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### The Future of the Land Grant Law School

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## The Future of the Land Grant Law School

Dean Johanna Kalb

This summer, I had the great honor of taking over the helm of the University of Idaho College of Law. In so doing, I joined a small and special group of deans who have the privilege of leading land grant law schools. In my preparation for the transition, I was surprised at how little has been written about the distinctive identity and mission of these institutions. In my view, this represents a missed opportunity, particularly in this challenging moment in legal education.

In this essay, I provide a brief overview of the unique history of land grant institutions and then describe the ways in which our founding mission should inform our vision at land grant law schools. I close by highlighting the ways in which we are living our land grant identity at the University of Idaho College of Law and describe some of our plans for the future.<sup>1</sup>

### The past and present of land grant law schools

Despite the significance of our land grant institutions, their history is not widely known.<sup>2</sup> In 1862, Congress passed the Morrill Act which gave each state 30,000 acres of land per federal representative for the purpose of creating public universities.<sup>3</sup> At the time, “a college degree was largely obtainable only by wealthy, white, urban males.”<sup>4</sup> Thus, the goal of these new land grant institutions was to begin to democratize access to education “to promote scientific farming, produce skilled labor, foster technological innovation, bolster transportation, and inculcate civic knowledge.”<sup>5</sup>

Because of the Morrill Act’s emphasis on agriculture and engineering, land grant institutions, including the University of Idaho (“UI”), have been leaders in farming innovation and are significant contrib-

utors both to our national economy and to managing the world’s food supply.<sup>6</sup>

Our success in the agricultural space has sometimes masked the broader mission of the land grant institutions. The Morrill Act was adopted in the early years of the Civil War when the future of the American democratic experiment was very much in doubt. By making a university education more broadly accessible, Republicans in Congress hoped that these institutions would lay the foundation for more representative, and therefore more effective, leadership for the nation.<sup>7</sup> It should not be surprising, therefore, that universities like ours viewed the opening of law schools as key to their mandate.

Fast forward to the present day, and there are now just under 200 accredited law schools in the United States, a small fraction of which are part of land grant universities.<sup>8</sup> The world of legal educa-

tion, and higher education more generally, is a challenging place these days. We have faced years of declining financial support<sup>9</sup> and relatedly—a public that is increasingly questioning the value of what we have to offer.<sup>10</sup>

We are being pushed by our accreditors (rightly in my view) to be more accountable for our students' success on the bar exam<sup>11</sup> and in the job market.<sup>12</sup> And the tyranny of national rankings means that we face growing pressures to compete on a variety of standard metrics, some of which are of questionable value, and none

land-grant institutions were radical not just in their orientation toward “the industrial classes,”<sup>13</sup> but also in that they were among the earliest co-educational universities in the United States.<sup>14</sup>

In 1890, the second Morrill Act banned racial discrimination in land grant institutions but allowed states to meet this obligation by creating “separate institutions ‘of like character.’”<sup>15</sup> The result was the establishment of a new group of colleges and universities, primarily in the South, aimed at educating Black Americans.<sup>16</sup>

In 1994, land grant status was extend-

The average cost of law school tuition nationally has reached approximately \$47,000 per year in tuition and fees alone for out of state students at public and private universities.<sup>19</sup> For students without personal or family resources, the law school debt burden can easily reach \$200,000.

As I see it, our role in this moment is to model ways to offer a quality education at a price that makes a law degree a smart investment. We can draw on our experience as the original colleges and universities of access to build stronger and more effective pipelines into law school and into the profession. And we can share our histories, as a way of highlighting the transformative effect that democratizing access to education has, not only on our students and their families, but on the leadership and economies of our states.

These commitments do not come without a cost. For example, there is a strong and unsurprising correlation between socioeconomic status and standardized test performance.<sup>20</sup> That means law schools need to make choices between ensuring access and succeeding in the national rankings. Dollars spent (or foregone) to make tuition affordable or to provide additional tutoring and bar preparation assistance cannot be used to support faculty scholarship or upgrade our buildings.

Yet, if we in the land grant law schools give up on these students as too costly to recruit and educate, we are, in my view, losing sight of our special purpose that distinguishes us from all other institutions of higher education and that has made us so transformative in the lives of our students and in the progress of our nation.

