

# Redux: Towards an Empowering Model of Legal Education

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*This article seeks to imagine a post-pandemic opportunity for law schools. The author posits that despite the challenges presented by the pandemic years, which were largely navigated through crisis management, law schools, and higher education more generally, might emerge fortified to better serve society. Through this reboot, or redux, law schools have an opportunity to reimagine a new path forward. This project urges the creation of more inclusive, transdisciplinary, tech-incorporating, empowering, and entrepreneurially motivated law schools. Such law schools would look to the future, instead of being moored to the past. Importantly, recalibrations, or recommitments, would be driven by a mission to enhance access to legal services, and thereby to better serve the interests of justice.*

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- I. INTRODUCTION
  - II. THE PAST AND PRESENT
  - III. THE VOICE OF THE LAW SCHOOL, NOT THE SHOW
  - IV. INNOVATING OR, AT LEAST, ITERATING
  - V. LESSONS FROM REMOTE WORK AND ONLINE EDUCATION
  - VI. CONCLUSION
- 

## I. Introduction

Having entered the space of higher education leadership in 2010, I was struck by the tales told by senior deans about the good old days of ‘deaning’. While deaning is definitionally fraught for reasons that will be mentioned later, including multiple overlapping constituencies, often at odds with each other, the last ten years in higher education administration have interwoven numerous moments of societal upheaval upon the challenge of deaning.<sup>1</sup> The totality of these moments, crises, and constraints has provided lessons in leadership during times of change and tumult, lessons which I believe inure to the benefit of legal education specifically, with an ultimate through line benefit to society more broadly.

The societal backdrop of the last decade has fueled greater law school innovation, the entry of more diverse talent into student bodies, staff, and faculties, and has certainly infused the decanal ranks with more diverse talent, as well.<sup>2</sup> During this time there has been a growing realization that business as

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<sup>1</sup> See Gerald T McLaughlin, “The Role of the Law School Dean as Institutional Veteran” (2000) 31:4 *University of Toledo Law Review* 675; R Lawrence Dessem, “Top Ten Reasons to be a Law School Dean” (2001) 33:1 *University of Toledo Law Review* 19; and Margaret Raymond, “Work and Life and Death: A Law School Dean’s Perspective” (2017) 48:2 *University of Toledo Law Review* 303.

<sup>2</sup> See “Gateway to Legal Education Aims to Help Diversify Legal Field” (10 April 2018), online: *Mitchell Hamline School of Law* <[mitchellhamline.edu/news/2018/04/10/gateway-to-legal-education-aims-to-help-diversify-legal-field/](http://mitchellhamline.edu/news/2018/04/10/gateway-to-legal-education-aims-to-help-diversify-legal-field/)>; “ABA to Honor UH Law Center’s Pre-Law Pipeline

usual is not a sustainable path forward, certainly not for law schools, and likely not for the universities of which many law schools are a part.<sup>3</sup> Disruption has been frequent and has forced some changes that were likely long overdue.<sup>4</sup>

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for Accomplishments in Diversity” (17 January 2019), online: *University of Houston Law Center* <[www.law.uh.edu/news/spring2019/0117Pipeline.asp](http://www.law.uh.edu/news/spring2019/0117Pipeline.asp)>; and Karen Sloan, “‘It’s the Moment for This’: an Unprecedented Number of Black Women are Leading Law Schools” (13 May 2021) *Law.com*. See also Bernise Carolino, “University of Ottawa Launches Legal Technology Lab” (14 October 2020) *Law Times* (“[t]he lab aims to come up with technology-based solutions which will address the challenges of lawyers in their work, of citizens in seeking access to justice, of firms in meeting the demands for cost-effective services and of the legal sector in Canada”); Sarah Kent, “Digital Law and Innovation Society Hopes to Shape Future of Law and Technology” (27 June 2020), online: *University of Alberta Faculty of Law* <[www.ualberta.ca/law/about/news/2020/6/digital-law.html](http://www.ualberta.ca/law/about/news/2020/6/digital-law.html)> (“students will have the chance to work with experts in legal tech, pursue digital law projects, and be on the front lines of creating change, all while taking UAlberta Law courses with a digital law focus”); “Professor Ngai Pindell Named New Dean of Allard Law” (21 July 2021), online: *Peter A Allard School of Law* <[allard.ubc.ca/about-us/news-and-announcements/2021/professor-ngai-pindell-named-new-dean-allard-law](http://allard.ubc.ca/about-us/news-and-announcements/2021/professor-ngai-pindell-named-new-dean-allard-law)>; and Michael Bennaroch, “Donna E. Young Appointed Founding Dean of Faculty of Law” (16 December 2019), online: *Ryerson University* <[www.ryerson.ca/news-events/news/2019/12/donna-e-young-appointed-founding-dean-of-faculty-of-law/](http://www.ryerson.ca/news-events/news/2019/12/donna-e-young-appointed-founding-dean-of-faculty-of-law/)>.

<sup>3</sup> See Richard Susskind, “Tomorrow’s Lawyers” (2013) 39:4 *Law Practice* 34; and Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford, NY: Oxford University Press, 2008). See also Brian Z Tamanaha, *Failing Law Schools* (Chicago: the University of Chicago Press, 2012). But see Philip G Schrag, “Failing Law Schools - Brian Tamanaha’s Misguided Missile” (2013) 26:3 *Georgetown Journal of Legal Ethics* 387 (critiquing Brian Tamanaha’s book *Failing Law Schools*, analogizing it to a “nuclear weapon” and “an attack on the very structure of modern legal education” at 387); and Michael Simkovic & Frank McIntyre, “Populist Outrage, Reckless Empirics: a Review of Failing Law Schools” (2013) 108:1 *Northwestern University Law Review Online* 176, online (pdf): *Northwestern University Pritzker School of Law* <[scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1025](http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1025)>.

<sup>4</sup> See Ray Worthy Campbell, “Law School Disruption” (2013) 26:3 *Georgetown Journal of Legal Ethics* 341 at 341–42 (explaining how Brian Tamanaha’s book

It is my sense that we would do well to learn lessons from this tumult and innovate towards an empowering law school model that embraces the future more than the past. To do otherwise is to jeopardize professional opportunities for our graduates, to further the perception of removal from societal imperatives pressing for change, and to plant the seeds of our own obsolescence.<sup>5</sup> In sum, to

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*Failing Law Schools* misses the ways some of the most disruptive changes, such as effective online learning, that has enormous implications for institutional finances and missions, also creates opportunities for law schools to be better than ever, at lower costs); Lorne Sossin, “Law School as Social Innovation” (2017) 48:2 *Victoria University of Wellington Law Review* 225 at 230–34 (describing various social innovation initiatives that reflect attempts by law schools in Canada to embrace potential disruption, of new technologies, new models of dispute resolution, or new narratives of law, aimed at “allowing more people to access legal knowledge, advice and services, in more accessible and helpful ways” at 235); and Christian Sundquist, “The Future of Law Schools: Covid-19, Technology, and Social Justice” (2020-2021) 53:1 *Connecticut Law Review Online* 1, online (pdf): *University of Connecticut* <connecticutlawreview.law.uconn.edu/wp-content/uploads/sites/2747/2021/03/The-Future-of-Law-Schools-Covid-19-Technology-and-Social-Justice.pdf> (“[l]aw firms have greatly expanded the ability of lawyers to work remotely over the last few years, reducing the costs of maintaining physical office space while promoting flexibility for its attorneys and staff”, a trend that “will undoubtedly be accelerated as law schools similarly transition to online teaching methodologies in the wake of the COVID-19 pandemic” at 17). See also Jordan Furlong, “The Way We’ve Always Done It Is Wrong” (19 January 2022) *Law21* (to locate relevant posts, use the key term *disruption* or the equivalent in the search box).

<sup>5</sup> See David M Becker, “Some Concerns about the Future of Legal Education” (2001) 51:4 *Journal of Legal Education* 469; Melissa Harrison, “Searching for Context: a Critique of Legal Education by Comparison to Theological Education” (2002) 11:2 *Texas Journal of Women and the Law* 245; Robert R Kuehn & Peter A Joy, “An Ethics Critique of Interference in Law School Clinics” (2003) 71:5 *Fordham Law Review* 1971; Julie Macfarlane, “Bringing the Clinic into the 21st Century” (2009) 27:1 *Windsor Yearbook of Access to Justice* 35; W Bradley Wendel, “Should Law Schools Teach Professional Duties, Professional Virtues, or Something Else: a Critique of the Carnegie Report on Educating Lawyers” (2011) 9:2 *University of St Thomas Law Journal* 497; Paul Horwitz, “What Ails the Law Schools” (2013) 111:6 *Michigan Law Review* 955; Lee Stuesser, “The Future for Canadian Law

remain relevant, and hopefully reemerge more salient, law schools should continue to center their societal role in furthering democratic ideals towards access to justice and social uplift, and broaden their aperture and understanding of how that might be achieved in ways that are efficient and expert, inclusive, innovative, technologically accessible, and enriched, as well as transdisciplinary.

