

LAW SCHOOL AS SOCIAL INNOVATION

*Lorne Sossin**

Legal education is in the midst of a range of challenges and disruptions. This address outlines these dynamics, and explores the potential of social innovation as a model for law schools which both responds to current challenges and enhances resilience in the face of disruption. By reframing legal education as facing outward, and advancing its public interest mandate through partnerships, collaboration and academic initiatives designed to solve social problems, law schools can enhance the student learning experience, generate new forms of legal knowledge and thrive at a time of rapid change. Address delivered at the Australian Law Teachers Association (ALTA) 2016 Conference in Wellington on 8 July 2016.

I INTRODUCTION

In July of 2016, I had the good fortune to spend an eventful week of talks and touring in New Zealand, culminating in an address in Wellington at the annual conference of the Australasian Law Teachers Association (ALTA) on the idea of law schools as social innovation.

In this brief article, I explore the themes I raised as part of this address, and do so in two parts. In the first part, I explore the challenges faced by law schools across Common Law jurisdictions at this juncture in time. In the second part, I propose a social innovation model as a future framing for part of the core mandate of law schools and legal education (at least public universities whose mandate includes the public interest).

II THE DYNAMICS OF LEGAL EDUCATION

I heard from a number of Australian, New Zealand and South Pacific colleagues about the challenges law schools in this part of the world face, from too many universities chasing too few students, to the bifurcation of legal education between traditional LLB programmes and emerging JD programmes, to the rise of managerialism throughout legal education.

* Dean and Professor, Osgoode Hall Law School, York University. I am grateful to Zach Hershenfeld for his superb research assistance in support of this article, Devon Kapoor and the editors of the Victoria University of Wellington Law Review for excellent editorial assistance, and for the helpful and engaging questions and discussion at the Annual Conference of the Australasian Law Teachers Association (ALTA) at Victoria University of Wellington, Faculty of Law, 7–9 July 2016. The participation of Professor Sossin was funded by the New Zealand Law Foundation.

Some of these dynamics are distinct to the Australasian model, while others resonate more broadly. Similarly, the reflections I shared on legal education as social innovation are dynamics in many ways particular to North American legal education, but which include elements I believe to be relevant more broadly.¹

A Looking Outward

Legal education is evolving from its historic inward focus on legal concepts, doctrines, analytic frameworks (for example, statutory analysis and reasoning by analogy through case law) and lawyering skills (oral and written advocacy), to an outward focus on problem solving in society, community engagement, law reform, social and economic innovation, and putting ideas into action for the social good.

At Osgoode Hall Law School, this transformation took on literal dimensions as our 2011 building renovation installed windows in brick walls to let communities see in and students see out – or "New Windows on Justice" as we called it then – and academic dimensions as our 2012 curricular renovation included new experiential and research requirements. But whether as a response to the profession's call for more engaged legal education,² or think-tank and task forces on the topic,³ the thrust of reform in legal education in the 21st century has been toward more experiential learning, and more of law school taking place outside traditional classrooms.

This outward orientation creates particular kinds of challenges and opportunities: reliance, for example, on lawyers and community partners to collaborate in delivering legal education may give rise to a concern over academic autonomy and control, as well as additional budgetary pressures – it typically costs more to develop and coordinate high-quality experiential programmes than to teach large numbers of students in classrooms.

An outward focused law school also faces greater pressure to adapt and change in relation to social change. In Canada, as in New Zealand, a key driver of curricular change has been Indigenization and the aspiration for legal education to support reconciliation. The recently concluded Truth and Reconciliation Commission on Indian Residential Schools in Canada, for example, included in its "Calls to Action" a specific recommendation relating to legal education:⁴

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- 1 Related themes are explored in Lorne Sossin and Devon Kapoor "Social Enterprise, Law & Legal Education" (2017) 54 *Osgoode Hall LJ* (forthcoming).
 - 2 Canadian Bar Association *Futures: Transforming the Delivery of Legal Services in Canada* (Canadian Bar Association, August 2014).
 - 3 William Sullivan and others *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Foundation, 2007).
 - 4 TRCTalk "Call to Action #28" <trctalk.ca>.

