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LEGAL EDUCATION'S CURRICULAR TIPPING POINT TOWARD INCLUSIVE SOCRATIC TEACHING

Jamie R. Abrams*

ABSTRACT

Two seismic curricular disruptions create a tipping point for legal education to reform and transform. COVID-19 abruptly disrupted the delivery of legal education. It aligned with a tectonic racial justice reckoning, as more professors and institutions reconsidered their content and classroom cultures, allying with faculty of color who had long confronted these issues actively. The frenzy of these dual disruptions starkly contrasts with the steady drumbeat of critical legal scholars advocating for decades to reduce hierarchies and inequalities in legal education pedagogy.

This context presents a tipping point supporting two pedagogical reforms that leverage this unique moment. First, it is time to abandon the presumptive reverence and implicit immunity given to problematic Socratic teaching despite the harms and inadequacies of such performances. Professor Kingsfield depicted an archetype of Socratic teaching where the professor wields power over students instead of wielding knowledge to empower students. He used strategic tools of humiliation, degradation, mockery, fear, and shame. Socratic performances that are professor-centered and power-centered do not merit the reverence and immunity they still receive after decades of

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sound critiques. This critique is framed as a call to “cancel Kingsfield.” Socratic teaching can (must) be performed inclusively. This Article proposes a set of shared Socratic values that are student-centered, skills-centered, client-centered, and community-centered.

Second, this Article proposes refining law school accreditation standards to ensure that students achieve learning outcomes equitably in inclusive classrooms. Accreditation reforms cannot happen around the architectural perimeter of legal education. Nor can reforms be implemented solely in episodic siloes by staff, external speakers, or even robust seminar courses. Rather, accreditation standards need to hold institutions accountable to measuring learning outcomes and addressing identified disparities and inadequacies in the curricular core of legal education.

I. INTRODUCTION

Two seismic forces have disrupted legal education. COVID-19 first disrupted the *delivery* of legal education beginning in spring 2020, with the disruptions still enduring well over a year later.¹ Faculty shifted abruptly to emergency remote teaching with the click of a Zoom “join meeting.”² Faculty also underwent frenzied emergency training to make the seemingly overnight shift that the public health crisis demanded.³ Faculty shifted online and modified exam delivery and grading models.⁴ Bar exams were postponed, delayed, and administered online.⁵ Legal education was compelled to change its delivery, at least temporarily.⁶

1. See Amanda Robert, *Coronavirus and Law Schools: Numerous Schools Canceling In-Person Classes*, ABAJOURNAL (Mar. 11, 2020, 10:15 AM), <https://www.abajournal.com/news/article/At-least-seven-law-schools-to-close-or-cancel-classes-because-of-coronavirus>.

2. See Kelsey J. Griffin, *‘A Decidedly Suboptimal Set of Circumstances’: Harvard Law Professors Evaluate Online Instruction*, HARV. CRIMSON (Apr. 1, 2020), <https://www.thecrimson.com/article/2020/4/1/harvard-coronavirus-law-school-zoom>.

3. See Doug Lederman, *How Teaching Changed in the (Forced) Shift to Remote Learning*, INSIDE HIGHER ED (Apr. 22, 2020, 3:00 AM), <https://www.insidehighered.com/digital-learning/article/2020/04/22/how-professors-changed-their-teaching-springs-shift-remote> (reporting that survey respondents communicated a “level of anxiety and scrambling” in the pivot online, but that “despite that anxiety, institutions and instructors made significant changes on the fly in their teaching practices and expectations to try to pull off [the transition]”).

4. See Robert, *supra* note 1; Karen Sloan, *With Pass/Fail Now the Norm, Outlier Law Schools Face Student Backlash*, LAW.COM (Mar. 31, 2020, 2:19 PM), <https://www.law.com/2020/03/31/with-passfail-now-the-norm-outlier-law-schools-face-student-backlash>.

5. See, e.g., *July 2020 Bar Exam: Jurisdiction Information*, NAT’L CONF. BAR EXAMINERS (Sept. 24, 2020, 11:34 AM), <https://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information>.

6. See Robert, *supra* note 1.

Spring and summer 2020 also brought a seismic racial reckoning to law schools and faculty,⁷ revealing an “insidiousness that many People of Color in the legal academy” had long since lived, contested, and identified.⁸ Nationwide protests against police brutality and systemic racial injustice yielded a second layer of legal education disruption.⁹ Just as the *delivery* of legal education transformed, many faculty and institutions also disrupted the *substance* of their teaching in new ways, with an emerging or enriched focus on racial justice in course content.¹⁰ Cohorts of deans, institutions, and fields swiftly organized timely, responsive, and robust programs on racial justice in academia.¹¹

These dual disruptions followed over half of a century of the sustained and steady drumbeat of critical scholars challenging the effectiveness and inclusivity of legal education, including the Socratic method.¹² Scholars of feminism, critical race theory, and critical legal studies have long championed classrooms that are more inclusive,

7. See, e.g., Black L. Students Ass'n, *BLSA Statement to Law School Community on Justice for George Floyd*, UNIV. MINN. (June 2, 2020), <https://www.law.umn.edu/news/2020-06-02-blsa-statement-law-school-community-justice-george-floyd>; Catharine Skipp, *Florida's 12 Law Schools Form New Consortium for Racial Justice*, UNIV. MIA. (July 2, 2020), <https://news.miami.edu/stories/2020/07/floridas-12-law-schools-form-new-consortium-for-racial-justice.html>; Karen Sloan, *Law Schools Have an 'Obligation' to Help End Racism and Injustice, Deans Argue*, LAW.COM (June 2, 2020, 2:45 PM), <https://www.law.com/2020/06/02/law-schools-have-an-obligation-to-help-end-racism-and-injustice-deans-argue>.

8. See generally Danielle M. Conway et al., *Building an Antiracist Law School: Inclusivity in Admissions and Retention of Diverse Students – Leadership Determines DEI Success*, RUTGERS RACE & L. REV. (forthcoming 2021).

9. See, e.g., *Law Deans Antiracist Clearinghouse Project*, ASS'N AM. L. SCHOOLS, <https://www.aals.org/antiracist-clearinghouse> (last visited Aug. 1, 2021); Ted Ruger, *Update on the Law School's Commitment to Anti-Racism*, PENN. L. (July 1, 2020), <https://www.law.upenn.edu/live/news/10226-update-on-the-law-schools-commitment-to>.

10. See, e.g., *Teach-In for Racial Justice*, UNIV. CIN. COLL. L., <https://law.uc.edu/racial-justice-teach-in.html> (last visited Aug. 1, 2021). This event was hosted by the law schools at Boston University; Howard University; Penn State Dickinson Law; Rutgers University; University of California, Irvine; University of Cincinnati; and Washburn University. *Id.* Session content included: “Becoming an Antiracist Lawyer, Black Lawyers Matter, Building a Faculty-Wide Race and Equal Protection of the Law Curriculum for 1Ls, Building an Antiracist Law School, Implicit Bias in Bankruptcy Law & Practice, Race and Contract Law, Race Matters,” and “Water Justice in Indian Country.” *Id.* (including links to many of these recorded programs).

11. See, e.g., *Racial Justice in Academia: Surviving as a Minority*, CONSTANT CONTACT, <http://events.r20.constantcontact.com/register/event?llr=pa4fpv5ab&oeidk=a07eh8wwc60b60da930> (last visited Aug. 1, 2021) (hosting a roundtable on “BLM and the calls for racial justice in the summer of 2020”); *SALT Virtual Series: Social Justice in Action, Incorporating Anti-Racism Frameworks into Core Law School Classes*, SOC'Y AM. L. TCHRS. (July 10, 2020) <https://www.saltlaw.org/salt-virtual-series-social-justice-in-action> (hosting programs on “Incorporating Anti-Racism Frameworks into Core Law School Classes, Promoting Equity and Inclusion in Online Teaching, Racialized Trauma and Fatigue Among Academic Activists,” and “Anti-Racist Hiring Practices”).

12. See, e.g., Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. LEGAL EDUC. 562, 565-66 (2015) (describing the critiques of the Socratic method); see *infra* Part II.

grounded, and effective. These voices have long challenged teaching techniques relying almost exclusively on appellate cases.¹³ They exposed how the Socratic method reinforces hierarchies and power dynamics.¹⁴ They sought to minimize the competitive and adversarial format of legal education.¹⁵ They challenged the teaching of purportedly neutral and objective rules without contesting how those rules actually reinforce dominant hierarchies.¹⁶ The legal profession, too, has championed reforms to better prepare students for modern law practice.¹⁷

Yet, despite decades of critical voices championing reforms and ongoing modern calls, legal education is still largely conformist, with its curricular core remaining largely unchanged.¹⁸ The Socratic method is still revered, widespread, and central to legal education curricula nationwide. The Socratic method still dominates most first-year law classes, bar classes, and required upper-level classes. It still fortifies law school budgets in its efficiency, scalability, and its high faculty-to-student ratios.

Innovations have certainly emerged in law school clinics, experiential learning, formative assessment, and simulations.¹⁹ These

13. See, e.g., Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847, 884 (2000) (concluding that law school still “depends on a limited set of materials—appellate opinions—that are discussed in a certain manner—through the Socratic method, using a purportedly objective, decidedly dispassionate, and typically adversarial approach”); Stephen C. Halpern, *On the Politics and Pathology of Legal Education: (OR, WHATEVER HAPPENED TO THAT BLINDFOLDED LADY WITH THE SCALES?)*, 32 J. LEGAL EDUC. 383, 384 (1982) (“The opinions of appellate-court judges become virtually the exclusive source of data examined by law-school teachers and used by them to introduce students to the subject matter of the first year,” which “is almost exclusively the study of what appellate judges see as the relevant issues in cases”).

14. See generally Anibal Rosario-Lebrón, *If These Classrooms Could Talk: The Critical Classroom, A Battlefield*, 9 CHARLESTON L. REV. 305, 322-23 (2015).

15. See, e.g., Montoya, *supra* note 13, at 884.

16. See generally DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (Critical ed. 2004) (explaining legal hierarchies).

17. See generally DEBORAH JONES MERRITT & LOGAN CORNETT, *BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE* (2020) (conducting fifty focus groups with 200 participants, of which 159 were junior attorneys and forty-two were supervising attorneys). The report challenged the effectiveness and relevance of our pedagogical reliance on federal appellate cases and the use of rigorous rule memorization to prepare students for law practice in all settings or fields. *Id.*

18. See, e.g., Montoya, *supra* note 13, at 884 (“For the most part, current legal education is the same as it was one hundred years ago when it was implemented by Dean Christopher Columbus Langdell at Harvard Law School.”).

19. See generally AM. BAR ASS’N, *ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS* (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 [hereinafter ABA STANDARDS] (adopting new standards requiring law schools to establish learning outcomes, provide simulation experiences, and assess student work).

meaningful innovations, however, have generally emerged outside of large lecture hall classrooms.²⁰ Innovation has flourished around the ancient architecture of the traditional Socratic classroom.²¹ In many cases, legal education's innovations and reforms have further 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.²²

Efforts to make legal education more diverse, equitable, and inclusive have also occurred around the margins and not in the structural curricular center. American Bar Association ("ABA") Diversity Standards are largely centered on the entry points of hiring and admissions.²³ This is vital work and there is much more to do in diversifying hiring and enrollment.²⁴ The experiences of students,

20. See Abrams, *supra* note 12, at 565-68 (describing the persistence of the Socratic method surrounded by innovation).

21. See Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609, 662-63 (2007) (explaining how experiential programs have developed, however, "these programs are not integrated with the lecture classes, and they have been marginalized by their later introduction into the curriculum and by the norms of the professoriate"); Ann Marie Cavazos, *Next Phase Pedagogy Reform for the Twenty-First Century Legal Education: Delivering Competent Lawyers for a Consumer-Driven Market*, 45 CONN. L. REV. 1113, 1128-29 (2013) (describing how schools supplemented course offerings with specialty programs, classes, and clinics, such as drafting, interviewing, counseling, negotiation, and alternative dispute resolution following the MacCrate Report).

22. See, e.g., Darby Dickerson, *President's Message: Abolish the Academic Caste System*, ASS'N AM. L. SCHOOLS, <https://www.aals.org/about/publications/newsletters/aals-news-fall-2020/presidents-message-abolish-the-academic-caste-system> (last visited Aug. 1, 2021) (describing a caste-system from tenured and tenure-track faculty to deans to clinical faculty to legal writing faculty to law librarians to adjunct faculty and then to staff); see also Rachel López, *Unentitled: The Power of Designation in the Legal Academy*, 73 RUTGERS UNIV. L. REV. 101, 102 (2021) (describing how labels and titles become proxies for "abusive, and even invidious, treatment all under the veil of objective neutrality"). While 37.3% of law faculty are women and 14.86% are non-white, 67% of clinical faculty are women and 19% are non-white. *Id.* at 104. Legal writing faculty are 71.8% women and 18.6% non-white. *Id.* "[T]his comes down to building anti-racist law schools that reflect the world that we imagine in our scholarship by removing unnecessary hierarchies that perpetuate discrimination against women of color, to finding a future less hamstrung by the biases that inhabit our minds and institutions, and perhaps even to having the humility to recognize that we all play a role in educating the next generation of lawyers—each one just as important as the next." *Id.* at 110.

23. See generally ABA STANDARDS, *supra* note 19.

24. See, e.g., Davida Finger, *CLEA Statement on Anti-Racist Legal Education*, BEST PRACTICES FOR LEGAL EDUC. (Apr. 22, 2021), <https://bestpracticeslegaled.com/2021/04/22/clea-statement-on-anti-racist-legal-education> [hereinafter *CLEA Statement*]; Deborah Archer et al., *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, 26 CLINICAL L. REV. 127, 128 (2019) (authorizing an essay by the Committee for Faculty Equity and Inclusion to "draw attention to the crisis of diversity among clinical faculties, and to urge law schools to take proactive steps to remedy this longstanding failure"). See generally Conway et al., *supra* note 8 (analyzing the challenges of yielding a diverse student body); Carliss N. Chatman & Najarian R. Peters, *The Soft-Shoe and Shuffle of Law School Hiring Committee Practices*, 69 UCLA L. REV.

faculty, and staff once hired or admitted, though, are not measured or monitored. Remedying modern climate concerns depends on strong leadership, effective agitators, and institutional commitments, not accreditation oversight. Compliance with existing diversity mandates is largely cabined in the Dean of Students offices and the Admissions offices. These approaches immunize traditional classrooms and standard assessment techniques from scrutiny despite longstanding critiques.

