

2012

## The Challenges to Legal Education in 1973 and 2012: An Introduction to the Anniversary Issue of the Hofstra Law Review

Nora V. Demleitner

Follow this and additional works at: <http://scholarlycommons.law.hofstra.edu/hlr>

 Part of the [Law Commons](#)

---

### Recommended Citation

Demleitner, Nora V. (2012) "The Challenges to Legal Education in 1973 and 2012: An Introduction to the Anniversary Issue of the Hofstra Law Review," *Hofstra Law Review*: Vol. 40: Iss. 3, Article 2.  
Available at: <http://scholarlycommons.law.hofstra.edu/hlr/vol40/iss3/2>

This document is brought to you for free and open access by Scholarly Commons at Hofstra Law. It has been accepted for inclusion in Hofstra Law Review by an authorized administrator of Scholarly Commons at Hofstra Law. For more information, please contact [lawcls@hofstra.edu](mailto:lawcls@hofstra.edu).

THE CHALLENGES TO LEGAL  
EDUCATION IN 1973 AND 2012:  
AN INTRODUCTION TO THE ANNIVERSARY  
ISSUE OF THE *HOFSTRA LAW REVIEW*

*Nora V. Demleitner\**

Almost forty years after its publication, the first issue of the *Hofstra Law Review* remains memorable because of its impressive list of authors, challenging content, and innovative structure. Astoundingly, it is relevant even today. It exemplifies the best a law review should and can be, and continues to reflect the ambition and vision of Hofstra Law and its founding dean, Malachy Mahon.

Hofstra Law School was born at a time of major changes in society, higher education, and law. Today, we find ourselves again at a similar crossroads, as this Introduction will demonstrate. The inaugural issue of the *Law Review* reflects, at least implicitly, multiple challenges the Law School faced at its inception, including curriculum planning and the integration of practical training in law schools. It also serves as a powerful reminder of the slowness with which change proceeds in the legal profession and the academy, as many of the currently hotly debated issues in both the profession and the academy have their origin in the past but have remained unaddressed or unresolved to this day. Globalization, technological changes, and resulting market pressures on the profession now mandate a new approach to both the practice of law and its teaching. It continues to amaze me how Hofstra Law's innovative beginning responded to those demands. The *Law Review* was born out of a desire to celebrate (practical) scholarship, create a reputation for the Law School, and establish a leadership role in scholarly endeavors. The inaugural issue accomplished these lofty goals.

---

\* Dean and Roy L. Steinheimer, Jr. Professor of Law, Washington and Lee University School of Law (since July 2012); Dean, Maurice A. Deane School of Law at Hofstra University (2008–2012). It was a privilege and honor to serve Hofstra Law as dean. It was my goal to uphold the high standards Dean Mahon set when he founded this innovative law school, and to contribute to the improvement of legal education, legal knowledge, and the lives of the students during my deanship.

The first part of this short Introduction to the *Fortieth Anniversary Issue* discusses the close connection between the *Law Review's* content and the mission, vision, and ambitions for Hofstra Law. Part II delves into some of the prescient predictions made in the first few articles that frame the *Law Review's* Volume 1.

### I. THE *LAW REVIEW*:

#### A MIRROR OF THE LAW SCHOOL'S MISSION AND VISION

The inaugural issue's construct was—and is—innovative. The first six, relatively short pieces provided insightful visions of the future of legal education, law practice, and a few substantive areas of the law. Some set out the challenges and called for action on part of the bar, bench, and academy. These articles were written by a most impressive array of authors: two former Supreme Court justices, Tom C. Clark and Arthur J. Goldberg; two of the leading academics of their time who remain household names in their respective fields, Jerome Hall and Irving Younger; and three practitioners, John L. Garland and Donald H. Elliott together with Norman Marcus, who served as chair—then of course, called “chairman”—and counsel to the New York City Planning Commission, respectively.

