

American University Washington College of Law

## Digital Commons @ American University Washington College of Law

---

Contributions to Books

Scholarship & Research

---

6-9-2021

### Feminism's Transformation of Legal Education and Unfinished Agenda

Jamie Abrams

Follow this and additional works at: [https://digitalcommons.wcl.american.edu/facsch\\_bk\\_contributions](https://digitalcommons.wcl.american.edu/facsch_bk_contributions)



Part of the [Law and Gender Commons](#), [Legal Education Commons](#), [Legal Profession Commons](#), and the [Legal Writing and Research Commons](#)

---

## FEMINIST PEDAGOGY IN LEGAL EDUCATION

Jamie R. Abrams

### Introduction

Feminism has powerfully influenced legal education over more than a century of critical engagement. Yet, the feminist agenda remains unfinished as it adapts to contest modern manifestations of century-old challenges. This chapter traces and evaluates the influences of feminism in legal education. It explores how feminist critiques challenged the substance of legal rules, the methods of law teaching, and the culture of legal education. Following decades of advocacy, feminist pedagogical reforms have generated new fields, new courses, new laws, new leaders, and new feminist spaces.

This chapter also examines feminism's unfinished agenda in legal education. While notable changes have endured and flourished, legal education today still looks more similar than different to law school a century ago.<sup>1</sup> Legal education remains largely standardized with only soft innovation and differentiation among schools.<sup>2</sup> The Socratic method still fosters a competitive, adversarial, and marginalizing classroom. Women faculty remain disproportionately burdened by service obligations, caregiving in the workplace and in the home, by bias in hiring, promotion, and evaluation. Doctrinal areas of study and hierarchies within law school institutions continue to privilege a traditional model of legal education built by and for men.

---

<sup>1</sup> Lucinda Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, 1 YALE J. L. & FEMINISM 41 (1989) (concluding that "U.S. law schools look remarkably like it did in [the late 1800s]" and that "the needs and concerns of women remain largely invisible or unexplored in mainstream law school classes").

<sup>2</sup> See e.g., BENJAMIN H. BARTON, *FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND* 28 (2019) ("[T]he most basic DNA of current law schools, including their structure and educational program, came from Harvard in the nineteenth century.").

In part, the limits of the feminist legal education revolution reflect that law schools cannot adapt and reform in isolation. They interface with powerful institutions, systems, and norms. The legal profession, law school accreditors, and regulators remain deeply influential in legal education.<sup>3</sup> As law schools prepare lawyers for the bar exam and the modern practice of law in a competitive, regulated market, these external and interconnected forces demand that the feminist agenda examine larger structural changes to secure lasting reforms.

### **Early Feminist Efforts: Access to Legal Education**

Early liberal feminist activism focused on removing formal barriers to legal education and bar admission. The University of Iowa and Washington University in St. Louis became the first law schools to admit women in 1869, followed in 1870 by the University of Michigan.<sup>4</sup> While educating women lawyers was considered radical at the time, formal legal education was *itself* a new innovation. Most lawyers at the time trained through apprenticeships; but these too were unavailable to women or restricted to fields like family law.<sup>5</sup>

In 1896, Ellen Spencer Mussey and Emma Gillett made history by establishing the Washington College of Law (“WCL”) in Washington, D.C. for the purpose of educating women lawyers.<sup>6</sup> WCL incorporated some unique structural protections to support its women students, such as night classes, low tuition, and even allowing one student to attend under a pseudonym to protect her identity.<sup>7</sup> But aside from the radical move of seeking legitimacy as a women-run law

---

<sup>3</sup> See e.g., Katharine T. Bartlett, *Feminist Perspective on the Ideological Impact of Legal Education Upon the Profession*, 72 N.C. L. REV. 1259 (1994) (suggesting that progress “cannot be made by law schools alone, without corresponding changes in the legal profession”).

<sup>4</sup> Mary L. Clark, *The Founding of the Washington College of Law: The First Law School Established by Women for Women*, 47 AM. U. L. REV. 613, n. 42 (1998).

<sup>5</sup> VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* 152 (1998).

<sup>6</sup> Articles of Incorporation, Washington College of Law (1898). See generally Clark, *supra* note 4, at 672.

<sup>7</sup> GRACE HATHAWAY, *FATE RIDES A TORTOISE A BIOGRAPHY OF ELLEN SPENCER MUSSEY* 130 (1937).

school for women students, its legal education pedagogy was entirely conventional.<sup>8</sup> And even as a law school for “women,” the radicalness of Mussey and Gillett’s fledgling feminist institution was severely undercut by the exclusion of African-Americans for fifty more years.<sup>9</sup>

Entry to law school was only one of many barriers facing women in the legal profession. When women could not vote or serve on juries, it was common for local bar associations to exclude women. These external barriers led Mussey and Gillett to establish the D.C. Women’s Bar Association in 1917,<sup>10</sup> an important foreshadowing of the external work feminists would need to accomplish to advance women in law schools.

Despite these early institutional pioneers, many law schools resisted the admission of women well into the 20<sup>th</sup> century. Harvard did not admit women law students until 1950 and Washington & Lee until 1972.<sup>11</sup> Women’s law school enrollment remained statistically low for decades, at only 6.35% in 1972.<sup>12</sup>

Legal education hit a milestone in 2016 when women’s enrollment exceeded men’s,<sup>13</sup> an achievement that has now held for four years.<sup>14</sup> But national numbers shroud a less rosy picture, as women are disproportionately enrolled in certain (mostly lower ranked) law schools, and remain well below the 50 percent mark in many others.<sup>15</sup>

---

<sup>8</sup> Jamie R. Abrams and Daniela Kraiem, *Banding Together: Reflections on the Role of the Women’s Bar Association of the District of Columbia and the Washington College of Law in Promoting Women’s Rights*, 4 MOD. AMER. 2 (Fall 2008).

<sup>9</sup> Clark, *supra* note 4, at 656.

<sup>10</sup> Letter from the WCL Alumni Ass’n (1917).

<sup>11</sup> David Garner, *Socratic Misogyny – Analyzing Feminist Criticism of Socratic Teaching in Legal Education*, 2000 B.Y.U. L. REV. 1597, 1613 (2000).

<sup>12</sup> *Id.*

<sup>13</sup> See Elizabeth Olson, *Women Make Up Majority of U.S. Law Students for First Time*, N.Y. TIMES, Dec. 16, 2016.

