A CANADIAN LAW SCHOOL CURRICULUM FOR THIS AGE

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This article suggests a number of curricular alterations to the current law school program in order to adjust for the modern practice of law. The author begins by reviewing the expansive nature of law school from the end of the Second World War until the period just after the year 2000, which he describes as the Gilded Age of law school. He asserts that the Gilded Age ended with the introduction of market forces into Canadian legal education in 1995. The author argues that the law school of today must anticipate the legal profession of tomorrow. The suggested additions to law school include: grounding legal education in learning theory; using solution-oriented and economic analysis; instructing lawyers to be leaders, team players, project managers, and globally minded; using legal history as a basis for understanding the law; and implementing technology as part of the core curriculum.

Cet article laisse entendre que plusieurs modifications ont été apportées au programme actuel des écoles de droit dans le but de refléter la pratique moderne de la profession. L'auteur commence par une revue de la nature expansionniste des écoles de droit depuis la fin de la Seconde Guerre mondiale jusqu'à l'an 2000, période qu'il décrit comme étant l'Âge doré des écoles de droit. Il affirme que cet Âge doré a pris fin avec l'introduction de forces du marché dans l'éducation juridique canadienne en 1995. L'auteur prétend que les écoles de droit d'aujourd'hui doivent prévoir la profession de demain. Les ajouts proposés à la formation en droit comprennent: les bases de la formation en droit dans la théorie de l'apprentissage, l'utilisation d'analyses économiques et axées sur les solutions, le fait d'apprendre aux avocats à devenir des chefs, des joueurs d'équipes et des gestionnaires de projets, tournés vers le monde et utilisant l'histoire juridique comme base de compréhension du droit ainsi que l'introduction de la technologie dans le programme de base.

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I. INTRODUCTION: THE GILDED AGE AND THE CLASH OF PREMISES

Law schools in Canada today are suffering from a clash of premises. It is a clash in many respects of our own creation, and it is one that we strive mightily to avoid acknowledging. That is that they — and we who work in them — try to live double lives. On one hand, we want to be part of the academy — the grand *collegium academica*. That was the essence of the epic struggle over control of legal education that played out in Ontario in the 1940s.[1] As academics, we reject the notion of law school as trade school. Rather, we aspire to a place — a *rightful* place in our view — in the great university cast in the vision of John Henry Newman. The notion that we are the training school for a craft guild, even a learned one like the Bar, is anathema to that.

At the same time, the truth is that we want to hold ourselves above many aspects of regular university life that we do not find so agreeable. Whether it is with respect to salaries, teaching loads, the expectation of applying for research grants, control over classroom space, or any other of the myriad of irritants to the working lives of university professors, we will point to our connections with the legal profession as the justification for different treatment.

Happily for the legal academy, the game worked in favour of the law schools for a long time. The end of the Second World War through to the end of the twentieth century was the Gilded Age for Canadian legal education. The continuing excess of demand over supply of seats in law schools meant that law professors were teaching students who were, in the main, very bright. The demand for legal services continued to grow, so that law graduates were relatively easily (at least compared to their forebears during the Great Depression) able to find employment. Moreover, because of the burgeoning demand for legal services, law firm billings were able to grow, which led to lawyers' salaries steadily increasing. Law school income, too, increased dramatically — partly because well-heeled graduates (of whom there were many more than before the War) were able to give back to their alma maters, and partly because tax-flush governments across the country were increasing funding for higher education. This greased the wheels for the steady enhancement of law professors' salaries, so that by the late 1990s, it was not uncommon in many universities for an Assistant Professor of Law to earn as much as, say, a full Professor of English or Sociology. It also facilitated the explosion in both the number of Canadian law schools,[2] and in the numbers of professors employed by those law schools, which in turn allowed for a reduction in teaching loads and an increase in time spent on research. For those on the inside, it was a magnificent time to be a law professor.

It would be easy — but wrong — to caricature our Gilded Age as a time of complete self-centredness. America's Gilded Age in the late nineteenth century was a time of significant social inequality to be sure, but it was also a time when great advances were made in science, technology, and the arts. It was also the period when many new law schools were created

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1 For a thorough examination of this, see C Ian Kyer & Jerome E Bickenbach, *The Fiercest Debate: Cecil A Wright, The Benchers, and Legal Education in Ontario 1923-1957* (Toronto: University of Toronto Press, 1987).

