UNIVERSITY OF PITTSBURGH LAW REVIEW
Vol. 85 ● Winter 2023

REMEMBERING THE ORIGINS OF MODERN LEGAL EDUCATION

Paula A. Monopoli

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

REMEMBERING THE ORIGINS OF MODERN LEGAL EDUCATION

Paula A. Monopoli*

ABSTRACT

American legal education came under tremendous pressure in the wake of the 2008 financial crisis. That crisis precipitated a decline in law school applications and a concomitant decrease in the size of American law school enrollments during the 2011–2012 academic year. Commentators offered a myriad of proposals for reforming legal education during that period. Yet many of those proposals failed to gain traction, and a decade later legal education looks much the same, albeit with smaller enrollments. One of those proposals was to shorten the three-year course of study. In this Article, I revisit the origins of that long-standing feature of American legal education introduced by Christopher Columbus Langdell, Dean of Harvard Law School, in the nineteenth century and later embraced by the legal education's regulatory bodies in the twentieth century. Viewed through a critical theory lens, its intractability can be explained, in part, by the persistence of exclusionary impulses and masculine norms in the legal profession from its origins to the current day. This Article proposes that American law faculty revive previous conversations about the value of this central design feature. And the subordinating effects of that feature should be a factor in weighing the costs and benefits of moving to a shorter course of study.

* Sol & Carlyn Hubert Professor of Law, University of Maryland Carey School of Law. The author thanks Susan G. McCarty for her editorial assistance and Andres Castillo for his research assistance. She is also grateful to Bernard Hibbitts, Richard Weisberg, and the participants in the *Modern Legal Education and the Unmaking of American Lawyers Symposium* for their insights. The author notes that the title of this article is an allusion to Bill LaPiana's foundational book, *Logic and Experience: The Origin of Modern Legal Education* (Oxford Univ. Press 1994).

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

Table of Contents

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

INTRODUCTION

Throughout history, societies have structured educational institutions in ways that reify hierarchy and subordinate disfavored groups.[1] In nineteenth-century America, those at the top of the social and political hierarchy structuring those institutions were property-owning White men. That class structured its social, political, and legal institutions in ways that effectively subordinated those groups lower in the hierarchy, including women, racial minorities, and immigrants.[2] Demands by such outsiders to participate in the power centers of American life, including law, triggered a visceral reaction by the nation's legal elites. The story of the consolidation of power in the hands of these legal elites and their reform of legal education is illustrative of education as a subordinating institution.[3]

Like many other trades, those interested in becoming lawyers in seventeenth- or eighteenth-century America became eligible to practice law most frequently through an apprenticeship.[4] But such a system was perhaps too democratic and allowed some outside of the White, male property-owning class to become part of the profession by the mid-nineteenth century.[5] The response was a movement to make law a "learned profession" in the mid-nineteenth century and that movement continued into the twentieth-century.[6] This professionalization of legal education has

---

[1] F.T. Mikhailov, *Education and State Power*, 44 J. RUSS. & E. EUR. PSYCH. 55, 55 (2006) (noting "education has been not so much *culture* as *structure*—a structure of institutional subordination"). *See also* Angela Harris & Zeus Leonardo, *Intersectionality, Race-Gender Subordination, and Education*, 42 REV. RSCH. EDUC. 1, 19 (2018) ("The apparatus of schooling is an intersectional meeting point, rather than the melting pot, of forces in the interpellation of the student as a subject on one hand and the nation creation project that is education on the other.").

[2] *See* discussion *infra* Sections I.B–C.

[3] *See* Patricia Mell, *Not the Primrose Path: Educating Lawyers at the Turn of the Last Century*, 79 MICH. BAR J. 846, 846–47 (2000).

[4] *See* W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1, 11–12 (1997) (describing three paths to becoming a lawyer prior to Langdell's reforms: (1) self-teaching; (2) apprenticing; and (3) attending one of the few law schools that existed, one of the most prominent being the Litchfield School, founded by Judge Tapping Reeve in 1784).

[5] Mell, *supra* note 3, at 846 ("In some respects, this allowed for a very democratic entry into the law for white males since an interested individual need only secure an apprenticeship with a practicing lawyer to pursue the profession.") (citing ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 21 (1983)).

[6] Bruce A. Kimball, *Young Christopher Langell, 1826–1854: The Formation of an Education Reformer*, 52 J. LEGAL EDUC. 189, 197 n.46 (2002). *See also* BRUCE A. KIMBALL, THE "TRUE PROFESSIONAL IDEAL" IN AMERICA: A HISTORY 108 (1992) ("Indeed, it is said that lawyers were 'without a profession . . . until the end of the nineteenth century.'").

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

been previously described by scholars as grounded in both bias and anti-competitive impulses.[7] While some members of marginalized groups gained entry via apprenticeship, even that could be a difficult path due to bias and an unwillingness of practicing lawyers to take on women and racial or ethnic minorities as apprentices.[8] As part-time and evening law schools began to fill that gap for marginalized groups,[9] one of the many responses of the organized bar was to require more formal educational requirements, including a longer course of study within a university setting.[10] That coincided with a push from some academic leaders in universities and their nascent law schools for a similar extension of formal legal education, albeit for perhaps less exclusionary reasons.[11] For example, in the latter half of the nineteenth century, Harvard Law School (HLS) was the locus of the movement to increase formal educational requirements prior to matriculation and to extend the law school curriculum from four semesters over two years to a three-year course of study.[12]

It was Christopher Columbus Langdell, an HLS student, professor, and the first dean of HLS,[13] who advocated for extending the two-year course of study to a three-year course of study.[14] This additional year of legal education made the academic study of law a better fit within the university and made law more like the divinity school's curriculum, which Langdell admired as the model for what a professional school within a university should look like.[15] But such a move also increased the barriers to entry, making legal education much more expensive,[16] thus limiting access for many women, racial minorities, and newly arrived immigrants who had fewer financial resources. But the exclusionary impulses and masculine norms

[7] Paula A. Monopoli, *Gender and the Crisis in Legal Education: Remaking the Academy in Our Image*, 2012 MICH. ST. L. REV. 1745, 1756–60.

[8] Mell, *supra* note 3, at 846.

[9] STEVENS, *supra* note 5, at 74, 81–82.

[10] James Parker Hall, *American Law School Degrees*, 6 MICH. L. REV. 112, 112–13 (1907).

[11] *Id.* at 113–15.

[12] STEVENS, *supra* note 5, at 36–37.

[13] BRUCE A. KIMBALL, THE INCEPTION OF MODERN LEGAL EDUCATION: C.C. LANGDELL, 1826–1906, at 4–5, 167 (2009).

[14] *Id.* at 7.

[15] *Id.* at 39.

[16] *Id.* at 258–59.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

around hierarchy represented by this move to a three-year course of study have been lost to our institutional memory.

Part II of this Article describes the origins of this move from a two-year to a three-year course of study, exploring how educational design itself, as well as its content, matters in terms of power within society and how such design can act as a subordinating structure in ordering social status. Part II revisits the crisis of 2011–2012 and the literature of that time that argued for moving to a two-year program. And Part III argues that this history should inform the present because it helps explain, in part, why such proposals, in the wake of the law school admissions crisis, failed to gain traction. Part III suggests revisiting those proposals and giving weight to the subordinating effect of this central feature of American legal education in evaluating whether to shorten the course of study.