But the conditions for lasting change are present. The frenzied speed of these dual transformations—a public health pandemic and a racial justice reckoning—present a pedagogical tipping point that compels action. Like viruses, changed behaviors can spread rapidly throughout communities and institutions.²⁵ A “tipping point” is a unique window in which the “beliefs and energies of a critical mass of people are engaged,” such that conversion to a new idea can “spread like an epidemic, bringing about fundamental change very quickly.”²⁶

The momentum for productive and lasting disruption exists in legal education and should be leveraged. It would be a tremendous loss to return to teaching status quo post-pandemic without seizing this opportunity. Yet, this opportunity is complicated by a “pandemic paradox.” This is the harsh irony. 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. This political, economic, and social moment has exacerbated the exact power structures that complicate legal education and compel its reform. The faculty, students, and administrators most likely to lead the time-sensitive call for curricular reforms are drowning in *The Second Shift* of intergenerational caregiving and/or the instrumental, transformative, indefatigable work of racial justice in our communities.²⁷

Law teaching needs responsive innovation and this opportunity is not to be missed. This Article proposes two responses to these dual disruptions. First, it is time to cease the presumptive reverence given to professor-centered and power-centered Socratic performances. Professor

DISC. 2, 2 (2021) (“The data and trends on law school faculty hiring, and on the performance of students of color in law school and on bar exams show that acts of discrimination are often obscured by the outcomes of systemic oppression misconstrued as academic achievement.”).

25. See generally MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* (2006) (describing contagious behavior).

26. W. Chan Kim & Renée Mauborgne, *Tipping Point Leadership*, 81 HARV. BUS. REV. 50, 52 (2003) (explaining that the biggest challenge in achieving change is convincing people that there is a problem and a need for change).

27. See generally ARLIE HOCHSCHILD WITH ANNE MACHUNG, *THE SECOND SHIFT* (Penguin Books 2003) (describing the reality that in dual-career households where women work outside of the home, women are still responsible for the majority of the childcare and housework).

Kingsfield embodied an archetype of Socratic teaching in which the professor wields power over students instead of wielding knowledge to empower students. It is a performance of the Socratic method that uses tools of humiliation, degradation, mockery, fear, and shame in problematic, marginalizing, and simply ineffective ways.²⁸

Professor-centered and powered-centered performances of the Socratic method are harmful to students and undermine the cultivation of future lawyers.²⁹ Such teaching does not align with the presumptive reverence and implicit immunity that it receives. This critique is styled as a call to “cancel Kingsfield.” It is a call to broaden and shift our approach to Socratic teaching, and to abandon harmful and ineffective performances of it. This Article champions a Socratic method that is student-centered, skills-centered, client-centered, and community-centered. These Socratic values are more inclusive for both students and faculty. They better train competent lawyers for the modern practice of law. These shared values offer a structural footing to teach culturally competent lawyering, build students’ professional identities, and cultivate inclusive, empowering, and dynamic classrooms.

Second, this cultural shift should be reinforced by an equity lens applied to how courses and programs measure learning outcomes under the ABA’s Standards. The ABA directs law schools to meet four fixed learning outcomes, although schools may also identify additional learning outcomes. These standards only require that schools “measure” learning outcomes and “[take] steps” to ensure that all students meet these outcomes.³⁰ Rather, measurement should address a decades-long demand for equity and inclusion in designing programs, materials, and assessment metrics that meet the needs of all learners. Measuring learning outcomes should explicitly examine any disparities in outcomes and address them. This reform makes all classrooms and institutional players accountable for cultivating inclusive and equitable classrooms.

Part II presents core themes from longstanding strands of critical scholarship. Part III previews the dual disruptions that create the conditions for change and the “pandemic paradox” that threatens its actualization. Part IV argues that legal education should “cancel Kingsfield” and add an equity lens to measuring learning outcomes.

28. See generally Tanisha M. Bailey, *The Mastery's Tools: Deconstructing the Socratic Method and Its Disparate Impact on Women Through the Prism of the Equal Protection Doctrine*, 3 U. MD. L.J. RACE RELIGION GENDER & CLASS 125, 127, 132, 161 (2003).

29. Halpern, *supra* note 13, at 389 (“The power and control exercised by the instructor and the manipulation and intimidation of students which occur as a legitimate part of classroom ‘teaching’ tend to make students fearful, passive, intellectually uninteresting, and uncreative.”).

30. See ABA STANDARDS, *supra* note 19.

II. A SUSTAINED DRUMBEAT OF CRITICAL VOICES CHAMPIONING PEDAGOGICAL REFORMS

Law teaching sits at a unique precipice following two seismic disruptions. This tipping point follows a decades-long drumbeat of scholars in critical legal studies, feminist legal theory, and critical race theory challenging the structure and substance of legal education.³¹ This Part explores broad strands of these critiques, including Socratic teaching concerns particularly.

A. Challenging the Doctrinal Assumptions that Entrench and Reinforce Hierarchies

Critical scholars across many institutions, identities, and decades have exposed problematic underlying doctrinal assumptions in legal education.³² Critical legal studies revealed how legal education reproduces larger political and legal hierarchies of race, gender, sexuality, and class.³³ Critical feminist scholars have contested the premise of teaching legal rules as "given, static, and almost immutable."³⁴ They have challenged the unidirectional way professors transmit knowledge about what the law "is"³⁵ in ways that undermine students' ability to engage with its critiques.³⁶ Critical voices have also identified how adversarial appellate cases obscure factual context and strategic legal choices,³⁷ losing valuable opportunities to train future lawyers.

31. See, e.g., KENNEDY, *supra* note 16; 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, 71 (1988); Daniel G. Solóranzo & Tara J. Yosso, *Maintaining Social Justice Hopes Within Academic Realities: A Freirean Approach to Critical Race/LatCrit Pedagogy,* 78 DENV. UNIV. L. REV. 595, 613 (2001); Catharine MacKinnon, *Feminism in Legal Education,* 1 LEGAL EDUC. REV. 85, 88 (1989); Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education,* 4 S. CAL. REV. L. & WOMEN'S STUD. 33, 41 (1994); Martha Minow, *The Supreme Court 1986 Term, Foreword: Justice Engendered,* 101 HARV. L. REV. 10, 31-33 (1987).

32. See, e.g., KENNEDY, *supra* note 16; Menkel-Meadow, *supra* note 31, at 71; Solóranzo & Yosso, *supra* note 31, at 613; MacKinnon, *supra* note 31, at 88; Crenshaw, *supra* note 31, at 41; Minow, *supra* note 31, at 31-33.

33. KENNEDY, *supra* note 16, at 87 ("I have been arguing that legal education causes legal hierarchy. Legal education supports it by analogy, provides it a general legitimating ideology by justifying the rules that underlie it, and provides it a particular ideology by mystifying legal reasoning.") (reprinting Kennedy's 1983 work with additional commentary).

34. Menkel-Meadow, *supra* note 31, at 68.

35. See, e.g., Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method,* 45 STAN. L. REV. 1571, 1574 (1993).

36. KENNEDY, *supra* note 16, at 42.

37. Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education,* 45 STAN. L. REV. 1547, 1558 (1993).

Teaching legal doctrine as fixed without addressing hierarchies of race, gender, sexuality, and class obscures the power of the law building and reinforcing these legal and social hierarchies. Feminist theorists, for example, have challenged the very premise of a gender-neutral person at the law's center.³⁸ Perceived neutrality in law, feminists argue, renders gender invisible while exalting a system that is built around unchallenged privileged male norms.³⁹

Critical race theorists have likewise analyzed how the law and law teaching obscure and erase the visibility of race.⁴⁰ Whiteness sits as the unstated norm, leaving systems of racial hierarchies and privileges unchallenged.⁴¹ This colorblind neutrality obscures racial hierarchies within the law and therein avoids interrogating the state's role in sustaining racism.⁴²

The harms of the "perspectiveless" approach are searing and complex for students of color.⁴³ Lynn Fujiwara describes these objective lenses as a form of "institutional violence."⁴⁴ Law teaching ignores any particular perspective by pretending to adopt an "analytical stance that has no specific cultural, political, or class characteristics."⁴⁵ Students of color are then perceived as presenting "biased, self-interested, or subjective opinions" when they voice their experiences, understood as "twin problems of objectification and subjectification."⁴⁶ These fictions

38. MacKinnon, *supra* note 31, at 88.

39. *Id.* at 88.

40. See Crenshaw, *supra* note 31, at 41.

41. 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).

42. Anastasia M. Boles, *Valuing the "Race Card": Teaching Employment Discrimination Using Culturally Proficient Instruction*, 44 T. MARSHALL L. REV. 25, 31 (2019).

43. See, e.g., Anastasia M. Boles, *Seeking Inclusion from the Inside Out: Towards a Paradigm of Culturally Proficient Legal Education*, 11 CHARLESTON L. REV. 209, 232 (2017) (concluding from the empirical literature that "students of color have a vastly degraded classroom experience in comparison to their white colleagues").

44. Lynn Fujiwara, *Racial Harm in a Predominantly White "Liberal" University: An Institutional Autoethnography of White Fragility*, in YOLANDA FLORES NIEMANN ET AL., PRESUMED INCOMPETENT II 107 (2020); see also Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violence*, ABAJOURNAL (Oct. 15, 2020, 11:23 AM), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent.

45. Crenshaw, *supra* note 31, at 34-35.

46. *Id.* at 35-36; see also Emily A. Bishop, *Avoiding 'Ally Theater' in Legal Writing Assignments*, 26 PERSPS.: TEACHING LEGAL RSCH & WRITING, 3, 5 (2018) (explaining how White law students discuss the law without referencing their experiences because they are the baseline and then judge students of color negatively when they discuss their experiences as "a failure to maintain objectivity").

of objectivity and rationality obscure how law schools perpetuate institutional and structural racism.⁴⁷

Not acknowledging the privilege and oppression in law and law school forces students of color to abandon their identities and adopt a perspective that is infused with a white, middle-class world view.⁴⁸ Students vacillate between their lived consciousness and “the white consciousness required for survival in elite educational institutions.”⁴⁹ This creates a marginalizing and dissatisfying experience. One T-14 student wrote that they would “not wish my law school experience on my worst enemy” because it “largely ignored the recent racially-motivated, legally-upheld killings of people of color and their effects on marginalized communities.”⁵⁰ Students of color have explained how they “feel alienated, tokenized, overburdened and undervalued in part because the classroom teaching methods do not allow for [them] to engage in a meaningful way.”⁵¹

These issues are systemic and persistent. The Clinical Legal Education Association (“CLEA”) published an April 2021 statement summarizing concerns and calling for action. CLEA’s statement captured how institutions are failing students and inadequately

47. Bishop, *supra* note 46, at 6.

48. See Boles, *supra* note 42, at 37-38; Kathryn M. Young, *Understanding the Social and Cognitive Process in Law School that Creates Unhealthy Lawyers*, 89 FORDHAM L. REV. 2575, 2584 (2021) (surveying students about their law school experience and concluding that students of color experience “psychological challenges to professional integration: difficulty reconciling personal identity with lawyerly identity, which can present a variety of challenges”).

49. Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN’S RTS. L. REP. 297, 298 (1992); see also Young, *supra* note 48, at 2584-85 (“[Students of color] will either change how they see themselves as people to accommodate their identity as lawyers, or they will engage in greater role distancing by creating a professional identity they conceive as separate from who they are as a person.”).

50. Taifha N. Baker, Note, *How Top Law Schools Can Resuscitate an Inclusive Climate for Minority and Low-Income Law Students*, 9 GEO. J.L. & MOD. CRIT. RACE PERSP. 123, 124 (2017).

At each critical point of my first year in law school, Georgetown University Law Center remained silent to the nationally recognized, racially-motivated, and repeated police killings of unarmed African-American men. On July 14, 2014, New York police officers killed Eric Garner. My law school was silent. As I shopped for dorm room supplies on August 9, 2014, Darren Wilson, a Ferguson police officer, killed Michael Brown Jr. My law school remained silent. Toward the end of the fall semester, my Constitutional Law professor inappropriately laughed when a student said, “American slavery was not a big deal.” A few days later, a grand jury failed to indict Darren Wilson for Michael Brown Jr.’s murder. My law school remained silent. As I studied for finals, an Ohio police officer killed Tamir Rice. My law school remained silent. As I completed a twenty-four-hour Contracts exam, protesters chanted, “No justice! No peace! No racist police!” outside my dorm room window. My law school remained silent.

Id. at 124-25.

51. *Id.* at 139 (chronicling numerous anecdotal accounts from students).

combatting racism.⁵² CLEA flagged concerns about law school cultures in which “students from marginalized backgrounds have long been considered less qualified and competent than their peers by some faculty.”⁵³ CLEA called for faculty to “actively implement principles of anti-racist education into their teaching.”⁵⁴ CLEA squarely focused on law teaching and the role of faculty addressing biases in grading and assessment to “promote[] a climate of equity and inclusivity for all students.”⁵⁵ CLEA urged law schools to “take proactive steps to ensure that their faculty members work to eliminate biases and racism in their teaching and support students of color, who inevitably face disparate treatment and shoulder the burdens of responding to such incidents.”⁵⁶

These hostilities and inequalities impede student success.⁵⁷ Students of color report consistent disparities in their law school satisfaction, with Black women the least likely to describe their law school experiences as either “good” or “excellent.”⁵⁸ The literal costs of law school are also disproportionately absorbed by students of color in student debt acquisition.⁵⁹

Achieving inclusive classrooms must involve action and accountability within the curricular core of legal education.⁶⁰ The next Subpart explores critiques of Socratic teaching particularly.

52. See, e.g., *CLEA Statement*, *supra* note 24 (“And publicized incidents at various institutions of higher learning have demonstrated the failure of these institutions to protect students from racism, even within the walls of academia.”).

53. *Id.*

54. *CLEA Statement*, *supra* note 24.

55. *Id.*

56. *Id.*

57. *Id.*

58. THE CHANGING LANDSCAPE OF LEGAL EDUCATION: A 15-YEAR LSSSE RETROSPECTIVE 16 (2020).

59. Students of color leave law school with some of the steepest loan debts perversely fueled by a “reverse Robin Hood” cost-shifting strategy through which disadvantaged students subsidize the tuition of their peers from privileged backgrounds.” Aaron N. Taylor, *Robin Hood, in Reverse: How Law School Scholarships Compound Inequality*, 47 J.L. & EDUC. 41, 48 (2018) (analyzing data from 16,000 law students in the Law School Survey of Student Engagement). The size of student debt rose dramatically from 2004 to 2019, from 18% of students expecting more than \$100,000 in debt, to 35% expecting six figure debt. THE CHANGING LANDSCAPE OF LEGAL EDUCATION: A 15-YEAR LSSSE RETROSPECTIVE, *supra* note 58, at 10. For students of color, those numbers grew from 21% expecting more than \$100,000 of debt to 49%. *Id.* at 10-11 (explaining that fifty-six percent of Black students expected to have more than \$100,00 in debt, 52% of Latinx students, 40% of Native American students, and 35% of Asian American students).