2 Including the law schools at the University of British Columbia (1945), the University of Toronto (in its modern form, in 1949), the University of Ottawa (1957), Queen's University (1957), the University of Western Ontario (1959), the University of Windsor (1967), the University of Victoria (1975), and the University of Calgary (1976).

across the United States, which in turn fueled a pattern of upward social mobility for hard-working young men. In the same way, Canadian legal education's Gilded Age was a time of tremendous creativity and innovation — and of opportunity for young people from backgrounds that hitherto had been socially marginalized. So there is much about our Gilded Age to memorialize and celebrate.

The problem, though, was that the lives of law schools in Canada were increasingly divorced from the realities of everyday working lawyers. The breach was never complete, but less and less did law schools use as their guide for innovation the extent to which it better prepared their students for the profession they were about to join. This was the real paradox: a pattern of dramatic institutional growth had taken place on the basis that Canadian society needed more lawyers, yet the connection of the law schools to the profession for which they were the training ground became more and more attenuated.

II. THE INTRODUCTION OF MARKET FORCES INTO CANADIAN LEGAL EDUCATION

In 1995, Mike Harris was elected Premier of Ontario on a platform known as the "Common Sense Revolution." The Common Sense Revolution involved a grab bag of issues, principally economic in nature, that were designed to appeal to middle class voters, particularly those living in the so-called "905" — the urban and suburban communities that ring Toronto. Even today, the Common Sense Revolution — like Mike Harris himself — remains extremely divisive.[3] But there is no doubt that it involved a significant change in the philosophy by which Ontario was governed.

One of the items on the Harris agenda was to deregulate tuition in university-based professional programs, including Law and Business. At the same time, a young and ambitious scholar named Ron Daniels had been appointed dean of law at the University of Toronto in 1995. The move to deregulate professional school tuition gave Daniels the opportunity he sought: to differentiate Toronto's law school from the rest of the pack. Under his stewardship, the University of Toronto mounted an aggressive campaign to increase tuition to what were, by Canadian standards, astronomical levels. He used the increased revenue to recruit and retain faculty, and to attract top students from across the country.

Daniels' efforts were controversial in some circles, including among segments of his own faculty. Measured against his objectives, however, they were also wildly successful. Throughout his deanship, the stature of the University of Toronto's law school increased steadily so that by the time he left the dean's office to take up the Provostship at the University of Pennsylvania,[4] the University of Toronto could fairly boast that it stood among the most renowned law schools in the common law world. Yet Daniels' impact went far beyond the University of Toronto. What the Harris tuition reforms did was to allow market

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3 See e.g. Ruth Cohen, "The Ideology Driving the Common Sense Revolution" in Ruth Cohen, ed, *Alien Invasion: How the Harris Tories Mismanaged Ontario* (Toronto: Insomniac Press, 2001) 24.

4 After Penn, Daniels took up the presidency at Johns Hopkins in 2009, where he continues to serve as at the date of writing. See Tracey Tyler, "Former U of T dean new Johns Hopkins head," *Toronto Star* (11 November 2008), online: Toronto Star <http://www.thestar.com/news/gta/2008/11/11/former_u_of_t_dean_new_johns_hopkins_head.html>.

forces to operate in Canadian legal education; what the Daniels reforms did was to kick-start that market. In the years after 2000, a new spirit of market orientation emerged among Canadian law schools. Schools competed on at least three fronts: for the best students, for the best faculty and, as agents for their students, for the best post-law school job opportunities. This led, gradually but inexorably, to a shift in orientation within law schools towards the professional elements of legal education. It was no sign of submission — the reaction of the academy to the Federation of Law Societies of Canada report on the accreditation of law schools made this plain.[5] Rather, it was an acknowledgment, sometimes explicit, sometimes tacit, that our future is inextricably intertwined with the future of the practicing profession. The Gilded Age was dead.

