial and student exchanges, and the use of technologies; a few offer internships, clinics, seminars, case studies, and skills courses. *Id.*

¹⁴⁵ See Sanchez, *supra* note 49, at 637. For an explanation on why law schools have offered few foreign law courses, see *id.* at 638. See also Charles Stevens and B. Ko-Yung Tung, Remarks, in AM. SOC’Y INT’L L. PROC., *supra* note 35, at 254-55 (commenting that law school courses in international and comparative law were unhelpful in practice, and that the most useful law school courses for international practice are those that are practical and that teach culture).

¹⁴⁶ See, e.g., Carl M. Franklin, *The Teaching of International Law in American Law Schools*, 46 AM. J. INT’L L. 140, 140-43 (1952) (noting that many law schools considered international law a “luxury” subject, lacked the time and qualified faculty to teach international law, and discounted international law because it was not on any bar exam); see also John M. Raymond & Barbara J. Frischholz, *Lawyers who Established International Law in the United States, 1776-1914*, 76 AM. J. INT’L L. 802, 815-18, 823-25, 827 (1982) (providing an overview of the early evolution of international law as an academic subject in the United States). Others considered international law too much of an abstraction having too little impact on lawyers. E.g., James B. Scott, *International Law in Legal Education*, 4 COLUM. L. REV. 409, 417-19 (1904) (likening international law to constitutional law and contending that both subjects should be taught in law schools because both “have a great historical as well as legal value”). The issue of the bar exam is considered at further length in Part VI, *infra*.

¹⁴⁷ Edelman, *supra* note 144, at 635. Professor Edelman also urges that “[w]e should . . . continue to develop the already sizeable body of scholarship on the internationalization/transnationalization/globalization of legal education, and continue our professional and pedagogical dialogue about how to train and qualify our students to practice law transnationally.” *Id.* This article seeks to contribute to this dialogue.

entrepreneurship,¹⁴⁸ international law is an inherently interdisciplinary area¹⁴⁹ and merits such an approach in law schools.

While it may not be possible for U.S. legal education to prepare students to sit for the bar of any nation,¹⁵⁰ it is not altogether clear that preparing students for admission in other countries ought to be a goal for American law schools.¹⁵¹ Perhaps the greatest value-add that American law schools can contribute to students' preparation for cross-border and cross-cultural practice is the core set of skills needed in these areas. Chief among these is the ability to contribute strategically to global clients and employers through legal entrepreneurship.

The basic questions surrounding the internationalization of legal curricula are reducible to two core issues: whether international education should be required of students or elective, and whether international education should be experiential or academic.¹⁵² Questions particular to international law are also pertinent: whether the discipline should focus on foreign or international law; whether individual courses should be internationalized; and, most significantly for our purposes, whether internationalization should be concerned only with solutions to legal problems in the global and foreign contexts or whether students should be trained to think like lawyers.¹⁵³ As Part IV will discuss, this paper

¹⁴⁸ See *infra* Parts III.D and III.E (discussing entrepreneurship's interdisciplinary nature).

¹⁴⁹ See, e.g., Cavers, *supra* note 31, at 1064 (noting that the global environment increasingly "requires that the law teacher and student take into account a wider range of phenomena than was once thought germane to their studies. Political pressures, psychological factors, business practices, sociological and economic data and theory, all are likely from time to time to become pertinent and important."); Kunz, *supra* note 52, at 627 ("Naturally the jurist who devotes his life to the study of international law must know and understand many things, such as history, politics, languages, and so on, in order to be fully equipped for [the] task. . .").

¹⁵⁰ See Maxeiner, *supra* note 22, at 35 (ruling out such instruction in the United States but acknowledging programs in other nations involving this sort of instruction). Although this article does not contend that such instruction is impractical in the United States, the curricular reforms proposed here do not touch upon this issue directly.

¹⁵¹ *Id.* at 34. Some countries, for example, permit foreign lawyers to undertake transactional work even while forbidding foreigners from formal admission to the country's bar. See, e.g., Brad Alexander, Caroline Berube & Justin Evans, *China (People's Republic of China)*, in *THE ABA GUIDE TO INT'L B. ADMISSIONS* 49 (Russell W. Dombrow & Nancy A. Matos eds., 2012) (noting that foreign lawyers cannot be admitted to the P.R.C. Bar, but nevertheless can conduct transactional work in China, which represents the bulk of legal work to be done).

¹⁵² Maxeiner, *supra* note 22, at 36. Professor Maxeiner notes that "practical versus academic" is a false dichotomy, as legal education can and must deliver both dimensions. *Id.*; see also *supra* Part II.A (arguing that theory and practicality are reconcilable and that law schools must afford both to their students).

¹⁵³ "Thinking like a lawyer" in the foreign and global contexts now requires the

contends that basic substantive doctrine in international and comparative law should be required of all U.S. law students, as should basic cross-cultural and interdisciplinary training—most significantly, in entrepreneurship. Part IV also proposes a new specialized LL.M. degree in legal entrepreneurship, designed to train cross-border attorneys in the most important facets of global, twenty-first century law practice. Both proposals will involve integrative and immersive dimensions in the curriculum.¹⁵⁴ This paper echoes Professor Maxeiner’s view on the subject: it is almost beyond belief that the necessity of and advantages to internationalizing American legal education are still questioned.¹⁵⁵ “*Of course* we should prepare our students to deal with lawyers and clients from foreign legal systems.”¹⁵⁶ Ultimately, “[w]hat we need is an appreciation of how much we can learn from foreign law. That is how we will inoculate ourselves from today’s ‘globalization’ frenzy becoming tomorrow’s fad of yesterday.”¹⁵⁷ This appreciation, combined with entrepreneurial prowess, will enable American law schools to produce the world’s next generation of top global attorneys.

C. Experiential Education in the Law

Because experiential education lays at the heart of the reforms proposed in Part IV, *infra*, we take brief note of what many commentators have already observed: today’s market demands and rewards law graduates capable of combining conceptual learning with real-world skills, and it is incumbent upon law schools to produce such candidates.¹⁵⁸ To this end, experiential elements, including clinics, are key assets in the preparation of global lawyers.¹⁵⁹ Still, like

attorney to be entrepreneurial. Thus, our contention that attorneys must be trained to “think like lawyers” is simply to say that lawyers should think entrepreneurially as a matter of course in today’s environment.

¹⁵⁴ See Maxeiner, *supra* note 22, at 37-44 (discussing the additive, integrative, and immersion approaches to internationalization in law schools).

¹⁵⁵ *Id.* at 46.

¹⁵⁶ *Id.* (emphasis added). See also *infra* Part II.F (contending that law schools must teach culture in the broader sense in order to prepare practice-ready lawyers).

¹⁵⁷ Maxeiner, *supra* note 22, at 47.

¹⁵⁸ Some law schools heavily integrate skills courses, workshops, simulations, and experiential learning (including clinics) into their curricula with good results. See, e.g., Gregory M. Duhl, *Equipping Our Lawyers: Mitchell’s Outcomes-Based Approach to Legal Education*, 38 WM. MITCHELL L. REV. 906 (2012).

¹⁵⁹ Silver, *Getting Real*, *supra* note 14, at 461 (“While distinctions among legal systems and in substantive law can be learned from reading and more traditional approaches to cognitive learning, in order to acquire the sensitivity necessary to function with expertise in a global environment, experiential learning activities may take precedence.”). See also Ross Hyams, *Multidisciplinary Clinical Legal Education: The*

many of the areas our proposals seek to combine, experiential learning is underutilized in American legal education today.¹⁶⁰ “As we enter the new millennium, the movement beyond the casebook method to the wider integration of clinical methodology throughout the curriculum stands on a solid intellectual foundation. Yet . . . too often clinical teaching and clinical programs remain at the periphery of law school curricula.”¹⁶¹

Most global practices, and expatriate practices in foreign countries, are predominantly transactional¹⁶² in nature. The reforms proposed here are aimed principally at preparing strategic, entrepreneurial lawyers—many of whom will be primarily or exclusively transactional. All three major avenues for teaching transactional law—substantive courses, simulations, and clinics¹⁶³—are incorporated into the proposals of Part IV, *infra*. Irrespective of the precise mode of instruction, the end goal of an experiential legal education is the development of students’ critical abilities through experience and frequent feedback that enables further development.¹⁶⁴

Clinics play a featured role in experiential legal education. “[T]he primary goal of clinical legal education should be to teach students how to learn from experience. . . . Clinical education is first and foremost a method of

Future of the Profession, 37 *ALT. L. J.* 103, 105-06 (2012) (advocating the integration of multidisciplinary legal clinics into the law curriculum and noting that such clinics address many of the skills that commentators frequently identify as necessary for twenty-first century lawyers).

¹⁶⁰ “Learning-by-doing has been a part of legal education since its very beginning. Yet, today’s legal education is often sorely lacking in this area.” John T. Gaubatz, *Of Moots, Legal Process, and Learning to Learn the Law*, 37 *U. MIAMI L. REV.* 473, 490 (1983). Experiential learning tends to foster greater enthusiasm for the material, gives students a much more powerful understanding of why the skills they are learning are important in practice, and illustrates the importance of the law to the client. *See generally id.* *See also* Victor Fleischer, *Deals: Bringing Corporate Transactions into the Law School Classroom*, 2002 *COLUM. BUS. L. REV.* 475, 478 (2002) (arguing that today’s legal education does not adequately train transactional lawyers, since “thinking like a lawyer” is only one skill of many that lawyers need).

¹⁶¹ Barry, Dubin & Joy, *supra* note 53, at 32.

¹⁶² “‘Transactional law’ refers to the various substantive legal rules that influence or constrain planning, negotiating, and document drafting in connection with business transactions, as well as the ‘law of the deal’ (i.e., the negotiated contracts) produced by the parties to those transactions.” Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 *WASH. U. J. L. & POL’Y* 85, 90 n.27 (2013).

¹⁶³ *Id.* at 90 n.24 (noting these three major forms for teaching transactional law); *see also* Dilloff, *supra* note 136, at 448-51 (recommending role-playing, simulations, and getting out of the classroom as some of the most productive experiential learning methods).

¹⁶⁴ *See* Gantt, *supra* note 21, at 751-56.

teaching.”¹⁶⁵ Such a teaching method requires that students are confronted with the types of challenges that practicing attorneys encounter, that students interact with others to solve the challenge, and that the students’ performance is subjected to intensive review.¹⁶⁶ “The clinical method allows students to confront the uncertainties and challenges of problem solving for clients in fora that often challenge precepts regarding the rule of law and justice. . . . [T]he best learning takes place when the broad range of abilities we possess is engaged.”¹⁶⁷ So long as clinical courses are taken for credit (to properly incentivize students and faculty),¹⁶⁸ experiential programs can produce significant results.¹⁶⁹ Simulations¹⁷⁰ and workshops¹⁷¹ can also be helpful in advancing experiential legal education. In terms of scope, clinics can and should address transnational legal issues.¹⁷²

Some scholars are embracing innovation in experiential learning.¹⁷³ Professor Jennison advocates for a combination of “instructional innovation, problem-solving innovation, and experiential education innovation” in order to “transform the landscape of the legal academy.”¹⁷⁴ These innovations, like experiential education generally, help the student to bridge the law learned in books with “the complex and variegated world of the law in action.”¹⁷⁵ The proposals in Part IV, *infra*, endeavor to incorporate these many insights concerning experiential learning.

¹⁶⁵ Barry, Dubin & Joy, *supra* note 53, at 17-18.

¹⁶⁶ *Id.* at 17-18.

¹⁶⁷ *Id.* at 38.

¹⁶⁸ *Id.* at 10.

¹⁶⁹ *Id.* at 72 (reviewing the many productive results that clinical legal education can produce).

¹⁷⁰ See, e.g., Shawn Marie Boyne, *Crisis in the Classroom: Using Simulations to Enhance Decision-Making Skills*, 62 J. LEGAL EDUC. 311 (2012); see generally Robert C. Illig, Therese H. Maynard, Cherie O. Taylor & Irene Kosturakis, *Teaching Transactional Skills through Simulations in Upper-Level Courses: Three Exemplars*, 10 TENN. J. BUS. L. 15 (2009) (detailing, *inter alia*, the use of labs associated with traditional doctrinal courses); Carol R. Goforth, *Preparing the Corporate Lawyer: Use of Simulations and Client-Based Exercises in the Basic Course*, 34 GA. L. REV. 851 (2000) (advancing multiple reasons for the use of client-based simulation exercises in law courses).

¹⁷¹ See generally Jennison, *supra* note 131, at 665-66.

¹⁷² Barry, Dubin & Joy, *supra* note 53, at 57.

¹⁷³ See generally Jennison, *supra* note 131.

¹⁷⁴ *Id.* at 670-73.

¹⁷⁵ Katherine R. Kruse, *Getting Real About Legal Realism, New Legal Realism, and Clinical Legal Education*, 56 N.Y.L. SCH. L. REV. 659, 660 (2011). “[C]linical pedagogy is ideally suited to overcome the seemingly intractable problem of how to integrate social science insights into law teaching. . . . In clinics, students are immersed in the heart of the law in action. . . .” *Id.* at 681. See also Evans & Gabel, *supra* notes 2, 125 (noting divergence between the law in theory and the law in practice).

D. General Considerations on Teaching Entrepreneurship

Entrepreneurship, though widely thought of exclusively in terms of “starting a new business,” exists in many contexts.¹⁷⁶ Among these is the context of interest to us—entrepreneurship in the law.¹⁷⁷ Legal entrepreneurship is, however, an idea largely unexplored in the academic literature.¹⁷⁸ Thus, the next logical step in determining how law schools might produce legal entrepreneurs is to understand how entrepreneurship education functions within its traditional academic home: business schools.

Entrepreneurship has been conceived of in many ways.¹⁷⁹ For our purposes, entrepreneurship “is about identifying opportunities, creatively breaking patterns, taking and managing risk, and organising and co-ordinating resources.”¹⁸⁰ Thus, “[e]ntrepreneurship is about entrepreneurial individuals interacting with their environment, thus discovering, evaluating and exploiting opportunities.”¹⁸¹

We adopt Fayolle and Klandt’s broad definition of “entrepreneurship education” as “any pedagogical programme or process of education for entrepreneurial attitudes and skills, which involves developing certain personal qualities. It is therefore not exclusively focused on the immediate creation of new businesses. Hence this definition covers a wide variety of situations, aims,

¹⁷⁶ Evans & Gabel, *supra* note 2, at 396-97; accord Mark Griffiths, Jill Kickul, Sophie Bacq & Siri Terjesen, *A Dialogue with William J. Baumol: Insights on Entrepreneurship Theory and Education*, 36 ENTREPRENEURSHIP THEORY & PRAC. 611, 611-12 (2012) (stating that entrepreneurship is “no longer . . . synonymous with new, small, or owner-managed firms”). Some of the literature reserves the term “entrepreneurship” only for the traditional function of starting new businesses, employing such terms as “enterprising behavior” to describe individuals who apply entrepreneurial skills outside the context of starting a new business. See, e.g., Per Blenker, Poul Dreisler, Helle Meibom Faergemann & John Kjeldsen, *A Framework for Developing Entrepreneurship Education in a University Context*, 5 INT’L J. ENTREPRENEURSHIP & SMALL BUS. 45, 56-57 (2008).

¹⁷⁷ See generally *supra* Part II.

¹⁷⁸ See Evans & Gabel, *supra* note 2, at 400.