For a new law review, this line-up of authors likely remains unprecedented. In light of Dean Mahon's vision for the Law School, the array of authors—members of the bar and bench, academia, and government and policy—seems planned rather than accidental. The mix reflected the goals of the law school: to bring together legal educators and the bench and bar to be able to make a true difference and to educate students to become leaders in the profession. This ambition was exemplified in other ways, too, such as the creation of a clinical program when the Law School was only in its second year. From the start, Dean Mahon did not see any conflict between academic reputation, enhanced by an impressive *Law Review*, and hands-on law reform work.

The opening section of the *Law Review* also mirrored another aim of the Law School: to be at the cutting-edge of new developments. From its beginning, for example, Hofstra Law had an innovative curriculum which reflected Dean Mahon's vision of the future of the practice of law. It included Administrative Process and Legislative Process in the first year. Equally important, even traditional courses were renamed. Criminal Law, for instance, was renamed “Crime and Corrections,” to connote the inclusion of sentencing and correctional practice.<sup>1</sup> These

---

1. The beginning of the Law School, including challenges, curricular development, and faculty hiring, was documented by Dean Malachy T. Mahon in his account entitled *Starting Hofstra*

*Law Review* articles directly addressed and reflected some of the challenges of their time in the practice of law, legal education, and substantive law and process, and they projected likely developments in these areas out several years. In doing so they are now not an historical artifact but rather provide an insightful perspective on the past *and* the present.

The next major component of the *Law Review*'s first volume was the Symposium, put together by a then relatively junior academic who quickly became a rising star in the academy and a favorite of the bench and bar. Aaron D. Twerski is not only a former dean of Hofstra Law School but also one of the country's preeminent authorities on products liability law, having served as reporter for the American Law Institute's *Restatement on Product Liability*.<sup>2</sup> For this inaugural issue of the *Law Review*, he brought together leading conflicts scholars—including Hans Baade of the University of Texas, Amos Shapira of Tel Aviv University, and Robert Allen Sedler, then of the University of Kentucky—and his faculty colleague, Josephine King. Undoubtedly, their insights in this symposium were most valuable and their subsequent careers most impressive. It is a credit to the *Hofstra Law Review* and Aaron Twerski, whose help the editorial board generously acknowledged, that they managed to attract (rising) academic stars to contribute to this first volume.

Last, but surely not least, came the student Comments and Case Notes, none of which carry the names of their authors, as was typical at the time. They were focused on pressing issues and novel cases of the day, as was perhaps more customary then than it is today. While the names of the authors are known to the members of Volume 1, they will remain concealed from the rest of us. The loss of individuality may indicate the level of collaboration and teamwork that was necessary to make Volume 1 a truly memorable issue for its role as a new school's lead journal.

It has been my pleasure to meet many, though not all, members of the inaugural board of editors and many of the staff. They have made Hofstra Law proud not only through their editorial work but throughout their careers. The editor-in-chief, John J. Farley, III, who had joined

---

*Law School* (May 2, 2005) (on file in the law library at the Maurice A. Deane Law School at Hofstra University).

2. Aaron Twerski is the Irwin and Jill Cohen Professor of law at Brooklyn Law School. He was the first Hasidic Jew ever hired at a U.S. law school as a tenure-track faculty member. Subsequently, Professor Twerski served as Hofstra Law School's dean from 2005 to 2007. Marcelle S. Fischler, *Hofstra's Law Dean Stands out, but Still Fits In*, N.Y. TIMES, Sept. 18, 2005, at 4; Celeste Katz, *DeBlasio's Jewish Fundraiser*, N.Y. DAILY NEWS (June 15, 2007, 10:19 AM), <http://www.nydailynews.com/blogs/dailypolitics/2007/06/deblasios-jewish-fundraiser.html>.

Hofstra Law after having served in Vietnam, became a judge on the U.S. Court of Veterans Appeals. Michael Vecchione heads the Rackets Division at the Kings County D.A.'s office. Richard "Rick" Leland is a partner at Fried Frank. Marianne Trump Desmond (now Barry) has been a role model for women attorneys—first by becoming the highest ranking woman prosecutor in a major U.S. Attorney's Office and then through her appointments to the District Court and later the U.S. Court of Appeals for the Third Circuit. Many of the editorial board members have served as adjunct faculty members, including Rick Leland, Michael Vecchione, Bennett Wasserman, and the "typist," Beth Goldmacher.

