
MARKING 200 YEARS OF LEGAL EDUCATION:
TRADITIONS OF CHANGE, REASONED DEBATE, AND
FINDING DIFFERENCES AND COMMONALITIES

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What is the significance of legal education? “Plato tells us that, of all kinds of knowledge, the knowledge of good laws may do most for the learner. A deep study of the science of law, he adds, may do more than all other writing to give soundness to our judgment and stability to the state.”¹ So explained Dean Roscoe Pound of Harvard Law School in 1923,² and his words resonate nearly a century later. But missing are three other possibilities regarding the value of legal education:

- ◆ To assess, critique, and improve laws and legal institutions;
- ◆ To train those who pursue careers based on legal training, which may mean work as lawyers and judges; leaders of businesses, civic institutions, and political bodies; legal academics; or entrepreneurs, writers, and social critics; and
- ◆ To advance the practice in and study of reasoned arguments used to express and resolve disputes, to identify commonalities and differences, to build institutions of governance within and between communities, and to model alternatives to violence in the inevitable differences that people, groups, and nations see and feel with one another.

The bicentennial of Harvard Law School prompts this brief exploration of the past, present, and future of legal education and scholarship, with what I hope readers will not begrudge is a special focus on one particular law school in Cambridge, Massachusetts.

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¹ Roscoe Pound, *The Work of the American Law School*, 30 W. VA. L.Q. 1, 1 (1923), reprinted in 2 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES 678, 678 (Steve Sheppard ed., 1999).

² Pound continued:

If we are to do our duty by the common law in the 20th century, we must make it a living system of doing justice for the society of today and tomorrow, as the framers of our polity made of the traditional materials of their generation an instrument of justice for that time and for ours.

Id. at 17.

Some call this a time of crisis in legal education; others emphasize innovation and renewal.³ With new strains on constitutional democracies around the globe, serious chasms between the ideals and realities of justice systems in the United States and elsewhere, and perhaps unprecedented disruptive innovations in the ways legal knowledge is shared and law is practiced, Harvard Law School and legal education generally face significant questions and opportunities. This is a moment when many countries are creating new law schools, some following a model from the United States, which itself is much influenced by Harvard Law School.⁴ And institutions like Jindal Global Law School in India, the Peking University School of Transnational Law in China, new law schools in Italy and Brazil, and a revamped transnational program at McGill in Montreal, Canada, deliberately seek to invent new modes of legal education that treat law as global and beyond any one jurisdiction.

Some of the themes and issues for legal education have persisted for more than a century. Professor William Twining wrote in 1994:

In all Western societies law schools are typically caught in a tug of war between three aspirations: to be accepted as full members of the community of higher learning; to be relatively detached, but nonetheless engaged, critics and censors of law in society; and to be service-institutions for a profession which is itself caught between noble ideals, lucrative service of powerful interests and unromantic cleaning up of society's messes.⁵

These tensions persist and rightly so. They manifest the unique position of law schools as a bridge between theory and practice, between law and justice, between ideals and needs. Academic inquiry pursuing truth, engaged critique of law as it operates in multiple societies and times, and assistance to a profession that is itself caught between doing well and doing good characterize most law schools. Most law schools straddle theory and practice and also straddle service to the haves, who pay lawyers' bills, and the have-nots, who often bear the weight of laws without influence to shape them.

³ On the present as a time of crisis, see Kyle P. McEntee et al., *The Crisis in Legal Education: Dabbling in Disaster Planning*, 46 U. MICH. J.L. REFORM 225 (2012); and Steven J. Harper, *The Intractable Crisis in Legal Education: To Understand Why the Crisis in Legal Education Persists, Take a Look at How Law Deans and Professors Are Wishing It Away*, AM. LAW. (Sept. 11, 2015), <http://www.americanlawyer.com/id=1202736970724/The-Intractable-Crisis-in-Legal-Education> [<https://perma.cc/3GNN-JWDX>]. On the present as a time of innovation, see Beverly Petersen Jennison, *Beyond Langdell: Innovating in Legal Education*, 62 CATH. U. L. REV. 643 (2013); and Andrew Perlman, *Innovation in Legal Education*, LAW PRAC. TODAY (Jan. 2014), http://www.americanbar.org/content/newsletter/publications/law_practice_today_home/lpt-archives/2014/january14/innovation-in-legal-education.html [<https://perma.cc/X36D-6WQE>].

⁴ N.R. MADHAVA MENON, HARVARD LAW SCH. PROGRAM ON THE LEGAL PROFESSION, THE TRANSFORMATION OF INDIAN LEGAL EDUCATION (2012), https://clp.law.harvard.edu/assets/Menon_Blue_Paper.pdf [<https://perma.cc/G9B2-FC5A>]; Simon Chesterman, *The Globalisation of Legal Education*, 2008 SING. J. LEGAL STUD. 58, 65.

⁵ WILLIAM TWINING, BLACKSTONE'S TOWER: THE ENGLISH LAW SCHOOL 2 (1994).

Like law itself, law schools have the capacity to retain traditions and to enable change, to protect reliance on past practices and laws and also to inspire reform. Harvard Law School's bicentennial follows what can be described as three periods of legal education and over a century devoted to debate and rational argument across an expanding range of issues, sources, and points of view. Even with shifts in the debate over what is open for debate, this history provides a foundation for grappling with profound challenges ahead.

I. IN PLACE OF MULTIVOLUMED HISTORIES: A BRIEF ACCOUNT OF THREE PERIODS

With thanks and apologies to those who have studied the history of legal education and of Harvard's legal education in great detail,⁶ this brief summary starts before the industrial revolution. From medieval times until the mid-nineteenth century, lawyers learned their skills largely through apprenticeship and reading in informal settings.

Even in the first period, training began to become more formalized. In the late-thirteenth century in England, special education began for those appearing before "increasingly professional courts of England."⁷ In colonial America and the early Republic, a more informal process of apprenticeships or clerking emerged. Chief Justice John Jay and President John Adams, for example, clerked with mentors and exemplified the small elite group of individuals learned in the law who came to play a disproportionately large civic role in this emerging democracy.⁸ The alternative route of university-based legal education began with a failed proposal in the Connecticut legislature.⁹ Some years later, when Isaac Royall, a wealthy slaveholder in Massachusetts, endowed a lectureship in 1777 at Harvard University for either medicine or law, the

⁶ See, e.g., DANIEL R. COUILLETTE & BRUCE A. KIMBALL, ON THE BATTLEFIELD OF MERIT: HARVARD LAW SCHOOL, THE FIRST CENTURY (2015); DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM (N.Y. Univ. Press 2004) (1983); JOEL SELIGMAN, THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL (1978); ARTHUR E. SUTHERLAND, THE LAW AT HARVARD (1967); CHARLES WARREN, HISTORY OF THE HARVARD LAW SCHOOL (1908); Ralph Michael Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*, 57 CHI-KENT L. REV. 429 (1981).

