

A Glass Half Full:
ASEAN INTEGRATION 2015 AND THE IMPERATIVE FOR REFORMS
IN THE LEGAL PROFESSION AND THE LEGAL EDUCATION
IN THE PHILIPPINES

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(A Lecture by Dean Joan S. Largo in her capacity as one of the ten holders of the "Chief Justice Panganiban Professorial Chairs on Liberty and Prosperity" delivered on September 11, 2014 at the CAFA Theater, University of San Carlos, Cebu City)

Mr. Chief Justice Artemio V. Panganiban, Mr. Chief Justice Hilario G. Davide, Jr., Mr. Aniceto Sobrepena of the Metrobank Foundation, Ms. Evelyn P. Dum Dum of Foundation for Liberty and Prosperity, Ms. Glenda Reyes of the Department of Trade and Industry, Fr. Dionisio M. Miranda, SVD, University President, , Executive Justice Gabriel T. Ingles of the Court of Appeals Cebu Station, honorable members of the first and second level courts here present, Pres. Mae Elaine Bathan of IBP Cebu City, Atty. Gonzalo Malig-on, Jr., of IBP Cebu, Officers of the IBP Cebu and Cebu City Chapters, Deans of the Colleges of Law in Cebu, and may I mention and warmly welcome to the world of academe Justice Portia Alino- Hormachuelos, newly-installed Dean of Gullas Law School of the University of the Visayas, faculty members, dearest students:

As presented by no less than the DTI Technical Consultant for the AEC, and as reported in Business Mirror, the ten countries comprising the Association of Southeast Asian Nations or ASEAN, with its combined population of half a billion people, a combined gross domestic product of USD2Trillion, is now poised to be presented as one attractive investment destination. Individually and on their own, the countries within the South East Asia may not stand a chance in terms of global competitiveness. But when they band together, it is a likelihood that the unification of the region's economy will spur economic activity, and with it, economic growth.

This, thus, is the whole idea of ASEAN Integration: ten member states banding together to create a unified economy. Among the ten member states of Indonesia, Malaysia, the Philippines, Singapore, Thailand, Brunei Darussalam, Vietnam, Cambodia, Laos and Myanmar, there will be one marketplace for capital investment, goods and services. This integrated economy is sought to be achieved through the elimination of tariffs for goods, increased foreign and intercountry investments, and increased movement of labor.

Under the ASEAN Economic Community Blueprint, AEC will transform ASEAN into a single market and production base, comprising of five core elements: (i) free flow of goods; (ii) free flow of services; (iii) free flow of investment; (iv) freer flow of capital; and (v) free flow of skilled labour¹. Our distinguished speaker from the Department of Trade and Industry (DTI) has outlined the plans on how these five core elements of integration will come to fruition.

¹ ASEAN Economic Community Blueprint, Jakarta: ASEAN Secretariat January 2008, p. 6.

With or without the integration, but even more so with the integration, the movement of people, goods and capital is inevitable. This ease in movement became the inescapable result when transportation became very affordable to everyone, and connectivity became instant. Virtually, the world is already borderless. Physically, it is fast becoming so, with travels made easy and affordable to everyone.

Along with mobility of persons comes the need also for mobility of degrees. Started almost a quarter of century ago in Europe, more and more people are finding the need to bring their degrees outside their home countries. Degree portability became a buzzword in the academic community. Among the first professions to document the need for mobility of degrees is the Engineering profession through its Washington Accord. Signed in 1989, it is an agreement among accrediting bodies of signatory countries to recognize substantial equivalency of engineering programs for entry to the practice of engineering in any of the signatory countries.

Bologna Accord also came into being. In Bologna Accord, twenty-nine countries in Europe pledged to create within Europe a convergence through the creation of a “system of easily readable and comparable degrees”², achieved by institutionalizing subject credit systems and comparable criteria and methods on testing quality of degrees obtained in European schools and universities.

Insofar as ASEAN is concerned, the AEC Blueprint seeks to achieve free flow of services by 2015 by the removal of substantially all restrictions on trade in services for four priority service sectors, air transport, e-ASEAN, healthcare, and tourism by 2010, and for all other sectors, by 2015, and completion of mutual recognition arrangements or MRAs in architectural services, accountancy services, surveying qualifications, medical practitioners by 2008 and dental practitioners by 2009.

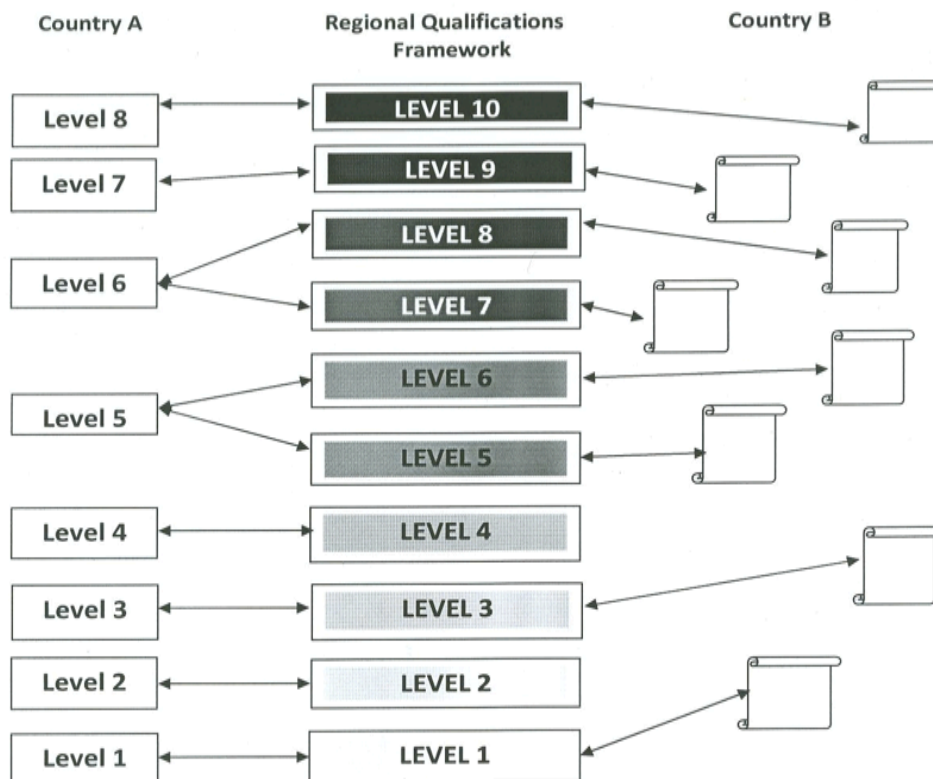
Mobility of professionals and skilled labor is also planned to be implemented not only by mutual recognition arrangements but also by the development of core competencies (or the concordance of skills and qualifications for jobs/ occupational skills³. Thus, was conceived the Asean Qualifications Reference Framework or AQRF. The Task Force for AQRF was then created to design AQRF that support the development of mutually comparable National Qualifications Framework (NQF), that is, one that will contain learning outcomes, levels and domains of skills to enable comparisons of qualifications across participating ASEAN countries, allowing a scenario like this to happen⁴:

² Sourced from [http://www.bologna-bergen2005.no/Docs/00 Main_doc/990719BOLOGNA_DECLARATION.PDF](http://www.bologna-bergen2005.no/Docs/00_Main_doc/990719BOLOGNA_DECLARATION.PDF) last accessed on September 9, 2011, 1:47 PM.

³ See Strategic Schedule for ASEAN Economic Community, pp. 49-50, ASEAN Economic Community Blueprint, Jakarta: ASEAN Secretariat January 2008.

⁴ Source: Professional Regulation Commission.

Example of referencing to a Regional Qualifications Framework



It was agreed among the members of the task force of AQRF that the AQRF will contain at least eight levels of complexity of learning outcomes and no more than three domains, namely, knowledge and skills, application and responsibility.

The resulting draft of framework then looked like this⁵:

⁵ Source: Specifications for the ASEAN Qualifications Reference Framework, last accessed at http://ceap.org.ph/upload/download/20138/27223751388_1.pdf, August 25, 2014.



