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Sheila I. Velez Martinez
University of Pittsburgh School of Law

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TOWARDS AN OUTCRIT PEDAGOGY OF ANTI-SUBORDINATION IN THE CLASSROOM

SHEILA I. VÉLEZ MARTÍNEZ*

The reason I left [university] in my second year was because I felt that professors could be just as selfish and foolish as everybody else.¹

INTRODUCTION

I. CLASSROOM PEDAGOGY IN U.S. LAW SCHOOLS

II. HOW TRADITIONAL LAW SCHOOL PEDAGOGY HAS FAILED OUTSIDER GROUPS

III. OUTCRIT POSITIONALITY ON PEDAGOGY

III. OUTCRIT PEDAGOGY GOING FORWARD: A DIFFERENT KIND OF TEACHING

CONCLUSION

INTRODUCTION

The dominant model of legal education is in crisis.² The current debate surrounding the “existential crisis” of legal education sets the stage for a critical assessment of traditional legal education pedagogy and how it can be improved in ways that would promote justice and anti-subordination practices within the law school.³ Because LatCrit theory has paid close

* Assistant Clinical Professor of Law, University of Pittsburgh School of Law. Muchas gracias to Jules Lobel, Beth Lyon, and Jessie Allen for their comments and suggestions on the various drafts of this paper.

1. Julia Lowrie Henderson & Pejk Malinovski, *Interview: A Final Visit with Pete Seeger*, STUDIO 360 (Jan. 31, 2014, 2:40), <http://www.studio360.org/story/a-final-visit-with-pete-seeger/>.

2. Paul Lippe, *Why Waste the Crisis in Legal Education?*, A.B.A. J. (Mar. 7, 2013, 2:30 PM), <http://www.abajournal.com/legalrebels/article/lawschool.next>; Paula A. Monopoli, *Gender and the Crisis in Legal Education: Remaking the Academy in Our Image*, 2012 MICH. ST. L. REV. 1745, 1746.

3. Anti-subordination refers to a positionality that challenges practices and policies that by intent or effect enforce the secondary social status of historically oppressed groups. It also strives to develop practices and policies capable of redressing entrenched structures of inequality. *See generally* Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 PHIL. & PUB. AFF. 107 (1976); Reva B. Siegel, *The American Civil Rights Tradition—Anticlassification or Antisubordination?*, 58 U. MIAMI L. REV. 9 (2004); Marc Tizoc Gonzalez et. al, *Afterword: Change and Continuity: An Introduction to the LatCrit Taskforce Recommendations*, 8 SEATTLE J. FOR SOC. JUST. 303, 304 (2009) (on LatCrit’s anti-subordination positionality).

attention both to knowledge production and to its principled performance, it is uniquely positioned to propose new approaches to legal education that fuse theory and action as central to anti-subordination in academic practice.⁴ This paper seeks to provide a theoretical framework that informs a pedagogical practice of anti-subordination within the law school classroom setting.

The law school classroom is a space of privilege and power that mirrors society.⁵ For over thirty years, critical legal scholars have discussed how law professors' traditional pedagogical practices further the reproduction of hierarchies of power and subordination.⁶ Traditional pedagogy, as expected, models for students how they are supposed to think, feel, and act in their future professional roles.⁷ Furthermore, through traditional pedagogy, law professors contribute to the continued legal consolidation of power and legal knowledge in preservation of the status quo, that is the preservation of euroheteropatriarchal paradigms.⁸ Outcrit scholars⁹ have taken the discussion of hierarchy in legal education beyond the initial po-

4. Steven W. Bender and Francisco Valdes, *At and Beyond Fifteen: Mapping LatCrit Theory, Community, and Praxis*, 1 U. MIAMI RACE & SOC. JUST. L. REV. 177, 194 (2011); Francisco Valdes, *Rebellious Knowledge Production, Academic Activism, & Outsider Democracy: From Principles to Practices in LatCrit Theory, 1995 to 2008*, 8 SEATTLE J. FOR SOC. JUST. 131, 153–54 (2009).

5. Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 591–95 (1982).