⁷ Stein, *supra* note 6, at 429. In 1292, King Edward I issued a royal edict to common bench judges to recruit "better, worthies and more promising students" from each county to learn the business of the courts by attending cases, participating in moot courts, and joining with judges and lawyers to meet together in what became the Inns of Court. COUILLETTE & KIMBALL, *supra* note 6, at 23; see *id.* at 23–26.

⁸ Stein, *supra* note 6, at 440. Almost half the signers of the Declaration of Independence were lawyers, as were more than half of the members of the Constitutional Convention. *Id.* (citing LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 265 (1973)).

⁹ *Id.* at 441.

university chose law as it already had launched instruction in medicine.¹⁰ In its early days, Harvard's law program sought both to serve the nation and to prepare students to serve private clients.¹¹ When Joseph Story, Associate Justice of the United States Supreme Court, became a professor in 1829, he explicitly organized the school around public duties and service.¹² The efforts to achieve a balance between public service and private professional gain have persisted ever since in legal education. At Harvard, these efforts have included expansion over time in the school's diversity of people, issues, and sources of law.¹³

Dean Christopher Columbus Langdell launched the second period by infusing commitment to "justice and legitimacy of the legal system" as he initiated a revolution in law school pedagogy between 1870 and 1895.¹⁴ The changes saved what was otherwise an apparently failing institution. A note published but unsigned in 1871, and probably written by Oliver Wendell Holmes, Jr., described the condition of the Harvard Law School as "almost a disgrace to the Commonwealth of Massachusetts," because students could secure degrees with little class attendance or work.¹⁵ Christopher Columbus Langdell launched a curricular change that transformed not only Harvard but also legal education. Langdell rejected the financial model premised on low academic standards and low tuition. This seemed to ignore concerns of the market — but the ultimate results demonstrated that a professional school elevating academic merit could not only survive, but also thrive.¹⁶

¹⁰ A history of Royall's gift and the controversy surrounding the University's assignment of a shield based on it can be found at *Facing History and Looking Forward: Retiring the Harvard Law School Shield*, HARV. U., <http://exhibits.law.harvard.edu/hls-shield-exhibit> [https://perma.cc/2DWC-GPYN]. See also COUILLETTE & KIMBALL, *supra* note 6, at 81–91 (recounting the history of Isaac Royall's gift, his father's plantation, and origin of the resources). Harvard Law School launched observance of its bicentennial by unveiling a memorial plaque to the enslaved people whose labor supported the school's inaugural gift. Lydialyle Gibson, "To Be True to Our Complicated History," HARV. MAG. (Sept. 6, 2017), <http://harvardmagazine.com/2017/09/law-school-slavery-moument> [https://perma.cc/4C7P-7WSU].

¹¹ SUTHERLAND, *supra* note 6, at 358. Sutherland wrote, "The School has always thought of itself as serving the nation as well as training individuals for a private calling, but conscious concentration on the first of these missions has much increased, and rightly so, during the last third of the School's existence." *Id.*

¹² Paul D. Carrington, *Law as "The Common Thoughts of Men": The Law-Teaching and Judging of Thomas McIntyre Cooley*, 49 STAN. L. REV. 495, 500–01 (1997); William Schofield, *Christopher Columbus Langdell*, 46 AM. L. REG. (n.s.) 273 (1907).

¹³ Harvard Law School's first African American student, George Lewis Ruffin, enrolled in 1868, and he was the first black student to graduate in the United States from a university-based law school. COUILLETTE & KIMBALL, *supra* note 6, at 279–81. On exclusion and ultimate admission of women, see *infra* p. 2287.

¹⁴ COUILLETTE & KIMBALL, *supra* note 6, at 334; see also *id.* at 344–45.

¹⁵ See WILLIAM C. CHASE, *THE AMERICAN LAW SCHOOL AND THE RISE OF ADMINISTRATIVE GOVERNMENT* 25 (1982).

¹⁶ BRUCE A. KIMBALL, *THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL, 1826–1906*, at 345 (2009).

Langdell changed the program into a three-year curriculum with a prescribed sequence of courses, assessed by exams, ending casual attendance.¹⁷ Under Langdell's leadership, Harvard also expected students to have completed an undergraduate program before law school enrollment.¹⁸ The school employed full-time law teachers rather than practitioners lecturing part-time.¹⁹ The program focused on criminal and constitutional law, and also private fields, including bills of exchange, quasi-contracts, equity, advanced property, sales, trusts, and partnership.²⁰ The curriculum treated common law as general, rather than as tied to specific jurisdictions.²¹ Taken together, the changes transformed Harvard Law School from a regional to a national institution.²²

The most significant change associated with Langdell's name is the case method pedagogy. Focused on appellate judicial opinions, Langdell's teaching questioned students about the arguments within written judicial opinions rather than demanding that students memorize rules divorced from the context of their evolution.²³ Students and scholars would operate as empirical investigators, using appellate opinions to identify principles at work and devising original criticism in the spirit of a Socratic dialogue.²⁴ Exams did not ask for statements of rules but instead for applications of principles to hypothetical cases.²⁵ The method initially was unpopular with students; attendance at Langdell's session fell off to a handful of students.²⁶ Oliver Wendell Holmes, Jr., then a distinguished lawyer, compared Langdell's approach "to that of a biology teacher who 'would give one of his pupils a sea urchin and tell him to find all about it he could.'"²⁷

¹⁷ Robert W. Gordon, *The Geologic Strata of the Law School Curriculum*, 60 VAND. L. REV. 339, 341 (2007).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See Carrington, *supra* note 12, at 500, 519–20.

²³ See C.C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS vi–vii (photo. reprint 1983) (1871). Professor Frederick Schauer emphasizes as Langdell's most important advance his "belief that judicial judgments and their accompanying opinions are the raw material of law — the analog of scientific observations," rather than "mere evidence of law." Frederick Schauer, Essay, *Law's Boundaries*, 130 HARV. L. REV. 2434, 2438 (2017).

²⁴ COUILLETTE & KIMBALL, *supra* note 6, at 358–59; M.H. Hoeflich, *Law and Geometry: Legal Science from Leibniz to Langdell*, 30 AM. J. LEGAL HIST. 95, 119–21 (1986), reprinted in 2 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES, *supra* note 1, at 589, 602; see COUILLETTE & KIMBALL, *supra* note 6, at 360–75 (reconstructing Langdell's classroom exchanges).

²⁵ KIMBALL, *supra* note 16, at 165.

²⁶ *Id.* at 140.

