Criticism, Crises, and Opportunity: 21st Century Challenges for U.S. Law Schools

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U.S. law schools confront challenges both old and new at this moment. As institutions, they face criticism of the material they teach, the methods they use to teach it, and the price they charge to students. Inextricable from such criticism is ambivalence over the role of legal education in a political environment divided over efforts to address historical and longstanding, racial injustice. And at the same time, a global pandemic has highlighted inequality of opportunity among law students, forcing law schools to consider their role in contributing and obligation to respond. These uncertain and volatile conditions may make possible far-reaching changes in legal education, with schools adopting distinct and probably more explicit ideological stances. The result may be greater attention to access and success for increasingly diverse student population, but it is also unlikely that legal education will directly resolve tensions over methods and purpose, even in the wake of a global health emergency.

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I. Introduction

Given the powerful role of law and legal institutions in the politics and culture of the United States,[1] attention to and controversy over legal education comes as no surprise. Even so, the series of challenges that the legal academy has faced in the second decade of the new millennium is striking. The popular media attacked swaths of law schools as institutions, criticizing them for deceiving students about their job prospects in the profession, charging them far too much, and leaving them indebted and unable to find employment.[2] Applications to law schools declined sharply in the years after this reporting[3] and

1 "There is, so to speak, no political event in which [one] does not hear the authority of the judge invoked": Alexis de Tocqueville, *Democracy in America*, vol 1, English ed by Eduardo Nolla, translated by James T Schleifer (Indianapolis: Liberty Fund, 2012) at 168.

2 David Segal, a reporter at *The New York Times*, led the charge with a series of articles that criticized in particular less selective law schools. See David Segal, "Law School Economics: Ka-Ching!" (17 July 2011) *The New York Times* (criticizing legal education for offering "diplomas [that] have such allure that law schools have been able to jack up tuition four times faster than the soaring cost of college. And many law schools have added students to their incoming classes — a step that, for them, means almost pure profits — even during the worst recession in the legal profession's history").

3 According to the Law School Admission Council, the number of applicants fell steeply between 2010, when applications reached a high of 87,916, and 2015, when they hit a low of 54,433 — a decline of nearly 40 percent: "Archive: 2001-2016 ABA End-of-Year Summaries – Applicants, Admitted Applicants,

scholars engaged in soul-searching debates over what law schools do, how they do it, how much they cost, and what the effects are on students who often borrow in order to pay.[4]

Very public assertions that law school was not worth the cost[5] lent new urgency to longstanding concerns about what and how law schools teach. Some have worried that legal education does not adequately prepare students for the

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Applications" (2021), online: *Law School Admission Council* <report.lsac.org/View.aspx?Report=AdmissionTrendsApplicantsAdmitApps> [*LSAC* (2001-2016)]. The numbers have since recovered somewhat, rising to 63,384 in 2020: "Admission Trends: ABA Applicants, Admitted Applicants & Applications" (2021), online: *Law School Admission Council* <report.lsac.org/View.aspx?Report=AdmissionTrendsApplicantsAdmitApps> [*LSAC* (2020)]. In 2021, the number of applicants appears to have increased, rising to 70,674: "Three Year U.S. Volume Comparison" (2021), online: *Law School Admission Council* <report.lsac.org/ThreeYearComparison.aspx> [*LSAC* (2021)].

4 Perhaps the best-known critics were Brian Tamanaha and Paul F Campos, the authors of *Failing Law Schools* and *Don't Go to Law School (Unless),* respectively. Brian Z Tamanaha, *Failing Law Schools* (Chicago: The University of Chicago Press, 2012); Paul F Campos, *Don't Go To Law School (Unless): A Law Professor's Inside Guide to Maximizing Opportunity and Minimizing Risk* (Scotts Valley: CreateSpace Independent Publishing Platform, 2012). These books, as well as articles by Professor Tamanaha and Professor Campos, in turn fueled debates in the pages of law journals; see *e.g.* Michael A Olivas, "Ask Not For Whom the Law School Bell Tolls: Professor Tamanaha, Failing Law Schools, and (Mis)Diagnosing the Problem" (2013) 41:1 Washington University Journal of Law & Policy 101.

5 See *e.g.* Paul F Campos, "The Crisis of the American Law School" (2012) 46:1 University of Michigan Journal of Law Reform 177 at 179 (arguing that a "contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession") [Campos, "American Law School"]; but see Michael Simkovic & Paul McIntyre, "The Economic Value of a Law Degree" (2014) 43:2 Journal of Legal Studies 249 (arguing that a legal education is worthwhile and finding that a law degree confers a pre-tax, lifetime earnings premium of approximately $1 million).

actual practice of law.[6] Others worry that legal education also does not adequately prepare students to be "independent, intentional, and self-directed learners" able to thrive in law school and in the profession.[7] These concerns in turn prompted questioning of the curriculum, asking whether the program of legal education should be two years instead of three, for example, or about the need for more opportunities for experiential learning in the curriculum.[8]

Law schools' pricing, pedagogy, and substance all have an effect on who applies and enrolls. Growing recognition of disparities in educational opportunity for students who are members of historically excluded and still underrepresented groups has put additional pressure on schools both to diversify the ranks of their faculty and students, as well as to ensure that the curriculum attends to the role of law in creating and maintaining inequality. Though longstanding, underrepresentation of students of color in law school classes now persists in the same historical moment as fierce, worldwide protests over the role of race across all aspects of society take place in the wake of police killings of unarmed Black men.[9] Critical recognition of the role of law in perpetuating racial inequality, demanded by some students, has grown more salient and more controversial. Responding to the demands for inclusion of more critical perspectives in law school classes has also drawn ferocious counterattack by

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6 Critics voiced this concern both within and outside the academy. Within: William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007) at 179; and outside: David Segal, "What They Don't Teach Law Students: Lawyering" (20 November 2011) *The New York Times*.

7 Jennifer A Gundlach & Jessica R Santangelo, "Teaching and Assessing Metacognition in Law School" (2019) 69:1 Journal of Legal Education 156 at 158.

8 "Report and Recommendations American Bar Association Task Force on the Future of Legal Education" (2014), online (pdf): <www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf> ["Task Force Report"].

