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"ART FOR A BETTER LIFE:" A NEW IMAGE OF AMERICAN LEGAL EDUCATION

Kara Abramson**

INTRODUCTION

Imagine a first day of law school that begins not with a casebook, not with a rule, not with the Socratic method, but with an Image

Sound

Poem

Story

History

Picture a contracts class that starts not with Hurley v. Eddingfield\(^1\) or Hawkins v. McGee\(^2\) but with a deeper look at the ideas underpinning the notion of contract beyond its American incarnation. Visualize, then, liberating contract law from the pages of an American textbook and exploring its origins and its essence across time and space. Push the Uniform Commercial Code aside for a moment and visit contract in ancient Rome, understand how it operated in medieval Japan, hear its haunting legacy in the voices of coalminers whose songs of struggle detail the failure of contract to protect workers, and revisit contract today to probe the issues of consent and free will that have shaped recent debates over trafficking in human beings. Meet the idea of contract as a


1. 59 N.E. 1058 (Ind. 1901).
2. 146 A. 641 (1929).
rich, complex story, of which the American version is but one chapter.

American legal education shuns this vision. American law students learn American law. They are taught to look inward to a narrow telling of law as a body of rules gleaned from the appellate decisions of American courts. Poetry and song, history and literature—none has a place in this classroom. Here, the images and sounds that rule are the dull pages of overstuffed casebooks, obsessively organized study aids and student outlines, and the menacing tone of a professor's Socratic questioning.

To be sure, the preceding portrayal of American legal education is extreme, but one that is not wholly unwarranted. Created at the hands of Christopher Columbus Langdell, the stodgy American tradition of legal training myopically focused on case law and Socratic questioning has endured to the present day even as the legal world has come to reject Langdell's philosophy of law as a science. Langdell's legacy lives, even if it has been softened, and it is especially strong in the first, most formative year of American legal education.

Critiques of Langdell's formalism, from the realism of the interwar period to the critical legal studies movement of more recent decades, have chipped away at the power of Langdell's vision of law and legal education. New philosophies of law are taught alongside or instead of black letter rules and legal doctrine extracted from appellate cases. Professors today turn to lectures, interdisciplinary scholarship, and role-playing exercises to supplement or even replace Langdell's Socratic questioning and case-centered teaching materials. Some alternatives to Langdell's method, however, such as the law and economics approach, do little to alleviate the narrow scope of legal teaching methods; other approaches, such as the law and literature movement, present a powerful reevaluation of law, yet tend to be marginalized within law school curricula. Unfortunately, in the first-year law school class, the Langdellian mindset persists.

This Article is an attempt to present an alternative to the standard Langdellian method of legal teaching. It presents an alternative to standard legal education and an effort to systematize existing challenges to it by suggesting a comprehensive curriculum for first-year law school classes. At the core of this challenge to Langdell's heritage is a vision of legal education that looks outward to the larger world of knowledge that gives life to law. It is a vision of law in three forms: a liberal art, an American enterprise, and a practical profession.

The first Part of this Article gives a brief overview of American legal
education. It outlines the history of American law schools and the current contours of law school curricula. The remainder of this Article is a proposal for change, envisioned as a first-year law school class that presents law through three lenses. More specifically, this Article imagines a first-year course divided into three parts, lasting roughly four to five weeks each, which introduce three distinct angles of a first-year legal subject. Part II of this Article describes the first unit of such a law school class: law presented through the medium of liberal learning. This unit stresses the roles of history and the arts in conveying law's story. It also encourages a more global view of law by probing the dimensions of a legal subject in different cultural settings.

Part III maps out the middle portion of class: an introduction to a legal subject through a series of lectures and conversations about the subject in its American context. This Part's articulation of legal education moves beyond the current standard paradigm by advocating greater attention to United States law outside of appellate decisions and Socratic questioning. It also urges constant reference back to the larger, more global story of law taught in the first weeks of class.

The final Part of the Article details the final weeks of class: an initiation, primarily via cooperative and collaborative learning simulations, into legal practice skills that relate to the specific legal subject studied in class. It not only aims to overcome the marginalization of practice-based education within law schools but also strives to demonstrate to students the link between theory and practice. Cumulatively, the three portraits of law conveyed in this Article present a new image of American legal education.

I. DEFINING THE CONTEXT: AN OVERVIEW OF AMERICAN LEGAL EDUCATION

A. Langdell's Vision: The Roots of American Legal Education

Our lead education story begins, as always, with Christopher Columbus Langdell. Langdell's arrival at Harvard Law School in 1870 introduced new order to a century of American legal education characterized by diverse approaches to learning law. On the one hand, scholar-statesmen such as Thomas Jefferson espoused a rigorous approach to legal learning that included the study of history and poetry, a model worthy of emulation today but oft ignored even in Jefferson's own time. In a similar vein, David Hoffman, in 1817, outlined a multi-

year course of study for law students that included an examination of subjects such as philosophy and Roman law alongside contemporary American legal subjects. In contrast, Abraham Lincoln joined the legal profession after only cursory study of the law. Other lawyers similarly crammed for the bar via study aids. Still others, such as John Quincy Adams, entered the legal profession after an unsatisfying period of apprenticeship in a law office. By 1860, standards for entering the bar had deteriorated as the number of states that mandated a formal course of study to pass the bar declined. Such laxness of standards threatened the very raison d'être of American law schools.

The legal community was ready for a revolution in legal education, and Langdell emerged to lead it. The poor New Hampshire farm boy who rose to prominence by his own gumption was a legend at the Harvard Law School even during his stint there as a student. Known then for long days at the library and tremendous self-discipline, Langdell returned to Harvard as a faculty member and quickly imposed similar rigor on the next generation of law students. Langdell was not the very first professor to teach with case-centered materials, but he was the driving force behind refining and popularizing the method, which spread across the United States in the following decades.

At the core of Langdell's method was the uncovering of a body of law through close study of selected legal decisions. Not all legal decisions were fair game in his pedagogic vision, however. Instead, he selected only a few designed to reveal a body of doctrine or illustrate mistaken deviations from the rules. The need to censor irrelevant cases led to the creation of textbooks that narrowed the body of law to be studied. Langdell further focused the subject of instruction by

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5. Ferguson, supra n. 3, at 29.
7. Ferguson, supra n. 3, at 29–30; Seligman, supra n. 6, at 21–22.
8. Seligman, supra n. 6, at 26–27.
9. See id. (describing the decline of required legal training and requirements for entering legal study).
10. Id. at 29–31.
11. Id. at 30–31.
12. Id. at 32–34.
14. See id. at 52–53 (stating that the original purpose of the case method was to isolate and analyze the relatively few principles of the common law).
15. Seligman, supra n. 6, at 45; Steven, supra n. 13, at 53–56.
explaining the legal topic at hand not by lecture but through what has come to be called the Socratic method: a process of questioning loosely designed on the dialogues of its namesake.\textsuperscript{16} As a means of interrogating students on the specifics of each case, the Socratic method was intended to avoid mindless absorption of facts and cultivate critical thinking skills within students. No answer was definite in the Socratic framework; students learned to probe the various dimensions of a case until they had unearthed a legal rule or larger principle and were able to link it to other principles to form a concrete body of law.\textsuperscript{17}

Underpinning this pedagogy was Langdell's view of law as a freestanding science.\textsuperscript{18} Just as the laboratory was the incubator for students of science, Langdell was known to say, so was the library the proper environment for law students.\textsuperscript{19} Neither the classical learning of Jefferson nor the apprentice office of Adams was appropriate under Langdell's model of legal education.\textsuperscript{20} The study of law at the law-school level thus had to shun the study of related disciplines and the cultivation of practical skills. Law stood alone. It was not an empty box that absorbed other disciplines. To Langdell, law represented a discrete science in its own right, composed of fully discernable legal principles that had their own force.\textsuperscript{21}

Students clamored for knowledge of law as clearly enunciated rules, cut off from an examination of the social context in which the rules operated;\textsuperscript{22} this could have meshed well with Langdell's faith in the identification of law as a discrete entity that did not depend on knowledge of broader social issues, but he drew great enmity from students for his delivery.\textsuperscript{23} Langdell's earliest students declared outrage at their professor's convoluted teaching method.\textsuperscript{24} Fortunately for Langdell and Harvard Law School, the voices of dissatisfaction faded, and within a few years Harvard began an upward swing in enrollment.\textsuperscript{25}

Langdell's method was but one step in a series of reforms introduced to Harvard Law School. By the 1895–96 academic year, only college graduates and a select group of advanced Harvard undergraduates

\begin{itemize}
\item \textsuperscript{16} Seligman, \textit{supra} n. 6, at 33–35; Stevens, \textit{supra} n. 13, at 53.
\item \textsuperscript{17} Seligman, \textit{supra} n. 6, at 35–36, 45.
\item \textsuperscript{18} \textit{Id.} at 36.
\item \textsuperscript{19} Stevens, \textit{supra} n. 13, at 53.
\item \textsuperscript{20} \textit{See} Seligman, \textit{supra} n. 6, at 33–34.
\item \textsuperscript{21} Stevens, \textit{supra} n. 13, at 52–55.
\item \textsuperscript{22} \textit{See} Seligman, \textit{supra} n. 6, at 34.
\item \textsuperscript{23} \textit{Id.} at 33–35.
\item \textsuperscript{24} \textit{Id.} at 34–35.
\item \textsuperscript{25} \textit{Id.} at 35.
\end{itemize}
qualified to enter the school.\textsuperscript{26} Four years later, Harvard increased the required length of its course of study from two years to three.\textsuperscript{27} Outside of Harvard, other law faculties began to adopt Langdell’s method as a springboard to greater prestige.\textsuperscript{28} State schools in particular, such as the University of Cincinnati, which turned to the method in 1895, found the cachet of Langdell’s method useful, and in the 1920s, his pedagogy spread to state schools in the South.\textsuperscript{29}

Not all law schools embraced the Langdellian method. Some local law schools continued to gear their instruction to passing the state bar,\textsuperscript{30} and other law schools, like Columbia and the University of Virginia, voiced concern over the Langdellian method as it gained prominence.\textsuperscript{31} Critics did not necessarily reject Langdell’s method wholesale. Alfred Reed, a Carnegie Foundation staff member who studied professional education, noted, “I believe that while in the hands of a genuine scholar, skilled in the Socratic method, the case method is indubitably the best, in the hands of a mediocre man it is the very worst of all possible modes of instruction.”\textsuperscript{32} Despite such critiques, Langdell’s vision of legal education firmly took root across the nation. By 1908, about a third of U.S. law schools used Langdell’s method, and it continued to spread quickly, becoming the prevailing norm in American legal education.\textsuperscript{33}

\textbf{B. Early Critiques: Realist Challenges to the Langdellian Method}

The reevaluation of law that emerged in the 1920s, known as realism, represented the first well-organized challenge to the Langdellian status quo in American legal education. Premised on the notion that law was necessarily linked to the social context that produced it, realism rejected Langdell’s notion of law as a distinct science. Realists aimed to understand how law related to the societies upon which it acted.\textsuperscript{34} To this group, law was more than a body of rules.\textsuperscript{35} It was necessarily bound to

\begin{itemize}
  \item \textsuperscript{26} Id. at 41.
  \item \textsuperscript{27} Id. at 33.
  \item \textsuperscript{28} Id. at 42–44.
  \item \textsuperscript{29} Stevens, supra n. 13, at 61, 191.
  \item \textsuperscript{30} Id. at 192.
  \item \textsuperscript{31} Id. at 60, 192.
  \item \textsuperscript{32} Id. at 121 (quoting Alfred Z. Reed, Training for the Public Profession of the Law: Historical Development and Principal Contemporary Problems of Legal Education in the United States with Some Account of Conditions in England and Canada 382 (Charles Scribner’s Sons 1921)).
  \item \textsuperscript{33} Seligman, supra n. 6, at 42–45 (stating that about a third of law schools had adopted the method by 1908); Stevens, supra n. 13, at 64 (indicating that about a third of law schools had adopted the method by 1907).
  \item \textsuperscript{34} Seligman, supra n. 6, at 50.
  \item \textsuperscript{35} Id. at 50–52.
\end{itemize}
the forces of society and the lives of ordinary people; it was, to some realists, a social science in its own right. Putting their theories into action, realists made strong contributions to New Deal policies and, in academic circles, waged war against Langdell.

One realist saw the standard Langdellian legal education as divorced from the realities of legal practice. "American legal education went badly wrong some seventy years ago when it was seduced by a brilliant neurotic," Jerome Frank, a leading figure in the realist movement, proclaimed in a 1947 article. Attention to appellate cases, he claimed, produced a distorted vision of the legal process, and failure to observe the practices of courtrooms and lawyers cut law students off from the realities of their profession. Frank advocated scrapping Langdell's law school for a clinical approach to legal education that introduced students within the classroom to a wider array of legal issues and brought them beyond the classroom into close contact with their future profession.

Fellow realist Karl Llewellyn pushed for new entrance requirements to law school, calling for schools to populate their ranks with students who were well versed in subjects like psychology and United States history and who were marked by "intellectual eagerness." Like Frank, Llewellyn urged law schools to pay more attention to the social context in which law operated. Indeed, to Llewellyn, such social context was necessary because "[t]he fact is that legal rules mean, of themselves, next to nothing." Moreover, the social facts made for better pedagogy because they made the rules "more meaningful" and "easier to learn." Llewellyn organized teaching materials that reflected this outlook. His *Cases and Materials on Sales*, published in 1930, lived up to its name by supplementing legal decisions with other sources that informed the law.

Students, meanwhile, waged their own battles. Electives and
seminars were being integrated into the curriculum, but students demanded even more change. Harvard students rallied against large class sizes, a feature of the Langdellian method that made it less expensive than small classes and seminars, and urged the administration to confine the case method primarily to first-year classes. The public service mentality of the realists also gripped law students. In the 1920s only a handful of schools had legal aid clinics, but by the 1940s, such programs had become more common. Slowly but surely, both students and legal scholars mounted a challenge to the pedagogic tradition launched by Langdell.

C. Post-Realist Critiques and the Current State of American Legal Education

"The undiluted Langdell principles are nowhere in good repute today," Jerome Frank wrote in 1947. "But they are still the basic ingredients of legal pedagogy, so that, whatever else is mixed with them, the dominant flavor is still Langdellian."

The latter half of the twentieth century witnessed further encroachments on the Langdellian method. American legal education now presents a complex mix of pedagogies. Yet in many ways Frank's assessment of legal pedagogy rings true even today. "The case method's dominant position in U.S. law schools is a curious phenomenon," wrote Russell Weaver in 1991. "It has been achieved despite the fact that Langdell's justification for developing and using the method ... has long since been repudiated. The case method's dominance has also been achieved notwithstanding much criticism, which continues even today."

Despite the persistence of the Langdellian method, the changes to the legal education landscape in the past half-century have not been insignificant. In the 1950s and 1960s, law schools introduced new pedagogies that operated alongside the Langdellian method, such as the problem method, introductory legal courses, and clinical classes. By

50. Stevens, supra n. 13, at 158.
52. Stevens, supra n. 13, at 63.
53. Id. at 161.
54. Id. at 162–63.
55. Id. at 215.
56. Frank, supra n. 39, at 1312.
the 1966-67 academic year, Harvard offered more than a hundred electives, but these courses represented more of an ornament atop the dominant Langdellian cast of legal education rather than a replacement to it. Campus upheavals and growing politicization among student bodies contributed to the push for reform. Some changes were successful. Clinical legal education programs had blossomed by the 1970s, even as clinical instructors were often poorly regarded by traditional law school faculty. Other changes were fleeting. Harvard’s “Development of Legal Institutions” class, designed to give students historical context to various legal subjects, was discontinued in 1968 as a required class. By the 1970s such background classes were the exception rather than the rule at top law schools. At Northeastern University Law School, which had roots as a local night school, the curriculum in 1971 was organized around a social justice theme. Although Northeastern continues to stand out among law schools for its innovative cooperative learning program, its progressive tones have waned.