60. TRACIE MARCELLA ADDY ET AL., WHAT INCLUSIVE INSTRUCTORS DO 156 (Stylus Publishing, LLC 2021) (“We posit here that inclusive teaching is the collective responsibility of all members of the institution who contribute to the institutional mission around teaching and learning.”).

B. Questioning the Socratic Method as Legal Education's Dominant Pedagogy

Critical scholars have specifically questioned the centrality of the Socratic method as the dominant paradigm for delivering legal education. The Socratic method of law teaching in 1870 was first introduced by Christopher Langdell of Harvard University.⁶¹ The Socratic method grounded law teaching in a scientific approach and gave it increased prestige.⁶² With that prestige and power, came exclusion and hierarchy.⁶³

The Socratic method is an inquisitive method of teaching whereby faculty lead students through extracting rules from appellate cases using a fluid question and answer dialogue to develop reasoning and argumentation skills. Many performances of Socratic teaching ask questions persistently to reveal what students *do not* know and to motivate students to prepare for class through fear of embarrassment while “on call.” The Socratic method, in its traditional performance, embeds a hierarchy of teacher and students, and the hierarchy is the point. Duncan Kennedy offered this critique:

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.⁶⁴

The Socratic method, as deployed in many law school classrooms, distorts power dynamics such that *how* the content is taught reinforces the critiques of *what* is taught, as presented in Subpart A. These performances reinforce law as an authoritative system and structure *over*

61. Christopher M. Ford, *The Socratic Method in the 21st Century*, U.S. MIL. ACAD. 1-2 (2008), https://www.westpoint.edu/sites/default/files/inline-images/centers_research/center_for_teching_excellence/PDFs/mtp_project_papers/Ford_08.pdf (documenting the history of the Socratic method in legal education, which Langdell used as the “engine” to “power his case method”); Teneille Fordyce-Ruff, *Research Across the Curriculum: Using Cognitive Science to Answer the Call for Better Legal Research Instruction*, 125 DICK. L. REV. 1, 6-7 (2020).

62. See Bruce A. Kimball, *The Langdell Problem: Historicizing the Century of Historiography, 1906-2000s*, 22 L. & HIST. REV. 277, 277 (2004) (chronicling how Christopher Columbus Langdell “transformed legal education from an undemanding, gentlemanly acculturation into an academic meritocracy”); see also Michele R. Pistone & John J. Hoeffner, *No Path But One: Law School Survival in an Age of Disruptive Technology*, 59 WAYNE L. REV. 192, 207-10 (2013) (providing a historical chronology of legal education); David R. Barnhizer, *The Purposes and Methods of American Legal Education*, 36 J. LEGAL PROF. 1, 8, 10-11 (2011) (summarizing historical critiques of the scientific law school).

63. See Conway et al., *supra* note 8.

64. Catherine A. MacKinnon, *Mainstreaming Feminism in Legal Education*, 53 J. LEGAL EDUC. 199, 212 (2003).

students. It teaches the law, but it allows little room to challenge the law's origins or justness unless the professor pursues that line of inquiry.⁶⁵ In these performances, efforts to question the rules or the cases must then derive from students drawing upon another case or another rule.⁶⁶ This leaves legal education "intrinsically justif[y]ing the existing legal order and the social authority of the state."⁶⁷ Rather, an authentic and inclusive Socratic method assumes that students possess knowledge—they are not "skull[s] full of mush," as Professor Kingsfield famously stated.⁶⁸

John Jay Osborn's 1971 novel, *The Paper Chase*, depicted a first-year student at Harvard Law School tangling with the esteemed and regarded contract law professor, Professor Charles Kingsfield.⁶⁹ Two years later, the book was produced as a film for which John Houseman, the actor depicting Professor Kingsfield, won an Academy Award for Best Supporting Actor.⁷⁰ The film remains iconic as law school lore. It depicts the challenges and pressures of law school. It follows one first-year Harvard student's journey through the social, academic, and professional pressures of law school. It depicts the student's ascension from classroom humiliation and shame to the top of the classroom hierarchy, which he describes as the "upper echelon."⁷¹

Professor Kingsfield is generally regarded as a legendary example of Socratic teaching performance, although perhaps never regarded as a good example of Socratic teaching. Professor Kingsfield has embodied a certain archetype of the American law professor since *The Paper Chase*. Kingsfield, an older, White, male professor, is presumed brilliant and receives instant, deep, and enduring respect. He holds immense power in the classroom in the traditional and enduring "sage on the stage" model of teaching.⁷² He teaches the law without application to communities and context.⁷³ He is something of a caricature representing "problematic

65. KENNEDY, *supra* note 16; Joshua Krook, *The Real Socratic Method: Law Schools Fail to Understand Why Socrates Asked So Many Questions*, NEW INTRIGUE (Sept. 24, 2017), https://newintrigue.com/2017/09/24/the-real-socratic-method-law-schools-fail-to-understand-why-socrates-asked-so-many-questions/#_ftn22.

66. Joshua Krook, *Real Socratic Method: Law Schools Fail to Understand Why Socrates Asked So Many Questions*, 5 GRIFFITH J.L. & HUMAN DIGNITY 32, 33 (2017).

67. Krook, *supra* note 65.

68. Rosario-Lebrón, *supra* note 14, at 322; *THE PAPER CHASE* (Twentieth Century Fox 1973).

69. See generally JOHN JAY OSBORN, JR., *THE PAPER CHASE* (1971).

70. *THE PAPER CHASE*, *supra* note 68.

71. *Id.*

72. *Id.*

73. Halpern, *supra* note 13, at 385 (explaining how "case books and the case method . . . typically ignore considerations which would enable the student to place the cases in any meaningful historical perspective," which "unnaturally severs the study of law from its roots in the values, traditions, customs, and history of the society in which it has developed").

performances” of the Socratic method. Note that problematic performances of the Socratic method are about *how* material is taught and not *who* is teaching the material. The characteristics comprising problematic performances of Socratic teaching are most often deployed as a package of techniques summarized here.

Problematic Socratic Performances

Professor-centered teaching with a professor perpetually positioned in the center of the room with students engaging in serial participation with the professor. Students are positioned as subordinate absorbers of the professor's knowledge.
Power-centered with the professor leading the dialogue, holding all the answers—often tauntingly—while the students perform for the professor and their peers.
Wielding tools of fear and, to a lesser extent, shame to motivate student participation and underscore the inadequacies of the students.
Abstract teaching of rules using teaching notes that rarely need adapting across institution or time.
Appellate case focus using a diluted casebook collecting cases from various times and geographies.
Summative assessment provided only with little to no transparency of performance metrics.

Kingsfield embodies many of these problematic Socratic performances. Kingsfield was portrayed as a mythical “prototype of the law professor.”⁷⁴ He was the “epitome of confidence, expertise, and sharp analytical thinking.”⁷⁵ He distinctly believed that his treatment of students was for their own good and that, from his intellectual abilities, students will be transformed from a “skull full of mush” into “thinking like a lawyer.”⁷⁶ This framing explicitly rejects the relevance of student experiences and disempowers student engagement.

Problematic Socratic performances undermine inclusive classroom environments, as scholars have argued for decades. Beginning in the 1980s and continuing into the 1990s, feminists and intersectional feminist scholars documented disparities in women’s Socratic class

74. Martha Chamallas, *The Shadow of Professor Kingsfield: Contemporary Dilemmas Facing Women Law Professors*, 11 WM. & MARY J. WOMEN & L. 195, 198-99 (2005).

75. *Id.* at 198.

76. *Id.*; THE PAPER CHASE, *supra* note 68.

participation.⁷⁷ Male students dominated, while women remained silent in ways that compromised academic and professional success.⁷⁸

The 1994 publication of *Becoming Gentlemen: Women's Experiences at One Ivy League Law School* highlighted how parallel male and female candidates diverged from their first year of law school to their third, as women received relatively lower grades, class ranks, and honors than their male peers.⁷⁹ It urged law schools to act, framing the problem as one of law schools' "institutional design . . . rather than personal qualities of individual female or male students."⁸⁰ It concluded that "legal education creates or enhances 'difference' and converts it into a disadvantage."⁸¹ The authors emphasized institutions' "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."⁸² These observed trends of gendered and racialized disparities in Socratic participation have persisted even into COVID-19 emergency teaching,⁸³ as have the calls for institutional responses.⁸⁴

Margaret Montoya, in *Silence and Silencing*, explains how the Socratic classroom "magnifi[es] some voices and silence[s] others," as the teacher dominates at the podium and students orient toward that central power figure, only minimally interacting with each other.⁸⁵ This classroom design socializes students regarding when to speak and to whom.⁸⁶ The law creates a "centripetal force" positioning "centralize[d] power and privilege within the hands of those dedicated to maintain[] the status quo [while] the language[] of outsiders produce centrifugal

77. See David Garner, *Socratic Misogyny, Analyzing Feminist Criticism of Socratic Teaching in Legal Education*, 2000 BYU L. REV. 1597, 1614-27 (2000) (documenting studies at Yale in 1988, Stanford in 1988, Berkeley in 1989 to 1990, the University of Pennsylvania in 1994, and studies conducted by the Law School Admissions Council in 1994 by Taunya Lovell Banks).

78. Stephanie Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147, 151 (1988) (concluding that "[s]ilence, deference, and talk with no substance are not ways of survival in law firms, courtrooms, and legal life").

79. Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PENN. L. REV. 1, 21-32, 42 (1994) (describing their first year of law school as "a radical, painful, or repressive experience"). See generally Nancy Leong, *A Noteworthy Absence*, 59 J. LEGAL EDUC. 279 (2009) (documenting disparities in gendered Law Review publication rates).

80. Guinier et al., *supra* note 79, at 45.

81. *Id.* at 81.

82. *Id.* at 88.

83. Young, *supra* note 48, at 2588-92 (interviewing students and documenting their sense of gendered and racialized disparities in class participation, noting that their "descriptions were virtually identical whether or not a professor used panels, cold calls, or a volunteer system").

84. See *id.* at 2590-91 (noting, however, that while "cold calls stood out as a particularly salient source of inequality, gendered and racialized classroom dynamics extended into other parts of the learning environment as well").

85. Montoya, *supra* note 13, at 879-80.

86. *Id.* at 880.

forces that decentralize and destabilize that power and privilege.”⁸⁷ Communities of color can use silence as a form of resistance and opposition by withdrawing participation “as a way of destabilizing the power dynamics and resisting the pressures to assimilate to the socializing norms of the credentializing experience.”⁸⁸ Problematic performances are “digestive” experiences where students are passive learners absorbing and “banking” new information.⁸⁹ When students *are* active participants, often the loudest and most dominant voices are valued as the most competent.⁹⁰ Silence, in Socratic participation, can be interpreted as lack of preparation, inadequacy, and weakness.⁹¹

While problematic Socratic performances can harm students and are considered ineffective by many, notably, these problematic performances are unlikely *intended* to harm students or inadequately prepare students.⁹² They are more likely arising from the perpetuation of the status quo and pure mimicry of established professors that have grown outdated with modern trends in law practice and legal education. Some data bear this out. When surveyed about *why* professors are still using the Socratic method, professors reported believing it was the most effective (90%), comfortable to the faculty using it (59%), what *they* experienced in law school (32%), or that they wanted to align with most of their colleagues (4%).⁹³

Scholars have instead championed classrooms that are built on lived experiences and problem-solving.⁹⁴ They have sought classrooms that “[b]uild[] trust, collaboration, engagement, and empowerment . . . rather than reinforc[e] the competition, individual achievement, alienation, passivity, and lack of confidence that now so pervade the classroom.”⁹⁵ They have envisioned a model of shared leadership that

87. *Id.* at 852.

88. *Id.* at 854.

89. *Id.* at 882-83.

90. See Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. (forthcoming 2021) (manuscript at 35), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3873205 (“Certainly the ‘dialogue’ students are expected to master is a particular kind of dialogue, in a particular register.”).

91. Montoya, *supra* note 13, at 882 (explaining the importance of fighting negative misconceptions of silence).

92. Young, *supra* note 48, at 2594 (explaining that issues of student wellness are “not about intention; it is about structure” as law schools hold a “fidelity to a system’s long-standing structures even when those structures do not serve all students”).

93. Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law School*, 20 SEATTLE UNIV. L. REV. 1, 31 (1996) (emphasis added).

94. Menkel-Meadow, *supra* note 31, at 81.

95. *Id.*; see generally Crenshaw, *supra* note 31, at 49 (envisioning a classroom in which students hold ownership of the dialogue and work to “unlearn patterns of disengagement and alienation”).

embeds “trust and cooperation,” integrates “affective and intellectual learning,” and uses “personal experience as a valid source of knowledge.”⁹⁶ These types of classrooms might, in turn, yield better lawyering by broadening the quality, breadth, and depth with which lawyers respond to legal problems.⁹⁷

Socratic teaching has nonetheless remained foundational to legal education.⁹⁸ It persists in first-year and bar exam classes, particularly.⁹⁹ Whether out of necessity, efficacy, sustained reverence, or agnostic indifference, law schools continue to deliver a large portion of legal education in this format.¹⁰⁰ Legal education has generally added innovation, such as clinical programs, experiential learning, and skills development, while simultaneously retaining the hallmarks of traditional legal education.¹⁰¹ Law schools continue to design their budgets, curricula, and student experiences around some degree of case-based, Socratic law teaching in large-lecture-style classrooms.¹⁰²

96. Menkel-Meadow, *supra* note 31, at 79-80.

97. *Id.* at 78-79.

98. See Rhode, *supra* note 37, at 1554 (stating that “[t]he dominant paradigm for legal education remains the quasi-Socratic lecture focusing on doctrinal analysis”); Rubin, *supra* note 21, at 610 (“Here we are, at the beginning of the twenty-first century, using a model of legal education that was developed in the latter part of the nineteenth. Since that time, the nature of legal practice has changed, the concept of law has changed, the nature of academic inquiry has changed, and the theory of education has changed.”).

99. See Guinier et al., *supra* note 79, at 3 (describing the Socratic method as “the dominant pedagogy for almost all first-year instruction”) (emphasis in original).