9 See *e.g.* Norimitsu Onishi, "George Floyd Protests Stir a Difficult Debate on Race in France" (17 June 2020) *The New York Times*.

critics who decry such moves as inappropriate political activism. Opposition to exploration of historical racism has grown more intense and focused, with lawmakers in several states passing legislation aimed at curbing the teaching in K-12 schools of material generally deemed inconsistent with a hagiographic perspective of U.S. history that consigns discrimination to an irrelevant past that is best ignored.[10]

The questioning of the effects of law schools' business practices and pedagogy has occurred before and the legal academy has thrived nonetheless.[11] Indeed, as of this writing, the application numbers have recovered significantly from the lows of a few years ago[12] — a development that may undermine efforts to reform legal education or its business model. After all, increasing demand for what law schools offer may be interpreted as vindication of the *status quo* and refutation of critics. Further, apparent growth in interest in legal education may have yet more symbolic meaning when it occurs in the course of a global pandemic unlike anything the world has faced in nearly a century. The pandemic prompted radical changes in teaching methods, implemented overnight as public health mandates dictated the cessation of in-person,

10 See *e.g.* FAC tit 6 §6A-1.094124(3)(b) (2019) (proscribing the teaching of "theories that distort historical events and are inconsistent with State Board approved standards [such as] the denial or minimization of the Holocaust, and the teaching of Critical Race Theory, meaning the theory that racism is not merely the product of prejudice, but that racism is embedded in American society and its legal systems in order to uphold the supremacy of white persons. Instruction may not utilize material from the 1619 Project and may not define American history as something other than the creation of a new nation based largely on universal principles stated in the Declaration of Independence").

11 Bryant G Garth, "Crises, Crisis Rhetoric, and Competition in Legal Education: A Sociological Perspective on the (Latest) Crisis of the Legal Profession and Legal Education" (2013) 24:2 Stanford Law & Policy Review 503 at 506–509 (describing depression-era criticism of legal education and likening that criticism to the more recent variety); see also Simkovic & McIntyre, *supra* note 5 at 252-53 (summarizing criticism of cost of law school).

12 See *LSAC* (2001-2016), *LSAC* (2020), *LSAC* (2021), *supra* note 3.

classroom teaching.[13] Whether any of those changes will survive the end of pandemic isolation measures is an open question; the pandemic is, then, a fourth challenge that simultaneously may open a window of opportunity for meaningful change.

Legal education thus confronts multiple, powerful criticisms. The business model is under fire because legal education is perceived as too costly relative to the financial benefit to graduates. The substance of the curriculum is under fire as irrelevant to practice and/or insufficiently attentive to the role of law in perpetuating inequality, both implicating institutional mission. The processes used to select students and to hire faculty are under fire for failure to result in populations that look like that of the nation as a whole, a criticism that also implicates institutional mission. This Essay argues that the global pandemic has made possible institutional innovation that in the past has been elusive.

It is striking that three of these challenges, captured in the criticism of law schools, have presented themselves at earlier times, too; concern over the gap between what law schools teach and what lawyers need to know is certainly not new.[14] While the health crisis precipitated by the spread of COVID-19 has highlighted challenges faced by law students, in particular, the challenges themselves — the cost to them of their legal education, the teaching methods of law schools, among others — are not new. Perhaps what *is* new, and what has made discussion of legal education more fraught, is the degree to which decisions about legal education are seen — or explicitly recognized — as political decisions. What law schools teach, how they teach it, what they exhort their

13 Jonathan D Glater, "Pandemic Possibilities: Rethinking Measures of Merit" (17 June 2021) at note 5 and accompanying text, online (blog): *UCLA Law Review Discourses* <www.uclalawreview.org/pandemic-possibilities-rethinking-measures-of-merit/> [Glater, "Pandemic Possibilities"].

14 Eli Wald puts it bluntly at the start of a 2021 article: "[f]or a century, critics have called for a law school reform agenda centered around integrating skills and formation of professional identity into the mainstream of legal education, only to be ignored …": Eli Wald, "Formation Without Identity: Avoiding a Wrong Turn in the Professionalism Movement" (2021) 89:3 University of Missouri-Kansas City Law Review 685 at 685.

students to go forth and accomplish, all have partisan, political significance. Decisions made by law school administrators and faculty have implications for the credibility of the legal academy as a source of neutral perspective and perhaps of the law as an objective institution. These are weighty concerns indeed. But more worrisome is the prospect that in an effort to avoid appearing partisan, the legal academy also avoids adopting a morally correct stance consistent with both the rule of law and the demands of justice.

The discussion that follows examines this set of challenges confronting law schools and ponders paths forward in a time of political volatility. Part II describes the financial model and summarizes criticism of that model, identifying the consequences for students of rising tuition, increasing indebtedness, and distribution of financial aid to recruit high-scoring students rather than support those with financial need. Part III turns to the substance of legal education, noting the modest changes made in the century and a half since Langdell pioneered the use of the case method. Part IV turns to the reckoning with racial injustice made more evident by the context of the global pandemic. Part V notes the difficulty of responding to the challenges already identified, if there is no overriding mission statement to provide guidance. The final substantive Part then explores the costs and benefits that attach to different responses to those challenges, given the degree of polarization around legal education and the law in a dynamic and politically tense moment. There follows a brief conclusion.

II. The Financial Model

The dominant criticism of law schools in recent years has begun, and often enough been limited to, cost.[15] By cost, critics typically mean the price that students pay, not the cost of operations, although faculty salaries routinely come under fire, too.[16] According to *U.S. News & World Report,* which collects data on the costs of law school, tuition and fees at a private, nonprofit law school in

15 See *e.g.* Tamanaha, *supra* note 4.

16 See *e.g.* Campos, "American Law School", *supra* note 5 at 187–91.

the 2020-2021 academic year cost more than USD $50,000;[17] the total cost, including room and board, would necessarily be greater. However, what each student actually pays is the result of a complex system, and the effects of what students pay — and, often, how much they borrow in order to pay — for their legal education are many and likely subtle. This Part first describes the costs of law school for students, then turns to the potential effects that the high and rising price has on their lives after obtaining a degree.[18]

When critics attack tuition, the argument is not simply that law school costs more than it should, but that it is not a worthwhile investment. As Paul Campos wrote in 2012: "[i]f the cost of becoming a lawyer continues to rise while the economic advantage conferred by a law degree continues to fall, then eventually both the markets for new lawyers and for admission to law school will crash".[19] This is a straightforward cost-benefit argument, resting on assumptions about why students pursue legal education that this Part will explore in more detail below,[20] and it is couched as a warning to law schools that they must reduce their prices or risk financial ruin.

While the financial collapse of legal education has yet to materialize, the cost-benefit critique still resonates for law students, who after all are the people who bear the burden of debt. For a particular student, it may well be that the wage to be earned after graduation is insufficient to manage the repayment obligation comfortably. Not surprisingly, the question of whether law school confers an income benefit that justifies the cost has drawn scholarly scrutiny; Michael Simkovic and Frank McIntyre find that a law degree leads to a lifetime income

17 Farran Powell & Ilana Kowarski, "10 Law Schools that Offer the Most Tuition Help" (14 April 2021) *U.S. News & World Report*.

