

*Legal Education at a Social Justice Tipping Point in a Pandemic Era:
Change Leadership and the Law School Curriculum*

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Although it is a bit paradoxical, change is a relative constant. Whether change is planned or unplanned—and as to the latter, whether it is foreseeable or unforeseeable, it is sure to happen. Foreseeable change may result from, among other things, a risk commonly known to be attendant to a particular activity or behavior. Broad-based examples of unforeseeable change would include the 2008 financial crisis, the recent COVID-19 pandemic, and the sharp increase in racial justice activism and reform efforts this spring in the wake of the deaths of a series of Black people at the hands of law enforcement. While leading through strategic or predictable change is undoubtedly different from leading through chaotic or unpredictable change, understanding how to lead through change is a valuable skill that can positively impact decision making in a variety of contexts.

Lawyers, as inherent and frequent leaders in professional, community, and personal environments, have a greater-than-average need for proficiency in change leadership. In these many settings, lawyers are charged with promoting, making, and addressing change. Change is part of the fabric of lawyering, writ large. Yet, change leadership—well known as a focus for attention in management settings and related academic literature—is rarely called out for individual or focused attention in the traditional law school curriculum. This essay presents a brief argument for the intentional and instrumental teaching of change leadership to law students.

It seems important to note at the outset that lawyers live with and must respond to change as a matter of professional responsibility. In the course of their practice, lawyers must conduct their activities in accordance with a specified professional standard. That standard applies irrespective of change and requires reaction to change. Specifically, the American Bar Association's Model Rules of Professional Conduct (the "*Model Rules*") require lawyers to have and maintain competence—including the knowledge and skills attendant to their practice as it exists *over time*.² Comments to this model rule expressly counsel that, "[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to

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² MODEL RULES OF PROF'L CONDUCT r.1.1 (Am. Bar Ass'n 2016) (emphasis added) ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.").

which the lawyer is subject.”³ Thus, lawyers are compelled to recognize and grapple with change when it presents itself.

And change has been presenting itself in novel and compelling ways. The blunt force of change was acutely felt by all in the spring of 2020. With the recognition that the COVID-19 pandemic was not a momentary, fleeting crisis and the instigation of a renewed and vibrant national movement for racial justice, substantial and ongoing change became the order of the day—every day. Lawyers stepped up to the challenge in myriad ways. They have had and continue to have major leadership roles in working with and responding to this period of seemingly relentless change: guiding national and state governmental regulation and policy, including the provision of advice on stay-at-home orders, capacity restrictions for public venues, and mask mandates; handling *force majeure* clause interpretations, impracticability and impossibility analyses, and other contract and transaction enforcement issues; working collaboratively with the judiciary in taking judicial proceedings and related processes online during court closures; addressing disruptions in the administration of bar examinations; and much, much more. This leadership—necessity leadership⁴—is critically important to the success of our system of justice. “Although we cannot always control change, we can control our eventual response to it.”⁵

Notwithstanding their professional responsibility to appreciate and address change and their inevitable exposure to and engagement with immediate and emergent change, as a group, lawyers are notoriously uncomfortable with change.⁶ This resistance to change may exist or persist even for lawyers who rise to positions of leadership.⁷ It may impede or impair the exercise of effective leadership in generating viable, lasting change—change that is meaningful, well-conceived, and properly founded; change that survives a crisis. To be effective leaders, lawyers must embrace, manage, and make change, rather than run from it. They must learn how to lead change that is sustainable and enduring.

³ *Id.* cmt. 8.

⁴ The use of this label derives from a dichotomy (although perhaps an overly simplistic one) that differentiates necessity entrepreneurs (those for whom entrepreneurship is essential for financial welfare because of nonexistent or insufficient employment prospects) from opportunity entrepreneurs (those who choose entrepreneurship more freely). See, e.g., Nick Williams & Colin C. Williams, *Beyond necessity versus opportunity entrepreneurship: some lessons from English deprived urban neighbourhoods*, 10 INT’L ENTREPRENEURSHIP & MGT J. 23, 24 (2014) (“[T]he start of the 21st century has seen the emergence of . . . a dualistic depiction of entrepreneurs as either necessity-driven, pushed into entrepreneurship because all other options for work are absent or unsatisfactory, or opportunity-driven, pulled into this endeavour more out of choice to exploit some business opportunity”). The leadership observed in immediate response to crisis can be analogized to necessity entrepreneurship in that it is compelled by circumstance.

⁵ JAMES W. SIPE & DON M. FRICK, SEVEN PILLARS OF SERVANT LEADERSHIP 146 (2015).

