Legal Education’s Curricular Conformity

Socratic classrooms continue to dominate legal education’s curricular core. Their dominance necessitates their central role in building inclusive, equitable, and effective law schools. Inclusive institutions cannot be built around the perimeter of traditional Socratic classrooms no matter how many sophisticated niche seminars, cohorts of interested law teachers, or well-orchestrated lunchtime programs are offered. Inclusive Socratic classrooms are vital to systemically, swiftly, and sustainably building inclusive institutions that better prepare students for practice. The forthcoming redesign of the entry-level bar exam, wellness and health challenges, and diversity and inclusion struggles further reinforce this call to action. Inclusive Socratic classrooms are an essential foundational baseline reform from which our institutions can then further innovate and transform.

This Introduction’s unifying thread is one of uniformity and conformity. Modern legal education and its structure, economics, demographics, curriculum, and grading practices are quite standardized and stagnant. Working within these constraints and structures, this book offers a roadmap to catalyze Socratic classrooms—the curricular core of legal education—to improve the culture, equity, and inclusion of legal education in scalable and immediate ways. Inclusive teaching is equitable, giving all students an opportunity to achieve their potential. It is welcoming, leaving all students feeling a sense of belonging. Inclusive teaching can be learned, cultivated, and measured, even in a Socratic classroom.
It is the responsibility of the law teacher to build an inclusive learning environment. This book charts the path for law teachers, law schools, and accreditors seeking to cultivate inclusive Socratic classrooms.

CURRICULAR CONFORMITY

Most of modern legal education’s core courses are delivered using some variation of the Socratic method, an inquisitive teaching method whereby law teachers lead students through extracting rules from appellate cases using a fluid question-and-answer dialogue to develop reasoning and argumentation skills. This Socratic method of teaching law, first introduced by Dean Christopher Langdell of Harvard University in 1870, grounded law school teaching in a scientific approach and gave legal education increased prestige. This model of legal education was adopted swiftly and uniformly, leaving law schools with little differentiation or distinction.

With legal education’s heightened esteem came exclusion and hierarchy, which persists today in both glaring and subtle ways. The Socratic method, in its traditional performance, embeds a hierarchy of teacher and student, and the hierarchy is the point. Feminist scholar Catharine MacKinnon explained how students in Socratic classrooms can be “motivated by fear” and “infantilized,” and they are “schooled in hierarchy, taught deference to power, and rewarded for mastering codes for belonging and fitting in.” MacKinnon’s twenty-year-old critique still rings powerfully true today.

From Professor Charles Kingsfield in *The Paper Chase* to Elle Woods in *Legally Blonde*, our society is deeply intrigued by the curriculum and format of legal education. Formal books and programs abound to prepare students for success in law school, as do widely circulated memes and humor. These materials and depictions are universally applicable because the law school curriculum is structured so similarly nationwide across schools that are private and public, small and large, well resourced and underresourced, and across the perceived hierarchies of prestige ranking various law schools, with only minor gradients of distinction and innovation.

This uniformity is a bit surprising when we reflect on the realization that—in his time—“Langdell’s approach and proposals were innovative and responsive to challenges in legal education and the legal landscape,” yet “the legal academy has not continued to follow Langdell’s lead by innovating and responding to new information and new challenges—
or at least . . . the innovations have not been as effective or comprehen-
sive as the passage of so much time would seem to warrant.” Rachel
Gurvich and colleagues powerfully conclude that what “current law
students experience is an artifact of another generation and therefore
does not account for today’s student body or decades of research about
pedagogy and the science of learning.”

