

The role of law schools and clinical programmes in ending poverty

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Synopsis

The rule of law is compromised by the toleration of poverty, in an era when the world has the resources, expertise and capability to end poverty and its damaging effect on justice and equality for all. Lawyers, including current and future lawyers in law schools, who value access to justice under the rule of law have individual and collective responsibilities to do something about poverty through law and justice. Law schools and other branches of the global legal profession¹ can and should, do more in that mutual enterprise than most of them currently do.

To gain mass acceptance for those three fundamental propositions and make a difference on poverty, the role of law schools in combatting poverty needs a conceptual framework justifying that role and an operational plan of action that implements it. Accordingly, this chapter covers both conceptual and practical dimensions of the relationship between poverty and the rule of law and how that relationship manifests itself in the ways in which law schools conduct legal education, scholarship and external engagement with the profession and the world at large.

What lawyers do or fail to do about poverty must be assessed and practised within prevailing systems and standards of governance, regulation and professional (including social) responsibility.² These standards are not sacrosanct. Instead, they are subject to scrutiny and criticism if they obstruct action on poverty or even institutionalise oppression of poor people under cover of the rule of law.³ Individual law schools and the community of legal academics as a whole⁴ can act alone or together with other branches of the legal profession in alleviating the conditions of poor people, who in practice are denied full equality and access to justice in multiple ways. How law schools and the legal profession as a whole respond to poverty is itself responsive to broader disruptions to legal thinking, practice and responsibility in the era of the Fourth Industrial Revolution,⁵ reinforced by transformational approaches to successive global crises such as the

* The authors acknowledge the valuable research assistance and analysis provided by their research and administrative assistant, Jarryd Shaw, who is a Monash University law student.

1 Including law firms, bar associations, law societies, other professional bodies, corporate counsel and even the IBA itself.

2 To foreshadow the argument that follows, we view the professional responsibility of lawyers as one that encompasses individual and collective responsibilities of discrete kinds towards others in society, beyond the conventionally recognised responsibilities in legal proceedings towards a client and the court.

3 The authors gratefully acknowledge Norman Clark's insights in discussion on this and other points.

4 These two groups are referred to collectively in this chapter by the shorthand expression, 'the legal academy'.

5 The 'Fourth Industrial Revolution' era is commonly characterised as the era of technologically enabled global interconnectivity. It follows three earlier industrial revolutions of factory-based industrialisation, mass electrification and digitalisation.

climate emergency and pandemics such as Covid-19.

As a collective constituency capable of creating meaningful change about poverty, injustice and inequality, law school communities comprise legal academics, law students as future leaders of the profession(s), alumni, current and retired judges and lawyers and partner organisations. They can be powerful communities for exposing and redressing gaps and inequities in law-making, the administration of justice and broader access to justice for poor, vulnerable and disadvantaged communities. The challenge for law schools and their communities is to embed understanding and action about poverty and associated inequalities and injustices in the DNA of legal education, scholarship and engagement, particularly through clinical legal education (CLE) and community legal centres (CLCs).

This chapter outlines and illustrates various ways in which law schools and their clinical programmes can take action on poverty and empower poor clients and communities in law schools' research, education and engagement with their various constituencies and communities. We are determined that our discussion produces a concrete focus on the highly necessary reorientation of law schools, sufficient to prioritise within legal and justice education the urgent need to end poverty, inequality and injustice. Throughout this chapter, we therefore focus on a comprehensive suite of practical steps for action by law schools and others in the legal profession in helping poor, vulnerable and marginalised people achieve basic human rights and equal access to justice under the rule of law.

Overview

Poverty, injustice, inequality and law

The world is very different now. For man holds in his mortal hands the power to abolish all forms of human poverty and all forms of human life.⁶

President John F Kennedy

Poverty is both a cause and a consequence of inadequate levels of access to justice [...] Moreover, poverty as a barrier to access to justice is exacerbated by other structural and social obstacles generally connected to poverty status, such as reduced access to literacy and information, limited political say, stigmatisation and discrimination.⁷

Julinda Beqiraj and Lawrence McNamara,
International Access to Justice: Barriers and Solutions

The tolerance by wealthy countries and peoples of poverty anywhere in the world in the 21st century is a cause for global and national shame, 'an affront to human dignity',⁸ a barrier to equality and justice, a denial of universal human rights and a deficiency that impedes full realisation of the rule of law worldwide. No less an authority for lawyers than the

6 US President John F Kennedy, 'Inaugural Address' (Speech, Washington DC, 20 January 1961).

7 Julinda Beqiraj and Lawrence McNamara, *International Access to Justice: Barriers and Solutions* (Bingham Centre for the Rule of Law Report 02/2014, October 2014) pt 3.1.

8 IBAHRI Council, *Resolution on Poverty and Human Rights* (Resolution, 27 May 2010) 1.

International Bar Association (IBA) – the self-described ‘global voice of the legal profession’ – acknowledged through its Human Rights Institute (IBAHRI) more than a decade ago that: ‘each case of poverty is [...] accompanied by violations of fundamental rights and is an affront to human dignity’, as well as ‘a persistent danger to global peace, security and economic equity within and among nations’.⁹

Even on human rights grounds alone, lawyers who value and work towards the universalisation of human rights are necessarily bound to value and work towards the end of poverty within and across all nations and communities.¹⁰ ‘Poverty itself is a violation of numerous basic human rights’ according to Mary Robinson, former President of Ireland, United Nations High Commissioner on Human Rights and UN Special Envoy on Climate Change.

At the same time, poverty cannot be treated in one-dimensional terms, as just another aspect of human rights or even defined by a designated level of income. Many contingencies affect the societal preconditions that shape the systemic distribution of capabilities, resources and opportunities that, in turn, affect the employment, income and enabling of individuals and communities.¹¹ In the words of Professor Amartya Sen on poverty and justice: ‘the relationship between resources and poverty is both variable and deeply contingent on the characteristics of the respective people and the environment in which they live – both natural and social’.¹² Action by lawyers on poverty risks failure if it is not designed, coordinated and pursued with sensitivity to the true complexity of poverty and associated inequality and injustice and also to the humanity, dignity and empowerment of people in poverty.

The IBA has publicly espoused values and stated positions that stand alone and also come together as an overarching platform for action by the global legal profession in ending poverty. According to the IBA, poverty is implicated not only in human rights, equality and peace and security, but also in legal aid, access to justice, standards of legal professional conduct, climate change and law and business and human rights.¹³ For example, the IBA recognises that while access to justice is ‘a universal right’ and ‘essential to [...] the Rule of Law’, the deplorable global reality remains that ‘access to the courts and effective legal representation and advice are not afforded to all who need them, especially *the poor, underprivileged and marginalised*’.¹⁴

9 *Ibid.*

10 There have been calls for lawyers to swear or affirm a ‘Hippocratic Oath’ before they are admitted to legal practice, in the interests of ‘doing no harm’ to the community or their clients, but to date there is no formally positive requirement for a lawyer to address poverty, as a condition of admission. See Adrian Evans, ‘Admission by Hippocratic Oath’, IBA (28 September 2009) www.ibanet.org/Article/NewDetail.aspx?ArticleUid=127b51ae-36fe-44b6-9cf6-e9e4f4044e2b accessed 4 January 2021; Kim Economides, ‘2002: An Odyssey’ (2003) 34 *Victoria University of Wellington Law Review* 1.

11 Amartya Sen, *The Idea of Justice* (Belknap Press of Harvard University Press 2009) 253–7.

12 *Ibid.* 254. According to Sen (at 255–6), the four sources of variation in those contingencies are: ‘personal heterogeneities’ (eg, disability and ill-health); ‘diversities in the physical environment’ (eg, climatic variations and industrial pollution); ‘variations in social climate’ (eg, public health, peace and levels of crime); and ‘differences in relational perspectives’ (eg, resources and opportunities to participate in the social life of a community).

13 Eg. IBA *Pro Bono Declaration* (Declaration, 16 October 2008); see n 8 above; IBA Council, *IBA Business and Human Rights Guidance for Bar Associations* (8 October 2015); IBA Council, *IBA Practical Guide on Business and Human Rights for Business Lawyers* (28 May 2016); IBA Climate Crisis Statement (5 May 2020).

14 IBA Council, *International Principles on Conduct for the Legal Profession* (25 May 2019) 16; IBA *Pro Bono Declaration* (16 October 2008) 3e [emphasis author’s own].

In our view, the IBA can and should build up its public stand on poverty's implication in various essential domains of law and justice, by explicitly endorsing the individual and collective responsibility of its members to contribute meaningfully to the end of poverty, inequality and injustice (*Practical step 1*). For example, the IBA could recommend that courts, law societies and bar associations support measures such as the equivalent for newly admitted lawyers of the Hippocratic Oath taken by members of the medical profession, incorporating an ethic of not only doing no harm, but also committing to improve equality and access to justice under the rule of law of the poorest and otherwise most vulnerable members of the communities affected by their practice as lawyers. Such an oath would reinforce conventional lawyerly commitment to pro bono work, improve professional and community respect for lawyers as key actors in ending poverty and associated inequality and injustice and enhance aspirations for lawyers to become more committed and involved in that collective enterprise.

In recent years, the IBA has highlighted the importance of lawyers acting to address poverty. This public position has been adopted by various entities of the IBA in areas as diverse as human rights, business and climate change.¹⁵ The IBA has also promoted this position through the establishment of various committees which directly seek to address poverty.¹⁶ Consequently, the IBA could and, in our view, should consider such additional practical steps as:

- The IBA should require lawyers to declare an admission oath to address poverty and associated inequalities and injustices in order to become a member of the IBA.
- The IBA should fund a research project to define the appropriate accountability mechanisms of law schools' (and other branches of the legal profession) systemic impacts on alleviating poverty.
- The IBA should expressly include a commitment to alleviating poverty, inequality and injustice as part of its mission statement.
- The IBA should include in its practical guidelines to lawyers the impact that certain areas of law have in exacerbating global poverty. This could be achieved in a similar way to the IBA's approach to recognising the impact that particular areas of law may have on human rights (which are *Practical steps 2 to 5* below).

15 For IBA statements relating to poverty, see IBA *Poverty, Justice and the Rule of Law* (Peter Maynard and Neil Gold, eds) (2013); see n 7 above, pt 3.1; IBA Access to Justice and Legal Aid Committee and the World Bank, *A Tool for Justice: The Cost Benefit Analysis of Legal Aid* (September 2019) ch 1; IBA *Rule of Law Forum, Poverty and the rule of law* (13 November 2019); IBA, *IBA Pro Bono Declaration*, n 13 above. In the context of climate change, see IBA, *Climate Crisis Statement*, n 13 above.

16 The IBA has demonstrated its commitment to tackling poverty by creating the Poverty and Social Development Committee which seeks to engage the legal profession in actions that will directly contribute to the attainment of UN SDG No 1: The Eradication of Poverty. See IBA, 'About the Committee', *Poverty and Social Development Committee* www.ibanet.org/PPID/Constituent/Poverty-Social-Dev/Default.aspx accessed 4 January 2021; the IBA has also committed to recognising the link between the commercial world and poverty through the creation of the IBAHRI Task Force on Illicit Financial Flows, Poverty and Human Rights. See IBAHRI *Task Force on Illicit Financial Flows, Poverty and Human Rights, Tax Abuses, Poverty and Human Rights* (IBA, 2013).

Professor Jeffrey Sachs, former Special Adviser to UN Secretary-General Kofi Annan and globally recognised economic expert and scholar on poverty, concludes that ‘the key to ending extreme poverty is to enable the poorest of the poor to get their foot on the ladder of development’, adding ‘[t]he extreme poor lack six major kinds of capital’, comprising ‘[h]uman capital’, ‘[b]usiness capital’, ‘[i]nfrastructure’, ‘[n]atural capital’, ‘[p]ublic institutional capital’ and ‘[k]nowledge capital’.¹⁷ He includes within the notion of ‘public institutional capital’ a number of elements all of which relate to aspects of law and justice – namely, ‘the commercial law, judicial systems, government services and policing that underpin the peaceful and prosperous division of labor’.¹⁸ Law schools and their various

constituencies form part of society’s poverty-fighting ‘capital’, commonly located and working with poor communities.

From any perspective, the link between law and poverty is or should be a matter of core concern to everyone in the legal profession. The IBA’s own public statements and standards make it an imperative. Accordingly, the link between law and poverty is a suitable (some would say essential) focus for study and action by law schools and their internal and external constituencies.

The IBA has an established practice of not only recognising law schools and their academics as one of the branches of the legal profession, but also including them in the development and content of various standard-setting exercises. For example, the most authoritative IBA statement referring to law schools, especially in a poverty-related context, is the *IBA Pro Bono Declaration*,¹⁹ which reads:²⁰

‘The IBA is committed to actively encouraging lawyers, judges, law firms, bar associations, law schools, governmental and non-governmental organisations to participate in pro bono legal service and invites them to use and contribute content to the information developed by the IBA in this field.’

Accordingly, the IBA can and should solidify the connection between these concerns by explicitly recommending that such a poverty-sensitive focus and priority for legal and justice education and training is incorporated in requirements for the accreditation of law schools, admission of lawyers to legal practice and ongoing entitlement to continue working as a lawyer in all areas of the legal profession (*Practical step 6*).

17 Jeffrey Sachs, *The End of Poverty: How We Can make it Happen in Our Lifetime* (Penguin Books 2005) 245-245.

18 *Ibid*, 244.

19 *IBA Pro Bono Declaration*, n 13 above.

20 *Ibid*, 5 [emphasis author’s own]. For a comparative view and practical suggestions on how to cultivate a ‘pro bono ethos’ amongst future lawyers by law schools and those who regulate them, see, eg, John Corker, ‘The Importance of Inculcating the “Pro Bono Ethos” in Law Students and the Opportunities to Do It Better’ (2020) 30(1) Legal Education Review 1.

Practical steps

1. The IBA can and should build on its public stand on poverty's implication in various essential domains of law and justice, by explicitly endorsing the individual and collective responsibility of its members to contribute meaningfully to the end of poverty, inequality and injustice.
2. The IBA should require lawyers to declare an admission oath to address poverty and associated inequalities and injustices in order to become a member of the IBA.
3. The IBA should fund a research project to define the appropriate accountability mechanisms of law schools' (and other branches of the legal profession) systemic impacts on alleviating poverty.
4. The IBA should expressly include a commitment to alleviating poverty, inequality and injustice as part of its mission statement.
5. The IBA should include in its practical guidelines to lawyers the impact that certain areas of law have in exacerbating global poverty. This could be achieved in a similar way to the IBA's approach to recognising the impact that particular areas of law may have on human rights.
6. The IBA can and should solidify the connection between these concerns by explicitly recommending that such a poverty-sensitive focus and priority for legal and justice education and training is incorporated in requirements for the accreditation of law schools, admission of lawyers to legal practice and ongoing entitlement to continue working as a lawyer in all areas of the legal profession.

The role of law schools in combatting poverty, injustice and inequality

The nations and peoples of the world collectively have the resources, expertise and capability to end poverty.²¹ However, they are yet to come together effectively to achieve that end. Some countries and their populations (including lawyers) have the wealth but not yet the political and legal will to do so.²² All lawyers in all branches of the legal profession – including current and future lawyers in law schools who value human rights, social justice and the rule of law – have individual and collective responsibilities to do something about poverty through legal and other means. We all can *and* should do more on this front, alone and together.

In particular, law schools across the globe must do more than most of them currently do to address poverty and associated factors directly in their core mission of research, education and engagement with the legal profession and the outside world (*Practical step 7*). Their success or failure in doing so from now depends in part on the combined contributing

21 Our IBA colleague, Norman Clark, has championed this view for some time, asserting that 'we already have many [...] of the tools and structures needed to achieve long-term sustainable solutions to poverty.' Norman Clark, 'Unfinished Business', *Review of the Report of the Second Phase of the IBA Presidential Taskforce on the Global Financial Crisis*, 2013, 2.

22 The authors are grateful to Neil Gold for insights in discussion on this and other points.

effect of a series of critical and inter-related factors. Critically, those factors include: their own missions and resources; the priority and means of combatting poverty accepted by lawyers and other potential collaborators in their locations; professional and politico-legal institutional mechanisms in each jurisdiction that reinforce or alternatively hold back the ambition of ending poverty; and national and geopolitical architecture within which such poverty-combatting initiatives operate.

In particular, study and action on poverty must be sensitive to a multiplicity of politico-legal, socio-ethical and eco-environmental forces and structures within society that can either help or hinder the war on poverty, ranging from the ‘problematisation’ and identification of poverty to the ideological, institutional and sectoral realities to which any poverty-alleviating actions by law schools and other lawyers must be sensitive.²³ The legal profession’s unique societal role and expertise worldwide on law, justice and equality requires it to meet the united call to arms from the IBA itself to join forces in ending poverty, injustice and inequality.

Lawyers are not just members of the legal profession and participants in legal and justice systems. Rather, lawyers occupy those roles within broader ecosystems in which they operate. Similarly, law schools and their constituencies form part of multiple coexisting systems within geopolitics, societal sectors and the legal profession. Consequently, any involvement by law schools in addressing poverty in their core academic work of scholarship, education, professional engagement and community-building must ideally be integrated (and not fragmented), embedded (and not marginal) and systems-sensitive (and not ad hoc or isolated).

The dynamics and structures operating in such systems are not value-neutral. They favour prevailing political, legal and economic actors (including institutions) and interests who might be threatened by what it will take to end poverty and associated inequality and injustice. Existing distributions of political power, economic prosperity and individual and family wealth that survive through tolerance of endemic poverty and its incidents will not easily yield. At the same time, diverse and complex forms of societal ordering provide an array of mechanisms that can help or hinder anyone engaged in the enterprise of trying to navigate and end poverty at home or abroad.

So, the possibilities and aspirations for law schools in focusing on poverty must be understood and implemented against their broader systemic backgrounds, to achieve success. As outlined later in this chapter, the choices made by law students about worthy areas of legal study and career uses of their law degree and by legal academics about the orientation and scope of what they research and teach, are each choices that are subject to broader ideologies and other forces within particular societies, public and university sectors, professional services industries and law school environments.