100. See Rubin, *supra* note 21, at 613 (explaining how the Socratic method has weathered over a century of attacks and now “it has ceased to be viewed as a particular approach to legal education—as last generation’s innovation—and has become a venerable institution that gains gravity and prestige from its antiquity”); Gary Shaw, *A Heretical View of Teaching: A Contrarian Look at Teaching, the Carnegie Report, and Best Practices*, 28 *TOURO L. REV.* 1239, 1242-43 (2012) (arguing that experiential learning does not teach analytical thinking better than the Socratic dialogue, nor does it foster better professionalism); Elizabeth Mertz, *Teaching Lawyers the Language of Law: Legal and Anthropological Translations*, 34 *J. MARSHALL L. REV.* 91, 113-14 (2000) (“[A] possible reason for continued adherence to a distinctive Socratic teaching approach” is because it “contains a precise linguistic mirroring of aspects of [legal] reasoning.”).

101. See, e.g., WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 50, 56 (2007) [hereinafter *CARNEGIE REPORT*] (stating that law schools uniformly rely on a single method of teaching—the case-dialogue method, which is accompanied by a system of competitive grading); Rubin, *supra* note 21, at 662-63 (2007) (explaining how experiential programs have developed, however, “these programs are not integrated with the lecture classes, and they have been marginalized by their later introduction into the curriculum and by the norms of the professoriate”); Cavazos, *supra* note 21, at 1128-29.

102. See, e.g., Pistone & Hoeffner, *supra* note 62, at 222 (“When law schools became the near-exclusive suppliers of professional legal instruction and the case method became the near-exclusive method of delivering that instruction, a case of ‘too much of a good thing’ developed.”). The authors conclude that “there is one opportunity to save the traditional place-based law school” and that

“to seize that opportunity law schools must finally and decisively reject what has for over a century sufficed in legal education and must commit themselves instead to an

Yet, Christopher Langdell's interpretation of the Socratic method as a tool for legal education, some have argued, "bears little resemblance to the actual ideas of Socratic wisdom."¹⁰³ Langdell is the father of modern legal education, using both the case method and the Socratic method.¹⁰⁴ Langdell's version of the Socratic method positions the teacher as the expert and conductor of the Socratic exchange, leaving the student disempowered and unable to seek their own wisdom and clarity in understanding the law from the expert's mastery and knowledge.¹⁰⁵

Modern Socratic performances certainly vary greatly.¹⁰⁶ For some, the Socratic method remains a traditional means of rigorous critical inquisition to develop analytical skills. It is also often supplemented with other teaching techniques, such as group work, skills simulations, practice problems, and lecture.¹⁰⁷ Performances of the technique vary by professor, class, and institution, but, despite its acknowledged decline in use, it still persists almost universally.¹⁰⁸

While the worst problematic performances have definitely waned, variations of it persist.¹⁰⁹ Socratic techniques still often "reinforce[] competitive, confrontational capacities to the exclusion of other, equally significant relational skills."¹¹⁰ Indeed, the "shadow of Professor Kingsfield continues to dog women and other outsiders on law faculties because expectations play such an important role in the social construction of reality."¹¹¹ Professors in the genre of Kingsfield teaching generally receive a deep "presumptive reverence."¹¹² This, in turn, clashes powerfully with a profound "presumptive incompetence"

educational model that, to a greatly heightened degree, attempts to remedy flaws in the traditional school that have been identified over and over again in a series of measured and independent studies ranging across almost a century."

Id. at 197.

103. Krook, *supra* note 66, at 34-35.

104. *Id.* at 33-34.

105. *See id.* at 36.

106. *See* Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37, 40 (1997) (noting that there is no single definition of the Socratic method of teaching).

107. *See, e.g.,* Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 114 (1999) (describing the Socratic method as more "myth than reality" because modern law school includes "an eclectic mixture of newer approaches, including toned-down Socratic questioning, student panels, group discussions, and lectures").

108. *See, e.g.,* Ford, *supra* note 61, at 4 (noting the decline in Socratic method use).

109. Rhode, *supra* note 37, at 1554-55.

110. *Id.* at 1557.

111. Chamallas, *supra* note 74, at 199-206.

112. *See, e.g.,* KENNEDY, *supra* note 16, at 20-21 (explaining that non-Socratic professors are perceived to lack "rigor"); Chamallas, *supra* note 74, at 199 (describing how one student felt it was "unfair" that they had not gotten the "Kingsfield" of their school).

plaguing women faculty, faculty of color, and non-traditional faculty when they enter the classroom.¹¹³

Critical scholars have challenged the centrality of the Socratic method to legal education pedagogy in a steady drumbeat of critique for over half of a century. Yet, the Socratic method endures with curricular centrality and reverence. The next Part explores how dual disruptions in legal education have created a curricular tipping point that compels some standard-setting in the Socratic method's use.¹¹⁴

III. DUAL DISRUPTIONS IN LEGAL EDUCATION PEDAGOGY CREATE A TIPPING POINT FOR CURRICULAR REFORMS

A. Zooming Pedagogical Shifts

Seismic shifts affecting legal education present a vital tipping point to achieve long-sought curricular reforms. The COVID-19 public health pandemic disrupted nearly every institution and community, including the delivery of legal education. In spring of 2020, faculty nationwide abruptly shifted online to finish the semester in an emergency remote delivery format.¹¹⁵ Institutions were careful not to call the switch a move to "online education" because online education involves intentional pedagogy and methodology.¹¹⁶ Rather, it was an emergency adaptation to a public-health crisis.¹¹⁷ Faculty, staff, students, and institutions adapted under great adversity to complete the spring 2020 semester. As it became clear that traditional legal education would not resurface as quickly as anticipated, schools developed contingency plans to adapt for summer and fall 2020 teaching.¹¹⁸

113. See YOLANDA FLORES NIEMANN ET AL., PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA 7, 110-11 (2020); see also Laura M. Padilla, *Women Law Deans, Gender Sidelining, and Presumptions of Incompetence*, 35 BERKELEY J. GENDER L. & JUSTICE 1, 2 (2020) ("The same presumptions of incompetence that accompany women when they enter the Academy often follow them up the career ladder through the tenure process.").

114. See *infra* Part III.

115. See, e.g., Lederman, *supra* note 3 (reporting on survey results showing that ninety percent of institutions surveyed shifted to an "emergency distance/virtual education" to complete spring 2020).

116. See, e.g., *Course Design Rubric Standards*, QUALITY MATTERS, <https://www.qualitymatters.org/qa-resources/rubric-standards/higher-ed-rubric> (lasted visited Sept. 10, 2020).

117. See, e.g., COVID-19, CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (lasted visited Sept. 10, 2021).

118. See, e.g., Caroline Spiezio, *Columbia Law Plans on In-Person Classes with Remote Options for Fall 2020*, REUTERS (May 29, 2020, 3:22 PM), <https://www.reuters.com/article/lawyer->

As the picture crystallized for a longer haul, institutions worked harder to adapt traditional classrooms to online delivery. Many faculty, alumni, and students perplexedly wondered how the Socratic method would convey to an online format.¹¹⁹ Some faculty concluded, as a matter of first impression, that online teaching was surprisingly “*more genuinely Socratic*” than the traditional classroom.¹²⁰ The exchanges were more private and personal, and participation felt like less of a performance and more of a dialogue.¹²¹ Particularly, compared to a large lecture hall where the room’s spacing and layout are hierarchical and distant, in an online format, students and faculty are more equally positioned in side-by-side dialogue with equal space allotted to students and faculty alike.¹²² There is no front seat, no digital professor podium, no microphone to amplify certain voices, and everyone’s Zoom box is equal in size.

Many faculty dynamically adapted their courses to be more visually appealing, more interactive, and more diverse in teaching methods.¹²³ Socratic faculty used their classroom time differently to apply the doctrine to problems and hypotheticals.¹²⁴ Faculty interacted with their students in new ways, checking on their well-being, learning more about their experiences,¹²⁵ and soliciting more real-time feedback.

COVID-19 dramatically upended longstanding teaching norms. Many of these transformations were rushed, frenzied, and problematic, but law schools also made strides in technology usage, the integration of formative and summative assessment techniques, student flexibility, and content coverage. Faculty worked more collaboratively across fields and across campus departments to learn new skills and adapt their courses to these hardships on behalf of students. Faculty proved that law teaching *can* change, that time and resources *can* be devoted to improving

coronavirus-law-school/columbia-law-plans-on-in-person-classes-with-remote-options-for-fall-2020-idUSL1N2DB21A.

119. Lederman, *supra* note 3.

120. See, e.g., *Socratic Zooming: Faculty Weigh in on Teaching Remotely*, COLUM. L. SCH. (Apr. 27, 2020), <https://www.law.columbia.edu/news/archive/socratic-zooming-faculty-weigh-teaching-remotely> (emphasis added).

121. *Id.* (noting that the analysis seems more probing and exploratory and that students relaxed to let an exchange linger); see also Kim Wright, *How the Socratic Method Translates Online*, HARV. GAZETTE (Mar. 24, 2020), <https://news.harvard.edu/gazette/story/2020/03/harvard-law-school-professor-was-prepared-for-zoom-debut> (teaching on Zoom was “surprisingly more personable and less performative than standing at a podium at the front of a large lecture hall”).

122. See, e.g., *Socratic Zooming: Faculty Weigh in on Teaching Remotely*, *supra* note 120.

123. *Id.*

124. *Id.* (applying doctrines and theories to pandemic legal and political issues).

125. *Id.*

teaching, and that we *can* all learn from each other across generations, institutions, and geographies.

Perhaps most notably, the pandemic depersonalized teaching transformations. Faculty were not revising courses because of personal shortcomings. They changed because students needed faculty adaption and resilience. Faculty achieved largescale collaborative change that now presents a tipping point for necessary and enduring curricular improvements.

B. Racial Awakening

Spring and summer 2020 also brought a powerful racial reckoning. Nationwide demands for change sounded in protests, marches, legislation, and activism.¹²⁶ Communities wrestled with policing practices,¹²⁷ hyper-incarceration,¹²⁸ and the presence of monuments and naming practices celebrating White supremacy and White supremacists.¹²⁹ These conversations called for all institutions and individuals to reflect on their role in dismantling racism in their communities and institutions.¹³⁰

Law schools and law faculty were thus essential sites for reflection and transformation. Legal education advanced various initiatives, albeit episodically. Schools expanded program and course offerings.¹³¹ Schools hosted community programs engaging the public.¹³² Educators examined the inclusivity of their classrooms, their teaching methods, and their content coverage. For example, the Society of American Law Teachers

126. See, e.g., Reuters, *U.S. Saw Summer of Black Lives Matter Protests Demanding Change*, U.S. NEWS & WORLD REP. (Dec. 7, 2020, 8:04 AM), <https://www.usnews.com/news/top-news/articles/2020-12-07/us-saw-summer-of-black-lives-matter-protests-demanding-change> (describing the Black Lives Matter protests as the biggest protests in a generation).

127. See, e.g., AM. CIV. LIBERTIES UNION, *THE OTHER EPIDEMIC: FATAL POLICE SHOOTINGS IN THE TIME OF COVID-19* 3 (2020), <https://www.aclu.org/report/other-epidemic-fatal-police-shootings-time-covid-19> ("Our country has to reckon with the scope and impact of centuries of systemic police violence and racism."); Robert Klemko & John Sullivan, *The Push to Remake Policing Takes Decades, Only to Begin Again*, WASH. POST (June 10, 2021), <https://www.washingtonpost.com/investigations/interactive/2021/police-reform-failure>.

128. See, e.g., Zina Makar, *Unnecessary Incarceration*, 98 OR. L. REV. 607, 649 (2020).

129. See, e.g., Lyra D. Monteiro, *Power Structures: White Columns, White Marble, White Supremacy*, MEDIUM (Oct. 27, 2020), <https://intersectionist.medium.com/american-power-structures-white-columns-white-marble-white-supremacy-d43aa091b5f9>.

130. See, e.g., Justin Worland, *America's Long Overdue Awakening to Systemic Racism*, TIME (June 11, 2020, 6:41 AM), <https://time.com/5851855/systemic-racism-america>.

131. See, e.g., Alaa Elassar, *The University of Louisville's Law School is Offering a Class on Systemic Racism Titled 'Breonna Taylor's Louisville'*, CNN (Sept. 23, 2020, 4:56 PM), <https://www.cnn.com/2020/09/23/us/university-of-louisville-breonna-taylor-class-trnd/index.html>.

132. See, e.g., *UB The Change Series*, UNIV. BALT., <http://www.ubalt.edu/alumni/events/UB%20the%20Change.cfm> (last visited Aug. 1, 2021).

organized well-attended programs on anti-racist work and teaching methods.¹³³ Boston University hosted a symposium titled: *Racial Bias, Disparities and Oppression in the 1L Curriculum: A Critical Approach to the Canonical First Year Law School Subjects*.¹³⁴

Circles of scholars also came together to discuss survival strategies and action plans for racial justice work in academia.¹³⁵ Racial justice work is fatiguing and requires such support.¹³⁶ While many in legal education are newer to the work, others have been engaged in this work intensely for decades. It is chronic work that can drain and deplete.¹³⁷

There is still much work to be done in recruitment, retention, and culture and climate for students, faculty, and staff. Students of color report notable discomfort with law school and their enrollment reflects this trepidation.¹³⁸ Thirty-one percent of enrolled law students are students of color, reflecting a steady upward trajectory in the aggregate.¹³⁹ Aggregate numbers obscure vast differences when examined further by gender, race, and region, though. Notably, the enrollment of women of color vastly exceeds men of color.¹⁴⁰ Black

133. *SALT Virtual Series: Social Justice in Action, Incorporating Anti-Racism Frameworks into Core Law School Classes*, *supra* note 11.

134. *Racial Bias, Disparities and Oppression in the 1L Curriculum: A Critical Approach to the Canonical First Year Law School Subjects*, B.U. SCH. L., <http://www.bu.edu/law/files/2019/12/BU-Symposium-schedule-2320201-1.pdf> (last visited Aug. 1, 2021).

135. See, e.g., *Racial Justice in Academia: Surviving as a Minority*, *supra* note 11.

136. See, e.g., Christina Silva, *Black Activist Burnout: 'You Can't Do This Work if You're Running on Empty'*, NPR (Aug. 10, 2020, 5:00 AM), <https://www.npr.org/2020/08/10/896695759/black-activist-burnout-you-can-t-do-this-work-if-you-re-running-on-empty>.