²⁷ Carrington, *supra* note 12, at 519 (quoting LIVA BAKER, THE JUSTICE FROM BEACON HILL 208–09 (1991)).

Yet, by 1886, after briefly joining the Harvard Law School faculty and then accepting a post on the Massachusetts Supreme Judicial Court, Holmes commended Langdell's case method (though not Langdell himself).²⁸ The method stimulated discussion and debate. The buzz around the courses attracted more students. Although initially rejecting student preferences in favor of academic merit, Langdell's method secured good jobs for graduates, attracted more talented students, and eventually cultivated strong student support.²⁹ Langdell served as dean for twenty-five years, spreading the case method, raising money for the school, and advancing a conception of law as "pure" and "divorced from politics."³⁰ Although most of his contemporaries disagreed with this conception, his idea seemed to capture "the spirit of [the] times," embracing technical competence and making the legal profession a separate and elite undertaking.³¹ Sixty-four percent of law schools adopted some version of the case method by 1915.³²

Over time, Langdell's case method endured but sprang free from his idea of law as science, as teachers and students moved away from treating opinions as natural objects waiting to be systematized.³³ The case method persisted because it sharpened students' analytic thinking and readiness for practice.³⁴ Professor James Barr Ames, who had never practiced law, popularized the technique at Harvard after excelling as a student.³⁵ An early twentieth-century practitioner of Ames's method explained, "The teacher . . . secures from the student a decided opinion upon the problem" after statement of the case.³⁶ "Whatever it is, the instructor should be prepared to break him down[,] . . . force a reversal of his opinion[,] and then start in on him again and break him down a second time, so that he is forced to admit that his first opinion was right"³⁷ Classroom examination and cross-examination conveyed

²⁸ See *id.* at 519–20.

²⁹ KIMBALL, *supra* note 16, at 264–66.

³⁰ Paul D. Carrington, *William Gardiner Hammond and the Lieber Revival*, 16 CARDOZO L. REV. 2135, 2149 (1995).

³¹ *Id.*

³² COQUILLETTE & KIMBALL, *supra* note 6, at 557; see also KIMBALL, *supra* note 16, at 264. Rival law schools emphasized moral philosophy or political economy; the University of Chicago staked out social scientific study of law. See Gordon, *supra* note 17, at 346–47. But even there, the case method spread and became dominant, supporting law as a professional specialty and autonomous field. *Id.* at 346–49.

³³ See Howard Schweber, *Before Langdell: The Roots of American Legal Science*, in 2 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES, *supra* note 1, at 606, 631–34.

³⁴ CHASE, *supra* note 15, at 36–38.

³⁵ *Id.* at 34.

³⁶ *Id.* at 35 (alteration in original) (quoting Albert M. Kales, *An Unsolicited Report on Legal Education*, 18 COLUM. L. REV. 21, 22 (1918)).

³⁷ *Id.* (quoting Kales, *supra* note 36, at 22).

“the power of legal reasoning,” rather than law as a science or mastery of a fixed body of knowledge.³⁸

Langdell’s legacy included problems that persisted at the school for decades. He opposed the admission of women, leaving Harvard Law School behind as other institutions welcomed women.³⁹ His case method, focused on the common law, did not anticipate the significance of legislation, regulation, and administration,⁴⁰ requiring later generations to fight for room in the curriculum for these crucial elements of law. Some suggest that Langdell’s Harvard wrongly resisted the scholarly movement known as legal realism, which critiqued the idea of “general law” separate from those people and interests producing it,⁴¹ although Harvard luminaries Oliver Wendell Holmes, Jr., and Roscoe Pound have also been claimed as contributors to this school of thought.⁴²

Making the classroom a vehicle for developing legal skills became an aspiration of Harvard Law School under Langdell. Yet, a year after joining the faculty at Harvard Law School, where he had been a star student, Felix Frankfurter warned in 1915 of a dysfunctional disconnection between legal education and practice, and urged legal education to do more to advance public welfare. Frankfurter wrote:

We fail in our important office if [graduates] do not feel that society has breathed into law the breath of life and made it a living, serving soul. We must show them the law as an instrument and not an end of organized humanity. We make of them clever pleaders but not lawyers if they fail to catch the glorious vision of the law, not as a harsh Procrustean bed into which all persons and all societies must inexorably be fitted, but as a vital agency for human betterment.⁴³

³⁸ *Id.* at 36 (quoting *Discussion of Kale’s Paper*, 30 ANN. REP. A.B.A. 1010, 1025 (1907) (remarks of Professor James Barr Ames)). Successful Boston attorney and Harvard Law graduate John Chipman Gray used the case method as a Harvard Law School teacher to “provide students with an experience which would give them ‘the power of solving legal problems’” with best models from prior cases. *Id.* at 37 (quoting *Discussion of Kale’s Paper*, *supra*, at 1025 (remarks of Professor James Barr Ames)). The case method developed “mental muscles” in relation to detailed disputes. Gordon, *supra* note 17, at 342. For the contrast between legal reasoning and mastery of a fixed body of knowledge, see CHASE, *supra* note 15, at 35.

³⁹ JUDITH RICHARDS HOPE, *PINSTRIPES & PEARLS: THE WOMEN OF THE HARVARD LAW SCHOOL CLASS OF ’64 WHO FORGED AN OLD-GIRL NETWORK AND PAVED THE WAY FOR FUTURE GENERATIONS* 13 (2003); SUTHERLAND, *supra* note 6, at 319–20; Paul Massari, *HLS Fetes 50 Years of Women Graduates: For Many, It’s a Bittersweet Reunion*, HARV. GAZETTE (May 8, 2003), <http://news.harvard.edu/gazette/story/2003/05/hls-fetes-50-years-of-women-graduates> [<https://perma.cc/29ES-R4VJ>].

⁴⁰ CHASE, *supra* note 15, at 14.

⁴¹ LAURA KALMAN, *LEGAL REALISM AT YALE, 1927–1960*, at 45–66 (1986).

⁴² Bernie R. Burrus, *American Legal Realism*, 8 HOW. L.J. 36, 36–38 (1962); *see also* COQUILLETTE & KIMBALL, *supra* note 6, at 197–99 (tracing influential work by Harvard faculty and students); Schauer, *supra* note 23, at 2436–46.

⁴³ Felix Frankfurter, *The Law and the Law Schools*, 1 A.B.A. J. 532, 539 (1915), *reprinted in* 2 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES, *supra* note 1, at 673, 677.