We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.

Playing our part in the reconciliation process with indigenous communities requires fundamentally rethinking both the role law (and lawyers) has played in perpetuating injustice in countries like Canada, Australia and New Zealand, and how we teach. Several law schools have developed programmes involving curricular and co-curricular elements embedded in Indigenous communities. For example, in 2014, Osgoode Hall Law School launched the Anishinaabe Law Camp at Neyaashiinigmiing (Cape Croker, Ontario) in collaboration with the Chippewas of Nawash. Community knowledge-holders – legal scholars, ecologists, leaders and elders – guide the annual Camp in which 35 to 40 students and six to eight faculty members, staff and visiting judges are introduced to Anishinaabe legal concepts, principles, pedagogies and modes of reasoning.⁵

Participants begin to learn how to read the most fundamental text that the Anishinaabe have historically drawn upon to build their intellectual tradition: the land itself. They listen to some of the ancient stories of the Chippewas and discuss how to tease out some of the principles they contain for living respectfully and resolving conflicts. Aspects of current conflicts and dilemmas experienced by the community are also explained and reflected on throughout their stay.⁶

B Disruptions

Legal education is in the midst of transformation because of disruptions affecting the justice system and the delivery of legal services, including digital and tech transformation, globalisation and rising tuition coupled with growing student debt.

These transformations together have compelled all law programmes to come under unprecedented scrutiny and revisit their mandates, missions and funding models. In the United States, these dynamics, together with dwindling applications and enrolments, have led some programmes to contract, and others to run, unprecedented deficits. Over half of law schools in the United States reported smaller entering classes in 2015 compared to 2014, with a quarter reporting declines that exceeded ten per cent. Since the precipitous drop in United States law school enrolments began close to a decade ago, enrolments system wide have been cut in half.⁷ Building on the Carnegie Report on

5 Serena Dykstra, Zachary Donofrio and Jasleen Johal "Anishnaabe Law Camp" (29 September 2014) *Obiter Dicta* <obiter-dicta.ca>.

6 Dykstra, Donofrio and Johal, above n 5.

7 See American Bar Association "2015 Standard 509 Information Report Data Now Available" <www.americanbar.org>.

Educating Lawyers,⁸ many law schools in the United States are developing new experiential programmes, and indeed some are experimenting with a full year or term of law school involving internal and external placements in clinics, non-governmental organisations (NGOs) and law offices.

In this way, disruptions can present opportunities. For example, while enrolments in the United States have dropped, classes have become more diverse,⁹ and curricular innovation is on the rise.¹⁰ In Canada, we have witnessed a rise in innovations as well. At Lakehead University, a new JD programme was founded in 2012, which integrates supervised placements and practical training as an alternative to articling.¹¹ At the University of Victoria, a new co-curricular degree in Indigenous knowledge has been developed, while the University of Saskatchewan has partnered with Arctic College to develop a law programme in Canada's northern territory of Nunavut, which will build on Inuit traditions and knowledge.¹²

C Experiential Learning and Research

While the connection between experiential legal education (for example, clinics, cooperatives, intensive programmes and internships) and social innovation is somewhat intuitive, the link between legal research and social innovation has been subject to less scrutiny and attention. I believe this is changing.¹³ One-off research courses featuring legal research in collaboration with external organisations are becoming more common. In these collaborations, the goal is not for law students to provide supervised legal services, as with clinical legal programmes, but rather for law students to contribute to social innovation through research.

While not every experiential programme is an example of social innovation and not every social innovation project will involve experiential learning for law students, there is a high correlation between the growth of experiential learning and the impetus for greater collaboration with community partners and greater focus on social innovation.