## II. THEN AND NOW: CHALLENGES TO LEGAL EDUCATION AND THE LEGAL PROFESSION

Let me return now to the impressive set of six articles that open the very first issue of the *Hofstra Law Review*. According to the Foreword, they were commissioned to "foster[] consideration of future problems now."<sup>3</sup> The Foreword continued to state that the goal of this array of pieces is "to present a discussion of prospective issues so that current thought and debate will help define and hopefully decrease the scope of future problems."<sup>4</sup> While I postulate that the *Law Review* failed miserably in its goal of *decreasing* future problems, the articles remain fresh and riveting. They foreshadow a future that is just beginning to play out forty years later. Because of their perceptiveness, their current impact, and their broad ramifications, two articles are of particular interest as they address issues that are most relevant to legal education today.

### A. *The Future of Legal Education*

Justice Clark, disavowing any "clairvoyance," took us to what he called "predicted changes," after a discussion of the background, reasons for and the inevitability of change.<sup>5</sup> Is it really 1973, or rather 2012, when he charged that law professors cannot impart practical skills?<sup>6</sup> He suggested that every law professor have "some trial practice in the courts."<sup>7</sup> As much as this might be a one-sided portrayal of the legal profession as litigation-focused (an especially jarring view today as much of legal practice is transactional, centered on administrative

---

3. *Foreword*, 1 HOFSTRA L. REV. vi, vi (1973).

4. *Id.*

5. *See* Tom C. Clark, *Changing Times*, 1 HOFSTRA L. REV. 1, 1, 3 (1973).

6. *See id.* at 3-4.

7. *Id.* at 4.

practice, and inclusive of alternatives to litigation), presumably it reflected the Justice's broader belief that law professors should be skilled practitioners. Today's non-clinical faculty members drawn from practice as infrequently as ever, a development that contributes to a further widening gap between the profession and the legal academy.

Interestingly, Justice Clark praised a state bar program that included not only courtroom training but also "training in file organization, necessary forms, systems analysis, fee setting and collection, client relations and billing."<sup>8</sup> Today, law schools are beginning to take an interest in teaching some of these so-called soft skills that are crucial for success in the practice of law, but they remain scarcely taught and are often far removed from practical experience. Hofstra Law has followed Justice Clark's suggestion by recently creating a professional development program that is designed to impart leadership skills, cross-cultural and cross-gender communication skills, and cross-generational understanding. More of this teaching is needed, inside as well as outside the curriculum, to prepare law students more effectively for the modern practice of law. Other law schools have added courses that focus on setting up a solo practice. To be effective, however, those courses should be coupled with hands-on "incubator" support through the law school and alumni for graduates who are embarking upon such a venture.

Justice Clark's suggestion that law schools establish clinics became widely accepted in the academy over the following years and decades.<sup>9</sup> With respect to Hofstra, Justice Clark may have signaled his support not only for the developments at the Law School but also for his former law clerk, Dean Mahon.<sup>10</sup>

In his prescription, Justice Clark narrowly focused on trial skills as the essential skills of an attorney,<sup>11</sup> incidentally an idea taken up in Dean Mahon's original curricular blueprint. As modern practice settings indicate, however, trial practice is a relatively limited slice of the legal profession. For that reason, many law schools have added programs to teach transactional skills, alternatives to litigation, and administrative

---

8. *Id.*

9. *See, e.g.*, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM (Robert MacCrate ed., 1992); WILLIAM M. SULLIVAN, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

10. Dean Mahon clerked for Justice Clark from 1960 until 1961. *The Papers of Justice Tom C. Clark – Law Clerks*, TARLTON L. LIBR., <http://tarlton.law.utexas.edu/clark/clerks.html> (last visited July 27, 2012). He was perhaps the only night school graduate to ever clerk for a Supreme Court Justice, which he did upon graduation from Fordham Law School's evening program in 1960.

