CONTEXT AT THE PERIPHERY: THE RISE OF THE CRITICAL-CONTEXTUAL LEGAL EDUCATION REFORM MOVEMENT

*Cara R. Shaffer**

"[N]o teacher shall be compelled by a policy of any state agency, school district, campus, open enrollment charter school, or school administration to discuss current events or widely debated and currently controversial issues of public policy or social affairs."

–Texas H.B. 3979, effective 9/1/2021[1]

"'There's a peculiar kind of vanity or megalomania at Harvard, that the place is the soul of the American ruling class . . . Whoever wins in local institutional battles there thinks they will control America's cultural and institutional destiny.'"

–Robert Gordon, 1987[2]

TABLE OF CONTENTS

I. INTRODUCTION 57
II. WHAT IS CRITICAL-CONTEXTUAL EDUCATION? 62
A. Critical Vocabularies: What Does "Critical" Mean? 63
B. "Multidisciplinary" 65
III. HISTORY OF THE ISSUE 66
A. A Brief History 66
1. Early Curriculum Considerations 66
2. The Rise of Langdell 69
3. Early Dissent 71

* Director of the Writing Center at South Texas College of Law Houston. I would like to thank Travis Alexander for his thoughts and suggestions on this Article. I would also like to thank the editors of the *Cardozo Journal of Equal Rights and Social Justice* for their diligent work on this piece.

[1] H.B. 3979, 2021 Leg., 87th Reg. Sess. (Tex. 2021).

[2] Jennifer A. Kingson, *Harvard Tenure Battle Puts 'Critical Legal Studies' on Trial*, N.Y. TIMES (Aug. 30, 1987), https://www.nytimes.com/1987/08/30/weekinreview/harvard-tenure-battle- puts-critical-legal-studies-on-trial.html.

B. The Last Forty Years: Education Reform & Critical-Contextual Education.....75
1. The Culture Wars: Late 80s, Early 90s.....75
a. The Rise of Theory.....76
b. Background: Theoretical Shifts in the Legal Academy.80
c. Legal Education Reform Discourse.....83
d. Critique.....86
i. Liberal Critique & Political Suspicions.....86
ii. Practicality.....88
iii. Individual Faculty Interest.....89
e. The End of the Era.....90
2. Aughts.....91
a. Practical Skills.....93
b. The Death of Theory.....95
c. Critical Legal Pedagogy.....96
d. The Rise of Neoliberal and Practical Rhetoric.....97
e. Multi-Disciplinarity & Interdisciplinarity.....99
f. Shifting Language & Focus.....101
g. The Location of Critical-Contextual Content & The Theory-Practice Binary.....103
h. Continued Resistance & a Tenor of Frustration.....105
i. Privileging Rigor & Practical Learning.....106
ii. Political Critique.....107
iii. Time.....110
iv. Student Discomfort.....111
v. Perspectives Are Already Taught.....112
i. The End of the Aughts.....113
IV. PRACTICALITY: CRITICAL-CONTEXTUAL CONNECTION WITH SKILLS.....116
A. The Skill of Critical Thinking & Reading.....116
B. Context Not Gained in Lower School.....119
C. Argument Skills.....120
V. CURRENT MOVEMENT RESURGENT REFORM: A SEA CHANGE.....124
A. Contemporary Rhetoric.....131
VI. CONCLUSION.....133

I. INTRODUCTION

Despite challenges faced by Generation Z ("Gen Z"), research shows that they are resilient and deeply committed to impacting positive political and social change.[3] This is no surprise. Gen Z students have been bombarded with and embroiled within polarized political messaging for years. This messaging is often partisan, balkanized, and delivered right to their iPhones. Indeed, forty-four percent of Gen Z reads no traditional news sources and receives all of their news from TikTok, Twitter, Instagram, and similar sources.[4] Further, the United States education system fails its students, both compared to other countries and to the country's own historical standards. Scores in history, civics, and critical reading have decreased in recent years.[5] Educators agree this may be, in part, because these contextual subjects are marginalized within the system.[6] Moreover, we now have students entering law school who are the victims of reinvigorated regressive political moves to censure history, literature, and social context. Culturally, de-emphasis on humanities-based ideas and frameworks may be having an effect. Interestingly, recent polling by Nord Anglia revealed that only thirty-eight percent of Gen Z respondents believed critical thinking was one of the top

---

[3] *See, e.g.*, Kim Parker, Nikki Graf & Ruth Igielnik, *Generation Z Looks a Lot Like Millennials on Key Social and Political Issues*, PEW RSCH. CTR. (Jan. 17, 2019), https://www.pewresearch.org/social-trends/2019/01/17/generation-z-looks-a-lot-like-millennials-on-key-social-and-political-issues; *see also* Mychael Schnell, *College Students Voted in Record Numbers in 2020 Election: Study*, HILL (Oct. 28, 2021, 2:58 PM), https://thehill.com/homenews/campaign/578973-college-students-voted-in-record-numbers-in-2020-election-study.

[4] *Fatigue, Traditionalism, and Engagement: The News Habits and Attitudes of the Gen Z and Millennial Generations*, AM. PRESS INST. (Aug. 31, 2022), https://americanpressinstitute.org/publications/reports/survey-research/fatigue-traditionalism-and-engagement-the-news-habits-and-attitudes-of-the-gen-z-and-millennial-generations/single-page.

[5] *See NAEP Report Card: U.S. History*, NATION'S REP. CARD (2022), https://www.nationsreportcard.gov/ushistory/?grade=8 ("U.S. History score continues decline begun in 2014"); *see also* Sequoia Carrillo, *U.S. Reading and Math Scores Drop to Lowest Level in Decades*, NPR (June 21, 2023, 1:04 PM), https://www.npr.org/2023/06/21/1183445544/u-s-reading-and-math-scores-drop-to-lowest-level-in-decades (noting that "U.S. history and civics for eighth-graders are down across the U.S." and that "[t]he scores in U.S. history declined five points, from 263 in 2018 to 258 in 2022, continuing a downward trend that began in 2014."); April Rubin, *Middle Schoolers' Reading and Math Scores Plummet*, AXIOS (June 21, 2023), https://www.axios.com/2023/06/21/schools-students-reading-math-test-scores-decline ("American students' test scores in math and reading got significantly worse last year–continuing a decade-long freefall."); *NAEP Report Card: Reading*, NATION'S REP, CARD, https://www.nationsreportcard.gov/reading/nation/scores/?grade=8 (showing an eight point decrease in 8th grade reading scores from 2013-2022) (last visited Nov. 29, 2023).

[6] *See e.g.*, Dana Goldstein, *Why Kids Can't Write*, N.Y. TIMES (Aug. 2, 2017), https://www.nytimes.com/2017/08/02/education/edlife/writing-education-grammar-students-children.html ("Three-quarters of both 12th and 8th graders lack proficiency in writing . . . and 40 percent of those who took the ACT writing exam in the high school class of 2016 lacked the reading and writing skills necessary to complete successfully a college-level English composition class.").

skills for a successful career.[7] Now, in the law school classroom, educators remark that this group of students face serious issues with critical thinking and contextualizing information.[8]

In a 1997 article, a law professor charged that his law students appeared "disinterested, if not ignorant, about the critical idealism and wider social perspectives which once engaged, informed and mobilized significant numbers of their predecessors . . . ."[9] Inasmuch as the professor was correct at the time, this trend has certainly reversed. Today's entering law students are predominantly Gen Z students who have grown up in an era of political and cultural crisis and upheaval. These students are inevitably engaged with the cultural, social, and political contexts that operate within the legal system. But do our students have the language, the tools, and the frameworks to analyze the law in context? Do we as legal educators provide those tools? And ought we?

Law professors in the past few decades have often posed worries that their current crop of students is less competent at writing and critical thinking than students of prior generations.[10] It is rarer in the scholarship, though, for professors to consider their students' engagement with social and critical perspectives and how that engagement may impact their legal careers. Considerations of how law school training about critical and cultural frameworks might directly impact those practical skills have been fleeting and inconsistent–until now.

Over a century ago, the advent of the notorious Langdell case method system created a strict bifurcation of legal education content.[11] Within the first bucket of education, we traditionally plop doctrinal courses in which students read appellate cases and then brave the ordeal of Socratic cold-calling; the second bucket contains *everything else*.[12] But there is a

---

[7] *New International Research Reveals the Skills and Attitudes Gen Z Thinks are Necessary to Succeed in the 'Game of Life'*, CISION PR NEWSWIRE. (Dec. 1, 2022, 3:48 PM), https://www.prnewswire.com/news-releases/new-international-research-reveals-the-skills-and-attitudes-gen-z-thinks-are-necessary-to-succeed-in-the-game-of-life-301691163.html.

[8] *See* Kalinsowski, *infra* note 10, at 109.

[9] Kim Economides, *Cynical Legal Studies*, *in* EDUCATING FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION, IN EDUCATING FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION 26 (Jeremy Cooper & Louise G. Trubek eds., 1997).

[10] *See, e.g.*, Barbara A. Kalinowski, *Logic Ab Initio: A Functional Approach to Improve Law Students' Critical Thinking Skills*, 22 LEG. WRITING 109, 109 (2018) ("Law professors and legal employers alike lament the modern trend of diminishing critical-thinking skills among law students and new graduates").

[11] *See* White, *infra* note 77, at 4 (noting Langdell's system created a "relentless exclusion," in legal education, of anything that was not a judicial opinion, including related academic subjects like history).

[12] *See, e.g.*, Susan Bisom-Rapp, *Contextualizing the Debate: How Feminist and Critical Race Scholarship Can Inform the Teaching of Employment Discrimination Law*, 44 J. LEGAL EDUC. 366, 368 (1994) (noting a division between the traditional curriculum and "peripheral" electives, like Women and the Law and Race and the Law); *see also* SULLIVAN, COLBY, WELCH WEGNER, BOND & SHULMAN,

prioritization hierarchy even within that second bucket: Educators considering precious time outside of doctrinal courses have hoped to focus students' training on "practical" skills.[13]

That which is not "practical" has historically been relegated to the periphery of legal education.[14] Over the last fifty years, different disciplines have struggled to move from secondary to primary status within law school curricula.[15] Now, at least some of those subjects–advocacy, clinics, and legal writing–have arguably attained status as core, "practical," ineradicable parts of the law school curriculum.[16] But what remains in the second bucket at the periphery?

Here, I coin the term "critical-contextual coursework" to encompass the information that gives students context about the law. It is the information that allows students to think about the history of the law–and the history of the way we think about the law. It encompasses perspectives courses, "interdisciplinary" courses, policy courses, and theoretical coursework–traditionally all optional electives.[17] But now, critical-contextual content's status at the periphery may be in flux.

In the wake of profound reconsiderations of race in the United States following the 2020 racial justice protests, universities across the country faced a reckoning about their curricula and practices related to race.[18] While Race and the Law electives have long been available in law schools, they

---

EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW *infra* note 238, at 6 (noting that social issues are treated like "addenda" to the case method).

[13] *See, e.g.*, Mark Yates, *The Carnegie Effect: Elevating Practical Training Over Liberal Education in Curricular Reform*, 17 J. LEGAL WRITING INST. 233, 233 (2011) (noting that most law schools engaged in contemporary curricular reform believed students needed more "practical skills" training and took steps to add clinical requirements, legal writing programs, and professional responsibility courses).

[14] *See, e.g.*, Bisom-Rapp, *supra* note 12, at 368 (describing non-doctrinal electives like Women and the Law and Race and the Law as "peripheral").

[15] *See, e.g.*, Kristen Konrad Tiscione, *If I Am a Color* (Feb. 13, 2014) (noting the egregious discrepancies in pay between doctrinal and legal writing faculty as of 2014 and noting "[t]he second-class status of Legal Research and Writing faculty has been perpetuated by the legal academy for decades.") (available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2395495).

[16] However, issues with differing pay structures between legal writing, clinical faculty, and doctrinal faculty still speak to a problematic and lingering relationship between the academy and subjects it considers peripheral. *See* Amy H. Soledad, *Legal Writing Professors Salary Disparity, and the Impossibility of Improved Status*, 24 LEGAL WRITING J. 47, 47 (2020) (noting historical and continuing pay disparity between legal writing professors and doctrinal professors).

[17] *See, e.g.*, Bisom-Rapp, *supra* note 12, at 368 (describing the traditional law curriculum as absent perspective-based critiques like those found in Race and the Law and Women and the Law classes).

[18] *See, e.g.*, Eugene K. Chow, *A Racial Reckoning*, FORDHAM L., https://digital.law.fordham.edu/issue/fall-winter-2021/a-racial-reckoning (last visited Nov. 24, 2023) ("The calls for incorporating a critical racial analysis into the curricula are not unique to Fordham Law. They are part of a growing chorus at law schools throughout the nation.").

remained just that–electives;[19] however, due to critical work by education reform scholars in the legal field, law schools have begun to implement meaningful changes to law school curricula.[20] Some schools have moved to require Race and the Law;[21] some schools have begun to develop new "perspectives" courses; some schools have begun to ask questions about how issues of race might be interwoven within first-year curricula.[22] In 2022, in light of these discussions, the American Bar Association ("ABA") added addendum 303(c), requiring law schools to provide students with training on "bias, cross-cultural competency, and racism."[23]

As law schools considered issues of race in the curricula, which are urgently necessary in their own right, a corner was peeled back, revealing a significant curricular deficit related to other perspectives. Today, law schools across the country are fundamentally rethinking a variety of contextual content traditionally relegated to the periphery. At this historical nexus, "for the first time in a long time, real momentum is emerging behind efforts to effectuate such transformations in legal education."[24]

But, if this is the first time in a long time, when was the last time? Were there changes? If not, what made that reform advocacy ineffective? An analysis of the historical periphery of legal curricula reveals that the reasons to implement these reforms are both more expansive and more dire than even passionate advocates argue.

---

[19] Staci Zaretsky, *Top Law School Will Make Race-Related Coursework Mandatory for Graduation*, ABOVE THE L. (Apr. 9, 2021, 1:00 PM), https://abovethelaw.com/2021/04/top-law-school-will-make-race-related-coursework-mandatory-for-graduation (noting that, as of April 2021, the University of Southern California Gould School of Law was only the second in the country to require any kind of mandated race-related coursework).

[20] *See, e.g.*, Ilana Kowarski, *How U.S. Law Schools Are Preparing Students for Racial Justice Work,* U.S. NEWS (Oct. 21, 2022), https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/how-u-s-law-schools-are-preparing-students-for-racial-justice-work (describing curricular reforms at multiple law schools that were "galvanized" by the Black Lives Matter Movement).

[21] *See* Zaretsky, *supra* note 19.

[22] *See* Michael Hunter Schwartz, *Law Schools Incorporate More DEI Work into Their Curricula*, WHAT GREAT L. SCHS. DO (Jun. 9, 2022), https://www.whatgreatlawschoolsdo.com/2022/06/law-schools-incorporate-more-dei-work-into-their-curricula (providing a summary of DEI curricular shifts at several law schools from 2020-2022).

[23] *Standards and Rules of Procedure for Approval of Law Schools 2023-2024,* ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/2023-2024-aba-standards-rules-for-approval.pdf (last visited Nov. 29, 2023).

(c) A law school shall provide education to law students on bias, cross-cultural competency, and racism: (1) at the start of the program of legal education, and (2) at least once again before graduation. For students engaged in law clinics or field placements, the second educational occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses."

Id.

[24] Chantal Thomas, *Reloading the Canon: Thoughts on Critical Legal Pedagogy,* 92 U. COLO. L. REV. 955, 974 (2021).

This Article presents a historical analysis of calls for critical-context over the last fifty years. I argue that calls for centralizing critical-contextual education have spiked and pitched at key moments–during the eighties and again in the early aughts. Despite those movements and meaningful work by reform advocates during those periods, critical-contextual content remained on the periphery of legal curricula until now.

This under-theorized history offers an opportunity to reflect on the shape of critical-contextual education throughout legal history, the obstacles to its implementation, and the ways in which we can move beyond facial reform into deep, lasting curricular reform. Our contemporary sea change also provides us with a chance to consider how declining critical thinking and writing skills are interwoven with contextual education–and how a lasting centralization of critical-contextual content might be the silver bullet for which frustrated legal educators have longed searched.

First, this Article asks what critical-contextual education is. Second, this Article briefly analyzes historical calls for critical-contextual reform in the first century of United States legal education and provides an in-depth analysis of the claims, language, and tenor of critical-contextual advocacy at two key points: in the late eighties to early nineties and in the post-recession aughts. Third, I will outline contemporary legal reform advocates' arguments for critical-cultural education benefits and outline key objections. Next, I will consider critical-contextual content as a tool to improve students' practical skills. Finally, I will consider the shape of our current movement towards critical-contextual education and ultimately advocate for increased attention to its inclusion across the curriculum.

Writing in 2011 about why education reform in the past had fallen flat, Professor Sara Rankin argued that reformers had failed to articulate a coherent movement with an overarching strategic campaign to implement lasting change.[25] Rankin predicted that localized instances of success in creating reforms would appear piecemeal and marginalized and that well-intended efforts may be viewed in hindsight as a fad.[26]

This Article is a small attempt to collate and organize some of those attempts that might first look piecemeal and marginalized because they did not–in the end–effectuate the revolutionary changes that their advocates envisioned. This Article hopes to articulate at least some through-lines of education reform while attempting to account for the divergences in rhetoric through different eras.

---

[25] Sara K. Rankin, *Tired of Talking: A Call for Clear Strategies for Legal Education Reform: Moving Beyond the Discussion of Good Ideas to the Real Transformation of Law Schools*, 10 SEATTLE J. SOC. JUST. 11, 19-20 (2011).

[26] *Id.* at 20.

Ultimately, I hope to bring together voices from different corners of the legal education reformation movement of the last forty years to reveal the existence of foundations for a much broader and revolutionary movement than is even currently being countenanced in the legal academy. By examining seemingly disparate voices across the legal reform academy together, I hope to reveal the extent to which the substance of critical-contextual education is an important answer for those concerned about students' "practical" skills of critical thinking, writing, and reasoning.

The cultural turbulence of the last few years has wrought a sea change–and an opportunity to create lasting reform in the legal academy. By examining the many voices arguing for critical-contextual reform over the past decades, I hope to join my colleagues in creating an echo, urging the importance of context within our doctrinal courses, while taking a step towards defining a cohesive movement with a cohesive history.

II. WHAT IS CRITICAL-CONTEXTUAL EDUCATION?

Critical-contextual content is not doctrine. It involves the contexts in which doctrine exists–social, cultural, political, and economic. Critical-contextual education accepts that the history of ideas is relevant. The law itself is situated within a context and a history–and various theoretical frameworks allow us to more profoundly recognize, analyze, and critique the ways in which law in the real world reflects that history.

The "critical" refers to the pedagogical component that encourages students to develop rigorous methods for thinking through those frameworks and employing multiple, sometimes-competing, lenses towards any given subject.

In this section, I will broadly overview the term "critical-contextual," which I have chosen to convey this idea, and give a broad overview of types of law school coursework that fall under this category.

Critical-contextual content is a descriptive category that creates an umbrella over many types of content taught in law schools. This content is often found in electives, extra-curriculars, or not at all. Critical-contextual involves "interdisciplinary" texts and ideas–but it hopes to subvert the idea that those ideas are truly outside the discipline of law. As one scholar wryly put it, law is "a scavenger. It grows by feeding on ideas from the outside, not by inventing new ones of its own."[27] The history of legal thinking is also a history of broader social thought.

"Critical-contextual" also encompasses the underlying theoretical lenses that stem from both legal and adjacent scholarships. Critical-contextual education provides students with the tools to understand the

[27] E. Donald Elliott, *The Evolutionary Tradition in Jurisprudence*, 85 COLUM. L. REV. 38, 38 (1985).

complex social, cultural, and political frameworks in which legal opinions and policy are made. It encourages rigorous questioning and using multiple frameworks or lenses to view each issue. Further, critical-contextual education gives students the vocabularies to think through and discuss the complex legal frameworks that extend beyond the mere blackletter.

By using the term "critical-contextual," I hope to balance breadth and narrowness. Many law schools refer to similar classes under the umbrella of "perspectives" coursework. However, law schools define "perspectives" courses in an incredibly broad and non-uniform way.[28] I believe there is no term that is broad enough to incorporate theory courses and "interdisciplinary" courses and narrow enough to exclude the tangential course content that gets thrown in under "perspectives." The language of critical-contextual education frontloads its flexible potential to be interwoven within doctrinal coursework and its purpose–to teach students multiple frameworks with which to contextualize and understand doctrinal law.

A. Critical Vocabularies: What Does "Critical" Mean?

"Critical Legal Studies," "Critical Legal Pedagogy," "Critical Race Theory," "Critical Indigenous Studies." Why, a student might ask, are we adding the addendum "critical" to all of these movements? The term was first coined by educational theorist John Dewey in the 1910s in his book

---

[28] *See, e.g., Juris Doctor*, U. S. CAROLINA, https://academicbulletins.sc.edu/law/degree-programs/juris-doctor (last visited Nov. 15, 2023) (defining a Perspective course: "The faculty believes that graduates of the School of Law should understand the law in its broader social context, have some sense of its history, and appreciate the philosophical underpinnings of its operation." To this end, all students must receive credit for one of the following perspective courses–this list varies each academic year.); *Juris Doctor Program*, LOUIS D. BRANDEIS SCH. OF L. (last visited Nov. 15, 2023), https://louisville.edu/law/academics/degree-programs/jd-program ("The perspective course requirement is intended to ensure students encounter an 'outsider' perspective on the American legal system . . . . ."); *Required Courses*, ST. LOUIS U. SCH. OF L., https://www.slu.edu/law/academics/curriculum/required-courses.php (last visited Nov. 15, 2023) (described as the "study of comparative or international legal systems, insights from other academic disciplines (such as history, literature, economics, philosophy, psychology, anthropology or sociology), or approaches by other critical viewpoints on legal concepts or problems."); *Curriculum & Requirements*, SUFFOLK U. L. SCH. (last visited Nov. 15, 2023), https://www.suffolk.edu/law/academics-clinics/juris-doctor/curriculum-requirements (described as "help[ing] students develop an analytical perspective on our legal system, by viewing it through the lens of another discipline, probing the foundations, values or assumptions underlying our legal institutions, or studying alternatives to our own doctrinal approach to legal problems."); *Guide to Selecting Courses 2022*, TUL. U. SCH. OF L. 4 (2022), https://intranet.law.tulane.edu/Portals/0/Selecting%20Courses%202022.pdf?ver=2021-11-05-151939-253 (the purpose is to "reflect on the law, its purposes, its philosophical underpinnings, its development over time, and its relationship to other institutions of contemporary society."); *Student Handbook*, IND. U. ROBERT H. MCKINNEY SCH. OF L. 10 (2023) ("A perspectives course is one that approaches the law and legal institutions from a special perspective.") (available at: https://mckinneylaw.iu.edu/students/student-handbook/index.html).

about thinking.[29] This usage arose out of a turn-of-the-century progressive education movement that sought to contrast "critical" thinking with methods produced by traditional education–like rote memorization.[30]

Out of this lineage, the "critical" language implies an active, targeted method of assessing one's beliefs.[31] Critical thinking is thinking that uses deliberate reasoning to uncover "underlying logic and assumptions," "recognize and account for one's own biases," "assess relevant evidence," and "adjust and reevaluate one's own thinking."[32] Most doctrinal courses share a goal of developing students' critical thinking skills–they do so in a specific way: cold-calling.[33] In cold-calling, a professor often mimics the logic of critical thinking in asking specific questions in a particular order. Over time, we hope students learn what questions to ask themselves about the cases in order to assess the underlying holdings, reasoning, and logic and their connection to other cases. In contrast, I argue critical-contextual content often develops critical thinking tools through other methods–asking students to think through adjacent texts or ideas, generate their own questions, and interrogate the logic behind their own thought processes and assumptions.

A little later in the century, the term took a turn. "Critical" was first adopted by The Frankfurt School–Marxist social theorists in Germany–to describe a set of theories that sought to describe facets of culture and to critique them.[34] The term "critical theories" came to describe any social philosophy that critiqued power structures.[35] Though extremely diverse in

---

[29] Will Gosner, *Critical Thinking*, BRITTANICA.COM, https://www.britannica.com/topic/critical-thinking (last visited Nov. 13, 2023) ("The term *critical thinking* was coined by American philosopher and educator John Dewey in the book *How We Think* (1910) and was adopted by the progressive education movement as a core instructional goal that offered a dynamic modern alternative to traditional educational methods such as rote memorization.").

[30] *See* JOHN DEWEY, HOW WE THINK, (Juliet Sutherland, Cathy Maxam eds., 2011); *see also* Rankin, *supra* note 25, at 20-30 (discussing the connection between the progressive education and legal education pedagogy reform).

[31] *See* DEWEY, *supra* note 30; *see also* Rankin, *supra* note 25.

[32] Gosner, *supra note* 29.

[33] *See, e.g.*, Amy H. Soled & Barbara Hoffman, *Building Bridges: How Law Schools Can Better Prepare Students from Historically Underserved Communities to Excel in Law School*, 69 J. LEGAL EDUC. 268, 290-91 (2020) (noting that the "dominant pedagogy for most first-year law classes is the Socratic method, a pedagogical technique involving cold-calling and posing questions designed to stimulate critical thinking to teach the law" and recommending that professors explain the purpose of the Socratic method, cold-calling, "so students can understand how it is designed to strengthen critical thinking and not to simply terrify and disempower new law students.").

[34] *See* STEPHEN ERIC BRONNER, CRITICAL THEORY: A VERY SHORT INTRODUCTION 17, 100 (2d ed. 2017); DAVID HELD, INTRODUCTION TO CRITICAL THEORY: HORKHEIMER TO HABERMAS 14 (1980) (describing the formation and goals of early critical theorists).

[35] *Critical Theory*, WIKIPEDIA, https://en.wikipedia.org/wiki/Critical_theory#:~:text=A%20critical%20theory%20is%20any,critique%2C%20and%20challenge%20power%20structures (last visited Nov. 17, 2023) ("A critical theory is any

methods and focus, critical theorists broadly critiqued that the ways in which laws, policies, institutions, and cultural forms claim to work do not represent the full picture; instead, critical theories assume that there are invisible, sublimated, and hidden assumptions and goals beneath the surface of a cultural subject.[36] Because scholars working within critical methodologies believe that our society is conditioned and sculpted by those sometimes invisible assumptions, the goal of this method is to make visible those hidden features, to critique the full scope of the institution, and, often, to offer policy suggestions.[37] Many scholars see critical theories as justice-oriented–a method to challenge inequality and oppression.[38]

I hope to borrow from both of these uses. I use "critical" here to invoke the tools critical-contextual content helps students develop, the transformative social goals that this content shares with some of its sub-components, and the necessary pedagogical methods used to invoke it in the classroom.