¹⁷⁹ Entrepreneurship is a distinctive, unique discipline, and not merely an amalgamation of other business disciplines. See, e.g., Michael H. Morris, Justin W. Webb, Jun Fu & Sujata Singhal, *A Competency-Based Perspective on Entrepreneurship Education: Conceptual and Empirical Insights*, 51 J. SMALL BUS. MGMT. 352, 365 (2013).

¹⁸⁰ Jarna Heinonen & Sari-Anne Poikkijoki, *An Entrepreneurial-Directed Approach to Entrepreneurship Education: Mission Impossible?*, 25 J. MGMT. DEV. 80, 82 (2006).

¹⁸¹ *Id.*; accord Francisco Liñán, *The Role of Entrepreneurship Education in the Entrepreneurial Process*, 1 HANDBOOK OF RES. IN ENTREPRENEURSHIP EDUC. 230, 234-35 (Alain Fayolle ed., 2007) (contending that the entrepreneurial process consists of the interactions between the entrepreneur, the environment, and the opportunity; and, thus, entrepreneurship education develops creativity and opportunity recognition skills, intention, specific knowledge, and other facets crucial to this process).

methods and teaching approaches.”¹⁸² Entrepreneurship and entrepreneurship education can thus be perceived at different levels: as a matter of culture, behaviors, and specific situations.¹⁸³ Regardless of the particular paradigm or theoretical framework in which entrepreneurship is taught,¹⁸⁴ the fundamental goal “is that learning objectives and learning activities enhance the students’ entrepreneurial behavior. . . .”¹⁸⁵

Entrepreneurship as an academic discipline is relatively new; as such, the discipline’s foundations are still evolving, and entrepreneurship courses often embrace divergent learning objectives.¹⁸⁶ Some scholars question whether entrepreneurship can be taught,¹⁸⁷ but that question appears to have been resolved affirmatively.¹⁸⁸ Numerous approaches to teaching entrepreneurship exist;¹⁸⁹ the

¹⁸² Alain Fayolle & Heinz Klandt, *Issues and Newness in the Field of Entrepreneurship Education: New Lenses for New Practical and Academic Questions*, in INT’L ENTREPRENEURSHIP EDUC. 1, 1 (Alain Fayolle & Heinz Klandt eds., 2006).

¹⁸³ *Id.* at 2.

¹⁸⁴ Per Blenker, Steffen Korsgaard, Helle Neergaard & Claus Thrane, *The Questions We Care About: Paradigms and Progression in Entrepreneurship Education*, 25 INDUS. & HIGHER EDUC. 417, 419-22 (2011) (discussing the four paradigms in entrepreneurship education).

¹⁸⁵ *Id.* at 425; accord Earl C. Meyer, *A Philosophy of Entrepreneurship Education*, 46 BUS. EDUC. F. 8 (1992) (“The primary purpose of entrepreneurship education should be to prepare students for entrepreneurial opportunities.”). Other scholars are more specific. “The aim of our entrepreneurship education,” for example, can be “to integrate the skills and attributes of an entrepreneurial individual with the entrepreneurial process and related behavior.” Heinonen & Poikkijoki, *supra* note 180, at 83-84.

¹⁸⁶ Nathalie Duval-Couetil, *Assessing the Impact of Entrepreneurship Education Programs: Challenges and Approaches*, 51 J. SMALL BUS. MGMT. 394, 397 (2013). See also Heinonen & Poikkijoki, *supra* note 180, at 81-82 (offering an excellent synopsis of the recent evolution of the discipline and noting that academic work in the field has touched upon a wide variety of themes).

¹⁸⁷ See, e.g., Duval-Couetil, *supra* note 186, at 397.

¹⁸⁸ See, e.g., Dean Elmuti, Grace Khoury & Omar Omran, *Does Entrepreneurship Education Have a Role in Developing Entrepreneurial Skills and Ventures’ Effectiveness?*, 15 J. ENTREPRENEURSHIP EDUC. 83 (2012) (noting studies indicating that entrepreneurship education is indeed effective at training students); Carlos A. Alborno, *Toward a Set of Trainable Content on Entrepreneurship Education: A Review of Entrepreneurship Research from an Educational Perspective*, 3 J. TECH. MGMT. & INNOVATION 86 (2008) (knowledge, skills, and attitudes can be taught within the context of entrepreneurship); Bruce C. Martin, Jeffrey J. McNally & Michael J. Kay, *Examining the Formation of Human Capital in Entrepreneurship: A Meta-Analysis of Entrepreneurship Education Outcomes*, 28 J. BUS. VENTURING 211 (2013) (finding evidence from the human capital context that entrepreneurship education delivers value to students); Alain Fayolle, *Entrepreneurship Education at a Crossroads: Towards a More Mature Teaching Field*, 16 J. ENT. CULTURE 325 (2008) (stating that entrepreneurship can be taught); Saskia J.M. Harkema & Henk Schout, *Incorporating Student-Centered Learning in Innovation and*

most fundamental debate is whether education should be *about* entrepreneurship (“[c]ourses that explain entrepreneurship and its importance to the economy, where students remain at a distance from the subject”), or *for* entrepreneurship (“courses with an experiential component that train students in the skills necessary to develop their own businesses”).¹⁹⁰ Some academics add a third category of education *through* enterprise, which involves “using the new venture creation process to help students acquire a range of both business understanding and transferable skills or competencies.”¹⁹¹ The proposals in Part IV, *infra*, aspire to produce entrepreneurial lawyers by positively contributing to students’ mindsets and experiences in and beyond the traditional classroom; thus, our proposal is one that is both “for” and “through” entrepreneurship. The extent to which entrepreneurship programs have moved beyond the “about” approach is questionable.¹⁹² In any event, tradeoffs exist in the choice of entrepreneurship pedagogy, and programs must manage these tradeoffs.¹⁹³

Entrepreneurship Education, 43 EUR. J. EDUC. 513, 514 (2008) (stating that although entrepreneurship can be taught, the pedagogy and context of learning are important); Colette Henry, Frances Hill & Claire Leitch, *Entrepreneurship Education and Training: Can Entrepreneurship be Taught? Part I*, 47 EDUC. & TRAINING 98 (2005); Colette Henry, Frances Hill & Claire Leitch, *Entrepreneurship Education and Training: Can Entrepreneurship be Taught? Part II*, 47 EDUC. & TRAINING 158 (2005) (noting that most commentators believe that at least some aspects of entrepreneurship can be taught, although many approaches to teaching are possible because of the many disciplinary perspectives from which the subject can be approached); Donald F. Kuratko, *The Emergence of Entrepreneurship Education: Development, Trends, and Challenges*, 29 ENTREPRENEURSHIP THEORY AND PRAC. 577 (2005) (contending that at least some aspects of entrepreneurship, including “entrepreneurial perspective,” can be taught); Jeff Vanevenhoven, *Advances and Challenges in Entrepreneurship Education*, 51 J. SMALL BUS. MGMT. 466, 467 (2013) (“Entrepreneurship is a domain of traits that can be learned and thus can be taught.”). *But see* Trish Boyles, *21st Century Knowledge, Skills, and Abilities and Entrepreneurial Competencies: A Model for Undergraduate Research Education*, 15 J. ENTREPRENEURSHIP EDUC. 41, 41-50 (2012) (questioning whether sufficient evidence exists for this conclusion and suggesting new ways in which entrepreneurship programs might be assessed).

¹⁸⁹ Some commentators view this negatively, reflecting a lack of theoretical consensus in the field. *See* Henry, Hill & Leitch, *Part I, supra* note 188, at 103. For a concise synopsis on why there remains such little agreement on the elements and methods to be used in teaching entrepreneurship, *see* Vanevenhoven, *supra* note 188, at 467.

¹⁹⁰ Duval-Couetil, *supra* note 186, at 397-98 (reviewing the various approaches to teaching entrepreneurship, as well as the “about” versus “for” debate); Blenker, Dreisler, Faergemann & Kjeldsen, *supra* note 176, at 55.

¹⁹¹ Fayolle, *supra* note 188, at 327; *see also* Henry, Hill & Leitch, *Part I, supra* note 188, at 101-02 (discussing three-category framework by which to organize entrepreneurship education).

¹⁹² Some scholars find that “despite a widespread desire to promote and develop

Stemming from the lack of consensus on its core objectives, entrepreneurship education often entails a variety of assessment instruments.¹⁹⁴ The various forms of entrepreneurship education detailed above diverge significantly in their modes of assessment.¹⁹⁵ “‘About’ forms of entrepreneurship education are much less likely to engage other stakeholders, are much more likely to seek ‘objective’ assessment methods and are more likely to apply ‘summative’ assessment methods.”¹⁹⁶ In the other forms of entrepreneurship education, “assessment practice tends to be more reflective, more engaging of other stakeholders, more accepting of ambiguity and more formative in nature.”¹⁹⁷ In sum, Pittaway and Edwards urge that entrepreneurship educators “do more to engage stakeholders particularly via peer assessment and the engagement of entrepreneurs and other professionals. Assessment practice needs to be more innovative.”¹⁹⁸

Entrepreneurship is an inherently multidisciplinary area.¹⁹⁹ Thus, collaboration across disciplines and even across institutions of higher education can be productive means by which to deliver entrepreneurship education,²⁰⁰

innovative forms of entrepreneurship education it is quite evident . . . that current educational practice remains fairly traditional.” Luke Pittaway & Corina Edwards, *Assessment: Examining Practice in Entrepreneurship Education*, 54 EDUC. & TRAINING 778, 792 (2012). In particular, a sizeable proportion of entrepreneurship education remains “focused on helping students understand the phenomenon rather than preparing them for genuine entrepreneurial activity.” *Id.* at 793.

¹⁹³ See generally Benjamin C. Powell, *Dilemmas in Entrepreneurship Pedagogy*, 16 J. ENTREPRENEURSHIP EDUC. 99 (2013) (discussing major dilemmas and tradeoffs involved in the selection of entrepreneurship pedagogy).

¹⁹⁴ Duval-Couetil, *supra* note 186, at 398 (describing assessment instruments). See also *id.* at 401-05 (discussing what an entrepreneurship program must do to promote assessment); Boyles, *supra* note 188, at 49-50 (suggesting possible assessment instruments for entrepreneurship); Fayolle, *supra* note 188, at 329 (noting the “wide range of pedagogical methods, approaches and modalities” that have been tested and used in entrepreneurship education). See generally Morris, Webb, Fu & Singhal, *supra* note 179 (identifying key entrepreneurial competencies, the challenges associated with assessing them, and proposing means for doing so).

¹⁹⁵ Pittaway & Edwards, *supra* note 192, at 793.

¹⁹⁶ *Id.* “Given the dominance of this form of entrepreneurship education in [their] sample,” the authors add, “this is a somewhat disheartening finding.” *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Duval-Couetil, *supra* note 186, at 398, 406 (discussing the need for entrepreneurship education programs to appeal to key stakeholders because as inherently interdisciplinary programs, these run the risk of being left without a clear champion across the disciplines).

²⁰⁰ See, e.g., Paul F. Buller & Todd A. Finkle, *The Hogan Entrepreneurial Leadership Program: An Innovative Model of Entrepreneurship Education*, 16 J.

especially in light of the expansive content coverage embraced in many entrepreneurship courses.²⁰¹ Indeed, “[h]aving established the entrepreneurship field in business schools (and in the eyes of [other stakeholders]) the next challenge for the entrepreneurship education movement is into non-business school arenas.”²⁰² Although “law” and “entrepreneurship” have been blended in many legal curricula, these programs almost universally prepare attorneys to advise *clients* who are entrepreneurs, within the traditional Western perceptions of the lawyer’s functions, and only within the U.S. context.²⁰³ We propose something more: “attorneys can apply the entrepreneur’s fundamental skills to the unique circumstances of the legal market, harnessing legal flexibilities and the linkages between law and strategy to craft competitive advantages.”²⁰⁴

Some commentators have attempted to enumerate the individual skills required of, or most commonly commanded by, entrepreneurs²⁰⁵—for example, the wherewithal to communicate effectively.²⁰⁶ Alternatively, entrepreneurial competencies can be grouped into three major categories: cognitive, social, and action-oriented.²⁰⁷ The cognitive aspects of entrepreneurship are concerned with the “entrepreneurial mindset”—that is, “the distinct[ive] ways of thinking which increase [entrepreneurs’] likelihood of identifying opportunities and [taking action] to exploit those opportunities.”²⁰⁸ The cognitive dimension of

ENTREPRENEURSHIP EDUC. 113 (2013) (describing the Entrepreneurship Education Consortium). Significantly, the “Hogan Program” discussed in this article involves more than just coursework: students complete an internship, participate in a “new venture lab” and in the “regional business plan competition,” and take part in other co-curricular activities. *Id.* at 117-19.

²⁰¹ Heidi M. Neck & Patricia G. Greene, *Entrepreneurship Education: Known Worlds and New Frontiers*, 49 J. SMALL BUS. MGMT. 55, 56 (2011).

²⁰² Debra Johnson, Justin B.L. Craig & Ryan Hildebrand, *Entrepreneurship Education: Towards a Discipline-Based Framework*, 25 J. MGMT. DEV. 40, 41 (2006).

²⁰³ See *infra* Part IV (discussing existing “law and entrepreneurship” programs in U.S. law schools).

²⁰⁴ Evans & Gabel, *supra* note 2, at 401.

²⁰⁵ Hisrich and Peters, for example, “categorize the various skills required by entrepreneurs as follows. Technical skills: includes written and oral communication, technical management and organizing skills. Business management skills: includes planning, decision-making, marketing and accounting skills. Personal entrepreneurial skills: includes inner control, innovation, risk taking and innovation.” Henry, Hill & Leitch, *Part I, supra* note 188, at 104.

²⁰⁶ Effective communication has been shown to increase an entrepreneur’s prospects for success greatly. See Pia Ulvenblad, Eva Berggren & Joakim Winborg, *The Role of Entrepreneurship Education and Start-Up Experience for Handling Communication and Liability of Newness*, 19 INT’L J. ENTREPRENEURSHIP BEHAV. & RES. 187 (2013).

²⁰⁷ See generally Boyles, *supra* note 188.

²⁰⁸ *Id.* at 44.

entrepreneurship is learnable and can be developed through practice.²⁰⁹ Entrepreneurial cognitions also involve the manner in which entrepreneurs process information and approach problems; these skills, too, can be learned.²¹⁰ Entrepreneurs actively search for information, remain alert, and embrace inventive thinking as part of their cognition.²¹¹

Entrepreneurs' social skills are also ordinarily well-developed.²¹² An individual's relationships with other people "are the basis of [the] entrepreneur's social capital; an intangible resource created through social relationships that creates access to both tangible and intangible resources through knowing others."²¹³ Relationships can connect entrepreneurs to crucial resources and opportunities.²¹⁴ Entrepreneurship education can encourage the development of social skills through a greater emphasis on social processes and social behaviors.²¹⁵ The ability to accurately assess others, adapt to changing social situations, and to persuade others are learnable social skills and can be taught.²¹⁶

Finally, entrepreneurs are action-oriented. "Entrepreneurship simply does not exist without actions on the part of the entrepreneur to manifest and exploit a recognized opportunity."²¹⁷ Entrepreneurship is "a conscious process of establishing goals, planning for goal achievement, monitoring execution, and adjusting for success."²¹⁸ Clearly, "knowledge, problem-solving skills and an attitude conducive to change seem to be important" for entrepreneurs,²¹⁹ and thus, these aptitudes should be encouraged through entrepreneurship education.

