

Legal Education and Technology: The Potential to Democratize Legal Knowledge and Power

Russell G. Pearce*

Fordham University (USA)

Hema Lochan**

Fordham University (USA)

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Abstract

The current technological transformation of legal education, including computer-based, interactive, and online modes of instruction, represents “one of the most dramatic technological revolutions in history, if not the most dramatic.”¹ As the AI-based technological revolution accelerated dramatically in the 1990s, many commentators responded to the “commercial spread of the Internet” with utopian faith in its potential to equalize and democratize knowledge and power. This faith gave way to a second wave of comments criticizing the “damages... to historically subservient groups”, the threat of “disinformation” and polarization of democracy, the consolidation of power in Big Tech and authoritarian governments, and the threat to privacy in general.² Today’s commentators are challenged to determine if and how to address these harms while realizing the potential benefits of AI-powered technology, especially given the impact and use of technology during the forced experimentation that took place during the COVID-19 pandemic.

* BA/JD, Yale University, U.S.A., Edward & Marilyn Bellet Chair in Legal Ethics, Morality & Religion, Fordham University School of Law, residing in New York, U.S.A., ✉ rpearce@fordham.edu. Special thanks to research assistants Lorraine Fernandes, Seamus Ronan, and Diobel Rodriguez.

** BA, Princeton University, U.S.A.; JD, Fordham University School of Law, U.S.A., Associate Attorney at Earthjustice Clean Energy Program, residing in New York, U.S.A., ✉ hlochan@fordham.edu.

1 Richard Kahn and Douglas Kellner, “Paulo Freire and Ivan Illich: Technology, Politics, and the Reconstruction of Education,” *Policy Futures in Education* 5, no. 4 (2007): 431, 433.

2 Olivier Sylvain, “Recovering Tech’s Humanity,” *Columbia Law Review Forum* 119 (2019), 255.

In assessing the potential impact of technology on legal education, this paper focuses primarily on legal education in the United States, although we will include some comparative ideas. Part I provides the context for our analysis – how legal education functions today to maintain hierarchy and inequality regardless of any specific reliance on technology. Part II examines the way law schools currently use online legal education, and its minimal impact on democratizing legal education. Part III will explore the potential of technology to improve legal education, including democratizing legal knowledge and power.

Keywords

Legal Education, Virtual Learning, Technology, Equity, Justice

Educación jurídica y tecnología: El potencial para democratizar el conocimiento y el poder jurídicos

Abstract

La transformación tecnológica presente de la educación jurídica, incluidos los modos de instrucción basados en computadores, interactivos y en línea, representa “una de las revoluciones tecnológicas más dramáticas de la historia, si no la más dramática”. A medida que la revolución tecnológica basada en la Inteligencia Artificial se aceleró drásticamente en la década de 1990, muchos comentaristas respondieron a la “expansión comercial de Internet” con una fe utópica en su potencial para igualar y democratizar el conocimiento y el poder. Esta fe dio paso a una segunda ola de comentarios que criticaban los “daños... a grupos históricamente subordinados”, la amenaza de “desinformación” y la polarización de la democracia, la consolidación del poder en Big Tech y en gobiernos autoritarios, y la amenaza a la privacidad en general. Los comentaristas de hoy enfrentan el desafío de determinar si y cómo responder a estos daños y, al mismo tiempo, darse cuenta de los beneficios potenciales de la tecnología impulsada por la IA, especialmente por el impacto y el uso de la tecnología durante la experimentación forzada que ocurrió durante la pandemia de COVID-19.

Al evaluar el impacto potencial de la tecnología en la educación jurídica, este documento se enfoca principalmente en la educación jurídica en Estados Unidos, aunque incluiremos algunas ideas comparativas. En la Parte I, situaremos la promesa y el peligro de la tecnología en contexto: cómo funciona la educación jurídica actualmente para mantener la jerarquía y la desigualdad. La Parte II examinará hasta qué punto la educación jurídica en línea está democratizando realmente la educación jurídica. La Parte III explorará el potencial de la tecnología para mejorar la educación jurídica, incluyendo la democratización del conocimiento y del poder jurídicos.