<sup>14</sup> Law School Rankings by Female Enrollment (2019), Enjuris, <https://www.enjuris.com/students/law-school-female-enrollment-2019.html>.

<sup>15</sup> *Id.* (noting disproportionately high rates of women at these law schools: District of Columbia (68.18%), North Carolina Central (67.86%), Atlanta’s John Marshall (65.69%), Howard (64.18%), Texas Southern (63.78%), and over a dozen other schools exceeding 60% enrollment).

Women of color report complex and multidimensional experiences in law school. Today, 31% of enrolled law students are students of color, reflecting a steady upward trajectory when examined in the aggregate.<sup>16</sup> These aggregate numbers obscure vast differences when examined further by gender, race, and region. Notably, enrollment of women of color vastly *exceeds* men of color.<sup>17</sup> Black women's enrollment doubles black male enrollment.<sup>18</sup> In fact, enrollment for African-American/Black students has trended downward for four consecutive years, even as the aggregate number of students of color has risen.<sup>19</sup> These aggregate numbers also obscure vast differences when examined by race and by region, with states such as Texas, Arizona, California, Florida, and Hawaii reporting enrollment rates closer to 45%, while other states remain in the 10-20% range.<sup>20</sup> Despite their statistical advantage, women of color report more negative *experiences* in law school than male peers when measured by their overall satisfaction.<sup>21</sup> Women of color disproportionately contemplate withdrawing from law school compared to all other categories of students and attrition rates for students of color are indeed disproportionately higher.<sup>22</sup>

Law school gains have not held in the legal profession, reflecting equity concerns in advancement and retention. Women, and especially women of color, are still dramatically under-

---

<sup>16</sup> The Buzz, *Law School Diversity Report: JD Enrollment by Race & Ethnicity*, Oct. 5, 2020, available at <https://equalopportunitytoday.com/2020/10/05/2019-law-school-diversity-report-jd-enrollment-by-race-ethnicity/>.

<sup>17</sup> Various Statistics on ABA-Approved Law Schools, American Bar Association, [https://www.americanbar.org/groups/legal\\_education/resources/statistics/](https://www.americanbar.org/groups/legal_education/resources/statistics/) (citing 2020 enrollment data that 7,598 women of color enrolled, compared to 4825 men of color, out of 38,202 total 1L students).

<sup>18</sup> Law School Enrollment by Race & Ethnicity, ENJURIS (2019), <https://www.enjuris.com/students/law-school-race-2019.htm>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Women of Color: A Study of Law School Experience, THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION AND THE CENTER FOR WOMEN (Oct. 2020), <https://utexas.app.box.com/s/kvn7dezec99khii6ely9cve368q4gj9o>.

<sup>22</sup> Kylie Thomas & Tiffane Cochran, *ABA Data Reveals Minority Students are Disproportionately Represented in Attrition Features*, Sept. 18, 2018, available at <https://www.accesslex.org/xblog/aba-data-reveals-minority-students-are-disproportionately-represented-in-attrition-figures>.

represented in law practice, law faculties, law school administration, the judiciary, and law review authors.<sup>23</sup>

The number of women faculty has grown mightily over the decades. In 1977, there were 391 women law professors nationwide,<sup>24</sup> comprising 8.6% of all tenure and tenure-track faculty.<sup>25</sup> By the mid-80s, this percentage had doubled to 15.9%.<sup>26</sup> Today, women comprise nearly 40% of law school faculty and faculty of color comprise 16.7% of law school faculty,<sup>27</sup> reflecting strong trajectories in the aggregate. Women of color remain dramatically under-represented and even more so in the tenure/tenure-track ranks.<sup>28</sup> Women of color were just 7% of law faculty in 2009 when these data were last released.<sup>29</sup>

A closer look at aggregate numbers also reveals entrenched hierarchies and segmentation. Women faculty occupy lower-status and lesser-paid jobs while more male faculty hold full professorships at more prestigious schools.<sup>30</sup> Women faculty are saddled with disproportionate institutional service and support, described as the school's "housework."<sup>31</sup> The paradox of more work for less status is even starker for women of color.<sup>32</sup> These uneven gains point to the unfinished business of even a liberal feminist agenda.

---

<sup>23</sup> AM. BAR ASS'N, A CURRENT GLANCE AT WOMEN IN THE LAW 4 (2019), [https://www.americanbar.org/content/dam/aba/administrative/women/current\\_glance\\_2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf).

<sup>24</sup> NANCY C. JURIK & SUSAN EHRLICH MARTIN, DOING JUSTICE, DOING GENDER 124 (2006).

<sup>25</sup> *Id.*

<sup>26</sup> Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 548 (1988).

<sup>27</sup> AM. BAR ASS'N, A CURRENT GLANCE AT WOMEN IN THE LAW 4 (2019), [https://www.americanbar.org/content/dam/aba/administrative/women/current\\_glance\\_2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf).

<sup>28</sup> See e.g., YOLANDA FLORES NIEMANN, ET. AL, PRESUMED INCOMPETENT II 3 (2020) (citing 2016 data from the National Center for Education Statistics published in 2018).

<sup>29</sup> Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & LAW 441, 445-46 (2015) (citing 2009 numbers before AALS stopped releasing data).

<sup>30</sup> See Paula Monopoli, *Gender and the Crisis in Legal Education: Remaking the Academy in Our Image*, 2012 MICH. ST. L. REV. 1745 (2012); Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99 (2009).

<sup>31</sup> McGinley, *supra* note 30.

<sup>32</sup> Deo, *supra* note 29.

In addition to growth in law student and faculty representation, women have risen in the leadership ranks. In April 2018, 31% American Association of Law School (AALS) member-schools had women deans, 6.7% of whom were women of color.<sup>33</sup> And yet, careful observers watch these numbers warily for their long-term predictive power. Skeptics observe that the rise in women deans has notably coincided with nationwide law school budget cuts, admissions declines, and job placement challenges.<sup>34</sup>

Despite their historic significance, all of these gains remain fraught, vulnerable, and segmented. Deep struggles remain to preserve feminist gains in access to legal education and the legal profession. The global COVID-19 pandemic both reminds feminists that historic gains need to be protected and reveals a norm-shattering moment in legal education to advance the feminist agenda, as explored below.