137. See, e.g., Paul C. Gorski, *Racial Battle Fatigue and Activist Burnout in Racial Justice Activists of Color at Predominantly White Colleges and Universities*, 22 RACE ETHNICITY & EDUC. 1, 8-12 (2019); Paul C. Gorski & Noura Erakat, *Racism, Whiteness, and Burnout in Antiracism Movements: How White Racial Justice Activists Elevate Burnout in Racial Justice Activists of Color in the United States*, 19 ETHNICITIES 784, 793-800 (2019).

138. See, e.g., Kathryn Rubino, *Black at Harvard Law School is the Instagram Account You Need to Read Right Now*, ABOVE L. (June 24, 2020, 2:42 PM), <https://abovethelaw.com/2020/06/black-at-harvard-law-school-is-the-instagram-account-you-need-to-read-right-now>. See Capers, *supra* note 90, at 21 (summarizing how only 9% of White students report feeling uncomfortable on campus, while 25% of Black students and 18% of Latinx students report feeling uncomfortable).

139. The Buzz, *2019 Law School Diversity Report: JD Enrollment by Race & Ethnicity*, EQUAL OPPORTUNITY TODAY, <https://equalopportunitytoday.com/2019-law-school-diversity-report-jd-enrollment-by-race-ethnicity> (Oct. 5, 2020); see also Capers, *supra* note 90, at 21 (noting that 12.7% of law students are Latinx students and 7.94% are Black students while the overall population is 18.3% Latinx and 13.4% Black).

140. *Various Statistics on ABA-Approved Law Schools*, AM. BAR ASS'N., https://www.americanbar.org/groups/legal_education/resources/statistics (last visited Aug. 1, 2021) (citing 2020 enrollment data that 7,598 women of color enrolled, compared to 4,827 men of color, out of 38,202 total 1L students).

women's student enrollment doubles Black male student enrollment.¹⁴¹ Despite their statistical advantage, women of color report more negative experiences in law school than their male peers when measured by their overall satisfaction.¹⁴² Women of color disproportionately contemplate withdrawing from law school compared to all other categories of students.¹⁴³ Enrollment for African-American/Black students has also trended downward for four consecutive years, even as the aggregate number of students of color has risen.¹⁴⁴ These aggregate numbers also obscure vast differences when examined 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.¹⁴⁵

Faculty of color also face barriers in recruitment, retention, and culture and climate. Today, faculty of color comprise less than 15% of university faculty.¹⁴⁶ Women of color in law teaching remain dramatically under-represented and even more so in the tenure/tenure-track ranks.¹⁴⁷ Women of color were just 7% of law faculty in 2009 when data were last released.¹⁴⁸

A closer look at aggregate numbers also reveals hierarchies and segmentation. Women faculty of color occupy lower status and lesser-paid jobs, thus often doing more work for less security and pay.¹⁴⁹ Concerns fester about "internal status inequities and the clustering of women faculty members in non-tenured positions with lower salaries and less job protection, including on clinic, legal research and writing and library faculties."¹⁵⁰ CLEA's Statement on Anti-Racist Legal Education highlighted how experiential faculty are also often women and racial minorities and they often have less secure jobs, less status, and less pay.¹⁵¹ These hierarchies, in turn, communicate problematic values to students.¹⁵²

141. *Law School Enrollment by Race & Ethnicity (2019)*, ENJURIS, <https://www.enjuris.com/students/law-school-race-2019.html> (last visited Aug. 1, 2021).

142. THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION & THE CENTER FOR WOMEN IN LAW, *WOMEN OF COLOR: A STUDY OF LAW SCHOOL EXPERIENCES* 48 (2020) [hereinafter NALP FOUNDATION].

143. *Id.* at 32.

144. *See id.*

145. *Id.*; see also Capers, *supra* note 90, at 21 (noting that Latinx students make up just 9% of students at the top thirty law schools and Black students represent only 6%).

146. NIEMANN ET AL., *supra* note 113, at 4.

147. Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. 441, 457 (2015).

148. *Id.* at 445-46 (2015) (citing 2009 numbers before the Association of American Law Schools stopped releasing data).

149. *Id.* at 446.

150. Archer et al., *supra* note 24, at 128, 130.

151. CLEA Statement, *supra* note 24.

152. *Id.*

Progress seems to have languished. The CLEA's Committee for Faculty Equity and Inclusion concluded that racial and ethnic inclusion in law faculty clinical hiring has been limited and stagnant.¹⁵³ While the aggregate percentage of faculty of color in clinical teaching has grown from 10% to 21%, Black clinical faculty have not exceeded the peak of 7% in 1999, numbers of Latinx faculty have likewise not grown since 1981, and Indigenous faculty have never even attained 1% of representation.¹⁵⁴

These hierarchies and disparities are deeply problematic for many reasons, but particularly in the quest to foster diverse and inclusive classrooms and institutions. What is missing from existing episodic and incremental responses are shared values and approaches across all institutions, faculties, and classrooms. The ABA has recently taken a step in this direction, as explored in Subpart IV.B.3, but more transformative moves are needed.¹⁵⁵

C. Harnessing the Momentum of a Curricular Tipping Point Against the Headwinds of a "Pandemic Paradox"

The dual disruptions of 2020 have led us to a critical curricular tipping point that should not be overlooked for its transformative potential. Like viruses, changed behaviors can spread rapidly throughout communities and institutions.¹⁵⁶

Tipping points are unique moments engaging the "beliefs and energies of a critical mass of people."¹⁵⁷ A tipping point requires critical mass and focused energy, but not necessarily a majority view.¹⁵⁸ A committed minority position can evoke change and achieve a tipping point that will, in turn, trigger a "cascade of behavior change that rapidly increases the acceptance of a minority view."¹⁵⁹ Tipping points allow new ideas to spread rapidly and bring "fundamental change very quickly."¹⁶⁰

153. Archer et al., *supra* note 24, at 128, 130.

154. *Id.* ("Overall, White faculty continue to hold nearly [eight] out of [ten] clinical faculty positions.").

155. Memorandum from the Standards Committee to The Council 1 (May 7, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may21/21-may-standards-committee-memo-proposed-changes-with-appendix.pdf [hereinafter ABA Memorandum].

156. *See, e.g.*, GLADWELL, *supra* note 25.

157. Kim & Mauborgne, *supra* note 26, at 52 (explaining that the biggest challenge in achieving change is convincing people that there is a problem and a need for change).

158. *See id.*

159. Damon Centola et al., *Experimental Evidence for Tipping Points in Social Convention*, 360 AM. ASS'N FOR ADVANCEMENT SCI. 1116, 1116 (2018).

160. *See* Kim & Mauborgne, *supra* note 26, at 52.

The move to online learning was a seismic disruption that created the conditions for a curricular tipping point. A focused energy emerged. Faculty got to work attending trainings, accessing campus resources, and sharing ideas and syllabi. They worked collaboratively, rapidly, and universally. Faculty did not just replicate old teaching techniques in front of a camera.¹⁶¹ Rather, 69% of faculty with no online teaching experience changed the types of assignments they gave and even 60% of faculty who were already teaching online changed assignments or exam formats.¹⁶²

The speed of the curricular reforms, the breadth of their implementation, and the longevity of the teaching disruptions all suggest a transformative curricular tipping point. Faculty have moved outside of their comfort zone, tried new techniques, and reimagined their classrooms, whether by choice or necessity. It would be a loss to return to “business as usual” given the breadth and depth of critiques.

However, there is also a harsh pandemic paradox obstructing the actualization of this tipping point. The exact communities best situated to lead the call for curricular reforms, after decades of seeking such reforms, have the least bandwidth and political capital presently to move these reforms forward because of the global pandemic, strained caregiving, and racial justice work in the community.

Pandemics “magnify[] all existing inequalities.”¹⁶³ COVID-19 has exacerbated inequalities of class, race, gender, disability, national origin, and age. Moreover, the virus itself has disproportionately harmed communities of color, immigrants, low-wage workers, the elderly, and the medically vulnerable, revealing all of society’s structural hierarchies and barriers. These deepened inequalities are predicted to far outlast the epidemic.¹⁶⁴

In December 2019, just weeks before COVID-19 was declared a global health pandemic,¹⁶⁵ women had surpassed more than half of the

161. Lederman, *supra* note 3.

162. *Id.*

163. Helen Lewis, *The Coronavirus is a Disaster for Feminism*, ATLANTIC (Mar. 19, 2020), <https://www.theatlantic.com/international/archive/2020/03/feminism-womens-rightscoronavirus-covid19/608302>. See generally Naomi R. Cahn & Linda C. McClain, *Gendered Complications of Covid-19: Towards a Feminist Recovery Plan*, 22 GEO. J. GENDER & L. 1, 1 (2020) (chronicling the depths and breadth of gendered hardships arising from COVID-19 and charting a plan for transformative change).

164. See, e.g., Titan Alon, et al., *The Impact of Covid-19 on Gender Equality*, COVID ECONOMICS, Apr. 14, 2020, at 1, 62-64, <https://cepr.org/content/covid-economics-vetted-and-real-time-papers-0#block-block-10>.

165. WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19, WORLD HEALTH ORG. (Mar. 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

nation's labor force.¹⁶⁶ Just months later, COVID-19 was called a "disaster for feminism."¹⁶⁷ COVID-19's effects on women in all professions and sectors is deep and disproportionate.¹⁶⁸ COVID-19 will hurt "an entire generation of women" who are getting pushed out of the work force and will struggle to re-enter.¹⁶⁹ Women of color are the single most affected community economically.¹⁷⁰ COVID-19 has "forever colored our understanding of not only the crisis of contagion, but also of the ethics of community, care, and concern."¹⁷¹ The pandemic is existing inequities "on steroids."¹⁷²

While an economic downturn often impacts men in industries like manufacturing and construction, this pandemic has distinctly struck areas of high female employment, including the restaurant and hospitality sectors.¹⁷³ These job losses are likely to further depress women's wages beyond the pandemic and make it harder for the unemployed to secure future jobs.¹⁷⁴ As one author writes, the choices were difficult, but the answer was clear:

What do pandemic patients need? Looking after. What do self-isolating older people need? Looking after. What do children kept home from school need? Looking after. All this looking after—this unpaid caring labor—will fall more heavily on women, because of the existing structure of the workforce. 'It's not just about social norms of

166. U.S. Dep't of Labor, Bureau of Labor Statistics, News Release USDL-21-0002 (Jan. 8, 2021), https://www.bls.gov/news.release/archives/empst_01082021.pdf; see Chabeli Carrazana, *Women Drove 70% of the Job Gains in July, the Second Straight Month of Strong Job Growth This Year*, THE 19TH* (Aug. 6, 2021, 10:02 AM), <https://19thnews.org/2021/08/women-drove-70-of-the-job-gains-in-july> (noting that unemployment is still highest for women of color).

167. Lewis, *supra* note 163.

168. See generally Cahn & McClain, *supra* note 163. See, e.g., Sarah Chaney, *Women's Job Losses From Pandemic Aren't Good For Economic Recovery*, WALL ST. J. (June 21, 2021, 9:40 AM), <https://www.wsj.com/articles/womens-job-losses-from-pandemic-arent-good-for-economic-recovery-11592745164> (explaining that female workers have endured the brunt of pandemic job losses and that, particularly married women, are less likely to re-enter the workforce).

169. Patricia Cohen & Tiffany Hsu, *Pandemic Could Scar a Generation of Working Mothers*, N.Y. TIMES, <https://www.nytimes.com/2020/06/03/business/economy/coronavirus-working-women.html> (June 30, 2020) (summarizing the challenges and sacrifices that working women make while bearing the brunt of domestic labor).

170. U.S. Dep't of Labor, *supra* note 166.

171. Catherine Powell, Opinion, *The Color of Covid: The Racial Justice Paradox of Our New Stay-at-Home Economy*, CNN (Apr. 18, 2020, 9:13 AM), <https://www.cnn.com/2020/04/10/opinions/covid-19-people-of-color-labor-market-disparities-powell> (describing this reality as the "color of COVID").

172. Cohen & Hsu, *supra* note 169.

173. Alon et al., *supra* note 164, at 63. Between 1989 and 2014, three quarters of employment fluctuations affected men because male employment is "more concentrated in sectors with a high cyclical exposure, whereas women are highly represented in sectors with relatively stable employment over the cycle." *Id.* at 66.

174. *Id.* at 64.

women performing care roles; it's also about practicalities[.] . . . Who is paid less? Who has the flexibility?'¹⁷⁵

COVID-19 exacerbated existing caregiving hardships, sometimes called the "maternal wall."¹⁷⁶ The pandemic deepened unequal divisions of household labor.¹⁷⁷ Within opposite sex married couples with full-time workers, women already perform 70% of the childcare during working hours.¹⁷⁸ Of these couples, men perform an average of 7.4 hours of childcare per week and women perform 13.3 hours.¹⁷⁹ For children under age five that is 10.9 hours for men and 19.8 hours for women.¹⁸⁰ Women perform 60% of all childcare (including working and non-working hours) among dual-earner couples.¹⁸¹

In March 2020, 1.5 billion children worldwide were out of school buildings, thus dramatically increasing caregiving demands¹⁸² and the higher COVID-19 mortality rate for the elderly compromised the role that grandparents had historically played in family caregiving.¹⁸³ As childcare options dwindled,¹⁸⁴ the paid caregiving market shifted to an unpaid one.¹⁸⁵ For homes with existing disparities, the pandemic may have thus deepened caregiving hardships.¹⁸⁶ Caregiving responsibilities include intergenerational caregiving and community caregiving for extended networks of friends and relatives.¹⁸⁷

Of the almost 130 million households in the United States, 17% are single-parent households and 70% of those households (15 million) are

175. Lewis, *supra* note 163.

176. See Joan C. Williams & Elizabeth S. Westfall, *Deconstructing the Maternal Wall: Strategies for Vindicating the Civil Rights of "Careers" in the Workplace*, 13 DUKE J. GENDER L. & POL'Y 31, 31-33 (2006).

177. See, e.g., Chabeli Carrazana, *Moms Spent the Equivalent of a Full-Time Job on Child Care Last Year – While Working at the Same Time*, THE 19TH* (Aug. 3, 2021, 4:23 PM), <https://19thnews.org/2021/08/moms-child-care-pandemic-full-time-job> ("During the pandemic, child care was a second full-time job for many moms of young kids.").

178. Alon et al., *supra* note 164, at 72.

179. *Id.* at 71 (noting that the hours are higher for young children, but the ratio remains the same).

180. *Id.* at 72.

