

## REIMAGINING LANGDELL’S LEGACY: PUNCTURING THE EQUILIBRIUM IN LAW SCHOOL PEDAGOGY\*

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*For more than 150 years, legal education has largely followed the course charted by Christopher Columbus Langdell when he became dean of Harvard Law School in 1870. Langdell’s innovations included the case method, high-stakes summative assessments, and preferences for faculty members with experience in “learning law” rather than practicing it. His proposals were innovative and responsive to challenges in legal education at the time, but this Article argues that taking Langdell’s approach to reform—including a willingness to implement radical changes in the face of institutional shortcomings—requires reimagining his methods for the benefit of today’s students. We identify key deficiencies of the Langdellian method, which was devised for a different set of students and at a time when we knew far less about how people learn. And we propose reforms, recommending inclusive course design that encompasses a broad range of competencies for a broad range of practices and inclusive pedagogical practices in both teaching and assessment. We also encourage all members of the law school community to share responsibility for implementing these reforms rather than relying on only a few “front-line” faculty and staff.*

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## INTRODUCTION

For students who started law school this year, legal education looks a lot like it did for the authors of this Article. Sure, today's students do some of their work on Zoom and they've never had to Shepardize with a book. Still, if they traveled back in time to our 1L classes, the teaching and curriculum would feel familiar. Surprisingly, however, the same would probably be true if the students went even further back in time, to as many as one hundred years before even *we* were in law school. We won't say that the students would be right at home, because, like us, many of them wouldn't be welcome in those spaces. But they'd probably still recognize what was happening at the front of the room and could easily relate it to their own law school experience. So, here's our question: Given everything that's happened in the last 150 years, is that a good thing?

It's perhaps appropriate that this Article was born from a presentation at a conference of legal writing professors,<sup>1</sup> a discipline that would have been as foreign to Christopher Columbus Langdell<sup>2</sup> as the identities of the law

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1. At the 20th Biennial Conference of the Legal Writing Institute in July 2022, the authors presented a panel called "Kick Langdell in the Butt: Puncturing the Equilibrium in Law School Pedagogy." We shared our own ideas and observations, many of which are included in this Article, but also invited audience participation. Some of the ideas in the final part of this Article come from audience discussion. Modeling the active learning techniques we use in our classes, we divided attendees into small groups and asked them four questions designed to help us imagine ways to disrupt Langdellian legal education. Each corner of the room had a presenter with posterboard with one of the four questions, and audience participants brought each of us color-coded post-it notes with their group's answers. Sometimes these answers had names on them, and sometimes they didn't; in the sections that follow, we have included informal attributions as appropriate.

2. As discussed below, Langdell is widely viewed to be responsible for much of how law school teaching and curriculum exist today. *See infra* Part I.

professors who participated on that panel: six women, including three women of color.<sup>3</sup>

But the genesis of this Article came before that, at a different conference, as several of us ate ice cream in the oppressive humidity of Amelia Island following a panel on “Law Schools of 2050.”<sup>4</sup> Panelists painted compelling pictures of the outside forces that might affect law schools in the coming years: the ever-rising costs of higher education, the growing demand for remote instruction, even how climate change would impact our physical plants and campuses. But many contributions seemed to assume that whatever else happened outside the classroom, the core curriculum and dominant pedagogy of law schools would largely remain stable. Reflecting on this, we asked each other, over melting ice cream: What if they didn’t?

Langdell himself didn’t take either the curriculum or the pedagogy he inherited as a given. Instead, as we describe below, when he found himself in a position to influence instruction at a particular institution, he took stock of the system he inherited—such as it was—and evaluated what was (and wasn’t) working. His examination revealed a system with inconsistent attention to merit. It also revealed a system in which instructors merely lectured and institutional learning was largely passive. His observations and resulting efforts led to changes in law school admission standards, faculty hiring, curriculum, pedagogy, and assessment.

Although we began our work with a critical eye and an internal wariness about Langdell’s lasting influence, our views evolved as we studied him and his legacy.<sup>5</sup> We have come to believe that the problem is neither the Langdellian focus on learning the law from appellate decisions reprinted in casebooks nor his Socratic method of classroom instruction in and of themselves; at the time, Langdell’s approach and proposals were innovative and responsive to challenges in legal education and the legal landscape more generally. The problem is that

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3. See Renee Nicole Allen, Alicia Jackson & DeShun Harris, *The Pink Ghetto Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525, 536 (2019) (explaining legal writing’s classification as a “pink ghetto” by the American Bar Association Commission on Women in the Profession and noting that, in 2013, seventy percent of legal writing professors were female); ASSOC. OF LEGAL WRITING DIRS., ALWD/LWI LEGAL WRITING SURVEY, 2019–2020: REPORT OF THE INSTITUTIONAL SURVEY 68 (2019–2020) (noting that 69.8% of 557 legal writing professors surveyed identified as female in the 2019–2020 ALWD/LWI Legal Writing Survey); L. Danielle Tully, *What Law Schools Should Leave Behind*, 2022 UTAH L. REV. 837, 853–54 [hereinafter Tully, *Leave Behind*] (discussing how race and gender complicate law school faculty hierarchies).

4. See *SEALS 2021 Conference Program*, SE. ASS’NS L. SCHS., <https://seals.wlu.edu/submissions/program/programwp.asp> [https://perma.cc/LT3S-ERWS] (detailing the *Initial Thoughts on Law Schools of 2050—An Academic Master Plan for the Future* panel).

5. Indeed, the first title for this Article was the same as our panel presentation: *Kick Langdell in the Butt: Puncturing the Equilibrium in Law School Pedagogy*. We thank the *North Carolina Law Review* board for confirming that they would publish a piece with that title, even if the evolution in our thinking has made it unnecessary.

the legal academy has not *continued* to follow Langdell's lead by innovating and responding to new information and new challenges—or at least that the innovations have not been as effective or comprehensive as the passage of so much time would seem to warrant.

In this Article, we begin with the premise that transparency is paramount in any efforts to reform legal education. Instead of doing things as we've always done them because we've always done them that way, let's name what we're doing, for ourselves and for our students, and then ask, independent of tradition or inertia: Should we really be doing this? Where the answer is "yes," then let it be a reasoned, intentional yes, and not a yes born out of habit or failure to consider other alternatives. That's a result we could happily explain to our students and the profession. But we should also be prepared for the answer to be "no." And when that is the case, we need to respond—and disrupt—accordingly.

This transparent, intentional approach to legal education would help our students by demystifying law school and aligning the curriculum to meet their professional goals. And it could also help our profession and society at large by preparing lawyers to better serve their clients, their communities, and the needs of a thriving and stable democracy. As we articulate learning outcomes for our students and decide what goals we're trying to achieve with legal education, we want more for our graduates than mere "practice-readiness." Or perhaps we want the definition of practice-readiness to expand. As the past handful of years has made clear, the health of our communities—and of our democracy more generally—require advocates who are prepared to reform and build. For law schools to foster these skills, they must create learning environments where students can view themselves as change agents, actors who can create new rules and new systems instead of accepting the world as it is now.

This Article has three main parts. First, we summarize who Langdell was and the changes he brought to legal education, including his new approaches to admissions, faculty hiring, teaching, and assessment. Next, we identify some problems with these approaches, particularly considering that, in the more than 150 years since Langdell started at Harvard Law School, we have seen significant changes in both the demographic profile of law students and in research about how those students learn. We also observe that the burden of changing the existing Langdellian structure often falls upon those individuals with less power, lower status, and heavier service- and student-support loads than others in the academy. Finally, we identify areas ripe for innovation and change, drawing upon both the existing literature and ideas from our panel's audience in the Legal Writing Institute's summer 2022 conference.

## I. WHO WAS LANGDELL AND WHAT DID HE DO?

Christopher Columbus Langdell has been credited—or blamed—for many of the quintessential aspects of today’s legal education. His road to the deanship that allowed him to have such an impact was not a linear one,<sup>6</sup> but instead was forged amid complex economic, social, political, and cultural forces that spanned decades. Although Langdell completed law school, he did not complete his undergraduate education. Unable to continue his undergraduate studies at Harvard College for financial reasons, Langdell left after just three semesters and returned home to New Hampshire.<sup>7</sup> There, Langdell spent eighteen months studying law in the office of two prominent local attorneys.<sup>8</sup> To support himself during that time, he worked manual jobs and tutored.<sup>9</sup> Langdell returned to Harvard, not to finish his undergraduate degree, but to matriculate at the law school; he graduated three-and-a-half years later—longer than most students took at that time.<sup>10</sup> Legal historian Daniel Coquillette posits that “[s]urviving and succeeding as a ‘pauper scholar’ and as an apprentice in a law office had developed in Langdell a deep commitment to learning inductively from original sources and to evaluating students through a rigorous system of academic merit.”<sup>11</sup>

Langdell’s professional experience practicing law in New York further cemented his commitment to robust legal education.<sup>12</sup> By the late 1860s Langdell had become “disaffected from the New York City bench and bar, abhorring the complicity of eminent lawyers and the judiciary in the corruption of the Tweed Ring of Tammany Hall.”<sup>13</sup> After practicing law in New York for nearly fifteen years, Langdell joined Harvard Law School as a professor in 1869, and the faculty appointed him to the newly established dean position a year later.<sup>14</sup>

6. See Samuel F. Batchelder, *Christopher C. Langdell*, GREEN BAG, Aug. 1906, at 438 (describing Langdell as a “typical farmer’s boy, bashful, awkward, [and] sturdy” and also “very poor”).

7. DANIEL R. COQUILLETTE & BRUCE A. KIMBALL, ON THE BATTLEFIELD OF MERIT: HARVARD LAW SCHOOL, THE FIRST CENTURY 308 (2015); Jeremiah Smith, *Professor Langdell—His Student Life*, 20 HARV. L. REV. 5, 5 (1906).

8. Bruce Kimball, *Young Christopher Langdell, 1826–1854: The Formation of an Educational Reformer*, 52 J. LEGAL EDUC. 189, 222 (2002) [hereinafter Kimball, *Educational Reformer*].

9. *Id.*

10. COQUILLETTE & KIMBALL, *supra* note 7, at 308.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 308–09. A deanship in 1870 looked nothing like it does today. Harvard University required each of its professional schools to elect a dean from among its members to “keep the records of the Faculty and prepare its business.” Charles W. Eliot, *Langdell and the Law School*, 33 HARV. L. REV. 518, 519 (1920). At the time of Langdell’s election, there were four people at the meeting: Harvard University President Eliot, Professor Washburn, Professor Holmes, and Professor Langdell. *Id.* According to President Eliot, neither Professor Washburn nor Professor Holmes wanted this new, vague role. *Id.* Professor Langdell, on the other hand, did not express an opinion. *Id.* Professor

With this background, as the dean of Harvard Law School from 1870 to 1895,<sup>15</sup> Langdell worked to elevate and standardize legal education. His vision included admitting students with specific credentials to a program with a well-defined curriculum, taught by faculty who were experts in “discovering” tenets of the science of law and showing their students how to do the same.<sup>16</sup> This program of study, Langdell believed, would prepare students for the evolving—and more formalized—requirements for admission to the profession, thereby ensuring competent practitioners.<sup>17</sup>

#### A. *The Landscape Before Langdell: Ad Hoc Legal Education*

Langdell entered the academy at a time when legal education was on the precipice of a reprofessionalization movement.<sup>18</sup> After forty years of Jacksonian democracy, many in the profession were skeptical of formal legal education and even opposed rigorous bar admission requirements.<sup>19</sup> Before Langdell, the need for formal legal education was not universally accepted, perhaps because admission to the legal profession was a much more casual endeavor. By “casual,” we don’t mean to suggest that the profession was necessarily open to anyone or that the required qualifications for practice or even the existence of the

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Washburn moved to appoint Langdell as dean, and his motion “was carried by the votes of Professors Washburn and Holmes, Professor Langdell not voting.” *Id.* The rest is history.

15. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 35–36 (1983).

16. A RECORD OF THE COMMEMORATION, NOVEMBER FIFTH TO EIGHTH, 1886, ON THE TWO HUNDRED AND FIFTIETH ANNIVERSARY OF THE FOUNDING OF HARVARD COLLEGE 84–89 (1887) [hereinafter *COMMEMORATION*].

17. *Id.*

18. See BENJAMIN H. BARTON, *FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND* 19 (2019) (“In the 1870s and 80s, the choice was not between a functioning apprenticeship system and a resurgent or redesigned law school system. To the contrary, Jacksonian democracy essentially killed law schools, formal apprenticeships, and even bar associations themselves, so the reprofessionalization movement arrived with a relatively blank slate, but a steep hill to climb.”). *But see* STEVENS, *supra* note 15, at 8–9 (suggesting a more complex set of historical forces and noting that “[t]o attribute all this inhibiting atmosphere to the ‘excesses’ of Jacksonian Democracy, however, would encourage grave dangers of misinterpretation”). For a “brief history of legal education in the United States,” see John O. Sonsteng, Donna Ward, Colleen Bruce & Michael Petersen, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 321–33 (2007).

19. See A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 68 WASH. & LEE L. REV. 1949, 1970–71 (2012). Some states went as far as to abolish both apprenticeship and formal education as a prerequisite to entry into the legal profession: in 1842, New Hampshire decreed that “any citizen over twenty-one was entitled to be admitted to practice.” STEVENS, *supra* note 15, at 9. Between new states joining the union with minimal licensing standards and existing states reducing barriers to entering the legal profession, legal education scholar Benjamin Barton argues that during this period, “the profession hit a nadir in terms of formality.” BARTON, *supra* note 18, at 19.

profession itself weren't hotly contested.<sup>20</sup> Rather, entry into the profession was ad hoc and decentralized.<sup>21</sup>

Although the first independent law school, The Litchfield School,<sup>22</sup> opened sometime between 1774 and 1784 and colleges had created a few professorships of law at the undergraduate level,<sup>23</sup> people—generally white

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20. CHARLES WARREN, *A HISTORY OF THE AMERICAN BAR*, 211–15 (1911) [hereinafter WARREN, *AMERICAN BAR*] (describing the late eighteenth century as a time when lawyers were reviled, there were calls for reform to allow anyone to represent themselves, and some localities demanded “complete abolition of the legal profession”).

21. While attorneys had to be licensed in most states to practice law, and licensure generally included some sort of oral examination, the licensure procedures varied widely by locality until the mid-1800s. JOAN W. HOWARTH, *SHAPING THE BAR: THE FUTURE OF ATTORNEY LICENSING* 16–19 (2022); ALBERT J. HARNO, *LEGAL EDUCATION IN THE UNITED STATES* 33 (1953). For example, as of 1870, only New York had a written bar exam; in Indiana and New Hampshire, no exam was required for licensure; in other states, “oral and normally casual” examination sufficed. STEVENS, *supra* note 15, at 25. *See generally* WARREN, *AMERICAN BAR*, *supra* note 20, at 39–143 (detailing colonial-era bars). More generally, professional standards in the mid-nineteenth century were “largely nonexistent,” and did not necessarily include formal education. STEVENS, *supra* note 15, at 25. Indeed, by the end of the nineteenth century most lawyers “had seen the inside neither of a college nor of a law school.” *Id.* at 95. If any period of school-based education was required, it differed from state to state. In 1860, of the nine jurisdictions (of thirty-nine total) that required a specific period of law study, three required a two-year period and six a three-year period. *Id.* at 25, 32 n.41. The remaining thirty jurisdictions required no study. *See id.* at 25. The question of which requirements were necessary to practice law preoccupied the nascent American Bar Association (“ABA”). HARNO, *supra*, at 73. At the ABA’s second annual meeting in 1879, the Committee on Legal Education and Admission to the Bar recommended that state and local bar associations support a prescribed minimum course of legal study lasting three years. *Id.* at 74–75. The full ABA did not adopt a resolution supporting three years of law school until 1897. Spencer, *supra* note 19, at 1971 n.87. By 1915, the ABA supported both law school graduation and bar passage for licensure. HOWARTH, *supra*, at 24. The requirements for licensure now generally include graduating from an ABA-accredited law school and sitting for a relatively uniform bar examination, although bar admission is still controlled at the state level by each state’s judiciary. Roy Stuckey, *The Evolution of Legal Education in the United States and United Kingdom: How One System Became More Faculty-Oriented While the Other Became More Consumer-Oriented*, 6 INT’L J. CLINICAL LEGAL EDUC. 101, 116, 128, 135 (2004).

