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## Back to the Future: An Address to the Class of 2042

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## **Back to the Future: An Address to the Class of 2042<sup>†</sup>**

ALFRED C. AMAN, JR.\*

Dean, Former Deans, Members of the Class of 2042, Ladies and Gentlemen: Thank you very much for inviting me to address you today on the bicentennial anniversary of this great Law School. I hope you all will indulge an old man in a few memories—for it seems only yesterday that we celebrated our 150th birthday, complete with the four-hundred-pound birthday cake sculpture that graced our library for a time. It's been some time since I visited the building, but I am happy to see that the sesquicentennial print created by artist-in-residence Rudy Pozzatti still hangs proudly in the entryway. It is as beautiful and thought-provoking as ever, a wonderful bridge between the creativity of the arts, and the creativity of the law. Only yesterday, I was listening to some of the music of the 1990s, and relished David Baker's composition once again. That tune, written to honor our 150th, still has a modern fresh sound, and it continues to be a very moving piece of music. Its premiere, you may be interested to know, was in the Law Library! And of course, there was the sesquicentennial issue of the Law Journal, with a contribution from many of our faculty on their impressions of what they expected the future to bring. In my brief remarks today, I want to go back to that future, so, as I say, I hope you'll indulge an old man (a very old man!) in a few memories and reflections on what turned out to be a very exciting period in the history of law and legal education.

The 1990s and the turn of the twenty-first century were a watershed in our legal history, with a new global age emerging. It was a time that—like today—demanded continual adaptation, improvisation, and creativity in the law and in law schools. Law, politics, markets, and technology were in flux as we grappled daily with the challenges of a truly integrated global economy, not to speak of the legal transformations and challenges brought about by genetic engineering. These challenges dealt with only one planet—Earth—and focused primarily on human beings. But your challenges today are conceptually similar. So I hope you will find my reflections on those times of more than historical interest. But let us first look back to the very beginnings of this Law School.

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\* Dean of the Indiana University School of Law—Bloomington.

The study of law began on the Bloomington campus in 1842. When we celebrated the 150th, I remember thinking that, in some ways, the world of 1842 was very different from ours. In other ways, it was a world whose promise and challenges we could identify with then and even today, for, as in 1992, new nations were forming out of old empires, the world order was changing, and new technologies were reshaping Americans' lives at home and beyond. In the 1840s, urban Americans outnumbered their rural cousins, and the success of the American experiment with democracy (as Tocqueville called it) was a novelty that attracted the world's attention. Still, it would have been difficult for many Americans to recognize their ideals in the reality of the 1840s, with people enslaved, or pressed out of their native lands, or struggling to survive as new immigrants. The law was, and remains, an essential part of the American story. This is as true now, in 2042, as it was in 1992 and 1842.

With the America of the 1840s seeming both near and far, it makes a fascinating experience to relive the opening of this Law School in 1842 by rereading the speech made by Professor and Judge David McDonald to inaugurate the Law School.<sup>1</sup> McDonald delivered his introductory address, entitled simply "The Study of Law," in the chapel of Indiana University on December 5, 1842, to the Law Department's students and assembled guests.<sup>2</sup>

First, Judge McDonald seemed to express some of our modern sense of commitment and innovation at the Law School today, and its link to both the university and the bar, when he described the opening of the Law School this way: "We are entering upon an experiment not before attempted in this seat of learning—an experiment, which touches a variety of interests dear to the university, and dear to the legal profession of the State of Indiana."<sup>3</sup>

The Judge went on to describe his vision of the Law School as part of the particularly American story of individual rights and the rule of law:

The assertion of all our rights, as American citizens, depends almost entirely upon [the study of law]. A proper cultivation of it is . . . indispensable. . . . Other calamities may befall [sic] a nation, and it may survive them . . . but when the laws, by which the people are governed and protected, have fallen into disrepute, . . . ruin is the inevitable consequence.<sup>4</sup>

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1. By modern standards, that law school was a model of efficiency—one faculty member, five students, and no dean.