181. *Id.*

182. Lewis, *supra* note 163.

183. *Id.*

184. Cahn & McClain, *supra* note 163, at 13 (demonstrating that the increased likelihood of "[c]hild care deserts are most likely to be in low- and middle-income and rural communities").

185. Lewis, *supra* note 163.

186. Alon et al., *supra* note 164, at 71.

187. Colleen Flaherty, *No Room of One's Own*, INSIDE HIGHER ED (Apr. 21, 2020), <https://www.insidehighered.com/news/2020/04/21/early-journal-submission-data-suggest-covid-19-tanking-womens-research-productivity>.

single-mother households.¹⁸⁸ Single parents face compounded risks caring for their children and retaining employment.¹⁸⁹

Increased childcare responsibilities can cause career setbacks,¹⁹⁰ including promotion delays, productivity losses, and diminished networking.¹⁹¹ The Boston Consulting Group concluded that the pandemic left parents doubling the time they spent on tasks, including education and household management, from thirty hours per week to fifty-nine hours per week.¹⁹² Of that increase in overall hours spent, women spent an average of fifteen hours more than men in this increased pandemic caregiving.¹⁹³ Another study found that 44% of women in two-parent households reported that they were managing the childcare alone during the pandemic, compared to only 14% of men.¹⁹⁴

These broader trends in stunted career trajectories caused by caregiving also apply to women in academia.¹⁹⁵ Journal submission data as early as April 2020 began confirming gendered patterns in submissions as women professors bore the brunt of caregiving.¹⁹⁶ Anecdotal accounts suggested two separate gendered trends.¹⁹⁷ The Deputy Editor of the British Journal for the Philosophy of Science reported from March to April 2020, a “negligible” number of submissions from women researchers, the likes of which the editor had not seen before.¹⁹⁸ In contrast, the Journal of Comparative Political Studies reported a 25% increase in submissions in April 2020 driven

188. Alon et al., *supra* note 164, at 70.

189. *Id.*

190. *Id.* at 74.

191. *Id.* at 82. See generally Sun Joo Ahn et al., *Academic Caregivers on Organizational and Community Resilience in Academia (Fuck Individual Resilience)*, 14 COMM’N, CULTURE & CRITIQUE 301, 302 (2021) (“The challenges of childcare, homeschooling, and elder care further increase gender disparities in promotion and tenure, potentially for an entire cohort of women working in higher education and caregiving, including contingent and teaching faculty—the majority of whom are women.”).

192. Matt Krentz et al., *Easing the COVID-19 Burden on Working Parents*, BOS. CONSULTING GRP. (May 21, 2020), <https://www.bcg.com/publications/2020/helping-working-parents-ease-the-burden-of-covid-19>.

193. *Id.*

194. Jenesse Miller, *COVID-19 Pandemic Has Hit Women Hard, Especially Working Mothers*, USC NEWS (June 18, 2020), <https://news.usc.edu/171617/covid-19-women-job-losses-childcare-mental-health-usc-study>.

195. See generally Salima Kasymova et al., *Impacts of the COVID-19 Pandemic on the Productivity of Academics Who Mother*, 28 GENDER WORK ORG. 419, 420 (2021) (“Several studies assessed the impact of the COVID-19 pandemic on productivity of academics and found that the pandemic is amplifying the existing gender inequalities in academic publishing.”). The author notes that more research is needed regarding academic job responsibilities, teaching, and service. *Id.* (surveying 109 participants).

196. Flaherty, *supra* note 187.

197. *Id.*

198. *Id.*

entirely by male submitters, while women's submissions remained consistent.¹⁹⁹ The effects of these disparities could extend for years to come.²⁰⁰

These early findings prompted extensive discussion, as women faculty highlighted the challenges they were facing managing teaching, service, scholarship, and caregiving.²⁰¹ These disparities align with larger academic trends revealing that women faculty disproportionately engage in the emotional labor of supporting students and in institutional service.²⁰² These inequities are likely to be felt more harshly for faculty of color, as they carry added responsibilities of supporting diversity and inclusion efforts in ways that are often underappreciated and draining tasks.

The hardships and inequities described in this Part create a "pandemic paradox," revealing how the faculty communities who have long sought curricular changes have the most strained bandwidth at this pedagogical tipping point.

IV. TIPPING TOWARD TRANSFORMATIVE CURRICULAR CHANGE

Transformative change in legal education cannot happen around the margins. Reforms need to be situated in the structural, curricular, and economic center of legal education. Timely change in the wake of existing curricular disruptions is vital. The pandemic taught legal educators that we *can* systemically change rapidly and universally.

Likewise, legal education needs the same moment of reflection, community, consistency, and collaboration in achieving inclusive classrooms. This Article proposes two reforms. The first is a call to end the presumptive reverence given to problematic performances of the Socratic method. The second is a call to add an equity lens to measuring learning outcomes in classrooms and programs.

199. *Id.*

200. See, e.g., Colleen Flaherty, *Where and How Gender and Caregiving Intersect for Professors During COVID-19*, INSIDE HIGHER ED (Mar. 31, 2021), <https://www.insidehighered.com/news/2021/03/31/where-and-how-gender-and-caregiving-intersect-professors-during-covid-19> (explaining that teaching and learning might look "relatively more normal in the fall" but "trends related to research productivity and employment are likely to impact women and caregiver academics for years to come").

201. Flaherty, *supra* note 187.

202. *Id.*; Ahn et al., *supra* note 191, at 301 ("Academic caregivers are disproportionately women, and the COVID-19 pandemic brought to light our precarious position and the lack of structural and institutional responses to cope with crises.").

A. Ending the Presumptive Reverence Given to Problematic Performances of the Socratic Method

Law schools should commit to delivering legal education effectively and inclusively for all students. This Part does not advocate for an *abandonment* of Socratic teaching, but rather a reframing of the Socratic method around a student-centered, skills-centered, client-centered, and community-centered delivery. Performances of the Socratic method that are power-centered and professor-centered do not deserve the presumptive reverence they receive, given the documented harms and critiques of these performances.²⁰³

The Socratic method must be a critical site for curricular reform, given its centrality to the student experience. Socratic teaching is not leaving legal education any time soon, as a practical matter. It also offers pedagogical strengths. Many applaud its intellectual rigor in teaching students to think critically and analytically.²⁰⁴ It can be taught to a large lecture hall of students efficiently and sustainably.²⁰⁵ It is repeated hundreds of times in different courses achieving spaced repetition.²⁰⁶ It is delivered to large and diverse groups of students allowing for competing perspectives and critical inquiry. It has robust volumes of existing teaching materials built around it already.²⁰⁷ It is comfortable

203. See, e.g., Young, *supra* note 48, at 2594-95 ("But the more transformative approach is a structural one: entertaining the possibility that if a pedagogical tool consistently produces negative results for certain people, perhaps the problem is with the tool, not the people.").

204. See, e.g., ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 210, 211 (2007) (explaining that the Socratic method encourages students to think logically and then to explain their reasoning and conclusions in the classroom, which gives "abundant opportunities for putting their own minds into vigorous action, in order first that they might gain mental power, and secondly, that they might hold firmly the information or knowledge they have acquired"); Jenny Morgan, *The Socratic Method: Silencing Cooperation*, 1 LEGAL EDUC. REV. 151, 154 (1989) (noting that the Socratic method tries to develop key analytic skills and rhetorical skills); Ford, *supra* note 61, at 2 (highlighting how the Socratic method helps students look for evidence to support their positions, understand logical construction of arguments, and draw valid conclusions); Kerr, *supra* note 107, at 116-18 (summarizing descriptions of the Socratic method "at its best"); Phillip Areeda, *The Socratic Method*, 109 HARV. L. REV. 911, 921-22 (1996).

205. See, e.g., Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?*, 43 CAL. W. L. REV. 267, 273-74 (2007) (giving "professors the ability to teach large bodies of students in an active manner").

206. STUCKEY ET AL., *supra* note 204, at 178 ("Virtually all learning theorists agree that most learning is enhanced by repetition."). Posing questions to students on many occasions and in many ways is central to the Socratic method: "through repetition and variation, a student can construct, or internalize, an independent understanding of a problem and its solution." *Id.* at 208.

207. Pistone & Hoeffner, *supra* note 62, at 211 (describing how the Socratic method allowed "large numbers of students [to be taught] at relatively little expense for instruction and materials").

for many professors and law faculties because they were taught this way and they have taught this way for decades.²⁰⁸

This article calls to “cancel” the presumptive reverence that is given to problematic Socratic performances. It is a call to stop revering, amplifying, and immunizing the power-centered and professor-centered model where it still exists. “Cancel Culture” refers to the popular, albeit controversial, trend of withdrawing support for public figures after they have acted objectionably, often for racist and sexist behavior.²⁰⁹ The term is used for consumers to communicate dissatisfaction²¹⁰ or to “disinvest”²¹¹ in something or someone that is no longer culturally relevant.²¹² While “Cancel Culture” has been criticized by many as going too far,²¹³ scholars have nonetheless found underlying merit and complexity in what the practice actually represents societally.²¹⁴ Canceling is “ultimately an expression of agency[,] . . . a taking back of one’s power.”²¹⁵ Lisa Nakamura, a professor at the University of Michigan who studies the intersection of digital media and race, gender and sexuality, explained that “[i]t’s an agreement not to amplify, signal boost, give money to” so as to deprive someone of attention.²¹⁶

Quite understandably, the first question this proposal often raises is: Are you talking about *my* Socratic teaching? The idea of critiquing another’s teaching is admittedly deeply personal, vulnerable, and off-putting. It can feel like an attack on beloved, accomplished, and talented colleagues. To this notably delicate question, I respond with two answers. Globally, “yes.” On one level, I am referring to some aspects of problematic performances that remain in all our traditional Socratic classrooms, *including my own*. There are aspects of problematic

208. See Rhode, *supra* note 37, at 1547 (noting that the Socratic method has not changed universally because, for some faculty, the Socratic method just works well); Barnhizer, *supra* note 62, at 5 (“We can begin with the fact that the character of the core law school curriculum and its primary methods is a reflection of the fact that because most law professors were extremely successful in their undergraduate and law school careers and feel endowed by that experience with the knowledge and ability required to teach well by means of the same approaches.”).

209. The Daily Podcast, *Cancel Culture, Part 1: Where It Came From*, N.Y. TIMES, <https://www.nytimes.com/2020/08/10/podcasts/the-daily/cancel-culture.html> (Aug. 12, 2020); Donovan X. Ramsey, *The Truth About Black Twitter*, ATLANTIC (Apr. 10, 2015), <https://www.theatlantic.com/technology/archive/2015/04/the-truth-about-black-twitter/390120>.

210. The Daily Podcast, *supra* note 209.

211. Jonah Engel Bromwich, *Everyone Is Canceled*, N.Y. TIMES (June 28, 2018), <https://www.nytimes.com/2018/06/28/style/is-it-canceled.html>.

212. See *id.*

213. See, e.g., Emily S. Rueb & Derrick Bryson Taylor, *Obama on Call-Out Culture: ‘That’s Not Activism’*, N.Y. TIMES, <https://www.nytimes.com/2019/10/31/us/politics/obama-woke-cancel-culture.html> (Aug. 10, 2020).

214. See Bromwich, *supra* note 211.

215. *Id.*

216. *Id.*

performances within all traditional Socratic classrooms, whether it be the classroom design, the penultimate exam, the lack of formative assessment, the sole use of appellate casebooks, or the centering of the professor. The breadth and depth of the critique differs, but an element of problematic Socratic performances festers in all traditional Socratic teaching. This proposal is, in large part, a challenge for our entire academic community to modernize around shared values.

I am also candidly addressing more urgently particularly toxic performances of Socratic teaching. For the small handful of faculty who *do* embrace and celebrate problematic performances of the Socratic method as their brand and their direct intended pedagogy, this is a more dire and urgent call to action on behalf of our students.

A more inviting and pragmatic way to frame the proposal, though, is to emphasize the professional importance of growing and adapting in one's skillset. Teaching is not a binary box that you check off as something you have achieved or mastered. Teaching, like any other career or skill, requires adaptation, transformation, and growth. This call to action is a collaborative one to modernize the Socratic method for our students and for our profession.

Our students need our support with their well-being and health as they progress through our programs and graduate into a profession that is itself struggling mightily with wellness.²¹⁷ We have a shared institutional and professional obligation to modernize and adapt.²¹⁸ We ask our students to learn entirely new vocabularies, analytic approaches,

217. See, e.g., Young, *supra* note 48, at 2575-76 (noting that students enter law school no less happy or healthy than their peers, but they leave law school "less intrinsically motivated, less hopeful, and less happy" while also navigating new grave risks such as self-harm, depression, anxiety, and alcohol dependence, risks which also plague the legal profession); Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 116 (2016); Janet Thompson Jackson, *Wellness and Law: Reforming Legal Education to Support Student Wellness*, 65 HOWARD L.J. (forthcoming 2021) ("Just as movements have galvanized the public to demand action on issues of racial injustice, gender equality, and climate change, so the legal profession must take steps to comprehensively address the wellness crisis spanning the lecture halls to practice."); Jennifer Jolly-Ryan, *Promoting Mental Health in Law Schools: What Law Schools Can Do for Law Students to Help Them Become Happy, Mentally Healthy Lawyers*, 48 U. LOUISVILLE L. REV. 95, 96 (2009) ("Law schools are in the best position to help solve the problems of law students' mental health and substance abuse, and perhaps, in the process, can help alleviate the legal profession's problems with mental disorders and substance abuse.").

218. See, e.g., Iselin Gambert, *Trauma is Not an Add-On: Embracing Grief and Trauma in Our Classrooms—and Our Lives*, 25 J. LEGAL WRITING INST. 46, 55 (2020) (arguing that it is time to "acknowledge the grief and trauma we and our students bring with us into the classroom, but make them part of the conversation"). "Stress, grief, and trauma are not unique to this pandemic and will not be eradicated with a vaccine. Neither will systemic racism, sexism, or other forms of oppression. Sometimes we are aware that our students or our colleagues are struggling, but more often they do so invisibly—and alone." *Id.*

and rules every day in our classes, despite their greatest vulnerabilities and fears.²¹⁹ We can do the same for our students.