Palabras clave

Educación jurídica, aprendizaje virtual, tecnología, equidad, justicia

INTRODUCTION

As Daniel Bonilla explains, “Technology, its creation and use, does not emerge in a vacuum; it always emerges in specific contexts where power relationships determine who has or does not

have access to it, as well as the distribution of its negative and positive consequences.”³ Bonilla further observes that “technology may have virtuous and vicious uses at the same time. The role that it plays in human life depends on the horizon of perspectives from which it is interpreted and implemented.”⁴

Mindful of these concerns, this paper also places technology within the context of Gramsci’s teaching, particularly “that every crisis is also a moment of reconstruction.”⁵ As Stuart Hall notes, “the disruption of the normal functioning of the old economic, social, and cultural order, provides the opportunity to reorganize it in new ways, to restructure and refashion, to modernize and move ahead.”⁶ In this spirit, we shall focus on exploring the ways in which technology could have a positive impact in democratizing legal knowledge and power, while acknowledging that, as Bonilla points out, a powerful negative potential exists in terms of inferior education and increased inequality. For purposes of this article, we do not address other issues that Bonilla raises, including whether “law schools must innovate in technical matters to meet the expectations and needs of the new generations of law students” or whether “this aim should be achieved to meet the expectations and needs of law firms.”⁷

As we assess the potential impact of technology on legal education, we shall focus primarily on legal education in the United States, although we will include some comparative insights. In Part I, we explain the context for the introduction of technology – the way legal education in the United States operates to maintain inequality and a hierarchy without relying on technology. Part II examines the limited extent to which law schools are currently employing technology, particularly online legal education, and how that use of technology is doing little to democratize access to legal education. Part III will explore the potential of technology to enhance legal education, including the democratization of legal knowledge and power. Given the scarcity of reliable research on the goals and effectiveness of legal education, and the very early stage of the technological disruption of legal education, our analysis remains quite tentative.

I. LEGAL EDUCATION AND CULTURAL HEGEMONY

As Antonio Gramsci noted, formal educational institutions play a central role in maintaining systems of cultural hegemony – the preservation of hierarchy and oppression through “the values, norms, perceptions, beliefs, sentiments, and prejudices that support and define the existing distribution of goods, the institutions that decide how this distribution occurs, and the permissible range of disagreement about those processes.”⁸ In educational institutions, “[p]rofessional intel-

3 Daniel Bonilla Maldonado, “Legal Education and Technological Innovation,” (2023): 26. An English translation of the article (“Legal education and technological innovation: a critical essay”, in *Direito GV Magazine*, 2020, 16-1) was shared by the author. This is the version referenced and published together with this article.

4 *Ibid.*, 16.

5 Stuart Hall, “Gramsci and Us,” *VersoBooks*, last modified February 10th, 2017, <https://www.versobooks.com/blogs/2448-stuart-hall-gramsci-and-us>.

6 *Ibid.*

7 Bonilla Maldonado, Daniel. "Legal Education and Technological Innovation: A critical Essay". *Latin American Law Review* N°10 (2023): 6, <https://doi.org/10.29263/lar10.2023.01>

8 T.J. Lear, “The Concept of Cultural Hegemony,” *The American Historical Review* 90, no. 3 (1985): 569.

lectuals... with formal education and certification” serve as the leaders, scholars, and teachers, who in turn train new generations of professional intellectuals.⁹ In this way, professional intellectuals, even when they view themselves as critics of the *status quo*, act “directly or indirectly on behalf of a dominant social group to organize coercion and consent.”¹⁰ The potential for resistance to oppression derives instead from “organic intellectuals,” whatever their training, who are organic to the oppressed classes and have the ‘capacity’ to ‘oppos[e] and transform [] the existing social order.’¹¹

In the United States, law schools serve as cornerstones for preserving cultural hegemony. As Duncan Kennedy so eloquently pointed out forty years ago, legal education reproduces hierarchy.¹² Law school teaches “that it is natural, efficient, and fair for law firms, the bar as a whole, and the society the bar services, to be organized in their current patterns of hierarchy and domination.”¹³

They do this both through admissions and training. Kennedy notes that “[l]egal education structures the pool of prospective lawyers so that their hierarchical organization seems inevitable and trains them in detail to look and think and act just like all the other lawyers in the system.”¹⁴ The dominant classroom pedagogy furthers this goal. As Kennedy observes, legal education “provides [legal hierarchy with] a general legitimating ideology by justifying the rules that underlie it and provides it with a particular ideology by mystifying legal reasoning.”¹⁵ Given that lawyers play a key governance role as intermediaries between the people and the law,¹⁶ the education of lawyers to serve hierarchy and inequality has powerful ramifications.

Since the publication of Kennedy’s critique, his observations remain trenchant. The requirement of undergraduate education before admission to law schools, created in the 1930s to exclude immigrant Jews and other low-income populations from becoming lawyers, continues.¹⁷ Law schools, moreover, use criteria for admission that exacerbate inequality based on class and race. They require admissions tests – the LSAT and GRE – that favor White and wealthy applicants. The tests correlate with the wealth of test takers at least in part because an investment in tutoring and preparation can make a significant difference in score.¹⁸ With regard to race, Christina John and her co-authors note that the LSAT and GRE:

9 Christina John, Russell G. Pearce, Aundray Jermaine Archer, Sarah Medina Camiscoli, Aron Pine, Maryam Salmanova, and Vira Tarnavska, “Subversive Legal Education: Reformist Steps Towards Abolitionist Visions,” *Fordham Law Review* 90 (2022): 2092.