Research-based social innovation in law schools is distinctly well suited to the university contexts and aspirations. Too often, experiential learning is associated with law students providing legal

8 Sullivan and others, above n 3.

9 See Kelly McEvers "As Law School Applicant Pool Shrinks, Student Bodies Diversify" (26 April 2016) National Public Radio <www.npr.org>.

10 R Michael Cassidy "Reforming the Law School Curriculum from the Top Down" (2015) 64 J Leg Ed 428.

11 Bora Laskin Faculty of Law, Lakehead University "Integrated Practical Curriculum" (2013) <www.lakeheadu.ca>.

12 See CBC News "Nunavut chooses University of Saskatchewan as law degree program partner" (23 August 2016) <www.cbc.ca>.

13 I elaborate on this view somewhat in Lorne Sossin "Experience the Future of Legal Education" (Research Report No 47, Osgoode Hall Law School of York University, 2013).

services or engaged in skills training with respect to aspects of legal practice (for example, how to conduct a client interview, engage in mediation or argue a motion). While these settings are valuable and important, experiential learning takes place in broader settings in the law school, from participating in dispute resolution and access to justice in the community (through a mediation or public legal education programme), to the various incubators and hubs discussed below.

Research-based social innovation is more likely than clinical programmes to be designed and led by full-time faculty at law schools, and to be more closely aligned to broader learning objectives in university-based law programmes (for example, enhancing analytic problem solving and critical thinking). Research-based social innovation is also well suited to project based and time sensitive initiatives. In the past few years, for example, Osgoode Hall Law School has partnered in such ventures with the Centre for Addiction and Mental Health (CAMH), the Office of the Judge Advocate General (JAG), the Refugee Sponsorship Support Program and the Barbra Schlifer Clinic. In each case, students engaged in organised, collaborative research focused on problem solving, law reform and new ways of thinking about the law. These collective directed research initiatives are expressly intended to marry the student-driven generation of new legal ideas with problem solving for NGOs and public interest organisations.

Below, I explore a range of social innovation initiatives rooted in North American Law Programmes, including both clinical and research oriented collaborations. These programmes, to some extent, dovetail with the structure of North American legal education (for example, such programmes are second entry JD degrees where students have already completed an undergraduate degree in a range of fields – and sometimes other graduate or professional degrees as well). Additionally, the resources available to "professional legal education" in North American law schools may provide for more funding for social innovation projects than available in other peer jurisdictions with direct entry legal education models. As Liz Curran has observed:¹⁴

Australia's law schools are very different to those in the United States although similar to those in Canada (for the moment anyway the Commonwealth government of Australia in its most recent Budget has announced greater fee paying and personal autonomy in setting those fees for universities.) But Australia does not have the vast resource base of American law schools both public and private which have substantial tuition fees, large endowments and receive significant support from alumni and benefactors. In Australia, and as I understand it the United Kingdom, clinical legal education courses are primarily part of the undergraduate program and are often combined with another degree. There is a somewhat broader 'liberal education' mission than American law schools which have in the last decade become more narrowly oriented towards 'professional separation' and skilling.

14 Liz Curran "Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change" (2004) 6 JCLE 162 at 166 (citations omitted).

While jurisdictional and cultural differences matter in the context of legal education, I believe the benefits between legal education and social innovation can, and should, extend to all law programmes where the public interest and advancement of society are key aspects of the programme's mission, including direct entry and professional programmes in the United Kingdom, Australia and New Zealand, among other jurisdictions.¹⁵

As I elaborate below, I believe social innovation settings include some of the most successful learning environments for students, and one of the most tangible ways in which those involved in legal education engage with the communities around them.

III LEGAL EDUCATION AS SOCIAL INNOVATION

When seen as a hub for social innovation, the law school can lead not only to social improvements, as set out above, but also, importantly, to higher quality legal education and thought leadership in legal research, broader bases of community support for the law school, new resources for students and scholars, and broader support and engagement from alumni and the legal profession.