I. THE ORIGINS OF THE THREE-YEAR COURSE OF STUDY

Reva Siegel has argued that "[c]onstitutional memory is not coextensive with history, and often excludes history, sometimes intentionally."[17] Similarly, institutional memory often excludes history. For example, the origins of the three-year course of study in legal education have been lost to us today. The erasure of that history helps assuage our discomfort as a profession about the sexist, racist, and nativist roots of the barriers to entry established by the organized bar a century ago.

In eighteenth-century England, law was viewed primarily as a trade rather than a learned profession.[18] Like other trades, one became trained in law through apprenticeship or self-study rather than through law schools.[19] Blackstone was the first prominent legal figure to provide something akin to formal academic training by giving a lecture on English law at Oxford in 1753. His *Commentaries* were among the most notable legal treatises of the time.[20] And while in eighteenth- and early nineteenth-century America there were some law departments and law schools in

[17] Reva B. Siegel, *The Politics of Constitutional Memory*, 20 GEO. J. L. & PUB. POL'Y 19, 21 (2022).

[18] ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES: A REPORT PREPARED FOR THE SURVEY OF THE LEGAL PROFESSION 4 (photo. rep. 1980) (1953) (noting that the "emphasis in English legal education has ever been severely practical"); James Bradley Thayer, *The Teaching of English Law at Universities*, 9 HARV. L. REV. 169, 171–72 (1895) (reviewing the history of law in eighteenth-century England and noting "the conservatism of a powerful profession, absorbed in the mere business of its calling, itself untrained in the learned or scientific study of law, and unconscious of the need of such training").

[19] HARNO, *supra* note 18, at 11.

[20] *Id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

existence[21] "law was [similarly] viewed as a trade in which one apprenticed with a practicing lawyer as the preferred method of training."[22] By the second half of the nineteenth century, law was increasingly viewed as a path to increased economic security and social status.[23] Racial minorities and immigrants began to seek admission to law practice in larger numbers.[24] A small number of women gained admission to state bars as early as 1869.[25] And more formal training in law became available through the increase in the number of law schools.[26]

Legal elites saw this wave of new groups as a threat, both in terms of their view that members of marginalized groups demeaned the bar and in terms of the competition for business that they represented.[27] In keeping with the preservation of hierarchy and prestige, legal elites wanted law to be seen as a profession rather than as a trade.[28] And so, over the next fifty years, they used their power and influence to raise formal educational requirements, which included moving law schools into universities.[29] Faced with "real scholars" in other departments like the sciences, the humanities, and the social sciences, they embraced the norms of the modern

[21] W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1, 11–13 (1997).

[22] Monopoli, *supra* note 7, at 1753 (citing William D. Henderson, Commentary, *The Inferiority Complex of Law Schools*, NAT'L JURIST, Mar. 2012, at 4, 4).

[23] Mell, *supra* note 3, at 847.

[24] *Id.*

[25] Arabella Mansfield was the first woman admitted to the practice of law in Iowa in 1869. Mary L. Clark, *The Founding of the Washington College of Law: The First Law School Established by Women for Women*, 47 AM. U. L. REV. 613, 622 n.45 (1998). The first Black woman to be admitted to the bar in the United States was Charlotte Ray in the District of Columbia in 1872. *Id.* at 621 n.42.

[26] Mell, *supra* note 3 (noting that from 1870 to 1900 the number of law schools more than doubled).

[27] *See* WILLIAM P. LAPIANA, LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION 80–81 (1994).

[28] LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 619 (Oxford Univ. Press, 4th ed. 2019). George Templeton Strong, a member of the legal elite in New York, once said of a group of lawyers congregating at Special Term, "[t]here were really not more than *three* who were not stamped by appearance, diction, or manner as belonging to a low social station, and as having no claims to the conventional title of 'gentlemen.' It was manifestly a mob of low-bred, illiterate, tenth-rate attorneys, though it included many successful and conspicuous practitioners. Such is the bar of New York." LAPIANA, *supra* note 27, at 81 (quoting THE DIARY OF GEORGE TEMPLETON STRONG: THE TURBULENT FIFTIES, 1850–1859, at 478 (Allan Nevins & Milton Halsey Thomas eds., 1952)).

[29] Susan Katcher, *Legal Training in the United States: A Brief History*, 24 WIS. INT'L L.J. 335, 347–48 (2006).

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

American university of the time, modeled on European universities.[30] Thus, "[i]t was not until the late nineteenth and early twentieth centuries that law schools began to appear as units of larger universities." This trend was met with "great skepticism" by non-legal academics.[31] Perhaps one of the best examples of this was when, in 1918, "economist Thorstein Veblen commented on this alarming development by noting that 'the law school belongs in the modern university no more than a school of fencing or dancing.'"[32] Veblen and like-minded academics believed:

> that universities should be citadels for science-based learning and the production of knowledge. Law, in contrast, was a trade. Indeed, in the early 1900s, a substantial portion of the practicing bar had obtained their skill and knowledge through office apprenticeships. When law schools did begin to appear, they were just as likely to be proprietary law schools operating out of a local YMCA than to be part of an established university.[33]

Bill Henderson has offered three reasons why universities allowed law schools into the fold:

> (1) law was the primary occupation of many elected officials who saw this [move into universities] as a way to elevate their own status and credentials; (2) a small number of law schools at elite universities like Harvard had adopted the "case method," developed by Christopher Columbus Langdell, which appeared similar to a scientific method of inquiry, with "objective legal rules" that could be parsed from judicial cases to form a body of knowledge that could be divined; and (3) law schools, with large lectures and without expensive laboratories, were profit centers for universities.[34]

As "an increasing number of American law schools became units of larger universities, the faculties of those law schools began to compare themselves to their colleagues in other departments. Thus, . . . they developed an 'inferiority complex'

---

[30] Monopoli, *supra* note 7, at 1754–55 (citing Henderson, *supra* note 22, at 4–5).

[31] *Id.* at 1753–54 (citing Henderson, *supra* note 22, at 4).

[32] *Id.* at 1754 (quoting Henderson, *supra* note 22, at 4).

[33] Henderson, *supra* note 22, at 4.

[34] Monopoli, *supra* note 7, at 1754 (citing Henderson, *supra* note 22, at 4).

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

in that their work was less scholarly than that of their counterparts."[35] As a result, they embraced research and scholarship as indicia of their being part of a university.[36] They also increased formal educational requirements as part of that evolution, including an extended post-graduate course of study.[37]

At the same time, not only racial minorities and immigrant groups began to seek admission to the bar, so too did women.[38] As more states expanded the scope of who was eligible to practice law in the wake of the ratification of the Nineteenth Amendment in 1920, women began to seek admission to law school in greater numbers than in the nineteenth century.[39] Many of them sought legal education to change law itself by altering a set of legal and social rules that confined women to the private sphere.[40] Even in the wake of the federal woman suffrage amendment, many courts construed that amendment narrowly and women continued to be ineligible for jury service and public officeholding.[41]

Americans share a general view that education ensures social mobility.[42] However, as sociologists have noted, educational systems are often designed not to elevate citizens but to subordinate them.[43] Both educational requirements and educational content act as subordinating structures that can ensure the social order remains stable and lower status groups remain in their place.[44] While curricular

[35] *Id.* (citing Henderson, *supra* note 22, at 4–5).

[36] *Id.*

[37] *See* HARNO, *supra* note 18, at 95 (noting that "the three-year requirement for law students went into effect in 1906").

[38] *See* Audrey Wolfson Latourette, *Sex Discrimination in the Legal Profession: Historical and Contemporary Perspectives*, 39 VAL. U. L. REV. 859, 863–64 (2005).