10 *Ibid.*, quoting Gramsci, 2092.

11 *Ibid.*

12 Duncan Kennedy, “Legal Education and the Reproduction of Hierarchy,” *Journal of Legal Education* 32, no. 4 (1982).

13 *Ibid.*, 591.

14 *Ibid.*, 607.

15 *Ibid.*

16 Russell G. Pearce, “Legal Profession as a Blue State: Reflections on Public Philosophy, Jurisprudence, and Legal Ethics,” *Fordham Law Review* 75 (2006): 1349.

17 Russell G. Pearce, “Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School,” *Loyola University Chicago Law Journal* 29 (1998): 732; Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s*, (Chapel Hill: University of North Carolina Press, 1983): 176, 184.

18 Elie Mystal, “LSAT: Testing Wealth, Not Logic,” *Above the Law*, May 21st, 2010, <https://abovethelaw.com/2010/05/lsat-testing-wealth-not-logic/>.

“Lock []-in” White dominance. White and Asian test-takers receive an average LSAT score of 153; Black test-takers average 142, and Latinx test-takers average 146. GRE results are similarly nonsensical. To the extent the LSAT is at all predictive, its value is somewhat circular – it correlates somewhat with what we already do but we have no understanding of exactly how any of what we do tells us whether someone will be a better lawyer.¹⁹

Also favoring wealthy applicants are preferences for students from more prestigious undergraduate schools which over-represent upper-middle and upper-classes, as do the high costs of law school tuition ranging from an average of \$50,000 at private law schools to \$40,000 for out-of-state students, and \$29,000 for in-state students at public institutions.²⁰ These class effects, and the others described below, have discriminatory racial impacts in a society where structural racism has skewed wealth toward Whites.²¹

Not surprisingly, therefore, according to one influential study of the country’s top 20 law schools, only two percent of the students came from the bottom socioeconomic quarter of the general population.²² More than 75% of the students were found to come from the richest socioeconomic quartile.²³ The study noted that, “students from top decile families are nearly ten times as likely to end up in law school as students from the bottom half, and more than eighteen times as likely as students from the bottom quartile.”²⁴

Regarding race, legal education reflects and creates the demographics of a legal profession which Deborah Rhode famously described as “the least diverse profession.”²⁵ Indeed, as Bennett Capers explains, law schools are a “White Space.”²⁶ He notes that:

[I]n 2019, Latinx students accounted for 12.7% of the students at ABA accredited law schools, even though Latinx individuals make up approximately 18.3% of the population in the United States. The number of Black students is even smaller. Blacks make up just 7.94% of law students, although Blacks make up 13.4% of the population.²⁷

19 John et. al, “Subversive Legal Education,” 2099; Diane Curtis, “The LSAT and the Reproduction of Hierarchy,” *New England Law Review* 41, no. 2 (2019): 316-20.

20 “How Much Does Law School Cost? Average Law Degree and Tuition Costs”, College Ave. Student Loans, accessed January 25th, 2022, <https://www.collegeavestudentloans.com/blog/how-much-does-law-school-cost-average-law-degree-tuition-costs/>.

21 John et. al, “Subversive Legal Education,” 2095.

22 Richard H. Sander, “Class in American Legal Education,” *Denver University Law Review* 88 (2011): 637.

23 Ibid.

24 Ibid., 638.

25 Deborah L. Rhode, “Law is the Least Diverse Profession in the Nation. And Lawyers Aren’t Doing Enough to Change That”, *Washington Post*, May 27th, 2015, <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/>.

26 Bennett Capers, “The Law School as a White Space” *Minnesota Law Review* 106 (2021), 29.

27 Ibid., 20-21.

Whites, not surprisingly, remain significantly over-represented. They represent 61,9% of law students²⁸ in comparison to college demographics where “52.9 percent [of the students] are non-Hispanic white, 20.9 percent are Hispanic, [and] 15.1 percent are Black.”²⁹

Whites receive even greater advantages at the more prestigious law schools. A recent study found that “Black students and Hispanic students are disproportionately enrolled in lower-ranked schools.”³⁰ Accordingly, notes Bennett Capers, “[a]t the top 30 law schools, Latinx students make up just 9% of the students; Blacks only 6%.”³¹

Law school pedagogy similarly reinforces hierarchy and inequality. As Duncan Kennedy noted, the law school classroom “is hierarchical with a vengeance.”³² Most law professors apply what Paulo Freire termed the banking approach to education – the authoritarian mode where the teacher deposits information in the student. This is especially true where law professors use the so-called Socratic or case dialogue method, whether in a lecture or a seminar. In

The banking model the teacher is regarded as the holder and transmitter of knowledge, which is then imparted to the student. The banking model assumes the student is an empty vessel and does not value or recognize the student’s experiential and cultural knowledge. Moreover, it leaves the student in the role of passive recipient rather than active creator of knowledge.³³