11. *See Clark, supra* note 5, at 4.

regulation. These are constant reminders of changes in the law, including the entire creation of new areas in the last few years.<sup>12</sup>

Justice Clark would likely nod approvingly at the increasing number of simulation courses and online courses that bring together practitioners and academics in the classroom. While only a few law schools have focused on increasing practice immersion during the last year of law school,<sup>13</sup> many have expanded more practice-based offerings, which are frequently taught by adjunct faculty members, all reflected in a recent ABA Curriculum Survey.<sup>14</sup> As change has come slowly in so many schools, more radical ideas are in the making, though many of those are unlikely to become reality.

Some have argued for a residency-based training program, akin to the medical school model, to allow young lawyers to become better trained and more experienced members of the profession. It appears that Justice Clark is part of that group, as he suggested replacing the third year of law school with a clinical year.<sup>15</sup> Others advocate for overall greater flexibility in law schools, resulting from fewer accreditation restrictions, so as to allow for the creation of greater differentiation between law schools and highlight diverse educational missions.<sup>16</sup>

Some have argued that the undergraduate degree, which became required by all schools in the 1950s, is unnecessary, as the English model demonstrates, and adds unnecessary costs. Others increasingly argue for a two-year law degree.

While these ideas may initially sound attractive, especially if greater differentiation of law schools is a goal, they may have substantial unexpected consequences. They could send us back to the pre-World War II era, but with a technology-driven spin. In those days, Ivy League schools led the institutionalization of the academic model of law

12. Bankruptcy and sentencing suffice as examples.

13. The third-year program at Washington & Lee University's School of Law requires a clinical or externship experience but supplements that with a transactional and litigation immersion as well as simulation-based courses, usually co-taught by members of the full-time and the adjunct faculty. *Washington and Lee's New Third Year Reform*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/thirdyear/> (last visited July 27, 2012); see also Judith Romero, *Stanford Law School Advances New Model for Legal Education*, STANFORD L. SCH. (Feb. 13, 2012), <http://blogs.law.stanford.edu/newsfeed/2012/02/13/stanford-law-school-advances-new-model-for-legal-education/>.

14. A.B.A., *A Survey of Law School Curricula: 2002–2010* (forthcoming 2012).

15. Clark, *supra* note 5, at 4. The proposal seems to be in vogue again in certain quarters. The arguments in its favor are imbuing recent law graduates with desired practical training and decreasing their debt burden.

16. See, e.g., Richard A. Matasar, *Does the Current Economic Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?*, N.Y. ST. B.J., Oct. 2010, at 20; see generally David E. Van Zandt, *The Evolution of J.D. Programs—Is Non-Traditional Becoming More Traditional?*: Keynote Address Transcript, 38 SW. L. REV. 607 (2009).

schools. On the other end of the educational spectrum were hosts of underfunded night programs, attended largely by working class immigrants who were taught by practitioners. While these schools charged generally little tuition, they did not require an undergraduate degree nor did they have particularly exacting teaching standards. Their faculty was minimally compensated, in part because teaching provided a (necessary) supplement to their attorney salaries. These models created choices, but they also resulted from great stratification within the legal academy, which the profession replicated.

With the economics of legal education driving many of the current proposals, these ideas raise especially large questions about such stratification at a time when the distribution of income and wealth within U.S. society has become increasingly unequal. Much of this inequality leads to educational differentiation at every level, which is likely to lead to further stratification. Disturbingly, educational and wealth inequality also reflects the racial inequality in this country.

As society becomes more globalized and technology-savvy, the need for more sophisticated lawyering will increase. For many law school graduates, nevertheless, the reality of their practice may be more local, with less sophisticated client needs. Law schools struggle to serve both of these constituents as it is difficult to predict legal ability, despite the LSAT requirement, let alone accurately ascertain a law school applicant's inclination toward one or another of these practice settings. Perhaps such early tracking, which would highlight differences in prestige perceptions between law schools, may not be good pedagogical practice, as students of different ability levels are often able to support each other, and shine in distinct areas. In addition, many law students are woefully unprepared to consider the options available to them. Frequently, good grades—and high tuition debt—drive the belief that a global law firm would be the best setting for a young lawyer. Personality traits, ambition, and desire for more of a family-life balance, however, may counsel differently.