Roscoe Pound struck similar notes. In 1906, as dean of the University of Nebraska Law School, Pound challenged the newly formed American Bar Association to deal with the many “causes of popular dissatisfaction” with the law.⁴⁴ Then, as dean of Harvard between 1916 and 1936, Pound pushed for reforms of laws, courts, and lawyers. Pound stressed the need to adjust principles and doctrine to human conditions and put “the human factor in the central place.”⁴⁵

In the third phase, Harvard Law School and other American law schools added policy analysis and courses relevant to the administrative state at the same time that law professors helped to invent and staff the New Deal and post–New Deal agencies.⁴⁶ Law schools kept the common law core in the first-year curriculum, implicitly treated contractual and property rights as the baseline, and introduced upper-level courses on legislation and regulation. Electives mirrored the public and social issues of succeeding decades; Harvard added labor law in the 1940s and ’50s; poverty law, civil rights law, and urban law in the 1960s and ’70s; environmental law in the 1970s and ’80s; and more recently, internet, entertainment, and human rights law, addressing student and faculty concerns. Courses on law and race relations, on gender, on sexuality, and on disability also emerged, at times resulting from student protests and scholarly debates.⁴⁷

⁴⁴ Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 40 AM. L. REV. 729, 729 (1906).

⁴⁵ Frankfurter, *supra* note 43, at 537 (quoting Roscoe Pound). A strong form of this public mission of law schools emerged at the University of Wisconsin, where the whole university committed to deploy expert knowledge and training to advance human welfare — and law professors regularly worked to develop regulations and serve on boards and commissions. Paul D. Carrington & Erika King, *Law and the Wisconsin Idea*, 47 J. LEGAL EDUC. 297, 324–26 (1997).

⁴⁶ See SUTHERLAND, *supra* note 6, at 287–88.

⁴⁷ See Kimberlé Williams Crenshaw, Essay, *Race Liberalism and the Deradicalization of Racial Reform*, 130 HARV. L. REV. 2298 (2017); see also Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 542 (2007) (warning that electives risk marginalizing the issues of difference and discrimination without altering legal education). There is some debate over the origin and location of the first offering of courses on women and the law. Compare BARBARA ALLEN BABCOCK ET AL., *SEX DISCRIMINATION AND THE LAW* v (1975) (tracing the first of America’s “student-generated courses in Women and the Law” to fall 1969 at NYU), CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 71 (2d ed. 1993) (tracing first course to NYU), and Diane Schulder Abrams, *Brains vs. Beauty: How the 1968 Miss America Pageant Led to the First “Women and the Law” Course in America*, 97 WOMEN LAW. J. nos. 3 & 4, 2012, at 32, with Aleta Wallach, *Genesis of a “Women and the Law” Course: The Dawn of Consciousness at UCLA Law School*, 24 J. LEGAL EDUC. 309 (1972). Justice Ginsburg recalls requests by students in the late 1960s to offer a seminar on women as an influence in her journey toward becoming a leading architect of advocacy for women’s rights. Roya Rafei, *Ruth Bader Ginsburg: The Former Rutgers Law Professor Led the Legal Campaign for Gender Equality*, RUTGERS: RUTGERS TODAY (Feb. 29, 2016), <http://news.rutgers.edu/feature/ruth-bader-ginsburg-former-rutgers-law-professor-led-legal-campaign-gender-equality/20160228> [<https://perma.cc/VT4C-B58G>].

Professor William Rubenstein was one of the first to offer courses in sexuality and the law; as a lecturer at Harvard, Yale, and Stanford, and a litigator at the ACLU, he co-authored the first

The predominantly white and male character of legal education began to change. Harvard Law School had rejected a woman applicant just as Langdell took charge in 1871 even though Oberlin, Michigan, and other schools had pursued co-education — where in fact women surpassed men in academic accomplishment.⁴⁸ Langdell said in 1899 that “the law is entirely unfit for the feminine mind — more so than any other subject.”⁴⁹ Finally admitting women in the 1950s, Harvard joined other law schools by accepting female students in increasing numbers during the 1970s and ’80s. Although a few African Americans and individuals from outside the United States had attended Harvard Law School before this time, diversity on these and other dimensions notably increased.⁵⁰ With more people of color and women within law schools and the profession, schools reacted with more electives, and with efforts to revise individual courses through historically absent lenses such as race, gender, and economic inequality.

Ethical crises — from Watergate to Enron to the role of lawyers, economists, and bankers in the global financial disaster of 2008 — triggered new courses and requirements. Law schools tend to emphasize individual ethical development while many scholars call for attention to structures, incentives, and organizational culture affecting ethical violations.⁵¹ Some observers argue that the profession itself tends toward unethical, unhappy, and unhealthy practices, and have called upon law schools to help individuals achieve ethical and fulfilling careers.⁵²

Many teachers of law, using multiple perspectives and contrasting methods, expressly focus their classes and scholarship on critiques of

casebook on the subject, now entitled *Cases and Materials on Sexuality, Gender Identity, and the Law*.

⁴⁸ KIMBALL, *supra* note 16, at 273–75.

⁴⁹ *Id.* at 289 (emphasis omitted). One historian attributes this attitude to the competitive style cultivated at the school — in contrast to the qualities of “gentleness, agreeableness, and empathy” associated with images of women by “Brahmin gentry.” *Id.* at 294.

⁵⁰ See Crenshaw, *supra* note 47, at 21.

⁵¹ See, e.g., Elizabeth Chambliss & David B. Wilkins, *The Emerging Role of Ethics Advisors, General Counsel, and Other Compliance Specialists in Large Law Firms*, 44 ARIZ. L. REV. 559 (2002); Laurence Etherington & Robert Lee, *Ethical Codes and Cultural Context: Ensuring Legal Ethics in the Global Law Firm*, 14 IND. J. GLOBAL LEGAL STUD. 95 (2007); Deborah L. Rhode, *Institutionalizing Ethics*, 44 CASE W. RES. L. REV. 665 (1994); Ronald D. Rotunda, *Why Lawyers Are Different and Why We Are the Same: Creating Structural Incentives in Large Law Firms to Promote Ethical Behavior — In-House Ethics Counsel, Bill Padding, and In-House Ethics Training*, 44 AKRON L. REV. 679 (2011). For work aimed directly at practitioners, see JOSEPH E. MURPHY, SOC’Y OF CORP. COMPLIANCE & ETHICS, USING INCENTIVES IN YOUR COMPLIANCE AND ETHICS PROGRAM (2011), <http://www.corporatecompliance.org/Portals/1/PDF/Resources/IncentivesCEProgram-Murphy.pdf> [https://perma.cc/NUV9-GNSC], which analyzes objectives to and defenses of incentives in ethics and compliance programs.

