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SYMPOSIUM

FOREWORD

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This symposium about the future of legal pedagogy could not be more timely. Its four thought-provoking papers raise a constellation of questions about how law schools educate lawyers and toward what purposes. These papers describe and assess the impact of the shifting demographics of law students and faculty and the variety of life experiences these students and teachers bring with them to law school. They highlight different approaches to pedagogy and how those approaches can better train students for effective and humane advocacy. They argue for the need to historicize and contextualize the law in order to understand its power, its impact on people, and how it operates in the world.

At their core, these essays grapple with the question—still ongoing many years after women and people of color began attending law schools in significant numbers—of how institutions adapt when the people who inhabit them change. According to the American Bar Association, in the fall of 2021, women made up more than 56% of first-year law students. One in three entering law students are students of color.¹ Law students are

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¹ Statistics: ABA Required Disclosures, A.B.A., https://www.americanbar.org/groups/legal_education/resources/statistics/ [https://perma.cc/UDF8-P4LP] (last visited Feb. 14, 2022) (download spreadsheet titled “2021 1L Enrollment by Gender & Race/Ethnicity”).

LGBTQ+ and veterans, first-generation and low-income. They are students with disabilities and students from all over the world. Unsurprisingly, they arrive at law school with a far wider array of personal experiences than ever before.

So too do the faculty who teach these students. Drawn largely from the ranks of these increasingly diverse law graduates, faculty are also more diverse—although still far less so than the student population.² As law schools become more diverse, legal pedagogy has begun, in fits and starts, with more and less intentionality, to adjust.

Identifying, commenting on, and exploring the effects of these demographic changes on legal pedagogy, the essays in this symposium offer nuanced and complex approaches to a series of inherently nuanced and complex questions. To take one: Has the moment—the nearly century and a half moment—of the Socratic method now passed? The jury, as they say, remains out. What is clear is that we are asking new and harder questions of this classic law school teaching method. Does it silence or alienate some students, often women and people of color, more than others? Does it overemphasize judicial opinions to the exclusion of a fuller understanding of how cases come to be, the other actors involved in their development, and the very human problems out of which they arise and on which they exercise coercive power? Does it reinforce existing hierarchies and fail to rectify disparities deeply entrenched in societal structures?

Molly Shadel, Sophie Trawalter, and Rip Verkerke approach these questions empirically, leveraging quantitative methods to examine gender disparity in classroom participation.³ By combining the coding of classroom participation with longitudinal and survey studies, the authors document such gender disparity, provide insights about why it exists, and suggest possible ways to remedy it. Molly Shadel and Anne Coughlin

² In 2011, 40% of full-time law faculty were women and 17% were minorities; in 2021, 46% of full-time law faculty were women and 22% were minorities. Compare 509 Required Disclosures, A.B.A., <https://www.abarequireddisclosures.org/Disclosure509.aspx> [<https://perma.cc/T75B-ACSQ>] (last visited Feb. 16, 2022) (select “2021” and “Faculty Resources” under “Compilation – All Schools Data” to generate report), with id. (select “2011” and “Faculty and Administrators” under “Compilation – All Schools Data” to generate report); see also Justin McCrary, Joy Milligan & James Phillips, *The Ph.D. Rises in American Law Schools, 1960–2011: What Does It Mean for Legal Education?*, 65 *Legal Educ.* 543, 549 (2016).

³ Molly Bishop Shadel, Sophie Trawalter & J.H. Verkerke, *Gender Differences in Law School Classroom Participation: The Key Role of Social Context*, 108 *Va. L. Rev. Online* 30 (2022).

develop these empirical insights into a compelling critique of the modern Socratic Case Method, highlighting how it fails to escape its history of hierarchy and sexism.⁴ Going forward, they argue, law schools must foster collaboration, encourage listening, and empower diverse perspectives so as to better prepare students for the challenges and opportunities of legal practice.