B. "Multidisciplinary"

Critical-contextual education encompasses a spectrum of ideas and frameworks: The sciences, social sciences, and the humanities all facially intersect with and co-constitute the law.[39] Although legal history, legal philosophy, law and society, and law and economics are commonly included in law school elective offerings, coursework also exists at many universities that connects, for example, the law with psychology, neuroscience, communication, sociology, or cultural studies.[40] These courses broaden the

---

approach to humanities and social philosophy that focuses on society and culture to attempt to reveal, critique, and challenge power structures.").

[36] *See* BRONNER, *supra* note 34, at 1.

[37] *Id.* at 2.

[38] Shirley R. Steinberg & Joe L. Kincheloe, *Power, Emancipation, and Complexity: Employing Critical Theory* 2 POWER & EDUC. 140, 140 (2010) (describing critical theory as a moral construct designed to reduce human suffering); *see also* Jan Fook, *Social Justice and Critical Theory*, *in* THE ROUTLEDGE INTERNATIONAL HANDBOOK OF SOCIAL JUSTICE (Michael Reisch ed., 1st ed. 2014) (theorizing the parallels between social justice and critical theory).

[39] *See, e.g.,* David Sugarman, *The Humanities and Law: More Intertwined Than You Might Think*, TALKING HUMANITIES (Mar. 7, 2022), https://talkinghumanities.blogs.sas.ac.uk/2022/03/07/the-humanities-and-law-more-intertwined-than-you-might-think ("Law, history, religion, philosophy, economics, politics and literature all borrow from and compete with each other.").

[40] *See, e.g.*, *Law and Neuroscience*, VAND. L. SCH., https://law.vanderbilt.edu/tag/law-and-neuroscience (last visited Apr. 29, 2023); *see also Courses: Law and Neuroscience*, HARV. L. SCH., https://hls.harvard.edu/courses/law-and-neuroscience (last visited Apr. 29, 2023); *Concentration in Psychology and Law*, UCI CTR. FOR PSYCH. & L., https://psychlaw.soceco.uci.edu/for-students/graduate-programs/concentration-in-psychology-and-law (last visited Aug. 11, 2023) (outlining multiple course offerings connecting law and psychology, including Psychology and the Law, Memory and the Law, and Crime and Social Deviance).

scope of students' considerations of the law and can "ha[ve] serious implications for the legal system."[41]

III. HISTORY OF THE ISSUE

A. A Brief History

The dominant system of legal education used in law schools for over a century elides critical-contextual education. The dominion Christopher Columbus Langdell's case method system has enjoyed over the past century is impressive.[42] In this system, as all law students are intimately aware, professors question students on the cases, encouraging them to identify the court's underlying legal reasoning that may then be applied to other factual scenarios. Traditionally, professors do not introduce external texts or frameworks into these lectures. In general, the case itself is king.

Because the system extends beyond the scope of living memory, it is easy for students to imagine Langdell's case method system as both eternal and apolitical–something that just *is*. Meanwhile, efforts to import critical-contextual frameworks into curricula are often seen as political.[43] To imagine the future of legal education, we should pose some questions. Was the Langdell system inevitable in legal education? Is Langdell's case method politically neutral? And, if history's attorneys did not see the case method as eternal or inevitable, what might have been included in curricula?

1. Early Curriculum Considerations

Legal practice did not require formal schooling for the first century of this country's history.[44] Legal education was, therefore, unstandardized.

---

[41] *Course Information Law and Neuroscience*, *supra* note 40; *Concentration in Psychology and Law*, *supra* note 40.

[42] Andrew E. Taslitz, *Exorcising Langdell's Ghost: Structuring a Criminal Procedure Casebook for How Lawyers Really Think*, 43 HASTINGS L.J. 143 (1991) ("Langdell founded the case method, which has dominated law school education for so long."); Weaver, *infra* note 76, at 518 (noting Langdell's case method was introduced in 1870 and that, "Today, more than a century later, most faculty still use the case method.").

[43] Jonathan D. Glater, *Criticism, Crises, and Opportunity: 21st Century Challenges for U.S. Law Schools*, 8 CAN. J. COMPAR. & CONTEMP. L. 118, 121-22 (2022) (noting that demands for inclusion of critical perspectives in law school classes have "drawn ferocious counterattack by critics who decry such moves as inappropriate political activism.").

[44] Thomas D. Morgan, *A Defense of Legal Education in the 1990s*, 48 WASH. & LEE L. REV. 1, 2 (1991) ("America's first century, for example, was characterized by at least three competing models of legal education. The first held that formal legal training was not necessary at all to make one qualified for admission to practice.").

In the Colonial era, apprenticeships and clerkships became a dominant method of legal training.[45] As other historians have extensively outlined, a lawyer in the new American Republic might have learned almost exclusively from observing court proceedings as an apprentice with no formal school training.[46] This meant that, as an attorney, your knowledge base depended on the individual to whom you were apprenticed. Historians also describe the importance of independent reading to early legal education, noting "[t]he bulk of [students'] studies were in solitude, reading and copying from English law books."[47] Popular among texts of the period was Blackstone's *Commentaries*.[48] Legal historian Lawrence Friedman summarizes the state of post-Colonial legal education: "For a fee, the lawyer-to-be hung around an office, read Blackstone . . . and copied legal documents. If he was lucky, he benefited from watching the lawyer do his work, and do it well. If he was very lucky, the lawyer actually tried to teach him something."[49]

However, by the end of the eighteenth century, supplementary to apprenticeship, legal institutions began to form with the purpose of providing standardized training for lawyers.[50] A philosophical split between practical and contextual education emerged from the first. This split is evident in the training methods of several of the fifteen schools that existed at the time.[51]

The Litchfield Law School trained eighteenth century students through lectures.[52] The content of these lectures came in part from Blackstone's *Commentaries*.[53] Often given by practitioners, these lectures were meant to describe how to practically apply the law in various scenarios.[54] Other

---

[45] LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 56 (3rd ed. 2005) (discussing the clerkship model); Susan Katcher, *Legal Training in the United States: A Brief History*, 24 WISC. INT'L L.J. 335, 339 (2006) (providing a comprehensive overview of early legal training in the U.S.).

[46] *See* FRIEDMAN, *supra* note 45, at 56; *see also* Albert V. Dicey, *Teaching of English Law at Harvard*, 13 HARV. L. REV. 422, 423-24 (1900) (observing how Langdell's system led to the abandonment of apprentice training).

[47] *See* THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES 9-12 (Steve Sheppard ed., 1st ed. 1999).

[48] *See* Katcher, *supra* note 45, at 343-44.

[49] *See* FRIEDMAN, *supra* note 46, at 238.

[50] *See* Katcher, *supra* note 45, at 341-42.

[51] *Id.* at 342.

[52] *Id.*

[53] *Id.* at 344.

[54] *See* Kristen Konrad Robbins-Tiscione, *Philosophy v. Rhetoric in Legal Education: Understanding the Schism Between Doctrinal and Legal Writing Faculty*, 3 J. ASS'N LEGAL WRITING DIRS. 108, 120 (2006) ("Litchfield, for example, focused on teaching legal principles and their application to any situation, while William and Mary offered a broader range of studies in law, politics, history, and science."); *see also* Charles R. McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 WASH. U. L. Q. 597, 600-02 (1981) (describing pre-Revolutionary legal education and noting the broad variety of training methods, including studying philosophy and training as an apprentice).

schools generally regarded law as "a profession grounded in the humanities."[55] Harvard took an interdisciplinary approach, emphasizing literature and philosophy.[56] At eighteenth century William & Mary, students read the works of contemporary political theorists like Montesquieu.[57] They also read classical writers such as Horace and Virgil.[58] Thomas Jefferson's humanistic curricular preferences for the law school at the University of Virginia are similarly well-chronicled.[59] Although most of Jefferson's colleagues would have trained to be lawyers in the apprentice system, Jefferson had a different vision. One scholar explains: "Unsurprisingly, Thomas Jefferson wanted law taught a certain way at the University of Virginia–with an emphasis on legal philosophy as much as procedure, as part of the University's liberal arts curriculum, so that law students could take classes in other schools."[60]

This split between lectured law, applied skills training, and critical-contextual education was not resolved. As the century went on, anti-intellectual movements associated with Jacksonian Democracy fractured Bar associations and impacted legal educational institutions.[61] By the end of the century, legal education was non-standardized and ripe for a change. While many Bars still did not require a law degree to practice during this time, increasing dissatisfaction with the apprentice model opened the door to new methods of education.[62] In 1850, there had been fifteen private law schools.[63] By 1900, there were over one hundred.[64] Increasingly, law schools struggled to claim their place among the competition; moreover, "more established" members of the Bar were "alarmed" by multiplying schools and worried about "income and prestige" of the profession with an influx of lawyers.[65]

---

55 Jess M. Krannich, James R. Holbrook & Julie J. McAdams, *Beyond "Thinking Like a Lawyer" and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education*, 86 DENV. U. L. REV. 381, 383 (2009).

56 *Id.*

57 Davison M. Douglas, *Jefferson's Vision Fulfilled: The Nation's Oldest Law School Celebrates 230 Years of Educating Citizen Lawyers*, WM. & MARY ALUMNI MAG. (Winter 2010) (available at: https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1015&context=popular_media).

58 *See id.*

59 *See* Mike Fox, *Law Library to Showcase Jefferson Letter*, U. VA. L. (Sept. 3, 2019), https://www.law.virginia.edu/news/201909/law-library-showcase-jefferson-letter.

60 *Id.*

61 For a strong analysis of the effects of Jacksonian Democracy on 19th century legal education see Katcher, *supra* note 45, at 345.

62 Marcia Speziale, *Langdell's Concept of Law as Science: The Beginning of Anti-Formalism in American Legal Theory*, 5 VT. L. REV. 1, 7 (1980).

63 Katcher, *supra* note 45, at 348.

64 *Id.*

65 *Id.* at 363-64.

As this massive expansion took place, Bar associations resolved to address the lack of standardization across the country.[66] The ABA was founded in 1878 to raise legal education standards.[67] As the twentieth century dawned, debate continued about the direction of legal education. And Professor Christopher Columbus Langdell, Dean of Harvard Law, stepped up to settle that debate.

2. The Rise of Langdell

The Langdell method of legal education standardized law school. While there are debates about who first originated the system, Langdell certainly popularized the system through which students learn the law by reading appellate opinions.[68]

The method was based on Langdell's view that "law is a science, and that it must be learned from books."[69] For Langdell and his contemporaries, the science of law used "deductive logic to derive the outcome of a case from premises accepted as authoritative."[70] Therefore, Langdell's theory was that law was disconnected from social interests and values because advocates and judges could apply it scientifically and unbiasedly through a perfect deductive system of logic.[71]

---

[66] *See* McManis, *supra note* 54, at 653 (discussing the "slow but steady lock-step to promote increasingly stringent standards for admission to law school and to the bar" after the turn of the century).

[67] *See* Morgan, *supra* note 44, at 4.

[68] Christina Jacobs Ogden, *A Modest Proposal: Reform to the Law School Curriculum*, 23 LOY. L. REV. 144, 145 (1977); Taslitz, *supra* note 42, at 150 (noting Langdell's exclusive focus on the "scientific" analysis of appellate cases).

[69] Harvard University, *A Record of the Commemoration, November Fifth to Eighth, 1886, on the Two Hundred and Fiftieth Anniversary of the Founding of Harvard College,* 84-86 (1887) (available at: https://upload.wikimedia.org/wikipedia/commons/a/a6/A_record_of_the_commemoration%2C_November_fifth_to_eighth%2C_1886%2C_on_the_two_hundred_and_fiftieth_anniversary_of_the_founding_of_Harvard_college_%28IA_recordofcommemor00harv%29.pdf).

[70] *See* Richard A. Posner, *Legal Formalism*, *Legal Realism, and the Interpretation of Statutes and the Constitution*, 37 CASE W. RES. L. REV. 179 (1986); *see also* Brian Leiter, *Legal Realism and Legal Doctrine*, 163 U. PA. L. REV. 1975, 1980 (2015).

[71] Though many scholars trace the rise of legal formalism and related ideas to Langdell and his contemporaries, some scholars argue the idea of law as a science arises decades earlier–as early as the 1820s. *See* Speziale, *supra* note 62, at 5; M. H. Hoeflich, *Law & Geometry: Legal Science from Leibniz to Langdell*, 30 AM. J. LEGAL HIST. 95, 95 (1986) ("The notion of legal science, however, greatly predates the Langdell era."); *see* White, *infra* note 77, at 5.

> The process of reasoning on which Langdell's system depended was consistent with his epistemological perspective. He sought to tighten the data base of his system to make it more "scientific." A lawyer or jurist interested in taxonomic classification through geometric-style logic was required to study "all the cases," because "the only way of mastering the doctrine effectually is by studying the cases in which it is embodied." But this task was not particularly formidable because it ruled out other potential sources of doctrinal principles and sharply delineated the field of legal expertise. It also transformed law into a self-contained professional enterprise with secularized, "scientific" data,

Rapid advancements across the sciences in the nineteenth century led Langdell and his contemporaries to believe that science was "the model for all human inquiry and the source of all human progress."[72]

The legal field has tried to claim this legitimizing influence since that time.[73] In an era during which law schools were standardizing, regulating, and, importantly, struggling, a perceived scientific method to legal education and practice "imparted a badge of authenticity" to law school training.[74] One scholar noted that, "unless a discipline could be described as a serious science, it was doomed to lower-class status within the academic community."[75] In adopting the view that law is a science–a specific codified system–the case method effectively banished forever the idea that a lawyer could train without a law school. Mere practical, on-the-job training could not teach you to "think like a lawyer." Claiming the legitimizing influence of science, law schools cemented their continued existence and became an ineradicable, necessary step towards the Bar.[76]

The strict understanding of law as science–and law as a scientific method–binarized legal education in ways that are still felt today. Because the system assumed that all legal conclusions could be deductively, scientifically derived from the language of the law itself, Langdell's system excluded applied skills courses and critical-contextual content.[77] In Langdell's day, prominent educational reform advocates moved to hire fewer professors with practical experience and more professors with scholarship

---

> vocabulary, and reasoning patterns. In an educational universe in which academic disciplines were fragmenting and declaring their own identities, we can understand why this approach would have been attractive to Langdell and his contemporaries.

Id.

[72] Patrick J. Kelley, *Holmes, Langdell, and Formalism*, 15 RATIO JURIS 26, 26 (2002).

[73] *See* Hoeflich, *supra* note 71, at 121 (crediting Langdell with the popularization of the idea of law as a science in the "quest for certainty in law and the need to legitimize university legal studies . . . .").

[74] Eric Mills Holmes, *Education for Competent Lawyering–Case Method in a Functional Context*, 76 COLUM. L. REV. 535, 544 (1976).

[75] James E. Moliterno, *The Future of Legal Education Reform*, 40 PEPP. L. REV. 423, 426 (2013).

[76] Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 529 (1991) ("Langdell may have had an ulterior motive for viewing law as a 'science': it provided a justification for the existence of law schools.").

[77] *See, e.g.,* G. Edward White, *The American Law Institute and the Triumph of Modernist Jurisprudence*, 15 L. & HIST. REV. 1, 4 (1997).

> Langdell's innovation was the relentless exclusion, as sources of 'scientific' legal principles, of everything except reported decisions. Earlier jurists had included the laws of nature, history, religion, and 'first principles' of government as relevant sources for the legal scientist. Langdell's reformulation appeared to be a tacit restriction of legal sources to the secular and positivistic.

Id.

potential.[78] The idea of law as science came to dominate American legal thought.[79] As such, "the methodology of law study has consisted primarily of analyzing appellate judicial decisions in order to inculcate basic analytic skills, with far less concern for either applied skills training or the empirical or humanistic study of law."[80] Adopting this system as the dominant pedagogical method in legal education made sense when assuming that law was totally divorced from political and cultural institutions–as Langdell and contemporary thinkers did.[81] If law is a science–and all law can be derived from the scientific method–the history of ideas within the law and the broader contexts in which the law is situated are irrelevant.

As the new century dawned, though, scholars began to challenge the case method and, connectedly, the idea of law as a closed system with no intervening forces.[82] Although it may seem to current law students that the Langdell case method is both venerated and eternal, there have been dissenting voices from across the legal academy for a century.

3. Early Dissent

After the turn of the century, some legal scholars began to reject the idea of law as a perfectly closed universe isolated from social values. Instead, scholars began to suggest that "law *was* 'stuff of society.'"[83] Scholars note there were early debates about whether law was a site of mere deductive thinking or inherently linked to social ideas as early as the 1820s;[84] however, the twentieth century saw tension between law as a closed system and law as

---

[78] Weaver, *supra* note 76; *see also* Gerald E. Frug, *A Critical Theory of Law*, 1 LEGAL EDUC. REV. 43, 43 (1989).

[79] Morton J. Horwitz, *Law and Economics: Science or Politics?*, 8 HOFSTRA L. REV. 904, 905 (1980).

[80] *See* McManis, *supra* note 54, at 597.

[81] For an interesting assessment of the ways in which legal realism also used scientific discourse to stake its claim to legitimacy, see Speziale, *supra* note 62, at 2.

[82] *See generally* Leiter, *infra* note 87, at 267 (discussing the "enormous influence Legal Realism has exercised upon American Law and legal education over the last sixty years"); Brian Leiter, *American Education: The First 150 Years*, HUFFPOST (Jan. 12, 2014, 9:35 PM), https://www.huffpost.com/entry/american-legal-education_b_4581672.

> In the 1920s and 1930s, another group of law professors and lawyers known as the 'American Legal Realists' challenged Langdell's approach, noticing that the legal principles the Langdellian scholar latched on to were often pitched at too high a level of abstraction from the particular problems the courts were confronting. Sensitivity to economic and social context was often necessary to make sense of the decisions, not just knowledge of abstract rules.

Id.

[83] Brainerd Currie, *The Materials of Law Study*, J. LEGAL EDUC. 1, 18 (1955) (citing Woodrow Wilson, *Legal Education of Undergraduates*, 17 A.B.A. REP. 439, 443 (1894)).

[84] Speziale, *supra* note 62, at 2.

subject to intervening forces rise as a prominent theme across pedagogy scholarship.[85]

Progressive scholars argued that, in fact, law was interrelated with and construed by social values and ideas.[86] Relatedly, they argued that when judges make decisions, those choices may be idiosyncratic–as opposed to scientifically precise–and connected to the judges' personal beliefs.[87] Some early century thinkers theorized that not only is law sometimes used as a political tool, but that it *ought* to be used as a tool of social engineering to achieve social justice.[88] The jurisprudential theory related to the idea that judges do or should consider social policy alongside law in their decisions was called legal realism.[89] Critics of Langdell formalism began to perform "a series of fierce realist attacks, insisting that the law was not a set of preexisting concepts of fixed scope but a tool of government which would and should be reshaped as the desires of the community or (more realistically) of its politically-dominant groups changed."[90] As the century went on, the extent to which thinkers who challenged law's objective nature advocated for jurisprudence as a tool of social engineering waxed and waned.

Connected progressive legal strains of thought developed the idea of law as socially constituted and linked. Historians note that the "social law" movement believed that conditions of late nineteenth century life represented a social transformation so great that it had required a re-consideration of American law that privileged the idea of "interdependence" over

---

[85] Edward A. Purcell, Jr., *American Jurisprudence Between the Wars: Legal Realism and the Crisis of Democratic Theory*, 75 AM. HIST. REV. 424, 430 (1969) (noting the "intense debate" over legal realism began in 1930).

[86] *See* Joseph William Singer, *Legal Realism Now*, 76 CALIF. L. REV. 465, 469 (1988); *see also* Morton J. Horwitz, *The Rise of Legal Formalism*, 19 AM. J. LEGAL HIST. 251 (1975).

[87] Brian Leiter, *Rethinking Legal Realism: Toward a Naturalized Jurisprudence*, 76 TEX. L. REV. 267, 275 (1997).

> The Core Claim of Legal Realism consists of the following descriptive thesis about judicial decision-making: judges respond primarily to the stimulus of facts. Put less formally–but also somewhat less accurately–the Core Claim of Realism is that judges reach decisions based on what they think would be fair on the facts of the case, rather than on the basis of the applicable rules of law.

Id.

[88] Andrew Lang, *New Legal Realism, Empiricism, and Scientism: The Relative Objectivity of Law and Social Science*, 28 LEIDEN J. INT'L L. 231, 235 (2015).

> Having lost faith in the ability of tradition and doctrine to rationally guide the development of the law, and armed with a vision of law as an instrument of social engineering, the legal realists argued that the law ought to be guided by reliable knowledge of its consequences on the social world–the sort of knowledge that the new social sciences promised to provide.

Id.

[89] *See* Michael S. Green, *Legal Realism as Theory of Law*, 46 WM. & MARY L. REV. 1915, 1920 (2005).

[90] Posner, *supra* note 70, at 184.

individualism in society.[91] Legal thinkers educated in Europe pushed for worker's rights and regulations, child labor laws, and other progressive legislation.[92] This progressive movement created a substantial body of law, ideas, and theory not countenanced by Langdell's curriculum.[93]

As debate continued about the extent to which law was a science or subject to interpretive whims, scholars considered whether and how law school curricula should change as ideas about the law shifted.[94] Small glimpses into the scholarship over a century reflect this debate and the overwhelming idea that the case method alone deprived law students of necessary context.

In 1923, Harlan Fiske Stone, the dean of Columbia Law School and future Supreme Court Justice, pointed out the oddness of separating the study of law from the study of related disciplines: "Present-day problems of legal education," he argued, "arise . . . from our traditional attitude toward the law as a body of technical doctrine more or less detached from those social forces which it regulates."[95] Stone, a legal realist, argued that it was unproductive to omit such context from legal study because disciplines like social science and economics are both intimately intertwined with–and also constitute–legal issues.[96] He proposed a return to a legal curriculum that would give the student "a thorough-going knowledge of the social functions with which law deals."[97]

In 1938, legal history and legal philosophy were omitted from the new Harvard Law curriculum.[98] Writing at the time, Professor Sidney Post Simpson argued that these courses should be required components of the Harvard Law curriculum.[99] Simpson argued that legal scholars needed historical and philosophical contexts for competency in practice.[100] As is the case for our own students, there was no pre-requisite undergraduate major to attend law school at the time. Simpson noted, "inadequacies in the

---

[91] Robert W. Gordon, *The Geologic Strata of the Law School Curriculum*, 60 VAND. L. REV. 339, 345 (2019).

[92] *Id.* at 346.

[93] *Id.* at 346.

[94] *See* Rankin, *supra* note 25, at 17 (highlighting how early progressive education reform efforts failed and describing a "botched experiment at Columbia Law School in the 1920s.").

[95] Currie, *supra* note 83, at 10.

[96] *Id.*

[97] *Id.* at 12.

[98] Sidney Post Simpson, *The New Curriculum of the Harvard Law School*, 51 HARV. L. REV. 965, 972 (1938).

[99] *Id.* at 982.

[100] *Id.* at 982.

preparation, in fields of basic or related importance, of most men now entering law school are almost startling."[101]

After the second World War, scholars argued that legal philosophy and jurisprudence theory were necessary in law school for students to "understand the nature of law, its method and its primary aim of peace and order. He must be acquainted with the philosophy of law to perceive its intermediate ends of liberty and justice and the material interests which modern society seeks to achieve by means of law."[102] Echoing this theme, Yale professor Filmer Northrop in 1948 argued that the new atomic era had fundamentally changed society; as such, he argued that legal scholars must develop new legal philosophy and jurisprudence to make sense of the era.[103] He argued that the new era required a shift in curriculum, incorporating those subjects, to properly train students.[104] In this same era, Professors Harold Lasswell and Myres McDougal argued for the "Law, Science, and Policy" approach to legal education that integrated social science into the legal curriculum.[105] Scholars grappled with the rapid shifts of modernity and how those shifts ought to impact legal curricula.[106] And again, scholars concluded that critical-contextual content was necessary for students and lawyers to make sense of the legal world.[107] In 1955, UCLA law professor Brainerd Currie reflected, "[t]he most significant development in American legal education since 1870 is the movement toward reorganization of courses along functional lines and toward the broadening of law school studies to include nonlegal materials, chiefly from the social sciences, which are relevant to legal problems."[108]

Throughout the century, scholarly work reflects the idea that law interacts with the social sphere.

In the wake of the civil rights movement, Professor James Wallace wrote in 1967 that a practitioner of law is more than a "dispenser of law rules; he is a participant in the creation of a social order . . . ."[109] Wallace argued

---

101 *Id.* at 972.

102 *See* Joseph W. Planck, *Producing Great Lawyers: Jurisprudence and Legal Philosophy*, 44 A.B.A. J. 327, 329 (1958).

103 Filmer S. C. Northrop, *Jurisprudence in the Law School Curriculum*, 1 J. LEGAL EDUC. 482, 493 (1949) (arguing for the production of a new jurisprudence based on contemporary issues).

104 *Id.*

105 *See* Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943); Jack Van Doren & Christopher J. Roederer, *McDougal-Lasswell Policy Science: Death and Transfiguration*, 11 RICH. J. GLOB. L. & BUS. 125, 126 (2012) (outlining McDougal and Lasswell's beliefs related to legal realism and education).

106 *See* Planck, *supra* note 102, at 328-29.

107 *See, e.g.,* Currie, *supra* note 83, at 1.

108 *Id.* at 1.

109 James E. Wallace, *Philosophy and the Future Law School Curriculum*, 44 DENV. L.J. 24, 35 (1967).

that, "[t]he place of philosophy in the future law school curriculum must be viewed in the context of the changes that are occurring in the social and political structure within which lawyers practice and the consequent changes in the legal profession itself."[110] He reasoned that man "cannot deny or escape the past which provides the matrix for his understanding of reality."[111] Together, these writings reflect the sense across multiple generations that not only did law schools not teach philosophy of law that helped students make sense of the world in which they were to begin practice, but that perhaps such a philosophy did not exist. Wallace suggested that law school as an institution was caught "in the midst of the failure of philosophy to provide a theory of law compatible with the demands upon it."[112]

Scholars across a century all share a sense that something is missing. These brief examples suggest an abiding sense from thinkers in each successive generation that contemporary circumstances require context and tools with which to interpret that context. Yet, Langdell remained dominant. Discussing a 1940s article advocating for curricular change, one professor noted that "when all was said and done . . . in terms of producing radical change in legal education, [it] was almost completely unsuccessful."[113]

B. The Last Forty Years: Education Reform & Critical-Contextual Education

The past forty years have witnessed two distinct spikes in calls for critical-contextual education: in the late 1980s and again after the 2008 recession. Comparing and analyzing these two moments of reform advocacy–and the language, ideas, and arguments used by each–gives us insight into the new reform movement coalescing around contemporary issues.