While the liberal feminist agenda succeeded in getting women in the door, at the podium, and in the Dean's Suite of law schools, it did little to *integrate* women into the curriculum.<sup>35</sup> Ironically, after centuries of women's exclusion on the basis of presumed differences from men, once admitted, women were assumed to be the same.<sup>36</sup> Women endured sexism,<sup>37</sup> tokenism,<sup>38</sup> and sexual harassment.<sup>39</sup> Women's initial law school presence compelled them "to simply join the academic procession, not to question its direction."<sup>40</sup> The next challenge feminists faced was

---

<sup>33</sup> Laura M. Padilla, *Presumptions of Incompetence, Gender, Sidelining, and Women Law Deans* in YOLANDA FLORES NIEMANN, ET. AL, PRESUMED INCOMPETENT II 117-19 (2020) (noting that women have led many top-10 law schools and further analyzing the data of first Latina, Native, and Asian American deans).

<sup>34</sup> *Id.* at 119 (explaining that current deans are doing "housekeeping, rather than growth").

<sup>35</sup> Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547, 1547 (1993) (quoting the Dean of Harvard Law School reassuring alumni that women's presents in law school was unlikely to "change the character of the School or even its atmosphere to any detractable extent").

<sup>36</sup> *Id.* at 1547.

<sup>37</sup> *Id.*

<sup>38</sup> Stephanie Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147 149 (1988) (describing class participation "Ladies Day").

<sup>39</sup> Garner, *supra* note 11, at 1613.

<sup>40</sup> Garner, *supra* note 11, at 1614.

thus transforming legal education itself, following in the footsteps of feminist pedagogical reforms across other disciplines.

### **Developing a Feminist Pedagogy**

Before legal education reforms, feminist educators challenged the masculinist styles that dominated in all academic disciplines and developed specialized spaces for the study of sex and gender. Women's studies courses and programs emerged in the late 1960s and 1970s as a stand-alone academic study, drawing upon feminist methods, centrally examining women's lives and experiences, questioning constructs of gender, interrogating systems of privilege and power, and exploring the intersections of gender, race, sexual orientation, class, and disability.<sup>41</sup> These courses, materials, and programs grew rapidly, along with newly emerging feminist journals and a feminist press.<sup>42</sup>

Women's Studies programs and courses inseparably transformed both *what* was studied and *how* learning was structured by reconfiguring classrooms, re-envisioning assignments, and leveling power imbalances.<sup>43</sup> Faculty in women's studies courses sought to create spaces that were nonauthoritarian and egalitarian without any one voice dominating the conversation, fostering a spirit of cooperation instead of competition.<sup>44</sup>

Early Women's Studies programs wrestled with how to interface and integrate with the largely unaltered power structures of the larger university,<sup>45</sup> a challenge feminist law faculty

---

<sup>41</sup> Marilyn J. Boxer, *For and About Women: The Theory and Practice of Women's Studies in the United States*, 7 SIGNS: J. OF WOMEN IN CULTURE & SOCIETY, 661, 662-63 (1982).

<sup>42</sup> *Id.* at 665 (documenting how 150 new women's studies programs emerged from 1970-1975 and 150 new programs from 1975-1980 along with 30,000 new courses offered at colleges and universities).

<sup>43</sup> *Id.* at 667 (describing techniques such as "circular arrangement of chairs, periodic small-group sessions, use of first names for instructors as well as students, assignments that required journal keeping, "reflection papers," cooperative projects, and collective modes of teaching with student participation").

<sup>44</sup> Lora H. Robinson, *The Emergence of Women's Courses in Higher Education*, ERIC CLEARINGHOUSE ON HIGHER EDUC. 1, 2-3 (1972).

<sup>45</sup> Catherine M. Orr, *Tellings of Our Activist Past: Tracing the Emergence of Women's Studies at San Diego State College*, 27 WOMEN'S STUD. Q. 212 (1999).



would soon face as well.<sup>46</sup> These programs also struggled to give full voice to the experiences of women of color, of lesbian women, and of any women outside the cisgender heterosexual white able-bodied women who typically founded and directed these programs.<sup>47</sup>

Over time, specialized women's courses expended to the humanities and the social sciences, where women faculty were present in strong numbers, then later to the arts, sciences, and professional fields.<sup>48</sup> These courses sought to address the "virtual absence" and invisibility of women from substantive fields, often relegating women to an appendix or a footnote, positioned as an exception to the field as a whole.<sup>49</sup>

Emerging courses and specialized content shaping *what* was taught across disciplines continued to transform *how* material was taught, challenging teaching styles that privileged and marginalized.<sup>50</sup> Across disciplines, feminist pedagogy came to demand that multiple perspectives be considered, that all voices be valued, that experiences be contextualized, and that fields be re-oriented away from the notion of one absolute, objective truth.<sup>51</sup> Feminist pedagogy also directed learning toward achieving transformative changes in society through action.<sup>52</sup>

Notably, these principles of feminist pedagogy are not about the narrow question of advancing *women*. Rather, they stand to improve the experiences of *all* learners and communities. These feminist pedagogical influences eventually took root in legal education.

### **Feminist Methods Transform Legal Education**

---

<sup>46</sup> Boxer, *supra* note 41, at 670.

<sup>47</sup> *Id.* at 677, 679-80.

<sup>48</sup> Robinson, *supra* note 44, at 1.

<sup>49</sup> *Id.* at 2.

<sup>50</sup> See e.g., Elisabeth Hayes, *Insights from Women's Experiences for Teaching and Learning*, in 43 EFFECTIVE TEACHING STYLES: NEW DIRECTIONS FOR CONTINUING EDUC. 55, 56-57 (1989).

<sup>51</sup> *Id.* at 58.

<sup>52</sup> *Id.*

As women took their place in the legal academy as students, faculty, and administrators, feminists sought greater transformations. Feminists' victories in institutional access were the starting point, not the finish line.<sup>53</sup> Feminists began creating communities and spaces to convene and to collaborate.<sup>54</sup> They challenged core doctrinal premises, problematic legal rules, and ineffective teaching methods through their teaching, scholarship, and advocacy.

### ***Creating Feminist Spaces and Building Feminist Communities***

Feminist action begins with building community and experience-sharing in the consciousness-raising tradition. Women's early presence in law schools presented "a vexing combination of presence and absence."<sup>55</sup> Women experienced "exaggerated attention combined with near total invisibility seldom seen but always center stage."<sup>56</sup> These realities were and remain even starker for women of color, who report feeling both hyper-visible and invisible.<sup>57</sup> Accordingly, community-building was and remains a critical component of feminist legal education pedagogy.