2. David McDonald, Address at the Inauguration of the Indiana University School of Law (Dec. 5, 1842) (transcript printed by Marcus L. Deal, available at Lilly Library, Indiana University—Bloomington).

3. *Id.* at 5.

4. *Id.* at 6.

Back in the 1990s, a lot of folks were worried about there being too many lawyers. I know this is hard to imagine now in view of the law boom of the first quarter of the twenty-first century, and the general restructuring of law firms in the same period. With respect to the lawyer-bashing of his own day, or perhaps to those who doubted the need for a new law school, Judge McDonald had this response:

To study our jurisprudence . . . and to be thoroughly learned in its precepts, are . . . not only honorable to us and necessary to a wise administration of justice, but of the highest moment to the permanence of our political institutions. . . .

. . . .  
. . . Of the ten persons, who have filled the office of President of the United States, eight have been lawyers.<sup>5</sup>

Judge McDonald's description of the law curriculum was based equally in his view of humankind's basic nature as social and his view of the Common Law as having developed from multiple sources in the laws and cultures of other places and times. When I first read the Judge's speech back in 1992, I remember thinking that he might feel quite comfortable with the interdisciplinary projects at the law school of our day, from legal history to law and society, from law and medicine to international law. He seems to have been an adventurous fellow, and I am sure he would be just as excited about the ways those fields have developed today—although he surely would never have imagined that the Law School would ever teach the law of galaxies or the law governing interplanetary trade and communication, as it does today. Still, intrigued as he was by the fact that the law connects domestic law to the laws of other nations and epochs, he was also persuaded that the law must be responsive to its own time and place. He believed deeply in the importance of the link between law practice and legal education.

Judge McDonald celebrated the law as a source of both stability and change. He observed that the American Revolution was based in a number of complaints, but the Common Law was not among the targets. He said: "[D]uring the whole period of the Revolutionary War, the Common Law was duly administered in our courts of justice, and cheerfully obeyed by our citizens."<sup>6</sup> In other passages, his words had a special savor for the idea of access to law, and for the possibility of equality being both the means and the ends of law.

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5. *Id.* at 6, 20.

6. *Id.* at 9.

Indeed, while it was the Common Law in particular that Judge McDonald emphasized, there were two areas of the law in the curriculum of 1842 whose future importance he underestimated: "It is designed that, International and Constitutional Law shall occupy a place in our inquiries; but as the acquisition of a proper knowledge of these, is a short and easy task, when compared with that of the Common Law, *its* precepts must principally engage our attention."<sup>7</sup> Surely, constitutional law was to become and remain one of the most intellectually challenging and important law school subjects in the curriculum, especially after World War II and through the close of the twentieth century. Judge McDonald could not have fully foreseen the major transformations of our constitutional system in the twentieth century, with the national government playing so minor a role in his day. The issues of federalism with which constitutional law eventually dealt, especially during and after the New Deal, could not fully have been foreseen. Nor could the role of federal law and the extent and rapidity to which power moved from the state level to the national level. We became a truly integrated *national* economy in the twentieth century. The language of the Commerce Clause—"Commerce . . . among the several States"<sup>8</sup>—eventually came to be interpreted as "commerce among individuals who happened to live in states." I suppose you now study the case of *Wickard v. Filburn*<sup>9</sup> in your legal history course, but in our day, it was the ultimate Commerce Clause case. The Court recognized that a single bushel of wheat grown in Ohio could have national market effects! Of course, all of this was to change yet again in the Global Era to follow, as the allocation of power issues that arose before and especially during the New Deal returned, albeit in a new form, to the constitutional law agenda. But I am getting ahead of my story. I shall return to that future a bit later.