While there are many definitions of social innovation which could have application in legal education, most convey the idea that a social innovation is a new solution to a social problem that is more effective and efficient than current solutions. Another feature of social innovation is that the value derived from this new solution benefits society or groups in society rather than private individuals.¹⁶

It is worth distinguishing social innovation from the somewhat related concepts of social enterprise and social entrepreneurship. Social innovation focuses attention on solving problems that create social value, as well as on the processes through which social problems can be addressed. Social enterprise and social entrepreneurship focus more on the application of commercial strategies to improve society, seeking to enhance both profit and social impact along the way. While these are different concepts, they often bring together like-minded communities within law schools, and so examples of both are included in the discussion below.

A Incubators, Accelerators and Labs

Law schools are also becoming catalysts for social improvement as never before – including a focus on better access to justice, more adaptive and flexible models and tools for dispute resolution, shaping social norms of fairness and inclusion, and re-imagining the role of the legal profession and

15 For a review of some innovations in Australian legal education, see Sally Kift and others (eds) *Innovation and Excellence in Legal Education* (LexisNexis, Chatswood (NSW), 2011).

16 See for example Center for Social Innovation "Defining Social Innovation" Stanford Graduate School of Business <www.gsb.stanford.edu>.

legal professionalism. Below, I canvass some examples of law school-based projects and initiatives developing this aspect of legal education and social innovation.

1 NuLawLab

The NuLawLab out of Northeastern University is an "interdisciplinary innovation laboratory working to imagine, design, test, and implement pioneering approaches to legal empowerment".¹⁷ The NuLawLab applies three strategies to advance the democratisation of law: (1) work with communities to identify unmet legal needs and work with them to design solutions; (2) cultivate knowledge from a variety of disciplines and perspectives to shed new insight on longstanding barriers to legal empowerment; and (3) teach lawyers to be innovative in connecting people to law, legal information and services. This three-pronged approach has helped to launch various initiatives to help increase access to justice. Among others, these projects include an online game to help self-represented litigants prepare for court,¹⁸ a tool that provides underserved women veterans with information about their legal rights and available benefits,¹⁹ and an "app" that informs domestic workers about workplace essentials.²⁰ The numerous projects launched by the NuLawLab all hope to improve access to justice and further their goal of a "world where everyone is empowered to use the law".²¹

2 Open Law Lab

Margaret Hagan, a lawyer and designer based at Stanford University, created the Open Law Lab to help explore how law can be more accessible and useful to users.²² The Open Law Lab documents initiatives that create solutions to real issues, and projects that can "increase access to justice through technology [and] design".²³ Through themes such as illustrated law, human centred dispute resolution, access to justice, legal education and law games, the Open Law Lab designs projects to push the law forward by going through a process from concept, to working prototype, to a fully workable solution.

3 LegalRnD – The Center for Legal Services Innovation

Through research and development of "efficient, high-quality legal-service delivery tools and systems", Michigan State University's "LegalRnD" aims to increase access to legal services and

17 NuLawLab "About the Lab" <www.nulawlab.org>.

18 NuLawLab "RePresent: Online Game for Self-Represented Litigants" <www.nulawlab.org>.

19 NuLawLab "Women Veterans Outreach Tool" <www.nulawlab.org>.

20 NuLawLab "The Domestic Worker App" <www.nulawlab.org>.

21 NuLawLab "Home" <www.nulawlab.org>.

22 Margaret Hagan "About" Open Law Lab <www.openlawlab.com>.

23 Hagan, above n 22.

improve legal service delivery.²⁴ LegalRnD attempts to "bring the law to everyone" and improve service in the legal industry by leveraging technology and also by recognising the ineffective services that currently exist. LegalRnD's curriculum at Michigan State University extends from e-Discovery to Legal Analytics, and from Designing Legal Services to Delivering Legal Services and New Legal Landscapes.