III. THE BETTER PREMISES FOR LEGAL EDUCATION IN CANADA

It is true, as those nostalgic for the Gilded Age sometimes assert, that law students go on to a multitude of careers. And we all know that even of those who want to be conventional lawyers, many will leave private practice after a few years. But only a willfully blind person can deny that the vast majority of Canadian law students choose to attend law school because they want to spend at least a portion of their working lives as lawyers. This surely must be the premise on which any analysis of the goals and content of Canadian legal education should begin.

A second obvious premise is that the law is a service profession. Put another way, lawyers exist as a professional class to meet the needs of the public. The legal profession became important because we served an important role in society. We facilitated the transition from feudalism and absolutism in government to democracy and the rule of law. We assisted with the flow of capital that fuelled the industrial revolution. And so on, and so on, through to the end of the twentieth century. The point is that we were a necessary adjunct to the various processes of social and economic evolution that have taken place in the millennium since the Norman Conquest.

If this second premise is accepted, then it is axiomatic that, at least in its North American form, legal education must be a service profession, too. Law schools exist, perhaps not completely but in large measure, to supply the next generation of legal professionals. In order, therefore, to determine what legal education should look like today, and what it should look like tomorrow, we need to consider what the legal profession itself will look like, which in turn demands an assessment of how the public demand for legal services is changing and evolving.

It goes without saying that none of us has a crystal ball through which we can see the future perfectly. A metaphor that has been used before is to say that for the legal profession, today is like July 1914 — the uncertain interlude between the murder of Archduke Franz Ferdinand at the end of June and the German invasion of Belgium at the beginning of August. Everyone knew that the world would soon be ablaze, but no one was certain how the

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[5] In a nutshell, it was not positive. See e.g. Canadian Association of Law Teachers & Canadian Law and Society Association, "Response to the Consultation Paper of the Task Force on the Canadian Common Law Degree of the Federation of Law Societies of Canada December 15, 2008" (2009) 3 CLEAR 151.

inferno would start.[6] Nonetheless, there are a number of trends that seem likely to continue. No one can deny that we are living in the era of the dual professional crucible of globalization and commodification. Both of these factors challenge the very foundations upon which our traditional notion of legal practice exists. That is because they both undermine the importance of geography and the notion of the "full-service" law firm. When one adds into the mix the relentless pace of technological development, and the growing uncertainty about the sustainability of the Canadian version of the articling system, it seems that the historical foundations for our professional structure — upon which we have based many of our assumptions about what needs to be taught in law school — are quite shaky, indeed.

IV. THE ANTI-FUNDAMENTALIST FUNDAMENTALS

In a recent article in the *Saskatchewan Law Review*, Harry Arthurs offered what he termed a series of propositions that he described as "anti-fundamentalist."[7] Notwithstanding the provocative nature of the label, Arthurs' propositions serve remarkably well as an organizing manifesto for what a Canadian professional legal education today should be based upon — and what it should *not* be based upon. In a nutshell, Arthurs noted a number of features of modern-day professional life that undermine the notion of any sort of extensive substantive academic canon in the legal realm. This is because — and with respect to Professor Arthurs, this seems hardly anti-fundamentalist; it is something that we strive to teach every first year law student — the law is inherently indeterminate.[8] So how can one say that a particular body of substantive law, at least beyond the basic common law framework, is critical to the formation of every member of the legal profession?

Arthurs also noted something that has been put forcefully by Richard Susskind, *viz*, that much work done by lawyers today can be done equally well by paralegals and other support staff — and, as Susskind would remind us, increasingly by computers.[9] Echoing Susskind on another point, Arthurs reminded us that legal practice is changing at an increasing rate of speed. All of these things being the case, he made an observation that, notwithstanding his claim of anti-fundamentalism, seems quite conventional — and that would have likely seemed trite to Oliver Wendell Holmes more than a century and a quarter ago. That is that the "[s]uccessful resolution of most problems encountered in legal practice requires not only knowledge of substantive and adjectival law but also an ability to negotiate the practicalities of the legal system, to engage with the real-life circumstances of the parties and to take account of the larger social and economic circumstances within which their interests are imbricated."[10] How can one take issue with that? The point is that one cannot. But one *can*

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6 See e.g. Ian Holloway, "The Evolved Context of Legal Education" (2013) 76:1 Sask L Rev 133.