Judge McDonald could not have foreseen the growth and importance of international law, either. It was important in 1842, of course, but with the end of the Cold War and the rise of the trading state, a truly global and reasonably integrated economy began to emerge in the latter part of the twentieth century. This global age and the issues it spawned continue to dominate law and law schools. Perhaps the most significant effect of this age has been the gradual elimination of the traditional boundary lines among domestic and international law, politics, and markets. Domestic and international law still existed at the turn of the twenty-first century, but we weren't nearly so comfortable then with a third body of law—global law—as you are today. In my day, we understood the Global Era in terms of the mutual impact of domestic and

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7. *Id.* at 8 (emphasis in original).

8. U.S. CONST. art. I, § 8, cl. 3.

9. 317 U.S. 111 (1942).

international law, each with overlapping scopes. Today we see that, at least in some areas of the law, global law is a genre unto itself.

Five factors in particular gave rise to new bodies of domestic, international, and especially global law: (1) multiplicity of power and decision-making responsibility; (2) global economic competition among countries and industries; (3) new global technologies; (4) global problems that knew no boundaries, such as ozone depletion, global warming, and air pollution; and (5) global problems due to boundaries, such as the growing disparity in wealth and the differential standards in health, safety, and environment that existed between the developed and developing world.

In 1992, we began to realize more fully than ever before that the U.S. economy was as much affected by reforms, changes, and slowdowns in the Japanese and German economies as it was by events occurring solely within U.S. borders. The interdependent global economy of the late twentieth century made the United States much more sensitive to and aware of not only the economic policies of other countries, but the legal cultures of trading states around the world. We began in earnest to establish common legal and economic frameworks for the new and extensive trade relationships then developing.

International business competition meant that regulatory differences among nations gave industries an opportunity to manipulate their legal obligations and especially regulatory and labor costs in different business contexts. These differences created incentives to site manufacturing plants in countries with less developed regulatory structures and concerns. Even during the period when environmental regulations in the developed world became more comprehensive and effective, global pollution actually increased. Gradually we realized that problems such as air and water pollution required new forms of global legislation.

Global technologies also were advancing in the latter part of the twentieth century. Global telecommunications linked countries and individuals in those countries in very direct ways by combining various aspects of computer, television, and radio technologies in new ways. Just as we once were, for purposes of the Commerce Clause, individuals who happened to live in states, we became individuals or corporate entities who did business globally, who happened to live in countries. Still, national boundaries continued to matter, especially when they seemed to define differences—differences in wealth, health, safety, and environment. The end result of the early Global Era was an increase in the disparities in wealth around the world, with developing countries significantly lagging behind the developed world when it came to decent standards of living and at least minimal environmental, health, and safety standards.

These types of political, economic, and legal forces all pushed in the same direction, that of globalization—the globalization of law, politics, markets, and human rights. Globalization diffused political power both within nations and among them. Slowly, the United States began to realize that it could not unilaterally ensure economic growth or effectively solve our problems involving the environment, securities markets, banking, antitrust, and a host of other so-called domestic issues—including fundamental issues of human dignity—without the cooperation of other countries. The impact of the global market on the poor and other disadvantaged groups gave rise to a new breed of global civil rights lawyers.

Initially, all of this made our political system seem particularly ineffectual and full of empty rhetoric. As late as 1992, politicians continued to promise to “deliver” solutions to “our” problems and to exploit nationalism for political gain. At that time, the United States was only beginning to come to grips with the complexities of multi-country decision making, coordination, and—the buzz word of the day, imported from the newly united Europe—harmonization.

Globalization in the late twentieth and early twenty-first centuries had profound constitutional effects as well. Globalization produced two political and structural results that directly affected our constitutional system of checks and balances. First, the power of the executive branch increased dramatically, as more and more issues, once thought to be purely local, were viewed as international and thus appropriately within the scope of the executive branch. Second, for a long while, Congress as an institution declined significantly. Congress was designed to focus primarily on regional, state, and especially local issues. It was not until Congress began to restructure itself as an institution that true global politics began to take effect, and the system of checks and balances once again came into equilibrium.