Notwithstanding their many differences, U.S. entrepreneurship programs appear to share at least two goals in common: increasing students' awareness and understanding of entrepreneurship as a process, and increasing students' awareness of entrepreneurship as a career goal.²²⁰ In other words, U.S. programs seek first to raise students' entrepreneurial *intentions*.²²¹ While the programs that we propose endeavor to raise students' entrepreneurial intentions (no other dimension of entrepreneurship training is likely to be effective if students have no

²⁰⁹ *Id.*

²¹⁰ *Id.* at 45.

²¹¹ *Id.* at 45-46.

²¹² Boyles, *supra* note 188, at 48.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Boyles, *supra* note 188, at 48.

²¹⁸ *Id.*

²¹⁹ Harkema & Schout, *supra* note 188, at 514.

²²⁰ Daniel Yar Hamidi, Karl Wennberg & Henrik Berglund, *Creativity in Entrepreneurship Education*, 15 J. SMALL BUS. AND ENTERPRISE DEV. 304, 306 (2008).

²²¹ *See id.*

intention of using the training), our programs also emphasize the development of concrete skills.²²²

Sophisticated entrepreneurship programs develop students' abilities with respect to opportunity recognition.²²³ Students must become capable of recognizing and assessing the sources of entrepreneurial opportunity. Among these sources of opportunity are non-market activities,²²⁴ and in particular, those enabled by changes in government policy.²²⁵ While we fully appreciate this insight, it represents the traditional Western perception of the relationship between public policy and business: namely, that policy impacts business in a variety of ways, and that changes to policy can create new business opportunities in the economic marketplace.²²⁶ Our prior work's core argument is somewhat different: attorneys can generate competitive advantages for the client in the economic realm through the application of entrepreneurial initiative in the legal realm.²²⁷ The creation of legal competitive advantage thus entails more than merely reacting to changes in policy,²²⁸ it also involves more than seeking to influence the content of policy.²²⁹ "For a business venture to survive, and to succeed, it is not

²²² See generally *infra* Part IV (discussing proposed reforms). "Intention is a necessary but not sufficient condition for entrepreneurship . . ." Heinonen & Poikkijoki, *supra* note 180, at 86.

²²³ Alborno, *supra* note 188, at 89-90 (discussing opportunity recognition in entrepreneurship education).

²²⁴ The "process of opportunity creation can include significant non-market activities." Greg Clydesdale, *Entrepreneurial Opportunity: A Framework for Teaching*, 15 J. ENTREPRENEURSHIP EDUC. 19, 23 (2012). "Opportunities emerge from a complex pattern of changing conditions including technological, economic, political, social, and demographic conditions It is the juxtaposition or confluence of conditions at a given point of time that determine the existence of an opportunity." *Id.* The role of non-market activities in opportunity recognition, discovery, and creation is often neglected in the academic literature. *Id.* at 21.

²²⁵ *Id.* at 24-25.

²²⁶ The traditional Western view of the relationship between public policy and business is deeply engrained in the relevant literature. See Evans & Gabel, *supra* note 2, at 335, 344-49 (observing that the little prior research to address the law as a source of competitive advantage almost uniformly assumes the presence and correctness of Western institutions, and that this assumption is poorly-suited on the global scope since "the character and prevalence of strategic legal opportunities depend upon the nature of the legal system").

²²⁷ *Id.* at 401.

²²⁸ See Clydesdale, *supra* note 224, at 25 (discussing Weidenbaum's work, which argues that businesses have three primary options for approaching public policy, one of which is "passive reaction").

²²⁹ See *id.* (discussing the "public policy shaping" option). Neither reacting to policy nor seeking to change policy is necessarily inconsistent with legal entrepreneurship. See Evans & Gabel, *supra* note 2, at 406-07. However, legal entrepreneurship does not require

enough that the entrepreneur be ‘in the right place at the right time,’” Dafna Kariv notes.²³⁰ “Entrepreneurs also have to develop the ability to stay on top of the trends, largely by adapting to them and making adjustments in the plans on which the business was originally founded.”²³¹ These principles certainly apply to the practice of legal entrepreneurship, where attorneys must stay ahead of and capitalize upon trends in culture and public policy.²³²

For the classical entrepreneur, “an opportunity means meeting (or creating) a market need or interest and turning it into superior value through a variety of resource and ability combinations.”²³³ Thus, “[e]ntrepreneurs who transform their new ideas or solutions into market and commercial potential have performed a successful opportunity-recognition process.”²³⁴ Opportunities can be created or exploited, but in either event,²³⁵ opportunity recognition can and should be taught.²³⁶

Sound entrepreneurship programs also develop students’ skills and attitudes toward risk and risk assessment.²³⁷ This can be accomplished by several means, including the use of realistic risk assessments, developing business plans (and conferring with advisors while doing so), and simulations.²³⁸ While these methods have been suggested in the traditional (business school) context of

either and, indeed, opportunities for legal entrepreneurship often (counterintuitively) require that changes to flexible legal institutions must be avoided or even affirmatively resisted. *See id.* at 406-08.

²³⁰ DAFNA KARIV, *ENTREPRENEURSHIP: AN INTERNATIONAL INTRODUCTION* 90 (2011).

²³¹ *Id.*

²³² *See supra* Part II.C (discussing empirical evidence of legal entrepreneurship in China).

²³³ KARIV, *supra* note 230, at 90.

²³⁴ *Id.* at 91.

²³⁵ *Id.* “[E]xploiting opportunities focuses on using existing resources or combining them to gain economic returns from the potential entrepreneurial opportunity, while creating an opportunity means to form new, innovative possibilities to be used for the new idea.” *Id.*

²³⁶ *See generally* Dawn R. DeTienne & Gaylen N. Chandler, *Opportunity Identification and Its Role in the Entrepreneurial Classroom: A Pedagogical Approach and Empirical Test*, in *ENTREPRENEURSHIP EDUC.* 333 (Patricia G. Greene & Mark P. Rice eds., 2007).

²³⁷ *See generally, e.g.*, Saulo D. Barbosa, Jill Kickul & Brett R. Smith, *The Road Less Intended: Integrating Entrepreneurial Cognition and Risk in Entrepreneurship Education*, 16 *J. ENTERPRISING CULTURE* 411 (2008) (arguing, *inter alia*, that a holistic sequence of entrepreneurship education experiences can develop students’ risk-taking skills).

²³⁸ *See generally* David F. Robinson, *Planting the Seeds of Effective Entrepreneurship by Teaching Risk, Advising, and Design through Growth*, 3 *J. TECH. MGMT. AND INNOVATION* 29 (2008).

entrepreneurship education, the LL.M. degree proposed here²³⁹ will incorporate analogous exercises for teaching entrepreneurship in the context of the legal marketplace.

Many entrepreneurship programs now include some degree of practical skills courses to better prepare students for the realities of the competitive marketplace,²⁴⁰ fully embracing experiential learning methods as a foundational component of their curricula.²⁴¹ “Perhaps the most powerful learning situation [in entrepreneurship education] is achieved when experiential learning, through active involvement with an entrepreneurial company, enables students to acquire

²³⁹ See *infra* Part IV.

²⁴⁰ See, e.g., Henry, Hill & Leitch, *Part I, supra* note 188, at 105 (reviewing the numerous learning methods employed in entrepreneurship education, including lectures, presentations, handouts, video and case study-based learning, group work and role-plays). Significantly, student surveys reveal that courses based on the project method “were perceived to develop and enhance knowledge and understanding . . . as well as the ability to evaluate” more effectively than the traditional case method in entrepreneurship courses. *Id.* at 105-06. See also Vesa P. Taatila, *Learning Entrepreneurship in Higher Education*, 52 *EDUC. & TRAINING* 48, 55-56 (2010) (“The most effective methods used so far for learning [entrepreneurial] skills have been very practical entrepreneurial projects conducted in a real environment and with real customers.”); George Gendron & Patricia Greene, *Practitioners’ Perspectives on Entrepreneurship Education: An Interview with Steve Case, Matt Goldman, Tom Golisano, Geraldine Laybourne, Jeff Taylor, and Alan Webber*, in *ENTREPRENEURSHIP EDUC.* 88, 89 (Patricia G. Greene & Mark P. Rice eds., 2007). Nevertheless, at least one survey has found that the development of entrepreneurial skills is the least frequently stated major objective of entrepreneurship education in the literature. Ernest Samwel Mwasalwiba, *Entrepreneurship Education: A Review of its Objectives, Teaching Methods, and Impact Indicators*, 52 *EDUC. & TRAINING* 20, 26 (2010).

²⁴¹ Robin Anderson, Brooke R. Envick & Prasad Padmanabhan, *A Practical Framework for the Continuous Advancement of Entrepreneurship Education*, 4 *AM. J. ECON. & BUS. ADMIN.* 65, 66 (2012); Briga Hynes, Yvonne Costin & Naomi Birdthistle, *Practice-Based Learning in Entrepreneurship Education*, 1 *HIGHER EDUC., SKILLS AND WORK-BASED LEARNING* 16 (2011) (describing an experiential entrepreneurship program); Blenker, Dreisler, Faergemann & Kjeldsen, *supra* note 176, at 58 (discussing experiential learning in entrepreneurship education); Fayolle, *supra* note 188, at 329 (noting the use of “real-life or virtual cases, role plays and problems” in entrepreneurship education); Heinonen & Poikkijoki, *supra* note 180, at 83 (noting that the multi-faceted nature of entrepreneurship “suggests the need for a shift from teaching to learning in an environment as close to real life as possible. Concrete experience gained through the active participation of students should be part of the [entrepreneurship] curriculum.”); Colin Jones & Jack English, *A Contemporary Approach to Entrepreneurship Education*, 46 *EDUC. & TRAINING* 416, 422 (2004) (urging that entrepreneurial education is most effectively delivered by a teaching style “that is action-oriented, supportive of experiential learning, problem-solving, project based, creative, and involves peer evaluation”); Leitch & Harrison, *supra* note 30, at 92-94 (discussing action learning in entrepreneurship, which “emphasizes learning by doing”).

knowledge about the business environment and to develop questioning and problem-solving skills in a real-life setting.”²⁴² Experiential learning in the entrepreneurship context can take a variety of forms,²⁴³ including synergistic learning formats in which nascent entrepreneurs (students), established entrepreneurs, and facilitators are brought together and learn from one another collaboratively.²⁴⁴ Students’ involvement with professionals should benefit both parties, and will do so when the experiential program is well-designed.²⁴⁵ Experiential learning projects that include non-business majors can yield numerous benefits to students.²⁴⁶

²⁴² Sarah Cooper, Colin Bottomley & Jillian Gordon, *Stepping Out of the Classroom and Up the Ladder of Learning*, 18 INDUS. & HIGHER EDUC. 11, 15 (2004).

²⁴³ Mwasalwiba, *supra* note 240, at 31 (noting that these forms include business simulations, videos and filming, real venture setting up, games and competitions, role models and guest speakers, projects, workshops, presentations, discussions and group work, study visits, case studies, business plan creation, and theory-based lectures). For a helpful discussion on ideas for experiential learning in entrepreneurship, *see generally* Neck & Greene, *supra* note 201 (proposing that entrepreneurship should be taught as a method rather than as a process). Some scholars advance a holistic approach to learning because such an approach is similar to the demands of actually being an entrepreneur. Taatila, *supra* note 240, at 55. “The reason for the importance of a holistic view of learning instead of the more traditional academic approach of atomizing the subject and then teaching it ‘atom by atom’ may be that the key to entrepreneurship is not so much in the mastering of the individual skills involved but in being able to control the ligaments between them.” *Id.*; accord Siok San Tan & C. K. Frank Ng, *A Problem-Based Learning Approach to Entrepreneurship Education*, 48 EDUC. & TRAINING 416 (2006) (urging that entrepreneurship education should “adopt an integrative and holistic approach” since the discipline is multi-faceted and seeks to promote creativity, cross-functional thinking, and ambiguity tolerance).

²⁴⁴ *See generally* Lorna A. Collins, Alison J. Smith & Paul D. Hannon, *Applying a Synergistic Learning Approach in Entrepreneurship Education*, 37 MGMT. LEARNING 335 (2006). Although the project profiled by Collins et al. achieved positive results, synergistic learning programs can be challenging to manage—particularly with respect to involving professionals outside of the university. *See id.* at 352. Other similar formats, such as the “entrepreneurial-directed approach,” call for co-learning between teachers and students, wherein the teacher acts as a supporter and facilitator. “The task of the teacher is to develop the students’ abilities to reflect on their own experiences and put them in a wider context, and to give them the opportunity to make their own theoretical interpretations.” Heinonen & Poikkijoki, *supra* note 180, at 85. Students assume new perspectives as role-playing encourages people to view situations from novel angles. “The basic idea is that anyone is capable of entrepreneurial activity once she/he has given her/himself permission to be brave, creative, and innovative.” *Id.* at 87. Circles of experiential learning are employed such that new activities produce new experiences and new thinking through reflection. *Id.*

²⁴⁵ Cooper, Bottomley & Gordon, *supra* note 242, at 15.

²⁴⁶ *See generally* Christina Hartshorn & Paul D. Hannon, *Paradoxes in*

Some entrepreneurship programs are making headway in the international context.²⁴⁷ “[G]lobal entrepreneurship courses have become increasingly common. . . . In these courses, students may even have the opportunity to travel and test out their ideas in a foreign environment.”²⁴⁸ Still, like legal education,²⁴⁹ entrepreneurship education has often focused exclusively on the domestic context at the expense of the global.²⁵⁰ Entrepreneurship programs can inculcate an international entrepreneurship culture, developing many traits desirable in global entrepreneurs. Among these are knowledge acquisition, the development of hard, soft, and cross-cultural skills, and international entrepreneurial competencies.²⁵¹ A “focus on improving students’ awareness, knowledge and understanding of global market environments is fundamental to greater international orientation.”²⁵² Ideally, programs will integrate foreign market immersion as a fundamental experiential element, but where constraints make this impossible, technologies can be employed to mitigate students’ lack of first-hand experience.²⁵³ “[E]xposing students to international entrepreneurs and their firms is critical,” and, in general, “applied practical projects are preferable to academic exercises or case-study approaches.”²⁵⁴ Entrepreneurship instructors should therefore develop expansive networks with international entrepreneurs, investigate sources of possible funding for the exploration of international opportunities, carefully screen firms participating in

Entrepreneurship Education: Chalk and Talk or Chalk and Cheese?, 47 EDUC. & TRAINING 616 (2005). These scholars discuss a project created for bioscience students in a European university. Some faculty co-taught with others, and students reported numerous benefits including elevated personal confidence and communication skills, an improved understanding of and ability to make decisions and work with others, and a helpful experience to discuss in job interviews. *Id.* at 624.

²⁴⁷ Globalization and changes at the societal level are inducing greater complexity and uncertainty in most countries; thus, “at all levels, there will be a greater need for people to have entrepreneurial skills and abilities.” Henry, Hill & Leitch, *Part I*, *supra* note 188, at 100-01.

²⁴⁸ Anderson, Envick & Padmanabhan, *supra* note 26, at 66.

²⁴⁹ *See supra* Part III.B.

²⁵⁰ Jim Bell, Ian Callaghan, Dave Demick & Fred Scharf, *Internationalising Entrepreneurship Education*, 2 J. INT’L ENTREPRENEURSHIP 109, 110 (2004).

²⁵¹ *Id.* at 113-19.

²⁵² *Id.* at 119.

²⁵³ *Id.*; accord Popescu Cristian-Aurelian & Simion Petronela Cristina, *Entrepreneurship Education and E-learning: A Perfect Match*, 5 J. ELECTRICAL AND ELECTRONICS ENG’G 203, 203-04 (2012) (illustrating that distance learning can contribute to entrepreneurship education, particularly in rural areas and in such varied national settings as rural Romania).

