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The Tunnel Vision of Legal Training

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In response to this invitation to contribute some "provocative thoughts" on legal education, I offer a couple of proposals addressing problems which deeply trouble me. One has to do with the first-year law school curriculum, and stems from the proposition that there should be greater emphasis in the first year upon legal principles which serve to define various relationships across doctrinal lines. As an example, the first semester might focus upon traditional doctrinal categories (e.g., tort, contract, property) and the second semester upon particular relationships (e.g., landlord-tenant, employer-employee, seller-consumer, physician-patient, attorney-client) as to which the doctrinal categories tend to overlap and merge, with some statutory infusion as well. I realize that the idea would require rather massive reorganization of resources and development of new materials — both difficult things for a law school to do. There would be substantial gains, I believe, in developing more realistic and more creative understanding of how the legal system operates.

The other idea, hardly original with me, concerns the typically narrow emphasis of the law school curriculum and law reviews upon appellate opinions, as if they contained the ultimate relevant reality. As an appellate judge, I am impressed time and again with the lack of guidance we receive from litigants concerning the policy choices which often must be made in deciding among various competing approaches to a common law, constitutional, or even statutory problem. These choices cannot realistically be made without some assessment, explicit or implicit, of the consequences for future litigants and for society (see my concurring opinion in Ochoa v. Superior Court (1985). The best lawyers confront those assessments in their briefs and oral arguments in some meaningful way, and the very best seek to provide the court
with available empirical data, but I must say that both types are somewhat rare.

The fault lies in part, I think, with the almost exclusive emphasis in most law schools upon "legal" materials from the social sciences (note sociologist Cynthia Epstein's observations, p. 449), and with the tendency of law review editors and writers to confine themselves to a library instead of getting into the world and inquiring as to the impact of the legal rules which they have chosen to consider. I realize it is a whole lot easier, and safer, for a student writing a law review note to analyze and criticize appellate opinions as a form of exegesis than it is to develop a questionnaire or conduct interviews with live human beings, but I suggest that the students, and the legal world, would be better off if there were a bit less of the former and a bit more of the latter. Boalt Hall's Jurisprudence and Social Policy Program (as described herein at p. 691) is, in my view, an enormous step in the right direction.