7 Harry Arthurs, "'Valour Rather than Prudence': Hard Times and Hard Choices for Canada's Legal Academy" (2013) 76:1 Sask L Rev 73 at 83-84.

8 In Arthurs' words: "Substantive legal knowledge is inherently indeterminate, has a short shelf life, and is used (if at all) in unpredictable combinations by lawyers in various kinds of practices" (*ibid* at 83 [emphasis omitted]).

9 See Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford: Oxford University Press, 2013) at 5-14. Arthurs put it this way: "Many lawyers spend much of their time performing routine procedures that can be (and are) also performed by para-professionals and support staff with no formal knowledge of the underlying legal rules or principles" (*ibid* at 84 [emphasis omitted]).

10 *Ibid* [emphasis omitted].

use Arthurs' observations to ground thoughts about what should be included in every Canadian common law J.D. program. Each could itself warrant a full-length article, but it might be useful for the purposes of the current debate over the future of legal education to group them in abridged form.

A. THE NEED TO GROUND LEGAL EDUCATION IN LEARNING THEORY

One of the traps that many who talk and write about legal education fall into, is to talk about what should be *taught* in law school. Instead, we should talk about what should be *learned*. To put it another way, we need to ground all reform efforts in an understanding of how students learn.

In its current form, North American legal education equates volume with rigor. Law school is difficult because we throw so much at our students. It is a fact that few law schools in Canada systematically measure how law is taught against what we now understand about how people learn and retain information. The hundred per cent final examination should have no place in an institution that values learning. Formative assessment is an essential element of the learning process.[11] Yet the "all or nothing final" still looms very large in the life of every Canadian law student. Moreover, we all know (and if we were in any doubt, the Law School Survey of Student Engagement would educate us) that by third year, our students' rate of engagement with the material falls off dramatically.[12] Of course, there are exceptions to this, but we should be under no illusion that law school in its current form is as intellectually stimulating or absorbing as we might want it to be. Using learning theory as the basis for evaluating possibilities for curricular reform could only make what we do better. Importantly, it could also allow us to do what we do in a fashion that is truly intellectually rigorous.

B. SOLUTION-ORIENTED ANALYSIS

The conventional party line in legal education is that we teach students to think like lawyers. As Professor Kingsfield put it so memorably to his students in the movie, *The Paper Chase*, "You come in here with a skull full of mush, and you leave thinking like a lawyer."[13] Fortunately, perhaps, there are not many Charles W. Kingsfields left in the Canadian legal academy, so the tone may have changed. But the theme has not: we purport to teach our students to think as legal professionals think. It is for that reason that we tend to continue to employ the case method as the primary vehicle for teaching legal principle. It is hard to imagine something more inefficient as a means of transmitting substantive knowledge than the case method. But its justification is that it forces students to read — and consequently to evaluate — critically, and to learn how to separate grain from chaff. And at that, it works

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11 See e.g. Carol Springer Sargent & Andrea A Curcio, "Empirical Evidence that Formative Assessments Improve Final Exams" (2012) 61:3 J Legal Educ 379.

12 See e.g. Law School Survey of Student Engagement, "Evaluating the Value of Law School: Student Perspectives, Annual Results 2013," online: Law School Survey of Student Engagement <http://www.lssse.iub.edu/pdf/2013/LSSSE_2013_AnnualReport.pdf> at 8; Mitu Galanti, Richard Sander & Robert Sockloskie, "The Happy Charade: An Empirical Examination of the Third Year of Law School" (2001) 51:2 J Legal Educ 235.

13 *The Paper Chase*, 1973, DVD (Beverley Hills, Cal: 20th Century Fox Home Entertainment, 2003). Based on the novel of the same name by John Jay Osborn Jr.

quite well. Indeed, one of the crowning achievements of the Canadian form of the Langdellian model of legal education is that it produces graduates who are highly skilled at critical thinking.