The call to “cancel Kingsfield” is an imperative to meet the needs of *all* students to position them for success and to cultivate a sense of belonging.²²⁰ Students need to feel psychologically safe and valued in a learning environment.²²¹ Socratic teaching need not create so much distance between teachers and learners, and it need not center power squarely or solely with the professor.²²² Effective teaching strategies can instead position students and professors as “co-creators of knowledge.”²²³

To create inclusive classrooms, we need to revisit building and classroom design, power dynamics, content, and techniques.²²⁴ That will take time and innovation, but we need to start somewhere. We can start by eliminating problematic Socratic performances that reinforce dominance, hierarchies, and power dynamics in ways that undermine learning. We can begin to re-imagine a Socratic classroom that is horizontal, as “students recover their voices, voices that have been silenced by the hegemonic practices of *traditional* legal education.”²²⁵

Inclusive law schools and classrooms must be cultivated by all faculty and institutions, not just subsections of the faculty.²²⁶ Socratic reforms align with professional calls for transformation in traditional legal education too. Modern lawyers candidly acknowledge that it would be nearly malpractice to rely on the cache of written rules learned in law school.²²⁷ The Institute for the Advancement of the American Legal System (“IAALS”) surveyed practicing attorneys from various fields and seniorities and identified twelve building blocks to develop minimally competent lawyers²²⁸:

219. See generally Nicole P. Dyszlewski, *Wisdom for Teachers on the Journey to Integrating Diversity in the Law Classroom*, in INTEGRATING DOCTRINE AND DIVERSITY 3-14 (Nicole P. Dyszlewski et al., eds. 2021).

220. Lain, *supra* note 41, at 786; Elizabeth Bodamer, *Do I Belong Here? Examining Perceived Experiences of Bias, Stereotype, Concerns, and Sense of Belonging in U.S. Law Schools*, 69 J. LEGAL EDUC. 455, 455 (2021).

221. *Id.*

222. Rosario-Lebrón, *supra* note 14, at 314.

223. Rosario-Lebrón, *supra* note 14, at 312.

224. See generally Capers, *supra* note 90, at 22-41 (describing the need for systemic change across building architecture, law content, and law teaching techniques).

225. Rosario-Lebrón, *supra* note 14, at 314 (emphasis in original).

226. Boles, *supra* note 42, at 31; see Capers, *supra* note 90, at 9 (“[I]t should be taken as a given that law schools must step up. Must do better. Must, at a minimum, get their own houses in order.”).

227. Krook, *supra* note 66, at 24.

228. MERRITT & CORNETT, *supra* note 17, at 3.

- The ability to act professionally and in accordance with the rules of professional conduct
- An understanding of legal processes and sources of law
- An understanding of threshold concepts in many subjects
- The ability to interpret legal materials
- The ability to interact effectively with clients
- The ability to identify legal issues
- The ability to conduct research
- The ability to communicate as a lawyer
- The ability to see the “big picture” of client matters
- The ability to manage a law-related workload responsibly
- The ability to cope with the stresses of legal practice
- The ability to pursue self-directed learning²²⁹

From these building blocks, the IAALS recommended that law graduates develop their ability to interact effectively with clients and “focus on the lawyer’s responsibility to promote and protect the quality of justice.”²³⁰

Consistent with longstanding critiques and calls for reform, the Socratic method could instead be reframed to embed shared values that meet the stated needs of our students and of the profession. These shared values could be incorporated through Socratic teaching that is skills-centered, student-centered, client-centered, and community-centered.²³¹ The below chart depicts this shift compared to performative performances.

Building a Shared Set of Socratic Values

	Problematic Performances	Modernized Socratic Approaches
Skills-centered	Heavily, if not entirely, focused on teaching students to “think like a lawyer” by progressing through many rules with a final exam assessing students’ rapid analysis of those rules in one penultimate test.	Using formative assessment techniques to move students incrementally through the development of substantive rules and analytic skills, packaged around sensitization to

229. *Id.* (describing these components as interlocking).

230. *Id.* at 4 (recommending that bar licensing be “valid, reliable, and fair to all candidates”).

231. *See* Abrams, *supra* note 12, at 568.

		lawyering skills like research, writing, advocacy, civility, cultural competence, and client counseling.
Student-centered	Students follow the directional flow of the Socratic dialogue managed by the professor with each student participating serially in one-on-one exchanges. Students rarely understand how they are performing and their "on call" motivates preparation and performance.	Students engage with each other and with the professor. Students' lived experiences and perspectives are central to their acquisition of legal knowledge and the basis of inquiry. Students are given feedback to direct their own success.
Client-centered	Appellate cases shape instruction, leaving the role of clients' layers removed from the discussion of law. Clients are introduced outside of core courses in courses like clinics, simulations, and experiential learning.	Each Socratic exchange is a chance to explore the role of clients in the case and the work of lawyers using legal rules to achieve client objectives. Each mastered concept is a chance to advise a client responsively.
Community-centered	Cases are studied from appellate casebooks "in the air," neutral to the time, context, or community. Community focuses are left for clinics, externships, and	Students examine where the underlying concepts being discussed are present in their communities and how the rules do or do not provide redress. Students are

	<p>jobs.</p> <p>Students rarely feel connected to an inclusive learning community in large lecture courses. The perspectives of certain voices and communities dominate teaching and learning.</p>	<p>empowered to consider how the law reflects or does not reflect the values of their community. To the extent existing law does not reflect community needs or values, students consider reforms. Learning environments are cultivated with purpose to build welcoming and inclusive communities.</p>
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The Socratic method can be more student-centered, skills-centered, client-centered, and community-centered. This reframing would give the Socratic method modern purpose and relevance.²³² It is futile to bring large groups of diverse students together if there is only a single, absolute rule, or string of rules, to memorize in lockstep. Students can instead be more empowered to “unpack[] the hidden values, ideological motivations and the philosophical foundations of legal principles.”²³³ Students can test the logic and workability of the rules based on their own experiences and perspectives. This reframing will yield Socratic performances that are more effective and authentic.

Skills-centered Socratic classrooms would respond to professional calls for reform. Faculty can soften their emphasis on rules memorization for heavily-weighted final exams.²³⁴ Rather, faculty can broaden their Socratic focus to include skills sensitization, such as communication skills, the interpreting and understanding of legal

232. Nancy E. Dowd et al., *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL'Y 11, 41 (2003) (arguing that learning must be contextualized and relevant to students' experiences).

233. Krook, *supra* note 65.

234. MERRITT & CORNETT, *supra* note 17, at 7-12 (surveying prior studies concluding that the memorization of legal concepts from appellate federal cases had little value to the practice of law).

materials, and compiling facts, skills consistently cited as more valuable to practicing attorneys.²³⁵

Client-centered Socratic approaches will also prepare more practice-ready graduates. Existing casebooks can be used to explore client objectives.²³⁶ Repetition across casebooks and classes can sensitize students to examining why a client hired a lawyer, how the lawyer gathered relevant facts, and how the lawyer developed a legal strategy to meet the client's objectives. Centering clients in Socratic dialogue can help students learn how to communicate legal outcomes to a client, particularly when the outcome is not favorable and leaves the client's objectives unfulfilled.²³⁷ These are dramatically different exchanges than abstract ones centered around a court or the law, and they are vital to law practice.²³⁸ Law practice also includes persistent incivility and bias.²³⁹ Law classrooms should not reinforce and normalize troublesome models of professionalism while training lawyers.

Socratic teaching can also be more community-centered. Students can explore how legal doctrine shapes their community and what further reforms best meet community needs. This Socratic focus would better prepare students for community-based law clinics, community service, and community-engaged scholarship. Community-centered classrooms would also involve faculty seizing accountability for building and

235. *Id.* at 9. For example, one study concluded that nine out of ten hiring partners wanted new lawyers to have strong oral and written communication skills, whereas less than a third wanted new lawyers to have existing knowledge of substantive or procedural law. *Id.*

236. *See, e.g., id.* at 25 (explaining how supervising attorneys wanted lawyers "to develop a client-centered approach to cases").

237. *See id.* at 51 (valuing the importance of concise, accessible, and careful communication skills).

238. *See id.* at 43.

239. *See, e.g.,* Pamela J. White, *Thirty Years Later: Recalling the Gender Bias Report and Asking "What's Next?" In the Legal Profession*, 80 MD. L. REV. ONLINE 13, 32-33 (2020); Lilia M. Cortina et al., *What's Gender Got to Do with It? Incivility in the Federal Courts*, 27 L. & SOC. INQUIRY 235, 238 (2002) (chronicling how New Jersey first adopted a gender bias task force in 1982 and "[b]y 1999, at least [forty] states and five federal circuits had published reports examining gender bias, and a number of jurisdictions had also examined possible racial, ethnic, and religious bias in their court systems"); Dorothy W. Nelson, *Introduction to the Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 731, 733 (1994); Mary-Christine Sungaila, *Combating Bias Inside & Outside the Courtroom*, PERSPECTIVES, Summer 1996, at 12, 13-15; *A Difference in Perceptions: The Final Report of the North Dakota Commission on Gender Fairness in the Courts*, 72 N.D. L. REV. 1113, 1155 (1996); Kristen A. Kubes et al., *The Evolution of Model Rule 8.4(g): Working to Eliminate Bias, Discrimination, and Harassment in the Practice of Law*, AM. BAR ASS'N (Mar. 12, 2019), https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/model-rule-8-4.

cultivating inclusive classroom communities.²⁴⁰ Inclusive classrooms are welcoming for all students,²⁴¹ and they position all students for success.²⁴²

Law schools should continue the momentum of experimentation, collaboration, and self-reflection that COVID-19 sparked, by reframing the Socratic method around modernized values responsive to longstanding critiques.

B. Measuring Learning Outcomes with an Equity Lens

Accreditation reforms can also strengthen, solidify, and standardize effective teaching methods to meet the needs of all learners. Stronger accreditation oversight within existing ABA Standards can better hold law schools accountable for both *what* is taught and *how* it is taught.

The Council of the ABA Section on Legal Education and Admissions to the Bar (the “Council”) has been the formal accrediting body of Juris Doctor programs in the United States since 1952, but it has been promulgating standards governing law schools, and approving and listing law schools that meet those minimal education requirements, since 1921.²⁴³ The Council sits independent from the ABA, although schools refer to themselves as “ABA-approved.”²⁴⁴ Most states predicate bar licensure on graduation from an ABA-approved school, along with a fitness determination by a public authority.²⁴⁵ ABA Standards set out the requirements that law schools must meet to obtain and retain an ABA-approved law school designation and the Council provides interpretive guidance to help schools comply with these standards.²⁴⁶

The Council reviews its standards and remains open to proposed changes and public input.²⁴⁷ In 2014, the Council completed a six-year review of its accreditation standards.²⁴⁸ Previously, law school accreditation focused on the input and output of law schools, both the resources invested and the bar-passage rates and job placement data

240. See generally ADDY et al., *supra* note 60 (capturing the experiences of hundreds of instructors identifying what inclusive teaching is and how to incorporate it into their courses).

241. *Id.*

242. *Id.*

243. See AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS v (2020), https://www.americanbar.org/groups/legal_education/resources/standards. The American Bar Association (“ABA”) first established a Standing Committee on Legal Education and Admissions to the Bar in 1879. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.* at vi.

248. *Id.*

achieved.²⁴⁹ A handful of iconic publications in prior decades had nudged law schools toward curricular reform, but they had not formally modified the correlating accreditation standards.²⁵⁰ These 2014 reforms were well overdue in legal education, following implementation across other disciplines in earlier years.²⁵¹ These revisions to the standards reflected that the historical model of teaching content and relying solely on summative assessment was outdated and ineffective.²⁵² The 2014 reforms pushed law schools to modernize their curriculum to better prepare students for practice.²⁵³ In May 2021, the ABA proposed further reforms to these standards in the areas of diversity, equity, and inclusion that remain under consideration at the time of this publication.²⁵⁴

This Part spotlights how accreditation reforms could better address the steady drumbeat of legal education critiques by adding an equity lens to the measurement of learning outcomes. It first considers the current ABA Standards governing learning outcomes and governing diversity and inclusion. It argues that accreditation reforms need to bridge the deepening emphasis on diversity equity and inclusion to the measurement of learning outcomes in classrooms. Partitioning accountability for equity and inclusion outside of law school classrooms perpetuates the curricular status quo despite longstanding critiques.

1. Establishing Learning Outcomes to Measure Student Competency

ABA Standard 302 requires all schools to achieve learning outcomes that establish competency in at least these four 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;

249. See generally A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949 (2012) (chronicling the historic shifts in legal education from apprenticeships to the Langdell modern American law school to the ABA's centralized regulation).

250. See generally E. Eugene Clark, Note, *Legal Education and Professional Development – An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: *Narrowing the Gap*, 4 LEGAL EDUC. REV. 201, 208 (1993) (concentrating more on the “[s]kills and [v]alues [n]ew [l]awyers [s]hould . . . [a]cquire”).

251. See, e.g., Sarah Valentine, *Flourish or Founder: The New Regulatory Regime in Legal Education*, 44 J.L. & EDUC. 473, 474-75 (2015) (explaining how law schools historically distanced themselves from reforms occurring in other sectors of undergraduate and higher education). “Law schools now find themselves isolated: untethered from the profession, unmoored from higher education, and beset by unrelenting calls to reform.” *Id.* at 475.

252. Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 UNIV. S.F. L. REV. 245, 249, 255-57 (2016).

253. Valentine, *supra* note 251, at 484-89.

254. ABA Memorandum, *supra* note 155.

- (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.²⁵⁵

These reforms were “a catalyst for law schools to be intentional in curriculum development.”²⁵⁶ They centered learning outcomes around the “traditional legal curriculum,” while giving schools an opportunity to differentiate, innovate, and reflect distinct values.²⁵⁷ Schools might highlight learning outcomes focused on diversity and inclusion, cross-cultural competencies, client counseling, professional formation, or client-centered lawyering as shared objectives for all learners.

Indeed, some schools have added a learning outcome to achieve competency in cross-cultural legal representation.²⁵⁸ These schools aligned with other “client-facing professional schools” such as medical, nursing, social work, and dental schools that have included a formal educational requirement tied to cultural competency to their accreditation processes.²⁵⁹ The accrediting body for medical education, for example, has a standard requiring that “faculty and students must demonstrate an understanding of the manner in which people of diverse cultures and belief systems perceive health and illness and respond to various symptoms, diseases, and treatments.”²⁶⁰ Social work programs have an even stronger commitment to active competency by “engag[ing] diversity and difference in practice,” defined as:

Social workers understand how diversity and difference characterize and shape the human experience and are critical to the formation of identity Social workers understand that, as a consequence of

255. Memoranda from Managing Director of Am. Bar Ass’n Section of Legal Educ. and Admissions to the Bar on Learning Outcomes and Assessment Programs 1 (June 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.pdf (noting that schools could also add additional learning outcomes).