Yet the economics and trajectories of legal education do largely envi-
sion (at least implicitly) the continuation of law school’s existing curricular
structure. The law school curriculum is three years for most full-time stu-
dents and four years for evening and part-time students. Approximately
10 percent of students enroll in part-time programs. Over these three or
four years, students complete a largely consistent core curriculum. Com-
mon law subjects prominently featured on the bar exam dominate this
core curriculum, with niche seminars and clinics supplementing the core.
For these core classes, students generally read from expensive casebooks
compiling appellate opinions and take heavily weighted summative exams.
Students also complete a required first-year legal research and writing
course and an upper-level writing requirement. They engage in experien-
tial learning that simulates the practice of law in a class or two. Recent
accreditation reforms ensure that students get some training in cultural
competency and professional-identity formation before graduation.

In sum, the vast, sweeping majority of students sit in a large, lecture-
hall course with a traditional appellate casebook in a Socratic-style envi-
ronment more than any other method of instruction. For most law
schools, there is little incentive—either economically or reputationally—
to innovate the curriculum. Rather, schools largely stay in lockstep
together. Thus, Socratic classrooms dominate our institutions. Socratic
teaching methods can vary considerably within our institutions from
class to class and teacher to teacher. For some the Socratic method
remains a traditional means of rigorous critical inquisition to develop
analytic skills. Many styles of Socratic teaching ask questions persist-
ently to reveal what students know and motivate students to prepare for
class through the anxiety of being called on to answer these questions.
For others Socratic teaching is one tool layered on with other teaching
techniques such as group work, skills simulations, practice problems,
and lectures. Despite its acknowledged decline in exclusive use, the
Socratic method persists almost universally in varying styles and intensi-
ties across student learning in all institutions.

Notably, most performances of the Socratic method are quite inau-
thentic to true Socratic dialogue. Even in its most favorable usage, law
teachers generally conduct the classroom in a “sage on the stage” approach, with professors centered intellectually and structurally. Langdell’s version of the Socratic method positions teachers as the experts and conductors of the Socratic exchange, leaving students disempowered and unable to seek their own wisdom and clarity in understanding the law. The professors in Langdell’s traditional model were selected predominantly for their keen intellect, while their teaching skills or practice experience were rarely essential.

The Socratic method, as deployed in many classrooms, can thus distort power dynamics such that how the content is taught reinforces the critiques of what is taught. For this reason legal education pedagogy scholars sometimes refer to this teaching technique as the “Langdell method” as compared to the “Socratic method.” Beth Hirschfelder Wilensky describes the Langdell method as encompassing the pedagogical components of the “case method,” the “Socratic method,” and “cold calling,” which collectively describe law teachers deploying appellate casebooks and questioning techniques that leave students in suspense regarding their participation. Here I am using Socratic teaching to describe broadly the large, lecture-hall classroom with a professor poised at the podium, using an appellate casebook to question students about the material, with a high-stakes summative exam looming at the end of the course.

Traditional styles of Socratic teaching reinforce the positioning of law as an authoritative system and structure over students. It teaches the law, but it allows little room to challenge the law’s origins or justness. The method of reasoning strictly using edited appellate cases as the framework for learning is a “rigid deductive local structure.” We train students to “think like a lawyer,” but we do so in a vacuum devoid of culture or context and in a model framed around authority over and control of the discourse. This formalism limits students to engage only with the precedential rule and the selected facts in the case and risks obscuring social and nonlegal context. This narrow focus can keep students from engaging in systemic or comprehensive inquiries of law. Absent social, political, and economic context, students lose sight of the larger trajectory of the law, the critiques of its effects on various communities, and broader visions of how else the law could function. Whether out of necessity, efficacy, sustained reverence, or agnostic indifference, Socratic teaching remains foundational to legal education. Law schools continue to design their budgets, curricula, and student experiences around some degree of case-based, Socratic law
teaching in large lecture-style classrooms with heavily weighted summative exams.\textsuperscript{21} It particularly persists in first-year and bar exam classes.\textsuperscript{22}

In recent years the American Bar Association sought to transform legal education to be more outcome driven. Law teachers now include learning outcomes in their syllabi. They might also provide a midterm with a model answer or a light grading sheet to help students assess how they are progressing toward achieving competencies in meeting the published learning outcomes. Students generally receive only light feedback on the summative exam, however. They often do not even receive their own answer or the exam question back to allow for meaningful self-critique because faculty often preserve the possibility of reusing the exam.