18 Limiting the analysis to students who complete the course of study is not intended to diminish the impact of cost and indebtedness for students who do not graduate. These students may find themselves in an extremely difficult financial position, lacking the anticipated income boost from obtaining a *juris doctor* while confronting the obligation to repay student loans.

19 Campos, "American Law School", *supra* note 5 at 178–79.

20 See *infra* traditional knowledge.

boost of USD $1,000,000, a sum that certainly exceeds the cost of a legal education, at least for now.[21] Their finding does not mean every law school graduate experiences this kind of benefit — far from it.[22] But it does refute the equally vague and potentially misleading claim that law school is generally not a worthwhile financial investment.

Law school tuition has risen. A task force of the American Bar Association reported in 2015 that between 1999-2000 and 2014-2015, tuition at private law schools rose by 29 percent and by 104 percent at public law schools.[23] Net tuition, a figure taking into account scholarship aid to students, rose 29 percent at private institutions and 102 percent at public institutions.[24] Not surprisingly, student borrowing has increased as well. The same 2015 report found that in 2012-2013, total borrowing by students at private law schools on average reached USD $127,000 and by students at public law schools, USD $88,000.[25] That was eight years ago, and the numbers have increased since. At the same time, institutions of higher education generally have had to weather the uncertain revenue environment created by the pandemic, and law schools are not immune. Both public and private institutions are vulnerable, the former in particular as state revenues wane and perhaps, with the benefit of federal support, wax.

Rising costs to students mean that access to credit is increasingly important, and that has serious implications. First and perhaps most obviously, the burden of debt is not evenly distributed across the student population: those students

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21 Simkovic & McIntyre, *supra* note 5.

22 The authors acknowledge this, observing that "individual outcomes vary", *ibid* at 285.

23 Memorandum from Dennis W Archer to Interested Parties (17 June 2015) at "Task Force on Financing Legal Education", online (pdf): *American Bar Association* <www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.pdf>.

24 *Ibid* at 8.

25 *Ibid*.

whose backgrounds are less privileged are more likely to need to borrow and to borrow larger amounts. Thus, the debt finance structure penalizes those who arrive at law school with greater financial need. The repayment obligation at the back end, in turn, weighs on students as they make career choices. While there is not extensive research on this, much of what exists suggests that debt leads students to enter the private sector rather than seek lower-paying, public interest opportunities that they might have wished to pursue otherwise.[26] The debt burden also affects other life decisions, like having a family or buying a house.[27] And the mere prospect of debt deters some number of students from pursuing a law degree entirely.[28]

These hard financial realities have disproportionate demographic effects, as Dalié Jiménez and I have argued.[29] Black students, who are more likely to

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26 See *e.g.* Erica Field, "Educational Debt Burden and Career Choice: Evidence from a Financial Aid Experiment at NYU Law School" (2009) 1:1 American Economic Journal: Applied Economics 1 (reporting on positive impact on pursuit of public interest jobs when law school offered grant aid to students rather than loans); see also Christopher J Ryan, Jr, "Paying for Law School: Law Student Loan Indebtedness and Career Choices" (2021) 2021:1 University of Illinois Law Review 97 at 130 (finding that higher law school cost of attendance correlates with a lower, stated interest in a public interest job upon graduation).

27 Much has been written on this in the popular press. See *e.g.* Yuki Noguchi, "Heavy Student Loan Debt Forces Many Millennials to Delay Buying Homes" (1 February 2019) *NPR* (describing student borrowers who have put off investing in housing as a result of their loan obligations); see also Claire Cain Miller, "Americans are Having Fewer Babies. They Told Us Why" (5 July 2018) *The New York Times* (describing student debt as factor contributing to financial insecurity and consequent reluctance to start a family).

28 See Steven A Boutcher, Anna Raup-Kounovsky & Carroll Seron, "Financing Legal Education through Student Loans: Results from a Quasi-Experiment in Tuition Remission" (2018) 67:3 Journal of Legal Education 755 at 776–77 (describing finding that debt aversion affected indebtedness and warning that the "phenomenon of fear of debt may have wider implications for how this emerging generation of law graduates manages their careers").

29 Dalié Jiménez & Jonathan D Glater, "Student Debt is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform" (2020) 55:1 Harvard Civil Rights-Civil Liberties Law Review 131 at 131–32 (observing that Black

borrow and to borrow larger amounts than other students,[30] consequently have a heavier repayment burden weighing on them when they complete a course of study. Latinx students may be less likely to borrow, but those who do are more likely to default. Disparities in wealth and wages along lines of race[31] mean that repayment of any given amount is more challenging for Black and Latinx borrowers in particular. Student loans simultaneously make higher education and its desirable corollary, a pathway to far greater economic security,[32] more accessible while ensuring that members of the same groups historically subject to discrimination attain less of a benefit because of debt.[33]

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and Latinx students "are disproportionately likely to borrow, to borrow larger amounts, to take out student loans to attend for-profit schools with worse career outcomes, and to default on their loans relative to their White peers" and that while Latinx students are less likely to borrow than White students but those who do are also more likely to attend a for-profit institution and to default than White students).

30 *Ibid*.

31 Brandon Fuller, "Understanding the Racial Wealth Gap" (2020), online (pdf): *Federal Reserve Bank of Richmond* <www.richmondfed.org/-/media/RichmondFedOrg/publications/research/econ_focus/2020/q4/at_the_richmond_fed.pdf>; see also Neil Bhutta et al, "Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances" (28 September 2020), online: *Board of Governors of the Federal Reserve System* <www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm> (contrasting wealth of different racial and ethnic groups); on the wage gap between Latinx workers and White workers, see Marie T Mora & Alberto Dávila, "The Hispanic-White Wage Gap Has Remained Wide and Relatively Steady" (2 July 2018), online: *Economic Policy Institute* <www.epi.org/press/the-hispanic-white-wage-gap-has-remained-wide-and-held-steady-for-decades/>.

32 Data continue to show that the financial benefit of higher education remains robust, even as the cost of attendance has risen. "Learn More, Earn More: Education Leads to Higher Wages, Lower Unemployment" (May 2020), online: *US Bureau of Labor Statistics* <www.bls.gov/careeroutlook/2020/data-on-display/education-pays.htm>.

33 Sociologists who have studied the phenomenon of student debt have dubbed this pattern "predatory inclusion". Jiménez & Glater, *supra* note 29 and accompanying text.