In terms of the effectiveness of communicating knowledge, the weight of educational theory suggests that banking pedagogy is significantly less effective than interactive teaching methodologies.³⁴

The meta-narratives of legal education also reinforce inequality and hierarchy. The background narratives of a neutral partisan lawyer, a neutral decider judge, and a neutral teacher make systemic injustice a marginal topic at best. Added to the mask of neutrality, legal education’s ethos of atomistic individualism,³⁵ reflected not only in the framing of legal doctrine but also in grading on the curve and the treatment of students more generally, also contributes to facilitate cultural hegemony by normalizing oppressive legal structures. As the Carnegie Report

28 Reemplazar por: Li, Miranda, Phillip Yao, and Goodwin Liu, “Who’s Going to Law School? Trends in Law School Enrollment Since the Great Recession,” *UC Davis Law Review* 54, no. 2 (December 2020), 626.

29 “More Than 76 Million Students Enrolled in U.S. Schools, Census Bureau Reports,” United States Census Bureau, December 11th, 2018, <https://www.census.gov/newsroom/press-releases/2018/school-enrollment.html>.

30 Li, Yao, and Liu, “Who’s Going to Law School?” 655.

31 Capers, “Law School as a White Space,” 24.

32 Kennedy, “Legal Education and the Reproduction of Hierarchy,” 593.

33 Drick Boyd, “What Would Paulo Freire Think of Blackboard? Critical Pedagogy in an Age of Online Learning,” *International Journal of Critical Pedagogy* 7, no. 1 (2016): 174–75. <https://libjournal.uncg.edu/ijcp/article/view/1055/892>.

34 Cherry A. McGee Banks and James A. Banks, “Equity Pedagogy: An Essential Component of Multicultural Education,” *Theory Into Practice* 34, no. 3 (Summer 1995): 152–158, <https://www-jstor-org.fl.s.idm.oclc.org/stable/1476634>.

35 Eli Wald and Russell G. Pearce, “Making Good Lawyers,” *St. Thomas Law Review* 9, no. 2 (2012): 415–21 (using the term “autonomous self-interest” to describe atomistic individualism), https://ir.lawnet.fordham.edu/faculty_scholarship/626.

on Legal Education acknowledges, legal education tends to divorce students from their sense of “justice” and fairness.” Indeed, a number of “[c]ommentators include stories of law students raising the issue of justice in class and faculty responding that law schools teach law, not justice.”³⁶

II. THE CURRENT STATE OF LEGAL EDUCATION AND TECHNOLOGY

Daniel Bonilla has summarized the ways that legal education has adopted technology-driven legal “tools like online courses, blended courses, interactive electronic case books, online platforms to evaluate students, sharing information between students and professors, integrating computers, cell phones, or clickers in class dynamics, anti-plagiarism software, the use of videos in classes, and the use of software to measure professors’ productivity and to evaluate students’ perceptions of their courses, have a greater or lesser presence.”³⁷ For purposes of this paper, we shall focus in particular on online courses and related technologies for providing students with information, assessing their understanding, and promoting dialogue and the sharing of information among students and faculty.

In the United States, the closing or limiting of in-person legal education in response to Covid accelerated the adoption of on-line teaching. Most jurisdictions temporarily allowed law schools to take all or most of their courses online during the health emergency.³⁸ The conditions for this shift were not ideal. Not only did the pandemics create a variety of challenges for teachers and students, but:

The sudden transition to remote learning during the spring semester, as well as to virtual legal practice, undoubtedly negatively impacted students’ learning opportunities in various ways. Students not only had to manage the anxiety of learning during an unexpected pandemic, but also needed to quickly adapt to a new learning methodology implemented (*sometimes awkwardly*) by faculty in the middle of an academic semester.³⁹

There is little empirical evidence regarding the impact of online legal education during COVID.⁴⁰ In other areas of education, the empirical evidence is equivocal at best. One study suggested that “at-risk” students have had worse difficulties in adjusting⁴¹ while one of the

36 Wald and Pearce, “Making Good Lawyers,” 420.

37 Bonilla Maldonado, “Legal Education and Technological Innovation,” 4.

38 Christian Sundquist, “The Future of Law Schools: Covid-19, Technology, and Social Justice,” *Connecticut Law Review Online* 53, no. 1 (December 2020): 5–6, <https://connecticutlawreview.law.uconn.edu/wp-content/uploads/sites/2747/2021/03/The-Future-of-Law-Schools-Covid-19-Technology-and-Social-Justice.pdf>.

39 Sundquist, “The Future of Law Schools,” 6.

40 Nina A. Kohn, “Online Learning and the Future of Legal Education: Symposium Introduction,” *Syracuse Law Review* 70, no. 1 (2020): 2, <https://lawreview.syr.edu/wp-content/uploads/2020/07/1-11.pdf>.

