
THE SOCRATIC METHOD IN THE AGE OF TRAUMA

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When I was a young girl, the careers I dreamed of — as a prima ballerina or piano virtuoso — involved performing before an audience. But even in my childhood ambitions of life on stage, no desire of mine involved speaking. My Korean immigrant family prized reading and the arts, but not oral expression or verbal assertiveness — perhaps even less so for girls. Education was the highest familial value, but a posture of learning anything worthwhile seemed to go together with not speaking. My incipient tendency to raise questions and arguments was treated as disrespect or hubris, to be stamped out, sometimes through punishment. As a result, and surely also due to natural shyness, I had an almost mute relation to the world.

It was 1L year at Harvard Law School that changed my default mode from “silent” to “speak.” Having always been a student who said nothing and preferred a library to a classroom, I was terrified and scandalized as professors called on classmates daily to engage in back-and-forth dialogues of reasons and arguments in response to questions, on subjects of which we knew little and on which we had no business expounding. What happened as I repeatedly faced my unwelcome turn, heard my voice, and got through with many stumbles was a revelation that changed my life. A light switched on. Soon, I was even volunteering to engage in this dialogue, and I was thinking more intensely, independently, and enjoyably than I ever had before. Eventually, learning through speaking, reasoning, questioning, and revising in conversation with others became a way of life that I treasure and try to cultivate in students.

As a law professor over the past decade, I have seen students experience their own epiphanies and transformations in relation to the law school classroom. But I know that some students viscerally dislike the pedagogy that typifies law school, viewing it as outdated and oppressive, and even reporting ill effects on their sense of equality, identity, and well-being. And critiques of law school teaching that point to a disproportionate adverse impact on the educational experience of women and minorities are of special concern to me — as a feminist, a teacher, and the first Asian woman to have been tenured at the school that formed my legal mind and opened my greatest opportunities.

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This Essay on the occasion of Harvard Law School's bicentennial is a reflection on the present connections and contradictions between our inherited pedagogical traditions, the desires and needs of students in a diverse law school, and aspirations for law graduates in a changing world today.

I. A NEW WAY

Langdell was always worried about "Why?" and "How?" He didn't care particularly whether you knew a rule or could state the rule or not, but how did the court do this, and why did it do it? That was his approach all the time.

— Roscoe Pound¹

Harvard Law School is the birthplace of the way of teaching now known as the "Socratic method." It began as the "case method," or the "Langdell method," for its first Harvard practitioner, Christopher Columbus Langdell. As traditional and hide-bound as the method may seem today, it was, in 1870, a radical innovation that would upend the complacently reigning legal pedagogy. Until that time, law professors generally used class to lecture: summarizing legal rules and even reading aloud from textbooks or treatises.² Students were expected to listen and take notes, perhaps occasionally asking a question of the professor and receiving an authoritative-seeming answer.³ According to Charles Eliot, Harvard University's President at the time, lectures often "degenerated into running comment" on treatises the professor had published.⁴ As soon as Langdell joined the Harvard Law School faculty in 1870, after having been a young litigator in New York, he proposed at a faculty meeting that professors stop teaching from textbooks that summarized the law, and instead assign students to read and discuss the original sources, the cases themselves.⁵ The proposal received a chilly reception, primarily because of concerns that it would lead to inadequate coverage of information that students needed to assimilate.⁶ But Langdell began implementing it in his own teaching, eschewing a textbook and giving his students actual cases to read.⁷

¹ Arthur E. Sutherland, Jr., In Memoriam: Roscoe Pound, *One Man in His Time*, 78 HARV. L. REV. 7, 10 (1964).

² Franklin G. Fessenden, *The Rebirth of the Harvard Law School*, 33 HARV. L. REV. 493, 498, 500 (1920).

³ *Id.*

⁴ CHARLES W. ELIOT, *Methods of Instruction, in* UNIVERSITY ADMINISTRATION 174, 178–79 (1908).

⁵ BRUCE A. KIMBALL, *THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL*, 1826–1906, at 141 (2009).

⁶ *Id.*

⁷ *Id.* at 141–42.

The next year, Langdell, by then dean of the law school, made good on his proposal by publishing a new kind of book for use in teaching: the first “casebook,” *A Selection of Cases on the Law of Contracts*.⁸ In its preface, he explained that he came to the conclusion that law should be taught through cases “chiefly through [his] experience as a learner.”⁹ Successful classroom teaching meant “pupils might at least derive a greater advantage from attending it than from devoting the same time to private study.”¹⁰ The purpose of teaching was to cultivate mastery of principles or doctrines embodied in cases, so “a true lawyer” could apply them to the “ever-tangled skein of human affairs.”¹¹ The best way to teach, therefore, was “to compel the mind to work out the principles from the cases.”¹² Another revolutionary move was Langdell’s inclusion of overruled and conflicting cases — he laid out the conflict to underscore the importance of examining and questioning the reasoning behind cases, rather than simply taking in rules with the assumption that they were right.¹³

For Langdell, the case method for selecting course materials went hand in hand with a new classroom-teaching gambit that would displace the lecture format and come to be known as the Socratic method. Here is how he described it a few years after he started using it:

The instructor begins by calling upon some member of the class to state the first case in the lesson, *i.e.*, to state the facts, the questions which arose upon them, how they were decided by the court, and the reasons for the decision. Then the instructor proceeds to question him upon the case. If his answer to a question is not satisfactory (and sometimes when it is), the question is put round the class; and if the question is important or doubtful, or if a difference of opinion is manifested, as many views and opinions as possible are elicited.¹⁴

This method of questioning required students in class to analyze particular cases’ reasoning, rather than having the professor state general propositions of law for students to ingest. It invited students to express interpretations of cases. As described by a student in Langdell’s first class: “The student is . . . taught to analyze, criticize, and reason upon [the cases] for himself, while at the same time he is subjected to the

⁸ C.C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS* (1871).

⁹ *Id.* at v.

¹⁰ *Id.*

¹¹ *Id.* at vi.

¹² Note, *The Increasing Influence of the Langdell Case System of Instruction*, 5 HARV. L. REV. 89, 89 (1891) (quoting Sydney G. Fisher, *The Teaching of Law by the Case System*, 27 AM. L. REG. (n.s.) 416, 417 (1888)).

¹³ DANIEL R. COQUILLETTE & BRUCE A. KIMBALL, *ON THE BATTLEFIELD OF MERIT: HARVARD LAW SCHOOL, THE FIRST CENTURY* 314 (2015) (citing C.C. LANGDELL, *A SUMMARY OF THE LAW OF CONTRACTS* 11–12 (1880)); Fessenden, *supra* note 2, at 500.

¹⁴ Note, *The Case System of Teaching Law*, 1 VA. L. REG. 298, 299 (1895) (quoting Letter from Christopher Columbus Langdell, Dean of Harvard Law Sch. (1878)).

criticism and suggestion of his instructor and fellow-students in doing so.”¹⁵ The student’s reasoning was followed up with yet further questions.¹⁶

At first students were unwilling to engage in this new way. When questioned about their views, arguments, and opinions, a student recalled, it became “evident that very few had studied the case critically, and had had no thought of forming any judgment of their own.”¹⁷ Indeed, they found it presumptuous and “absurd to undertake to give their thoughts about a subject of which they knew nothing.”¹⁸ Most judged the new method as “a childish performance” and “openly condemned” it.¹⁹ The core complaint was: “Where could any one find out any rule of law if he pursued this iconoclastic way? Everything was made questionable and uncertain.”²⁰ Students avoided the class and attendance dwindled to a handful.²¹

The disruption of classroom hierarchy was disturbing: students came to class for the professor’s wisdom, only to hear fellow students’ responses to questions. They complained at “impromptu indignation meetings” in the vein of: “What do we care whether Myers agrees with the case, or what Fessenden thinks of the dissenting opinion? What we want to know is: What’s the *Law*?”²² But devotees who stuck it out reported that they felt freer and stronger learning through the “active search and inquiry” that was the new method, rather than the “passive absorption” that had been the norm.²³

Defying immediate hostility from students and colleagues as well as dire predictions of disaster and ruin to Harvard Law School,²⁴ the Langdell method would soon be adopted by all teachers at the school.²⁵ By the early 1900s, it would become the common teaching method at

¹⁵ COQUILLETTE & KIMBALL, *supra* note 13, at 358 (quoting *The Harvard Law School*, HARV. ADVOC., Feb. 5, 1875, at 146–47).

¹⁶ *Id.* at 359 (citing William Schofield, *Christopher Columbus Langdell*, 46 AM. L. REG. (n.s.) 273, 275 (1907)).

¹⁷ Fessenden, *supra* note 2, at 499.

¹⁸ *Id.*; *see also id.* (describing students characterizing Langdell’s method as “an entire absence of anything but a seeking of expressions of opinion from youths who were ignorant of what they talked about”).

¹⁹ *Id.*

²⁰ *Id.* at 503.

²¹ *Id.* at 500, 503–04.

²² Samuel F. Batchelder, *Christopher C. Langdell*, 18 GREEN BAG 437, 440 (1906).