Several new schools of legal thought developed in the latter decades of the twentieth century. The critical legal studies movement, has offered a new critique of law that aimed to expose its underlying biases and its vulnerability to prevailing power dynamics. Another school of thought, the law and economics approach, has examined legal decisions through the lens of economic analysis. Funneled through this heuristic, law-related choices are seen to reflect economically efficient or inefficient options. On the other end of the interdisciplinary legal studies spectrum, the law and literature movement has introduced works of literature and techniques of literary analysis into legal studies with aims such as the use of literature to illustrate law’s force on society and the promotion of more nuanced interpretations of legal texts. Against this background of new theories and teaching methodologies that coexist with a still firmly rooted Langdellian method, observers of contemporary legal education offer conflicting portraits of the method’s status in contemporary law schools. Some scholars see a demise of the Langdellian method. Richard Posner, for example, laments what he observes as a decline in the “most valuable technique of legal teaching.” Posner’s viewpoint may reflect

59. Seligman, supra n. 6, at 81.
60. Id. at 81-82.
61. See e.g. id. at 6-7.
63. Seligman, supra n. 6, at 84.
64. See id. at 84, 141 (discussing the few schools offering first-year electives).
his political leanings more than the reality of legal education. He perceives a decline in the method because, to his mind, policies like affirmative action erode rigorous academic standards.  

Orin Kerr offers empirical evidence to back up claims that the Langdellian method is being phased out of American legal education, but he ultimately fails to make a strong case for his argument. Based on a 1997 survey of twelve Harvard Law School professors who taught first-year courses, he categorized only five as "traditionalists" who adhered firmly to the Socratic method and, one can assume, to the case method that combines with Socratic questioning to form the Langdellian method. He categorized three professors in his sample as "quasi-traditionalists" who combined the Socratic method with other teaching styles. Finally, four members of his sample comprised the "counter-traditionalists" who "have consciously rejected the traditional Socratic style." These counter-traditionalists used techniques ranging from a panel system for calling on students to a philosophical introduction to a legal subject coupled with practical skills training. Based on the range of teaching methods used by his sample, Kerr concluded that the "traditional Socratic method . . . is no longer common at Harvard—and, assuming Harvard is typical, at most American law schools."  

Kerr's in-depth description of the teaching styles of the twelve professors is a useful contribution to scholarship on legal education, but his conclusions about the nature of American legal education are unconvincing in several respects. First, Kerr fails to expressly define the term "Socratic method" in his article. Today, the term is used both narrowly, to refer to a process of questioning within the classroom, and broadly, as a synonym for the Langdellian method. The Socratic method as a questioning process may be used independently, but it is often paired with case materials within the legal classroom. Kerr seems to refer mainly to the narrow meaning of the Socratic method, but closer attention to how the case method and Socratic method relate, especially in the classrooms of the twelve professors he interviewed, would have eliminated confusion and deepened the scope of Kerr's analysis.  

Second, the fact that eight out of twelve of the sample—the traditionalists and the quasi-traditionalists—used the Socratic method

67. Id.
69. Id. at 115.
70. Id. at 122.
71. Id. at 123.
72. Id. at 124.
73. Id. at 124–25.
74. Id. at 132.
(and, most likely, the Langdellian method) in some form in their classrooms suggests that the method is in fact still prominent. Even some of the professors in Kerr’s counter-traditionalist category appear to have used the Socratic method. The so-called “panel system” of identifying in advance the students who will be called on in class, is often just a modified version of instruction that still centers on teacher-led questioning and case-book materials.75

In light of these flaws, Kerr’s assertion that the Socratic method is on the wane at Harvard is doubtful, at best. His assumption that trends at Harvard must be indicative of the situation elsewhere is even more troubling.77 While Harvard developed the dominant mode of legal education used at American law schools, the spread of the Langdellian pedagogy to other schools was not instantaneous.78 Even assuming that the Socratic method and other related Langdellian apparatuses are indeed in danger of becoming extinct at Harvard—a problematic assertion in and of itself—Kerr offers no evidence to prove that new trends at Harvard today produce an immediate trickle-over (or, as Harvard might prefer, a “trickle-down”) effect on other schools.

Steven Friedland provides a broader survey of the current state of American legal education.79 Like Kerr, he focuses on the “Socratic method” rather than the “Langdellian method” in his survey,80 and because he allows each respondent to attach his or her own meaning to the term,81 the survey likely captures more of its divergent definitions. Taken as a general gauge, Friedland’s survey provides good insight into the ways various elements of the Langdellian method—either Langdellian-style Socratic questioning techniques alone or comprehensive Langdellian tools of questioning aligned to case material—are used in legal education today.

After receiving 574 responses from a national pool of 2000 law professors whom he contacted in the 1994-95 school year,82 Friedland found that 370 of 383 professors of first-year classes used the Socratic method.83 Thirty percent of the teachers used it “most of the time.” Forty-one percent employed the method “often.” Twenty-one percent

75. Id. at 125.
76. Id. at 132.
77. Id.
78. Seligman, supra n. 6, at 42–43.
80. Id. at 1.
81. Id. at 15.
82. Id. at 14.
83. Id. at 28.
utilized it “sometimes,” and five percent used it “rarely.”

His survey also revealed a range of alternative teaching techniques. Seventeen percent of the first year teachers used small groups for an average of four percent of their class time, and thirty percent used role playing, averaging five percent of the total cumulative class time. Based on his overall results, Friedland concluded that “the Socratic approach remains firmly entrenched in legal education.”

Another scholar, Russell Weaver, using the term “case method” to refer to Langdell’s pedagogy, suggests that the method has survived in part because the law students who were successful under the Langdellian method are inclined to teach it as professors. He argues that the Langdellian method “is unquestionably the primary method of instruction in United States law schools.” Weaver’s conclusion about the “case method” is supported by the results of the surveys of Friedland and Kerr, even though Kerr felt that the Socratic method was on the decline. Although the Langdellian method is no longer alone on law school campuses, it is still a dominant method of legal education.

Books and test centers that prepare students for entering law school also serve as a mirror of trends in legal education. Such study guides reiterate not the study habits useful in undergraduate education but those uniquely tailored to the Langdellian method. “Going to law school?” asks the title of one prep book. “What may come as a surprise is that the very nature of the teaching at law school is different from what you are used to,” the authors explain. “Law professors generally use the ‘Socratic method’ (or, in less grandiose terminology, the ‘case method’) of teaching, and this will require some adjustment in how you approach your classes.” Market demand for advice on navigating the Langdellian

88. Id.
85. Id. at 27.
86. Id.
87. Id. at 28.
88. Weaver, supra n. 57, at 543–44. (“Students examine primary source materials, whether statutes or cases, and they are expected to reach their own conclusions about how problems should be resolved. The professor’s function is to stimulate thought in a Socratic fashion.”).
89. Id. at 544.
90. Id. at 543.
91. Friedland, supra n. 79, at 28; Kerr, supra n. 68, at 132; Weaver, supra n. 57, at 543.
92. Harry Castleman & Christopher Niewochner, Going to Law School: Everything You Need to Know to Choose and Pursue a Degree in Law (John Wiley & Sons, Inc. 1997).
93. Id. at 19.
94. Id.; BarBri Nile, a law school and bar preparation company, describes its law school prep course and refers to the Socratic method. BarBri, Program Overview-Workshops, http://www.lawschoolprep.com/program/workshops.shtm. The BarBri Nile program explains that it prepares students for the first year of law school by teaching them “[h]ow to play the Socratic game (and win!)” and “[h]ow to brief cases.” Id.
method adds yet another layer of support for the possible immortality of Langdell’s legacy.

II. IMAGING LAW

Training law students through a curriculum centered on the appellate decisions of American courts is an incomplete pedagogy and one uprooted from context. It is like teaching an aspiring homebuilder about building four walls and a roof, while denying him or her instruction in the nature of homebuilding materials or the relationship between a structure and its surroundings. A law school course that aims to reattach a legal concept to the world in which the concept developed must deviate from the standard approach to American education.

Unlike their medical school counterparts, American law school students need not complete a common “pre-law” course of study before entering law school. The lack of a pre-law canon for American law students is not a shortcoming of the system in itself. Pre-law courses consisting of wholly vocational dimensions may crowd out precious undergraduate time that could otherwise be devoted to broad liberal learning. The fact that undergraduate education is often separated from professional training is in fact a strong point of the American educational system. American students have more time to develop broad intellectual capacities in general undergraduate coursework and refine that development via “majors” or “concentrations” than many of their non-American counterparts who must squeeze liberal and professional training into an undergraduate education.

It is unclear, however, if law schools truly place faith in the value of undergraduate training as a requisite for studying law, as law school admissions brochures might profess, or, more cynically, if law schools simply don’t care what students study as undergraduates because none of it matters in the legal classroom. In accepting students from a multitude of undergraduate experiences, from liberal arts training to pre-professional education in marketing or accounting, law schools recognize that students may enter law school without any knowledge of law or with only limited knowledge of legal subjects. Yet many law schools take few measures to rectify this gap in knowledge. The danger of legal academia

95. Douglas A. Henderson, Uncivil Procedure: Ranking Law Students among Their Peers, 27 U. Mich. J.L. Reform 399, 399 (1994) (citing Christopher T. Matthews, Student Author, Sketches for a New Law School, 40 Hastings L.J. 1095, 1099 (1989)). To continue this analogy, law school might also be like teaching a student about homebuilding without giving him or her the actual chance to pound nails into wood. See Part IV, later in this paper, for a more detailed discussion about the gaps between law school instruction and practice skills. Along these lines, Matthews likens law school to “requiring house painters to study art history—never picking up a brush.” ld. at 399.
is not in the admission of students with limited or no knowledge of law. Rather, the danger is that law schools may not provide students with a complete picture of law, including law’s origins, development, philosophical underpinnings, and its interactions with and effects on society. Legal context courses that aim to introduce students to general ideas about law are either relics of the past or relegated to the status of supplementary courses outside of standard first-year core subjects. However, the concepts embodied in first-year subjects don’t stand alone, despite formalist portrayals of legal subjects as fully independent entities. Some of the larger, more general issues about legal theory would be well suited to an independent course, but they should be equally at home in standard first-year classes.

A first-year course that aims to open students’ understanding of law rather than funnel it through the narrow fetters of standard legal education might devote the initial third of the course to the introduction of law as a story larger than the pages of American textbooks. This vision encompasses the idea of a legal subject as a collection of narratives about the subject’s roots, incubation, evolution, form in diverse times and places, development as part of concrete “legal systems,” effects on modern-day society, and role in the international arena, to name but a few of the angles through which a particular legal concept might be examined. The heuristic underpinning this vision of legal pedagogy is that of presenting law through liberal learning.

A. Liberal Legal Education

The idea of “liberal learning” or “liberal arts” is subject to divergent meanings. In the American context, the identity of liberal learning was the subject of dispute in the early twentieth century between restorationists, who called for adherence to the classical learning associated with European and early American higher education, and pragmatists, who advocated higher learning suited to the specific context of the American experience. Today, scholars continue to debate whether liberal learning must center on a canon of subjects and texts or whether it should reflect a more fluid inclusion of subjects; institutes of higher learning reflect a diversity of styles.
Broadly conceived, however, liberal learning might be commonly understood as combining elements of "'breadth,' a sampling from the main branches of structured knowledge, and 'depth,' the major." In the arena of legal education, liberal learning involves exposure to law through the disciplines that inform it. Legal liberal learning is broad. It includes sciences, social sciences, and humanities, but still maintains depth by anchoring this learning in a particular first-year legal subject.

Legal subjects intersect with other disciplines in different contexts. In many cases, the link between liberal disciplines and the law is obvious: the natural sciences shed light on the development of rules of evidence and proof in criminal proceedings; statistics influence standards in tort law; sociology exposes the factors that shape the workings of our criminal justice system; and economic theory articulates the market forces that bear on legal institutions. The humanities are, to some observers, less obviously connected to the law, but in fact they are a crucial component of liberal legal learning. Despite the development of "law and literature" as a legal discipline, the humanities remain a controversial addition to legal academia. As this Part discusses, however, the humanities, especially the arts, are essential to conveying law's story. Indeed, the art of historical narrative provides the ideal entry into an understanding of law that is linked to liberal learning.

Of the many ways to tell law's story, history is the ideal discipline in which to root law. As historian Paul Gagnon explains, "History is the basic, generative humanities discipline, upon which the coherence and usefulness of other disciplines depend." Or, as Diane Ravitch, a specialist in history and education, explains, "[history] establishes a context of human life in a particular time and place, relating art, literature, philosophy, law, architecture, language, government, economics, and social life." It "encourages ... a sense of perspective." Of course, the history of a legal subject is not a simple narrative that describes the development of contract law in America, or even the evolution of contract law from ancient Rome to modern-day society. Law's story includes these histories, but it is more complex. It involves attention to a legal subject's identity in non-western regions, embraces the pre-history of a legal subject, and gives attention to the human emotions that have shaped the development of the subject. It is a story told as a historical narrative that cradles other disciplines such as

102. Diane Ravitch, From History to Social Studies: Dilemmas and Problems, in Challenges to the Humanities, supra n. 101, at 94.
philosophy, social science, natural science, and the arts.

**B. Outlining a Liberal Course of Study**

There are many ways to provide historical context to the study of law. For example, a teacher of criminal law or torts might begin a course with an examination of the ideas of revenge and retribution that preceded the development of formal legal doctrines designed to channel these urges. Students might look to the idea of "custom" as distinct from "law" to understand what factors coalesced to create a body of ideas that we now recognize as "property law" or "contracts." After examining the early roots of a legal subject, the narrative might continue to probe the character of the discipline through an examination of how the subject was realized in diverse historical settings. As roots of many modern-day legal systems, the legal orders of ancient and pre-modern Europe are helpful lenses through which to examine a legal subject, but legal inquiry must not be limited to European historical roots. An examination of how different Amerindian nations viewed their relationship to land provides students with an additional tool for understanding the idea of property and provides a useful framework for understanding the modern-day indigenous rights movement. In addition, a study of the diverse geopolitics of central Africa provides insight into notions of custom and law as they relate to land and state power. Islamic and Jewish marriage contracts, often works of art in addition to mere legal documents, illustrate legal concepts in religious systems.

Moving to recent centuries, students might look to how developments in science have changed criminal investigations. They might study the nineteenth century Chinese case of *Hsiao-pai-ts' ai* for an example of how a careless mistake in an autopsy led to a legal debacle that has attained legendary status in Chinese popular culture.103 Criminal students might also turn to comparative works of history and sociology to analyze how age or socioeconomic status affects crime rates.

As students progress in their historical narrative to the present day, they could turn to the field of international law. Given that many international law principles draw on concepts from the civil law world, a prior introduction to civil-law concepts throughout this unit would prove to be especially useful here.104 Turning to current issues in international law, property students might examine how concepts in property law extend to notions such as national sovereignty or self-determination.


Contracts students might study contract in the context of international treaties. Civil procedure students could look at the rich history of jurisdictional disputes within international law.

Finally, throughout this journey, students might study larger issues common to all legal subjects, such as general differences in contemporary families of legal systems, issues of bias in the law, the role of law in nation building, the bridge between customary and formal law, and the idea of separation of powers to clearly demarcate the role of the judiciary.

This venture detailed above is a different enterprise from the standard method of teaching law through casebook materials and Socratic questioning, and the unique nature of this liberal arts introduction demands a different pedagogic approach. Since the venture is a close cousin to the liberal learning in American undergraduate institutes, a similar methodology—in-class lecture supplemented by primary and secondary-source materials—is in order. The historical narrative demands that a good portion of class time be devoted to fleshing out law’s story through lecture. The instructor might also draw on student participation by promoting in-class discussion during or after lectures, or by devoting one class a week solely to class discussion. As discussed in greater detail later within this section, lectures also could be supplemented in-class via artistic materials, such as songs and works of art.

This overarching tour aims to provide students with a firm background in the various ideas relating to a legal subject. Students will be better prepared to critically examine the specifics of the subject in its American form if they understand the subject in a larger historical framework, which is illuminated by other fields such as the sciences, social sciences and philosophy. Yet an introduction to a legal subject through these disciplines alone fails to portray the full force of law’s story, and the dominance of one discipline in portraying a legal subject may result in the closing, rather than opening, of law’s story. For example, the law and economics movement has contributed important insight into the way legal institutions operate, yet when it becomes the overriding lens through which to view law, it distorts the way law operates as it essentializes legal activities into strictly economic interactions. The tendency, especially in the social sciences, to reduce law to a set of experiences that conform to set theories runs the risk of shutting out the range of law’s experiences. As a body of knowledge and experiences that can add further context to the social sciences and other

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105. These traditional methodologies are discussed in detail in Part III.
106. The role of lecturing in the classroom is drawn out in greater detail in Part III.
portrayals of the law, the arts greatly enrich an understanding of law. The arts play a pivotal role in ensuring that liberal legal learning thoroughly portrays the many faces of law. Like other subjects, the arts should not serve as the sole lens through which to channel a historical narrative of a legal subject. However, because the arts are often marginalized within legal academia, they deserve special mention here.