41 Michael S. Kofoed, Lucas Gebhart, Dallas Gilmore, and Ryan Moschitto, “Zooming to Class?: Experimental Evidence on College Students’ Online Learning during COVID-19,” *IZA Institute of Labor Economics* (May 2021): 12, <https://www.iza.org/en/publications/dp/14356/zooming-to-class-experimental-evidence-on-college-students-online-learning-during-covid-19>.

few studies on professional education found, despite “mixed results,” that student performance improved.⁴²

Beyond the crisis, though, the limited literature on the effectiveness of online legal education suggests that, when properly provided, it is as or more effective than in-person legal education.⁴³ This finding is consistent with the:

Ample body of research on the effectiveness and impact of online education in other fields. Much has been written about the effectiveness of online teaching in higher education, and best practices for promoting rich learning and understanding. Research examining effectiveness of online education in other professional fields of study has found that it can be an effective modality for teaching both concepts and skills.⁴⁴

Moreover, as Nina Kohn notes, “[r]esearch from other fields also indicates that online education increases the rate at which many historically disadvantaged populations participate in higher education.”⁴⁵ To do so, however, online must be significantly less expensive, either because tuition is much less expensive or because the costs of housing and physical attendance are dramatically reduced. Even with these costs drastically reduced, other costs would remain. To participate fully in online education, a student would need reliable access to the internet, computer systems to work and learn from, and a place to study. Although these costs are likely to be far less than the tens of thousands of dollars of the in-person tuition we have described above, they can still be significant, as became evident during the COVID-19 pandemic, when many schools started to provide assistance to low-income students for internet access.⁴⁶ We note, however, that during the pandemic, students were paying high in-person tuition to which new costs of online education were added.

Following the health emergency response to Covid, most schools have returned to in-person instruction and the ABA and other regulators have reinstated many rules limiting the amount of online content in legal education, including requiring schools to apply for variances if they wish to provide more than one-third of their classes through distance learning.⁴⁷ At the same

42 Meixun Zheng, Daniel Bender, and Cindy Lyon, “Online Learning During COVID-19 Produced Equivalent or Better Student Course Performance as Compared with Pre-Pandemic: Empirical Evidence from a School-Wide Comparative Study,” *BMC Medical Education* 21, no. 495 (2021): 4–7, <https://bmcmmededuc.biomedcentral.com/articles/10.1186/s12909-021-02909-z>.

43 Yvonne M. Dutton, Margaret Ryznar, and Kayleigh Long, “Assessing Online Learning in Law Schools: Students Say Online Classes Deliver,” *Denver Law Review* 96, no. 3 (2019): 493, <https://heinonline-org.flis.idm.oclc.org/HOL/Page?handle=hein.journals/denlr96&div=22>. For further discussion, see also Victoria Sutton, “Asynchronous E-Learning in Legal Education: A Comparative Study with the Traditional Classroom,” *Syracuse Law Review* 70, no. 1 (2020): 143, <https://heinonline-org.flis.idm.oclc.org/HOL/Page?handle=hein.journals/syrlr70&div=10>.

44 Kohn, “Online Learning,” 2.

45 *Ibid.*, 3.

46 Elissa Nadworny, “Need A Laptop? Colleges Boost Loaner Programs Amid Pandemic,” *NPR*, August 15th, 2020, <https://www.npr.org/2020/08/15/902500905/need-a-laptop-colleges-boost-loaner-programs-amid-pandemic>.

47 “A Guide to Approved ABA Distance Education”, American Bar Association, accessed January 21st, 2022, https://www.americanbar.org/groups/legal_education/resources/distance_education/.

time, regulators have taken small, incremental steps toward expanding online opportunities. In 2021, the ABA allowed for the “first fully online Juris Doctor program.”⁴⁸ St. Mary’s University School of Law will begin a four-year online pilot JD offer, with approximately half of the courses offered asynchronously, and a tuition of \$26,594 equivalent to that for St. Mary’s in-person part-time program.⁴⁹ The St. Mary’s program joins “nearly a dozen” ABA-approved hybrid programs that include both online and in-person components.⁵⁰ In addition to these programs, the ABA has approved online graduate and certificate programs that provide limited legal education and do not entitle graduates to sit for the bar in most jurisdictions. Accordingly, even though students in these graduate and certificate programs can learn about the law, they can never practice or advocate, thus making their access extremely restricted. In this way, the ABA maintains high barriers to becoming a lawyer while making the claim that legal knowledge is accessible. Beyond the ABA approved programs, some schools even offer online JD degrees that do not entitle graduates to sit for the bar in most jurisdictions. Concord Law School, for example, offers an online legal education at the significantly reduced tuition of approximately \$12,420 per year, but only qualifies graduates to sit for the California bar.⁵¹ Northwestern California University School of Law, another law school accredited only in California, charges only \$3,900 annual tuition for an online JD degree.⁵²

III. THE PROMISE OF TECHNOLOGY FOR LEGAL EDUCATION

As Bonilla notes, these technological developments, now and in the future, can have “virtuous or vicious” ramifications. We are aware today that technology, in legal education as in society, can serve to reinforce or expand authoritarianism, hierarchy, and inequality. But can technology also be used to democratize legal knowledge and power?