²³ Fessenden, *supra* note 2, at 500; *see id.* at 503; *see also* ARTHUR E. SUTHERLAND, *THE LAW AT HARVARD 178* (1967) (“Essential to Langdell’s case method was . . . the requirement that the student judge all material for himself, scrutinize instances closely, accept no other man’s judgment until he had judged its logic for himself, judged its soundness, its wholesomeness.”).

²⁴ Fessenden, *supra* note 2, at 508–10.

²⁵ *Id.* at 511.

law schools all over the country.²⁶ The conversion appears attributable in significant part to Professor James Barr Ames, Langdell's student, who was appointed to teach at Harvard Law School in 1873 (later to succeed Langdell as dean), and exceeded his professor in attractive implementation of the method. Ames's broad education and intense intellectual interest beyond just legal precedent — in history, politics, social justice, and issues of the day — brought life and context to the method.²⁷ The centennial history of Harvard Law School said:

The Socratic method of teaching, with [Ames], was neither a club nor a rapier. Like Socrates himself, he desired to open the eyes of his students and let them discover the truth for themselves. He would rather state a problem than a solution. His favorite device in teaching was to put one good student against another, that the class might learn the law from their argument.²⁸

What is particularly striking about this late nineteenth-century teaching revolution is its aim to place the focus on students as learners and thinkers at the center of the classroom, rather than on the professor as fount of knowledge informing students of the law. The professor's opinion was "of no consequence when compared with the importance of leading them to think and form their own judgments."²⁹ By replacing professorial expounding on the law with asking students to grapple with why and how the law operated, teaching became a guided process of intellectual discovery that could stretch students to activate their own reasoning processes.³⁰ Given its aim to refocus the classroom on students' active thinking rather than passive acceptance of authoritative statements, would this Socratic method enable law and legal authority themselves to be treated as less sacred, and more subject to critique?

II. AN ATMOSPHERE OF TERROR

The term "Socratic method" most commonly refers to a professor proceeding through a combination of calling on students ("cold-calling") and asking them questions to elicit reasons and arguments. This is in contrast to, for example, the lecture, the discussion relying primarily on volunteer participation, or the question-and-answer exchange in which students ask questions and the professor provides answers.

²⁶ See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 64 (1983) (detailing the spread of Langdell's method to other law schools).

²⁷ See HARVARD LAW SCH. ASS'N, *THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 1817-1917*, at 37 (1918).

²⁸ *Id.*

²⁹ Fessenden, *supra* note 2, at 502.

³⁰ Steve Sheppard, *An Introductory History of Law in the Lecture Hall, 1997*, in 1 *THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES* 7, 29 (Steve Sheppard ed., 1999).

One hundred years after Langdell's fateful intervention, when the Socratic method had been the universally dominant legal pedagogy for many decades, Duncan Kennedy published *How the Law School Fails: A Polemic*,³¹ an acid critique of legal education written while he was a Yale Law School student. He said that the Socratic method as usually practiced "is an assault."³² He observed that "students often respond physically and emotionally to questioning as though they were in the presence of a profound danger," and "see professors as people who want to hurt them; professors' actions often do hurt them, deeply."³³ Kennedy accused professors of "an astounding lack of awareness of what they are doing. They have neglected a professional responsibility of the first order, and in so doing have inflicted emotional harm on their students."³⁴ Noting that "students are aware of the pleasure that is taken in their subjection,"³⁵ he even suggested that "the element of destructive aggression, of terrorism, in teaching law is a real 'psychic good' for the teacher."³⁶ Not only were law professors emotionally harming students with the Socratic method, but they were also manifesting sadism in doing so.

Professor Laura Kalman has recalled her own 1970s student experience of hating the Socratic method and "seeing law school as a jungle through which one proceeded warily, always anticipating a pouncing. Though I never actually suffered a traumatic experience because of the Socratic method, I assumed I risked one daily."³⁷ The obsessive student anxiety engendered by the law school classroom was also captured in the widely appreciated 1973 film, *The Paper Chase*, a drama focused on the tense scene of Socratic dialogue at Harvard Law School, which was based on a novel by a 1970 graduate and followed up by a long-running television series.³⁸ (My own grandfather, in Korea, never missed an episode of the show.) The character of Professor Kingsfield embodied the cold, imperious, and distant older male professor who wields Socratic

³¹ Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACTION 71 (1971).

³² *Id.* at 73; see also Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 407-08 (1971) (describing Duncan Kennedy as exemplifying a "startling" change in student opinion on Socratic teaching arising from "the new values of activist students and the concomitant change in student mood that has ensued," *id.* at 407).

³³ Kennedy, *supra* note 31, at 73.

³⁴ *Id.*

³⁵ *Id.* at 74.

³⁶ *Id.* at 75.

³⁷ Laura Kalman, Commentary, *To Hell With Langdell!*, 20 LAW & SOC. INQUIRY 771, 771 (1995) (footnote omitted).

³⁸ JOHN JAY OSBORN, JR., *THE PAPER CHASE* (1971); *THE PAPER CHASE* (20th Century Fox 1973) [hereinafter *PAPER CHASE* (film)]; *The Paper Chase* (20th Century Fox Television 1978-1979, 1983-1986).

questioning as a tool of humiliation, purportedly in the service of training students, who “come in here with a skull full of mush” and “leave thinking like a lawyer.”³⁹ The professor’s demeaning treatment was portrayed as part of the educational rigor that would hone and sharpen the student’s mind.

In 1982, as a professor at Harvard Law School, Duncan Kennedy followed up his trenchant student polemic with *Legal Education and the Reproduction of Hierarchy*, a classic text of the Critical Legal Studies movement.⁴⁰ In it, he stated that “[l]aw schools are intensely political places” that engage in ideological training of students to be willing participants in the “hierarchical structure of life in the law.”⁴¹ Modeling interaction with a dominating authoritarian figure, the Socratic method served as a tool of this training in hierarchy:

The classroom is hierarchical with a vengeance, the teacher receiving a degree of deference and arousing fears that remind one of high school rather than college. The sense of autonomy one has in a lecture — with the rule that you must let the teacher drone on without interruption, balanced by the rule that he can’t do anything to you — is gone. In its place is a demand for pseudo-participation in which one struggles desperately, in front of a large audience, to read a mind determined to elude you. It is . . . humiliating to be frightened and unsure of oneself, especially when what renders one unsure is a classroom arrangement that suggests at once the patriarchal family and a Kafka-like riddle-state.⁴²

Submission to the professor’s demand for participation consisted of “suffer[ing] with positive cheerfulness interruption in mid-sentence, mockery, ad hominem assault, inconsequent asides, questions that are so vague as to be unanswerable but can somehow be answered wrong all the same, abrupt dismissal, and stinginess of praise.”⁴³ Participation in the Socratic dialogue was training for hierarchy because it gave students practice in subjection to authority.

Langdell’s new classroom method had caused great consternation a hundred years earlier, in part because it appeared to disrupt the hierarchy of professor over student. Its innovation was to put the student’s thought process at the heart of the classroom experience in place of the professor’s authoritative views. But qualities that the method was thought to nurture in students — independence, autonomy, self-confidence, and a capacity for critique — were, in Kennedy’s narrative, taking a serious beating in the Socratic classroom. Where Langdell

³⁹ PAPER CHASE (film), *supra* note 38, at 11:40.

⁴⁰ Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982) [hereinafter Kennedy, *Legal Education*]. Kennedy later published a book based on this article, DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY (1983), which became known as the “little red book.” E. Dana Neacsu, *CLS Stands for Critical Legal Studies, If Anyone Remembers*, 8 J.L. & POL’Y 415, 417–18 (2000).

⁴¹ Kennedy, *Legal Education*, *supra* note 40, at 591.

⁴² *Id.* at 593.

⁴³ *Id.* at 604.

equated the professor's lecture with student passivity, Kennedy flipped this logic and observed that Socratic "pseudo-participation" in front of classmates robs students of the autonomy they enjoy in a lecture. A mode of interaction that was supposed to lessen authoritarianism and deference had, in Kennedy's rendering, had the opposite effect.

Moreover, the Socratic method functioned to train students to acquiesce substantively to the status quo. Kennedy described the student posture as one "of double surrender: to a passivizing classroom experience and to a passive attitude toward the content of the legal system."⁴⁴ In other words, the Socratic method's aim to encourage independence had utterly backfired. Far from fostering critique, the student's participation in the Socratic dialogue merely performed acceptance of the status quo, of both hierarchical relations and the content of the legal system.

In modeling hierarchy, the classroom had a particular gender, race, and class tilt: "[T]he line between adaptation to the intellectual and skills content of legal education and adaptation to the white, male, middle-class cultural style is a fine one, easily lost sight of."⁴⁵ Kennedy pointed out that the legal professional style to which students learn to assimilate is "overwhelmingly white, male, and middle class."⁴⁶ But the Socratic method's encounter with gender, race, and class diversity might relatedly occasion worry about exclusion or oppression in a more tangible way. That is, if the Socratic method causes the kind of terror and disempowerment in students that some have observed, and is stylistically white, male, and middle class, would it not also impose disproportionate harm on students who are women, as well as on racial and class minorities?⁴⁷

The argument that legal education may be harmful to women was made early on, not for purposes of promoting equal opportunity, but rather as a rationale for excluding women from the legal profession. At the very time that Langdell's method was first being implemented, the Supreme Court held in *Bradwell v. Illinois*⁴⁸ that it was not unconstitutional for a state to deny women admission to its bar.⁴⁹ Justice Bradley

⁴⁴ *Id.* at 594.