C. Arts in Legal Academia and Arts in the Legal Classroom

Outside the realm of art law or First Amendment issues, legal academia’s relationship with art has been most closely linked to the art of words.\(^{107}\) The law and literature movement, often traced back to James Boyd White’s 1973 book *The Legal Imagination*,\(^ {108}\) has explored the multiple points of contact between law and non-legal written texts. As Bruce Rockwood notes, “law and literature” includes a wide variety of techniques under the umbrella of its name, ranging from the analyses of depictions of law within literature to the borrowing of literary tools of interpretation in order to read legal texts.\(^{109}\)

The dominant mode of humanistic discourse in the interdisciplinary domain of “law and” subjects, law and literature centers its scope of inquiry to texts. The goals of the law and literature movement, from portraying law in action to contributing to a greater understanding of legal texts, are more fully realized through utilization of several art forms in addition to literature. Legal scholarship on other art forms has not achieved the broadly recognized “movement” status of law and literature scholarship, but has contributed further techniques for understanding how law relates to artistic enterprises.

The following sections elaborate on the character of the law and literature field and articulate a larger space for the arts to function within the first-year legal classroom. Art, broadly conceived, may be classified into the collection of categories listed below. Each category describes a specific point of contact between art and law and a specific way in which

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\(^{107}\) However, as a field within legal academia, law and literature does not seem to have had a large influence in the first-year classroom. Elizabeth Villiers Gemmette’s 1993 survey of American law schools, for example, found that law and literature subjects were typically introduced through small, upper-level seminars. Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 Val. U. L. Rev. 665, 675 (1995).


attention to art enriches knowledge of the law and legal education. This list does not and cannot aim to be exhaustive, and the categories are not entirely exclusive, as several of the classifications overlap with each other. However, the list expresses a greater series of interactions and provides a more comprehensive approach to understanding the relationship between art and law than typically described in scholarship.\textsuperscript{110}

\section*{i. Art Portrays Law}

One of the most obvious points of intersection between art and law is the category of artistic works that describes the workings of a legal system or legal order. The law and literature movement is closely linked to this category. A hallmark of law and literature scholarship is analyses of literature about legal themes, ranging from works of literature with explicitly legal themes, such as \textit{A Jury of Her Peers} and \textit{Billy Budd}, to works of literature with legal themes woven into a larger story, such as \textit{Cider House Rules}.\textsuperscript{111}

Beyond literature, the art and ornamentation of courtrooms or the architecture of legal buildings, for example, sheds light on how a legal system projects its physical image.\textsuperscript{112} Spatial arrangements within a courtroom, such as where the judge positions himself or herself, how the lawyers position themselves vis-à-vis decision makers and their clients, and whether the space accommodates a jury, elaborate on the self-image of a legal system.\textsuperscript{113} By understanding how a legal system is represented in the physical space and icons of legal arenas, students gain a better understanding of how a legal system conceives of itself and represent its aspirations to others. An example of scholarship in this mode is Dennis

\begin{itemize}
\item \textsuperscript{112} See e.g. Piyel Haldar, \textit{The Function of the Ornament in Quintilian, Alberti, and Court Architecture}, in \textit{Law and the Image}, supra n. 110, at 117-36.
\item \textsuperscript{113} \textit{id.} at 130-136.
\end{itemize}
Curtis and Judith Resnik’s examination of depictions of the Virtue of Justice. By tracing the evolution of Justice from a wide-eyed Goddess to today’s blindfolded protector of impartiality before the law, and through examining other works of art used in legal spaces, Resnik and Curtis illuminate the ways in which legal systems have relied on images to consolidate their power and project their authority within concrete legal spaces.

At the most basic level, these works of art provide descriptive evidence of the law’s workings in a specific context. Cider House Rules outlines the boundaries of abortion law in the early twentieth century. Courtroom architecture details the role of legal actors within the judiciary. At a richer level, these stories and works of art, including ones that deal more subtly with legal themes, also provide deep insight into the material and emotional effects of law on society.

Several works of music are also particularly powerful in providing deeper insight into the legal frontier. The plethora of music relating to labor, for example, provides deep insight into principles related to contracts in the context of employment. Many songs describe the effects of unfair labor practices, as in Sarah Gunning’s song, “Come All You Coal Miners:”

Dear miner, they will slave you ‘til you can’t work no more
And what’l you get for your living but a dollar in a company store
A tumbled-down shack to live in, snow and rain pours in the top.
You have to pay the company rent, your dying never stops.

Such songs often mobilized the will of the workers to organize in an effort to level the bargaining power between employer and laborer. Gunning sings in the same piece:

They take your very life blood, they take our children’s lives
They take fathers away from children, and husbands away from wives.
Oh miner, won’t you organize wherever you may be
And make this a land of freedom for workers like you and me.

Contemporary works of music, from modern folk to rap, also shed light on the law. In country music, the songs of the late Johnny Paycheck describe legal subjects including labor and the Internal Revenue

115. Id. at passim.
117. Haldar, supra n. 112, at 117-36.
119. Id.
120. Johnny Paycheck, Takes This Job and Shove It, in Take This Job and Shove It (Laserlight 1992) (CD).
The music of Bob Dylan also touches frequently on legal themes, describing in *The Lonesome Death of Hattie Carroll*, for example, how money and influence shield some criminals from punishment.

Art in this vein serves to document the life of the law in society and its effects on individuals' lives. This is one of the most powerful dimensions of art. It serves as a constant reminder that law is not simply an enterprise limited to a courtroom and judicial opinions. Unfortunately, traditional legal education materials mask this larger story of law.

*ii. The Forces and Problems that Inform Law Inform Art*

This heuristic is the counterpoint to the previous model. The previous model places law at the center and uses works of art to illuminate law. The present model looks at the sources that influence both law and art. In this understanding, discrimination as it is portrayed in art, for example, is not merely an attribute of the legal system but a larger force in society that surfaces in multiple phenomena. Issues that affect law, such as the role of judgment, also affect other dimensions, including art. In effect, the social forces that manifest themselves in law are also manifested in art. Several works of scholarship express variations on this theme.

Several works of scholarship highlight how the identity crises stemming from understandings of modernity and postmodernity have surfaced in both law and art. Nathaniel Berman skillfully illustrates this connection in an article that examines legal modernism in the interwar period in Europe and artistic modernism as expressed in Pablo Picasso's *Les Demoiselles d'Avignon*. While this article is not specifically linked to any one of the typical first-year legal subjects, it would complement any legal course through its discussion of the forces that influence legal development.

In negotiating modernity, art and law also have felt similar conflicts arising from the battle between tradition and innovation, but Costas Douzinas and Lynda Nead suggest that, unlike law, art has been more successful in expanding its boundaries and accepting new forms of representation within its rubric. Sanford Levinson and Jack Balkin also draw on crises in modernism to highlight the link between art and

121. Johnny Paycheck, *Me and the IRS*, in *Take This Job and Shove It*, supra n. 120.
124. Douzinas & Nead, supra n. 110, at 1.
law in their article by comparing the debate over the authentic performance of early music to issues of authenticity in the law.\footnote{Sanford Levinson & J.M. Balkin, Law, Music, and Other Performing Arts, 139 U. Pa. L. Rev. 1597 (1991).}

iii. Law and Art Demand Judgment

Oliver Wendell Holmes cautions, "It would be a dangerous undertaking for persons trained only to the law to constitute themselves as final judges of the worth of pictorial illustrations outside of the narrowest and most obvious limits."\footnote{Douzinas & Nead, supra n. 110, at 1.} His attention to the dangers of judicial power raises the question of what subjects judges are competent to judge. By the very nature of legal work, judges and legal professionals constantly define which objects of human interaction may be subject to the force of law, just as judges of art dictate which representations are worthy of the name "art" and the protections that adhere to such a designation. In this understanding, the problem of judgment is not limited to the sphere of a judge encountering an unfamiliar work of art. It represents a more fundamental controversy, one which divorces legal judgment from artistic evaluation,\footnote{See id. at 1–5 (discussing the “aesthetic question”); Hein, supra n. 110, at 111–12 (“Today, under the new rules of postmodernism, it is quite possible to claim authority for oneself—but it counts for less since anyone can claim it.”).} and creates deep suspicion of one side toward the other.\footnote{Douzinas & Nead, supra n. 110, at 4.}

iv. Art Unearths Law’s Origins and Describes Its Alternatives

Art in this scheme is characterized by works like Albanian writer Ismail Kadare’s book *Doruntine*, in which a young man returns from the grave to fulfill a promise to escort his sister, Doruntine, back to her native village.\footnote{Ismail Kadare, Doruntine (Jon Rothschild trans., New Amsterdam Books 1988).} The man, Constantine, had held a unique philosophy during his life that explained his actions after death.\footnote{id. at 158.}

[He] was opposed to existing laws, institutions, decrees, prisons, police, and courts, which he considered no more than a pack of coercive rules raining down on man from the outside like hail. He believed that these laws ought to be abolished and replaced by inner laws arising from within man himself. By this he did not mean purely spiritual standards dependent on conscience alone, for he was no naïve dreamer who assumed that humanity could be ruled solely by conscience. He believed in something far more tangible, something the seeds of which he had detected scattered here and there in Albanian life in recent
times, something he said should be nurtured, encouraged to blossom into a whole system.

The basis for this order was the bessa, the inviolable promise. And so, in the end, after all the townspeople had demanded who could have brought Doruntine back, the answer was clear: a promise mightier than death.

Art as a description of the law’s origins portrays the roots of a legal idea, explores the boundaries of custom and law, and illustrates the alternatives to legal order. Examples of such art also include depictions of restitution in Icelandic sagas and revenge stories in Greek and Elizabethan literature.

Richard Posner has contributed greatly to the exploration of the law’s origins by his examination of such Greek and Elizabethan stories. His analysis of the legend of the House of Atreus, which describes a cycle of violence that includes a man feeding his enemy brother the body of his son, illustrates the destructive effects of private revenge and describes the founding of a legal court as a remedy for the violence.

“Before the Rain” is another example of revenge as an alternative to formalistic legal order. This movie, set in modern Macedonia, describes the circle of violence sparked when an ethnic Albanian girl

131. Id.
132. Id. at 159–62.
133. Id. at 163.
135. Id. at 33.
136. Id. at 33–44. Posner, the enfant terrible of the law and economics movement, is an odd figure in the law and literature field. His seminal work on the subject, Law and Literature, first claims that “the extent to which law and literature have been mutually illuminated is modest.” Id. at 13. Posner thus sees limited utility in the discipline and argues, for example, that tools of literary analysis provide little assistance in understanding legal texts. Id. at 247–58. Alongside Posner’s efforts to debunk the law and literature movement are numerous examples of how literature, in fact, illuminates legal issues. Id. at 33–44.

Posner’s book contributes a useful classification scheme to the law and literature movement and skillfully connects several works of literature to legal ideas. Posner decries the narrowness of legal training, and casts doubt on the skills of lawyers in literary analysis due to the shortcomings of their training. Yet, he also repeatedly shows that literature unveils new dimensions of law not visible in legal training, id. at passim., and he directly admits that literature is a useful tool for expanding lawyer’s breadth of the law. See id. at 165. He notes, for example, that “the concept of law is not exhausted by its conventional associations with rules and objectivity. The fact that literature can help us see this is one of the fruits of the law and literature movement.” Id. at 165. By the end of his book, after having set forth several creative analyses, Posner admits that he has “a warm though qualified enthusiasm for the field of law and literature.” Id. at 353.

kills an ethnic Macedonian man who attempts to rape her.\textsuperscript{138} Her act sets off a cycle of revenge between Albanian and Macedonian neighbors and eventually between family. When the Albanian girl refuses to abandon a young Macedonian monk who has protected her from an angry mob, the girl’s cousin kills her. At the movie’s end, the story returns to the opening scene, suggesting that the cycle of events is to continue in a never-ending loop.\textsuperscript{139}

Both the House of Atreus\textsuperscript{140} and “Before the Rain” paint a bleak picture of worlds that have not internalized ordered legal means of settling disputes, yet the legal alternatives have their own shortcomings, as other artistic works have shown. Posner cites E.L. Doctorow’s \textit{Ragtime} as an example of a corrupt legal system that denies formal justice to African-Americans.\textsuperscript{141} By contrasting portrayals of formal and informal mechanisms of ordering, students can better realize the potentials and drawbacks of formal legal systems and work toward opening spaces for reform within legal orders.

v. Art and Law Embody Power

The influence and role of power in art and law is a disputed point of commonality between the two disciplines, centering mostly on the extent to which art embodies power. None of the participants in this debate denies the position of law as a conduit for power. By comparing and contrasting the role of power in each field, students who study this debate better understand the magnitude and role of the power they will inherit when they enter the legal profession.

Richard Posner argues that the judge, as a public figure, embodies power in a more tangible way than the literary critic.\textsuperscript{142} The judge, he argues, has greater power than the critic to enforce his interpretations on others.\textsuperscript{143}

\textsuperscript{138} \textit{Before the Rain} (Polygram Video 1994) (motion picture). Set against the backdrop of conflict in Yugoslavia, the movie is geared toward an international audience. It is not necessarily a wholly accurate portrayal of present-day Albanian and Macedonian societies, but it has great value as an illustration of how cycles of revenge might play out in areas with firmly entrenched customs that coexist alongside other systems of ordering. \textit{Id.}

\textsuperscript{139} \textit{Id.}; see also The Internet Movie Database, \textit{Plot Summary for Before the Rain}, http://www.imdb.com/title/tt0110882/plotsummary (accessed Feb. 25, 2006) (offering a brief summary of the movie \textit{Before the Rain}).

\textsuperscript{140} Posner, \textit{Law and Literature, supra} n. 110, at 33–44.

\textsuperscript{141} \textit{Id.} at 46.

\textsuperscript{142} \textit{Id.} at 287 ("Holmes had said such things before he was appointed to the Supreme Court, but for a Supreme Court Justice to say them carried greater weight." (citing Oliver Wendell Holmes, \textit{The Path of the Law}, 10 Harv. L. Rev. 457 (1897) (address delivered by Justice Oliver Wendell Holmes at the dedication of a new building))).

\textsuperscript{143} \textit{Id.}
Levinson and Balkin dispute such claims as they relate to the field of music.¹⁴⁴ Musical notations, such as an oddly placed F-natural in a Beethoven piano concerto and an unusual repeat in a Schubert sonata "appear to be law-like commands."¹⁴⁵ In response to law and literature scholar Robin West’s assertion that only "legal interpretation is an act of power,"¹⁴⁶ Levinson and Balkin assert that her argument "borders on the naïve."¹⁴⁷ "One does not have to be a Nietzschean to recognize the struggles for power and prestige involved in debates over artistic interpretation," they explain.¹⁴⁸ "Indeed, the essays in Authenticity and Early Music speak of nothing so much as the battle for authority between early music acolytes and their traditional opponents."¹⁴⁹

Perhaps, however, Levinson and Balkin overlook a key difference between the role of power in the law and the role of power in early music. Artistic authority indeed is an arena for power struggles, but it represents a sphere of authority that one submits to more voluntarily than the sphere of authority enacted by a legal system. Nonetheless, the scope of the debate forces more careful reflection for students on the nature of legal power.

The opportunity for the manifestation of power is not limited to the separate manifestations of authority described in the debate by Posner, West, and Levinson and Balkin. Douzinas and Nead offer evidence of another aspect of power for art.¹⁵⁰ If art did not have power, they contend, it would not be subject to the regulation of the law to the extent it is today.¹⁵¹ Art has the power to challenge, offend, and upset sensibilities. From the homoerotic photography of Robert Mapplethorpe to feces-smeared depictions of the Virgin Mary, art exudes a threat to the sensibilities that are captured in law, and law has responded by constraining the range of art’s authority.