1. The Culture Wars: Late 80s, Early 90s

The late 1980s was a period of discontent in the legal academy. By 1990, the president-elect of the ABA noted, "I can't find many people who are that happy with legal education."[114] Advocates throughout the decade suggested law school curricula were insufficient to ready graduates for practice.[115] The Council of the Section of Legal Education and Admissions

---

[110] *Id.* at 24.

[111] *Id.* at 24.

[112] *Id.* at 30.

[113] ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 265 (G. Edward White ed., 1983) (discussing failures of one article's impact on curricular reform in the 1940s).

[114] *See* Morgan, *supra* note 44, at 1.

[115] Robert S. Summers, *Fuller on Legal Education*, 34 J. LEGAL EDUC. 8, 15 (1984).

to the Bar established a task force to assess the state of legal education in the United States.[116] In 1992, capping off years of discontent, that group published the divisive MacCrate Report.[117] The report emphasized that law schools should "be encouraged to develop or expand" their lawyering skills curricula and should stress "that examination of the 'fundamental values of the profession' is as important in preparing for professional practice as acquisition of substantive knowledge."[118]

Legal skills and professional ethics classes proliferated. "Practical," "skills-based" courses would go on to define the legal reform literature of the late nineties and early aughts.[119] While those calls were already prominent in the 1980s, another strong contingent of legal scholars called for a different type of curriculum reform: the addition of critical-contextual content.[120] The critical-contextual reform calls of this period are influenced by the rise of theory in the American academy and the incorporation of developing theoretical frameworks related to intersectionality, race, and feminism.[121]

a. The Rise of Theory

Post-war, changes were afoot in the American academy. After World War II, German and French critics became increasingly interested by the history of ideas; these scholars developed methods of social critique that slowly took hold in the American academy.[122] Through the 1970s,

---

[116] Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551, 570-72 (2018).

[117] *See generally* AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT–AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 238 (1992) (citing the 1974–1975 and 1990–1991 surveys).

[118] *Id.* at 332.

[119] *See, e.g.*, Gerald P. López, *Transform–Don't Just Tinker With–Legal Education*, 24 CLINICAL L. REV. 471, 513 (2017) (noting that during the past ten years, legal education scholarship violates some traditional principles and linking that to law schools' "[s]evere pressures–both to produce law graduates as practice-ready as three years permit and to improve the experience of law students during their formal legal education . . . "); Martin H. Pritikin, *The Experiential Sabbatical*, 64 J. LEGAL EDUC. 33, 33 (2014) ("Recent years have seen loud and frequent calls for reform in education. The Carnegie Report and *Best Practices* exhorted law professors to infuse their teaching with practical skills and professionalism.").

[120] *See e.g.*, *infra* note 213.

[121] *See generally* Johnson Jr., *infra* note 213, at 1236-37 (noting that change in the legal academy is influenced by professors being "academicians" creating new theories in "law and economics, law and philosophy, critical legal studies, critical feminist theory, and "critical race theory," and also noting that:

> Feminists, scholars of color, proponents of critical legal studies, and others have attacked the traditional ideas of law and lawyering as elitist and reflective of white, male hegemony. In this way the growth of pluralism in all of academia has found its way into law schools and embedded itself in law school curricula.

Id.

[122] *See* Mark Greif, *Life After Theory*, AM. PROSPECT (Jul. 16, 2004), https://prospect.org/features/life-theory.

humanities graduate programs had begun to train their students in structuralism, linguistics, semiotics, and other theoretical and philosophical modes imported from post-war Europe.[123] Among these methods taken up in the United States, two that were particularly influential in the legal academy were deconstruction and discourse analysis, which I will briefly define.[124]

Deconstruction, coined by French theorist Jacques Derrida, is a theory that considers the way meaning is constructed from text.[125] Deconstruction is a method[126] that seeks to mine and reveal the inherent contradictions and

---

> What was theory, anyway? It was the best and worst, but certainly the most important, thing to happen to American intellectual life following the 1960s. Theory started as the transfer of French philosophy of the late '60s to the United States. It continued the cosmopolitan trend of our postwar intellectuals, who ever since 1945 had looked to a European tradition for inspiration. Theory's origin is usually dated to a conference at Johns Hopkins in 1966, during which a range of French philosophers exposed their disagreements about the then-current 'structuralism' in front of an American audience. Because the United States had provided a richer home for Freudianism, existentialism, and German émigré thought than could be found in those movements' countries of origin, it was natural that America should make room for a new philosophy of 'poststructuralism.'

Id.

[123] Michael Peters, Colin Lankshear & Mark Olssen, *Introduction: Critical Theory and the Human Condition*, 168 FOUNDERS AND PRAXIS 1, 1 (2003) (discussing that, by 2003, humanities and social science students frequently believed that theories of Derrida and Foucault are relevant but noting value in "traditional" theories, including "structuralism, semiotics, and poststructuralism"); ROBERT LAYTON, *Structuralism and Semiotics*, *in* HANDBOOK OF MATERIAL CULTURE 29 (Christopher Tilley, Webb Keane, Susanne Küchler, Michael Rowlands & Patricia Spyer eds., 2006) (noting structuralism became the dominant theory in the social sciences in the 1960s and 1970s); Marcel Danesi, *The Institution of Semiotics in North America*, 3 SIGNATA 187 (2012) (noting semiotics was an extremely popular major in the humanities at schools like Brown University by the 1980s).

[124] *Critical Legal Studies*, ENCYCLOPEDIA.COM, https://www.encyclopedia.com/law/encyclopedias-almanacs-transcripts-and-maps/critical-legal-studies#:~:text=Moreover%2C%20CLS%20scholars%20argue%20that,are%20open%20to%20multiple%20interpretations (last visited Nov. 15, 2023).

> Moreover, CLS scholars argue that the esoteric and convoluted nature of legal reasoning actually screens the law's indeterminacy. They have used the ideas of deconstruction to explore the ways in which legal texts are open to multiple interpretations . . . . CLS has been largely a U.S. movement, though it has borrowed from European philosophers, including . . . poststructuralist French thinkers such as Michel Foucault and Jacques Derrida, representing, respectively, the fields of history and literary theory.

Id.

[125] Catherine Zuckert, *The Politics of Derridean Deconstruction*, 23 POLITY 335, 336 (1991); *see also* Pierre Schlag, *A Brief Survey of Deconstruction*, 27 CARDOZO L. REV. 741, 744 n.5 (2005).

[126] Derrida says deconstruction is not a method, but that is how it got taken up in the American academy. *See* Letter from Jacques Derrida to Toshihiko Izutsu (July 10, 1983) (on file with The University of California, Irvine).

> I would say the same about method. Deconstruction is not a method and cannot be transformed into one. . . It is true that in certain circles [university or cultural, especially in the United States] the technical and methodological 'metaphor' that seems necessarily attached to the very word deconstruction has been able to seduce or lead astray.

Id.

incoherencies of a specific text.[127] Specifically, deconstruction assumes that "meaning" cannot be fixed. Instead, for Derrida, meaning evolves as competing concepts negotiate for dominance.[128] Therefore, a deconstructive reading might interrogate competing concepts and interpretations within a text that combine to produce meaning. This is a simplification at which orthodox deconstructionists might balk, but for the purposes of considering how deconstruction got taken up in the legal academy, it is sufficient. Legal thinkers in the 1980s noted that Derridean deconstruction raised "important philosophical questions for legal thinkers."[129] Cultural theorists writing about law borrowed deconstruction's goals and techniques to broaden their tools of analysis.[130]

Discourse analysis refers to the method through which scholars seek to understand how concepts–through language–work over a period of time.[131] Discourse analysis focuses on the use of language within a social context.[132] This heuristic, as it has developed through scholarship, owes much of its influence to Michel Foucault and his conceptions of language and power.[133] Discourse analysis is a close cousin of legal historical analysis in that it carefully considers the way that words are used in particular time periods. Legal historicist analysis often seeks to discover some sort of objective truth about how a word was used in a particular historical context in order to apply that meaning to the present;[134] proponents of discourse analysis, however, might consider more broadly the multivalent or warring uses of a word

---

[127] *See* Schlag, *supra* note 125, at 744.

[128] *See id.*; Catherine Turner, *Jacques Derrida: Deconstruction*, CRITICAL LEGAL THINKING (May 27, 2016), https://criticallegalthinking.com/2016/05/27/jacques-derrida-deconstruction ("Rather than pursuing the truth of a natural origin, what deconstruction requires is the interrogation of these competing interpretations that combine to produce meaning.").

[129] J. M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743, 754 (1987) (performing a deconstructive reading of "actual injury" as it relates to standing).

[130] *See, e.g.*, Gayatri Chakravorty Spivak, *Deconstruction and Cultural Studies: Arguments for a Deconstructive Cultural Studies*, *in* DECONSTRUCTIONS: A USER'S GUIDE 14 (Nicholas Royle ed., 2000).

[131] *See* JAMES PAUL GEE, AN INTRODUCTION TO DISCOURSE ANALYSIS: THEORY AND METHOD 53-54 (1st ed. 1999).

[132] Bart Miles, *Discourse Analysis*, SAGE RSCH. METHODS, https://methods.sagepub.com/reference/encyc-of-research-design/n115.xml (last visited Nov. 16, 2023) ("Therefore, discourse analysis focuses on the use of language within a social context.").

[133] Melissa NP Johnson, Ethan McLean, *Discourse Analysis*, INT'L ENCYCLOPEDIA OF HUM. GEOGRAPHY (2020), https://www.sciencedirect.com/science/article/pii/B9780081022955108145 ("Many contemporary varieties of discourse analysis have, explicitly or implicitly, been influenced by Michel Foucault's theories related to power, knowledge, and discourse. In part, Foucault's work has helped stimulate greater interest in researching the role language plays in the production and maintenance of specific knowledges, and inequitable power relations.").

[134] Robert W. Gordon, *Historicism in Legal Scholarship*. 90 YALE L.J. 1017, 1017 n.1 (1981) (defining historicism in legal scholarship, as "the perspective that the meanings of words and actions are to some degree dependent on the particular social and historical conditions in which they occur, and to interpretations and criticisms that are suggested by that perspective.").

through time–and how a particular discourse might manage its own incoherencies and internal contradictions.[135] In discourse analysis, scholars focus on the historical context of an idea through time.[136]

For example, a discourse analysis might be a study that considers the history of the term "liberty" before and after 9/11. The study might think through the way that different groups at the time consider, emphasize or de-emphasize, weaponize, and shift the linguistic context in which the word is used. A discourse analysis might look at the historical structures that constitute our understanding of the word "liberty" and the way the discourse within which it is used manages the inconsistencies and of the traditional definition with its historical post-9/11 usage.

As the century went on, scholars bridged innovative theoretical modes with cultural critique.[137] This pairing of sometimes-abstruse European theory with contemporary Western social issues had a large influence on later legal thinkers analyzing law and culture. For example, Gayatri Spivak's famed essay, "Can the Subaltern Speak?," paired deconstructive theory techniques with postcolonialism to question Western capitalism and the international labor division.[138] Judith Butler's scholarship considered gender by bridging methods developed from discourse analysis and deconstruction.[139] Kimberlé Crenshaw developed feminist cultural studies ideas, coining "intersectionality" to describe how the multiple facets of an individual's cultural identity influence an individual.[140] She argued that these facets–whether race, class, sexuality, religion, disability, or other factors–impact that individual's status in society.[141] Intersectionality–and the concept of identity-based critique–would prove a significant and lasting idea as the decade wore on.

---

[135] Ulrike Ehgartner, *Methods for Change, Sociological Discourse Analysis*, ASPECT & U. OF MANCHESTER 3, 5 (2021), http://aspect.ac.uk/wp-content/uploads/2021/03/Sociological-Discourse-Analysis.pdf (describing "identify internal contradictions" as one of the steps of a discourse analysis in Sociology).

[136] *See* GEE, *supra* note 131.

[137] *See, e.g.*, Gayatri Chakravorti Spivak, *Can the Subaltern Speak*, *in* MARXISM AND THE INTERPRETATION OF CULTURE 287-88 (Gary Nelson & Lawrence Grossberg eds., 1988) (bridging deconstructive theory and postcolonialism); *see* Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory,* 40 THEATRE J. 519, 520, 529 (1988) (bridging discourse analysis and deconstruction); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 (1991) (developing feminist cultural studies and other disciplines to theorize intersectionality).

[138] *See* Spivak, *supra* note 137.

[139] *See* Butler, *supra* note 137, at 529.

[140] *See* Crenshaw, *supra* note 137, at 1242.

[141] *See id.*; *see also* BELL HOOKS, AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM 119 (1st ed. 1981) (developing argumentation about intersectionality as it relates to race and sex).

To legal scholars, this work offered a vocabulary to discuss the law and also a tool that spoke to critiques which reform advocates had been making for years. These new modes of theorization offered answers to education reformers who cited the lack of context, history, theory–and an understanding of the law itself as a historically-constituted idea–as deficits in legal education.

As the decade went on, scholars in legal studies, cultural studies, Black studies, legal feminism, queer theory, Critical Indigenous Studies, gender studies, Marxist theorists, and other fields began to expand theoretical frameworks that would have increased relevance in the law.[142]

b. Background: Theoretical Shifts in the Legal Academy

In 1990, a journalist wrote that, "[t]he last decade has been an extremely unusual period in the history of the American Supreme Court."[143] The journalist ascribed that unusualness to the fact that Ronald Reagan's conservative political agenda "had a marked impact on the Supreme Court itself . . ." and that the Supreme Court's opinions related to "individual freedoms" had expanded.[144] In reality, the Supreme Court had never been an impartial, apolitical institution; however, public perception that it was increasingly more partisan led to shifts in legal scholarship and in the legal education reform movement. Progressive scholars called for critical-contextual education to educate students about the social issues of the day.[145] Conservatives responded.[146] Politics tinted the tenor of reform movements in this era.[147]

Several key theoretical movements formed within the legal academy provided a background for that movement; the Critical Legal Studies ("CLS") movement was one key group calling for law school reforms.[148] The movement formed as an expressly liberal scholarly coalition in the 1970s.[149] Professor Mark Tushnet, describing central beliefs of the CLS movement, noted that CLS scholars believed the law was indeterminate and could be

---

142 *See, e.g.*, Robin West, *Feminism, Critical Social Theory and Law*, 1989 U. CHI. LEGAL FORUM 59, 59 (1989) ("Critical social theory has revolutionized the way that critical legal scholars and, to a lesser extent, mainstream legal scholars think of the most fundamental categories of legal theory.").

143 Gillian Peele, *Supreme Court in the 1980s*, CONTEMP. REC., 1991, at 26-29.

144 *Id.*

145 *See, e.g.*, Kingson *supra* note 2 (describing Harvard Law School debates about liberal CLS scholars v. more conservative faculty).

146 *Id.*

147 *Id.*

148 Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1518 (1991) (Though the CLS movement originated in the 1970s, CLS scholars have a strong voice in the field through the 1990s when the movement largely petered out.).

149 *Id.*

understood by analyzing the "context in which legal decisions are made."[150] He explained that CLS scholars fundamentally believed "law is politics."[151] CLS incorporated many of the high theory ideas percolating in other parts of the American academy. And indeed, the CLS scholars noted that they hoped to analyze how meaning was created in the law through a blend of methods from social science and the humanities.[152] Scholars in the movement agreed that law and culture co-constitute each other.[153] CLS privileged diversity, contextualization, and critique.[154]

Because CLS reflected broad theoretical interests, the movement was notoriously not cohesive. CLS scholars noted at the movement's peak the lack of common themes within its scholarship.[155] Some scholars attempted to articulate a CLS critical pedagogy that involved emphasizing the above themes to students.[156] Meanwhile, some scholars proposed that CLS was merely a leftist "political location" in which scholars could situate themselves.[157] Regardless, the CLS movement scholarship influenced the tenor of legal education reform throughout the decade.

In the 1980s, another fast-growing and controversial movement developed within legal scholarship: Critical Race Theory ("CRT").[158] Scholars debate whether CRT arose out of CLS or whether it emerged independently. Foundational CRT scholars, like Kimberlé Crenshaw, acknowledge a multitude of influences.[159] The CRT movement formed, in part, due to the perceived failure of CLS to sufficiently focus on issues of race.[160] Still, CRT scholars borrowed "style and substance" of CLS, drawing methods from "poststructuralist" thought–like discourse analysis and

---

150 *Id.*

151 *Id.*

152 Jennifer L. Schulz, *What Is Cultural Legal Studies?*, 44 MAN. L.J. 143, 144 (2021).

153 *Id.*

154 *Id.*

155 *See* James Boyle, *A Symposium of Critical Legal Studies: Introduction*, 34 AM. U. L. REV. 929, 929 (1985) (describing the incredible diversity of scholarly goals in CLS and proposing that the only common theme is that they tend to challenge the status quo and point of the false inevitability of existing arrangements, the way that "what is" gets converted into "what ought to be.").

156 *See, e.g.*, Toni Pickard*, Experience as Teacher: Discovering the Politics of Law Teaching*, 33 U. TORONTO L.J. 279 (1983); Duncan Kennedy, *First Year Law Teaching as Political Action*, 1 L. & SOC. PROBS. 47 (1980).

157 Tushnet, *supra* note 148, at 1518.

158 Douglas E. Litowitz, *Some Critical Thoughts on Critical Race Theory*, 72 NOTRE DAME L. REV. 503 (1997).

159 *See* Benjamin Wallace-Wells, *How a Conservative Activist Invented the Conflict Over Critical Race Theory*, NEW YORKER (June 18, 2021), https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory (noting as influences not only Critical Theory but also a variety of thinkers, including Martin Luther King).

160 Litowitz, *supra* note 158.

deconstruction.[161] CRT also took inspiration from Marxism, cultural studies, and the Black Power movement.[162] As with CLS, scholars noted that CRT was not easily defined, but that scholarship within the movement addressed "however directly or obliquely, the various ways in which assumptions about race affect the players within the legal system . . . and have a determining effect on substantive legal doctrines."[163]

On the other side of the ideological spectrum, conservative thinkers of the period also developed legal theories that would come to influence legal education reform. Law and Economics ("L&E") was often positioned as the "great rivalry" of the liberal CLS movement.[164] L&E scholars theorized that law should be thought of in economic terms; again, this theory staked the claim that law was a science–a mathematical operation–and that it should take efficiency as its highest goal.[165] Contemporary critics charged that "the economic analysis of law is only the most recent claimant to draw upon the prestige of the natural sciences in an effort to create a system of legal thought that is objective, neutral, and apolitical."[166] Although L&E had been around for several decades, in the 1980s, conservative thinkers, through the L&E movement, pushed for a "conservatization" of the legal academy.[167]

Though our students might be forgiven for reading contemporary case law and believing originalism is an ancient jurisprudential method,[168] it was not popularized until the 1980s. In this era, conservative thinkers adopted originalism as a dominant mode of constitutional interpretation.[169] Originalism claims that meaning is fixed at the time of the textual adoption

---

[161] *Id.*

[162] *Id.*

[163] *Id.* at 503-04 (citing foundational CRT thinkers as Derrick Bell, Patricia Williams, Regina Austin, Richard Delgado, Mari Matsuda, Charles Lawrence, and Kimberlé Crenshaw).

[164] *See* Paul Jeffrey Baumgardner, *Retrenchment Rivals: Critical Legal Studies, Law-and-Economics, and the Legal Academy of the Long 1980s* (2020) (Ph.D. dissertation, Princeton University) (ProQuest) ("I frame my dissertation investigations around the retrenchment rivalry that developed between the law-and-economics and critical legal studies (CLS) movements, as each movement fought to influence students, professors, judges, and practicing attorneys during the decade, and each side angled to retrench key features of the American legal system.").

[165] George J. Stigler, *Law or Economics*, 35 J.L. & ECON. 455, 458-59 (1992) (discussing the centrality of efficiency in L&E and giving an overview of key L&E methods and concepts).

[166] Horwitz, *supra* note 79, at 905.

[167] *See* Baumgardner, *supra* note 164, at 19.

[168] The term "originalism," is generally attributed to Stanford Professor Paul Brest in a critique of the method in a 1980 law review article. *See* Paul Brest, *The Misconceived Quest for the Original Understanding*, 60 B.U. L. REV. 204 (1980) ("By 'originalism' I mean the familiar approach to constitutional adjudication that accords binding authority to the text of the Constitution or the intention of its adopters.").

[169] Logan E. Sawyer III, *Principle and Politics in the New History of Originalism*, 57 AM. J. LEGAL HIST. 198, 199 (2017); *see also* James E. Ryan, *Laying Claim to the Constitution: The Promise of New Textualism*, 97 VA. L. REV. 1523 (2011).

and that the historical meaning of the constitutional text has authoritative legal significance.[170] Scholars describe originalism as a conservative reaction to the decisions of the notably liberal Warren Court.[171] The Reagan administration went on to embrace originalism "as a check on judicial activism."[172] Unlike many CLS theories of interpretation, because originalism was a jurisprudential method taken up by the Supreme Court, it was entrenched in doctrinal courses.[173] Indeed, in my own Constitutional Law classes, the political background of various jurisprudential interpretive methods was never mentioned.

A complete overview of the intricacies, sub-branches, and offshoots of the theoretical post-war movements would take volumes. The outline above does not account for other disciplines, like social science and psychology, which also sought to theorize law through their respective lenses during this period.[174] Together, all of these movements drove reform discourse of the period.

c. Legal Education Reform Discourse

In this era, the legal academy experienced a "recommitment to . . . a more mechanistic view of doctrine" and the idea that "doctrine was all."[175] It was in this context that the spike in calls for education reform proliferated.

Advocates argued that law students should be introduced to the conceptual underpinnings of law and the legal system.[176] Scholars suggested that first-year courses should contain critical-contextual components like theory and history.[177] They noted that including theoretical perspectives

---

[170] Keith E. Whittington, *Originalism: A Critical Introduction*, 82 FORDHAM L. REV. 375, 378 (2013).

[171] *Id.* at 375.

[172] *Id.*

[173] *See, e.g.*, David F. Forte, *Originalism in the Classroom*, NAT'L ASS'N OF SCHOLARS (2011), https://www.nas.org/academic-questions/24/2/originalism_in_the_classroom (discussing books assigned in Constitutional Law classes at the top fifty law schools and noting, "[w]e can see, therefore, that the notion of an originalist perspective on the meaning of the Constitution and its allied interest in historical materials has made headway in a large number of assigned texts.").

[174] *See, e.g.*, David M. Trubek, *Back to the Future: The Short, Happy Life of the Law and Society Movement*, 18 FLA. ST. U. L. REV. 1 (1990) (discussing the 25th anniversary of the law and society movement, which sought to view law as an object that could be studied through the lenses of the social sciences).

[175] STEVENS, *supra* note 113, at 274.

[176] *See* Lewis D. Solomon, *Perspectives on Curriculum Reform in Law Schools: A Critical Assessment*, 24 U. TOL. L. REV. 1, 38 (1992).

[177] *See id.* at 38-39; Karl E. Klare, *The Law-School Curriculum in the 1980s: What's Left?*, 32 J. LEGAL EDUC. 336, 343 (1982) (advocating for teaching law students "cultural and social analysis, that is, in political economy, anthropology, philosophy, and so on."); Robert F. Blomquist, *Some Thoughts on Law School Curriculum Reform: Scaling the Mountainside*, 29 VAL. U. L. REV. 641, 663 (1995) (advocating for integrating theory with doctrine throughout the law school curriculum); Bisom-Rapp, *supra* note 12, at 369 (advocating for teaching critical and feminist theory in law school).

within legal coursework would provide students insight into the law and its "unrealized potential" and into the limits of its "efficacy . . . as a social regulatory mechanism."[178] Mirroring ideas from CLS, scholars suggested that a contextual understanding of law is important for students to question their "own assumptions about how the world works and how the law operates upon it are racist or sexist–and for that matter ageist, classist, ethnocentric, heterocentric, or unmindful of the disabled."[179]

Scholars began to advocate for including theory in the law school curriculum.[180] Professor Kathryn Stanchi wrote that, "students must be exposed to some critical theory at the same time that they are learning conventional legal analysis and language. At a minimum, this would teach students to recognize bias in legal language and would validate students who feel uncomfortable with legal language."[181] Susan Bisom-Rapp, a law student at Columbia at the time, noted that scholarship had begun to critique first-year casebooks based on these "neglected [] perspectives" of race and feminism within the law.[182] She noted: "Such scholarship is exciting because it challenges the notion, which hitherto has dominated legal discourse, of a neutral law school canon. It reveals, for example, how tort law's conception of injury or harm–not so obviously a feminist issue, as, say, sexual harassment–has feminist implications."[183] Students and faculty alike seemed hopeful that adding critical-contextual content to the curriculum would reveal important context about the law and help students feel empowered in the law school classroom. Pedagogy scholars also suggested that teaching critical legal theory could make the legal profession less alienating to students in marginalized groups.[184]

Moreover, the Socratic method itself began to come under fire.[185] A few critics suggested abandoning the Socratic method completely; however, multiple scholars suggested the need to "revamp" the system in order to provide smaller courses, introduce alternative teaching styles, and add in

---

178 Solomon, *supra* note 176, at 39.

179 Bisom-Rapp, *supra* note 12, at 369.

180 *Id.* at 366-67.

181 Kathryn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 55 (1998).

182 Bisom-Rapp, *supra* note 12, at 367.

183 *Id.*

184 Stanchi, *supra* note 181, at 10-11.

185 *See* Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching,* 23 N.Y.U. REV. L. & SOC. CHANGE 249, 275 (1997) (suggesting other pedagogical methods are needed alongside the Socratic Method and explaining alternatives); *see also* Cynthia G. Hawkins-León, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues,* 1998 BYU EDUC. & L.J. 1, 18 (1998) (suggesting the Socratic method may not be the best learning style for all students).

alternative pedagogical methods like role-playing and narrative.[186] Some scholars suggested moving more towards a simulated case model in which students are given a real-life scenario that companies, or law firms, have faced and then ask students to be the decisionmakers.[187] This is similar to the model that some business schools use.[188]

Shifts began to materialize in the classroom. The 1980s and early 1990s witnessed several notable efforts to import critical-contextual education into law school curricula.[189] Optimistic scholars noting the shifts wrote that, "with the ever growing number of theoretically-inclined academics at the elite national law schools, it does not seem likely that the next generation of law students will be short-changed on the conceptual aspects of law, particularly in their second and third years of study."[190] Two notable examples were seen at Columbia Law School and Georgetown Law School.