Rather than focusing on making law school shorter or converting it to an undergraduate degree, we will have to target the cost structure of legal education in other ways. Instead of pegging tuition to the highest salaries attainable in Wall Street firms, law schools will have to consider average salaries earned by their graduates in pricing their degrees.<sup>17</sup> The Millennial generation and their parents emphasize the “market power of

---

17. Cf. Bernard A. Burk & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 103-15 (2011) (describing the impact of the decreasing demand for highly paid associates in global law firms on the number of law school applicants and their price sensitivity).

the brand and the cash-value of the learning.”<sup>18</sup> They will evaluate the costs and benefits of an education, a new development accelerated through the recent economic downturn.

This change will lead to an overhaul of legal education, albeit slowly. It may indeed also bring with it greater focus on practice-based learning in the third year, with attendant structural changes to the earlier years of legal education.

Some aspects of the proposals that are currently being debated may be valuable. Medical schools require their students to have taken a certain core of scientific subjects before embarking upon medical training. Law schools value a liberal arts undergraduate education. At least at non-elite schools, however, fewer law students have fulfilled liberal arts requirements. In addition, they may have failed to have received the type of education helpful, perhaps even necessary, to succeed in law school. They may lack one of the most fundamental skills: solid writing ability. While complaints about the absence of certain skills on the part of law students have always existed, current studies indicate that the amount of studying that occurs at the undergraduate level is decreasing,<sup>19</sup> and therefore lending credence to the concerns of graduate and law faculty.

Rather than abolishing an undergraduate degree requirement, some law schools may consider requiring a certain core curriculum before students start their studies. This would create a greater consistency of skills, especially with respect to writing. Uniform substantive knowledge, however, would be much less desirable. Others may want to consider following the Northwestern model by requiring that almost every student have a minimum of two years of work experience before starting law school to assure greater maturity, better judgment, and more focus and purpose in their studies.<sup>20</sup> This approach would make a law graduate substantially more marketable both in law and in business. Some, however, counsel against this approach with the Millennial Generation, which tends to either power through its education or take substantial detours.<sup>21</sup>

Besides the creation of clinics, Justice Clark’s article included some additional proposals. His focus on instruction on judicial administration

---

18. NEIL HOWE & WILLIAM STRAUSS, *MILLENNIALS GO TO COLLEGE 202* (2007).

19. See RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* tbls.A3.5, A4.2, A4.3 & A4.5 (noting the decreasing periods spent studying among college students and providing breakdowns by subject).

20. Northwestern Law admits “a small number of students directly from college.” *Class Profile, Admissions*, NORTHWESTERN L., <http://www.law.northwestern.edu/admissions/profile/> (last visited July 27, 2012).

21. See HOWE & STRAUSS, *supra* note 18, at 204.

has totally fallen by the wayside, and his thought that the bar examination should be replaced by “a more realistic test of the student’s ability to practice law” is a perennial favorite for discussion.<sup>22</sup> While a few states now offer more practice-based examinations,<sup>23</sup> many others have added the Multistate Performance Test, designed to bring greater realism to the bar examination. Overall, however, not much has changed, in part because the large number of test-takers in many states makes implementation of a true practice component difficult, if not impossible. It would presumably mean an additional amount of time for testing, which would further delay entry into the profession.

While the bench, bar, and legal academy will continue to discuss the mechanics of practice-based learning and testing, Justice Clark made a larger point about clinics on which he put the burden of improving the image of the legal profession “because these young people will not put up with the present injustices of justice and the antiquated procedures used in many of our courts.”<sup>24</sup> Despite improvements over the last few decades, injustices remain rampant.<sup>25</sup> While some of these have been uncovered and partially addressed by law school clinics (the most famous of which is the Innocence Project, affiliated with Cardozo Law School at Yeshiva University), many of them seem due to the extraordinary emphasis we have begun to put on process over substantive law and especially fairness and justice.<sup>26</sup>

Justice Clark also commented on the number of lawyers. While he acknowledged the claim that “the profession cannot absorb the high output of the law schools”—how reminiscent of present findings—he argued that “we need more lawyers” as “[m]illions of people are without

---

22. See Clark, *supra* note 5, at 4.

23. See, e.g., *Law School News Round Up*, ACCEPTED (Oct. 17, 2010), <http://blog.accepted.com/2010/10/17/law-school-news-round-up-7/> (discussing Wisconsin and New Hampshire’s diploma privilege programs, which allow law school graduates admission to the bar without having taken the bar exam, provided they meet certain course requirements).