22. The Litchfield School is considered the first American school of law in that it was organized strictly to prepare individuals to be lawyers. Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547, 564–65 (1997). It began as a tutorial in Judge Tapping Reeve’s law office and at its height in 1813 enrolled fifty-five students. *Id.* Before it closed, shortly after Judge Reeve’s passing, it had graduated over a thousand students “including three U.S. Supreme Court members, fifty-six state supreme court judges, twenty-eight Senators, one hundred and one Congressmen, fourteen governors, six U.S. cabinet members, and eight professors.” *Id.*

23. *See* HARNO, *supra* note 21, at 29, 35–38.

men<sup>24</sup>—usually became attorneys by “reading law.”<sup>25</sup> Rather than studying law in a classroom, they worked as apprentices to other attorneys.<sup>26</sup> Legal academician and scholar Albert J. Harno explained in his influential book, *Legal Education in the United States*, that during this time, “[l]awyers clung tenaciously to the notion that legal education was nothing more than the mastering of a craft, the skills for which had to be passed on from the practitioner to the novice.”<sup>27</sup>

Over the course of the nineteenth century, the profession adopted a more institutional approach, and the number of schools dedicated to educating lawyers increased.<sup>28</sup> But before Langdell, schools used a very different model

24. See, e.g., Anne M. Coughlin & Molly Bishop Shadel, *The Gender Participation Gap and the Politics of Pedagogy*, 108 VA. L. REV. ONLINE 55, 59 (2022) (noting that most students at Harvard Law School before 1870 were “wealthy, white, and Christian”). Law schools have only recently (within the past few decades) seriously committed to promoting diversity in admissions. In fact, less than a century ago, in 1950, Yale’s suggestion that the American Association of Law Schools (“AALS”) should expel law schools that maintained policies of segregating or discriminating on the basis of race was met with opposition. Genevieve Blake Tung, *Working Towards Equitable Outcomes in Law School — The Role of the ABA Standards*, in INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM 15, 15–16 (Nicole P. Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppen, Anna Russell & Genevieve B. Tung eds., 2021) (quoting opponents of the proposal as encouraging AALS to “confine itself to its traditional function . . . of legal education” and discouraging interaction with the “social issue” of racial nondiscrimination). It was not until 1963 that the ABA first addressed nondiscrimination in legal education. And it took ten more years for the accrediting body to incorporate a nondiscrimination provision into its standards in 1973. *Id.* at 16–17.

25. Russell L. Weaver, *Langdell’s Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 522 (1991); STEVENS, *supra* note 15, at 3–4; Calvin Woodard, *The Limits of Legal Realism: An Historical Perspective*, 54 VA. L. REV. 609, 706–07 (1968); HOWARTH, *supra* note 21, at 16 (commenting that “Abraham Lincoln recommended five books to read as ‘the best way’ to enter the profession but was said to have added that ‘no serious damage would be done if one were to continue reading after having begun practicing’”). Reading the law continued to be the primary approach to legal education until at least the mid-nineteenth century. See COQUILLETTE & KIMBALL, *supra* note 7, at 51 (noting that “[a]pprenticeship was not easily swept aside[]” and one-third of newly admitted lawyers in 1910 were educated in the apprenticeship model).

26. See COQUILLETTE & KIMBALL, *supra* note 7, at 50.

27. HARNO, *supra* note 21, at 39.

28. The shift was gradual, with a period of several decades (1820s–40s) during which both apprenticeships and law schools suffered amidst “vigorous assaults on the legal profession and its status.” See STEVENS, *supra* note 15, at 7–8. While the first professor of law was appointed in 1779 at William & Mary, “overall efforts by the colleges to develop law as a scholarly study were not a success” before the 1820s. *Id.* at 4–5; see also Spencer, *supra* note 19, at 1964–68; HARNO, *supra* note 21, at 23–28 (discussing the establishment of chairs of law and characterizing these “early ventures” as “tremendously significant, but in their immediate impact they were failures”). From the early part of the nineteenth century to the middle, apprenticeship requirements diminished. In 1800, almost three-quarters of jurisdictions (fourteen of nineteen) required an apprenticeship to enter the profession. By 1860, less than one-quarter (nine of thirty-nine) did. STEVENS, *supra* note 15, at 7–8. Notably, formal training at colleges and law schools during this time was not widespread. In 1840, there were only nine “university-affiliated” law schools educating 348 students in total. *Id.* at 8. But by the middle of the century, institutionalized legal education began a steady rise. See *id.* at 20–28; Spencer, *supra* note 19, at 1968–74. By 1870, twenty-one law schools existed, enrolling 1200 students. STEVENS, *supra* note 15, at 76. By 1890, the number of law schools had increased to sixty-one and student enrollment had nearly



from the one we know today. At first, institutionalized legal education primarily followed the “continental method,” in which students attended lectures given by judges or practitioners.<sup>29</sup> At these lectures, students focused on transcribing and memorizing the speaker’s words and the rules of law the speaker imparted.<sup>30</sup> There was no class discussion.<sup>31</sup> There was no established curriculum nor any specific set of required courses.<sup>32</sup> And there was no requirement that students attend law school for a specific amount of time.<sup>33</sup>

The approach began to change—first at the university level and then at the law school level—as (1) more professors trained in the German system, which focused on research, new scholarship, and scientific investigation,<sup>34</sup> and (2) industrialization and urbanization in the post-colonial period necessitated more complex and nuanced attention to law training.<sup>35</sup> By the time Langdell assumed his position as dean of Harvard Law School in 1870, the idea of more

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tripled. *Id.* Despite the movement away from apprenticeship and toward law school training, most lawyers still relied on on-the-job training until the turn of the twentieth century. *Id.* at 24; *see also* Spencer, *supra* note 19, at 1970. As late as the 1890s, “no state required attendance at law school” to become a lawyer. STEVENS, *supra* note 15, at 95.

29. Weaver, *supra* note 25, at 523–24; Woodard, *supra* note 25, at 709–11 (describing the institutionalization of legal education); Spencer, *supra* note 19, at 1973 (“Up to [Langdell’s time], the method of legal instruction in law schools was a combination of the lecture method and the text method, meaning students read texts that related and summarized particular bodies of law, and professors lectured on that material in class.”).

30. Woodard, *supra* note 25, at 709. To the extent that students used texts to supplement their lecture transcriptions, they did so essentially by reading and memorizing the published lectures of respected speakers such as Blackstone, Kent, or Story. *See id.* Students were encouraged to read, reread, and commit to memory such treatises. *Id.* at 710 n.50 (describing how U.S. Supreme Court Justice Bradley praised a student for daily rereading and memorizing Blackstone until “he became almost a walking commentary himself”). Some schools supplemented reading the law with moot court and debating. COQUILLETTE & KIMBALL, *supra* note 7, at 108. For example, as early as 1826, Harvard Law School included the following in its curriculum: (1) recitations and examinations, (2) written lectures, (3) a moot court, (4) debating clubs, and (5) written dissertations. WARREN, AMERICAN BAR, *supra* note 20, at 362–63.

31. *See* Woodard, *supra* note 25, at 709.

32. STEVENS, *supra* note 15, at 36 (noting that when Langdell became dean, there was no established curriculum at Harvard and that students were “free to start at any point”); *see also id.* at 15 n.46 (noting that, in 1829, students at Harvard Law “were free to come or go in mid-term and to stay for as long or as short a period as they wished” and that the formal plan of studies previously suggested had “almost disappeared, and examinations were abolished”); Woodard, *supra* note 25, at 710 (“[T]he most significant change in the system [was] the introduction of the idea of a curriculum.”).

33. Langdell is also widely credited for establishing a three-year period for the study of law. STEVENS, *supra* note 15, at 36–37 (explaining the progression from an eighteen-month (or shorter) undergraduate study to a three-year degree). As noted above, it wasn’t until 1897 that the American Bar Association adopted a resolution supporting three years of law school before applying for state bar admission. Spencer, *supra* note 19, at 1971 n.87.

34. *See* Stuckey, *supra* note 21, at 117.

35. Spencer, *supra* note 19, at 1963–64.

formal legal education was gaining strength, but its precise dimensions were still unclear.<sup>36</sup>

### B. *Langdell's Changes*

As dean, Langdell disrupted the emerging institutional model by changing who could attend Harvard Law School, who taught there, and how they taught. Reflecting on how Langdell transformed the law school, James Barr Ames, who succeeded Langdell as dean, described Harvard before Langdell as “a faculty of three professors giving but ten lectures a week to one hundred and fifteen students of whom fifty-three percent had no college degree, a curriculum without any rational sequence of subjects, and an inadequate and decaying library.”<sup>37</sup>

Perhaps in response, the new model was self-consciously exclusionary.<sup>38</sup> Langdell sought to elevate the profession by restricting who was allowed to attend law school and who was allowed to practice.<sup>39</sup> His primary concern was with merit as he perceived it.<sup>40</sup> To this end, he required applicants to have

36. See AM. BAR ASS'N REPORT OF COMMITTEE ON LEGAL EDUCATION 341 (1892) (reporting on the state of legal education in the United States and cataloging vast differences in admissions standards, the course of study, and assessment methods). Benjamin Barton argues that the elite Harvard model with its “overly academic” focus emerged to differentiate its form of legal education from both the apprenticeship model and the proprietary school model, which served as “inexpensive legal education for the masses.” BARTON, *supra* note 18, at 17–18.

37. HARNO, *supra* note 21, at 51–52 (quoting *Christopher Columbus Langdell, in LECTURES ON LEGAL HISTORY* 467, 477 (1913)).

38. See CHARLES WARREN, *HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA* 395–96 (1908) (quoting Harvard Law School President Eliot on the 1875 changes to admissions and graduation standards where Eliot lauded the new requirement of an undergraduate education and argued that law schools “have been for fifty years in process of degradation through the barbarous practice of admitting to them persons wholly destitute of academic culture”); see also Kristen K. Tiscione, *How the Disappearance of Classical Rhetoric and the Decision To Teach Law as a “Science” Severed Theory from Practice in Legal Education*, 51 WAKE FOREST L. REV. 385, 394 (2016) (noting that Langdell and Harvard President Charles Eliot were responsible for establishing “a law school entrance exam, annual exams at the end of each academic year, a three-year curriculum, and the obligation that law faculties conduct research”).

39. See Bruce A. Kimball, *Beyond the Paper Chase: Student Culture at Harvard Law School, 1895–1918*, 61 J. LEGAL EDUC. 31, 31 (2011); BRUCE A. KIMBALL, *THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL, 1826–1906*, at 5 (2009); *COMMEMORATION*, *supra* note 16, at 87–88.

40. COUILLETTE & KIMBALL, *supra* note 7, at 411–12 (“By June 1876 Langdell had therefore succeeded in establishing academic merit as the primary standard of evaluation both to enter the school and to progress through the curriculum via examinations. The fundamental issue debated at the Law School henceforth was not whether academic merit would be the primary standard, but how high and far that standard would be extended in various dimensions of ‘the new system.’”). Langdell’s goal, with this curriculum and other innovations, was to “raise the standards and status of legal education from its apprenticeship roots.” Spencer, *supra* note 19, at 2023. The result, however, appears to have been a disproportionate focus on doctrinal instruction to the exclusion of other “related but distinct levels of training that are necessary to become a competent legal professional,” including not only substantive

completed their undergraduate education and extended the program of studying law from eighteen months to three years.<sup>41</sup> Langdell also established a specific curriculum of first-year and upper-level courses.<sup>42</sup> And he instituted final exams as a measure of quality control.<sup>43</sup> Consistent with his pedagogy, detailed below, these exams did not rely on rote memorization. Rather, Langdell developed complex hypotheticals that asked students to use the law to solve actual problems.<sup>44</sup>

Langdell also diverged from previous hiring practices; instead of recruiting lawyers and judges to teach, he hired recent law graduates.<sup>45</sup> He rejected the notion, on which earlier law professorships were founded, that these positions should be based in expansive ideals of a liberal education.<sup>46</sup> And he built up a faculty comprised of professors who were not themselves practicing attorneys but rather experienced in what he called “learning law.”<sup>47</sup> As he

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knowledge of the law and analytical abilities but also “the development of certain practical skills and the formation of the professional values and judgment that define legal practice.” *Id.* at 2024.

41. COMMEMORATION, *supra* note 16, at 87; *see also* COQUILLETTE & KIMBALL, *supra* note 7, at 412. Langdell also required students who wanted to apply to Harvard Law School from an apprenticeship and receive credit for a year of advanced standing to pass the first-year examinations. *Id.* at 311; Sonsteng et al., *supra* note 18, at 324; HARNO, *supra* note 21, at 82–83 (noting that after the 1895–1896 academic year Harvard no longer admitted law candidates without an academic degree from a specific list of colleges).

42. After the Langdellian revisions, the curriculum at Harvard in the 1889–1890 academic year included specific courses for each year of the three years of study. Robert W. Gordon, *The Geologic Strata of the Law School Curriculum*, 60 VAND. L. REV. 339, 341 (2007).

43. COQUILLETTE & KIMBALL, *supra* note 7, at 348 (explaining that the examination requirement was applied to each separate course); Spencer, *supra* note 19, at 1978 (“Strict examinations were introduced as prerequisites to proceeding to the next year of study and to receiving the degree.”); William Epstein, *The Classical Tradition of Dialectics and American Legal Education*, 31 J. LEGAL EDUC. 399, 399 (1981) (describing final examinations before graduation as “an important first measure of quality control”). In the early 1800s, some courses at Harvard Law School also used end-of-term dissertations that assessed the topics covered by an entire course. Steve Sheppard, *An Informal History of How Law Schools Evaluate Students, with a Predictable Emphasis on Law Student Final Exams*, 65 UMKC L. REV. 657, 666 (1992) [hereinafter Sheppard, *How Law Schools Evaluate Students*]. However, there were no formal, required examinations at Harvard Law School from 1829–1871 “that could bar a student from the degree.” *Id.* at 672–73. Therefore, the end-of-term exams implemented under Langdell added another prerequisite not only to continuing one’s study of law but to becoming a lawyer. *Id.* at 672–73. Harvard was not the first law school to use examinations. The Litchfield School curriculum included weekly exams. WARREN, AMERICAN BAR, *supra* note 20, at 361. Additionally, some law schools in jurisdictions with diploma privilege also administered various kinds of exams both during the course of study and at the end. Sheppard, *How Law Schools Evaluate Students*, *supra*, at 668. Even some law schools outside of diploma privilege jurisdictions like St. Louis Law School and the University of Chicago Law School required exams. *Id.* at 668–71.

44. COQUILLETTE & KIMBALL, *supra* note 7, at 351.

45. STEVENS, *supra* note 15, at 38. In fact, Langdell appointed James Barr Ames to the position of Assistant Professor of Law immediately following his graduation from Harvard Law School. Ames was the first person to teach law without ever having practiced it. William Draper Lewis, *James Barr Ames 1846–1909*, 58 U. PA. L. REV. 289, 289 (1910).

46. HARNO, *supra* note 21, at 59–60.

47. COMMEMORATION, *supra* note 16, at 86.

famously explained: “What qualifies a person, therefore, to teach law is not experience in the work of a lawyer’s office, not experience in dealing with men, not experience in the trial or argument of causes, —not experience, in short, in using law, but experience in learning law.”<sup>48</sup> Despite his own practice experience, Langdell’s ideal law professor was someone who had experience reading and analyzing cases rather than trying them, so that they could expand on the rules of law without “sully[ing] [the] purity” of the system with such trifles as the actual practice of law.<sup>49</sup>

In contrast to the “curriculum without any rational sequence of subjects” at Harvard Law School prior to his tenure, Langdell established a defined set of classes to be taken in a specific sequence. These classes and this sequence are familiar to us because “the vast majority of U.S. law schools still have a mandatory 1L curriculum that includes the original five Langdellian first-year courses.”<sup>50</sup> And the upper-level course of study at Harvard during Langdell’s time, while not identical to today’s, included familiar courses such as Constitutional Law, Evidence, Sales, Trusts, Agency, Federal Jurisdiction, Partnership and Corporations, Conflicts, and Legal History.<sup>51</sup>

Despite the impact of these transformative structural innovations, Langdell is perhaps best known for the pedagogical approach he pioneered: instead of passively listening to lectures, students analyzed appellate judicial opinions in casebooks and responded to their professor’s “Socratic” questions.<sup>52</sup>

48. *Id.*

49. *Id.* STEVENS, *supra* note 15, at 38. Not surprisingly, practicing attorneys did not immediately endorse these changes. Spencer, *supra* note 19, at 1971 (“The practicing bar thus remained hostile to formal legal education, declining to refine bar admissions requirements to include such education as a prerequisite to being licensed to practice. This is a skepticism that endured until the late nineteenth century.”). Although these and other efforts (e.g., the movement to create a uniform bar examination) across the late nineteenth and early twentieth centuries were framed as raising the standards of the legal profession, those efforts were also criticized as actually being intended to keep “undesirable” people out of the profession. STEVENS, *supra* note 15, at 100 (describing the work of Jerold Auerbach in the early twentieth century and noting that “[t]he effort to raise standards, in Auerbach’s view, were primarily concerned with keeping out Jews, blacks, and immigrants”).

50. David A. Hyman, Jing Liu & Joshua C. Teitelbaum, Does the 1L Curriculum Make a Difference? 7 (Aug. 23, 2022) (unpublished manuscript), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3483&context=facpub> [<https://perma.cc/LXF3-EXVW>]. In 1889, first-year Harvard Law School students were required to study Property, Contracts, Torts, Civil Procedure, and Criminal Law. Gordon, *supra* note 42, at 341.