[39] *See* RONALD CHESTER, UNEQUAL ACCESS: WOMEN LAWYERS IN A CHANGING AMERICA 8–10 (1985). Chester notes that "the growth of the part-time schools encouraged the first great influx of women into the bar; this influx peaked in the late 1920s . . . ." *Id.* at 9.

[40] Elizabeth D. Katz, *Sex, Suffrage, and State Constitutional Law: Women's Legal Right to Hold Public Office*, 33 YALE J.L. & FEMINISM 110, 113–14 (2022).

[41] PAULA A. MONOPOLI, CONSTITUTIONAL ORPHAN: GENDER EQUALITY AND THE NINETEENTH AMENDMENT 5 (2020). *See also* Katz, *supra* note 40, at 110–11.

[42] *See, e.g.*, John N. Friedman, Opinion, *School Is for Social Mobility*, N.Y. TIMES (Sept. 1, 2022), https://www.nytimes.com/2022/09/01/opinion/us-school-social-mobility.html.

[43] Mikhailov, *supra* note 1, at 55.

[44] For an excellent history of how depriving women of access to education had such a subordinating effect in the eighteenth and nineteenth century, and how women scholars like Catharine Macaulay and Mary Wollstonecraft connected the need for educational access to women's equality, *see generally* MARY

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

content is a significant part of this subordinating effect, educational design can be just as important. For purposes of this Article, that important design feature is the move from less formal apprenticeship models and a two-year course of study in the few law schools that existed in the nineteenth century to a longer three-year course of study—one that was eventually implemented as a requirement by law schools and accrediting organizations in the early twentieth century.[45] There were two drivers underlying that move, each of which had different but connected motives for increasing formal educational requirements. The legal elites of the practicing bar, who controlled admission, were interested in the exclusionary effects that such an increase would have. While legal scholars were arguably interested in improving the quality of their graduates and in becoming equal members of the university itself, alongside scholars in the sciences or the humanities. These scholars, of course, may well have also shared the biases and exclusionary impulses of their counterparts in the organized bar. In both camps, norms about masculinity, law, and lawyers also played a significant role.[46] And, among those legal scholars, Christopher Columbus Langdell, the first dean of HLS, was the preeminent advocate for increased formal educational requirements.[47]

A. Langdell's Influence

Born in New Hampshire in 1826, Christopher Columbus Langdell came from very humble beginnings.[48] His father owned a small, unprosperous farm.[49] Langdell also suffered the trauma of losing his mother and two of his brothers at a very young age, but he found solace in education and managed to study at Phillips Exeter in 1845, Harvard College in 1848, and eventually HLS in 1851 by dint of hard work and spartan living.[50] When Langdell was a student at HLS, there was a four-semester

---

SARAH BILDER, FEMALE GENIUS: ELIZA HARRIOT AND GEORGE WASHINGTON AT THE DAWN OF THE CONSTITUTION (2022).

[45] HARNO, *supra* note 18, at 95–96.

[46] *See, e.g.*, FRIEDMAN, *supra* note 28, at 622 (writing that in the late 1800s, "the leading lawyers of the big Wall Street firms . . . were solid Republican, conservative in outlook, standard Protestant in faith, old English in heritage. These men were also the leaders of the bar associations").

[47] KIMBALL, *supra* note 13, at 214.

[48] *Id.* at 11–12.

[49] *Id.* at 4, 11–12.

[50] *Id.* at 12–13, 16, 20, 32–33.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

over two-years required curriculum.[51] Langdell completed the curriculum in 1853 and received an LL.B. degree.[52] Students who graduated could apply to stay on for an optional third year to study further.[53] Langdell did so and began a third year as a "resident graduate" in the fall of 1853, during which time he worked as a research assistant for a faculty member.[54] Langdell lived at the Divinity School during his third year at HLS,[55] and he was impressed that the divinity students were required to complete a baccalaureate degree prior to matriculating and complete a three-year post-graduate curriculum.[56]

After completing the third year at HLS in 1854 and receiving a Master of Arts *honoris causa*, Langdell left to practice law in New York City before returning in 1870 to become a faculty member and the first dean at HLS.[57] Noted for his introduction of the requirement of a baccalaureate degree as a requirement of admission, the case method of study, and the three-year curriculum in the 1870s, "[t]he appointment of Christopher Columbus Langdell as Dane Professor at Harvard Law School on January 6, 1870, is widely acknowledged to mark the beginning of the modern American law school."[58]

B. Exclusionary Impulses

While Langdell was not a natural member of the legal elite given his humble beginnings, he was white, male, and propertied, thus eligible for admission to any state bar.[59] During the period when Langdell was initiating reforms that included

[51] *See id.* at 37.

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.* at 38.

[56] *Id.* at 39.

[57] *Id.* at 40, 42–83, 193.

[58] LAPIANA, *supra* note 27, at 3.

[59] *See* Carol M. Langford, *Barbarians at the Bar: Regulation of the Legal Profession Through the Admissions Process*, 36 HOFSTRA L. REV. 1193, 1201 (2008) ("Despite the seemingly open admission process and de facto restriction of certain minority groups, women and blacks were excluded from admission to the Bar more conspicuously."); *see also* Carter, *supra* note 4, at 138. Professor Carter makes the point that Langdell "used the language of 'merit' and suggested that the disadvantaged should pull themselves up by their own academic bootstraps. But his own academic and professional success would not have been possible without significant affirmative action from mentors, not to mention the unearned benefits of his race and gender." *Id.* She concludes that the nineteenth-century legal profession's concerns

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

more formal educational requirements at HLS, the organized bar was debating similar requirements for bar eligibility, a movement that was highly contested from the 1870s to the 1920s.[60] During this fifty-year period, "status [was] a continuing theme in the story of the relationship between practitioners and law schools."[61] Elite members of the bar argued for higher standards for admission to the bar as women, racial minorities and immigrants began to seek admission in large numbers.[62]

> To the eyes of believers in higher standards the threat to professional status was greater than ever. They saw the bar flooded by undesirables trained at third-rate law schools . . . . Lawyerly fears of undesirables, principally immigrants and Jews, seem to have been a staple of the American profession, but after World War I they became acute.[63]

Similarly, "[i]t was difficult for Blacks in the North to get legal training, but Blacks were specifically barred from pursuing professional education in the South."[64] Institutions like the American Bar Association (ABA) and the American Association of Law Schools (AALS) debated raising the standards of legal education, and the result was that they eventually agreed to implement more formal education "as they tried to close the door through which entered those who could never be properly professional lawyers."[65]

In addition to Langdell assuming a professorship and deanship at HLS, the Association of the Bar of the City of New York was also founded in 1870.[66] "It was clearly designed to bring together the 'best men' of the profession [to] . . . help purify the bar and the bench."[67] And that effort was done through "[i]ncreasing the formal

about race and gender continue to sound today and that "[t]he historical resilience of these debates suggests that the relationship between Langdell's time and ours is worth investigating further." *Id.* at 139.

[60] *See* Katcher, *supra* note 29, at 362.

[61] LAPIANA, *supra* note 27, at 161.

[62] *Id.* at 163.

[63] *Id.*

[64] Mell, *supra* note 3, at 846, 849 n.12 (citing EDWARD J. LITTLEJOHN & DONALD L. HOBSON, BLACK LAWYERS, LAW PRACTICE, AND BAR ASSOCIATIONS—1844 TO 1970: A MICHIGAN HISTORY 4–5 (1987)).

[65] LAPIANA, *supra* note 27, at 163–64.

[66] *Id.* at 85.