24. See Clark, *supra* note 5, at 4.

25. Recent discovery of the number of innocent people in our prisons is just one, albeit harrowing, example of how wrong our criminal justice system can be.

26. In the sentencing area, lack of uniformity has driven us to create guidelines to assure proportionality and to address racial bias. Many states and the federal system abolished parole to enhance “truth-in-sentencing.” Both movements were in part anchored in great idealism, but the reality turned out much grimmer, as prison sanctions proliferated and got longer and ultimately led to the highest per capita incarceration rate in the world. Often our attempts at greater justice have led to procedural reforms that allow us now to react more harshly to those who lose in our courts. See generally WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* (2012).

Correctly calibrating procedural protections and substantive justice remains challenging. The apparent increasing polarization of the country may make it increasingly less possible to agree on substantive values, requiring us to resort to procedural protections. That process surely began in the 1960s and 1970s. At that time, the Court’s ventures into more substantive areas of law have catapulted the country into long-standing disputes on matters such as the death penalty and abortion.

legal representation.”<sup>27</sup> He noted the Supreme Court’s decision in *Argersinger v. Hamlin*<sup>28</sup> and the subsequent funding of legal services as increasing the need for attorneys, and therefore for law schools to produce them.

Sadly, Justice Clark’s observations remain on point today. Every year we are facing a large number of law school graduates entering the profession. Many are unable to obtain legal employment,<sup>29</sup> yet major legal needs remain unmet. Our criminal justice system promises representation by an attorney, for example, but, operationally it continues to fall short of true representation in the misdemeanor context, even though misdemeanors often carry wide-ranging and long-term consequences.<sup>30</sup>

As a result of the current economic situation, legal services and programs around the country have been defunded or cut. Even before that, however, increasing tuition over the last decade has made it more difficult for young lawyers to join legal services organizations.<sup>31</sup> Without government intervention through enhanced funding of legal services (in the form of increased compensation or more generous loan forgiveness programs), the mismatch between legal services and legal needs will remain, with young lawyers unemployed or underpaid.

Justice Clark may already have given thought to the increasing plight of the middle class which often finds itself un(der)represented, often in difficult and high-stakes situations. For that reason, he urged the bar to consider a “prepaid legal insurance similar to hospital and health insurance in the medical field.”<sup>32</sup> Had he known about the travails of health insurance in this country, he might have been more reluctant to make this comparison. His underlying point, however, remains valid. We must develop alternatives to the current crisis in legal representation. Some Continental European countries have developed such insurance plans, not only for automobiles but also for other types of litigation, including labor, inheritance, rental, and other contractual disputes.

---

27. Clark, *supra* note 5, at 6.

28. 407 U.S. 25 (1972).

29. See Catherine Rampell, *The Lawyer Surplus, State by State*, ECONOMIX (June 27, 2011, 11:00 AM), <http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/> (reporting that there are over 44,000 law school graduates each year).

30. See generally Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277 (2011) (discussing lack of zealous representation for people charged with misdemeanors).

31. The federal government’s loan forgiveness program makes it somewhat easier and more attractive to practice in the public sector. See generally Philip G. Schrag, *Federal Student Loan Repayment Assistance for Public Interest Lawyers and Other Employees of Governments and Nonprofit Organizations*, 36 HOFSTRA L. REV. 27 (2007).

32. See Clark, *supra* note 5, at 6.

Justice Clark may be surprised to see how well *Brown v. Board of Education*<sup>33</sup> has been holding up in the courts but also how little it has impacted housing segregation and disparate school funding. Racial inequality continues to persist. Affirmative action remains the new frontier in race cases, with increasing questions about how higher education will be able to help support racial equality.<sup>34</sup> These questions become particularly challenging in light of recent immigration from nations and ethnicities who have benefitted from affirmative action programs over the last few decades because of historic inequities. In some of cases affirmative action may have operated to the detriment of minority applicants whose families have been much longer settled in this country.