Appendix 1: Level descriptors

	Knowledge and skills	Application	Responsibility
	<i>Demonstration of knowledge and skills that:</i>	<i>Applied in contexts that:</i>	<i>Where there is:</i>
Level 8	are at the most advanced and specialised level and at the frontier of a field; involving independent and original thinking and research, resulting in the creation of new knowledge or practice	are highly specialised and complex involve the development and testing of new theories to resolve complex, abstract and emergent issues	demonstrated high level initiative, adaptability, and self direction and leadership to others authoritative and expert judgement, with sustained commitment to management of research and significant responsibility for extending professional knowledge and practice and creation of new ideas and or processes
Level 7	involve mastery of a body of knowledge at the forefront of a field, involving critical and independent thinking as the basis for research to extend or redefine knowledge or practice	are complex and unpredictable involve the development and testing of innovative solutions to resolve abstract and emergent issues	demonstrated substantial initiative, adaptability, self direction and guidance to others expert judgement, with significant responsibility for professional knowledge and practice; management, evaluation and improvement of activities
Level 6	are specialised technical and theoretical, involving critical and analytical thinking	are complex and changing involve the development of solutions to resolve complex and abstract issues	minimal guidance and demonstrated initiative, adaptability and self direction defensible judgement and significant planning, coordination, evaluation and improvement of activities
Level 5	are comprehensive and specialised, technical and theoretical	are subject to change involve resolving complex and sometimes abstract issues	minimal guidance and demonstrated self direction defensible judgement and planning, coordination and evaluation of activities
Level 4	are factual, theoretical and technical	are usually predictable but subject to change involve resolving unfamiliar issues	broad guidance with some demonstration of self direction defensible judgement and planning and coordination
Level 3	are factual, technical and with some theoretical aspects	are stable with some aspects subject to change involve resolving routine issues	general guidance judgement and planning
Level 2	are factual and based on standard techniques	are structured involve resolving familiar issues	routine supervision some discretion or judgement
Level 1	are basic, general and manual	are highly structured and familiar involve straightforward and everyday processes	close support and supervision limited discretion or judgement

Following the thrust of the Asean Qualifications Reference Framework, President Benigno Aquino III issued Executive Order No. 83, S. 2012 and established a PQF National Coordinating Committee⁶ “[t]o adopt national standards and levels for outcomes of education... and [t]o align the PQF with international qualifications framework to support the national and international mobility of workers through increased recognition of the value and comparability of Philippine qualifications.”⁷

Thus was signaled the shift of Philippine higher education to an outcomes-based education or OBE.

⁶ Section 2 of EO 83, s. 2012 created the PQF National Coordinating Committee to be chaired by the Secretary of the Department of Education and with the following as members: (a) Technical Education and Skills Development Authority (TESDA); (b) Commission on Higher Education; (c) Department of Labor and Employment (DOLE); and (d) Professional Regulations Commission (PRC).

⁷ Implementing Rules and Regulations of EO 83, S. 2012, last accessed at <http://www.gov.ph/2012/12/17/implementing-rules-and-regulations-of-executive-order-no-83-s-2012/> on August 25, 2014.

As announced in CHED Memorandum Order (CMO) No. 46⁸, OBE is a paradigm shift in Philippine education system “from education to lifelong learning, and from education as transmission of expert knowledge to education as building learner competencies—including learning how to learn.”⁹ In a more detailed articulation of the meaning and implications of this shift, CHED released its Handbook on Typology, Outcomes-based Education, and Institutional Sustainability Assessment (ISA), which stated the rationale of the paradigm shift, thus:

In a borderless society, cross-country mobility of students, workers, and businesses is bound to happen. For the Philippines, this means more opportunities for the Filipinos to study or work abroad as well as more foreign students and workers coming in the country. But to be globally competitive, there is a need to ensure that Filipinos have the right competencies and attitudes through excellent quality education at all levels.

To address the demands and challenges of an international community, the Philippine government have been implementing educational reforms for the past few years. In basic education, we have the universalization of kindergarten, the mother-tongue based education in the early years, and the senior high school.

In higher education, we have shifted from an inputs-based to an outcomes-based education (OBE), thus placing the students in the center of all educational planning. There is also a recognition that higher education institutions (HEIs) are different from each other and thus, a typology or classification of HEIs was developed to guide HEIs to have an alignment among their vision, mission, and goals (VMGs); their desired graduate attributes and impact on society; and their educational programs. A major key that will enable HEIs to achieve their VMGs is their institutional quality assurance systems which they could establish following the Institutional Sustainability Assessment (ISA) framework¹⁰.

⁸ The subject of the CMO is Policy- Standard to Enhance Quality Assurance (QA) in Philippine Higher Education Through an Outcomes- based and Typology-based QA.

⁹ See Article III, CMO 46, last accessed at <http://www.ched.gov.ph/wp-content/uploads/2013/07/CMO-No.46-s2012.pdf> on August 25, 2014.

¹⁰ <http://www.ched.gov.ph/wp-content/uploads/2014/06/Handbook%20on%20Typology%20Outcomes.pdf> last accessed August 25, 2014.

As a policy, OBE will require all higher education institutions (HEIs) to describe the attributes of their ideal graduates based on their visions and missions as part of their institutional goals or outcomes, and use these as bases for developing specific program outcomes. Program outcomes are the sets of competencies (related knowledge, skills, and attitudes) that all learners are expected to demonstrate. Institutional or program outcomes may also emphasize lifelong learning. These desired outcomes have to be translated to what the students learn in specific courses and HEIs must ensure that at the level of the courses, the desired course and learning outcomes are attained with the proper content, methodologies, and student performance assessment.¹¹

The concept is illustrated as follows:

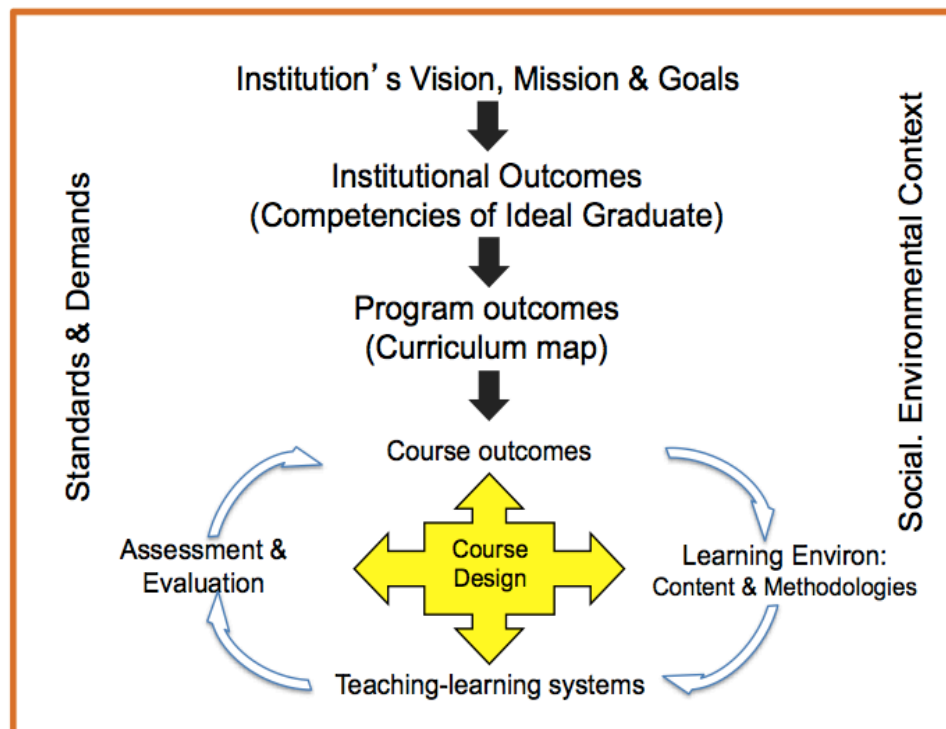


Figure 3. Framework for Outcomes-based Education

By and large, this shift to an outcomes-based education will require a shift in the focus of education, “from an inputs-based, teacher-centered “instruction” paradigm to an outcomes-based, learner-centered educational paradigm”. Higher Education Institutions (HEIs) will now be required to consider what kind of graduates they want to produce, to define their own graduate attributes based on international (AQRF and other accords), national (PQF) requirements and the Mission-Vision of the institution itself. HEIs will now be determining their intended outcomes for the institution, the program, the course, and to see to it that these defined learning outcomes will be addressed in the various courses offered in the program and in the teaching methodologies

¹¹ Id., Part III.

employed and the manner of assessments adopted. In this context, the learner becomes the main consideration, or to be precise, the needs of the learner, thus, the nomenclature that the educational paradigm is “learner- centered” than “teacher- centered.”