As of 1992, Columbia Law School required all first-year students to take a three-credit Perspectives on Contemporary Legal Thought course.[191] The course aimed to introduce students to "the major historical and philosophical influences on modern legal ideas and institutions–legal realism, critical legal studies, law and justice, law and economics, critical race theory, and feminist legal theory."[192]

Curricula also shifted at Georgetown Law School during that decade. A scholar describing the curriculum noted, "[a]lthough students continue to learn traditional first-year material, the new curriculum rearranges the information to emphasize the connection between and the common theoretical underpinnings of various legal areas and to better integrate theory into the classroom."[193] This included a required first-year seminar in which students were introduced to "the evolution of legal theory from formalism to realism and ultimately post-realism."[194] In the spring semester, the course focused on a specific legal problem "from a variety of theoretical

---

186 Sarah E. Thiemann, *Beyond Guinier: A Critique of Legal Pedagogy,* 24 N.Y.U. REV. L. & SOC. CHANGE 17, 26 (1998).

187 *Id.* at 35.

188 *See, e.g.*, *What is the Case Study Method?*, HARV. BUS. SCH. (last visited Nov. 15, 2023), https://www.exed.hbs.edu/hbs-experience/learning-experience/case-study-method (describing the case method as a discussion of real-life situations that business executives have faced during which students put themselves in the shoes of the key decision maker, analyze the situation, and decide what they would do to address the challenges).

189 Solomon, *supra* note 176, at 8.

190 *Id.* at 41.

191 *See id.* at 7-8; *see also* David A. Hyman, Jing Liu & Joshua C. Teitelbaum, *Does the 1L Curriculum Make a Difference?*, GEO. L. CTR. 1, 5 (2023) (discussing ultimately "failed efforts by Columbia and Yale to establish curricula that integrated law and social science.").

192 Solomon, *supra* note 176, at 8.

193 *Id.* at 9, 11.

194 *Id.* at 11.

perspectives, including law and economics, critical legal studies, critical race theory, feminist jurisprudence and law and literature."[195] This program introduced students to critical-contextual content and ideas across the political spectrum within the first year.

While proponents of CLS and similar movements made modest moves towards including theory in the curriculum, conservatives were much more successful at importing the L&E movement into schools over the next three decades.[196] Defending modern legal education in 1991, Professor Thomas Morgan wrote, "economic theory has had a profound influence on the nation's law schools. Economic analysis today may be found in casebooks, student papers, and professors' scholarship. Indeed, through the work of lawyers, judges, and legislators, economics now pervades much of legal doctrine."[197]

d. Critique

i. Liberal Critique & Political Suspicions

Shifts towards critical-contextual education produced a set of critiques and a wall of massive pushback. Its opponents viewed CLS as a challenge to the rule of law itself.[198] Ronald Dworkin, a leading legal philosopher in this arena, charged that CLS-based arguments "have so far been spectacular and even embarrassing failures."[199] The Dean of Duke Law School at the time questioned whether adherents of CLS were fit to teach in law schools.[200]

The CLS positioned itself as a threat to the liberalism that the United States legal academy had privileged for decades.[201] Liberalism–which emphasizes the right of the individual, the rule of law, and the idea of free markets–was at odds with CLS in that the movement emphasized the role of the collective and institutions, questioned the neutrality of the law, and, in

---

195 *Id.* at 11-12.

196 *See* Morgan, *supra* note 44, at 1.

197 *Id.*

198 *See* ANDREW ALTMAN, CRITICAL LEGAL STUDIES: A LIBERAL CRITIQUE 52 (1990).

199 RONALD DWORKIN, LAW'S EMPIRE 274 (1988).

200 Kingson, *supra* note 2 (quoting Stanford Professor Gordon Sanford:

> Carrington, the dean of Duke University Law School, questioned whether those who do not believe that law exists in a conventional sense can be committed to teaching it. 'I think it would be a difficult role to play to be a professor of divinity while professing atheism,' he said in a recent interview).

Id.

201 David Andrew Price, *Taking Rights Cynically: A Review of Critical Legal Studies*, 48 CAMBRIDGE L.J. 271, 271-72 (1989) (noting CLS critiques of liberalism and stating, "[t]he Critical Legal Studies movement has been described by one its leading proponents as having 'undermined the central ideas modern legal thought and put another conception of law in the place.'").

some cases, questioned capitalism.[202] Deep animosity sprung up between self-proclaimed liberals and CLS scholars who believed the liberal world vision produced unaccounted-for contradictions between individualism and altruism.[203]

CLS scholars often embraced their own "unpopular politics" and used equally unpopular Marxist rhetoric to call for pedagogy reform. Duncan Kennedy, a founding CLS scholar, wrote:

> I propose that we develop our first year courses into systematic embodiments of our views about . . . social life. In particular, we should teach our students that bourgeois or liberal legal thought is a form of mystification. We should teach our students to understand the contradictions of that thought, and we should make utopian proposals to them about how to overcome those contradictions.[204]

Given CLS rhetoric, it is not entirely surprising that some opponents viewed it as a threat. Even some scholars who believed CLS might have the potential to help students understand broader contexts were not wholly convinced. One professor noted, "[f]ar from all professors and students share the politics of the 'Crits'"–the theorists involved in CLS and other "critical" movements.[205] The professor further noted that, "[CLS] also is far from alone as an active jurisprudential style. Concepts such as 'original intent' . . . equally often are debated in the nation's law schools."[206]

While CLS scholars often embraced the politically progressive nature of the movement, advocates of the case method maintained that Langdell's system was politically neutral and scientific.[207]

Anything inserted into that curriculum–and certainly the nakedly-ideological content advocated by CLS scholars–was coded as politicized.[208]

---

[202] *Id.* at 271-72 (noting "Critical Legal Studies writers deprecate 'liberalism,' by which they usually mean 'legal liberalism,'" and also noting that "CLS writers also inveigh against liberalism in [its] everyday sense.").

[203] *See* J. Paul Oetken, *Form and Substance in Critical Legal Studies*, 100 YALE L.J. 2209 (1991); *see also* William A. Edmundson, *Transparency and Indeterminacy in the Liberal Critique of Critical Legal Studies*, 24 SETON HALL L. REV. 557 (1993) (discussing tensions between the CLS movement and Liberal philosophy).

[204] Duncan Kennedy, Professor of Law, Harv. Univ. Speech at the Second National Conference on Critical Legal Studies, (Nov. 10, 1978).

[205] Morgan, *supra* note 44, at 8.

[206] *Id.*

[207] *See, e.g.*, Lewis F. Powell Jr., *In Defense of the Langdell Tradition*, 1975 BYU L. REV. 587, 588 (1975) (defending Langdell and characterizing the system as inculcating the "capacity for analytical thought, including the ability to reason independently of the pressures and fashions of the moment, is of timeless value.").

[208] *See, e.g.*, Kingson, *supra* note 2 (describing critiques of CLS, one professor noted her colleagues' opposition to the "crits" teaching: "'They say that crits will be disruptive, and use the podium for proselytizing rather than proper teaching.'").

Indeed, when Columbia and Georgetown implemented theory-based reforms, scholars assessing the programs questioned whether these programs had an ideological bias and asked whether these programs were biased "in opposition to market-oriented solutions to legal and policy problems."[209] Assessing the programs, one scholar wrote: "Although it is too early to assess the efforts of Columbia and Georgetown, a number of questions exist."[210]

The significant pushback to critical-contextual education reform in this period serves as a reminder of the powerful tendency of institutions to change slowly over time–or not at all. Critics of dramatic re-structuring of the legal education model advocated for reliance on the Socratic method and noted that, "creativity and competitive instincts of American law schools" would naturally improve existing programs.[211] Scholars using language traditionally connected to liberal ideas of the free market to describe law school itself give a glimmer of just how deeply ingrained these ideas were within the institution. Discussing CLS and its limitations, one scholar wrote, "[t]he legal theory of the Anglo-American tradition has exhibited a remarkable degree of continuity. The substance of contemporary debates and controversies exhibits a lineage which can be traced back to the variant models of bourgeois political relations developed by Hobbes and Locke."[212] The strength of these ideas would build and integrate with rhetoric of cultural-contextual reform in the next decade. In this era, lineage of theory–and also of pedagogy–was ultimately too ingrained to allow the widespread changes for which education reformers advocated.

ii. Practicality

More damning still, critics of the era framed theoretical considerations as impractical and unnecessary for students and professors.[213] Noting the heavy burden on law professors to teach how to "find applicable legal rules and how to make the kind of arguments lawyers use in court," one author noted that some faculty believed that:

---

[209] Solomon, *supra note* 176, at 12.

[210] *Id.* at 12.

[211] *See* Morgan, *supra* note 44, at 13; *see also* John C. Weistart, *The Law School Curriculum: The Process of Reform*, 1987 DUKE L.J. 317, 320 (1987) (indicating that the current model of legal education has a built-in flexibility to respond to the changing needs of lawyer training).

[212] Alan Hunt, *The Theory of Critical Legal Studies*, 6 OXFORD J. LEGAL STUD. 1, 4 (1986). Georgetown now offers a traditional "A" track and a "B" track. The smaller B track–one section of students compared to four–offers an "integrated" approach to law during which students take courses, including "legal process and society" and "legal justice." *See Curriculum B (Section 3)*, *infra* note 228.

[213] *See* Frug, *supra* 78, at 43 (noting that some faculty believe theoretical questions are "extras" due to the heavy pressure to teach the kind of arguments lawyers use in court); Alex M. Johnson Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance between Law School and Law Practic*e, 64 S. CAL. L. REV. 1231, 1239 (1991) (suggesting that law schools have come to educate their students on philosophy and other academic subjects when they should educate them on "the study of the legal profession . . . .").

> Some theoretical questions can properly be addressed in basic courses, and others can be addressed later in law school in optional courses such as jurisprudence or legal history. But these matters are 'extras', not the core of the curriculum. It is obvious, they might say, that the primary focus of teaching law has to be law.[214]

However, the curriculum shifts at schools like Columbia and Georgetown prompted one professor to observe that, "[t]he focus of [] elite national law schools has gone from thinking like a 20th-century law professor (doctrinal analysis of appellate cases) to thinking like a 21st-century legal academic (interdisciplinary analysis of cases, statutes, administrative materials, and, more broadly, social problems)."[215] This binarization divides thinkers who focus on legal analysis as opposed to thinkers who focus on critical-context as if legal thinkers do not always engage with both. Critics charged: "First, at the most prestigious law schools, professors are no longer hired for their experience or knowledge as practitioners. Such a theoretical orientation has caused many to inveigh against law schools' lack of emphasis on the actual practice of law."[216] Even advocates of critical-contextual education mirror this oppositional logic, charging that law school curricula were "insufficiently theoretical and insufficiently practical."[217] In all of these accounts, critical-contextual subjects are separate and, for the critics, frivolous and unnecessary.

iii. Individual Faculty Interest

Even though some shifts in curriculum introduced critical-contextual content, scholars describe that individual professors seemed hesitant to change what they had been teaching for years; one scholar described a fragmented faculty as the most "significant obstacle" to curricular change.[218] He noted "faculty conservatism" stemmed from multiple elements, including the difficulty in attaining "a consensus on educational policy because the faculty is 'deeply divided on virtually all important matters.'"[219] Robert Stevens, writing about the history of law schools in the 1980s, echoed this obstacle when he noted that, modern "proposals for fragmentation of the curriculum" were being met with "little enthusiasm" by the professoriate.[220] He explained: "[T]eaching by methods other than the casebook was probably not congenial to most law professors whose chief and sometimes only skill

---

214 *Id.*

215 Solomon, *supra* note 176, at 1.

216 Johnson Jr., *supra* note 213, at 1238.

217 Summers, *supra* note 115, at 15.

218 Solomon, *supra* note 176, at 37.

219 *Id.* at 37.

220 STEVENS, *supra* note 113, at 277.

was the analytical one associated with the parsing of cases. There was understandable skepticism about venturing into other fields . . . ."[221]

Some opponents also argued that contextual information is part of the "informal curriculum" of law school–that which did not need to be formalized because, while not in the curriculum itself, it is taught "unconsciously" by the faculty and the institution.[222] The system, advocates argued, had built-in "flexibility."[223] Scholars also questioned whether students would be interested in any changes other than those that would allow them to practice sooner.[224]

e. The End of the Era

Education reformers hoping to implement widespread programmatic shifts in critical-contextual education ran into resistances both active and static: a long-entrenched status quo of legal theory and pedagogy in law schools, active suspicion about the leftist agenda of CLS and critical scholars, and, perhaps most deadly, a tendency to pit the substance of critical-contextual education against the substance of doctrine as if they could not exist mutually within a course.

Some advocates from the reform movement of this era seemed to imagine a telos–"an evolution of legal theory from formalism to realism and ultimately post-realism"–as one author summarized Georgetown Law School's course description from the 1980s.[225] But neither the legal theory or the pedagogical practices worked as a telos; instead, competing ideas from traditional liberalism, new ideas from conservatives, and stagnation and resistance in the academy itself ultimately stymied what might have been a revolution.[226] The radical changes conceptualized of by early CLS proponents failed to take form, and the spike of energy and enthusiasm that education reform scholars brought ultimately fizzled out.[227] The case method–as it had been adopted a century ago–remained intact. Georgetown Law students were no longer required to study theory in their first year.[228]

---

[221] *Id.*

[222] Bisom-Rapp, *supra* note 12, at 367.

[223] Weistart, *supra* note 211, at 334 (suggesting a "flexibility" of the contemporary curriculum and noting that "not all of the new ideas for curriculum reform will continue this flexibility and thus there are differing views on the value of forsaking the existing preference for a looser structure.").

[224] Andras Jakab, *Dilemmas of Legal Education: A Comparative Overview*, 57 J. LEGAL EDUC. 253, 264 (2007) ("Are students interested in changes other than those that take them into practice sooner?").

[225] Solomon, *supra* note 176, at 9, 11, 13.

[226] *See, e.g.*, John Henry Schlegel*, CLS Wasn't Killed by a Question*, 58 ALA. L. REV. 967, 967 (2007) (discussing the death and "fading away" of CLS).

[227] *Id.*

[228] *Curriculum B (Section 3)*, GEO. L., https://curriculum.law.georgetown.edu/jd/curriculum-b-section-3 (last visited Aug. 1, 2023).

Columbia still offered a Law and Contemporary Society elective, but it was no longer required.[229]

In 1975, just as CLS was beginning to gel as a movement, a scholar defending Langdell's system had applauded students' capacity to "reason independently of the pressures and fashions of the moment."[230] Throughout the next decade, education reform advocates challenged the logic that reason can exist independent of the context of the moment.[231] They presented alternative critical-contextual coursework; however, whether a product of active resistance or the less dramatic death of dissipating movements, major critical-contextual reform failed to manifest as imagined in the revolutionary visions of its advocates.[232] While proponents of education reform in this period had a profound impact on scholarship and cultural ideas that would build in the next century, as the millennium dawned, attention turned, for a time, to other more practical matters.[233]

2. Aughts

The aughts marked a shift in legal scholarship related to law school education reform. The fever pitch of scholars advocating for critical theories in the classroom receded.[234] There was an increasing sense of Langdell fatigue.[235] Instead, reform-minded scholarship turned to the "practical," including the structure of law school's three years and the importance of skills courses and clinics.[236] Fears of preparing competitive graduates in the era of globalization began to drive scholars to suggest that law students needed business training in addition to legal doctrine.[237]

---

[229] *See J.D. Program and Curriculum*, COLUM. L. SCH., https://www.law.columbia.edu/academics/jd-program-and-curriculum (last visited Mar. 16, 2023).

[230] Powell Jr., *supra* note 207.

[231] *See generally id.*

[232] *See, e.g.*, Schlegel*, supra* note 226.

[233] *See, e.g.*, Carrie Menkel-Meadow, *Crisis in Legal Education or the Other Things Law Students Should Be Learning and Doing*, 45 MCGEORGE L. REV. 133, 133 (2013) (noting in 2013 that, for the "last few years" there has been a "crisis in legal education.").

[234] *See, e.g.*, Schlegel, *supra* note 226.

[235] *See* Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1931 (2002) ("The problem with Langdell's approach to legal education was that it was static and unreal, ...").

[236] Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 235-36 (2001) (discussing alternate two-year structures of law school); Wizner, *supra* note 235, at 1931 (discussing skills-based law school offerings).

[237] *See* Moliterno, *supra* note 75, at 429-30; *see also* Heather Field, *A Tax Scholar's Take on Legal Education Reform*, 2012 JOTWELL J. 1 (2012) (reviewing Bradley T. Borden & Robert J. Rhee, *The Law School Firm*, 63 S.C. L. REV. 1 (2011)) (noting a legal education reformer's call for business development skills).

A 2007 report by the Carnegie Foundation raised alarms throughout the profession by concluding that law students were not practice-ready.[238] The Carnegie Report reignited and sparked a decade-long debate about legal education.[239] Amid these concerns, some professors observed, from "reformation" scholarship, "a recognition" that professors were "facing a different kind of student."[240] Critics charged that an undergraduate degree "no longer signals the attainment of basic problem-solving, critical-thinking, and communication foundations upon which those skills can be built."[241] For these issues, scholars blamed K-12 education–noting the failures of No Child Left Behind–as well as "misguided courses" of undergraduates.[242] According to a comparison of data in the National Education Reports between 1992 and 2003, the percentage of college graduates with proficient literacy declined from forty percent to thirty-one percent; document literacy proficiency declined from thirty-seven percent to twenty-five percent.[243] One scholar remarked on the "startling erosion of entering students' academic preparation and the increasing numbers of academically underprepared law students."[244]

It was in this already fraught environment when, in 2008, the legal job market plunged alongside the economy. In this era, renewed critiques of law school practical programming proliferated.[245] Critics charged that young

---

[238] WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 1, 6 (2007).

[239] *See* William M. Sullivan, *After Ten Years: The Carnegie Report and Contemporary Legal Education*, 14 U. ST. THOMAS L.J. 331, 337 (2018) ("The nearly simultaneous appearance of the Carnegie Report and *Best Practices*, and the widespread debate they set in motion, spurred efforts to continue the experiments with reshaping law school curricula and pedagogy that have already been noted."); *see also* Susan P. Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515 (2007) ("Law school reform is in the air."); Yates, *supra* note 13, at 233; Bradley T. Borden & Robert J. Rhee, *The Law School Firm*, 63 S.C. L. REV. 1 (2011).

[240] Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 VAL. U. L. REV. 41, 46 (2013).

[241] *Id.* at 45.

[242] *See id.*; *see also* Rebecca Flanagan, *The Kids Aren't Alright: Rethinking the Law Student Skills Deficit*, 2015 BYU EDUC. & L.J. 135, 135-36 (2015) (discussing changes in undergraduate education over the last few decades and noting the decrease in law student fundamental skills); Nancy B. Rapoport, *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools*, 116 PENN. ST. L. REV. 1119, 1121 (2012) (outlining criticisms of underprepared law students and noting that "law professors need to recalibrate their assumptions about their students' academic backgrounds, ...").

[243] Stuart & Vance, *supra* note 240, at 56-57.

[244] *Id.* at 42.

[245] *See* Sturm & Guinier, *supra* note 239, at 515; A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 2038 (2012); John M. Lande, *Reforming Legal Education to Prepare Law Students Optimally for Real-World Practice*, 2013 J. DISP. RESOL. 1-2 (2013); Rapoport, *supra* note 242, at 1152 (offering suggestions for law school reform); *see also* Kirsten M. Winek, *Writing Like a Lawyer: How Law Student Involvement Affects Self-Reported Gains in Writing Skills in Law School*, 69 J. LEGAL EDUC. 568 (2021) (noting historical calls for change based on weak

attorneys could not write, did not have critical thinking skills, did not have practical skills, and were missing the "legal imagination" required in the field.[246] Fewer prospective students took the LSAT, and fewer students applied to graduate school, causing grave financial worries within law schools.[247] The tailspin of the 2008 recession would eventually cause the New York Times to declare in 2011: "American legal education is in crisis."[248]

Just a few years later, in a still shaky legal market, Bar rates began to drop.[249] Many scholars saw this as the inevitable outcome of the critiques raised by the Carnegie Report. It was in this context that renewed calls for change reached a fever pitch such that one observer commented, "[l]aw school reform is in the air."[250]

Several key themes of reform emerged.

a. Practical Skills

Calls for increased academic support education increased.[251] "Practical skills" dominated reform rhetoric of the early aughts.[252] "Practice-ready"

---

legal writing skills in the aughts); Andrew Schepard & Peter Salem, *Foreword to the Special Issue on the Family Law Education Reform Project*, 44 FAM. CT. REV. 513 (2006) (proposing curriculum change towards a more practice-oriented approach in family law); Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 86 (2003) (assessing writing weaknesses of new legal graduates).

[246] *See* Spencer, *supra note* 245, at 2038; *see also* Winek, *supra* note 245, at 568.

[247] Deborah L. Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437, 443 (2013).

[248] Editorial, *Legal Education Reform*, N.Y. TIMES (Nov. 25, 2011), https://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html; *see also* Menkel-Meadow, *supra* note 233, at 133 ("For the last few years we have been bombarded with news articles, lawsuits, conferences, and scholarly treatments of the 'crisis in legal education.'").

[249] *See Bar Exam Statistics & Pass Rates*, UWORLD LEGAL, https://legal.uworld.com/bar-exam/statistics/#:~:text=While%20the%20overall%20pass%20rate,is%20slowly%20creeping%20back%20up (last visited Oct. 18, 2023) (From 2013 to 2019, Texas' pass rate declined from eighty percent to sixty-four percent. California's pass rate fell from fifty-one percent to forty-three percent. New York's declined from sixty-four percent to fifty-nine percent. Florida's pass rate declined from seventy percent to fifty-six percent.).

[250] Sturm & Guinier, *supra* note 239, at 515; Judith Welch Wegner, *Symposium 2009: A Legal Education Prospectus: Law Schools & Emerging Frontiers, Reframing Legal Education's "Wicked Problems"*, 61 RUTGERS L. REV. 867 (2009) ("Change is in the air for legal education, ...").

[251] *See* Louis N. Schulze Jr., *Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, And Humanizing the Law School*, 5 CHARLESTON L. REV. 269, 274, 330 (2011) (arguing for the benefits of academic support programs); Melissa J. Marlow, *It Takes A Village to Solve the Problem in Legal Education: Every Faculty Member's Role in Academic Support*, 30 U. ARK. LITTLE ROCK L. REV. 489, 514 (2008) (noting the importance of increased academic support in light of "an increasing number of students who find law school an unusually challenging task.").

[252] *See, e.g.*, Alexi Freeman, *Teaching for Change: How the Legal Academy Can Prepare the Next Generation of Social Justice Movement Lawyers*, 59 HOW. L.J. 99, 100 (2015) ("The call for 'practice

became a resounding call at law schools around the country.[253] Calls erupted for clinics, internships, academic support services, writing centers, and advocacy training. Less than a decade later, the ABA "require[d] each student to satisfactorily complete at least . . . one or more experiential course."[254] The courses were required to "integrate doctrine, theory, skills, and legal ethics," and the classes must "engage students in performance of one or more of the professional skills identified in Standard 302."[255] Both academic and journalistic sources critiqued that law schools were "over-emphasizing instruction in legal doctrine and analysis at the expense of practical legal training."[256] Law schools responded with writing centers, first-year support classes, Bar classes, and other programs dedicated to aid students with foundational skills. Again, advocates justified reform on the basis of Bar passage and practice readiness.[257]

Due to the interest in practical skills, the case method came under renewed, aggressive fire.[258] And it was with a new and sometimes virulent fervor that scholars labeled the case method as inadequate.[259] While most critiques of the case method related to the fact that it got in the way of students developing practice skills, a small portion of critiques also mentioned critical-contextual substance. For example, in 2001, Professor Alan Watson, advocating for getting rid of casebooks, argued that: "Students cannot tell whether a case reflects the general proposition or stands at the very edges . . . There is an absence of theoretical underpinnings," and

---

ready' lawyers has been heard loud and clear across the country."); Lande, *supra* 245, at 1 ("There is a growing consensus that American law schools need to do a better job of preparing students to practice law.").

253 *See* Freeman, *supra* note 252.

254 *Standards and Rules of Procedure for Approval of Law Schools 2023-2024, supra* note 23.

255 *Id.*

256 Lande, *supra* note 245, at 4.

257 *See, e.g.*, Stephen Ellmann, *The Clinical Year*, 53 N.Y.L. SCH. L. REV. 877, 878 (2008) (noting that law schools often do not prepare practice-ready graduates and proposing a potential "clinical year" program similar to medical school residency); Stephen Gerst & Gerald Hess, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VAL. U. L. REV. 513 (2009) (describing the need for curricular reform based on the lack of professional skills taught in law school); Todd A. Berger, *Three Generations and Two Tiers: How Participation in Law School Clinics and the Demand for "Practice-Ready" Graduates Will Impact the Faculty Status of Clinical Law Professors*, 43 WASH. U. J.L. & POL'Y 129 (2013) (noting clinical education reforms based on criticism that law school graduates are not "practice-ready."); Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & SOC. JUST. 247 (2012) (noting that law schools acknowledged that significant curricular reform was warranted to produce "practice-ready" graduates).

258 Laurel Currie Oates, *Did Harvard Get It Right?*, 59 MERCER L. REV. 675 (2008) (critiquing the case method); *see also* Alan Watson, *Legal Education Reform: Modest Suggestions*, 51 J. LEGAL EDUC. 91 (2001) (advocating for the disappearance of casebooks); Michael Martinez, *Legal Education Reform: Adopting a Medical School Model*, 38 J. LEGAL EDUC. 705, 705 (2009) ("Legal minds tend to agree that the current educational model used in American law schools is inadequate.").

259 *See, e.g.*, Currie-Oates, *supra* note 258; Watson, *supra* note 258; Martinez, *supra* note 258.

critiqued that cases out of context do not reveal the nature of law "in society."[260]

While most calls for reform in this period related to practical skills, critical-contextual reform existed in tandem; however, the combination of circumstances in the aughts led to a very different tenor in reform.

b. The Death of Theory

During this era, the popularity of high critical theory dissipated, leading some critics to declare the "end of theory."[261] While critical-contextual calls still exist, the understanding of "theory" itself shifts in legal scholarship. Whereas, in the prior decades, scholars use the term "theory" broadly, to include social and cultural theory, after 2001, there was a shift in rhetoric.[262] Cultural theorists appear far less quoted in the scholarship, and the word "theory" began to represent anything not practical.[263] A professor's comment on legal education reform in 2013 is illustrative: "The contention that law school is a place for theory rather than practice is not necessarily wrong."[264] Here, the professor uses "theory" as a stand in for doctrinal education–anything that is not practice-related, i.e., clinics, business school style practical exercises, and advocacy training. The language shift erased critical-contextual content from debate. The professor goes on to suggest that law schools should implement third-year residency-type systems mirroring medical training "[i]f a school wishes to engage purely in theoretical academics."[265] Again, theoretical academics here means merely that which is not skills-oriented.