This combination of Socratic teaching and summative exams often yields an inordinate amount of student anxiety and fear, but often in ways quite far removed from mastering the material or learning to lawyer. Students receive little clarity regarding how they are supposed to progress in Socratic classrooms from semester to semester and year to year. Rarely do students get feedback regarding how their Socratic engagement tethers to the course exam, bar exam, or law practice. Law schools collectively hope that students graduate at the end of three or four years, having met the school’s stated learning outcomes, prepared for the bar exam, and secured a job for which they have the skills to succeed.

The Socratic method does bring one notably reliable and enduring attribute—it is cost-effective and scalable.\textsuperscript{23} Its efficiencies also align with the larger demands on law faculty. Teaching in this method ensures that faculty can produce impactful scholarship and serve in their institutions and communities. Faculty workloads have long been cemented around this Socratic classroom model. Our casebooks are built around this model. Our budgets are built around this model. Accordingly, even discussing reforms to the delivery of legal education is often stunted heavily by the competing demands already facing faculty and the abundance of existing teaching materials supporting these classrooms.

Legal education has thus generally added innovation, such as clinical programs, experiential learning, and skills development, around the curricular core while simultaneously retaining the hallmarks of traditional legal education.\textsuperscript{24} Those teaching in Socratic classrooms generally hold the highest pay and status in legal education. Students then enhance that curricular core with thoughtfully designed clinics, simulation courses, and experiential learning courses. Clinics rigorously center the client in the classroom and position faculty and students to collaboratively solve the client’s problems. The client comes from the local community.
Students might also receive academic credit for placement in a practice setting to obtain real-world experience. When scheduling permits, niche seminars focused on race, sexuality, economics, gender, and more allow select students to explore critical perspectives with the self-selecting cohort of students that enroll. From the student perspective, though, these core Socratic courses might be perceived as disconnected from these other components of legal education without a purposeful pedagogical pipeline from Socratic classrooms into more client-centered and community-centered learning experiences.

After graduation law students generally lose an additional semester’s worth of employment and pay an outside vendor thousands of dollars to prepare for the bar exam. The process of preparing for the bar exam is sometimes described disdainfully as too pedestrian for a typical law school classroom. It is often, instead, jettisoned into academic success curricular offerings that are optional and disconnected from both the core law school curriculum and the vendor-administered bar courses that students purchase at a hefty price. The optional nature of bar success programming requires students to invest time that they rarely have. It leaves some of the students who would benefit the most from this programming unable to attend for bandwidth reasons (e.g., caregiving responsibilities, employment obligations, or extended commutes).

Historically, the bar exam has not assessed whether students have acquired practice skills. Rather, the legal profession has long taken on the work of training law students to be lawyers in their firms, chambers, offices, and entities. Many practitioners have expressed persistent frustration with law schools for not adequately equipping students with the skills that they need to succeed in practice, like client counseling, problem-solving, task management, and communication skills. Changes to the bar exam are imminent to address this disconnect.

Despite this curricular consistency over the past century, the costs to complete a JD degree have risen dramatically, and the stratification of costs is steep. The average cost of law school tuition has increased by $35,000 over the past thirty-five years. Law school debt differs based on several factors, such as geography, LSAT scores, grade-point averages, and state funding provided to the school. Nonetheless, 74 percent of law students graduate in debt, with an average borrowing amount of $118,400. This debt substantially affects students in school choice, satisfaction, and job options.