I think a reconceptualization of ‘where justice lives’ allows for an appreciation that within every course or class there are engaging and inspired legal possibilities for substantive justice, legal process, and thereby for access to and the delivery of inclusive justice.<sup>6</sup> Furthermore, the role and place of technology and innovation in legal pedagogy, practice, and our profession is an important part of each of these conversations, as is an acknowledgment that lawyers must also humbly appreciate that our profession is not self-contained.<sup>7</sup> The more we can

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Schools” (2013) 37:1 *Manitoba Law Journal* 155; and Melissa Gismondi, “Why Universities Are Failing to Prepare Students for the Job Market” (13 October 2021) *CBC News*.

<sup>6</sup> See “School of Law, Racial Bias, Disparities and Oppression in the 1L Curriculum: a Critical Approach to the Canonical First Year Law School Subjects” (28-29 February 2020), online (pdf): *Boston University School of Law* <[www.bu.edu/law/files/2019/12/BU-Symposium-Schedule-February-26th.pdf](http://www.bu.edu/law/files/2019/12/BU-Symposium-Schedule-February-26th.pdf)>.

<sup>7</sup> See Alan M Dershowitz, “The Interdisciplinary Study of Law: a Dedicatory Note on the Founding of the NILR” (2008) 1:1 *Northwestern Interdisciplinary Law Review* 3 at 5:

The law has varied over time in its emphasis on particular disciplines. There was a time when psychology was at the forefront, then sociology and now economics. To every discipline there is apparently a season, but there is no season for law shorn of other disciplines. Law without interdisciplinary input is like a beautiful wine decanter without the wine. Today’s law student must be familiar with developments not only in the social sciences, but in the hard sciences as well.

See also Ben W Heineman Jr, “Lawyers as Leaders” (2007) 116:1 *Yale Law Journal Forum*, online: *Yale Law Journal* <[www.yalelawjournal.org/forum/lawyers-as-leaders](http://www.yalelawjournal.org/forum/lawyers-as-leaders)>:

We also need lawyers who can understand the methods of thinking and analysis taught in business and public policy schools. Law, business, and public policy schools offer complementary perspectives from which to view public- and private-sector problems ... Ultimately, we need lawyers who have a great leader’s ability to define problems comprehensively and

understand our clients and their situations, businesses (both for-profit and not-for-profit), contexts, and circumstances, the better we can represent, evaluate, counsel, advise, negotiate, and advocate for them.<sup>8</sup> Hence, a hearty infusion of an awareness of politics, economics, psychology, business, and historical insights, in addition to cultural competence and EQ support, can only help our students better serve and support their future clients.<sup>9</sup>

And in so doing, it is my firm belief that those whose thoughts and voices have not previously carried, those with quiet voices and those for whom disability prevents or limits vocalized speech, can make a significant difference in society if we empower and support them through recognition of their gifts, skills, and leadership potential.<sup>10</sup> Given the leadership roles that lawyers are privy

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comprehensively; to integrate different perspectives into solutions; and to forge agreement on a solution and then implement it in a way that makes a difference.

But see Randy Kiser, “Why Lawyers Can’t Jump: the Innovation Crisis in Law (205)” (4 October 2020) *Legal Evolution*.

<sup>8</sup> See “Model Rules of Professional Conduct: Preamble & Scope” (2021), online: *American Bar Association*

<[www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_preamble\\_scope/](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/)>.

<sup>9</sup> I always found the introduction to contracting law, a foundational contracts law casebook, refreshing in its acknowledgement of law as informed by numerous disciplines: “Contracting Law: Fifth Edition” (2022), online: *Carolina Academic Press* <[cap-press.com/books/isbn/9781594609893/Contracting-Law-Fifth-Edition#>](http://cap-press.com/books/isbn/9781594609893/Contracting-Law-Fifth-Edition#>):

The fifth edition of *Contracting Law* continues the clear explanations of contract doctrine, engaging cases, and thought-provoking cultural and historical materials that have made this casebook a favorite of students and professors . . . The fifth edition augments the cultural material with notes and questions showing the social contexts for specific contract doctrines.

<sup>10</sup> See Stuart Pixley, “Lawyering with Challenges: Disability and Empowerment” (2015) 23:1 *The Professional Lawyer* 1, online (pdf): *American Bar Association* <[www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/the\\_professional\\_lawyer\\_lawyering\\_with\\_challenges\\_disability\\_and\\_empowerment.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/the_professional_lawyer_lawyering_with_challenges_disability_and_empowerment.pdf)> (“[t]he diversity movement advocates that organizations must do for people with disabilities what it does for all of its employees: create a safe,

to take on throughout society, law schools must commit to empowering a diverse cadre of our students through the building of their capacity for leadership in, and through, the law.<sup>11</sup> We have an opportunity to recalibrate the societal positioning of law schools. We can be centers of innovative and capacious thinking and learning in a rapidly changing society, and increasingly connected world, where the decisions made today have massive consequences for the quality of life of those who come behind us, and where the technologies of justice, as well as the justice of technologies, will be an important part of the conversations that we hope enhance professional opportunities for our students and graduates.

## II. The Past and Present

Legal education has experienced a remarkable amount of innovation over the last few decades.<sup>12</sup> It is important to acknowledge this fact. For example,

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empowering place where people can bring their ‘A game’. And a message that we have a valuable ‘A game’ to bring is the most important message of all” at 5); and Bjarne P Tellmann, “Mentoring and Diversity” (14 December 2017), online (blog): *National Disability Mentoring Corporation* <[ndmc.pyd.org/guest-blog-mentoring-and-diversity/](http://ndmc.pyd.org/guest-blog-mentoring-and-diversity/)>.

<sup>11</sup> See Deborah L Rhode, *Lawyers as Leaders* (Oxford, NY: Oxford University Press, 2013); and Anthony C Thompson, *Dangerous Leaders: How and Why Lawyers Must be Taught to Lead* (Stanford: Stanford University Press, 2018). To address this need we recently launched the Island Leadership Lab at the University of Hawai‘i at Mānoa William S Richardson School of Law: see “New Island Leadership Lab Launched at Law School to Empower Hawai‘i’s Next Generation of Leaders” (13 September 2021), online (blog): *University of Hawai‘i at Mānoa: William S Richardson School of Law* <[www.law.hawaii.edu/article/new-island-leadership-lab-launched-law-school-empower-hawai%E2%80%98s-next-generation-leaders](http://www.law.hawaii.edu/article/new-island-leadership-lab-launched-law-school-empower-hawai%E2%80%98s-next-generation-leaders)>; and Jayna Omaye, “New University of Hawaii Law School Initiative Touts Diversity, Inclusion” (13 September 2021) *Yahoo Finance*.

<sup>12</sup> See Robert M Lloyd, “Investigating a New Way to Teach Law: a Computer-Based Commercial Law Course” (2000) 50:4 *Journal of Legal Education* 587; Lisa A Kloppenberg, “‘Lawyer as Problem Solver:’ Curricular Innovation at Dayton” (2007) 38:2 *University of Toledo Law Review* 547; and Sari Graben,

experiential legal education has been embraced to a much greater extent, efforts towards diversity and inclusion are increasingly spoken of, if not acted upon, more schools have attempted to forge national and international relationships and partnerships, and legal tech capacity building is proliferating.<sup>13</sup> These steps forward are noteworthy, especially as both legal education and the profession are not traditionally regarded as beacons of disruptive innovation.<sup>14</sup>

As a profession, in practice and in the academy, we are traditionalist and conservative by design. Our legal foundation in *stare decisis*, “to stand by things decided”,<sup>15</sup> mandates our adherence to the past through a system of precedent necessitating the incorporation of historical notions as we chart a future course. To step back and interrogate this premise is to reveal the challenges and ironies, if not the very shaky footing on which we attempt to stand and propel ourselves forward.

At many turns, it is revealed that much of the law was not intended to be accessible or inclusive, nor was it even contemplated that diversity would be a

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“Law and Technology in Legal Education: a Systemic Approach at Ryerson” (2021) 58:1 Osgoode Hall Law Journal 139.

<sup>13</sup> See Constance Blackhouse, “The Changing Landscape of Canadian Legal Education” (2001) 20:1 Windsor Yearbook of Access to Justice 25; Joseph A Rosenberg, “Confronting Cliches in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills” (2008) 12:1 SMU Science and Technology Law Review 19; Michele Pistone, “Law Schools and Technology: Where We Are and Where We Are Heading” (2015) 64:4 Journal of Legal Education 586; Sossin, *supra* note 4; and Rosa Kim, “Globalizing the Law Curriculum for Twenty-First-Century Lawyering” (2018) 67:4 Journal of Legal Education 905.