## Community engagement

This brings me to the second guiding value: community engagement. Land grants, unlike their private counterparts, were designed to provide education and build research capacity in ways that would provide direct and practical benefits to the nation's economy. Declining public support for our institutions reflects, at least at some level, a failure either to build effective community partnerships or, more likely, to communicate their successes to key stakeholders and the public.<sup>21</sup>

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which focus on our relationship with the communities in which we are embedded. The 21<sup>st</sup> century law school is being asked to be all things for everyone. The challenge for us is to find and follow a vision that meets the many competing demands of the present moment. But a particular strength of land grant law schools is that our founding mission offers key principles to guide us, even as we learn from and contribute to the national dialogue on legal education.

## Access

The first core principle for land grant law schools is access. The mission of the land grant institution was to make higher education available outside of urban elite communities, an inspiring vision that is still being realized. Many of the earliest

ed to 25 tribal colleges and universities, a small step toward providing Native communities with access to the educational system that their ancestral land was used to house and to fund.<sup>17</sup> Subsequent legislation has included funding for some programming at Hispanic-serving colleges and universities.<sup>18</sup>

With formal *de jure* discrimination no longer a barrier to educational access, the work for land grant institutions has turned to smoothing the path for students who are the first in their families to attend college, and for those from under-represented communities. And this work is more crucial than ever. The complexity of the application process and the skyrocketing costs of tuition have recreated some of the barriers to access that the land grants were founded to overcome.



Fortunately, the trend in law schools over the last few decades has been toward an emphasis on practical or “experiential” education.<sup>22</sup> Law schools are now required to ensure that students build their lawyering skills in addition to learning doctrine, often by representing real clients under faculty supervision in clinics or through externships with legal and business employers. Relatedly, law school faculty are also increasingly engaged in public scholarship, designed to leverage legal theory to solve real-world problems.

Land grant law schools have real choices to make about how to support and structure these kinds of opportunities, given the wide range of engaging work of interest to students and faculty. In my view, our land grant mission again provides us with guidance about where to invest our resources. Idaho, like most other states, is experiencing a legal services crisis. Half of Idaho’s 44 counties have fewer than 10 attorneys, including those who work for the government. Five of those counties have

no private counsel and three have no attorneys at all.<sup>23</sup> For many Idahoans looking to adopt a child, start a business, invest in a piece of land, or draft a will, legal services are simply inaccessible.<sup>24</sup>

Under these circumstances, our founding ideals would suggest that we prioritize providing critical legal services to communities in need in our state, while working with our partners in the bench and bar to develop creative ways to build capacity over the longer-term.

### **Public accountability**

A final principle that should inform our direction is public accountability, which dovetails with the ideas of access and community engagement. As schools compete for tuition dollars, many students are treated increasingly as consumers rather than beneficiaries of higher education, even at public colleges and universities.

Together with the growing financial

burden, this sends the message to students that their investment in higher education is a personal, rather than societal one. This orientation shapes, in both pragmatic and philosophical ways, the decisions that graduates make about how to use their degrees. Paying it back makes it harder to pay it forward. And if the public does not see the graduates of their universities engaged in work to better the lives of people in the state, its support declines, and the cycle continues.

As land grant law schools, our success depends upon reversing these trends and repairing the relationship between ourselves, our students, and the people of our states. Our students should understand the charge and responsibility that comes with being graduates of our special institutions. And, as professional schools, we should work actively to facilitate connections between our graduates and communities in need around the state, so that the public can see the direct benefits of their investment in us.



## The future of legal education in Idaho

Fortunately, much is happening in land grant law schools, and particularly at the University of Idaho College of Law, that supports these goals. As an access institution, we have remained committed to controlling tuition prices, with the result that Idahoans can attend the College of Law at half the price of the average law school. With your support, we are working to further defray these costs, most recently through the launch of the Tribal Homeland Scholarship Program, which provides a \$10,000 scholarship to successful applicants who are members of federally recognized tribes.

We know too that cost is only one of the challenges that face first-generation and minoritized law students. This year, we have grown our academic success and bar preparation program with the hiring of three new faculty to help ensure that all our students are successful in law school and in their transition to the practice.

Our community engagement prioritizes the needs of Idahoans and our dual campus structure allows us to be present in more ways around the state. Our faculty continues to research solutions to the issues facing our state, from the challenges posed by growth in Boise, to the regulation of teacher certification, to the management of our water resources.

This fall, we will launch our grant-funded Housing Clinic, which will work to address the pressures of rising home prices on Idahoans. This brings us to a total of five in-house clinics, which is impressive for a public law school of our size. We also have a growing externship program, supervised by clinical faculty in Boise and Moscow.