Together with the enhancement of basic education program by requiring at least one (1) year of kindergarten education, six (6) years of elementary education, and six (6) years of secondary education (secondary education includes four (4) years of junior high school and two (2) years of senior high school education)¹², it is intended that the Filipino learners will receive an education that is globally competitive “based on a pedagogically sound curriculum that is at par with international standards.”¹³

II. ASEAN Integration and the Legal Profession

Coming now to the issue of ASEAN Integration and the legal profession. Insofar as the liberalization of services under the ASEAN Economic Community pillar is concerned, it has been noted that while liberalization of trade among ASEAN countries has enjoyed significant improvement, liberation of services left much to be desired. The implementing mechanism, i.e., the MRAs do not warrant unrestricted flow of foreign professionals as domestic rules and regulations would still apply.¹⁴ It has been noted that while ASEAN has made remarkable achievement in the liberalization of goods through the ASEAN Free Trade Agreement (AFTA), where tariffs on virtually all imports have been reduced to zero within ASEAN 6 since 2010, the progress made in liberalizing trade in services have not been impressive.¹⁵

This lack of significant change in the cross-border movement of professionals will be even more pronounced in the legal sector. Enshrined in Section 14 of Article XII¹⁶ is the edict that reserves the practice of professions in the Philippines to Filipinos. When read alongside Section 5[5], Article VIII of the 1987 Constitution which places the exclusive regulatory authority upon the Supreme Court on all matters pertaining to pleadings and practice of law in Philippine courts, and the fact that the Supreme Court is not showing any indication that the legal profession will be opened up to non-Filipinos, no matter how limited the practice may be, it can be said with certainty that the legal profession will remain to be the Filipino lawyers’ exclusive turf.

However, it will be foolhardy to believe that simply because the practice of law will remain to be exclusively reserved to Filipinos, that the legal profession will not bear any direct impact when ASEAN Integration takes effect in December 31, 2015. Despite the slow movement in the

¹² Republic Act No. 10533, last accessed at <http://www.gov.ph/2013/05/15/republic-act-no-10533/> on August 25, 2014.

¹³ *Id.*, Section 2 (Declaration of Policy).

¹⁴ Basu Dasm Sanchita, ASEAN Economic Community Scorecard: Performance and Perception, ISEAS Publishing Institute of Southeast Asian Studies, Singapore 2013, p. 55.

¹⁵ Nikomborirak, Deunden and Jitdumrong, Supunnavadee, An Assessment of Services Sector Liberalization ASEAN, *id.*, at p. 47.

¹⁶ Section 14 of Article XII states that “the practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.” When read alongside Article VIII, Section 5[5] of the Constitution, it would indicate that the practice of law shall be reserved to Filipinos unless otherwise indicated by the Supreme Court of the Philippines.

liberalization of skilled labor and services, the ASEAN Integration of 2015 is expected to present ASEAN and its member countries as investment destination of the world. With the establishment of the ASEAN Economic Blueprint, ASEAN will be viewed as a single market and production base. The borders will soon be opened, and the arena where Filipino lawyers will be applying their lawyering skills will be changed. With the free movement of business and people, the profile of the clients of the Filipino lawyers will change. Change has come and will keep on coming, and it is quite absurd to continue believing that the legal profession will be immune to such change.

A shift from the traditional notion of the practice of law

There is now a signaled shift from the traditional notion of practice of law. The typical setting of lawyers typically representing local clients on local matters and involving local laws in local law office is now being challenged in various ways.

For one, with the advancement in technology, lawyers now find it easy to communicate with far-away clients, travel to other jurisdictions, and encounter foreign law. In addition, many law firms are expanding their physical presence by opening new offices in foreign states and countries.¹⁷ Nowadays, more and more lawyers are no longer confined to purely domestic concerns, and with the expected influx of foreign investments, lawyers may find themselves dealing increasingly with foreign clients, and in dealing with foreign clients, the main difference from the standard advising scenario often entails dealing with cultural nuances or dispelling misperceptions foreign clients might have regarding the domestic legal system.¹⁸

Technological advances are also making a vast amount of legal information available to the public with little or no intermediation by lawyers. Technology is also enabling lawyers (and clients) to be “virtually” anywhere¹⁹.

With the change in economic and social setting, and as borders start to disappear, it becomes a non-issue that the roles that a Filipino lawyer plays have evolved and changed over time. One practitioner noted that with the ease with which knowledge of law may be obtained, clients have become cost-conscious, looking not only for advice on specific facet or facets of law but on how the law may be applied in their favor²⁰. In fact, hiring practices of the law firms have

¹⁷ Sara J. Lewis, *Charting the “Middle” Way: Liberalizing Multijurisdictional Practice Rules for Lawyers Representing Sophisticated Clients*, Georgetown Journal of Legal Ethics, 2009.

¹⁸ See Wayne J. Carroll, “*Innocents Abroad: Challenges and Opportunities for the International Legal Adviser*”, Vanderbilt Journal of Transnational Law, October 2001.

¹⁹ See Ted Schneyer, *Introduction: The Future Structure and Regulation of Law Practice*, Arizona Law Review, 2002.

²⁰ Interview with Atty. Emerico O. De Guzman, Managing Partner of Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW) on August 12, 2014. As stated in the Firm’s website, ACCRALAW “is a cohesive multi-disciplinary team of legal professionals who possess in-depth knowledge in specialized fields of law, backed by extensive experience of over forty years in the practice of law in the Philippines. From a core group of seven lawyers at its inception in 1972, the Firm has grown to a prestigious service organization of over 150 lawyers and over 130 non-legal personnel. Its principal offices are in Bonifacio Global City, Taguig, Metro Manila. The Firm has branches in thriving business

evolved from simply looking at academic credentials to requiring that new lawyers exhibit not only sharp analytical ability and excellent written and oral communication skills but also adeptness with latest technology, excellent research skills, a well-rounded personality that demonstrates the ability to deal with people, work within a team, and an ability at negotiation²¹.

Nowadays, too, as globalization finds countries becoming more and more dependent upon international trade, and with export transactions and international investments increasing, lawyers are confronted with new field or practice of law, that is, investment laws and a dispute resolution that is becoming more international in nature. All of these factors illustrate the growing diversity of legal practice and its increasingly pervasive nature²².

Thus, while practice of law will remain to be the exclusive domain of the Filipinos, still there is no avoiding the impact of globalization and ASEAN Integration. It may then be asked, when the borders are opened and Filipino lawyers find themselves working side-by-side with people from all walks of life, people who come not only from different countries but also from different cultures, do Filipino lawyers have enough experiential and intercultural learning to make them live and work effectively in a globalized setting?

The need to re-define the Filipino Lawyers' Competencies

This brings us to the first imperative: the need to re-define the competencies of the Filipino lawyer of today. The fact is, law practice has changed, and so did the skills and values needed to function in the 21st century practice. The one important reform that needs to be done in the legal profession is in **defining and identifying the skills and values that a Filipino lawyer needs for the 21st century law practice.**

In 1992, when the American Bar Association set for itself the goal of improving the legal profession, the first most important thing that it did, through the Task Force created for the purpose, was to formulate a lengthy and carefully considered analysis of the fundamental skills and values necessary for all lawyers.

Three years and a rather extensive work thereafter, the Task Force turned in a report, now famously known among legal educators as the MacCrate Report²³, named after the Chair of the Task Force, Robert MacCrate. The MacCrate Report identified ten fundamental lawyering skills and four professional values.

commercial centers in the Visayas and Mindanao – Cebu City and Davao City. ACCRALAW is a member of Meritas Law Firms Worldwide based in the USA, and Terralex.” See <http://www.accrallaw.com/sites/default/files/ACCRALAW%20Firm%20Brochure%202013.pdf> last accessed August 25, 2014

²¹ Interview with Atty. Regina P. Geraldez, Co-Managing Partner of ACCRALaw on August 12, 2014.

²² See Bernard L. Greer, THE CHALLENGE OF GLOBALIZATION, International Law Practicum, Autumn, 2002.

²³ The work is titled Legal Education and Professional Development--- An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap last accessed at [http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report\).authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report).authcheckdam.pdf) on January 16, 2013.

The ten skills identified were:

problem solving;
 legal analysis and reasoning;
 legal research;
 factual investigation;
 communication;
 counseling;
 negotiation;
 litigation and alternative dispute resolution procedures;
 organization and management of legal work; and
 recognizing and resolving ethical dilemmas

The four fundamental values listed were:

provision of competent representation; striving to promote
 justice, fairness, and morality;
 striving to improve the profession; and
 professional self-development

Republic Act 7662, or the Legal Education Reforms Act of 1993 seems to outline the fundamental lawyering skills and values of the lawyers as follows: broad knowledge of law and of legal institutions, research skills, analytical skills, communication skills, skills in advocacy, counselling, problem-solving and decision-making. It then enumerates certain desired values as the desire for continuing study and self-improvement, and conscientious adherence to ethical norms and responsibilities of the profession.²⁴

But this was a law passed in 1993. It goes without saying, this determination of Filipino skills and values were done under a 20th century setting²⁵. There is an impervious need for the Philippines to come up with its own list of competencies for the practitioner of the 21st century that will embody the **core knowledge**, **legal skills** and **professional attributes** that a Filipino lawyer needs to thrive in a now integrated world.