Debt further stratifies by race and gender. Black students owe 97 percent more and Latinx students 49 percent more than their White
counterparts after graduation. White students on average owe 17 percent less than the national average.26 Women also leave law school with more debt than men.27 Rates of loan repayments also differ greatly by race, ethnicity, and gender, as women and students of color make less on average after graduation, thus extending the time it takes to repay loans.28 These debt disparities, in turn, can raise access to justice issues, compelling students into higher-paid government and private-sector jobs and compromising the ability of students to work in public service. Legal education’s curricular conformity also comes at a heavy psychological cost to many. Teri McMurtry-Chubb reveals the stagnant trend of conformity and the systemic harms that it perpetuates across legal education in this powerful statement: “We press, purposely and deliberately, under the guises of ‘course coverage’ and ‘bar passage’ . . . [but in doing so we] perpetrate microaggressions, microinequities, microassaults, microinsults, microinvalidations, and stereotype threat—all of which act as barriers to minoritized law students experiencing equitable and inclusive classroom and curricular environments. When viewed in this light, our curricular and pedagogical goal is conformity, not diversity, equity, or inclusion.” While schools have made considerable strides in increasing the aggregate number of women and students of color studying, teaching, and working in law and law schools, as described in the next section, notably the pedagogy has not adapted universally to support more diverse communities or to adapt to evolving professional trends.29

STAGNATING DEMOGRAPHICS, SILOED ACCOUNTABILITY, AND STEEP HIERARCHIES

Law schools have stagnated on diversity and stratified in hierarchies. The numbers are problematic on their own and even more so if considered as a reflection of entrenched institutional values. The Supreme Court’s recent decision in Students for Fair Admissions v. University of North Carolina and SFFA v. Harvard College present additional challenges to retaining and improving law school diversity.30 In 2022 there were 196 accredited law schools nationwide, with a total of 39,294 first-year students enrolled and 26,440 faculty (of which 9,360 were full-time and 17,080 were part-time).31 The budgetary model relies largely on scalability, filling large classrooms to deliver content efficiently in ways that are replicable year to year.

Legal education is heavily ranked, stacked, and steeped in hierarchies. Law schools dedicate tremendous time, energy, and expense to
position themselves favorably in the *U.S. News and World Report* rankings, even while law schools almost universally hold searing critiques and frustrations with the dominance of these rankings. These pressures particularly came to bear in the 2022–23 academic year, when many law schools refused to participate in the rankings, and the *U.S. News* dramatically altered its rankings methodologies. The external job market is also steeply hierarchical, with students competing mightily for elite jobs. Faculty recruiting committees, likewise, compete in their hiring processes to recruit elite pedigrees of new faculty colleagues.

Law schools also have entrenched institutional hierarchies that affect pay, status, and governance that are deeply relevant to designing effective and equitable institutional reforms. L. Danielle Tully powerfully writes that “legal education is shrouded in stories of gatekeeping and exclusion,” with decades of “vagaries and vicissitudes.” The hierarchies are not merely about labels; they are “containers” that “limit faculty’s ability to collaborate, innovate and integrate best practices for legal education across the curriculum.” The compensation, status, and workload differences among staff, faculty, and various categories of law teaching are often inverted relative to the degree of student support and skills instruction compelled by the role. The most student-intensive and skills-intensive classes are often taught by legal research and writing, clinical, and experiential law faculty.

Likewise, the institutional employees who interact most with students are often staff. The Dean of Students Office generally supports student wellness, campus programming, and student groups. The Academic Affairs Office generally manages the course schedule, teaching loads, accommodations, and exam administration. Perhaps a Director of Diversity monitors campus climate, hosts programs, and provides training. Professional development offices support students and alumni in job searches. The staff who fill these various roles are often supporting students in time-intensive, one-on-one relationships, mentoring students needing academic support, counseling students in job searches, and supporting students as individuals and in student organizations.

Our institutions collectively put the weight of admissions, academic success, and career placement in staff positions. Most diversity and inclusion efforts have also been housed in staff roles. This structure inhibits moving the cultural needle because it leaves unaddressed calls for reform straight through legal education’s curricular core. These hierarchies house some of the important functional tasks of law school success in positions with lower pay and prestige and higher turnover than tenure-track fac-
ulty. It heavily immunizes tenure-track faculty within the curricular core from accountability for outcomes such as bar passage, inclusion, job placement, student satisfaction, and student wellness.