The notion of power inherent in art illustrates the power struggle that exists between law and the subjects of its regulation even beyond art. While many people may see homosexuality as a natural sexual orientation worthy of protection, portrayals of homosexuality in art may be seen by some legislators and judges as such a powerful challenge to "proper" values that they use censorship to repress what the art

¹⁴⁴. Levinson & Balkin, supra n. 125, at 1598–1614.
¹⁴⁵. Id. at 1608.
¹⁴⁶. Id. at 1612.
¹⁴⁷. Id.
¹⁴⁸. Id.
¹⁵⁰. Douzinas & Nead, supra n. 110, at 6–9.
¹⁵¹. Id. at 7.
represents. A perceived role of power, whether in a work of art or an act of love, challenges legal actors to intervene and exercise power to preserve their own, though sometimes skewed, values.

vi. Law Regulates Art

This category includes the various subjects typically included under the category of Art Law, such as First Amendment issues, tax law, entertainment law, cultural heritage law, and intellectual property law. Issues of authority to judge and issues of power, as discussed above, necessarily surface in this category. Despite Holmes' assertion that art and law are separate arenas that should not meet, judges frequently encounter artistic questions in the courtroom.

Many of the issues in this category are especially well suited to an upper-level class devoted specifically to Art Law or to classes in subjects like intellectual property or First Amendment law, but they may also be introduced more briefly within the first-year class. Students could study property law cases that include aesthetic considerations, for example, or civil procedure cases that involve disputes over cultural objects.

vii. Aesthetic Dimensions of Law

Some legal scholars have aimed to find aesthetic value in the work of lawyers. This effort sometimes results in wholly positive assessments of the creative role of lawyers. Under this paradigm, law is not merely a technical craft but an artistic venture, and the lawyers' craft embodies the aesthetic principles that define beauty in art. Scholars who adhere to this outlook include Indiana University School of Law Dean Alfred C. Aman, Jr.—who sees law students as "aspiring artists," and some legal problems as "high art"—and, to a certain extent, James Boyd White, who writes his book on the legal imagination, sees the student "as an artist" who is "as free" as the sculptor or painter in what she or he does as a lawyer.

These positive portrayals rightly challenge the notion of law as an enterprise of "plugging and chugging" rules into a specific legal case.

154. Id. at 129.
155. White, supra n. 108, at xxv. White adds as a note of caution that the student is also "as responsible" for his or her actions as the sculptor or painter. Id. Given the possible limitations of this comparison, as discussed in the model of law and art as conduits for power, White may overlook the fact that the implications of legal creativity may reach further than artistic creativity.
156. Id.
Yet as an enterprise that includes space for creativity, law also creates a space for dangerous manipulation inherent in the creative process. Aesthetic outlooks on law can overestimate the positive attributes of the creative process, \cite{157} and efforts to achieve aesthetic excellence in law have been criticized as inappropriate “in a field of pain and death.”\cite{158}

Other scholars have aimed to provide a more neutral aesthetic view of law that does not strive for beauty in the legal process but rather aims to discern a series of aesthetic arrangements that describe different understandings of law. Pierre Schlag, for example, formulates several aesthetic models of law as visual mappings that may apply to such outlooks of law as legal formalism and policy-based schools of thought.\cite{159} Schlag asserts that the aesthetic ideal that attaches to the formalistic model—law as a grid that compartmentalizes and binds—also describes the dominant mode of pedagogy in American legal education.\cite{160}

viii. Legal Texts as Literary Texts

This mode of understanding looks at the artistic qualities of legal documents and finds that literary style is more than a rhetorical flourish or a nod to the aesthetic qualities of law. Here, the legal text draws on literary technique to enhance its power of persuasion. Two examples of literary writings can be found in the works of Oliver Wendell Holmes and Karl Llewellyn.

Holmes separated law from art. “[T]he law is not the place for the artist or the poet,” he asserted.\cite{161} Yet as Daniel J. Kornstein points out, Holmes himself accommodated art in his legal works.\cite{162} Holmes’ stature as a judge, Kornstein argues, came partly from his skills in writing legal

\begin{thebibliography}{99}

\bibitem{157} Jerome Frank lambasted judges who focused their career on the aesthetic attributes of their decisions at the expense of the lives their decisions affected. Frank, \textit{supra} n. 39, at 1310 (“But such a decision often means death or imprisonment or poverty or a ruined life to some mere mortal who, in his benighted ignorance, has more regard for his own welfare than for the aesthetic delights of pure ‘jurisprudence.’”). \textit{See also infra n. 251 and accompanying text (discussing the effects of \textit{Riss}).}


\bibitem{159} \textit{Id.} at 1051–57.

\bibitem{160} \textit{Id.} at 1068.


\bibitem{162} \textit{Id.}
\end{thebibliography}
texts. His prowess depended, then, on his powerful and effective use of language.

Karl Llewellyn exercised his literary skills in numerous formats, from poetry and satirical essays\textsuperscript{164} to law review articles.\textsuperscript{165} N.E.H. Hull sees the strength of Llewellyn’s arguments in the literary language of his scholarship.\textsuperscript{166} “Ferment is abroad in the law,” Llewellyn begins in \textit{Some Realism About Realism}.\textsuperscript{167} “The sphere of interest widens; men become interested again in the life that swirls around things legal. Before rules, were facts; in the beginning was not a Word, but a Doing.”\textsuperscript{168} As Hull points out, the tone of this article served both as a persuasive method of writing\textsuperscript{169} and as a way of subverting the dreary formalism of typical legal scholarship.\textsuperscript{170}

\textit{ix. Law as Story/Drama}

Law in this vein is a story and a performance. Lawyers perform plays within the courtroom. They recount stories designed to persuade. Whether in an individual trial or across the multiple cases that form our canons of doctrinal learning, law here provides its own narrative. Examples of this idea of law as story include this very Part’s articulation of a legal subject as a complex story to be presented as a historical narrative.

\textit{x. Art and Law Impose Visions of Order}

This mode explores structural similarities between art and law in projecting their own systems of ordering. Scholars who have written in this field often focus specifically on the roles of both art and law in imposing order onto chaos.\textsuperscript{171} This position incorporates strains of the “creative ideal” discussed in aesthetic considerations the mode of law

\textsuperscript{163} Id.
\textsuperscript{165} Id. at 120 n. 25.
\textsuperscript{166} Id. at 120.
\textsuperscript{167} Id.
\textsuperscript{168} Id. at 120 (quoting Karl N. Llewellyn, \textit{Some Realism about Realism—Responding to Dean Pound}, 44 Harv. L. Rev. 1222 (1931)).
\textsuperscript{169} Id. (“It was Llewellyn’s poetic style in his legal writings that I believe has been one of his enduring attractions for legal scholars.”).
\textsuperscript{170} Id. at 120–21.
\textsuperscript{171} See Hein, supra n. 110, at 113 (“From an obverse perspective, the examination of art through the speculum of its legal control and legitimation suggests the extent to which the very concept of art (and its instances) is embedded in the morality, commerce, politics and social stratification of culture.”); Kornstein, supra n. 152, at 1240.
that considers aesthetic dimensions, but in a less enthusiastic way. Exploring systems of ordering, whether they are legal, artistic, or other, raises several questions about the regimes we impose on organic patterns of daily life. How do we identify disorder and chaos, and are systems that aim to order always preferable to chaos? What forms of chaos might systems of order themselves engender? By exploring broader questions about order and control, students better understand potentials and shortcomings of the legal system and may begin to think about alternative methods to the conventional forms of ordering encompassed in legal regimes.

xi. Artistic Devices as Tools of Analysis

The law and literature movement frequently cites this mode of comparison in its work. In this scheme, tools of literary analysis are used as devices to interpret legal texts. One such tool involves "the liberation of the text from the author." As a literary device, it allows the reader of the text to introduce her or his own meaning to the words on the page and embrace the text as a device that outlives its identity as the creation of a set moment in time and space. As a legal tool, it enables legal scholars to interpret ambiguous texts and look beyond the text to extrinsic evidence that may inform the legal document's usefulness in a contemporary context.

Sanford Levinson and Jack Balkin have extended this heuristic to tools of musical interpretation. One aim of their article on debates over early music is to demonstrate how ideas gleaned from the interpretation of musical texts also bear relevance to issues of judicial interpretation. The analogy is especially apt. Although works of literature are reenacted each time they are read, the reading of literature tends to be a more private act than the performance of music or the interpretation of a legal document.

173. Id. at 569–70.
174. See id. (citing J.M. Balkin, Deconstructive Practice and Legal Theory, supra n. 172, at 779–80) ("Recognizing that language is essentially the use of abstract symbols to convey ideas, the deconstructionist asserts that intersubjective meaning is only possible if those symbols have a public interpretation divorced from, and not necessarily identical to, the intent supra n. 125, at 1598–1614.
175. Levinson & Balkin, supra n. 125, at 1598–1614.
176. Id.
177. Id.
xii. Art Redefines What it Means to Think Like a Lawyer

Training students to “think like a lawyer” is a frequently professed goal of American legal education. Although defined in different ways by different people, the dominant interpretation of this catchphrase is that law school inducts students into a special way of critical analysis uniquely suited to legal issues. “Thinking like a lawyer” is often equated with a type of cool-headed analysis, cultivated by the Langdellian method, which works as an antidote to acting on emotion rather than reason. In sociologist Robert Granfield’s fieldwork at Harvard Law School in the mid-to-late 1980s, he observed professors defining the framework of legal analysis through admonitions to “calm down... and approach this like lawyers.” Students told Granfield that they were chided by faculty members when they introduced “political, ethical, or moral” dimensions to a class discussion. This traditional model of thinking like a lawyer—equating legal analysis to a mode of thinking that need not reference moral, political, or other concerns—conforms to the standard model of American legal education that emphasizes a certain form of technical rigor at the expense of other heuristics.

Fortunately, other law professors have held a more nuanced interpretation of what it means to think like a lawyer. Anne-Marie Slaughter has defined thinking like a lawyer as a way of “thinking with care and precision, reading and speaking with attention to nuance and detail.” Slaughter couples this technique with “attention to context and contingency” and argues that lawyers need not sacrifice their own values for the sake of being able to make an argument on either side of an issue. Rather, this skill allows students to understand that “there are arguments on both sides” and that lawyers must be receptive to multiple arguments. In the end, she concludes that thinking like a lawyer is not a dehumanizing process. She states, “[t]hinking like a lawyer is thinking like a human being, a human being who is tolerant, sophisticated, pragmatic, critical, and engaged.”

Professor Slaughter opens the door to a broader understanding of what it means to think like a lawyer, and art expands this concept. Literature sensitizes us to the forces of the law. It encourages empathy and vigilance to the human dimensions of law. As Marijane Camilleri

178. Granfield, supra n. 65, at 75.
179. Id. at 76.
180. Id. at 75–76.
181. Anne-Marie Slaughter, On Thinking Like A Lawyer (copy on file with the author).
182. Id.
183. Id.
184. Id.
notes, "By reading literature, the lawyer can learn to recognize the familiar human needs, hopes, and hurts in the unfamiliar situations of the people he represents."\textsuperscript{185} It works as a remedy to the "narrowness" of professional training criticized by Posner by encouraging well roundedness and cultural literacy.\textsuperscript{186}

"Images speak, they are neither mute nor lifeless blocks . . . Images open the heart and awake the intellect."\textsuperscript{187} The eighth-century author of this quote lived in a time when illiteracy was the norm and images played a different role in society,\textsuperscript{188} and yet his words resonate even today. Art helps inject a necessary dose of emotion into what it means to think like a lawyer, but it need not come at the expense of our intellect. To the contrary, art enhances our intellect.

It is entirely appropriate to consider the role of emotion in legal training, for even if some forms of legal analysis shut out emotional considerations, real-life legal problems do not. Lawyers confront emotional situations on the job, and spending three years pretending that emotion plays no role in the law cannot adequately prepare students to work as lawyers. By reserving a place for emotion within the legal classroom, students learn how to conduct legal analysis within the context of emotionally or morally difficult cases. They learn to confront their own emotions and to navigate legal problems that involve emotional considerations. A legal classroom that shuns all emotions anesthetizes students to the full force of the law.

xiii. Art Expands Our Arsenal of Ideas

The arts increase the law student's legal vocabulary and widen the arsenal of ideas to use in legal analysis. As a response to Bentham's assertion that poetry has no more use than child's play, Hilary Putnam wrote that "[Great poetry contributes to] the enlargement of our repertoire of images and metaphors, and the integration of poetic images with mundane perceptions and attitudes that takes place when a poem has lived in us for a number of years."\textsuperscript{189} Exposure to various facets of legal experience through the arts endows students with a greater "repertoire of images and metaphors" to draw on in legal analysis and to carry with them in their legal careers. This expansion of the arsenal of ideas also provides a powerful justification for expanding legal

\textsuperscript{185} Camilleri, supra n. 108, at 564–65.
\textsuperscript{186} Posner, Law and Literature, supra n. 110, at 175 ("Professional training in law and the professional experiences of lawyers are narrowing.").
\textsuperscript{187} Curtis & Resnik, supra n. 114, at 1746.
\textsuperscript{188} \textit{Id.}
\textsuperscript{189} Posner, Law and Literature, supra n. 110, at 302.
imagination to non-western perspectives (discussed later in this Part) and
confirms the general need to include a wide array of disciplines to
challenge the tunnel vision of ordinary legal education.

With an expanded repertoire of ideas about law, law students are
better positioned to conduct their work critically, carefully, and
creatively. By drawing inspiration from postmodern art’s outreach to
new forms of representation, legal innovators may look to non-traditional
approaches to meet legal needs or solve legal problems. By probing
commonalities between modernist movements in art and law, students
better understand the outside forces that bear on both disciplines in
specific contexts. The arts promote the legal imagination by providing
both the context and the inspiration to draw on a diverse set of
disciplines with which to think about legal problems. More knowledge
about the law also draws students’ attention to the wider variety of
contexts in which they might work as lawyers, thus counteracting the
tendency of law students at some schools to gravitate toward only a
select handful of legal jobs, such as corporate work.

xiv. Art as Communicator of Legal Ideas

Art functions as a type of legal communication in at least three ways:
as testimony, legal discourse, and form of education.

(a). Testimonial Values of Art

This understanding of law is closely connected to the idea of art
portraying law. This mode includes such typical representations of law in
works of art and also includes works of art that serve as historical
evidence of law’s great failings: Holocaust literature, for example, or the
poetry of victims of repressive legal regimes. Art as a testimonial
communication serves a documentary function. It tracks law’s
performance and details its successes and its shortcomings.

(b). Art as Legal Discourse

A legal text with the characteristics of a literary work is one model of
art as a form of legal discourse. This mode also includes the use of visual
images to make legal arguments, such as images of indigenous art to
promote indigenous rights laws or posters or murals used to advance
legal and political arguments.

(c). Art as Educator

Art in this mode communicates legal ideas to populations unfamiliar
with legal concepts. It includes Chinese propaganda posters that
publicize legal ideas and songs or images that inform people of elections and instruct them how to vote.\footnote{190} Harnessing the imaginative force of art, this mode of communication provides a source of creativity for expressing legal ideas. Art here need not simply be a messenger of legal ideas to the larger community of citizens; it can also be a messenger of ideas to law students.

xv. Art Completes the Legal Narrative

The preceding categories of the intersections between art and law offer a range of methods for completing law’s story in the first-year legal classroom. Art complements social science and philosophical introductions to law, for example, by revealing additional dimensions to law. The arts illuminate a specific legal discipline, as is the case with a work of literature that portrays the criminal justice system or a song about the failings of labor contracts. They also provide insight into broader legal issues, such as the roles of intent and authenticity in textual interpretation, and invite understanding of the influence of historical events in the development of legal ideas, such as crises in modernism.