51. Gordon, *supra* note 42, at 341. Second-year Harvard Law School students chose five of these seven courses: Bills of Exchange and Promissory Notes, Quasi-Contracts, Evidence, Equity, Advanced Property, Sales, and Trusts. *Id.* Third-year students chose five or six of the following options: Agency, Constitutional Law, Equity Jurisdiction, Partnership and Corporations, Suretyship and Mortgages, Federal Jurisdiction, the Law of Persons, Conflicts, and Legal History. *Id.*

52. See Laura A. Webb, *Speaking the Truth: Supporting Authentic Advocacy with Professional Identity Formation*, 20 NEV. L.J. 1079, 1095–97 (2020) (summarizing aspects of Langdell’s “Socratic” method). Langdell introduced both Socratic questioning and a focus on appellate cases. While there are nuanced differences between the “Socratic method” and the “case method,” see, e.g., Don Macaulay, *The Socratic Method, the Case Method and How They Differ*, BARBRI L. PREVIEW (Oct. 17, 2019),

Named after Platonic dialogues in which Socrates and his interlocutor tried to jointly arrive at foundational philosophical truths, the “Socratic method” that Langdell introduced consisted of a dialogue between teacher and student about published cases.<sup>53</sup> In Langdell’s case-method approach, “[j]udicial decisions were analyzed in a scientific spirit as specimens from which general principles and doctrines could be abstracted.”<sup>54</sup> Through active questioning, the teacher sought to guide and redirect students to derive (correct) legal principles from a line of cases.<sup>55</sup> This process was meant to encourage pupils to critically assess opposing arguments, expose and prevail over false or flawed arguments, and then arrive at a true understanding of foundational principles about “The Law.”<sup>56</sup>

Langdell considered his method to be a more interactive and engaging pedagogy than the lecture-heavy approach it replaced, and this method soon became known as the most effective way to teach students to “think like a lawyer.”<sup>57</sup> The success of this model depended on Langdell’s vision of law as a

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<https://lawpreview.barbri.com/socratic-method-case-method-differ/> [<https://perma.cc/W8F3-245T>], we refer here to the approach introduced by Langdell and subsequently adopted widely, which combines both the manner of questioning and the sources used. There is disagreement about whether Langdell should receive all the credit (or blame) for this method, but that discussion is beyond the scope of our work here.

53. The Langdellian method differed in important respects from a “true” Socratic method. See Webb, *supra* note 52, at 1090–97 (contrasting Socratic method in Platonic dialogues to Langdellian method).

54. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 5* (2007) [hereinafter *CARNEGIE REPORT*].

55. Webb, *supra* note 52, at 1095–97.

56. *Id.* at 1097.

57. See, e.g., STEVENS, *supra* note 15, at 269 (“[M]ost legal educators and practitioners regarded it as an unparalleled method for training students to be lawyers.”); Edmund M. Morgan, *The Case Method*, 4 J. LEGAL EDUC. 379, 384 (1952); Elizabeth G. Porter, *The Socratic Method*, in *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* 101, 102 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo López eds., 2015) (characterizing Socratic method as “an easily scalable, effective, deeply engaging way to achieve active student learning”); *CARNEGIE REPORT*, *supra* note 54, at 50–56 (noting law schools’ widespread reliance on the method). Certainly, what precisely it means to “think like a lawyer” is unclear; consequently, figuring out the most effective way to achieve that goal is also unclear. Catherine Bramble & Rory D. Bahadur, *Actively Achieving Greater Racial Equity in Law School Classrooms*, 70 CLEV. ST. L. REV. 709, 751–55 (2022); see also L. Danielle Tully, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 STAN. J. C.R. & C.L. 201, 203–04 (2020) [hereinafter *Tully, (Re)Turn*].

science: a set of definable, objective, and interrelated rules.<sup>58</sup> And to Langdell, “all the available materials of that science [were] contained in printed books.”<sup>59</sup>

Langdell’s reforms were not universally celebrated or accepted.<sup>60</sup> In fact, he drew the ire of many lawyers and law professors alike and had to overcome “determined opposition to establish meritocratic structures and policies.”<sup>61</sup> Nevertheless, his innovations persisted even after his tenure ended. Although Langdell’s reforms initially threatened both enrollment and revenue,<sup>62</sup> a little more than ten years after he stepped down as dean, Langdell’s method had been adopted by at least twenty other law schools.<sup>63</sup> This method provided law schools with elite cachet while allowing them to expand enrollment at a fraction of the cost of alternative practices.<sup>64</sup> Within half a century, the case method and Socratic questioning Langdell introduced at Harvard had become the dominant paradigm in legal education and today it continues to be “law’s signature pedagog[y].”<sup>65</sup> In sum, there is little doubt of the lasting impact of Langdell’s

58. COMMEMORATION, *supra* note 16, at 85; CARNEGIE REPORT, *supra* note 54, at 5 (“Langdell’s new law school embraced the emphasis on formal knowledge by presenting law as a science in the making.”). Although Langdell did not suggest that legal principles had not evolved over time, his position was that they had largely completed that evolution. See Edward Rubin, *What’s Wrong with Langdell’s Method, and What To Do About It*, 60 VAND. L. REV. 609, 631–35 (2019). Rubin suggests Langdell viewed legal principles as having “developed . . . by the cumulative operation of human reason over long periods of time, and having done so, they were fixed and permanent in the legal culture that had created them.” *Id.* at 634. Classical rhetoric scholar Kristen Tiscione notes that his motives may have resulted, in part, to “a declining belief in natural law after the Civil War” and a need to find new authority for common law rooted in “a coherent system of objective and enduring principles that judges use to make their decisions.” Tiscione, *supra* note 38, at 395.

59. COMMEMORATION, *supra* note 16, at 85; see also Martin H. Brinkley, *Teaching Leadership in American Law Schools: Why the Pushback?*, 73 BAYLOR L. REV. 194, 200 (2021) (calling it “irrefutable” that the “method of instruction introduced by Christopher Columbus Langdell” and the ensuing system of formal legal education in American law schools “still lays primary value on inculcating analytical and rhetorical skills—the ability to ‘reason and argue in ways distinctive to the American legal profession’—over virtually every other achievement” (quoting CARNEGIE REPORT, *supra* note 54, at 2)).

60. See, e.g., COQUILLETTE & KIMBALL, *supra* note 7, at 348; see also STEVENS, *supra* note 15, at 57–59.

61. COQUILLETTE & KIMBALL, *supra* note 7, at 311.

62. *Id.* at 413.

63. Spencer, *supra* note 19, at 1979–80. See generally STEVENS, *supra* note 15, at 59–64 (tracking the acceptance of Langdell’s method in law schools and noting that “[b]y the beginning of the twentieth century, then, the case method, although far from unanimously approved, was recognized as *the* innovation in legal education” (emphasis in original)).

64. Spencer, *supra* note 19, at 1980; STEVENS, *supra* note 15, at 63–64 (discussing the method’s “trump card”: finance). Some schools had experimented with using the lecture method accompanied by quizzes and recitation; Langdell’s method seemed to ensure effective education within a large class setting without additional work (and thus cost) from faculty. *Id.* (contrasting case method with “the recitation and the quiz, the ‘exercises’ used at good schools relying on the lecture method” and concluding that “[t]he case method was thus both cheaper as well as more exciting for both teacher and student”).

65. STEVENS, *supra* note 15, at 63; see also Brinkley, *supra* note 59, at 200.

work, and he is often credited with almost single-handedly lifting legal education to a “full-fledged legitimate part of university learning.”<sup>66</sup>

## II. WHAT ARE SOME PROBLEMS WITH LANGDELLIAN LEGAL EDUCATION?

There is much to laud about Langdell’s vision for a system of legal education that would produce competent attorneys. Our concern, though, is the continued reliance on the Langdellian framework for legal education today. This part of our Article addresses the presumptions that the case method is the most effective method for learning law and that a single summative exam is the most effective format for assessing that knowledge. We conclude by exploring a possibility that may strike some as controversial: that the structure and hierarchies embraced under the Langdellian system have placed the burden of promoting and implementing departures from that system—that is, changes to legal education—on specific and often marginalized groups within law schools.

### A. *Socratic/Case Method as the Default Method for Teaching Law*

Decades of scholarship chronicle the ascendancy and value of the Socratic method and Langdell’s innovations more generally.<sup>67</sup> And there’s a bibliography at least as long critiquing the Langdellian enterprise.<sup>68</sup> That extensive scholarly

66. Woodard, *supra* note 25, at 715.

67. See, e.g., Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. LEGAL EDUC. 562, 563–64 (2015) [hereinafter Abrams, *Reframing*] (summarizing the use of the Socratic method as the “bedrock of legal education for well over a century”); Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 114–18 (1999) (arguing generally that the traditional Socratic method is “more myth than reality” and using interviews with twelve professors at Harvard Law School to explore the “revolution” in legal pedagogy toward a “toned down” Socratic method interspersed with other teaching techniques and more generally the method’s value and modern implementation); STEVENS, *supra* note 15, at 35–65; Ralph Michael Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*, 57 CHI.-KENT L. REV. 429, 448–54 (1981); Weaver, *supra* note 25, at 541–61.

68. See generally CARNEGIE REPORT, *supra* note 54, at 53 (critiquing the method’s reliance on “highly redacted accounts” of facts that “can give the misleading impression that facts are typically easy to ‘discover,’ rather than resulting from complex processes of interpretation that are shaped by pressures of litigation”); Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547 (1993) (employing feminist critique and concluding that the method does not serve students’ best interests); Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982) (arguing that the method is inherently ideological and serves hierarchies of the corporate welfare state); Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597 (2007) (arguing that the method undercuts legal education and does not prepare students to be leaders in the modern world); Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Realist Pedagogy*, 60 VAND. L. REV. 483, 494 (2007) (arguing that the method creates a singular idea of “correctness” in legal analysis and structure); Abrams, *Reframing*, *supra* note 67, at 565–66 (summarizing critiques of the method); Webb, *supra* note 52, at 1100 (discussing critiques of the method in law school); Jamie R. Abrams, *Legal Education’s Curricular Tipping Point Toward Inclusive Socratic Teaching*, 49 HOFSTRA L. REV. 897, 904–15 (2021) (same) [hereinafter Abrams, *Tipping Point*]; Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOFSTRA L. REV. 955,

treatment is outside our project's scope. But there is no doubt that Langdell's method was developed for a different set of students and at a time when we knew far less than we know today about how people learn.

There are 150 years separating today's law students from the law students—and society—for whom the method was first imagined.<sup>69</sup> This mismatch alone should give us pause. The students for whom Langdell designed his method were radically different from the students sitting in law school classrooms today.<sup>70</sup> For example, Harvard Law School only admitted its first female students in 1950 as part of the class of 1953.<sup>71</sup> By comparison, Harvard's incoming class in 2021 had 563 students, of which 54% were female and 43% were students of color.<sup>72</sup> Moreover, nationwide, the incoming class in 2021 was 57.4% female and 34.7% students of color.<sup>73</sup>

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966–1013 (2005) (summarizing and refuting several common critiques of the method); Spencer, *supra* note 19, at 1982–2015, 2026–37 (summarizing “over a century of critique and reform” of the Langdellian model, including the case method, and providing additional criticism of its shortcomings). Scholarly critiques of the Socratic method have generated a range of proposals for reform, from calls to “refram[e]” the method to a “student-centered, skills-centered, client-centered and community-centered delivery,” see Abrams, *Tipping Point*, *supra*, at 926, to encouraging faculty to abandon the method entirely in favor of true active learning approaches, see Bramble & Bahadur, *supra* note 57, at 745–50, 759–60.

69. In addition to the vast demographic differences between law students in Langdell's era and law students today, the education students received prior to entering law school has also changed dramatically. For background on how changes in K–12 curriculum resulting from No Child Left Behind impacted the cognitive skills of incoming law students, see Sandra L. Simpson, *Law Students Left Behind: Law Schools' Role in Remediating the Devastating Effects of Federal Education Policy*, 107 MINN. L. REV. (forthcoming June 2023).

70. See Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320, 2327–28 (2017) (describing Langdell as “a particularly strenuous crusader (more than his faculty colleagues) against the admission of female applicants to Harvard Law School in the 1890s”); Sonsteng et al., *supra* note 18, at 335 (“Law schools were originally designed for social and economic elites.”).

71. Walter R. Fleischer, *The First Class of Female Graduates of Harvard Law School* (photograph), in HARVARD LIBRARY, [https://hollis.harvard.edu/primo-explore/fulldisplay?docid=HVD\\_VIAolvwork383503&context=L&vid=HVD2&search\\_scope=everything&tab=everything&lang=en\\_US](https://hollis.harvard.edu/primo-explore/fulldisplay?docid=HVD_VIAolvwork383503&context=L&vid=HVD2&search_scope=everything&tab=everything&lang=en_US) [https://perma.cc/GCX5-C9TV].

72. *Harvard University — 2021 Standard 509 Information Report*, AM. BAR ASS'N, <https://www.abarequiddisclosures.org/Disclosure509.aspx> [https://perma.cc/GK4L-RG4Y].

73. Susan L. Krinsky, *The Incoming Class of 2021 — The Most Diverse Law School Class in History*, LAW SCH. ADMISSION COUNCIL (Dec. 15, 2021), <https://www.lsac.org/blog/incoming-class-2021-most-diverse-law-school-class-history> [https://perma.cc/AD2V-WM88]. Today's law students are thus “a diverse group of student learners” who “enter law school with a range of experiences, perspectives, preferences, and needs.” Karen J. Sneddon, *Square Pegs and Round Holes: Differentiated Instruction and the Law Classroom*, 48 MITCHELL HAMLIN L. REV. 1095, 1115 (2022) (internal citations omitted). For context on current law students, see Tiffany D. Atkins, *#ForTheCulture: Generation Z and the Future of Legal Education*, 26 MICH. J. RACE & L. 115 (2020) (discussing the disconnect between Generation Z student expectations and the traditional curriculum they often encounter in law school); Simpson, *supra* note 69 (noting the changes in modern students' education levels over the past 150 years); LAW SCH. SURV. OF STUDENT ENGAGEMENT, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., *THE CHANGING LANDSCAPE OF LEGAL EDUCATION: A 15-YEAR LSSSE RETROSPECTIVE* (2020), [https://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE\\_Annual-Report\\_Winter2020\\_Final.pdf](https://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE_Annual-Report_Winter2020_Final.pdf) [https://perma.cc/8MNR-FY9P] (analyzing the shifting demographics of law students);



The differences between today's students and those of Langdell's time should be especially concerning for law schools that are committed to diversity, equity, inclusion, and belonging.<sup>74</sup> This is because, if not thoughtfully practiced, it's easy for the Socratic method to become a professorial display of power.<sup>75</sup> Professor Abrams calls these "problematic Socratic performances," characterized by professor-centered, power-centered teaching that wields tools of fear and even shame to motivate student participation.<sup>76</sup>

But even without the most "problematic" aspects of such "performances," using the Langdellian method without modification teaches students to grapple with rules abstractly. Courses often rely on casebooks containing heavily edited appellate opinions—typically from federal courts—and many professors rely on teaching notes that, most years, may require only moderate revisions.<sup>77</sup> Classes taught in this manner typically culminate in a summative assessment, sometimes "provided . . . with little to no transparency of performance metrics."<sup>78</sup> The result can be to alienate and disempower students, and to reinforce various hierarchies within the classroom: between the professor and student, but also between the students who "get it" and the students who don't.<sup>79</sup>

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ACCESSLEX INST., LEGAL EDUCATION DATA DECK: KEY TRENDS ON ACCESS, AFFORDABILITY, AND VALUE (2022), <https://www.accesslex.org/sites/default/files/2022-06/AccessLex%20Legal%20Education%20Data%20Deck%20-%202005-26-2022.pdf> [https://perma.cc/ZB4R-N386] (analyzing key trends in law school admissions and enrollment).

74. For an intersectional analysis of law school demographics and the role that emergent adulthood may play in developing more effective legal education, see Rebecca Flanagan, *Anthrogogy: Towards Inclusive Law School Learning*, 19 CONN. PUB. INT. L.J. 93, 95–98 (2019).

75. See Abrams, *Tipping Point*, *supra* note 68, at 902–03 ("Professor Kingsfield embodied an archetype of Socratic teaching in which the professor wields power over students instead of wielding knowledge to empower students."). Certainly, to the extent that any professors intentionally mock, humiliate, degrade, or marginalize their students, we can call these perversions of the Socratic method. And we are confident that very few faculty teaching today do these things on purpose. But at the same time, there's no question that, as the Socratic method is traditionally implemented in law schools, the locus of power is with the professor. Even at the time of its introduction, "[l]aw professors undoubtedly relished their increasing power and influence in the classroom and happily made the change from treatise-reading clerk to flamboyant actor in a drama." STEVENS, *supra* note 15, at 63.

76. Abrams, *Tipping Point*, *supra* note 68, at 910–12.

77. *Id.* Of course, casebooks today are entirely different from the early casebooks. In fact, Langdell might bristle at the new casebook model that has both case summaries and additional commentary. In the first edition of his 1871 textbook, he wrote, "[T]he shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied." Eric E. Johnson, *A Populist Manifesto for Learning the Law*, 60 J. LEGAL EDUC. 41, 43–44 (2010) (alteration in original). He then experimented with blackletter law summaries in the second edition, only to omit them from future editions because he was concerned the summaries would be too helpful to students. *Id.*

78. Abrams, *Tipping Point*, *supra* note 68, at 910–12.

79. Sheila I. Vélez Martínez, *Towards an Outcrit Pedagogy of Anti-subordination in the Classroom*, 90 CHI.-KENT L. REV. 585, 586 (2015) ("For over thirty years, critical legal scholars have discussed how law professors' traditional pedagogical practices further the reproduction of hierarchies of power and subordination."). For example, there is evidence that the experience of Socratic questioning is worse for women and historically marginalized populations. See, e.g., Kathryn M. Young, *Understanding the*

Certainly, many faculty skillfully use the Socratic case method as a “cognitive apprenticeship” and a way to improve analytical reasoning.<sup>80</sup> However, a truly inclusive classroom will continue to elude us unless we establish some “standard-setting”<sup>81</sup> around the method’s use.