Our new faculty hires arriving this fall will strengthen our Business Law program, which is training lawyers to support our state's growing economy, and our Native American Law Program, which prepares our students, both Native and non-Native, to serve the tribes' work in economic development, environmental restoration, and the provision of social services.

Finally, we continue to find ways to be in relationship with the people of Idaho, to highlight our gratitude for their sustaining support, and to instill in our students a commitment to the community that has invested in their education. As part of our mission through the Idaho Law and Justice Learning Center, we host training institutes for teachers and for journalists. We also, in partnership with the Idaho Supreme Court, continue to house and serve the State Law Library in service to the public. And every student who graduates from our law school is required to complete 50 pro bono hours, which helps lay the foundation for a lifetime of service.

Of course, we can and will strive to do better. We will continue to explore new ways to reach first generation students around the state, and facilitate their access to law school, including through expanding our partnerships with Idaho's other public and private institutions. We hope to expand our presence to better meet the needs of Idaho's rural communities, guided by students and recent graduates in our Agricultural Law Society. I have heard from so many of you already about your desire to welcome our students into your towns and counties and your willingness to share with them the challenges and the tremendous rewards of lawyering in these places. A goal for me is to find summer funding for students to pursue these opportunities as a way of building their connections with all you.

And we will continue to provide a forum for discussion and debate on issues of interest to Idahoans, fulfilling our unique role as an intellectual community for the residents of our state, and modeling for our students the leadership we expect them to exercise as graduates. For those of you who are alumni of our institution, expect to hear from me – we hope that you will return to our campuses often to share your stories with us and our students.

One of the most attractive qualities of this deanship is the strong connection between the law school and the bench



and bar. I understand our status as a land grant law school to mean that your role in visioning the future of Idaho's legal education is at least as important as mine. I look forward to many conversations and collaborations in the months to come.



**Johanna Kalb** was appointed to serve as the Dean of the University of Idaho College of Law in May 2021. She is the first woman to serve in this role. Prior to her deanship, Dean Kalb was the

Associate Dean of Administration and Special Initiatives and Edward J. Womac Jr. Distinguished Professor of Law at Loyola University New Orleans School of Law. Her research and teaching interests include constitutional law, federal courts, and the law of detention and democracy. She is a co-author, with Martha F. Davis and Risa Kaufman, of the first law school textbook focused on domestic human rights, *Human Rights Advocacy in the United States* (West, 2014). Her recent scholarship appears in *U.C. Irvine Law Review*, the *Yale Journal of International Law*, the *Yale Law and Policy Review*, and the *Stanford Journal of Civil Rights and Civil Liberties*, as well as the *Washington Law Review Online*, the *NYU Law Review Online*, and the *Yale Law Journal Forum*.

From 2014 to 2016, Kalb served as Visiting Associate Professor of Law and Director of the Arthur Liman Public Interest Program at Yale Law School. Dean Kalb is a

graduate of Yale Law School and the Johns Hopkins University School of Advanced International Studies where she completed her M.A. in International Relations with a focus on African Studies. After law school, she served as a clerk for the Honorable E. Grady Jolly of the United States Court of Appeals for the Fifth Circuit and the Honorable Ellen Segal Huvelle of the District Court of the District of Columbia. She is admitted to practice in the States of Mississippi and New York.

## Endnotes

1. I received helpful feedback on this essay from my colleagues Michele Bartlett, Don Burnett, Wendy Couture, Aliza Cover, Benji Cover, Teresa Koepfel, Richard Seamon, and Jodi Walker. Tenielle Fordyce-Ruff and the Advocate Board provided excellent editorial assistance. My views here were informed by conversations with the Justices of the Idaho Supreme Court and the leadership of the State Bar. I am grateful for their time and support of the College. This essay draws on the work of Professor Stephen M. Gavazzi of Ohio State University and President E. Gordon Gee of West Virginia University, whose passion for land grant institutions has helped to inspire my own.
2. See STEPHEN M. GAVAZZI & E. GORDON GEE, LAND GRANT UNIVERSITIES FOR THE FUTURE: HIGHER EDUCATION FOR THE PUBLIC GOOD 29 (2018).
3. U.S. CONGRESSIONAL RESEARCH SERVICE, THE U.S. LAND-GRANT UNIVERSITY SYSTEM: AN OVERVIEW 5 (R45897; Aug. 29, 2019), by Genevieve Croft (hereinafter "*U.S. Land-Grant University System*").
4. See GAVAZZI & GEE, *supra* note 2, at 43.
5. Margaret A. Nash, *The Dark History of Land-Grant Universities*, WASH. POST (Nov. 8, 2019), at <https://www.washingtonpost.com/outlook/2019/11/08/dark-history-land-grant-universities/>.
6. See GAVAZZI & GEE, *supra* note 2, at 38.
7. THE HARTFORD GUNN INSTITUTE, EDUCATIONAL TELECOMMUNICATIONS: AN ELECTRONIC LAND GRANT FOR THE 21ST CENTURY, CURRENT (Oct. 22, 1995), available at <http://www.current.org/bpbp/articles/morrillgunnpaper.html>. See also CLIFFORD W. YOUNG, BACKGROUND FOR DEVELOPING A SYSTEM OF HISPANIC-SERVING LAND-GRANT COLLEGES 3 (undated