On core knowledge, surely the 21st century law practice demands more than just the basic elements of Political Law, Labor Law, Civil Law, Mercantile Law (and its four major components of Corporation Code, Transportation Laws, Insurance and Negotiable Instruments Law), Taxation,

²⁴ Section 3 [b] states that the objectives of legal education should be: “(1) to impart among law students a broad knowledge of law and its various fields and of legal institutions; (2) to enhance their legal research abilities to enable them to analyze, articulate and apply the law effectively, as well as to allow them to have a holistic approach to legal problems and issues; (3) to prepare law students for advocacy, counselling, problem-solving and decision-making, and to develop their ability to deal with recognized legal problems of the present and the future; (4) to develop competence in any field of law as is necessary for gainful employment or sufficient as a foundation for future training beyond the basic professional degree, and to develop in them the desire and capacity for continuing study and self-improvement; (5) to inculcate in them the ethics and responsibilities of the legal profession; and (6) to produce lawyers who conscientiously pursue the lofty goals of their profession and to fully adhere to its ethical norms.

²⁵ RA 7662 was passed on 23 December 1993.

Criminal Law, Remedial Law and Legal Ethics. The 21st century practice under an integrated ASEAN Economic Community will bring in the need for new knowledge on such areas as investment laws, anti-trust laws, and new contextual legislations and policies on environment care and protection, mining, indigenous peoples, and the combat of transnational crimes. Knowledge on procedure will have to be more than the traditional notion of appearances in courts; there must be greater emphasis on alternative dispute resolutions in multi-cultural environment. As one study points out, aside from corruption and governance issues, among the greatest stumbling blocks to foreign direct investments are “complexity, delays, and inefficiency of administrative procedures, and arbitrary interpretation in implementing regulations”²⁶. If we have to entice investment, we have improve and enhance the efficiency of our judiciary, and we need to learn new ways of resolving conflicts with dispatch.

On legal skills, there is more and more clamor to go beyond training students to “think like a lawyer”, though the term itself needs defining. Lawyers need to be able to work within a team, or work independently, using technological advancement to the fullest, and in possible multi-cultural setting.

On professional values and attributes, aside from a strong sense of professional responsibility that must continually be cultivated, Filipino lawyers need also to see themselves more and more as part of a community, and that the roles that they play have an impact on the society. They must be communitarian, aside from being culture-sensitive.

Filipino lawyers as communitarian

In a 2005 publication of the Asian Development Bank entitled “*Philippines: Moving Toward a Better Investment Climate*”, it was pointed out that a good investment climate is critical to economic growth. A good investment climate consists of three crucial factors namely: “(i) macro fundamentals, (ii) infrastructure, and (iii) governance and institutions. Having a good set of macro fundamentals include achieving reasonable fiscal and external balances, realistic exchange rate, low inflation and interest rates, competitive markets, and social and political stability. Infrastructure has to do with availability and quality of physical infrastructure, such as roads and ports, telecommunications, power and water supply. Governance and institutions refer to transparency and efficiency in regulation, taxation, and legal system, strong and well- functioning financial sector, labor market flexibility, and skilled labor force.”

In a fairly recent assessment of the investment climate in the Philippines as of March 2013, these have been among the disturbing findings:

²⁶ Urata, S. and M. Ando (2011), ‘Investment Climate Study of ASEAN Member Countries’, in Urata, S. and M. Okabe (eds.), *Toward a Competitive ASEAN Single Market: Sectoral Analysis*. ERIA Research Project Report 2010-03, pp.137-204. Jakarta: ERIA. p. 157.

“Many foreign investors describe the inefficiency and uncertainty of the judicial system as a significant disincentive for investment. Investment disputes can take years to resolve...”²⁷

If we are to realize the gains of a fully integrated economy, attract investments and improve the lives of our people, the Filipino lawyers of the 21st century must have a well-developed sense of belongingness; a collectivist perspective; a discerning view that their actions will have a ripple effect in community they live in.

The Filipino lawyers practicing law in an era of ASEAN Integration must get the sense that for whenever they delay the resolution of cases, through abuse or misuse of court processes, such an action will have deleterious impact not only on the parties to the case and the court, but also on the country with its investment climate being continually considered as bleak and uninviting. Chapter I of the Philippines’ Code of Professional Responsibility--- the least emphasized of all the duties of Filipino lawyers--- should gain major attention and prominence, most notably Canon 4 that requires “a lawyer [to] participate in the development of the legal system by initiating or supporting efforts in law reform and in the improvement of the administration of justice.”

Filipino lawyers as culturally-aware and -sensitive

With the global stage becoming borderless, Filipino lawyers must also have an awareness and sensitivity to other cultures and the facility to operate across these cultures and boundaries.

Elsewhere, as in McGill University Faculty of Law²⁸ programs are devised integrating training in both civil and common law systems, hoping to establish in law graduates a bijuridical identity. When students graduate from the law school, they are expected to be neither civil lawyers nor common law lawyers but rather “law specialists trained in the two major legal traditions.” Introducing what it calls “Transsystemic Legal Education”, McGill University ensures that students graduate with a cosmopolitan understanding of the law, one that is not confined to specific jurisdictions, or even legal traditions, given a world of borderless human interaction where localized legal education is deemed to be insufficient.

It would seem that for these leading universities in Asia and the US, preparing the law graduates for a life in a globalized world goes beyond an inventory of subjects with international theme. It includes imparting to the students the skills needed to function properly in globalized setting: skills such as cultural awareness and sensitivity.

²⁷ 2013 Investment Climate Statement - The Philippines
(<http://www.state.gov/e/eb/rls/othr/ics/2013/204715.htm> last accessed August 9, 2014).

²⁸ McGill faculty are expert in both civil and common law traditions, with many emphasizing a comparative approach, most readily demonstrated by the number of international law specialists. This depth gives students a wide choice of courses in public and private international law, including human rights and international business law (<http://www.mcgill.ca/law/about/> accessed December 28, 2010).

In an academic visit at Singapore Management University (SMU), for instance, it was personally observed that the conscious and express objective is to train lawyers who have broad-based understanding of the real world, have contextualized and comparative legal knowledge and expertise, are confident, articulate and are holistic and integral law graduates.

SMU's LL. B Program (approved by the Singapore Board of Legal Education) is a four-year program of 36 course units that is heavy in commercial and corporate law, in keeping with the nation's thrust towards becoming the investment hub of the world.²⁹

What is particularly striking though are the non-law courses of the curriculum. Students are *required* to read the following subjects as university *core* courses: analytical skills and creative thinking; business, government and society; ethics and social responsibility; leadership and team building; and technology and world change.

In the creative thinking course, students learn how psychologists define and measure creativity, how to identify the characteristics of a creative problem-solver and how the social environment influences creative behavior. They are exposed to a variety of creative puzzles and techniques to get them to 'think out of the box', and also hone their creative problem-solving skills by designing and constructing their own creative products.

The Business, Government and Society course analyzes the interactions between business, government and society in a changing global economy. It examines, with reference to Asia- Pacific Region, the relationships between business and the economic, social, political and cultural environment. In particular, it looks at the ways in which companies relate to their internal and external stake holders and how they are affected by emerging social and technological issues.

The Leadership and Team Building course considers the dynamics of leadership and team-building. It is designed to offer perspectives and experiences that will help students become good leaders and team members, who can work across diverse business disciplines, environment and cultures.

The Technology and World Change course helps students understand how technological innovation comes about, and how socio-economic and environmental factors drive certain technologies to become world-changing ones.

And as a final piece of the jigsaw of a holistic legal education, the LL. B. curriculum has two half-unit courses on life skills—Finishing Touch, and Work and Family. Finishing Touch seeks to provide students with practical career management skills, such as working with Emotional Intelligence Quotient, and business and social etiquette. The module has seven components: introduction to the world of work, cover letter and resume writing, interviewing skills, working with

²⁹ Notably, the following elective courses, among others, are offered: banking law, biotechnology and the law, competition law, financial and securities regulation, information technology and the law, insolvency law, insurance law, intellectual property law, law of international trade, tax law, transportation law. A student may also choose to embark on individual directed research paper (an original research paper of 4,000 to 5,000 words) as law elective. To hone the student's research and writing skills, each student is required to write an individual research paper of 2,000 to 3,000 words for one of the two law courses read in each term from Year Two onwards. Thus, by the end of the program, every law student would have written six individual research papers.

Emotional Intelligence Quotient and networking, presenting a professional image, business and social etiquette and office politics. Work and Family helps students explore the challenges of balancing work with other aspects of life, particularly, family life.³⁰

The 21st century practice of law is set in a stage without borders. Elsewhere, it is already recognized that “practicing with cultural competence is a fundamental lawyering *skill*, as is the ability to critically evaluate laws, culture, and societal systems from a variety of perspectives or lenses. Respect for difference and other cultures and beliefs is also a fundamental lawyer *value*.”³¹ Such must also be expressly declared to be a fundamental skill of a Filipino lawyer of today.

The improvement of the legal profession will begin with a baseline determination of the knowledge, skills and values that a Filipino lawyer needs to thrive in an integrated economy. The legal education, and the Bar Examination can then be aligned to meet these determined competencies for the law practice of the 21st century.