In addition to the negative power dynamic it might create within a classroom, the Langdellian Socratic approach also focuses students on the art of disputation: distinguishing between different cases, splitting hairs, and, perhaps, winning an argument for the sake of winning.<sup>82</sup> As such, it can imply that a lawyer’s role is to argue cleverly and well but not necessarily to seek truth or justice.<sup>83</sup> The influential Carnegie Report of 2007 explicitly advanced this critique, noting that this method “often forces students to separate their sense of justice and fairness from their understanding of the requirements of legal procedure and doctrine,”<sup>84</sup> and famously suggesting that law schools make room in their curriculum for an apprenticeship of professional identity and purpose.<sup>85</sup>

Furthermore, the method’s implicit suggestions about “The Law”—as if there is only one version of “Law”—can be harmful. The original Socratic method was intended to reveal truth: “[T]rue Socratic questioning, unlike the questioning used by professors in law school classrooms, is dialectic—the truth to be discovered is equally unknown to both teacher and student and becomes apparent as they engage in a Socratic-style discussion together.”<sup>86</sup> But to the extent students experience Socratic questioning as an effort to expose the “truth” of the law, they may implicitly understand law to be less mutable than

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*Social and Cognitive Processes in Law School That Create Unhealthy Lawyers*, 89 FORDHAM L. REV. 2575, 2588–91, 2594–95 (2021); Bramble & Bahadur, *supra* note 57, at 749–50 (citing some additional scholars who claim the method has the opposite effect); Abrams, *Tipping Point*, *supra* note 68, at 910–12; Abrams, *Reframing*, *supra* note 67, at 566 & nn.21 & 24 (reviewing scholarship critical of the case method’s effects on marginalized students).

80. See generally CARNEGIE REPORT, *supra* note 54, at 63–74 (providing “snapshots of law schools’ cognitive apprenticeship in action”); see also Gersen, *supra* note 70, at 2342–45 (discussing her use of an altered Socratic method to foster inclusive dialogue that promotes rigorous and productive engagement on difficult topics).

81. Abrams, *Tipping Point*, *supra* note 68, at 915.

82. Webb, *supra* note 52, at 1097–98.

83. *Id.* (“Today’s law professors, like the Sophists, focus more on the game of debate itself than on the moral education or absolute truth-seeking that was so important to Socrates.”) Students—or lawyers—who are put in the position of “advancing arguments that are ‘artfully written but not truthfully meant’” may become demoralized and discontent with their profession. *Id.* at 1109 (internal citation omitted). Although judges had historically relied broadly on justice, fairness, and public policy concerns to justify their decisions, Langdell believed that such concepts “could be manipulated to reach a decision either way” and thus a reliance exclusively on fundamental legal doctrines would produce a purer result. Tiscione, *supra* note 38, at 396.

84. CARNEGIE REPORT, *supra* note 54, at 57.

85. *Id.* at 126–61.

86. Bramble & Bahadur, *supra* note 57, at 734–35. Scholars might disagree about whether Socrates actually, as he claimed, did not have a particular answer in mind when he questioned his students. But we leave that question for another day.

it is. That is, the method may provide the mistaken impression that the rules are neutral and exist independent of social, historical, and cultural influences. Moreover, this method may encourage students to accept rules without question rather than critiquing them as human creations, necessarily susceptible to faulty thinking and bias.<sup>87</sup> As Professor Kimberlé Crenshaw wrote nearly thirty-five years ago, this method reinforces a norm of “perspectivelessness.”<sup>88</sup> Such a method presents “legal doctrine as fixed without addressing hierarchies of race, gender, sexuality, and class”<sup>89</sup> to name only a few. In short, students may miss the critical point that *we can change* the rules.

Advocates of the Socratic method often praise it as a way to hone analytical skills, as a “potent form of learning-by-doing,”<sup>90</sup> and as a way to test a student’s thorough understanding of a legal principle by providing hypotheticals by which one can explore the parameters of that principle.<sup>91</sup> Surely we all applaud those goals. And yet accepting this one method as a default strategy, and sometimes practicing it without meaningful alterations, seems odd, given—among other things—what we’ve learned about learning in the intervening 150 years.

For example, despite decades of cognitive science research about the pedagogical benefits of clearly and explicitly communicating learning objectives, the way that the casebook method and Socratic questioning are sometimes implemented can be characterized as obfuscation by design.<sup>92</sup> During

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87. See generally Webb, *supra* note 52, at 1100–10 (arguing that Langdellian method constrains students from viewing themselves as meaning-makers and active agents of change in the legal profession).

88. Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT’L BLACK L.J. 1, 2 (1988).

89. Abrams, *Tipping Point*, *supra* note 68, at 905–07 (explaining the harms of “perspectivelessness”). Additionally, as Professor Crenshaw argued, when the expectation of perspectivelessness “is combined with the fact that what is understood as objective or neutral is often the embodiment of a white middle-class world view, minority students are placed in a difficult situation.” Crenshaw, *supra* note 88, at 2–3.

90. CARNEGIE REPORT, *supra* note 54, at 74.

91. *Id.* at 56 (noting students “discovered they were now able to frame convincing arguments from opposing strategic positions while shifting quickly among points of view”).

92. See, e.g., Johnson, *supra* note 77, at 42–45 (discussing this phenomenon in a section of their paper entitled, “Obfuscation: A Long-Cherished Value”). For another articulation, see Bramble & Bahadur, *supra* note 57, at 751:

The reality is that there is no universal agreement about or understanding of exactly what the phrase “thinking like a lawyer” means. The result of this reality is that so long as a nebulous ill-defined outcome is the alleged “goal” of a legal education, it is impossible to assess whether the goal is actually being achieved. This is an excellent way to avoid scrutiny of one’s effectiveness as a teacher, but a poor way for an entire field of professional study to conduct itself in a twenty-first century educational environment where clear outcomes and assessment are the expectation of students and accrediting bodies alike, in the United States and internationally.

a recent internet dust-up about the Socratic method, one former law professor explained that when “both the substance of the law and this ineffable ‘thinking like a law professor’ skill” are opaque, “it’s sort of like blindfolding your students, handing them legos dipped in goo, and asking them to construct a railroad depot.”<sup>93</sup> Regardless of the pedagogy we select, we owe our students more than “legos dipped in goo.”

Finally, we know now that vicarious active learning is a myth.<sup>94</sup> While the Socratic method was initially praised, in part, because it engaged students more than the passive listening and memorizing that preceded it,<sup>95</sup> this bar is admittedly low. Even true Socratic dialogue, which includes active engagement between the parties speaking, leaves most law students passively watching rather than actively engaged in learning.<sup>96</sup> And some students never participate

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93. Carthage Must Be Footnoted, Comment to *If You're Going to Law School, Do It Right*, OUTSIDE L. SCH. SCAM (June 19, 2014, 5:00 PM), <http://outsidethelawsschoolscam.blogspot.com/2014/06/if-youre-going-to-law-school-do-it-right.html> [https://perma.cc/9D38-AXMX]. The full metaphor, in context:

Law school can teach a handful of particular, distinct skills. The main skill it teaches is how to write a law school exam—which is a skill that has cognates in writing bench memos for judges/appellate briefs.

...

[But one] problem is that we use the Socratic method to teach two things at once: both the substance of the law and this ineffable “thinking like a law professor” skill. When both are opaque, it’s sort of like blindfolding your students, handing them legos dipped in goo, and asking them to construct a railroad depot, with the added caveat that you do not, in fact, want a railroad depot; you really want a museum of trains, something that only looks like a railroad depot from a distance. The fact that some students manage to produce the appropriate museum is no reason to pat ourselves on the backs.

*Id.*

94. See, e.g., Bramble & Bahadur, *supra* note 57, at 738, 756.

95. One early critique of the lecture method was that it was not well-suited for all students, particularly those “of average powers.” STEVENS, *supra* note 15, at 57 (quoting Theodore W. Dwight, *Columbia College Law School, New York*, 1 GREEN BAG 141, 146 (1889)). While advocating for structural changes, President Eliot of Harvard Law School said in the 1874–1875 Annual Report: “Genius has seven-leagued boots, but common men require a well-made road.” Anthony Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HIST. 329, 337 (1979). President Eliot believed that the role of law school was “to train young men of good preliminary education and average ability, taken by the hundred, for the higher walks of the profession.” *Id.* The lecture method simply would not do. *Id.* at 336–38.

96. Bramble & Bahadur, *supra* note 57, at 738; Doron Samuel-Siegel, *Reckoning with Structural Racism in Legal Education: Methods Towards a Pedagogy of Antiracism*, 29 CARDOZO J. EQUAL RTS. & SOC. JUST. 1, 27–29 (2022) (“[S]tudents not speaking in the dialogue at any given moment are, at most, vicariously active, and unlikely to be engaged in active reflection during each moment of the dialogue.”); Spencer, *supra* note 19, at 2030–31.

at all.<sup>97</sup> As a result, while it may be moderately effective in any given class for a handful of students, it's not effective for most students in most classes.

While the disparate effects of Langdellian education are difficult to quantify, and “the worst problematic performances [of the Socratic method] have definitely waned,”<sup>98</sup> merely mixing new teaching techniques in with old practices<sup>99</sup> is not enough to prevent harm to historically excluded populations or to ensure that we are using best practices in teaching and learning. Nor is a mix-and-match approach enough to alter how (and what) students learn about the law and how to practice it. As a result, this approach is ripe for reimagination.

B. *Single Summative Assessment: One Final Exam as Default Method for Assessment*

While our focus above has been primarily on the Socratic method, that's not the only Langdellian innovation that we now know negatively impacts students' learning in law school. Langdell's method of “measuring learning” using a single, high-stakes summative assessment is also problematic for all learners, and even more so for historically excluded populations.<sup>100</sup> Indeed, Professors Kelly Hogan and Viji Sathy use law school's single, high-stakes final exam format as the quintessential example of a problematic assessment paradigm in their book about inclusive teaching in higher education.<sup>101</sup> In part, that's because in most classes these exams are the *only* input into a student's final grade.<sup>102</sup> Yet law schools continue to employ these high-stakes, end-of-

97. Dane Hall, where Langdell's Socratic method first took root, contained three tiers of seating. Students who sat in the third block were never questioned. Kimball, *Educational Reformer*, *supra* note 8, at 227. There is reason to think this situation remains largely unchanged; first-year classes in modern law schools are often large, and “students who are not regularly involved in class discussions may not develop a complete understanding of the course material.” Sonsteng et al., *supra* note 18, at 336.

98. Abrams, *Tipping Point*, *supra* note 68, at 914. For a critique of this method written by Duncan Kennedy while he was still a law student, see Duncan Kennedy, Comment, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACTION 71 (1970).

99. Kerr, *supra* note 67, at 114, 131–34.

100. See, e.g., Jonathan Feingold & Doug Souza, *Measuring the Racial Unevenness of Law School*, 15 BERKELEY J. AFR.-AM. L. & POL'Y 71, 92–110 (2013); Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 7, 38–39 (2021); Derrick A. Bell, Jr., *Law School Exams and Minority Group Students*, 7 BLACK L.J. 304, 306–09 (1981).

101. See KELLY A. HOGAN & VIJI SATHY, INCLUSIVE TEACHING: STRATEGIES FOR PROMOTING EQUITY IN THE COLLEGE CLASSROOM 76 (2022) (critiquing high-stakes exams and concluding that the approach focuses on “choosing, culling, or weeding out students”).

102. Sheppard, *How Law Schools Evaluate Students*, *supra* note 43, at 657 (“[E]xams are usually the exclusive method by which a record of student performance is created.”). The ABA has long required accredited law schools to include a significant summative assessment at the end of each lecture course. ABA STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. § 304(b) (AM. BAR ASS'N 1973) (“As part of the testing of scholastic achievement, a written examination of suitable length and complexity shall be required in every course for which credit is given, except clinical work, courses involving extensive written work such as moot court, practice court, legal writing and drafting, and

semester exams almost exclusively, even though the benefits of formative assessment throughout a course of learning are well established.<sup>103</sup>

In addition to the high-stakes nature of these exams, the format also captures only a narrow set of lawyering skills. End-of-semester essay exams typically ask the student to analyze hypothetical problems from the point of view of a judge, lawyer, or policymaker.<sup>104</sup> In this format, students spot issues in a single doctrinal area and apply the law, often in a fixed and flat universe. But, of course, client issues are anything but fixed and flat, and the matters they seek assistance on rarely involve only one area of law.<sup>105</sup> Thus, the summative “issue-spotter” final exam, or doctrine-focused, multiple-choice exam, when offered in a majority of a student’s classes, overemphasize a certain set of “thinking like a lawyer” skills at the expense of others.<sup>106</sup> Easily overlooked skills include those that involve considerations other than law and legal doctrine—“such as moral, economic, social, and political factors[] that may be relevant to the client’s situation.”<sup>107</sup>

These summative exams also do little or nothing to test the skills identified by researchers as contemporary legal competencies. For example, the exams do not assess students on many of the character-related skills identified by the

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seminars and individual research projects.”). The ABA did not include formative assessment as a requirement until the 2014 Revisions. See AM. BAR ASS’N, ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014–2015 § 314 (2014).

103. See, e.g., Leslie M. Rose, *Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading Is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way*, 17 J. LEGAL WRITING INST. 123, 137 (2011) (noting that frequent formative feedback helps students to develop into self-motivated and independent learners); Robert C. Downs & Nancy Levit, *If It Can’t Be Lake Woebegone . . . A Nationwide Survey of Law School Grading and Grade Normalization Practices*, 65 UMKC L. REV. 819, 823 (1997) (“A single examination followed by a course grade prevents professors from giving students repeated feedback, which many theorists say is essential to deep learning.”); DEBORAH JONES MERRITT & LOGAN CORNETT, BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE 63–66 (2020) (noting that focus group members observed that closed-book, timed, multiple-choice exams are a poor measure of minimum competence to practice law).

104. Spencer, *supra* note 19, at 2040.

105. See *id.* at 2041 (noting also that “[t]raditional doctrinal courses and their associated final exams tend to abstract all of these things out of legal problems, isolating doctrinal (and perhaps policy) analysis as the key to how any given issue is resolved”).

106. See Sonsteng et al., *supra* note 18, at 318 (noting that legal education inadequately prepares students in the following skills: “(1) understanding and conducting litigation; (2) drafting legal documents; (3) oral communications; (4) negotiations; (5) fact gathering; (6) counseling; (7) organizing and managing legal work; (8) instilling others’ confidence in the students; and (9) providing the ability to obtain and keep clients”).

107. MODEL RULES OF PRO. CONDUCT r. 2.1 (AM. BAR ASS’N 2020). “A single method of testing does not utilize a variety of learning and problem-solving methods and ignores underlying character attributes that are important predictors of a student’s success as a lawyer.” Sonsteng et al., *supra* note 18, at 346. The teaching method and assessment together may thus discourage students “better suited to certain aspects of lawyering such as client interaction, trial advocacy, mediation, and negotiation” from even entering the profession. *Id.* at 390.

Institute for the Advancement of the American Legal System (“IAALS”) in its “Foundations for Practice” report as critical to lawyering.<sup>108</sup> They do not test many of the factors or competencies identified by Marjorie Shultz and Sheldon Zedeck as relating to effective lawyering and lawyering competence,<sup>109</sup> nor the list of synthesized skills and competencies recurring in surveys of legal employers conducted by the Holloran Center.<sup>110</sup> Nor, of course, do they evaluate a constellation of skills relating to leadership, expansively defined, and parts of the lawyer’s role that are directly related to her contribution to a vibrant democracy.<sup>111</sup> In short, as Martin Brinkley, dean of the University of North Carolina School of Law, writes, “Our profession has always left critical parts of the lawyer’s apprenticeship—the acquisition of values-imbued craft and expertise, professional judgment and wisdom, and participation in civic professionalism—to an unstructured, chance-ridden set of arrangements that only take purchase after a law degree is earned.”<sup>112</sup>

Finally, no discussion of assessment in law school would be complete without reference to norm-referenced grading, often referred to as “the curve.”<sup>113</sup> While norm-referenced grading was not a Langdellian innovation, it has arguably grown out of the system he championed. As outlined above, Langdell focused on merit: his changes required students to have graduated from college before starting law school, he implemented final exams to test their knowledge, and he argued for a longer, three-year period of formal legal education before admission to the legal profession.

108. See INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 3 (2016), [https://iaals.du.edu/sites/default/files/documents/publications/foundations\\_for\\_practice\\_whole\\_lawyer\\_character\\_quotient.pdf](https://iaals.du.edu/sites/default/files/documents/publications/foundations_for_practice_whole_lawyer_character_quotient.pdf) [<https://perma.cc/TD96-V3FX>] (noting that “characteristics” such as integrity and work ethic and “professional competencies” such as listening, arriving on time, and working well in teams were more necessary for lawyers at the beginning of their careers than legal skills such as issue spotting).

109. See generally Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620 (2011) (describing twenty-six factors of lawyering effectiveness).