6. *Id.*

7. Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *THE POLITICS OF LAW* (David Kairys ed., Basic Books 3d ed. 1998). See also Anita L. Allen, *On Being a Role Model*, 6 BERKELEY WOMEN'S L. J. 22 (1990), for a critical view of the widely used role model argument.

8. DECONSTRUCTING PRIVILEGE: TEACHING AND LEARNING AS ALLIES IN THE CLASSROOM 1, 4 (Kim A. Case ed., 2013).

9. Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 ASIAN L. J. 65, 67–70 (2003) [hereinafter Valdes, *Outsider Jurisprudence*]. I subscribe to Valdes' description of OutCrit scholars:

OutCrit positionality is framed around the need to confront in collective and coordinated ways the mutually-reinforcing tenets and effects of two sociological macro-structures that currently operate both domestically and internationally: Euroheteropatriarchy and neoliberal globalization. Therefore, among them are the legal scholars who in recent times have pioneered the various strands of outsider critical jurisprudence—OutCrits.

Id. at 67 n.5; see also Francisco Valdes, *Outsider Scholars, Legal Theory & Outcrit Perspective: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831, 840–41 (2000) [hereinafter Valdes, *Outsider Scholars*] (discussing the relationship between Euroheteropatriarchy and OutCrit theory and praxis). The term "Outsider Jurisprudence" was first used by Professor Mari J. Matsuda. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323 (1989). Latcrit Theory is one strand in outsider jurisprudence along with Critical Race Theory, Critical Race Feminism, Asian American Scholarship and Queer Legal Theory. See generally Elizabeth M. Iglesias, *Foreword: LatCrit Theory: Some Preliminary Notes Towards a Transatlantic Dialogue*, 9 U. MIAMI INT'L & COMP. L. REV. 1 (2000); Valdes, *Outsider Jurisprudence*, *supra* note 9 (discussing the history and current perspective of "Outsider Jurisprudence"); Francisco Valdes, *Afterword: Theorizing "Outcrit" Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) (drawing lessons for Latcrit from the experiences of other outsider efforts, principally those of Racecrits And Queercrits).

lemic of critical legal scholars by redefining the players in multiple relationships of power. For instance, for Outcrit scholars, the student is not only defined by her relationship with education; rather, she is a multi-identitarian being that has to resist subordination within the legal academia and has to deal simultaneously with other forms of subordination like racism, sexism and homophobia, just to name a few.¹⁰ Even though Outcrit theory has seen from its beginning the fusion of theory and action as central to the anti-subordination agenda, the discussion regarding praxis within the classroom could benefit from further development.

Save notable exceptions,¹¹ Outcrit scholars have largely confined themselves to the use of traditional law school pedagogy while aspiring to “teach anti-subordination knowledge and foster the ability of students to decolonize themselves and others.”¹² I propose that using formal or traditional legal education pedagogy is itself a contradiction of anti-subordination principles, inasmuch as traditional pedagogy is inherently hierarchical and validates euroheteropatriarchal perspectives. My critique to the use of the traditional course book pedagogies can be summed up as follows: (1) It ignores best practices in teaching and critical pedagogy; (2) Because of that, it is not only a poor educational tool for most students but also has a particular oppressive effect in female students and students of color.

Outcrit pedagogy practices should strive to build in the classroom a democratic space that is emancipatory, creates conditions for learning, and fosters the critical exploration of society.¹³ A critical exploration of society should serve as a provocation for students to act to transform the conditions of subordination. To achieve this purpose, it is necessary not only to teach about deconstructing privilege, building social justice, and the intersectionality of class, race and gender. We must also teach intentionally in a way that recognizes and minimizes privilege inside the classroom.¹⁴ We must

10. Gerald Torres & Katie Pace, *Understanding Patriarchy as an Expression of Whiteness: Insights from the Chicana Movement*, 18 WASH. U. J.L. & POL’Y 129, 130 (2005).