In the 1960s, feminist law faculty began creating spaces for conversation, community-building, scholarship, and advocacy. These spaces were more inclusive than the mainstream and non-hierarchical, thus bringing feminism to both "method and practice."<sup>58</sup> This mobilization also brought faculty out of the law school and into the community in scholarly discourse and activism. In the late 1960s, for example, a group of New York scholars organized a Women and

---

<sup>53</sup> See Christine Boyle, *Teaching Law as If Women Really Mattered, or, What About the Washrooms?* 2 CAN. J. WOMEN & L. 96, 108-09 (1986).

<sup>54</sup> See generally Linda K. Kerber, *Writing our Own Rare Books*, 14 YALE J. L. & FEMINISM, 429 (2002) (chronicling early women and the law gatherings and casebook manuscripts).

<sup>55</sup> Catharine A. MacKinnon, *Mainstreaming Feminism in Legal Education*, 53 J. LEGAL EDUC. 199, 211 (2003).

<sup>56</sup> *Id.*

<sup>57</sup> See Jessica Lavariega Monforti and Melissa R. Michelson, *They See Us, but They Don't Really See Us* IN YOLANDA FLORES NIEMANN, ET. AL, PRESUMED INCOMPETENT II 59 (2020).

<sup>58</sup> Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School,"* 38 J. LEGAL EDUC. 61, 65 (1988).

the Law Conference to discuss topics such as family law, criminal law, discrimination law, reproductive rights, and constitutional law.<sup>59</sup> Law reform efforts targeted substantive areas like sexual harassment, rape, domestic violence, employment, family law, and reproductive rights. These public feminist reforms inevitably transformed learning inside the classroom. For example, reforms to rape laws led professors to re-envision the doctrine's place in the law school curriculum.<sup>60</sup>

Pioneering scholars began to publish casebooks on Women and the Law and Sex-Based Discrimination.<sup>61</sup> These materials, borne out of scholarly faculty communities, created opportunity for specialized study and community-building at the student level. Over time, these specialized survey classes led to courses like Feminist Jurisprudence, bringing a feminist methodological lens.<sup>62</sup>

As powerful feminist spaces and academic materials emerged to deepen discourse within select pockets and courses, questions of the scalability and transferability of feminist methods emerged. Were there risks that specialized courses and programs would marginalize women's issues in ways that reinforced the myth of law's neutrality throughout *the rest* of the law school curriculum?<sup>63</sup> While urging these courses to continue, Catharine MacKinnon and other contemporaries boldly called for the "mainstreaming" of gender issues across legal education.<sup>64</sup>

---

<sup>59</sup> Carrie Menkel-Meadow, Martha Minow and David Vernon, *From the Editors*, 38 J. LEGAL EDUC. 1 (March/June 1988).

<sup>60</sup> See generally Kate E. Bloch, *A Rape Law Pedagogy*, 7 YALE J. L. & FEMINISM (1995) (noting that many criminal law instructors do not teach rape or they teach it different from other rules).

<sup>61</sup> See e.g., BARBARA ALLEN BABCOCK, ANN E. FREEDMAN, ELEANOR NORTON, & SUSAN DELLER ROSS, *SEX DISCRIMINATION AND THE LAW: CAUSE AND REMEDIES* (1975); KENNETH DAVIDSON, RUTH BADER GINSBURG, & HERMA HILL KAY, *TEXT, CASES, AND MATERIALS ON SEX-BASED DISCRIMINATION* (1st ed. 1974). See generally Linda K. Kerber, *Writing our Own Rare Books*, 14 YALE J. L. & FEMINISM, 429 (2002).

<sup>62</sup> See e.g., Morrison Torrey, Jackie Casey, and Karin Olson, *Teaching Law in a Feminist Manner: A Commentary from Experience*, 13 HARVARD WOMEN'S L. J. 87 (1990).

<sup>63</sup> See e.g., Boyle, *supra* note 53, at 108.

<sup>64</sup> Catharine MacKinnon, *Feminism in Legal Education*, 1 LEGAL EDUC. REV. 85, 93 (1989) [*"Feminism in Legal Education"*].

Feminism was not something to be done in fragments in select spots of courses or books, but rather, required a wholesale effort to rethink the curriculum holistically.<sup>65</sup>

Courses on Women and the Law, Sex-Discrimination, and Feminist Jurisprudence have withstood the test of time as mainstays in the curriculum, even as the feminist agenda marched on to challenge deeper presumptions and norms dominating legal education.

### ***Challenging the Foundational Assumptions Underlying Law and Pedagogy***

Feminists pushed for a transformation of legal education and its threshold assumptions, approaches, and methodologies. They contested the “add woman and stir”<sup>66</sup> model and refused to limit feminism to a “narrow, one-dimensional, one-note, geographically limited, thin set of problems, questions, and people.”<sup>67</sup> Instead, they challenged the unstated assumptions that shaped legal education and the law itself.

Feminists challenged the notion that longstanding legal rules were “given, static, and almost immutable.”<sup>68</sup> For example, they challenged the premise of a gender-neutral person positioned at the law’s center “for whose protection and honour the laws are written, and for whom the system is designed.”<sup>69</sup> This perceived neutrality, feminists argued, rendered gender invisible, while exalting a system designed around privileged male norms.<sup>70</sup>

---

<sup>65</sup> *Id.* (providing examples of how this would work across other doctrinal courses).

<sup>66</sup> Bartlett, *supra* note 3.

<sup>67</sup> Catharine A. MacKinnon, *Mainstreaming Feminism in Legal Education*, 53 J. LEGAL EDUC. 199, 200 (2003) [*“Mainstreaming Feminism in Legal Education”*].

<sup>68</sup> Menkel-Meadow, *supra* note 58, at 68.

<sup>69</sup> *Feminism in Legal Education*, *supra* note 64, at 88.

<sup>70</sup> *Id.* at 88.

Feminists challenged the unidirectional process of professors transmitting knowledge through objective discussion.<sup>71</sup> They challenged the method of teaching with appellate cases because it obscured factual context and lawyering strategy.<sup>72</sup>

Feminists aligned with other critical communities in challenging legal education's structural and pedagogical premises. Critical Legal Studies converged with feminist pedagogies in seeking to dismantle law school hierarchies.<sup>73</sup> Critical race theorists and critical race feminists particularly revealed the invisibility of race and gender in law. Beginning from an unstated White male perspective, positioned whiteness and masculinity as the norm, as it ushered in a "race-based system of rights and privileges."<sup>74</sup>

Feminist reforms would later coalesce with those urged by the LatCrit Community and Queer Theorists, respectively advocating for the interests of the Latinx community and the LGBTQI community. These communities had their own pains, oppressions, and marginalizations that they saw magnified and exacerbated in legal education pedagogy and in the legal profession. Together, these critical perspectives aligned in demanding law and pedagogy reforms exposing and upending unstated hierarchies within the law and legal institutions.