⁵² See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999).

law and on potential changes.⁵³ Legal education has long immersed students in the task of recognizing competing values such as freedom and security, fairness and efficiency, and predictability and individualized justice in the context of particular issues or as systematic concerns.⁵⁴ To address these and other questions, legal education since World War II has increasingly drawn upon other disciplines. These include microeconomics, behavioral economics, history, political science, decision analysis, philosophy, psychology, and organizational behavior. These and other disciplines inform legal scholarship and even what it means to “think like a lawyer.”⁵⁵

The use of other disciplines risks pulling legal education away from practice and toward theoretical inquiries. Pushing toward practice and service, on the other hand, is the rise of clinical education in law schools, a substantial trend over the past sixty years.⁵⁶ Several schools, including Harvard, had developed programs offering legal services for the poor as early as 1913 but did not include such programs in the instructional and credit-bearing work of legal education.⁵⁷ In the 1960s, some law schools

⁵³ Influential texts include RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY* (2d ed. 2012); DAVID KAIRYS, *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (3d ed. 1998); KENNEDY, *supra* note 6; RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* (9th ed. 2014); RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2009); and Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 *CLINICAL L. REV.* 39 (2013).

⁵⁴ For discussion of themes and approaches recurring in a first-year course, see JOSEPH WILLIAM SINGER ET AL., *PROPERTY LAW*, at xxxv–xlvi (6th ed. 2014). For examples of scholarly discussions of these tensions, see Carolyn Edwards, *Freedom of Contract and Fundamental Fairness for Individual Parties: The Tug of War Continues*, 77 *UMKC L. REV.* 647 (2009) (freedom and security); Thomas O. Main, *ADR: The New Equity*, 74 *U. CIN. L. REV.* 329 (2005) (individualized justice versus predictability in dispute resolution); and Lee Anne Fennell & Richard H. McAdams, *Fairness in Law and Economics: Introduction* (Univ. of Chi. Law Sch. Pub. Law & Legal Theory Working Paper Series, Paper No. 489, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2504819 [<https://perma.cc/H3JL-96TD>] (addressing arguments over whether fairness and efficiency are rivals or complements).

⁵⁵ See Nicholas Mercurio, *The Jurisprudential Niche Occupied by Law and Economics*, 2 *J. JURIS.* 61 (2009); Martha Minow, *Law Turning Outward*, *TELOS*, Fall 1987, at 79. For debate over these developments, see Anthony D’Amato, *The Interdisciplinary Turn in Legal Education*, (Nw. Univ. Sch. of Law Pub. Law & Legal Theory Series, Research Paper No. 06-32, 2006), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=952483 [<https://perma.cc/AW9Y-4E8D>]; and Lawrence Solum, *Interdisciplinarity, Multidisciplinarity, and the Future of the Legal Academy*, *LEGAL THEORY BLOG* (Jan. 18, 2008), <http://lsolum.typepad.com/legaltheory/2008/01/interdisciplinarity.html> [<https://perma.cc/9SXD-9N7L>].

⁵⁶ For histories of this development, see Laura G. Holland, *Invading the Ivory Tower: The History of Clinical Education at Yale Law School*, 49 *J. LEGAL EDUC.* 504 (1999); and Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FORDHAM L. REV.* 1929 (2002).

⁵⁷ N.Y. STATE JUDICIAL INST., *PARTNERS IN JUSTICE: A COLLOQUIUM ON DEVELOPING COLLABORATIONS AMONG COURTS, LAW SCHOOL CLINICAL PROGRAMS AND THE PRACTICING BAR* 2 & n.4 (2005), <http://www.nycourts.gov/ip/partnersinjustice/Clinical-Legal-Education.pdf> [<https://perma.cc/X4WH-BZKR>].

began to develop clinics as a part of legal education, similar to teaching hospitals, while elevating attention to poverty, racial and gender discrimination, and access to justice.⁵⁸ Clinical legal education offers students a chance to engage in public service with more time and opportunity for instruction than many practice settings afford. For law schools themselves, clinical education requires committing instructional resources and space and linking the schools to communities and clients with needs.

Harvard's clinical legal education builds on the student-initiated Legal Aid Bureau, founded in and continuously operating since 1913.⁵⁹ In the 1970s, Professor Gary Bellow, a leading public interest lawyer, pioneered clinical education at Harvard as a laboratory for the mass delivery of service, social change, and community engagement.⁶⁰ Harvard Law School currently has thirty clinics and eleven student practice organizations, involving eighty percent of the students and treating public service practice as a central part of the school's mission as well as a method for developing professional experience.⁶¹ Initially focused on representing individuals in local courts and agencies, clinics have branched out over time. Law school clinics can encompass federal and international litigation, legislative development, negotiation and mediation, and legal assistance in transactions and entrepreneurial efforts.⁶²

⁵⁸ Elliott S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. LEGAL EDUC. 375, 375 (2001); Robin I. Mordfin, *Fifty Years of Clinical Legal Education at Chicago Law*, UNIV. CHI. L. SCH. REC., Spring 2008, at 10.

⁵⁹ See William Piel, Jr., *The Student Viewpoint Toward Clinic Work*, 8 AM. L. SCH. REV. 228, 235-36 (1935); *Harvard Legal Aid Bureau*, HARV. L. SCH., <http://hls.harvard.edu/dept/clinical/clinics/harvard-legal-aid-bureau> [<https://perma.cc/C9GF-JHNB>].

⁶⁰ After graduating from Harvard Law School in 1960, Professor Gary Bellow served as deputy director of the Legal Aid Agency for the District of Columbia, then joined a community organizing group, the United Planning Organization in Washington, D.C., and subsequently worked as deputy director of California Rural Legal Assistance from 1966 to 1968. In California, his integration of community organizing and legal assistance for migrant farmworkers involved collaboration with Cesar Chavez of the United Farm Workers and conflict with then-California Governor Ronald Reagan. See Interview by Zona Hostetler with Gary Bellow, Professor, Harvard Law Sch., in Cambridge, Mass. (Mar. 17, 1999), <https://repository.library.georgetown.edu/handle/10822/709332> [<https://perma.cc/R38W-WUHG>]. Bellow joined the Harvard faculty in 1971 as Visiting Professor of Law. He became Professor of Law in 1972 and Louis D. Brandeis Professor of Law in 1993. He served as Faculty Director of the Clinical Programs from 1992 to 1996. His influential texts include GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY* (1978).

⁶¹ See *Externship Clinics*, HARV. L. SCH., <http://hls.harvard.edu/dept/clinical/clinics/externship-clinics> [<https://perma.cc/R3JB-DG4S>]; *In-House Clinics*, HARV. L. SCH., <http://hls.harvard.edu/dept/clinical/clinics/in-house-clinics> [<https://perma.cc/M998-8VRK>]; *Student Practice Organizations*, HARV. L. SCH., <http://hls.harvard.edu/dept/clinical/student-practice-organizations-spos> [<https://perma.cc/95T2-XEJ6>]. Harvard followed the University of Pennsylvania and the University of Hawai'i as one of the first law schools to mandate pro bono service by J.D. law students. Harvard Law students routinely exceed the requirement of fifty hours with an average of over 600 hours performed by individual members of the Harvard Law School class of 2016.