⁶ See DEBORAH L. RHODE, LAWYERS AS LEADERS 11-12 (2013) (indicating that lawyers, “[b]y training and temperament,” may push back against change).

⁷ See *id.* at 56 (“[L]awyers as a group tend to be particularly resistant to change, and those who reach leadership positions do not appear to be exceptions. In one . . . survey, fewer than 20 percent of firm leaders described their philosophy as embracing innovation and change.”).

Law school is the logical place to begin the process of educating lawyers about change leadership. We are encouraged by our rules of professional conduct to pursue improvements in the law school curriculum.⁸ Teaching change leadership in law school makes great sense, especially—but not exclusively—as we continue to battle with a global pandemic and social injustice.

Law schools have begun to address this challenge through professional leadership courses and curricular programs. Important foundational training focuses on leadership aptitude, traits, and types—the roles of leaders in context and the nature and scope of leadership. Legal education and training on leadership processes, however, may be a missing piece of the puzzle that is essential to the leadership proposition.⁹ Change leadership is a process.

“[E]xperts have discovered a certain amount of predictability embedded in the change process.”¹⁰ As a result, the process of change leadership has been illuminated in many published works, including most prominently organizational management literature.¹¹ Perhaps the most well known of these works are those written by Harvard Business School Professor (now Emeritus) John P. Kotter.¹² As among Kotter’s works, his 1996 book entitled *Leading Change*¹³ has a special place. In it, he outlines an eight-stage process for change leadership that has become iconic.¹⁴ Yet few lawyers and law professors make use of, and may be aware of, or Kotter’s work or other similar works outlining successful processes for leading change.¹⁵ If we desire to best prepare our law students for the challenges they will face as leaders, this must change.

Nevertheless, there are challenges. Many of these challenges come in the form of resource constraints. Faculty are overburdened as they address the ongoing pandemic and racial injustice in their classrooms, scholarship, and service—as well as their lives outside the law school. Law schools may be subject to hiring freezes in the current environment. Even if no hiring freeze exists in an institution, however, a law school’s budget may not permit new hiring

⁸ MODEL RULES OF PROF’L CONDUCT Preamble ¶6 (Am. Bar Ass’n 2016) (“As a member of a learned profession, a lawyer should . . . work to strengthen legal education.”).

⁹ Joan MacLeod Heminway, *The Role of Process in Leadership*, LEADING AS LAWYERS (Aug. 27, 2019), <https://leadingaslawyers.blog/2019/08/27/the-role-of-process-in-leadership/> (“Process, properly engaged, can signal, foster, and strengthen leadership. And process poorly engaged can hinder, stymie, or weaken leadership. There is an important reason for this: process and trust are linked, and trust is at the core of leadership. Trust builds followers.”).

¹⁰ SIPE & FRICK, *supra* note 5, st 149.

¹¹ See, e.g., RHODE, *supra* note 6, at 57 (summarizing some of the literature).

¹² See, e.g., JOHN P. KOTTER & DAN S. COHEN, *THE HEART OF CHANGE* (2002) (illustrating and further illuminating the eight-stage change leadership process suggested in John P. Kotter’s earlier book, *Leading Change*); JOHN P. KOTTER, *LEADING CHANGE* (1996) [hereinafter KOTTER, *LEADING CHANGE*] (describing an eight-stage process for change leadership).

¹³ KOTTER, *LEADING CHANGE*, *supra* note 12.

¹⁴ *Id.* at 20-23 (summarizing the eight-stage change leadership process).

¹⁵ Notable exceptions include Professor Deborah L. Rhode, who has written a significant number of books and articles on leadership of and for lawyers. See, e.g., RHODE, *supra* note 6, at 56-60 (citing to Kotter’s work and the change leadership works of others).

now or in the near future. The law school curriculum is already quite full as it is. Bar passage concerns may compel law schools to focus on investments in core doctrinal and experiential curriculum and academic support, rather than specialty academic offerings and innovative curricular initiatives. As a result, law schools have rejected (and may continue to reject) faculty-led initiatives to introduce professional leadership courses and programs.

Resource scarcity should not, however, prevent the teaching of change leadership in the law school setting. Faculty need not depend on a specific course or curriculum to introduce change leadership to their students. All faculty need to introduce change leadership to their students is a leverage point—a case, a transaction, a simulation, a writing assignment, a clinic client matter, or the like—that provides a context in which a lawyer is faced with leading change. Any of these regular teaching tools and moments can be used to motivate discussions that can be expertly guided by the instructor to address the lawyer’s role in leading change and effective processes that may be used in doing so. Lessons on change leadership can permeate discussions and overall problem solving across the law school curriculum in traditional doctrinal and experiential settings.