### ***Identifying Law's Gendered Harms and Exposing False Dichotomies***

Feminists did not just contest the underlying doctrinal norms of law and legal study. They also exposed the *harms* that these norms caused.<sup>75</sup> The false dichotomies of rational-irrational,

---

<sup>71</sup> See e.g., Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method*, 45 STAN. L. REV. 1571 (1993).

<sup>72</sup> See Rhode, *supra* note 35, at 1558.

<sup>73</sup> DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY—A POLEMIC AGAINST THE SYSTEM* (2007) (republishing 1983 work).

<sup>74</sup> See e.g., Emily A. Bishop, *Avoiding 'Ally Theater' in Legal Writing Assignments*, 26 PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING 1 (Spring 2018); Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 781-82 (2018).

<sup>75</sup> See e.g., Lucinda M. Finley, *The Nature of Domination and the Nature of Women: Reflections on Feminism Unmodified*, 82 NW. U. L. REV. 352, 384 (1988).

public-private, intellectual-emotional did not just *exist*, they reinforced gendered stereotypes and marginalized women.<sup>76</sup>

Dominance feminists particularly critiqued the neutrality and objectivity of the law, and the public-private dichotomy embedded in it, as the *source* of women's subordination. The dominance feminist lens found the objective, rational, neutrality of the law "flawed" and distortive.<sup>77</sup> Male patriarchal norms, masquerading as normal and neutral, harm and discredit women.<sup>78</sup> For example, purportedly neutral standards like the "reasonable person" in tort law are framed around male wage-earning power, which compromises women's claims and depresses their damage recoveries.<sup>79</sup>

These harms are even more searing for women of color. Law school's "perspectiveless" approach marginalizes students of color. It discounts any particular perspective by pretending to hold "no specific cultural, political, or class characteristics."<sup>80</sup> This framing forces students of color to abandon their identities and instead adopt a perspective that is actually infused with a White, middle class world view. Students of color are left to provide marginalized "testimony" to challenge the dominant norms.<sup>81</sup> Students of color are then perceived as presenting "biased, self-interested, or subjective opinions" when they voice their experiences, creating "twin problems of objectification and subjectification."<sup>82</sup> Mari Matsuda describes this vacillating between a

---

<sup>76</sup> Menkel-Meadow, *supra* note 58, at 71, 74.

<sup>77</sup> Bartlett, *supra* note 3, at 1266.

<sup>78</sup> Finley, *supra* note 75, at 384; Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847, 893 (2000).

<sup>79</sup> Lucinda Finley, *Women's Experiences in Legal Education: Silencing and Alienation*, 9 LEGAL EDUC. REV. 101 (1989).

<sup>80</sup> Kimberlé Crenshaw, *Foreward: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33, 41 (1994).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 35-36.

student's lived consciousness and "the white consciousness required for survival in elite educational institutions" as "multiple consciousness."<sup>83</sup>

### ***Questioning the Socratic Method***

Feminist reforms particularly challenged the Socratic method's positioning as the dominant paradigm for delivering legal education. The Socratic method is an inquisitive method of teaching whereby faculty lead students through rules and cases using a fluid question and answer dialogue to develop reasoning and argumentation skills. Feminist faculty excoriated the Socratic method for failing in both teaching and learning. It sits at a "level of abstraction" that is "both too theoretical and not theoretical enough" in that it fails to examine the foundations of legal rules and fails to teach students how to use it.<sup>84</sup>

Gendered double standards pervade the Socratic method. The iconic Professor Kingsfield personifies the archetype of the Socratic professor. Kingsfield domineered the Socratic classroom to great reverence, even as his students arrived in fear and left confused and demoralized.<sup>85</sup> Yet, women teachers do not easily fit within this model. Students leaving women faculty's classrooms confused and demeaned would more likely be viewed as incompetent than deeply respected.<sup>86</sup> Fitting into this Socratic model is even more complicated for women faculty of color.<sup>87</sup>

Traditional performances of the Socratic method embed a teacher-student hierarchy and the hierarchy *is the point*.<sup>88</sup> Catherine MacKinnon elaborated:

---

<sup>83</sup> Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method* 14 WOMEN'S RIGHTS L. REP. 213 (1993).

<sup>84</sup> See Rhode, *supra* note 35, at 1558.

<sup>85</sup> Catharine P. Wells, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155, 156 (1988).

<sup>86</sup> *Id.*

<sup>87</sup> See generally GABRIELLA GUTIÉRREZ Y MUHS, ET. AL, IN PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (2012).

<sup>88</sup> Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982).

At its worst, the process embodies all the voices of inequality. Students are motivated by fear; infantilized, they learn the opposite of respect for their own thoughts . . . law students are schooled in hierarchy, taught deference to power, and rewarded for mastering codes for belonging and fitting in. By initiation, they learn to inflict the same when their chance comes.<sup>89</sup>

Beginning in the 1980s and continuing into the 1990s, feminist scholars documented disparities in women's Socratic class participation. These studies revealed gendered discrepancies in class participation.<sup>90</sup> Male students were more willing to "take up space" while women remained silent in ways that compromised academic and professional success.<sup>91</sup> The 1994 publication of *Becoming Gentlemen: Women's Experiences at One Ivy League Law School* highlighted how similarly qualified male and female candidates diverge as they move from their first year of law school to their third.<sup>92</sup> Co-authored by Professor Lani Guinier, who would go on to become the first woman of color granted tenure at Harvard Law School,<sup>93</sup> the study revealed that women students receive relatively lower grades, class ranks, and honors than their male peers.<sup>94</sup>

While prior studies had documented women's reduced classroom participation,<sup>95</sup> *Becoming Gentlemen* exposed women's alienation resulting from the Socratic method, even as this pedagogy dominated (then and now) across all first-year instruction and much of the upper-level curriculum. Women described their first-year as "a radical, painful, or repressive experience" with psychological and employment consequences.<sup>96</sup> The Socratic method represented legal

---

<sup>89</sup> *Mainstreaming Feminism in Legal Education*, *supra* note 67, at 201-02.

<sup>90</sup> Garner, *supra* note 11, at 1627.