⁶² See sources cited *supra* note 61.

The investment of resources — and the time of staff attorneys, faculty, and students — in clinics affirm and amplify the mission of law schools in advancing justice while training lawyers.⁶³

As legal education turned to strengthen attention to theory, practice, ethics, and students' personal development, the purview of law schools expanded from courts, legislatures, agencies, and physical spaces to virtual reality, political organizing, economic and social change, and efforts to shape individual behavior.⁶⁴ Continuously present, though, is the focus on reasoned argument, addressing objections and disagreements with evidence and logic while seeking to persuade.⁶⁵ Law school instruction and scholarship emphasize attention to distinctions and analogies, framing and reframing apparently dissimilar facts or arguments to find commonalities, and identifying differences to point out reasons to treat seemingly similar instances differently.⁶⁶ The Harvard Law School Bicentennial Essays printed in this issue wonderfully demonstrate these approaches.

⁶³ See sources cited *supra* notes 56–60.

⁶⁴ See WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007), http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf [<https://perma.cc/PPF9-S5S5>]. Reflecting on two major commissions on legal education, separated by nearly 100 years, Professor James R. Maxeiner concluded that: (1) the law school curriculum should integrate doctrine, skills, and professional identity — social-ethical, role-based understandings; (2) new and varied teaching techniques should be added to the usual combination lecture/Socratic method and the Langdellian reliance on learning by dissecting appellate opinions in order to cultivate this kind of integration; and (3) law schools should devise new ways to assess student learning and provide feedback. James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, 35 INT'L J. LEGAL INFO. 1, 46 (2007). Under the leadership of Dean Elena Kagan, I chaired a curricular reform adding in 2006 three required courses for J.D. students: Legislation and Regulation; International or Comparative Law; and the Problem-Solving Workshop, based on simulations. See *HLS Faculty Unanimously Approves First-Year Curricular Reform*, HARV. L. TODAY (Oct. 6, 2006), <https://today.law.harvard.edu/HLS-faculty-unanimously-approves-first-year-curricular-reform> [<https://perma.cc/SZ3S-2YAN>].

⁶⁵ Despite theoretical debates over the role of reason in courts and other practical settings, legal education continues to emphasize reason and logic. See Mary Massaron Ross, *A Basis for Legal Reasoning: Logic on Appeal*, 3 J. ASS'N LEGAL WRITING DIRECTORS 179 (2006). Explicit explanations of the importance of critical thinking and logical reasoning to American legal education appear in communications with readers from other countries. See, e.g., Paul Gewirtz & Jeffrey Prescott, *Point of Order — Why Legal Education Matters*, CAIXIN (June 1, 2010, 2:53 AM), <http://www.caixinglobal.com/2010-06-01/101045277.html> [<https://perma.cc/Y8Z7-R58F>]. For an argument that law schools teach sophistry rather than truly intellectual work, see Ralph Shain, *Legal Education and Hierarchy: A Reply to Duncan Kennedy*, 23 Q.J. IDEOLOGY 1, 13 (2000). It is notable that even a critique of this nature uses argument and evidence. *Id. passim*.

⁶⁶ For an effort to link these techniques to basic instruction offered in the children's television show *Sesame Street*, see MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 1–4 (1990).

II. FRAMING AND REFRAMING DEBATES

Each of the Essays written for the *Harvard Law Review* on the occasion of the Law School's bicentennial reflects disagreements in law and in the world, and each one demonstrates the use of reasoned argument to frame the issues for productive discussion.⁶⁷ They also demonstrate the power of reframing debates, finding commonalities where others see differences, and emphasizing distinctions that might otherwise be less visible.

In *The Socratic Method in the Age of Trauma*, Professor Jeannie Suk Gersen provides a vivid explanation of the transformative effects in her life of the vigorous question-based teaching method pioneered at Harvard Law School.⁶⁸ She recounts how she has embraced “learning through speaking, reasoning, questioning, and revising in conversation” in her own teaching,⁶⁹ even in the midst of debates and criticisms, especially when professors use the method to explore challenging subjects like sexual assault. Writing with knowledge of both sides of the classroom, and reflecting both deep memories of experiences as a member of a marginalized minority group and current experiences as a figure of authority, Gersen demonstrates how vigorous questioning and reasoning sharpen insights and model respect even amid intense conflicts.

Professor Frederick Schauer analyzes shifts in the sources deemed relevant to the study and work of law in *Law's Boundaries*. He traces how Harvard Law School Dean Christopher Columbus Langdell boldly treated judicial judgments and opinions not as mere evidence of law but as “the raw material of law,”⁷⁰ and how Dean Roscoe Pound urged the use of empirical and social science data, attending to diverse social interests.⁷¹ Schauer describes how Harvard Law School Professor Lon Fuller, in contrast, offered a procedural version of natural law⁷² and a “capacious” view of sources of law,⁷³ while Harvard Law School alumnus Professor Ronald Dworkin stressed how courts are not limited to rules and principles recognized in formal sources, and actually also engage in policy analysis.⁷⁴ Putting these significant figures in dialogue

⁶⁷ Each author is a graduate or faculty member of Harvard Law School; many are both. Professors Kimberlé Crenshaw and Frederick Schauer are Harvard Law School graduates; Professor Vicki Jackson is a Harvard Law School faculty member; Dean John Manning and Professors Jeannie Suk Gersen and Adrian Vermeule are each both Harvard Law School graduates and faculty members.

⁶⁸ Jeannie Suk Gersen, Essay, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320 (2017).

⁶⁹ *Id.* at 2320.

⁷⁰ Schauer, *supra* note 23, at 2438.

⁷¹ *Id.* at 2444–45.

⁷² *Id.* at 2447–48.

⁷³ *Id.* at 2450.