III. ASEAN Integration and the Legal Education

This leads me to the second imperative: the imperative of shifting to an outcomes-based legal education.

As elsewhere indicated, an outcomes-based education is one that begins with an end in mind. Here, schools are mandated to state the intended graduate attributes and to see to it that these attributes are addressed in the courses offered and the manner by which these courses are taught. Otherwise referred to as “backward design,” OBE is described this way:

First, the educator identifies his goals for the course: what measurable results does he want? This is the outcomes identification phase. Second, the educator determines what achievement of those outcomes would look like. What is evidence of student proficiency? This is the assessment phase. Third, the educator develops teaching methods and materials that are designed to help students achieve the identified outcomes in a way that the educator can assess. This is the delivery phase (what we think of as “teaching”). Finally, the educator evaluates how well his design worked. Did the teaching result in measurable evidence that students achieved the outcomes and did students achieve the outcomes? This is the evaluation phase...³²

³⁰ Kee Yang Low, *Legal Education in Singapore and the Introduction of a New Law School at the Singapore Management University: A New Chapter Begins*, published in *Legal Education in Asia: Globalization, Change and Contexts*, Routledge Law in Asia, 2010.

³¹ Mary A. Lynch, “The Top Ten Myths Concerning Student Learning Outcomes in Legal Education”, last accessed at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1969889 on August 22, 2014.

³² Carolyn Grose, “*Outcomes-Based Education One Course at a Time: My Experiment with Estates and Trusts*”, last accessed at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1663327 on August 7, 2014.

As the legal profession determines for itself the core knowledge, skills and values that a Filipino lawyer needs for 21st century law practice, these competencies then needs to be reflected in the law programs offered in the law schools of this country. For instance, if we determine that the Filipino lawyer has to be adept at conflict resolution and be culturally-aware and sensitive, then our law program should offer courses that address these competencies, and teaching methods and assessments should be designed towards meeting these intended outcomes.

To achieve this, we do not have to reinvent the wheel. Other jurisdictions have already determined for themselves the program outcomes of their law programs. The Australian government, for instance, has released in December 2010, its list of program outcomes for the Bachelor of Laws program of its law schools in the publication, *Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement*:

The Threshold Learning Outcomes for the Bachelor of Laws are as follows:

TLO 1: Knowledge

Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes:

- (a) the fundamental areas of legal knowledge, the Australian legal system, and underlying principles and concepts, including international and comparative contexts,
- (b) the broader contexts within which legal issues arise, and
- (c) the principles and values of justice and of ethical practice in lawyers' roles.

TLO 2: Ethics and professional responsibility

Graduates of the Bachelor of Laws will demonstrate:

- (a) an understanding of approaches to ethical decision-making,
- (b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts,
- (c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and
- (d) a developing ability to exercise professional judgement.

TLO 3: Thinking skills

Graduates of the Bachelor of Laws will be able to:

- (a) identify and articulate legal issues,
- (b) apply legal reasoning and research to generate appropriate responses to legal issues,
- (c) engage in critical analysis and make a reasoned choice amongst alternatives, and
- (d) think creatively in approaching legal issues and generating appropriate responses.

TLO 4: Research skills

Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

TLO 5: Communication and collaboration

Graduates of the Bachelor of Laws will be able to:

- (a) communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences, and
- (b) collaborate effectively.

TLO 6: Self-management

Graduates of the Bachelor of Laws will be able to:

- (a) learn and work independently, and
- (b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

The authors are to be congratulated for having produced something remarkably brief and coherent

The American Bar Association has released its own Statement of Learning Outcomes in its Standard 302. The minefield of knowledge and best practices is so vast; we just have to search our hearts and keep our eyes and minds open. And this is where the battle needs to begin.

Literatures on education carry these lamentations: “[e]ducation today is largely out of sync with the realities of the global world³³. “There is a new tension between the glacial pace of institutional change in ministries of education and schools and the rapid social, economic and cultural transformations brought about by the forces of globalization”.³⁴

The principal challenge to education in the twenty-first century is to shift from a localized factory model to one that prepares citizens to function in an increasingly interconnected and rapidly changing globalized world³⁵.

And yet, it was noted that the “people, culture and structures of higher education are not conducive to coherence; rather, the natural tendency is for individualism and specialization. It is very common for faculty in higher education programs *not* to have a collective and coherent view of the program in which they reside. In fact, many groups of faculty have never undertaken a discussion about what it is they want their students to know and be able to do at the culmination of the programs.”³⁶

In *Best Practices for Legal Education*³⁷ and Carnegie Foundation’s *Educating Lawyers*³⁸, the common recommendation is for legal education to keep pace with the educational paradigm adopted by higher education a quarter of century ago--- an outcomes-based education. *Best Practices*³⁹ observed that:

There is nothing more important for any educational institution than to have clearly articulated educational goals. A law school cannot determine whether it is achieving its educational goals unless the goals are clear and specific. A law school’s educational objectives should be published and made available to prospective and current students, alumni, and employers.

The educational goals of most law schools in the United States are articulated poorly, if at all. This is one of the

³³ See Learning in the Global Era, *International Perspectives on Globalization and Education*, Marcelo M. Suarez- Orosco, University of California Press Berkeley and Los Angeles, California, 2007.

³⁴ See *From Teaching Globalization to Nurturing Global Consciousness* by Veronica Boix Mansilla and Howard Gardner, published in Learning in the Global Era, supra.

³⁵ See Learning in the Global Era, *International Perspectives on Globalization and Education* at Note 42.

³⁶ Deborah Maranville, Kate O’Neill, Carolyn Plumb, *Lessons for Legal Education from the Engineering Profession’s Experience with Outcomes- based Accreditation*, at <http://www.wmitchell.edu/lawreview/Volume38/documents/4.Maranville.pdf> last accessed on August 7, 2014.

³⁷ http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf last accessed on January 12, 2013.

³⁸ http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf last accessed January 25, 2013.

³⁹ See Note 37 at p. 39.

primary reasons why most law school curriculums can best be described as chaotic: they lack cohesion, coordination, and common purpose, especially after the first year.

Thus, law schools are prodded to articulate their educational goals in terms of intended student outcomes, noting that “[w]hen objectives are not made explicit, the result is almost certainly a preoccupation with specific knowledge. If students are expected to develop a degree of independence in pursuit of learning, reach a satisfactory level of skill in communication, demonstrate sensitivity to their own values and those of their associates, become capable of collaborating with peers in defining and resolving problems, be able to recognize the relevance of their increasing knowledge to the current scene, and seek continually for insightful understanding and organization of their educational experience, these outcomes must be specifically stated. In addition, they must be made explicit in relation to learning experiences and by providing opportunities for demonstration of the developing behavior and for evaluation of it.”⁴⁰

In *A Nation At Risk*⁴¹, it was said that American education in 1980s had been characterized by the absence of any defined student or institutional outcomes, the presence of incoherent curricula, and teachers operating in individual isolation.⁴²

When placed in a law school setting, the problem is, absent a defined mission and the identification of attendant student and institutional outcomes, a law school lacks focus and its curriculum becomes a collection of discrete activities without coherence.⁴³ Lacking the guidance of an express mission or statement of student or institutional outcomes, the traditional law school curriculum is “deficient in both structure and coherence.”⁴⁴ When the mission in legal education is nonexistent and student outcomes are not identified, one can predict that the teaching method will lack focus and be ineffective.⁴⁵

In the Philippines, an outcomes-based approach is entirely foreign to legal education. The tendency is to even reject it, sometimes deriding it as one that is needed only in the undergraduate courses. This is where a re-thinking needs to be done. For there is a reason why the Philippine higher education has shifted to an outcomes-based education. As established by numerous surveys, “students are more motivated to learn as part of a community of learners if they understand the long term and intermediate objectives of the program of instruction. Learning is also enhanced when students understand why certain instructional and assessment methods are employed.”⁴⁶

⁴⁰ Id at p. 39-40.

⁴¹ See http://datacenter.spps.org/uploads/sotw_a_nation_at_risk_1983.pdf last accessed on August 22, 2014.

⁴² See Gregory S. Munro, *Outcomes Assessment for Law Schools*, last accessed at <http://lawteaching.org/publications/books/outcomesassessment/munro-gregory-outcomesassessment2000.pdf> on August 25, 2014.

⁴³ Id, pp. 3-4.

⁴⁴ Id, at p. 52, citing Roger Cramton, The Need for Greater Emphasis on Skills Development, Remarks at the National Conference on Legal Education- Curricula for Change.

⁴⁵ Id at p. 54.

⁴⁶ See *Best Practices* at Note 37.

The criticism about law schools of “ignoring the constituencies that they serve, not knowing what lawyers do, what law students need to learn, how law students learn best, what teaching methods are most effective, how to determine whether students have learned, what responsibilities the law school has to the profession and to the society”⁴⁷ may in fact be said also of Philippine law schools in general. When Karl N. Llewelyn lamented in 1935 that “no faculty and not one percent of law instructors knows what it or they are really trying to educate for”⁴⁸, he could have described a situation that persists close to a century after he made the observation.