[67] *Id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

requirements for admission" which would effectively exclude immigrant newcomers.[68] As Harvard President Charles Eliot said, the university was "only doing its duty to the learned professions of Law and Medicine, which have been for fifty years in process of degradation through the barbarous practice of admitting to them persons wholly destitute of academic culture."[69]

This movement to create barriers to entry was resisted by other academic leaders, arguably because it was regressive and exclusionary, and "the result would be a 'caste system.'"[70] For example, the president of Yale University, Arthur T. Hadley, "blocked requiring a college degree for admission, and as late as 1902 he stated his opposition . . . . [T]he 'poor man' simply cannot delay earning a living for the time it would take to complete both college and law school courses."[71] Hadley's concern was that with this requirement of a baccalaureate degree, "we enhance the artificial difficulties which are already great enough at best, and tend to make the professions of law and medicine places for the sons of rich men only."[72] But eventually Yale Law School moved in 1912 to requiring a baccalaureate degree and three-year course of study.[73]

The move by the elite bar to increase formal educational requirements, which occurred parallel to the move by law schools to increase them, was explicitly exclusionary:

> In the late 1800s, the law was experiencing an increase in the number of lawyers from ethnic, racial, and religious minority groups. These groups had recognized the value of being a member of the legal profession and, being denied access to an apprenticeship, obtained entry to the bar by virtue of open admissions law schools. For this reason, the perceived influx of minorities into the profession

[68] *Id.* at 86.

[69] *Id.* at 89.

[70] *Id.* at 145.

[71] *Id.* at 144–45.

[72] *Id.* at 145.

[73] *Id.* Harvard President Charles Eliot noted that there was resistance by "the Faculties and the Governors of the modern American professional schools" to adding formal requirements like a baccalaureate degree because of concerns of a drop in enrollments and revenue. *Id.* at 89. *See also* Mell, *supra* note 3, at 849 n.48 (citing STEVENS, *supra* note 5, at 37 (1983)) ("At the beginning of World War I, only Harvard and Pennsylvania required college study as a prerequisite to law study. By 1921, they had been joined by Stanford, Columbia, Western Reserve, and Yale, each of which required a college degree.").

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

> became an issue of social policy and access to power. One explanation for the heightened educational standards for admission to law schools was the attempt to restrict access to positions of power to members of these groups.[74]

Denied other paths to becoming lawyers, women, racial minorities, and immigrants attended these "open admissions" law schools which, in turn, fueled calls by legal elites for more rigorous educational requirements for the practice of law.[75] The prospect that such groups might garner political power by becoming members of the bar was also of concern to those legal elites:

> When an ambitious Italian, Jew, or [B]lack vaulted the bar into the legislature he often carried his group identity with him and found himself advantageously situated to serve the group's needs while advancing his career. Any movement to limit access to the bar might easily become (or indeed originate as) a device to deny political power to specific ethnic or religious groups.[76]

C. Masculine Norms

One might also suggest that this move to create barriers to entry was not simply exclusionary but was connected to and reflected norms of the period about masculinity.[77] Scholars have identified the connection between those norms and the development of the legal profession and legal education.[78] As women began to push

[74] Mell, *supra* note 3, at 847 (citation omitted).

[75] *Id. See also* CHESTER, *supra* note 39, at 8–10 (1985) (describing efforts by the legal and medical profession to reduce the number of women lawyers and doctors by closing access to medical and law schools to women). Chester notes that "[d]uring the 1900–1920 period . . . it became easier for women to secure legal training, thanks to the growth of part-time law schools." *Id.* at 8. One of these, Portia Law School, was largely "for the children and grandchildren of immigrants." *Id.* at 9–10. In a 1927 study of Suffolk Law School, a similar school, half of the students were of Irish descent, a quarter were Jewish and Italian, and another quarter "were mainly descended from poor, long-time New England residents of English and Scottish descent." *Id.* at 10.

[76] Mell, *supra* note 3, at 847 & 849 n.30 (quoting JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 95 (1976)).

[77] KIMBALL, *supra* note 13, at 273–308 (examining the structural sexism and anti-Catholicism implicit in Langdell's system of academic merit, and describing the idea of "scholarly manliness . . . cultivated at university professional schools" of that era). *Id.* at 293.

[78] *See, e.g.*, Lani Guinier, Michelle Fine & Jane Balin, *Becoming Gentlemen: Women's Experience at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); Ann C. McGinley, *Masculine Law Firms*, 8 FIU L.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

for admission to the profession, cases like *Bradwell v. Illinois* reflected nineteenth and early twentieth-century views about gender and eligibility to practice law. In denying Myra Bradwell's petition to practice law because she was a woman, the Illinois Supreme Court observed:

> It is to be also remembered that female attorneys at law were unknown in England, and a proposition that a woman should enter the courts of Westminster Hall in that capacity, or as a barrister, would have created hardly less astonishment than one that she should ascend the bench of Bishops, or be elected to a seat in the House of Commons. [T]hat God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply and execute the laws, was regarded as an almost axiomatic truth.[79]

U.S. Supreme Court Justice Joseph Bradley echoed the same separate spheres view of the world when he later wrote the concurrence in the high court's opinion affirming the Illinois Supreme Court's decision in *Bradwell*.[80] Even though Bradley argued that the right to one's profession was protected by the Fourteenth Amendment's Privileges or Immunities Clause in his dissent in the *Slaughter-House Cases*,[81] handed down the same day, he took a different view of a woman's right to a profession in his concurrence in *Bradwell*:

> On the contrary, the civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood.[82]

REV. 423 (2013); Dara E. Purvis, *Legal Education as Hegemonic Masculinity*, 65 VILL. L. REV. 1145 (2020).

[79] *In re* Bradwell, 55 Ill. 535, 539 (1869).

[80] *Bradwell*, 83 U.S. at 141 (Bradley, J., concurring).

[81] The Slaughter-House Cases, 83 U.S. 36, 112 (1872) (Bradley, J., dissenting).

[82] *Bradwell*, 83 U.S. at 141 (Bradley, J., concurring).

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

Note the masculine norm evoked by Bradley's reference to men being women's protector and defender. As some scholars have observed, American masculinity was conceived of in this way by the founding generation. "A man's virtue, according to [Thomas] Paine, derives from his being woman's protector, a woman's virtue from being man's protected."[83] Bradley's concurrence clearly highlights the masculine fear that women entering the profession would compromise masculine identity. And his focus is male identity rather than women's constitutional rights. The concept of separate spheres was a fundamental element of the natural order of things, and attributes associated with the masculine like "decision and firmness" were essential for the practice of law:

> [I]n view of the peculiar characteristics, destiny, and mission of woman, it is within the province of the legislature to ordain what offices, positions, and callings shall be filled and discharged by men, and shall receive the benefit of those energies and responsibilities, and that decision and firmness which are presumed to predominate in the sterner sex.[84]

So, when one traces the advent of increased educational requirements from the 1870s to the 1920s and the racist, sexist, and nativist views of that era, it becomes clear that such increases were as much a product of exclusivity impulses and ideas around masculinity as they were about improving the quality of young lawyers.[85]

II. THE CRISIS OF 2011–2012

The previous Part offered a brief historical summary of law schools, universities, and the practicing bar's efforts to implement a three-year course of study. This effort culminated in the early twentieth century when the American Bar Association implemented this requirement for all accredited law schools, and it

[83] John M. Kang, *Manliness and the Constitution*, 32 HARV. J.L. & PUB. POL'Y 261, 330 (2009).