With America's focus on racial equality, little emphasis remains on economic disadvantage. A recent study has indicated, however, that most law students come from the middle and upper-middle class, with the poorer segments of the population barely represented, a finding that holds true across racial categories.<sup>35</sup> These data raise troubling questions about educational stratification as well as the ability of members of our legal profession to adequately represent those who are economically disadvantaged. Here clinics may be able to play a most valuable role by exposing law students to a client population with whom they may otherwise share little social contact.

While Justice Clark's article remains timely today as it takes up a series of ongoing challenges to legal education, John Garland's contribution to Volume 1 foreshadows many of changes to legal education caused by technological innovations.

### B. *The Impact of Technology*

Garland's article is nothing short of remarkable, especially if one were to replace the word "computer" with "Internet."<sup>36</sup> John Garland was a New York City attorney and manager of information systems marketing in IBM's data processing division. He lucidly foresaw many of the technological developments in legal education and legal practice with which we continue to struggle. He described the computer as "an

---

33. 347 U.S. 483 (1954).

34. See, e.g., *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Fisher v. Univ. of Tex. at Austin*, 631 F.3d 213 (5th Cir. 2011), cert. granted, 132 S. Ct. 1536 (2012).

35. See generally Richard H. Sander, *Class in American Legal Education*, 88 DENV. U. L. REV. 631 (2011).

36. See John L. Garland, *Computers and the Legal Profession*, 1 HOFSTRA L. REV. 43, 43 (1973).

instrument of change,” with change occurring with increasing speed.<sup>37</sup> The law, on the other hand, he depicted as “a guardian of continuity.”<sup>38</sup> Forty years later, the law still appears to have difficulty adjusting to, let alone keeping up with change.

Garland predicted the use of remote access to legal materials, the increased use of film and other media in legal education, and effective computer-based self-instruction, like the CALI model.<sup>39</sup> While it would have been futuristic for him to think about the Internet, e-mail and Twitter, he urges the need for a new paradigm in teaching law as a result of the changes “in the methods of creating, storing, processing and distributing information.”<sup>40</sup> Garland, for example, considered more individualized, and therefore more effective learning, including use of more points of evaluation rather than a semester, or as then common end-of-year, examination.<sup>41</sup> This would require major changes in teaching, as law schools continue to use the large section model to impart analytical skills. Individualized learning is the province of clinical teaching and simulation-based courses, all of which demand a substantially smaller faculty-student ratio. Today’s generation will likely exert the pressure on higher education to increase the feedback, positive reinforcement, and assessments that the Millennial Generation craves.<sup>42</sup> These demands, however, squarely collide with equally loud and valid calls for flat, or even decreased, tuition. While personnel costs are usually the largest share of a law school’s budget, increasing technology expenses are non-negligible.

Garland’s article brings us to a point in time that is just a few years past: PowerPoint, film clips, use of some electronic updates in the classroom are exactly as he described. He considered those changes “a revolution in the methodology of teaching law.”<sup>43</sup> If it has been a revolution, it has been slow moving and has not required major structural adjustments. That, however, is about to change.

With even elite universities joining the online market and making their best faculty and lecturers available to a broad audience across the globe through massive open online courses (“MOOCs”), we must re-envision legal education. Garland noted the ability—and perhaps obligation—of well endowed law schools to develop new teaching

---

37. *Id.*

38. *Id.*

39. *See generally id.*

40. *Id.* at 47.

41. *See id.* Dean Mahon mandated the relatively novel model of end-of-semester exams even for year-long courses when Hofstra Law opened its doors.