⁴⁵ *Id.* at 605.

⁴⁶ *Id.*

⁴⁷ See, e.g., Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3 (1994) ("[M]any women are alienated by the way the Socratic method is used in large classroom instruction . . ."); Tanisha Makeba Bailey, *The Master's Tools: Deconstructing the Socratic Method and Its Disparate Impact on Women Through the Prism of the Equal Protection Doctrine*, 3 MARGINS 125, 127 (2003) (arguing that the Socratic method has "devastating aggregate effects upon women law students" and "hinders the academic development of women by maintaining a denigrating psychological atmosphere of silence, and adversarial competition").

⁴⁸ 83 U.S. (16 Wall.) 130 (1872).

⁴⁹ *Id.* at 139.

in his concurrence observed: “The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life,”⁵⁰ namely law practice, for which was needed the “energies and responsibilities, and that decision and firmness which are presumed to predominate in the sterner sex.”⁵¹ Langdell himself was a particularly strenuous crusader (more than his faculty colleagues) against the admission of female applicants to Harvard Law School in the 1890s.⁵² He expressed to his colleagues the idea that “the law is entirely unfit for the feminine mind — more so than any other subject.”⁵³ He thought the “study of the law would be not an improvement but an injury” to women.⁵⁴

Professors Daniel Coquillette and Bruce Kimball observe that, in a late Victorian culture that fretted over the erosion of manliness, Langdell’s model of legal education was based on “dialectical combat . . . exemplified in case method teaching,” and that was why Langdell thought it was incompatible with women.⁵⁵ They find it unsurprising that “the school that originated [the] case method stoutly resisted the admission of women,” and that the “founder of [the] case method would be the staunchest defender of masculine legal culture.”⁵⁶ In their view, Langdell’s sentiment was less a denigration of women’s intellectual ability than a perception of feminine psychology or sensibility, giving rise to doubts about fitness to engage in the mano-a-mano struggle of the Socratic classroom, much less that of the legal profession itself.⁵⁷ Other Harvard Law School faculty members worried less about harming women and more about coeducation’s constraining effect on class discussion, presumably because gentlemen’s proper respect for ladies’ delicacy and vulnerability should lead to inordinate self-restraint.⁵⁸

⁵⁰ *Id.* at 141 (Bradley, J., concurring).

⁵¹ *Id.* at 142.

⁵² See COQUILLETTE & KIMBALL, *supra* note 13, at 483–95.

⁵³ *Id.* at 495 (recounting Langdell’s comments at an 1899 faculty meeting).

⁵⁴ *Id.*

⁵⁵ *Id.* Ames called the Socratic method a “virile” method as compared to its predecessor. *Id.* at 497. Note also that men of Langdell’s generation had the experience of the Civil War. Cf. Edward Rubin, *What’s Wrong with Langdell’s Method, and What to Do About It*, 60 VAND. L. REV. 609, 612 (2007) (observing that Langdell’s method was “generally well-suited to the period immediately following the Civil War”).

⁵⁶ COQUILLETTE & KIMBALL, *supra* note 13, at 498; see also *id.* (claiming that Langdell alone expressed this view, because “he was not a gentleman,” whereas his colleagues were more respectfully receptive to women’s applications because of “appreciation of ‘the lady’ in the ideology of gentility embraced by the nineteenth-century Brahmin gentry”).

⁵⁷ *Id.*

⁵⁸ *Id.* at 494, 496.

When Harvard Law School finally began admitting women in 1950,⁵⁹ of course the Socratic method was not abandoned. But it often proceeded without women's participation because they were not given the same opportunities to speak and frequently were not even acknowledged in class.⁶⁰ Until the late 1960s, in several professors' classes, the now infamous "ladies' days" were the only times when the handful of female students were allowed to speak.⁶¹ On those days, the women would come prepared to be on display in front of the class, knowing that they would be called on, often to discuss topics that were considered trivial, of special interest to women, or sexually embarrassing, such as an engagement ring as a marital gift, rights to deceased husbands' property, fraudulent sale of underwear — or rape.⁶²

One female 1963 graduate told Judith Richards Hope that a professor who refused to call on women except on ladies' days probably did so out of a paternalistic feeling that he shouldn't do to the women what he was able to do to the men: "[P]ush them to the wall with questions."⁶³ Another recalled that the professor explained in class that "it was unchivalrous to call on a lady without advance notice."⁶⁴ Far from being gentlemanly, though, the class mood on ladies' days was raucous, as male students "hooted and laughed and sometimes stomped their feet, thinking it was marvelous fun."⁶⁵ Several women likened the experience to performing like caged animals.⁶⁶ The ladies' day tradition exemplified both the refusal to engage women in Socratic dialogue and, simultaneously, the use of Socratic questioning to embarrass them because of their sex.⁶⁷

⁵⁹ See JUDITH RICHARDS HOPE, *PINSTRIPES & PEARLS: THE WOMEN OF THE HARVARD LAW CLASS OF '64 WHO FORGED AN OLD-GIRL NETWORK AND PAVED THE WAY FOR FUTURE GENERATIONS* 12–17 (2003) (detailing the process leading to coeducation at Harvard Law School).

⁶⁰ See, e.g., 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/W3E4-JYW9>] (quoting former American Civil Liberties Union President and 1975 Harvard Law School graduate Nadine Strossen as saying: "I did raise my hand a lot and not get called on"); see also Deborah L. Rhode, *Midcourse Corrections: Women in Legal Education*, 53 J. LEGAL EDUC. 475, 479 (2003); Janet Taber et al., Project, *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1210 (1988).

⁶¹ See HOPE, *supra* note 59, at 96–103.

⁶² See CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 66–67 (1981); HOPE, *supra* note 59, at 98; Mary J. Mullarkey, *Two Harvard Women: 1965 to Today*, 27 HARV. WOMEN'S L.J. 367, 370 (2004).

⁶³ HOPE, *supra* note 59, at 97.

⁶⁴ *Id.* at 98.

⁶⁵ *Id.* at 99.

⁶⁶ *Id.*

⁶⁷ On one ladies' day in the mid-1960s that led to the demise of the tradition, the women came prepared not only to be questioned about a case involving underwear but also to mortify the professor by producing lingerie from their briefcases and throwing it at the male students. See EPSTEIN, *supra* note 62, at 67.

III. TRAUMATIC SOCRATIC

In recent years, we have seen a distinctive contemporary feminist reframing of the connection between the Socratic method and law school's harm to women. The debate over the gendered experience of the classroom has included attempts to link the Socratic method to psychological trauma. That link has been emphasized in the particular example of teaching and learning rape law.

A. Is the Socratic Method Bad for Women?

In 2013, the Harvard Law School student group "Shatter the Ceiling" was formed to address gender disparities at the school, including gaps between males and females in honors at graduation, membership on the *Harvard Law Review*, likelihood of volunteering to speak in class, and subjective self-evaluation.⁶⁸ In the launch video produced by the group, a female graduate said: "It was the best-known secret on campus that women just can't do as well, the way this school is structured."⁶⁹ Like many past observers of the gendered impact of legal education,⁷⁰ the group pointed to the Socratic method's effect on women's performance and comfort.⁷¹

The *Harvard Crimson* reported at the time that, according to one female law student, the Socratic method is "the worst thing in the world[.] . . . It forces you to talk like a man. . . . Women take longer to process thoughts before they feel comfortable to say them out loud than men do."⁷² Professor Lani Guinier, a sharp critic of the Socratic method, has said that women and people of color tend to be "reluctant partners in the Socratic exchange," thriving instead in smaller and more informal

⁶⁸ See Lena Silver, *Do You Accept the Status Quo? It's About Time to Shatter the Ceiling*, HARV. L. REC. (Mar. 11, 2013), <http://hlrecord.org/2013/03/do-you-accept-the-status-quo-its-about-time-to-shatter-the-ceiling/> [https://perma.cc/4HY6-MQPF] (citing WORKING GRP. ON STUDENT EXPERIENCES, HARVARD LAW SCH., STUDY ON WOMEN'S EXPERIENCES AT HARVARD LAW SCHOOL (Feb. 2004), <http://www.law.harvard.edu/students/experiences/FullReport.pdf> [https://perma.cc/BT59-LV9N]); see also Taber et al., *supra* note 60, at 1242 (finding that male students at Stanford Law School were more likely to volunteer to participate in class than female students).

⁶⁹ Shatter the Ceiling, #ShatterIt! at 1:13, FACEBOOK (Mar. 24, 2013), <https://www.facebook.com/WLASHatter/videos/359477527491540/> [https://perma.cc/3CPZ-ZBQT].