⁷⁴ *Id.* at 2452–56.

with one another, Schauer ponders how the boundaries of law tend to grow to encompass new sources, including from other nations and jurisdictions.⁷⁵ He closes with the striking observation that this expansion of law is accompanied by a simultaneous shrinking of the scope of jurisprudence as a field of study.⁷⁶

Dean John Manning turns in *Without the Pretense of Legislative Intent* to continuing debates over how to interpret a particular legal source: statutes. Finding common ground among many who otherwise disagree, Manning shows how “Harvard’s realists, progressives, New Dealers, Legal Process purposivists, and modern formalists” diverge over prescriptions but nonetheless join in resisting as elusive the search for the intention of the legislature.⁷⁷ United in acknowledging that the intention of many-membered legislatures cannot actually be discerned, the influential Harvard Law School theorists studied by Manning share “the proposition that fights about interpretation theory are really fights about different actors’ complex institutional roles and relationships.”⁷⁸ Manning thus reframes what could be viewed as irreconcilable methodological arguments over differing prescriptions as a shared project. The theorists under study each seek respect for the role of Congress while attending to the hard questions typically unaddressed by Congress that nonetheless give rise to disputes over the meaning and application of congressional work product.⁷⁹ Much practical import turns on these debates, as Manning illustrates with the example of a few words that could be construed to destroy or maintain the health insurance scheme of the Affordable Care Act.⁸⁰ This kind of issue requires attention not to guessing what members of Congress meant when they voted for (but may not even have read) the words in question, but to first-order questions about the nature of legislative power and the role of courts, argues Manning.⁸¹

In an essay entitled *Thayer, Holmes, Brandeis: Conceptions of Judicial Review, Factfinding, and Proportionality*, Professor Vicki Jackson examines three major figures who in different ways contributed to judicial deference to legislatures and a pattern of skepticism about values that carries significant influence in constitutional analysis.⁸² Jackson highlights contrasts among these three Harvard Law School alumni.

⁷⁵ He notes that this expansion is contingent, not inevitable, and could change. See *id.* at 2459.

⁷⁶ *Id.* at 2460–62.

⁷⁷ John F. Manning, Essay, *Without the Pretense of Legislative Intent*, 130 HARV. L. REV. 2397, 2401 (2017).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See *King v. Burwell*, 135 S. Ct. 2480 (2015); Manning, *supra* note 77, at 2397–99.

⁸¹ Manning, *supra* note 77, at 2432.

⁸² Vicki Jackson, Essay, *Thayer, Holmes, Brandeis: Conceptions of Judicial Review, Factfinding, and Proportionality*, 130 HARV. L. REV. 2349 (2017).

James Bradley Thayer urged judicial deference as a means of ensuring legislative responsibility, but only for federal, not state, legislation. Oliver Wendell Holmes, Jr., reached a similar view about judicial deference to legislatures, but extended it to state legislatures. Holmes also expressed skepticism about whether values could be known or agreed upon, as well as a belief that constitutional democracy called for room for popular majorities to enact their views.⁸³ Louis D. Brandeis provided yet another approach because of his immersion in progressive legislative campaigns and his interest in social facts, legislative experimentation, and rendering law responsive to social needs.⁸⁴ After highlighting these contrasting views, Jackson argues that “[a]ll saw constitutional law as involving forces beyond the materials of traditional legal study.”⁸⁵ Such materials included popular beliefs, laws of different jurisdictions, and knowledge of the world.⁸⁶

Manifesting her own commitment to learning from the laws of different jurisdictions, Jackson contrasts the categorical or balancing approaches within constitutional practice in the United States with proportionality review, a common constitutional method in other countries.⁸⁷ Admiring the ways in which proportionality review offers transparency and opportunities to optimize constitutional rights within self-governing democracies, Jackson examines other countries’ consideration of infringements of constitutional rights by asking whether the intrusion on a right is proportional to the governmental interests behind the infringement.⁸⁸ She argues that courts in the United States resist proportionality review because of traditional deference to legislatures and skepticism about values, as advanced in part by Harvard theorists.⁸⁹ She also contrasts the United States with other countries as having a culture of authority rather than one of justification.⁹⁰

Despite such explanations, Jackson argues that proportionality review would advance the very goals and values held by Thayer, Holmes, and Brandeis. Proportionality review could implement the regard for statesman-like judgments on constitutional questions manifested by James Bradley Thayer, the articulation of means and ends sought by

⁸³ *Id.* at 2353–54.

⁸⁴ *Id.* at 2355, 2359.

⁸⁵ *Id.* at 2360.

⁸⁶ *Id.*

⁸⁷ *Id.* at 2361–67.

⁸⁸ *Id.* at 2362, 2364–66 (analyzing a Canadian example).

⁸⁹ *Id.* at 2369–71.

⁹⁰ *Id.* at 2368–69.

Oliver Wendell Holmes, Jr., and the respect Louis Brandeis held for social facts.⁹¹ Proportionality review offers greater candor than the categorical or balancing approaches typical in United States courts.⁹² Proportionality review, she argues, also clarifies the capacities of courts to assess facts with greater impartiality than the political branches do.⁹³ Judicial deference to legislative policy need not suppress the special abilities of courts to bring impartiality to the determination of facts.⁹⁴ In an age of allegations about fake news and mounting distrust of government and other established institutions, experts, and authorities, improving the methods of reasoning used by courts has consequences well beyond individual decisions.⁹⁵

Professor Adrian Vermeule's *Bureaucracy and Distrust: Landis, Jaffe, and Kagan on the Administrative State* addresses questions about the legitimacy of the administrative state that are more urgent now than in recent decades.⁹⁶ Vermeule shows how leading Harvard scholars each focused on independence as the way to advance the legitimacy of administrative agencies and the regulatory system they establish, and yet each supported a different means for achieving independence.⁹⁷ For Professor James Landis, agencies needed independence from the President; for Professor Louis Jaffe, independent courts could provide legitimacy for the delegation of power to agencies; for Justice Kagan, control by the President offers independence from parochial interests of particular agencies, from interest groups, and from congressional committees.⁹⁸ Vermeule shows how these contrasting views share a recognition of the risks of dependence on inevitably partial institutions.⁹⁹ He argues that the turn toward independence serves as a placeholder for the many values that matter in a democracy.¹⁰⁰ Underneath their apparent differences is an abiding search for democratic accountability, legalism, and expertise, competing values that can be advanced only

⁹¹ *Id.* at 2371–72.

⁹² *Id.* at 2376.

⁹³ *Id.* at 2392–93.

⁹⁴ *Id.* at 2392–95.

⁹⁵ *See id.* at 2369, 2382–85, 2395–97.

⁹⁶ Adrian Vermeule, Essay, *Bureaucracy and Distrust: Landis, Jaffe, and Kagan on the Administrative State*, 130 HARV. L. REV. 2463 (2017) (“What, if anything, legitimates the administrative state?” *Id.* at 2463.); *see* Charles Krauthammer, *The Trump Cabinet: Bonfire of the Agencies*, NAT’L REV. (Dec. 15, 2016, 8:00 PM), <http://www.nationalreview.com/article/443101/donald-trump-cabinet-challenging-bureaucracy> [<https://perma.cc/LC2G-MG8Z>] (“Trump’s nominees challenge the out-of-control administrative state.”).

⁹⁷ Vermeule, *supra* note 96, at 2463–66.

⁹⁸ *Id.*; *see also id.* at 2486. For detailed discussions, *see id.* at 2469 (Landis); 2473–74 (Jaffe); and 2479–82 (Kagan).