110. The Holloran Center, housed within the University of St. Thomas School of Law, has collected a wealth of research on professional identity as part of its mission to promote professional identity formation and ethical leadership in the legal profession. See *Holloran Research on Professional Formation*, HOLLORAN CTR., <https://www.stthomas.edu/hollorancenter/holloranresearchonprofessionalformation/> [<https://perma.cc/79RW-S32U>]. The repository includes, but is not limited to, citations to research such as Neil Hamilton, *Empirical Research on the Core Competencies Needed To Practice Law: What Do Clients, New Lawyers, and Legal Employers Tell Us?*, BAR EXAM’R, Sept. 2014.

111. See Brinkley, *supra* note 59, at 196–97, 202, 205–06.

112. *Id.* at 202.

113. Norm-referenced grading is a grading practice where grades are standardized and reflect how a student performed relative to other students. Rose, *supra* note 103, at 126. Law schools use a variety of norm-referenced grading formulas including a “bell curve,” in which the middle range of grades falls at the top of the bell shape and the high and low grades fall on its sides. *Id.* Many also use mandatory grade means and grade distributions among the range of available grades. Tully, *Leave Behind*, *supra* note 3, at 863, 865 n.161.

This focus on discerning merit may also have supported the adoption of norm-referenced grading, although that system did not take hold in law schools until well over one hundred years after Langdell became dean at Harvard.<sup>114</sup> By then, law schools were fully saturated with hierarchies. While schools adopted these grading policies for nominally equitable reasons—to address widespread grading disparities among professors—norm-referenced grading as currently practiced undermines inclusive classroom instruction and hampers student learning.<sup>115</sup>

Norm-referenced grading is problematic because it's wholly unrelated to the mastery of relevant subject matter or the learning outcomes that each law school must now identify and assess. Instead, “rather than communicating to students whether and to what extent they can demonstrate competency in course learning outcomes, curves merely communicate to students where they sort in relation to their classmates.”<sup>116</sup> Such sorting can demoralize rather than motivate, particularly because a law student's grades are often unaccompanied by any feedback about specific strengths or weaknesses demonstrated in the class (or, more explicitly, on the single final exam). Sociologist and law professor Kathryn Young identifies curved grading as undermining law student self efficacy, that is, “the sense that they have the ability to exert control over outcomes.”<sup>117</sup> This demoralization, in turn, causes students to evaluate themselves in relation to other people, impairing their ability to master new concepts, and harming student—and ultimately lawyer—mental health.<sup>118</sup>

Between the problems that come with using a single, high-stakes, end-of-term exam for assessment, the narrow range of skills typically tested on such exams, and the challenges raised by norm-referenced grading, the practices instituted or inspired by Langdell's method of evaluating “merit” require reimagination.

114. Tully, *Leave Behind*, *supra* note 3, at 863–64 (noting approximately nine percent of law schools used norm-referenced grading practices in 1976 and at least seventy-five percent of ABA accredited law schools used such practices in 2022).

115. HOGAN & SATHY, *supra* note 101, at 80. Grades are yet another way in which legal education perpetuates and reinforces hierarchy, privileging those who “have entered law school with [certain] backgrounds, experiences, and demonstrated skills and bestow[s] upon them additional grade wealth.” Tully, *Leave Behind*, *supra* note 3, at 866; *see id.* at 866–70; *see also* Brinkley, *supra* note 59, at 204 (“The degree to which the profession [views] one-shot law school examinations as a winner-take-all system to mete and dole unequal privileges among otherwise gifted people is shameful.”); Sonsteng et al., *supra* note 18, at 344 (“The assessment process is based on a narrow set of standards, suited to a small subset of the student population, and is intended to spotlight the most talented lawyers for potential employers.”).

116. Tully, *Leave Behind*, *supra* note 3, at 866–67; *see also* Sonsteng et al., *supra* note 18, at 344 (“Rather than using assessment as a tool to refine teaching methods, achieve greater learning objectives, and ensure consistent grading, students are tested and assigned grades primarily for the purpose of compiling a class rank.”).

117. Young, *supra* note 79, at 2587.

118. *Id.* at 2585–88.



C. *Other Implications of Langdellian Structure: Who Promotes and Implements Change?*

Langdell's new faculty hiring practices and pedagogical innovations have become the unshakeable foundation of modern legal education. But they also sowed the seeds for institutional hierarchies that endure today. To the extent that there have been innovations in legal education since Langdell's time, they have largely been either marginal or reactive, and the burden of promoting and implementing these changes has often fallen unevenly on members of the law school community.

We say marginal not to diminish the importance of the changes—many of which have happened in the very corners of the academy we inhabit—but in part to locate them relative to the “podium” classes traditionally considered the core of legal education.<sup>119</sup> And we say “reactive” because changes to legal education have often been catalyzed by various forces from outside the law school.<sup>120</sup>

As a result, while some of the changes since Langdell's time have improved legal education, they don't necessarily signal a first step toward more widespread reform. Marginal changes are, by definition, either incremental or limited to a particular silo within the law school. And the problem with reactive change, of course, is that law schools often find themselves adapting their current model to new exigencies, essentially trying to fit a square peg into a round hole, rather than reimagining and rebuilding. Further, some of these changes, though beneficial to students' learning and sense of belonging in law school, may not endure. In part, this is because many changes to traditional Langdellian education, as Professor Abrams argues, “have . . . been implemented using deeply bifurcated and hierarchical power and pay structures that implicitly undermine the perceived value of these innovations relative to traditional Socratic teaching.”<sup>121</sup> This bifurcation, and the implicit devaluation of learning outside the traditional Socratic classroom, reinforces the long

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119. Abrams, *Tipping Point*, *supra* note 68, at 900–01 (“Innovations have certainly emerged in law school clinics, experiential learning, formative assessment, and simulations. These meaningful innovations, however, have generally emerged outside of large lecture hall classrooms. Innovation has flourished around the ancient architecture of the traditional Socratic classroom.”). *See also* Spencer, *supra* note 19, at 2008 (noting that although the 1992 MacCrate Report “spawned some efforts to increase skills instruction in law schools, such training has remained peripheral to legal education”).

120. For a discussion of reform efforts, see Minna J. Kotkin, *Clinical Legal Education and the Replication of Hierarchy*, 26 CLINICAL L. REV. 287, 289–91 (2019) (describing the history of legal education reform efforts). And for further discussions of reactive changes in legal education catalyzed by forces outside the law school, see, for example, Abrams, *Tipping Point*, *supra* note 68, at 915–20 (defining a “tipping point” as a “unique moment[]” engaging a critical mass of people and their beliefs and energies, and characterizing the post-2020 legal education landscape as an opportunity to introduce fundamental change to the legal academy because of the COVID-19 pandemic and antiracism movement that developed in summer 2020).

121. Abrams, *Tipping Point*, *supra* note 68, at 901.

critiqued and profoundly durable skills-doctrine divide that dates back to Langdell's rejection of faculty whose experience involved *practicing* law rather than *studying* it.<sup>122</sup>

Because changes in legal education have been built up around and on top of the existing Langdellian architecture—"in addition to" rather than "instead of"—they often create additional burdens on students, staff, and some (typically lower-status) faculty.<sup>123</sup> This imbalance occurs even though many high-status faculty members are deeply committed to the principles we endorse in this work, including transparency, inclusion, and evidence-based practices grounded in the science of learning. Here are just a few examples of the imbalance.

First, legal writing and academic success professors often end up teaching new law students "how to read a case," how to prepare for classes these professors don't (or aren't allowed to) teach, and how to outline and study for final exams in their colleagues' classes,<sup>124</sup> especially—though not exclusively—when the professors teaching those other classes are reluctant to do so. More generally, many of the academic support tools designed to help all students—but especially students historically underrepresented in law school—are often packaged as additional enrichment programming and loaded on top of existing coursework in lieu of modifying instruction or expectations in the classes themselves.<sup>125</sup> Finally, skills faculty (who are generally paid less than doctrinal

122. Langdell emphatically stood by the distinction between handicraft and science and to him, handicraft "may best be learned by serving an apprenticeship to one who practices it" whereas science and therefore law could "only be learned . . . in a university by means of printed books." *COMMEMORATION*, *supra* note 16, at 85; see Tully, *Leave Behind*, *supra* note 3, at 847–57 (describing critiques of the faculty caste system and the doctrine/skills divide); see also Linda H. Edwards, *The Trouble with Categories: What Theory Can Teach Us About the Doctrine-Skills Divide*, 64 J. LEGAL EDUC. 181, 183–84 (2014).

123. To understand what we mean by lower and higher "status" faculty, see Rachel López, *Unentitled: The Power of Designation in the Legal Academy*, 73 RUTGERS U. L. REV. 923, 925–28 (2021) (describing faculty hierarchy and its consequences for the "other teachers" holding the wrong title, "[l]abels, in the form of titles, help cement these disparities, concretizing them into a caste system that justifies unequal pay, less power in faculty governance, and, at times, abusive behavior"). Clinical and skills faculty, as well as faculty dedicated to academic support, are "lower-status." See, e.g., Tiscione, *supra* note 38, at 399 ("[T]he overwhelming majority of clinical and skills faculty are ineligible for tenure and earn substantially less than their traditional faculty counterparts."); Louis Schulze, *The Manifold Ways of Reaching Law Students*, LAW SCH. ACAD. SUPPORT BLOG (Oct. 28, 2022), [https://lawprofessors.typepad.com/academic\\_support/2022/10/the-manifold-ways-of-reaching-law-students-another-perspective.html](https://lawprofessors.typepad.com/academic_support/2022/10/the-manifold-ways-of-reaching-law-students-another-perspective.html) [<https://perma.cc/8REC-BLGH>] (discussing academic support program faculty and noting that "[t]he literature is replete with accounts of strikingly low salaries, extraordinary performance results requirements, the absence of contractual stability, and institutional prohibitions against impactful pedagogy").

124. See O.J. Salinas, *Secondary Courses Taught by Secondary Faculty: A (Personal) Call to Fully Integrate Skills Faculty and Skills Courses into the Law School Curriculum Ahead of the NextGen Bar Exam*, 107 MINN. L. REV. (forthcoming 2023) (on file with the North Carolina Law Review).

125. Relatedly, when classes moved online in the aftermath of the COVID-19 pandemic, many faculty incorporated additional formative assessments to increase student engagement. But often, with faculty understandably committed to covering the same content as usual, this resulted in *additional*

faculty and who often have fewer faculty voting rights) and law school staff (who are typically paid even less than either doctrinal or skills faculty and often have no faculty voting rights) often bear the brunt of implementing new diversity and professional identity initiatives, which students and accreditation bodies both increasingly demand.<sup>126</sup>

Faculty and staff principally responsible for departures from the Langdellian model may face multiple challenges. First, students might resent the faculty or staff implementing these innovations because these professors require things that other faculty do not and may seem outside the norm.<sup>127</sup> For example, students may resist efforts by faculty to provide formative assessments throughout a course even if these assessments reduce grade pressure by ensuring that a student's whole grade isn't based on a single high-stakes exam. Additionally, even if the purpose of the assessments is to deepen learning and activate skill and knowledge acquisition through spaced repetition,<sup>128</sup> students may view these formative assessments as simply busy work.

Even if the students don't feel this way, the people responsible for these changes perform work that is labor-intensive, individualized, and service-heavy,

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work for students, as faculty assigned extra quizzes or discussion forum posts on top of their existing assignments. Despite evidence that contextualizing academic skills and learning strategies is effective, schools may be reluctant to make doctrinal professors incorporate them into their classrooms. Indeed, some schools actively prevent academic support faculty (teaching in "Academic Success Programs" or "Academic Support Programs") from discussing legal topics that the doctrinal faculty currently teach. *See, e.g.,* Schulze, *supra* note 123 ("At some schools, ASP faculty are forbidden from teaching skills in the context of doctrinal subjects students currently study.").

126. *See, e.g.,* Abrams, *Tipping Point*, *supra* note 68, at 938–42 (describing current and then-proposed ABA standards on nondiscrimination, equality of opportunity, professional identity, and diversity and inclusion and how the structure of these standards "invite law schools to segment compliance with diversity and inclusion mandates away from the heft of the faculty and into the overburdened staff"); Flanagan, *supra* note 74, at 124 (noting that the increased emphasis on experiential learning and professional identity formation initiatives "puts more pressure on experiential and clinical law professors to provide more support to more students, while more and more of those students are unprepared for the basics of legal representation and client communication"). While Abrams applauds the "deepening emphasis" on diversity, equity, and inclusion, she also notes that even the latest reforms have taken a "segmented approach," placing the diversity standards not in the "Program of Legal Education," which sets the requisite curriculum and learning standards, but in the "Standards on Law School Organization and Administration." *See* Abrams, *Tipping Point*, *supra* note 68, at 935–39. As a result, the ABA standards do not require schools to track or address any inequities in learning outcomes and therefore "partition[s] schools' diversity, equity, and inclusion mandates outside of legal education's curricular center." *Id.* at 938. Staff are thus "disproportionately saddle[d] with accountability for diversity and inclusion initiatives," while the "curricular core" is immunized from "diversity and inclusion scrutiny." *Id.* at 939.

127. Additionally, if these curricular innovations are the only ones that don't include a graded assessment component, particularly in the first year, students face the difficult decision of how much effort to invest in them.

128. For a summary of the science of spaced repetition and its application to legal education, see Gabriel H. Teninbaum, *Spaced Repetition: A Method for Learning More Law in Less Time*, 17 J. HIGH TECH. L. 273, 273 (2017).

but which is often institutionally devalued.<sup>129</sup> Moreover, professors on the “skills” side of the skills-doctrine divide, along with many staff members, are what Professor Katie Rose Guest Pryal calls “front-line faculty,” that is, faculty who “have close contact with students and are therefore in a position to notice—and do something about—students’ mental health struggles.”<sup>130</sup> Professors on the front lines have been stretched particularly thin in the last few years, as they have confronted teaching amid the destabilizing effects of the coronavirus pandemic, a polarizing political climate, and movements for racial reckoning. These pressures have not only required shifts in teaching modalities, but also have exacerbated the preexisting problem of law student mental health, requiring more flexibility, intervention, and support from front-line faculty.<sup>131</sup>

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In sum, Langdell’s innovations have remained durable even though today’s law students are not the law students of 1870. These practices endure even though the legal academy has rightfully rejected many assumptions about law and society that prevailed at that time. And they endure even though the philosophical underpinnings of the Socratic method—Langdell’s assertions about law being a science—were never fully accepted during his time and have been definitively rejected since.<sup>132</sup> In fact, “[t]he great irony of modern legal

129. See, e.g., Mary Nicol Bowman, *Legal Writing as Office Housework?*, 69 J. LEGAL EDUC. 22, 24–26 (2019) (using the office housework frame to demonstrate how and why legal writing professors’ work, which is labor intensive, individualized, and often requires heavy learning-centered service loads, is devalued in law schools); Sara L. Ochs, *Imposter Syndrome & the Law School Caste System*, 42 PACE L. REV. 373, 385–86, 398–99 (2022) (explaining the intense demands on faculty teaching skills courses and the ways in which this mental and emotional work is often devalued by their colleagues and institutions); Meera E. Deo, *Investigating Pandemic Effects on Legal Academia*, 89 FORDHAM L. REV. 2467, 2469 (2021) (describing the concept of “academic caretaking” and who does it in law schools); Meera E. Deo, *Pandemic Pressures on Faculty*, 170 U. PA. L. REV. ONLINE 127, 139 (2022) [hereinafter Deo, *Pandemic Pressures*] (“[S]ervice burdens have long been borne disproportionately by women faculty who rarely receive reward or recognition, despite the institutional benefit of their efforts.”).

130. Katie Rose Guest Pryal, *Front-Line Faculty and Systemic Burnout: Why More Faculty Should Attend to Law Students’ Mental Health and the Inequities Caused by Faculty Who Opt Out*, 27 J. LEGAL WRITING INST. 1, 5 (2023).

131. See generally *id.* at 2–5 (describing the pandemic’s dramatic effects on law student mental health and additional burdens on front-line faculty who support them); LAW SCH. SURV. OF STUDENT ENGAGEMENT, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., THE COVID CRISIS IN LEGAL EDUCATION 11 (2021), <https://lsse.indiana.edu/wp-content/uploads/2015/12/COVID-Crisis-in-Legal-Education-Final-10.28.21.pdf> [<https://perma.cc/T89J-T7DS>] (describing the pandemic’s negative effects on law student mental health); Deo, *Pandemic Pressures*, *supra* note 129, at 132–39 (describing the pandemic’s toll on already-marginalized law school faculty); Abrams, *Tipping Point*, *supra* note 68, at 902 (“The exact communities who have fought for the pedagogical reforms that are within sight, have the least bandwidth and capital to actualize these long-sought reforms.”).