²⁵⁴ Bell, Callaghan, Demick & Scharf, *supra* note 250, at 120.

the educational process, and carefully select student teams to balance the team members' experiences and backgrounds.²⁵⁵

E. Teaching Entrepreneurship Outside of the Traditional Context

In addition to the general principles of entrepreneurship pedagogy discussed in Part III.D, *supra*, it will behoove us briefly to consider the challenges and opportunities associated with teaching entrepreneurship outside of its traditional academic context. Entrepreneurship lends itself with relative ease to interdisciplinary inquiries because it is intrinsically an interdisciplinary field.²⁵⁶ In the undergraduate context, campus-wide entrepreneurship offerings can yield productive learning opportunities.²⁵⁷

Connors and Ruth have found support for the hypothesis that students who take introductory-level entrepreneurship courses later in their studies tend to perform better in those courses.²⁵⁸ Curiously (and encouragingly), however, business students and non-business students have been found to perform equally well in introductory entrepreneurship courses.²⁵⁹ Knowledge “spillovers” from other business courses were not found to result in higher performance in

²⁵⁵ *Id.* at 121.

²⁵⁶ Frank Janssen & Sophie Bacq, *Cultural and Outcomes-Related Issues in Implementing an Interdisciplinary Cross-Campus Entrepreneurship Education Program*, 23 J. SMALL BUS. AND ENTREPRENEURSHIP 733, 735 (2010). Entrepreneurship should thus be taught in an interdisciplinary way, *id.*, though this can raise challenges within the university's culture., *id.* at 743. See also Briga Hynes, *Entrepreneurship Education and Training – Introducing Entrepreneurship into Non-Business Disciplines*, 20 J. EUR. INDUS. TRAINING 10 (1996) (providing a very helpful overview of moving entrepreneurship into non-business disciplines); Susan E. Connors & Derek Ruth, *Factors Influencing Success in an Introductory Entrepreneurship Course*, 15 J. ENTREPRENEURSHIP EDUC. 63, 64 (2012) (noting entrepreneurship tends to be a field of interdisciplinary study).

²⁵⁷ Some academic observers are in accord. “Entrepreneurship as an academic discipline must push beyond the cozy walls of the college of business in order to connect with a broader population of students interested in entrepreneurship.” Doan Winkel, Jeff Vanevenhoven, William A. Drago & Christine Clements, *The Structure and Scope of Entrepreneurship Programs in Higher Education around the World*, 16 J. ENTREPRENEURSHIP EDUC. 15, 26 (2013).

²⁵⁸ Connors & Ruth, *supra* note 256, at 69.

²⁵⁹ *Id.* at 69-70. This is consistent with prior anecdotal evidence. Some business faculty have attested that business majors outperform non-business majors in business courses generally, whereas other business faculty have reported that some of their strongest students in business courses hail from outside of the business majors. *Id.* at 66-67.

introductory-level entrepreneurship offerings.²⁶⁰ “Taken together,” Conners and Ruth concluded,

[T]hese results bolster the idea that students can get a solid grounding in [e]ntrepreneurship without the need to take an extensive group of additional business courses. As well, and in contrast with some other business programs, these results argue against the necessity of creating a separate curriculum for non-business students.²⁶¹

Administrators and faculty thus enjoy a relatively high degree of flexibility in designing entrepreneurship curricula.²⁶² Inquiry-based learning is an effective instructional method for teaching entrepreneurial ideas to non-business students.²⁶³ Interdisciplinary teamwork is also helpful for students of all backgrounds.²⁶⁴ Even in the case of non-business students, the best entrepreneurial learning outcomes result when theoretical knowledge and experiential opportunities are afforded to students together.²⁶⁵ In the entrepreneurship context, as in the legal education context,²⁶⁶ the inclusion of experiential learning is not hostile to theory.²⁶⁷ Indeed, a sizeable body of evidence now supports the

²⁶⁰ *Id.* at 69-70.

²⁶¹ *Id.* at 71. Other factors unrelated to students’ performance may still motivate specialized entrepreneurship offerings. *Id.* at 71-72.

²⁶² *Id.* at 72.

²⁶³ See, e.g., Luke Pittaway, *The Role of Inquiry-Based Learning in Entrepreneurship Education*, 23 INDUS. & HIGHER EDUC. 153, 153 (2009) (illustrating the application of one inquiry-based learning pedagogy for science students). Inquiry-based learning involves the posing of questions that require students to conduct research in order to answer—it is, in other words, the pursuit of “open questions.” *Id.* at 154.

²⁶⁴ See generally Francisco J. García-Rodríguez, Esperanza Gil-Soto & Inés Ruiz-Rosa, *New Methods in University Entrepreneurship Education: A Multidisciplinary Teams Approach*, 3 CREATIVE EDUC. 878, 880 (2012); see also Hynes, *supra* note 256, at 17 (endorsing interdisciplinary teamwork as a means for including entrepreneurship in non-business disciplines).

²⁶⁵ Vijay Vij & Steve Ball, *Exploring the Impact of Entrepreneurship Education on University Nonbusiness Undergraduates*, 9 INT’L J. ENTREPRENEURSHIP AND SMALL BUS. 86, 100 (2010).

²⁶⁶ See *supra* Part III.A.

²⁶⁷ Vij & Ball, *supra* note 265, at 100 (describing the use and necessity of theory in an experiential learning program); accord James O. Fiet, *The Pedagogical Side of Entrepreneurship Theory*, in ENTREPRENEURSHIP EDUC. 292, 292 (Patricia G. Greene & Mark P. Rice eds., 2007) (discussing the value of theory in entrepreneurship education). Specifically, Professor Fiet advises that faculty can become irrelevant “when we fail to apply theory as a tool to answer student questions.” *Id.* at 297. The use of theory can thus

combination of cross-disciplinary theoretical and experiential learning elements as the optimal approach to entrepreneurship education.²⁶⁸

The application of entrepreneurship pedagogy in the legal context, then, is a natural pairing of academic pursuits.²⁶⁹ “There is no single, universally correct disciplinary location for entrepreneurship education. Within the university, entrepreneurship belongs wherever you want to put it. . . . You teach it wherever the right mindset prevails. In actual university practice, there is a healthy proliferation of locations emerging.”²⁷⁰ As a pedagogical matter, training lawyers as entrepreneurial strategists appears not only possible, but quite plausible.

F. Teaching Soft Skills: The Example of Teaching Culture

Scholars have long acknowledged the relevance and importance of culture to business.²⁷¹ The importance of culture to law practice has also been recognized: “If law schools are to prepare students for the reality of practice, it is useful to help students become aware of cultural issues that can affect client

promote student learning by answering students’ inquiries and by informing observations obtained through experiential learning opportunities.

²⁶⁸ See, e.g., Qingbin Wang, Kenneth Bauer & Kathleen Liang, *Toward a Multidisciplinary Entrepreneurship Education: A Case Study of the Community Entrepreneurship Program at the University of Vermont*, 2 INT’L J. INNOVATION AND REG’L DEV. 84, 84 (2010).

²⁶⁹ Some institutions have developed clinics specifically to bring together students from law and others from entrepreneurship. In one such program, LL.B. and M.B.A. students jointly ran a clinic focused on providing solutions to start-up business owners. See Peter Robinson & Sandra Malach, *Multi-Disciplinary Entrepreneurship Clinic: Experiential Education in Theory and Practice*, in HANDBOOK OF RES. IN ENTREPRENEURSHIP EDUC., at 173, 176-78 (Alain Fayolle ed., 2007). Similar clinics and programs geared toward the law student/business student combination are fairly common in law schools throughout the United States. See, e.g., *Duke Law, LLM in Law & Entrepreneurship* (describing courses that bring together law students and entrepreneurs, and courses involving frameworks imported from MBA curricula), <http://law.duke.edu/llmle/llm/> (last visited Oct. 7, 2015).

²⁷⁰ Kevin Hindle, *Teaching Entrepreneurship at University: From the Wrong Building to the Right Philosophy*, in ENTREPRENEURSHIP EDUC. 135, 145 (Patricia G. Greene & Mark P. Rice eds., 2007).

²⁷¹ See generally, e.g., MARY O’HARA-DEVEREAUX & ROBERT JOHANSEN, GLOBALWORK (1994); RICHARD D. LEWIS, WHEN CULTURES COLLIDE (1996); see also ROBERT ROSEN, GLOBAL LITERACIES (2000).

representation by examining the culture that the law school creates.”²⁷² Understanding the client’s language and culture are key aspects of both professional competency and ethical law practice.²⁷³ Yet legal education arguably has underemphasized the role of language and culture.²⁷⁴

A voluminous body of academic literature has evolved on how best to teach university students about culture. A comprehensive review of this literature is beyond the scope of this article. Instead, we consider selections that appear particularly relevant to our context. Like many of the concepts discussed in this article, “[c]ultural knowledge, awareness, and skills can be taught and learned in a clinical program using a variety of methods. . . .”²⁷⁵ Some scholars have developed methodologies for teaching culture in the legal education context.²⁷⁶ “Many clinical teachers have recognized the importance of teaching diversity issues in the clinic.”²⁷⁷ Significantly, “cross-cultural competence is a skill that can be taught. . . . [E]veryone has the capacity to become more proficient at cross-cultural interaction and communication skills.”²⁷⁸ Even in a purely domestic practice, cultural differences can “result in negative judgments and misunderstanding.”²⁷⁹ “By teaching students how to recognize the influence of culture in their work and to understand, if not accept, the viewpoint of others, we provide students with skills that are necessary to communicate and work positively with future clients and colleagues.”²⁸⁰

²⁷² Antoinette Sedillo Lopez, *Reflections on Cultural Awareness – Exploring the Issues in Creating a Law School and Classroom Culture*, 38 WM. MITCHELL L. REV. 1176, 1178 (2012).

²⁷³ Sanchez, *supra* note 49, at 640-41, 669.

²⁷⁴ *Id.* at 645.

²⁷⁵ Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J. L. & POL’Y 37, 38 (2008).

²⁷⁶ See generally, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 33-34 (2001).

²⁷⁷ *Id.* at 35. “One of my jobs as a clinical professor is to create a space where it is safe to talk about [racial, cultural, and class differences] without judging each other for the positions and ideas we bring to the discussion,” explains Professor Paulette Williams. “Cultural differences are not generally the first explanation for [miscommunications that clinical law students have with their clients] and may not, in fact, be the cause. However, our individual perspectives shape our responses to situations, and it can be fruitful to consider whether there are some cross-cultural barriers in play.” Paulette J. Williams, *Cross-Cultural Teaching in the Business Law Clinic*, 76 TENN. L. REV. 437, 439 (2009).

²⁷⁸ Bryant, *supra* note 276, at 38.

²⁷⁹ *Id.* at 39-40; see also Susan S. Kuo, *Teaching Cultural Defenses in the Criminal Law Classroom*, 48 ST. LOUIS L.J. 1297, 1297 (2004) (arguing that culture is highly relevant to both legal outcomes and to the proper study of U.S. law).

²⁸⁰ Bryant, *supra* note 276, at 40.

The first step in cross-cultural lawyering is to become aware of the effect that culture has on oneself.²⁸¹ Though it is mostly invisible, culture “is the logic by which we give order to the world.”²⁸² Teaching cross-cultural skills enables students to “make the invisible more visible and thus help students understand the reactions that they and the legal system may have towards clients and that clients may have towards them.”²⁸³ The law and legal system constitute a culture in themselves,²⁸⁴ “with strong professional norms that gives [sic] meaning to and reinforces [sic] behavior.”²⁸⁵ Naturally, on the global scope, cultural competence is at least as crucial. Identical legal issues with identical facts may experience profoundly different results, and may be subject to different potential outcomes, depending upon the contexts in which the cases occur. In other words, the same case may be treated very differently across different countries—and the cultures of the jurisdictions in question are likely key explanatory drivers of these differences.²⁸⁶

The notion of global literacy can be defined as “a state of seeing, thinking, acting, and mobilizing in culturally mindful ways.”²⁸⁷ Similarly, “[c]ross-cultural lawyering occurs when lawyers and clients have different ethnic or cultural heritages and when they are socialized by different subsets within

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ “While the study of law within its larger culture is emerging, recognition of law as culture is still generally nascent within legal studies and pre-professional programs. In fact, the greater recognition of law’s social and political role may have impeded a consideration of law’s role as culturally specific,” Kerstin Carlson notes. “Yet as law practice becomes more globalized, such awareness is an increasingly necessary element of any practitioner’s toolkit.” Kerstin Carlson, *Found in Translation: The Value of Teaching Law as Culture*, 5 DREXEL L. REV. 407, 408 (2013). Thus, “[i]n both domestic and international legal practice, an awareness of the cultural relevance . . . of legal norms and practices can increase lawyers’ efficacy.” *Id.* at 421.

²⁸⁵ Bryant, *supra* note 276, at 40; accord Lopez, *Reflections on Cultural Awareness*, *supra* note 272 (noting that law schools create a culture unique to the legal industry).

²⁸⁶ See Evans & Gabel, *supra* note 2, at 337 (noting the impact of culture on the firm’s legitimacy); *id.* at 347 (noting that cultural differences will remain “highly influential in international business” in the era of globalization); *id.* at 361 (noting that “every legal system is based on social and cultural institutions,” and that these institutions can drive legal risks and legal costs); *id.* at 369-71 (defining the jurisdiction’s socio-cultural background as one of the four key “realms” within the rule of law process); *id.* at 380-82 (noting that culture drives several sources of systemic flexibility); *id.* at 398 (contending that the firm’s “legal market” should be defined to include the jurisdiction’s cultural realm); *id.* at 408-09 (noting that “[m]odern global counsel are most effective when they possess fluency in cross-cultural lawyering. . .”).

²⁸⁷ ROSEN, *supra* note 271, at 57.

ethnic groups.”²⁸⁸ When lawyers and clients hail from different cultures, several dimensions of their relationship are likely to be impacted.²⁸⁹ Students can learn how to anticipate and cope with these increasingly common situations.²⁹⁰ As with many of the other ideas discussed in Part III, cross-cultural *theory* must be taught in conjunction with cross-cultural *skills*—both the theoretical and practical or applied aspects of culture must be taught in order for effective learning to take place.²⁹¹

Professor Bryant proposes five habits of cross-cultural lawyering: (1) degrees of separation and connection (students “list and diagram similarities and differences between themselves and their clients and then . . . explore the significance of these similarities and differences”);²⁹² (2) the three rings (in which students “identify and analyze the possible effects of similarities and differences on the interaction between the client, the legal decision-maker and the lawyer—the three rings”);²⁹³ (3) parallel universes (this is “a method for exploring alternative explanations for clients’ behaviors” that “invites students to look for multiple interpretations, especially at times when the student is judging the client negatively,” the ultimate purpose of which “is to become accustomed to challenging oneself to identify the many alternatives to the interpretations to which we may be tempted to leap, on insufficient information”);²⁹⁴ (4) pitfalls, red flags and remedies (which “focuses on cross-cultural communication, identifying some tasks in normal attorney-client interaction that may be particularly problematic in cross-cultural encounters as well as alerting students to signs of communication problems”);²⁹⁵ and (5) the camel’s back (which “[e]ncourages the student to create settings in which bias and stereotype are less likely to govern” and the habit “[p]romotes reflection and change of perspectives with a goal of eliminating bias”).²⁹⁶ If students are able to master (or at least internalize) these habits, they will be far more effective in cross-cultural situations. Faculty, then, must (1) develop students’ motivation to learn about cross-cultural competence,

²⁸⁸ Bryant, *supra* note 276, at 40-41.