Unfortunately, however, that is only half of the equation when it comes to thinking like a lawyer. For good lawyers do not just know how to poke holes in an argument or a case. Rather, they know how to provide solutions to clients' problems. A business proprietor once described to me his concerns about lawyers this way: "I don't need someone to tell me what my problems are. I already know what they are, even if he can use more flowery language to describe them. What I need is someone to tell me what the possible *solutions* are. That's what I need."

In some respects, this is the single greatest indictment of the current form of legal education in Canada: no law school teaches solution-oriented thinking in a systematic way such that all students can claim to have been obliged to learn it. To be sure, there are individual courses in individual law schools in which the skill is taught.[14] But as a matter of programmatic structure, solution-oriented analysis is largely absent from the Canadian system of legal education. One supposes that this was something that was meant to be picked up by osmosis during the articling period. There are two problems with this, though. The first is we just do not know for certain that this happens; to paraphrase D.H. Lawrence, the dirty little secret behind the articling system is that quality assurance is at best minimal.[15] Secondly, as recent events in Ontario have shown, the future of articling looks more and more precarious.

So what Canadian law schools need to do is incorporate solution-oriented thinking into the J.D. curriculum. There are many vehicles with which this could be done. Some would be relatively resource intensive — compulsory clinics or more substantively-focused "case studies" courses, for example. Yet others would not be very difficult or costly at all to adapt structurally to the Canadian way of doing things. The Australians and New Zealanders, for example, have modified the Oxbridge system of tutorials to sit alongside the more North American approach to lectures. As a result, the typical Antipodean law graduate, while generally younger, will have had more experience at solving legal problems than his or her North American counterpart. There is no reason why the Australasian version of "Tutes," as they are known there, could not be introduced in Canadian law schools.

C. ECONOMIC ANALYSIS

"Law and economics" remains a loaded term, coloured still by the so-called Chicago school of free market thought that spawned the expression. But the skill of analyzing a legal issue from an economic perspective is something different. It concerns helping clients determine the best outcome for themselves. Almost always when a lawyer gives legal advice, he or she is inviting the client to engage in some sort of cost-benefit analysis. Yet, as core

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[14] For example, the University of Western Ontario's "Case Studies in Business Law" course, taught by Richard McLaren. Likewise, many law schools offer courses in dispute resolution. Clinical courses often do this, as well, but most law students in Canada still do not complete clinical courses which are formally evaluated for academic credit.

[15] DH Lawrence, *Pornography and Obscenity* (London: Faber & Faber, 1929).

as this is to the lawyer's function, it is not taught in law school — at least not in a systematic way. Partly, this is a function of the lack of systemic attention to solution-oriented thinking that has been discussed. But on a deeper level, it perhaps reflects a more troubling tendency to dissociate the study of law from the study of the human condition. If we were to remember the principal premise that the law, and hence the lawyer, is the servant of the public — that lawyers are *serviens ad legem*, as the ancient description had it — then it might seem more natural to ground how and what we teach in the necessity of helping citizens to make responsible choices to govern their conduct. At the moment, though, we still tend to allocate that responsibility to clinical-type courses. But as noted, most students do not complete clinical courses for academic credit, so it is difficult to assess how well the skill is being learned. In the future, we might accordingly consider embedding economic analysis in substantive courses, as well.

D. THE LAWYER AS LEADER

Twenty years ago, Anthony Kronman, who would go on to become dean of the Yale Law School, published a book entitled *The Lost Lawyer: Failing Ideals of the Legal Profession*.[16] Kronman's vision was of the lawyer-statesman: someone "possessed of great practical wisdom and exceptional persuasive powers, devoted to the public good but keenly aware of the limitations of human beings and their political arrangements."[17] The problem, he argued, was that as a class, we have lost our way because we have lost our professional lodestone of public-spiritedness.

At the time, some critics suggested that Kronman's was a highly idealized, perhaps even highly romanticized, picture of the legal profession.[18] Regardless, few could gainsay Kronman's analysis of the tremendously important leadership role that lawyers play in society. We all know of the highest profile instances of this: Abraham Lincoln's presidency and Thurgood Marshall's advocacy in *Brown v. Board of Education*,[19] are two American examples; Sir John A Macdonald's leadership at Charlottetown in 1864, and F.R. Scott's representation of Frank Roncarelli in his appeal against Maurice Duplessis, being Canadian counterparts.[20] But even on a more humble, workaday, level, every good lawyer provides leadership skills to his or her clients. Should an accused accept a plea offer? Should an accident victim accept the settlement offer made by an insurance company? Should a company try to fight a takeover bid?