[84] *Bradwell*, 83 U.S. at 142 (Bradley, J., concurring).

[85] For the link between Langdell's reforms and masculinity, see KIMBALL, *supra* note 13, at 293 ("By 1899 . . . Harvard had therefore become highly masculinized, fostering a competitive species of academic meritocracy particularly suited to an education that was conceived as preparation for the jousts of professional life. Among professional schools, none embraced more fully the masculine culture of competition and struggle than law schools, and among law schools, none more fully than those that adopted case method, which required struggle. . . . In contrast, 'the recitation method . . . is not a virile system. It treats the student not as a man, but as a schoolboy' observed Ames."). *Id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

remains a requirement today.[86] This Part applies a critical theory lens to the puzzle of why proposals to return to a two-year course of study after the crisis of 2011–2012 faded away. When one remembers the requirement was grounded in exclusionary impulses and masculine norms, it becomes more apparent why structural reform has been elusive.

Fifty years ago, Berkeley law professor Preble Stolz published an article in the *Journal of Legal Education* that began as follows:

> On Friday, February 4, 1972, in a New Orleans hotel room crowded with deans of law schools attending a mid-year meeting of the ABA, a proposal to authorize some law schools to grant the first degree in law after two years of study was killed—killed dead, at least for the moment. This paper records the whimpering death rattle of that proposal by one who was actively involved in promoting the idea.[87]

This proposed shift back to a two-year course of study from the three-year post-baccalaureate model, first implemented by Langdell in the late nineteenth century and embraced by the ABA in the early twentieth century, was significant.[88] But—as

[86] Note that the ABA allows two-year programs but only if they are designed to deliver the same eighty-three credits required in the traditional three-year curriculum in a compressed format:

> Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR (a) A law school shall require, as a condition for graduation, successful completion of a course of study of not fewer than 83 credit hours. At least 64 of these credit hours shall be in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction. (b) A law school shall require that the course of study for the J.D. degree be completed no earlier than 24 months and, except in extraordinary circumstances, no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit.

SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: 2022–2023, at 24 (2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/2022-2023-standards-and-rules-of-procedure.pdf [hereinafter ABA STANDARD 311].

[87] Preble Stolz, *The Two-Year Law School: The Day the Music Died*, 25 J. LEGAL EDUC. 37, 37 (1973).

[88] A two-year law school had been suggested in 1968 by the Chairman of the AALS Curriculum Committee; this was endorsed by President Edward Levi of Chicago and President Derek Bok of Harvard, and "Stanford Law School had started offering a degree (if not qualification to take the bar) after two years." *Id.* at 39.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

Stolz pointed out—it was dead on arrival as an idea in 1972.[89] However, that idea was revived forty years later when, in the wake of the 2008 financial crisis, applications and admissions to American law schools collapsed;[90]

> When the market declined [in 2008], big firms cut back on their hiring, rapidly and significantly. In 2009, large firms hired 5,200 new graduates; in 2011, their hiring levels dropped to 2,900 graduates. This represented a nearly 50 percent decline in the segment of the market for new graduates that provided them the highest salaries.
>
> . . . Further, there was a significant decline in applications. Ten years ago, we had 96,000 applicants to law schools. Now we have 56,000. This is an extraordinary drop in a decade. The decline in applicants and the increased demand for financial aid put great economic pressure on law schools. Seeking to ensure that the quality of law students remained in the face of declining applications, law schools dramatically cut the number of seats. Ten years ago, there were 56,000 seats, and now there are 43,000 seats.[91]

In the wake of that historic decline, there were a number of proposals for structural reform of legal education.[92] These proposals included higher teaching loads, more online education, paid positions for internships with law firms, and a reduction in easy student loan availability.[93] But most salient for this Article is the idea, "supported by President Barack Obama, [to] reduce legal education from three years to two years, cutting tuition costs for students,"[94] much as Stolz had suggested forty years before. But that effort failed to gain traction in the years following the

[89] *Id.* at 37.

[90] There is extensive literature on the law school admissions crisis that followed the 2008 financial crisis. For example, see Victor Gold, *Reducing the Cost of Legal Education: The Profession Hangs Together or Hangs Separately*, 66 SYRACUSE L. REV. 497, 501–05 (2016); *see also* Panel Discussion, *The Crisis in Legal Education*, BULL. AM. ACAD. ARTS & SCIS., Spring 2016, at 9.

[91] William Michael Treanor, in *The Crisis in Legal Education*, *supra* note 90, at 9, 9.

[92] *See The Crisis in Legal Education*, *supra* note 90. Note that in 2022, for the first time since the admissions crisis, there were indications of a slight uptick in admissions—the first in seven years. *See* Stephanie Francis Ward, *Gender, Race and Finances for Law School Admittees Examined in New Report*, ABA J. (May 16, 2023, 2:32 PM), https://www.abajournal.com/news/article/law-school-admissions-rate-increases-for-first-time-seven-years-report-claims.

[93] Philip G. Schrag, in *The Crisis in Legal Education*, *supra* note 90, at 12, 12.

[94] *Id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

crisis, which raises the question of why such structural reform in legal education has been so hard to achieve.

Once again, when Langdell himself studied law at HLS circa 1850, he was only required to complete four semesters over two years to receive his degree.[95] The third year that he completed as a "resident graduate" was completely optional. It did not become required until Langdell himself became the dean in 1870.[96] One-hundred years later, Preble Stolz and others in legal education made a move to return to the pre-1870 two-year course of study but, as Stolz said, that move was "killed dead."[97] The rationale for moving back to a two-year model has remained the same since Stolz proposed it in 1972 and since many legal scholars revived it ten years ago during the admissions crisis of 2011–2012.[98] The primary argument is that such a

[95] KIMBALL, *supra* note 13, at 37.

[96] *Id.* at 37, 220.

[97] Stolz, *supra* note 87.

[98] Such commentary around moving to a two-year course of study included law review articles, news articles, blog posts, and letters to the ABA. For example, see Samuel Estreicher, *The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 599 (2012); Jack Graves, *An Essay on Rebuilding and Renewal in American Legal Education*, 29 TOURO L. REV. 375 (2013); Paul D. Carrington, Commentary, *The Price of Legal Education*, 127 HARV. L. REV. F. 54 (2013). News articles, blog posts, and books at that time included Paul Campos, *3LOL and "Mandatory" Attendance Policies*, INSIDE THE L. SCH. SCAM (Nov. 12, 2012), http://insidethelawschoolscam.blogspot.com/2012/11/3lol-and-mandatory-attendance-policies.html; Daniel B. Rodriguez & Samuel Estreicher, Opinion, *Make Law Schools Earn a Third Year*, N.Y. TIMES (Jan. 17, 2013), https://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html; Karen Sloan, *Experts Debate Two-Year Law School Option*, LAW.COM: N.Y.L.J. (Jan. 22, 2013, 12:00 AM); Debra Cassens Weiss, *Two-Year Law School Was a Good Idea in 1970, and It's a Good Idea Now, Prof Tells ABA Task Force*, ABA J. (Feb. 10, 2013, 1:36 AM), https://www.abajournal.com/news/article/two-year_law_school_was_a_good_idea_in_1970_and_its_a_good_idea_now; Peter Lattman, *Obama Says Law School Should be Two, Not Three, Years*, N.Y. TIMES (Aug. 23, 2013, 5:31 PM), https://archive.nytimes.com/dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/; Dylan Matthews, *Obama Thinks Law School Should Be Two Years. The British Think It Should Be One*, WASH. POST (Aug. 27, 2013, 2:00 PM), https://www.washingtonpost.com/news/wonk/wp/2013/08/27/obama-thinks-law-school-should-be-two-years-the-british-think-it-should-be-one/; Brian Tamanaha, *The Proposal for a 2 Year Law Degree: Déjà Vu All Over Again?*, BALKINIZATION (Sept. 6, 2013), https://balkin.blogspot.com/2013/09/the-proposal-for-2-year-law-degree-deja.html; Matt Barnum, *The Two-Year Law Degree: A Great Idea That Will Never Come to Be*, ATLANTIC (Nov. 12, 2013), https://www.theatlantic.com/education/archive/2013/11/the-two-year-law-degree-a-great-idea-that-will-never-come-to-be/281341/; Elizabeth Olson, *The 2-Year Law Education Fails to Take Off*, N.Y. TIMES (Dec. 25, 2015), https://www.nytimes.com/2015/12/26/business/dealbook/the-2-year-law-education-fails-to-take-off.html. Representative letters in favor of a two-year model or a reduction in overall credits included letters from Professor Carol A. Chase (Jan. 2013); Professor Stephen Gillers (Mar. 5, 2013); Professor Lynn Wardle (Mar. 29, 2013); and Professor