⁷⁰ See, e.g., OHIO JOINT TASK FORCE ON GENDER FAIRNESS, FINAL REPORT 53 (May 1995) (reporting that 64% of female law school students as compared to 51% of male students stated that "a professor's use of a Socratic teaching method inhibits the free exchange of ideas"); Guinier et al., *supra* note 47, at 3–5; Jennifer Jaff, *Frame-Shifting: An Empowering Methodology for Teaching and Learning Legal Reasoning*, 36 J. LEGAL EDUC. 249, 258–61 (1986) (calling the Socratic method "patriarchal," *id.* at 260); Morrison Torrey et al., *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267, 275–85 (1998); Bailey, *supra* note 47, at 127.

⁷¹ See Shatter the Ceiling, *supra* note 69.

⁷² Dev A. Patel, *In HLS Classes, Women Fall Behind*, HARV. CRIMSON (May 8, 2013), <http://www.thecrimson.com/article/2013/5/8/law-school-gender-classroom/> [https://perma.cc/46LS-QV7S].

class situations.⁷³ In Shatter the Ceiling's video, she said that women are "canaries in the coal mine" whose discomfort in the classroom reveals a problem that harms the whole community.⁷⁴ The experience of women in the classroom may, after all, be symptomatic of harms inflicted more generally on students by the kind of "terrorism" in law school teaching reported by Duncan Kennedy decades earlier.⁷⁵

The significance of emotional harm that has at times been associated with Socratic teaching partakes today in a general cultural renaissance of the language of trauma, drawn from the medicalized terminology of Post-Traumatic Stress Disorder (PTSD), which is increasingly used to refer to suffering, especially by women.⁷⁶ As a case in point, a Harvard Law School student group that advocates for sexual assault victims, Harassment Assault Law-Student Team (HALT), claims:

Professors can benefit students with PTSD by decreasing their use of the adversarial Socratic method, in which professors cold-call students. An aggressive classroom tone . . . subjects students to the panic that suddenly being put on the spot can invoke, along with the fear of knowing a cold call is imminent. This can prompt a flight or fight reaction, causing the student to shut down, freeze, dissociate, and/or experience a flashback or panic attack. Dispensing with the most confrontational forms of the Socratic method, thereby making classrooms less adversarial, would better account for traumatized students' needs.⁷⁷

Socratic cold-calling entails the professor calling on individual students to speak when they are not raising their hands to volunteer and don't know in advance when they will be called on. HALT suggests that this teaching method should be reconsidered in light of the fact that students, in particular sexual assault survivors, may suffer from PTSD. This claim relies on the idea of assault and aggression in portraying the experience of the classroom. Describing the panic and fear of a cold-

⁷³ LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 91 (1997); see also Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547, 1557 (1993) (stating that the "conventional law school" method "runs counter to feminism's most basic insights, which stress learning through empathetic and collaborative exchange"); Taber et al., *supra* note 60, at 1242 (finding that male graduates in a Stanford Law School study preferred professors who were "good at Socratic dialogue," whereas female graduates preferred professors who were "accessible and open to questions outside class"); cf. CAROL GILLIGAN, IN A DIFFERENT VOICE (1982).

⁷⁴ Shatter the Ceiling, *supra* note 69, at 1:48; cf. LANI GUINIER & GERALD TORRES, THE MINER'S CANARY (2002).

⁷⁵ Kennedy, *supra* note 31, at 75.

⁷⁶ See Jeannie Suk, *Laws of Trauma*, in KNOWING THE SUFFERING OF OTHERS: LEGAL PERSPECTIVES ON PAIN AND ITS MEANING 212, 213 (Austin Sarat ed., 2014); Jeannie Suk, *The Trajectory of Trauma: Bodies and Minds of Abortion Discourse*, 110 COLUM. L. REV. 1193, 1197 (2010).

⁷⁷ *Why Alter the Socratic Method?*, HARVARD LAW SCH. HALT (footnotes omitted), <https://orgs.law.harvard.edu/halt/trauma-recognition-in-law-schools/why-alter-the-socratic-method/> [<https://perma.cc/2MFP-MJMY>].

call as prompting a student to “freeze” or “dissociate” in class resonates with now-common descriptions of victims of sexual assault as reacting in “frozen fright” when they feel they are about to experience an assault.⁷⁸ This rhetorical move serves implicitly to relate and compare reactions to being called on in a Socratic classroom to those of being sexually assaulted. The professor is imagined to inflict the injury in place of an assailant, or to “re-traumatize” a student with the Socratic cold-call.

Calls for professors to lay off the Socratic method, cold-calling, or questioning of individual students during class may be general or more focused on the teaching of rape law.⁷⁹ They may be concerned with protecting the mental well-being of sexual assault victims or of women students in general who may on the whole be considered more vulnerable, uncomfortable, or fearful in the classroom environment. But from some quarters, there are even broader calls for professors to avoid classroom discussion of topics that might be associated with trauma, such as sexual assault.⁸⁰

B. *The Socratic Method and Sexual Assault*

Between a time when rape law was generally not considered important enough or suitable for law school teaching (except perhaps on ladies’ days) and today, feminists such as Professor Susan Estrich, who had been the first female president of the *Harvard Law Review* and then a professor at Harvard Law School, worked successfully in the 1980s and 1990s to get the subject included in criminal law course discussions and materials.⁸¹ Revealing that she had been raped before law school, Estrich recounted her frustration in the mid-1970s at not being taught rape law in law school while spending “an eternity” on homicide, and then putting together her own rape law teaching materials as a criminal law professor in the 1980s.⁸² She advocated teaching rape law in a way that squarely confronted hard questions: “When does sex become rape;

⁷⁸ See, e.g., Michal Buchhandler-Raphael, *The Failure of Consent: Re-Conceptualizing Rape as Sexual Abuse of Power*, 18 MICH. J. GENDER & L. 147, 160 (2011); Martin Symonds, *The Rape Victim: Psychological Patterns of Response*, 36 AM. J. PSYCHOANALYSIS 27, 30 (1976) (discussing frozen fright).

⁷⁹ See Katie J.M. Baker, *Teaching Rape Law in the Age of the Trigger Warning*, BUZZFEED NEWS (Apr. 3, 2015, 11:11 AM), <https://www.buzzfeed.com/katiejmbaker/teaching-rape-law-in-the-age-of-the-trigger-warning> [<https://perma.cc/LUK3-FMRT>].

⁸⁰ See *id.*

⁸¹ See Susan Estrich, Essay, *Teaching Rape Law*, 102 YALE L.J. 509, 510–11 (1992); see also Jeannie Suk, “*The Look in His Eyes*”: *The Story of Rusk and Rape Reform*, in CRIMINAL LAW STORIES 171, 208–09 (Donna Coker & Robert Weisberg eds., 2013); Jeannie Suk Gersen, *The Trouble with Teaching Rape Law*, NEW YORKER (Dec. 15, 2014) [hereinafter Gersen, *The Trouble with Teaching Rape Law*], <http://www.newyorker.com/news/news-desk/trouble-teaching-rape-law> [<https://perma.cc/7V35-9MCU>].

⁸² Estrich, *supra* note 81, at 509–10.

according to whom; what counts as force; whose definition of consent governs; how much do we really need to know about the accuser and the accused in order to decide who to believe?”⁸³ Estrich wrote that in teaching she does not abide orthodoxy, and expects “the feminists to articulate the defendant’s strongest arguments, and those most skeptical of the feminist position to be able prosecutors.”⁸⁴

Questions of sexual assault and consent are even more alive today; they are more widely debated in our society and considered more relevant to students’ experiences. But now that teaching on rape law is common in law schools, some students have expressed the wish that it wouldn’t be taught. As one female Harvard Law School student put it: “I just don’t think the benefit of being taught rape in criminal law justifies what I think are the many harmful effects.”⁸⁵ Those harmful effects, it seems, are emotional injuries from the classroom experience itself, presumably attributable to a combination of the teaching method and the substance of what students and professors might say in class.⁸⁶ By requiring student participation, the Socratic method may intensify discomfort, especially for those students who feel some personal relation to the subject matter. But Estrich argued that “no one would ever suggest that we should skip homicide in those years when we have students who have been touched by it, or skip insanity because some of our students have fought mental illness, or never mention drunk driving because we’re all probably too familiar with that.”⁸⁷ Still, many feel that rape is different.

These discussions reflect a common goal to promote equality in legal education, the legal profession, and society. The institutional memory of ladies’ days, during which women students were grilled on sexually embarrassing topics,⁸⁸ perhaps has not faded. Yet the notion of protecting women from legal discussions of sexual matters also has a traditional sexist counterpart in arguments from the era when the Socratic method was first being implemented and women were being excluded. For example, a Wisconsin judicial opinion in 1875 justifying exclusion of women from the legal profession stated that women should not

mix professionally in all the nastiness of the world which finds its way into courts . . . questions of sodomy, incest, rape, seduction, fornication, adultery, pregnancy, bastardy, legitimacy, prostitution, lascivious cohabitation, abortion, infanticide, obscene publications, libel and slander of sex, impotence, divorce . . . with which the profession has to deal, and which go towards

⁸³ *Id.* at 513–14.

⁸⁴ *Id.* at 514.

⁸⁵ Baker, *supra* note 79.

⁸⁶ *See id.*

⁸⁷ Estrich, *supra* note 81, at 514.