The teacher committed to relaying law’s story in the first-year legal classroom may rely on various combinations of legal and artistic interaction to convey the story of law. The use of art with legal themes and art that portrays alternatives to law may fill out most of law’s narrative. Students may watch movies or documentaries that portray legal events. The teacher might also introduce scholarly articles that discuss other ways of using art and law, such as Levinson and Balkin’s article\footnote{191} or excerpts of White’s writings on imagination in legal thinking.\footnote{192} Students could view wampum belts to understand what contractual arrangements looked like in the context of Amerindian treaty-making or look at posters that publicize legal ideas to a general audience in contemporary China. The goal of this exercise is to fortify law’s story and thereby open law students to a rich world of law beyond its depiction in American legal textbooks.

xvi. Globalizing the First-year Classroom

The preceding examples of how to broaden the portrayal of law have drawn on several examples outside the American experience. As law is

\footnote{190} Pedro A. Malavet, \textit{Literature and the Arts as Antisubordination Praxis: LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit}, 33 U. Cal. Davis L. Rev. 1293, 1316 (2000) (Malavet cites the example of songs used in 1950s that Puerto Rico used to educate voters about an upcoming election.).

\footnote{191} Levinson & Balkin, supra n. 125.

\footnote{192} White, \textit{supra} n. 108.
certainly older than its incarnation on American soil, an examination of a legal subject’s history necessarily demands an examination of non-American legal systems. However, gaining a global perspective of law extends beyond simply providing the historical context of an American legal subject or completing the story of the evolution of modern-day American law. Knowledge of non-American systems has value in its own right.

The appropriateness of integrating non-American perspectives into an academic setting is generally accepted in non-legal American institutions of higher learning, but unfortunately the presence of non-American perspectives must be justified within legal academia. The title of John Merryman’s book, *The Loneliness of the Comparative Lawyer*, conveys the difficulties of scholars who specialize in non-American legal subjects. Finding acceptance within legal academia is a challenge for any scholar who deals in non-American legal subjects, whether it is comparative law, foreign law, or international law.

Recent trends provide some indication that law schools are becoming more aware of the need to integrate global perspectives. As legal and other spheres of interaction increasingly span national borders and increased migration sustains international issues within national borders, some schools have made steps to adjust their curricula accordingly. Most notable is the University of Michigan’s decision to make a course in “transnational law” a required class for all students as of the 2001–2002 academic year, marking the first time a law school has made knowledge of non-American legal systems a requirement for graduation. New York University’s Global Law School, launched in 1995, has carved out institutional space for global perspectives. Its worldview has also trickled into the general curriculum via efforts to integrate global perspectives into its JD classes. The Washington

193. Certainly, scholars in undergraduate institutions debate whether or not a canon of learning should include non-western perspectives, and scholars of non-western subject matters may sometimes find themselves marginalized by some college administrations. Despite these controversies, disciplines that reference mostly non-American subject matter—ranging from the Romance languages to Chinese history—have a fairly safe existence within academia. If anything, the increase in opportunities to interact with non-United States cultures should only stimulate more student interest in pursuing these disciplines.


196. Id. at 715.


College of Law at American University has also made a systematic effort to integrate global studies into its school, including both international perspectives within the classroom and the opportunity to participate in clinics and research centers that involve transnational issues. Other schools have made more modest yet equally important efforts to globalize the classroom; New England School of Law, for example, has provided funding to instructors of first-year classes for curricular development that includes global perspectives. Casebook publishing also reflects a trend in the inclusion of more international perspectives.

Schools that have included foreign, international, and comparative perspectives in their curricula recognize the value that comes from looking outside one's own legal system. Global perspectives enrich legal learning on several levels. On one level, students learn more about their own system by comparing it to other legal systems. They discover the American system is not the only way to structure law, and they become better able to critically evaluate their system in light of alternatives that exist elsewhere.

Student also better understand what "law" is when viewed in a more holistic context. Like a historical introduction to a legal subject, an international introduction gives students the tools to better probe the make-up of the various legal concepts they encounter in law school. It also provides the groundwork for studying how law intertwines with state-building and state power in multiple contexts.

Global education also more adequately prepares students for practicing law in the twenty-first century. Business deals today may span multiple continents; American lawyers may find themselves working outside United States borders or dealing with issues that involve multiple jurisdictions. Within the United States, issues of immigration and asylum touch on non-American legal systems, as well as international law. It may be unrealistic to expect law schools to train lawyers to be

200. *Id.* at 838-55.
205. See e.g. Nagle, *supra* n. 104, at 1106.
206. *Id.*
as equally versed in foreign law as in American law, but an introduction to general families of legal systems or an overview of legal systems in different countries paves the way for better informed American lawyers, whether they work in a corporate firm or an asylum clinic.

Instruction specifically in international law prepares students for a field of law that has exploded since the Second World War. The establishment of temporary and permanent international criminal tribunals, the proliferation of human rights treaties, and the growth of development and trade projects provide new arenas for using international legal knowledge.

Despite numerous factors illustrating the real necessity for integrating global perspectives in American law schools, some law schools have responded with indifference, claiming that law is still primarily a domestic matter.207 This resistance may mirror the same ideological underpinnings that support continued use of the Langdellian method, described by Claudio Grossman as a pedagogy "born in an era dominated by the principle of national sovereignty."208 While the presence of at least one course that deals with non-American subject matter has become the norm at American law schools,209 many law schools fail to provide the push to study these subjects. As a result, many students graduate law school without meaningful exposure to global legal perspectives.210

In a 1996 survey of seventy law schools, John Barrett found that only thirty-seven percent of students in the sample graduated with a course in an international legal field.211 Although his survey covered a cross-section of schools that included top-ranked national institutions, large state schools, and local law schools, Barrett estimates that his figures may be on the high side, due to factors such as the inclusion of schools in his sample that are located in cities with strong international presences, such as Washington, DC.212 Although every school in his survey offered classes on transnational subjects, a significant increase from the seventy-nine percent of schools found to offer such classes in a survey from the 1960s,213 the number of students taking such courses had barely

208. Id. at 820.
209. Barrett, supra n. 204, at 854 (citing a survey by the International Legal Education Committee of the ABA’s Section on International Law and Practice).
210. Id. at 854 (only thirty-seven percent of law students graduate with a course in international law).
211. Id. at 854.
212. Id.
Barrett suggests that the easiest way to remedy this problem is to include global perspectives within regular core classes. Requirements like those at the University of Michigan are also effective, but given the tardiness with which such policies might be implemented and the institutional determination required to carry out such curricular reform, the globally minded law professor may find the first-year class the ideal place to introduce international perspectives. Indeed, in the first-year classroom described in this paper, such an international perspective is essential in providing a well-rounded legal education.

However, efforts to internationalize legal education must not succumb to the pressures of eurocentrism that has gripped even the seemingly cosmopolitan venture of comparative law. Certainly, close attention to European legal systems is a fundamental step in broadening one’s horizons beyond the United States, but excessive attention to European systems as objects of comparison can channel even the most committed comparativists into a parochial mindset. Franz Wieacker, for example, concludes his otherwise learned treatment of civil law by stating that developing countries should adopt European law because their own legal orders fall short of well-functioning legal systems. Meanwhile René David and John Brierly justify comparative law in part to facilitate “dealings with representatives of far eastern countries who, with their very different intellectual processes, contemplate law and international relations in a manner very different from those in western countries.” Alas, the myth of an unknowable Orient has yet to be cracked even by otherwise skilled comparativists. Such comments reflect a superficial understanding of legal systems beyond the European continent.

Ignorance of non-western systems also undermines larger efforts to understand the law. Roberto Unger’s early attempt to construct a theory of legal order was based in part on a description of Chinese law that

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214. Barrett, supra n. 204, at 854.
215. Id. at 856.
216. Not only do the systems have value for comparison in their own right, but they also serve as the bases for formal legal systems in many other parts of the world.
218. René David & John E. C. Brierly, Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law 9 (3d ed., Stevens & Sons Ltd. 1985). This comment reflects a welcome sensitivity to different understandings of law, but it also incorporates strains of deeply rooted stereotypes—perpetuated in part by some East Asian scholars themselves—about a unique Asian mindset that resists legal consciousness.
was inaccurate. As noted by William Alford, such a misrepresentation not only does an injustice to Chinese history but also pokes holes in Unger's categorization of legal systems.

Attention to a multitude of legal systems enriches the project of understanding law. First, knowledge of legal systems inside and outside of Europe broadens the law student’s arsenal of legal ideas. Second, many of the issues raised in comparative law inquiries can be best answered by looking beyond the West. Issues of legal transplantation, for example, are illuminated not only by transplantation within the context, for example, of the European Union framework, but also beyond Europe, where there is a long history of legal borrowings within and across regions.

Finally, works of art and literature as they illuminate legal ideas must look beyond the western school of thought. James Boyd White, defending his use of western texts, argues, “I make no claims for the priority of this culture . . . or for these texts, but I do for their value.” How unfortunate that White and some of his colleagues know enough that works of literature can open the door to broader legal learning, yet fail to draw on the true greatness of art and literature that can be found in non-western works.

xvii. Testing the Liberal Legal Classroom

You are the curator of a traveling exhibit on tort law that will visit many countries across the globe. Your job is to give a general critical overview of torts that is not grounded solely in the doctrine’s development in one particular country or in one particular era. You may use numerous media—paintings, photography, panels of text, documentaries, historical artifacts, to name only a few—in this exhibit. Please describe what objects you will use and how they will combine to present your story of torts. Feel free to attach illustrations to your explanation.

A multidisciplinary unit that portrays law’s history through historical narrative is well served by a tool of assessment that allows for the creative incorporation and synthesis of the many ideas learned in this unit. The above essay questions demands that students digest what they have learned and reveal that they have made the material their own by telling their own story of a legal discipline.


221. Alford, supra n. 220, at 952–53.

Students also might be called on to display their knowledge in another manner. The mere questions, "What is property law? What are its potential advantages and its potential shortcomings?" demand that students work out their own expertise on the topic. This unit portrays a legal subject as a complex animal, and a deceivingly simple-sounding question, such as "What is contracts?" forces students to probe the very core of the legal subject they are studying.

Students could also be asked to engage specifically in a cross-disciplinary comparative exercise. For instance, students might be asked to discuss a concept that illuminates contract law, providing several concrete, original examples. Among such "illuminating concepts" students could look to economics, feminist jurisprudence, poetry, linguistics, or marriage practices, to name a few. Students here must look beyond the notion of a legal topic as a fully independent body of law unaffected by other considerations.

Any one of the preceding topics might be assigned as a five-page essay to evaluate student progress in the course. The professor might assign the topic early on in class, to give students time to carefully think about the issue. In evaluating the essay, the professor should measure students not only on their ability to synthesize the ideas learned in class but also on their skills in thinking beyond the class materials and developing thoughtful insights into the legal subject.

III. AMERICAN VERSIONS OF LAW, AMERICAN CHALLENGES TO THE LANGDELLIAN METHOD

The previous Part described a vision of pedagogy centered on subject matter often unfamiliar in the first-year classroom. The final Part, which focuses on skills-based training, deals with a more familiar yet still marginalized form of legal training. The present Part, in contrast, concerns the central foundation of American legal education, namely, the examination of United States legal doctrine. It is here, then, that an examination of the typical features of an American legal education—case materials, Socratic questioning, and issue-spotter exams—is most appropriate. The first three sections of this Part describe and critique these three aspects of standard legal education, and the final section offers a comprehensive proposal for redesigning instruction in American law.

223. This question is modeled after an essay question used by Harvard Law Professor Christine Jolls in her Fall 2000 contracts class.
A. Beyond the Casebook: Challenging Current Teaching Materials

The diet of first-year law school students consists largely of edited appellate decisions dissected into component parts in student case briefs. A typical brief might read as follows:

*Riss v. City of New York* (Court of Appeals of New York, 1968) 224

Facts: Riss twice unsuccessfully sought police protection after ex-boyfriend stalked and threatened her. The day after the second time help was denied, hired thug threw lye in her face, burning and blinding her. Lower courts dismissed and affirmed the dismissal. 225

Issue: Can the police be sued for failing to protect?

Held: No. Affirmed. This case is different from cases where governmental actions have displaced/supplemented traditionally private enterprises, like hospitals, where ordinary principles of tort have followed with abolition of immunity. This is also different from government activities like providing highways, etc., where ordinary tort laws may also apply. Here, the case “involves the provision of a governmental service to protect the public generally from external hazards and particularly to control the activities of criminal wrongdoers. The amount of protection that may be provided is limited by the resources of the community,” and by legislative-executive decision on how those resources are used. 226

As discussed in Part I, such case material was a cornerstone of Langdell’s pedagogy. Legal ideas, according to Langdell, were best distilled from select cases that cumulatively contained a complete body of legal rules. The need to single out cases best suited to this purpose—for not all legal cases fit into Langdell’s project—led to the development of casebooks. 227 The realists of the early twentieth century reformed casebooks to include outside materials, but the basic idea of the casebook as a collection of appellate legal decisions, possibly adorned by snippets of legal scholarship or other materials, remains a standard ingredient in legal education. 228 Under this model, students subsist on a daily reading load of cases, condense the main points of the case into a brief or rely on briefs prepared by others, including commercial legal publishers, and then condense the case again into an outline to be used during the final

225. *Id.* at 862.
226. *Id.* at 860.
227. Weaver, *supra* n. 57, at 569.
228. *Id.* at 569–70.
exam. Hence, *Riss v. City of New York* evolves over the course of a semester from the longer brief, above, to a few lines in a subcategory of a neatly organized list of legal rules on torts:

**Government Liability**

*a. Riss:* Police cannot be sued for failing to protect P from abusive boyfriend b/c the case "involves the provision of a governmental service to protect the public generally from external hazards and particularly to control the activities of criminal wrongdoers." The degree of protection may be limited by the resources.

The process of rewriting a case into a brief and connecting its principles to other ideas within a legal subject is one of the perceived benefits of the case method. Its advocates praise the case method for teaching students to "think like lawyers," to understand legal texts, to discern the relevant holding of a decision, and to connect a court holding to rules gleaned from other cases. In a precedent-based system, moreover, it is seen as especially appropriate to base teaching materials on judicial decisions.

The endeavor is, in effect, one of reconstruction. Students take apart a case in preparation for class, reorganize it into a brief, then later use the ideas from the case as a building block for an outline designed to represent torts, contracts, or another first-year subject. Although classroom discussion of the case provides guidance to the student in understanding the rule at hand, much of this process of construction is meant to take place outside the classroom; hence the case method is also lauded for promoting independent thinking skills.

Anthony Kronman adds to these positive assessments of the case method by asserting that such a method also cultivates "moral imagination." Assuming that the law instructor uses the case materials as a basis for exploring the different positions embodied in the case, Kronman argues that students develop their imagination as they are forced to examine different perspectives. Over time, the practice of seeing different sides of a case becomes "habitual." This process, as

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229. Id. 240 N.E.2d 860.
230. Id.
231. Weaver, *supra* n. 57 at 547, 549.
232. See e.g. id. at 547–561, 553.
235. Id. at 113.
236. Id. at 114.
carried out through the case method, Kronman concludes, "works simultaneously to strengthen both the student's power of sympathetic understanding and his ability to suppress all sympathies in favor of a judge's scrupulous neutrality."237 This latter power is one of the ultimate benefits of the process, as "the student himself takes on a measure of the public-spiritedness that distinguishes the judge's view of legal conflict."238 Kronman justifies the case method not only for the inherent value of these specific skills but also because these skills may work to reclaim a lost ideal of the "lawyer-statesman" within American society.239 Speaking in the manner of a Confucian scholar yearning for the Golden Age of the great sage kings, Kronman identifies a crisis of conscience in the legal profession;240 cultivating moral judgment via the case method serves, to him, as one antidote to this troubled world of the present-day legal profession.

The notion that the case method encourages moral imagination, or, as other advocates suggest, promotes analytic skills, overlooks the serious shortcomings of the case method. Certainly, the close reading of a judicial decision coupled with careful note-taking in the form of a brief promotes useful skills. Lawyers should be familiar with reading legal decisions and analyzing individual cases within a larger context, both of which are skills that the case method arguably advances, but the case method alone fails to fully develop the skills needed to be a good lawyer.

The case method focuses only on a small picture of the legal process, typically the level of decision-making in appellate courts. Kronman justifies this by claiming that appellate decisions "have the advantage of bringing out the legal issues in a case with an economy and a precision that trial transcripts, for example, rarely do."241 Such an economy can be helpful given the time constraints within the classroom, but that reason alone should not crowd out examination of some legal cases all of the documents involved, rather than just the appellate decision.