In the context of historical and persistent wealth and income inequality that tracks race and ethnicity, then, the rising cost of law school, the concomitant increases in indebtedness, and aversion to taking on debt all work together to undermine the appeal and feasibility of legal education for the same kinds to students who, not so many decades ago, were excluded under color of law.[34] The financing of legal education as a result contributes to unequal levels of access to the profession and stands in the way of efforts to promote inclusivity in the practice of law. The commitment to diversity expressed by the organized bar[35] thus has powerful implications for law schools' admissions and financial aid practices.

However, those admissions and financial aid practices may not level the playing field. First, law schools compete to enroll the students with the highest scores, not least because enrolled students' scores affect an institution's position on influential rankings. The LSAT test results show gaps along lines of race, with White and Asian American students receiving higher scores.[36] The admissions goal of admitting students with higher scores works against inclusion of more Black students in particular, for example.[37] Further, because law schools increasingly use scholarship aid as a lure to entice high-scoring students

34 See *Sweatt v Painter*, 339 US 629 at 631 (1950) (describing the facts of a case in which the plaintiff was denied admission to the University of Texas Law School "solely because he is a Negro"; the Court struck down the policy).

35 See *e.g.* "Diversity & Inclusion", online: *American Bar Association* <www.americanbar.org/topics/diversity/> ("[t]he ABA maintains a longstanding commitment to diversity through eliminating bias and enhancing inclusion in the Association, the legal profession, and the justice system").

36 Susan P Dalessandro, Lisa C Anthony & Lynda M Reese, "LSAT Performance with Regional, Gender, and Racial/Ethnic Breakdowns: 2007-2008 through 2013-2014 Testing Years" (2014), online: *Law School Admission Council* <www.lsac.org/data-research/research/lsat-performance-regional-gender-and-racialethnic-breakdowns-2007-2008>.

37 See William C Whitford, "Law School-Administered Financial Aid: The Good News and the Bad News" (2017) 67:1 Journal of Legal Education 4 at 9 (observing that need-based aid is critical to "enhance diversity in background in the legal profession").

regardless of their actual financial need,[38] aid practices may contribute to larger debt burdens for students with lower scores.[39] These students are disproportionately Black. Heavier debt burdens in turn almost certainly influence students as they make various career choices; those students who are unencumbered by debt, or whose debt burden is lighter, experience more freedom to take jobs that may pay less.[40]

While federal student aid programs have features intended to reduce the burden of repayment for students who enter public service careers,[41] flexible repayment plans with payments tied to borrower income,[42] and the prospect of forgiveness for students who make their payments for a period of years,[43] those programs may be politically vulnerable.[44] The Public Service Loan Forgiveness Program, too, has been very slow to cancel the debt obligations of potentially

38 *Ibid* at 7–8.

39 This pattern has drawn criticism from writers charging that the result is a regressive subsidy from poorer, lower-scoring students to better-off, higher-scoring students. Jerome M Organ, "Net Tuition Trends by LSAT Category from 2010 to 2014 with Thoughts on Variable Return on Investment" (2017) 67:1 Journal of Legal Education 51 at 74–75 (describing "this pattern of awarding scholarships [as] pretty well-entrenched within legal education").

40 See Steven A Boutcher, Anna Raup-Kounovsky & Carroll Seron, "Financing Legal Education through Student Loans: Results from a Quasi-Experiment in Tuition Remission" (2017) 67:3 Journal of Legal Education 755 at 776 (studying effects of reducing or eliminating tuition for cohorts of students at a new law school and suggesting that financial aid that has an "equalizing effect" on students "may also open up a space for a broader swath of students to explore a wider range of career options, including public service, at career launch").

41 34 CFR § 685.219(a) (2021).

42 34 CFR § 685.209 (2017).

43 34 CFR § 685.209(a)(6) (2017).

44 The Trump Administration called for elimination of the Public Service Loan Forgiveness program, see *e.g.* Adam S Minsky, "Trump Proposes Repealing Public Service Loan Forgiveness – Can He Do That?" (11 February 2020) *Forbes*.

eligible borrowers,[45] and at least until quite recently has canceled the debt of only a small number of applicants.[46] Unfortunately, it is possible that students may be reluctant to rely on these federal aid programs.

All the financial concerns that the cost of law school rightly raises contribute, and have contributed, to a more subtle shift in thinking about legal education. More students approach their legal education with a consumer mindset, expecting a particular rate of return in the form of a well-paying job upon completion of their three years of study, as well as a particular level of service for the lofty price that law schools charge. In confronting such a consumer mindset, legal education resembles undergraduate higher education in the United States: surveys show an increasing share of college students emphasizing the employment and wage benefits of higher education as a reason to pursue their studies, even as students also cite the importance of intellectual growth.[47]

This mercantile conception of law as a career is in some tension with the historical view of the lawyer as a guardian of the public good who performs an essential role in well-functioning civil society. An American Bar Association task force a few years ago weighed the future of legal education and concluded that this "fundamental tension … underlies the current set of problems" confronting legal education.[48] Students may be forgiven for focusing on the private benefit

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45 Some of the federal Education Department's conduct of the program led to litigation by borrowers who argued that they were eligible for debt cancellation. The Department lost. Judge Timothy J Kelly, "Memorandum Opinion, American Bar Association et al v. United States Department of Education et al, Civil Action No. 16-2476" (2019), online (pdf): *Courthouse News* <www.courthousenews.com/wp-content/uploads/2019/02/ABA.pdf>.

46 Erica L Green & Stacy Cowley, "Broken Promises and Debt Pile Up as Loan Forgiveness Goes Astray" (29 November 2019) *The New York Times* (reporting that "[f]ewer than 1 percent of those who have applied for relief under the Public Service Loan Forgiveness program have been deemed eligible").

47 Rachel F Moran, "City on a Hill: The Democratic Promise of Higher Education" (2017) 7:1 UC Irvine Law Review 73 at 85.

48 "Task Force Report", *supra* note 8 at 6–7.

of investing in legal education, given the price they are expected to pay and the need to earn enough to repay any loans used.

Viewing legal education as a private good, benefitting only the student who receives it, has a macro effect as well: the willingness of taxpayers to subsidize access to the legal profession may wane. After all, a subsidy perceived to redound to the benefit of people who will earn high incomes in an elite field must be regressive. Perhaps this shift in perspective is one reason that tuition at public law schools has risen more quickly than has that at private, nonprofit institutions — although the cost at public institutions remains lower in absolute terms:[49] law schools have long been viewed as "cash cows" to subsidize the larger university, rather than vulnerable entities in need of subsidy themselves.[50] Law schools may also face revenue effects of the pandemic, though it is difficult to know at the time of writing. Public law schools in particular may face challenges and pressure to raise tuition and fees, if states reduce their financial support as a result of declining tax revenue.