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

move would reduce harm to young lawyers. And the harms imposed by the three-year model are increasingly acute.

Law student debt levels have continued to increase since the crisis of 2011–2012, with the average law school graduate carrying $165,000 in loans upon graduation.[99] Student debt makes it virtually impossible for many of these graduates to achieve the traditional benchmarks of adult lives. More than 55% of students surveyed postponed buying a house, and nearly 30% postponed or decided not to get married.[100] That level of debt service is also harmful to their mental health, imposing years of financial stress on them.[101] There is an additional harm in the form of depriving students of the choice to walk away from law. Many are so saddled with debt that they become indentured servants, bound to practice law for many years until they free themselves of that status. Unlike previous generations for whom a relatively small amount of debt came with a law degree,[102] allowing them to decide

Paul Carrington (Apr. 2013), submitted to the ABA Task Force on the Future of Legal Education (on file with the ABA).

[99] *See* Matt Leichter, *The Law School Debt Bubble: $53 Billion in New Law School Debt by 2020*, THE LAST GEN X AMERICAN (Oct. 17, 2011), https://lawschooltuitionbubble.wordpress.com/2011/10/17/the-law-school-debt-bubble-53-billion-in-new-law-school-debt-by-2020/ (comparing the debt load of law students from 2001–2009, and projecting its continued rise, using *U.S. News* and ABA data); *Average Law School Debt*, EDUCATION DATA INITIATIVE, https://educationdata.org/average-law-school-debt (updated June 15, 2023) (charting law student loan debt from 2012 to 2022). *See also* YOUNG LAWS. DIV., ABA, 2020 LAW SCHOOL STUDENT LOAN DEBT: SURVEY REPORT (2020), https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2020-student-loan-survey.pdf. The average law school graduate owes approximately $165,000 in educational debt upon graduating. *Id.* at 7. "More than 95% of all respondents took out loans to attend law school." *Id.* More than 55% of students surveyed postponed buying a house, and nearly 30% postponed or decided not to get married. *Id.* at 14. Over 75% of law students surveyed "had at least $100,000 in student loans at graduation"; more than half had over $150,000 in student loans; and more than one in every four law students reported having over $200,000 in student loans at the time of graduation. *Id.* at 3. About 40% of respondents reported that their student debt had grown since they left law school. *Id.* at 10. Student debt plays a key role in the legal paths chosen by recent graduates. *Id.* at 15–17. Over 37% of respondents said their debts forced them to take on jobs based on salary rather than their interests. *Id.* at 15. Over 63% of law school graduates working for the government or military and over half of those working at nonprofits and for the public sector took these jobs due to their loan forgiveness eligibility. *Id.* at 16. About 17% of respondents chose a job that offered forgiveness instead of a job they wanted. *Id.* at 15. All students of color took on more student debt than their White counterparts, carrying on average between $25,000 and $40,000 more. *Id.* at 18. Law school debt impacts women and men nearly equally: 94.8% of women borrowed money to pay for their education compared to 95% of men. *Id.* at 9. Women borrowed about $3,000 more on average. *Id.*

[100] *Id.* at 14.

[101] *Id.* at 19–22.

[102] *Id.* at 2–4.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

to walk away from law if it did not prove a satisfying career, students today can no longer afford to move to a more fulfilling career.[103] And these harms are not evenly distributed. They have a disparate impact on women, who borrow $3,000 more on average than men, and even more on students of color, who have between $25,000 and $40,000 more in law school debt than White students.[104] Thus, the three-year model has subordinating effects, both in keeping those in marginalized groups from attending law school in the first place and preventing those saddled with debt from robustly engaging in the economy. They are also less able to walk away from law after practicing for several years and finding it more psychologically costly than beneficial to them.

So why has there been such a failure to act on proposals to shorten the course of study and its cost? There are the obvious collective-action and institutional capture problems. University and law school administrators are reluctant to lose a year's worth of revenue and law faculty may well be characterized as rent-seeking. Such a move would reduce revenue and thus faculty salaries. It might also reduce the chance to teach smaller classes like seminars. And law faculty can legitimately argue that law has gotten more complex and that the third year has value to students. It often does. But in addition to those obvious reasons, I want to add a perspective that I did not often see in the proposals generated during the admissions crisis—that the failure to engage in this particular structural reform is also due to the exclusionary impulses and masculine norms upon which much of legal education was originally built. That history explains, in part, the stickiness of the current three-year model. And one reason that we should remember its origin story is that this feature of educational

[103] "One common-sense rule in student lending provides that students should not borrow more than they expect to earn after their first year." *Cost of Attendance*, L. SCH. TRANSPARENCY, https://www.lawschooltransparency.com/trends/costs/debt (last visited Feb. 21, 2024) (choose "Debt" from menu). Describing a graph of the bi-modal nature of first-year lawyer salaries in 2022, LAW SCHOOL TRANSPARENCY notes that "[t]he left-side group is between $50,000 and $90,000. This group accounts for a little over half of reported salaries. (The median reported salary was $85,000 in 2022.) The left-hand mode is best expressed as a range, $60,000 to $75,000, and accounts for about 30% of reported salaries. The right-side mode is actually two distinct peaks at $205,000 (5.3%) [and] $215,000 (17.2%), with the latter being the biglaw market rate in 2022, for a total of about 22.5% of reported salaries." *Job Outcomes and Salaries*, L. SCH. TRANSPARENCY, https://www.lawschooltransparency.com/trends/jobs/salaries (last visited Feb. 21, 2024) (choose "Salaries" from menu).

[104] *See* YOUNG LAWS. DIV., ABA, *supra* note 99, at 9. With regard to disparate impact, *see also Fast Facts: Women and Student Debt*, AAUW, https://www.aauw.org/resources/article/fast-facts-student-debt/ (last visited Feb. 21, 2024) ("Women hold nearly two-thirds of the outstanding student debt in the U.S."). Women borrow $3,000 more than men for law school; students of color borrow $25,000–40,000 more. *See* YOUNG LAWS. DIV., ABA, *supra* note 99, at 9, 18.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

design continues to have a subordinating effect on marginalized groups who seek admission to the legal profession.