132. The legal realism movement took hold as early as the 1930s, effectively “kill[ing] the Langdellian notion of law as an exact science.” STEVENS, *supra* note 15, at 156. Thus, Langdell’s view of law as science, which “was met with skepticism [even] at its introduction,” was definitely out of favor by the end of the twentieth century. Webb, *supra* note 52, at 1098.

education is that it is not only out of date, but that it was out of date one hundred years ago.”<sup>133</sup>

The version of Langdellian legal education that current law students experience is an artifact of another generation and therefore does not account for today’s student body or decades of research about pedagogy and the science of learning. In the classroom, it engages only a single student at a time while often undermining the wellness of many of them. Further, it relies on high-stakes assessments that offer scant opportunities for practice, provide minimal meaningful feedback to students, and bear little resemblance to law practice. Langdell’s approach suggests to students that there is a single form of analytical thinking needed to be a good lawyer.<sup>134</sup> But as legal rhetoric scholar Kristen Tiscione has noted, “In real life, lawyers are called upon to think more multidimensionally and diversely. They must be both doubters and believers, zealous yet able to compromise for the good of their clients, and tough but empathetic as well. No one can seriously argue that Langdell’s methods teach these skills.”<sup>135</sup>

Perhaps most importantly, continuing these practices also comes with an opportunity cost: we reject certain pedagogical approaches—whether consciously or out of inertia—while clinging to the way we’ve always done things.<sup>136</sup> What if, instead, we set out to remake legal education without trying to maintain the status quo or existing power dynamics? What if we refuse to give “presumptive reverence”<sup>137</sup> to the Socratic method and the summative final exam that privilege a narrow set of skills over the much larger set that is required for competent law practice? What if we build legal education around the needs of our current student population, with an eye toward preparing lawyers who can contribute to a healthy, inclusive democracy?<sup>138</sup> What if we ask: What are we missing by failing to implement—or even imagine—the kind of innovation that Langdell himself introduced to legal education? And who are we expecting to bear the burden of change? Langdell looked at the practices of his day with a

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133. Rubin, *supra* note 58, at 611.

134. Tiscione, *supra* note 38, at 397–98.

135. *Id.* at 398.

136. See Sneddon, *supra* note 73, at 1112 (“[C]ontinued reliance on the Socratic Method has, at least for a time, restricted development and implementation of pedagogy and theory developed in other educational settings.”).

137. Abrams, *Tipping Point*, *supra* note 68, at 914, 926–34 (describing and then calling for an end to the “presumptive reverence” given to professor-centered, problematic Socratic performances).

138. See Brinkley, *supra* note 59, at 204 (positing that changes to legal education are particularly important “with so much in the American constitutional experiment riding in the balance” and noting that “with our own egos, successes, and life choices at stake, we let the battle be harder than it should be”).

critical eye, refusing to accept them as the best simply because they were current practice. We should do the same.<sup>139</sup>

### III. WHAT SHOULD WE CHANGE?

In the latter half of the nineteenth century, Langdell faced a variety of challenges, including incoherent and disorganized approaches to teaching and curriculum, inconsistent and often minimal standards for those learning or even practicing law, and a general attitude that the study of law was a practical trade rather than an intellectual and academic pursuit. Langdell and others who wanted to improve legal education provided solutions to address these problems: instituting admission requirements, implementing summative exams to ensure high standards in law schools, hiring faculty with academic—but not practical—expertise, and adopting a pedagogy that treated law as a science with tenets that could be deduced through the study of appellate opinions. These solutions, we suggest, elevated legal education in some ways while also narrowing it.

Today, legal education faces a different set of challenges that requires a different set of solutions.<sup>140</sup> We know now, if indeed it was ever in doubt, that law is not a science. The library is not the law's "proper workshop," and law cannot, as Langdell imagined, be taught only from printed books.<sup>141</sup> We also

139. *See id.* ("We've been at it since 1870, when Christopher Columbus Langdell became dean at Harvard. In the sesquicentennial year of his deanship, could we envision doing better?").

140. One modern challenge we want to acknowledge is the role of Artificial Intelligence in the production, consumption, and dissemination of knowledge. That topic is simply too vast to even touch on here. Another modern challenge is the "rankings game": the annual ritual of waiting for and venerating one magazine's proprietary mathematical formula that purports to identify the "best" law schools in the country. This ranking hierarchy, of course, isn't something that was born with Langdell, but it's something that discourages change and thus likely tethers more law schools to an outdated model—or, at the very least, wastes valuable law school resources chasing elusive rankings wins that have very little to do with the student experience. *See generally* Rachel F. Moran, *Of Rankings and Regulation: Are the U.S. News & World Report Rankings Really a Subversive Force in Legal Education?*, 81 IND. L.J. 383 (2006) (summarizing symposium sessions on the impact and future of rankings). Rankings make it particularly difficult for schools in the "middle of the pack" to innovate—those schools that aren't Harvard, Yale, or Stanford but also aren't the schools that, whether because of their business model or their relatively low rank, must innovate to survive. *See* Deborah Merritt, *Professor at the Ohio State University*, FUTURE L. SCH. PODCAST, at 16:00–20 (Aug. 18, 2019), <http://thefuturelawpodcast.com/2019/08/18/deborah-merritt-professor-at-the-ohio-state-university/> [<https://perma.cc/766J-CXXG>]. In response to multiple top-ranked and influential schools publicly renouncing the ratings and declaring that they would no longer submit institution reports, *U.S. News* announced in January 2023 that it will change the methodology used to create its rankings. Debra Cassens Weiss, *US News Changes Its Ranking System Amid Boycotts by Most Top Law Schools*, ABA J. (Jan. 3, 2023), <https://www.abajournal.com/news/article/us-news-changes-its-rankings-system-amid-boycotts-by-most-top-law-schools> [<https://perma.cc/HBJ9-3B5N>]. The new approach gives more emphasis to publicly available information, such as employment and bar-passage rates, and no longer considers items such as school spending per student or student debt at graduation. *Id.* It remains unclear how the new methodology will impact legal education.

141. COMMEMORATION, *supra* note 16, at 85–86.

know that a law professor's job is not merely teaching future lawyers and judges how to call balls and strikes.<sup>142</sup> It's much more complex.<sup>143</sup> Teaching law, much like the law itself, is messy and human. Finally, we know a lot more about how the human brain works and how people learn. To the extent it's fair to characterize Langdell's changes as valuing *exclusiveness*, today's legal education cries out for *inclusiveness* instead: an expansive curriculum covering the broad range of competencies and skills that today's lawyers need to study and practice. Such a curriculum also calls for adopting inclusive teaching and assessment methods to reach and encourage a diverse student population.<sup>144</sup>

Law schools must acknowledge and confront the value of inclusion and the consequences of prior hierarchies that have not valued it. To do that, those who govern and work within law schools must examine everything at our institutions, from pedagogical choices to the uneven experiences<sup>145</sup> of different

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142. *Contra Roberts: 'My Job Is To Call Balls and Strikes and Not To Pitch or Bat,'* CNN (Sept. 12, 2005, 4:58 PM), <http://www.cnn.com/2005/POLITICS/09/12/roberts.statement/> [<https://perma.cc/6HF2-EHEJ>] (detailing Chief Justice Roberts's opening statement during his nomination hearings).

143. See Kevin Bennardo, *Abandoning Predictions*, 16 LEGAL COMMUN & RHETORIC 39, 43 (2019) (noting that judges are "all-too-human workers," who don't always methodically apply legal rules to facts).

144. See Sonsteng et al., *supra* note 18, at 395 ("[F]illing lecture halls with people of different ethnicities, socio-economic backgrounds and life experiences, without doing more to explore those differences, does little to impact the learning process.").

145. Kinda L. Abdus-Saboor, *Lessons from Pandemic Pedagogy: Humanizing Law School Teaching To Create Equity and Evenness*, 69 J. LEGAL EDUC. 621, 623 (2020) (describing unevenness as permeating law school and defining it as occurring when "a student suffers 'burdens [unrelated] to her inherent talent or abilities' arising solely from a particular component of his or her identity"; for example "race, gender, socioeconomic class, (dis)abilities, etc." (quoting Feingold & Souza, *supra* note 100, at 79)).

kinds of faculty,<sup>146</sup> staff,<sup>147</sup> and students.<sup>148</sup> Additionally, we need to examine the legal profession and the individuals, communities, entities, and systems served by the lawyers we educate. At each step, we must be prepared to engage willingly and openly about the dominant model of legal education, for whom it was designed, and whether (or how) it has marginalized and/or alienated generations of students.<sup>149</sup> Along the way, we should also examine legal

146. See generally MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019) (describing the way that women of color experience the legal academy in everything from the hiring process to service expectations to student interactions); Meera E. Deo, *The Ugly Truth About Legal Academia*, 80 *BROOK. L. REV.* 943, 947 (2015) (describing results from the Diversity in Legal Academia study and concluding that intersectional bias creates barriers to success for nontraditional law faculty, particularly female faculty of color); López, *supra* note 123, at 925–28 (describing how women and people of color often make up lower-ranked positions in legal academia); Allen et al., *supra* note 3, at 538–44 (describing the impact of gendered expectations on the experience and status of female faculty in law schools); Nantiya Ruan, *Papercuts: Hierarchical Microaggressions in Law Schools*, 31 *HASTINGS WOMEN'S L.J.* 3, 5–6 (2020) (examining hierarchical microaggressions experienced by skills faculty and locating them in four categories: devaluing, degrading, demeaning, and discrediting); Ruth Anne Robbins, Kristen K. Tiscione & Melissa H. Weresh, *Persistent Structural Barriers to Gender Equity in the Legal Academy and the Efforts of Two Legal Writing Organizations To Break Them Down*, 65 *VILL. L. REV.* 1155, 1161–62 (2020) (discussing status trends for skills faculty); Amy H. Soled, *Legal Writing Professors, Salary Disparities, and the Impossibility of “Improved Status,”* 24 *J. LEGAL WRITING INST.* 47, 48–49 (2020) (describing pay disparities between legal writing professors and doctrinal professors); J. Lyn Entrikin, Lucy Jewel, Susie Salmon, Craig T. Smith, Kristen K. Tiscione & Melissa H. Weresh, *Treating Professionals Professionally: Requiring Security of Position for All Skills-Focused Faculty Under ABA Accreditation Standard 405(c) and Eliminating 405(d)*, 98 *OR. L. REV.* 1, 20–26 (2020) (describing how Standard 405(d) disenfranchises skills faculty).

147. See, e.g., Abrams, *Tipping Point*, *supra* note 68, at 939 (describing how “overburdened” law school staff often bear the responsibility for implementing a variety of diversity initiatives, especially when faculty abdicate that responsibility); Darby Dickerson, *President’s Message: Abolish the Academic Caste System*, ASS’N AM. L. SCHS., <https://www.aals.org/about/publications/newsletters/aals-news-fall-2020/presidents-message-abolish-the-academic-caste-system> [https://perma.cc/H5XH-M2XC] (describing and calling for eliminating the law school “caste system” with tenured faculty at the top and staff at the bottom); Ruan, *supra* note 146, at 18–21 (explaining that staff, because of their position in the law school hierarchy, often suffer micro (or macro) aggressions); Alyson Drake, (@DrakeAlyson), TWITTER (Aug. 4, 2022), [https://twitter.com/DrakeAlyson/status/1555175308071936001?s=20&ct=VoE172TVU0N7gn3Do\\_aoFA](https://twitter.com/DrakeAlyson/status/1555175308071936001?s=20&ct=VoE172TVU0N7gn3Do_aoFA) [https://perma.cc/HYX9-7KUN] (reminding law school communities that staff are often “just as burnt out” as students and faculty but don’t get to spend the summer away from campus recharging).

148. See, e.g., Alexa Z. Chew & Rachel Gurvich, *Saying the Quiet Parts Out Loud: Teaching Students How Law School Works*, 100 *NEB. L. REV.* 887, 890–91 (2021); Abdus-Saboor, *supra* note 145, at 624–25; Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 *J. LEGAL EDUC.* 780, 783–86 (2018); LAW SCH. SURV. STUDENT ENGAGEMENT, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., DIVERSITY & EXCLUSION 7–14 (2020) [hereinafter LSSSE 2020 SURVEY], <https://lsse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf> [https://perma.cc/RJ33-CW9V]; Shaun Ossei-Owusu, *Guest Post: Legal Education and the Illusion of Inclusion*, LAW SCH. SURV. STUDENT ENGAGEMENT: INSIGHTS BLOG (Feb. 15, 2021), <https://lsse.indiana.edu/blog/guest-post-legal-education-and-the-illusion-of-inclusion/> [https://perma.cc/5WX8-Z9SF].

149. See generally Nicole P. Dyszlewski, *Wisdom for Teachers on the Journey to Integrating Diversity in the Law Classroom*, in *INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM*, *supra* note 24, at 8–9 (encouraging faculty to “set the tone from the



education's intended and unintended role in both creating and mitigating some of the most pressing issues we face today. Law schools play a unique role in American society—and increasingly in the global community—and law faculty have a special responsibility to uphold the public trust.

While reforming modern legal education might not yield the same dramatic results in the same short time that Langdell and his compatriots experienced, new reforms could ripple further than we can perhaps imagine. This Article cannot address all the challenges of legal education nor imagine all the routes for reform. However, we hope that Part III contributes to the ongoing dialogue as we work together to create meaningful change and ultimately the best legal education possible for today's law students.<sup>150</sup>

#### A. *Inclusive Course Design: Broad Range of Competencies*

The empirical evidence is clear: what law schools are teaching *does not* encompass the range of competencies that employers want from new law school graduates.<sup>151</sup> Instead, there's a gap between the key competencies legal employers seek in prospective employees—including the abilities to communicate and collaborate effectively—and the relative emphasis on these skills in the law school environment.<sup>152</sup> The case method encourages one set of skills that we can all agree is important. But when we feed students a “steady diet of borderline cases,” they often come to believe that “there are no *right*

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beginning” and “be willing to share personal stories”); Samuel-Siegel, *supra* note 96, at 31–65 (setting out suggestions for creating antiracist, inclusive classrooms).

150. The ideas in this part stem from preparing for our panel, our audience's contributions, and our continued reflection after the panel. They are, of course, a first—not final—step in the conversation about improving legal education.

151. See generally NEIL W. HAMILTON & LOUIS D. BILONIS, LAW STUDENT PROFESSIONAL DEVELOPMENT AND FORMATION: BRIDGING LAW SCHOOL, STUDENT, AND EMPLOYER GOALS 17–27 (2022) (summarizing empirical studies on desired lawyer competencies from client and employer perspectives); Milan Markovic, *The Law Professor Pipeline*, 92 TEMP. L. REV. 813, 833 (2020) (noting that law students graduate “unprepared to represent lower-income individuals and to address their complex mix of legal and socioeconomic needs”); Susan C. Wawrose, *What Do Legal Employers Want To See in New Graduates?: Using Focus Groups To Find Out*, 39 OHIO N.U. L. REV. 505, 522–41 (2013) (outlining competencies legal employers look for in new hires); Mark A. Cohen, *What's a Lawyer Now? Law's Shift from Practice to Skill*, FORBES (Sept. 23, 2019, 7:20 AM), <https://www.forbes.com/sites/markcohen1/2019/09/23/whats-a-lawyer-now-laws-shift-from-practice-to-skill/?sh=19af8094745b> [<https://perma.cc/9ZPA-UEKT>] (emphasizing that lawyers need new business and technological competency); Dyane L. O'Leary, *“Smart” Lawyering: Integrating Technology Competence into the Legal Practice Curriculum*, 19 U.N.H. L. REV. 197, 215–18 (2021) (noting that students graduate without sufficient exposure to legal technology and law schools have a duty to incorporate technology competence into their required curricula).

152. See Hamilton, *supra* note 110, at 14 (“[Legal employers] agree that a substantial number of competencies or skills are more valuable for the new lawyer or candidate for employment than doctrinal law knowledge domains. However, the typical required and elective curriculum at law schools heavily emphasizes doctrinal knowledge in specialized areas of law.”). The misalignment is substantively problematic, but so is the lack of communication with our students about it. If students had easier access to this data, then they, too, could help drive the kinds of disruption we're describing.

answers, just *winning* arguments.”<sup>153</sup> This traditional teaching approach—along with much of the current required law school curriculum—thus minimizes the law student’s ethical formation. In addition, the focus on “hard cases” gives the mistaken impression that the practice of law is limited to arguing difficult questions.

Even some very early critiques of the case method identified this failing. The ABA noted in 1892 that the case method’s focus on the “elaborate study of actual disputes” and ignoring “settled doctrine[.]” results in “graduates admirably calculated to argue any side of any controversy, or to make briefs for those who do so, but quite unable to advise a client when he is safe from litigation.”<sup>154</sup> While the ability to argue both sides of a controversy is certainly a useful skill, it is not the only skill a good lawyer needs. Legal employers want to hire lawyers who can demonstrate facility with teamwork, collaboration, client counseling, effective oral communication, and a host of other competencies that are not necessarily encouraged by traditional teaching practices.<sup>155</sup> Some scholars have already suggested strategies to disrupt the 1L year, including by “clinicizing it.”<sup>156</sup> Others have suggested building an “Experiential Law School,” which would offer experiential learning opportunities in each of law school’s three years.<sup>157</sup> Still others have reimaged law schools entirely, sketching out a new mode of legal education centered on law practice that serves the ideals of justice and equity.<sup>158</sup>

153. Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 254–55 (1978) (emphasis in original).