For critics who argue that law schools produce too many lawyers — meaning that there are not enough law jobs that pay salaries sufficient to justify (or cover repayment of) the cost to law students[51] — disinvestment in legal education both by individual, potential students and by anyone who would subsidize accessibility of the profession are rational, desirable market corrections. The

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49 "Law School Tuition 1985-2012," Microsoft Excel: *Data from the 2013 Annual Questionnaire ABA Approved Law School Tuition History Data* (online: *American Bar Association* <www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/lawschool_tuition_averages_by_year_public_private.xls>).

50 Jay Sterling Silver, "Pedagogically Sound Cuts, Tighter (Not Looser) Accreditation Standards, and a Well-Oiled Doomsday Machine: The Responsible Way Out of the Crisis in Legal Education" (2014) 66:2 Rutgers Law Review 353 at 358.

51 Campos, "American Law School", *supra* note 5 at 197 (asserting that "[t]here aren't enough jobs for lawyers, especially new lawyers, and too many of the legal jobs that do exist do not pay enough to justify incurring the cost of a legal education").

trouble is, as various commentators reacting to criticisms of legal education have noted, the United States actually suffers from a shortage of lawyers, though not in the most lucrative fields. Any decline in their availability may worsen a longstanding gap in access to justice for those of greater and lesser means.[52] Recognizing this access-to-justice crisis, the cost of law school presents a slightly different problem: not how expensive it is but who pays. Where more of the cost shifted from students, whether through repayment assistance programs at the back end or grant aid that need not be repaid at the front end, students wishing to work in lower-pay jobs would be freer to do so. Perhaps, if more law students could provide lower cost legal services to people who cannot currently afford counsel, they would.

Some critics of the cost of legal education have argued that the current business model, with its reliance on loans that borrowers may not be able to pay and potentially regressive allocation of financial aid, marks law school as a "fundamentally unsustainable institution",[53] in the words of Paul Campos. He continued in that article, published in 2012: "[t]he ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession".[54] That is not quite how the ensuing decade played out, proving yet again the wisdom underlying Yogi Berra's caution about predictions. The persistence of inequality of access to legal education suggests that a greater concern about the rising cost of legal education and its undesirable implications is not that the business model of legal education cannot be sustained. It is that it can be.

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52 See *e.g.* Philip G Schrag, "Failing Law Schools – Brian Tamanaha's Misguided Missile" (2013) 26:3 Georgetown Journal of Legal Ethics 387 at 412 (noting that while Tamanaha bases his concerns on the financial hardships of law students and prospective law students, "[t]here is … a vastly larger group of low-income people whom the legal profession is failing: potential clients").

53 Campos, "American Law School", *supra* note 5 at 179.

54 *Ibid.*

III. The Curriculum and the Pedagogical Model

What law schools teach and how they teach it have received significant criticism for years, and both have evolved in part in response to such criticism. One line of criticism contends that law school classes do not prepare students for the actual practice of law; while the traditional, Socratic classroom may teach a student to "think like a lawyer"[55] — or at least like an appellate advocate — it does not prepare students for the pragmatic, common tasks lawyers undertake in multiple areas of practice,[56] and often devotes little time to professionalism and ethics.[57] A second line of criticism contends that the format of the traditional law school classroom, featuring professorial lecturing and those Socratic colloquies, neither prepares students for the practice of law nor constitutes effective pedagogy.[58] And a third, substantively critical line of criticism contends that law school classes too often present the law in a vacuum,

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55 Eli Wald & Russell G Pearce, "Making Good Lawyers" (2011) 9:2 University of St Thomas Law Journal 403 at 403–407.

56 Eli Wald, "The Contextual Problem of Law Schools" (2018) 32:1 Notre Dame Journal of Law, Ethics & Public Policy 281 at 282 [Wald, "The Contextual Problem"].

57 Rebecca Flanagan, "Better by Design: Implementing Meaningful Change for the Next Generation of Law Students" (2019) 71:1 Maine Law Review 103 at 116 (warning that law students "are less likely to have the prior knowledge and life experiences necessary to make sense of the complex cognitive, ethical, and professional demands of lawyering"); see also Wald, "The Contextual Problem", *supra* note 56 at 289–90 (arguing that the "crux of this strand of the professionalism crisis at law schools is not merely that they embrace [an] individualistic, market-based client-centered model of professionalism, but rather that they fail to introduce and model any competing visions of professionalism, such as models grounded in justice, dignity, public interest, social justice, or relational self-interest"); see also Gerald P López, "Transform – Don't Just Tinker With – Legal Education" (2017) 23:2 Clinical Law Review 471 at 523–24 (arguing that in legal education, "[a]s deserving of a central place in future training is all that takes place outside of litigation, often utterly attenuated from doctrinal analyses").

58 Jamie R Abrams, "Reframing the Socratic Method" (2015) 64:4 Journal of Legal Education 562 at 566 (note 22 and accompanying text).

ignoring historical, cultural, and political context that shapes how the law is applied, potentially applied differently, and to whom.[59] This Part very briefly examines each criticism.

A number of law schools and law school classes have incorporated more practical topics to help prepare students for the actual practice of law.[60] For example, classes may include drafting exercises and negotiation exercises, to name two. The American Bar Association has mandated more of this kind of classroom experience. [61] Classes may also use simulations of live client interactions, negotiations, or other aspects of practice.[62] These classes require time and effort to develop, and likely work best when of more modest size, so they present the same cost challenges that clinical courses do. Nonetheless, the acceptance of incorporation of exercises into doctrinal classes and creation of greater numbers of classes that do not consist solely of a professor imparting

59 See Cheryl I Harris, "Critical Race Studies: An Introduction" (2001) 49:5 UCLA Law Review 1215 at 1220-21 (tracing the development of Critical Race Theory and explaining that while "Critical Legal Studies had begun the important work of critiquing the foundational premise that law, as distinct from politics, was rule-bound, objective, and neutral, as part of the effort to expose the role of the law in maintaining and legitimizing an unjust status quo[,] CRT was an intervention that sought to build upon the insights (while resisting the constraints) of liberal civil rights scholarship and Critical Legal Studies in order to develop a theoretical language that would expose the limitations of prevailing racial ideology and facilitate its disruption").

60 Klint W Alexander, "The Changing Nature of Legal Education" (December 2018), online: *Wyoming Lawyer* <digitaleditions.walsworth.com/publication/?m=10085&i=549638&p=22&ver=html5>.

61 "ABA Standards and Rules of Procedure for Approval of Law Schools 2019 — 2020" (2019) at 303(A)(3), online (pdf): *American Bar Association* <www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-and-rules-of-procedure.pdf>.