If the first two papers take aim at the method of pedagogical inquiry, the latter two focus on the substance of what law schools teach. Sherri Lee Keene and Susan A. McMahon suggest moving beyond a curriculum focused on judicial opinions.⁵ Such opinions, they argue, systematically dehumanize tragedy, ignore non-legal drivers of legal outcomes, suggest certainty in a complex world, frequently privilege unrepresentative speakers, and foreclose the imagination of transformational, systemic change. The authors advocate instead contextualizing opinions within the human experience, presenting them alongside competing and often overlooked perspectives, and viewing them as one facet of a broader legal framework in need of radical reimagination. Similarly, Paula A. Monopoli argues that feminist legal theory and history are essential reading for law students, particularly in core curricula relating to constitutional development.⁶ Invoking historical examples, Monopoli views the vital role that women advocates have played in creating constitutional and social change as empowering law students to become more effective advocates today.

As these brief descriptions suggest, these essays not only engage with the major demographic shifts law schools have experienced over the past half century. They also reflect, in more and less direct ways, other changes that have substantially transformed legal pedagogy over the same general period—changes that make this moment a particularly fertile one for legal education.⁷ Two such trends are especially relevant to this symposium

⁴ Anne M. Coughlin & Molly Bishop Shadel, *The Gender Participation Gap and the Politics of Pedagogy*, 108 Va. L. Rev. Online 55 (2022).

⁵ Sherri Lee Keene & Susan A. McMahon, *The Contextual Case Method: Moving Beyond Opinions to Spark Students' Legal Imaginations*, 108 Va. L. Rev. Online 72 (2022).

⁶ Paula A. Monopoli, *Feminist Legal History and Legal Pedagogy*, 108 Va. L. Rev. Online 91 (2022).

⁷ One important trend beyond the scope of this Foreword is the penetration of technology into every aspect of life and law, which has had, and will continue to have, profound effects on both what we teach and how we teach it. The speed of communication, the explosion in the production of information, and the complexity of technological systems require law schools to educate students more extensively and with more specialized knowledge about technology. See generally Michele Pistone, *Law Schools and Technology: Where We Are and Where We*

and to the direction in which these essays both see legal pedagogy heading and view as salutary, if not necessary.

First, alongside the demographic shifts that have taken place among law faculty is a methodological one. As recently as 2000, most law professors were trained exclusively in law, and they came to law teaching after judicial clerkships and brief stints in legal practice.⁸ Historically, law schools were more closely connected both intellectually and institutionally to the legal profession and the practice of law than to the rest of the university. In recent decades, however, more and more law professors have engaged in formal doctoral training in complementary cognate fields alongside their law degrees—economics, psychology, politics, history, philosophy, literature, and more.⁹ As a result of this increased interdisciplinarity—and despite some criticism by legal practitioners—law schools and legal scholarship have moved closer intellectually to the universities of which they are a part.¹⁰

Both what and how we teach have changed as a result. The law school curriculum has unsurprisingly become more interdisciplinary, offering more courses in critical theories, the humanities, and the social sciences. At UVA Law School, and I am sure at other schools as well, small

Are Heading, 64 *J. Legal Educ.* 586, 586 (2015) (arguing that “technology offers the attractive possibility of making legal education both more efficient and more effective”). Technology has also altered how we learn, teach, and collaborate. See, e.g., Kennedy M. Maranga, *The Role and Impact of Technology in Legal Education* (June 9, 2010) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1520831 [https://perma.cc/WT9F-HGRQ] (suggesting that technology has changed both the classroom and legal practice). The ongoing COVID-19 pandemic has both accelerated the use of online teaching of various forms and reinforced for many the continued importance of in-person teaching and intellectual exchange. See, e.g., Morenike Saula, *Crisis-Induced Innovation in U.S. Legal Education*, 69 *J. Legal Educ.* 679 (2020).

⁸ McCrary et al., *supra* note 2, at 553 (“As for credentials, in 2000 ‘the prototypical new law teacher graduated from an elite school (most often from Harvard or Yale), was on the staff of the law review or another journal while in law school, clerked for a judge (usually a federal judge), published one or two articles or notes (though many published nothing at all), and practiced for several years (usually in a law firm or a corporate counsel’s office) before entering academia.’”) (quoting Richard E. Redding, *Where Did You Go to Law School? Gatekeeping for the Professoriate and Its Implications for Legal Education*, 53 *J. Legal Educ.* 594, 596 (2003)).