If we are serious about equity in legal education and the legal profession, law faculty should revisit the conversation around a shortened course of study over two years rather than three.[105] The savings to students would be significant. Those savings include a year's worth of tuition, which could range from $12,000 to $78,000, a year's worth of living expenses which can be as high as $45,000, and the elimination of the opportunity cost students incur in forgoing a year's worth of income.[106] While convening such a conversation may be against faculty interests in many ways, it may well be in their students' best interests to carefully consider all the costs and benefits of requiring a third year of study.[107] Law faculty should adopt a fiduciary perspective when revisiting the issue and include consideration of the subordinating effects of the three-year model on the cost side of the analysis. In evaluating whether the harm to students outweighs the benefit to them, and how much of the three-year model is driven by inertia and revenue concerns, law faculty should remember the subordinating origins of the model in the late nineteenth and early twentieth centuries. While subordination may not remain the dominant motive today, it continues to have the same effect on marginalized groups. And that should be part of the calculus as law faculty revisit the issue today.

Similarly, agency and autonomy should be factors in evaluating the costs and benefits of the current model. While law faculty add value by deciding on the first-year and core curriculum on behalf of students, that value diminishes after students complete those courses. There is independent value to having students decide for themselves if they want to practice law first before incurring a third year of debt. Allowing students to graduate and take the bar exam after two years, thus making a third year optional, would allow them to choose a course of study that would be most helpful after they practice for a few years. For example, law schools could offer

[105] This conversation should focus on a course of study that reduces the credits required to sixty or sixty-four rather than the current ABA option that still requires eighty-three credits but allows those credits to be completed in an accelerated "two-year" program, with no savings in tuition, but reducing living expenses and opportunity costs. *See* ABA Standard 311, *supra* note 86, at 24.

[106] Melanie Hanson, *Average Cost of Law School*, EDUC. DATA INITIATIVE (Sept. 13, 2023), https://educationdata.org/average-cost-of-law-school.

[107] The author of a 2012 article describing the crisis notes that in a room of more than one hundred academics at a conference on legal education, "no one . . . was willing to defend the proposition that the third year of law school represented a justifiable investment of time and money for contemporary law students." Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 220 (2012).

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

options like an estate planning, health law, or environmental law certificate, or a Visiting Assistant Professor program for those interested in teaching, that students could pursue after graduating and working long enough to determine which area of practice they enjoy. Giving law students that agency and autonomy should count as a benefit when balancing the costs and benefits of the current, very expensive three-year model. And such a model would have historical antecedents in the days when Langdell was a student at HLS, where only a two-year course of study was required but students could choose to stay and concentrate on a specialty for a third year.[108]

The very origins of legal education explain much of why it looks the way it does today. Those origins also help explain, in part, why serious structural reform did not emerge in the wake of previous inflection points like the admissions crisis of 2011–2012. I am reminded of the words of the nineteenth-century abolitionist and women's rights activist Lucretia Mott: "Any great change must expect opposition, because it shakes the very foundation of privilege."[109] Mott was very likely thinking about White, male privilege. Moves for structural reform of legal education strike at the heart of male privilege. Such privilege is still reflected in classrooms where women faculty's competence is still challenged, especially women faculty of color. Thus, women faculty—not just students—are harmed by having to engage in Langdell's version of the Socratic case method, which reflected masculine norms around competition.[110] The fact that women faculty are forced by the method to make students, especially male students, feel awkward or embarrassed hurts those women in their student evaluations, where women are punished for being harsh rather than nurturing and transgressing gender norms.[111] The literature on student evaluations shows marked contrasts in women's evaluations as opposed to men's evaluations.[112]

---

[108] KIMBALL, *supra* note 13, at 37.

[109] BONNIE S. ANDERSON, JOYOUS GREETINGS: THE FIRST INTERNATIONAL WOMEN'S MOVEMENT, 1830–1860, at 6 (2000).

[110] "[M]any women are alienated by the way the Socratic method is used in large classroom instruction, which is the dominant pedagogy for almost *all* first-year instruction." Guinier et al., *supra* note 78, at 3. For a discussion of the connection between the case method and masculine norms, see KIMBALL, *supra* note 13. For a more general discussion of the harms arguably inflicted by Langdell's "three follies"—his claims that law is a science best traced through case law, that the study of redacted appellate cases is the "best" way to learn the law, and that having practiced law is harmful to the law professor, see Harold Anthony Lloyd, *Langdell and the Eclipse of Character*, 85 U. PITT. L. REV. ___ (forthcoming 2024).

[111] Joey Sprague & Kelley Massoni, *Student Evaluations and Gendered Expectations: What We Can't Count Can Hurt Us*, 53 SEX ROLES 779, 781, 791–92 (2005).

[112] *See, e.g.*, *id.* For more on the significance of having women faculty in the classroom, see Paula A. Monopoli, *Feminist Legal History and Legal Pedagogy*, 108 VA. L. REV. ONLINE 91, 109 n.76 (2022)

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

And untenured women have to mimic the masculine model of teaching or risk being evaluated by their tenure committees as being less than rigorous. Reform offers an opportunity to reset the idea that this inherently hierarchical pedagogy is the preferred intellectual approach to understanding and teaching law. It would also open a dialogue about what students should be exposed to in terms of course content. We could get more creative in the classroom and use more lecture infused with historical context that teaches students that women and people of color were makers of law and policy too. Instead of that message being siloed in seminars like Feminist Legal Theory or Critical Race Theory that few students elect to take, such history could be made a foundational part of constitutional law, property, contracts, and similar required courses.

As noted above, feminist legal scholars have written about the deeply masculine norms on which legal education is built.[113] In addition to exclusionary impulses, those norms are also a reason for why structural reform has not gotten more traction. Such reform challenges entrenched male privilege, entitlement, and power in the legal academy. Law faculty should consider how much male privilege plays a role in why legal education looks the way it does, rather than an actual substantive need for three years to produce competent young lawyers. As someone who has recently written about why feminist legal theory has not gained traction in American legal education since its introduction forty years ago,[114] I see the connections between resistance to including the lived experiences of women in the law school curriculum and the resistance of law schools to create structural change. Both can be understood by reflecting on the origins of legal education itself and how those exclusionary impulses and masculine norms persist today with subordinating effects.

(citing Amanda L. Griffith, *Faculty Gender in the College Classroom: Does It Matter for Achievement and Major Choice?*, 81 S. ECON. J. 211 (2014)) (studying the impact of the gender of faculty members on male and female students); Tina R. Opie, Beth Livingston, Danna N. Greenberg & Wendy M. Murphy, *Building Gender Inclusivity: Disentangling the Influence of Classroom Demography on Classroom Participation*, 77 HIGHER EDUC. 37 (2019) (finding that increased female representation in business schools may create inclusive learning environments in addition to other exogenous factors); Kenneth Gehrt, Therese A. Louie & Asbjorn Osland, *Student and Professor Similarity: Exploring the Effects of Gender and Relative Age*, 90 J. EDUC. FOR BUS. 1, 5 (2015) (studying female and male students' evaluations of professors' gender and age and finding female students rated female faculty more highly than male faculty, perhaps in part because there were fewer female than male faculty at the university and thus female faculty "might have been especially salient to the students sharing the same gendered trait.").

[113] *See* sources cited *supra* note 78.