²³ On the ‘problematisation’ of poverty (ie, making poverty problematic), see Arturo Escobar, ‘The problematization of poverty: The tale of three worlds and development’ in Arturo Escobar (ed), *Encountering Development: The making and unmaking of the third world* (Princeton University Press 2012) 21.

This chapter's structure, aims and practical tools

This chapter is divided into three parts:

- The first part outlines a conceptual roadmap for navigating the landscape on law and poverty and the location of law schools in that landscape. It also outlines key geopolitical (including UN), scholarly and professional (including IBA) entry points into the international architecture for discussing, practising and exercising advocacy about law and poverty with which law schools and their constituencies must engage.
- The second part provides a suggested framework for holistically examining the role and opportunities for law schools and their constituencies in studying and committing to actions that meaningfully do something about poverty and associated inequality and injustice. It also outlines a series of practical recommendations and steps to inform action by law schools and their constituencies aimed at helping poor, vulnerable and disadvantaged people and communities within their orbit of influence.
- The final part offers a more focused reflection on CLE and justice education more broadly and the crossroads at which law schools find themselves in meeting their responsibilities towards students and the community constituencies serviced and supported through legal clinics.

Appendix III also lists the practical steps discussed and illustrated throughout this chapter, for ease of reference in taking up the challenges this chapter presents.²⁴

In writing this chapter and making these recommendations, we do not try to cover all of the terrain on the multi disciplinary scholarly landscape on law and poverty. Nor do we attempt to describe any kind of 'best practice' combination of actions in combatting poverty that law schools and their various constituencies might universally adopt. Much is path-dependent on the particular political, legal and societal cultures of the developed and developing nations and communities in which individual law schools are located. What we hope to offer is a simple (but hopefully not simplistic) focus on the rationale and role of law schools in combating poverty and an illustrative menu of practical means to choose from in pursuing that end. In particular, we hope to elevate the triangulation between the legal profession, law schools and associated CLCs and clinics as a major force in helping and working with poor, vulnerable and marginalised individuals and communities.

In doing so, however, we also hope to inspire law schools and their staff to rethink and re-orientate their approach to the inter-relationship of poverty, inequality and injustice, centring that inter-relationship and what it demands of lawyers at the core of the research, education and professional and community engagement of lawyers. Essentially, law schools globally now face a provisional and suspect social utility. All need to reinvent a sense of mission that embraces justice and the alleviation of poverty; and each needs to adopt its own

²⁴ Each practical step is first outlined and discussed in the relevant section of this chapter. The practical steps discussed under each section heading appear in highlighted form at the end of the section, so that related actions are grouped and contextualised together. A complete list of all practical steps appears in Appendix three, as a standalone set of actions for broader discussion, dissemination and use.

programme to achieve such redefinition, based we suggest on these practical steps. To do nothing is to deny the cultural and moral stewardship of legal education and its obligation to the most profound of national and international goals.

Practical step

7. Law schools across the globe must do more than most of them currently do to address poverty and associated factors directly in their core mission of research, education and engagement with the legal profession and the outside world.

Part 1

A roadmap on law and poverty

Global mega-trends

One reason for reducing inequalities within a domestic society is to relieve the suffering and hardships of the poor [...] A second reason for narrowing the gap between rich and poor within a domestic society is that such a gap often leads to some citizens being stigmatised and treated as inferiors and that is unjust [...] A third reason for considering the inequalities among peoples concerns the important role of fairness in the political processes of the basic structure of the Society of Peoples.²⁵

John Rawls,
The Law of Peoples

Gaps in global, national and local systems of law and justice affect poverty in multiple and dramatic ways. Such gaps maintain or increase levels of poverty in various ways, result in more poor people having legal problems, inhibit meaningful access to justice for the poor in vindicating their rights, marginalise the voices and interests of poor people in making and applying laws affecting them and otherwise reinforce structural inequalities and socio-economic barriers to the empowerment of poor people.²⁶ All of these causes and effects are the concern of all branches of the legal profession everywhere, including the legal academy and its constituencies and communities.

The actions that law schools and lawyers in general take on poverty are ingrained within broader international and societal systems. In taking a systemic approach to this topic, a contrast can be drawn between what might be called old and new ways of thinking about matters such as sovereignty, democracy, governance, regulation and responsibility, at least

²⁵ John Rawls, *The Law of Peoples* (Harvard University Press 2001) 114.

²⁶ By 'poor people', we mean broadly, those people who are described as 'the poor, underprivileged and marginalised' in the 2008 IBA *Pro Bono Declaration*, n 13 above, who are experiencing 'profound poverty' as contemplated by the 2010 IBAHRI Council Resolution on Poverty and Human Rights, see n 8 above and whose lives, wellbeing and empowerment are the direct or indirect focus of relevant UN SDGs.

from a legal perspective. Understanding and differentiating the old from the new provides an insight into lawyerly mindsets which shape and sometimes hinder effective analysis, advocacy and action on poverty. The result is hopefully a richer appreciation of both lawyerly responsibility in society *and* what is involved in ‘thinking like a lawyer’ for various work-situated roles in legal practice. All of this is – or should be – an essential focus of study and training in law schools.

The transition between old and new ways of thinking can be viewed and grasped through the prism of a series of global mega-trends. One mega-trend that shapes attitudes and actions on poverty-ending strategies from state and non-state actors alike is the continuing battle for supremacy between Western and non-Western systems of thought and political organisation in successfully elevating mass populations and communities out of long-term poverty. To that extent, the West – including the Western legal profession and Western legal education – cannot be complacent about its contribution to alleviating poverty.

In this Asian century, with democracy facing huge challenges to its legitimacy from populism, institutional mistrust, social unrest and instability, long-term systemic inequality and injustice and entrenched crime and corruption, the emerging economic and military dominance of Greater China is supporting effective effort in alleviating poverty for many. In the process, the rise of China and other non-Western countries as global focal points of political and economic power is challenging Western assumptions about the inherent superiority of its systems and institutions in delivering widespread socio-economic prosperity along with political freedom and an independent rule of law. Consequently, there is an external dynamic to the need for conventional political legal processes in broadly Western societies to sharpen their focus on eliminating poverty among their peoples.

Another relevant mega-trend concerns changes in thinking and practice about societal organisation and norms. Considered from a Western perspective, the 20th century witnessed the high-water mark of the old view of *sovereignty* based on territoriality, *democracy* conceived and exercised predominantly through the formal mechanisms of majoritarian rule, *governance* focused solely or mainly on the functions and activities of government, *regulation* principally through the official institutions of law-making and adjudication and *responsibility* understood chiefly in terms of what is enforceable by state power and sanction under law.

What underlies each of those lenses is a notion of the nation-state and its formal architecture as the exclusive source and agent of authority and power in ordering society through political processes (including law-making), the legal system (including the administration of court-centred justice) and official enforcement of compliance with the law. At their extreme, those lenses can collectively produce a form of tunnel vision, resulting in an overly government-centric account of societal (and indeed global) governance and an overly law-centric account of the regulation of institutional, organisational and individual behaviour. Together, such accounts further risk propelling us towards a flawed and impoverished account of responsibility, under which it is not real or worth accepting unless it has the backing of the force of law.

What does this mean for lawyers? One important consequence of the old view is a mass tendency, even within the global legal profession, to view notions of responsibility overwhelmingly through the prism of what the state does (eg, make and enforce laws), with the ancillary outcome of privileging enforceable legal responsibility (eg, through legal compliance and sanctions) as the dominant notion of responsibility for lawyers and their clients. The world of the old view is a world in which socio-ethical lawyerly responsibilities, corporate social responsibility (CSR), (including CSR for the legal profession and its various branches) and other products of anything other than ‘hard law’ (and even then, mainly ‘hard law’ of relevance for BigLaw and its BigBusiness clientele) lie at the margins of what really matters in legal education and practice alike.

To date, law schools are central to the pervasiveness of the old view of law and lawyering because of their critical roles in the intellectual and character formation of law students and therefore in the creation of more technocratic and rule-focused than empathetic and justice-sensitive future practitioners and other professionals. They are anything but immune from such ideological fault lines in their own battles over pedagogy, scholarship and the evolving role of law schools in society.

The 21st century is witnessing at least the permeation of the old view by an evolving understanding of the new view of sovereignty beyond territoriality, democracy beyond majoritarianism, governance beyond government, regulation beyond law and responsibility beyond enforcement.²⁷ A connecting thread through those features in the new view concerns the reassertion of the primacy of ‘the people’ in various guises. For example, notions of sovereignty can extend beyond territorial sovereignty and become grounded in alternative bases for sovereignty, such that ‘[u]nder the republican ideal of the sovereignty of the people, national sovereignty and parliamentary sovereignty are best conceived as subordinate sovereignties’.²⁸ Those advances in theory-building about sovereignty reinforce a growing willingness under international law to accept that, in moral philosopher Professor Peter Singer’s words: ‘[t]he limits of the state’s ability and willingness to protect its people are also the limits of its sovereignty’.²⁹

Similarly, ideas of participatory governance and democracy envisage mechanisms by which the formal architecture of democratic government gives ‘the people’ meaningful voices in their own political and legal systems, beyond the formalities respectively of periodic visits to the voting booth and the jury room, even more so in the age of technology-enabled mass global constituencies. Opportunities now exist for multi-stakeholder coalitions to engage in standard-shaping of law and policy and also public ‘watchdog’ monitoring of governments and businesses alike, amplified through news and social media, as well as network-building that can include lawyers from various branches of the legal profession, including law schools and their constituencies.

27 For a broader discussion of this point, see Bryan Horrigan, *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business* (Edward Elgar Publishing 2010) 49–69.

28 John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge University Press 2000) 605.

29 Peter Singer, *One World: The Ethics of Globalisation* (Text Publishing 2002) 164.

Systemic considerations

The various branches of the legal profession have been at the forefront of progressive worldwide developments aimed at redressing inequality, injustice and poverty, working within and across systems of government, the legal system and the administration of justice.³⁰ Transnational illustrations of that point include IBA standard-setting and the involvement of IBA members in work on UN conventions and norms, the Sustainable Development Goals (SDGs) and initiatives of similar scale. Advocacy and action by lawyers on poverty importantly includes, but is not confined to, their collective contribution to undertaking pro bono legal work and sensitising policy development, law-making and law reform to the realities of poverty, inequality and injustice. Publicly funded legal aid schemes provide legal advice and assistance for people in poverty who need access to justice but who cannot afford a lawyer and the resourcing of CLCs and clinics supports an access to justice ecosystem in many local communities.³¹

The prohibitive cost of going to court to defend or enforce legal rights is joined by disruptions to conventional ways of administering justice through technology and mass pandemics, creating an impetus for online dispute resolution. Court-centred justice can overcome traditional hurdles of cost and non-coordination for poor and marginalised groups in protecting and enforcing basic legal rights, through the combined effect of class actions, litigation funding, strategic litigation in the public interest and court-facilitated pro bono schemes.³² Subject to the provision of assistance in users' electronic literacy, online courts can improve access to quicker and cheaper justice for a larger number of people from a larger number of places.³³ Law schools must study, support and participate in such enterprises.

Considered from a systemic perspective, law schools use a number of guises within a series of coexistent systems. Law is simultaneously a social construct, a public good, an academic discipline, a body of knowledge, a profession and a business. Most law schools are constituent parts of universities within tertiary (post-secondary) sectors of education,³⁴ members of broader peer associations and also academic and professional networks and subject to politico-legal regulation and standard-setting of various kinds, while also playing their part in communities,

30 Some organisations which have been at the forefront of such progressive worldwide developments include The *Global Alliance for Justice Education* (GAJE) (see 'Welcome to Gaje', Global Alliance for Justice Education <https://gaje.org> accessed 4 January 2021, the *Ford Foundation* and the *Soros Foundation* (see Richard J Wilson, 'Training for Justice: The Global Reach of Clinical Legal Education' (2004) 22 *Penn State International Law Review* 421).

31 At the same time, law firms and individual lawyers can do much more than many currently do in leading and implementing activities flowing from such transnational and local initiatives.

32 On three 'waves' in the reform of access to justice in western democracies, relating here to legal aid, class actions and alternative dispute resolution, see Mauro Cappelletti and Bryant Garth, 'Access to Justice: The Worldwide Movement to Make Rights Effective: A General Report' in M Cappelletti and B Garth (eds) *Access to Justice: A World Survey* (Sijthoff and Noordhoff 1978-1979) vol 1, 3, 21.

33 Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press 2019) 10.

34 Much of what we say in this chapter about law schools and CLE is equally applicable to publicly and privately funded law schools alike, although we take publicly funded law schools as the prevailing norm, while conceding that the funding and functionalities of all law schools are now more complex than what a crude state/public-private distinction conveys.

economies and societies. In addition, law schools constitute a critically important branch of the legal profession, interacting in various ways with its other branches.

In an age of ‘fake news’, scepticism about truth-seeking, mistrust of institutions, partisan public intellectualism and shallow social media debate, law schools and their constituencies also have a role to play as independent brokers and participants in the mechanisms of participatory governance, deliberative democracy and public reason. Law school academics, students and alumni partner with other organisations in multi-stakeholder coalitions of influence in public debate and advocacy, as well as standard-setting and partnering initiatives with other branches of the legal profession, together with institutions and actors from government, industry and civil society. In short, law schools have huge and largely untapped potential to address poverty, inequality and injustice under evolving notions of governance, operating within the architecture of contemporary governance, regulation and responsibility.

Law schools can no longer rely on uncritical community goodwill to ensure their relevance to social wellbeing. Their roles are not just important, but fundamental to justice and equality, despite the fact wider society rarely sees this. And if this is true, then law schools must re-combine to seek a collective authority in their own justice mission and do so in a way that encourages all law schools to accede to and be measured against this ambition. Therefore, law schools must embrace new ways of thinking about their place in contemporary governance, regulation and responsibility and take active steps to embed them in the design, operations and evaluation of law schools by the various audiences who regulate or need them (*Practical step 8*).

Practical step

8. Law schools must embrace new ways of thinking about their place in contemporary governance, regulation and responsibility and take active steps to embed them in the design, operations and evaluation of law schools by the various audiences who regulate or need them.

Democracy’s evolution and poverty

Democracy reflects the emergence of a universal expectation that those who seek a validation of their empowerment – the governors – should govern with the consent of the governed. Democracy has invariably been addressed as a national issue [but] (d)emocratic claims too are being internationalised. If participatory democracy is relevant to the national levels of government then why should it not also apply at the international level, where so many decisions which affect people’s lives are now being taken?³⁵

Philippe Sands QC, *Lawless World: Making and Breaking Global Rules*

³⁵ Philippe Sands, *Lawless World: Making and Breaking Global Rules* (Penguin Books, 2006) 18.

The working of democratic institutions, like that of all other institutions, depends on the activities of human agents in utilising opportunities for reasonable realisation [...] (If) democracy is seen in terms of public reasoning, then the practice of global democracy need not be put in indefinite cold storage [...] Active public agitation, news commentary and open discussions are among the ways in which global democracy can be pursued, even without waiting for the global state. The challenge today is the strengthening of this

*already functioning participatory process, on which the pursuit of global justice will to a great extent depend. It is not a negligible cause.*³⁶

Amartya Sen, *The Idea of Justice*

At its broadest and simplest, democracy is government of, by *and* for the people.³⁷ The relevant popular constituency and the correlative jurisdiction might be global, national or regional. In each case, democratic architecture and institutions are part of the formal machinery of democracy and sometimes seen as exhausting its content and dynamics.

However, democracy's manifestations and potential evolution are not limited to the formalities of constitutional government, electoral voting and law-making by elected legislative majorities. Some scholars argue that respect for majoritarian democracy in turn rests on majoritarian democracy's respect for underlying democratic preconditions for a society.³⁸ A 'thin' version of this form of democratic accountability occurs under judicial review of the legality of executive government decision-making and even the validity of duly enacted legislation in some jurisdictions, which turns upon the judicial branch of democratic government holding the other two branches to account under constitutional constraints. A 'thick' version of it might envisage broader ways in which state and non-state entities and individuals might hold the wielders of political, corporate and financial power accountable to the people and communities who are subject to the uses (and abuses) of such power.

Similarly, some scholars argue that democracy is itself evolving in the late 20th century and beyond to include respect and accountability within and between branches of democratic government for universal human rights,³⁹ even to the point where the proliferation of national bills and charters of rights protecting universally agreed human rights represents a growing transnational commitment and expectation by societies of people that protection of such rights inheres and extends beyond individual countries and their democratically elected majorities.⁴⁰

Another group of scholars highlight the forms of public deliberation, argument and

³⁶ See n 11 above, 354, 409-410.

³⁷ President Abraham Lincoln, 'Gettysburg Address' (Speech, Gettysburg, 19 November 1863).

³⁸ Eg, Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Harvard University Press 1996) 17-8.

³⁹ Eg, Anthony Mason, 'Future Directions in Australian Law' in *The Mason Papers: Selected Articles and Speeches by Sir Anthony Mason AC, KBE* (Geoffrey Lindell, ed) (Federation Press 2007) 11, 26.