The higher education system in the country has already shifted to an outcomes-based approach. A shift to an outcomes- based legal education will prevent a clear disconnect of the law program from the rest of the programs offered by all higher education institutions. More importantly, it will also promote and enhance quality learning in our law schools. It will serve as guidance for the teachers when they teach their respective courses. They will see their courses as part of the integrated whole. It will also serve as a motivation for the students as they will now see that the learning activities that they are required to undergo have an intended outcome. It is a means of promoting accountability of the law school to the students, the public and the community. As Nelson P. Miller⁴⁹ aptly summarizes:

“A table of lawyer competencies enables a law school to align its curriculum, in a process known as curriculum mapping, to what the bar expects of law school graduates. Curriculum mapping makes particular sense, given the Carnegie Foundation report’s criticism that “faculty attention to the overall purposes and effects of a school’s educational efforts is surprisingly rare” mainly because faculty focus on only their areas while blindly following the self-replicating model of the elite schools. Curriculum mapping can help to create a professional learning community... Curriculum mapping also validates teaching to standards, providing not only guidance but accountability. .. Instructors readily discover what they are teaching but need not, what they are teaching and need to continue to teach, and what they are not teaching but should start to teach. It also fosters teamwork across an educational institution. Instructors can recognize how the competencies that they teach relate to the same or different competencies taught by others in the same institution and can coordinate instruction.”

⁴⁷ See Munro at Note 46, p. 46.

⁴⁸ Cited at Munro, p. 46.

⁴⁹ *Mapping Lawyer Competencies onto the Law School Curriculum to Confirm that the Curriculum Prepares Graduates for Practice*, last accessed at Social Science Research Network’s http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2461037 on August 14, 2014.

Toward an Outward-looking Curriculum

As the legal education shifts to an outcomes-based system, as the law graduate attributes are being determined, it may be important to include in such list the need for law graduates to be both communitarian and culturally-sensitive, thereby bringing in another imperative: an outward-looking law curriculum.

Gabriel Hawawini, a faculty member of INSEAD, in his much-cited work *The Internationalization of Higher Education Institutions: A Critical Review and a Radical Proposal* (2011), presents at least two compelling reasons why universities ought to internationalize their education. Internationalization is needed to remain academically relevant in an interconnected world that is increasingly global. Internationalization is also the university's way to learn from the world.

Education specialists point to many approaches to the internationalization of legal education. There is an import-export model where a law school looks at the creation of student exchange programs and international joint ventures and partnerships in the area of research. However, as personal experience has shown, this path to internationalization is paved with costly obstacles.

International initiatives can be costly. There is the issue of the disparity in the amount of tuition that Filipino students will have to pay when studying abroad. There is also the concern of whether a law school, with limited finding sourced almost entirely only from tuition fees, can afford to bring in a faculty from a foreign university to teach in our courses. Harvard, NYU, Georgetown University-- they all fly in distinguished law professors from all over the world to discuss global concerns and global laws to their students. But a Filipino law dean will surely shudder at the thought of how much this would cost a school in the Philippines. USC School of Law and Governance is infinitely thankful for the existence of a faculty and staff exchange program with Stockholm University Department of Law with funding arrangement skewed in favor of this law school from developing country. But there are not too many exchange arrangements as this one. Besides, exchange programs are also costly not just financially but also in terms of time spent to create connections and links to potential partners around the world. In fact, after suitable partners have been identified and partnership agreements have been signed, time and effort must still be invested to develop them and draw from them the potential benefits they can deliver.

Thus, and for the nonce, the most viable path to internationalization of our legal education is in the area of our curriculum. An inventory of courses with international content is the best starting point. In the model curriculum prescribed by the Legal Education Board, there is the mandatory Public International Law course for two units, and then some suggested electives with international law flavor such as International Business Law in LLB and suggested electives in JD of Environmental Law, Human Rights, Humanitarian Law in Armed Conflicts, International Commercial Transactions, International Economic Law, International Taxation, International Moot Court. However, beyond the content of the courses with international flavor that we aim to offer our students, what is equally and urgently needed is the embedding of skills and competencies to enable them function in a globalized work setting.

Prof. David Weisbrot, former Dean of Law of University of Sydney noted in the book *Excellence and Innovation in Legal Education* that there is need to "align legal education more

closely with the imperatives of contemporary professional practice, which have little to do with relentless appellate case exegesis, and far more to do with teamwork, creative problem-solving, advocacy, understanding of client's interests and experience.

In other words, equally important, if not more important than the doctrines, is the ability of a lawyer to operate effectively in this dynamic setting, which requires the development of professional skills that go far beyond the ability to identify the ratio of a very lengthy Supreme Court decision. Lawyers need well-developed oral and written communication skills, including the critical ability to listen and ask the right questions, excellent research skills utilizing electronic databases, strong dispute avoidance, resolution and management skills and a deep sense of ethics and professional responsibility. Then, in reference to his ability to effectively work in an integrated economy and in a globalized setting, law students must gain from their university experience an awareness and sensitivity to other cultures and the facility to operate across these cultures and boundaries, while being imbued all along with a collectivist perspective.

ASEAN Integration will force law schools from all parts of the country, whether urban or rural, to stop viewing legal education from a narrow, parochial lens. A law curriculum that is responsive to the demands of an integrated economy and which aims to be benefit therefrom needs to be outward-looking, and flexible enough as to be sensitive to new knowledge, aware of new problems and realities, and able to train the law graduates to function independently or with a team in a world without borders. No matter how tall the mandate may sound, this needed innovation is, in fact, doable. This can be achieved by offering more courses on comparative law, courses on the legal systems of the world, on new modes of dispute settlement, and a cultural diversity training, among others. Teaching- learning activities that let the students work within a team and then on their own may also equip them with skills needed to function effectively in diverse setting. Truly, at times, modest steps are all it takes for us to start preparing our graduates for a life in a changed and changing landscapes.

The Bar Examinations

This discussion on reforms in the legal profession and the legal education cannot close without examining the Philippine Bar Examinations. Years of being immersed in the academe fortify this personal observation that law schools teach what the Bar Exams test. Indeed, if lawyers are what law schools make them, it can also be said that in this country, law schools are what the Bar Exams prod them to become.

In this country, admission to the Philippine Bar is a highly regulated and nationalized activity by the State, or to be more specific, by the Supreme Court. As mandated in Section 5(5) of Article VIII of the 1987 Constitution, admission to the practice of law is the domain of the Supreme Court. As to what subjects to test, even where and when to hold the test—these all rest in the hands of the Supreme Court who carry out the task through a duly-designated Justice of the Supreme Court who serves as Bar Chairperson every year.

Entry to the legal profession is done through the rigorous Bar Examination. In the case of *In the Matter of the Petitions for Admission to the Bar of Unsuccessful Candidates of 1946 to*

1953⁵⁰ filed by ALBINO CUNANAN ET AL in March 18, 1954, the Supreme Court spoke of the place and function of the Bar Examination as follows:

To the legal profession is entrusted the protection of property, life, honor and civil liberties. To approve officially of those inadequately prepared individuals to dedicate themselves to such a delicate mission is to create a serious social danger.

Reading between the lines, it would seem that to our Supreme Court, the purpose of the Bar Examination is to determine who are competent to practice law, thereby holding out that the Bar Examination is means of quality assurance, a mechanism by which the public are protected from the incompetent, or at least, the unprepared.

In one case, the Supreme Court even characterized the administration of the Bar Examination as a judicial function, and that is impressed with vital public interest.⁵¹

But is this really the purpose of Bar Examination? Over a century from the conduct of the Bar Examination, there is still not much articulation. At best, it is simply assumed as self-evident that the Bar Examination is meant to determine who are already possessed with minimum level of competence to practice law. In fact, in a 1948 En Banc decision⁵², the Supreme Court did not speak of the Bar Examination as a gauge of *competence* to practice law, but a test to determine *knowledge* of the law, thus:

The Supreme Court and the Philippine Bar have always tried to maintain a high standard for the legal profession, both in academic preparation and legal training, as well as in honesty and fair dealing. The Court and the licensed lawyers themselves are vitally interested in keeping this high standard; and one of the ways of achieving this end is to admit to the practice of this noble profession only those persons who are known to be honest, possess good moral character, **and show proficiency in and knowledge of the law** by the standard set by this Court by passing the Bar Examinations honestly and in the regular and usual manner. (Emphasis supplied)

⁵⁰ In the said case, our Supreme Court asserted that the admission of attorneys-at-law in the practice of the profession and their supervision have been indisputably a judicial function and responsibility--- the judiciary's "most solid of title", to borrow its own words.