4 Pitt Legal Services Incubator

The Pitt Legal Services Incubator programme is an incubator at the disposal of recent Pitt Law graduates who are developing solo or small firm practices that aim to increase access to justice and "target the needs of underserved client communities".²⁵ The programme focuses on helping with the business side of law practice, and aids in building financially sustainable practices across a range of under-represented practice areas and client communities. As well as providing office space, the incubator offers training, resources and mentorship to aid the development and maintenance of a solo or small firm practice.²⁶

5 Indigenous Law Research Unit

Social innovation has become linked to the embrace of new technologies and modernising legal services, but can take many forms. For example, the University of Victoria Faculty of Law's Indigenous Law Research Unit (ILRU) aims to honour Indigenous societies and their legal traditions, and to identify legal principles relating to lands and waters, justice and economic relations that may be accessed and applied today.²⁷ The ILRU engages with, and conducts research on, the traditions of Indigenous groups and the convergences and divergences with state law in hopes of creating a discussion about issues with which these communities struggle, and produces papers, graphic narratives and Indigenous Law Reports on specific areas of practice, among other endeavours. The ILRU works in partnership with Indigenous communities and has been involved in the development of a degree programme (concurrent to the JD on Indigenous Law). In this sense, it is embedded in social innovation both within the university and throughout broader communities.

6 Winkler Institute for Dispute Resolution

The Winkler Institute for Dispute Resolution is an initiative based out of Osgoode Hall Law School that aims to: (1) pursue innovation and excellence in alternative dispute resolution; (2) advance accessible justice in Ontario, Canada and internationally; (3) promote legal ethics and

24 LegalRnD, The Center for Legal Services Innovation "Innovation to Increase Access to Legal Services" <legalrnd.org>.

25 PittLaw, University of Pittsburgh "Pitt Legal Services Incubator Legal Innovations Toolbox" <law.pitt.edu>.

26 PittLaw, University of Pittsburgh "Pitt Legal Services Incubator" <law.pitt.edu>.

27 University of Victoria "Indigenous Law Research Unit (ILRU)" <www.uvic.ca>.

professionalism, which are necessary to achieve these objectives; and (4) provide a dispute resolution knowledge hub that collects and showcases the most innovative research in dispute resolution from within Canada and around the World.²⁸ Overall, the Winkler Institute aims to improve access to justice through innovative dispute resolution mechanisms. One major initiative that has arisen out of the Winkler Institute is the Family Justice and Mental Health Social Lab, which has developed projects that aim to improve the experience of users of the family justice system who deal with mental health challenges.²⁹

7 *Grunin Center for Law and Social Entrepreneurship*

The Grunin Center for Law and Social Entrepreneurship – the first centre of its kind at a law school – described ambitiously as a "trailblazer in social justice and education innovation."³⁰ The Center is engaged in a partnership with Ashoka – a pioneer in the field of social entrepreneurship – and works to improve the legal systems that affect social entrepreneurs. While social entrepreneurship differs from social innovation (as set out above), the goal of the Center is to generate "system-changing idea[s] to directly address an intractable social need and implement pattern-breaking solutions to serve the common good" which tracks closely to social innovation goals.³¹

8 *CyberJustice Lab*

The CyberJustice Lab's main goal is to fuel the adoption of technology into the justice system in order to reduce costs and delays of proceedings.³² More specifically, the Laboratory's multi-disciplined team analyses the impact of technologies on the justice system and uses this information to develop solutions to issues that plague this system. The Laboratory is made up of a courtroom for holding trials and simulations, a computer lab, an audiovisual control, a server room where the software modules are developed, and a mobile courtroom used for studying the implications of the use of videoconferencing and remote information exchange in a judicial context.