⁴⁰ Eg, Jeremy Waldron, *Partly Laws Common to All Mankind: Foreign Law in American Courts* (Yale University Press, 2012) 198.

contestability of views and values that are part of the workings of modern democracy.⁴¹ Yet others point to the need for openness and accountability of democratic institutions to the people and the emergence of a ‘monitory’ form of democracy, through mechanisms that are not limited to voting for elected politicians and even judges at periodic elections, with coalitions of non-state actors participating in their own democratic governance and holding the organs of democratic government publicly accountable in some way.⁴²

In short, this brief sample of scholarship at least offers a common glimpse of a view of society in which both state and non-state institutions and actors are engaged in participatory governance, deliberative democracy and public reason and standard-setting, with interlocking forms of accountability. In an age of globalisation, democratisation and digitalisation and therefore mass interconnected communities, law schools risk irrelevance if they do not combine with state and non-state parties in forming multiple networks of monitoring, accountability and standard-setting for the use and limits on abuse of official and corporate power. Law schools do so, for example, through their academics, students, alumni and partner organisations: making submissions to public inquiries to improve laws for the better; contributing to public advocacy and thought leadership on matters of fundamental inequality, injustice and corruption; undertaking various forms of research with the aim of enhancing public and political understanding and otherwise improving the conditions of people’s lives under law; and also working directly to assist those without wealth or other advantages through legal clinics and pro bono work.⁴³

Law schools therefore have various roles to play in the new ecosystem for democratic governance within and across countries, many of which can support the global project and legal professional responsibility of ‘making poverty history’.⁴⁴ In these countries that lack democracy, there are other mechanisms of networking, monitoring, standard-setting and influence, both within and beyond their national borders, which can be developed to similar effect. A strong connecting thread therefore exists between: the rule of law, lawyerly fidelity to it and contemporary democracy, on one hand (in the sense that a robust rule of law provides necessary social integrity for all other systems to function); and options for CLCs and clinics associated with law schools to improve the opportunities for poor and otherwise socio-economically disadvantaged people to influence the laws that govern them and to otherwise achieve better access to justice, on the other.

Furthermore, ‘[i]f equal access to justice under the rule of law involved action and advocacy to ensure that the non-value-neutral impact of leasing, taxation and other laws upon poor, vulnerable and disadvantaged people is addressed, for example, then enabling non-government parties to represent and give a voice to such people in policy-making, law-making and law reform processes is just as valid an object of clinical work, law school

41 Eg, Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton University Press, 2004).

42 John Keane, *The Life and Death of Democracy* (W W Norton 2009).

43 For a broader discussion of the role of law schools and legal clinics in the contemporary democratic ecosystem, see Bryan Horrigan, ‘Designing and Implementing an Enhanced Clinical Program in the Age of Disruption – Part Two: Clinical Activities’ (2020) 27 *International Journal of Clinical Legal Education* 204.

44 Nelson Mandela, ‘Make Poverty History’ (Speech, London, 3 February 2005).

endeavours and multi-dimensional contemporary democracy as any other', as the co-author of this chapter, Professor Horrigan, has written in highlighting these connections in another context.⁴⁵ Nor are these concerns only for legal theorists, public lawyers and clinicians within law schools. Research, teaching and advocacy by private lawyers about the poverty-exacerbating suppositions and effects of property law, taxation law, investment law, financial services law and business and corporate law are all part of this mix too. In that sense, all legal academics have poverty-sensitive opportunities and responsibilities regardless of their field(s) of expertise and their choices (and non-choices) play into broader justice education, legal knowledge and democratic governance.

21st century regulation and poverty

*(S)elf-regulatory organisations frequently become more influential than states in the epistemic communities that frame debates over regulatory design [...] The recursive quality of global regulation means that there are many possible entry points of entry to influence the direction of change [...] It does not follow that actors are destined to irrelevance unless they are cogs in either a powerful state or a powerful corporation. There can be strength in a large set of comparatively weak ties to powerful motors that drive other powerful motors in a recursive system ... If an interest group has large corporations in its coalition [then] enough strength to transform the world can follow from the weak link.*⁴⁶

John Braithwaite and Peter Drahos, *Global Business Regulation*

Societal and democratic governance aside, what does a contemporary view of regulation (including law) hold for law schools in approaching responses to poverty, inequality and injustice? A contemporary view of regulation includes but also goes beyond simply nation-states (and their regional institutions) as sources of law-making and enforcement and lawfulness and legal compliance as exclusive measures of relevant responsibility in society. It takes account of the multiple state and non-state parties and other drivers of human and organisational behaviour that combine to order and influence values, norms and resulting behaviour by governments, private sector organisations, civil society actors and individuals. In such a meta-regulatory system, 'law interacts with other forms of normative ordering', resulting in 'various layers of regulation each doing their own regulating', while at the same time 'each layer regulates the regulation of each other in various combinations of horizontal and vertical influence'.⁴⁷

'Hard laws' and 'soft laws'

In the discipline of law, for example, the idea of law and responsibility under it is traditionally viewed mainly in terms of what legislatures enact, executive agencies administer, official

⁴⁵ Horrigan, n 43 above, 223–224.

⁴⁶ Braithwaite and Drahos, n 28 above, 481–482.

⁴⁷ Christine Parker et al, 'Introduction' in Christine Parker et al (eds), *Regulating Law* (Oxford University Press, 2004) 1, 6.

regulators enforce and courts adjudicate. Conceived in that primarily state-centric and court-focused way, 'law' is about 'hard law' and the only responsibility that really matters to lawyers and their clients is their enforceable legal responsibility under 'hard law'. 'Soft law', on the other hand, includes standards, customs and norms which lack the official legal force and origin of executed regulatory instruments such as primary or subordinate legislation, but which are nevertheless legal in character and can influence behaviour and decision-making as much as 'hard law'. Examples from public law include statements of government

policy, regulatory guidelines and rulings, official codes of conduct and practice and major public recommendatory reports and findings.⁴⁸

'Soft law' also extends beyond the domain of the public sector, to embrace, for example, industry practices and codes, contractual and non-contractual measures, professional body and special interest group standard-setting and public statements of position from industry stakeholder coalitions. Combined with a richer and more complicated account of the reality of law and regulation, the rise of 'soft law' in international and national legal systems means that lawyers now regularly advise their clients on how 'hard law', 'soft law' and other forms of relevant regulation relate to their legal responsibilities and liabilities.

What law firm, for example, could meaningfully advise a multinational corporate client on its legal position in doing business in each of its countries of operation without considering a wide range of legal and regulatory drivers? These drivers include:

- international economic regulation (eg, free trade agreements and rules of international commercial arbitration);
- avenues and standards to navigate in various forms of commercial dispute resolution;⁴⁹
- applicable national and regional laws (eg, corporate and employment law);
- relevant 'soft laws' (eg, the UN's Guiding Principles on Business and Human Rights (UNGPs));
- Organisation for Economic Co-operation and Development (OECD) standards, and so on); and
- matters affecting corporate reputation and governance (eg, a company's social responsibility and standing, its engagement with shareholding and non-shareholding constituencies and its consideration of investors' concerns about environmental, social and governance (ESG) considerations in its decision-making and disclosure).

Mere compliance with 'hard law' as a matter of necessity is no longer a complete account of how successful multinational business enterprises and their legal advisers holistically approach legal, regulatory and societal responsibilities as part of the recipe for business success in society.

48 On these notions and illustrations of 'soft law', see Greg Weeks, *Soft Law and Public Authorities: Remedies and Reform* (Hart Publishing 2016) 13-21.

49 Eg, Centre for International Legal Cooperation, *The Hague Rules on Business and Human Rights Arbitration* (12 December 2019).

Accordingly, a broader view of regulation transcending ‘hard law’ encompasses the ways in which various standards and other societal norms influence and order behaviour by individuals, organisations and institutions, from a variety of sources that are not exclusively legal or state-based in origin. In terms of legal dimensions of regulation, the existence, importance and reinforcing interaction of ‘hard law’ and ‘soft law’ in the national and international legal orders has knock-on effects for the range of relevant sources of law for client-focused legal services work, as well as the correlative dimensions of individual, organisational and institutional responsibility in national and international legal orders.

The question that this opening snapshot of contemporary regulatory theory poses for all branches of the legal profession in addressing global poverty is what they can do alone and together on a sufficient scale to create meaningful change, using the various regulatory dimensions and levers available to them. One legal academic can write a pivotal text on law and poverty and a law school can prioritise and resource a student legal clinic or social entrepreneurship programme to help communities in need; whereas an association of law schools working with other branches of the legal profession and indeed other state and non-state parties can achieve much in coalitions of standard-setting and collective action to alleviate poverty. Global frameworks within which the research, education and engagement of law schools on such fronts can usefully occur include various IBA standards (including those dealing with ethics and combatting corruption)⁵⁰ and the UN’s SDGs, Principles for Responsible Investment (PRI) and UNGPs.

The UNGPs provide a clear global example of the influence and reach of a ‘soft law’ standard that is relevant to poverty, given the clear relationship between business, human rights and the protection and empowerment of poor people and communities. It is reinforced by its adoption in other multilateral standards (eg, OECD and International Finance Corporation (IFC) standards and the SDGs), as well as its developing normative influence on ‘hard law’ standards. The UNGPs are described in IBA standards for lawyers on business and human rights in the following terms:⁵¹

‘In 2011, following six years of multi-stakeholder consultations, research and pilot projects, the UN Human Rights Council unanimously endorsed the UNGPs [...] [T]he UNGPs do not have the force of law and are not legally binding. But they have enjoyed wide global uptake and are regarded as the global authoritative standard on business and human rights. They are increasingly reflected in public policy, in law and regulation, in commercial agreements, in international standards that influence business behaviour, in the advocacy of civil society organisations and in the policies and processes of companies worldwide.’

50 Eg. see ‘Anti-Corruption Strategy for the Legal Profession’, *Anti-Corruption Strategy for the Legal Profession* www.anticorruptionstrategy.org accessed 4 January 2021.

51 IBA Council, *IBA Practical Guide on Business and Human Rights for Business Lawyers*, n 13 above, 13.

The cumulative reinforcing effect of the UNGPs, SDGs, various IBA standards and the commitment of most (if not all) law schools to social justice under the rule of law has a potential that is yet to be realised in generating poverty-ending coalitions, strategies and measures across the various branches of the global legal profession. In the 21st century, the landscape of the ‘war on poverty’ continues to evolve.

Law schools taking individual and collective action on poverty

The impact of the market on the higher education sector has been remarkably similar all over the world as neoliberalism has become the dominant political philosophy and nation states move to commodify heretofore public goods [...] (N)ot only is the legal academy being radically altered as a result of contraction in the funding of universities from the public purse, but the cartography of legal knowledge itself is changing. The ultimate impact on the legal profession and democratic institutions is likely to be profound as social, critical and contextual knowledge is sloughed off in favour of the technocratic and the instrumental – knowledge most highly valued by the market.⁵²

Professor Margaret Thornton, *Privatising the Public University: The Case of Law*

The multiplicity of possible dimensions and entry points for legal analysis, advocacy and action on poverty can themselves be barriers to progress in this field of work, because of the absence of a single dominating standpoint, narrative and solution. The topic can be approached from a range of legal perspectives, including theories of law and justice, ‘social contract’ analysis, universal human rights, economic and sustainable development, intergenerational equity, democratic participation, socio-ethical and professional responsibility, substantive areas of law, access to justice and CLE. The range and density of scholarly analysis is itself something to be navigated in identifying, justifying and implementing remedial solutions for poverty through law and justice.

The roles and actions of law schools in alleviating poverty are also affected at a broader level by the relationship between the state and markets and by how their host universities and professional audiences perceive and respond to law schools in view of that relationship and its effects and constraints on them. Some commentators characterise the prevailing relationship between nation-states and markets in terms of a neoliberal agenda, at least in societies subscribing to democratic capitalism. A neoliberal agenda is characterised by factors such as economic liberalism, market capitalism and privatisation of public assets and services, resulting in free trade, deregulated markets and contraction of the welfare state, all as part of broader market-driven influences on government activity, including socio-economic policy priorities and resource allocation.

⁵² Margaret Thornton, *Privatising the Public University: The Case of Law* (1st edn, Routledge 2012) xii–xiii.

The shrinking state

Under such a view, an alignment occurs between the interests of free and deregulated markets, a shrinking state in service to those markets and BigBusiness – the major client constituency for BigLaw. Such an alignment also results in particular expectations from BigLaw and other sector employers of law graduates about the preferred types of knowledge, skills and work-related experiences that law graduates need from their university education. In the absence of careful filtering and balancing against other public interests engaged in legal and justice education, these expectations can steer law schools more towards preparing students for the transactional and advice-based needs of commercial law firms and their business clients than

towards achieving access to justice for impoverished peoples, especially where success in that endeavour might threaten existing balances of power, money and influence.

Reflecting through the lens of neoliberalism on the systemic pressures and drivers of law school strategies, operations and resourcing does not automatically mean accepting all of the characterisations or even all of the criticisms surrounding neoliberalism generally and its application to universities and law schools in particular. Nevertheless, universities and law schools that are unduly subservient to market interests, corresponding governmental priorities and orientations of law school stakeholder audiences catering to those interests have already fallen prey, because, more often than not, they have not been careful of the unfiltered impact of those forces.

In staying true to their own moral compasses, law schools must navigate neoliberalism's gravitational force towards 'marketisation' of their missions and operations, 'credentialisation' of their academic reputation (or 'brand') and course offerings, corporatism of their strategy and structures, privatisation of the benefits of their legal education and managerialism of their governance and decision-making. At worst, the result is a legal academy where individual academic autonomy, freedom and collegiality and the quality and range of localised professorial control and decision-rights conventionally associated with such academic qualities, are mediated and disrupted beyond recognition by such forces.⁵³

In turn, the collective impact of such marketisation, credentialism, corporatism, privatisation and managerialism arguably increases the likelihood of the instrumental commodification and commercialisation of academic legal research and education, limiting the priorities and opportunities for intended audiences and beneficiaries in broader society. Additional risk arguably arises in consequence for pursuit of the ideals of law and justice, public goods in law-making and the administration of justice and both truth-seeking scholarship and inculcation of an ethic of professional and public service.⁵⁴ Justice education

53 At the same time, university and law school management face institutional choices that still need to be made with good intent under prevailing institutional circumstances, even accepting neoliberal critiques of what produces those circumstances and conditions the decisions made under them. Of course, not every value, choice, or decision of a university or law school manager necessarily fits an overarching neoliberal narrative.

54 For an empirical and critical account of neoliberalism's pervasive influence upon universities and law schools in major common law systems, which informs this analysis, see n 52 above. For another recent perspective on global, market and other forces affecting Western and non-Western law schools, see Carel Stolker, *Rethinking the Law School: Education*,

(ie, ‘education in the social responsibility of the law and the legal profession’)⁵⁵ struggles to survive let alone thrive in such an environment, where the law’s ‘progressive potential’⁵⁶ for an aspirational race to the top in creating a just and civil society is impeded and suffocated by a subservient race to the bottom of neoliberal ideology and market idolatry.⁵⁷

Whatever position anyone might take in supporting or opposing such ideological characterisations, it is undeniable that a series of convergent and very visible global crises in the first two decades of the 21st century are challenging key ideas and practices surrounding the nature and role of governments, markets and lawyers in service to both. The last 20 years bear witness to the threats posed by the interdependencies and instabilities of the international financial system (eg, the 2008 Global Financial Crisis (GFC)), ongoing mass socio-economic inequality, an ascending climate emergency, sectoral and region-wide corruption and global pandemics (eg, Covid-19), all of which combine to greater adverse effect in widening the gap between wealthy and poor communities.

In that sense, measures aimed at ending poverty must take also account of its intersections with the structural and systemic features of intergenerational inequity, socio-economic inequality, non-access to justice, climate deterioration, institutional corruption and recurring pandemics. Law is often not the only disciplinary lens through which to view these topics and the interactions between them. Lawyers in all branches of the profession must coordinate and join forces with others in society to achieve success in these domains.

Market forces can, of course, also be used for the public good, notwithstanding the undeniable reality that market and societal values are not completely the same. For example, governments and the financial community can use the emerging market for social bonds to achieve some public goods, tying dividends on bonds to indicators aligned with demonstrable socio-economic improvements in poor communities.⁵⁸ Law schools can create social entrepreneurship clinics, working together with social enterprises, business advisers, philanthropic bodies and poor communities to develop sustainable businesses that address community needs (*Practical step 9*).

Practical step

9. Law schools can create social entrepreneurship clinics, working together with social enterprises, business advisers, philanthropic bodies and poor communities to develop sustainable businesses that address community needs.

Research, Outreach and Governance (Cambridge University Press 2014).

55 Adrian Evans, ‘Normative Attractions to Law and their Recipe for Accountability and Self-assessment in Justice Education’ in Frank S Bloch (ed) *The Global Clinical Movement: Educating Lawyers for Social Justice*, (Oxford University Press 2011) 353, 353.

56 *Ibid.*

57 Justice education and its orientations and benefits are discussed further in the final part of this chapter.

58 Mathilde Pellizzari and Jean-Michel Lecuyer, *The Social Bond Market: Towards a New Asset Class?* (Report, 2018).

Recasting lawyerly responsibility to combat poverty under the rule of law

(T)he relentless focus on short-term economic success has adversely affected the culture and institutional integrity of firms; the training, mentoring and development of young lawyers; the ability of firms and their lawyers to service the poor and underprivileged; and the ability of firms and their lawyers to devote time to the profession and the broader needs of society. We urge a rebalancing of the sometimes competing goals of 'economic' and 'professional' success.⁵⁹

Ben W Heineman Jr, William F Lee and David B Wilkins, *Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century*

The biggest obstacle to mass global action against poverty by lawyers from all strands of the profession is our individual and collective failure to accept responsibility for that outcome as a necessary and not simply voluntary aspect of lawyerly fidelity to the profession and society under the rule of law. Yet, the IBA has explicitly accepted and publicly espoused the fundamental proposition that the special privilege, status and expertise of lawyers to society on matters of law and justice produces a correlative 'duty and opportunity to provide pro bono legal service', which crucially 'helps to fulfil the unmet legal needs of the poor, underprivileged and marginalised'.⁶⁰ To that extent, the 'global voice of the legal profession' (as the IBA rightly presents itself) unequivocally accepts the connection between poverty, the rule of law and resulting lawyerly responsibility, with implications for member bar associations, law societies, law firms and individual lawyers in how that responsibility is promoted and practised.

The co-author of this chapter, Professor Horrigan has argued elsewhere⁶¹ that lawyerly fidelity to the rule of law produces a correlative lawyerly responsibility to do something to end poverty, as individual lawyers and collectively through law firms and other branches of the legal profession as a whole. The steps in that argument can be summarised as follows. Meaningful access to justice is part of most (if not all) accounts of the rule of law. Lawyers profess fidelity to the rule of law. Society affords lawyers special privileges and roles beyond ordinary citizenship in upholding the rule of law through legal systems and the administration of justice, with correlative expectations – accepted by the legal profession – that lawyers will use their special expertise and opportunities to achieve justice and remedy injustice for all people, regardless of their capabilities, wealth and standing in society.