In this paper, we identify two ways in which technological disruption creates conditions conducive to democratizing legal education. One is the ways that current technologies may facilitate the democratization of legal knowledge and power by dramatically reducing the costs of education. The second is the opportunity implicit in the fact of disruption, not from technology itself. Disruption affords the opportunity to revisit the prevailing hierarchical and oppressive practices. Rather than assume the *status quo* goals and values, a paradigm shift invites us to revisit these goals and values and ask whether we should keep or revise them – whether we should continue to reproduce hierarchies or should instead seek to democratize legal knowledge and power.

48 Karen Sloan, “First ABA-approved Online JD Program to Debut Next Fall,” Reuters, accessed September 14th, 2021, <https://www.reuters.com/legal/legalindustry/first-aba-approved-online-jd-program-debut-next-fall-2021-09-14/>

49 Ibid.

50 Ibid.

51 “Concord Law School Tuition Homepage”, Concord Law School, accessed May 31st, 2022, <https://www.concordlawschool.edu/tuition/> <https://www.concordlawschool.edu>.

52 “Tuition and Finances”, Northwestern California New York University School of Law, accessed May 31st, 2022, <https://nwculaw.edu/school-information/tuition-finances>.

In Part III.A, we shall explore the potential of online teaching to significantly decrease the cost of law school and dramatically increase access to legal education. Our analysis is, of course, quite preliminary, given the scarce data on the expenses of legal education and the wide range of variables, including changes to existing regulations and the market. In Part III.B, we shall consider a range of educational improvements that the disruption of online legal education could make possible.

A. Democratizing Access

How much could we open access if the primary change in regulation would be to allow for unlimited online legal education and remove all requirements for physical classroom facilities? Alex Tabarrok notes that online education decreases costs through leverage.⁵³ Leverage is not unknown at in-person law schools. Particularly during the first year, legal education is already taught through “large, intimidating lectures.”⁵⁴ Nonetheless, online synchronous sessions and asynchronous sessions can lower costs. Whereas law schools currently hire multiple professors to teach required and other multi-section classes, one professor could teach all sessions of a required or popular course as a single large class online. At the same time, without the physical limitation of a classroom, all courses could be larger, allowing for a dramatic increase in enrollment. By allowing each faculty member to reach more students and by increasing the number of students, law schools could significantly increase the number of students and significantly decrease the cost per student.

Although St. Mary’s experiment in ABA-accredited online legal education shows no cost savings compared to other part-time programs,⁵⁵ the California accredited law schools offering as low as \$3,900 annual tuition⁵⁶ are a better example of how online legal education could reduce costs. What makes it difficult to extrapolate from California accredited law schools is that they tend to hire greater numbers of working lawyers and judges as adjuncts, and fewer full-time professors,⁵⁷ as many law schools in the United States did when legal education in general was less costly and far more available to low-income students in the early twentieth century.⁵⁸

53 Alex Tabarrok, “Why Online Education Works,” *CATO Unbound*, November 2012, <https://www.cato-unbound.org/print-issue/61/>.

54 Gabriel Kuris, “How to Survive and Thrive First Year of Law School,” *US News & World Report* (Oct. 5th, 2020), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/how-to-survive-and-thrive-first-year-of-law-school>.

55 Sloan, “First ABA-approved online JD program to debut next fall.”

56 “Tuition and Finances,” *Northwestern California School of Law*, accessed May 31st, 2022, <https://nwculaw.edu/school-information/tuition-finances>.

57 “California Law Schools for Working Adults,” *Western State College of Law*, accessed May 31st, 2022, <https://www.wsulaw.edu/news/california-law-schools-for-working-adults/>.

58 Benjamin H. Barton, “Fixing Law Schools: From the Collapse to the Trump Bump and Beyond,” *New York University* (2019): 23.

Nonetheless, even when including the approximately \$1000 annual cost for a modem, a router, and high-speed internet access⁵⁹ and at least \$300 for a computer,⁶⁰ online legal education has the potential to cut law school tuition to almost 10% of the existing private law school tuition and 20% of the existing public law school tuition. These vastly lower tuitions would make legal education far more available regarding to class and race in a society where many wealth disparities derive from systemic racism.