11. Derrick Bell & Erin Edmonds, *Students as Teachers, Teachers as Learners*, 91 MICH. L. REV. 2025, 2026–27 (1993); Charles R. Lawrence III, *The Word and The River: Pedagogy as Scholarship as Struggle*, 65 S. CAL. L. REV. 2231, 2238 (1992); Saru Matambanadzo, *Fumbling Toward a Critical Legal Pedagogy and Practice*, 4 POL’Y FUTURES EDUC. 90, 91 (2006); Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 33 U. MICH. J.L. REFORM 263, 298 (2000); Spearlt, *Priorities of Pedagogy: Classroom Justice in the Law School Setting*, 48 CAL. W. L. REV. 467, 470–71 (2012).

12. Valdes, *Outsider Jurisprudence*, *supra* note 9, at 65.

13. *Id.* at 73–74.

14. Kim A. Case, *Beyond Diversity and Whiteness: Developing a Transformative and Intersectional Model of Privilege Studies Pedagogy*, in DECONSTRUCTING PRIVILEGE: TEACHING AND LEARNING AS ALLIES IN THE CLASSROOM, *supra* note 8, at 1, 4.

teach in a way that challenges the power differential between professors and students and fosters a horizontal teaching and learning community.

From an anti-subordination perspective, critical reflection on our pedagogical praxis has to be constant to avoid the peril of having students perceive our discourse as nothing more than empty words.¹⁵ Teaching anti-subordination perspectives through a pedagogical practice that is non-hierarchical and democratic is but one bridge that we as Outcrit scholars have yet to cross. It is the purpose of this article to help us to continue moving in that direction.

In particular, this paper discusses how traditional teaching practices can reinforce systemic discrimination, exclusion, subordination and oppression within the classroom. The paper traces the discussions about pedagogy in Outcrit literature and proposes that teaching techniques within the classroom have to reflect anti-subordination perspectives. Drawing from the critical pedagogy work of Paulo Freire, Derrick Bell and others, the paper proposes that teaching from an anti-subordination perspective requires praxis of collaborative, non-hierarchical teaching. This paper seeks to offer a theoretical basis to elaborate future practices that can help build a more democratic and inclusive classroom. In particular, I propose that we have to forgo authority as the basis of the teacher-student relationship. Forgoing authority means finding a new basis for the relationship: collaboration. This includes collaboration in the production of knowledge.

Part I of the article discusses the trajectory of the Langdellian method as the dominant pedagogy in U.S. law schools. Part II highlights the main standing critiques to the Langdellian method, in particular those related to the impact it has historically had on women and students of color. Part III surveys Outcrit positionality on pedagogy with particular emphasis on the work of Derrick Bell.

Part IV argues that Outcrit positionality on pedagogy should engage in an epistemological change: thus, not assuming that the professor is all-knowing and should occupy center stage in the classroom. I propose that teaching should be engaged to form praxis of collaboration that frees the student to think independently and leads to an experience where there is a non-oppressive dialectic relationship between students and professors.

15. *Id.*

I. CLASSROOM PEDAGOGY IN U.S. LAW SCHOOLS

*Professors assume the role as the repository of knowledge, which is often withheld and strategically and titillatingly revealed.*¹⁶

The mainstream pedagogy still prevalent in most law school classrooms, or the “imperial tradition,” as aptly described by Margaret E. Montoya and Francisco Valdes, “is as old as the establishment of formal legal education in the United States.”¹⁷ The use of the phrase “imperial tradition” to describe the prevalent law school pedagogy is consistent with the contemporary conversation regarding the nature of the U.S. academy as an “Imperial University.”¹⁸ In particular, Piya Chatterjee and Sunaina Maira contend that: “[a]s in all imperial and colonial nations, intellectuals and scholarship play an important role—directly or indirectly, willingly or unwittingly—in legitimizing American exceptionalism and rationalizing U.S. expansionism and repression, domestically and globally.”¹⁹

Another salient characteristic of legal education in the United States, which is consistent with the imperial tradition, is that, like higher education as a whole, it has increasingly become a commodity to be sold in a competitive market by universities to their “customers,” who are for the most part heavily indebted students.²⁰ Many commodification scholars note that quite often “those whom commodification objectifies become entrenched as society’s subordinated class.”²¹ Conversely, because “market relations reflect, create, and reinforce social relations, . . . those who control the terms

16. Robert S. Chang & Adrienne D. Davis, *Making Up is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1, 3–4 (2010). Chang and Davis further stress that “[a]uthority and classroom command become crucial in this mode of conveying knowledge. Students often dread being called on or participating, experiencing classroom exchanges as humiliating exercises in which success is futile.” *Id.* at 4.