⁸⁸ HOPE, *supra* note 59, at 98.

filling judicial reports which must be read for accurate knowledge of the law. . . . Reverence for all womanhood would suffer in the public spectacle of woman so instructed and so engaged. . . . Discussions are habitually necessary in courts of justice, which are unfit for female ears.⁸⁹

Tellingly, this Victorian explanation focuses on the need to shelter women from the law's engagement with regulation of sexual conduct and sexual violence. This argument, whose upshot is to exclude women, is of course not the same as the contemporary argument, aiming to increase women's educational opportunity, that law professors should refrain from using the Socratic method to teach on sexual assault. But protection of women is a rhetorical common thread. I am sensitive to the potential to unconsciously reprise old notions of protecting women as a class from exposure to legal discussions of sexual matters.

Teaching on questions of gender and sexuality — including sexual violence — is essential to the pursuit of equality. Sexual injury is a part of many people's experience and can make discussion of the subject challenging for some. The topic of sexual assault is as important as it has ever been in campus discourse, policy, and student life, and yet at the same time there is more anxiety than ever that the teaching of it and related topics in class will harm students. My courses touch on most of the topics enumerated by the Wisconsin Supreme Court in 1875 as "unfit for female ears." I am a cold-calling Socratic professor of criminal law who devotes about the same number of hours in class to sex offenses as to homicide. The subjects are comparable in their interest, difficulty, complexity, and relevance in the world in which we live. I treat them with the same level of seriousness and rigor. I have over the years heard some students report anticipatory nervousness as the sex-offenses unit approaches. A small number have told me they wished to skip the class sessions on rape law, or even to switch to any other professor who would devote less time to the subject. But in truth, there is no particular day or week devoted to topics related to sex and gender violence; rather, they pervade my classes, whether the topic is actus reus, mens rea, causation, homicide, attempt, conspiracy, prosecutorial discretion, sentencing, or due process. They are present on most days and difficult to avoid.

Unlike me, some professors employ blanket exceptions to their general pedagogy for teaching on rape law. They don't cold-call any students on that day, or they dispense with Socratic questioning altogether.⁹⁰ They don't put rape law on the exam. Before beginning the

⁸⁹ *In re Goodell*, 39 Wis. 232, 245–46 (1875).

⁹⁰ See Baker, *supra* note 79 (noting that Professor Jed Rubenfeld, despite declining to give trigger warnings, "refrains from cold-calling on students when rape is being discussed"); Colleen Flaherty, *Harvard Law Professor Says Requests for Trigger Warnings Limit Education About Rape Law*, INSIDE HIGHER ED (Dec. 17, 2014), <https://www.insidehighered.com/news/2014/12/17/harvard-law->

unit, they give a special speech, uniquely emphasizing that this is a topic that is different from the others and that students present have had firsthand experience of it.

The related demand for “trigger warnings” — warnings on course syllabi or before class discussion that the content to be studied may “trigger” traumatic memories — has risen on university campuses for the teaching of a range of subjects including literature and film that depicts not just rape but topics like discrimination, abuse, and suicide.⁹¹ It is unclear whether the intent of trigger warnings is to allow students to choose to refrain from studying certain material, or to aid them in coping with the experience of studying it. Perhaps it is neither of those things, but rather functions as a signal to students that the professor cares about protecting them — or more pointedly, politically aligns with people who think trigger warnings are supposed to help.

All this raises questions about exceptionalism in the classroom.⁹² Should there be a rape (or any other) exception to the Socratic method? Should some students be excused from otherwise required reading or discussion on sexual assault (or other topics that are difficult for them)? Should the entire class be warned about a special challenge with studying and discussing rape law — or race, gun violence, discrimination, or other topics? What should professors do when a student wants to skip class or not be called on for certain topics?

Students who have disabilities or illness (such as PTSD) may of course go through the school’s usual channels for accommodations including exemptions from attending class or being called on — just as would be available for other mental or physical illness. And if a student said he or she was just not up to being called on during a particular class, for whatever reason, it would seem to me unnecessarily harsh to require that student to be called on that day. But with regard to the general group of students, the idea that professors should take upon

professor-says-requests-trigger-warnings-limit-education-about-rape-law [https://perma.cc/HX6L-J7G5] (noting other professors who decline to cold-call about sexual assault cases).

⁹¹ See Sarah Brown, *A Brief Guide to the Battle over Trigger Warnings*, CHRON. HIGHER EDUC. (Aug. 26, 2016), <http://www.chronicle.com/article/A-Brief-Guide-to-the-Battle/237600> [https://perma.cc/2RNH-8GYX]; Jenny Jarvie, *Trigger Happy*, NEW REPUBLIC (Mar. 3, 2014), <https://newrepublic.com/article/116842/trigger-warnings-have-spread-blogs-college-classes-thats-bad> [https://perma.cc/E8TU-57RR]; Jennifer Medina, *Warning: The Literary Canon Could Make Students Squirm*, N.Y. TIMES (May 17, 2014), <https://www.nytimes.com/2014/05/18/us/warning-the-literary-canon-could-make-students-squirm.html> [https://perma.cc/G3RN-ZP8V].

⁹² Cf. Michelle J. Anderson, *Campus Sexual Assault Adjudication and Resistance to Reform*, 125 YALE L.J. 1940, 2000 (2016) (“In general, we should be skeptical of rape or sexual assault exceptionalism.”); Donald Dripps, *After Rape Law: Will the Turn to Consent Normalize the Prosecution of Sexual Assault?*, 41 AKRON L. REV. 957, 958 (2008) (“The old rape exceptionalism . . . has given way to a new exceptionalism.”); Janet Halley, *Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict*, 9 MELB. J. INT’L L. 78 (2008) (discussing the exceptionalizing of the rape of women in war).

themselves to give some kind of a quasi-medical warning about trauma that students might experience because of the class is borderline irresponsible. In fact, some psychologists have claimed that trigger warnings may be counterproductive, because they may prime students to experience what is coming as more emotionally difficult than it would otherwise be, ratcheting up anxiety and pain.⁹³ The Harvard psychology professor Richard McNally has written that “trigger warnings are countertherapeutic because they encourage avoidance of reminders of trauma, and avoidance maintains P.T.S.D.”⁹⁴ Professors should be wary in any event about framing class discussions (as if they possessed medical or therapeutic expertise) as potential trauma triggers, but this is especially so in the absence of evidence that trigger warnings are more helpful than harmful to mental health.

Professors should, however, take extra good care to foster discussion that is respectful, civil, and sensitive. This can be done with a general message at the beginning of the course that is reiterated several times throughout. We should emphatically state the importance of showing respect and civility in disagreement, and of being mindful that the class is full of classmates who are touched by the subject matter in ways that may not be apparent. This framing is different from a “trigger warning” about a particular subject that focuses on the possibility of trauma. As one former student of mine, Clara Spera, put it: “Entering law school is the trigger warning.”

I do not think suspending one’s usual pedagogy in teaching on rape law or other difficult topics is a good idea, unless one wishes to convey a kind of exceptionalism about the topic. That is not how I want rape law (or any other difficult subject) to be taught. As Estrich put well: “What I have been fighting for, over these years, is not to give rape special treatment because it happened to me and to so many others, but rather to stop treating it specially.”⁹⁵ In some ways, the Socratic method

⁹³ See, e.g., Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, THE ATLANTIC (Sept. 2015), <https://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/> [<https://perma.cc/Y4A5-QQL3>].

⁹⁴ Richard J. McNally, Opinion, *If You Need a Trigger Warning, You Need P.T.S.D. Treatment*, N.Y. TIMES (Sept. 13, 2016), <http://www.nytimes.com/roomfordebate/2016/09/13/do-trigger-warnings-work/if-you-need-a-trigger-warning-you-need-ptsd-treatment> [<https://perma.cc/E8GU-GQLA>]; see also EVE KOSOFKY SEDGWICK, *Paranoid Reading and Reparative Reading, or, You’re So Paranoid, You Probably Think This Essay Is About You*, in TOUCHING FEELING: AFFECT, PEDAGOGY, PERFORMATIVITY 123, 146 (2003) (“[T]o read from a reparative position is to surrender the knowing, anxious paranoid determination that no horror, however apparently unthinkable, shall ever come to the reader *as new*; to a reparatively positioned reader, it can seem realistic and necessary to experience surprise. Because there can be terrible surprises, however, there can also be good ones. Hope, often a fracturing, even a traumatic thing to experience, is among the energies by which the reparatively positioned reader tries to organize the fragments and part-objects she encounters or creates.”).

⁹⁵ Estrich, *supra* note 81, at 512.

is just right for teaching about subjects on which orthodoxies have taken root. If it is used to elicit reasoning and argument in a shared dialogue toward a better understanding, rather than to produce a narrow range of “correct” answers, it can highlight disagreement, conflict, or the possibility of reconsideration. Rape law sits at the crossroads of two ideologies that tend toward orthodoxies: historical sexism and misogyny that have infused rape law for hundreds of years, and contemporary tenets that have arisen to counter that sexist tradition. The concept of “rape myths” has developed to refer to false beliefs, rooted in sexism and misogyny, and in need of debunking.⁹⁶ It should be acknowledged that some of those “rape myths,” such as the shibboleth that “women often lie about rape,” have spawned some implausible counterorthodoxies, such as that complainants never lie about rape, and the related dogma that one must as a rule believe the accuser.