**Race**

To build inclusive Socratic classrooms, we must also understand the racial demographics of our law schools and then examine the structural hierarchies shaping our institutions. Law schools, “by almost any definition, are still white spaces.”36 Most students study in majority-White institutions under majority-White faculties. Reflecting a steady upward trajectory when examined in the aggregate, 34 percent of enrolled law students are students of color.37 The aggregate numbers still vitally lag behind the US population at large though. For example, Latinx students comprise 12.7 percent of all law students and 18.3 percent of the US population. Asian students comprise 6.36 percent of all law students and 5.9 percent of the US population. Black students comprise 7.94 percent of all law students and 13.4 percent of the overall US population.38 While the overall enrollment of students of color has trended upward, enrollment for Black students has trended downward for four consecutive years.39 Aggregate law school enrollment numbers also obscure stark institutional and geographic differences. States such as Texas, Arizona, California, Florida, and Hawaii have 45 percent students of color enrolled in their law schools. Other states, in contrast, remain dramatically lower, in the 10–20 percent range.40 Students of color are also disproportionately enrolled in lower-ranked schools.41

The enrollment of women of color in law school generally exceeds that of men of color, with Black women’s enrollment doubling that of Black men.42 Yet women of color generally disproportionately contemplate withdrawing from law school (31 percent) compared to men of color (26 percent), White women (24 percent), and White men (22 percent), suggesting inclusion and belonging concerns. Attrition rates for all students of color are also disproportionate, deepening the disparities that begin with admissions.43 While White students were 62 percent of law school enrollment in 2016, they accounted for 49 percent of attrition in the first year. In contrast, first-year law students of color began with 30 percent of total enrollment but accounted for 44 percent of law school attrition.44

Perhaps driving these attrition issues, students of color report considerable culture and campus-climate concerns, as explored further in
Chapters 2 and 3. For example, despite their statistical advantage, women of color report more negative experiences in law school than their male peers when measured by their overall satisfaction, reinforcing the importance of an intersectional analysis of law school cultures. Only 21 percent of Native American and Black law students agreed that they were a “part of the community.” A full 25 percent of Black students and 18 percent of Latinx students reported that they did not feel comfortable being themselves in their law school, relative to 9 percent of White students. These statistics hold true in the legal profession as well, revealing that the “White space” of law school feeds into the “White space” of lawyering too.

Yet a sense of belonging is vital to academic success, motivation, student engagement, and achievement. A sense of belonging is about how well students perceive that they fit in and cohere with their classmates, faculty, and institution. Generally, law students’ sense of belonging differs by race and gender, with women of color having the lowest sense of belonging. This sense of belonging is heavily affected by perceived bias and stereotype concerns. For example, White women worry at a rate of 7 percent higher than White men do that their professors “underestimate their intelligence,” and women of color worry 13 percent more than White men do about this. These findings are critical. These data suggest that inclusion will not derive from a lunch program or savvy seminar offering. Rather, inclusion requires all institutional stakeholders striving to ensure the success of all students.

Yet most existing diversity, equity, and inclusion efforts sit squarely, if not exclusively, in the admissions, financial aid, recruiting, student organization, seminar, and mentoring spaces of law school. These siloed centers of accountability place heightened vigilance at the entry points to law school but do little to explore the exit points and the day-to-day lived experiences of students during their course of study. Thus we keep recruiting students, staff, and faculty of color into law schools even when we are not fully supporting them. Carliss Chatman and Najarian Peters lead us to think meaningfully about the inadequacies of our approaches, concluding that many recruiting techniques are “shams” and “deep-shallow fakes” that can “draw Black and Brown students into the hostile waters.” Thus Chatman and Peters conclude that, when we are talking about diversity, equity, and inclusion, we need to differentiate between performative gestures and effective practices. This includes positioning the dialogue squarely in legal education’s curricular core.