These are all questions that are within the everyday compass of a lawyer's vocation. But none have a simple, right or wrong, up or down, legal answer. Instead, in all three instances the client is depending upon the lawyer's guidance to help make the best choice out of the various possible alternatives. We tend not to use this title in Canada today, but in each instance, the lawyer is filling the role of what the Americans would describe as counsellor. Put another way, the real value that the lawyer is adding to the lives of the client is not the

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16 Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge, Mass: Harvard University Press, 1993).

17 *Ibid* at 12.

18 See e.g. Anthony A Alfieri, "Denaturalizing the Lawyer-Statesman" (1995) 93:6 Mich L Rev 1204; Peter Margulies, "Progressive Lawyering and Lost Traditions" (1995) 73:5 Tex L Rev 1139.

19 347 US 483 (1954).

20 *Roncarelli v Duplessis*, [1959] SCR 121.

lawyer's knowledge of the law. Instead, the real value is the lawyer's leadership skill. The client needs the lawyer to help *lead* him or her to the best possible outcome. Substantive legal knowledge simply serves as the lens through which to focus that leadership and those different outcomes. It is the means, rather than the end.

Peter Drucker is often said to have described the difference between management and leadership as being that management involves doing things right, while leadership involves doing the right things.[21] When expressed this way, it is easy to see the role that leadership education should play in the law school curriculum. If we view our mission as being to produce ethical lawyers, regardless of their area of practice, then it behoves us to acknowledge the duty to prepare our students to behave as something more than value-agnostic hired guns. The lawyer-statesman should surely be our ideal, not Neil Mink.[22]

E. TEAMWORK AND PROJECT MANAGEMENT AS CRITICAL PROFESSIONAL SKILLS

Every lawyer works as a member of multiple teams. This is obviously the case for a lawyer who practices in a large corporate firm. But it is equally true for a sole practitioner. In the latter case, the other members of the teams may be other service providers for the client. Or in some cases, they may be the clients themselves. However the team is constructed, and no matter how large or small it may be, in order to be effective a lawyer must be able to work with others in a coordinated, outcome-oriented way.

In a similar vein, the successful lawyer must be able to manage a number of projects at once. Discussions with discipline counsel at the Law Societies make plain that most lawyers who get into trouble are not motivated by deep-seated *mala fides*. Rather, they are ordinary practitioners who aren't able to keep all of the balls in the air at once — and who try to cover things up when one of them falls to the ground. A simple enough scenario, but the consequences could not be more dramatic.

Perhaps more than leadership and solution-oriented thinking, law school in its current structure facilitates the development of teamwork and project management skills in our students. Most, if not all, law schools have compulsory mooting programs that require students to work together. And the sheer volume of material covered in the curriculum forces students to balance a great deal. But the problem is that we adopt a sink or swim approach. Teamwork and project management are teachable skills. Unfortunately, and to the detriment of our students, we tend to eschew the teaching of them.

F. THE NEED FOR GLOBALLY-MINDED LAWYERS

I sometimes tell the story of having spoken some years ago to a member of a three person law firm in northwestern Ontario. This lawyer was then in his 50s and had graduated from law school in the 1970s. He had spent his whole career as a small firm lawyer in the north.

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21 See e.g. Stephen R Covey, *The Seven Habits of Highly Effective People: Restoring the Character Ethic* (New York: Simon & Schuster, 1989) at 101.

22 Tony Soprano's lawyer from the television series *The Sopranos*.

I asked him what sort of law his firm practiced. Instead of the anticipated answer: a general practice — wills and estates, residential real estate and minor criminal defence, the lawyer said (quite seriously in tone) that he and his two partners practiced international law. He responded to my obvious puzzlement by going on to explain that his firm represented loggers who exported trees to mills in Minnesota, and building suppliers who imported finished lumber back into Canada. They also represented hunters and fishers from the United States who had camps and lodges in Canada. He said that they regularly interacted with the customs and immigration services of both countries, and he boasted that he was probably as familiar with the terms of NAFTA as any lawyer in a big firm in Toronto.