Students who subscribe to the new orthodoxies may find it uncomfortable and perhaps even offensive, for example, if the possibilities explored in class include ones that contradict or doubt a complainant’s account. It can be jarring when arguments about a complainant’s (not just the defendant’s) possible untruthfulness are treated as arguments to be addressed rather than dismissed out of hand. Attention to due process for defendants may not be as welcome in this unit as it is in other parts of the criminal law course. And if the Socratic method, which is designed to put arguments against each other to test reasoning, is perceived as creating an “adversarial” or “aggressive” classroom tone, its use in teaching rape law may strike some students as a harmful instantiation of “rape culture” itself.

C. *A Hostile Environment?*

This is a time when the classroom is increasingly perceived as a potential site of trauma. In what Professor Sharon Marcus would call a “collapsed continuum” of sexual violence, various types of injury or discomfort are sometimes spoken of as if their harm were like sexual assault.⁹⁷ On today’s university campus, acts that fall along a continuum — such as harassment, unwanted touching, and sexual remarks — are often rhetorically equated, as if they are substitutes for “rape.” Similarly, it has become common to hear reference to many things that are unpleasant, unwelcome, objectionable, or uncomfortable as “traumatic.” And the more the classroom is perceived as a cause of emotional harm

⁹⁶ Some rape myths, such as the idea that “only bad women get raped,” “only a stranger can commit rape,” or “women who are drunk are willing to engage in any kind of sexual activity,” are so absurd as to be surprising that they even need a response.

⁹⁷ Sharon Marcus, *Fighting Bodies, Fighting Words: A Theory and Politics of Rape Prevention*, in *FEMINISTS THEORIZE THE POLITICAL* 385, 391 (Judith Butler & Joan W. Scott eds., 1992); see also *id.* at 389–91.

for students, the more the classroom may be likened to and experienced as a site of trauma analogous to sexual assault itself.⁹⁸

There is risk that professors could engage students in Socratic dialogue about one of those topics and be perceived as inflicting trauma. That risk is most obviously relevant to courses including sexual topics that our culture now commonly associates with trauma, such as the criminal law of sex offenses. But in fact, a great many courses in the law school curriculum — Torts, Evidence, Employment Law, Contracts, Property, Constitutional Law, International Law, Legislation and Regulation, and Civil Procedure, to name a few — can include plenty of topics that students may associate with trauma. The degree to which courses cover such topics is at the professor's discretion. Many professors in the past several years have told me that they don't want to include materials concerning sex, violence, or race, out of both a sympathy for students who may become upset by an aspect of the discussion, and a self-protective urge not to end up in the crosshairs of student sensibilities that are hard to predict.⁹⁹

These developments have coincided with expansive definitions and concepts of harassment that have been adopted on campuses in the past several years.¹⁰⁰ Take, for example, Harvard University's sexual harassment definition: "[U]nwelcome conduct of a sexual nature" including verbal conduct in class.¹⁰¹ "Unwelcome Conduct" is defined as conduct that is unrequested or uninvited, and "regarded . . . as undesirable or offensive."¹⁰² When this policy was unveiled in 2014, those who were teaching, discussing, and writing on sex and sexuality had reason to anticipate that their work could too easily be perceived as violating the policy, because it appeared to hinge on whether a person "regarded" the verbal conduct as undesirable or offensive, but notably not on whether he or she did so reasonably.¹⁰³ An accusation under this policy did not seem at all implausible if a student regarded an aspect of a professor's teaching about legal regulation of sexual matters as uninvited, undesirable, and so pervasive or severe that it created a hostile environment for

⁹⁸ *Id.* at 389.

⁹⁹ *Cf.* Committee Report, *The History, Uses, and Abuses of Title IX*, ACADEME (BULL. AM. ASS'N U. PROFESSORS), July–Aug. 2016, at 69, 75–79; Gersen, *The Trouble with Teaching Rape Law*, *supra* note 81.

¹⁰⁰ *See* Jacob Gersen & Jeannie Suk, *The Sex Bureaucracy*, 104 CALIF. L. REV. 881, 884 (2016).

¹⁰¹ HARVARD UNIV., SEXUAL AND GENDER-BASED HARASSMENT POLICY 1 (2017), http://titleix.harvard.edu/files/title-ix/files/harvard_sexual_harassment_policy.pdf [https://perma.cc/P2YJ-ELGQ].

¹⁰² *Id.* at 2.

¹⁰³ *See* Press Release, Janet Halley, Royall Professor of Law, Harvard Law Sch., A Call to Reform the New Harvard University Sexual Harassment Policy and Procedures 13 (Oct. 28, 2014), <http://orgs.law.harvard.edu/acs/files/2014/10/ACSPost.014.pdf> [https://perma.cc/98S9-T395].

the student. In response to the law school faculty's concerns,¹⁰⁴ the University subsequently released Frequently Asked Questions in 2015, in which it clarified:

The University assesses the effect of the speech on the environment from the perspective of an objective, reasonable person, bearing in mind that the University encourages free and uninhibited speech and inquiry. . . . For example, where academically relevant, a professor or a student may discuss sexually provocative or offensive material in class. By contrast, discussion of such material might not be appropriate where it has no relevance to the particular setting or is inappropriately directed at a particular individual.¹⁰⁵

This clarification, particularly the specification of a "reasonable person" standard, improves the situation. However, the debate revealed how concretely an overly broad definition of sexual harassment can reduce teaching about sexual matters. As a result of the overbreadth of the 2014 sexual harassment policy, professors considered cutting related cases and materials in courses that could be taught without them.

Teachers of subjects that more directly address sexual matters bear a greater risk that something that happens in the course of their teaching will be considered "traumatic" or "sexual harassment." And in my experience, women, particularly feminists, are more likely than men to be teaching on such subjects. That means that feminist teachers may be particularly susceptible to accusations of causing emotional harm to their students in the classroom.

For example, feminist professor of sociology Patti Adler at the University of Colorado had for twenty years taught a popular course, "Deviance in U.S. Society." The course included a role-playing exercise with students playing characters in the global sex trade such as pimps and sex workers. In 2013, students complained that the course was sexual harassment. After Title IX administrators sat in on Adler's class, her Dean said she could no longer teach the course because her pedagogical method was too risky for the school in the current environment.¹⁰⁶ The

¹⁰⁴ See Opinion, *Rethink Harvard's Sexual Harassment Policy*, BOS. GLOBE (Oct. 15, 2014), <https://bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZN7nU2UwuUuWMnqbM/story.html> [<https://perma.cc/XD6T-9277>].

¹⁰⁵ TITLE IX OFFICE & OFFICE FOR DISPUTE RESOLUTION, HARVARD UNIV., FREQUENTLY ASKED QUESTIONS CONCERNING HARVARD UNIVERSITY SEXUAL AND GENDER-BASED HARASSMENT POLICY AND PROCEDURES FOR HANDLING COMPLAINTS INVOLVING STUDENTS 6 (Apr. 12, 2016), http://titleix.harvard.edu/files/title-ix/files/sexual_harassment_policy_procedures_faqs.pdf [<https://perma.cc/WNK4-76ZC>].

¹⁰⁶ Michelle Goldberg, *This Professor Was Fired for Saying "Fuck No" in Class*, THE NATION (July 2, 2015), <https://www.thenation.com/article/this-professor-was-fired-for-saying-fuck-no-in-class/> [<https://perma.cc/P2HY-XEJP>]; see also BOULDER FACULTY ASSEMBLY AD HOC COMM., REPORT OF THE BOULDER FACULTY ASSEMBLY (BFA) AD HOC COMMITTEE TO INVESTIGATE THE PATRICIA ADLER CASE (May 1, 2014), <http://www.colorado.edu/bfa/sites/default/files/attached-files/ReportBFAAdlerFinalReport05.2014.pdf> [<https://perma.cc/FC7K-F5QM>].

school also attempted to force Adler's early retirement.¹⁰⁷ After an outcry in Adler's support, the restriction was lifted and she was allowed to stay, but she retired anyway with dismay over the incident.¹⁰⁸

Laura Kipnis, a feminist professor of film studies at Northwestern University, was accused of sexual harassment through the school's Title IX process for statements she published in an essay¹⁰⁹ that was sharply critical of new campus sexual harassment codes and the sexually paranoid culture accompanying them.¹¹⁰ In the course of her argument, she discussed publicly available facts drawn from court filings in a case concerning a philosophy professor at her institution who was accused of sexually harassing a student. Several graduate students filed a Title IX complaint against Kipnis for "retaliation," claiming "the essay had a 'chilling effect' on students' reporting of sexual misconduct."¹¹¹ Northwestern's months-long investigation of Kipnis ended up clearing her of wrongdoing. But after Kipnis then published a book about her experience and wrote at length on her theory that the philosophy professor was falsely accused, Northwestern investigated her again.¹¹² That both investigations ended with a finding that she was not responsible for sexual harassment is obviously better than the alternative, but Kipnis's story nevertheless serves as a warning that expanding understandings of harassment may make writing and teaching on certain topics (and viewpoints) concretely undesirable. For some students, the failure of the school to discipline her is merely another sign that schools don't take sexual violence seriously.