<sup>14</sup> See Faisal Bhabha, “Towards a Pedagogy of Diversity in Legal Education” (2014) 52:1 Osgoode Hall Law Journal 59; William D Henderson, “Innovation Diffusion in the Legal Industry” (2018) 122:2 Dickinson Law Review 395; and Hilary G Escajeda, “Legal Education: a New Growth Vision: Part I - the Issue: Sustainable Growth or Dead Cat Bounce: a Strategic Inflection Point Analysis” (2018) 97:3 Nebraska Law Review 628.

<sup>15</sup> See Timothy Oyen, “Stare Decisis” (March 2017), online: *Cornell Law School Legal Information Institute* <[www.law.cornell.edu/wex/stare\\_decisis](http://www.law.cornell.edu/wex/stare_decisis)>.



worthy goal.<sup>16</sup> While this is true of many disciplines, our profession is to be duly critiqued for our shortcomings, especially given the lofty language that pervades

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<sup>16</sup> See Derrick Bell, “Foreword: The Civil Rights Chronicles” (1985) 99:1 *Harvard Law Review* 4 at 39–57 (hypothesizing that the US Supreme Court would accept a law school’s argument that the “maintenance of a predominantly white faculty ... is essential to the preservation of an appropriate image, to the recruitment of faculty and students, and to the enlistment of alumni contributions” and find that “neither title VII nor the Constitution prohibits it from discriminating against minority candidates when the percentage of minorities on the faculty exceeds the percentage of minorities within the population” at 46); John Hagan, Marie Huxter & Patricia Parker, “Class Structure and Legal Practice: Inequity and Mobility among Toronto Lawyers” (1988) 22:1 *Law & Society Review* 9 at 50–53 (analyzing the composition of different groups within the legal profession in Toronto and finding some “evidence of progress for women and Jews ... [in spite of] the increasingly apparent bad record of the past” at 52); Richard H Chused, “Hiring and Retention of Minorities and Women on American Law School Faculties” (1988) 137:2 *University of Pennsylvania Law Review* 537 (explaining that on law school faculties, “minority professors in general, and black professors in particular, tend to be tokens if they are present at all” and women are hired in numbers “significantly behind the national pace” at 539); Chris Tennant, “Discrimination in the Legal Profession, Codes of Professional Conduct and the Duty of Non-Discrimination” (1992) 15:2 *Dalhousie Law Journal* 464 at 469–70 (describing the exclusion of women, aboriginal people, and racial and ethnic groups from the legal profession in Canada); Mark D Walters, “Let Right Be Done: a History of the Faculty of Law at Queen’s University” (2007) 32:2 *Queen’s Law Journal* 314 at 348–63 (detailing the law school’s efforts from 1977-1992 to move away from the “remarkably homogenous-looking group of men” of its law faculty and student body to “[reflect] the diversity of Canadian society” at 349); CBA Working Group on Racial Equality in the Legal Profession, “Racial Equality in the Canadian Legal Profession: Presented to the Council of the Canadian Bar Association” (February 1999) at 2, online (pdf): *Canadian Bar Association* <[www.cba.org/Equality/Publications-Resources/Reports](http://www.cba.org/Equality/Publications-Resources/Reports)> (acknowledging that systemic racism is widespread within the profession and noting the significant under-representation of Aboriginal persons in the legal profession); and Allison E Laffey & Allison Ng, “Diversity and Inclusion in the Law: Challenges and Initiatives” (2 May 2018), online: *American Bar Association* <[www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/](http://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/)> (stating that the “legal profession remains one of the least diverse of any profession” and that the

much of our constitutional jurisprudence about fundamental freedoms, human rights, equality, and justice.<sup>17</sup> This language, which might even have seemed ironic at the time, certainly begs such criticism by contemporary standards.<sup>18</sup> Without delving deeply into the limits posed by foundational doctrine in numerous areas, including tort and contract law, constitutional and property law, let alone criminal law and procedure, it is a worthy endeavor to posit the ways in which the law must evolve to be truly inclusive and accessible, let alone empowering for all.<sup>19</sup>

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numbers for racial and ethnic diversity in the legal field “paint an even bleaker picture”).

<sup>17</sup> See Colleen Sheppard, “Constitutional Recognition of Diversity in Canada” (2006) 30:3 Vermont Law Review 463 (describing the “scope and tenor of the modern recognition of cultural and group-based pluralism in Canadian constitutional law” at 472).

<sup>18</sup> See *Canadian Bill of Rights*, SC 1960, c 44, preamble:

[A]ffirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions.

It is also worth noting that human rights in Canada were not protected in the written constitution until 1982 through the *Charter of Rights and Freedoms*: see *Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11; and Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada 1900-1950* (Toronto: University of Toronto Press, 1999).

<sup>19</sup> See Clinton G Wallace, “Tax Policy and Our Democracy” (2020) 118:6 Michigan Law Review 1233 at 1245, n 60 (noting that despite the reputation as a more socially progressive government, Canada is equally reliant on the tax code, similar to the US, but much less outwardly focused on helping those who do not have housing); Donna J Martinson & Caterina E Tempesta, “Young People as Humans in Family Court Processes: a Child Rights Approach to Legal Representation” (2018) 31:1 Canadian Journal of Family Law 151 (elaborating on the need for legal representation for children in family court proceedings consistent with the *Canadian Charter of Rights and Freedoms*, the United Nations *Convention on the Rights of the Child*, and other human rights instruments); Paul Harpur & Michael Ashley Stein, “Universities as Disability Rights Change Agents” (2018) 10:2 Northeastern University Law Review 542 at 555, n 76 (noting that the Committee on the Rights of Persons with

The challenge is that for law, traditional legal discourse has often openly favored white propertied heterosexual men who comprise but a well-to-do sliver of our society.<sup>20</sup> Not only were women, First Nations and Indigenous people, and people of color not equitably represented in much jurisprudence and legal reasoning, but many other people were also excluded from the legal canon, including working-class people, people who are not able-bodied, and LGBTQ people. This is compounded by the ongoing difficulty in many areas of the law to recognize the intersecting realities of our identities, which somehow still proves confounding in the law.<sup>21</sup>

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Disabilities recommended that Canada adopt policies on inclusive and quality education throughout its territory); Shannon Hutcheson & Sarah Lewington, “Navigating the Labyrinth: Policy Barriers to International Students’ Reporting of Sexual Assault in Canada and the United States” (2017) 27:1 *Education & Law Journal* 81 (exploring how the “legal process can be difficult for international students to navigate, especially concerning the role that cultural capital plays in understanding policies such as Title IX, the *Canadian Human Rights Act*, and the *Canadian Charter of Rights and Freedoms*” at 81); and Susan Ursel, “Building Better Law: How Design Thinking Can Help Us Be Better Lawyers, Meet New Challenges, and Create the Future of Law” (2017) 34:1 *Windsor Yearbook of Access to Justice* 28 at 55–58 (describing how design thinking can be applied to improve access to different aspects of the legal system, e.g. online dispute resolution and access to justice services).

<sup>20</sup> See Lucinda M Finley, “Breaking Women’s Silence in Law: the Dilemma of the Gendered Nature of Legal Reasoning” (1989) 64:5 *Notre Dame Law Review* 886; and Charles C Smith, “Who is Afraid of the Big Bad Social Constructionists – or Shedding Light on the Unpardonable Whiteness of the Canadian Legal Profession” (2008) 45:5 *Alberta Law Review* 55.

<sup>21</sup> See Shira Galinsky, “Returning the Language of Fairness to Equal Protection: Justice Ruth Bader Ginsburg’s Affirmative Action Jurisprudence in *Grutter* and *Gratz* and Beyond” (2004) 7:2 *New York City Law Review* 357 (“[a]ffirmative action stands at the intersection . . . of two classes of rights (civil and economic), though once and still set apart by politicians, jurists, and scholars, commonly relate to promotion of the health and welfare of humankind” at n 122); Maneesha Deckha, “Is Culture Taboo – Feminism, Intersectionality, and Culture Talk in Law” (2004) 16:1 *Canadian Journal of Women and the Law* 14 (“just as ‘women’ invoked only a fraction of female experiences, these non-gendered categories took male experiences as their referent, resulting in a discursive slippage that stranded ‘different’ women at the intersections of

Such jurisprudential alienation is not a matter of evolving terminology around civil and human rights discourse, rather it is a foundational anchoring of much legal doctrine to exclusive notions not meant to respect all people. For instance, axiomatic to legal analysis is the doctrinal reasonable man standard.<sup>22</sup> Although we have evolved to say ‘the reasonable person’, the doctrine as originally framed was an exclusive framework for analysis, definitionally constructed in opposition to inclusive multi-gendered wisdom and knowledge. It has nonetheless underpinned much of our jurisprudence until fairly recently.