Other scholars echoed this schema, noting, "[t]he number of internal quarrels about theory versus practice . . . is mind numbing."[266] Again, "theory" is a stand-in for doctrine. As decades of education policies brought students with increased support needs, the rhetoric shifted dramatically away from calls to expand students' knowledge, and towards calls to ensure students had basic skills.[267] Exploding calls for change led to a cemented

---

260 Watson, *supra* note 258, at 93, 96.

261 Jeffrey Williams, *The Death of Deconstruction, the End of Theory, and Other Ominous Rumors*, 4 NARRATIVE 17-18 (1996).

262 *See, e.g.*, Martinez, *supra* note 258, at 713; Larry E. Ribstein, *Practicing Theory: Legal Education for the Twenty-First Centur*y, 96 IOWA L. REV. 1649, 1669-70 (2011) (using "theory" to refer to interdisciplinary subjects that would help students and specifying that useful knowledge might include that of "capital assets" and comparative law to compete in a global market).

263 Martinez, *supra* note 258 at 713.

264 *Id.*

265 *Id.*

266 Stuart & Vance, *supra* note 240, at 42.

267 *See* Anderson, *infra* note 317.

binary between theory and practice–but one in which social context is entirely elided and erased.

In many education reform papers, any note of critical-contextual education disappears and is replaced by a black-and-white binary: practical versus case method. One scholar framed the key education reform issue of the day as, "whether legal education should emphasize law as a science or should include more practical skills."[268] Critical-contextual education is totally absent from the equation.

c. Critical Legal Pedagogy

While the vast weight of pedagogy reform scholarship related solely to "practice-oriented," "practical" classes, a group of legal scholars began to carve out and reinvigorate the calls for critical-contextual content in the classroom.[269]

During the aughts, scholars began to develop and clarify specific goals of "Critical Legal Pedagogy" ("CLP").[270] CLP–which is still a live method–is not a movement in the same way CLS was. Instead, CLP carries through themes and ideas from critical legal theory to develop methods for how to teach in the classroom.[271] CLP advocates note the goal of CLP is to use methods in the classroom that disrupt the idea that law is fixed and that legal reasoning is immutable.[272] The goal of CLP is a transformative one: to use teaching methods in the legal classroom that reveal the law as a vehicle for both "stasis and change," challenge the idea that any particular type of idea or reasoning is universal, and emphasize the "gaps, conflicts, and ambiguities" that exist within structures of legal reasoning.[273] Though CLP defies easy definition, the method aims to create an environment that empowers students in a setting that often does the opposite.[274]

Prominent scholars across the globe worked to develop the goals of the movement during this era. Dr. Joel Modiri, describing the South African legal academy in the "afterlife" of colonial apartheid, offers insight into the

---

[268] Charles R. Irish, *Reflections of an Observer: The International Conference on Legal Education Reform,* 24 WIS. INT'L L.J. 5-6 (2006).

[269] *See, e.g.*, Thomas, *supra* note 24, at 974 (discussing CLP and noting, "[f]or the first time in a long time, real momentum is emerging behind efforts to effectuate such transformations in legal education.").

[270] *See* Karl E. Klare, *Teaching* Local 1330*–Reflections on Critical Legal Pedagogy*, 7 UNBOUND: HARV. J. LEGAL LEFT 57, 77-78 (2011) (articulating multiple goals of CLP).

[271] *Id.*

[272] *Id.*

[273] *See* Thomas, *supra* note 24, at 969-71.

[274] *See generally* Chris K. Iijima, *Separating Support from Betrayal: Examining the Intersections of Racialized Legal Pedagogy, Academic Support, and Subordination*, 33 IND. L. REV. 737 (2000).

promise of CLP.[275] Advocating for a shift to a CLP, Dr. Modiri argued that South African law schools failed to apprehend the "specificity of the present as a construction of particular histories, practices, and discourses."[276] Chiefly, he argued, this failure redounded to the ways in which law schools presented an "oddly anachronistic view of law as a technical science, decidedly separate from morality and politics."[277] Instead, Dr. Modiri argued that a more "subversive" approach is one that would "'corrode the perceived certainties of the legal system' and 'reveal alternative structures and ideas with the aim of relating law to the material conditions in society.'"[278]

Overarchingly, CLP scholars argued that pedagogy that contextualized case law served to "illuminat[e] its plausible animating forces and assumptions."[279] CLP advocates claimed that in Langdellian courses, when guided, students find that "legal texts are minefields of gaps, conflicts, and ambiguities with moral and political implications."[280] CLP advocates argue that the law is historically constituted. Therefore, "legal reasoning" is actually a repertoire of conventional, culturally-approved rhetorical moves and countermoves. Some scholars argue these moves are "deployed" by lawyers strategically to create an appearance of the legal necessity.[281] CLP methods necessarily incorporate critical-contextual content and frameworks in service of disrupting the view of the law as inevitable and immovable.

d. The Rise of Neoliberal and Practical Rhetoric

The character of the reform language in this period reflects a changing world. Scholars note that the reforms that did occur were a reflection, in part of "dramatic changes in technology, communications, and globalization."[282] Some scholars became interested in contextual education as a route to ready

---

[275] Joel Modiri, *The Time and Space of Critical Legal Pedagogy*, 27 STELLENBOSCH L. REV. 507, 507-08 (2016).

[276] *Id.* 507.

[277] *Id.* at 507-08.

[278] *Id.* at 510 (referencing D. Visser, *The Legal Historian as Subversive (or Killing the Capitoline Geese)*, *in* ESSAYS ON THE HISTORY OF LAW 1-29 (1989)).

[279] Phyllis Goldfarb, *Pedagogy of the Suppressed: A Class on Race and the Death Penalty,* 31 N.Y.U. REV. L. & SOC. CHANGE 547, 549 (2007).

> [C]ontextualizing case law in a variety of ways offers some hope of illuminating its plausible animating forces and assumptions. This approach is especially promising when used to examine cases concerning American criminal justice because the methodology can be directed toward highlighting the attitudes found within mainstream legal culture for inflicting state violence on the disempowered.

Id.

[280] Klare, *supra* note 270, at 75.

[281] *Id.* at 64.

[282] Moliterno, *supra* note 75, at 423.

graduates for competition in a globalized market–a radically different purpose than calls of prior decades.

Increasingly, neoliberal[283] language of markets and corporatization began to creep into law school rhetoric.[284] Legal scholars noted that managerialism–the idea that businesses are run well if they maximize profits for stakeholders–increased in discussions of legal education.[285] The law school as a business emerged as a dominant discourse.[286] Reflecting these themes, one law professor noted that, "[t]he value proposition of a law degree is increasingly tied to [the] commodities that we offer to our 'customers,'" meaning students.[287] In 2014, the ABA Task Force Report ("the Report") noted that that, "[l]aw schools have long escaped pressure to adapt programs or practices to customer demands or to the pressures of business competition . . . [C]urriculum, culture, and services have developed with little relation to market considerations."[288] The Report then called for a "reorientation of

---

[283] Here, "'Neoliberalism' refers to the revival of the doctrines of classical economic liberalism, also called laissez-faire, in politics, ideas, and law." *See* David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 L. & CONTEMP. PROBS. 1 (2014).

[284] *See, e.g.*, Kenneth Lasson, *Compelling Orthodoxy: Myth and Mystique in the Marketing of Legal Education,* 10 U. N.H. L. REV. 273, 320 (2012) (noting the "branding" and marketing of a law school as impacting academic freedom and priorities within law schools); Margaret Thornton, *Legal Education in the Corporate University*, ANNU. REV. L. SOC. SCI. 19, 23 (2014) (discussing the effects of corporatization on higher education globally and noting:

> The corporatization of universities has caused students to be viewed as consumers, customers, or even clients and academic educators and their institutions have become service providers, so that the special relationship between teacher and student is reduced to one of contract . . . The instrumental or consumerist focus is pronounced in the case of legal education in which legal educators have to accommodate the interests not only of students themselves as key stakeholders but also of the legal profession).

Id. (citations omitted).

[285] Lynn A. Stout, *On the Rise of Shareholder Primacy, Signs of Its Fall, and the Return of Managerialism (in the Closet)*, 36 SEATTLE U. L. REV. 1169, 1184 (2013) (defining managerialism); *see* Richard Joseph, *The Cost of Managerialism in the University: An Autoethnographical Account of an Academic Redundancy Process*, 33 CRITICAL STUD. IN INNOVATION 139 (2015) (noting the rise of managerialism in universities across the world); Stuart Toddington, *Skills, 'Quality' and the Ideologies of Managerialism*, 28 L. TCHR. 243 (2010) (commenting on the rise of managerialism in law schools).

[286] *See* Nora V. Demleitner, *Colliding or Coalescing: Leading a Faculty and an Administration in the Academic Enterprise*, 42 U. TOL. L. REV. 605 (2011).

> Law school is a business. Law school is a part of academia. Assuming that the former and the latter are diametrically opposite, which is it? Can it be both, or do we have to choose? These questions are part of an on-going debate not only in higher education, but also in the popular media and public discourse.

Id.

[287] R. Michael Cassidy, *Reforming the Law School Curriculum from the Top Down*, 64 J. LEGAL EDUC. 428, 429 (2015).

[288] Bryant Garth, *Legal Education Reform: New Regulations, Markets, and Competing Models of Supposed Deregulation*, 83 BAR EXAM'R 17, 19 (2014) (describing how competition effects law schools and how the market differentiates law schools with no regulation); *The Report and Recommendations of*

attitudes toward change, including market-driven change."[289] One scholar, arguing that corporate culture was corroding the academy, observed that the ideologies of neoliberalism had given rise to the "language of commercialization, privatization, and deregulation."[290] He argued that the idea of universities as businesses blurred boundaries between "public values and commercial interests."[291]

Relatedly, the reform literature that reflects fears that students would not be prepared to be competitive in a "globalized" world began to appear in the literature. There was a sense that even "[t]eaching the laundry basket of skills of the 1980s and '90s"–including advocacy and writing–was "no longer enough."[292] Instead, reformers urged that students needed knowledge of "business" and "markets"[293]; other scholars emphasize professionalism training.[294] Harvard Law School introduced a required 1L course on "global legal systems."[295] Scholars began to advocate for comparative teaching approaches, pointing out that, "the casebook method is not much respected [in other places]."[296]

e. Multi-Disciplinarity & Interdisciplinarity

In the same vein, advocates suggested that multi-disciplinary subjects beyond business would be productive in a curriculum to give students a more "globalized" view of law.[297] "Multi-disciplinarity" and "interdisciplinarity"

---

the ABA Task Force on the Future of Legal Education: Its Significance for Bar Admissions and Regulation of Entry into the Legal Profession, 83 BAR EXAM'R 12 (2014).

289 *The Report and Recommendations of the ABA Task Force on the Future of Legal Education: Its Significance for Bar Admissions and Regulation of Entry into the Legal Profession*, *supra* note 288, at 16.

290 *See* Henry A. Giroux, *Neoliberalism, Corporate Culture, and the Promise of Higher Education: The University as a Democratic Public Sphere*, 72 HARV. EDUC. REV. 425, 425 (2002).

291 *Id.* at 433.

292 Moliterno, *supra* note 75, at 430.

293 *Id.*

294 Solomon Oliver Jr., *Educating Law Students for the Practice: If I Had My Druthers*, 2013 J. DISP. RESOL. 85 (2013).

295 *See* Cassidy, *supra* note 287, at n.18.

296 Watson, *supra* note 258, at 97.

297 *See* Menkel-Meadow, *supra* note 233, at 157 (discussing comparative law study and other new programs as "one type of 'globalized' legal education" and "one way of unpacking and repacking the knowledge needed by lawyers in an increasingly globalized legal world.").

became buzzwords that echoed throughout reform language.[298] Many curricular reform suggestions involve business, markets, and finance.[299]

Interdisciplinarity was not just invoked to advocate for business competency, though. The popularity of interdisciplinarity exponentially multiplied in the years following 2008 and, with it, came the language of "perspectives," which increasingly became the language through which reformers framed their arguments.[300]

Reform advocates considered a host of interdisciplinary possibilities, including: philosophy, sociology, psychology, economics, history, art, poetry, literature, and the scientific method.[301] Scholars argued interdisciplinary methods had multiple advantages and could lead to "more informed and more balanced judgment," "a deeper understanding than someone who is only interested in the 'law as such,'" a better "grasp [of] the forces that act upon the legal system and how the law operates in action," and a stronger foundation for policy recommendations.[302]

As in the calls for legal education reform after the second World War, calls for reform reflect that, in shifting landscapes of post-modernity, legal education felt incomplete. The "changing times" justification is echoed in much of the reform literature. One scholar noted that, "changes in the legal debate, such as addition of economic, political, medical and social information compel lawyers to be articulate and convincing in dialogues on a variety of topics."[303] The scholar argued that this shifted legal debate "demands general knowledge that exceeds the legal field."[304] Like scholars experiencing the aftermath of the World Wars and the political upheaval of

---

[298] *See, e.g.*, Paula Galowitz, *The Opportunities and Challenges of an Interdisciplinary Clinic*, 18 INT'L J. CLINICAL LEGAL EDUC. 165 (2012); Erwin Chemerinsky, *The Ideal Law School for the 21st Century,* 1 U.C. IRVINE L. REV. 1, 17 (2011) (discussing his opinion as dean that the curriculum should be "extensively interdisciplinary" at University of California Irvine and that "[w]e spent a great deal of time at our faculty meetings discussing how to integrate interdisciplinary perspectives into the first-year curriculum.").

[299] *See* Rhode, *supra* note 247, at 449; *see also* Moliterno, *supra* note 75.

[300] *See* Timothy J. Berard, *The Relevance of the Social Sciences for Legal Education*, 19 LEGAL EDUC. REV. 189, 189 (2009) (arguing that the inclusion of social scientific perspectives will reduce the gap between legal education and the legal profession); *see also* Kara Abramson, *"Art for a Better Life:" A New Image of American Legal Education*, 2006 BYU EDUC. & L.J. 227, 227 (2006) (using the language of "perspectives" to describe interdisciplinary approaches to 1L courses, including poetry, literature, art, and history).

[301] *See* Berard, *supra* note 300, at 189 (discussing relevant fields intersecting with law, including political science, sociology, economics, anthropology, philosophy, and literature); *see also* Abramson, *supra* note 300, at 227 (noting poetry, literature, art, and history as interdisciplinary legal perspectives).

[302] Mathias M. Siems, *The Taxonomy of Interdisciplinary Legal Research: Finding the Way Out of the Desert*, 7 J. COMMONWEALTH L. AND LEGAL EDUC. 5, 18 (2009).

[303] Hedwig van Rossum, *Lawyers, Law Schools and Social Change–Defining the Challenges of Academic Legal Education in the Late Modernity*, 25 INT'L J. LEGAL PRO. 245, 248 (2018).

[304] *Id.*

the 1960s, there is a sense of responsibility among advocates to provide law students with the tools to process the modern world.[305] Scholars advocated for shifts towards teaching students about "processes of late modernity," including globalization and "technological possibilities and, simultaneously, the demystification of science."[306]

While calls for critical-contextual education before the aughts reflected a goal of incorporating multiple disciplines into legal education, the aughts language shift significantly expands the types of disciplines called for and the types of subject-matter envisioned;[307] in general, the language of reform in this period reflects more moderate political language that focuses more on helping underprepared graduates compete in a tough market than producing well-rounded scholars.[308]

f. Shifting Language & Focus

Much of the direct language of critical theoretical frameworks–and much of the leftist vocabulary often borrowed from that critical theory–dissipated by the aughts and is largely eclipsed by other language. In part, some ideas that seemed radical thirty years before were now a more integrated part of education mainstream discourse. These ideas are difficult to pin down, but they include, broadly, the idea that diversity and representation are beneficial in institutions, the idea that intersectional identities determine status in society, and the idea that differing

---

[305] *See, e.g.*, Jon Mills & Timothy McLendon, *Law Schools as Agents of Change and Justice Reform in the Americas*, 20 FLA. J. INT'L L. 5, 6 (2008) ("Law schools in the United States have an obligation to address recent global developments. In fact, the President of the Association of American Law Schools identified the globalization of the legal practice as the top current challenge to legal education.").

[306] van Rossum, *supra* note 303, at 245.

[307] *See, e.g.*, Menkel-Meadow, *supra* note 233, at 157 (discussing new programs, like comparative law, as giving students the knowledge they need in a globalized world).

[308] *See, e.g.*, Sherri Lee Keene, *One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the "Practice-Ready" Law School Curriculum*, 65 MERCER L. REV. 467, 468-69 (2014):

> This Article is prompted by the recent debate in the legal community, often played out in public forums, about the increasing demand from law firms, other legal employers, and even clients, that recent law graduates be 'practice-ready' when they complete law school. The cry for practice-readiness can best be understood in the context of the present legal market. In 2008, widespread economic changes prompted reductions in client spending, which in turn led to significant cutbacks at law firms and increased attorney unemployment and self-employment. Since that time, the legal market has become extremely demanding, with law graduates facing increased competition from both peers and more experienced attorneys and law firms expecting more from new hires.

Id.

"perspectives" should be introduced–in some way–into the law school curriculum.[309]

Legal realism had also moved from a fringe position to the middle. Most conservative thinkers perceived the Supreme Court to skew socially liberal.[310] By 2010, scholars noted that, "[f]ew people now seriously contend that judges are not themselves the product of their time and not influenced by broader social considerations."[311] Indeed, many scholars seem to take as gospel that this century-old view of the legal realists–which had been adopted by left-leaning "crits" and other law school reform advocates of the eighties and nineties–was now a centrist view.[312] However, a growing strong contingent of conservative legal theorists did not agree. Scholars in this period began to note the powerful influence of the Federalist Society–champions of originalism[313]–in law schools and the judiciary.[314] Indeed, by 2015, the opposing conservative viewpoints, represented in law schools within the Federalist Society, had gained enough traction to be deemed a "counterrevolution."[315]

While conservative methods quietly rose in stature both in and out of law school classrooms, another part of legal reform discourse shifted towards at least facial political neutrality. Discourse shifted away from overt language of Marxist critique. Instead, the rhetoric of reform increasingly took on the more neutral vocabulary of "perspectives," "interdisciplinarity," "multi-culturalism," and "diversity" to discuss curriculum deficits.[316]

---

309 *See* Kevin R. Johnson, *The Importance of Student and Faculty Diversity in Law Schools: One Dean's Perspective*, 96 IOWA L. REV. 1549 (2011).

310 *Negative Views of Supreme Court at Record High*, *Driven by Republican Dissatisfaction*, PEW RSCH. CTR. (Jul. 29, 2015), https://www.pewresearch.org/politics/2015/07/29/negative-views-of-supreme-court-at-record-high-driven-by-republican-dissatisfaction ("68% of Conservative Republicans See Court as Liberal").

311 Jim Phillips, *Why Legal History Matters*, 41 VICT. U. WELLINGTON L. REV. 293, 316 (2010).

312 *See* Leiter, *supra* note 87, at 267 (noting that, in the late 90s, the phrase "we are all legal realists now" was cliché and discussing the "enormous influence Legal Realism has exercised upon American law and legal education over the last sixty years.").

313 *See* Michael D. Ramsey, *Beyond the Text: Justice Scalia's Originalism in Practice*, 92 NOTRE DAME L. REV. 1945, 1946 (2017).

314 *See* Nancy Scherer & Banks Miller, *The Federalist Society's Influence on the Federal Judiciary*, 62 POL. RSCH. Q. 366 (2009); George W. Hicks, Jr., *The Conservative Influence of the Federalist Society on the Harvard Law School Student Body*, 29 HARV. J.L. & PUB. POL'Y 623, 625 (2006).

315 *See* AMANDA HOLLIS-BRUSKY, IDEAS WITH CONSEQUENCES: THE FEDERALIST SOCIETY AND THE CONSERVATIVE COUNTER-REVOLUTION 160 (Steven Teles ed., 2015).

316 *See, e.g.*, Schlegel, supra note 226, at 967 (discussing the "death" and "fading away" of CLS by 2007); Catherine Ann Golden, *Ideological Expansion in Higher Education Discourse: A Study of Interdisciplinarity in Undergraduate Education* (2014) (Ph.D. dissertation) (ProQuest) (While not specifically discussing law schools, Golden notes, "[c]urrent U.S. higher education research is filled with accolades for interdisciplinary academic programs, course offerings, and research."); Faisal Bhabha, *Towards a Pedagogy of Diversity in Legal Education*, 52 OSGOODE HALL L.J. 59, 59 (2015) (In the author's abstract, she writes, "[t]here is resounding consensus that diversity in legal education is a

The effect of this language in the scholarship is under-theorized. However, as opposed to prior generations that featured vocal critiques between two binarized opponents, much reform advocacy seems sequestered and offers merely affirmative positions that do not directly seek to critique opposition.

While emphasis on creating "justice" remained in much of the reform literature, the goals of critical-contextual education reform shifted away from the broad, structural, and political. A hard pivot towards "practicality"–in response to the deemed education crisis in law schools–depleted many critical-contextual conversations within the scholarship.

g. The Location of Critical-Contextual Content & The Theory-Practice Binary

Concerns about the effects of placing critical-contextual substance at the periphery of the legal education–and particularly its effect on minority student populations–were developed and foregrounded in literature of the aughts.

Scholars critiqued that law schools had often answered the calls of CRT theorists and other groups by making facial changes–not substantive ones.[317] For example, the Dean of CUNY Law School echoed this concern, writing in 2009 that, "[w]hile diversity is visually highlighted, it does not shape the curriculum, pedagogy, or student experience at most law schools."[318] She noted that, "[t]he legal education reform canon is almost silent on the lack of diversity in the legal profession and the consequences for marginalized communities," arguing that, "[d]iversity in law schools enhances the education of majority students" and works as a form of justice by "[r]ectifying the legal, social, financial, and status-related exclusion of racial minorities from the profession."[319]

Scholars continued to increasingly consider and critique the ways in which "concerns of gender, race, class, sexual orientation, economic and social justice, disability and citizenship are often relegated to 'special' discussion on rape or 'special classes' that are not taught as part of the core

---

priority."); Saerom Lee, Yun-Kyung Cha & Seung-Hwan Ham, *The Global Institutionalization of Multicultural Education as an Academic Discourse*, 13 SOCIETIES 191 (2023) (discussing and explaining the popularity of "multiculturalism" as an academic discourse by the 2020s).

317 Michelle Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 RUTGERS L. REV. 1011 (2009); Johnson, *supra* note 309, at 1577 ("In reality, my experience has been that few but the true believers seem to care much about–or at least pay more than lip service to–the importance of a racially diverse faculty and student body at a law school."); Robert S. Chang & Adrienne D. Davis, *Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1, 1 (2010) (noting steps law schools can take to go beyond facial reform).

318 Anderson, *supra* note 317, at 1028.

319 *Id.*

topics."[320] Scholars certainly developed work of earlier decades to critique that identity-based concerns and other social issues remained siloed within legal curricula.[321] Scholars further developed critiques that argued keeping critical-contextual topics at the periphery of the curriculum allows students to think of them in just that way–peripheral, elective, and optional.[322]

In the aughts, arguments for "competency-based curricula" often prioritized skills courses and erased critical-contextual subjects.[323] But, when critical-contextual substance was not erased from discussions of reform, scholars continued to note the resistance they faced in combatting the idea that context courses were not practical.[324] Instead, critical-contextual courses were often positioned as addenda. In 2012, Professor Mark Jones wrote:

> I hope it will be clear, then, that in emphasizing the importance of perspectives courses I am not speaking as some "ivory tower academic" who values learning for its own sake. I believe strongly that ensuring that students receive a serious and sustained perspectives exposure during their legal education is of critical importance in preparing them for the practice of law.[325]

Here, Jones anticipates the shut-down blow of legal pedagogical criticism: "Perspectives" courses are not practical and useful. He anticipates that his education reform suggestions will not be taken seriously because

---

[320] *See* Saru Matambanadzo, *Fumbling Toward a Critical Legal Pedagogy and Practice*, 4 POL'Y FUTURES IN EDUC. 90, 92 (2006).

[321] *See* William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW SUMMARY 6 (2007), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf (discussing unintended consequences of the case-method, the authors note that:

> Issues such as the social needs or matters of justice involved in cases do get attention in some case-dialogue classrooms, but these issues are almost always treated as addenda. Being told repeatedly that such matters fall, as they do, outside the precise and orderly 'legal landscape,' students often conclude that they are secondary to what really counts for success in law school—and in legal practice. In their all-consuming first year, students are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses).

Id.

[322] *Id.*; *see also* Dylan C. Penningroth, *Race in Contract Law*, 170 U. PA. L. REV. 1199, 1298 (2022) (suggesting that, by keeping race out of current doctrinal courses "American law schools implicitly teach two important legends. The first is that contract law has little to do with civil rights, African Americans, or race."); Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: Perspectives on Curriculum Reform, Mercer Law School's Woodruff Curriculum, and. . . "Perspectives"*, 63 MERCER L. REV. 975, 1046 (2012) (arguing that electives that are not required are seen as of less fundamental value: "Under the influence of the neo-Langdellian prejudice, most students will likely elect not to take any dedicated perspectives courses that are 'mere electives'–that is, courses that are not regarded as being of such fundamental value and importance that they should be required or at least strongly recommended.").

[323] William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 501 (2013).

[324] Jones, *supra* note 322, at 977.

[325] *Id.* at 979.

critical-contextual content is positioned by objectors as esoteric addenda to the serious Langdellian skill of thinking like a lawyer.

Of course, advocates reasonably suggested the need for skills and internship courses; yet the discursive separation implicitly suggests that critical-contextual courses are not practical. This created a serious rhetorical impediment to change.

However, scholars in the aughts also began to point out and object to ongoing "separation of doctrine, theory, and lawyering skills."[326] For example, challenging the traditional theory-practice binary, Professor Kathryn Stanchi called for law schools to "increase the number of courses that integrate doctrine, theory, and skills so that students learn to use both doctrine and legal theory, including critical theory, in a practical context."[327] Professors increasingly, in arguing for perspectives courses, moved to build a bridge between critical-contextual perspectives courses and the practicality long attributed to only skills courses.[328] Although not a dominant argument in the literature of this era, some scholars developed the argument that seeing the law in broader contexts serves a practical purpose of aiding students' professional development and critical thinking skills.[329]

While, overall, the academy continued to create a dichotomy between theory and practice within legal education rhetoric, the aughts mark a subtle shift in tenor towards reform advocacy to an approach that might interweave the two together. Yet, amid calls for change, advocates continued to remark that legal education broadly was deeply invested in the preservation of the status quo.[330]

h. Continued Resistance & a Tenor of Frustration

The tenor of the reform scholarship in the new millennium takes on a wearier cynicism about possibilities for change, as exemplified in this passage calling for reform in 2001:

> Can change occur? Not, in my opinion, in traditional law schools. Established professors are too set in their ways, assistant professors must not

---

326 Kathryn M. Stanchi, *Step Away from the Case Book: A Call for Balance and Integration in Law School Pedagogy*, 43 HARV. C.R.-C.L. L. REV. 611, 612 (2008).