There are at least two ironies arising from the cultural move to frame the classroom (or even reading) as a potential site of sexual trauma. First, in universities' efforts to protect the educational opportunity of female students by expanding the scope of what constitutes sexual harassment, feminist professors, who tend to teach and write about sexual and gender-related matters have now become more vulnerable to accusations of sexual harassment. Second, subjects regarding sexuality that were once marginalized from the curriculum because of their perceived unimportance are at risk of being remarginalized because of their perceived weight.

¹⁰⁷ Goldberg, *supra* note 106.

¹⁰⁸ *The History, Uses, and Abuses of Title IX*, *supra* note 99, at 82.

¹⁰⁹ Laura Kipnis, *Sexual Paranoia Strikes Academe*, CHRON. HIGHER EDUC. (Feb. 27, 2015), <http://www.chronicle.com/article/Sexual-Paranoia-Strikes/190351.pdf> [https://perma.cc/2XQ3-6N83].

¹¹⁰ Laura Kipnis, *My Title IX Inquisition*, CHRON. HIGHER EDUC. (May 29, 2015), <http://www.chronicle.com/article/My-Title-IX-Inquisition/230489> [https://perma.cc/G4MX-J9SF].

¹¹¹ *Id.*

¹¹² LAURA KIPNIS, UNWANTED ADVANCES: SEXUAL PARANOIA COMES TO CAMPUS (2017); Jeannie Suk Gersen, *Laura Kipnis's Endless Trial by Title IX*, NEW YORKER (Sept. 20, 2017), <https://www.newyorker.com/news/news-desk/laura-kipnis-endless-trial-by-title-ix> [https://perma.cc/WMT8-YZAZ].

I continue to hear from colleagues at multiple schools who say they are limiting or refraining from teaching topics that are “too hot to handle” in an environment in which teaching might inadvertently injure and not receive the benefit of the doubt. This is disheartening. I hope this moment turns out to be a blip rather than a horrible unintended consequence or sustained feature of coeducation. How the law school classroom handles “hot” topics with a diverse student body is a sign of how well legal education is equipped to train students for difficult conversations in a diverse society. Rape law is perhaps the most discussed example in contemporary debate of the suitability of law teaching methods. But it exemplifies a larger concern about teaching topics that students may associate with emotional injury. The debate is a part of a broader contemporary reflection on legal education as Harvard Law School enters its third century.

IV. BECOMING CITIZENS: TRAINING FOR DEMOCRACY

My parents and grandparents fled North Korea as refugees during the Korean War in 1950. I was born in a military dictatorship in South Korea. My parents’ friends were imprisoned as political dissidents, and their teachers were arrested for statements they made in class. We immigrated to the United States in 1979, when I was six.

To me, teaching is meant to form citizens of a democracy.¹¹³ A classroom can model how citizens speak to each other and discover their rational and meaningful disagreements. How can we be together through difference and dialogue?¹¹⁴ Continued questioning, critique, and participation are far more important than arriving at a particular answer. The health of our democracy depends on people’s willingness to have these dynamic conversations, and we can foster that capacity in the law school classroom. What I’ve loved most as a teacher is seeing students develop their voices and engage in the vital conversations about our democracy — about how we should live together and govern ourselves.

Langdell quaintly thought of his method as perfect for teaching law as a “science,” an idea that quickly fell by the wayside. The method has survived through the years, adapting incredibly well to various approaches and goals: Legal Realism’s dominance, the Legal Process and Critical Legal Studies movements, and now a contemporary legal education particularly attuned to relevance, practicality, and inclusion. The

¹¹³ See, e.g., JOHN DEWEY, *DEMOCRACY AND EDUCATION* 101 (1916); FRANCIS W. PARKER, *Democracy and Education*, in *TALKS ON PEDAGOGICS* 401, 450 (1894) (“A school should be a model home, a complete community and embryonic democracy.”).

¹¹⁴ Cf. HANNAH ARENDT, *THE HUMAN CONDITION* 208 (2d ed. 1998) (discussing the importance of “trusting in action and speech as a mode of being together” for preserving a meaningful political life).

“reproduction of hierarchy” critique of law school culture may remain as powerful today as when Duncan Kennedy introduced it.¹¹⁵ Nonetheless, that Kennedy himself used the Socratic method to great effect in his own teaching at Harvard Law School (with important modifications such as the “no-hassle pass”¹¹⁶) supports my own experience of the method as a tool that can be useful for fostering a capacity to critique the status quo. Specifically with respect to the goal of inclusion, a professor asking students questions and devoting class time to listening and following up on students’ answers compares favorably to professors leading volunteer-driven discussions in which some voices are more likely to be silent, ignored, or talked over. In contrast to entrenching hierarchy, the Socratic method can be a powerful leveler.

A. *An Inclusive Dialogue*

Professor Phillip Areeda’s characterization of the Socratic method as “not recitation but reasoning and analysis that forces the student to use what he knows . . . from the assigned judicial opinion (or statute or other materials)” still rings true.¹¹⁷ Today, it is not really the “case method.” We focus even less exclusively on appellate opinions, and often we use a variety of other legal and nonlegal texts to tee up the dialogue. At its best, the Socratic method should enable rigorous exploration of high-stakes issues and disagreements through the reexamination of reflexive reactions, and nurture an attitude that is questioning and self-critical — the kind of civil discourse that would benefit our democracy.¹¹⁸

To achieve this type of discourse, I have found it best to deemphasize the aspect of cold-calling that may appear to test students on whether they did the reading or how well they remember its details. If a student seems not to recall, I just show the relevant portion of the text and ask questions arising from it. A relentless hide-the-ball exercise is hardly a good version of the Socratic method: “One can force students to reason for themselves and still give them *some* relatively clear and certain knowledge or premises as anchors for their independent further exploration.”¹¹⁹ And I hope all professors can agree that insults, cruelty, incivility, contempt, and sadism are not only unnecessary but also antithetical to the Socratic method. Such conduct undermines the

¹¹⁵ See pp. 2326–27.

¹¹⁶ See Duncan Kennedy, *Liberal Values in Legal Education*, 10 NOVA L.J. 603, 614 (1986) (describing modified Socratic method allowing students to “pass” when they are called on).

¹¹⁷ Phillip E. Areeda, *The Socratic Method (SM) (Lecture at Puget Sound, 1/31/90)*, 109 HARV. L. REV. 911, 915 (1996).

¹¹⁸ Cf. HANNAH ARENDT, *ON REVOLUTION* 223 (Penguin Books 1990) (1963) (“Nothing, after all, compromises the understanding of political issues and their meaningful debate today more seriously than the automatic thought-reactions conditioned by the beaten paths of ideologies . . .”); *id.* at 223–28 (discussing the importance of reasoned exchange of opinions to the institution of democracy).

¹¹⁹ Areeda, *supra* note 117, at 919.

atmosphere of openness and respect necessary to having difficult conversations.

One goal of the Socratic method is to identify and elucidate the contours of conflicts in reason and justification — between cases, between policies, between policy goals and legal constraints, and between groups in society. To achieve this goal, I might divide the class up and assign the students different sides to argue. I might ask a student to articulate an argument, and then ask the same student to argue the other side. And this often leads students to acknowledge internal conflicts within each of their own beliefs, goals, and commitments as individuals. Diversity is not an assumption of each student as a representative of his or her group, but rather a recognition of the intellectual diversity within each student. Exposing that diversity enables students to recognize the ambivalence, complexity, imperfection, and incompleteness of their own and others' arguments.

As a professor of criminal law and procedure, I know that students or people they know have been victims of crimes, suspected or accused of crimes, arrested, or imprisoned. They or their family members have worked in law enforcement or criminal justice. Similarly, as a family law professor, I know that everyone comes from some kind of family and brings perspectives based in part on intimate experience. In class, I ask students to make arguments and explicate reasons that may go beyond their experience or reflect opinions that they do not hold. For purposes of class discussion, they are not a fixed representative of a viewpoint, background, or group. Arguments are not identities or vice versa. Students' views are often elicited, but discussion is not merely the seriatim airing of positions; rather, opinions are starting points for analysis. I want students to explain meanings, rationales, and critiques, not only their personal beliefs. They need to listen to each other with generosity and openness. Having students defend and, in the process, understand viewpoints other than their own is intended to loosen orthodoxies and impart an appreciation of complexity. The habit of being prepared to think and speak in dialogue and discussion — listening, processing, and reacting to the thoughts and reasoning of others — infuses our lives as citizens in a world with diverse and divergent views.

The democratic aspirations of legal education are in some tension with its intensely meritocratic tradition — one that traces as much to Langdell's vision for Harvard Law School as it does to the Socratic method.¹²⁰ In a context of competitive exams, graded blind on a curve, the professor as Socratic questioner risks coming across like the ultimate

¹²⁰ See, e.g., COUILLETTE & KIMBALL, *supra* note 13, at 476 ("Many inferred that modern democracy does or should approximate a meritocracy. Yet, Arendt suggested that it 'contradicts the principle of equality, of equalitarian democracy.'" (quoting Hannah Arendt, *The Crisis in Education*, 25 *PARTISAN REV.* 493, 499 (1958))).

arbiter of what is right or who is smart, ranking and sorting students into hierarchical statuses.¹²¹ Professors Susan Sturm and Lani Guinier have observed that “[s]tudents often experience their participation in class as a performance, and one that regularly defines their status among their peers.”¹²² The live and public classroom interaction may feel as if stumbles and imperfections are magnified and consequential.