As we train the next generation of legal leaders, I think it is crucial to know our histories, with all its failings and fault lines, to ensure that we embrace a better future, one in which ensuring inclusive justice is not a radical proposition. We should learn from our past and not let it moor us to exclusive conceptualizations of law as it once existed. As we move to an empowering model of legal education, acknowledgment and awareness of our history, legal history in particular, is part of the puzzle as we unpack the present moment and chart a more uplifting and inclusive course.

So, while our evolution towards more expanded and diverse jurisprudential thinking is, in my estimation, welcome, the fabric of much of our legal thinking is interwoven with exclusionary threads that are still being teased out. An

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gendered and non-gendered categories” at 36); Iyiola Solanke, “Putting Race and Gender Together: a New Approach to Intersectionality” (2009) 72:5 *Modern Law Review* 723 (“[i]ntersectionality highlights that anti-discrimination laws have posited discrimination as a zero-sum game: if one form, then not the other. However, discrimination is not zero-sum at all: it is often not just one or the other ground but can be many together acting in addition or intersecting” at 748); Aisha Nicole Davis, “Intersectionality and International Law: Recognizing Complex Identities on the Global Stage” (2015) 28:1 *Harvard Human Rights Journal* 205; and Thomas A Mayes, “Understanding Intersectionality between the Law, Gender, Sexuality and Children” (2016) 36:2 *Children’s Legal Rights Journal* 90.

<sup>22</sup> See e.g. Cynthia Lee, *Murder and the Reasonable Man: Passion and Fear in the Criminal Courtroom* (New York: New York University Press, 2003).

essential part of this analysis begs the lack of diversity of our judiciary as well.<sup>23</sup> While Canada prides itself on its multiculturalism,<sup>24</sup> like the United States, there is much work that can be done to diversify the judicial ranks, as well as to build diverse pipelines to the bench, the bar, and the legal academy.<sup>25</sup> This is where we are, and it shows who we are, despite our protestations otherwise. I think there is a role for law schools in the building of this diverse pipeline to all areas, which holds the specter of inclusive and empowered justice.

### III. The Voice of the Law School, Not the Show

Over the last ten years, I have experienced increased engagement and activism amongst our student bodies. More and more they expect their university and

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<sup>23</sup> See “Statistics Regarding Judicial Applicants and Appointees” (28 October 2020), online: *Office of the Commissioner for Federal Judicial Affairs Canada* <[www.fja-cmf.gc.ca/appointments-nominations/StatisticsCandidate-StatistiquesCandidat-2020-eng.html](http://www.fja-cmf.gc.ca/appointments-nominations/StatisticsCandidate-StatistiquesCandidat-2020-eng.html)>; and Ian Burns, “Judicial Diversity Stats Show Move in Right Direction but More Needs to be Done: Observers” (7 December 2020) *The Lawyer’s Daily* (acknowledging the increase of women judges appointed but noting the disparity of judges representing “indigenous people, racialized communities and candidates with disabilities”).

<sup>24</sup> Learn about Canadian multiculturalism on the Government of Canada website. Unlike notions of the American melting pot, Canada prides itself on citizens’ retention of their unique identities. See “Multiculturalism” (6 May 2021), online: *Government of Canada* <[www.canada.ca/en/services/culture/canadian-identity-society/multiculturalism.html](http://www.canada.ca/en/services/culture/canadian-identity-society/multiculturalism.html)> (“[d]iscover the significance of multiculturalism in Canada — ensuring that all citizens keep their identities, take pride in their ancestry and have a sense of belonging”).

<sup>25</sup> See Roderick A Macdonald & Thomas B McMorrow, “Decolonizing Law School” (2014) 51:4 *Alberta Law Review* 717 (proposing the future of the law school in Canada turns on a separation from the US model to one that embraces indigenous and international approaches to the law); Peter Devonshire, “Indigenous Students at Law School: Comparative Perspectives” (2014) 35:2 *Adelaide Law Review* 309 (arguing that a wider inclusion of indigenous students in law schools “fulfills a need for non-European insights in legal education” at 314); Jeffery G Hewitt, “Decolonizing and Indigenizing: Some Considerations for Law Schools” (2016) 33:1 *Windsor Yearbook of Access to Justice* 65; and Sossin, *supra* note 4.

law school leaders to take a stand and to speak out publicly on the pressing issues of the day, whether that means speaking or writing about Deferred Action for Childhood Arrivals (“DACA”) rulings and policies, denouncing police brutality, condemning hate crimes, commenting on the insurrection and acrimonious election cycle, or mobilizing support for students distressed about judicial confirmations, to name but a few examples. In sum, there is an expectation on the part of some students, and faculty, that law schools, through their leadership, take a public stand on contemporary issues. This may flow from increased societal polarization, especially political, at the precise time that student bodies are becoming more representative of the population more generally.

With increased diversity comes a diversity of demands and expectations. Over the last few years, I have come to think that a key missing ingredient in the diversity and inclusion equation is empowerment. It is my sense that this is part of the push around ‘voice’. With the addition of a diverse cadre of students and faculty, and with their empowerment, one can and should expect a corresponding expectation that the law school’s voice be inclusive of the concerns and experiences of those who have traditionally been excluded. And so, for example, the expectations of our students of color about the law school voice as it pertains to the spate of police killings or shootings of unarmed people of color, and Black people in particular in an age of the Black Lives Matter movement, should not be a surprise.

This positioning of the law school, whether through voice or advocacy, however, is not uncontested or without its landmines.<sup>26</sup> Certainly, the law school and university missions should be furthered. Indeed, these missions often provide helpful roadmaps in such circumstances. But, as we are in a time of heated polarization, leaders who do boldly take such positions should not be

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<sup>26</sup> See Donald Lazere, “Chemerinsky and Irvine: What Happened?” (24 September 2007) *Inside Higher Ed*; and Katie Robertson, “Nikole Hannah-Jones Denied Tenure at University of North Carolina” (19 May 2021) *The New York Times*. See also Asheesh Kapur Siddique, “Campus Cancel Culture Freakouts Obscure the Power of University Boards” (19 May 2021) *Teen Vogue*.

surprised to hear from myriad constituencies, including students who have differing opinions on the issues (and who view the announcement, writing, or stance as offensive, biased, or inappropriate), faculty who share the views of the aforementioned students, alumni who allude to, or plainly threaten to, withhold funding support based upon the positions taken, and of course university leadership concerned about all of the above, as well as possible funding cuts to public institutions if legislators are offended.<sup>27</sup> These are appropriate matters for consideration; hence my earlier statement about multiple overlapping constituencies. However, there are moments that will call for the dean, provost, and president to speak up, lest their silence be viewed as complicity, acquiescence, or approval of the matter at hand.

It will further be important, in many cases when the ‘voice of the law school’ is demanded by some constituencies, for a dean not to get ahead of the provost or president in their framing of such unit-level voice. I have occasionally been urged by irate students to ‘get a message out’, one that I knew would have ultimately been unhelpful to the law school if it were perceived as ‘jumping the gun’, or not waiting our turn, as it were, to allow time for the university leadership to first frame their sense of an issue for the entire university. Thereafter, I have been able to craft and share my message which can layer upon, and piggyback on, the voice of the university writ large. Nonetheless, even when continuing to center the societal role of the law school in furthering democratic ideals, it may prove impossible to please all of the people in the myriad constituencies whom a dean or university leader seeks to keep in a good and positive place. This aspect of charting our future is fraught in an increasingly polarized space, but thankfully there are some areas that are, at least at first glance, less controversial.

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<sup>27</sup> See Bill Chappell, “Univ. of Alabama Returns \$21.5 Million Gift; Donor Urged Boycott Over Abortion Law” (7 June 2019), online: *National Public Radio* <[www.npr.org/2019/06/07/730671823/univ-of-alabama-rejects-21-5-million-gift-donor-urged-boycott-over-abortion-law](http://www.npr.org/2019/06/07/730671823/univ-of-alabama-rejects-21-5-million-gift-donor-urged-boycott-over-abortion-law)>; and Nick Roll, “UNC Board Bars Litigation by Law School Center” (11 September 2017) *Inside Higher Ed*.