9 *Legal Innovation Zone*

The Legal Innovation Zone at Ryerson University is a co-working space for entrepreneurs, lawyers, students, tech experts, government members and industry leaders who aim to influence and change Canada's legal system.³³ This incubator-type model is intended to support, foster and develop

28 Winkler Institute for Dispute Resolution "What We Do" <<https://winklerinstitute.ca>>.

29 See Winkler Institute for Dispute Resolution "Family Justice & Mental Health Social Lab" <<https://winklerinstitute.ca>>.

30 Grunin Center for Law and Social Entrepreneurship "Who We Are" NYU Law <www.law.nyu.edu>.

31 Grunin Center for Law and Social Entrepreneurship, above n 30.

32 CyberJustice Laboratory "The Laboratory" <www.cyberjustice.ca>.

33 Legal Innovation Zone "About Us" <www.legalinnovationzone.ca>.

solutions and technologies that focus on improving Canada's justice system. This is done through providing co-working space, support and resources to companies and individuals working on projects related to justice and legal system solutions, and by partnering with organisations, governments and the legal community to assemble collaborative groups to tackle challenges that face the legal system.

In its first year of the Legal Innovation Zone, Ryerson reported support for 19 active start-ups, partnership agreements with law firms and legal related enterprises (including Osler, Hoskin & Harcourt LLP and LexisNexis) and the development of numerous initiatives.³⁴ Among others, these include projects that help connect entrepreneurs to legal services, a hackathon ("Hackcess to Justice") focused on rural and remote issues,³⁵ a panel on the future of legal tech and outreaches to support student programming.

IV REFLECTIONS

What do all these expressions of social innovation at North American law schools amount to? What trends are emerging from their development and growth? How should their success be evaluated?

First, it is apparent (and important) to note that most social innovation initiatives are occurring outside the core curriculum of law schools and in units, divisions, hubs or centres that appear to have some autonomy and separate identity from the law school and university per se. This observation, in turn, raises important questions: how are these initiatives funded and governed, and how do they interact with law school faculty, staff and students? There is clearly a range of models, even in the small sample of illustrations discussed above. Some of these initiatives have been created by law schools to reflect shared goals, while others emerged from partnerships with outside firms, NGOs and organisations, and still others have resulted from donations (presumably with priorities as set by donation agreements to keep in mind in addition to law school governance).

Secondly, virtually all social innovation initiatives reflect attempts by law schools to embrace potential disruptions, whether the disruption of new technologies (including artificial intelligence), new models of dispute resolution or new narratives of law (among others). Additionally, social innovation responds to anxieties in law schools about the career paths of law students. Rather than rely on existing kinds of careers and jobs, social innovation suggests law graduates may need and want exposure to the process of designing new kinds of roles and career pathways using legal education.

Thirdly, social innovation initiatives reflect the outward orientation alluded to at the outset of this article. These activities are engaged in exploring and addressing social problems, and attempt to add

34 Legal Innovation Zone "Initiatives" <www.legalinnovationzone.ca>.

35 See Ryerson University "March 28: Hackcess to Justice: Connecting Rural and Remote Communities to the Law" (25 March 2015) Your Legal Rights <<http://yourlegalrights.on.ca>>.

social value through the efforts and investments of the law school. The goal of many of these initiatives is aimed, in one way or another, at allowing more people to access legal knowledge, advice and services, in more accessible and helpful ways. By doing so, however, each provides additional skills, opportunities and accelerating potential for the students, staff, faculty and partners who participate. Social innovation builds on academic skills, but importantly, and in ways distinct from conventional classroom oriented legal education, deploys them for a social purpose.

V CONCLUSION

The ALTA Conference in Wellington coincided with the anniversary of my sixth year as Dean of Osgoode Hall Law School at York University in Toronto. It is amazing to think of all the changes that have occurred over this brief and fleeting span of time. In this role, I have come to understand that the ivory tower is neither ivory nor a tower any longer; rather, law schools are becoming drawbridges spanning social and economic moats, some seen and others still in the shadows. While uncertainties and risk certainly characterise the future of legal education, I am more convinced than ever that the best years for law schools as social innovators lie ahead.