<sup>91</sup> Stephanie Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147, 151 (1988).

<sup>92</sup> Lani Guinier, Michelle Fine, Jane Balin, et. al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PENN. L. REV. 1 (1994).

<sup>93</sup> Harvard Law School, <https://hls.harvard.edu/faculty/directory/10344/Guinier>. Renowned Harvard Law School Professor, Derrick Bell, had previously taken an extended unpaid leave of absence, leading to his termination, in protest over Harvard's refusal to hire a single woman of color on its law faculty. *Harvard Law Notifies Bell of Dismissal for Absence*, N.Y. TIMES, A.19, July 1992.

<sup>94</sup> Guinier, *supra* at 92, at 21-32.

<sup>95</sup> See e.g., Taunya Lovell Banks, *Gender Bias in the Classroom*. 38 J. LEGAL EDUC. 137 (1989).

<sup>96</sup> Guinier, *supra* at 92, at 6, 42.



education more broadly in which there were “few winners and many losers.”<sup>97</sup> It took the differences among students and “convert[ed] it into a disadvantage.”<sup>98</sup>

*Becoming Gentlemen* issued law schools a powerful call to action to change their structure and content. This call to action shifted the focus from adapting women *to* legal education toward examining law school’s “institutional design.”<sup>99</sup> The authors concluded that institutions have a “professional and educational obligation” to meet the needs of all of its students and to “minimize the gendered differences in academic performance, whatever the source.”<sup>100</sup> These Socratic method critiques brought the experiences of women and students of color to the forefront, revealing the importance of systemic legal education reforms. Yet, the Socratic method still endures in many large, doctrinal classes, a point explored more at the closing of this chapter.

### ***Incorporating Women’s Values, Experiences, and Perspectives***

In reframing *how* legal education was delivered, feminists sought to inject women’s perspectives and experiences into law study. Difference strands of feminist theory particularly explored how values traditionally associated with women were marginalized in legal education and needed to be pedagogically centered.<sup>101</sup> This marked a transformative pedagogical move away from trying to assimilate women *into* law schools toward aligning the culture of legal education *with* women’s learning styles.

Historically, law school included little emphasis on practical lawyering skills, such as problem-solving and client counseling. This left legal education emphasizing competition and individualism.<sup>102</sup> Law schools rewarded students “making any argument for any point of view

---

<sup>97</sup> *Id.* at 68.

<sup>98</sup> *Id.* at 81.

<sup>99</sup> *Id.* at 45.

<sup>100</sup> *Id.* at 88.

<sup>101</sup> See e.g., Garner, *supra* note 11, at 1630.

<sup>102</sup> Rhode, *supra* note 35, at 1205-06.

without cultivating empathy or connection to either side of the case,” yielding a “kind of zeal that blinds rather than enlightens.”<sup>103</sup> This approach left a narrow bandwidth for dialogue and suppressed critiques of the gender and race implications of rules and arguments.<sup>104</sup> Feminists sought less abstract exchanges centered on doctrinal analysis and more feedback, discussion, and simulations grounded in client-centered lawyering.<sup>105</sup>

Difference feminism celebrates a relational ethic of care that values collaboration, community, and cooperation as critical values in law beyond abstraction and competition.<sup>106</sup> Carol Gilligan notably described how women’s approaches to justice embodied an ethic of care framed around context and relationships.<sup>107</sup> Designing law schools around women’s learning styles would more centrally position “care, context, cooperation, and relationships” within law study and lawyering.<sup>108</sup> Feminists advocated that *all* law classes, not just gender-focused ones, could be more participatory, inclusive, and non-hierarchical. All classrooms might use a model of shared leadership valuing “personal experience as a valid source of knowledge.”<sup>109</sup>

Valuing these relational skills might, in turn, improve the quality, depth, and breadth of *lawyering*.<sup>110</sup> Cultural approaches offered promise to transform the legal profession by rethinking longstanding formally gender-neutral obstacles to women’s success, such as billable hour requirements and the absence of family leave.<sup>111</sup> Core values in the legal system, such as

---

<sup>103</sup> Bartlett, *supra* note 3, at 1264.

<sup>104</sup> Crenshaw, *supra* note 80, at 43.

<sup>105</sup> Rhode, *supra* note 35, at 1563. These feminist reform goals aligned synergistically with a larger progressive movement within legal education toward clinical teaching.

<sup>106</sup> Bartlett, *supra* note 3, at 1267.

<sup>107</sup> CAROL GILLIGAN, IN A DIFFERENT VOICE, PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT 1-2 (1982).

<sup>108</sup> Rhode, *supra* note 35, at 1205-06.

<sup>109</sup> Menkel-Meadow, *supra* note 58, at 80.

<sup>110</sup> *Id.* at 78.

<sup>111</sup> Bartlett, *supra* note 3, at 1267.

protecting individual rights and privacy over relationships and community, sparked cultural feminists' call for a turn toward relational values in law too.<sup>112</sup>

But not all feminists signed on to a cultural feminist agenda. An important critique of relational approaches is that there is no one singular approach or learning style that is inclusive of all women. Indeed, to suggest otherwise is to ignore rich variations across diverse cultures, classes, races, ages, and sexual identities.<sup>113</sup> Embracing a “women’s perspective” risks engaging in a type of essentialism that erases differences, privileges dominant voices, and reinforces exclusionary hierarchies, repeating the exact same mistakes feminists sought to overcome.<sup>114</sup> Still, feminists could broadly agree on the need to expand the repertoire of skills and values traditionally valued in legal education. Feminists aligned in moving beyond a model designed by and for men, even as they differed in what model best responded to the critiques.

### **The Feminist-Inspired *Evolution* of Legal Education and a *Revolution* Deferred**

For decades, feminists have developed a bold pedagogical vision for legal education. Feminist reforms have achieved many lasting changes. Feminists broke barriers gaining access to legal education and rising to the highest ranks of the profession. Specialized courses and materials have trained countless lawyers in feminist theory and method. Feminists have also cultivated and retained cherished convening spaces to discuss structural and substantive challenges in legal education and the law. A strong evolutionary drumbeat of feminist progress has beat for decades louder and rapider at times, quieter and slower at others.

---

<sup>112</sup> *Id.* at 1263.

<sup>113</sup> Rhode, *supra* note 35, at 1551.

<sup>114</sup> Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47 (1998).