[114] Monopoli, *supra* note 112.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

In his biography of Langdell, a man who came from very humble beginnings, Bruce Kimball notes that the categorical approach Langdell took in implementing his system of academic merit, including the three-year course of study, had clearly exclusionary consequences.[115] Langdell's push to extend legal education was as consistent with masculine norms around maintaining status and position within a hierarchy as it was with a genuine desire to improve the law, lawyers, and law practice.[116] And it coincided with and reified the movement by legal elites in the bar to exclude marginalized groups by raising formal educational standards. Serious structural reform of the basic design of legal education might not only reduce harm to our students, but such fundamental change also offers us a way to dislodge the remaining structural overentitlement of male faculty members. That entitlement still manifests itself in so many ways (including a very sticky gender pay and prestige gap) that persists in legal education, despite years of formal equality measures.[117]

III. CONCLUSION

It can be difficult for educational change to "occur from within . . . because of the degree of subordination of the educators to the dominant group."[118] Legal educators and their universities have financial and other interests in existing models. Thus, such change is often external, sparked by social upheaval.[119] Prior discussions about shortening the course of study in law schools came in during major inflection

[115] *See supra* note 77 (describing Kimball's observations with regard to the structural sexism inherent in Langdell's system of academic meritocracy and the prevailing norms around "scholarly manliness" as an ethos in professional education of that era.) *See also* Carter, *supra* note 4, at 134 ("Certainly, for Langdell's part, while elitism is a strong theme in his writings, absent is the specifically racist or sexist intent apparent in the writings of many of his historical peers. But requiring specific intent is a woefully inadequate approach for analyzing this period.").

[116] *See* Carter, *supra* note 4, at 135–36 ("We can say that Langdell believed that lawyers were, in general, poorly trained and that this fact in large part inhibited their ability to rise and to become a widely respected profession. . . . He thus believed that the best hope of elevating the status of lawyers and the quality of law itself was to bring legal training into the university where full-time teachers could devote themselves to that training.").

[117] *See, e.g.*, Paula A. Monopoli, *The Market Myth and Pay Disparity in Legal Academia*, 52 IDAHO L. REV. 867 (2016); Melissa Hart, *Missing the Forest for the Trees: Gender Pay Discrimination in Academia*, 91 DENV. U. L. REV. 873 (2014); Ann Juliano, *Privileging Scholarship and Law School Compensation Decisions: It's Time to Shine Some Light*, 61 U. LOUISVILLE L. REV. 291 (2023).

[118] Dennis Warwick & John Williams, Review Essay, *History and the Sociology of Education*, 1 BRIT. J. SOCIO. EDUC. 333, 340 (1980) (citing M.S. ARCHER, THE SOCIAL ORIGINS OF EDUCATIONAL SYSTEMS (1969)).

[119] *See id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

points. The movement that Preble Stolz wrote about in 1972 came as the nation grappled with the Vietnam war and in the wake of the enactment of Title IX. That was the moment when law faculties finally hired women in significant numbers, and law schools enrolled women students in larger numbers.[120] The 2011–2012 conversation came in the wake of the 2008 financial crisis, external to law schools themselves, but which was a causal factor in the law school admissions collapse.

So why might a structural reform like shortening the course of study gain more traction now than it has in the past? We are in the immediate wake of a historic global pandemic. The broader student debt crisis is a major part of the public conversation in electoral politics.[121] The reinforcing hierarchal effect of *U.S. News & World Report* is weakening.[122] Law firms are beginning to announce delayed start dates for young lawyers that look similar to those in 2009.[123] Law schools have also now experimented broadly with online instruction since the pandemic.[124] And then there is the NextGen Bar. The class of first-year law students matriculating in the fall of 2023 will take that version of the Uniform Bar Exam, which cuts the number of topics tested, in July 2026.[125] So that development opens the door for us to look again

[120] Elizabeth D. Katz, Kyle Rozema & Sarath Sanga, *Women in U.S. Law Schools, 1948–2021*, 15 J. LEGAL ANALYSIS 48, 52 (2023).

[121] Zolan Kanno-Youngs, *Biden Chips Away at Student Loan Debt, Bit by Bit, Amid High Expectations*, N.Y. TIMES (Feb. 21, 2024), https://www.nytimes.com/2024/02/21/us/politics/biden-student-loan-forgiveness-debt.html ("[]Mr. Biden's aides believe the student debt cancellation can be a way to quickly improve the lives of some Americans and help turn the tide on his low approval numbers.").

[122] Karen Sloan, U.S. News & World Report, *Facing Backlash, Revamps its Law School Rankings*, REUTERS (Jan. 2, 2023, 3:21 PM), https://www.reuters.com/legal/legalindustry/us-news-world-report-facing-backlash-revamps-its-law-school-rankings-2023-01-02/ (pointing out that nearly a dozen law schools, including "all but two of the top 14-ranked schools," have stopped submitting internal data to the publication for rankings).

[123] *See, e.g.*, Debra Cassens Weiss, *Are Pushed-Back Start Dates for Associates Making a Comeback? One Law Firm Confirms Deferrals*, ABA J. (Sept. 29, 2022, 11:37 AM), https://www.abajournal.com/news/article/are-pushed-back-start-dates-for-associates-making-a-comeback-one-law-firm-confirms-deferrals; Staci Zaretsky, *The Return of the Dreaded Biglaw Deferral is Now Being Praised by Industry Insiders*, ABOVE THE L. (May 16, 2023, 2:12 PM), https://abovethelaw.com/2023/05/biglaw-deferral-praised.

[124] *Law Schools Plan Virtual Learning Expansion Post-Pandemic*, ABA, https://www.americanbar.org/news/abanews/aba-news-archives/2022/02/law-schools-plan-virtual-expansion (last visited Feb. 22, 2024).

[125] Those subjects include Business Associations, Civil Procedure, Constitutional Law, Contracts, Criminal Law and Constitutional Protections, Evidence, Property, Torts, and Family Law. *Bar Exam Content Scope: First Administration July 2026*, NEXTGEN: BAR EXAM OF THE FUTURE, NAT'L CONF. OF

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu

at the possibility of a course of study that can easily cover those topics in less than three years, leaving room for electives, clinical, and experiential courses as well. With fewer subjects on the professional licensing exam, the cost/benefit analysis for a mandatory third year of study, with its attendant debt load, may well shift in a significant way.

In addition to reducing harm to students, implementing significant structural reform of legal education offers the possibility that other reforms might follow. Those reforms could remake law schools in ways that address subordination and inequality, making the legal academy a more hospitable place for faculty and students who are members of marginalized groups. Understanding that the three-year course of study was grounded in masculine norms about hierarchy and exclusionary racist, sexist, and nativist tendencies helps illuminate whether such a requirement continues to have sufficient educational value to justify its costs or whether it is predominantly about serving other interests. It is time, once again, for American law faculty to have that conversation.[126]

BAR EXAM'RS (2023), https://nextgenbarexam.ncbex.org/pdfviewer/ncbe-nextgen-content-scope-may-24-2023.

[126] Law schools are accredited by the American Bar Association Section of Legal Education and Admissions to the Bar Council and many jurisdictions require graduation from an ABA-accredited law school to be eligible to sit for the bar exam. Thus, the Council would have to change its accreditation rules for law schools to be able to move to such a model. *New to Bar Admissions? What You Might Like to Know About: The ABA's Connection to Bar Admissions*, 90 BAR EXAM'R, Spring 2021, at 86, 86 (2021). Law students themselves have begun to call for such reform. *See, e.g.*, Katlyn Martin, Note, *The Three-Year Law Degree: Exclusive, Unaffordable, and Upheld by Law School Accreditation Standard 311*, 55 CREIGHTON L. REV. 515 (2022) (characterizing the current three-year course of study as antithetical to the ABA's own standards on diversity and inclusion and arguing for the ABA to change its standards to allow a shorter course of study).

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2023.1002
http://lawreview.law.pitt.edu