²⁸⁹ *Id.* at 41-42.

²⁹⁰ *Id.* at 41.

²⁹¹ *Id.* at 50; see also Marjorie Florestal, *A Tale of Two Compadres: Teaching International Trade and Development Across Cultures*, 26 PAC. MCGEORGE GLOB. BUS. & DEV. L. J. 33, 58-59 (2013) (reaffirming “that students approach the course with enthusiasm when they can see how to translate classroom knowledge to the ‘real world’” and noting that the author’s “course is more successful to the extent that it incorporates the social context in which the rules play out”).

²⁹² Bryant, *supra* note 276, at 64-67.

²⁹³ *Id.* at 68-70.

²⁹⁴ *Id.* at 70-72.

²⁹⁵ *Id.* at 72-76.

²⁹⁶ *Id.* at 76-78.

(2) raise awareness of the significance of culture, (3) develop their own knowledge, and (4) develop their own cross-cultural skills.²⁹⁷

In the legal education setting, students should learn about the cultural context of clients and others, become self-aware, and develop inter-cultural practice skills.²⁹⁸ In developing these competencies in students (where the clinical setting is particularly helpful), certain “best practices” have been suggested for effective cross-cultural representation.²⁹⁹ Among these, attorneys should approach clients with humility and respect, guard against making assumptions and acting on stereotypes, and should try to learn about culture through research.³⁰⁰ Attorneys must treat clients as individuals, and not merely as a member of a culture; they must think creatively about the client’s issues, and must carefully consider how best to communicate with the client.³⁰¹ Ideally, the attorney will speak more than one language, since “[t]he cultural knowledge and understanding that comes with speaking another language is invaluable.”³⁰² Attorneys involved in cross-border and cross-cultural transactions in the pre-globalization era foretold many of these best practices.³⁰³ The importance of these insights is only heightened in today’s globalized environment.

In addition to understanding culture’s influence on law practice, students ideally will come to understand culture’s impact on the law itself. For example, “‘soft law’ is an important aspect of legal culture,” particularly in developing nations.³⁰⁴ Soft law often serves as a barometer of how the jurisdiction’s formal, written law will evolve; soft law also indicates how things really work in a legal culture.³⁰⁵ Significantly, soft law supplies an element of flexibility within the legal system.³⁰⁶ To the extent that law schools can help students to appreciate

²⁹⁷ Bryant, *supra* note 276, at 78-79.

²⁹⁸ Lopez, *Making and Breaking Habits*, *supra* note 275, at 45-49; *see also* Sanchez, *supra* note 49, at 652 (noting that unless attorneys are consciously aware of their cultural context and its impact on human affairs, “[t]heir understanding of others’ cultural knowledge, including foreign legal systems, will be severely limited”).

²⁹⁹ *See* Lopez, *Making and Breaking Habits*, *supra* note 275, at 66-67.

³⁰⁰ *Id.* at 66.

³⁰¹ *Id.* at 67.

³⁰² *Id.*

³⁰³ *See, e.g.*, Charles Stevens, Remarks, in AM. SOC’Y INT’L L. PROC., *supra* note 35, at 253 (referencing his experiences with contract negotiations in Japan, Stevens noted that cross-cultural negotiations often involve misunderstandings, that lawyers need a good law background, cultural understanding, and language skills across the cultures involved, and that lawyers must be willing to adapt to the other culture’s practices, at least to a degree, in order to be effective).

³⁰⁴ Sanchez, *supra* note 49, at 656-57.

³⁰⁵ *Id.* at 657.

³⁰⁶ *Id.* *See also* Evans & Gabel, *supra* note 2, at 380-82 (discussing systemic flexibilities, including the impact of culture and informal rules on legal outcomes).

these many differences stemming from culture, students will be far more sophisticated and practice-ready upon graduation than they would otherwise be.

G. Concluding Thoughts on the Pedagogical Imperatives of Legal Entrepreneurship

Whereas Part II developed the case for entrepreneurial legal education by examining the skills that clients now need in their legal advisors, Part III has revealed the major parameters along which such a legal education should take shape. Law schools, to their detriment, have remained mostly out-of-touch with their external environment.³⁰⁷ This is attributable to many factors, among which is the general aversion among faculty to including substantial practical or experiential elements in the law school curriculum.³⁰⁸ Yet law schools should teach practical skills *for their own self-interest*, as practical law programs will be in high demand.³⁰⁹ As we have seen, advocates of practicality in the law curriculum are not hostile to theory.³¹⁰ Most clinical faculty recognize that they need theory to inform experiential learning, and that experiences can inform theory.³¹¹ The question is not whether to do away with theory (few if any advocate such a route). The question is instead whether practicality will occupy *any* meaningful proportion of the curriculum *together with* theory (thereby positioning the law school competitively), or whether practical strands of the curriculum will continue to be marginal or non-existent (thereby inviting the market to define the law school's brand as obsolete and of little value in light of the skills that lawyers must now possess to respond to clients' and employers' needs). The curricular elements proposed here would contribute significant strategic value to law schools competing for students in a receding market.³¹²

International law and globalization, like practical skills, are now at least nominally represented in most law curricula; but like practical skills, global issues

³⁰⁷ See *supra* Part III.A.

³⁰⁸ See *supra* Part III.A.; see also Barry, Dubin & Joy, *supra* note 53, at 35-37 ("In the typical law school classroom, the world of practice is often regarded with suspicion and sometimes even disdain.").

³⁰⁹ See *supra* Part III.A.

³¹⁰ See *supra* Part III.A.

³¹¹ See *supra* Part III.A.; Cf. *supra* Part III.D. (acknowledging the importance of mutual aid between theoretical and experimental learning within the entrepreneurship clinical setting).

³¹² See, e.g., Roland J. Kushner, *Curriculum as Strategy: The Scope and Organization of Business Education in Liberal Arts Colleges*, 70 J. HIGHER EDUC. 413 (1999) (contending that curricula are strategic in nature). "The essence of strategic management is that organizations are engaged in continual adaptation to changing environmental conditions and circumstances." *Id.* at 413.

are woefully underrepresented as a function of their relative importance in today's globalized environment.³¹³ Most law schools have embraced international, comparative, and foreign law in two respects: doctrinal courses in the traditional Socratic format (with no experiential element), and short-term studies abroad.³¹⁴ While a sound first step, these initiatives alone will not prepare global legal entrepreneurs.³¹⁵ Contemporary global and cross-cultural topics should be treated largely by experiential means, and should be a mandatory part of the J.D. experience.³¹⁶

Most global attorneys are primarily transactional in nature.³¹⁷ We have seen that well-designed experiential education significantly augments the value that students receive for their tuition dollars.³¹⁸ Thus, the reforms proposed in Part IV, *infra*, draw liberally upon the many clinical opportunities available for teaching transactional law.

Entrepreneurship is an inherently interdisciplinary field; as such, many of the basic principles of entrepreneurship education are transferrable to the legal context.³¹⁹ The ultimate goal of entrepreneurship education is to increase students' entrepreneurial behavior,³²⁰ and the ultimate goal of a program in legal entrepreneurship is the production of lawyers who are entrepreneurial in their *practice of law*.³²¹ These goals can best be accomplished through practical, experiential learning opportunities, and ideally with students, faculty and external participants from varying disciplinary backgrounds.³²²

Certain key skills must be developed in entrepreneurship students.³²³ In general, entrepreneurs have strong cognitive skills (such as the ability to seek out, recognize and even create opportunities, and the ability to process information), social skills (such as the ability to work with others, adapt to changing situations, and persuade others), and are action-oriented (they can set goals and follow through).³²⁴ Entrepreneurs can assess risk and are willing to take sensible,

³¹³ See *supra* Part III.B.

³¹⁴ See *supra* Part III.B.

³¹⁵ See *supra* Part III.B.

³¹⁶ See *supra* Part III.B.

³¹⁷ See *supra* Part III.C.

³¹⁸ See *supra* Part III.C.

³¹⁹ See *supra* Part III.E.

³²⁰ See *supra* Part III.D.

³²¹ See *supra* Part III.D. This is distinguishable from existing programs in "law and entrepreneurship" and clinics in "business law," as existing programs are geared toward preparing lawyers to provide counsel where the *client* is the entrepreneur. See *infra* notes 335-36; see also Evans & Gabel, *supra* note 2, at 400 (discussing this distinction).

³²² See *supra* Part III.D.

³²³ See *supra* Part III.D.

³²⁴ See *supra* Part III.D.

calculated risks.³²⁵ All of these skills are learnable, and therefore can be taught.³²⁶ Moreover, entrepreneurship can be applied to the global context,³²⁷ and it can and should be applied outside of the traditional business context.³²⁸

Legal entrepreneurs must understand the legal market well and must discern where and how opportunities for legitimate legal competitive advantages may exist.³²⁹ An understanding of culture is vitally important to law practice today, even in a purely domestic setting, and especially in the cross-border context.³³⁰ Cultural competence, like most of the other soft skills described here, is learnable and can be taught.³³¹

We turn now to consider the form that these principles might assume as constituents within an integrated law curriculum.

IV. CURRICULAR PROPOSALS: THE LL.M. IN GLOBAL LEGAL ENTREPRENEURSHIP AND REFORMS TO THE J.D. CURRICULUM

A. Guiding Precepts of the Legal Entrepreneurship Curriculum

Irrespective of whether the baleful conditions now burdening the legal industry continue indefinitely (but particularly if they do), the question arises whether individual law schools can buck these trends by offering distinctive value to prospective students.³³² We think the answer is “yes,” and one key to such a value proposition is found in preparing students, in concrete and measurable ways, for the practical aspects of the twenty-first century marketplace. Of greatest importance, students must be trained to be entrepreneurial in their approach to the practice of law, as well as intercultural in outlook.

We have noted that the entrepreneurial lawyer’s two most important general tasks are to (1) harness the law to the client’s competitive advantage (acting as much as a strategist and entrepreneur as a traditional counselor) and to (2) function as the “bridge” between management and the jurisdiction’s regulatory

³²⁵ See *supra* Part III.D; see also Evans & Gabel, *supra* note 2, at 421.

³²⁶ See *supra* Part III.D.

³²⁷ See *supra* Part III.D.

³²⁸ See *supra* Part III.E.

³²⁹ See *supra* Part II.A.

³³⁰ See *supra* Part III.F.

³³¹ See *supra* Part III.F.

³³² See *supra* Parts I.A-B. (noting both commentators who doubt that globalization will increase the value of the U.S. law degree, those who think the opposite, and still others who urge that “self-help” is the best remedy for law schools whose faculty and administrators do not want to bog down reforms in bureaucratic and political maneuvering).

apparatus (requiring an understanding of both the client’s strategic needs and the external environment—that is, the jurisdiction’s rule of law process).³³³ These two basic functions form the foundation for the reforms proposed here; they comprise the most crucial learning outcomes for an education in legal entrepreneurship.

We agree with Professor Susskind’s assessment that the foundational courses of the J.D. degree are core legal subjects that ought not to be jettisoned. Thus, “the time and place to train law students” in any substantial new areas “is not law school but in post-graduate courses.”³³⁴ For this reason, Part IV.B proposes a new LL.M. degree as the primary vehicle by which legal entrepreneurs should be trained. Nevertheless, some fundamental skills of the global legal entrepreneur are now so foundational and universal that their inclusion is warranted in the J.D. degree. Part IV.C addresses those items. The J.D. is still primarily a U.S.-based degree for the purpose of gaining admission to U.S. jurisdictions and to prepare for U.S.-based practice. A slightly modified J.D. could prepare attorneys for a cross-cultural practice that is strictly limited to the United States. To prepare students for cross-border or international practice, a specialized LL.M. degree is needed. Our proposal bears in mind the parameters necessary for the effective delivery of legal education today: namely, the program must balance quality and cost, satisfy the demands of the legal profession of the future (particularly with respect to globalization), and primarily benefit students and clients.³³⁵

The LL.M. proposed here is distinguished from existing programs in “law and entrepreneurship.” Many U.S. law schools today offer programs, including clinics, in “law and entrepreneurship”—but these seek to train attorneys to counsel *clients* who are entrepreneurs.³³⁶ A few programs even train attorneys to be entrepreneurial in the *business of law* (that is to say, to entrepreneurially

³³³ See generally *supra* Part II.

³³⁴ SUSSKIND, *supra* note 42, at 137-38.

³³⁵ McEntee, Lynch & Tokaz, *supra* note 131, at 229.

³³⁶ See, e.g., University of Michigan School of Law, “Zell Entrepreneurship and Law,” <http://www.law.umich.edu/centersandprograms/zeal/Pages/default.aspx> (last visited Oct. 7, 2015) (detailing a program wherein “students will learn how to think like a businessperson, an entrepreneur, and an attorney who serves clients that are pursuing entrepreneurial activities”); Northwestern Law, “Entrepreneurship Law Center,” <http://www.law.northwestern.edu/legalclinic/elc/> (last visited Oct. 7, 2015) (describing a program “to provide intensive, hands-on training for students who want to be transactional lawyers or founders of start-up companies” and in which “law and business students work together to represent start-up companies, entrepreneurs, and nonprofit organizations”); University of Washington School of Law, “Entrepreneurial Law Clinic,” <http://www.law.washington.edu/clinics/entrepreneurial/> (last visited Oct. 7, 2015) (noting “an innovative clinic serving entrepreneurs” wherein law and business students “provide critical early stage legal and business counseling”).

manage law firms as business units). But no programs appear to train attorneys to take an entrepreneurial approach with respect to their *practice* of law.³³⁷

B. The LL.M. in Global Legal Entrepreneurship

There exist relatively high barriers to entry into law practice on the cross-jurisdictional scope.³³⁸ Thus, to the extent that a specialized, skills-focused legal education could lower these barriers, such an education would add real value from the student's perspective.

The LL.M. in Global Legal Entrepreneurship would be principally (though not exclusively) experiential in design.³³⁹ Experiential learning is vitally important to learning entrepreneurship because experience is a major driver of opportunity recognition, evaluation, and exploitation.³⁴⁰ Clinical education undoubtedly has a key role to play in preparing students for the globalized environment.³⁴¹ The "inevitable move towards globalization will require that lawyers acquire the skills needed for these new practice settings," and, "[i]n turn, law schools will become challenged to develop approaches to impart the new skills needed to serve the emerging global community."³⁴² Because "[t]he most effective approach to clinical studies is to integrate clinical methodology throughout the law school's course offerings while at the same time constructing a series of progressive clinical experiences,"³⁴³ the bulk of this new LL.M. should be comprised of experiential opportunities. These opportunities would wed best practices from clinical legal education with those from clinical entrepreneurship education, and, by incorporating global content and experiences, would also yield

³³⁷ This is the sense of legal entrepreneurship that our research has developed. See *supra* Evans & Gabel, *supra* note 2, at 400-01.

³³⁸ See George A. Zaphiriou, Remarks, in AM. SOC'Y INT'L L. PROC., *supra* note 35, at 249 (reviewing these barriers).

³³⁹ See Barry, Dubin & Joy, *supra* note 53, at 7 (discussing the combination of "general classroom work" with clinical opportunities); Moliterno, *supra* note 131, at 434-45 (calling for "sophisticated experiential education" consisting of, among other things, "simulation courses taught by a mixture of professors and expert practitioners").