The legal process is more complex than the economic portrayal of legal facts within appellate decisions. As Russell Weaver points out, the issues within a lawsuit that most affect its outcome may be present in the pre-appellate stages of a case, and typically lawyers first confront a legal problem from its beginning, not at the appellate level of the legal

237. Id. at 113.
238. Id. at 119.
239. Id. at 1–7.
240. Id. This resemblance to Confucian modes of romanticizing the past was first noted in William P. Alford, Of Lawyers Lost and Found: Searching for Professionalism in the People's Republic of China, in East Asian Law and Development: Universal Norms and Local Culture 191 (Arthur Rosett et al., eds., Routledge/Curzon 2002).
241. Kronman, supra n. 234, at 110.
process.\textsuperscript{242} Students who study only appellate decisions do not confront this reality and thus miss out on the cultivation of legal skills at other stages of a legal problem.\textsuperscript{243} They also miss out on the larger world of law that extends beyond the judiciary.

Exposing students to legal materials at stages prior to the appellate level and in forms outside the judiciary, in sum, more accurately captures the nature of the legal ideas students aim to learn from appellate decisions and the nature of legal work students will confront after graduation. Jerome Frank advocated this very approach to legal education, stressing the importance of factual issues in the work of lawyers:

In most suits, no disagreement arises about the rules, and the disputes relate solely to the facts. Decision in such suits, says many a professor, quoting Cardozo, leave "jurisprudence . . . untouched." That is true, provided you so conceive of "jurisprudence" that it stays aloof from the affairs of ordinary men. But such a decision often means death or imprisonment or poverty or a ruined life to some mere mortal who, in his benighted ignorance, has more regard for his own welfare than for the aesthetic delights of pure "jurisprudence."\textsuperscript{244}

The legal process is not only more complex than appellate decisions. It is, as Frank eloquently suggests, also more complex than a world of law limited to legal decisions in general.\textsuperscript{245} Indeed, Frank was among the realist voices pushing to situate legal cases within a broader social context beyond mere legal documents. First, confining the case of Riss v. City of New York\textsuperscript{246} to a simple fact-pattern and case summary, for example, does not develop the range of issues presented in the case. Next, the job of the lawyer is not simply to process and apply a rule about police liability but to understand what forces support the rule and what issues intersect with the rule. A lawyer who aims to understand the broader thrust of the law on society must look beyond the outward rule of Riss v. City of New York\textsuperscript{247} to fully comprehend what rules of liability mean. Finally, a legal professional dissatisfied with such a rule must understand its implications in their entirety if she or he is to work to change it.

In Kronman's model, however, the broader issues of the case might be best left to the imagination. Specifically, he argues that students can

\begin{itemize}
\item \textsuperscript{242} Weaver, supra n. 57, at 570–71.
\item \textsuperscript{243} Id.
\item \textsuperscript{244} Frank, supra n. 39, at 1310.
\item \textsuperscript{245} Id.
\item \textsuperscript{246} 240 N.E.2d 860.
\item \textsuperscript{247} Id.
\end{itemize}
cultivate their moral imagination through appellate cases because the succinct nature of the cases demands that students fill in the gaps for themselves. This process of imagining the specific details of a case is troubling, however, when students have no general background knowledge of the issues involved in a case in which to root their moral imaginings. Perhaps some students studying Riss would be inclined to imagine away the epidemic of domestic abuse entirely.

Education centered on the examination of cases alone fails to capture the wider life of the law. A typical summary of Riss v. City of New York—"Police cannot be sued for failing to protect P from abusive boyfriend b/c the case involves the provision of a governmental service to protect the public generally"—does justice neither to the lives affected by the decision nor to the law students struggling to understand the meaning of the law and the meaning of their future profession. A classroom that looks beyond Riss v. City of New York as portrayed in a textbook provides an excellent angle through which to explore the law’s intersection with domestic violence, or, perhaps more accurately, its frequent failure to intersect in this “private” sphere, as well as issues of judicial lawmaking.

The Riss case also presents a springboard into the question of what law means in the lives of individuals. Students might read background articles, such as scholarship on domestic abuse and newspaper articles describing the attack on Ms. Riss, to understand how the decision affected Ms. Riss’s life. Students might explore the afterlife of the Riss decision, not only its effect on Ms. Riss but also its effect on various political movements.

Finally, the issues included in a case might be expanded beyond their American context to look at how similar legal issues are dealt with in a different legal system. Casebooks consist almost exclusively of American cases, with the occasional bow to commonwealth legal decisions. The almost wholly domestic focus of case materials is yet another limitation on the horizon of American legal education.

Certainly, some professors stray from the case method or supplement

249. 240 N.E.2d 860.
250. Id.
251. For example, the Riss case has been co-opted by pro-gun groups to show the necessity of gun ownership for self-defense in light of a police force not compelled to protect women from abuse. See e.g. Sixgunner, Do You Have a Right to Police Protection? http://hematite.com/dragon/policeprot.html (last updated May 12, 2000); Sixgunner, Gun Control, http://www.sixgunner.com/guests/guncontrol.htm (no longer available, accessed at http://web.archive.org/web/2003062212955/http://www.sixgunner.com/guests.guncontrol.htm (Sept. 20, 2005)).
252. Weaver, supra n. 57, at 569–70.
cases with outside reading. Those who add supplemental material within the basic framework of a case-centered class may find, however, that students fail to attach significance to non-case-centered materials, viewing such additions as mere "embellishment." Weaver argues that professors themselves promote this rule obsession among students. The narrowness of the case method and of the final exam work to create an atmosphere in which students come to understand that rules matter. Professors question why their students want to learn black-letter rules, Weaver notes, yet through their pedagogy, professors help reinforce the message that rules count. A course that aims to portray a legal subject primarily through appellate cases sets the default mode of the course to a narrow body of materials that, at best, provides a highly edited glimpse of one aspect of the law, and at worst, distorts how the law operates.

Finally, the case method is problematic because it has become so standardized in its content, delivery, and evaluation techniques that students need only turn to the many study aids, most notoriously canned briefs and outlines, that do the work for students and eliminate the need to conduct independent critical thinking. The format of many study aids, like the case method itself, discourages a wide view of legal principles. Study aids summarize cases. Linda Riss becomes yet another rule within an outline, and the issue of domestic violence is pushed to the side. It is terrifying to think about a generation of lawyers whose imagination, moral or otherwise, has been shaped by the commercial outlines of Emmanuel’s and Gilbert’s.

B. The Socratic Method

In contrast to Japanese university students who do little more than listen passively as their professors lecture, Harvard law students participate actively in classroom debate and work with their instructors to make their law school education as rewarding as possible.

This quote comes from Yukio Yanagida, a Japanese lawyer who received an LL.M. from Harvard Law School, where he also spent time as a visiting professor. In Japan, legal education is an undergraduate

254. Weaver, supra n. 57, at 565–66, 580.
255. Id. at 577, 565–66.  
256. Id. at 565–66, 577, 579–80.
257. The facts of a legal case are not only edited in the process of creating appellate decisions, but also edited by casebook authors. Students examine a legal issue several levels removed from the original legal problem.
major. In comparing Japanese law students (the passive listeners) to Harvard Law School students (the active participants), Yanagida reflects widely held assumptions about the lecture method of teaching—the typical tool of American undergraduate education as well as Japanese legal education—and the Socratic method of teaching used not only at Harvard but also at other American law schools.

Supporters of the Socratic method have long lauded the "active learning" which the method is meant to cultivate and which is thought to stem from the method’s rigorous in-class questioning. Lawyers, after all, must learn to think quickly and argue their position eloquently in front of others. In its standard form, the professor selects a student to describe a case assigned for the day. Then, moving from student to student, the professor quizzes the class on the case. Through a process of back-and-forth-questioning, the professor guides the student toward an articulation of the ideas expressed in the case. The professor may ask one student a series of questions or divide the questioning among a number of students. She or he may ask students to argue positions on both sides, and then may adjust the facts of the case, offering a "hypothetical" to see how the rules of the case might function in a different fact pattern. In its purest form, this questioning process takes up the entire class session. The professor neither lectures nor provides answers. Students are forced to develop conclusions on their own based on the guidelines provided by the professor’s questioning.259

The reality, of course, is much different. Few professors fill an entire class period with Socratic questioning. As Friedland’s survey suggests, professors may intersperse other teaching techniques with Socratic questioning.260 Further, the nature of the teaching method termed “Socratic” varies tremendously in style. Professors may incorporate the element of surprise, a key factor in forcing students to think on their feet, by randomly selecting students, or they may notify students in advance that they will be called on. A student may be questioned for much of the class period, or the student may be only one of many called on to participate.261 The professor may pride himself or herself on the adversarial nature of the process, grilling students harshly and perhaps publicly critiquing those who perform poorly, or the professor may question students in a less confrontational manner. Finally, the questioning can range from those closely tailored to the case to broader

260. Friedland, supra n. 79, at 27.
261. Areeda argues that the best approach is to call on many students. Areeda, supra n. 259, at 916.
questions that elicit more open-ended answers.\textsuperscript{262} The late Harvard Law School professor Phillip Areeda was a staunch defender of the method.\textsuperscript{263} Though he recognized the potential of misuse of the method, such as when a professor uses the method as a form of public humiliation, Areeda argued that the method is an effective way to educate law students.\textsuperscript{264} Areeda noted that the risk of being questioned promotes vicarious participation.\textsuperscript{265} He envisioned the Socratic method as a carefully orchestrated event where students cultivate their own analytic skills as they engage in the questioning process.\textsuperscript{266} Yet, they are not completely left to their own devices in gaining insight into the law because students are "carefully led to [their discoveries] by skillful questioning."\textsuperscript{267}

Other Socratic method supporters have offered wholesale praise for the method, without Areeda's detailed differentiation between proper and improper uses of the method. University of North Carolina law professor Martin Louis, in an interview shortly before his death, described the method as "a friendly assault."\textsuperscript{268} According to Louis, the point of the method was to teach students "analytical thinking" and, as an added bonus, gave students "a little practice in oral communication."\textsuperscript{269} Ruta Stropus is even more adamant in her support for the Socratic method. Speaking of the "Langdellian method," including the Socratic questioning that adheres to it, she asserts that

[If law schools lower their standards and alter their methodology, ultimately the law students will suffer. Untrained in independent thought, critical analysis, and verbal communication in their undergraduate education and not fully exposed to it in their legal training, law students will enter the legal market completely unprepared to face the challenges that await them.\textsuperscript{270}]

For Stropus, the Langdellian method, complete with its Socratic questioning, is the only way to effectively educate students. To her, the method stands for a type of rigor lacking in undergraduate education.\textsuperscript{271}

\textsuperscript{262}. This open-ended type of questioning is frowned upon by Areeda. \textit{id.} at 913.
\textsuperscript{263}. \textit{See id.} at passim. (defending the benefits of the Socratic method).
\textsuperscript{264}. \textit{id.} at 918.
\textsuperscript{265}. \textit{id.} at 916.
\textsuperscript{266}. \textit{id.} at 911–22.
\textsuperscript{267}. \textit{id.} at 922.
\textsuperscript{269}. \textit{id.} at 970.
\textsuperscript{270}. Stropus, \textit{supra} n. 233, at 473.
\textsuperscript{271}. Interestingly, Lani Guinier, Michelle Fine, and Jane Balin, who are heavily critical of the Socratic method, also equate the method with rigor. Despite the shortcomings in the method that they identify, they advocate that law schools still retain "rigorous Socratic teaching." Lani Guinier et
The Socratic method has become a powerful symbol for all that is right, or all that is wrong, with American legal education. For its adherents, the Socratic method is rigor. It represents the high standards upheld in an idealized past and, in their view, is increasingly under fire by assertive students and radical professors like the "crits." The Socratic method is a key to developing the analytical skills needed to "think like a lawyer." To opponents of the method—and indeed this is a method of such forceful symbolic value that it has not merely critics but actual opponents—the method stands for the ills of modern-day legal education. The problem is pathological. The method transmits a virus that plagues not only legal education but also law students themselves.

Some of the strongest critiques of the method assert that it harms students by cultivating severe anxiety. Anecdotes of clever volleys lobbed by a particularly cruel professor bent on carrying out a one-sided battle hint at the extent of harm that may be inflicted on students. Yanagida applauds the suspense and nerves that attach to the method, noting, "[t]his pressure and fear of being embarrassed in front of one's peers, it is said, force students to be well prepared and think at a higher level." Some observers, however, see this stress as a side effect of the Socratic method that can overshadow the learning process. Gerald Hess asserts, for example, that the stressful nature of the process can cause students to focus single-mindedly on what they perceive as the primary issue of learning the rules and consequently ignore the broader issues connected to learning the law.

Stropus suggests that the Socratic method leads students to "the realization that law is not as certain, predictable, and ordered as many students expect." Yet the very controlled process of questioning, coupled with a narrow set of legal materials, deliberately overlooks the unpredictability that can exist in law. The Socratic method introduces uncertainty, but with the final goal of bringing order to that uncertainty to produce an outline of how a legal subject operates and to answer exams sometimes graded by a checklist of correctly identified issues. Socratic questioning channels law through a tunnel. The narrowness of

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272. Kerr, supra n. 68, at 127.
273. See e.g. id. at 118; Stropus, supra n. 233, at 458–60.
274. Yanagida, supra n. 258, at 11.
276. Stropus, supra n. 233, at 458.
the Socratic method reinforces the limited scope of subject matter dealt with in case law. Although Socratic questioning could be applied, perhaps quite awkwardly, to general subject matter, it is especially well suited to the philosophy of the case method. Yet the limited scope of the Socratic method is not due only to the limited scope of case material. The very nature of the classroom control exercised by the Socratic professor can crowd out examination of broader issues that attach to a case.

Students, meanwhile, decry the process for giving professors unfettered power to harass students. Critics lambaste the method for its perceived inefficiency and the limited scope of material that can be covered. Even some of its adherents doubt that the method effectively cultivates speaking skills because students are seldom questioned long enough to develop such prowess.

One of the most powerful critiques of the Socratic method comes from feminist theory. In Lani Guinier, Michelle Fina, and Jane Balin's study of University of Pennsylvania law school students, Guinier and her colleagues found that "many women are alienated by the way the Socratic method is used in large classroom instruction." This detachment from the method, combined with controlling professors who give more class time to male voices, results in lower performance rates by women, they argue. Men and women enter with nearly identical track records of academic success, but women fall behind during their first year of law school, giving men an edge they maintain up to graduation. Guinier and her colleagues conclude: "The performance aspect of a large Socratic classroom disables some women from performing up to their potential, especially when this teaching method is used to intimidate."

The Guinier perspective is integrated into debates about the different thinking processes of men and women, a position widely publicized in the works of Carol Gilligan. If women conceive of legal ideas differently than men, then the questioning process fashioned by a white man and perfected by like-minded predecessors may work against women. Similarly, if women look to solve problems outside the standard Socratic method of confrontational inquisition, they may be disadvantaged.

In contrast, other observers argue that the Socratic method empowers

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278. Weaver, supra n. 57, at 519.
279. Kerr, supra n. 68, at 129.
280. Guinier et al., supra n. 271, at 28.
281. Id. at 45.
282. Id. at 58.
283. Id. at 37.
284. Id. at 58.
women. A female Harvard law professor interviewed in Orin Kerr’s study stated that she relied on the method to ensure women were given an equal opportunity to speak in class. By calling on students rather than allowing them to volunteer, this teacher worked to avoid a possible gender imbalance within the classroom.\(^{285}\)

Others reject the very premise that women need safeguards against aggressive male students. Stropus notes that some critics assert that the Langdellian method hurts women, minorities, and other “nontraditional students” because it “reflects white male values . . . assertive, argumentative, confrontational, controlling, impersonal, logical, and abstract.”\(^ {286}\) But to her, “it is racist and sexist to suggest that people other than white males cannot master the art of intellectual dialogue.”\(^ {287}\)

Although Stropus takes a narrow view of the types of argument that can constitute intellectual dialogue, her point suggests possible weaknesses in some feminist critiques of legal education. Cultural or difference feminism remains a debated position within feminist theory. Most recently, post-colonial critiques have criticized older strains of feminism, including cultural feminism, for lacking consideration of diversity among women and portraying only the experiences of white middle-class women.\(^{288}\) These western feminisms work not only to portray women as different from men, but, sometimes, also end up portraying third-world women as weak and victimized. Moreover, Carol Gilligan’s research on girls’ self-esteem, which was based on mostly white girls who attended an elite private school, has been called into question by a later study finding that African-American girls in fact maintain high levels of self-esteem throughout adolescent academic experiences.\(^ {289}\)

These critiques of cultural feminism suggest that issues of gender and identity in the legal classroom should be looked at through multiple lenses that resist generalizing the experiences of women. At the same time, research indicating a trend in low female performance or greater female dissatisfaction within the legal classroom serves as a powerful reminder that issues of gender discrimination should not be overlooked in analyzing modern legal training. Techniques such as waiting for several students to raise their hands rather than calling on the student quickest to place his or her hand in the air may serve as a safeguard to

\(^{285}\) Kerr, supra n. 68, at 128.