⁵¹ *IN RE: VICTORIO D. LANUEVO, former Bar Confidant and Deputy Clerk of Court, A.C. No. 1162. August 29, 1975; IN RE: RAMON E. GALANG, alias ROMAN E. GALANG, 1971 Bar Examinee, A.C. No. 1163. August 29, 1975; IN RE: HON. BERNARDO PARDO, HON. RAMON PAMATIAN, ATTY. MANUEL TOMACRUZ, ATTY. MANUEL MONTECILLO, ATTY. FIDEL MANALO and ATTY. GUILLERMO PABLO, JR., Members, 1971 Bar Examining Committee, A.C. No. 1164. August 29, 1975 (En Banc)*

⁵² *In re Investigation of ANGEL J. PARAZO for alleged leakage of questions in some subjects in the 1948 Bar Examinations, G.R. No. 120348, December 3, 1948, En Banc.*

Assuming though that the Bar Examination is intended to determine and measure minimal competency to practice law, it may then be asked, what are these minimum levels of competency? If Bar Examination is to test competence, what is competence? What knowledge, skills, and qualities should one possess to be deemed competent to practice law?

Just as the legal education needs to be purposive, such purpose and direction must also be reflected in our Bar Examinations.

Republic Act 7662 mentions in its Section 2 of preparing the “students for advocacy, counseling, problem-solving, and decision-making” and in its Section 3, not only of the knowledge of the law but also of “legal research abilities to enable them to analyze, articulate and apply the law effectively, as well as to allow them to have a holistic approach to legal problems and issues.”

LEB Memo No. 1, passed by the Legal Education Board in implementation of the law, also made articulations on the aims of legal education.⁵³ However, apart from RA 7662 and the LEB Memo No. 1, a legal educator in this country will not be able to find a detailed, authoritative and commonly-accepted articulation of the minimum level of competency that we require new lawyers to possess, and which we in turn test in a Bar Examination.

This state of things is truly problematic, for we test only that which we value. If our Bar Examination is meant to determine competence, then it cannot be that as to what constitutes competence remains still largely undefined.

In the United States, after the MacCrate Report identified ten fundamental lawyering skills and four professional values, legal educators then analyzed whether the bar examinations sufficiently test these skills and values in their bar examinees. It may be of interest to note that there were findings that the bar examination (consisting of 200 multiple choice questions and several essay questions) does not adequately test the skills that the profession has identified as necessary for competent law practice⁵⁴.

At best, the bar exam tests legal analysis, a minimal degree of problem solving, and one limited aspect of written communication. There are even strong sentiments that essay exams in the Bar do not even measure the problem solving skills of an examinee that they purport to test. This is because problem-solving skill of a lawyer has a peculiar connotation. The lawyer’s problem-solving skill requires not only the ability to identify and diagnose a problem, but also the

⁵³ It may already be seen that if indeed, as held in the case of *In Re Angel Parazo, supra.*, the purpose of the Bar Examination is to test the knowledge of the bar examinee of the laws, then there is a serious disconnect between the aim of legal education which is to impart not only knowledge of law but also to develop competence in “any” field of law and the purpose of the bar examination, which is to merely test the examinee’s knowledge of the law.

⁵⁴ MacCrate *supra.*, note 23, where the author noted that “in July 2002, the Society of American Law Teachers (SALT), the largest membership organization of law professors in the nation, issued a Statement criticizing bar examinations, as currently administered, for failing adequately to measure competence to practice law, negatively affecting law school curricular development and the law admission process, and creating barriers to the achievement of a more diverse bench and bar.”

ability to generate alternative solutions and strategies⁵⁵, matters, which are no longer, asked in a problem-type examination.

The kind of essay-type examination in the Bar was also criticized as largely dissociated with the reasoning skills it purports to test. Essay questions require examinees to give one correct answer, which correct answer is already determined by some law or jurisprudence, so that in the end, the essay question becomes a test of memorization, an application of what one has committed to memory.⁵⁶ The one resounding criticism is that testing for memorization of legal principle is unreflective of practice of law. In the real world, good lawyers research, rather than memorize, law⁵⁷.

Besides, laws are constantly evolving, and lawyers cannot rely on laws learned in law school and during bar review; he is constantly required to keep himself abreast with the recent laws and jurisprudence and it is malpractice to cite outdated principles and maxims. Yet the bar examination seems to be obsessed only in testing substantive knowledge of a law that is constantly changing.

In the Philippines, while law curriculum, law pedagogy and bar assessment are undergoing massive examination all over the world and in most of Asian countries⁵⁸, the conduct of the Bar Examinations has remained constant a century hence.

Up until the 2011 Bar Examinations, Bar Examinations in the country remained to be entirely a timed essay examination where students are asked to display knowledge of the various aspects of the law in an essay-type examination that lasts for four hours in the morning, and three hours in the afternoon, all four Sundays of September every year. The bar coverage has, for a time now, remained constant as well, that is, Political Law⁵⁹, Labor Law and Social Legislations, Civil Law, Taxation, Mercantile Law⁶⁰, Criminal Law⁶¹, Remedial Law, Legal Ethics and Practical Exercises.

In 2011, when Associate Justice Roberto A. Abad was appointed by the Supreme Court to Chair the 2011 Bar Examinations, he sought the introduction of various reforms in the conduct of the examination, as to content, manner of conducting the test and even the examination venue and

⁵⁵ Please see the work of Kristin Booth Glen, *Thinking Out of the Bar Exam Box: A Proposal to 'MacCrate' Entry to the Profession*, 23 Pace L. Rev. 343 (2003).

⁵⁶ Please see the work of Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 Neb. L. Rev. 363 (2002) wherein it was lamented that "[o]ne problem with the essay questions is that they require analysis based on memorization rather than analysis based on research and case law, which is the kind of analysis practicing lawyers do."

⁵⁷ Curcio, *supra.*, note 56.

⁵⁸ See *Legal Education in Asia: Globalization, Change and Contexts*", Stacey Steele & Kathryn Taylor eds., Routledge, 2010 which considers itself as the "first significant edited collection available in the English language on the subject of pre-qualification legal education in Asia".

⁵⁹ The subject is further subdivided into several areas, namely, Political Law, Constitutional Law Administrative Law, Law on Public Officers, Election Laws and Law on Public Officers and Public International Law.

⁶⁰ The subject covers the four major commercial laws, namely, Corporation Code, Transportation Laws, Insurance, Negotiable Instruments Laws and other special commercial laws.

⁶¹ The subject deals mainly with the two books of the Revised Penal Code, and some special penal laws.

schedule⁶². Exams were conducted in November and at the University of Santo Tomas. The bar coverage was examined and the format was drastically changed. On January 28, 2011, the Supreme Court issued Bar Matter No. 2265. Its preamble reads:

The Court has found merit in the proposed changes in the conduct of the bar examinations that the Chairperson of the 2011 Bar Examinations and Philippine Association of Law Schools recommended.

One recommendation concerns the description of the coverage of the annual bar examinations that in the past consisted merely of naming the laws that each subject covered. This description has been regarded as too general and provides no specific understanding of the entry-level legal knowledge required of beginning law practitioners.

A second recommendation addresses the predominantly essay-type of bar examinations that the Court conducts. Because of the enormous growth of laws, doctrines, principles, and precedents, it has been noted that such examinations are unable to hit a significant cross-section of the subject matter. Further, the huge number of candidates taking the examinations annually and the limited time available for correcting the answers make fair correction of purely essay-type examinations difficult to attain. Besides, the use of multiple choice questions, properly and carefully constructed, is a method of choice for qualifying professionals all over the world because of its proven reliability and facility of correction.

A third recommendation opts for maintaining the essay-type examinations but dedicating these to the assessment of the requisite communication skills, creativity, and fine intellect that bar candidates need for the practice of law.

The Supreme Court then approved and mandated that the coverage of the bar examinations shall be drawn up by topics and sub-topics rather than by just stating the covered laws, and that the examinations shall consist of two types: multiple-choice questions (MCQ) and essay which shall require the examinee to prepare Legal Memorandum and Legal Opinion.

The MCQ-type of examination was envisioned to test both knowledge of the law and its application. Supposedly, not only will the MCQs “measure the candidate’s knowledge of and ability to recall the laws, doctrines, and principles that every new lawyer needs in his practice”; MCQs

⁶² Please see his monumental work entitled *Preparing for the 2011 Bar Exams and Beyond*, published by the Philippine Supreme Court in Manila, Philippines, on July 2010.

should also assess the candidate's understanding of the meaning and significance of those same laws, doctrines, and principles as they apply to specific situations, and his ability to analyze legal problems, apply the correct law or principle to such problems, and provide solutions to them.

The essays were not be graded for technically right or wrong answers, but for the quality of the candidate's legal advocacy. The passing standard for correction shall be work expected of a beginning practitioner, not a seasoned lawyer.