154. AM. BAR ASS’N REPORT OF COMMITTEE ON LEGAL EDUCATION 341 (1892). The ABA recognized that “[we] are not setting up an ideal standard of morals when we insist that even in the law school, the work of which is mainly technical, the student should not be so trained as to think he is to be a mere hired gladiator [sic], fighting indifferently for one side or the other that pays his fee.” *Id.*

155. Hamilton, *supra* note 110, at 8–9; Wawrose, *supra* note 151, at 522 (surveying legal employers and finding that they want employees to, among other things, be able to collaborate well with colleagues and clients and have strong verbal communication skills). Some members of our panel’s audience addressed the anticollaboration ethos of the 1L year and identified even more law school “traditions” to do away with, including eliminating anticollaboration policies for major writing assignments in first-year legal-writing courses. Katrina Robinson, Assistant Clinical Professor of L., Cornell L. Sch., Audience-Member Comment at Kick Langdell in the Butt: Puncturing the Equilibrium in Law School Pedagogy, Legal Writing Institute’s 20th Biennial Conference (July 22, 2022). This practice would (1) reinforce teamwork and cooperation skills, (2) better reflect the collaborative nature of law practice, and (3) reduce student feelings of isolation and competition.

156. Eduardo R.C. Capulong, ‘Clinicalizing’ the First Year: Working with Actual Clients at the University of Montana, in THE NEW 1L: FIRST-YEAR LAWYERING WITH CLIENTS 121, 121–46 (Eduardo R.C. Capulong, Michael A. Millemann, Sara Rankin & Nantiya Ruan eds., 2015).

157. Catherine Fisk, Carrie Hempel & Erwin Chemerinsky, *Building an Experimental Law School*, in THE NEW 1L: FIRST-YEAR LAWYERING WITH CLIENTS, *supra* note 156, at 147–69.

158. Claudio Angelos, Mary Lu Bilek & Joan W. Howarth, *The Deborah Jones Merritt Center for the Advancement of Justice*, 82 OHIO ST. L.J. 911, 912–14 (2021) (describing The Merritt Center for the Advancement of Justice, which would house nine law practice offices that serve as the primary context for student learning).

At a minimum, recent changes to ABA Standard 303, requiring law schools to include “substantial opportunities to students” for “the development of a professional identity,” codify an emerging, albeit contested, understanding in legal education that we must do more.<sup>159</sup> But generally ABA changes have not sparked the thorough reevaluation we propose.<sup>160</sup> Law schools must provide all three “apprenticeships” in their training: cognitive, practical, and ethical-social.<sup>161</sup> Investing more resources in the ethical-social apprenticeship will help

159. AM. BAR ASS'N, ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2022–2023 § 303(b) (2022).

160. Tully, (*Re*)*Turn*, *supra* note 57, at 220–33 (critiquing the impact of revisions to Standard 301 and Standard 302).

161. CARNEGIE REPORT, *supra* note 54, at 147–61 (observing that a successfully integrated professional education curriculum must include three “apprenticeships” of learning: the apprenticeships of cognition and intellect, practicality and skill building, and identity, meaning, and purpose). Readers wishing to familiarize themselves with Professional Identity Formation concepts may find the following selections useful in gaining a foundation: HAMILTON & BILIONIS, *supra* note 151, at 1–16 (proposing that law students internalize four goals as essential aspects of their professional identity: “continuous professional development toward excellence at the competencies that clients, legal employers, and the legal system need,” a widening service orientation toward others, client centeredness, and prioritization of health and well-being needs); Eduardo R.C. Capulong, Andrew King-Ries & Monte Mills, *Antiracism, Reflection, and Professional Identity*, 18 HASTINGS RACE & POVERTY L.J. 7 (2021) (arguing that antiracism is essential to the legal profession’s responsibility to improve the quality of justice and therefore an essential component of a lawyer’s professional identity); Larry O. Natt Gantt II & Benjamin V. Madison, III, *Self-Directedness and Professional Formation: Connecting Two Critical Concepts in Legal Education*, 14 U. ST. THOMAS L.J. 498, 514 (2018) (asserting that self-regulation and the development of self-directed behavior is critical to the development of a law student’s professional identity); Neil W. Hamilton, Verna E. Monson & Jerome M. Organ, *Empirical Evidence That Legal Education Can Foster Student Professionalism/Professional Formation to Become an Effective Lawyer*, 10 U. ST. THOMAS L.J. 11, 14–15 (2012) (asserting that an effective professional identity formation curriculum meets each student at their current developmental stage, enhances law students’ moral reasoning skills, increases their consideration of the socioethical aspects of legal practice, and encourages students’ internalization of a deep service responsibility to others and continuous development toward excellence in core lawyering competencies); Nathalie Martin, *Think Like a (Mindful) Lawyer: Incorporating Mindfulness, Professional Identity, and Emotional Intelligence into the First Year Law Curriculum*, 36 U. ARK. L. REV. 413, 423–27 (2014) (describing the benefits of mindfulness practice and emotional intelligence training in law school and how this training supports law students’ formation of healthy professional identities); Beverly I. Moran, *Disappearing Act: The Lack of Values Training in Legal Education—A Case for Cultural Competency*, 38 S.U. L. REV. 1, 44–50 (2010) (asserting that law schools must integrate values training in the first-year curriculum as part of law students’ professional formation and to fully prepare law students for legal practice, with emphasis on the values of nondiscrimination and inclusiveness based on race, ethnicity, gender, and socioeconomic status); Eli Wald, *Formation Without Identity: Avoiding a Wrong Turn in the Professionalism Movement*, 89 UMKC L. REV. 685, 686 (2021) (asserting that a professional identity formation curriculum must “be grounded in the core responsibilities and values of the profession” and simultaneously “acknowledge and introduce students to the immense variety of professional roles, circumstances, and contexts in which professional identity is forged and tested”). See generally PATRICK EMERY LONGAN, DAISY HURST FLOYD & TIMOTHY W. FLOYD, *THE FORMATION OF PROFESSIONAL IDENTITY: THE PATH FROM STUDENT TO LAWYER* (2020) (describing the “six virtues” lawyers need as part of their professional identity to build a meaningful and sustainable practice: competence, fidelity to client, fidelity to law, public spiritedness, civility, and practical wisdom).

to foster a more interconnected law school community. Similarly, all faculty should take a holistic view of the competencies required for ethical lawyering and commit to incorporating a wide range of skills along with the doctrinal content already covered in their classes. Intentionally and transparently integrating skills and doctrine creates an iterative learning environment. “Skills” professors have long accepted that it’s impossible to teach skills without doctrinal substance; one cannot learn to write without having something to write about. And “doctrinal” professors should also explicitly acknowledge in their classrooms that the divide between “skills” and “doctrine”—what one legal scholar has called “legal education’s self-inflicted wound”—is nonsensical and should be abandoned.<sup>162</sup>

Reimagining—and ultimately adding to—what we teach in law schools necessarily raises questions about what, if anything, we can let go of or otherwise revisit.<sup>163</sup> Professors tend to wring their hands about removing content from their courses either because they think it’s crucial or because of a free-floating concern about “rigor.” But of course, we know it’s impossible for lawyers to go into the world knowing “all of the law.” And scaling down—removing content from our courses to allow space for additional practice and skills instruction on the competencies described above—could increase student learning, retention, and well-being.<sup>164</sup> A scaled-down approach that focuses on depth, practice, and applying new knowledge arguably aligns more closely with legal education’s ultimate goal of teaching students how to *be lawyers*. As

162. LINDA H. EDWARDS, *THE DOCTRINE-SKILLS DIVIDE: LEGAL EDUCATION’S SELF-INFLECTED WOUND* 6 (2017); *see also* Rachel Arnow-Richman, *Integrated Learning, Integrated Faculty*, 92 *TEMP. L. REV.* 745, 746, 752–56 (2020) (defining the law school organizational structure as a “bifurcated faculty” and illustrating how this model “impedes managerial flexibility, limiting law schools’ ability to adjust their curricula in the face of changing market demands”); Tully, *Leave Behind*, *supra* note 3, at 847–57 (describing the faculty caste system as a product of the skills/doctrine divide and arguing that this distinction and the hierarchies it reifies must be abandoned for equitable reform to take hold).

163. Multiple participants at our panel called on law schools to revisit and overhaul the inherited, one-size-fits-all 1L curriculum to pare down or break up the required classes—such as constitutional law—into chunks so that students could exercise more agency over whether, when, and from whom to take them. Audience-Member Comments at Kick Langdell in the Butt: Puncturing the Equilibrium in Law School Pedagogy, Legal Writing Institute’s 20th Biennial Conference (July 22, 2022). Other attendees supported dramatic changes to the sometimes controversial *third* year of law school: everything from eliminating it entirely to replacing it with a two-year apprenticeship with practicing attorneys. *Id.* One participant suggested dispensing with expensive casebooks, which often eat into student budgets for things like rent and food, and instead leaning into open-source materials and teaching through thoughtful hypotheticals and professor-created materials. *Id.*

164. *See* Beth A. Brennan, *Explicit Instruction in Legal Education: Boon or Spoon?*, 52 *U. MEM. L. REV.* 1, 54–55 (2021). For course design strategies, *see* Kimberly E. O’Leary, *Weaving Threads of Clinical Scholarship into the First-Year Curriculum: How the Clinical Law Movement Is Strengthening the Fabric of Legal Education*, 26 *CLINICAL L. REV.* 357 (2019); KIM O’LEARY, JEANETTE BUTTREY & JONI LARSON, *IMPROVING STUDENT LEARNING IN THE DOCTRINAL LAW SCHOOL CLASSROOM: SKILLS AND ASSESSMENT* (2020).

discussed in Part II, the current first-year curriculum has remained largely unchanged for many years. It's time to reassess the curriculum, recognizing that such choices may themselves have downstream effects, such as on bar passage, employment rates, and law faculty composition.<sup>165</sup>

### B. *Inclusive Pedagogy: Teaching and Assessment*

In addition to reimagining *what* we teach, we advocate for reforms—and increased attention more generally—to *how* we teach. As a threshold matter, we note that a law school is more than just what or how we teach; it's also a learning community. This community profoundly affects the social and emotional well-being of those who come through its doors. And we know that to learn effectively and to truly thrive, students must feel both welcome and supported. They must feel like they belong.<sup>166</sup> Beyond enabling “cooperation, collaboration, and the ability to work across difference,”<sup>167</sup> such a setting would “unlock[] the best in everyone”<sup>168</sup> and allow each student to reach their full potential. In educational environments specifically, a sense of belonging helps students adopt a learning mindset that embraces productive struggle and risk-taking as a critical part of learning, rather than a sign of otherness.<sup>169</sup>

165. The bar exam deserves—and is receiving—its own exclusive attention from scholars. *See generally*, e.g., HOWARTH, *supra* note 21, at 127–46 (describing how the initial goal of written bar exams—to test all the law a new lawyer was likely to need—no longer reflects how law is practiced and therefore fails to protect the public as envisioned); MERRITT & CORNETT, *supra* note 103 (observing that the bar exam is a poor measure of minimum competence to practice law). Multiple panel attendees suggested overhauling or even abolishing the bar outright. Audience-Member Comments at Kick Langdell in the Butt: Puncturing the Equilibrium in Law School Pedagogy, Legal Writing Institute's 20th Biennial Conference (July 22, 2022). The shortcomings of our current system of professional licensure are well documented: it's decentralized, inequitable, and bears very little resemblance to the actual practice of law. *See, e.g.*, HOWARTH, *supra* note 21, at 16, 18, 127. The crux of this Article is about law schools, so we leave the question of bar exam reform for another day. We acknowledge, however, that the threat of the bar exam can scare schools into curricular stagnation or propel curricular change; the NextGen bar exam might propel change. So long as the bar exam is waiting for our students on the other side of their legal education, and as long as bar passage remains a crucial metric in schools' ranking and reputation, that single assessment will continue to impact disruption in legal education.

166. Much has been written about the value of belonging in law school. *See, e.g.*, LSSSE 2020 SURVEY, *supra* note 148, at 9 (“Scholarly research indicates that students who have a strong sense of belonging at their schools are more likely to succeed.”). *See generally* RUSSELL A. MCCLAIN (HE/HIM), THE GUIDE TO BELONGING IN LAW SCHOOL (2020) (providing guidance on finding belonging in law school). As Brené Brown, who is well known for her research on shame, vulnerability, and leadership, writes, “True belonging doesn't require you to change who you are; it requires you to be who you are.” BRENE BROWN, BRAVING THE WILDERNESS: THE QUEST FOR TRUE BELONGING AND THE COURAGE TO STAND ALONE 40 (2017) (emphasis omitted).

167. SUSIE WISE, DESIGN FOR BELONGING: HOW TO BUILD INCLUSION AND COLLABORATION IN YOUR COMMUNITIES xiii (2022).

168. *Id.* at xii.

169. *See id.*

### 1. Teaching

Langdell's model grew out of his commitment to a course and method of study he thought would enhance his students' learning and more appropriately prepare them for being lawyers. But Langdell's model—through no fault of his own—predates learning science as a discipline. It's time law schools finally abandon “willful ignorance of evidence-based strategies for learning.”<sup>170</sup> Instead, they must systematically embrace decades of research about how adults learn and, crucially, train law professors to do the same.<sup>171</sup>

The law schools we envision would reliably value teaching—including teaching innovations—as much as faculty scholarship. Valuing teaching is consistent with Langdell's willingness to explore alternative pedagogies that would better engage students and achieve desired learning outcomes. These values should be reflected not only in faculty status and compensation<sup>172</sup> but also by making teaching-related training and mentorship available—if not required—at least to the same extent that it is for faculty scholarship.<sup>173</sup>

And as part of prioritizing teaching, we should ensure that all faculty—not just some—take responsibility for following research in educational psychology and how adult students learn.<sup>174</sup> All of us must incorporate this work into our classrooms. We should expose our students to learning strategies and help them acquire habits that will support their ongoing learning once they enter law practice, and we should do this by integrating this material into our courses

170. Alyson Drake, Head of Instruction & Lecturer, Univ. of Hous. L. Ctr., Audience-Member Comment at Kick Langdell in the Butt: Puncturing the Equilibrium in Law School Pedagogy, Legal Writing Institute's 20th Biennial Conference (July 22, 2022).

171. Such an approach would be a noted contrast to the current one in many law schools. Jennifer M. Cooper & Regan A.R. Gurung, *Smarter Law Study Habits: An Empirical Analysis of Law Learning Strategies and Relationship with Law GPA*, 62 ST. LOUIS U. L.J. 361, 376 (2018) (explaining that law schools “have historically out-sourced law learning skills” to various “self-help” resources that follow a “non, empirical, anecdotal approach: ‘I did well in law school, so you should do what I did’”). A law school following evidence-based strategies for learning instead of the professors' recollections of what worked best for them might, for example, more consistently give students practice and instruction on key lawyering competencies using a skills-across-the-curriculum model. Drake, *supra* note 170.

172. See, e.g., Brinkley, *supra* note 59, at 201 (describing how numerous schools “work[] to resemble, as closely as they can, the top schools by rewarding faculty primarily for scholarly achievement”); see also Webb, *supra* note 52, at 1107 n.175 (“Certainly, the structure of law school does not necessarily support an emphasis on pedagogy, although many law schools and many professors passionately believe in the value of good pedagogy.”); BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 58–61 (2012) (describing how professors are encouraged to prioritize scholarship, not teaching practical lawyering); *Cute as a Button*, STRICT SCRUTINY, at 33:15 (Nov. 23, 2020), <https://strict-scrutiny.simplecast.com/episodes/cute-as-a-button-OpmUo9op> [https://perma.cc/4JKV-BZMP] (describing how professors are paid bonuses for prestigious article placements but not service or other teaching-related responsibilities).

173. Drake, *supra* note 170.

174. As Professor Flanagan has argued, “Law schools need to address the deficits in undergraduate education, as well as the demographic and social changes that have upended assumptions about the experience and knowledge of matriculating law students.” Flanagan, *supra* note 74, at 116.

along with doctrinal content. We should explicitly talk about process *and* product.<sup>175</sup> It's not enough to encourage schools to properly fund and support academic success programs, although that would be a good start.<sup>176</sup> Instead, we must all collaboratively take responsibility for integrating learning strategies with other course content. Providing instruction about learning strategies, such as how we use cognitive schema to categorize and access information, paves the way for explicit instruction, which allows students to devote their cognitive resources “toward doing the task, not trying to understand the task.”<sup>177</sup>

We could also increase inclusion in the classroom by eliminating what many students experience as the obfuscation, misdirection, and even glorified hazing of the first year of law school. Inclusive teaching begins with communicating specific course learning outcomes and ultimately requires us to measure whether and how we are achieving them, ideally using an equity and inclusion lens.<sup>178</sup> Let's start by teaching our students how to succeed in our classes and how to ask for help if they need it.<sup>179</sup> Developing this mindset also sets the stage for students to feel comfortable with—and maximize their

175. Contextualizing academic success produces superior results. See Schulze, *supra* note 123 (citing Kristine S. Knaplund & Richard H. Sanders, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157 (1995)).

176. *Id.* (noting that “many law schools hinder their own success by failing to support those providing support” and “very few schools properly fund and support [ASP] efforts”).

177. Brennan, *supra* note 164, at 42; Flanagan, *supra* note 74, at 116–21 (connecting literature on emerging adulthood with learning theory and suggesting that professors use the “Communities of Practice” model to support students who “lack the sophisticated foundational knowledge and schema necessary to understand, interpret and apply advanced doctrinal knowledge in their courses”).