327 *Id.*

328 *See* Jones, *supra* note 322.

329 *See* Stanchi, *supra* note 326, at 611-12 ("In my view, 'thinking like a lawyer' means mastering the doctrine and being skilled, but it also should mean having a strong sense of the theories related to the doctrine, as well as the criticisms of the doctrine."); Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1, 1 (2015) (arguing that critical legal theory can help law students become "generative lawyers who are more creative in their lawyering . . . ."); Alex Steel, *Good Practice Guide (Bachelor of Laws): Law in Broader Contexts*, AUSTL. LEARNING AND TEACHING COUNCIL (2013).

330 Matambanadzo, *supra* note 320, at 89.

> rock the boat. The way ahead lies in establishing either a new law school with a commitment to recruiting faculty who will be free to experiment or, more likely, legal studies department that are not tied to law schools.[331]

Another critic noted bluntly that, "[t]he profession has resisted change" and that "[t]he short story is that the legal profession is ponderous, backwards, and self-preservationist."[332] Critics charged that American legal education suffered from a "deep-seated, often unrecognized malaise."[333] He lamented that, "the change that has come has been forced by society, culture, economics, and globalization–not by the profession itself."[334] "In every instance," charged Professor James Moliterno, "the profession has held fast to its history and its ways long after those ways have become anachronistic."[335]

Professors who advocated for curriculum change related to critical-cultural note the serious skepticism and opposition they faced for going "against the grain."[336] Professor Mark Jones advocated that students should take "at least one perspectives course."[337] In doing so, he noted the great amount of pushback he had faced over thirty years of teaching when advocating for increased perspectives in the legal classroom.[338] Professors Sturm and Guinier warned reform advocates that the system, which they characterize as constituted by "competition and conformity," was "remarkably static, non-adaptive, and resistant to change, even in the face of strong pressure."[339] I will briefly note a few of the common arguments that embody this resistance.

i. Privileging Rigor & Practical Learning

Some attorneys merely support the Langdell system and see no need for change. They praise the Langdell system's ability to sharpen students' critical analysis skills; advocates further cite the system's ability to inculcate "mental toughness" and the skill of "think[ing] on one's feet" as justifications for the continued use of the case method.[340] Reform advocates also often

---

331 Watson, *supra* note 258, at 97.

332 Moliterno, *supra* note 75, at 423.

333 Watson, *supra* note 258, at 96.

334 Moliterno, *supra* note 75, at 423.

335 *Id.*

336 Solomon, *supra* note 176, at 35-36 (discussing obstacles to significant curricular reform, Solomon argues that innovation that "runs against the grain is likely to be viewed as 'deviant'").

337 Jones, *supra* note 322, at 977.

338 *Id.* at 977.

339 *See* Sturm & Guinier, *supra* note 239, at 520.

340 Weaver, *supra* note 76, at 529; *see also* Robert W. Gordon, *The Case For (and Against) Harvard*, 93 MICH. L. REV. 1231 (1995).

praise the Langdell system's ability to help students encounter and deal with the uncertainty that comes with practice.[341]

Many attorneys value the "toughness" and difficulty connected with Langdell's system as an important component of legal education. The purpose of this Article is not to question that logic. It is only to point out the deeply interwoven cultural logic through which the Socratic method has become synonymous with difficulty and rigor. Reform advocates may choose their own path forward–but it will likely be necessary to point out the rigor and difficulty of critical-contextual education to create a holistic theory of critical-contextual reform.

ii. Political Critique

Critics have always charged that critical-contextual perspectives are political. This critique continues to the present: Berkeley Law professor Jonathan Glater recently noted that, "demands for inclusion of more critical perspectives in law school classes [have] also drawn ferocious counterattack by critics who decry such moves as inappropriate political activism."[342]

This critique gets at the heart of an important tension within the cultural imaginary of law schools, which is this: Law schools imagine themselves to be ideologically neutral. Law schools are not ideologically neutral.[343] The critique imagines that including discussions of social perspectives in school enforces a liberal political perspective on students. A critic might argue that, on the other hand, maintenance of the status quo enforces no perspective–that it is totally neutral. This is a fallacy.

Law schools, of course, endeavor to be ideologically neutral. By this, law schools usually do not advocate for particular legal policies, but rather hope to merely allow students to glean what the law is, how it has changed over time, and how judges come to their legal conclusions based on the facts. This assumes, however, that overt advocacy is the only means of furthering a political ideology. This is not so. A choice to "neutrally" present the ideological status quo of American law is just as ideologically consequential as the choice to introduce a series of other theoretical lenses into a classroom discussion. A choice of what to include in the curriculum is ideologically consequential, as is the choice of what to leave out. United States law is, to put it obviously, political. It can only be political. It is the vehicle through

---

341 Wegner, *supra* note 250.

342 Glater, *supra* note 43, at 121-22.

343 *See* Duncan Kennedy, *The Political Significance of the Structure of the Law School Curriculum*, 14 SETON HALL L. REV. 1, 1 (1983) (Kennedy provides a reading of the political nature of the curriculum and states as a goal that he attempts to "make explicit the political content of everyday life in the law–the implicit or unconscious political meanings" in the daily life of law teachers and students.); *see also* Klare, *supra* 177 at 337 (analyzing the "ideological and emotional messages" in the law school curriculum).

which we implement political policy in this country. A choice to maintain "neutrality" is a choice to showcase a certain set of ideologies and not another.

Presenting law school curriculum as totally politically neutral is also odd insofar as law school is taught through cases–and the methods of reading cases are politically constituted. A lack of comparative and contextual frameworks also opens the door to confusion for 1L students with professors who choose to emphasize a certain viewpoint.

To use a personal example, I spent several weeks of my life in my first semester of law school learning about L&E theories. My professor explained L&E methods as the key method through which courts now reach correct legal conclusions. I was taught about the key principle of efficiency. I learned about important L&E theorists. I studied formulas. I read opinions using those methods. The language my professor used to couch L&E was the language of science–economics is a scientific way to reach legal conclusions.

My professor did not mention that L&E was a conservative legal movement. He did not mention that L&E was, at best, limited in its usefulness and scope. He did not mention that, at worst, legal scholars had used L&E for decades to route their social preferences through allegedly scientific justifications–to ensure social outcomes through a facially mathematical rationale. He did not mention the key theorists introduced were the founders of the Federalist Society. He did not note the immense wall of pushback against L&E–or the arguments that L&E was, in fact, lacking any scientific basis. He did not introduce countervailing scholarship, or alternative theories. My professor did not mention that L&E was only one conceptual apparatus of many. While my brilliant and well-meaning professor only emphasized the theory he had researched and published about, I was left without a complete understanding of the spectrum of possible ways to think about the subject as I left that first-year course.

Law students should learn about L&E–a major movement in United States law. However, teaching any legal subject devoid of broader context does our students a disservice and robs them of the opportunity to form and sharpen their own opinions.

The geography of United States case law is a political battleground. In light of recent Supreme Court opinions, no law student could fail to notice the overtly political context in which the law is embroiled. When law schools politely ignore that fact, the effect is both awkward and harmful.

Understandably, both professors and students express hesitation to court political anger in the classroom; however, the classroom is a place where difficult discussions should take place. It is a place to sharpen ideas and learn about opposing viewpoints. When students gain the tools to

understand the broader context of the law–to learn how to articulate arguments through diverse theoretical frameworks–students are empowered to challenge and sharpen their own conclusions.

As all proponents of the Socratic method know, merely telling a student something does not equate to learning. Students must work through issues and reach conclusions on their own with the proper context. That requires a multitude of viewpoints and contexts within a classroom.

Professor Jonathan Glater connects ferocious opposition to change in the academy with conservative opposition to explorations of historical racism at all educational levels.[344] Conservative political forces seek to narrow the knowledge and ideas to which United States public school students have access.[345] The balm for this is for academic institutions to provide greater access to knowledge and ideas.

The benefit of context and history shows us that there is no way to divorce that which is "political" from education. Education shapes the dominant cultural ideas of the future through curricular choices. Classroom content is, therefore, unavoidably ideological or political.[346] Reform intervenes in what kind of ideas are included in that curriculum. As such, both advocates and critics deem efforts to reform education as "inherently subversive."[347]

If we choose to keep things as they are, that is an ideological choice. If we choose to reform, that is too. Reformers will carefully choose how to couch their own critiques and arguments for shifted curricula; however, regardless of view, all scholars should push back against the idea that current law school curricula are apolitical and neutral.

---

[344] Glater, *supra* note 43, at 122.

[345] *See, e.g.*, Cathryn M. Oakley, *Curriculum Censorship of LGBTQ+ Identity: Modern Adaptation of Vintage "Save Our Children" Rhetoric Is Still Just Discrimination*, 54 LOY. U. CHI. L.J. 641, 645 (2023) (detailing attempts by conservative lawmakers curriculum LGBTQ+ issues in school curricula); Sarah Schwarz & Eesha Pendharkar, *Here's the Long List of Topics Republicans Want Banned from the Classroom*, EDUC. WEEK (Feb. 2, 2022), https://www.edweek.org/policy-politics/heres-the-long-list-of-topics-republicans-want-banned-from-the-classroom/2022/02 ("Republicans this year have drastically broadened their legislative efforts to censor what's taught in the classroom, according to an Education Week analysis of active state bills."); *see also* Brian Lopez, *Republican Bill that Limits how Race, Slavery, and History Taught in Public Schools Becomes Law*, HOUS. CHRON. (Dec. 3, 2021), https://www.chron.com/politics/article/Texas-critical-race-theory-schools-law-16671515.php ("A more restrictive law designed to keep "critical race theory" out of Texas public schools became law on Thursday.").

[346] *See* Rankin, *supra* note 25, at 19; *see also* Tim Walker, *'Education is Political': Neutrality in the Classroom Shortchanges Students,* NEATODAY (Dec. 11, 2018), https://www.nea.org/nea-today/all-news-articles/education-political-neutrality-classroom-shortchanges-students (Assistant Professor of Teacher Education at Michigan State University says "[e]ducation, at its core, *is* inherently political . . . '[e]verything in education–from the textbooks to the curriculum to the policies that govern teachers' work and students' learning–is political and ideologically-informed . . . .'").

[347] *Id.*

iii. Time

Critics of critical-context in the classroom often point out that there simply are not enough hours in a semester for a full consideration of theory and, instead, suggest students should seek out professors outside of class to parse theoretical considerations.[348] A recent author critiqued that even "truly critical" professors cannot give "access to more than a glimpse of critique.[349] Why? Because professors and students are given one, maybe two, days to concentrate on this material. Because, even if you could, critical theories wind up just serving doctrine."[350]

While many professors may delight in discussing theory outside of class with students, this does not solve the issue that critical-contextual considerations cannot be divorced from issues of law. Pushing these issues into peripheral spaces–office hours, elective reading, etc.–simply deprives many students of important knowledge. Further, it is true that theories may serve doctrine, but this logic suggests that, because a student may conclude that a theory supports a given hegemonic doctrine, it should not be taught. This logic supports that theory should be only radical–only countervailing. Theory is a tool to understand power, knowledge, and doctrine. Even a "glimpse" of it–even if professors do not have time to reveal the whole world of theory–gives students more than they had before. More importantly, critical-contextual education reveals to students a whole world of ways to think through the law that enriches their education.

Professors also worry that they will not have time to fully discuss doctrine.[351] While valid, our current law school system suggests that our curriculum is slightly more flexible than we imagine. After all, students are almost always required to learn or re-learn facets of Bar Exam subjects for the test. What student remembers every subtlety of contract law three years later? Many schools do not even require students to take every subject on the Bar Exam, suggesting that students must learn some subjects for the test during that summer of study. Even if professors were forced to cut somewhere in a syllabus, a deep understanding of the innerworkings of the

---

348 Daniel J. Sequeira, *Conversations After Class: 'Becoming Critical,' or the Steps Necessary to Achieve Critical Thought for Law Students*, 92 U. COLO. L. REV. 1237, 1251 (2021).

349 *Id.* at 1251.

350 *Id.* at 1251.

351 *See* Jones, *supra* note 322, at 1043-44 (discussing the limitations of incorporating perspectives into doctrinal courses, noting that faculty must "ration the limited time available," and critiquing that exposure to perspectives in doctrinal courses is "likely to be partial, nonsystematic, and fragmented."); *see also* Thomas, *supra* note 24, at 973 (discussing the fear of skeptics that including critical pedagogy content will "dilute" core classes, disallowing students and lawyers from mastering the discipline); Penningroth, *supra* note 322 at 1201 (noting that because "race is usually treated as context–so tangential to the substantive doctrinal rules and concepts that many faculty are expressing concern that they will have to skimp on the doctrine to make room.").

law–and the ability to employ critical tools to think through it–is worth a small doctrinal sacrifice. As Professor Chantal Thomas recently aptly put it:

> To the skeptics who would be fearful that the core methods and tools of legal education would be diluted and that lawyers might become jacks of all disciplines, masters of none, my contention is that this way of teaching, though it must be carefully curated, profoundly enhances the depth of insight into the law.[352]

iv. Student Discomfort

Professors worry that, when discussing certain theories, students do not feel comfortable sharing from their own experience when they "remember the sort of aggressive, hostile energy the classroom exudes."[353] Scholars suggest that, outside of the classroom context, students may be more likely to comfortably translate their experience to others.[354] No student should feel burdened to share anything they do not want to in the classroom. And if students feel more comfortable sharing their experiences in different settings, they should do so. But the fact that a student might feel uncomfortable in the classroom is the precise reason why we should address critical-contextual education.

Schools must carefully balance their responsibilities to ensure student wellbeing; however, it is also true that learning itself can be uncomfortable. Students should be pushed–in a productive way–to articulately justify their ideas. Students must be exposed to different points of view. Students should understand how to frame arguments that they themselves do not believe. That is a necessary skill of legal practice. As other scholars have noted, "[t]he somewhat consumerist focus on student satisfaction, though in many ways commendable and particularly so given the cost of legal education, may or may not complement the goals of broader pedagogy."[355] We are in a difficult moment in which discrimination and prejudice are on the rise. Law schools have a responsibility to protect students from discrimination and prejudice. Law schools also have the responsibility to teach students that they will encounter ideas as lawyers that they do not like–and that they will need to respond to in court. While "classroom dynamics and misunderstandings can have a strong impact on students' participation and their sense of being valued or heard,"[356] there is also a threat that productive arguments and

---

352 Thomas, *supra* note 24, at 973.

353 Sequeira, *supra* note 348, at 1253.

354 *Id.*

355 Thomas, *supra* note 24, at 964 n.24.

356 *See* ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" 176 (2007).

differing viewpoints may be shut down if "student discomfort" is the idea we privilege the highest in formulating pedagogical schemas.[357]

Experience suggests the opposite: Multiple scholars suggest that critical-cultural context is, in fact, an answer to the "disorientation" that many 1L students feel.[358] As many scholars argue, critical-contextual education is, in fact, a route to student empowerment in the classroom because it gives them the tools to articulate arguments, situate their own experience within the law, and think critically about many different viewpoints.[359] Scholars writing in the area of legal pedagogy often share personal anecdotes about their time in law school that made them feel alienated and unheard. Often, these anecdotes relate to the fact that the law is taught devoid of context.

v. Perspectives Are Already Taught

Some critics might argue that these perspectives are so tangential to doctrinal courses that they should be kept in electives.[360] However, structurally, situating critical-contextual perspectives at the periphery deemphasizes their importance, suggests that they are optional in understanding the law, and robs students of critical perspectives.[361]

Scholars rebut the presumption that critical-contextual content and methods are discreet and separable.[362] Advocates suggest critical-contextual education and CLP offer a way of framing or thinking through issues of law

---

[357] Tess Winton, Opinion, *With Some of My Fellow Stanford Law Students, There's No Room for Argument*, WASH. POST (Apr. 3, 2023, 7:30 AM), https://www.washingtonpost.com/opinions/2023/04/03/stanford-law-school-intimidation-of-moderates/?utm_medium=social&utm_source=twitter&utm_campaign=wp_opinions.

[358] Pierre Schlag, *The Anxiety of the Law Student at the Socratic Impasse–An Essay on Reductionism in Legal Education*, 31 N.Y.U. REV. L. & SOC. CHANGE 575 (2007); Klare, *supra* note 270, at 75.

[359] Klare, *supra* note 270, at 77.

[360] *See, e.g.*, Penningroth, *supra* note 322, at 1201:

> Discussing race in the private law domain of contract is difficult for several reasons: because many faculty feel unprepared to discuss race; because matters relating to race are typically taught in electives and in public law courses such as criminal and constitutional law; and because race is usually treated as context—so tangential to the substantive doctrinal rules and concepts that many faculty are expressing concern that they will have to skimp on the doctrine to make room.

Id.

[361] *Id.* at 1298, 1300 (Penningroth makes a similar structural argument when he argues that, "American law schools implicitly teach two important legends. The first is that contract law has little to do with civil rights, African Americans, or race.").

[362] *Id.* at 1300-01 (arguing that cases related to race belong in doctrinal classes–including contracts–at the "core of our shared legal intellectual life" and "the leading casebooks make it seem as though contract law has almost nothing to do with race or racial minorities or the struggle to define freedom in a world without slavery. And this doctrinal passing has cost law schools dearly.").

and are necessarily woven into doctrinal lessons.[363] They reject the idea that critical-contextual content could manifest as a class or two spent on critical methodologies before returning to the important content: doctrine.

The effect of the way that critical-contextual education has been offered to students is that it seems peripheral, separate, and, problematically, optional. When students look at the curriculum, they see the dominance of those doctrinal classes in positioning and hours as indicative of value.

Instead, professors should transparently discuss how critical legal methodologies are useful in understanding the law and in practice. Students should be allowed to develop a high-level understanding of the history and context of law–and of the legal academy itself. In my survey of the literature, many scholars who argued for critical-contextual education raised personal stories of the alienation, confusion, and hurt they experienced in law school as a result of obscured historical, cultural, and other contextual narratives.[364]

i. The End of the Aughts

In this era, the tone of the reform literature was such that Professor Judith Welch Wegner remarked that, "[m]ost legal educators have by now encountered claims from numerous sources contending that reform is necessary."[365] And, indeed, some narrow reforms did happen.[366] However, just a few years later, Professor Michael Cassidy noted, "[i]n terms of pedagogy, the most common reaction to the legal education crisis has been to expand clinical offerings and add externship opportunities, while leaving the rest of the traditional law school curriculum essentially in place."[367]

Another professor, examining the stasis of legal education through the lens of historical reform efforts, argued that legal reform efforts were marginalized and had limited normative impact because reformers underestimated the strategic demands of systemic change.[368] By the end of

---

[363] *See, e.g.*, Thomas, *supra* note 24, at 973 (discussing changing core law courses to include social context and inform students on "key debates on the nature of justice, equality, and freedom," Professor Thomas argues:

> To the skeptics who would be fearful that the core methods and tools of legal education would be diluted and that lawyers might become jacks of all disciplines, masters of none, my contention is that this way of teaching, though it must be carefully curated, profoundly enhances the depth of insight into the law).

Id.

[364] *See, e.g.*, Matambanadzo, *supra* note 320, at 90-91.

[365] *See* Judith Welch Wegner, *Cornerstones, Curb Cuts, and Legal Education Reform*, 2013 J. DISP. RESOL. 33, 34 (2013).

[366] *See* Stanchi, *supra* note 326, at 611 (For example, in 2008, Harvard Law School had a new first-year curriculum which required a course that integrated legal theory with problem solving.).

[367] *See* Cassidy, *supra* note 287, at 430.

[368] Rankin, *supra* note 25, at 11-12.

the decade, the sense loomed that, if reform efforts were to move forward, advocates would need to build a coherent, collective strategy.[369] Despite meaningful scholarship produced throughout the decade, critical-contextual education reformers in the aughts did not, ultimately, come together as a collective to create that necessary strategy. Language related to "practical" changes, like academic success and Bar initiatives, dominated reform discussion.

Critical-contextual reform rhetoric shifted radically towards helping underperforming students and preparing students to compete in a global market.[370] While this is not necessarily for good or ill, scholars interested in the way language impacts policy and politics over time may be interested in tracking rhetoric changes that so radically shifted to "practicality" in the aughts.

As with any history, these characterizations are just that; they are not blanket claims of ubiquity. So many reformers contributed to imaginative change in this era; scholars did impressive work theorizing and developing pedagogy practices related to perspectives, including race, gender, class, and disability.[371] This foundational work would become the basis of key Diversity, Equity, and Inclusion ("DEI") initiatives in the next decade–the seeds of lasting, fundamental change.

Despite concentrated effort and impressive work by these reformers in the field, ten years after the 2008 recession sparked a flurry of calls for change, few changes materialized. Reformers who had expected fundamental changes in the legal academy felt "duped," "double-crossed," "suckered," and "furious."[372] One scholar described reform advocates of this generation as a "motley crew" of "mainstream idealists and radical utopians."[373] This description matches my observed split between those

---

369 *Id.* 12.

370 *See* Jason G. Dykstra, *Beyond the "Practice Ready" Buzz: Sifting Through the Disruption of the Legal Industry to Divine the Skills Needed by New Attorneys*, 11 DREXEL L. REV. 149, 152, 161, 163 (2018) (In his article discussing skills needed by new attorneys, Dykstra discusses new "unprecedented global competition," notes that "new lawyers will hatch fledgling into a new era of practice far less insulated from global competition," and also notes that "the legal academy grasps at the marketing buzz of purveying an ever more 'practice-ready' legal education.").

371 *See e.g.*, Vernellia R. Randall, *Teaching Diversity Skills in Law School*, 54 ST. LOUIS U. L.J. 795, 796 (2010) (discussing how to incorporate "outsider views" into legal education); Chang & Davis, *supra* note 317 (developing frameworks to consider bias in the law school classroom); Steven K. Homer, *Using Interculturally Aware Teaching-Methods in* BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 85 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo López eds., 2015); Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 25 BERKELEY LA RAZA L.J. 1 (2015) (collating lessons in incorporating discussions on diversity in law school through critical pedagogies).

372 López, *supra* note 119.

373 *Id.* at 473.

reformers still embracing the more radical rhetoric of the eighties and those embracing new trends of the millennia.

Perhaps this was the problem–this divided motley crew.

Discussing the cause of this failure to manifest change, scholars cite institutional malaise. Professor Gerald L*ó*pez wrote in 2017 that, "[d]eans and leading faculty members at various schools told me, beginning in 2007 and continuing through today, that they planned on doing nothing more than framing differently what their law schools already had been doing."[374] Institutions resist change. Huge revolutions of curricula are complex, thorny, and expensive. Further, as Professor L*ó*pez goes on to argue, "[t]he past decade's events all have taken place within a set of operative convictions and conventions, a set of 'background rules of the game'" that "structure possibilities" of reform.[375]

Many of those background conventions noted above are conventions of liberal and neoliberal norms–concerns of laissez-faire capitalism, business and markets, and globalization.[376] These norms predominantly frame law school as a business that produces value for clients, instead of an educational apparatus for creating knowledge and worldly advocates.[377] This is not a system conducive to revolutionary changes. This is a world that would only embrace language of practicality, practice-ready graduates–flexible competitors in globalized markets.

While some law schools took impressive shifts to revamp their curricula in this era, particularly related to clinics and skills courses,[378] legal education generally remained fundamentally stagnant. A coherent movement with an

---

[374] *Id.* at 491.

[375] *Id.* at 511.

[376] Liz Manning, *Neoliberalism: What It is, with Examples and Pros and Cons*, INVESTOPEDIA (Jul. 29, 2022), https://www.investopedia.com/terms/n/neoliberalism.asp ("Neoliberalism is a political and economic philosophy that emphasizes free trade, deregulation, globalization, and a reduction in government spending. It's related to laissez-faire economics, a school of thought that prescribes a minimal amount of government interference in the economic issues of individuals and society.").

[377] *See, e.g.*, Julian S. Webb, *The LETRs (Still) in the Post: The Legal Education and Training Review and the Reform of Legal Services Education and Training–A Personal (Re)view*, in THE FUTURES OF LEGAL EDUCATION AND THE LEGAL PROFESSION (Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan, and Richard Young eds., 2015) (discussing international trends in legal education and noting:

> Much of this can be associated with the interplay of globalisation and the new (national) political economy of higher education. In the wake of the Washington Consensus, higher education policy internationally has become increasingly framed within the neo-liberal agenda of creating a global 'knowledge economy', a discourse that values higher education more as an economic than a cultural good, and which has led to higher education becoming treated as a private economic good, to be privatised, marketised, commoditised and deregulated or re-regulated in the name of efficiency.

Id.

[378] López, *supra* note 119, at 487–88 (outlining shifts by Harvard and Stanford and the curriculum of newly-formed UC Irvine).

overarching strategic campaign failed to materialize.[379] With a movement divided in goals and rhetoric, critical-contextual education remained strictly peripheral despite great individual efforts.

IV. PRACTICALITY: CRITICAL-CONTEXTUAL CONNECTION WITH SKILLS

At least since the aughts and continuing through the present, scholars argue that, "today's entering law students are demonstrably less prepared for law school because their critical thinking and problem-solving skills are significantly lower than those of students" of prior decades.[380] While each successive generation tends to critique the readiness of the next, this observation parallels broad scholarship that suggests standardized testing and a decrease in writing education have negatively impacted fundamental skills across the board. Here, I will challenge the idea that traditionally peripheral critical-contextual education is impractical. Instead, I will argue that critical-contextual content works in tandem with doctrinal substance to develop necessary skills for practice; simultaneously, critical-contextual education helps students refine necessary fundamental skills that their lower schools often fail to instill in them. The effect of this, ultimately, is to increase skills and wellbeing.

A. The Skill of Critical Thinking & Reading

Scholars suggest that college and secondary students' critical thinking skills have declined for years.[381] Many college students struggle to "draw inferences from written material," justify their opinions, or recognize "evidential relationships."[382] These are the keys to critical thinking.

Despite our hope that the Socratic method will sharpen our students' abilities to "think like a lawyer," reform advocates charge that law schools are not sufficiently preparing law students for practice. Bar Exam scores

---

[379] *See* Rankin, supra note 25, at 19-20.

[380] Stuart & Vance, *supra* note 240, at 41; *see* EDWIN S. FRUEHWALD, CRITICAL THINKING: AN ESSENTIAL SKILL FOR LAW STUDENTS, LAWYERS, LAW PROFESSORS, AND JUDGES 1 (2022).