## IV. Innovating or, at Least, Iterating

I have elsewhere discussed the ways in which the markets for legal education, legal practice, and demands for justice are misaligned.<sup>28</sup> We have before us an opportunity in both legal education and practice to work towards furthering justice, whether that be in the criminal legal system or tax reform, for those in our society for whom the provision of, and access to, legal services is cost or time prohibitive. Query how further intentional innovation might better calibrate the demand and supply lines towards enhanced access to legal services, and thereby access to justice:

Technological innovation has been taking place for a long time. But the pace has quickened, and the opportunities for global connection and information-sharing are vast. Technological innovation holds the promise of enhanced access to services, goods and the sharing of expertise between people the world over. I posit that such innovation also holds the promise of much greater access to justice. ...

Importantly, from my perspective, a critical part of this technological revolution should aim to ensure the delivery of legal services to those most in need. As others and I have said elsewhere, the supply and demand curves for legal services are misaligned given that there is a persistent demand for—yet a limited supply of—affordable legal services. It is my hope and expectation that the ongoing technological revolution will help to bridge this justice gap.<sup>29</sup>

While we have heard complaints that there are too many lawyers, we have simultaneously heard complaints that most people cannot access or afford a lawyer.<sup>30</sup> I think that if we can create technology to figure out if there is an

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<sup>28</sup> Camille Nelson, “Law Schools Can’t Sleep Through the Technological Revolution” (7 November 2013), online (blog): *ABA Legal Rebels* <[www.abajournal.com/legalrebels/article/law\\_schools\\_cant\\_sleep\\_through\\_the\\_technological\\_revolution](http://www.abajournal.com/legalrebels/article/law_schools_cant_sleep_through_the_technological_revolution)>.

<sup>29</sup> *Ibid.*

<sup>30</sup> See Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants” (May 2013), online (pdf): *National Self-Represented Litigants Project (NSRLP)*



available handy person in our area to install a doorbell, or to book a dog-sitter, or to order and have a meal delivered through an app, surely there must be more we can do, perhaps with a little help from our friends in tech, to figure out which lawyer might be able to draft a will, or contest an eviction in our area for a set

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<representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf> (more than 90% of respondents, across Alberta, British Columbia and Ontario, cited the “inability to afford to retain, or to continue to retain, legal counsel” as the number one reason for self-representation (at 39)); Jeffrey J Pokorak, Ilene Seidman & Gerald M Slater, “Stop Thinking and Start Doing: Three-Year Accelerator-to-Practice Program as a Market-Based Solution for Legal Education” (2013) 43:1 Washington University Journal of Law & Policy 59; and Ilene Seidman, “The Bad Business of Ignoring the Justice Gap” (18 February 2016), online (blog): *ABA Legal Rebels* <www.abajournal.com/legalrebels/article/the\_bad\_business\_of\_ignoring\_the\_justice\_gap>. See also “The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans” (June 2017), online (pdf): *Legal Services Corporation* <lsc-live.app.box.com/s/6x4wbh5d2gqxwy0v094os1x2k6a39q74> (nearly one in five Americans, or more than 60 million, including 19 million children, have family incomes below 125% of the Federal Poverty Level (“FPL”), which corresponds to USD \$30,750 per year or less for a family of four (at 16); 44% of Americans with family incomes below 125% of FPL identify as white, 28% as Hispanic, 21% as black, 4% as Asian, 1% as American Indian, 8% as another race, and 4% as two or more races (at 18); 71% of low-income households have experienced at least one civil legal problem in the past year (*e.g.* issues of health, finances, rental housing, children and custody, education, income maintenance, and disability), 54% of these households have faced at least two civil legal problems, and about 24% have faced six or more in the past year alone (at 21–22); while “low-income Americans seek professional legal help for only 20% of their civil legal problems, they receive inadequate or no professional legal help for 86% of the civil legal problems they face in a given year” (at 30); and the most common reasons for low-income Americans not seeking help include the following: they decide to deal with the problem on their own (24%), they do not know where to look for help or what resources might be available (22%), they do not perceive their civil legal problems to be legal (20%), and they are concerned about the cost of seeking such help (14%) (at 33–34)).

fee.<sup>31</sup> And I think those examples are but the tip of the iceberg. I leave it to those much savvier than I to further explore the myriad ways in which innovative uses of technology might be harnessed to: improve access to legal services and the time taken to deliver those services; push expansion of the venues for the delivery of such services, including virtual and design improvements to the entire system in ways that enhance diagnostics of the challenges (legal and otherwise); and

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<sup>31</sup> See Gina Jurva, “Legal Tech and the Future of Civil Justice: Digital Tools for Underrepresented Communities” (2 March 2021) *Thomson Reuters* (discussing how legal tech has helped *pro se* parties by fostering online legal advice via chatbot, technology to automate court filings, and apps such as LegalZoom, TurboTax, and Rocket Lawyer to help individuals complete legal documents, but noting “legal tech for underrepresented groups is still a tiny drop in the bucket relative to the need for access”); Bernise Carolino, “Legal-Tech Platform Promoting Access to Justice for Marginalized Communities Presented at Conference” (12 May 2021) *Law Times* (describing Mouthpiece Law, a legal technology platform developed by three students at Queen’s Faculty of Law that “seeks to offer the general public cost-effective solutions to access legal services”); and Stanford University Legal Design Lab, “Eviction Innovations: Initiatives to Address the Eviction Crisis” (2021), online: *Eviction Innovations* <[evictioninnovation.org/](http://evictioninnovation.org/)> (highlighting new websites, apps, document-assembly tools, data initiatives, and other tech efforts to improve services and policy-making around evictions). *Cf.* Kriston Capps, “Landlords Are Using Next-Generation Eviction Tech” (26 February 2020) *Bloomberg* (“[t]enant advocates say that programs such as ClickNotices or eWrit Filings ... are essentially helping landlords funnel tenants into rent court, regardless of the merits of the case”); “Richard Susskind – How Technology Will Change Justice: Ralph Baxter sits down with Professor Richard Susskind OBE to discuss Richard’s latest book, *Online and the Future of Justice*” (8 January 2020) at 00h:30m:02s, online (podcast): *Legal Talk Network* <[legaltalknetwork.com/podcasts/law-technology-now/2020/01/richard-susskind-how-technology-will-change-justice/](http://legaltalknetwork.com/podcasts/law-technology-now/2020/01/richard-susskind-how-technology-will-change-justice/)>:

We often say of neurosurgeons, that people don’t want neurosurgeons, they want health, I think it’s true of courts. People don’t want physical courtrooms and lawyers and judges and traditional process, there are a whole bundle of things they want, but they want an end of their dispute, and I think this is going to require a social movement to bring about the kind of change that’s necessary, and what’s at stake is so incredibly important that we increase access to justice for all.

improve efficiency, effectiveness, and fairness in the provision of access to justice.<sup>32</sup>

Making space for such entrepreneurial thinking is a part of the way that law schools must innovate to empower the next generation of legal leaders to make a difference. This was part of my thinking as we worked to launch and build important initiatives at the schools at which I previously served as dean. We created the previously named Law Practice Technology and Innovation Institute at Suffolk University Law School<sup>33</sup> (now called the Institute on Legal Innovation and Technology), including corollary programs and opportunities for students. At Washington College of Law, we developed the strategy to design, launch, and fortify innovative programs and opportunities for students — some of which

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<sup>32</sup> See “Digital Justice Initiative” (2021), online: *American Bar Association* <[www.americanbar.org/groups/diversity/racial\\_ethnic\\_justice/projects/digital-justice-initiative/](http://www.americanbar.org/groups/diversity/racial_ethnic_justice/projects/digital-justice-initiative/)> (discussing how community-level data collected from apps “can be utilized to track priority benchmarks to decrease the frequency of investigative stops lacking reasonable basis”); Sandy North, “How We’re Learning More About Ways to Improve Access to Justice Across the U.S.” (12 December 2020) *A2J Lab*; “Using Gamification of Access to Justice to Train Artificial Intelligence: David Colarusso Talks About the Learned Hands Project” (1 February 2019), online (podcast): *Legal Talk Network* <[legaltalknetwork.com/podcasts/digital-edge/2019/02/using-gamification-of-access-to-justice-to-train-artificial-intelligence/](http://legaltalknetwork.com/podcasts/digital-edge/2019/02/using-gamification-of-access-to-justice-to-train-artificial-intelligence/)> (explaining how a machine learning game “identifies text classifiers for developing a new taxonomy that can be used to connect people with public legal help resources”); and Darrell Malone, “Tubman Project Boston” (29 November 2018), online (blog): *Darrell K. Malone Consulting* <[dkmalone.com/2018/11/29/the-tubman-project/](http://dkmalone.com/2018/11/29/the-tubman-project/)> (describing the winning solutions for preventing income from becoming a barrier to justice through open-source legal technologies that leverage data machine learning, e.g. “present[ing] a provable and third-party validated alibi even without a human witness by leveraging” the Google Maps app).