Yet, it would surely go too far to conclude that the feminist agenda has *revolutionized* legal education or that the agenda is complete.<sup>115</sup> Rather, the core power systems, substance, and method of delivering legal education remain remarkably unchanged. The Socratic method still dominates legal education. Hierarchical, adversarial, competitive classrooms still shape most required first-year and upper-level courses. Women faculty remain segmented in particular areas of law, including clinical teaching, legal writing, and family law, often with lesser pay, status, and security. At nearly every step of the academic career trajectory, persistent barriers still impede women's success. From the highly competitive faculty hiring process to bias embedded in student course evaluations to peer faculty hostility to vague and secretive tenure processes to disproportionate service and emotional labor, the feminist agenda to create and cultivate inclusive law schools remains unfinished.<sup>116</sup>

From a cultural standpoint, strong headwinds still afflict the careers of women faculty, students, and staff. A demoralizing and harmful "presumption of incompetence" painfully governs the careers of women and faculty of color reminding these communities that they have yet to attain a sense of meaningful belonging in spaces they have occupied for over half a century. Many women and faculty of color describe suffering from an imposter syndrome, a "sense of fraudulence," and a lack of belonging.<sup>117</sup> Women continue to shoulder disproportionate amounts of service and emotional labor in the academe.<sup>118</sup> They are also still saddled with the "Second Shift" performing disproportionate caregiving and household management at home.<sup>119</sup>

---

<sup>115</sup> See e.g., Nel Noddings, *Feminist Critiques in the Legal Profession*, Chapter 8 in REVIEW OF RESEARCH IN EDUCATION 393, 401 (1990) ([T]he impact on legal education seems so far to be minimal. The odd parody of Socratic teaching (the model is Professor Kingsfield) continues, abated here and there by . . . feminist teachers.").

<sup>116</sup> See generally MEERA E. DEO, UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA (2019).

<sup>117</sup> Julia H. Chang, *Spectacular Bodes*, in YOLANDA FLORES NIEMANN, ET. AL, PRESUMED INCOMPETENT II 261 (2020).

<sup>118</sup> See generally DEO, *supra* note 29, at 58-59.

<sup>119</sup> ARLIE RUSSELL HOCHSCHILD, SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME (1989).

COVID-19 powerfully reminded legal educators how tenuous and fraught even liberal feminist progress is as child care providers and K-12 schools closed and professional work shifted to the home, placing unprecedented strain on professional caregiving.<sup>120</sup>

The legal profession is likewise still plagued with bias, discrimination, and harassment even as these issues morph and manifest in new ways. New terms have emerged to describe these harms such as microaggressions, mansplaining, hepeating, sidelining, whitesplaining, tokenism, and more. In 2016, the American Bar Association (“ABA”) added a new subsection to its rules on professional responsibility prohibiting attorneys from engaging in conduct that “the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.”<sup>121</sup> This reflects a recognition that such bias persists, an important normative commitment to equality, and a meaningful path to enforce these norms.

While the public displays of discrimination in legal education pedagogy (e.g., “Ladies Day”) have ceased, harassing and predatory behavior still exist in law schools, albeit in more subtle and entrenched forms that are difficult to ferret out.<sup>122</sup> Just as the “Shitty Men” list broke open the #MeToo movement in media, so too has a list emerged detailing sexual misconduct of faculty at universities.<sup>123</sup> The #MeToo movement exposed several incidents of long-standing systemic

---

<sup>120</sup> See e.g., Helen Lewis, *The Coronavirus is a Disaster for Feminism*, THE ATLANTIC, Mar. 19, 2020.

<sup>121</sup> American Bar Association. Model Rule 8.4(g). See generally Kristen A. Kubes, Cara D. Davis, and Mary E. Schwind, *The Evolution of Model Rule 8.4(g): Working to Eliminate Bias, Discrimination, and Harassment in the Practice of Law*, American Bar Association, March 12, 2019, [https://www.americanbar.org/groups/construction\\_industry/publications/under\\_construction/2019/spring/model-rule-8-4/](https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/model-rule-8-4/).

<sup>122</sup> See e.g., Dahlia Litwick and Susan Matthews, *Investigation at Yale Law School*, SLATE.COM, Oct. 5, 2018; Marilyn Odendahl, *Title IX investigation ends with IU Maurer professor’s departure*, THE INDIANA LAWYER, May 15, 2019.

<sup>123</sup> Prachi Gupta, *Academia’s ‘Shitty Men’ List has Around 2,000 Entries Detailing Sexual Misconduct at Universities*, JEZEBEL.COM, Jan. 11, 2018 (asking respondents to detail the nature and timing of the abuse and identify any recourse pursued).

sexual harassment in legal education.<sup>124</sup> Festering issues of harassment, bullying, and incivility, are especially stubborn and complex for women of color in law teaching.

Any honest assessment of feminist influence in legal education and the profession must also acknowledge the ongoing work needed for white women to engage fully in meaningful, lasting, and serious inclusion efforts. Feminists of color have called on white women to shed habits of “defensiveness and emotional manipulation” and work toward “acknowledging and working through the depths of White women’s complicity in the oppression narrative.”<sup>125</sup> This is hard work that White feminists cannot afford to defer.

Feminism created change that is evolutionary but not revolutionary. Yet, in fairness, no reforms have revolutionized law school. The powerful winds of competition and regulatory forces push against revolutionary changes in ways that perpetuate the status quo, even when the status quo is ineffective and harmful. The change, and inertia, reflected in the ABA’s most recent accreditation changes demonstrate this.

The ABA oversees accreditation standards to improve the competence of new lawyers entering law practice. The dominant approach for law school accreditation traditionally focused on the input and output of law schools, both the resources invested and the bar passage rates and job placement rates.<sup>126</sup> A handful of iconic publications in prior decades had nudged law schools

---

<sup>124</sup> See Gregory Yang, *Law Professors Facing Consequences of #MeToo Movement*, TippingtheScales.com, Dec. 12, 2018, <https://tippingthescales.com/2018/12/law-professors-facing-consequences-of-metoo-movement/>.

<sup>125</sup> Rachelle A.C. Joplin, *Through a White Woman’s Tears*, in YOLANDA FLORES NIEMANN, ET. AL, PRESUMED INCOMPETENT II 217 (2020) (explaining how women of color have to “attend[] to the fragile emotions and defense mechanisms of White women, all while already existing in a system that wants nothing more than their silence”).