42. HOWE & STRAUSS, *supra* note 18, at 204.

43. Garland, *supra* note 36, at 47.

techniques that would be available for adoption by those with lesser means.<sup>44</sup>

Will we be able to use the information revolution to our advantage and provide students with more one-on-one tutoring in the classroom and deeper analysis, as Garland suggested? Surely, the lecture model that has increasingly crept into law schools will become outdated. Some have even argued that the ban on laptops is a flawed attempt at establishing authority over their students by depriving them of independence and autonomy, which, they claim, contributes to mental health problems of law students and enhances the infantilization already implicit in the way law professors use the Socratic method.<sup>45</sup> The attempt of faculty to keep technological control in the classroom is also likely condemned to fail in light of the multiplicity of sources that allow constant connectivity. While technology may contribute to increasing human distance and lack of connectedness, this generation of law students counteracts these tendencies with their demand for and reliance on collaboration—a skill praised in practice but so far hardly taught or valued in legal education.<sup>46</sup>

I fear we may have squandered the first thirty-five of the last forty years in adjusting legal education to the vision Garland sets out in this article. Technological change seems to have led to erratic attempts to adjust the learning experience. Instead we should focus on Garland's call to focus the core of legal education on the need for "learning to think, to analyze and to solve problems."<sup>47</sup>

This paradigm has become more important as we are facing an information explosion and more sophisticated lawyering. Those demands, including the increasing need to sort the relevant from the irrelevant, have contributed to the workload and stress on young attorneys. While analytical ability remains at the core of lawyering that skill alone no longer suffices in today's competitive business market. We have also added demands for more cross-disciplinary knowledge, an understanding of the client's business with its goals and strategies, cross-cultural competence, language skills, business and financial acumen, and others, to our list of requirements for a young lawyer.

If asked today, Garland would likely counsel against the proliferation of courses we countenance in our curricula. He advocated for the re-creation of a "core" of legal education, with specialization to

---

44. *See id.*

45. *See, e.g.*, DAVID I.C. THOMSON, LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE 80-81 (2009).

46. *See id.* at 31-35.

47. Garland, *supra* note 36, at 48.

occur either at the graduate program level or in the practice of law.<sup>48</sup> Many administrators and legal educators, however, see specialization as necessary for schools to distinguish themselves and to distinguish their students. As long as a law degree requires three years of academic study, specialization must be acquired after graduation. Even though law schools increasingly offer specializations and concentrations—presumably based on a college model of majors and minors—they seem to carry generally little value in the marketplace. The same may be true for some LL.M. degrees, especially if completed immediately after the J.D. and if the graduate is not also concurrently employed in the field. The exception to this rule seems to be primarily the tax LL.M.

Law school may best be viewed as two years of a core “liberal arts” curriculum, with a final bridge year into the profession. That construct of legal education would enhance the need for learning assessments and perhaps also outcome measurement.<sup>49</sup> While learning to be reflective and thoughtful critics of the legal process, law students would also acquire the type of knowledge, experience and values the profession appreciates and rewards. Such a learning environment would retain the value of law schools as the gateway to the profession.

Garland implied the need for pooled resources and a seamless interface between legal education and practice. While resource constraints in both the profession and academia might counsel in this direction, are the two sufficiently integrated to make this feasible? On the other hand, the employment pressures on today’s law students may not provide law schools with any option other than to create a closer relationship with the bench and bar.

Most importantly, current technological changes may decrease the need for attorneys who are not able to provide value to their clients beyond that available more cheaply through standardization and computerization.<sup>50</sup> As the practice reacts slowly to technological changes, their impact may remain even more of a mystery to law schools. Legal educators must begin to focus directly on what the developments summarized above may mean for different strata of the legal profession. Otherwise, we may wake up one day and have to question our own relevance as teachers and legal professionals.

---

48. See *id.* (internal quotation marks omitted).

49. For a discussion of outcomes assessment as a response to current critiques of legal education, see ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

50. For an insightful discussion of the changes occurring in the legal profession and their potential impact on the future of lawyers, see RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* (2010) and Thomas D. Morgan, *The Rise of Institutional Law Practice*, 40 HOFSTRA L. REV. (forthcoming 2012).

Just as Justice Clark and John Garland did, we live in interesting—and challenging—times. As the practice of law will undergo substantial changes, so will legal education in the years to come. Technology, globalization, and rapid societal changes will force us to change today to remain relevant tomorrow.

\*\*\*