The 2011 Bar Examinations posted a passing percentage of 31.9% or 1,913 passers of 5,990 examinees, considered as the second highest passing rate of the millennium⁶³.

For the 2012 Bar Examinations, however, the 2012 Bar Chairman, Associate Justice Martin S. Villarama, Jr. recommended a different bar exam format. Supreme Court then approved his recommendations on March 2012 in Bar Matter No. 25202, and thus, for the Bar Examinations of 2012, 60% was multiple-choice and 40% were essay questions. Examinees were no longer asked to prepare any Legal Memorandum or Legal Opinion.

The ratio of MCQ to essay was reduced even more in the 2013 Bar Examinations when Associate Justice Arturo D. Brion, the Bar Chairman for the 2013 Bar Examinations, proposed for yet another format of the Bar Examination for 2013, which was then approved by the Supreme Court and summarized in Bar Bulletin No. 1 issued by the Office of the Bar Confidant stating in relevant parts that⁶⁴ the Bar Examination shall consist of 20% Multiple Choice Questions (MCQ) and 80% Essay-type questions. The Bar Examinations of 2014 will seem to take the same path⁶⁵.

Looking at the three bar bulletins issued for the 2011, 2012 and 2013 Bar Examinations, one obtains the impression of a Supreme Court still grappling for discernment on what it should truly aim to test in the Bar Examination, and how Supreme Court should test it.

In the meantime, outside the law classrooms, and into law offices, society has already shifted from a static understanding of professional competence as **memorized knowledge** to one of dynamic conception of lawyers with **ability and skill** to manage and solve complex problems. Even the Professional Regulation Commission has set out for itself that professional programs will be tested using the guide formula of sixty (60%) percent knowledge, and forty (40%) percent core skills.

A law curriculum that is simply high on content and less on skills, and a Bar examination that tests only for substantive knowledge and very narrow, limited skills cannot validly claim to prepare lawyers with minimum level of competency, that is, the competence to practice law unsupervised.

Thus, just as there is a need to face these nagging questions, *what attributes should the new Filipino lawyers possess, now that the world has changed, and changed drastically?*, there, too, is an imperative to address these fundamental queries, *What should we now test, in the 21st*

⁶³ <http://www.abs-cbnnews.com/nation/02/28/12/1913-pass-2011-bar-exams>, last visited 26 January 2013, 1:15 pm.

⁶⁴ The statements that follow are a direct quote from page 2 of the said Bar Bulletin.

⁶⁵ As discussed in a dialogue with 2014 Bar Chairperson Justice Diosdado Peralta on August 12, 2014.

century? Is the Bar Examination intended to test these competencies? If yes, can we still test in the same way that we tested in the 1900s, now that globalization has pervaded indispensably?

Equally important, the bar examination must meet the essential measurement criteria of reliability and validity, which hinge *first* on knowing what to test and *second*, what measure will be used to test it. All of these necessitate that systems be put in place on how licensure examinations are to be conducted⁶⁶.

This system is largely lacking in the conduct of Philippine Bar Examinations. The Bar Examination remains to be what it has been a century ago: subjective, undefined, Bar Chairman-dependent.

IV. The Way Forward

William Pollard declared, "learning and innovation go hand in hand; the arrogance of success is to think that what you did yesterday will be sufficient for tomorrow."

It is along this age-old wisdom that the imperatives for reforms in the legal profession and the legal education are anchored, and the plans of action are proposed:

First. Stakeholders must come together and engage in a national conversation on the all-important query of what minimum competencies the Filipino lawyer must possess for a life of usefulness in the 21st century. Imperical data needs to be gathered so that declared policies are evidence-based. It is humbly suggested that the values of being communitarian and culturally-aware and sensitive beg to be included in this list.

Second. Guided by the duly-determined competencies, the Supreme Court and the Legal Education Board may then determine the Program Outcomes for all law schools in the country. After all, the Honorable Supreme Court will be revisiting its age-old Rule 138 prescribing the qualifications of law applicants to make the requirements abreast with the changes in basic and in higher education brought about by the adoption of K+12 basic education system. With determined Program Outcomes, law schools can then be held accountable in seeing to it that these Program Outcomes are addressed by their curricular offerings, by the teaching methods adopted by their professors and the assessments they employ. It is suggested that this list of Program Outcomes include the graduate attribute of cultural awareness and sensitivity. The law curriculum needs to be redesigned so as to be outward-looking and malleable enough as to be sensitive to new knowledge, and aware of new problems and realities. Courses as Comparative Legal Systems of the World may be made an elective or a compulsory perspective course, and law students must be provided with some cultural diversity training and exposure on self-management, whether working independently or in a team across various work settings.

⁶⁶ In an interview with PRC Commissioner Hon. Angeline T. Chua Chiacco last August 12, 2014, it was shared that in the conduct of examination for the architects, the system of conducting the board examination included the determination of what are to be tested as embodied in a Table of Specifications and a prior assessment among this group of examiners on whether the intended test questions validly address the various aspects of the examination as embodied in the Table of Specifications.

Third. The conduct of Bar Examinations needs to be both purposive and systematic. As it is purposive, the Bar Examinations in the country must seek to purposely test not only substantial knowledge but also core skills. It can even emphasize the core value of collectivism and communitarian by testing the same in its Legal Ethics exam for instance. The Bar Exam must be an embodiment of the core knowledge, skills and values that were predetermined to be indispensable in modern law practice. A bar exam that is erratic, and which is mostly preoccupied with barely testing substantive knowledge of the law will do our country a disservice. In an era of ASEAN Integration, law graduates will be asked to demonstrate not only *what* the law is, but also *how* it may be of utility to their clients. The Bar Examination must also adhere to time-tested andragogical methods of assessment, so as to approximate the requirements of reliability and validity. It should cease to be dependent upon what the Bar Chairman wants, and should start to adhere to criteria, guidelines and systems duly made known to the law schools and the bar examinees. One need not create a Board of Examiners to achieve this purpose. The Supreme Court En Banc or through its Committee on Legal Education and Bar Examinations may itself set the general competencies to be tested in the Bar Examinations (which may be accomplished by setting out a Table of Specifications), and the system, procedure and guidelines in the conduct of the exam, covering the question-framing phase to the checking of the examinees' work. These guidelines are to then remain effective for at least five (5) Bar Exam years. Thus, it may be that the Supreme Court's Committee on Bar Examination may be composed of the Associate Justices who will chair the Bar Examination in the next five (5) years. This way, students will be tested by what they have studied, and the students will study what they know they will be tested.

These will hopefully put a stop to the felt incongruence between the skills of our lawyers and the needs of the modern times; between legal education and societal demands, and between legal education and the Bar Examinations.

It has been already noted that being adept in English and information technology,⁶⁷ the Filipino professionals have what it takes to function in a globalized workplace. The glass, then, is already half full. Reforms, however, need to be put in place to enable the Filipino lawyers to respond fully and adequately to the many opportunities posed by a borderless country and by occasioned by ASEAN Integration.

In the end, the jugular question all Filipino lawyers will be faced with is, what role will we play in shaping the future that is already upon us today? Answering this question will require a vision, a goal, an objective. Stephen Covey could not have said it any better: "begin with an end in mind; start with a clear understanding of your destination; know where you are going so that you better understand where you are now [and] that the steps you take are always in the right direction."

This will be a lot of work, as all endeavors for excellence and innovation do entail anyway. But we all can take comfort in what Bishop Oscar Romero said: we are not meant to finish all the work, after all, this future is not our own---

⁶⁷ See Comparative Skill Gap Among Professionals, Table 4 of World Bank East Asia and Pacific Regional Report 2012 entitled *Putting Higher Education to Work: Skills and Research for Growth in Asia*, accessed at http://siteresources.worldbank.org/EASTASIAPACIFICEXT/Resources/226300-1279680449418/7267211-1318449387306/EAP_higher_education_fullreport.pdf on May 26, 2014.

A Future Not Our Own

It helps now and then to step back and take a long view. The Kingdom is not only beyond our efforts, it is beyond our vision.

We accomplish in our lifetime only a fraction of the magnificent enterprise that is God's work. Nothing we do is complete, which is another way of saying that the kingdom always lies beyond us. No statement says all that could be said. No prayer fully expresses our faith. No confession brings perfection, no pastoral visit brings wholeness. No program accomplishes the Church's mission. No set of goals and objectives include everything.

This is what we are about. We plant the seeds that one day will grow. We water the seeds already planted knowing that they hold future promise. We lay foundations that will need further development. We provide yeast that produces effects far beyond our capabilities.

We cannot do everything, and there is a sense of liberation in realizing this. This enables us to do something, and to do it very well. It may be incomplete, but it is a beginning, a step along the way, an opportunity for the Lord's grace to enter and do the rest. We may never see the end results, but that is the difference between the master builder and the worker.

We are workers, not master builders, ministers, not messiahs. We are prophets of a future not our own. #