Publicly funded legal aid, community legal services and pro bono legal assistance are all manifestations of a lawyerly commitment to the rule of law that helps poor people and other vulnerable groups in legal need. They demonstrate a clear and integral connection between society, law and poverty that requires coordinated actions of lawyers across all branches of the profession. In many communities, such activities reach a critical mass and scale that amounts to a major contribution to the common good.

⁵⁹ Ben W Heineman Jr, William F Lee and David B Wilkins, *Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century* (Essay, Harvard Law School Center on the Legal Profession, 25 November 2014)

⁶⁰ IBA, *IBA Pro Bono Declaration*, n 13 above, 3i–j.

⁶¹ Horrigan, n 43 above.

'Thin' and 'thick' accounts

Nevertheless, such manifestations do not exhaust what is possible in helping poor and disadvantaged communities as part of a lawyerly commitment to the rule of law. In our view, the lawyerly responsibility to contribute in some way to the end of poverty changes nature and scope in the transition from 'thin' to 'thick' accounts of access to justice under the rule of law. A 'thin' account of access to justice focuses on what people need when they have legal troubles and face investigation, prosecution, or litigation. Individually, lawyers fulfil this form of access to justice characteristically by accepting legal aid work for lower than usual fees,⁶² volunteering at CLCs and doing pro bono work. Many law schools assist in that form of access to justice through CLE programmes and services, operating in conjunction with CLCs, pro bono lawyers and others engaged in public interest litigation.

A 'thick' account of access to justice encompasses all of the ways in which people need a voice and consideration in the regulation and use of political and corporate power over them and the laws that enable it.⁶³ Wealthy and poor constituencies rarely have equal voices in influencing the content, application and reform of laws. No legal instrument or proceeding is completely value-neutral as between different interests and allocations of resources. To that extent, the need for access to justice for everyone is not confined to a guaranteed minimum level of access to legal advice and assistance, triggered whenever someone is in trouble with the law or needs to pursue legal avenues to protect their rights or remedy their situation.

Individually, lawyers fulfil this 'thick' account of access to justice by contributing their expertise to submissions by advocacy groups to law-making and law reform inquiries, funding (including through foundations set up by law firms) necessary research and community initiatives to address gaps and faults in the justice system and otherwise participating in professional and public advocacy that is specifically aimed at exposing and fixing entrenched disadvantage, inequality and injustice. Law schools have individual and partnering roles to play in such initiatives too, through contributions by legal academics and students (including legal clinics) to the public goods of law-making and law reform in submissions to legislative committees and official inquiries that highlight the law's impact on poor and disadvantaged people.

Globally, the disproportionate impact on poor people and others most in need of the law's protection of inequitable allocation and use of power and resources is manifested in everything from the global climate emergency and mass pandemics such as Covid-19, to the

62 Just as an individual lawyer might support the pro bono part of their work through their other fee-generating work, so too whole organisations might support and cross-subsidise their pro bono efforts through other fee-paying and income-producing efforts. In this sense, both the lawyers engaged in pro bono work at a law firm and the lawyers working in practice areas whose client-based work generates the fees to support a pro bono practice group are equally engaged in both delivering on their firm's public pro bono commitments and meeting (at least in part) their individual and collective lawyerly obligation to access to justice under the rule of law.

63 This account of a 'thick' view of access to justice accommodates both public and corporate power. For a discussion to similar effect of access to justice's 'broad' and 'narrow' meanings, see, eg, John Corker, 'The Importance of Inculcating the "Pro Bono Ethos" in Law Students and the Opportunities to Do It Better' (2020) 30(1) *Legal Education Review* 1, 5.

systemic inequality and structural injustice that is exposed by mass movements, such as the anti-modern slavery and universal human rights movements. Even contemporary attempts to modify capitalism under banners such as ‘stakeholder capitalism’⁶⁴ and ‘compassionate capitalism’⁶⁵ reflect a similar concern with the use and abuse of corporate and financial power in ways that adversely affect business-related constituencies, such as victims of human rights abuses and modern slavery violations in a company’s supply and distribution chain, as well as poor local communities and groups who are victims of both lawful and unlawful corporate actions to their detriment. To summarise, a balanced approach to education, research and engagement by law schools must encompass a broader horizon of poverty-sensitive concerns, as part of meeting a law school’s university mission, membership of the legal profession and socio-ethical responsibility (*Practical step 10*).

Practical step

10. A balanced approach to education, research and engagement by law schools must encompass a broader horizon of poverty-sensitive concerns, as part of meeting a law school’s university mission, membership of the legal profession and socio-ethical responsibility.

Part 2

Prioritising relief from poverty in law school roles, missions and actions

Ten areas of endeavour for law schools on poverty, inequality and injustice

*We are committed to ending poverty in all its forms and dimensions, including by eradicating extreme poverty by 2030 [...] Our journey will involve Governments as well as parliaments, the United Nations system and other international institutions, local authorities, indigenous peoples, civil society, business and the private sector, the scientific and academic community – and all people.*⁶⁶

United Nations General Assembly, 70th Session, September 2015

As suggested earlier, law schools exist and operate in the intersections between law as an academic discipline, university entity, profession, business, public good and force for change. At first glance, law schools therefore seem well-placed to pursue education, research and professional and community engagement in many ways that prioritise poverty-sensitive study and work because of their and its close mutual connection to socio-economic equality,

64 Gavin Kelly, Dominic Kelly and Andrew Gamble, *Stakeholder Capitalism* (Palgrave Macmillan 1997); R Edward Freeman, Kirsten Martin and Bidhan Parmar, ‘Stakeholder Capitalism’ (2007) 74 *Journal of Business Ethics* 303.

65 Rich DeVos, *Compassionate Capitalism: People Helping People Help Themselves* (Plume 1994).

66 UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, GA Res 70/1, UN GAOR, 70th session, Agenda Items 15 and 116, UN Doc A/RES/70/1 (25 September 2015) 7[24], 12[52].

access to justice and the rule of law.

In their strategic planning and everyday operational realities, however, many law schools commonly confront and navigate various elements that detract from poverty-ending study and work. Those elements include the pressures of neoliberal governmental agendas, the host university's budget and workforce constraints, employer expectations of law graduate attributes, BigLaw's strong (albeit declining) hold on the legal services sector,⁶⁷ state-directed research funding priorities and grant schemes, professional and accrediting requirements, law school rankings and – for law schools associated with legal clinics and community centre services – inadequate publicly funded legal aid. All of these pressures can easily marginalise and otherwise distract attention from and support for, poverty as a major focus of study and action in 21st century law school missions and priorities.

The co-author of this chapter, Emeritus Professor Evans has written in another context about the need, forms and measurement of justice education about law and the legal profession, in a way that illustrates the array of socio-ethical orientations and connections implicated in how law schools might act on poverty, as follows:⁶⁸

‘Not many legal education institutions (LEIs), including law schools and other providers of practical legal training, see themselves as having a responsibility to deliver justice education – that is, education in the social responsibility of the law and the legal profession [...] Lawyers and nongovernmental organisations (NGOs) working for justice and justice education, or even thinking about the possibility, are confronted with a bewildering array of interrelated complexities. These include, for example, the links between poverty and preventing terrorism, human rights and access to resources, taxation and wealth distribution, even legal ethics and the difficulties in withstanding global warming. And yet so little seems, at times, to be achieved by those of us who try to use the law as an instrument to achieve sustainable improvement in many of these fields [...] The answer, if there is one, must lie in a sense of optimism that there is purpose to a struggle to improve access to justice regardless of past setbacks, because such setbacks are never complete and gradual advances are achieved.’

In other words, there is a danger for society and its underpinning respect for law and lawyers if training future lawyers for work in commercial law firms or at the commercial bar for governmental or business clients is the sole or paramount educational focus for any law school, especially if it occurs within a politico-legal and socio-economic system that reinforces and prioritises the market-servicing aspects of law degrees, revenue-generating

67 Eg Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (2nd edn, Oxford University Press 2017) 60-5; Emma Ryan, ‘BigLaw v NewLaw Debate Heats Up’, (19 January 2017) *Lawyers Weekly* www.lawyersweekly.com.au/newlaw/20409-newlaw-v-biglaw-debate-heats-up accessed 4 January 2021; Emma Ryan, ‘BigLaw “Rapidly” Losing Out to NewLaw Counterparts’, (19 February 2017) *Lawyers Weekly* www.lawyersweekly.com.au/newlaw/20562-biglaw-rapidly-losing-out-to-newlaw-counterparts accessed 4 January 2021; Richard Susskind and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press 2017) 66–71.

68 See n 55 above, 353.

academic legal research and sponsorship opportunities with BigLaw and BigBusiness. The danger is that ideas and actions associated with the ‘good’ lawyer, progressive legal education, the social responsibility of lawyers and a deep commitment to the use of law to cure real inequality and injustice can easily find themselves ‘benched on the sidelines’. The fact that *some* law schools and commercial law firms do a tremendous amount of good in the community does not detract from the danger flagged here for *all*.

Furthermore, embedding these ideas and actions and what they mean for poverty-focused study and work within law schools extends beyond matters of formal education and future professional outlook. As with the mainstreaming and integration of a business commitment to CSR, any law school’s commitment to sensitising its constituencies to poverty on all of the levels that matter means mainstreaming that commitment as an integral and built-in feature of the organisation and not simply leaving it in the slipstream of individual academic discretion and interest as a marginal and add-on feature of law school potentiality. Making a focus on poverty and associated aspects of inequality and injustice part of the DNA of law schools requires a holistic and multi-pronged institutional approach.

The nine areas

Accordingly, for the purposes of comprehensive discussion about what is possible, the agenda and recommendations for action on poverty by law schools can usefully be grouped and analysed under the following nine categories of areas of endeavour:

1. societal standing and expectations;
2. jurisdictional regulation and accreditation;
3. professional admission and employment;
4. organisational partnering and collaboration;
5. institutional strategy and planning;
6. academic orientation and capability;
7. legal scholarship and advocacy;
8. legal engagement and impact; and
9. legal education and ethics.

Each of those categories warrants detailed individual examination. A tenth category of law school effort – legal clinics and placements – deserves separate discussion and is addressed in Part 3. As is apparent from the discussion that follows in this part and Part 3, these categories not only have an impact on one another, but also traverse the basic focus and work of education, research and academic, professional and community engagement by law schools.

Societal standing and expectations

Law and justice do not exist to provide jobs for members of any section of the legal profession, including academic lawyers.⁶⁹ They exist to serve civil societies under the rule of law. All such societies in all civilisations and eras profess real concern for their poor, marginalised and disadvantaged members and groups. What does this mean for what society expects of the entire legal profession, including the legal academy? On the set of arguments presented in Part 1 of this chapter about the socio-ethical responsibility of lawyers on poverty, lawyerly fidelity to the rule of law generates a correlative lawyerly responsibility – both individual and collective – to do something about ending poverty and associated inequality and injustice. For law schools, that multi faceted responsibility translates into discrete actions in their core education, research and external outreach.

First, law schools can and should meet societal expectations that they educate and train the next generation of legal and professional leaders with orientations, knowledge and skills to do their part in ending poverty worldwide (*Practical step 11*). For example, a former justice of the High Court of Australia and current Co-Chair of the IBAHRI, Dr Michael Kirby, specifically included attention on poverty in the educational mission of Australian law schools in one of his ‘ten commandments’ for them in a 2015 speech (ie, ‘Address some particular subjects of poverty law’), commenting that ‘[i]f at no level in a law course there is any exposure amongst law students to the areas of law that typically affect their economically disadvantaged fellow citizens, it is unsurprising that there will be little or no knowledge, awareness or sympathy about the legal problems of people living in poverty’.⁷⁰ Law school subjects on law and poverty can be local, comparative or global.⁷¹

Second, societies which provide funding and other support for universities from a mix of public, private and not-for-profit sector sources have reasonable expectations that disciplines within universities will address significant national and global challenges in their research missions, as well as in their educational missions. Institutional resourcing of universities and their law schools from governments, industry and private foundations can prioritise poverty elimination as an area of academic focus and activities through measures such as government funding compacts with individual universities, research funding agency priorities for fundable research grant projects, social entrepreneurship initiatives and partnerships, sponsored multi disciplinary clinics and philanthropically supported research and outreach programmes (*Practical step 12*).⁷²

69 A sentiment and quote often attributed to legal futurologist, Richard Susskind. ‘Law does not exist to provide a livelihood for lawyers any more than illness exists to provide a livelihood for doctors. Successful legal business may be a by-product of law [...] but it is not the purpose.’ See Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University Press 2008).

70 Justice Michael Kirby, ‘Unmet Legal Needs in Australia: Ten Commandments for Australian Law Schools’ (Speech, Australian Law Teachers’ Association Conference, 17 July 2015) 18.

71 Eg, Stanford University’s ‘Global Poverty and the Law’ subject: Stanford University, ‘Global Poverty and the Law’, *Stanford Law School Course Catalog* <https://law.stanford.edu/courses/global-poverty-and-the-law> accessed 4 January 2021.

72 As another example, the ‘Leave No-One Behind’ Initiative at Monash University in Australia began in 2018 as a social business and entrepreneurship programme of multi disciplinary student projects with real community impact

Third, the status and privileges afforded by society to the legal profession depend to a significant degree on lawyers accepting and acting on their resulting legal, professional and social responsibilities. International crises of confidence in lawyers' integrity continue, especially in the context of taxation,⁷³ in avoiding corruption and money laundering,⁷⁴ and in the avoidance of conflicts of interest.⁷⁵ There may be very little agency or esteem remaining to the profession in future decades if it loses sight of the imperative need to show equal and active commitment to doing justice and fighting injustice, above making money, serving elite interests and facilitating unjust privilege.

While ill-considered provocation of fellow lawyers is pointless, this is hardly the case any longer. In the wake of public examples of problematic lawyerly conduct across both hemispheres, from Australian royal commissions to American court challenges to presidential election results, it is probably high time for the global legal profession to address ethics enhancement proactively for individual lawyers, by recurring assessments of legal practitioners for their socio-ethical sophistication and integrity, reinforced in requirements for admission to practice and law school accreditation (*Practical step 13*). The IBA and its member bar associations and law societies can similarly encourage member law firms to move beyond a constrained focus on lawyerly work as work consisting of billable client work, business development and pro bono work and to view relationships with law schools in various avenues of poverty-ending work as part of a richer account of lawyerly work in fidelity to access to justice and the rule of law (*Practical step 14*).

Finally, expertise-based advocacy in support of empowering and achieving better access to justice for poor people is both part of academic external engagement and impact as well as an aspect of society's expectations of the legal profession as a whole, including law schools. In addition, on the set of arguments presented in Part 1 of this chapter about the evolution of 21st century democracy, universities and law schools play key roles addressing poverty as participants in deliberative, participatory and monitory democracy, within broader systems of 21st century governance, regulation and responsibility.

For example, law schools and individual legal academics can participate in multi-stakeholder coalitions that develop or monitor standards from within the global legal profession (eg, IBA statements and guides) as well as beyond it (eg, SDGs and UNGPs), focusing mass attention on lawyerly action or inaction in fulfilling such standards (*Practical step 15*). Individual academics can contribute public submissions highlighting poverty insights and solutions to inquiries and calls for public submissions from official inquiries,

and involving philanthropic partners and entrepreneurs, organised around the SDGs and funded by the Monash Sustainable Development Institute (MSDI) and the Faculties of Law, Arts, Business and Economics, Education and Art, Design and Architecture.

73 See in particular, International Consortium of Investigative Journalists, *The Panama Papers: Exposing the Rogue Offshore Finance Industry* www.icij.org/investigations/panama-papers accessed 4 January 2021.

74 Involving former Australian monopoly wheat exporter AWB and its bribery of Saddam Hussein's Iraqi government. See 'How was AWB enmeshed in Iraq's oil-for-food scandal?', SBS News (Sydney, 13 October 2015) www.sbs.com.au/news/how-was-awb-enmeshed-in-iraq-s-oil-for-food-scandal accessed 4 January 2021.

75 In July 2020, the US Justice Department unilaterally withdrew charges against President Trump's former National Security Adviser, Michael Flynn, after he pleaded guilty. See Editorial Board, 'Don't Forget, He Pleaded Guilty', *New York Times* (New York, 9 May 2020) 30.

legislative committees and law reform agencies, as contributions to the public goods of policy-making, law-making and law reform, as well as manifestations of the legal academy's involvement in the kind of 21st century governance and democracy sketched in this chapter (*Practical step 16*).

Practical steps

11. Law schools should have a core mission of educating and training the next generation of legal and professional leaders with orientations, knowledge and skills to do their part in ending poverty, injustice and inequality worldwide.
12. Institutional, government and philanthropic funding of law schools should be made conditional on prioritising poverty, injustice and inequality as core areas of academic focus.
13. The global legal profession should address ethics enhancement proactively for individual lawyers by recurring assessments of legal practitioners for their socio-ethical sophistication and integrity. This must be reinforced by requirements for admission to practice and law school accreditation.
14. The IBA and its member bar associations and law societies can encourage member law firms to move beyond a constrained focus on lawyerly work as work consisting of billable client work, business development and pro bono work and to view relationships with law schools in various avenues of poverty-ending work as part of a richer account of lawyerly work in fidelity to access to justice and the rule of law.
15. Law schools and individual legal academics should participate in multi-stakeholder coalitions that develop or monitor standards from within and beyond the global legal profession, focusing on lawyerly action or inaction in meeting such standards.
16. Individual academics ought to make public submissions and other contributions to the public goods of policy-making, law-making and law reform that highlight poverty insights and solutions.

Jurisdictional regulation and accreditation

Consistently with the broader multi-order view of regulation outlined in this chapter, the regulation and accreditation of law schools is now widely a matter for state authorities, professional accrediting and admitting bodies, standard-setting from national and global communities of law school peers and internal host university accreditation and regulation binding on individual law schools. A number of possibilities are open at each of and across those various levels of ordering, to reinforcing effect.