[381] FRUEHWALD, *supra* note 380, at 1-2; Mark C. Perna, *Penny for Your Thoughts: Why Quality Thinking is Declining Worldwide*, FORBES (Oct. 11, 2022, 6:45 PM), https://www.forbes.com/sites/markcperna/2022/10/11/penny-for-your-thoughts-why-quality-thinking-is-declining-worldwide.

[382] FRUEHWALD, *supra* note 380, at 2; *see also* Jennifer Wilson Mulnix, *Thinking Critically About Critical Thinking*, 44 EDUC. PHIL. & THEORY 464 (2010); *see also* Tim van Gelder, *Teaching Critical Thinking: Some Lessons from Cognitive Science*, 53 COLL. TEACHING 41, 41-42 (2005); Daniel T. Willingham, *Critical Thinking: Why is It So Hard to Teach?*, 109 ARTS EDUC. POL'Y REV. 21 (2008); *see also* RICHARD ARUM & JOSIPA ROKSA, ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES 3 (2011).

have trended down for years.[383] Despite the proliferation of clinics, practical skills courses, and manifold resources, attorneys still critique law student practice readiness.[384] A recent study found new lawyers felt "woefully unprepared" to work with clients.[385] Among other deficits, they struggled to "listen and communicate effectively" with clients and to think "big picture."[386] One scholar argued that, of her students, "[m]any are no longer being challenged to engage in higher-order thinking skills in college, and therefore, are objectively weaker candidates for becoming practice-ready, regardless of whether or not they pass the bar."[387]

A professor, advocating in favor of critical-contextual curricular reform, articulated exactly the skills that overlap between critical-contextual education and "thinking like a lawyer": He argued that students must develop "hard-edged, analytical thinking and reasoning, incessant questioning, constant reevaluation, a sense of relevance of the facts of each case and the need to build on or distinguish precedent when faced with a novel claim."[388]

The higher-order thinking skills that promote the ability to constantly reevaluate and question are under fire in our cultural moment.[389] Students in lower school are not asked to constantly reevaluate and question. Instead, in many cases, they are taught a narrow set of maneuvers–a rote and uncritical system of recapitulation. In internet culture–a culture with which our students are interacting for an average of *five hours* per day–critique is

---

383 *See Bar Exam Statistics and Pass Rates*, *supra* note 249; Karen Sloan, *Racial Disparities in Bar Exam Scores Worsened in 2022*, REUTERS (Apr. 12, 2023, 2:18 PM), https://www.reuters.com/legal/legalindustry/racial-disparities-bar-exam-scores-worsened-2022-2023-04-12 (noting the "overall national first-time pass rate fell to 78% in 2022 from 80% the previous year.").

384 *See Hiring Partners Reveal New Attorney Readiness for Real World Practice*, LEXISNEXIS 1 (2015), https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf ("95% of hiring partners and associates in a recent survey believe recently graduated law students lack key practical skills at the time of hiring.").

385 DEBORAH JONES MERRITT & LOGAN CORNETT, BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE, 38, 51, 56 (2020) ("The lawyers in our study felt woefully underprepared for this work.").

386 *Id.* at 38, 51, 56.

387 Stuart & Vance, *supra* note 240, at 81.

388 *See* Solomon, *supra* note 176, at 5.

389 Helen Lee Bouygues, *Critical Thinking Skills Not Emphasized by Most Middle School Teachers*, FORBES (Aug. 17, 2022), https://www.forbes.com/sites/helenleebouygues/2022/08/17/critical-skills-not-emphasized-by-most-middle-school-teachers/?sh=6baf7fc72ee4 (citing a study finding that the teaching of critical thinking skills is inconsistent across states and noting that:

> [T]hings such as teacher pay, school funding and other "high-stakes" accountability measures often hinge on student performance in that grade. This pressure forces schools and teachers to focus on preparing their eighth graders for state exams in lieu of a more well-rounded educational experience. Indeed, our 2020 survey of teachers revealed that 55 percent believed that the emphasis on standardized testing made it more difficult to incorporate critical thinking instruction in their classrooms).

Id.

privileged;[390] critique and negative commentary have social capital and are rewarded with likes and upvotes. However, critique online is reductive, unnuanced, and flat.

Critical-contextual education develops crucial higher-order skills. Studying different lenses forces students to question the strengths and weaknesses of each–to evaluate and interrogate assumptions of each lens. Critical-contextual education encourages students to articulate arguments clearly, coherently, and persuasively. By synthesizing multiple viewpoints, they actively construct their knowledge in each area. In shifting viewpoints and articulating arguments, students are required to foster metacognitive skills–to think about their own thinking and learning in relation to theory. Indeed, studies show that when students must articulate their own thoughts through writing about a topic, this practice reliably enhances learning.[391] Scholars conducting empirical studies on reading comprehension in the law have noted that, "'real world' knowledge" is the "factor most affecting comprehension" of a text.[392] Without this background, scholars note that readers have a hard time understanding the text.[393] Expert readers have higher-order strategies for reading: They ask questions of the text, make predictions, and hypothesize about connected purpose and meaning.[394] These skills align with effects of critical-contextual education. Giving students a contextual framework in which to understand cases and encouraging critical tools, like active questioning, comparison, and active articulation, make students stronger readers of law school cases.[395]

---

[390] Peter Suciu, *Americans Spent on Average More Than 1,300 Hours on Social Media Last Year,* FORBES (June 24, 2021), https://www.forbes.com/sites/petersuciu/2021/06/24/americans-spent-more-than-1300-hours-on-social-media/?sh=3eb6ef242547 (noting that Americans spend an average of five hours per day online); *see, e.g.*, Gaia Vince, *Why Nice People Become Mean*, CNN HEALTH (Apr. 3, 2018) https://www.cnn.com/2018/04/03/health/good-people-bad-online-partner/index.html (describing how critique is rewarded online:

> Recent research shows that messages with both moral and emotional words are more likely to spread on social media – each moral or emotional word in a tweet increases the likelihood of it being retweeted by 20%. "Content that triggers outrage and that expresses outrage is much more likely to be shared," Crockett says. What we've created online is "an ecosystem that selects for the most outrageous content, paired with a platform where it's easier than ever before to express outrage.

Id.

[391] *See* Steve Graham, Sharlene A. Kiuhara, & Meade MacKay, *The Effects of Writing on Learning in Science, Social Studies, and Mathematics: A Meta-Analysis*, 90 REV. EDUC. RSCH. 179 (2020).

[392] Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 607 (2007).

[393] *Id.* at 607.

[394] *Id.* at 609; *see also* Laurel C. Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 139-40 (1997).

[395] *See* Oates, *supra* note 394.

B. Context Not Gained in Lower School

The 2020 George Floyd protests sparked a movement that created dramatic ripples. Mirroring the protests of the 1960s, while broad criticism existed over slow legislation and actual policy change, I argue that the movement indelibly enabled a shift in language in society and forced a series of recognitions about continued, systemic anti-Black prejudice.[396]

In response, conservative propagandists seized upon the idea of CRT to manage the conversation around race. Conservative lawmakers across the country began to implement fearmongering language akin to rhetoric used during the Red Scare, warning constituents of a "divisive ideology that threaten[ed] to poison the American psyche" and cause "irreversible damage to our children."[397] Indeed, according to one representative, this "souped-up version of Marxism" in our schools has led us to a moment of "cultural warfare."[398] Former Vice President Mike Pence referred to CRT as "state-sponsored racism."[399] In Texas, Governor Greg Abbott signed into law an act that banned social studies teachers from, for example, suggesting in a course that, "with respect to their relationship to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to, the authentic founding principles of the United States, which include liberty and equality."[400] Dozens of states followed suit.[401] Arkansas Governor Sarah Huckabee Sanders recently released a memo banning CRT

---

396 Noor Toraif, Neha Gondal, Pujan Paudel & Alison Frisellaa, *From Colorblind to Systemic Racism: Emergence of a Rhetorical Shift in Higher Education Discourse in Response to the Murder of George Floyd*, PLOS ONE 1, 24 (2023) (noting results of a study that found "[w]hen we compare our results to prior literature, we find evidence supportive of shifts in both the content and form of discourse on race and racism in higher educational institutions."); Olivia B. Waxman, *10 Experts on Where the Goerge Floyd Protests Fit Into American History*, TIME (Jun. 4, 2020, 4:32 PM), https://time.com/5846727/george-floyd-protests-history (quoting Jamila Michener, Assistant Professor of Government at Cornell University: "There are significant historical parallels between the present moment and prior episodes of unrest, particularly in the 1960s.").

397 Char Adams, *Republicans Announce Federal Bill to 'Restrict the Spread' of Critical Race Theory*, NBC NEWS (May 12, 2021, 4:54 PM), https://www.nbcnews.com/news/nbcblk/republicans-announce-federal-bills-restrict-spread-critical-race-theory-n1267161.

398 Representative Dan Bishop, *House Republican News Conference on Critical Race Theory*, C-SPAN (May 12, 2021), https://www.c-span.org/video/?511698-1/representative-bishop-omb-director-introduce-bill-opposing-teaching-critical-race-theory.

399 Will Weissert, *Pence Wades into School Debate Roiling Va Governor's Race*, AP NEWS (Oct. 28, 2021, 9:21 PM), https://apnews.com/article/elections-race-and-ethnicity-racial-injustice-michael-pence-virginia-a5100eb9c96250d914e8091d7bc51592.

400 H.B. 3979, 2021 Leg., 87th Reg. Sess. (Tex. 2021).

401 *See* Cathryn Stout & Thomas Wilburn, *CRT Map: Efforts to Restrict Teaching Racism and Bias Have Multiplied Across the U.S.*, CHALKBEAT, https://www.chalkbeat.org/22525983/map-critical-race-theory-legislation-teaching-racism [https://perma.cc/B9QG-2V3Q] (last updated Feb. 1, 2022, 7:20 PM) (citing language from the bills of 36 states that introduced or passed legislation related to restricting teachers from discussing "divisive" topics in schools, including racial history in the United States, the 1619 Project, and CRT).

and vowing that she would stop schools from "brainwashing our children with a left-wing political agenda."[402]

Abbott's astounding failure to properly apply his own party's favored originalism is not within the scope of this Article. The point here is the noted chilling effect in classrooms across the country of any discussion of race as it connects to history.[403] With stifled, silenced classrooms, dumbed-down discussion online, Balkanized, bifurcated news sources, and partisan politics, students who may have had necessary context ten years ago now may not.

A 2016 report from the American Council of Trustees and Alumni ("ACTA") called the lack of knowledge of American history "a crisis in civic education."[404] Many top schools such as Harvard, Yale, Princeton, UNC Chapel Hill, UCLA, Berkeley, and Stanford do not meet the ACTA's history standards.[405] ACTA found that only *eighteen percent* of four-year colleges required a foundational course in United States history or government.[406] We cannot assume our students have strong contextual knowledge of the system in which they will work. History and social studies education in America has been concerning for some time–a 2000 poll, for example, showed only one in four college seniors included in the poll knew what the Emancipation Proclamation was.[407] The increased prevalence of the internet and the censored Common Core curriculum work in tandem to dull complex argument skills while legislators in many states are now working to cut the meager contextual backgrounds students still receive in class. While law professors may worry about taking time out of the doctrinal curriculum, every legal graduate should have a holistic context of the United States legal system and its history.

C. Argument Skills

Many current law students are embroiled within social perspectives and, understandably, angry about related issues raised in the law. Recently,

---

[402] Laura Meckler, *On Day 1, Gov. Sarah Huckabee Sanders Targets Critical Race Theory*, WASH. POST (Jan. 11, 2023, 4:45 PM), https://www.washingtonpost.com/education/2023/01/11/arkansas-critical-race-theory.

[403] *See* Jennie A. Hill, *Legitimate State Interest or Educational Censorship: The Chilling Effect of Oklahoma House Bill 1775*, 75 OKLA. L. REV. 385, 385-86 (2023) (referring to the censorship effect of Oklahoma H.B. 1775 as a "pall of Orthodoxy"); Danielle M. Conway, *The Assault on Critical Race Theory as Pretext for Populist Backlash on Higher Education*, 66 ST. LOUIS U. L.J. 707 (2022).

[404] AM. COUNCIL OF TR. AND ALUMNI, A CRISIS IN CIVIC EDUCATION (2016).

[405] AM. COUNCIL OF TR. AND ALUMNI, WHAT WILL THEY LEARN? 2015-16: A SURVEY OF CORE REQUIREMENTS AT OUR NATION'S COLLEGES AND UNIVERSITIES (2015).

[406] *Id.* at 19.

[407] Richard Morin, *What Every Student Should Know*, WASH. POST: WHAT AMERICANS THINK (Apr. 17, 2000), https://www.washingtonpost.com/wp-srv/politics/polls/wat/archive/wat041700.htm [https://perma.cc/YMQ8-QM54].

the Federalist Society at Stanford Law School invited a conservative Trump-appointed judge to speak at the school.[408] Before the event, Stanford student groups opposed to Judge Duncan's presence on campus posted a flyer that charged the judge with fighting to deny rights to same-sex couples, trans people, and Black Americans.[409] At the event, protestors jeered, heckled, and disrupted the event to the extent that it ended early. The event ended up receiving an unsurprising amount of press across the spectrum of media outlets. Stanford law students were then forced to undergo training related to freedom of speech on campus.[410]

While it is reasonable for those students to be opposed to and even disturbed by the judge's personal opinions and his professional choices, it is also true that a number of them will likely argue in front of his bench in their lifetimes. A number of those students in that room will likely write a brief that the judge will read. Some of them will surely have the professional responsibility to respond to decisions written in his chambers. Those students forewent the opportunity to engage with the judge about his writing and analytical preferences or engage with him in measured debate.

It is easy to sympathize with that choice. Student protest is a powerful and important tool. It is easy to imagine that those students felt there simply was not anything to be gained from conversation with the judge. But there is a wealth of skills to be gained from engaging in debate *and* in putting oneself in the rhetorical shoes of one's opponent–no matter how loathsome one finds the position. CLP and critical-contextual education ask students to do just that. The ability to adaptively shift frameworks allows students to pinpoint precise points of disagreement. The learning theories noted above explain the beneficial impact of active questioning and shifting positions on critical thinking; evaluating arguments and counterarguments *is* critical thinking.

Studies suggest a decline in critical thinking skills in the United States in the last decade.[411] In law school, this often manifests in the analysis/application section of law school exams and legal writing assignments. Students know the rule. They understand the conclusion. But students often struggle to articulate and expand upon the reasons for that conclusion–to think deeply and holistically about the logical supports.

---

[408] *See* David Lat, *Yale Law is No Longer #1–For Free-Speech Debacles*, ORIGINAL JURISDICTION (Mar. 10, 2023), https://davidlat.substack.com/p/yale-law-is-no-longer-1for-free-speech.

[409] *Id.*

[410] Karen Sloan & Nate Raymond, *Stanford Law Official Who Admonished Judge During Speech is on Leave, Dean Says*, REUTERS (Mar. 22, 2023, 3:13 PM), https://www.reuters.com/legal/legalindustry/stanford-law-official-who-admonished-judge-during-speech-is-leave-dean-says-2023-03-22 (noting Stanford Dean Jenny Martinez wrote a public letter that "said all Stanford Law students will undergo a half day of training on 'freedom of speech and the norms of the legal profession' this spring").

[411] Perna, *supra* note 381.

Where, if not in school, do students see this skill mirrored? I argue that it is not in polarized American politics.[412] Pundits and partisan advocates often cite buzzwords without delving into the substance of any argument. This polarization seeps into rhetoric across the media.

What we do know is that students learn best when the prior knowledge they bring into the classroom is recognized and engaged with. Then, that learning is concretized when professors help students build "conceptual frameworks" upon foundational knowledge through active, experiential, and contextually varied learning.[413] Critical-contextual education does both. Critical pedagogies engage students' prior knowledge. Critical-context allows students to build on that knowledge by specifically articulating arguments derived from different theoretical frameworks.

We teach our students to be advocates. To do so, they must have the ability to argue for and against any issue. Intelligent debate requires context and critical tools, including critical thinking skills. Students must learn to articulate and defend ideas. Law intersects with and organizes every social issue. We ought to broaden the frameworks and contexts our students have to make conclusions. We ought to help our students think critically about these ideas and–importantly–how to formulate smart arguments for and against what they believe. This testing creates critical thinkers.

The practice of law is not within a vacuum. Students must both have access to broad cultural-contextual legal education and learn to engage with arguments on both sides of a socio-legal issue. This is training not only for law school, but for the work they will do as they go on to advocate for those in need, interpret the law as judges, and make law in the government. Both the lack of cultural education students receive in other schooling and the dearth of critical thinking skills force this decades-long debate to a head.

A thinker who applies only one framework is blind to the weaknesses of their argument. It is the work of testing multiple critical lenses and continuously challenging the logical assumptions of each that creates a polished, strengthened argument. Professor Chantal Thomas expanded on

---

412 Helen Lee Bouygues, *Reducing Polarization Through Critical Thinking and Common Ground*, FORBES (Oct. 4, 2022, 10:19 AM), https://www.forbes.com/sites/helenleebouygues/2022/10/04/reducing-polarization-through-critical-thinking-and-common-ground/?sh=4f58e3cb5313 (noting recent surveys with findings that, in the United States, (1) there was a twenty-six percent drop in the number of people who "seek out people who tend to have different opinions than [them] to engage in discussion or debate," and (2) when people stop talking to those with opposing views, an essential part of healthy critical thinking is lost"); *see also* Jennifer McCoy & Benjamin Press, *What Happens When Democracies Become Perniciously Polarized?*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 18, 2022), https://carnegieendowment.org/2022/01/18/what-happens-when-democracies-become-perniciously-polarized-pub-86190 (noting the "gridlock" of polarized politics in the United States and its pernicious effects).

413 *See Teaching and Learning Frameworks*, YALE POORVU CTR. FOR TEACHING AND LEARNING, https://poorvucenter.yale.edu/BackwardDesign (last visited Dec. 1, 2023).

the ways in which critical pedagogy imparts these skills: "Part of this process is training the students in critique: how to move beyond a general sense that a particular legal rule is 'wrong' and to identify 'specific arguments ranging from empirically or experientially based critiques of the accuracy of the claims being made, to criticism of the normative world view implicitly or explicitly adopted by the texts.'"[414] The process of challenging that inner logic–of constantly questioning, re-evaluating, and shifting lenses–develops the skills students need to become zealous attorneys.

"Practicality" as a dominant discursive requirement in legal education has a powerful grip on legal debate. It appears that successful reform efforts appeal to practicality. Critical-contextual education is practical because it provides supplemental reinforcement of all the key fundamental skills lawyers need to practice. Perhaps more importantly, though, overwhelming research shows that students experience a decline in both "psychological and emotional wellbeing" in law school.[415] That research shows, however, that, "when the social context in law school supports students' autonomy, gives them balanced interdisciplinary training, and focuses on satisfying students' psychological needs, such as competence, student[] satisfaction increases."[416] Critical-contextual education gives students the opportunity to engage with interdisciplinary training that allows them to reflect on their own experiences. These facets support student wellbeing and give students the tools to understand the era in which they practice–imminently practical goals.

---

414 Thomas, *supra* note 24, at 972; *see also* James E. Viator, *Legal Education's Perfect Storm: Law Students' Poor Writing and Legal Analysis Skills Collide with Dismal Employment Prospects, Creating the Urgent Need to Reconfigure the First-Year Curriculum*, 61 CATH. U. L. REV. 735 (2012).

415 Krannich, Holbrook & McAdams, *supra* note 55, at 394; *see also* Janet Thompson Jackson, *Legal Education Needs a Wellness Reckoning*, BL (Apr. 7, 2021), https://news.bloomberglaw.com/us-law-week/legal-education-needs-a-wellness-reckoning ("According to the Dave Nee Foundation, most law students begin law school with a psychological profile similar to that of the general public, with depression rates at less than 10%. But, after just one semester, depression rates rise to 27%."); Jessica R. Blaemire, *Analysis: Well-Being in Law School–Law Students Aren't OK*, BL (Feb. 3, 2023), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-well-being-in-law-school-law-students-arent-ok ("Most law students are struggling with mental health issues, according to a new Bloomberg Law survey." Out of 1,000 students, "[o]ver 75% of student respondents reported increased anxiety because of law school-related issues, and over 50% reported experiencing depression."); Karen Sloan, '*Our Law Students Need Help.' Study Finds Higher Rates of Mental Health Problems,* REUTERS (Jul. 13, 2022, 2:55 PM), https://www.reuters.com/legal/legalindustry/our-law-students-need-help-study-finds-higher-rates-mental-health-problems-2022-07-13 ("Nearly 69% of respondents from 39 law schools surveyed in 2021 reported that they needed help for emotional or mental health problems in the past year. That's up from 42% from the 2014 version of the same survey . . . .").

416 Krannich, Holbook & McAdams, *supra* note 55, at 395.

V. CURRENT MOVEMENT RESURGENT REFORM: A SEA CHANGE

In 1987, a law professor charged that schools responded to calls for "relevancy" in the curriculum by adding courses at the margin.[417] That trend continued for nearly forty years.[418] But now, a sea change is upon us.

I am not the only scholar to notice that for the first time in several years, momentum is again building towards critical-contextual education reform.[419] A quorum of scholars has begun to point to the fact that, "law school classes too often present the law in a vacuum, ignoring historical, cultural, and political context that shapes how the law is applied, potentially applied differently, and to whom."[420] These arguments, mirroring a century of arguments about critical-contextual education, now have a pathway to effect meaningful reform.

Here, scholars who work on issues of reform related to anti-racist education and race in the law lead the charge.[421] In response to the aftermath of Black Lives Matter and the conservative anti-CRT pushback, law schools face sharp pressure to engage anti-racist policies.[422] Reform advocates have noted that, "it is critical for law schools to see the role the legal system has

---

417 Weistart, *supra* note 211, at 320.

418 *See* Prentiss Cox, *1L Curricula in the United States: 2023 Data and Historical Comparison*, U. MINN. L. SCH. LEGAL STUD. RSCH. PAPER SERIES 1, 19 (2023) (noting "This descriptive empirical study of the 1L curricula at U. S. law schools follows more than a half a dozen similar surveys over the last 114 years. Much is the same, particularly reliance on a set of common law doctrine courses has persisted . . . ."); *see also* Bob Gordon, James May, Jack Schlegel & Joan Williams, *Legal Education Then and Now: Changing Patterns in Legal Training and in the Relationship of Law Schools to the World Around Them*, 47 AM. U. L. REV. 747 (1998) (describing the continuity of the 1L curriculum and noting, "By the 1940s and 1950s, you have something like the law school curriculum as you know it today; that is, with the nineteenth century common law ground rules as the core of the first year curriculum and the New Deal regulatory administrative state in the second and third years.").

419 Thomas, *supra* note 24, at 955 ("For the first time in a long time, real momentum is emerging behind efforts to effectuate such transformations in legal education.").

420 Glater, *supra* note 43, at 134-35 (presenting the critique that law school presents the law in a vacuum and ignores historical, cultural, and political context as one of three main contemporary critiques of legal education).

421 *See, e.g.*, Danielle M. Conway, *Antiracist Lawyering in Practice Begins with the Practice of Teaching and Learning Antiracism in Law School*, 2022 UTAH L. REV. 723 (2022); Amy C. Gaudion, *Exploring Race and Racism in the Law School Curriculum: An Administrator's View on Adopting an Antiracist Curriculum*, 23 RUTGERS RACE & L. REV. 131 (2021); Dermot Groome, *Exploring Race and Racism in the Law School Curriculum: Educating Antiracist Lawyers*, 23 RUTGERS RACE & L. REV. 65 (2021).

422 *See* Chow, *supra* note 18 (noting calls for incorporating critical race analysis into the law school curriculum at one school are part of a "growing chorus at law schools throughout the nation").

played in perpetuating racism" and to prioritize students' abilities to consider racial inequalities and the law.[423] Law schools have responded, considering what it means to be anti-racist as an institution.[424] Advocates point to the work legal education stakeholders have already done in building DEI frameworks that allowed these shifts to take place.[425] As one professor noted, "the speed and scope of responses in support of racial justice by deans, faculty, and institutions may be without precedent."[426] These shifts led to the 2022 ABA addendum, which required law schools to provide students training in "bias, cross-cultural competency, and racism."[427] These shifts are not only taking place in electives. Recent scholarship has stressed that there is room in all legal coursework to "help students see the racial implications of what they study."[428]

The critical work of reformers in this area has opened the door to much broader foundational reform. Reform advocates echo the idea that race-focused approaches reach their fullest potential in concert with broadly intersectional curricula–which remain decentralized in law schools. And a spike of calls has begun for a "fundamental rethinking of the baseline purpose of [legal] education" and a "complete overhaul" of that system.[429] Those calls challenge the language of legal discourse that privileges "neutral"

---

[423] Marcus Gadson, *Legal Education in the Era of Black Lives Matter*, 69 J. LEGAL EDUC. 637, 641-42 (2020).

[424] Keeshea Turner Roberts, *Law Schools Push to Require Anti-Racism Training and Courses*, ABA (Dec. 13, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/rbgs-impact-on-civil-rights/law-schools-push.

> Law schools nationwide began to look inward to determine how they can address systemic racism in their institutions as well as in the legal profession overall. In fact, 150 deans of law schools petitioned the American Bar Association's Section of Legal Education and Admissions to the Bar to consider requiring every accredited law school to provide anti-racism training and education.

Id.; Leslie Ridgeway, *USC Gould to Offer Unique Required Course Focusing on Race in Legal System*, USCGOULD SCH. L. (Feb. 4, 2021), https://gould.usc.edu/about/news/?id=4814.

> The racial reckoning of 2020, from the Movement for Black Lives to the ravages of COVID-19, brought home to the USC Gould School of Law the continuing salience of race in the legal system and in society. Faculty, students and administrators joined together to take concrete anti-racist actions in the law school community.

Id.

[425] *See, e.g.*, Teri A. McMurtry-Chubb, *The Law School Curriculum and the Movement for Black Lives*, 31 U. FLA. J.L. & PUB. POL'Y 27, 27 (2020); Danielle M. Conway, Bekah Saidman-Krauss & Rebecca Schreiber, *Building an Antiracist Law School: Inclusivity in Admissions and Retention of Diverse Students–Leadership Determines DEI Success*, 23 RUTGERS RACE & L. REV. 1 (2021).

[426] Glater *supra* note 43, at 144.

[427] *Standards and Rules of Procedures for Approval of Law Schools 2023-2024*, *supra* note 23.

[428] Gadson, *supra* note 423, at 641 ("And yet, even here, there is so much room to help students see the racial implications of what they study.").