⁹ *Id.* (noting that 28% of law professors at the top thirty-four law schools hold Ph.Ds, compared to 5% of all law professors in 1989); see also Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 *J. Legal Educ.* 506, 507 (2016) (“[T]he overall trend is unmistakable. Ph.D. hiring is increasing rapidly.”).

¹⁰ Kim Diana Connolly, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 11 *Wash. U. J.L. & Pol’y* 11, 19–20 (2003). A full reply to such criticism is beyond the scope of this brief Foreword.

seminars have displaced a substantial portion of large Socratic lecture courses in the law school curriculum, and students learn the disciplinary approaches of multiple methodologies alongside the analytical reasoning of blackletter fundamentals. The result is a legal education attuned not only to the logic of the law but also to the big picture within which that logic operates.

Second, even as law schools have expanded the curriculum into new theoretical horizons, we have also begun to offer far more practical training than ever before. Law schools have long described their core pedagogical mission as training students to “think like a lawyer”—how to problem solve through analytical reasoning. Learning the nuts and bolts of legal practice was left largely to summer and post-graduation employers.¹¹

That is no longer the case. Clinical and experiential education had grown in law schools even before the Great Recession of 2008, but their growth accelerated in its wake. Partially due to the market pressures facing law firms in the succeeding years, the American Bar Association (and some prominent state bars) established new experiential course requirements for law students. This shifted practice-oriented training from law firms to law schools.¹² Law schools have since embraced and proliferated numerous types of experiential education. Clinical education in particular has grown dramatically from its origins as student adjuncts to a local legal aid into its own major branch of legal education. This increase in clinical and experiential education leads not only to greater fluency with the practice of law but also greater understanding of the human dimension for which several of the essays in this symposium call.

The combined effect of the interdisciplinary turn and the expansion of practical training is a law school curriculum with three approaches to law teaching—analytical reasoning, interdisciplinary perspectives, and practical training—each distinct in goal, method, and subject matter. Here at the University of Virginia School of Law, for example, our curriculum is now roughly evenly split between lecture courses, experiential courses,

¹¹ Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 *Dickinson L. Rev.* 551, 574 (2018); see also Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 *J. Legal Educ.* 598, 599 (2010) ([T]he recession “put a premium on job candidates with practical skills, those on whom [legal employers] will not have to spend time and money before they are ready to practice.”).

¹² Joy, *supra* note 11, at 576–80.

and small seminars.¹³ The Socratic method still dominates much of the first-year curriculum and our imagination about legal pedagogy. But it has ceded its monopoly over legal education as it now exists. This is hardly Langdell's law school any longer.

This is all to the good, for many of the reasons the essays in this symposium suggest. At the end of the day, as I tell my students frequently, practicing law is not just a job. It is not just about private gain or personal glory. Those privileged to access the knowledge and license to practice law hold a public trust, a responsibility to fulfill public obligations. As members of a "learned profession," lawyers "profess" to uphold and promote the rule of law, democracy, and justice and to promote the public good.

That means, and has long meant, that law schools are in the business of training leaders and public servants. Today, that training is both more important and more challenging than ever, in light of widespread social crises, polarization, and political uncertainty. The developments in legal education the essays in this symposium discuss, and those I have briefly sketched, help prepare law students to lead and serve in this challenging moment. This three-pronged approach to legal education helps aspiring and diverse lawyers learn to respect opposing views, listen with empathy, and speak with respect. It makes advocates and counselors of our students, teaches them to take seriously their own humanity and the humanity of others, and inculcates in them the civic obligations they incur by virtue of their legal educations.

It is unsurprising that law schools have changed as our political, moral, and economic cultures have changed. It is equally unsurprising that these changes would affect who we teach, who does that teaching, what we teach, and how we teach it. In engaging with these changes, the essays in this symposium prompt us to ask how law schools can, and why they should, continue to live up to the lofty and critically important aspirations of our profession. As these and other changes remain very much in motion, this symposium locates us in our particular historical moment and prompts us to envision how we will continue to pursue our mission into the future.

¹³ See University of Virginia School of Law, Courses, <https://www.law.virginia.edu/courses> [<https://perma.cc/2L28-QYBX>] (last visited Feb. 14, 2022).