³⁴⁰ See generally Havard Asvoll & Petter Jacob Jacobsen, *A Case Study: Action Based Entrepreneurship Education: How Experience Problems Can be Overcome and Collaboration Problems Mitigated*, 15 J. ENTREPRENEURSHIP EDUC. 75 (2012).

³⁴¹ See Barry, Dubin & Joy, *supra* note 53, at 59.

³⁴² *Id.*; accord Ronald M. Criscuolo, *Global Efforts*, 43 INT'L L. NEWS 23, 26 (Spring 2014) ("[A]s domestic law schools make efforts to increase practical coursework in curricula, so too must they ground international legal practice in skills-based education").

³⁴³ See Barry, Dubin & Joy, *supra* note 53, at 46.

the benefits of interdisciplinary education.³⁴⁴ As with any experiential program intended to prepare its graduates for cross-border practice, the LL.M. proposed here will emphasize cross-cultural skills.³⁴⁵ A few leading law schools have implemented new clinics that include “opportunities for international or cross-boundary practice . . . clinical practice settings involving international legal organizations or non-governmental organizations . . . externships and clinics that expose students to practice in foreign countries, and . . . collaborations and exchanges with emerging clinical programs in other countries.”³⁴⁶ As with any other form of entrepreneurship education, this LL.M. would endeavor to place students in their “learning zone,” in which students “feel eustress, which is the type of stress that is healthy and gives one a feeling of fulfillment. It is a controlled stress that provides us with a competitive edge in performance related activities such as job interviews, public speeches, or business plan competitions.”³⁴⁷ Experiential learning approaches can be integrated into even the traditional classes that we propose for this LL.M.³⁴⁸

Although this new LL.M. would not necessarily be defined around a social justice dimension, one could be designed in such a manner.³⁴⁹ For instance,

³⁴⁴ “Inter-disciplinary clinical education provides students with an optimal experiential education” because of the roles that students assume. Robinson & Malach, *supra* note 269, at 183. “As entrepreneurship is holistic by nature, faculty can provide an optimal learning experience by incorporating multi-disciplinary clinical experiences into their curriculum. The result is an enforcement of the substantive knowledge acquired in traditional learning methods through the experiential application of this knowledge to a client problem.” Robinson & Malach, *supra* note 269, at 183-84. *See also* Barry, Dubin & Joy, *supra* note 53, at 69-71 (“Interdisciplinary clinical programs offer many opportunities for the acquisition of valuable skills by means of collaboration with and exposure to the culture, professional strengths, and limitations of other disciplines in a group setting. . . .”); *see supra* Part III.E. (discussing entrepreneurship education outside of the traditional context).

³⁴⁵ *See* Barry, Dubin & Joy, *supra* note 53, at 59-60.

³⁴⁶ *Id.* at 60-61.

³⁴⁷ Robin Anderson, Brooke R. Envick & Prasad Padmanabhan, *A Practical Framework for the Continuous Advancement of Entrepreneurship Education*, 4 AM. J. ECON. & BUS. ADMIN. 65, 66-67 (2012). This requires getting students out of their comfort zone, but not so far out that they are in the panic zone. *Id.*

³⁴⁸ *See, e.g.,* Celeste M. Hammond, *Borrowing from the B Schools: The Legal Case Study as Course Materials for Transaction Oriented Elective Courses: A Response to the Challenges of the MacCrate Report and the Carnegie Foundation for Advancement of Teaching Report on Legal Education*, 11 TRANSACTIONS: TENN. J. BUS. L. 9 (2009) (discussing experiential learning approaches for preparing students for a transactional business practice and proposing that legal case studies, akin to those used in business schools, would more effectively train law students for transactional practice than the standard Socratic case method typically used in U.S. law schools).

³⁴⁹ Clinical legal education historically has a strong social justice dimension. *See*

the LL.M. in Global Legal Entrepreneurship would enable its graduates to assist small businesspeople in developing countries with the launching of their businesses, thereby lifting their families from poverty and contributing to the general advancement of their communities. Economic opportunity and economic rights are widely acknowledged as human rights.³⁵⁰ To this end, the degree's general focus on business strategy could readily be built around the themes of corporate social responsibility³⁵¹ and promotion of human rights through the advancement of economic opportunity.

This LL.M. would not only prepare U.S. attorneys for global practice, but would also add value to foreign attorneys who come to the United States to study.³⁵² This is true despite most LL.M. programs' lack of immediate substantive relevance for practice in foreign jurisdictions.³⁵³ A market opportunity thus exists

Barry, Dubin & Joy, *supra* note 53, at 12-16. Clinics with social justice motivations have successfully been conducted in countries other than the United States. *See e.g.* Michael Ramsden & Luke Marsh, *Using Clinical Education to Address an Unmet Legal Need: A Hong Kong Perspective*, 63 J. LEGAL EDUC. 447 (2014); Priya S. Gupta, Kudrat Dev, Meher Dev & Kirti Rana, *How Clinical Education Builds Bridges with Villages for a Global Law School in India*, 63 J. LEGAL EDUC. 512 (2014).

³⁵⁰ *See, e.g.*, Office of the United Nations High Commissioner for Human Rights, *Economic, Social and Cultural Rights*, at iv, United Nations (2005) (noting that "human rights . . . include economic rights. . ."), <http://www.ohchr.org/Documents/Publications/training12en.pdf>; Amnesty International, *Economic, Social and Cultural Rights* (noting that economic, social and cultural rights are a broad category of human rights), <http://www.amnesty.org/en/economic-social-and-cultural-rights>.

³⁵¹ The business literature is well-developed with respect to business ethics and corporate social responsibility. *See generally*, CORPORATE SOCIAL RESPONSIBILITY: A RES. HANDBOOK (Kathryn Haynes, Alan Murray & Jesse Dillard eds., 2013) (providing an overview of this area); MIA MAHMUDUR RAHIM, LEGAL REGULATION OF CORPORATE SOCIAL RESPONSIBILITY (2013) (discussing corporate social responsibility and its relation to the law).

³⁵² For example, the opportunity to learn legal English is valued by many international students who study in U.S. law schools. Silver, *Internationalizing U.S. Legal Education*, *supra* note 19, at 156-57.

³⁵³ *See, e.g.*, Swethaa Ballakrishnen, *Homeward Bound: What Does a Global Legal Education Offer the Indian Returnees?*, 80 FORDHAM L. REV. 2441, 2466-67 (2012) (finding that LL.M. students from India studied in the U.S. despite the fact that "[s]tudents are aware that an American graduate degree holds limited substantive relevance for practice in their home jurisdiction"). International students find numerous other benefits to the U.S. LL.M. degree; these include access to international resources and contacts, the experience of living in another country, access to a strong intellectual environment that offers educational rewards beyond substantive, technical knowledge, and the ability to personalize their career trajectories. *Id.* *See also* Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 4 GEO. J. LEGAL ETHICS 1, 55 (2011) ("The importance of the LL.M. is less about the credential itself and more about particular

for U.S. law schools: “[i]nternational and comparative LL.M. programs in most cases do not translate directly into skill sets for foreign lawyers to apply in their practices or careers back home (any more than they provide a practical skill set for U.S. lawyers).”³⁵⁴ An LL.M. that was to effectively train attorneys as strategists across the world’s jurisdictions would add value by training lawyers (both U.S. and foreign) with knowledge directly applicable (or immediately adaptable) to the lawyer’s home environment. This could, but need not, include instruction in the jurisdiction’s substantive law. Instruction in the jurisdiction’s language, culture, and rule of law process would be directly applicable to legal entrepreneurship in the jurisdiction.

LL.M. programs that are explicitly focused on global elements (such as the one proposed here) should make a particularly compelling case for recruiting international students to the law school. Diversifying an LL.M. program through international student enrollments should benefit everyone enrolled in the program.³⁵⁵ This dimension of diversity, however, may require modified instructional techniques,³⁵⁶ sensitive to the cultures and expectations of the students involved.³⁵⁷ This is especially true in our context, since national culture impacts individual behaviors and is known to shape entrepreneurship.³⁵⁸ For students in a legal entrepreneurship program, the opportunity to develop global contacts should hold particular appeal, not only for the heightened learning

experiences and lessons that it enables.”).

³⁵⁴ Howard N. Fenton, *The U.S. LLM for Foreign Lawyers: Real Value or Overpriced, Low-Utility Legal Education?*, 43 INT’L L. NEWS 9, 10 (Spring 2014).

³⁵⁵ See generally Silver, *Getting Real*, *supra* note 14, at 457-59 (discussing the myriad benefits to U.S. law students of interacting with international students). Some scholars are concerned that an increase in international students may force U.S. law schools to ration scarce resources between foreign and domestic students. See, e.g., Ribstein, *supra* note 20, at 1671. However, an increase in international students (who will ordinarily pay tuition rates at least as high as those paid by domestic students) should result in greater financial resources for the program, and will carry other benefits such as driving enrollments in courses that might otherwise fail to reach capacity through domestic students alone.

³⁵⁶ See generally, e.g., Erin Ryan, Xin Shuai, Yuan Ye, You Ran, & Li Haomei, *When Socrates Meets Confucius: Teaching Creative and Critical Thinking Across Cultures Through Multilevel Socratic Method*, 92 NEB. L. REV. 289 (2013) (recommending a modified version of the traditional Socratic Method, which the authors call “Multi-level Socratic Method,” to accommodate law students hailing from cultures that, like China’s, emphasize passive student involvement in class and rote memorization in study).

³⁵⁷ *Id.* at 293 (distinguishing their study from prior literature on Socratic teaching, most of which exclusively addresses the experiences of U.S. minorities rather than international students). See also Silver, *Getting Real*, *supra* note 14, at 489 n.106 (listing examples of scholarship concerning the challenges of teaching law to internationally diverse students).

³⁵⁸ KARIV, *supra* note 230, at 4-6.

experience, but also because “[a] more thorough knowledge and awareness of cultures has become one of the major building blocks in ongoing entrepreneurial business activities, [and] as such knowledge can be turned into a vehicle for learning new skills, fostering new ideas, reducing risk, and facilitating effective resource-sharing with people and businesses from different cultures.”³⁵⁹

As for recruiting domestic students into an LL.M. in Global Legal Entrepreneurship, law schools can adopt admissions standards that explicitly favor those applicants who have best prepared for this type of experience. Numerous authorities provide advice on how generally to prepare for international law practice *before* attending law school.³⁶⁰ Because this LL.M. would require a J.D. of domestic students as a prerequisite, admissions committees can also recruit and admit those who have invested their time as J.D. candidates to prepare for global careers.³⁶¹ Further diversity among students can be achieved by recruiting students from varying disciplinary backgrounds.³⁶² Course deliverables in this new LL.M. will be optimized if they are designed to resemble real-world work product—deliverables that the student could give to prospective employers.³⁶³

This new LL.M. would seek to develop a particular skill set in students. Several of these skills are fundamental to legal entrepreneurship.³⁶⁴ To begin, entrepreneurs must work effectively with ambiguity.³⁶⁵ Indeed, entrepreneurs view ambiguity (and its unavoidable derivative, uncertainty) as affirmatively

³⁵⁹ *Id.* at 6.

³⁶⁰ *See, e.g.*, D. WES RIST, CAREERS IN INTERNATIONAL LAW: A GUIDE TO CAREER PATHS IN INTERNATIONAL LAW 19-34 (2013) (recommending, *inter alia*, that students pursue language study opportunities, obtain international experience through undergraduate studies, and obtain other international experiences before law school).

³⁶¹ *See id.* at 35-92 (discussing traditional means such as courses, moot court competitions, law reviews and journals, studies abroad, internships and professional networking events); *see also* Isabella D. Bunn, *Start Now: Leveraging Law School for a Global Career*, in CAREERS IN INTERNATIONAL LAW 203-10 (Salli A. Swartz ed., 4th ed. 2012) (recommending that students strive for academic excellence, get published, maximize their interdisciplinary expertise, apply for a fellowship, master a foreign language, serve in pro bono or public interest capacities, improve legal and leadership skills, maintain global awareness, and pass the bar exam).

³⁶² Some scholars have urged that international law—even when taught in the traditional doctrinal classroom setting—should involve students from different disciplines. *See, e.g.*, Richard B. Lillich, *The Teaching of International Human Rights Law in U.S. Law Schools*, 77 AM. J. INT’L L. 855, 857 (1983).

³⁶³ Several speakers expressed this view during Emory Law’s Fourth Biennial Conference on Transactional Education, “Educating the Transactional Lawyer of Tomorrow,” in June 2014.

³⁶⁴ *See* Parts I-III (discussing the skills fundamental to legal entrepreneurship); *see also* Evans & Gabel, *supra* note 2, at 408-12.

³⁶⁵ *See, e.g.*, LEONARD A. SCHLESINGER & CHARLES F. KIEFER, JUST START: TAKE ACTION, EMBRACE UNCERTAINTY, CREATE THE FUTURE (2012).

“good” or “favorable” features of the legal environment³⁶⁶—quite contrary to the instinct developed in law students from higher rule of law jurisdictions such as the United States. Both an organization and the individuals within it must have a reasonable risk tolerance in order to succeed entrepreneurially.³⁶⁷

Creativity is another core skill that must be developed in legal entrepreneurs. At a minimum, creativity involves originality and usefulness.³⁶⁸ Creativity “is the envisioning of new combinations of resources and market realities, often through the questioning of conventional wisdom, the discovery of new knowledge with respect to market needs, technology, or the availability of vital resources, and/or finding new applications for pre-existing knowledge.”³⁶⁹

Another key skill for entrepreneurs to master is the ability to collaborate with others. The entrepreneurial lawyer will work with, work for, and lead individuals from outside of the law.³⁷⁰ The ability to work with non-lawyers is crucial.³⁷¹ Legal entrepreneurship is inherently an interdisciplinary exercise.³⁷² Attorneys trained in an interdisciplinary manner will be capable of serving as a more effective bridge between the law and business than can the traditionally-

³⁶⁶ Steve Case has explained that entrepreneurs “can deal with ambiguity, and believe that ambiguity creates opportunity. That if [a situation or an environment] were not ambiguous . . . competitors could do [what our company is doing], so more ambiguity and more fog is good, not bad [H]aving that mindset . . . is critical” to being an entrepreneur. Gendron & Greene, *supra* note 240, at 94 (comments of Case). *Accord* SCHLESINGER & KIEFER, *supra* note 365, at 81 (explaining that for entrepreneurs following the authors’ model of “Creaction,” “problems are a potential resource as opposed to a disadvantage”).

³⁶⁷ Gendron & Greene, *supra* note 240, at 94-95 (comments of Goldman); *see also* Evans & Gabel, *supra* note 2, at 421 (urging that “[t]he firm must be willing to take sensible risks in order to achieve competitive advantages in the law”).

³⁶⁸ KARIV, *supra* note 230, at 55.

³⁶⁹ *Id.* at 54.

³⁷⁰ Long before globalization, scholars called for interdisciplinary legal education. *See, e.g.*, Eugene A. Gilmore, *Some Criticisms of Legal Education*, 7 A.B.A. J. 227, 230 (1921) (“[T]here should be a thorough integration of the law course with the other courses of the university, and particularly with the courses in the allied fields of history, philosophy, political science, economics, and sociology.”).

³⁷¹ *See, e.g.*, Cassidy, *supra* note 27, at 1518-19; *see generally* Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students’ Collaborative Skills*, 38 WM. MITCHELL L. REV. 1162 (2012) (noting that law students are frequently judged to lack emotional intelligence and collaborative abilities and that such skills are key to modern attorneys, and suggesting means by which law faculty can encourage collaboration and by which to assess students’ collaborative efforts); Barry, Dubin & Joy, *supra* note 53, at 65-66 (noting that attorneys in all practices are increasingly working with “professionals in other disciplines to address client problems in a more holistic, efficient, comprehensive, and cost-effective fashion”).