62 Becky L Jacobs, "Teaching and Learning Negotiation in a Simulated Environment" (2008) 18:1 Widener Law Journal 91 at 91 ("[c]ourses focused on negotiation theory and skill development have become curricular staples at North American law schools").

wisdom from the lectern at the front of the room both mean that legal education is moving, slowly to be sure,[63] toward a more modern pedagogy.

In part in response to the criticism that the Socratic method so well established in the legal academy is less effective than other, more experiential forms of learning, clinical law classes that permit students to represent live clients under the supervision of an experienced practitioner who is also affiliated with the law faculty are commonplace.[64] Given the importance of discussion of client needs, analysis of legal strategies and tactics, and supervision, these classes cannot be too large — which makes them more costly to offer than a large, lecture format.[65] Further, clinics are increasingly specialized, providing sophisticated legal counsel in specific practice areas such as intellectual property and immigration law, for example. Recognizing the value of clinical courses and committing to offering them has consequences for a law school's cost of operations, which in turn have consequences for students paying for their legal education. The same is true of experiential classes other than clinics, like simulation courses. Pedagogical choices in this way are tied directly to the business model discussed in Part II.

The evolution of legal education has included changes beyond the expansion of experiential learning. Law schools in recent decades have developed programming in legal research and writing, for example.[66] These courses, intended to give law students an opportunity to practice and improve skills they

63 Carol Goforth, "Transactional Skills Training Across the Curriculum" (2017) 66:4 Journal of Legal Education 904 at 904 (noting at the outset that "[l]egal education adapts slowly").

64 López, *supra* note 57 at Appendix I (describing curricular reforms at five law schools in 2007-2009).

65 Nancy B Rapoport, "Rethinking U.S. Legal Education: No More 'Same Old, Same Old'" (2013) 45:4 Connecticut Law Review 1409 at 1426.

66 Emily Grant, "Toward a Deeper Understanding of Legal Research and Writing as a Developing Profession" (2003) 27:2 Vermont Law Review 371 at 376 (describing the sharp expansion of legal research courses in the 1980s).

will need as practitioners, are resource intensive and consequently costly.[67] Also, of course, classes that help students develop an important mix of practical writing and research skills contribute to the value of the legal education provided. But these classes are consistent with shifts in the law school curriculum overall.[68]

The impact of critical analyses of the content of legal education are still emerging, though scholars have recognized the trend toward recognition of "rights and public services such as health care and education" in lieu of wholesale redistributive policies in the United States, and expansion of rights naturally entails a role for lawyers.[69] Movement toward a more assertive role on social justice for law schools has accelerated, even as controversy over the meaning of the phrase has increased, in the wake of the murder of George Floyd, an unarmed Black man, by a White police officer in 2020. This was not the first nor the last such killing in recent years, but the wanton callousness of the officer, the viral video footage of the murder, and the explosion of protest against racialized police brutality that followed all prompted a remarkable, national

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67 Rachel Croskery-Roberts, "Ten Years In: Critical View of the Past, Present, and Future of Skills Education at UC Irvine Law School" (2020) 10:0 UC Irvine Law Review 469 at 484 (describing the impact of small increases in class sizes in legal research and writing courses, given the need for achievement of, for example, individualized feedback to students).

68 Back in 1996, the American Bar Association modified accreditation standards for law schools to require "an educational program designed to provide its graduates with basic competence in legal analysis and reasoning, legal research, problem solving and oral and written communication": "American Bar Association Section of Legal Education and Admissions to the Bar Report to the House of Delegates" (August 1996) *ABA Journal* at §302(a)(iii); "ABA Standards and Rules of Procedure for Approval of Law Schools 2020 — 2021" (2020), online (pdf): *American Bar Association* <www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-for-approval-of-law-schools.pdf> ["ABA Standards and Rules"].

69 See *e.g.* Edward Rubin, "The Future and Legal Education: Are Law Schools Failing and If So, How?" (2014) 39:2 Law & Social Inquiry 499 at 508 (describing the significance of a "social justice agenda" for law schools).

grappling with racism.[70] Law schools were not untouched, but the public attention to structural racism and the backlash against reforms intended to curtail police violence all contributed to an atmosphere in which the decisions made at law schools are subject to heightened scrutiny.

Greater recognition of the role of law as either contributor to or means of opposing potential historical inequity puts pressure on law schools to tackle explicitly the troubling question of whose interests to serve: future, individual clients or the wider, more amorphous society shaped by law? That is, should lawyers zealously pursue only the narrow interests of whoever pays the bills, or do they have broader responsibilities? Rachel Moran describes two conceptions of the lawyer's role, each with implications for legal education: the expert professional and the social trustee professional.[71] The former emphasizes loyalty to the client, in the extreme to the exclusion of all other considerations, while the latter emphasizes a concomitant commitment to client representation that also enhances the greater good.[72] The social trustee model is inherently challenging, Moran notes, because "[s]triking the right balance between private interests and public values had undoubtedly been difficult – if not impossible – to achieve".[73]

Part IV explores more thoroughly the risks of responding to or ignoring demands that institutions adopt an antiracist stance. The ongoing asking of questions about what and how to teach has grown only more intensive and potentially divisive, even as recognition of the importance of the answers has spread. The current moment may provide an opportunity for law schools to

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70 Katie Rogers, "Biden Calls Chauvin Verdict a 'Much Too Rare' Moment of Justice" (21 April 2021) *The New York Times* (placing the trial of the officer who killed George Floyd "at the center of a national reckoning on race and policing").

71 Rachel F Moran, "The Three Ages of Modern American Lawyering and the Current Crisis in the Legal Profession and Legal Education" (2019) 58:3 Santa Clara Law Review 453 at 455–56.

72 *Ibid* at 456.

73 *Ibid*.

innovate — though given a surge in law school applicants in 2020-2021, the impetus to do so may wane as the perception of a crisis fades and more typical complacence that whatever law schools are doing must be just fine, may return.

IV. Awakenings: Health and Equity

The COVID-19 pandemic that almost overnight forced law schools online in March 2020 also made more obvious the disparities in the educational experience for differently situated students. Not all students suddenly required to participate in learning activities through the Internet actually had reliable and fast enough connections to do so consistently;[74] not all students working remotely had access to quiet spaces in which to listen to class discussions or to complete reading and writing assignments. Many students who worked part time while enrolled had to juggle not only the demands of newly remote schooling but also responsibilities to care for parents, children, or other family members now isolated from the sources of support they previously relied on.[75] These challenges fell upon students regardless of enrollment, affecting kindergarten through graduate and professional students, but at every level the burdens were distributed unevenly. Inevitably, students of more modest means faced a greater number of difficult obstacles, with fewer resources to manage them.[76]

Over the same period, awareness of inequality along lines of race spread in what may have been unprecedented fashion with news coverage of repeated

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74 See *e.g.* Niu Gao & Joseph Hayes, "The Digital Divide in Education" (February 2021), online: *Public Policy Institute of California* <www.ppic.org/publication/the-digital-divide-in-education/> (reporting that in 2019, "13% of K–12 students and college students did not have broadband at home").