Governments can use sectoral policy settings, regulatory controls and even the funding arrangements of universities and their law schools to achieve outcomes that meaningfully contribute to the war on poverty. In the context of broader university dealings with government,

such measures include institutional establishment and funding preconditions, public funding research priorities, social compacts with universities, legislated mandates for universities and government incentives for student equity and diversity (*Practical step 17*). At the level of individual law schools, a public agency or department of state might politically and financially support a legal academic focus on poverty in various ways, for example, through contributing some funding to a relevant research centre or project that accords with publicly stated access to justice priorities, providing some publicly funded legal aid to a free legal clinic associated with a law school and reframing incentives for law firm eligibility for government tenders and panels based on pro bono measures to encourage poverty-ending collaborations with law schools and others (*Practical step 18*).

Standard-setting by associations of law schools on basic accrediting requirements for member law schools can incorporate expectations and measures about what law schools do to shape the social consciousness of students and academics as participants in local, national and global communities committed to values such as socio-economic equality, universal human rights, access to justice, ethical lawyering and the rule of law, all as part of a commitment to justice education (*Practical step 19*). Law schools and their national and international associations can also develop self-assessment criteria and other tools to assist in demonstrating successful orientation and delivery of justice education for accreditation and other purposes, including templates for assessing matters, for example, such as the adequacy of teaching of legal ethics and social responsibility, clinical and pro bono programmes, orientation and selection of academic staff and governance arrangements supportive of justice education (*Practical step 20*).⁷⁶

Such steps can help us to examine in depth how much difference a suite of clinics or an overall CLE programme can actually make to the lives and legal support of those in poverty, or at the very least to students' awareness of law's impact on poverty through clinical and non-CLE across the legal curriculum. Indeed, in the absence of specific endorsement and prioritisation of such values in other sources of regulation and funding for law schools, it is even more imperative for law school standard-setting and standard-evaluation exercises to undertake this role.

The laws and court rules of a jurisdiction can provide for rights of appearance for appropriately supervised law students to assist self-represented clients who cannot afford a lawyer and who also do not qualify for publicly funded legal aid (*Practical step 21*).⁷⁷ Where the interest on client funds held on trust by law firms for settlements and other purposes is officially quarantined and payable into a fund for public purposes, those purposes can be framed to include clinical and related support for people who cannot afford legal representation, through a combination of legal aid agencies, CLCs and associated law school clinics (*Practical step 22*).

An important caveat is needed on this last practical step. What might have been a socially useful and professionally justifiable practice in the pre-computing age faces ethical and technological challenge in a digital era, where computers can calculate and award micro amounts to law firm clients for their trust fund balances.

⁷⁶ See n 55 Appendices 1–4.

⁷⁷ US law school clinics often have legislated rights of audience to represent clients under supervision in court appearances. Unfortunately, that is not yet widespread in some other countries, such as Australia.

Practical steps

17. Governments must use sectoral policy settings, regulatory controls and funding arrangements with universities and law schools to achieve societal outcomes that meaningfully contribute to addressing poverty, injustice and inequality. These may include funding preconditions, public research priorities, social compacts with universities, legislated mandates for universities and government incentives for student equity and diversity.
18. A public agency or department of state might politically and financially support a legal academic focus on poverty in various ways, such as contributing funding to a relevant research centre or project that accords with publicly stated access to justice priorities, providing some publicly funded legal aid to a free legal clinic associated with a law school, or reframing incentives for law firm eligibility for government tenders and panels based on pro bono measures to encourage poverty-ending collaborations with law schools and others.
19. Associations of law schools must incorporate standards, expectations and measures relating to the social consciousness of students and academics and a commitment to values such as socio-economic equality, universal human rights, access to justice, ethical lawyering and the rule of law as a basic accreditation requirement for member law schools.
20. Law schools and their national and international associations need to develop self-assessment criteria and other tools to assist in demonstrating successful orientation and delivery of justice education for accreditation and other purposes. This must include templates for assessing matters, such as the adequacy of teaching of legal ethics and social responsibility, clinical and pro bono programmes, orientation and selection of academic staff and governance arrangements supportive of justice education.
21. The laws and court rules of a jurisdiction should provide for rights of appearance for appropriately supervised clinical students to assist self-represented clients who cannot afford a lawyer and who also do not qualify for publicly funded legal aid.
22. Where the interest on client funds held on trust by law firms for settlements and other purposes is officially quarantined and payable into a fund for public purposes with client consent, those purposes ought to be framed to include clinical and related support for people who cannot afford legal representation, through a combination of legal aid agencies, community legal centres and associated law school clinics.

Professional admission and employment

Next, admitting authorities can make demonstrated understanding and practical experience of pro bono legal service and other aspects of access to justice, lawyerly fidelity to the system of justice and rule of law mandatory or desirable preconditions for admission to practise as a lawyer. More particularly, those authorities can make a designated amount of poverty-related practical legal experience at university (eg, clinics, voluntary work or internships) or beyond (eg, practical legal training) an essential precondition for a law graduate being admitted to practise as a lawyer (*Practical step 23*).⁷⁸ Accrediting authorities can do the same with accreditation of law schools, within regulatory mandates set or amended accordingly (*Practical step 24*).⁷⁹

Beyond what admitting and accrediting authorities might do, an individual law school might impose a similar requirement as a matter of choice and competitive differentiation, making it compulsory for students to complete a designated amount of poverty-related study or work as a condition of graduating with their law degree (*Practical step 25*).⁸⁰ State or national associations of law schools might set their own accrediting requirements for what is necessary to be a law school and include a poverty-based focus in a variety of ways, including coverage of substantive areas of law, socio-ethical training of lawyers, clinical legal programmes, community outreach for law schools and demonstrated knowledge of lawyerly roles in poverty alleviation (*Practical step 26*).

For duly admitted lawyers, ongoing demonstrated understanding and experience after admission to legal practice in poverty-relevant law and work can be made a condition for individual lawyers of continuing to hold relevant accreditation as a legal practitioner, with individual law firms, law schools and bar associations and other professional bodies providing such continuing legal education and training (*Practical step 27*). Law firms can reinforce the work of law schools to instil a lifetime professional commitment by aspiring lawyers to access to justice and the rule of law, by making career advancement and progression to partnership at least partially dependent on a demonstrated commitment to ending poverty, inequality and injustice in the communities served by those law firms (*Practical step 28*).

National, regional and local law societies and bar associations can include familiarisation with international and national standards for lawyers relating to poverty, inequality and

78 Eg mandating designated amounts of pro bono legal service generally as a condition for admission to legal practice or more particularly in poverty-related work. Eg pursuant to Rule 520.16(a) of the *Rules of the Court of Appeals*, applicants who pass the bar examination in the State of New York must demonstrate they have performed 50 hours of qualifying pro bono service before applying for admission to practice. See *Court of Appeals: State of New York*, 'Part 520. Rules of the Court of Appeals for the Admission of Attorneys and Counsellors at Law', Court of Appeals: State of New York <http://www.nycourts.gov/ctapps/520rules10.htm#B16> accessed 4 January 2021.

79 Eg ABA *Standards of Procedure for Approval of Law Schools* 2016-2017 Standard 303(b) provides that 'a law school shall provide substantial opportunities to students for: (1) law clinics or field placement(s); and (2) student participation in pro bono legal services, including law-related public service activities'.

80 Eg Loyola University New Orleans School of Law's Law and Poverty requirement for its Juris Doctorate degree: see ABA, 'Loyola University New Orleans School of Law', ABA (6 August 2018) www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/directory/ld57 accessed 4 January 2021.

injustice – including relevant IBA standards – as much a part of their continuing professional development (CPD) programmes for their members as other areas of substantive law and practice (*Practical step 29*). The lifelong socialisation of future lawyers from ‘cradle to grave’ (ie, law school to retirement from the legal profession) therefore involves a series of intertwined and reinforcing measures in law school education and work-situated experiences, practical legal training, accreditation and admission requirements, legal career progression, CPD and leverage from governments and professional bodies, in the ways indicated and more.

Individual law firms might incorporate pro bono legal service generally or other poverty-alleviating community work in expectations or opportunities for their law graduates and other employees, through employment requirements, employee volunteering programmes, client-related secondments (including with legal clinics) and support for further education and training (*Practical step 30*). Law firms and other professional services firms might also include poverty-relevant education and training for both staff and clients as part of in-house CPD programmes, with tie-in benefits for meeting individual and organisational CPD requirements, firm-organised pro bono activities, partnering with client and community organisations and general lawyerly awareness-raising and social consciousness (*Practical step 31*).

Bar associations and law societies can waive fees for professional accreditation and membership for retired or part-time lawyers who only undertake pro bono legal work (*Practical step 32*).⁸¹ These special interest groups can also develop codes of conduct and other professional standards that reinforce poverty-alleviating employment initiatives (*Practical step 33*).⁸² Such initiatives can have recruitment, retention and reputational benefits for law firms, as well as financial benefits in jurisdictions where governments require law firms to undertake a designated amount of legal aid and pro bono work to be eligible to tender for and provide government legal services.⁸³ Indeed, governments can include eligibility

81 Eg, in Western Australia, the Legal Practice Board has agreed to make available a no-fee ‘volunteer or pro bono only’ condition for imposition on a local practicing certificate. This may incentivise lawyers to work in this area. See Legal Practice Board of Western Australia, ‘Availability of a “Volunteer or pro bono only” condition for imposition on practicing certificates’, *Legal Practice Board of Western Australia* www.lpbwa.org.au/Legal-Profession/Practising-in-Western-Australia/Volunteer-or-pro-bono-only-condition accessed 4 January 2021.

82 Eg, models for such requirements in terms of pro bono service generally also include lawyerly requirements to provide or facilitate access to justice for people who cannot afford a lawyer, as an aspect of lawyerly ‘honesty, integrity and fairness’ under the 2019 *IBA International Principles on Conduct for the Legal Profession*, n 14 above. Specifically in relation to poverty, see the commentary on the Law Society of Alberta Code of Conduct (‘As a matter of access to justice, it is in keeping with the best traditions of the legal profession to provide services pro bono and to reduce or waive a fee when there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. The Society encourages lawyers to provide public interest legal services and to support organizations that provide services to persons of limited means’) Law Society of Alberta, *Code of Conduct* (Code of Conduct, 20 February 2020) Chapter 4 Commentary 2.

83 Eg, ‘Victorian Government Legal Services Panel’, *Australian Pro Bono Centre* www.probonocentre.org.au/provide-pro-bono/government-tender-arrangements/victorian-government-legal-services-panel accessed 4 January 2021. As part of the tender process firms were required to commit a pro bono percentage of at least five per cent of the value of legal fees under the contract to pro bono work and could nominate up to 15 per cent. Furthermore, in 1995, the US-based Pro Bono Institute established the Law Firm Pro Bono Challenge® Initiative. This provided that law firms with 50 or more lawyers are eligible to become signatories to the challenge and nominate a minimum annual target of either: five per cent of the firm’s total billable hours or 100 hours per lawyer; or three per cent of the firm’s total billable hours or 60 hours per lawyer. See Pro Bono Institute, *Law Firm Pro Bono Challenge® Initiative*, <http://www.probonoinst.org/projects/law-firm-pro-bono/law-firm-pro-bono-challenge> accessed 4 January 2021.

criteria to tender and serve on panels for delivery of governmental legal services that cover a spectrum from conventional pro bono and legal aid contributions to meaningful and innovative engagement in work that assists governments in alleviating poverty, inequality and injustice (*Practical step 34*).

Practical steps

23. Admitting authorities must make a designated amount of poverty-related practical legal experience at university (eg, clinics, voluntary work or internships) or beyond (eg, practical legal training) an essential precondition for a law graduate being admitted to practise as a lawyer.
24. Accreditation authorities must develop and implement regulatory mandates to make a designated amount of poverty-related practical legal experience at university (eg, clinics, voluntary work or internships) an essential precondition for law school accreditation.
25. An individual law school ought, as a matter of choice and competitive differentiation, make it compulsory for students to complete a designated amount of study or work related to poverty, injustice and inequality as a condition of graduating with their law degree.
26. State or national associations of law schools must set their own accrediting requirements to include a poverty-related focus. This can be achieved in a variety of ways, including: staff orientations and capabilities, coverage of substantive areas of law, socio-ethical training of lawyers, clinical legal programmes, community outreach for law schools and demonstrated knowledge of lawyerly roles in poverty alleviation.
27. For duly admitted lawyers, ongoing demonstrated understanding and experience after admission to legal practice in poverty-relevant law and work should be made a condition for individual lawyers of continuing to hold relevant accreditation as a legal practitioner, with individual law firms, law schools and bar associations and other professional bodies providing such continuing legal education and training.
28. Law firms can reinforce what law schools do to inculcate a lifetime professional commitment by aspiring lawyers to access to justice and the rule of law, by making career advancement and progression to partnership at least partially dependent on a demonstrated commitment to ending poverty, inequality and injustice in the communities served by those law firms.

29. National, regional and local law societies and bar associations must include familiarisation with international and national standards for lawyers relating to poverty, inequality and injustice – including relevant IBA standards – as a part of their CPD programmes for their members.
30. Individual law firms must incorporate pro bono legal service generally or other poverty-alleviating community work in expectations or opportunities for their law graduates and other employees. This might occur through employment requirements, employee volunteering programmes, client-related secondments (including with legal clinics) and support for further education and training.
31. Law firms and other professional services firms should also include poverty-relevant education and training for both staff and clients as part of in-house CPD programmes. This might also align with organisational benefits in meeting individual and organisational CPD requirements, firm-organised pro bono activities, partnering with client and community organisations and general lawyerly awareness-raising and social consciousness.
32. Bar associations and law societies must waive fees for professional accreditation and membership for retired or other lawyers who only or mainly undertake pro bono legal work.
33. Bar associations and law societies must develop codes of conduct and other professional standards that reinforce poverty-alleviating employment initiatives.
34. Governments must include eligibility criteria for law firms to tender and serve on panels for delivery of government legal services that promote lawyerly commitment to the public interests in addressing poverty, injustice and inequality. Those criteria can cover a spectrum from conventional pro bono and legal aid contributions to meaningful and innovative engagement in work that assists governments in alleviating poverty, inequality and injustice.

Organisational partnering and collaboration

Law schools can develop or join partnering, sponsorship, philanthropic and other collaborative arrangements to address poverty locally, nationally and globally, in the fulfilment of the educational, research and external engagement activities of the legal academy (*Practical step 35*). Multi-stakeholder initiatives aimed at improving access to justice can attract state support and include representatives from various branches of the legal profession, thereby encouraging and facilitating the involvement of law schools and their constituencies in such initiatives (*Practical step 36*).⁸⁴

⁸⁴ Eg, publicly funded and professionally supported access to justice commissions: see Vanita S Snow, 'The Untold Story

The IBA already leads the way in recognising what various strands of the legal profession, including law schools, can do together and at scale in core areas of poverty-sensitive legal work. For example, the 2008 *IBA Pro Bono Declaration* recognises the importance of ‘collaborations among bar associations, private and public interest law firms, *law schools*, foundations and other non-governmental organisations’ in providing pro bono legal services to improve access to justice, ‘especially [for] the poor, underprivileged and marginalised’.⁸⁵ A collaborative model that works in the community legal services context with which we are most familiar and which our law school has shared with interested academic and judicial delegations from other countries for their local communities, is as follows.

Local access to justice can and should embrace government-supported engagement between law schools, the legal profession and communities. A law school and its legal clinics can work hand in hand with the judiciary, legal profession, other CLCs and community bodies to provide free legal information, advice and representation locally, bolstered by relationships between those parties that facilitate student court appearances, professional supervision and volunteering of expertise (*Practical step 37*). Beyond court-focused legal and information services, other collaborations are possible between law schools and legal units across the public, private and NGO sectors, in the form of placements (including student internships, externships and voluntary work), clinics and partnered projects with a focus on providing support and services to people subjected to poverty, inequality and injustice (*Practical step 38*).

Standard-setting, monitoring and framework-building are important activities in holding government, business and professional advisers to account. The public goods of policy development, law-making and law reform to poverty-ending effect are influenced through public reason, advocacy and thought leadership – activities in which the legal academy and other branches of the legal profession have crucial networking, collaborative and influencing roles to play, alone or with others from multiple disciplinary and professional backgrounds beyond law (*Practical step 39*).

Many such collaborations have great potential to achieve success in addressing major challenges of poverty, inequality and injustice, through engagement with major international standards and cross-sectoral coalitions. Governments, businesses and those who advise them professionally all have roles to play, for example, in joining together to help the world achieve results under the SDGs in both developed and developing countries. Academics can become involved in research, consultancy and monitoring projects that flow from the innovative use of market mechanisms such as social bonds to achieve improvements in the conditions and opportunities for poor communities, aligned with goals and indicators under the SDGs (*Practical step 40*).⁸⁶

The significance of theory-building, framework-setting, multi-stakeholder coalitions and resulting policy and legal change in ending poverty are evident from even a cursory glance

of the Justice Gap: Integrating Poverty Law into the Law School Curriculum’ (2017) 37(2) *Pace Law Review* 642, 653.

85 IBA, *IBA Pro Bono Declaration*, n 13 above, 3 [emphasis author’s own].

86 Pellizzari and Lecuyer, n 58 above; International Capital Markets Association, *The Social Bond Principles* (Report, June 2017); BMO Capital Markets, *Social and Sustainability Bonds Help Combat Effects of COVID-19* (Report, April 2020).

at some of the major SDGs on poverty, education, equality and justice and the potential interactions between them, as follows:

‘Goal 1. End poverty in all its forms everywhere

By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than \$1.25 a day

By 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions

...

1.b Create sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive development strategies, to support accelerated investment in poverty eradication actions

Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

...

4.3 By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university

...

4.b By 2020, substantially expand globally the number of scholarships available to developing countries, in particular least developed countries, small island developing States and African countries, for enrolment in higher education ...

Goal 5. Achieve gender equality and empower all women and girls

5.1 End all forms of discrimination against all women and girls everywhere

...

5.c Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels

...

Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

...

16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

...

16.10 ... (P)rotect fundamental freedoms, in accordance with national legislation and international agreements

At the individual level, legal academics and students might join and contribute to a range of collaborative initiatives with others in the legal profession and beyond to achieve better equality and justice for society's most impoverished and disadvantaged members (*Practical step 41*). They might become active members of IBA, a law society, bar association and associated young lawyer committees whose areas of interest and public submissions relate to poverty. They might undertake a placement or secondment with an NGO or other organisation focused on relieving poverty and disadvantage. They might collaborate with others inside and beyond universities in multiparty public submissions to public inquiries, law reform referrals, legislative reform consultations, policy-setting proposals and other standard-setting initiatives.

Practical steps

35. Law schools should develop or join partnering, sponsorship, philanthropic and other collaborative arrangements to address poverty locally, nationally and globally, in fulfilment of the educational, research and external engagement activities of the legal academy.
36. Multi-stakeholder initiatives aimed at improving access to justice can attract state support and include representatives from various branches of the legal profession, thereby encouraging and facilitating the involvement of law schools and their constituencies in such initiatives.
37. A law school and its legal clinics ought to work hand in hand with the judiciary, legal profession, other community legal centres and community bodies to provide free legal information, advice and representation locally, bolstered by relationships between those parties that facilitate student court appearances, professional supervision and volunteering of expertise.
38. Beyond court-focused legal and information services, law schools and legal units across the public, private and NGO sectors should collaborate in the form of placements (including student internships, externships and voluntary work), clinics and partnered projects with a focus on providing support and services to people subjected to poverty, inequality and injustice.
39. The legal academy and other branches of the legal profession have crucial networking, collaborative and influencing roles to play, alone or with others from multiple disciplinary and professional backgrounds beyond law, in the public reason, advocacy and thought leadership which influences policy-development, law-making and law reform to poverty-ending effect.

40. Governments, business and academics have roles to play in joining together to help the world to achieve results under the SDGs in both developed and developing countries. This can be through research, consultancy and monitoring projects that flow from the innovative use of market mechanisms such as social bonds to achieve improvements in the conditions and opportunities for poor communities, aligned with goals and indicators under the SDGs.
41. Legal academics and students should join and contribute to a range of collaborative initiatives with others in the legal profession to achieve better equality and justice for society's most impoverished and disadvantaged members. Such activities can include professional body memberships, collaborative public submissions and NGO placements or secondments.

Institutional strategy and planning

Most law schools across the world operate within internal university and external higher education sectoral systems, in addition to their coextensive operation within systems of professional accreditation and admission to legal practice, all embedded within societal expectations of universities and law schools. Law school strategy, planning, decision-making and resourcing is therefore aligned with and subject to broader institutional directions and parameters. Academic work within a law school commonly covers education (including experiential and executive education), research (of both fundable and non-fundable types) and engagement (ie, both internal service and leadership, as well as external engagement and contribution of academic expertise to a wide variety of professional and societal stakeholders).

Therefore, the connection between law schools and poverty is not something that can or should be confined to only one dimension (eg, education), in the abstract (eg, a list of readings in a suitable subject) and at the margins (eg, a non-mandatory poverty elective or clinic). It is a vital aspect of constructing the social consciousness, justice orientations, professional identities, cognitive abilities and transferable knowledge and skills of law graduates, as agents in achieving social justice through a variety of legal and non-legal roles in society.⁸⁷ In addition, the connection between law schools and poverty is an equally crucial relationship in achieving the types of theory-building, evidence-based research, multi-stakeholder coalitions and movements,⁸⁸ and public advocacy and thought leadership that are needed to inform policy and legal changes in meaningfully addressing societal inequality and injustice.

Universities and other branches of the legal profession must ensure that they meaningfully support and do not take for granted the largely unfunded *and* impossible-to-fund academic

⁸⁷ Snow, n 84 above, 645–646.

⁸⁸ On theory-building about social movements including the poverty law movements, see Stephen Loffredo, 'Poverty Law and Community Activism: Notes from a Law School Clinic' (2001) 150 *University of Pennsylvania Law Review* 173.

research involved in research, advocacy and ‘watchdog’ activities that contribute to the public goods of law-making, law reform and legal policy development, with the empowerment of poor people and the ending of poverty as their objective (*Practical step 42*). For clarity, this means that universities and their law schools should properly value *and* resource both funded and impossible-to-fund research that contributes to such public goods in poverty-related fields of academic work, not least because of the societal and professional expectations of law schools and the ensuing benefits of such work for a law school’s community, formal accreditation, professional standing, external engagement and graduate employability.⁸⁹

On the broad view outlined above of the connection between law schools and poverty, law schools can and should mainstream a focus on poverty holistically in their law school missions, strategic planning and operations. In doing so, law schools must prioritise a deep focus on poverty, inequality and injustice in course curricula requirements, experiential learning and volunteering opportunities, year-by-year knowledge and skills training, required graduate attributes, formative and summative assessment requirements, student research topic options, academic research projects and cross-disciplinary collaborations, academic workforce capability profiling and development, organisational and institutional (eg, university-to-university) partnering initiatives, sponsorship and philanthropic proposals and CLE (*Practical step 43*). This does not mean that all law schools must incorporate a focus on poverty in all of these things and to a requisite level in each of them, but only that a whole-of-institution commitment to examining and taking action on poverty and associated inequality and injustice requires a multifaceted approach across various related domains of law school, university and external activity.

Practical steps

42. Universities and other branches of the legal profession must ensure that they meaningfully support and do not take for granted the largely unfunded and impossible-to-fund academic research involved in research, advocacy and ‘watchdog’ activities that contribute to the public goods of law-making, law reform and legal policy development, with the empowerment of poor people and the ending of poverty as their objective.
43. Law schools must mainstream a focus on poverty holistically in their law school missions, strategies and course curricula requirements. This holistic approach can be embedded within experiential learning and volunteering opportunities, year-by-year knowledge and skills training, required graduate attributes, formative and summative assessment requirements, student research topic options, academic research projects and cross-disciplinary collaborations, academic workforce capability profiling and development, organisational and institutional (eg, university-to-university) partnering initiatives, sponsorship and philanthropic proposals and CLE.

⁸⁹ Law schools can and should demonstrate their commitment to such research in their research performance and activity criteria, professional development and career advancement measures and academic workload recognition and allocation.

Academic orientation and capability

Poor people are not just like rich people without money. Poor people do not have legal problems like those of the private plaintiffs and defendants in law school casebooks [...] Poor people do not lead settled lives into which the law seldom intrudes; they are constantly involved with the law in its most intrusive forms [...] Poverty creates an abrasive interference with society; poor people are always bumping into sharp legal things. The [conventional] law school model of personal legal problems, of solving them and returning the client to the smooth and orderly world in television advertisements, doesn't apply to poor people.

Additions to the law school curriculum like 'Law and the Poor' serve a useful function by making it crystal clear that the remainder of the curriculum deals with law and the rich; they do little, however, to change the law schools' treatment of legal problems, or their perception of the proper roles and concerns of a lawyer.⁹⁰

Stephen Wexler,
Practising Law for Poor People

No law school in the world has academic staff who are all equally proficient in the integration of multi disciplinary insights, legal theory, substantive law, legal practice, clinical expertise, professional orientation *and* social consciousness about poverty that would be ideal in teaching, researching and otherwise doing something meaningful about it. The impossibility of achieving that ideal provides no justifiable excuse for the impoverished state of much legal education being largely careerist rather than justice-focused in its outlook. Nor does it make it acceptable for any law school to pay lip service to a concern for education and action about inequality, injustice and poverty only through selective exposure to elective subjects or clinics on such topics, passing reference (if any) to them in the readings and emphasis of compulsory subjects in the curriculum and abstract law school mission statements about equity, social inclusion and social justice.

For law school management, equipping the legal academy with the right balance of staff to do something meaningful about poverty and related issues of inequality and injustice is a matter of staff orientation and capability, which translates into strategies and actions on workforce profiling and planning, academic workforce retention and recruitment, academic development and career progression, institutional employment categories and roles and two-way secondment and lateral career-change opportunities (*Practical step 44*). As with individual law schools, individual academics cannot be all things to all people, so they cannot all reasonably be expected to become simultaneously the best academic teacher, published scholar, research grant-winner, doctoral thesis supervisor, law school leader, good university citizen, social media star, professionally respected expert and community engager in their field, even a poverty-related one.

90 Stephen Wexler, 'Practising Law for Poor People' (1970) 79 Yale Law Journal 1049, 1049–1050.

By the same token, it should not be left entirely to the individual and unbounded discretion of every academic whether or not to include in what they *do* teach, what they *might* research and how they *could* engage externally a basic level of sensitivity to how law and regulation in their chosen field(s) of legal expertise improve, worsen or even simply interact with endemic poverty, structural inequality, systemic injustice, long-term disadvantage and social prosperity and well being. Mastery of theory and substantive law can be achieved at too high a price if it comes without any or enough attention in a legal curriculum and work-integrated immersive student experiences to poverty, injustice and inequality and the legal orientations, outlooks and skills needed to solve them. All of this must be approached in an integrated way and from a whole-of-institution perspective.

The rehabilitation of law school orientations and capabilities to create a basic level of poverty literacy *and* interest among its academic cohort as a whole can be achieved in a number of ways, beyond the basic options of poverty-focused electives, clinics and discretionary research projects, which carry their own risks (if not handled well) of simply reinforcing the marginalisation of poverty in legal education.⁹¹ Law schools can attract and retain world-class academic experts in areas of poverty, injustice and inequality through prestigious named professorial chairs, senior professorial and adjunct positions, research centres and programme areas, academic fellowships and visiting positions and PhD scholarships (*Practical step 45*).

The way that academics design and teach fundamental legal skills to first-year law students can be broadened to include orientations about access to justice and the broader socio-ethical (and poverty-affecting) dimensions of law, in tools for student understanding of legal problem-solving, legislative scrutiny and interpretation, legal policy development and reform and legal research and advocacy (*Practical step 46*). For example, legal problem-solving approaches that structure students' understanding through step-by-step templates that cover relevant areas, issues, propositions and applications of substantive law to client-focused advice can usefully be broadened to include reference as well to the legal outcome's socio-economic context and consequences for the litigating parties and broader consequences for the system of justice and administration as a whole, given the variety of work-situated legal advisory roles and other careers in which law graduates might encounter such topics in their work.

All of this 're-tooling for justice' depends on law schools selecting future academic staff with attributes that go beyond the expected intellectual capacity and technical proficiency and who are responsibly focused on recognising and conveying these multi faceted dimensions of justice and their impacts on poverty. Some of these attributes include positive views on the worth of *pro bono publico* as a professional responsibility, personal track records of pro bono activity, normative as opposed to positivist views⁹² about the purposes of law, awareness of pedagogical debates concerning competing ethical frameworks

91 *Ibid*, 1050.

92 Adrian Evans, *The Good Lawyer* (Cambridge University Press 2014); Douglas O Linder and Nancy Levit, *The Good Lawyer: Seeking Quality in the Practice of Law* (Oxford University Press 2014); Jeff Giddings, *Promoting Justice through Clinical Legal Education* (Justice Press 2013); Stolker, n 54 above.

(especially, in this Asian century, those derived from Confucian and Daoist traditions) and indeed, genuine respect for diverse cultures, gender exploitation and emotional intelligence as baseline indicators of balanced personalities (*Practical step 47*).⁹³ Legal, technological, financial, cultural and socio-ethical literacies become core intertwined literacies in producing law graduates who have the orientations, capabilities and ideals to do something that makes a real difference on poverty, inequality and injustice.

Practical steps

44. Law school management should equip the legal academy with the right balance of staff to substantially contribute to poverty and related issues of inequality and injustice. In practice, this translates into strategies and actions on workforce profiling and planning, academic workforce retention and recruitment, academic development and career progression, institutional employment categories and roles and two-way secondment and lateral career-change opportunities.
45. Law schools ought to attract and retain world-class academic experts in areas of poverty, injustice and inequality through prestigious named professorial chairs, senior professorial and adjunct positions, research centres and programme areas, academic fellowships and visiting positions and PhD scholarships.
46. Academics must teach fundamental legal skills to first-year law students more broadly to include orientations about access to justice and the broader socio-ethical dimensions of law (eg, basic legal problem-solving approaches that structure students' understanding through step-by-step templates).
47. Law schools should balance their overall academic workforce profiles to select and train academic staff with attributes that go beyond intellectual capacity and technical proficiency in particular disciplinary fields of knowledge, to include interest and proficiency in broader matters such as justice education and the socio-ethical roles and responsibilities of lawyers, reinforced by personal track records of pro bono activity.

Legal scholarship and advocacy

As law and poverty are linked on many levels, legal research and scholarship within universities can and should focus on poverty from a range of theoretical, doctrinal, evidence-based, practical, cross-disciplinary, policy-making and law reform-orientated perspectives. In the legal academy, poverty-focused research and scholarship is diverse, ranging from books traversing different aspects of poverty law, social policy and legal practice,⁹⁴ to articles and papers covering discrete issues as various as the practice of law in serving

⁹³ See n 55 above, Appendix 3.

⁹⁴ Eg, Juliet M Brodie et al, *Poverty Law, Policy and Practice* (Wolters Kluwer 2014).

poor people as clients,⁹⁵ cross-institutional initiatives on poverty and legal education,⁹⁶ curricular integration of poverty law and work-situated roles of lawyers,⁹⁷ systemic legal institutional reform and access to justice for poor people,⁹⁸ theory-building about poverty law and its associated social mobilisation,⁹⁹ and legal clinics based on poverty concerns.¹⁰⁰

Universities and law schools have several institutional levers to prioritise, coordinate and support such research and at sufficient collaborative mass and scale to have a meaningful impact of society. The broader ecosystem for universities and research by the legal academy includes state funding and regulation,¹⁰¹ professional accreditation of university courses and employment of law graduates, public research funding agencies and their research priorities,¹⁰² contracted and philanthropically supported research projects, industry-supported PhD scholarships and academic fellowships and law school partnerships and sponsorships.¹⁰³

Accordingly, a series of public, professional, community and university mechanisms can be aligned to elevate attention to poverty and galvanise impactful research to bring it to an end, through mechanisms such as funded academic and PhD-based poverty research projects, sponsored professorial chairs and other fellowships in poverty law, legal clinics dedicated to public interest research and advocacy on poverty, prioritising poverty research in setting public and philanthropic research priorities and encouraging cross-institutional networks of research excellence that make poverty research a key pillar of associated research and educational programmes (*Practical step 48*).¹⁰⁴

Legal academics also make important contributions to the public goods of policy development, law-making and law reform through contributions to public reason, advocacy and thought leadership. CLCs and clinical programmes associated with law schools

95 See n 90 above.

96 Howard S Erlanger and Gabrielle Lessard, 'Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress' (1993) 43(2) *Journal of Legal Education* 199.

97 Snow, n 84 above; Marie A Fallinger, 'A home of its own: The Role of Poverty Law in furthering Law Schools' Mission' (2007) 34(4) *Fordham Urban Law Journal* 1173.

98 Ronald Sackville, 'Law and Poverty: A Paradox' (2018) 41(1) *UNSW Law Journal* 80.

99 Loffredo, n 88 above; Edgar Cahn, 'Reinventing Poverty Law' (1994) 103 *Yale Law Journal* 2133; Anthony V Alfieri, 'The Antinomies of Poverty Law and a Theory of Dialogic Empowerment' (1987) 16 *New York University Review of Law and Social Change* 659.

100 Philip F Iya, 'Fighting Africa's poverty and ignorance through clinical legal education: Shared experiences with new initiatives for the 21st century' (2000) 1 *International Journal of Clinical Legal Education* 13; Margaret Barry, 'Clinical Legal Education in the Law University: Goals and Challenges' (2007) 11 *International Journal of Clinical Legal Education* 27; Horrigan, n 43 above; Loffredo, n 88 above.

101 Many universities have governing statutes, enacted by the jurisdiction in which they operate and some depend in part on public funding for their activities.

102 Many national and transnational research funding agencies fund academic research across disciplines and have identified priority areas of need.

103 The legal academy receives financial and in-kind support by other areas of the legal profession in a variety of ways, including support for academic projects, positions and partnering.

104 In the US, eg, see the Interuniversity Consortium on Poverty Law, established with Ford Foundation funding support, as discussed in see n 96 above, 199 and the networked initiatives with philanthropic, professional, NGO, or international institutional support in Russian, European and other countries in both northern and southern hemispheres, as discussed in Stephen Golub, *Forging the Future: Engaging Law Students and Young Lawyers in Public Service, Human Rights and Poverty Alleviation* (Open Society Justice Initiative Issues Paper, January 2004) 5–8.

characteristically engage in research-based advocacy in the interest of their poor, vulnerable and disadvantaged clients, including public submissions and reports to inform future policy and laws (*Practical step 49*). Law societies and bar associations contribute to the public interest through their committees and members also engaging in public submissions and advocacy to similar effect, in exposing gaps and offering solutions on law's treatment of poverty, inequality and injustice, often in conjunction with law school collaborators (*Practical step 50*).

In many countries, the old position for scholars in the legal academy was one in which the audiences for their published research were largely other academics in their field(s). Their external engagement was pursued largely through academic collaborations, networks and conferences and their impact was viewed mainly in terms of their academic contribution and standing to the body of knowledge in their field(s). In other words, the excellence of their research was assessed in terms of the quality of their research, as judged almost exclusively by academic peers.

The new world for legal scholars is one in which there are multiple audiences, users and beneficiaries for their research-based scholarship, thought leadership and advocacy. Like all academics, legal academics strive to do research that matters to and for somebody. Their research excellence translates into transfer of legal knowledge and expertise through legal training, engagement and impact, alone and with others. Bringing individual and collective research-based academic legal expertise to bear on global problems of poverty, inequality and injustice is now more necessary, technologically enabled, network-assisted, framework-assisted and valued by more audiences than ever before.