Widespread online legal education could have additional far-reaching implications. Schools could save funds by paying a fee to purchase the rights from publishers, law schools, or individual teachers, for synchronous classes or asynchronous teaching modules. Prestigious schools could seek to dominate the market. Harvard Law School, for example, could offer a high-priced in-person law degree, and a much lower-priced Harvard on-line degree to many thousands of students.⁶¹ Another alternative would be to create the equivalent of Khan Academy for law school – a not-for-profit that would use donations to provide free online legal education.⁶² While each of these alternatives should be given careful attention, they are beyond the scope of our current inquiry.

Finally, an international example shows that even profit-driven AI-based tools have the capacity to drive the democratization of legal knowledge and power beyond lowering the costs of law school. They can serve to make legal education so inexpensive that legal knowledge would be readily available to all, not only to law students.⁶³ The Indian online legal learning site *MyLaw* has provided low-cost courses on legal topics to more than “35,000 learners from more than 100 countries.”⁶⁴ While some of these learners are law students, many of them are neither law students nor lawyers.⁶⁵ *MyLaw*'s curriculum consists of asynchronous modules combined with regular assessments. *MyLaw* students throughout the world may subscribe to unlimited courses for a year at the cost of 2,500 rupees or \$32 dollars.⁶⁶ *MyLaw*'s success could

59 “The Cost of Connectivity 2020,” *New America*, accessed November 11th, 2022, <https://www.newamerica.org/oti/reports/cost-connectivity-2020/global-findings/>.

60 Dereck Walter, “How Long do Computers Last? 10 Signs You Need a New One,” *Business Insider*, last modified January 23rd, 2023, <https://www.businessnewsdaily.com/65-when-to-replace-the-company-computers.html>. For even lower estimates of the cost of a computer or l-pad, see “In 2022 How Much Does a Computer Cost (Desktop and Laptop),” *Tecagile*, accessed November 11th, 2022, <https://tecagile.com/how-much-does-a-computer-cost/>.

61 For further discussion, cf. James D. Walsh, “The Coming Disruption Scott Galloway predicts a handful of elite cyborg universities will soon monopolize higher education,” *New York Magazine*, May 11th, 2020, <https://nymag.com/intelligencer/2020/05/scott-galloway-future-of-college.html>.

62 “What makes Khan Academy a Not-For-Profit,” *Khan Academy*, accessed November 11th, 2022, <https://support.khanacademy.org/hc/en-us/articles/202483500-What-makes-Khan-Academy-a-not-for-profit->. Thanks to Lorraine Fernandes for suggesting this possibility.

63 John et. al, “Subversive Legal Education”, 2115.

64 “MyLaw Law School,” *MyLaw*, accessed November 11th, 2022, <https://mylaw.net/lawschool>.

65 Nikhil Chandra, Zoom interview by Co-author Russell G. Pearce, June 3rd, 2020.

66 “Subscription plans,” *MyLaw*, accessed November 11th, 2022, <https://mylaw.net/unlimited-details>. “The success of *MyLaw*, an Indian business, offers evidence for further consideration of Bonilla’s assertion that increased reliance on technology inevitably favors the Global North. For further discussion, see Bonilla, “Legal Education and Technological Innovation,” 36-37. This issue is of great importance but not a topic that we can fully address in this paper.

be emulated in the United States by *MyLaw*, by other low-cost asynchronous online education providers, or by a Khan Academy style legal education provider.

B. Disrupting Hierarchical and Oppressive Practices

As we noted in Part I, legal education in the United States reproduces hierarchy and inequality through pedagogy, as well as through expensive tuition. Technological advancement itself causes a disruption that allows for a reconsideration of regressive pedagogies while dramatic cost reductions open the possibility of a radical improvement in legal education. In developing this analysis, we follow Paulo Freire's teaching: "we need to create new channels of knowledge, new methodologies, new relationships between subjects who seek knowledge, and the most advanced technological innovations that we have at our disposal."⁶⁷ Accordingly, in assessing the potential for AI-driven technology in legal education, we will be mindful of the teachings of the Critical Theory of Technology that questions "the underlying values and beliefs embedded in a given technology and for whom it is designed."⁶⁸ As Drick Boyd explains, "Freirean critical pedagogy" embraces a "vision toward creating a politically democratic, racially inclusive, economically just social order replacing the hierarchical, exclusive powers currently dominating the social and political world."⁶⁹ It both "help[s] students develop skills and knowledge to be able to survive economically" and "challenge[s] students to examine their social and cultural contexts, including the technological environment in which their class is being conducted."⁷⁰

Accordingly, rather than preserve a pedagogy grounded in the narratives of atomistic individualism and neutrality, legal education should embrace a more accurate understanding: people live in webs of relationships and neutrality is a fiction that masks systemic inequality. The banking approach to pedagogy, which is both ineffective and authoritarian, should give way to the mutual dialogue of student and teacher learning from each other.