³⁷² Evans & Gabel, *supra* note 2, at 397-98.

trained lawyer.³⁷³ Although it is in theory possible for non-lawyers to engage in legal entrepreneurship,³⁷⁴ it will be the entrepreneurial lawyer who, as a practical matter, is best positioned to bridge business and the law, since only lawyers will ordinarily have developed the advanced knowledge required of the legal half of the bridge.³⁷⁵ Still, legal entrepreneurship is more about intangible social and people skills and entrepreneurial abilities such as opportunity recognition, than it is about technical content mastery of the law. This new LL.M. should train students to identify opportunities for legal competitive advantage as entrepreneurs first and as lawyers second.³⁷⁶

Working through problems, familiarity with foreign law, the development of practical judgment, the ability to manage one's career, and the ability to manage one's practice are also crucial skills that law students should be developing.³⁷⁷ Lawyers will add value to their clients' operations by managing the legal process³⁷⁸ and by effectively functioning as management consultants for the client.³⁷⁹

The ability to manage information is crucial to the entrepreneurial lawyer.³⁸⁰ Indeed, some entrepreneurs achieve heightened effectiveness at

³⁷³ See, e.g., Nathan Isaacs, *The Teaching of Law in Collegiate Schools of Business: Discussion*, 28 J. POL. ECON. 113, 115-16 (1920) (beautifully illustrating the different lessons that a traditionally-trained attorney and a business person will draw from the same situation).

³⁷⁴ See Evans & Gabel, *supra* note 2, at 400-01 (defining "legal entrepreneurship" without reference to legal training or admission to the bar).

³⁷⁵ This is not to say that legal training for business executives is valueless. To the contrary: executives with some familiarity with the law will be impressed by its complexity, will be more likely to seek legal advice before decision-making rather than after, and will be empowered to work with lawyers intelligently. L.F. Schaub, *The Teaching of Law in Collegiate Schools of Business: Discussion*, 28 J. POL. ECON. 126, 127 (1920). Moreover, executives with some familiarity with the law are better-acquainted with "the problem of social control," and so are more inclined to play by the rules of the game. W.H. Spencer, *The Teaching of Law in Collegiate Schools of Business: Discussion*, 28 J. POL. ECON. 131, 132 (1920). The law is, indeed, a form of social control. Evans & Gabel, *supra* note 2, at 340, 370.

³⁷⁶ KARIV, *supra* note 230, at 95-96 (discussing evaluation procedures that have been developed for entrepreneurs making decisions, noting several research models for identifying, exploiting, and evaluating opportunities, and noting that opportunity recognition skills can be taught).

³⁷⁷ Cassidy, *supra* note 27, at 1520-29 (discussing these skills).

³⁷⁸ SUSSKIND, *supra* note 42, at 114.

³⁷⁹ *Id.* at 116-17.

³⁸⁰ Evans & Gabel, *supra* note 2, at 410-11 (noting that "[a]cquiring and interpreting information are . . . vital skills" since perfect information virtually never exists and that this reality contributes to legal uncertainties and legal risks, particularly in lower rule of law environments). See also SUSSKIND, *supra* note 42, at 160-61 (arguing that the law is

discerning opportunities through information that they already possess by virtue of work experience, connections, and other means.³⁸¹ The discovery of opportunities for legal competitive advantage is based in part upon the same principal. Thus, the entrepreneurial lawyer can make a significant individual contribution to the firm's success.³⁸²

We have seen that entrepreneurial lawyers effectively manage risk.³⁸³ Of equal danger to senseless risk-taking is an aversion to risk altogether.³⁸⁴ Sensible risk-taking competencies can be learned.³⁸⁵ Accordingly, the LL.M. in Global Legal Entrepreneurship must prioritize the development of students' attitudes and abilities concerning risk.

One of the most vital skills at the intersection of practical preparation, culture, and internationalization concerns language. Thus, the LL.M. in Global Legal Entrepreneurship should require the study and mastery of a foreign language.³⁸⁶ Some jurisdictions have effectively accommodated linguistic diversity *within* the jurisdiction,³⁸⁷ so it follows that an LL.M. program could train

information-based).

³⁸¹ Scott Shane, *Prior Knowledge and the Discovery of Entrepreneurial Opportunities*, 11 ORG. SCI. 448, 451-52 (2000).

³⁸² *Id.* at 466 (noting the importance of individual differences to the entrepreneurship process); see also Evans & Gabel, *supra* note 2, at 418-21 (discussing the entrepreneurial lawyer's strategic value-add to clients and employers).

³⁸³ See *supra* Part II.A and II.B. See also SUSSKIND, *supra* note 42, at 117-18 (discussing clients' need for legal risk managers).

³⁸⁴ "General Counsel, like the boards to which they report, have a strong preference for avoiding legal problems rather than resolving them." SUSSKIND, *supra* note 42, at 117. Still, "[a]voiding risk is not always wrong, but always avoiding risk needlessly cedes immense value to one's rivals." Evans & Gabel, *supra* note 2, at 364. "The firm must be willing to take sensible risks in order to achieve competitive advantages in the law." *Id.* at 421.

³⁸⁵ See generally, e.g., Paula Kyrö & Annukka Tapani, *Learning Risk-Taking Competences*, in HANDBOOK OF RESEARCH IN ENTREPRENEURSHIP EDUCATION, at 285 (Alain Fayolle ed., vol. 1 2007) (concluding that as a learnable skill, risk-taking is a fruitful area into which entrepreneurship pedagogy should reach).

³⁸⁶ See Sanchez, *supra* note 49, at 672 (arguing that law schools should train attorneys in foreign languages). Moreover, "given the diversity of our nation's people and the burgeoning practice of international law, nearly every lawyer will be well-served at some point in her career by speaking another language." Tacha, *Training the Whole Lawyer*, *supra* note 25, at 1700-01; accord Deanell Reece Tacha, *Refocusing the Twenty-First Century Law School*, 57 SMU L. REV. 1543 (2004) (noting that "in a global economic and geopolitical world, we must have problem solvers who can listen, hear, and incorporate legal concepts and assumptions from very different cultures, traditions, and languages").

³⁸⁷ See, e.g., Jimena Andino Dorato, *A Jurilinguistic Approach in Legal Education*, 26 INT'L J. SEMIOT. L. 635, 639 (2013) (arguing that foreign languages are crucial to preparing attorneys for practice in the multilateral environment).

U.S. attorneys to accommodate multiple languages *across* jurisdictions.³⁸⁸ “There is one absolute truth when pursuing any international career, legally focused or not: language skills open up opportunities that would otherwise be unavailable,” and “[w]hile there are still career opportunities that do not require specific language skills, there are many positions that either require or highly prefer applicants with fluency in non-English languages.”³⁸⁹ Certainly, for lawyers who want to practice in a foreign jurisdiction or represent clients from abroad, understanding the language of the jurisdiction is key to mastering the law there: not only are the laws expressed in the foreign language, but it is impossible to fully understand a foreign culture without understanding its language.³⁹⁰

The LL.M. in Global Legal Entrepreneurship could be offered with a number of concentrations. The most obvious dichotomy would call for concentrations in comparative law and international law.³⁹¹ The comparative law track would focus on one or a few foreign jurisdictions (the law school’s resources and collaborative partnerships will determine what number of foreign jurisdictions is practicable), whereas the international law track would focus on international institutions such as the World Trade Organization (WTO) and the United Nations (UN). The Appendix considers what the curricula for these concentrations might look like.

In light of this discussion and the preceding portions of this article, the following general parameters have emerged to guide the design of a new LL.M.:

- Legal entrepreneurs are those who apply entrepreneurial skills to the *legal* market, thereby creating and managing competitive advantages for the client in the *economic* market. Legal entrepreneurs lower the firm’s legal transaction costs and legal risks by innovatively harnessing the jurisdiction’s legal flexibilities.
- The legal entrepreneur’s two most important core functions are therefore to harness the law to the client’s competitive

³⁸⁸ Indeed, many U.S. attorneys working in China have noted the importance of knowing the local language. *See, e.g.,* Evans, *supra* note 16, at 318 (discussing the role of language and arguing that “[t]o better hone U.S. attorneys’ competitiveness in a global economy, law schools should develop foreign language curriculums”).

³⁸⁹ RIST, *supra* note 360, at 8. As to the factors to weigh in selecting a foreign language for study, *see id.* at 8-11. *See also* Ribstein, *supra* note 20, at 1671 (suggesting that U.S. law schools are enabling “U.S.-educated LL.M.s practicing in their home countries . . . to outcompete U.S.-based JDs [sic] seeking to enter these markets” by “failing to emphasize the importance of foreign language training” for U.S. J.D. students).

³⁹⁰ *See* Sanchez, *supra* note 49, at 656-72 (discussing the intersection of language, culture and law, and providing illustrative examples).

³⁹¹ An informative discussion of these areas can be found at *id.* at 674-78.

advantage, and to bridge the firm's management and the jurisdiction's rule of law process.

- The entrepreneurial lawyer must apply a broad (and increasing) array of skills from the realm of traditional entrepreneurship. Chief among these are cross-cultural competence, opportunity recognition, and sensible risk management.
- The entrepreneurial lawyer pursues “purposeful innovation” and so must be both flexible and adaptive—both patient and aggressive.
- Entrepreneurship is an inherently interdisciplinary area, and thus, a program or degree in legal entrepreneurship must incorporate other key disciplines. This may require expanded training for existing faculty, or collaboration with other disciplines' faculties. These non-legal faculty may be housed within the law school's home institution, at another U.S. university, or at a foreign partner university.
- The entrepreneurial lawyer must still “think like a lawyer”—but in the cross-cultural, interdisciplinary, global environment of the twenty-first century. Moreover, this mode of thought is not the only skill that attorneys require to be equipped for practice.
- The skills of the legal entrepreneur are learnable; collaborative and experiential learning are the best (but not exclusive) means by which to develop these skills.

And the development of the following skills should take priority in this new LL.M.:

- An entrepreneurial mind-set
- Innovativeness
- The ability to manage uncertainty and to work under ambiguous conditions
- Cross-cultural competence
- The ability to manage risk effectively and a balanced approach to risk-taking
- The wherewithal to acquire, interpret, and use information
- Problem-solving ability
- Social skills (including relationships with others, persuading others, and adapting to changing social situations)
- An orientation toward action-taking
- The ability to analyze the external environment
- Sound, practical judgment

- The ability to work well in teams (particularly with non-lawyers)
- Opportunity recognition
- The ability to manage the client's "legal process"
- Effective communication (including, crucially, foreign language ability)

A variety of curricula could be designed with these goals and constraints in mind. One possible curriculum can be found in the Appendix, *infra*. Although most LL.M. programs are one year in length,³⁹² and although some commentators question the value of "the LL.M.,"³⁹³ it is likely to require the investment of two years in order for students to develop the skills valued by employers in cross-jurisdictional practice. Thus, we recommend a two-year format for the LL.M. degree in Global Legal Entrepreneurship. If the foregoing discussion is correct, the optimal composition of these two years would probably consist of some permutation of the following components:

Doctrinal coursework. This traditional coursework should incorporate, to the greatest extent possible, active learning beyond the Socratic Method. These courses will provide students with the background information needed in the program.

Experiential components. These components will comprise the bulk of the program. Clinics, simulations, and other forms of experiential learning will enable students to hone their entrepreneurial skills through practice and by receiving constructive feedback.

Foreign language study. Students will select the foreign language likely to be most relevant to their future careers and

³⁹² Crane, *supra* note 20, at 55; *Understanding the Difference between JD and LL.M. Degrees*, LAW SCHOOL ADMISSION COUNCIL <http://www.lsac.org/llm/degree/jd-llm-difference> (last visited Oct. 7, 2015).

³⁹³ Critics note that the LL.M., in contrast to the J.D., is relatively unregulated by the ABA's accrediting authorities, and is not required of U.S. lawyers (who will already possess a J.D.) to sit for a bar exam in the United States. Thus, the LL.M. is unshielded from market forces; its value is entirely in whether it directly impacts graduates' job prospects. See, e.g., Elie Mystal, *The Value of the LL.M. Degree? Still Low*, ABOVE THE LAW, <http://abovethelaw.com/2012/01/the-value-of-the-ll-m-degree-still-low/>; accord Bryce Wilson Stucki, *LLM: Lawyers Losing Money*, THE AMERICAN PROSPECT, available at <http://prospect.org/article/llm-lawyers-losing-money>.

that they do not already speak at native fluency, and will study the language throughout the first three semesters in the LL.M program. The language would ideally align with both their career plans and their internship.

Internship and other networking. The last semester of the program will be spent working for a law firm, business, or non-profit in a global function (preferably located in a foreign jurisdiction), where students will have the opportunity to test and refine their skills in an actual practice setting. Networking is also vitally important for securing a job in the law and should be required under the rubric of “professional development.”

The Appendix, *infra*, proposes one possible means by which to organize the coursework for the LL.M. in Global Legal Entrepreneurship.

C. Adjustments to the J.D. Curriculum

Law school curricula must adapt in order to remain relevant—to prepare students for the new roles that employers and clients are demanding of their lawyers.³⁹⁴ As we have noted, not all attorneys will be engaged primarily as global advisers—but nearly all U.S.-licensed attorneys *will* require some subset of the entrepreneurial lawyer’s skill set moving forward. As a result of America’s changing demographics, attorneys well-prepared for “multicultural and cross-cultural settings” will find their training applicable to and highly useful in the United States.³⁹⁵ Thus, without converting the J.D. to a specialist degree for global practice, we urge that the following areas of emphasis from the LL.M. proposed above be incorporated into the J.D. curriculum:

- Cross-cultural competence
- The ability to manage risk effectively

³⁹⁴ SUSSKIND, *supra* note 42, at 136.

³⁹⁵ Barry, Dubin & Joy, *supra* note 53, at 62; *see also* Cassidy, *supra* note 27, at 1522 (arguing that exposure to foreign laws “not only will prepare our graduates to practice in a global environment, but it will also equip them with a deeper understanding of the choices made by our own legal system”); Cavers, *supra* note 31, at 1059 (“The study of Comparative Law can, if successfully pursued, equip the student with techniques for comparing his own law with the laws of other countries. . . .”); Silver, *Getting Real*, *supra* note 14, at 468-69 (America’s increasingly multi-cultural demographics will impact a wide variety of law practice settings in the U.S.); Criscuolo, *supra* note 342, at 26 (“Ultimately, a globalized education is a more fully formed education. It can solve local problems. . . .”).

- Problem-solving ability
- Social skills
- Sound, practical judgment
- The ability to work well in teams (particularly with non-lawyers)
- The ability to manage the client’s “legal process”
- Effective communication, including foreign language ability

These skills can be refined in many of the ways proposed for the LL.M. above: through experiential opportunities, the teaching of soft skills, and by transparently favoring such skills in the admissions process.

It is also possible to combine the U.S. J.D. with a foreign law degree as part of a dual degree arrangement, in which students earn both the U.S. and the foreign degrees together.³⁹⁶ Only a very small number of schools have accomplished this, however.³⁹⁷ This option entails unique challenges and its full exploration is beyond the scope of this article.