Practical steps

48. Public, professional, community and university mechanisms ought to be aligned to elevate attention to poverty and galvanise impactful research to bring it to an end, through mechanisms such as funded academic and PhD-based poverty research projects, sponsored professorial chairs, legal clinics dedicated to public interest research and advocacy on poverty and by encouraging cross-institutional networks of research excellence that make poverty research a key pillar of associated research and educational programmes.
49. Community legal centres and clinical programmes associated with law schools should engage in research-based advocacy in the interests of their poor, vulnerable and disadvantaged clients, including public submissions and reports to inform future policy and laws.
50. Law societies and bar associations must contribute to the public interest through their committees and members engaging in public submissions and advocacy to expose gaps and offer solutions on law's treatment of poverty, inequality and injustice. Legal academics, students and alumni can become involved through such mechanisms in supporting and achieving those aims.

Legal engagement and impact

In the 21st century, one of the key ways in which law schools and their constituencies can translate their research-based expertise and other involvement into meaningful mass action at scale on poverty, injustice and inequality is through participation in national and global multi-stakeholder coalitions and standard-setting initiatives. They can do so either directly as participants within networks engaged in developing such initiatives, or indirectly through creating individual and collaborative research projects focused on them (*Practical step 51*).

Once again, a number of UN and IBA standards provide suitable examples. In particular, the legal profession's representative bodies, including the IBA globally as well as national and regional professional representative bodies such as law societies and bar associations, whether alone or in tandem with other transnational institutions (eg, the UN) and norms (eg, SDGs), might engage in various forms of multi-stakeholder coalitions and standard-setting mechanisms with solutions to poverty as their focus. In particular, the UNGPs and SDGs are rich with untested potential for transnational networks and projects involving several partners (including law schools) on poverty-focused study and work, especially in developing measures and sharing good practice in meeting their aspirations.

A strong connecting thread exists between law, poverty, the SDGs and involvement of the legal academy, for example. Poverty is directly relevant (eg, SDG 1) or indirectly relevant (eg, SDGs 2, 6, 8, 10, 13 and 16) to a number of the SDGs. Partnerships across public, private and community sectors in both developing and developed economies (ie, SDG 17) can involve law schools collaborating with other organisations from the legal profession and elsewhere in combatting poverty (*Practical step 52*).

To take another example, the IBA's 2020 *Climate Crisis Statement* is a high-profile global initiative that implicates climate change, poverty, law schools and other branches of the legal profession. Its preamble specifically mentions and links climate change and poverty, in at least two specific instances by:

'Acknowledging the impact of climate change and the current climate crisis on the world's inhabitants and its natural environment and its disproportionately negative impact on all living creatures, but especially the poor and those who have contributed least to it, most notably those living in developing countries;

[and]

Accepting that failure to address the challenges posed by the climate crisis already has and will have even more devastating consequences, including social, security and human rights impacts, for billions around the world – irrespective of nationality, wealth, or education – and particularly the world's most vulnerable.

Various resolutions of the IBA *Climate Crisis Statement* also directly or indirectly implicate poverty and law and therefore what law schools might do to tackle poverty. For example, Resolution 1 encourages lawyers to facilitate corporate client disclosures of climate risks that

might affect a business's supply and distribution chain to relevant official or stakeholder bodies. Both the subjects and objects of that disclosure can contemplate poor people and communities who, in one way or another, are affected by a company's operations. It also 'urges lawyers [...] to consider [...] engaging in climate dispute resolution generally (including mediation, negotiation or litigation) and specifically on a pro-bono, volunteer or reduced fee basis, for those negatively affected by the climate crisis'. Poor people and communities can be the beneficiaries of such actions. This resolution is consistent with growing transnational legal awareness of the necessity for corporate boardrooms to address and manage climate changes risks, disclosures and stakeholder (including shareholder) engagement, under pain of breaching directors' duties and other non-compliance under corporate law.¹⁰⁵

Resolution 2 calls on lawyers to engage with policy-making and law-making processes aimed at addressing the global climate crisis and in so doing to be conscious of measures 'to address future risk to populations that are, or potentially could be, vulnerable to the devastating effects of the climate crisis'. Resolution 3 specifically brings into play lawyerly awareness and support of relevant SDG goals, including those that directly or indirectly relate to poverty.

Finally, in an endorsement of multi-stakeholder partnering across the various branches of the legal profession (explicitly mentioning law schools), all collaborating and working together at scale for the greater common good, the first part of Resolution 4 states:

'The IBA recommends that bar associations, law societies and similar bodies around the world each consider:

Engaging with law students and schools concerning education on legal elements of the climate crisis and its impact on human rights; [...]'

Each of those resolutions, culminating in the last one, takes a step towards identifying and acting on the connections between poverty, climate change, human rights and lawyers – including law schools and their constituencies. In addition, the bolstering of the IBA's *Climate Crisis Statement* by associated initiatives such as the IBA Climate Change Justice and Human Rights Task Force's *Model Statute for Proceedings Challenging Government Failure to Act on Climate Change*¹⁰⁶ creates new mechanisms for lawyers to hold governments to account for action or inaction on climate change that worsens the position of poor people within their jurisdictions.

Law schools and their constituencies can become involved in action based on such frameworks and standards in various ways, beyond participating in their genesis or subjecting them to research-based study and critique. For example, strategic litigation that attempts to compel climate action can be conducted through legal clinics associated with law schools,

105 Noel Hutley and Sebastian Hartford Davis, *Climate Change and Directors' Duties* (Memorandum of Opinion, 7 October 2016); Noel Hutley and Sebastian Hartford Davis, *Climate Change and Directors' Duties* (Supplementary Memorandum of Opinion, 26 March 2019); as discussed in Lord Sales, 'Directors' Duties and Climate Change: Keeping Pace With Environmental Challenges' (Speech, Anglo-Australasian Law Society, 27 August 2019).

106 IBA Climate Change Justice and Human Rights Task Force, *Model Statute for Proceedings Challenging Government Failure to Act on Climate Change* (Report, February 2020).

Practical steps

51. Law schools and their constituencies should translate their research-based expertise into meaningful mass action at scale on poverty, injustice and inequality through participation in national and global multi-stakeholder coalitions and standard-setting initiatives (eg, IBA and UN standards), either directly as participants within networks engaged in developing such initiatives, or indirectly through creating individual and collaborative research projects focused on them.
52. Law schools must collaborate with other organisations from the legal profession and elsewhere across public, private and community sectors in both developed and developing economies to combat poverty, injustice and inequality, especially in pursuit of a number of the SDGs.
53. Legal clinics associated with law schools should conduct strategic litigation in attempts to compel remedial climate action, sometimes joining forces with relevant research centres and external partners, to advance the cause of poor communities and countries who are severely affected by climate inaction from government and industry.

sometimes joining forces with their relevant research centres and interested external partners, in advancing the cause of poor communities and countries who are severely affected by climate inaction from government and industry (*Practical step 53*).¹⁰⁷

Legal education and ethics

*A law school course in law and poverty must address the historic, economic, social and political context of poverty, as well as the role that law has played and continues to play in promoting, protecting and increasing economic inequality. To accomplish this in the modern law school requires teaching materials substantially different from the standard law school casebooks currently in use in most law school courses.*¹⁰⁸

Stephen Wizner,

Book Review: Poverty Law, Policy and Practice

Legal scholars reinforce the idea that sensitivity and expertise in poverty law are integral and not simply optional parts of law school curricula and extracurricular experiences.¹⁰⁹

107 A nascent network of law school clinics focussed on climate litigation is getting under way in several jurisdictions, principally the US, UK and Australia. See, eg, the Monash Climate Justice Clinic, at 'Law4803 Clinical Placement/Law4811 In House Placement', *Monash University* www.monash.edu/law/home/cle/clinical-placement-offerings accessed 4 January 2021.

108 Stephen Wizner, 'Book Review: Poverty Law, Policy and Practice' (2015) 22 *Georgetown Journal on Poverty Law & Policy* 441, 444.

109 Eg, Fallinger, n 97 above.

More broadly, law schools can and should expose law students to a wide range of careers and work-situated roles in those careers that involve doing something about poverty, as citizens, legal practitioners, community leaders, institutional advocates and partners in poverty-ending initiatives (*Practical step 54*).¹¹⁰ Curricular exposure for students to poverty and its causes and effects through a suitably contextualised legal lens can include:

- studying the structural inequalities that exacerbate poverty in foundation-year programmes about legal and justice systems;
- including poverty-sensitive coverage and work-situated roles in study of substantive areas of law (eg, the non-neutral design and impact of taxation, property, corporate and criminal law on poor people);
- introducing students to the panoply of ‘hard law’, ‘soft law’ and other regulatory mechanisms and standard-setting initiatives in the 21st century that relate to connections between law, poverty and both pro bono and client-related work;
- designing and promoting specific subjects with poverty, inequality, injustice and law as their direct focus;¹¹¹
- providing work-integrated, co-curricular and extracurricular student experiences of the realities and needs of marginalised and poor communities and opportunities alone and with partner organisations to empower those communities, whether through legal clinics, placements, voluntary work, partnering programmes, sponsored or philanthropic initiatives, case studies, personal story-telling or otherwise;
- exposing students to simulated conflicts between consequentialist, Kantian, virtue-based and Confucian approaches to resolving arguments around policy priorities in transactional law, as between the interests of capital and human rights, in the interests of developing a habituated lawyer conscience around alleviating poverty, inequality and injustice; and
- regularly self-assessing whether the law school’s own teaching programmes are delivering a balanced education on ethics and social responsibility, having regard to a range of measurable criteria.¹¹² (*Practical steps 55 to 61*).

Yet, law schools face multiple and interconnected challenges in making their educational design, delivery and student experiences inclusive of understanding and action on poverty and associated factors. One hurdle lies in incorporating and prioritising them in legal education, in competition with competing needs in compliance with sectoral, university and professional accreditation requirements. A second hurdle looms in orientating and equipping law school academic staff with what is required to make poverty a core focus of legal education, which goes against the grain of much conventional legal academic training and practice:¹¹³

110 *Ibid.*

111 Eg, Stanford University, n 71 above.

112 See n 55 above, Appendix 1.

113 Snow, n 84 above, 643.

‘A traditional law school curriculum can effectively extinguish students’ fire in the belly for social justice. Although many schools now offer pro bono and clinic opportunities, these curricular realignments do not ensure that every law student receives sufficient training in representing low-income clients, just as they would receive preparation in legal writing, contracts, torts, or criminal law. Instead, schools promote social justice as something tangential to practising law, creating a hidden curriculum – a curriculum that minimises lawyers’ ethical duty to address the access-to-justice crisis.’

Law schools must find a way to overcome that second hurdle, within the constraints of their accreditation, missions, resourcing and staff profile and capabilities. Although the reality facing even the best law schools, as outlined earlier, is that no single law school and no individual legal academic is simultaneously expert and experienced in all of the dimensions of legal theory, substantive law, CLE, legal practice, personal qualities, cross-disciplinarity and socio-ethical awareness that are desirable in an academy of world-class legal educators as a whole, we can approach these targets by selecting for as many of these skills and attributes as possible in all new teaching staff (*Practical step 62*).

A third hurdle arises in the socialisation of both the legal profession and law graduates to the importance of justice education and meaningfully improving access to justice for those people most in need of it. Unless attention to poverty in legal education, practical legal training and CPD for lawyers is actively addressed as a matter of lifelong education for lawyers, it can easily be marginalised or lost through pressures from the globalisation of the legal profession, disruptive influence of technology and pandemics on legal services and perennial demand for legal education to be practical, relevant and capable of producing work-ready lawyers for transactional legal practice. It is therefore both axiomatic and just as easily downplayed by academic curriculum and recruitment committees, that the socio-ethical socialisation of law students and legal practitioners alike with a poverty-sensitive professionalism, values-set and sense of justice is as important in 21st century lawyering as technical, technological and other literacies.

In *Tomorrow’s Lawyers*, legal futurologist Richard Susskind contrasts yesterday’s and tomorrow’s law students and graduates as follows:¹¹⁴

‘Are we schooling aspiring lawyers to become traditional one-to-one, solo, bespoke, face-to-face, consultative advisers who specialise in the black-letter law of individual jurisdictions and who charge by the hour? Or are we preparing the next generation of lawyers to be more flexible, team-based, technologically-sophisticated, commercially astute, hybrid professionals, who are able to transcend legal and professional boundaries and speak the language of the boardroom [...]? My fear, in short, is that we are training young lawyers to become 20th-century lawyers and not 21st-century lawyers.’

114 Susskind, n 67 above, 162.

While we do not suggest that Susskind means to exclude or deprioritise an ethic of justice for law students, in short our fear is that such a binary distinction, framed simply as a contrast between traditional – one might almost say ‘neoliberal’ – legal education and a future for legal education that is more professionally and technologically forward-looking, carries particular risks. It is missing something without an additional and equally important dimension of future lawyering being made equally explicit and given equal priority with the other dimensions – namely, the socio-ethical grounding of law students as future lawyers who understand and work to achieve justice in all of its dimensions, whatever their ultimate career choice and trajectory.

Moreover, if we do not give equal and balanced priority to a technical, technological *and* socio-ethical grounding for the lawyers of the future, with everything that such a tripartite focus really requires of legal education and training, our view is that we shall risk failing to produce what the world needs from legally qualified professionals to deal with a century that has already seen what a global financial crisis, worldwide pandemic, climate emergency and resulting systemic ethical failures and sectoral shut-downs can do around the globe. And this says nothing at all about global political challenges within and beyond Western democracy that are also emerging.

In terms of the content of a poverty-inclusive legal curriculum, the literature affirms the multi dimensional nature of the relationship between law and poverty. Law can remedy or exacerbate structural inequality, injustice and poverty. At the same time, most (if not all) areas of law and work-situated roles for lawyers can be taught with a view to poverty, not least because all legal instruments, documents and precedents must affirm and reinforce some values and interests over others – in many cases, the values of those who have the power and resources to shape and use law in protecting their interests to the maximum and often at the expense of those with less influence and wealth. As we discussed above, a new level of consciousness needs to be reached in law schools’ workforce profiling and recruitment planning, to prioritise selection of new academic staff with demonstrable socio-ethical awareness and capability to deliver justice education (refer to *Practical step 63*).

A final obstacle relates to the diversity of a law school’s student profile and the barriers to opportunities for students from poor communities to attend and remain at law school. Equity and hardship scholarships for meritorious students are only part of the necessary mix of measures and need support from sponsorships, donations and philanthropy. Nor are such scholarships needed only to support students from the locality or country in which a law school operates, given the importance of providing equivalent opportunities for advancement through tertiary education to students from developing countries, as recognised in the SDGs (eg, SDG 4). Creating opportunities for law students in impoverished circumstances to have better lives and careers through equal access to tertiary education requires law schools to play their part in removing barriers to access and providing scholarships and other support which targets worthy candidates from poor local and overseas communities (*Practical step 64*). Law schools need to be assisted in such endeavours by their host universities, alumni and community philanthropy and the legal profession at large.

Practical steps

54. Law schools can and should expose law students to a wide range of careers and work-situated roles in those careers that involve doing something about poverty, as citizens, legal practitioners, community leaders, institutional advocates and partners in poverty-ending initiatives.
55. Law schools must expose law students to the structural inequalities and injustices that exacerbate poverty in foundation-year programmes about legal and justice systems, reinforced by capstone programmes in later years of study.
56. Law schools must include poverty-sensitive coverage and work-situated roles in study of substantive areas of law (eg, the non-neutral design and impact of taxation, property, corporate and criminal laws on poor people).
57. Law schools should introduce students to the panoply of 'hard law', 'soft law' and other regulatory mechanisms and standard-setting initiatives in the 21st century that relate to connections between law, poverty and both pro bono and client-related work.
58. Law schools must design and promote specific subjects with poverty, inequality, injustice and law as their direct focus.
59. Law schools should provide work-integrated, co-curricular and extracurricular student experiences that demonstrate the realities and needs of marginalised and poor communities. This can involve partnership opportunities to empower those communities through legal clinics, placements, voluntary work, partnering programmes, sponsored or philanthropic initiatives, case studies, personal storytelling or otherwise.
60. Law schools must expose students to simulated conflicts between consequentialist, Kantian, virtue-based and Confucian approaches to resolving arguments around policy priorities in transactional law and as between the interests of capital and human rights, with the intention of developing a habituated lawyer conscience around alleviating poverty, inequality and injustice.

61. Law schools must regularly self-assess whether their own teaching programmes are delivering a balanced education on lawyerly ethics and social responsibility, having regard to a range of measurable criteria.
62. While no single law school is simultaneously expert and experienced in all of the dimensions of legal theory, substantive law, CLE, legal practice, personal qualities, cross-disciplinarity and socio-ethical awareness that are desirable in an academy of world-class legal educators as a whole, law schools can approach these targets by selecting for as many of these skills and attributes as possible in all new teaching staff.
63. A new level of consciousness needs to be reached in law schools' workforce profiling and recruitment planning, to prioritise selection of new academic staff with demonstrable socio-ethical awareness and capability to deliver justice education.
64. Law schools and universities should promote equal access to tertiary education by removing barriers to access and providing scholarships and other support which targets worthy candidates from poor local and overseas communities.

Part 3

Legal clinics and placements

*A growing array of research demonstrates that legal services for disadvantaged populations contribute to the rule of law, good governance, human rights, empowerment of the poor and poverty alleviation. Yet the development and human rights communities pay insufficient heed to a cost-effective set of tools for forging the future of legal services and legal systems across the globe: CLE and similarly oriented efforts to engage law students and young lawyers in public service.*¹¹⁵

Stephen Golub,
*Forging the Future: Engaging Law Students and Young Lawyers in Public Service,
Human Rights and Poverty Alleviation*

It is strange that by and large, the broad development and global human rights communities have not realised the enormous potential of clinical legal methodologies to make a substantial difference to worldwide poverty.¹¹⁶ To the extent that CLE does generally assert the priority of fairness over wealth creation and accretion, it is fundamentally transformative

¹¹⁵ Golub, n 104 above, 1.