75 See *e.g.* BS Russell et al, "Initial Challenges of Caregiving During COVID-19: Caregiver Burden, Mental Health, and the Parent-Child Relationship" (2020) 51:5 Child Psychiatry& Human Development 671.

76 Nicholas Casey, "College Made Them Feel Equal. The Virus Exposed How Unequal Their Lives Are" (5 April 2020) *The New York Times*.

killings of unarmed Black men by police.[77] Public attention to the conduct of law enforcement has prompted universities to review their relationships with police,[78] but concern has not been limited to disparities in that context. Colleges, universities, and law schools also face more scrutiny over their hiring practices, because of the low numbers of nonwhite members of their faculties.

Inequality along lines of race and class, then, are at the center of national, political discussions about education, and the pandemic may have opened a door to reforms previously viewed as impossible. In the undergraduate admissions context, for example, COVID-19 led to colleges and universities abandoning the use of standardized tests — a highly controversial step.[79] Whether law schools will follow suit and make permanent changes to their admissions criteria, of course, remains to be seen. Several have modified requirements to allow applicants to submit scores on the GRE, an exam used by other graduate and professional programs, in place of the standard law school admissions test, the LSAT.[80] Whatever the long-term effects, the space has opened for difficult conversations about policies and practices of the legal academy that have historically, disproportionately, and adversely affected students and faculty members who are members of communities long underrepresented at law schools. In the course of the pandemic, law schools

77 See *e.g.* Charles Blow, "Rage Is the Only Language I Have Left" (17 April 2021) *The New York Times* (chronicling police killings of Black men and describing a tracking study that found that while "[e]very year, the police shot and killed roughly 1,000 people[,] Black Americans are killed at a much higher rate than white Americans, and the data reveal that unarmed Black people account for about 40 percent of the unarmed Americans killed by the police, despite making up only about 13 percent of the American population").

78 Julia Barajas, "At Some U.S. Universities, a Time to Rethink Cops on Campus" (9 July 2020) *Los Angeles Times.*

79 See generally, Glater, "Pandemic Possibilities", *supra* note 13 (describing the move by the University of California to abandon consideration of standardized test scores in undergraduate admissions).

80 David M Klieger et al, "The Validity of GRE General Test Scores for Predicting Academic Performance at U.S. Law Schools" (2018) Educational Testing Service Research Report No RR-18-26 at 3.

changed grading practices,[81] for example, and no doubt many individual professors also modified how they conducted classroom discussions to help students better cope with the difficulties of online learning. These are changes that might help to address longstanding law school practices that have been criticized for disadvantaging students who arrive on campus from less privileged backgrounds.[82] Such changes also recognize possible ways institutions of higher education can and do support students far beyond the classroom, from addressing potential food insecurity to providing health care and mental health support.

Again, time will tell which of the progressive steps taken in response to the pandemic survive its eventual passing and change the experience of a newly normal legal education. A critical driver of any innovation will be clarity of purpose: the extent to which law school faculty and administrators believe that they should prioritize the promotion of equity across a diverse student body made up of people whose backgrounds have prepared them to varying degrees for the demands — some justified, some not — of legal education.

V. The Mission in the Moment

As the preceding discussion suggests, responding to the different challenges confronting legal education is considerably more difficult in the absence of consensus on what such an education, and the institutions that provide it, are

81 See generally, Glater, "Pandemic Possibilities", *supra* note 13 and accompanying text.

82 Meera E Deo, "Two Sides of a Coin: Safe Spaces & Segregation in Race/Ethnic-Specific Law Student Organizations" (2013) 42:1 Washington University Journal of Law & Policy 83 at 85; see also Meera E Deo, "Separate, Unequal, and Seeking Support" (2012) 28:1 Harvard Journal on Racial and Ethnic Justice 9 at 18–9 (describing studies that "indicate that legal education continues to focus on white males as the primary recipients of legal knowledge and classroom attention, with students of color often feeling 'othered' and voicing concerns that their race negatively affects how professors treat them" and suggesting that "[l]aw students of color often have higher attrition rates and lower academic outcomes than whites, as many disengage from classrooms focused primarily on white students").

supposed to do. Not surprisingly, much has been written about the goals of legal education and of law schools, both to criticize and to defend institutional and pedagogical practices. Part V.A below briefly identifies objectives typically offered, then explores the implications of those goals for developing responses to the challenges presented in Parts II, III, and IV. Part V.B then situates possible reforms in the historical moment law schools must contend with at the time of this writing, when simply espousing commitment to the rule of law — a generic, anodyne statement — may be heard as controversial.

A. The Mission

The American Bar Association, which accredits law schools in the United States, provides a statement of the objectives of a program of legal education. Standard 301 reads in full:

> (a) A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.
>
> (b) A law school shall establish and publish learning outcomes designed to achieve these objectives.[83]

This leaves room for considerable variability among institutions on the question of what law schools are to try to do, and scholars have criticized the extent to which law schools may choose to teach in such a way that graduates are less likely to become "effective, ethical, and responsible … members of the legal profession".[84] This goal does not have any obvious implications for whom a particular law school admits as a student or hires as a faculty member.[85] Indeed,

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83 "ABA Standards and Rules", *supra* note 68 at 17.

84 *Ibid*. For example, Eli Wald has pointed out the extent to which legal education encourages competition and zealous client service over the achievement of substantive justice in the course of advocacy. Wald, "The Contextual Problem", *supra* note 56 at 289–90.

85 Standard 401 states the qualifications applicable to law school faculty:

> [a] law school shall have a faculty whose qualifications and experience enable the law school to operate in compliance with the Standards and carry out its program of legal education. The faculty shall possess a high degree of

the ABA has supported increasing experimentation and greater variety of approaches to implementing this mission statement.