⁹⁹ *Id.* at 2486–88 (noting the institutional goods, such as technocratic competence, reasoned decisionmaking, and constraints on governmental power, valued by the three scholars).

¹⁰⁰ *Id.* at 2463–66.

partially if all are to be respected.¹⁰¹ This acknowledgment of convergence by theorists who disagree thus involves not only a recognition of shared underlying values but also a demonstration of the predicament of pluralism that propels pragmatic accommodation rather than conceptual purity.

Debates between liberals and radicals over how law, legal education, and social policy treat race take center stage in Professor Kimberlé Williams Crenshaw's *Race Liberalism and the Deradicalization of Racial Reform*.¹⁰² Crenshaw examines struggles centered on Harvard Law School's teaching about race and civil rights, with attention to faculty hiring, student activism, critical versus liberal conceptions of law, and the broader political context.¹⁰³ Crenshaw examines how Harvard Law students and critics across the country examined issues raised after Harvard Law Professor Derrick Bell departed to become dean at another school, leaving the law school with only one black professor and no one to teach Bell's course, "Constitutional Law and Minority Issues." The law school's initial failure to make plans for a replacement course, followed by the offering of a three-week course by NAACP leaders Jack Greenberg (who was white) and Julius Chambers (who was black), generated debate that went national, while oversimplifying the issues to focus on the racial identity of professors rather than their approaches, prospects for long-term appointments, and likelihood of changing rather than assimilating to existing legal education and practices.¹⁰⁴ Participants in the controversy helped to galvanize Critical Race Theory as a movement and as a critical approach to law and legal education.¹⁰⁵ Crenshaw explores radical and liberal responses to racial injustice, their connections with larger social and political contexts, and the ways liberal legal theories and practices insulate themselves from challenge through concepts like neutrality, academic standards, integration, and colorblindness.¹⁰⁶ Her work shows the potential effectiveness of argument itself, even in tackling the pervasive influences of power and politics and in exposing how critical race theorists and race liberals clashed and misunderstood one another.

III. CONTINUITY AND CHANGE

Legal education has changed considerably over the past 200 years, and changes will likely not only continue but also accelerate. Developments in society, technology, and politics provide topics, pressures, and resources to fuel changes. Consider the transformations ushered in

¹⁰¹ *Id.* at 2487–88.

¹⁰² Crenshaw, *supra* note 47.

¹⁰³ *Id.* at 2300–16.

¹⁰⁴ *Id.* at 2308–16.

¹⁰⁵ *Id.* at 2298–99, 2312, 2316–17.

¹⁰⁶ *Id.* at 2304–06, 2309, 2312, 2314–16.

through information technology and digital tools; the biomedical revolution, including genetic breakthroughs, biotechnology, and nanotechnology; globalization, integrating economies, professions, cultures, and even biological and computer viruses through worldwide networks of exchange; resource scarcity and global climate change; and the demographic changes of mass population growth and migrations of people due to economic, political, and climate-related challenges.

These shifts generate fundamental questions whose answers will alter the shape of the human experience. The topics addressed in law schools, the nature of day-to-day activities in legal education, and the very people engaged in the work reflect these changes. Lawyers will play indispensable roles in tackling the issues raised by these developments and harnessing opportunities to secure orderly change and enhance human welfare.

Even more striking than the persistence of the case method are the continuous struggles in legal education over how to balance theory and practice, how to prepare lawyers who serve paying clients versus those who cannot pay, and how to both critique and strengthen law and the legal profession. The influence of the business model of law schools and the business model of legal service delivery cannot be dismissed. Who has access to enter the legal profession, how much the profession and the law schools think about interests other than those of paying clients, and whether students perceive opportunities to do good as well as to do well, will be shaped by the terms of financial aid, loan forgiveness, and other funding to cover the costs of legal education.

Christopher Columbus Langdell is remembered for inventing the case method, yet his willingness to rethink the mission and business model of legal education is no less important. He rejected the easy and old business model in favor of independent professional standards. For Langdell, that meant establishing high academic standards for admission, academic achievement, and graduation — with higher tuition.¹⁰⁷ In the future, rethinking the mission and economic viability of legal education could entail strengthening the public service mission of law schools and tackling social and economic problems with direct legal services. Law schools could do more work evaluating the legitimacy and effectiveness of the administrative state and constitutional democracies and devising improvements for governing public and private institutions. Law schools going forward would do well to strengthen techniques for determining truth and enhancing impartiality by governments. To advance justice and social order, law schools should deepen understanding of human differences, histories of unfairness, and the requisites for sustainable ecosystems and environments.

¹⁰⁷ Bruce A. Kimball, *Christopher Langdell: The Case of an "Abomination" in Teaching Practice*, NEA HIGHER EDUC. J., Summer 2004, at 23, 23–24.

Lawyers have the building blocks to help frame debates and generate alternative solutions. Through legal tools of contract, tort, property, constitutions, administrative regulation, and policy analysis, as well as adversarial and collaborative procedures, lawyers use analytic arguments to connect moral and institutional concerns and to translate interests into deals and decisions. These techniques can even expose how lawyers, laws, and legal institutions may try to insulate themselves against critique and change. Oliver Wendell Holmes, Jr., said, “The artist sees the lines of growth in a tree, the business man an opportunity in a muddle, the lawyer a principle in a lot of dramatic detail.”¹⁰⁸ Lawyers are skilled in recognizing and translating complex and abstract human values and goals into institutions and practices. We find ways to accommodate competing interests and to resolve conflicts. We repair the boat of the law at sea and even find ways to design a new ship while under sail. All of these practices and more must be engaged around the world as troubled elections, perils of cyberattacks and nuclear weapons, political movements of populism, and tyrannical forces threaten the very premises of constitutional democracy and the rule of law, Enlightenment commitments to reasons and facts, and post–World War II global peace. We do some things right already: we teach people how to deploy analysis and common sense as we work together to meet the challenges we face. The traditions of innovation and critique, modeled over 200 years at Harvard Law School, offer crucial resources for the coming time.

Locating a law school within a university was a gamble 200 years ago. Productive tensions persist between the missions of educating new generations, providing services to communities, and pursuing knowledge, truth, criticism, and reforms of law and legal institutions. Our common ground is the commitment to reasoned argument, persuasion, and the predicates of mutual trust, respect, and communication. The capacities to articulate differences and commonalities, to synthesize and reframe, are well displayed by the Essays that follow, and those very capacities can be sharpened for readers who join the conversation.

¹⁰⁸ Letter from Justice Oliver Wendell Holmes, Jr., Assoc. Justice, Supreme Court of the United States, to Dr. John C.H. Wu (June 16, 1923), *in* JUSTICE HOLMES TO DOCTOR WU 12, 13 (1947).