To me, this exchange was about as illuminating as any I have ever had as a dean. It made me appreciate that notwithstanding its triteness, or the glibness with which the expression is overused, globalization is real. Indeed, the issue that is defining almost *everything* today is the economic transformation that is known as globalization. Every time we shop at Walmart (and realize that we can no longer shop at Simpson's or Morgan's or Tower's or any of the regional department stores that used to occupy a regular place in mercantile life in Canada), we see globalization in action. And just as the small firm lawyer in northwestern Ontario had clients whose interests transcended our border, so, too, will most of our law students today have clients who could benefit from a cosmopolitan outlook in their legal counsel.

It is plainly not the core mission of Canadian law schools to prepare people for admission to the Bars of the United States or Great Britain or any other country (even though a small proportion of our graduates do go on to admission in foreign jurisdictions). But we do need to ensure that every one of our students has an international aspect to his or her professional outlook. Some law schools now have an "international requirement" as part of the J.D. program, but these largely represent a hotchpotch of various sorts of things, with minimal structural design or systematic consistency. If we believe that an element of global mindedness is an essential attribute for Canadian lawyers in the twenty-first century, then we should be more focused in formulating a means to that end.

G. LEGAL HISTORY AS THE BASIS OF UNDERSTANDING THE COMMON LAW SYSTEM

Before the Gilded Age, most Canadian law schools had compulsory courses in legal history. But by the late 1970s, these had all been abolished and replaced with courses aimed at broadening the perspectives of students beyond the narrow confines of appellate case law. The knock on the old approach to legal history was that it privileged the Anglo-Saxon male narrative. But the problem with the new is that it neglects the fundamental importance of a deep understanding of the legal system.

Ours is a legal system built on the doctrine of precedent. This means that the common law is an inherently conservative system. When we determine whether a given pattern of conduct is legal or not, we do so by looking at previously decided cases. In other words, the yardstick against which the propriety of present conduct is measured is the past. This is a critically important philosophical point, but one often overlooked. It is possible to describe the law, even to describe it in fine detail, without legal history. But because of its nature, one wonders

whether it is possible to say that one truly understands the law unless one knows how and why it has evolved. And without true understanding, it is difficult to conceive that a lawyer's advice is as meaningful as it can be.

As odd as it sounds, legal history is perhaps now more important to the law school curriculum than it was before the Gilded Age — partly because so few students come to law school having done much history, whether in school or in undergraduate studies. But the legal history taught cannot simply be the history of Canada from 1867 onwards. So many of the quirky, yet foundational, features of our legal system exist only because of the vagaries of history before Confederation. I often tell first year law students, for instance, that the key to understanding the law of real property is not to think like a lawyer, but rather to "think like a Tudor." I explain that many of the fundamental principles of our twenty-first century Canadian law of real property emerged in the sixteenth century, in the decades following the accession of Henry VIII and the split from the Church of Rome and the consequent dissolution of the monasteries. If they can imagine for themselves what sorts of things a Tudor-era landowner would have been worrying about, I say, they will better be able to appreciate why our law today is what it is — and better able to reason to the correct answer to a difficult property law issue.

Some students find this helpful; others do not. But the point is that when it comes to law and government, Canadian history did not begin at Confederation. It began in 1066 — the same moment that English legal and constitutional history began. The Battle of Hastings remains a watershed event in Canadian history, as do the *Magna Carta* and the Black Death and the Reformation and the Glorious Revolution and every other event that helped shape the British constitution — to which, thanks to the *Constitution Act, 1867*, our constitution must be similar in principle.[23] Likewise, it is wrong to think that events in Canada took place divorced from what was going on in Canberra, Wellington, Capetown, and New Delhi. We are our own fully-independent nation now, but our history is so intertwined with the histories of England and the British Empire that it is impossible to understand how law in Canada works without a real understanding of how — and why — it developed elsewhere in the Empire. In its current form, students get various snippets of legal history throughout their first-year courses, but one wonders whether the overall depth of learning might be greater were more attention paid to a systematic grounding in legal history.