Today's technology provides ample resources for students to take greater control of their education and for pedagogy to feature dialogue and community. Presently, as we noted, most legal education uses a banking methodology to teach the language of law – doctrine – to mostly passive students who often receive only summative assessments. With online legal education, teaching legal doctrine could easily be completed in less time and more effectively.⁷¹ Asynchronous and synchronous learning allow individuals to learn the language of the law on their own schedule through interactive modules with short lectures and problem sets that assess whether the student has mastered the material and, if not, offer new explanations and assessments until the students achieve mastery. Based on this efficient method, pedagogy can readily expand to encompass the relational and systemic implications that legal education presently tends to exclude.

67 Paulo Freire, "Pedagogy of Commitment," (New York: Routledge, 2014): 74-75.

68 Boyd, "What Would Paulo Freire Think of Blackboard? Critical Pedagogy in an Age of Online Learning," 171.

69 *Ibid.*, 172.

70 *Ibid.*, 172-73.

71 Mark Myring et al., "New Approaches to Online Accounting Education," (2013, Draft).

Technology-driven pedagogy can also enhance experiential training and skill development. For example, technology and online classrooms have been shown to have positive effects on authentic collaboration with other colleagues, furthering better communication skills.⁷² Moreover, the cost savings in doctrinal education can also subsidize in-person experiential education. To the extent that skill development includes interactions with clients, technology-driven learning can allow students to interact with clients outside their geographical bubble, creating a wide range of practical skills.

In all areas of teaching, much like the effect Eric Topol describes in the practice of medicine, the technical competence of technology and online-based tools provides greater opportunity for human interaction.⁷³ In education, human interaction, even when online, promotes dialogue and community among teachers and students,⁷⁴ and in those interactions the students more easily achieved technical competence facilitates their agency and participation. Indeed,

The extended nature of online dialogue allows for deeper inquiry and reflection often absent in a time-bound classroom setting... If done effectively, online discussions can push students and teachers beyond a superficial level to an expanded understanding of the context in which this knowledge is created.⁷⁵

As Boyd notes, “[t]hrough [such a] dialogue, both with oneself and with other learners, Freire believed one could arrive at a critical consciousness (awareness of one’s place in the social, political, and economic context).”⁷⁶

In this vein, technological disruption opens the door to even more radical pedagogical developments. As Gramsci observed, professional intellectuals training professional intellectuals preserves hierarchy and oppression.⁷⁷ A way to interrupt this cultural hegemony is to recognize that those whom the law impacts must be part of the construction of legal knowledge, and that teaching and scholarship cannot reflect the reality of the legal system without their participation.⁷⁸

72 Melinda Shirley & Tina Cockburn, “Enabling authentic collaborative education in an online environment- the QUT virtual law placement,” *The 16th World Association for Cooperative Education (WACEE) Conference* (2009).

73 For further discussion, cf. Paulo Freire: “The answer does not lie in the rejection of the machine but in the humanization of man.” Paulo Freire, “Education for Critical Consciousness,” New York: Seabury Press, 1973, 31. See also Kahn et al., and Kellner, “Paulo Freire and Ivan Illich: Technology, Politics and the Reconstruction of Education,” 435.

74 Boyd, “What Would Paulo Freire Think of Blackboard?” 179 (stating: “All online teaching must begin with building community and stress that a carefully constructed online learning community is the container in which knowledge is held jointly by the group/the object to be known is not an exclusive possession of one of the subjects doing the knowing, one of the persons in the dialogue... [Rather] they meet around it and through it for mutual inquiry”).

75 Ibid., 178-79.

76 Ibid., 178.

77 John et. al, “Subversive Legal Education”, quoting Gramsci at 2092.

78 Ibid., 2097.

CONCLUSION

The present system of legal education in the United States, as Duncan Kennedy observed, reproduces hierarchy and inequality. We have sought to identify how technology offers the potential to disrupt the reproduction of hierarchy and inequality through tools that have the potential for drastically reducing the costs of legal education and radically promote equality. Similarly, technological tools make it possible to remake legal pedagogy in ways that promote justice and equality, applying Paulo Freire's insight that with "advanced technological innovations" we can "create new channels of knowledge, new methodologies, [and] new relationships between subjects who seek knowledge."⁷⁹ But while we identify the great potential of technology, we do not attempt to predict whether regulators will be open to the use of technology to democratize legal knowledge and power, and we do not address the entire range of issues that Bonilla raises in his important work, including measures needed to guarantee a minimum level of quality in online education and to reduce inequality between the Global North and Global South. We also do not consider here important additional steps required to democratize legal knowledge and power, such as eliminating the requirement in the United States of having completed college education before beginning legal education.

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⁷⁹ Freire, "Pedagogy of Commitment" at 74-75.

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