\(^{286}\) Stropus, supra n. 233, at 463.

\(^{287}\) Id. at 484.


ensure that certain voices within the classroom—whether they are predominantly the voices of women or of other students who prefer to contemplate an answer before raising their hands—are not marginalized.\textsuperscript{290}

Like the case method, the well-executed Socratic method may cultivate some useful skills within law students, such as oral communication skills and quick synthesis of learned materials. When the pros are balanced against the cons, however, the justifications for using the Socratic method are weak. The Socratic method, characterized by ultimate control in the hands of the teacher and particularly well suited to case materials, constrains the broad world of law.

\textit{C. Testing the First-year Final}

The final exam embodies a strange paradox within the first-year legal classroom. The classic law school exam is the notorious issue-spotter, supplemented, perhaps, by a question related to policy.\textsuperscript{291} The issue spotter may span several pages as it lays out an intricate fact pattern of events that are meant to link a hypothetical sequence of events to the rules pulled from appellate cases. The question often describes the basic facts of a case, the kinds of issues a lawyer might confront when a client walks into her or his office and that he or she must develop into a coherent case to take to the negotiation table or trial. Therein lies the great puzzle of the first-year exam. After a semester of shutting out the initial facts in a legal problem, the trial stage, and other preliminary efforts, students are asked to demonstrate their prowess in comprehending appellate cases via an analysis of a set of facts typically far removed from the appellate stage in the legal process. Advocates suggest that this gap tests “legal imagination,”\textsuperscript{292} but given the narrowness of legal training, the exam tests a form of creative thinking that is barely cultivated within the classroom.

The second puzzle of the first-year final is the separation of issue-spotters from policy questions, and, in some cases, the absence of any consideration at all of policy issues within the exam. When teachers tack a separate policy question onto an exam that consists mostly of issue-spotter questions, they send the message that policy is somehow separate from standard legal problems and thus less important. In cases where

\textsuperscript{290} Guinier suggests that this approach to calling on students, based on a Japanese technique, may encourage greater participation. Guinier et al., \textit{supra} n. 271, at 72–73.

\textsuperscript{291} Henderson, \textit{supra} n. 95, at 431; Weaver, \textit{supra} n. 57, at 577. The exam format has been expanded by some professors to include other styles such as short-answer or multiple-choice questions. Kissam, \textit{Examinations}, \textit{supra} n. 277, at 438–39.

\textsuperscript{292} Kissam, \textit{Examinations}, \textit{supra} n. 277, at 440.
policy issues are completely absent from an exam, the only thing that counts is spotting the right issues. At this point, the legal exam turns into the children’s game that appears in the Sunday comics: find the six things hidden in this picture. Unfortunately, the children’s game may be a better test of skills truly needed by lawyers than the law school exam. The game often asks participants to find the six things wrong with a picture. Issue-spotter questions seldom demand that students analyze what might be wrong with the issues they are trained to spot. Indeed, if students were required to engage in such in-depth analysis, the system of grading whereby some professors use a checklist of issues to evaluate answers would be disrupted.

Critics see other problems with the final exam beyond these two puzzles. First, the exam is often designed as the only tool for evaluating a student’s grasp of the subject, and thus is meant to represent an entire semester or year’s worth of learning. Not surprisingly, education literature sees such tests as having little value in accurately measuring the breadth of a student’s learning. According to Douglas Henderson, “Virtually no empirical evidence, from either the psychological or legal research literature, confirms that law school exams reflect more than what a single essay can reflect.” More accurate measures of student achievement require more frequent testing and opportunities for reflection. In addition, excessive focus on one exam disvalues other ways in which students may demonstrate their knowledge of a legal subject, such as through class participation, paper-writing, or involvement in a class internet discussion forum.

Philip Kissam, argues that the first-year exam carries several ill effects. For example, it allows the professor to prioritize his or her own scholarship and other commitments over frequent assessments of student progress. Also, the exam places issue-spotting as a model of good legal thinking and as an acceptable form of legal writing, and, because success on the exam is disconnected from classroom instruction, it provides little incentive for students to attend class. Its role in ranking students, moreover, caters more to the hiring policies of corporate law firms than the needs of students.

293. See e.g. Kissam, Examinations, supra n. 277, at 444–45 (talking about the checklist of issues used to grade a law school exam).
294. Henderson, supra n. 95, at 407.
295. Id. at 411–12.
296. Kissam, Examinations, supra n. 277, at 436.
298. Id. at 183–84; Kissam, Examinations, supra n. 277, at 436.
299. Henderson, supra n. 95, at 404; Kissam, Examinations, supra n. 277, at 183.
Of course, like many attributes of the American legal system, the typical law school exam carries some benefits. It tests students' ability to process large bodies of knowledge and apply them to specific cases, and it expects students to work efficiently and effectively under pressure. Yet some of these positive effects, such as the learning of a large body of legal rules, may crowd out attention to other legal issues and force to the wayside secondary scholarship assigned in class as students delve into learning a body of law from commercial outlines. Case materials, the Socratic method, and the final exam all involve skills that are useful to the lawyer. Assuming each method is used skillfully, students learn how to read case materials critically, discuss their position with a critical opponent, and discern relevant issues from a collection of facts. But the possible benefits of the system seem like more of a happy accident than the result of a carefully considered policy for guiding students in their professional and intellectual development and for assessing their progress.

D. Proposal

The preceding sections outlined the shortcomings of the standard features of the Langdellian classroom: case-centered materials, Socratic questioning, and issue-spotter exams. The following proposal offers alternative methods designed to present a more thorough overview of the American legal system.

i. Redesigning Classroom Materials

A broad range of teaching materials, beyond the classic American case book, better exposes students to the reach of the law. Appellate decisions do trace the development of legal doctrine, but they are not the only sources of insight and thus should form only one part of the course materials used. Students might spend time studying all of the papers involved in the trial process of at least one case to gain a better understanding of legal processes. Students might also look beyond materials from the judiciary to works of legislation. To provide greater context to such primary-source materials, students should research secondary sources that provide narrative descriptions of a legal subject or illuminate a specific aspect of the legal subject. The goal here is to familiarize students with the contours of a subject in its American form. Traditional case materials give only limited exposure to a legal subject. Students who study torts, for example, solely through close readings of appellate decisions do not have the opportunity to adequately address big

300. See Kissam, Examinations, supra n. 277, at 435.
issues animating the field.

Maintaining a global posture throughout an examination of American law serves as a reminder that the American way need not be the only way. A global perspective increases the vocabulary with which students can examine and critique their own system. This perspective also enhances their global literacy and understanding of the foreign systems that they may encounter in their future work.

Students in a civil procedure class might read John Langbein’s assessment of the German legal system and the plethora of responses it generated. Langbein heaps praise on the German system for its fairness and efficiency, and he suggests that the costliness and inefficiency of the American process might be rectified by borrowing examples from the German model. For whatever flaws Langbein’s article contains, as a glowing assessment of the German model that fails to seriously examine potential shortcomings in the system, it provides an excellent springboard from which to explore several issues in comparative law. First, is the German system superior? Does it function better than the American system in determining the truth? Is truth the priority of either system? Students might next examine what challenges exist in borrowing features of another legal system.

In a contracts class students might compare the role of contract in Japan with its role in the United States. Some scholars have argued that cultural factors in Japan lead people to prefer simple contractual arrangements and to rely on other methods for ordering affairs. Can culture alone explain this phenomenon, if it indeed exists, and do similar types of informal ordering exist in the United States? In examining these questions, students explore fundamental questions about the nature of contract and the definition of legal consciousness.

The arts also reinforce a broader picture of law. Amy Hilsman Kastely, Deborah Waire Post, and Sharon Kang Hom’s textbook on contracts includes works of literature to complement specific cases. They pair *Lawrence v. Ingham County Health Department*—a case holding that a free clinic is not liable for a medical error during childbirth


\[\text{302. Id.}\]


\[\text{305. 408 N.W.2d. 461 (Mich. App. 1987).}\]
because the parents, as recipients of free services, did not provide any consideration— with Paulette Childress White’s story “Getting the Facts of Life”—describing a young girl’s trip to a welfare office—to sensitize students to the experience of receiving public assistance.  

In the arena of non-fiction literature, Jonathan Harr’s *A Civil Action* gives a detailed account of the ups and downs of the legal process. His description of lawyer Jan Schlictmann’s suit against two big corporations accused of polluting the water supply of Woburn, Massachusetts, resulting in abnormal rates of cancer in the area, would be a powerful teaching tool in both civil procedure and torts classes. As discussed in Part IV, Harr’s book would also serve as a useful way to introduce practice skills into the first-year classroom.

### ii. Alternatives to the Socratic Method

The excessive control engendered in the Socratic method further shuts out alternative forms of discussion on a legal topic. An alternative to the Socratic method is to open up a legal subject via a series of lecture on the topic, coupled by sufficient opportunity for class discussion. The Socratic method is well suited to questions and answers closely focused on a particular subject but cannot offer the broad overview of a topic the way old-fashioned lecturing can. Students need more background information in which to root their knowledge of a legal subject, and lecturing provides the ideal forum for conveying a more complete picture of American law.

Undergraduate educators have rightly expressed concern that lecture alone lacks the learning through action that is central to a liberal education. These possible shortcomings can be easily overcome in several ways. The professor might devote the final hour of class a week to a series of discussions or she or he may integrate discussion into lectures, giving students ample opportunity to raise questions and engage in discussion. Although law school classes are often larger than the number of students deemed ideal for small-group discussion, law school professors can nonetheless draw on research about discussion groups to facilitate class interaction. A professor may, for example, list “ground

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306. *Lawrence v. Ingham County Health Department*, 408 N.W.2d 461; Kastely et al., *supra* n. 304; Post, *supra* n. 304.


308. *Id.* Happily, some law professors have recognized the value of this work. Mark Neal Aaronson notes that a number of teaching materials now exist to accompany Harr’s book. Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 Clin. L. Rev. 1, 17 (2002).

rules” for class discussion or pick a specific theme to link the lecture to class discussion.310

iii. Evaluating Students

As noted above, literature on testing indicates that students benefit from frequent feedback. This Article envisions a legal classroom where students receive such feedback early on in their studies. By the end of the first unit of class, students should have put to use what they have learned via the essay questions described in Part II. Students can also be evaluated in the course’s middle unit and in the final unit on professional training, but evaluation should not be limited to these three junctures. Before describing the ways of testing students’ knowledge of American law, it is useful, then, to sketch out some other forms of evaluation.

First, professors might look beyond performance on exams and consider overall class participation in evaluating students. Participation need not be limited to statements made in class. Students who prefer not to speak in class might post their comments on a class message board or email the professor privately. The idea here is to recognize thoughtful participation and steady engagement with the issues raised in class.

Second, the professor might also allocate a small percentage of a final grade to class attendance. In recognizing students who steadily attend class and penalizing those who frequently skip class without good reason, the professor here instills an important lesson in professional responsibility. A good lawyer is a responsible lawyer. A responsible lawyer does not consistently skip work or disregard responsibilities. Law schools should instill this value of responsibility early on in legal education.

In assessing student performance in the specific area of American law, professors might turn to take-home essay questions that allow students to reflect upon and incorporate the wealth of knowledge learned in this unit. Students might be asked to provide a critical analysis of a specific aspect of the legal subject at hand, such as “consideration” in the case of contracts, or “negligence” in torts classes. Students would be urged not merely to reiterate the formal rules related to these concepts but also to discuss the various critiques of the concepts as they have developed in the United States and to reference comparative and other perspectives where appropriate. The question should be deliberately open-ended, requiring students to provide their own focus and refinement to the question.

Such an open-ended question might be coupled with similar essay questions or with other testing devices. A modified issue spotter could be reintroduced here as a complement to a legal classroom that gives a more thorough introduction to American law. Although the standard issue-spotter exam makes little sense in a class that has looked only at appellate materials, students that have spent class time looking at documents from various stages of a trial would be in a better position to analyze a legal problem at its origins, as it is usually expressed in an issue-spotter exam. The issue-spotter should not be limited to mere detection of issues. Rather, students would be required to give a critical discussion of the various considerations, policy and otherwise, that affect the case. In grading the exam, the professor would not look only to recitation of various rules but also to a thoughtful and well-written evaluation of the issues involved.

IV. INTEGRATING PRACTICE SKILLS

There are certain themes that endure throughout the story of legal education. Christopher Columbus Langdell as the whipping boy for legal education's discontents is one undying theme. The failure of legal education to link doctrinal training to the larger skills used by lawyers in practice, often called "practical skills," is another. Indeed, Langdell’s efforts to place legal training firmly within an academic setting upset existing strains of legal education that relied on apprenticeship systems. As Langdell’s method of legal training as a professional academic degree became firmly entrenched in the United States, voices of opposition argued that excessive focus on textbook training denied students training in the myriad of other skills needed on the job. From Lewis Delafield’s 1876 proposal to include a year of apprenticeship after law school and before the bar exam311 to the realists’ cry for broader training, early observers of legal education advocated a type of training that incorporated the "everyday" skills used by lawyers on the job. Reformers involved in the growing clinical movement in the 1960s and 1970s continued this battle, and have since made headway in creating space in legal education for non-traditional pedagogies.

To the present day, members of the legal community have continued to stress the need for skills training, sometimes criticizing theoretical training in the process and thereby overlooking how the two modes of teaching might complement each other. Judge Harry Edward, in a

311. Delafield was the president of the American Social Science Association, which was the predecessor of the American Bar Association. Christopher T. Cunniffe, The Case for the Alternative Third-Year Program, 61 Alb. L. Rev. 85, 86–87 (1997).
frequently cited 1992 article, faulted elite law schools for “abandon[ing]
their proper place, by emphasizing abstract theory at the expense of
practical scholarship and pedagogy.” He expressed concern that such a
mindset has led to “impractical’ scholars” who produce scholarship that
is not useful to the practicing bar.

The 1992 American Bar Association “MacCrate Report” also
emphasized the need for law schools to include skills training. Of the
report’s ten skills identified as necessary for proficient lawyering,
several—including counseling, negotiation, and written communication
skills—fall outside the scope of standard Langdellian legal education.
Local bar journals have also kept a close eye on trends in legal education,
as some members of the bar criticize law schools for not adequately
preparing students for practice.

This Part first traces efforts to introduce more practice-related skills
into legal education through the clinical education movement. Professors
increasingly have recognized the value of skills training within the legal
classroom, both as a separate class and as part of doctrinal courses; the
final portions of this Part give an overview of such in-class training
methods then outline a way of integrating practice skills into a classroom
that also considers liberal learning and a reformed version of teaching
U.S. law. The goal of this unit is to illustrate the role of practice skills as
a complement to other forms of training.