Measures of institutional merit that receive considerable attention in the legal academy are somewhat distinct: factors like selectivity, enrolled students' test scores and grades, clerkship placements, postgraduate salaries, and faculty members' credentials all play a role in determining where a law school falls in the national pecking order.[86] As Bryant Garth observes:

> law schools compete according to what is valued within the semi-autonomous legal field, and law students, faculty, and deans are well-aware of the hierarchy and the terms of competition. There is differentiation among the different law schools, to be sure, but law schools tend to compete by trying to show movement in the traits that are valued within the general law school world-hiring scholars, curricular innovation, better credentialed students, higher bar passage, ability to secure corporate jobs. Sociological study suggests also that competition in what is valued in the field tends to work together to promote the prosperity of the field as a whole.[87]

In this sociological perspective, then, to the extent that excellence in the field of legal academia is perceived by the community of law scholars and law school administrators to encompass promotion of greater equity in opportunity, these institutions will pursue that goal. One implication is that those in positions to steer law schools, both deans and faculty, may enjoy an opportunity at this historical moment to effect a meaningful shift in institutional course. Of course, such initiative, taking advantage of the opportunity alluded to in the title of this Essay, is not without its own challenges. Law schools operate in a competitive environment constrained by rankings produced by media organizations, perhaps most notably *U.S. News & World Report*; the criteria used by such

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> competence, as demonstrated by academic qualification, experience in teaching or practice, teaching effectiveness, and scholarship.

"ABA Standards and Rules", *supra* note 68 at 27.

86 Of course, the rankings by publications like *U.S. News & World Report* matter, too.

87 Garth, *supra* note 11 at 526.

publications have powerful effects on decisions at law schools and almost certainly affect decisions about admissions, the curriculum, and other aspects of the educational experience provided.[88]

B. The Moment

The horrific killings by police of unarmed Black men that have set off a wave of protest, recriminations, and efforts at reform have also enabled difficult conversations about structural inequality along lines of race at all levels of society in the United States. Law school faculty and administrators discussing law's lack of diversity have taken up the ideas of scholars and public intellectuals who have spelled out what it means to be antiracist and what the consequences are of failure to take on such responsibility.[89] The speed and scope of responses in support of racial justice by deans, faculty, and institutions may be without precedent.[90] For example, members of the faculty at Penn State Dickinson Law

88 See generally Michael Sauder and Ryon Lancaster, "Do Rankings Matter? The Effects of U.S. News & World Report Rankings on the Admissions Process of Law Schools" (2006) 40:1 Law & Society Review 105 at 110 (noting reported effects of rankings include a "dramatic increase in money spent on marketing and advertising, a much greater emphasis on LSAT scores in the admissions process, a transition from need-based to merit-based scholarships, and the transformation of the focus of career services from providing career counseling to ensuring that employment numbers are as high as possible").

89 See *e.g.* Ibram X Kendi, *How to Be an Antiracist* (New York: Random House Publishing, 2019) (defining antiracism as traditional knowledge and explaining the need for people and institutions to adopt antiracist positions in order to promote social justice); see also Nikole Hannah-Jones, "The 1619 Project" (August 2019) *The New York Times*.

90 The Association of American Law Schools has posted a list of faculty resolutions, statements by deans of law schools, and other resources on a website for law school leaders. "Law Deans Antiracist Clearinghouse Project", online: *Association of American Law Schools* <www.aals.org/about/publications/antiracist-clearinghouse/> ["Law Deans Antiracist Clearinghouse Project"].

endorsed an antiracist admissions regime, the adoption of an antiracist curriculum, and a required course on Race and Equal Protection of the Laws.[91]

More appears to be happening than just action at individual law schools. The Association of American Law Schools ("*AALS*"), of which more than 175 law schools are members, [92] now operates a "Law Deans Antiracist Clearinghouse Project" aimed at "creating a space for our collective voices as leaders of law schools to engage our institutions in the fight for justice and equality, we strive to focus our teaching, scholarship, service, activism, programming, and initiatives on strategies to eradicate racism". [93] Two law schools, Washington and Lee University School of Law and Washburn University School of Law, have adopted the program advocated by the *AALS* site.[94]

What impact these efforts will have is unclear. Abandoning practices that contribute to disproportionate exclusion of Black and brown students, as well as those that work against faculty candidates of color, will be contested. The spectacular decision of the board of trustees at the University of North Carolina to override the faculty of the institution's journalism school and offer Nikole Hannah-Jones, the visionary public intellectual, author, and prominent contributor to *The New York Times* 1619 Project, a position without tenure offers an illustration of the kind of battles sparked by efforts to hire nonwhite and explicitly antiracist teachers.[95] Many in the legal academy, like institutions

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91 Danielle M Conway, Bekah Saidman-Krauss & Rebecca Schreiber, "Building an Antiracist Law School: Inclusivity in Admissions and Retention of Diverse Students – Leadership Determines DEI Success" (2021) Rutgers Race and the Law Review at 36–37 (forthcoming, draft as of 17 August 2021, on file with author).

92 "About AALS", online: *Association of American Law Schools* <www.aals.org>.

93 "Law Deans Antiracist Clearinghouse Project", *supra* note 90.

94 *Ibid.*

95 Katie Robertson, "U.N.C. Denies Tenure to Writer on 1619 Project" (21 May 2021) *The New York Times.*

of higher education more generally, are risk averse and quite attached to its conventions.

Just as the national dialogue over race has energized progressive advocates who for years have questioned the conduct of police and other powerful institutions, it has galvanized those who view criticism of the police as an attack on law and order.[96] The implications for the legal academy, characterized by its well-defined strata, are intriguing and potentially concerning: law school leaders, who do not necessarily land in senior positions by pursuing radical paths, almost certainly will stake out positions that they believe will be supported by their alumni and professional community. After all, one important aspect of the law school business model that this Essay has not touched on is development: philanthropy can contribute significantly to an institution's bottom line.

The likely result will be further division of the legal academy along an ideological axis, with some institutions adopting a more progressive stance and some a more conservative one. Such increasing division within the legal community, which wields outside influence in politics and culture, would not bode well for the prospect of depolarization of politics. But that is not the subject of this Essay; of greater note for my purposes is the prospect that law faculty and deans could pursue paths intended to promote equity and education. This seems a fitting objective for the legal academy.

VI. Conclusion

The discussion in this Essay has described four challenges confronting legal education: what they teach, how they teach, and the simultaneous demands of the global COVID-19 health crisis and a battle over racial justice that has facilitated conversations about whom they teach and whom they hire. These last, twin challenges also have created space for the legal academy to make changes more quickly than it would have otherwise, to achieve goals that have

96 See *e.g.* Nellie Bowles, "Abolish the Police? Those Who Survived the Chaos in Seattle Aren't So Sure" (8 August 2020) *The New York Times* (describing tensions between advocates of major police reform, including abolition, and small business owners fearful of what they fear will be anarchy).

received considerable attention but have not gotten so much traction, and to make the legal profession more accessible to a more diverse population. This Essay has argued that decisions to pursue such equity goals may be controversial and risky, but that law school deans and faculty members have an opportunity and responsibility to pursue these goals more aggressively and explicitly.