<sup>126</sup> See generally A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1961–2015 (2012) (chronicling the historic legal education shifts from apprenticeships to the Langdell model to the ABA’s centralized regulation).

toward considerable curricular reform, but the ABA had not formally modified the correlating accreditation standards to facilitate such reform.<sup>127</sup>

Eventually, the ABA's Section of Legal Education and Admissions to the Bar decided to revisit its accreditation standards and spent six years reviewing proposed changes until approved in 2014.<sup>128</sup> These revisions purportedly reflected a "fundamental shift" in the delivery of legal education and curricular design,<sup>129</sup> called a "renaissance" of sorts.<sup>130</sup> They communicated a "quantum shift" in educational delivery, from an emphasis on teaching to an emphasis on learning, and from an emphasis on inputs to an emphasis on outcomes.<sup>131</sup>

These reforms were overdue in legal education, coming well after accreditation reform in other disciplines in recent decades.<sup>132</sup> The historical model of teaching content, and testing at the end was outdated and ineffective.<sup>133</sup> These reforms place pressure on law schools to modernize their curriculum toward preparing students for practice.<sup>134</sup> Law schools now must set goals for specific learning outcomes, gather information about how well students are achieving those designated learning outcomes, and work to improve student learning toward competency.<sup>135</sup>

---

<sup>127</sup>. See generally AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992); WILLIAM M. SULLIVAN, ET. AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007); ROY STUCKEY, ET. AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007).

<sup>128</sup>. ABA Standards and Rules of Procedure for Approval of Law Schools 2014–2015, American Bar Association (2014), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_bookmarked.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.pdf).

<sup>129</sup>. Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 U.S.F. L. REV. 245, 247 (2016).

<sup>130</sup>. David I. C. Thomson, *Defining Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 1 (2015).

<sup>131</sup>. Cara Cunningham Warren, *Achieving the American Bar Association's Pedagogy Mandate: Empowerment in the Midst of a "Perfect Storm,"* 14 CONN. PUB. INT. L.J. 67, 68 (2014).

<sup>132</sup>. See e.g. Sarah Valentine, *Flourish or Founder: The New Regulatory Regime in Legal Education*, 44 J.L. & EDUC. 473, 475 (2015) (noting law schools historically distanced themselves from reforms in other sectors of undergraduate and higher education).

<sup>133</sup>. Niedwiecki, *supra* note 129, at 255–57.

<sup>134</sup>. Valentine, *supra* note 132, at 484–93.

<sup>135</sup>. See Warren, *supra* note 131, at 71.

These reforms are student-centered and have the *potential* to support all learners in ways that address feminist critiques. If measured outcomes must ensure that *all* students are meeting learning objectives, then obstacles impeding the success of whole populations of students should be promptly corrected. These reforms *aspire* to more effectively integrate theory and practice, moving away from learning abstract concepts. This goal corresponds to some of the cultural feminist critiques of the administration of legal education and it addresses the tension between difference feminism and essentialist critiques by requiring faculty to support all learners in achieving competence in the stated learning objectives.

These reforms – in concept – seem consistent with feminist critiques of *what* is taught and *how* it is taught. Ultimately though, any convergence with feminism is more haphazard than organic. The ABA's reforms were driven more by market forces than philosophy and emerged as a response to pressure from universities and the legal profession to bring legal education in line with other accreditation processes and educational programs.

In practice, the reforms have turned out to be less sweeping than observers might have predicted. The new ABA standards have been implemented around the existing architecture of the large Socratic classroom dominating the 1L curriculum and upper-level courses. Innovations and experimentation have been segmented in corners of the curriculum without contesting the status quo of the dominant pedagogy.

Bringing some consistency and standardization, ABA Standard 302 requires all schools to meet learning outcomes that establish competency in *at least* these four highly conventional areas:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and



(d) Other professional skills needed for competent and ethical participation as a member of the legal profession.<sup>136</sup>

All law school share these learning outcomes. Individual schools *can* add additional innovative learning outcomes, such as diversity and inclusion, cultural competence, client counseling, or client-centered lawyering. But while the ABA standard identifies cultural competency as a *possible* additional learning outcome, it would be to differentiate, not to align with the stated objectives of legal education.

When measuring outcomes and competencies, law schools have marched ahead with traditional teaching methods despite decades of feminist advocacy revealing that these methods have not worked as effectively for women and students of color. With its latest reforms, the ABA acknowledged candidly that the traditional legal education curriculum, “teaching students to think like a lawyer,” remains centrally positioned in J.D. programs. While the new standards require law schools to make changes to the curriculum if learning outcomes are not met, it remains to be seen whether law schools will proactively undertake deeper pedagogical change to achieve equitable and inclusive outcomes.

Transformative change in legal education cannot happen around the margins. It needs to happen in the structural center of the curriculum. This includes finally re-envisioning Socratic style classes, which likely requires meaningful, enduring, and consistent training, support, and accountability for faculty to facilitate inclusive classrooms. Covid-19 notably imposed unprecedented demands on faculty to reform and adapt in ways that months earlier seemed unthinkable. Schools mobilized with trainings, infrastructure, and collaboration, strengthening teaching and assessment to support students. Faculty keenly understood that our students needed

---

<sup>136</sup> ABA Standard 302, American Bar Association, Managing Director’s Guidance Memo, *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_learning\\_outcomes\\_guidance.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.pdf).

their schools and teachers to rise to the challenge and produce a product that was adaptive and responsive. Faculty harnessed a “growth-mindset” for technology, teaching techniques, and assessment methods. Likewise, we need the same moment of reflection, community, and collaboration in lasting inclusive teaching pedagogies.

## **Conclusion**

Feminists have critiqued and influenced legal education for decades. Feminism has made surges of progress, but its mission is not yet complete. New challenges emerge on the path to progress, such as modern backlashes to critical theorists<sup>137</sup> and COVID-19 disparities and disruptions. The global Covid-19 pandemic presents a paradoxical opportunity to catapult the feminist agenda forward. Covid-19 upended many existing norms in legal education, from how legal education is delivered to professional licensure. In the tragedy of these disruptions and vulnerabilities, sits hope and opportunity. This chapter captures many reasons to celebrate the accomplishments of our feminist pioneers and champions. It also serves as a critical call to action to modern faculty, administrators, and students to carry the work forward with a vigilant purpose and determination.

---

<sup>137</sup> See e.g., Nathan M. Greenfield, *So is critical race theory poisonous or illuminating?* UNIV. WORLD NEWS (Jan. 9, 2001), <https://www.universityworldnews.com/post.php?story=2021010810452697>.