Notable here is Professor Carol Parker’s seminal work on writing across the curriculum.¹⁶ In that article, she asserts that

every law school course can teach students ways to use writing to help them analyze legal authorities and organize analysis, can expose students to various kinds of professional documents, and can encourage students to use writing to explore the nuances of law and fact and reflect on the social policies underlying legal issues. This education thereby socializes students into the discourse community of lawyers. In addition, opportunities exist throughout the law school curriculum to use writing to help students understand the creative and critical processes by which they generate and refine analysis of legal problems.¹⁷

Much the same can be said about teaching professional leadership, including change leadership. This essay is but a sketch as compared to the deep curricular and pedagogical arguments made by Professor Parker in that article. Nevertheless, what I advocate in this essay is an outcome analogous to that proposed by Professor Parker: legal education infused with an instrumental focus that enhances student understanding of the law, legal process, and lawyering. By introducing change leadership as part of a greater curricular value, restrictions on resources may be overcome or otherwise addressed.

Having said this, faculty buy-in may be a barrier to teaching change leadership in the law school setting. Although a growing group of faculty are champions of professional leadership education in law schools, many faculty may be relatively lacking in their knowledge of

¹⁶ Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561 (1997).

¹⁷ *Id.* at 565.

professional leadership and leadership education (in general) and change leadership (in particular). Luckily, change leadership is not rocket science. Faculty can easily learn basic principles from Professor Deborah Rhode's cogent synthesis of the relevant leadership literature in her *Lawyers as Leaders* book¹⁸ and from other accessible academic and non-academic resources. Faculty motivation also may be an issue, especially in the current environment, in which faculty are juggling personal and professional affairs in new, ever-evolving ways to respond to the effects of the pandemic on their communities, their institutions, and their families.

Law faculty do need to be inspired or persuaded to take on this additional work. We tend to be an independent and approach teaching from a number of different perspectives based on our education and background, including our backgrounds in law practice. Faculty members do not typically like to be told what to do or how to do it. Yet, if a significant number of law faculty can be convinced of the value of teaching change leadership to their students (perhaps by highlighting the ways in which lawyers are change leaders in their professional and personal lives), the individuality and diversity of the law professoriate can be harnessed to produce unique and compelling teaching in the area of change leadership. If this essay generates conversation among faculty about change leadership's relevance to legal education, law practice, and living life as a lawyer—perhaps at a faculty teaching workshop or forum—it will have served its purpose. Moreover, assuming existing faculty develop confidence and passion for the idea of introducing change leadership to their students, no new hiring is required.

Overall, we can do a great service to our students by introducing them to change leadership (and other common leadership processes) as well as leadership capacity, attributes, and styles. "If law schools seriously intend to prepare the next generation of leaders," Professor Anthony Thompson avers, "they must recognize and embrace the duty to start this process of learning by exposing law students to leadership concepts and lessons through their pedagogy and substantive discussions."¹⁹

Change is ubiquitous. As a result, lawyers must engage with change in the ordinary course. Their professional responsibilities also make this clear. Yet, lawyers may reject or question change in situations that demand or imply that they lead change for the benefit of a client or the public interest. Moreover, they may undertake to lead change in the wake of a crisis, only to find that they may not know how to sustain and solidify the change they have enabled. Teaching change leadership in law school can lay an important foundation for an effective, ethical law practice and life in service to the community that incorporates, accepts, and values change. After graduation, the bar must take up the mantle and ensure that the leadership educational process continues.²⁰

¹⁸ RHODE, *supra* note 6, at 56-60.

¹⁹ ANTHONY C. THOMPSON, *DANGEROUS LEADERS: HOW AND WHY LEADERS MUST BE TAUGHT TO LEAD* 149 (2018).

²⁰ *See id.* at 150 ("Ideally, leadership for lawyers ought to be conceived as an ongoing continuum of lessons and practices that begins in law school and continues throughout the lawyer-leader's career.").

With the advent of the pandemic and the awakening of a strident racial justice movement, 2020 will not soon be forgotten as a year of visible and wide-ranging change. Lawyers have been guiding much of that change. It seems wise to reflect on how to better train lawyers to exercise their leadership capacity in times of change as actors who make a difference by inspiring transformations in law and society that work over the long haul. This essay argues for teaching change leadership in law school as a formative step in that lawyer-as-leader training process.