¹¹⁶ The *Global Alliance for Justice Education (GAJE)* is a network of law teachers, lawyers and law students who have made poverty eradication through access to justice and clinical programmes, their mission (see GAJE, n 30 above), but their impact tends not to be broadly integrated with the large poverty NGOs or, for the most part, other NGOs such as the ICJ and even the IBA.

when permitted to interrogate privilege about ethical processes and objectives. Individual UN agencies¹¹⁷ and philanthropists¹¹⁸ have actively supported CLE for just this reason, but it is not yet the ‘go to’ strategy in all legal sectors (including attorneys-general), when it comes to motivating new lawyers about their responsibilities to humanity and its ecosystems.

The central reality and tension of legal education throughout the world is its necessary but alienating positivism, focused more on the sources and doctrines of law than on its ideals and effects, for the better. The focus of legal educators is typically and understandably on delivering – to law students and lawyers – as much ‘certainty’ around transactional rules as is functionally possible, in support of market economies. And quite a lot of certainty has been achieved, even in authoritarian nations and communities, because market structures are, or have been to date, highly globalised. Increasing collaboration and communication, especially through the World Trade Organisation (WTO) and the agency of professional associations such as the IBA and the Institute of Advanced Legal Studies (IALS), has promoted a loose international harmonisation around much of this market-serving body of law. So far, so good.

But the intellectual and financial effort focused on these outcomes has not been replicated in a similar legal professional effort to secure the livelihoods of those in extreme poverty – over 700 million people globally (ie, ten per cent of humanity).¹¹⁹ Extreme market wealth for a few and moderately comfortable lifestyles for billions, has come at a tremendous social cost for the most marginalised and, in the first two decades of this century, these social costs are accumulating. Social trust, financial stability, political predictability, wealth-sharing, climate defence and global health are all retreating together and everywhere. At the extremes, developments such as populist victimisation, state assassination and detention, organised addictions and deprivations, corruption and fraud, state and non-state terror and unlawful violence and killings are all normalised phenomena and yet remain particularly devastating to those many millions of people leading lives of abject poverty.

Of course, the traditional professions are increasingly responding. Countless aid organisations, including *Médecins Sans Frontières* and now *Engineers Without Borders*,¹²⁰ are going into the field and providing very practical assistance programmes. And within law, the IBAHRI and the International Commission of Jurists are just two bodies active in many countries attempting to highlight human rights abuses. One or two governments are even prepared to enact *Magnitsky* legislation,¹²¹ personally to sanction human rights abusers.

117 Eg, *UNDP* in Thailand, in its support of *BABSEACLE* see www.babseacle.org accessed 4 January 2021.

118 Both the Ford Foundation and more recently, the Soros Foundation have been very active in Eastern Europe in supporting CLE as both an access to justice strategy, as well as transition to democracy mechanism in post-Soviet societies. See, eg, Wilson, n 30 above.

119 See The World Bank, *Poverty*, (16 April 2020) www.worldbank.org/en/topic/poverty/overview accessed 4 January 2021.

120 See, eg, *Engineering Without Borders Australia* www.ewb.org.au accessed 4 January 2021.

121 *Magnitsky* legislation, named after assassinated Russian tax adviser Sergei Magnitsky, imposes personal financial and related sanctions on named human rights’ abusers. See, eg, the discussion at Latika Bourke, ‘Calls to Hit Lam with Sanctions’, *The Age* (Melbourne 8 July 2020) 16.

Lawyers and legal educators are beginning to rise to their social role of combatting all of this mayhem by asking existential questions about what law is, the societal contexts in which it operates and whose purposes it actually serves. But we struggle to be taken as seriously as we might, not least by those who wield public and economic power over billions of lives. More and more, our integrity as lawyers is suspect;¹²² and social trust in us as professionals is provisional,¹²³ at best. Culturally, when our best senior counsel are admired for their daily fees and our legal aid services are starved for funds by neoliberal governments, we are uncomfortable but also largely silent. We are too often identified with profit before justice.

Unsurprisingly, in the wake of those matters, there is an underlying crisis of character and courage in the legal profession globally. Lawyers have the means to tackle the inequality and injustice at its roots if they choose, but so also do law schools, perhaps even more so, because law schools *form* minds and hearts. What are law schools to do about it?

While it is fair to say that law is first a positivist system of rules and protocols to regulate societies and not primarily a normative vehicle for delivering compassion, that priority has been accentuated in the centuries since the first industrial revolution.¹²⁴ Today, if law delivers real justice in the face of economic power, it is too often celebrated as exceptional. And for those without financial or cultural access to the processes of law, the exceptions are still too few. But law schools everywhere can work to adjust this priority over time and inculcate a sense of care and respect in law students for everyone and for the endangered ecosphere which accentuates poverty – sufficient to balance our law students’ typical market priorities with personal generosity and a renewed sense of justice and fairness.

The proven mechanism to deliver this powerful social responsibility of law schools is CLE. Diverse and innovative CLE programmes, supported by reflective mentoring¹²⁵ of all students, focused supervision¹²⁶ and relevant assessment,¹²⁷ are capable of turning around otherwise positivist, passive and transactional ‘technician’ attitudes to law and replacing them with an active determination to provide justice to those in poverty (*Practical step 65*).

Many law schools have clinical programmes¹²⁸ and, in major jurisdictions, there are only a few hold-out (and robustly positivist) law schools that disdain an association with the term ‘clinical’. There is much scholarship in most major jurisdictions on the profound impact they can make to students’ motivation, their employability and readiness to practise law and

122 See n 55 above; *Royal Commission into the Management of Police Informants Australia* (Progress Report, 1 July 2019).

123 Evans, n 92 above ch 2.

124 See generally David Luban, *Lawyers and Justice: An Ethical Study* (Princeton University Press 1988); William H Simon, *The Practice of Justice* (Harvard University Press, 2000).

125 Anna Copeland, ‘Reflective Practice: The Essence of Clinical Legal Education’ in Adrian Evans et al (eds) *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School*, (ANU Press 2017) 153.

126 Jeff Giddings, ‘The Importance of Effective Supervision’ in Adrian Evans et al (eds) *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press 2017) 123.

127 Adrian Evans, ‘Clinical Assessment of Students’ Work’ in *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (Adrian Evans et al, eds) (ANU Press 2017) 179.

128 For the global picture, see Bloch, n 55 above; and for Australia, see Kingsford Legal Centre UNSW Sydney, *Kingsford Legal Centre Clinical Legal Education Guide* (Guide, 2019).

their capacity to integrate substantive law concepts into realistic case strategies.¹²⁹ Attorneys-general and judges understand it, bar associations and law societies mostly understand it and, above all, law firm employers understand it – especially when they are alumni of well-established clinical law schools.

The definitions of ‘clinic’ are legion, but the core international consensus among clinicians is that the best ‘clinic’ programmes place a law student ‘in charge’¹³⁰ of a real client with a real problem. The intimacy of this relationship is transcending for students and clients at multiple levels. There are many types of clinic,¹³¹ including those for business and business innovation purposes;¹³² but if the clinic focuses on poverty law environments and the client is burdened by poverty, then very frequently law students come to identify with the injustice not just of the presenting legal problem, but of the poverty itself.

Highly innovative teaching approaches aid this awareness. For example, the advent of multi disciplinary clinics that bring together students and supervisors from law, social work, psychology, medicine and finance,¹³³ to tackle the multitude of issues afflicting a single person and family, all essentially mired in and caused by poverty. After all, clients in legal distress often also face financial, psychological, medical and familial distress. For all levels of government and the legal profession, such multi disciplinary clinics can also serve an important community function in providing an ‘early warning’ indication for societies facing mass emergencies, as in the rise of financial distress, mental health issues and family violence incidents during the Covid-19 pandemic from 2020 onwards.

Over the course of a clinical semester, all of those students’ understanding of the nature of power and wealth, its use (and abuse) and how it can be redistributed, grows. Their professional formation as carers and justice artificers begins and their character-building journey commences.

For these reasons, by and large, law deans are happy to support clinical programmes provided that they are not too costly. In a few cases, deans are prepared to spend significant resources to develop the depth and range of their clinics because of the difference this makes to justice in their communities (and not unhelpfully differentiates them from less enthusiastic competitor law schools in their catchments). For example, at Monash University’s Faculty of Law, there are now clinics focused broadly on poverty and its incidents, including general practice clinics¹³⁴ and specialised clinics tackling sexual assault, family violence, employment discrimination, refugees and human rights, not to mention trade justice, capital

129 William Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007). See also, the European Network for Clinical Legal Education at *Improving the Future: Using Clinical Legal Education to Educate Lawyers for a Just Society*, Northumbria University Newcastle (2019) www.northumbria.ac.uk/about-us/news-events/events/2019/07/ijcle-2019 accessed 4 January 2021; Association for Canadian Clinical Legal Education <http://accle.ca/category/news> accessed 4 January 2021.

130 Of course, the clinical supervisor (the clinician) takes formal legal responsibility for the client’s representation, but best-practice supervision encourages the student to recognise that it is their efforts (not the supervisor’s) which will make the difference to this client.

131 See, eg, Kingsford Legal Centre, n 128 above.

132 See Monash University, n 107 above.

133 *Monash Law Clinics*, Monash University www.monashlawclinics.com.au accessed 4 January 2021.

134 *Ibid*; Springvale Monash Legal Service (2020) www.smls.com.au/#section_2 accessed 4 January 2021.

punishment, anti-slavery and climate justice.¹³⁵ In short, legal and multi-disciplinary clinics can incorporate poverty-sensitivity directly or indirectly and from a variety of work-situated standpoints across sectors and jurisdictions (*Practical step 66*).

It is for good reason that law schools which are intent on reducing poverty, inequality and injustice focus on this retinue of issues, as matters of interdependent local, national, regional and global concern. They all to a greater or lesser extent circle around poverty and endemic poverty hampers their resolution. Climate justice is particularly deserving of law schools' attention for this reason. As we have mentioned previously and as IBA and UN standards reinforce, almost every indication of global poverty is amplified by the climate emergency: access to water, food production and distribution, female education, the number of children per family, malnutrition and brain function, respiratory ill-health, disaster recovery and refugee and economic migration are just the most obvious affected areas.¹³⁶ It might even be argued that, today, a law school which professes to address poverty will be lacking in credibility if it is without an active clinical advocacy programme involving climate justice. The connection between poverty and climate justice is also explicitly reinforced in the SDGs covering poverty (SDG 1) and access to justice (SDG 16).

The direct and indirect injustices represented in these different clinics have human faces; whether they be fisher people who cannot harvest food because of rising sea temperatures, abandoned parents whose children have been abducted and families destroyed by an abusive partner fleeing the jurisdiction, or the anguished families of drug mules whose loved ones face execution because (while trying to earn enough for a basic education) they have been caught trying to smuggle methamphetamine. When these faces come into the clinics - often in person but also through their families and online in these pandemic times - clinical law students are confronted in a manner that a casebook discussion or a simulation can only emulate, but never equate.

Clinical law students learn to recognise and reflect clearly on the consequences of poverty and indifferent or oppressive legal structures. With insightful and experienced supervision, their underlying character is strengthened and sizeable numbers develop a profound pro bono consciousness. Fortunately, some also acquire a determination to bring about change through law reform and strategic advocacy, whatever their ultimate career destination and some fundamentally rethink their choice of career through their transformational and immersive clinical experience, committing themselves to careers in the forefront of work on poverty, injustice and inequality.

The best of these programmes will complete their clinical pedagogy with reflective seminars that will address much more of the theory of personal character development,

135 Most clinical units are shown at Monash University, n 107 above; see also Monash University, n 133 above; 'Clinical legal education program develops to meet community needs', *Monash University* (Forum Post) www.monash.edu/law/news-and-events/news/articles/archive/cle-community accessed 4 January 2021.

136 UN Development Programme (2020) www.undp.org/content/undp/en/home.html accessed 4 January 2021; *Conference of the Parties* (COP), UN Climate Change (2020) <https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop> accessed 4 January 2021.

particularly in the legal professional context,¹³⁷ in an effort to reinforce and more acutely contextualise students' consciousness and identification with the importance of ethics and character formation to their careers and in the process supporting and strengthening their commitment to social justice and poverty reduction.

Practical steps

65. Diverse and innovative CLE programmes, supported by reflective mentoring of all students, focused supervision and relevant assessment, are capable of turning around otherwise positivist, passive and transactional 'technician' attitudes to law and replacing them with an active determination to provide justice to those in poverty.
66. Legal and multi-disciplinary clinics can incorporate poverty-sensitivity directly or indirectly and from a variety of work-situated standpoints across sectors and jurisdictions, such as specialised clinics tackling sexual assault, family violence, human rights, trade justice and capital punishment.

None of these outcomes simply happen, however. Resourceful and energetic deans need to find the funds, recruit and retain the clinicians and also combat less-persuaded colleagues' anxiety about any number of shibboleths concerning clinics. And if they are to address systemic poverty through their clinics, they have to ensure that the course design process is thorough,¹³⁸ and that social justice is entrenched in that design.¹³⁹ Recurring global pandemics are also to be reckoned with in the conduct of clinics, for the health and safety of all clinical participants and clients, as part of the 'new normal' in undertaking clinical work.

As many law schools move to online teaching and 'remote delivery' in order to limit mass Covid-19 infection and protect student and staff health, clinical course design becomes particularly important for clients in poverty. A virtual clinic dealing with a sophisticated business client is one thing, but a homeless client with substance abuse and underlying mental health issues is rarely capable of managing, for example, to deposit complex electronic documents, even if they have physical access to the technology. It is not straightforward to deliver a poverty law service direct to such clients via video-link; the clinic design will almost always require an intermediating agency with which the law school partners. These links require their own development, interpersonal trust and ongoing, time-consuming maintenance. In that important sense, preparation for mass pandemics joins NewLaw, technological innovation and online dispute resolution as disruptors of conventional client-facing clinical work and CLE more broadly.

¹³⁷ See, eg. Evans, n 92 above, ch 4.

¹³⁸ Simon Rice, 'Course Design for Clinical Teaching' in Adrian Evans et al (eds) *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (Adrian Evans et al, eds) (ANU Press 2017) 67

¹³⁹ Anna Cody and Simon Rice, 'Teaching Social Justice in Clinics' in Adrian Evans et al (eds) *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press 2017) 97.

For law student-client relationships as well, it is not yet empirically clear (because the research is yet to be undertaken) that students can develop the same empathy and a commitment to alleviating poverty, if their interaction with clients in need is vicarious only. It may be that students will feel as much connection to someone on a screen as they do to someone sitting in front of them, but that remains unknown. If students' essential empathy and compassion are not reliably germinated by the virtual environment, then the core ingredient of law schools' clinical contribution to alleviating poverty in a remote context, may be unfulfilled or at best, unreliable.

Conclusion

*If a free society cannot help the many who are poor, it cannot save the few who are rich.*¹⁴⁰

President John F Kennedy

Are conditions right for a new global movement combatting poverty, inequality and injustice, in which law schools join not only other parts of the legal profession but also broader coalitions and networks across geographical and sectoral borders, working hand-in-hand with poor communities in developed and developing countries alike?

Global movements can be the harbingers of radical change in societal attitudes and conditions, from the environmental, consumer, human (including labour) rights and feminist movements of the late 20th century to the 'Make Poverty History', climate emergency, #MeToo and 'Black Lives Matter' movements of the early 21st century.¹⁴¹ Multinational business enterprises now put their reputations, profitability and value-creation at risk if they are insufficiently attentive to the interdependencies between socio-environmental considerations and whole economies, including impacts on climate-affected, indigenous and poor communities.

When such movements and societal preconditions for business success are accompanied by the proliferation and sophistication of frameworks and norms directed at poverty, inequality and injustice, of the kind and granular detail now available for example in the UNGPs, SDGs and IBA standards and joined by aspirations and actions in the same direction by almost all branches of the legal profession and other multi-stakeholder coalitions, conditions are ripe for law schools and their constituencies to play their part in helping to end poverty before the current generation of law students reaches retirement. We offer the analysis and menu of suggestions in this chapter as hopeful stimuli to reflection and action by law schools on multiple fronts to address poverty, injustice and inequality, to make their end a practical reality and not just an academic ideal.

Justice education in justice law schools is a critical part of the largest system of social accountability worldwide. Justice-focused law schools are both the starting point (and a sustaining source) for the flow of skills, values and paradigm shifts that the legal profession

¹⁴⁰ Kennedy, n 6 above.

¹⁴¹ On the contribution of global social movements to policy, legal and regulatory change generally, see n 28 above, 598, 604–605, 609–611.

will need to play its role in alleviating poverty and safeguarding humanity. If law schools are to rise to the challenge (and not to retreat into mediocre servants of untrammelled wealth), then the practical steps we outline are central.

The reorientation of understanding, responsibility and practical action that we urge for law schools and their associated constituencies and communities must also permeate and energise other strands of the legal profession. The lives and positions of the world's poorest peoples under the rule of law are intertwined, in the ways that we have argued, with the public standing and responsibility of the world's lawyers, who all owe fidelity to that same rule of law.

The late Anglo-American legal and political philosopher, Professor Ronald Dworkin, once said that '[t]he courts are the capitals of law's empire and judges are its princes'.¹⁴² Gendered and colonial terminology aside, 'law's empire' is a vast domain with millions of participants, offering multiple points of entry and opportunities for all lawyers to succeed or alternatively fall short in realising the values and ideals of law and justice. If law schools and the other branches of the global legal profession do not rise to the challenge of doing all that they reasonably could and must do in ending the poverty, inequality and injustice that currently prevails under cover of the rule of law, all of us lawyers risk becoming accomplices to the resulting social division, legal inequity and public loss of standing for the profession.

We are architects of our own professional destiny in fulfilling our lawyerly responsibility to contribute to the end of poverty. The people in poverty throughout the world, whose identities and needs are explicitly acknowledged in IBA norm-shaping about matters ranging from pro bono work to the looming climate emergency, seek a voice and empowerment from lawyerly attention to poverty, inequality and injustice as matters of the highest priority. *All* lawyers in *all* branches of the legal profession will be judged harshly in the court of public opinion if we fail to rise to that challenge.

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142 Ronald Dworkin, *Law's Empire* (Fontana Press 1986) 407.