V. ADMINISTRATIVE AND LOGISTICAL ISSUES WITHIN THE LAW SCHOOL

The LL.M. program described in Part IV, *supra*, is our general conception of the optimal means by which law schools can prepare lawyers for today’s globalized environment. But we realize that constraints are at work on every program—some are common³⁹⁸ while others are unique to the school in question. Even if a school finds that it cannot craft the precise program proposed here, it likely will find value in pursuing another iteration of the program. Each school must find a way to overcome its constraints. Substantial value can still be delivered even if a school’s global LL.M. diverges in its particulars from the proposal in Part IV. Moreover, some schools may find that the ideal described above is, for whatever reason, not ideal; and, as such, would do well to modify what is proposed here. “Innovations . . . need to be . . . discussed more, developed more and integrated throughout law schools in the twenty-first century. Law schools need to establish the expectation that faculty will teach a broad range of

³⁹⁶ Demleitner, *supra* note 46, at 8.

³⁹⁷ *Id.*

³⁹⁸ For example, some common challenges to the internationalization of law schools include a relative paucity of foreign language skills among faculty and students, the attitude that there is little to learn from foreign law, and law faculties that lack global exposure. Maxeiner, *supra* note 22, at 48-49.

skills . . . and the administration and faculty must give the necessary guidance and support to those faculty members who embrace this goal.”³⁹⁹

This leaves us with the question of how law school administrators can best address the challenges that may accompany the creation of a program like the one proposed here. We identify and briefly discuss the challenges likely to be most pressing:

Recruiting faculty. The law school has several options for staffing faculty in an interdisciplinary program. It can (a) recruit faculty with interdisciplinary backgrounds; (b) provide opportunities for further training to existing faculty; and (c) partner with faculty from outside the law school in the delivery of the program. The question for any interdisciplinary program is thus not “how can law faculty best instruct outside of the law?” but rather “how can law schools best facilitate quality instruction outside of the law and integrate this with legal education?” The best answer likely involves a combination of the options above. Collaboration with experts in different fields—particularly those in entrepreneurship—would provide a fruitful experience for students. Law faculty should remain at the center of any program in legal entrepreneurship, but a combination of these is most likely to produce students who think like lawyers for a globalized, intercultural world.

Experiential dimensions. Providing international and cross-cultural experiences to students can be challenging.⁴⁰⁰ Many universities have partnerships or other global programs already in place. These may provide the law school with a solid starting point in developing international opportunities for students. It may behoove law schools with assistant or associate deans to task one of these administrators with the development of international partnerships. Partnerships with American firms

³⁹⁹ Barry, Dubin & Joy, *supra* note 53, at 40.

⁴⁰⁰ Demleitner, *supra* note 46, at 5 (noting the expansion of global opportunities in U.S. law schools). “Substantive knowledge about international and foreign laws, clinical involvement in legal issues abroad, and even dual degree and qualification are now available to law students.” *Id.* at 5. Some schools are even offering upper-level electives on international topics in foreign languages, while some are offering simulation and clinical opportunities in international areas. These are often restricted, however, to the most heavily resource-endowed programs. *Id.*

that do business around the world would also likely prove helpful.⁴⁰¹

Teaching the soft skills. “You can always learn technical details and applicable law but being able to work successfully with people from different countries, different cultures, with different world views, requires a skill set that is more people oriented than substantive oriented.”⁴⁰² As with instruction in entrepreneurship, the law school must recruit faculty who can teach soft skills, including culture. Again, partnerships with faculty across disciplines likely will produce the best results.

Controlling costs. The financial model of any program is central to its feasibility. This is especially true in experiential contexts, such as clinical legal education.⁴⁰³ A program’s quality and its ability to generate additional revenues for the school must be considered in addition to its costs.⁴⁰⁴ This is not to say that the costs of programs should be trivialized; indeed, quite the opposite is true.⁴⁰⁵ Still, looking only at a program’s costs does not make for sound strategic planning. The administrative temptation will be to resist a higher-cost program—at all costs. This temptation is likely to be present even if the program delivers higher value and higher potential

⁴⁰¹ See, e.g., James A. Fanto, *When Those Who Do Teach: The Consequences of Law Firm Education for Business Law Education*, 34 GA. L. REV. 839 (2000) (suggesting that legal educators should monitor the manner in which law firms train new attorneys and should incorporate developments of law firm education into law school curricula).

⁴⁰² Silver, *Getting Real*, *supra* note 14, at 460 (quoting an unnamed in-house counsel); see also Demleitner, *supra* note 46, at 5-6, 8 (discussing the importance of cultural competence to legal education today). Still, “[e]ven though a number of schools offer such cultural and legal competence-enhancing programs, they remain restricted to a relatively small quantity of students.” *Id.* at 6. Incorporating international students into domestic programs can help bring global exposure to students who cannot afford to study abroad. *Id.*

⁴⁰³ See generally, e.g., Barry, Dubin & Joy, *supra* note 53 (discussing at length the costs of clinical law programs).

⁴⁰⁴ See *id.* at 23-25.

⁴⁰⁵ “Cost reform is the legal education battle for which legal education leaders in the early twenty-first century will be remembered. Each legal education stakeholder ought to ask whether he or she is willing to demand change rather than letting two common, powerful platitudes—access to education and access to justice—continue to serve as convenient rhetorical tools for those seeking to maintain a seriously broken model of delivering legal education.” McEntee, Lynch & Tokaz, *supra* note 131, at 227.

return for students, especially when applications to law schools are receding. But those administrators who make the investment now and who build their program's brand and reputation for value will better compete for students.⁴⁰⁶ Many palatable, realistic options exist to manage those costs that will invariably accompany experiential learning programs.⁴⁰⁷

Taken together, these considerations imply the same general challenges and concerns that will confront any new program or innovation in the law school setting. These challenges are manageable, however, and should not dissuade law schools from offering programs in legal entrepreneurship.

VI. IMPLICATIONS FOR ACCREDITATION AND THE BAR EXAM

Any individual law school determined to distinguish itself along the lines proposed here can do so through its own initiative. But to make internationalization the norm in law schools nation-wide will likely require the coordination of two of the most potent external forces to which law schools appear responsive: accreditation and the bar exam.

The meaningful reform of legal education, at least on the macro-level, will require the leadership of the ABA Section of Legal Education and Admissions to the Bar,⁴⁰⁸ or a broader, more foundational reform of the manner by which law schools are accredited.⁴⁰⁹ Law school accrediting standards should be revised not only to encourage the global aspects of contemporary legal education, but to require them. Law schools have neglected the deep integration of globalization in large measure because accreditation standards invite this result.⁴¹⁰ The ABA has adopted new regulations to try to keep pace with law schools' innovations in international legal education, but regulating what law schools do after the fact misses the potential to shape incentives.⁴¹¹ By requiring measurable learning outcomes in global and cross-cultural knowledge and skills, the ABA could encourage the whole legal education industry to advance more uniformly.⁴¹²

⁴⁰⁶ See Barry, Dubin & Joy, *supra* note 53, at 26.

⁴⁰⁷ *Id.* at 26-30.

⁴⁰⁸ Thies, *supra* note 131, at 614-22.

⁴⁰⁹ See, e.g., Judith Areen, *Accreditation Reconsidered*, 96 IOWA L. REV. 1471, 1494 (2011) (arguing that "[i]t is time for legal education to embrace a system of accreditation that is grounded on peer assessment," akin to most other disciplines in higher education).

⁴¹⁰ Silver, *Getting Real*, *supra* note 14, at 462.

⁴¹¹ See generally Edelman, *supra* note 144.

⁴¹² See, e.g., Janet W. Fisher, *Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measure in the ABA Standards for Approval of Law Schools*

We propose that the ABA integrate mandatory global and cross-cultural experiences into the basic law school education.

Additionally, with respect to the J.D., students are far less incentivized to study a given subject area in law school when it is not covered on the bar exam.⁴¹³ This discourages all but the most elite law schools from further diversifying the curriculum, and from requiring non-bar subjects as mandatory courses.⁴¹⁴ “By pressuring students to be prepared for a dizzying number of subjects, the bar exam impedes reforms that would assist students in being prepared to practice law. Courses, or activities within courses, on writing, problem solving, project management, teamwork, business-savvy, financial knowledge, and the like, are not tested on the bar exam.”⁴¹⁵

These effects are felt with particular force in international law. “Not one state has begun to test on principles of international law, implicitly signaling that they are of secondary importance in legal training.”⁴¹⁶ The bar exam’s lack of coverage of international law artificially depresses⁴¹⁷ the number of students who feel that they can “afford” to take globally-oriented courses and has contributed directly to the widening gap in the quantity and quality of international opportunities between the elite law schools and all other law schools.⁴¹⁸ State bar authorities would do a service to lawyers and to the legal industry—as well as to law schools—to test basic international law knowledge on the bar exam.⁴¹⁹

VII. CONCLUSION

In 1915, Felix Frankfurter wrote that

[o]ur society is becoming more and more complex, which means more law and not less law. . . . [The lawyer therefore] must adapt old loyalties to new facts; [the lawyer], above all,

Might Transform the Educational Experience of Law Students, 35 S. ILL. U. L. J. 225 (2011).

⁴¹³ See *supra* Moliterno, *supra* note 46, at 432-33.

⁴¹⁴ *Id.* at 433.

⁴¹⁵ *Id.*

⁴¹⁶ Demleitner, *supra* note 46, at 4.

⁴¹⁷ In this context, by “artificially depresses,” we mean “readjusts with no reference to actual market needs.”

⁴¹⁸ Demleitner, *supra* note 46, at 4.

⁴¹⁹ A few states do offer the option of a certification in international law after one is admitted to practice. See, e.g., The Florida Bar, International Law Certification, <http://www.floridabar.org/DIVCOM/PI/CertSect.nsf/9736b6935363096385256fd4005e5ce/a/c5fd87df4f7c446485256fd4005c0eef!OpenDocument> (last visited Dec. 20, 2015).

must find ways to reconcile order with progress. The problems ahead present to our profession opportunities for great leadership, but correspondingly they call for equipment adequate to the task; they call for fresh thinking, disinterested courage, and vision.⁴²⁰

Frankfurter was speaking in the context of law schools' contributions to leadership, and his message carries particular force in today's global and cross-cultural environment. Law schools have an immense opportunity to capitalize on the defining features of this environment—to train law students for the world as the students will experience it and, in the process, to revitalize the U.S. law school.

Still, as we have seen, U.S. law schools have fallen behind on the international front. The United States is, for example, “a more important receiving country for law students than it is a sending country, and as a result, we risk educating a cadre of globally savvy competitors that domestic students cannot possibly match in terms of experience and expertise relevant to navigating the challenges of a global practice environment.”⁴²¹ This is bothersome since “[t]he United States' continued success as legal educator to the world depends on how well U.S. law schools can compete in a dynamic global market.”⁴²² The LL.M. in Global Legal Entrepreneurship proposed here would help to remedy this in a manner consistent with our prior conceptual and empirical research.⁴²³ Our proposal, centered on legal entrepreneurship, is by no means the only avenue for preparing global law graduates, but we do think this program would address a pressing market need and merits serious consideration.

“There is now a widespread belief that law school graduates are not ‘practice ready,’ that they do not understand the business of law, that they have not cultivated their nonanalytical skills, that they do not network well, that they do not know how to manage projects, that they lack empathy, and so on,” Professor Richard Matasar has noted.⁴²⁴ “In the years ahead, it seems quite likely that firms will begin to search for new employees who have these traits. . . . In turn, schools must try to produce such results.”⁴²⁵ We hope that the LL.M. proposed here will meet the “practice ready” standard for global needs, and that the reforms proposed for the J.D. will help to elevate the general practice readiness of U.S. law graduates here and abroad.

⁴²⁰ Felix Frankfurter, *The Law and the Law Schools*, 1 A.B.A. J. 532, 540 (1915).

⁴²¹ Silver, *Getting Real*, *supra* note 14, at 494.

⁴²² Ribstein, *supra* note 20, at 1671.

⁴²³ *See supra* Part II.

⁴²⁴ Matasar, *supra* note 131, at 1591.

⁴²⁵ *Id.* at 1591-92.

While some law schools have advanced the global dimensions of their programs,⁴²⁶ most have not yet fully embraced internationalization. Yet many benefits will accrue to globally-oriented law schools. “From the U.S. law school’s perspective,” for example, “in addition to the obvious commercial advantage, the inclusion of foreign students signals an internationalization atmosphere and experience.”⁴²⁷ And “from the perspective of the incoming students, the changes in the world market for legal services have created a new environment in which an international legal education has practical value.”⁴²⁸ Indeed, “[f]inancial aid for LL.M. programs generally tends to be limited, so LL.M. programs are viewed as profit centers for most law schools. There are other, less tangible benefits to U.S. law schools, including increased diversity, enhanced global perspective, and a certain amount of prestige.”⁴²⁹

Global attorneys today must approach the law entrepreneurially. Even the lawyer whose practice is confined strictly to the U.S. context will find a pressing need for cross-cultural competence. Legal entrepreneurs can harness the law to the client’s competitive advantage, and will thus be in high demand. The LL.M. in Global Legal Entrepreneurship may just be the optimal vehicle for training these lawyers, and for repositioning law schools that are otherwise hurdling into the twenty-first century without the full complement of competitive tools necessary for survival in their own hyper-competitive environment.

⁴²⁶ “[G]lobalization has become another weapon in the competitive battles law schools undertake to buttress their reputations for purposes of attracting applicants, donors, faculty, and prospective employers of their graduates.” Silver, *Getting Real*, *supra* note 14, at 459.

⁴²⁷ Ballakrishnen, *supra* note 353, at 2444-45.

⁴²⁸ *Id.*

⁴²⁹ Fenton, *supra* note 354, at 9.

Appendix I: Example Curriculum for the Two-Year LL.M. in Global Legal Entrepreneurship

<p style="text-align: center;"><u>Year 1 – Semester 1</u></p> <ul style="list-style-type: none"> • Fundamentals of Entrepreneurship • Introduction to Global Legal Entrepreneurship • Introduction to International & Comparative Law • Strategic Analysis of the Legal and Business Environments • Foreign language (first semester) 	<p style="text-align: center;"><u>Year 1 – Semester 2</u></p> <ul style="list-style-type: none"> • Cultural Competence • Fundamentals of Risk Management • Institutions and the Law • Foreign language (second semester) • Professional development (first semester)
<p style="text-align: center;"><u>Year 2 – Semester 1</u></p> <ul style="list-style-type: none"> • Solving Client Challenges (simulation and workshop-based) • Opportunity Recognition in the Legal Market • Managing the Client’s Legal Process • Foreign language (third semester) • Professional development (second semester) 	<p style="text-align: center;"><u>Year 2 – Semester 2</u></p> <ul style="list-style-type: none"> • Internship (preferably overseas) • Foreign language (fourth semester)

These courses should integrate experiential opportunities to the greatest extent possible.⁴³⁰ Each of these courses could be designed as one, two, three, four or five credit-hour offerings. A comparative law track in this LL.M. would entail additional coursework, disbursed throughout the first three semesters, centered on the substantive law and legal institutions of the country of focus.⁴³¹ An international law track would entail additional coursework, disbursed throughout the first three semesters, focused on the representation of clients with

⁴³⁰ See generally *supra* Parts III and IV (urging that experiential elements should be incorporated into legal education, and particularly with respect to a degree such as this one, to the greatest extent possible).

⁴³¹ See *supra* Part IV.B (discussing potential concentrations in this LL.M.).

respect to international institutions such as the World Trade Organization and the United Nations.⁴³²



⁴³² See *supra* Part IV.B (discussing potential concentrations in this LL.M.).