manuscript prepared for the Hispanic Association of Colleges and Universities), available at <http://www.hacu.net/images/hacu/young.pdf> (last visited July 11, 2021).

8. See ABA, *List of ABA-Approved Law Schools*, [https://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools/](https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/) (last visited July 11, 2021).

9. See GAVAZZI & GEE, *supra* note 2, at 61-62.

10. Andrew Kreighbaum, *Persistent Partisan Breakdown on Higher Education*, INSIDE HIGHER ED (Aug. 20, 2019), <https://www.insidehighered.com/news/2019/08/20/majority-republicans-have-negative-view-higher-ed-pew-finds>.

11. Janelle McPherson, *ABA changes law school accreditation standard because of COVID*, NATIONAL JURIST (Dec. 17, 2020) <https://www.nationaljurist.com/national-jurist-magazine/aba-changes-law-school-accreditation-standard-because-covid>

12. See ABA Standard 509, [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2018-2019ABASStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter5.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABASStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter5.pdf) (last visited July 11, 2021) (requiring public disclosure on the law school website of consumer information including employment outcomes).

13. Act of July 2, 1862 (Morrill Act) § 4, PL 37-108 (codified as amended at 7 U.S.C. § 301).

14. See generally ANDREA G. RADKE-MOSS, BRIGHT EPOCH: WOMEN AND COEDUCATION IN THE AMERICAN WEST (2008).

15. U.S. LAND-GRANT UNIVERSITY SYSTEM, *supra* note ii at 6.

16. Stephanie Y. Brown, *Land Grant Universities and Access in the Millennium: A Mandate to Re-Capture Service Opportunities in Under-Represented Communities*, 13 U.D.C. L. REV. 219, 222 (2010).

17. See Nash, *supra* note iv. See also Robert Lee & Tristan Ahtone, *Land-Grab Universities*, HIGH COUNTRY NEWS (Mar. 30, 2020).

18. U.S. LAND-GRANT UNIVERSITY SYSTEM, *supra* note 3, at 1.

19. Ilana Kowarski, *10 Most Expensive Law Schools*, U.S. NEWS (Jun. 7, 2021), <https://www.usnews.com/education/best-graduate-schools/the-short-list-grad-school/articles/most-expensive-law-schools>.

20. See Letter From Society of American Law Teachers to Maureen O'Rourke, Chair, ABA Section on Legal Education and Admission to the Bar re: Statement in Support of Eliminating the Standard 503 Requirement that Every Prospective Student Submit a Standardized Admissions Test Score (Mar. 31, 2018), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/comments/20180331\\_comment\\_s503\\_salt.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/20180331_comment_s503_salt.pdf). LSAT scores also vary tremendously by racial group, with Blacks and Latinos scoring lower than Whites and Asians. Marisa Manzi & Nina Totenberg, 'Already Behind': Diversifying the Legal Profession Starts Before the LSAT, NPR.org, (Dec. 22, 2020), <https://www.npr.org/2020/12/22/944434661/already-behind-diversifying-the-legal-profession-starts-before-the-lsat>. It should perhaps unsurprising, therefore, that law is the least racially diverse profession in the country. *Id.*

21. See GAVAZZI & GEE, *supra* note 2, at 27-31 (describing the communication challenges land-grant university leaders have in communicating the value of these institutions to their different constituencies).

22. See generally Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICKINSON L. REV. 551 (2018).

23. This analysis was performed by Michele Bartlett of the University of Idaho College of Law in 2020.

24. See also STEPHANIE L. KANE, MONICA REYNA & BARBARA E. FOLTZ, LEGAL NEEDS ASSESSMENT: SSRU TECHNICAL REPORT 12-08-20 (March 2013) (presenting comprehensive survey data on the unmet legal needs of Idahoans with household income below the statewide median).