256. *Id.* (“A law school may also identify any additional learning outcomes pertinent to its program of legal education.”)

257. *Id.*

258. *Student Learning Outcomes*, N.Y. L. SCH., <https://www.nyls.edu/academics/programs-of-study/student-competencies-and-learning-outcomes> (last visited Aug. 1, 2021) (“Understands the fundamentals of basic lawyering skills such as interviewing, fact development and analysis, client counseling, negotiation, advocacy, document drafting, cross-cultural competency, organization and management of legal work, and the use of technology to aid practice.”).

259. L. Danielle Tully, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 STAN. J. CIV. RTS. & CIV. LIBERTIES 201, 224 (2020).

260. *Id.* at 225 (citing *Functions and Structure of a Medical School: Standards for Accreditation of Medical Education Programs Leading to the MD Degree*, LIAISON COMM. ON MED. EDUC. (Mar. 2014), https://med.wmich.edu/sites/default/files/2015-16_Functions-and-Structure-2015-6-16.pdf).

difference, a person's life experiences may include oppression, poverty, marginalization, and alienation as well as privilege, power, and acclaim. Social workers also understand the forms and mechanisms of oppression and discrimination and recognize the extent to which a culture's structures and values, including social, economic, political, and cultural exclusions, may oppress, marginalize, alienate, or create privilege and power.²⁶¹

While law schools can add cultural competency as a possible additional learning outcome, schools would notably be adding it to *differentiate*, not to *align* with the core shared values of legal education under the existing standards. This presents possibility, but certainly not transformative reform.²⁶² Yet, cultural competencies are considered "essential to legal education and to ethical law practice."²⁶³

Effective reforms to cultivate inclusive classrooms must include thoughtful measurement of outcomes in traditional law school classrooms. The ABA Standards currently do not compel inquiry into the effectiveness of teaching techniques to achieve stated learning outcomes. It is not enough to require schools to just measure learning outcomes in the abstract and "[take] steps" to meet them.²⁶⁴ When measuring the achievement of learning outcomes, decades of critical theory reveals that law schools have marched ahead with techniques despite knowing that these methods were not working equally for women and students of color. Accordingly, the measurement of learning outcomes must be accompanied by an equity and inclusion lens to measure the effectiveness of teaching techniques and assessment methods.²⁶⁵

Indeed, there is a large disparity in attrition for students of color, suggesting systemic institutional failures. First-year law students of

261. *Id.* at 225 (citing COUNCIL ON SOCIAL WORK EDUCATION, EDUCATIONAL POLICY AND ACCREDITATION STANDARDS FOR BACCALAUREATE AND MASTER'S SOCIAL WORK PROGRAMS 1, 7, 14 (2015), https://www.cswe.org/getattachment/Accreditation/Accreditation-Process/2015-EPAS/2015EPAS_Web_FINAL.pdf.aspx).

262. See Latonia Haney Keith, *Cultural Competency in a Post-Model 8.4(g) World*, 2 DUKE J. GENDER L. & POL'Y 1, 35-39 (2017) (arguing that education on bias in the profession and in the justice system is vital to accrediting lawyers).

263. Tully, *supra* note 259, at 226 (explaining that neglecting this learning outcome is problematic because law is "historically and culturally situated"). Tully advocates for the inclusion of "culturally responsive lawyering" within the ABA's learning outcomes all institutions must meet. *Id.* at 233.

264. See ABA STANDARDS, *supra* note 19.

265. See Genevieve Blake Tung, *Working Towards Equitable Outcomes in Law School – The Role of the ABA Standards*, in INTEGRATING DOCTRINE AND DIVERSITY 15-22 (Nicole P. Dyszlewski et al., eds. 2021) (explaining that diversity in the curricula is largely left to individual law professors and that this existing model is inadequate).

color began with 30% of total enrollment, but accounted for a disproportionate 44% of law school attrition.²⁶⁶

The ABA acknowledged in its 2014 reforms that schools need to measure learning outcomes, but it failed to require that schools track or address any inequities that emerge in achieving those learning outcomes. Its 2021 reforms, as explored below, continue that segmentation by partitioning schools' diversity, equity, and inclusion mandates outside of legal education's curricular center.

2. Diversity Mandates for Equal Access to Full Educational Opportunities

Where diversity *is* embedded in the ABA Standards is in the Standards on Law School Organizations and Administration, not the curriculum and learning standards contained in "The Program of Legal Education." These provisions separately mandate non-discrimination and equality of opportunity in law school administration.²⁶⁷ While its wording is framed broadly and holistically around equal access to the "full educational opportunity," its approach largely measures success by admissions and hiring.

ABA Standard 205, governing "Non-Discrimination and Equality of Opportunity," requires law schools to ensure an equal opportunity for students, faculty, and staff.²⁶⁸ ABA Standard 206, governing "Diversity and Inclusion," broadly requires law schools to:

demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.²⁶⁹

The requirements in ABA Standard 206 are said to "promote[] cross-cultural understanding, help[] break down racial, ethnic, and gender stereotypes, and enable[] students to better understand persons of different backgrounds."²⁷⁰

266. *Law School Enrollment by Race & Ethnicity (2019)*, *supra* note 141 (explaining that while White students were 62% of law school enrollment in 2016, they accounted for 49% of attrition in the first year).

267. AM. BAR ASS'N, *supra* note 243, at 11, 13.

268. *Id.* at 13.

269. *Id.* at 14.

270. *Id.*

While labeled “Diversity and Inclusion,” this standard, as currently written, seems to be more about diversity than inclusion. An opportunity to study law is not the same as inclusion. A school could have a tremendously diverse faculty, staff, and student body, while still having an environment that is toxic, teaching techniques that are marginalizing, and disparities in grades, attrition, and student satisfaction.

The current emphasis is primarily on getting students in the door and funded.²⁷¹ Indeed, the ABA reports that concrete efforts to satisfy these standards have typically been met with mentoring, programming, recruitment, scholarship, and pipeline programs.²⁷² These “concrete efforts” invite law schools to segment compliance with diversity and inclusion mandates away from the heft of the faculty and into the overburdened staff. Mentoring and event programming would likely be managed through a Dean of Students office outside of the classroom unbeknownst to most faculty. Recruitment, scholarships, and pipeline programs would likewise likely be managed by admissions and development offices out of the sightline of most faculty. This segmented approach disproportionately saddles staff with accountability for diversity and inclusion initiatives, while it immunizes the curricular core of legal education from diversity and inclusion scrutiny.

3. Proposed Diversity, Equity, and Inclusion Reforms

On May 7, 2021, the ABA proposed revisions to its standards governing accreditation on the topics of diversity, equity and inclusion, student wellness, and professional formation. These reforms seek to deepen legal education’s commitment to diversity and inclusion, but the approach continues the trajectory of segmentation. This Subpart argues for a bridge in the ABA Standards carrying the equity and inclusion emphasis to measuring the achievement of learning outcomes in classrooms.

The ABA, backed by strong support in written comments and by participants in a Roundtable on Diversity, Equity, and Inclusion, proposed a curricular requirement that law schools provide “training and education to law students on bias, cross-cultural competency, and racism.”²⁷³ This programming would occur at the start of legal education and once again before graduation.²⁷⁴ Embedding at least two programs

271. *Id.* (noting that these can include assistance in academic and financial need).

272. *See, e.g., id.*

273. ABA Memorandum, *supra* note 155, at 8.

274. *Id.* (noting that students in law clinics or field placements should complete the second training before or with the clinic or field placement).

addressing “bias, cross-cultural competency, and racism” in legal education is a positive improvement because of the standardization it offers across institutions and throughout the student body.²⁷⁵

There are some critiques, though, in the who, how, and where of implementation. The memorandum proposes two Interpretations to help with compliance. The first explains that cross-cultural competency is important to achieve “professionally responsible representation” and that lawyers have an obligation to “promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law.”²⁷⁶ The second Interpretation explains that schools can meet this learning outcome by hosting orientation sessions on “bias, cross-cultural competency, and racism,” bringing in guest speakers on these topics, offering courses on racism and bias in the law, or other educational experiences.²⁷⁷ The memorandum explains that all students do not need to take an upper-level course, but all students must participate in a “substantial activity designed to reinforce the skill of cultural competency and their obligations as future lawyers to work to eliminate racism in the legal profession.”²⁷⁸

This proposed approach continues the trajectory of relegating diversity, equity, and inclusion accountability to the staff level and to the periphery of the curriculum. It does not require that faculty revisit teaching techniques, content, or assessment metrics to embed cultural competency within doctrinal study. Rather, it glues a modern brick around the traditional architecture that still dominates the student experience. Yet, a seventy-year drumbeat of critiques suggests that issues relating to inclusion are best situated in the curricular center of law school classrooms.²⁷⁹ Equity and inclusion need to radiate out from this curricular center.²⁸⁰

The ABA also proposed reforms to ABA Standards 205 and 206 governing diversity and inclusion.²⁸¹ The revised ABA Standard 205, among other things, states that: “A law school shall adopt, publish, and adhere to policies that foster and maintain equality of opportunity for

275. *Id.*

276. *Id.* (explaining in Interpretation 303-6 that these values need to be introduced in law school).

277. *Id.* at 8-9.

278. *Id.* at 9.

279. *See, e.g.,* Young, *supra* note 48, at 2595 (critiquing reforms that are housed only in “orientation, lunch talks, and electives or clubs” because they “lack the structural power and institutional legitimacy needed to transform law schools”).

280. *See* Tung, *supra* note 265, at 22 (concluding that the solution must come from law schools and their faculties recognizing the “moral imperative”).

281. ABA Memorandum, *supra* note 155, at 8.

students, faculty, and staff, without discrimination or segregation on the basis of race, color, ethnicity, religion, national origin, gender, gender identity or expression, sexual orientation, age, or disability, or military status.”²⁸² Proposed ABA Standard 206 states that²⁸³:

(a) A law school shall provide:

(1) Full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly those related to race, color, ethnicity, religion, national origin, gender, gender identity or expression, sexual orientation, age, disability, and military status; and

(2) An environment that is inclusive and equitable with respect to race, color, ethnicity, religion, national origin, gender, gender identity or expression, sexual orientation, age, disability, and military status.

(b) A law school shall take effective actions that, in their totality, demonstrate progress in (1) Diversifying the students, faculty, and staff; and (2) Creating an inclusive and equitable environment for students, faculty, and staff.²⁸⁴

ABA Standard 206(a)(2) is a positive step forward in acknowledging that inclusion is not about providing *opportunity* alone. Inclusion begins by examining the environments we cultivate in our institutions and our classrooms. This more holistic language focusing on “an inclusive and equitable environment” offers a promise that the commitment to diversity, equity, and inclusion will carry into teaching techniques and assessment methods,²⁸⁵ but the “Interpretations” give mixed messages.

The ABA’s Interpretation 206-5 proposes that schools might create an inclusive and equitable environment by supporting affinity groups; holding diversity, equity, and inclusion training; providing mentoring opportunities; and creating pro bono and externship opportunities.²⁸⁶ These select examples suggest an ongoing partitioning of accountability

282. *Id.* at 1-2 (expanding the language).

283. ABA Memorandum, *supra* note 155, at 3-4 (changing the heading of the section to “Diversity, Inclusion, and Equity”) (emphasis added). It proposes moving this Standard on Diversity and Inclusion to a “core” standard, so as to provide public notice of non-compliance to “help underscore its importance.” *Id.* at 3.

284. *Id.* at 4.

285. *See, e.g.*, Rosario-Lebrón, *supra* note 14, at 321 (describing how grading rubrics, model answers, and transparent grading politics can contribute to horizontal classroom techniques). *See generally* Cynthia M. Ho, *How to Choose a Formative Assessment Platform to Optimize Data-Based Teaching*, INST. FOR L. TEACHING & LEARNING, <http://lawteaching.org/2021/08/11/how-to-choose-a-formative-assessment-platform-to-optimize-data-based-teaching> (last visited Aug. 1, 2021).

286. ABA Memorandum, *supra* note 155, at 6, 8 (complying with the requirement to create an inclusive and equitable environment will be assessed on the “totality of the law school’s actions”).

for diversity and inclusion efforts, and an ongoing immunity for the environments cultivated in traditional legal education classrooms.

Other aspects of the interpretive guidance offer more hopeful examples of what “effective actions and progress towards creating an inclusive and equitable environment” might look like.²⁸⁷ Most relevant to this article and most novel in its proposal, the ABA suggests that a school might take periodic “quantitative and qualitative measures of campus climate and academic outcomes disaggregated” by various categories (e.g., race, gender, sexual orientation, gender identity).²⁸⁸ This approach to compliance could be more transformative and responsive to decades of critiques.

The proposal also switches from a requirement that schools “demonstrate by *concrete action* a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession”²⁸⁹ to “*effective actions that lead to progress*.”²⁹⁰ This language also offers promise toward more rigorous monitoring and analytics in assessing teaching and learning, thus potentially continuing the momentum of 2020 and 2021 improving both *what* we teach and *how* we teach it.²⁹¹

Reforms to legal education’s accreditation processes offer an important springboard to lift diversity, equity, and inclusion from a programmatic goal largely centered around admissions and recruiting to a curricular analysis of equitable and inclusive techniques and assessment methods. The ABA’s proposed 2021 reforms are a positive start. They can be strengthened, though, to reinforce the inclusivity of *classroom* learning environments—the curricular center of legal education. They can be improved by strengthening the bridge between diversity, equity, and inclusion efforts in measuring learning objectives.

V. CONCLUSION

Legal education has reformed and transformed dramatically in response to an unprecedented public health emergency. It was frenzied, flawed, and fast. Yet, it was also nationwide, collaborative, and student-centered. It revealed that legal education *can* change, adapt, and pivot to meet the needs of students. Legal education sits at a tremendous curricular tipping point.

287. *Id.* at 6 (discussing Interpretation 206-5).

288. *Id.*

289. *Id.* at 4 (emphasis added).

290. *Id.* at 3 (emphasis added).

291. *Id.* at 4-6.

The legal academy, faculty, regulators, and institutional leaders should seize this moment to move legal education forward. This Article proposes two timely reforms as we emerge from post-pandemic teaching. Post-pandemic teaching should abandon the most problematic performances of the Socratic method that are power-centered and professor-centered, resituating teaching around Socratic techniques that are student-centered, skills-centered, client-centered, and community-centered techniques. Post-pandemic regulation of legal education should also ensure that teaching methods meet the needs of all students equitably and inclusively by bridging the commitments to diversity, equity, and inclusion into the traditional law school classroom.