But, of course, now we have the International Congress too, in which the United States is represented. The United Nations plays an international executive role to an extent not at all foreseeable two hundred years ago—or even fifty years ago. This level of international government and many of the international agencies that have arisen since the year 2000 have created new and challenging allocation-of-power problems akin to the days when there were only state and federal tiers of government with which to contend. Global democracy has its problems, and they are problems with which your generation will have to deal. In the 1990s, the institutionalization of a worldwide approach to issues and problems had a touch of social science fiction, though, in retrospect, the Law School long had been preparing for those developments. We certainly knew then that we needed new international institutions, and law faculties brought an increasingly global perspective to

their analyses of U.S. domestic law and institutions. We were only beginning to contemplate seriously how to mesh the various domestic legal regimes with emerging global law and international structures. These may seem, in retrospect, to have been rather simple problems, particularly since we have only recently come face to face with the existence of civilizations on planets other than Earth. Next week, of course, our world leaders shall for the first time host an interplanetary conference on the pollution of what used to be called "outer space."

The educational foundation provided by global law schools such as this one should make these new challenges and tasks manageable for you and your generation. Although I cannot read the future, I can say this to you with confidence because of our experience in the 1990s. In those days, as we began to prepare lawyers to function in the then-just-emerging global law environment, we hoped, but could not fully foresee, just how central our graduates would be to the creation of the legal foundations of the developments I have been describing in the first quarter of the twenty-first century.

Graduates of the Indiana University School of Law led the way in creating a new body of global law for the twenty-first century. Indiana law students of the 1990s went on to draft new statutory codes that were cognizant of the globally integrated economy of which Indiana was a vital part. These alumni drafted new antitrust laws, banking laws, trade laws, and environmental laws that helped make the state of Indiana one of the most sought-after locations for global entrepreneurs and investors. Graduates of this Law School were the ones who produced draft treaties and protocols that ultimately did much to save the planet's rain forests and endangered species and to maintain reasonable levels of biodiversity. And it was here that new structures appropriate for the new, emerging international administrative law of the late twentieth century were created. Succeeding generations of students have carried on these activities brilliantly.

Our students did not do these things alone, of course. The faculty was constantly creating new courses that anticipated these emerging bodies of law. They were alert to change, and were leaders in legal education in responding to it. In the 1990s, our school followed its own long tradition in being the source of new courses, new casebooks, and cutting-edge scholarship that led the way in legal education. I am sure that one thing has not changed since my day, and that is the strength of the faculty, as evidenced in their scholarship, teaching, and service to the bar. These qualities kept the school at the cutting edge of law, and made these global opportunities possible for our students, as they do for you today.

In the 1990s and early twenty-first century, legal education became at once more theoretical and more practical. It turned outward to numerous disciplines



to reinvent and retool the law so as to deal with new and complex scientific, economic, and political issues. It turned inward to develop more fully the writing skills and computer (and other technological) expertise that lawyers now routinely have. Our legal aid clinics took seriously the legal challenges presented by a society in which there still was poverty, illiteracy, and racism. At the same time, legal education began to make use of new technologies. Satellite communication technology made it commonplace for law professors from around the world to join our classes in Bloomington on a regular basis. The satellite network that enables you to communicate orally and visually with law faculties, practitioners, and students around the world was started on a pilot basis from Bloomington in the late 1990s. The global classroom is now a taken-for-granted reality.

It gives me particular pleasure to say that our students—even before they graduated—made a commitment to transfer these opportunities to the next generation. Each member of the sesquicentennial classes then in our Law School contributed five dollars to a class gift (and those were 1992 dollars!) to be invested for fifty years and used as a scholarship for a student in the class entering the Law School in the bicentennial year. I never imagined that I would be the one to deliver this gift to your Dean today. On behalf of the students in this Law School during our sesquicentennial celebrations, I salute you.