A. Paving the Way with Clinical Education

Even before its heyday in the latter part of the twentieth century,
clinical education, in one form or another, played an important role in
diversifying legal education. The first period of clinical education,
described by some clinicians as the “First Wave,” took the form of legal
aid bureaus or volunteer public defenders work. This work was either a
part of the formal curriculum or an extracurricular activity, and there was
little common understanding of what educational experiences comprised
clinical education. The “Second Wave,” given a push by student
activism in the 1960s, saw the emergence, by the mid-1970s, of a more
self-conscious clinical movement that sought to find a common

312. Hany T. Edwards, The Growing Disjuncture between Legal Education and the Legal
313. Id. at 35.
314. Cecilia Bryant, The Fork in the Road: The Bifurcated Purposes of Legal Education, 71
315. See e.g. Dianne Molvig, Preparing for Practice, 74 Wis. Law. 10, 10-12, 51 (July 2001).
316. Margaret Martin Barry et al., Clinical Education for This Millennium: The Third Wave, 7
definition of clinical work. Led by activist lawyers such as Gary Bellow, the movement was typically linked to social justice activities. 317

This second wave led to the presence of clinical education across American law schools. In 1996 the American Bar Association changed its accreditation standards to require all schools to provide “live-client or other real-life practice experiences,” although “[a] law school need not offer this experience to all students.” 318 Clinicians have suggested that in the current “Third Wave” of clinical education, the philosophy underlying clinical work will become more widespread as schools integrate more practice skills throughout their curricula. 319

Despite this remarkable growth of clinical education, the story of clinical education is far from one of triumph. Clinicians frequently remark that clinical education is marginalized or undervalued in legal academia, as manifest by such factors as the status of clinical instructors (more likely to be considered instructors rather than professors) and the low number of credit hours assigned to clinical work. 320 Moreover, not all students benefit from the experience of clinical education, either because law schools may provide little incentive for them to take such opportunities or because the high-cost clinics cannot be made available to the entire student population.

More fundamentally, as valuable as clinical experiences may be, they do not always provide students with real exposure to the range of issues involved in legal practice. Clinical work typically entails students working with legal organizations to provide legal assistance to local community members. As a real-world venture, some students may become involved in cases that provide little opportunity for substantive learning. A legal case may stall or end halfway through the semester, providing the student with little work, 321 and harried lawyers may be unable to take the time to properly supervise students. This might be especially true in externship programs that lack extensive on-campus supervision. 322

In addition, the degree of responsibility given to new clinical law

317. Id. at 13–18; Seligman, supra n. 6, at 160–173.
319. Barry et al., supra n. 316, at 72.
321. See Schrag & Meltsner, supra n. 320, at 25.
students may have unintended negative consequences. Although some students cite their contact with real clients as strong motivation to do work as hard as they can for the client, students may be inclined to err excessively on the side of caution for fear of making a mistake perhaps to a client’s detriment.323

B. Simulation Exercises

Many advocates of greater practice skills have turned to simulation exercises, often via collaborative or cooperative learning groups, to complement standard legal education. Some instructors use simulations as the primary mode of instruction in distinct “legal skills” classes, sometimes tailored to a specific theme. Nova Southeastern University School of Law, for example, offers two simulation tracks, litigation and transactions, to introduce skills specific to those fields as well as to integrate issues of professionalism into the instruction.324 Other instructors use simulations within regular substantive courses. Paul Ferber, of the Vermont Law School, has used brief simulations to introduce students to different schools of legal thought.325

Simulations encompass a variety of learning techniques. Ferber says that simulations include, at a minimum, “the performance of a lawyering task,” “a hypothetical situation which emulates reality,” and “a ‘significant’ . . . period of time to perform the task.”326 The simulation may range from a very brief in-class exercise, not far removed from the classic law school hypo, to a detailed multi-week project involving in-class and out-of-class work.327 Students may be assigned to a discrete task, such as talking with a client, designed to promote a specific skill such as interviewing techniques, or students may take part in many such tasks as part of a long, complex simulation.328 “Clients” may include volunteer law school staff and upper-level students or could be drawn from among the students in the class.329 Indeed, the experience of

323. Id. at 134.


325. Paul S. Ferber, Adult Learning Theory and Simulations—Designing Simulations to Educate Lawyers, 9 Clin. L. Rev. 417, 421 (2002) (Paul Ferber asks students to argue an issue according to a specific school of thought and asks other students to render a decision in accordance to the different legal philosophies.).

326. Id. at 418.

327. Id. at 419 (Ferber classifies simulations along a continuum from “very simple” to “very complex.”).


329. Ferber, supra n. 325, at 425, 441, 455.
playing a client may make students more aware of clients’ needs and perspectives. Students might be asked to keep a daily journal and produce legal products such as memos and briefs, and grading may be based on a final written product or an assessment of various work products.

Both clinical and non-clinical instructors alike have lauded the benefits of simulations. Advocates of clinical work, such as Philip Schrag and Michael Meltsner, have used in-class simulations to complement clinical experiences and to allow uniform student exposure to certain issues that students might not confront in specific clinicals. Ferber praises clinicals for enhancing student motivation, allowing greater risk-taking than live clinicals, providing skills experience in less time than clinical work, and allowing teachers to introduce specific lessons in a controlled environment not available in clinicals. He adds that simulations also give students a taste of what it means to be a professional, and simulations can “enable students to begin to understand the critical importance of the human aspect of lawyering.” Because in-class simulations need not rely on the resources of the law school or the will of individual students to take clinical classes, this experience is available to a wide spectrum of students.

Simulation exercises, especially when combined with other forms of assessment, serve as a better, more complete indicator of student achievement levels. Based on a study of over 500 students who took his “Foundation Skills” class at Fordham University School of Law, Ian Weinstein found that high performance on the exam component of the class was not correlated to high achievement scores in the simulation portion of the class, which tested a different set of skills than the exam. Thus, Weinstein found “a significant degree of independence among the various skills law students need to develop to become successful lawyers.” Noting that both exams and simulations test skills useful in good lawyering, Weinstein argues that students might make more informed career decisions if they had a more complete understanding of their strengths and weaknesses, as might be provided

333. Ferber, supra n. 325, at 431.
334. Id. at 434–35.
336. Id. at 285.
Simulation work is often paired with cooperative or collaborative work, and there are multiple ways of conceptualizing the difference between the two activities. Clifford Zimmerman describes cooperative work as "individual mastery of the subject via a group process," while collaborative work centers on "group work toward a unified final product." The former may be measured by individual assessment, such as through an exam, while collaborative work may rely, in part, on a group grade. Kenneth Bruffee, in contrast, suggests that collaborative work aims to place more initiative and control in the hands of student groups, while cooperative work promotes a group structure to break down competition in the classroom.

In each case, both forms of group work have been praised for overcoming the obstacles of the traditional legal classroom and for encouraging active learning. Citing several studies on group learning as well as her own legal teaching experience, Vernellia Randall finds that cooperative learning improves retention and performance, aids in critical thinking and social skills, lowers attrition rates, improves student attitudes, and helps students work well in diverse groups. Zimmerman argues that group work allows students to hear different opinions and may even promote less adversarial approaches to legal problem solving once students become lawyers. Bruffee states that collaboration better prepares students for group work when "stakes are high" by offering a low-risk environment in which to learn to work together. He cites a study that found medical students acquired better judgment skills when they worked collaboratively to diagnose a problem as an example of the benefits of collaboration. Instructors who use simulations note that a significant degree of preparation is necessary to create a good simulation exercise, and simulation work must be followed through with significant supervision and feedback by the instructor. Finally, simulation work

337. Id. at 285–86.
343. Id. at 12–13.
344. Randall, supra n. 331, at 234; Zimmerman, supra n. 338, at 1005. Of course, such hard work may fly in the face of standard legal education, which provides an easy out for professors who don't want to oversee students' education. To be sure, there are Langdellian professors who work hard to prepare for class, but the Socratic method and one-time, end-of-semester testing provide.
may also provide another forum for students to understand the emotional dimensions of lawyering.345

C. Integrating Practice Skills in the First-year Classroom

The preceding discussion articulates the need to integrate practice skills into theory-based training, pointing especially to the benefits offered by simulation activities and group work. This following section proposes a way of making practice skills a basis for the final unit in a law school class that has introduced students to a legal subject first through "liberal legal learning" and then through a broad-based introduction to American doctrine. This "practice skills" unit aims to complement prior units by providing a forum for students to understand the ramifications of theory in everyday legal settings. Because all three units are dependent on each other and because each contributes vital skills to lawyering, the phrase "practice skills," rather than "practical skills" is used here to avoid suggesting that theory-related units are "impractical." Rather, the two complement each other, and indeed, practice skills are meaningless and even dangerous without proper foundational knowledge.

The practice skills unit, designed to give students a taste of legal practice in action, would encompass roughly the final five weeks of class and would integrate a mix of skills activities, ranging from simulation exercises to guest lectures by members of the bar and field trips to court or legal aid clinics. The class might begin with a one-week overview of practice skills, as presented through lecture, guest lecture, and videos, for example. Then the class might spend three weeks on an extended group simulation designed to teach several skills related to a specific problem in American law. Finally, the class could finish with a smaller simulation that involves an issue with global dimensions. Alternatively, the professor might choose to conduct a series of three or four week-long simulations each designed to focus on a specific issue or skill, rather than do one long simulation, and the professor could integrate global and domestic issues into some or all of these activities.

For this portion of class, professors may design the facts of a simulation from scratch or model them after existing cases from legal aid clinics. Students might look at eviction cases, for example, or for a simulation with international dimensions, focus on an asylum case.

Throughout the simulation units of class, the professor could supplement the work with fieldtrips, lectures, and documentaries to

some slack for professors who do not want to exert themselves. See Areeda, supra n. 259, at 920 (for a description of the preparation needed for a well-executed Socratic class).

345. Schrag & Meltzer, supra n. 320, at 21 (noting that clinical work provides the opportunity to confront one's own emotions about lawyering); Ferber, supra n. 325, at 437.
impress upon students the nature of law practice and the scope of the unmet legal needs problem. In evaluating student achievement, the professor might inject several "debriefing sessions" throughout the unit to provide students with an opportunity to reflect upon their work. The professor might also require the submission of journals, documents, such as a petition to a court or a memo, and other material as a basis for providing a letter grade. Depending on whether the professor wants to emphasize collaborative or cooperative skills, part of each student's grade may be based on a few assignments written in a group setting, or the professor may focus more on individual assignments. Although a pass-fail grade might provide the incentive for greater risk taking, it would send the message that practice skills and pro bono work are valued less than other coursework. Thus, if letter grades are given for other units of the class, they should be given in this unit as well.

Simulations, regardless of the type, provide an excellent opportunity to introduce not only practice skills but also issues of professional responsibility, specifically pro bono work. Pro bono work helps address the problem of unmet legal needs. While the definition of "legal needs" is subject to different interpretations, legal aid experts recognize in any case that access to legal counseling and legal services, whether defined as needs or as something else, is out of reach for many people in the United States. Legal services organizations, funded by the Legal Services Corporation, fill some of the gap, but only apply to the very lowest income population, thus still leaving many people in lower income brackets without services. 346

Pro bono work has helped contribute to providing legal services. A 1994 study indicated that three times as many legal aid-eligible cases are handled by private attorneys than by legal aid attorneys. 347 At the same time, the number of United States attorneys who do pro bono for the poor is still less than one-third of the total number of lawyers. 348 Of course, pro bono work is not the only way to provide legal services; vouchers, enhanced roles for paralegals, and self-help clinics are but a few of the alternatives that might prove useful. 349 However, if more members of the bar contributed to pro bono work for the poor, more legal needs could be met.

Certainly, one might argue that many attorneys are not trained in

347. Id. at 18-19.
348. Id. at 21.
349. Many of these systems are used outside the United States. Once again, then, looking outside American borders proves to be of great value to American legal education.
legal aid issues, but if this is true, then it provides all the more reason to introduce practice skills to students through the lens of pro bono legal aid work. Law students will enter diverse areas of practice upon graduation. Focusing on a business simulation might provide useful skills for future corporate attorneys but would overlook or downplay the skills a government lawyer or solo practitioner might use. The one potentially common area of practice exists in pro bono lawyering, an act highly encouraged by the ABA and state bars, even if not mandated. If each lawyer takes his or her professional responsibility seriously, then all students should find pro bono skills a point of common educational interest. To be certain, it might be more beneficial for both the bar and legal aid recipients if some practitioners donate money rather than time to legal aid causes, but in order to even donate money, practitioners must first have an awareness that legal aid is worthy of support. This unit aims to instill that message.

There are a growing number of mandatory pro bono requirements in American law schools, but they may fail to convey to students the necessity of doing pro bono work on behalf of people otherwise unable to access legal services. While Tulane University, the first school to institute a mandatory pro bono requirement in 1987, requires students to do pro bono work on behalf of the poor, other schools, such as Harvard, allow a broad range of non-profit activity to count as pro bono work. Harvard chose this route so that its program would not “be seen as ‘ideological,’” but in doing so, it downplays the crucial role of pro bono in securing greater access to legal aid for more people.

Given that some law school pro bono requirements do not fully address the problem of unmet legal needs, the role of pro bono legal aid training within the classroom seems especially appropriate. By presenting pro bono work for lower income groups as an integral part of legal education, students better understand the crisis of unmet legal needs.


351. Strategic Plan for Harvard Law School 43–44 (2000) (copy on file with author). Under Harvard’s current rules, students may satisfy this requirement through “uncompensated, law-related public interest work on behalf of people who cannot afford (in whole or in part) to pay for legal services, or; for the government, or; at a non-profit organization as defined under IRS sections 501(c)(3) & (4) protecting rights of marginalized individuals/groups or working in the broader public interest, or; in a law firm working on a pro bono basis.” These are broad categories that leave terms like “broader public interest” undefined. While some of the groups included in these categories may promote worthy causes, the legal needs of these organizations are likely much less pressing than those of a low-income family facing eviction and homelessness. Harvard Law School, Pro Bono Service Program, http://www.law.harvard.edu/academics/probono/ (last modified Feb. 6, 2006).

352. Strategic Plan for Harvard Law School, supra n. 351, at 44.
and are better prepared to meet this challenge through their pro bono activities as future lawyers. This introduction to pro bono work may also help lead more students to legal aid-related or other community lawyering activities. Indeed, if students learn practice skills in class, they should not perceive the need to rely on corporate firms for general legal training.353

The point of this unit is to introduce legal practice skills, provide students with the opportunity to form connections among all facets of their legal work, and better understand the need for pro bono work. Through this unit, students understand that both theory and practice have a place in legal education.354

CONCLUSION

This paper has examined how a legal subject can be retold through three different mediums: liberal learning, the American experience, and practice skills. Law contains multiple layers and stories. Traditional legal education—case analysis as fleshed out through the Socratic method—provides only a limited narrative of the law. It confines, compartmentalizes, and thus misrepresents. This misrepresentation carries ill consequences for American law students. In narrowing the blinders on the law, it narrows law students’ visions of what they can do as lawyers. Enforcing only one type of legal analysis stifles creative and careful thinking about the law and its power. By contrast, opening law’s core by exploring its multiple stories opens students’ minds to different uses of the law. Accepting law as a set of principles packaged together into a tidy outline encourages accepting the status quo and discourages questioning, prodding, and reexamining law’s multiple dimensions.

Opening American law demands an integration of theoretical and practice-based skills into legal education. As Part IV discusses, some critics of American legal education point to the disjuncture between theory and practice as its major ill. The crux of the problem is not, however, that theory and practice are by their nature incompatible. Rather, the problem is that the specific theories taught in American law schools fail to complement practice. In other words, the shortcoming of American legal education is that it promotes a narrow form of theoretical

353. Granfield, supra n. 65, at 160–61 (Some law students justify their decision to do corporate work on the grounds that corporate firms provide the best general training in lawyering skills.).

354. See Molvig, supra n. 315, at 12 (In this vein, Howard Eisenberg, Dean of Marquette University Law School, sees the tension between “the sheet metal workers and the ivory tower philosophers” as essential to a good legal education because it promotes continued dialogue on the role of both theory and practice in a well-rounded legal education and prevents one camp of thought from winning over the other.).
learning about law. When theory is aligned to the realities of law and legal practice, it becomes a natural complement to practice skills. More than this, theory becomes *requisite* for practice skills and gives meaning to the everyday work of lawyers and allows lawyers to realize the implications of the tasks that they perform on the job.

But why uproot a well-established tradition of legal education? How much can it hurt to leave Langdell’s legacy in tact? Why allow art, international perspectives, lectures, and practice skills to make heretical encroachments into the American legal classroom? Because good lawyers, and thus good students, must always remember that law doesn’t begin with a casebook. It doesn’t begin with the Socratic method. It begins with stronger forces of both great joy and great pain that manifest themselves across borders, across time, and in art, music, and literature. To recognize these forces is not to succumb to the reification of law but to serve as a reminder of law’s larger story and of origins which are deeper than typically portrayed in American law schools. Law is drawn from forces more far reaching than those which can be expressed in the confines of Christopher Columbus Langdell’s legal classroom, and law operates among emotions, powers, and patterns of human life more resilient than even Langdell’s legacy of legal education.