<sup>33</sup> I am delighted to see the strengthening of these innovations: “Institute on Legal Innovation and Technology” (2017), online: *Suffolk University Boston* <[sites.suffolk.edu/legaltech/](http://sites.suffolk.edu/legaltech/)>.

were framed under the moniker of the Tech, Law and Security Program,<sup>34</sup> with other opportunities flowing through the Masters in Legal Studies Degree and the Intellectual Property programs. These initiatives all involved entrepreneurial approaches to legal education.<sup>35</sup>

Like leaders at a number of other law schools throughout Canada and the US, I have tried to lean into the future of our profession by considering innovation of curricula, programmatic opportunities, certificate programs, extracurricular, and professional opportunities that enhance the ability of our students to compete in a rapidly changing practice and world.<sup>36</sup> It is not easy work to scale such recalibration or redux internally at the school level. Deans and leaders in higher education have set talent pools, expert in many areas, but few schools have existing depth in these future-facing curricular, which means that even in times of fiscal constraint, if a school is to lean into the future of the profession and the practice, the dean must often look to external sources for expertise, or invest in internal leaders who are willing and able to grow into these

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<sup>34</sup> “Tech, Law & Security Program” (2021), online: *American University Washington College of Law* <[www.wcl.american.edu/impact/initiatives-programs/techlaw/](http://www.wcl.american.edu/impact/initiatives-programs/techlaw/)>.

<sup>35</sup> “Master of Legal Studies (MLS) Online” (2021), online: *American University Washington College of Law* <[www.wcl.american.edu/academics/degrees/mls-online/](http://www.wcl.american.edu/academics/degrees/mls-online/)>.

<sup>36</sup> See “J.D. Certificate Program in Legal Innovation + Technology” (2022), online: *Chicago-Kent College of Law* <[www.kentlaw.iit.edu/academics/jd-program/certificate-programs/legal-innovation-and-technology/](http://www.kentlaw.iit.edu/academics/jd-program/certificate-programs/legal-innovation-and-technology/)>; “Course Catalog: Innovation in Legal Education and Practice” (2022), online: *Harvard Law School* <[hls.harvard.edu/academics/curriculum/catalog/index.html?o=69245](http://hls.harvard.edu/academics/curriculum/catalog/index.html?o=69245)>; “Center for Law, Technology and Society” (2022), online: *University of Ottawa* <[techlaw.uottawa.ca/](http://techlaw.uottawa.ca/)>; “2022 Legal Innovation Conference” (2022), online: *University of Alberta* <[www.ualberta.ca/law/about/legal-innovation.html](http://www.ualberta.ca/law/about/legal-innovation.html)>; and “IP Innovation Clinic” (2022), online: *Osgoode Hall Law School* <[www.iposgoode.ca/innovation-clinic/about/](http://www.iposgoode.ca/innovation-clinic/about/)>. See also “Innovation, Law, and Technology” (2022), online: *University of Toronto Faculty of Law, Global Professional Master of Laws (GPLLM)* <[gpplm.law.utoronto.ca/programs/innovation-law-and-technology](http://gpplm.law.utoronto.ca/programs/innovation-law-and-technology/)>.

new innovative areas of opportunity. I very much hope that when I am finishing serving as dean, that I will be one of those faculty members facing forward and leaning into how trans-disciplinarity, technology, and innovation might inform not only my teaching but my areas of doctrinal interest, and can further access to justice therein, despite the inevitable and daunting work of getting ‘up to speed’. In terms of legal pedagogy, we can take solace from what we have learned from embracing technologies that we once thought of as foreign, far-fetched, or foolhardy.

At the time of this writing, we are in the midst of a prolonged COVID-19 pandemic. The pandemic forced innovation in unprecedented ways in society generally.<sup>37</sup> Studying and working through this pandemic has revealed the fallacy in previously held beliefs that remote work and distance learning were definitionally unworkable or suboptimal.<sup>38</sup> Necessity may well have proven to be the mother of invention in this milieu as, within a matter of weeks, classrooms, courts, and conventions were flipped online.<sup>39</sup> Many businesses,

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<sup>37</sup> See The Economist, “How COVID-19 is Boosting Innovation” (10 March 2021) at 00h:19m:03s, online (video): *You Tube* <youtu.be/zPyOnZpeFnQ>; Johnathan Cromwell & Blade Kotelly, “A Framework for Innovation in the COVID-19 Era and Beyond” (17 February 2021) *MIT Sloan Management Review*; Sonja Marjanovic, “The COVID-19 Crisis has Sparked Innovation and Offers Lessons We Must Not Forget” (1 April 2020), online (blog): *RAND Corporation* <www.rand.org/blog/2020/04/the-covid-19-crisis-has-sparked-innovation-and-offers.html>; and Rachel Bergen, “How the COVID-19 Pandemic is ‘Driving Innovation’ in Canada and Around the World” (29 March 2020) *CBC News*.

<sup>38</sup> See Paul Fain, “Takedown of Online Education” (16 January 2019) *Inside Higher Ed*; and Louis Mosca, “Working From Home: Don’t Allow it!” (29 June 2017) *Forbes*.

<sup>39</sup> See Andy Thomason, “U. of Washington Cancels In-Person Classes, Becoming First Major U.S. Institution to Do So Amid Coronavirus Fears” (6 March 2020) *The Chronicle of Higher Education*; and Scott Jaschik, “Colleges Go Online to Avoid COVID-19” (7 September 2021) *Inside Higher Ed*. See also Del Atwood, “COVID-19 Impacts on Courts in Canada” (2021) 60:3 *The Judges’ Journal* 24; and David Freeman Engstrom, “Post-COVID Courts” (2020) 68:1 *UCLA Law Review* 246.

from retail stores to restaurants, quickly pivoted online and/or adjusted their *modus operandi* to what I have sometimes referred to as the new abnormal. And higher education was, and is, no exception.<sup>40</sup>

The pandemic forced adoption of online learning platforms, and remote teaching and working.<sup>41</sup> Even the most ardent pre-pandemic naysayers and skeptics about these possibilities and platforms adjusted, sometimes reluctantly, at other times enthusiastically, and worked to deliver the highest caliber education possible to our students in the circumstances. I do not want to be read as pollyannish in my aspirations about the possibilities provided by technology in higher education, but I do think that despite some of the challenges, there are also opportunities, including increased access to education, with corollary reduced transactional costs associated with relocation, travel, accommodation, cost of living, and so forth.<sup>42</sup>

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<sup>40</sup> See Jason Openo, “Education’s Response to the COVID-19 Pandemic Reveals Online Education’s Three Enduring Challenges” (2020) 46:2 Canadian Journal of Learning & Technology 1; and Sundquist, *supra* note 4.

<sup>41</sup> See Doug Lederman, “Will Shift to Remote Teaching Be Boon or Bane for Online Learning” (18 March 2020) *Inside Higher Ed*; “The Coronavirus Spring: the Historic Closing of U.S. Schools (a Timeline)” (1 July 2020) *EducationWeek*; Laura Stone, Jeff Gray & Caroline Alphonso, “Ontario to Close All Public Schools for Two Weeks After March Break” (13 March 2020) *The Globe and Mail*; and Alexandra Mae Jones & John Vennavally-Rao, “Canada’s Workforce Having to Adjust to Working From Home” (16 March 2020) *CTV News*.

<sup>42</sup> See James McGrath & Andrew P Morriss, “Online Education & Access to Legal Education & The Legal System” (2020) 70:1 Syracuse Law Review 49 at 51–52 (supported by several datasets, the authors show how online legal education can solve two problems: (1) making legal education accessible to between 41 million and 155 million more Americans who currently live in areas outside a reasonable commuting distance to existing law schools and (2) more evenly distributing access to legal services in the US, since unsurprisingly the fewest number of lawyers per capita live in the same areas lacking access to legal education); Sean Gallagher & Jason Palmer, “The Pandemic Pushed Universities Online. The Change Was Long Overdue” (29 September 2020) *Harvard Business Review* (highlighting the significant enrollments and cost-savings of institutions using technologies to disrupt traditional degree markets

## V. Lessons from Remote Work and Online Education

There is much that has been discussed and written over the course of the ongoing pandemic about the future of work, remote work, and expectations for the reimagining of post-pandemic work-life.<sup>43</sup> Pre-pandemic, I recall being asked to opine on telework requests that were often tinged with concern on the part of supervisors about whether the employee in question would continue to work effectively and diligently. In many ways, the pandemic has exposed the fallacy of a blanket presumption that employees who work outside of the workplace at home will slack off and not do their work. Indeed, I think many people have worked just as hard, if not harder than ever before, with resultant fatigue. No doubt some of those who were not strong workers and who were less than stellar employees may have struggled and perhaps sunk to the level of ineffectiveness that was feared. But, for the vast swath of employees, in my experience, that has not been the case. Indeed, I think the ongoing pandemic and its workplace fallout has, hopefully, created space for us to reconsider how best to go forward in ways that empower and support our students, staff, and faculty.