H. THE USE OF TECHNOLOGY IN SYSTEMS ANALYSIS

The third limb of the forces driving the current wave of change in the legal profession is the technological revolution. It sits alongside, and underpins, globalization and commodification. Law firms — and, more importantly, the clients who employ them — are investing significant resources in the use of technology to support greater process efficiency. Knowledge management and systems automation have been recognized as business subdisciplines for many years now. Yet they are given very little systematic coverage in the conventional Canadian law school curriculum. It is true that law students today often come to law school with an impressive level of adeptness at the use of technology. But this should not be mistaken for something more than it is. It is one thing to be comfortable in the use of

[23] (UK), 30 & 31, Vict, c 3, reprinted in RSC 1985, App II, No 5, Preamble.

social media. It is quite another to be able consciously to approach the solution to legal problems with the architecture of technology in mind. Yet clients need this skill — so it befits us to begin to impart it in law school.

V. FINAL THOUGHTS

There are two commonly-proffered reasons for opposing the sorts of curricular additions that have been suggested. The first is that we in the academy do not ourselves have the skills to offer them. The second is that they would amount to the vocationalization — and, hence, an effective dumbing down — of legal education. The first is more accurate than the second, but neither holds up to serious scrutiny.

As to the lack of institutional competence, it is possible to overstate the level of niche expertise required. If one were expecting, say, a professor of contract law to start teaching students how to carry out a corporate financing transaction, that would be one thing. But that sort of extremely narrow applied skill is not the sort of feature the new curriculum demands. Rather, the need is to inculcate in our students skills that are of a more generic nature, and that are transposable across professional domains — for, as the sociologists remind us, our students today are likely to have more than one career during their working lives. When considered in that context, the prospect of systematically incorporating skills becomes a little less frightening. It is hard to imagine that most members of the academy do not have the wherewithal themselves to learn the new skills to impart in their students.

And consider the counter-argument: is it conceivable that a medical school could take the position that they ought not to teach, say, the use of diagnostic imaging in oncology because the professors don't know how to do it? Of course not — we would demand that the medical academy learn how to use the latest MRI techniques. Why, then, shouldn't we expect the same of ourselves? In a publicly-funded system of legal education such as we pride ourselves in Canada on having, do not we owe some sort of moral duty to adapt ourselves professionally to meet the needs of the legal system as it will be, not as it was when we ourselves learned the law?

If the first objection to systematic reform involves false modesty, the second is based upon a blend of hubris and arrogance. Few things sound more off-putting to people outside the academy — including people who may happen to be genuinely learned members of the legal profession — than to hear a law professor suggesting that his or her province is theory, with the implicit suggestion that to know how the law actually works is for lesser folk. There is no suggestion in any of this that law schools should be training people who are simply technicians. But it *is* the contention that knowing doctrine of theory without knowing how the law operates is, for most law students, a poor bargain. The truth is that, in the law, it is a false dichotomy to distinguish between theory and skills. Most of us would say that good lawyers — the very best lawyers — are people who can reason from first principles, but who can then actually do things to assist people in need. That is what these proposed reforms are intended to do: to better equip law students to use their knowledge of legal principle to help those who might benefit from that knowledge.

There is another point, as well. That is that we can deepen our students' understanding of legal principle by allying our substantive teaching with skills development. Most of us will have a memory of the paper course or the moot where the intensity of the experience, and the requirement actually to use the knowledge, led us to have a significantly deeper level of understanding than in the ordinary exam-based course. Conversely, we all know the experience of cramming for an exam only to begin a large-scale information dump as soon as we leave the examination room. Why shouldn't we, then, try to apply these observations across the curriculum? In no way is it to make law into a "trade school" (another one of the insults one sometimes hears in discussions of this nature) to say that we will enrich our students' learning of the substance of legal principle by connecting it to skills acquisition. If that were the case, then the whole scheme for medical and dental education in Canada would have to be suspect as well!

The reality is that the incorporation of the sorts of skills suggested in this article would accomplish several things at once. It would make law school more rigorous. It would make legal education more relevant. And it would make the classroom experience more enduring. How can anyone take issue with that?