178. For a useful resource for course design, see CARWINA WENG, DANIELLE R. COVER, MARGARET E. REUTER & CHRIS ROBERTS, *LEARNING LAW THROUGH EXPERIENCE & BY DESIGN* (2019). See also Flanagan *supra* note 74, at 129–31 (listing the nine principles of Universal Design and suggesting that they could be applied in legal education, which would make learning in law school more accessible to all law students, and specifically to students with disabilities); Abrams, *Tipping Point*, *supra* note 68, at 934–42 (suggesting “a bridge in the ABA Standards carrying the equity and inclusion emphasis to measuring the achievement of learning outcomes in classrooms”); Brennan, *supra* note 164, at 44–54 (describing strategies for integrating explicit instruction in law school classrooms to increase student learning).

179. *Saying the Quiet Parts Out Loud*, CAROLINA L. MAG. (2022), <https://magazine.law.unc.edu/june-2022/saying-the-quiet-parts/> [https://perma.cc/Z754-JVE7] (“Students also deserve to learn ‘how things work’ at the beginning of law school so they can better navigate the system and build community during law school, not years later.”). Maria Termini made a similar suggestion at our panel. Maria Termini, Assoc. Professor of Legal Writing, Brooklyn L. Sch., Audience-Member Comment at Kick Langdell in the Butt: Puncturing the Equilibrium in Law School Pedagogy, Legal Writing Institute’s 20th Biennial Conference (July 22, 2022). For a great example of such teaching in action, see Sarah J. Schendel, *Due Dates in the Real World: Extensions, Equity, and the Hidden Curriculum*, 35 GEO. J. LEGAL ETHICS 203, 219–33 (2022), which describes how professors can actually teach students how to ask for extensions and the pedagogical benefits of doing so. In addition to teaching valuable lessons about the practice of law, Professor Schendel explains that “[t]ransparency and frank discussion about the mechanics of the classroom afford professors the opportunity to show students that we understand they are full people with lives outside of the classroom.” *Id.* at 229.

learning from—what they may perceive as “failures.” Intentionally embracing failure as both a mindset and a pedagogical practice helps students build resiliency.<sup>180</sup>

Additionally, to take just one of the presumptions we identified above, if we’re using the Socratic method in class, let’s talk openly about why and how we’re using it and what we hope to achieve. Even better, let’s find ways to make it inclusive rather than alienating, and ensure that students can consistently engage in their own education in a way that supports individual learning and growth. This process doesn’t necessarily mean abandoning all the familiar old practices.<sup>181</sup> There’s certainly a place in law school for an inclusive version of Langdell’s Socratic dialogues—a “student-centered” and “skills-centered” Socratic method that relies on formative assessment, recognizing students’ own insights and critical perspectives, and empowering students to be cocreators of knowledge alongside the professor.<sup>182</sup>

Other opportunities to foster inclusion and belonging in the classroom abound. Some techniques involve having students talk about themselves early in the semester or in orientation to share something about their pre-law selves that is important to their identities.<sup>183</sup> Further into the semester, professors can create other opportunities to build community among various groups and help individual students start to discover their own professional identity by incorporating exercises that develop cooperation skills<sup>184</sup> and explore individual

180. Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L. REV. 959, 985, 990–91 (2018).

181. Sonsteng et al., *supra* note 18, at 394–95 (“The goal of a revitalized legal education system is not to replace traditional teaching practices, but to augment the existing system with a combination of teaching techniques, which meets the needs of a broader segment of students.”).

182. Abrams, *Tipping Point*, *supra* note 68, at 926–34; Abrams, *Reframing*, *supra* note 67, at 564 (accepting the premise that the Socratic method will continue “but not endorsing it” and highlighting “the unique dimensions of the Socratic method that could be better leveraged to strengthen other legal education reforms and innovations”); *see also* Samuel-Siegel, *supra* note 96, at 58–60 (discussing how to add active learning methods to the classroom, either in addition to or instead of the Socratic method to transcend barriers to antiracist pedagogy created by the method).

183. As discussed in this Article, belonging, or “being seen,” is important for all students, but is particularly so for students from first-generation communities or communities who are in law school in small numbers and who often feel invisible in the law school space. *See, e.g.*, Capers, *supra* note 100, at 41 (“[F]or students of color especially, law schools often function as white spaces, spaces where students of color ‘are typically absent, not expected, or marginalized when present.’”). *See generally* L. Danielle Tully, *Race and Lawyering in the Legal Writing Classroom*, 26 J. LEGAL WRITING INST. 195 (2022) (suggesting an approach to fostering belonging through introductory questionnaires).

184. For a sampling of articles explaining the benefits and importance of teaching collaboration in a law school, *see* Paul Radvany, *Experiential Leadership: Teaching Collaboration Through a Shared Leadership Model*, 27 CLINICAL L. REV. 309 (2021) (arguing for developing effective collaborative skills through specifically including leadership training in clinical programs); Jodi S. Balsam, *Teaming Up To Learn in the Doctrinal Classroom*, 68 J. LEGAL EDUC. 261, 279–81 (2019); Melissa H. Weresh, *Assessment, Collaboration, and Empowerment: Team-Based Learning*, 68 J. LEGAL EDUC. 303, 305–26 (2019); Janet Weinstein, Linda Morton, Howard Taras & Vivian Reznik, *Teaching Teamwork to Law Students*, 63 J.



strengths.<sup>185</sup> Such exercises foster the development of perspective, humility, judgment, and the ability to listen. They also deepen the connection between students and their future lawyer selves.<sup>186</sup> By inviting students to cocreate their legal education and helping them develop a wider array of skills we may quickly find that some of the best innovations are ones that originate from or transform into collaborations between students and faculty.<sup>187</sup>

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LEGAL EDUC. 36, 38–41 (2013); Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students' Collaborative Skills*, 38 WM. MITCHELL L. REV. 1162, 1165–68 (2012).

185. See, e.g., HEIDI K. BROWN, *THE FLOURISHING LAWYER: A MULTI-DIMENSIONAL APPROACH TO PERFORMANCE AND WELL-BEING* 21–28 (2022) (describing character strengths and providing exercises for students to explore and enhance individual strengths); SHAILINI JANDIAL GEORGE, *THE LAW STUDENT'S GUIDE TO DOING WELL AND BEING WELL* (2021) (describing lawyer well-being and providing exercises to cultivate personal well-being in law school and beyond).

186. See L. Danielle Tully, *Professional Identity Formation as a Power Skill*, in 1 PROCEEDINGS, 19, 20–24, 25 (2020) (describing exercises and approaches to use in the classroom to deepen and expand students' understanding of law, its practice, and their role in the profession). At our panel, members of the audience thought of other programs that could build community, such as “ask me anything” sessions for 1Ls and community celebrations of events and milestones that do not revolve around accomplishments. Tracy L.M. Norton, Assoc. Professor of Pro. Prac., La. State Univ. L., Audience-Member Comment at Kick Langdell in the Butt: Puncturing the Equilibrium in Law School Pedagogy, Legal Writing Institute's 20th Biennial Conference (July 22, 2022).

187. For example, one of us recently built a version of our law school campus in the metaverse, which served as a springboard for students to create ways to foster community in a remote environment. See Christine Charnosky, *Road Map to the Metaverse? How a Brooklyn Law School Created a Virtual Campus To Tackle a Pandemic Problem*, AM. LAW. (Apr. 1, 2022, 1:41 PM), <https://www.law.com/2022/04/01/foreshadowing-how-law-schools-may-use-the-metaverse-brooklyn-law-created-virtual-campus-using-second-life-technology-at-beginning-of-pandemic/> [<https://perma.cc/AZ43-YUNS> (dark archive)]; see also Joy Kanwar & Kim D. Ricardo, *Self-Made: Introducing Avatars in the Online Classroom*, TEACH L. BETTER (Aug. 3, 2020), <https://teachlawbetter.com/2020/08/03/self-made-introducing-avatars-in-the-online-law-classroom/> [<https://perma.cc/BNQ8-X6PB>] (discussing the use of avatars to build community); Joy Kanwar & Kim D. Ricardo, *Self-Made: Introducing Avatars in the Online Classroom (Part Two)*, TEACH L. BETTER (Aug. 6, 2020), <https://teachlawbetter.com/2020/08/06/self-made-introducing-avatars-in-the-online-law-classroom-part-two/> [<https://perma.cc/6R8D-AFZ8>] (same); Joy Kanwar & Kim D. Ricardo, *Self-Made: Introducing Avatars in the Online Classroom (Part Three)*, TEACH L. BETTER (Aug. 10, 2020), <https://teachlawbetter.com/2020/08/10/self-made-introducing-avatars-in-the-online-law-classroom-part-three/> [<https://perma.cc/PU73-24PE>] (same). The original goal was to give the students, who were otherwise primarily experiencing their 1L year remotely on Zoom during the COVID-19 pandemic, a “third place” to socialize with their classmates and the professor. The Third Place is a concept coined by sociologist Ray Oldenburg to describe a place other than home or work where people come to socialize and where “[t]he sustaining activity is conversation.” See generally RAY OLDENBURG, *THE GREAT GOOD PLACE: CAFÉS, COFFEE SHOPS, BOOKSTORES, BARS, HAIR SALONS AND OTHER HANGOUTS AT THE HEART OF A COMMUNITY* xxii (Marlowe & Co. 3d ed. 1999); see also MULTIPLAYER: *THE SOCIAL ASPECTS OF DIGITAL GAMING* 114 (Thorsten Quandt & Sonja Kröger eds., 2014). In other words, the space, which looked exactly like the law school and allowed the students to choose their own avatars to express some version of themselves, was a place to simply hang out (or fly around) and get to know their classmates. The students decided to make the space their own and began designing uses that deepened their law school learning as a community as well. They invited speakers from the law school to talk with them about the future of the legal profession and law in their virtual space. They also asked to come to the metaverse space to practice for their spring oral arguments. Providing a safe space—in whatever medium, whether physical or virtual, and whether by extra office

## 2. Assessing

Langdell's student assessment model grew out of his desire to make the study of law at Harvard Law School "worthy of a university."<sup>188</sup> He viewed the law as "one of the greatest and most difficult of sciences" and final examinations formed a core component of his plan to make the study of law "regular, systematic, and earnest."<sup>189</sup> Through a rigid course and method of study, Langdell thought he could enhance his students' learning and more appropriately prepare them to be lawyers. Perhaps he could and perhaps he did. But embracing inclusive pedagogy requires us to revisit some of the assessment practices that predominate in the post-Langdellian era. In Part II we discussed some of the problems inherent in using a single summative assessment at the end of a semester to both evaluate students and communicate their level of competency to them and to the outside world. We also discussed some challenges with different grading methods. As we strive for inclusive legal education, we should ask ourselves: If our grading methods don't necessarily assess and communicate competency, shouldn't we reimagine them?<sup>190</sup>

Ultimately, law faculty and students must develop a shared understanding of grading standards. Developing this shared understanding, though, requires faculty to talk among themselves.<sup>191</sup> As Professor DeShun Harris notes, "The reality is that law professors receive very little training about how to create and grade assessments. Instead, law professors typically learn these things by trial and error or by adopting methods from respected colleagues."<sup>192</sup> Such an approach can lead to uneven standards within and across institutions. It can also result in students and employers receiving mixed messages about a particular student's competencies. Prior to embarking on reforms, Professor Harris suggests that faculty grapple with the "fundamental purpose of grading" and

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hours, TA sessions, outside-of-class get-togethers, anonymous or attributed weekly or midsemester check-ins, or other techniques—reinforces the idea that students belong and matter in the law school setting.

188. COMMEMORATION, *supra* note 16, at 84–87.

189. *Id.* at 85.

190. In fact, the ABA requires law schools to "conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation . . . to make appropriate changes to improve the curriculum." AM. BAR ASS'N, 2022–2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 315 (2022). For a comprehensive explanation of the regulations and clear instructions for meeting these requirements, see KELLY TERRY, GERALD HESS, EMILY GRANT & SANDRA SIMPSON, ASSESSMENT OF TEACHING AND LEARNING: A COMPREHENSIVE GUIDEBOOK FOR LAW SCHOOLS (2021).

191. For suggestions on fostering grading conversations among law school faculty, see DeShun Harris, *Let's Talk About Grading, Maybe: Using Transparency About the Grading Process To Aid in Student Learning*, 45 SEATTLE U. L. REV. 805, 824–34 (2022) (describing four methods to foster faculty conversations about grading).

192. *Id.* at 820.

develop institution-specific approaches.<sup>193</sup> Then, law faculty should be transparent with students about the reasons for current assessment and grading practices.<sup>194</sup> And those reasons must be based in more than lore and efficiency.

The ongoing debate about what grades actually mean and who relies on them for what purpose can make it difficult for professors to communicate confidently about why they do what they do.<sup>195</sup> We frequently hear, for example, that we couldn't possibly change our grading system because employers rely on grades for sorting and selection. Other times we hear that students have been told they shouldn't apply for a particular opportunity because an employer won't consider them unless they're from a small set of schools or have a certain GPA.<sup>196</sup> The employers who are most frequently talked about in this context—for example, “BigLaw” firms—are not representative of the full range of experiences our students come to law school to seek out (and for which we should prepare them).<sup>197</sup> Yet these presumed expectations, attributed to a narrow subset of employers, feed into and nourish law schools' attachment to the kinds of toxic sorting and credentialing-for-its-own-sake that saturate the law school environment and often become the drivers of student behavior. We also hear from law faculty that adding more assessments or changing assessment type simply isn't possible under their current workload. We share this sentiment and acknowledge that law schools will need to devise strategies that meet the needs of both students and faculty. But disruption is still necessary.

Disrupting law school grading practices in an inclusive law school requires thoughtful attention to the role of grades for various audiences, including students, other institutions, and future employers. For example, some students

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193. *Id.* at 824. Panel participants suggested other possible grading reforms beyond merely eliminating norm-referenced grading, including eliminating letter grades entirely, using a pass/fail or mastery-based system, and ensuring grades do not impact financial scholarship awards or participation in extracurricular activities. Audience-Member Comments at Kick Langdell in the Butt: Puncturing the Equilibrium in Law School Pedagogy, Legal Writing Institute's 20th Biennial Conference (July 22, 2022).

194. For suggestions on fostering grading conversations with law students, see Harris, *supra* note 191, at 834–51 (describing three methods to foster conversations with students about explicit criteria and feedback, grades earned, and the evaluation process).

195. *Id.* at 813–16.

196. Ironically, considering our commitment to learning, it's often the students' grades in the first year, and even in the first semester—before they have had a chance to receive significant feedback or reflect on their strategies for learning and studying—that most impact the course of their academic journey and the initial jobs for which they are encouraged to apply. Sonsteng et al., *supra* note 18, at 338 (“Opportunities for the highest paid jobs and entry into the most prestigious law firms are based primarily on grades; frequently, the grades received in the first year of law school have the greatest impact.”).

197. ABA-approved law schools reported that approximately twenty-two percent of 2021 law school graduates were employed at law firms with more than 100 attorneys. *Law School Job Outcomes, LAW SCH. TRANSPARENCY*, <https://www.lawschooltransparency.com/trends/jobs/legal-jobs?scope=schools> [<https://perma.cc/H7UW-5J39>].

may experience validation from their grades and this validation may increase their confidence. Others may count on their grades to serve a signaling function with employers, perhaps even to counteract implicit (or explicit) bias.<sup>198</sup> For others, grades may undermine confidence and even discourage intellectual exploration. Students may feel embarrassed about their grades and may not seek out support from classmates or professors. Still others may avoid joining extracurriculars, particularly those that require applications like moot court honor boards and law review, because they fear further failure. Because grades occupy so much space in law schools, rethinking grading practices must be taken with extreme care. But it is long past time for us to have a real conversation about who our system serves and who it leaves behind, and to use what we learn—rather than inherited wisdom and presumptive reverence—to inform intentional pedagogical choices.

#### CONCLUSION

The ideas for change already live in our community. And reimagining our law schools doesn't mean completely abandoning notions that have been at the core of legal education for over a century. If we combine the best of Langdell's innovations with what we have learned in the years since his deanship, perhaps we'd end up with a more effective classroom experience. Indeed, perhaps the very definition of a law school classroom would change.

Langdell faced numerous structural obstacles and quite a few naysayers as Harvard Law School's reformer dean. But he had one advantage: legal education wasn't really working well anywhere. The professional law school was in its nascent phase—having yet to settle into its well-worn path. Langdell was, in some ways, free to innovate. Ironically, the pervasiveness of his success—the fact that, as far as legal education goes, it's still Langdell's world and most contemporary law schools are just living in it—has left us far more constrained than Langdell ever was. Especially in today's environment, where mathematical formulas determine a law school's rank and therefore ostensibly its prestige, it's much riskier to break away and set off in a new direction.

But set off we must. As we move forward, let's ask ourselves how we can work with students and other stakeholders to disrupt a system that has been passed down for so long that it's lost its own radical roots.

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198. See John Bliss, David Sandomierski & Tayzia Collesso, *Pass for Some, Fail for Others: An Empirical Analysis of Law School Grading Changes in the Early Covid-19 Pandemic* 4–5 (Feb. 5, 2022) (unpublished manuscript) (on file with the North Carolina Law Review) (documenting results from an empirical study examining the move to pass/fail grading and noting many students from historically underrepresented groups initially preferred curved grades, as opposed to pass/fail, because they wanted the opportunity to demonstrate academic achievement to future employers).