My conclusion is that we may need to move away from both our notions of one-size fitting all of our students, staff, and faculty, and also from our historic attachment to brick and mortar conceptualizations of a law school, to a

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and noting that the “100 largest players have nearly 50% of student enrollment”); Trevor Fairlie, “This is How Law Schools Should Embrace Technology” (21 January 2019) *Canadian Lawyer*; Pistone, *supra* note 13; and Abigail Cahak, “Beyond Brick-and-Mortar: How (Cautiously) Embracing Internet Law Schools Can Help Bridge the Legal Access Gap” (2012) 2012:2 *University of Illinois Journal of Law, Technology & Policy* 495 (“[o]nline law schools cater to a unique market ... these programs are in high demand by hopeful students that fall outside the law student norm” at 526).

<sup>43</sup> See *e.g.* Susan Lund et al, “What’s Next for Remote Work: an Analysis of 2,000 Tasks, 800 Jobs, and Nine Countries” (23 November 2020), online: *McKinsey & Company* <[www.mckinsey.com/featured-insights/future-of-work/whats-next-for-remote-work-an-analysis-of-2000-tasks-800-jobs-and-nine-countries](http://www.mckinsey.com/featured-insights/future-of-work/whats-next-for-remote-work-an-analysis-of-2000-tasks-800-jobs-and-nine-countries)>.

reimagined conceptual space, with a brick and mortar component, that provides greater access and empowerment for our community members over both space and time — meaning that they can learn and work from where they are situated if they want, and at a time that works best for them and theirs, as appropriate and feasible. Certainly, such an innovative model is not without its concerns. Notably, how do we prevent increased isolation and wellness concerns, already so prominent an aspect of all education during the pandemic,<sup>44</sup> as well as how do we ensure both some in-residence aspect to community building, at the same time that we strive to better understand how to optimize global community building, including virtually?

While I know it is not an easy possibility to consider, this potential model may be empowering for many people traditionally not centered within settings of (legal) education. For instance, not only might such flexibility in work and study allow for greater access for people with family responsibilities, mobility, or other physical challenges because of our built environments, as well as for those who are seeking to avoid the time and energy costs of relocation or commuting, let alone those concerned with the environmental impact of the same, but reconceptualizing our law schools space to include remote and virtual work and study also potentially allows for some greater inclusion, engagement, and empowerment of those shut out from traditional models of brick and mortar legal education, and physically demanding work.

As such, I wish to emphasize a way in which online education and remote work can also increase access by bringing educational and work possibilities to people whose ability to ambulate or move to be ‘in-residence’ in a classroom or workspace, whether that is physical, financial, health-related, distance prohibitive, familial-bound, and otherwise constrained, for instance by military

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<sup>44</sup> See D Benjamin Barros & Cameron M Morrissey, “A Survey of Law School Deans on the Impact of the COVID-19 Pandemic” (2021) 52:2 *University of Toledo Law Review* 241; and Changwon Son et al, “Effects of COVID-19 on College Students’ Mental Health in the United States: Interview Survey Study” (2020) 22:9 *Journal of Medical Internet Research* 1.



commitments, prevents them from accessing a (legal) education.<sup>45</sup> These circumstances should be recognized as providing opportunities, especially for students who would not otherwise be able to access legal and other types of educational opportunities if they were required to physically attend the campus. I think most institutions of higher education have missions or orientations that are supportive of increased access, but few have fully embraced the possibilities for increased access presented through an interweaving of technological know-how and delivery platforms throughout the enterprise to ensure the most inclusive and empowering models of access possible. There is opportunity here that has been highlighted by the pandemic. There are additional revelations as well.

While the cost-prohibitive concern about access to justice has been discussed for some time, the time prohibitive dimension of accessing legal services is seldom explored.<sup>46</sup> Even in the design of our system, it is often hard to physically navigate the ‘places where justice lives’, from taking time off work, using public transit to and from, or finding and paying for parking at courthouses or near legal offices or firms, to navigating the complex spaces of court offices where documents must be filed or fees paid, let alone waiting in court to be heard, it is no wonder that many people find themselves negatively wrapped up in the legal system for failure to keep appointments, appearances, submit appropriate

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<sup>45</sup> See Stephen L Nelson, Jennifer L Robinson & Anna M Bergevin, “Administrative Dream Acts and Piecemeal Policymaking: Examining State Higher Education Governing Board Policies Regarding In-State Tuition for Undocumented Immigrant Students” (2014) 28:3 *Georgetown Immigration Law Journal* 555; Jonathan D Glater, “To the Rich Go the Spoils: Merit, Money, and Access to Higher Education” (2017) 43:2 *Journal of College and University Law* 195; Darcel Bullen & Lorne Sossin, “A Flex Time JD: New Approaches to the Accessibility of Legal Education” (2017) 95:1 *Canadian Bar Review* 91; Sherley E Cruz, “Coding for Cultural Competency: Expanding Access to Justice with Technology” (2019) 86:2 *Tennessee Law Review* 347; and McGrath & Morriss, *supra* note 42.

<sup>46</sup> See Ab Currie, “Nudging the Paradigm Shift, Everyday Legal Problems in Canada” (2016) at 17–8, online (pdf): *Canadian Forum on Civil Justice (CFCJ)* <[cfjc-fcjc.org/a2jblog/nudging-the-paradigm-shift-everyday-legal-problems/](http://cfjc-fcjc.org/a2jblog/nudging-the-paradigm-shift-everyday-legal-problems/)>.

documentation, or to pay fines and fees. These challenges, constraints, and impediments further undermine their ability to positively navigate the legal system and achieve fair outcomes.<sup>47</sup> Importantly, they also undermine trust and faith in the legal system, let alone its credibility.

I think that if judges, practitioners, and law school leaders embrace the best of the innovations achieved during these most challenging of times, we could reaffirm a more accessible and equitable future. Instead of hastily turning away from innovations scaled up due to COVID-19, and returning to the way things were, we should strive to build and expand upon the innovative possibilities born of necessity during the pandemic to envision an experience in the law for our clients, students, attorneys, employees, and judges, that is as empowering and accessible as it is effective and efficient. We should not deceive ourselves in thinking that a return to the status quo is a return to perfection. If truth be told, the pandemic has forced many enterprises to address matters that should have been addressed decades ago. I am sure that we have also learned, sometimes surprising, lessons from the pandemic and that there are now revealed greater alternative ways to navigate the structural impediments barring greater access to legal support and services, and that technology, while not a panacea, can be helpful.

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<sup>47</sup> See Trevor CW Farrow et al, *Everyday Legal Problems and the Cost of Justice in Canada*, Canadian Forum on Civil Justice, 2016 CanLIIDocs 350, <[canlii.ca/t/2b02](http://canlii.ca/t/2b02)>; “State Bans on Debtors’ Prisons and Criminal Justice Debt” (2016) 129:4 *Harvard Law Review* 1024; Tonya L Brito, “Producing Justice in Poor People’s Courts: Four Models of State Legal Actors” (2020) 24:1 *Lewis & Clark Law Review* 145 (“[e]xamples that have come to light in recent years include ... the pattern of municipalities imposing exorbitant and burdensome fees and fines on poor residents-including for parking” at 149); and Alicia L Bannon & Douglas Keith, “Remote Court: Principles for Virtual Proceedings during the COVID-19 Pandemic and Beyond” (2021) 115:6 *Northwestern University Law Review* 1875 (“[e]ven under normal circumstances, self-represented litigants face substantial obstacles in navigating the court system, from parsing ‘legalese’ on forms to following often-cumbersome procedural steps” at 1897).

These lessons should also recognize that for many people, being able to take the time to find and locate an appropriate attorney, or provider of legal support or services, presupposes knowledge that a legal question or problem is looming, and that the law, therefore, is an operative frame.<sup>48</sup> As challenging as navigating the existing legal system is, it is often also an impediment for many people to realize the role of the law, and thus that legal assistance might be helpful and may offer some remedy or recourse. In this way, if we ask a foundational question, which is to say, ‘are legal problems always recognized as such’, I think another opportunity for law school leaders and practitioners to further access to legal services is unearthed in ways that might combine transdisciplinary humility on the part of attorneys. Specifically, in many cases I think we would do well to have teams of leaders — lawyers, plus social workers, financial advisors, cultural practitioners, psychologists, and public health officials, for example — working together to deconstruct and diagnose the problems presented by those we seek to better serve. I am increasingly concerned that rigid disciplinary boundaries result in an insistence on self-contained approaches to the delivery of services when more expansive notions of who should be involved in a matter might best serve the ends of justice. The ‘we don’t know what we don’t know’ approach is not helpful if we truly strive to support and empower our students and clients.