But from the standpoint of equal educational opportunity in most class settings, the Socratic professor is better positioned to ensure that all students have opportunities to practice participation than a professor who relies on volunteers already most inclined to offer up their thoughts. I expect every student to speak often. I try to call on thirty to forty students every class, and on every single student many times throughout the semester. There are very limited times when I take volunteers, but I do not rely on volunteers for the bulk of participation, because when I have done so, that has produced an uneven distribution of participation, skewed male and white, and away from women and minorities, sometimes without my even realizing it. If I call on many women and minorities in the first week of class, they are also more likely to volunteer from that point on. I explain that I do not like it when a handful of students volunteer too much, and that it is part of the participation requirement to look out for the opportunities of fellow students and to help keep the distribution roughly equal.

In contrast to the competitive classroom dynamic described by Sturm and Guinier, a cold-calling method that requires each student to speak many times throughout the semester significantly reduces the stakes of each individual cold-call. Mistakes and stumbles are less magnified. It becomes routine for students to hear their own voices and those of classmates. Establishing this pattern of participation makes for greater equalization and collaboration among students.

The Socratic method can be part of the solution to gender, race, and class disparities in law school performance and comfort. Existing studies do not purport to demonstrate that the Socratic method itself causes disparity or inequality,¹²³ but they do reveal that women and

¹²¹ Cf. Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2033–37, 2041–42 (1998) (discussing how other aspects of the law school experience, such as grades and clerkship hiring, sort students into a hierarchy).

¹²² Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 527 (2007).

¹²³ Elizabeth Mertz et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1, 4 (1998) (“Our findings demonstrate that the Socratic method is not a single or clear variable along which one can map gender and race disparity or equality, instead showing the ways that other aspects of classroom interaction and teaching interact with Socratic pedagogy to affect student participation.”).

minorities are less likely to volunteer to participate in class.¹²⁴ Even if, as some may believe, the Socratic method is on the whole a harder adjustment for women and minorities than for white men, it is still more effective at getting students to participate than a lecture or a volunteer-based discussion, especially when students are called upon frequently and equally. A professor who calls on students mindfully can ensure broad and equal participation by women and minorities.¹²⁵

Learned Hand said of his Harvard Law School professors: “In the universe of truth they lived by the sword; they asked no quarter of absolutes and they gave none,” and urged students: “Go ye and do likewise.”¹²⁶ The combat imagery that some associate with the masculinity of the Socratic method attributes too much to the method itself as opposed to a way in which it surely has been deployed.¹²⁷ A discussion in which every person is called on to speak is far less masculinist than one carried on by volunteers who are mostly male.

B. *The Socratic Method in the Twenty-First Century*

In 1914, a report on legal education in the United States noted that successful use of the Socratic method was highly dependent on an atmosphere that “consists above all in the extraordinary strong spirit of fellowship, in the spirit of professional comradeship, that pervades the young people in all these important law schools in varying degree, but nowhere in so peculiarly powerful a way as in Harvard.”¹²⁸ Over a hundred years later, when student bodies are as diverse as they have ever been, this observation is just as relevant and instructive. The Socratic method works best as a form of cooperation and collaboration. Criticisms of the adversarial or aggressive aspects of the Socratic method do not strike me as damning, because legal practice undeniably has some measure of those qualities. But equally important are the collaborative aspects of legal practice. The Socratic method itself has highly collaborative qualities that professors can make use of by putting students in active and productive dialogue with each other.¹²⁹

¹²⁴ WORKING GRP. ON STUDENT EXPERIENCES, *supra* note 68, at 4; Taber et al., *supra* note 60, at 1239.

¹²⁵ See, e.g., Ruth Anne French-Hodson, *The Continuing Gender Gap in Legal Education*, FED. LAW., July 2014, at 80, 84 (“The cold call system provided the least gender-disparate result [in classroom participation] . . .”).

¹²⁶ LEARNED HAND, *The Guardians*, in *THE BILL OF RIGHTS* 56, 77 (1958).

¹²⁷ Compare COUILLETTE & KIMBALL, *supra* note 13, at 496–97, and Guinier et al., *supra* note 47, at 13 & n.38, with Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37, 62 (1997) (“[L]egal educators should strive to humanize the Socratic Method to make it an effective teaching method for all students . . .”).

¹²⁸ JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING* 31 (1914).

¹²⁹ Areeda, *supra* note 117, at 917 (stating that the Socratic method, when properly applied, is “cooperative”).

It seems to me essential that students learn to comport themselves with respect, confidence, collegiality, and equanimity in both adversarial situations in which they may encounter assertive advocacy and collaborative situations in which they must engage in cooperative effort. All this should not be expected to come naturally to everyone, which is why training is needed. It is indeed more valuable, not less, in the context of the diverse student bodies and legal profession we have today, and particularly for students from cultures and families that did not emphasize such skills (I count myself in that number). Speaking in class — and being put on the spot — with regularity is an essential part of preparing students for careers in which they will need to speak and reason in real time, in both formal and informal settings. It is wrong to think these skills are relevant only to litigation or court. Myriad professional contexts, including ordinary meetings, presentations, and discussions of varying stakes, require these skills.

In recent years, I have attempted to foster an even more cooperative environment by mixing Socratic teaching with other modes of teaching that require student collaboration. I have assigned students to have discussions in small groups for a certain amount of time before having the larger class discussions. I have done more simulations of oral arguments, legislative hearings, negotiation exercises, client meetings, and other kinds of both formal and informal legal discussions. I have reserved some time in class for students to write in their journals about a problem or question before opening the discussion with the class. I have asked them to do “active listening” exercises in which students pair up, and the first student talks while the second listens, and then the second must accurately reflect back what the first said without expressing agreement or disagreement. I have even written a play and performed it in class. Over the years, the proportion of these “alternative” teaching modes has increased in my teaching, but the mainstay is still the Socratic method.

The last thing we should want in class is an atmosphere of arid games with toy puzzles. Instead the classroom should be a space to confront problems that feel urgently alive. The classroom should be broadly and richly informed by both historical and contemporary social context and the role that law plays in social change. At the same time, in studying law, it is a worthy ambition for students to struggle with the most profound questions of what it means to be human — as Oliver Wendell Holmes aptly put it, to “not only become a great master in your calling, but connect your subject with the universe and catch an echo of the infinite, a glimpse of its unfathomable process.”¹³⁰ It is precisely this

¹³⁰ O.W. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 478 (1897).

challenge for professor and student that draws me to teaching: the practice of reasoned argument about morally and politically contested matters that can so often divide people but also have universal significance.

In 1990, Areeda, considered “a master of the Socratic Method,” referred to himself as “a relic in a declining group of those who use it.”¹³¹ Perhaps we are still a declining group, particularly at this time when rising student debt and a shrinking legal market are creating intense pressure for change. Attempting to buck tradition, critics now call for a more experiential pedagogy that better simulates legal practice.¹³² Despite this well-developed consensus that legal education must change to become more practical, the appeal and relevance of Socratic pedagogy lies still in what Langdell first understood. First, that teaching through questioning simultaneously guides students and helps to develop their independence of mind. And second, that the “live performance” aspect of this teaching in which the student reasons verbally in class is really practice in the process of interpreting, making, and doing law. In other words, we shouldn’t count out the experiential nature of Socratic pedagogy.

Law school is still, and I hope will continue to be, less a trade school and more an intellectual journey that aims to prepare students for doing law in a way worthy of a society we want to live in. The harder it may be to have reasoned dialogues about matters of importance in our society, the more crucial it is for professors to practice doing so with their students. More than ever, we must train diverse students to be professionals, citizens, and human beings who will have the skills not only to get the job done but also to surmount the great challenges for open discourse in a democracy.

¹³¹ Areeda, *supra* note 117, at 911; see also Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113 (1999).

¹³² See Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. LEGAL EDUC. 562 (2015) (noting that “[t]he Socratic method persists and endures in law teaching, even while it is increasingly surrounded by innovation and its use is declining,” *id.* at 563, and suggesting that the Socratic method be reframed to “create more client-conscious and practice-ready graduates learning in more inviting and inclusive classrooms,” *id.* at 585); Beverly Peterson Jennison, *Beyond Langdell: Innovation in Legal Education*, 62 CATH. U. L. REV. 643, 672 (2013) (“[T]he ‘case method’ as originally conceived and practiced has enabled generations of students to ‘think like a lawyer,’ but it has stifled them in learning how to act and respond like a lawyer to real client situations.”); A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 2063 (2012) (“[I]t is clear that we need to get beyond the Langdellian model toward a truly twenty-first century program of professional legal education that prepares graduates for practice”); David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html> [<https://perma.cc/CZ3C-DNSA>] (“What they did not get, for all that time and money, was much practical training.”).