[429] *See* Etienne C. Toussaint, *The Purpose of Legal Education*, 111 CALIF. L. REV. 1, 5 (2023).

doctrinal substance and alleges that the case method is "objective."[430] The rhetoric of these current calls is much more aligned with the urgent rhetoric of the 1980s than most of the reform language over the last two decades.

Moreover, scholars are beginning to theorize a bridge between the binary of law and theory that has plagued education reform discourse for a century.[431] Scholars call for a combination of the two historically warring sides of legal education–its "*pedagogical* purpose to train law students how to understand, contextualize, and ethically practice the theory of law" and its "*business* purpose," which imparts practice skills to students to make them marketable.[432] Increasingly, scholars pose the idea that critical-contextual education is practical. Scholars have begun to suggest that without giving students a broader understanding of their own education in context, we are not providing them with a practical education.[433]

Scholars are beginning to build bridges between theory and practice in curricula. Berkeley Law School recently created a Legal Theories course to introduce first-year students to foundational and intersectional approaches to law.[434] Georgetown Law School also recently added a graduation requirement that first-year students must take one course "that teaches students to think critically about the law's claim to neutrality and the law's differential effects on subordinated groups, including those identified by race, gender, indigeneity, and class."[435] Columbia Law School offers a Critical Legal Thought seminar to 1L students, which bridges CLS and CLP ideas.[436] The course "introduces second-semester, first-year law students to

---

[430] *Id.* at 5.

[431] *Id.* at 9 ("[T]he study of the way legal systems and political institutions further racism, economic oppression, or social injustice must be viewed as endemic to the purpose of legal education.").

[432] *Id.* at 9.

[433] Beth H. Wilensky, *Dethroning Langdell*, 107 MINN. L. REV. 2701 (2023).

[434] *Moving Forward: Faculty Approves Race and Law Course Requirement in Order to Graduate*, BERKELEY L. (Feb. 18, 2022), https://www.law.berkeley.edu/article/faculty-approves-race-and-law-course-requirement/#:~:text=Submitted%20to%20the%20Curriculum%20Committee,relationship%20between%20law%20and%20race%2C (explaining that the original student-authored memorandum which proposed the course requested that "Berkeley Law add a legal theories course in the first-year curriculum that 'would introduce students to foundational and intersectional approaches to law' and 'require students to explore the relationship between law and race, gender, class, and power from a variety of perspectives'").

[435] *Academic Requirements & Degree Auditing*, GEO. L., https://www.law.georgetown.edu/academics/academic-resources/registrar/academic-requirements (last visited Nov. 14, 2023); *see also Message from the Dean: Update on Georgetown Law's Commitment to DEI*, GEO. L. (Oct. 7, 2021), https://www.law.georgetown.edu/about/georgetown-law-leadership/office-of-the-dean/message-from-the-dean-update-on-georgetown-laws-commitment-to-dei.

[436] *Critical Legal Thought*, COLUM. L. SCH., https://www.law.columbia.edu/academics/courses/29159#:~:text=Critical%20Legal%20Thought%20will%20introduce,outcomes%20seem%20just%2C%20neutral%2C%20and (last visited Nov. 13, 2023)

a range of critical approaches to law with the goal of giving them tools for testing legal arguments, assertions of legal pedigree, and the underlying normative premises that often make certain legal outcomes seem just, neutral, and objective, if not inevitable."[437] These courses, which borrow from critical legal theory and pedagogy of the last forty years, are just a few examples of many developing in the field.

Indeed, now students themselves are calling for shifted curricula. At the University of Washington Law School, a student who was part of a demonstration against the prior year's Perspectives class noted: "'A common criticism is that the conversations needed to be situated within the 1L curriculum, focusing on how the law and doctrines in that field disparately impact marginalized communities.'"[438] The faculty created a new course responsive to critique.[439] Dean Mario L. Barnes of the University of Washington Law School noted that, "[w]e need to hear, even if it is not our own perspective or experience, about the ways in which we need to more appropriately complicate our understanding of law."[440]

Now, schools across the country are moving to make Race and the Law a required elective.[441] Other courses offer students the opportunity to examine race in the context of subjects foundational to first-year curriculum.[442] Schools have also moved to consider and implement other required "perspectives" courses both as extracurriculars and as part of the 1L

("Beginning with Legal Realism and its progeny Critical Legal Studies, readings will cover Feminist and Critical Race critiques of law's aspiration to objectivity and neutrality.").

[437] *Id.*; *Law Schedule of Classes*, BERKELEY L., https://www.law.berkeley.edu/php-programs/courses/coursePage.php?cID=30753 (offering a Law & History Foundation Seminar).

[438] *See 1L Perspectives Course Reimagined, Returns as National Speaker Series*, U. WASH. SCH. L. (Jan. 28, 2021), https://www.law.uw.edu/news-events/news/2021/perspectives-course-reimagined.

[439] *See id.*

[440] *Id.*

[441] *See, e.g.*, Ridgeway, *supra* note 424 (noting USC's new required Race and the Law course); *'Race & the Foundations of American Law' Course*, ROGER WILLIAMS U. SCH. L., https://law.rwu.edu/student-experience/diversity-and-outreach/race-foundations#:~:text=RWU%20Law%20made%20national%20headlines,course%20as%20a%20spring%20elective (last visited Aug. 9, 2023) (describing RWU's required Race and the Law course).

[442] Stephanie Francis Ward, *Required USC Course on Race Is Expected to Help Law Students with Various Viewpoints*, ABA J. (Mar. 18, 2021, 9:11 AM), https://www.abajournal.com/web/article/required-USC-course-on-race-expected-to-help-law-students-with-various-viewpoints (discussing USC Gould School of Law's new mandatory course titled "Race, Racism and the Law"); *Yearlong Series Examines Race in the Context of Subjects Foundational to First Year Curriculum*, DUKE L. (Nov. 20, 2020), https://law.duke.edu/news/yearlong-series-examines-race-context-subjects-foundational-first-year-curriculum/#:~:text=A%20yearlong%20series%20at%20Duke,property%20law%2C%20and%20constitutional%20law; Benjamin M. Gerzik, *Reforging the Master's Tools: Critical Race Theory in the First-Year Curriculum,* 76 SMU L. REV. 34, 34 (2023) (arguing that "critical race theory (CRT) should be taught as a mandatory component of the first-year law school curriculum" and specifying that CRT should be taught in Civil Procedure and Constitutional Law).

curriculum.[443] For example, in 2021, Boston College Law School created a required first year course "on the intersection of law and race, gender, power, and class."[444] A brief survey revealed a resurgent flurry of theory-based offerings at law schools that explicitly mention critical theory and CLS.[445] Some law schools have developed "concentrations" that allow students to

---

[443] *See, e.g.*, *1L Perspectives Course Reimagined, Returns as National Speaker Series*, *supra* note 438; Vicki Sanders, *New 1L Course Stresses Inclusion*, B.C. L. SCH. (Sep. 7, 2021), https://lawmagazine.bc.edu/2021/09/new-1l-course-stresses-inclusion.

[444] *See* Sanders, *supra* note 443.

[445] *See, e.g.*, *Critical Theory in Legal Scholarship*, HARV. L. SCH., https://hls.harvard.edu/courses/critical-theory-in-legal-scholarship (last visited Nov. 12, 2023) ("The goal of this seminar will be to help students imagine writing projects of their own which put critical theory from the humanities and from legal studies "to work" in understanding some concrete dimension of the law."); *Legal Skepticism*, HARV. L. SCH., (last visited Nov. 12, 2023), https://hls.harvard.edu/courses/legal-skepticism ("We will look at skeptical writings in legal theory, mainly from the American schools of legal realism and critical legal studies."); *Advanced Studies: Sources/General Literature of the Several Fields: United States*, BERKELEY ACAD. GUIDE, https://classes.berkeley.edu/content/2022-Fall-HISTORY-280D-002-SEM-002 (last visited Nov. 12, 2023) (cross-listed with the Critical Theory program and exploring "the question of how history–as theory, as philosophy, as method, or simply as narrative–can help us understand the role that law has played, and plays, in the construction of our times."); *Course Descriptions: Legal Theory Seminar*, USCGOULD SCH. OF L., https://gould.usc.edu/academics/courses/legal-theory-seminar (last visited Nov. 12, 2023) ("This is a seminar on Legal Theory, the use of theoretical tools from philosophy and other disciplines (including economics, critical theory, and social theory) to analyze and criticize legal rules, doctrines, and institutions."); *Critical Race Theory*, STAN. L. SCH., https://law.stanford.edu/courses/critical-theory (last visited Nov. 12, 2023).

> This course will cover the most important writing in critical race theory as it relates to law and jurisprudence. We will review the relationship between skeptical jurisprudence as developed in legal realism and Critical Legal Studies to the struggle for racial justice and the ambivalent relationship of civil rights lawyers to mainstream legal strategies for social change.

Id.; Editors, Law School Announcements Editors, *Law School Announcements 2019-2020*, 132 U. CHI. L. SCH. 1 (2019) (The course, "Critical Legal Studies vs. Law and Economics," is described: "This seminar will explore two kindred (!) schools of legal thought: critical legal studies (including critical race theory and critical legal studies scholarship on gender and status) and law and economics."); *Critical Legal Thought*, COLUM. L. SCH., https://www.law.columbia.edu/academics/courses/29159 (last visited Nov. 12, 2023) ("Beginning with Legal Realism and its progeny Critical Legal Studies, readings will cover Feminist and Critical Race critiques of law's aspiration to objectivity and neutrality."); *Racial Capitalism and American Law Seminar*, GEO. L. CURRICULUM GUIDE, https://curriculum.law.georgetown.edu/course-search/?keyword=LAWG+1389+00 (last visited Nov. 12, 2023) ("Students will be introduced to foundational essays in the critical legal tradition, as well as emerging interdisciplinary scholarship in postcolonial studies, critical indigenous studies, black radicalism, ethnic / American studies, and feminist / queer studies."); *Upper-Level Course Listing*, UNC. SCH. OF L., https://law.unc.edu/academics/degree-programs/course-advising/upper-level-course-listing (last visited Nov. 12, 2023).

> What is the relationship between justice and contemporary law in the U.S.? In the first two-thirds of the semester, we'll consider critiques of U.S. law from the perspectives of critical race scholars, feminist legal theorists, and scholars from the law and political economy movement, along with others, to answer this question.

Id.

gain skills in critical-contextual education. For example, University of Illinois Chicago School of Law added a Critical Race and Gender Studies concentration in 2021.[446] Recent publications showcase the many methods professors have begun to develop to import contextual-cultural education in core law school classes.[447] A wealth of scholarship from past decades offers further examples and samples across the doctrinal spectrum.[448] Student interest, pressure, and activism are key to the changing landscape; it was, after all, under intense pressure from students that law schools began to form electives on Blacks and the Law, Civil Rights, and Poverty and Minority Law.[449] There are many models out there for schools to look to. Georgetown Law, for example, has long had a multi-track curriculum. One track has 1L students learning alternative dispute resolution ("ADR") techniques and litigation by studying not only rules and statutes, but "social science studies and historical analyses."[450] These shifts represent just a very small percentage of exciting developments in law school curricula.

Moreover, some schools have begun to develop coursework to help students contextualize their own education.[451] UCLA's recent course description for Learning to Think Like a Lawyer: Using Social Science to Interrogate the 1L Experience explains that, "[s]ocial scientists who study the professions have explored how the 1L year functions as a key moment in the professional socialization of lawyers. But students sometimes experience the

---

[446] *JD Concentration in Critical Race & Gender Studies Offers Avenue to Address Issues of Privilege and Power*, UIC L., https://news.law.uic.edu/featured-news/jd-concentration-in-critical-race-gender-studies-offers-avenue-to-address-issues-of-privilege-and-power (last visited Oct. 23, 2023).

[447] *See, e.g.*, Lolita Buckner Inniss, *Race, Space, and Surveillance: A Response to #LivingWhileBlack: Blackness as Nuisance*, 69 AM. U. L. REV. F. 213 (2020) (torts); Penningroth, *supra* note 322 (contracts); Thomas, *supra* note 24, at 955 (contracts); Jennifer Wriggins, *Teaching Torts with a Focus on Race and Racism,* ME. L. (Feb. 19, 2020), https://mainelaw.maine.edu/faculty/teaching-torts-with-a-focus-on-race-and-racism (torts); Leslie P. Culver & Elizabeth Kronk-Warner, *#IncludeTheirStories: Rethinking, Reimagining, and Reshaping Legal Education*, 2022 UTAH L. REV. 709 (2022); Alfred Dennis Mathewson, *Race in Ordinary Course: Utilizing the Racial Background in Antitrust and Corporate Law Courses*, 23 J. C.R. & ECON. DEV. 667 (2008) (corporate law).

[448] *See, e.g.*, Ann Shalleck, *Feminist Theory & Feminist Method: Transforming the Experience of the Classroom*, 7 AM. U. J. GENDER, SOC. POL'Y & L. 229 (1999) (family law); Bisom-Rapp, *supra* note 12 (Employment Law); Judy Scales-Trent, *Sameness and Difference in a Law School Classroom: Working at the Crossroads*, 4 YALE J.L. & FEMINISM 415 (1992) (employment discrimination law; constitutional law).

[449] *See* Penningroth, *supra* note 322, at 1272.

[450] *Curriculum B (Section 3)*, GEO. L., https://curriculum.law.georgetown.edu/jd/curriculum-b-section-3/#coursestext (last visited Nov. 13, 2023) (Curriculum B's 2023 "Legal Process and Society" course "introduces students to the procedures used in litigation and alternative dispute resolution. A variety of materials will be read, including cases, rules, statutes, social science studies, and historical analyses.").

[451] *Yearlong Series Examines Race in the Context of Subjects Foundational to First-Year Curriculum, supra* note 442 (profiling a recent seminar series at Duke Law that explores "racial disparities in the way [first-year doctrinal courses] are taught or formulated, or how they play out in practice").

1L year as quite alienating and overwhelming."[452] The course then uses social science research to explore the 1L experience and, particularly, "how female students (of all races) and students from racial minority groups (African American, Asian American, Latino/a and Native American)" experience 1L year and studies "[i]ssues of alienation related to sexual orientation, disability and social class."[453]

Critical-contextual development across the legal academy shows promise in giving students key tools with which to navigate their legal educations. By allowing students to critically read law within context, we empower them.

There is still much work to do in the area of critical-contextual reform. There are unfinished questions and problems left untheorized. For example, Professor Chantal Thomas recently posed the question of what canon of texts and information might be formed by critical pedagogy advocates.[454] Other scholars believe we should resist a canon related to law and critical-cultural context.[455] These scholars argue that education of this nature resists canonization and must maintain flexibility.[456] The answer, as with most things, probably lies somewhere in the middle–maintain flexibility and personalization while compiling bibliographies in each subject area.

The concern with a critical-contextual approach to the teaching of law has always been informed by a concern with equality, difference, justice and a "host of other critical commitments embraced by participating members."[457] As a result, critical-contextual education must make the connections between identity, power, law, and knowledge. It must reveal the limitations and assumptions of formal legal training while explaining why we choose to pursue those methods. Critical-contextual education hones critical skills by encouraging students to understand the broader context of a subject, articulate specific lines of argument, nimbly shift lenses, and continuously question assumptions, biases, and limitations.

---

[452] Email from Jordana Ruhland, Registrar, UCLA L., to author (Nov. 14, 2023, 1:28 p.m.) (on file with author).

[453] *Id.*

[454] Thomas, *supra* note 24, at 955; *see also* Susanna Menis, *Non-Traditional Students and Critical Pedagogy: Transformative Practice and the Teaching of Criminal Law*, 22 TEACHING IN HIGHER EDUC. 193 (2017).

[455] *See* Hyo Yoon Kang, *Is There (Should There Be) a Law & Humanities Canon?* 19 L., CULTURE & THE HUMANS. 60 (2019) (advocating for resisting a canon in law and the humanities).

[456] *See* Sara Ramshaw, *Law and Humanities: A Field Without a Canon*, 19 L., CULTURE & THE HUMANS. 77 (2019) (noting that explorations in this style of pedagogy are being undertaken and explored by Canadian legal scholars at the University of Victoria Faculty of Law, where faculty members are using arts-based practices in their research and teaching.)

[457] Francisco Valdes & Steven W. Bender, *Critical Pedagogy Transforming Legal Education and Targeting Systemic Injustice, in* LAT CRIT: FROM CRITICAL LEGAL THEORY TO ACAD. ACTIVISM 79 (Francisco Valdes & Steven W. Bender eds., 2011).

Whether it looks like giving students two law review articles with opposing ideas, introducing viewpoints in parallel with cases, or asking students to adopt and articulate arguments from disparate viewpoints, any of these methods can be productive. To give students the tools to contextualize their own learning imagines law students as active participants with a stake in the world of legal interpretation–and in their own educations. This necessary part of "thinking like a lawyer" should not be reserved for electives, but integral in every part of legal learning.

A. Contemporary Rhetoric

Now is the time to seize on momentum built over the last three years. We must avoid a "motley crew" of reformers; instead, reformers in favor of critical-contextual education must come together, decide on powerful, consistent language, and move forward united.

Whether reformers embrace the pall of practicality that haunts legal education reform and argue–as I have above–that critical-contextual content fits squarely within that paradigm, or whether reformers reject–as I do–that content must be practical to be important, we must choose. We must define motive and scope. We should consider the pros and cons of rhetoric from culture wars and aughts. Reform advocates must make decisions about what kinds of claims and language to use or omit from the past and what to take from the present.

A cautious note about "perspectives": Many schools now move to require a "perspectives" elective. The language of "perspectives" has been on a journey over the last forty years. It cropped up frequently in the literature of the seventies, eighties, and nineties, describing particular perspectives: perspectives of women, perspectives of Black people, perspectives on diversity, perspectives on *something*.[458] Then, in the early

---

[458] *See, e.g.*, Brian Owsley, *Black Ivy: An African-American Perspective on Law School*, 28 COLUM. HUM. RTS. L. REV. 501, 549 (1997) (writing on the African-American perspective and noting that, "I hope legal scholars draw upon my experiences to improve the quality of the legal education that all students receive and noting that "I would hope that white students read this article and become more aware of different legal perspectives."); *see also* Kimberlé Williams Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1, 9 (1988) (discussing alienation of minorities in the law school classroom and noting that "Although it is clear that many discussions do not involve race, it is also true that race is often implicated in a range of ways even when it is not directly at issue and when racial perspectives are not explicitly identified."); Nancy E. Dowd, Kenneth B. Nunn & Jane E. Pendergast, *Diversity Matters: Race, Gender and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL'Y 12, 44 (2003) ("Minority and female faculty are essential role models and bring greater diversity in pedagogy and perspectives in the classroom."); Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547 (1993) (advocating for affirming "concerns that resonate with women's experiences, but on the basis of feminist commitments, not biological categories. The educational vision implicit in those commitments has much in common with other critical perspectives, which should enrich our theoretical analysis and expand our political alliances.").

aughts, that language shifted. The reform literature filled with calls for "transnational legal perspectives," "international perspectives," "globalized perspectives," and "multidisciplinary perspectives."[459] The language shifted away from personal perspectives of different types of people to global ones.

Then, later in the decade, the language shifted again. "Perspectives" courses now frequently have no specific referent. "Perspectives" courses merely begin to encapsulate a sometimes astoundingly broad range of courses. "Perspectives" courses expand to cover those subjects popularized in the aughts under the sun of globalization and market interests. They incorporate broader subjects that do not fit cleanly anywhere else, including foreign law. As one law school put it in their course description: "A 'perspective' course is devoted to placing the study of law in a context other than what is routinely provided in required doctrinal, skills, or practice courses."[460] "Perspectives" courses, in other words, are the "everything else" bucket.

Law schools which have moved to require a "perspectives" course should be applauded, as they are trying to enrich the legal education of their students. However, we should be wary of allowing an over-broad category that, at some schools, includes a miscellaneous array of topics, including Tax Policy, International Trade Law, Independent Research Seminars, Bioethics, and Cyber Law. Doubtless, these are all important subjects for law students; yet, on their own, I believe they are subtly different from the core aims for which scholars over the last forty years have advocated in the movement I have hoped to trace. The value of critical-contextual education comes from

---

[459] *See, e.g.*, Carmel O'Sullivan & Judith McNamara, *Creating a Global Law Graduate: The Need, Benefits and Practical Approaches to Internationalise the Curriculum*, 8 J. LEARNING DESIGN 53, 54 (2015) (noting that there is a "need to ensure graduates receive a legal education that will develop the knowledge and skills required to address such issues and to undertake careers in the global arena. That is, there is a need to internationalise the law curriculum."); Jones, *supra* note 322, at 1042-43 (2012)(discussing, in a section entitled,

> Strategies for Ensuring a Serious and Sustained Perspectives Exposure and the Need for a Perspectives Course," the "inadequate exposure" to perspectives and arguing that "we invariably sacrifice the historical or international or comparative or jurisprudential or ethical or other perspectives material in favor of the 'essential' legal material that we 'must' cover.)

Id.; Rosa Kim, *Globalizing the Law Curriculum for Twenty-First-Century Lawyering*, 67 J. LEGAL EDUC. 905, 913 (2018) (advocating for "globalizing" the law curriculum and noting that The future of legal education, therefore, must include the goal of producing graduates who are both "intellectually and culturally flexible" and are exposed to comparative and international perspectives to a wider range of law subjects."); Francesco Parisi, *Multidisciplinary Perspectives in Legal Education*, 6 U. ST. THOMAS L.J. 347, 348 (2009) (advocating for "a greater emphasis on multidisciplinary education.").

[460] *Academic Requirements*, CAP. U. L. SCH., https://www.law.capital.edu/academics/juris-doctor/academic-requirements (last visited Nov. 13, 2023) ("A "perspective" course is devoted to placing the study of law in a context other than what is routinely provided in required doctrinal, skills, or practice courses.").

encountering multiple theoretical frameworks and historical perspectives of different groups. While a seminar on International Trade Law could absolutely incorporate critical-contextual content and critical pedagogy, it is not inherent in the subject.

I advocate for incorporating critical-contextual education into every doctrinal course. In defining courses that remain at the margins, we must be clearer in our vocabularies. We should taxonomize "perspectives" and mandate requirements that help students develop theoretical and cultural frameworks.

VI. CONCLUSION

Mari Matsuda, a founding practitioner of CRT, once analyzed a professor's statement that, "mediocre law students are the ones who are still trying to make it all make sense."[461] She noted that, often, these students tried to see law as "necessary, logical, and co-extensive with reality."[462] Instead, she argued that the best law students are the ones who are able to "detach law and to see it as a system that makes sense only from a particular viewpoint."[463] Indeed, "thinking like a lawyer" means cultivating the ability to see law as a closed ecosystem of logic. But, as Professor Matsuda went on to argue, strong lawyers "can operate within that view, and then shift out of it for purposes of critique, analysis, and strategy."[464] It is that ability to see both the closed ecosystem and the broader, contextual shape of the law that marks the strongest lawyers.

The goal of this work was to trace the intellectual history of the critical-contextual reform movement back several decades–and to analyze the forms and language those calls took. Critics took steps to frame critical-contextual education as impractical, elective, and peripheral. While I do not believe a subject has to be practical to be important, the weight of the legal community is against me here. Therefore, this Article has taken steps to show that, even under the premise that core curricular inclusions must be practical, critical-contextual education falls squarely within that paradigm. My arguments go even farther in arguing for this practicality than the language of most of my colleagues–and those of the aughts. Critical-contextual education teaches the fundamental lawyering skill of the "shift" that Professor Matsuda refers to–the ability to adopt different frameworks, analyze their strengths and weaknesses, and shift to the next.

---

461 Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN'S RTS. L. REP. 7, 8-9 (1992).

462 *Id.*

463 *Id.*

464 *Id.*

In this Article, I have hoped to collate some of the voices across the field to show the consistent call for critical-contextual education over the last four decades. I have attempted to contribute to a comprehensive theory that synthesizes the movement's history and self-perception. Whether you view the history of the movement as a slow telos or as marked by distinct peaks and valleys–as I do–my main argument is that it is one observable, consistent movement, albeit with different branches and discourses.

Now, this Article is just one of the many voices calling for a change. In this Article, I have hoped to showcase a broad thread of common interest even while the scholarship reflects many different voices with many different interests. As other scholars have argued, the next critical step is for other advocates of critical-contextual education to unify as a national movement–to articulate the movement and its goals in express language. In the past, movements that situated themselves as radically partisan–as the CLS movement did–and movements that eschewed political rhetoric–as in the aughts–both failed to realize the ultimate changes they sought. While the overtly political nature of the CLS movement hamstrung its ultimate goals, partisan campaigns like the Federalist Society *can*, clearly, be effective at gaining cultural and political capital. However, that sort of exclusionary political movement is the opposite of what this Article envisions as the goal of critical-contextual education.

Instead, while acknowledging the innate political nature of the law–and the general truth of legal realism–I still envision a curriculum where a broad spectrum of viewpoints and theoretical modes are countenanced, introduced, and studied in the law school context. We must overcome the historical feint of claiming institutional neutrality, acknowledge the impossibility and backwards thinking implicit in such a maneuver, and move to broaden critical-contextual education in every phase of legal education. There is no way for a law school to be perfectly "neutral," but we can introduce a broad and inclusive spectrum of ideas and perspectives. We can give historical context for when and why those perspectives have been applied empirically. We can give students agency and tools to think critically about the law and their own place in it.

This Article has attempted to synthesize some of the distinct arguments in the "ferocious" pushback against critical-contextual education. Chief among them is the emphasis on "practical" reform–and the overwhelming rhetorical structuring of critical-contextual education as "impractical," abstract, elite, and elective. The scholarship has largely situated "practicality" as opposed to "contextual and theoretical." This Article offers only one avenue to argue that this is not so. It is the very intellectual nimbleness that arises from trading lenses and frameworks in and out–from applying one and then another–that law professors seek to cultivate in

students through the Socratic method. Our true skill as lawyers lies precisely in our ability to frame ideas and issues, and to contextualize them within arguments.

In 1833, Professor Daniel Mayes spoke to students at an early United States law school.[465] He posed the question to them: "Is law a science, or is it something less dignified?"[466] The law is something less dignified. It is messy, full of human error and bias. It is a collection of normative social practices that are the products of the eras in which they were created. The law is uneven, incomprehensible, full of holes, and full of contradictions, despite our best intentions. The law is the unique field that touches every person in our society and impacts every facet of the way we live our lives. And students must have the context and the tools to understand that to successfully practice in our contemporary world.

This Article joins a striking rise in calls for critical-context within law school pedagogy–a revitalized movement that marks a sea change and offers hope for a true revolution in legal education.

---

[465] Daniel Mayes, *Whether Law is a Science*, 9 AM. JURIST & L. MAG. 349 (1833).

[466] *Id.*