So how might law school leaders harness technology, innovative transdisciplinary approaches to experiential learning, and the delivery of legal services to help in reconceptualizing spaces where people need help? Traditionally, the model is that people in need of legal services come to us; the lawyers stay put in their offices, while the clients come to them. But are there

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<sup>48</sup> See Legal Services Corporation, *supra* note 30 at 33–34 (finding that about 20% of low-income Americans do not perceive their “civil legal problems to be legal” and do not seek legal help); and “Justice Needs and Satisfaction in the United States of America” (2021) at 175, online: *Institute for the Advancement of the American Legal System* <[iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf](https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf)> (not considering a lawyer necessary to solve their problem was the most common reason Americans did not seek the advice of a lawyer when faced with a legal problem).

opportunities for law schools to be a part of a more decentralized vision of how law is delivered to the masses?

When we consider the myriad ways in which healthcare is delivered, we should acknowledge the healthcare providers who make house-calls, the proliferation of urgent care and walk-in clinics, the delivery of healthcare services through medical pop-ups, let alone the proliferation of remote care during the pandemic, that supplemented hospital, hospice, and doctor's office visits.

Might we as lawyers similarly support people in need of legal care closer to where their legal needs originate? What can be extrapolated from the experiences of healthcare and medical providers in the delivery of their professional services? Again, I think that law schools, especially those that are a part of large research universities, are particularly well situated to consider and offer some insights and possibilities. For instance, through the provision of satellite and remote legal services, might teams of law students in transdisciplinary cohorts, under the supervision of faculty in experiential classes, gain valuable training at the same time that they support people in need when they or their loved one's health is jeopardized, where their housing is inadequate, or water contaminated, where goods are not delivered or defective, and where they or their items are held, seized, or destroyed?

This question of legal innovation and how law schools can help begs the question of whether legal support can also be provided in the spaces where these problems are often encountered — in hospitals and clinics, city halls, housing complexes, in stores, schools, and malls, and so too libraries, places of worship, and post offices, and not just during business hours. Such presence could be physical, but it could also be remote or virtual, and it need not be offered within the same time zone, thereby opening up further possibilities for working people to receive legal support without having to risk losing pay.<sup>49</sup> For instance, law schools, lawyers, and the bench might contemplate whether we could provide cross-jurisdiction support, whereby someone on the east coast, or in the

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<sup>49</sup> See Sartha Rai, "Seven Reasons Why Bangalore Still Tops the Offshoring League" (5 July 2010) *TechRepublic*; and Diana Farrell, "Smarter Offshoring" (June 2006) *Harvard Business Review*.

Midwest, for example, could just as easily call or zoom with a lawyer in their jurisdiction, or receive help from a lawyer or law student in a jurisdiction further west, where it was still ‘business hours’. At this juncture, as we contemplate the role of law schools and law students, it is again important to emphasize the interdisciplinarity of the law.<sup>50</sup> Not only are those providing legal services and support issues spotting and problem-solving, but it is important to recall that lawyers are called to be representatives, advocates, counselors, negotiators, and evaluators. And as I mentioned above, we should also contemplate how the provision of more wholistic support and services to our clients and those in need may call for a more transdisciplinary cohort model of service provision.

This possibility recognizes both the legal issue spotting, at which law students and lawyers become proficient, even when the potential client does not see the problem as a legal one. But it also furthers the possibility of access to timely legal services and support in a place, space, and time more convenient to the client, whether that is telephonic, app-based, or in-person legal assistance, as need be. The goals are to further access the delivery of legal services and support, at the same time that our students’ legal training is enhanced by real-world experiential services. In this way, the demand and supply lines might move that much closer together through innovations such as these.

## VI. Conclusion

If this is easy, why has it not been done in a sweeping way? I must acknowledge some challenges that are baked into many of our law schools. The structure of many law schools means that to be able to lift such initiatives requires that resources must either be recalibrated, and/or new resources found.<sup>51</sup> This

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<sup>50</sup> See Susan Dianne Brophy & JC Blokhuis, “Defining Legal Studies in Canada” (2017) 12:1 *Journal of Commonwealth Law and Legal Education* 1 at 12.

<sup>51</sup> See Kiser, *supra* note 7 (stating that the legal profession lacks innovation because of a tendency to “package minor changes as major innovations”, a misunderstanding of the “elements and origins” of innovation, and a propensity to encourage behavior that quashes innovation); Mark A Cohen, “Innovation Is Law’s New Game, But Wicked Problems Remain” (21 May 2018) *Forbes* (arguing that for all the changes made in the legal profession, access to justice

reprioritization and budgetary realignment takes time to work through in the academic calendar, through committees, and often through faculty governance, and sometimes through the larger university as well.

Unlike other enterprises, much of the talent pool at universities and colleges is fixed, through tenure, with faculty having a fair bit of autonomy in the performance of their duties toward fulfilling teaching, scholarly, and service requirements, or otherwise where people were often hired to perform different tasks and responsibilities more aligned with past priorities.<sup>52</sup> Meaning, either one has to hope that one has a group of energized entrepreneurially minded faculty and administrators willing to take on more work for no more compensation (or a modest stipend if the dean can muster the finances), which is sometimes the case and sometimes not, or plans and strategies need to be made and approved to hire new talent to lift, staff, and scale the project, program, or innovation. That is frankly why we tend to see more innovation at schools that are wealthy and well-endowed. They have the money to do so and can therefore be more nimble.

For the rest of us leading at schools that are more resource-constrained, we need to seek external funding support (through fundraising and grant writing for example), diversify our revenue-generating opportunities, and strategically reprioritize our budgetary and financial systems to better map to future-facing initiatives, innovations, and opportunities. Importantly, our mindset as academics and those who work at academic institutions can also be more

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and general dissatisfaction of clients with their attorneys remain two troubling issues yet to be resolved); and Scott Jaschik, “New Push for a Shift in Promotion and Tenure” (30 September 2020) *Inside Higher Ed* (“recognizing innovation and entrepreneurial achievements among the criteria for higher education faculty promotion and tenure”).

<sup>52</sup> See Theresa Shanahan, “A Discussion of Autonomy in the Relationship Between the Law Society of Upper Canada and the University-Based Law Schools” (2000) 30:1 *Canadian Journal of Higher Education* 27 at 43; and Sara Dillon, “On Academic Tenure and Democracy: the Politics of Knowledge” (2019) 52:4 *UIC John Marshall Law Review* 937.

inclined to entrepreneurial thinking.<sup>53</sup> Again, this is a big ask when faculty, staff, and administrators are under-resourced, and already have a great deal on their plates. Ultimately though, such a mindset shift will not only better prepare our students, and situate them more competitively for future-facing opportunities, but it will also ensure that law schools, and the universities of which many are a part, remain relevant, stay true to their missions, and contribute in more meaningful ways to support the communities of which they are a part.

In sum, part of what law schools must come to terms with is their societal positioning. While this may sound grandiose and unnecessarily lofty, it is at bottom a simple question of contribution. Certainly, the work of legal academics as public intellectuals is not to be taken lightly, especially in an increasingly complex and polarized world.<sup>54</sup> Having legal academics who research, write, dialogue and lecture about the pressing issues of the day is very important to the ongoing work of a civil society, and is important to a thriving constitutional democracy. So too is the work of legal academics as professors who teach in the classroom, and courtroom. Those professors who are truly excellent teachers are to be celebrated, just as all teachers should be.

I mean to emphasize here the institutional mission-driven work of law schools in removing roadblocks to justice. Ideally, our work is much larger than ourselves. In empowering the next generation of legal leaders and entrepreneurs, law schools should also ensure that a part of such innovative thinking includes encouraging problem-solving around the structure of the law, the delivery of justice, including its interdisciplinary dimensions, and the ways in which

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<sup>53</sup> See Todd Davey & Victoria Galan-Muros, “Understanding Entrepreneurial Academics – How They Perceive Their Environment Differently” (2020) 39:5 *Journal of Management Development* 599; and Megan Bess, “Grit, Growth Mindset, and the Path to Successful Lawyering” (2021) 89:3 *UMKC Law Review* 493.

<sup>54</sup> See Eric Merkley, “Anti-Intellectualism, Populism, and Motivated Resistance to Expert Consensus” (2020) 84:1 *Public Opinion Quarterly* 24; and Eric Merkley & Peter John Loewen, “Anti-Intellectualism and the Mass Public’s Response to the COVID-19 Pandemic” (2021) 5:6 *Nature Human Behavior* 706.

technology, access, and empowerment enhances these possibilities in service of our clients, communities, and inclusive justice.