17. Margaret E. Montoya & Francisco Valdes, “Latinas/os” and the Politics of Knowledge Production: *LatCrit Scholarship and Academic Activism as Social Justice Action*, 83 IND. L.J. 1197, 1209 (2008).

18. Piya Chatterjee & Sunaina Maira, *The Imperial University: Race, War and the Nation-State*, in THE IMPERIAL UNIVERSITY: ACADEMIC REPRESSION AND SCHOLARLY DISSENT 1, 6 (Piya Chatterjee & Sunaina Maira eds., 2014).

19. *Id.* at 6–7. Chatterjee & Maira add that, “U.S. imperialism is characterized by deterritorialized, flexible, and covert practices of subjugation and violence and as such does not resemble historical forms of European colonialism that depended on territorial colonialism.” *Id.* at 7. For them, the academy’s role in support of state politics is crucial, particularly because it is a liberal institution that legitimizes the imperial agenda via humanitarian and culture wars. *Id.*

20. George Caffentzis, A Russell Scholar Lecture: A Critique of Commodified Education and Knowledge (From Africa to Maine) 1 (Feb. 12, 2008), available at http://www.commoner.org.uk/wp-content/uploads/2008/04/caffentzis_critiqueeducation.pdf.

21. Margaret Jane Radin & Madhavi Sunder, *The Subject and Object of Commodification*, in RETHINKING COMMODIFICATION: CASES AND READINGS IN LAW AND CULTURE 8 (Martha M. Ertman & Joan C. Williams eds., 2005).

of commodification secure their position in society's ruling class."²² "Although many young lawyers enter law school with rather vague ambitions to serve justice, the combination of their educational loan debts and the temptation to earn far higher salaries serving commercial interests tends to steer their careers away from public service."²³ Law school faculties do not escape from participation in this process of commodification and enjoy a position of privilege that situates them generally closer to university management.²⁴ However, law school faculties' position of privilege is also increasingly proletarianized.²⁵ This means that law school faculties serve a function within the scheme of capitalist accumulation of the academic industry. As such, mainstream pedagogical practices in academic institutions in the United States—law schools included—cannot be viewed as neutral but as part of the role assigned to educational institutions in the preservation of imperial privilege in the neoliberal economy. For example, law schools have played an important role in the export of the American legal system into the imperial conquest of the nineteenth century, the post-World War II occupied nations, and most recently in the United States' "nation building" efforts.²⁶

A. Dominant Pedagogy in U.S. Law Schools: Short Journey, Long Reign

One style of pedagogy has dominated law school teaching in the United States with only periodic yet important changes since 1875, when Christopher Columbus Langdell introduced it to Harvard Law School.²⁷ "Under the influence of Langdellian formalism and scientism," this prevalent pedagogy in law school is dependent "on legal doctrine as woven by appellate judges."²⁸ It is largely predicated in the use of the "case method" or "Lang-

22. *Id.*

23. Nick Smith, *Commodification in Law: Ideologies, Intractabilities, and Hyperboles*, 42 CONTINENTAL PHIL. REV. 1, § 2.14 (2009).

24. WESLEY SHUMAR, COLLEGE FOR SALE: A CRITIQUE OF THE COMMODIFICATION OF HIGHER EDUCATION 115 (Routledge Falmer 1997).

25. *Id.* at 63.

26. See JAMES A. GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA 18–19 (1980); Rosa Ehrenreich Brooks, *The New Imperialism: Violence, Norms, and the "Rule of Law"*, 101 MICH. L. REV. 2275, 2279–87 (2003); Ugo Mattei, *A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance*, 10 IND. J. GLOBAL LEGAL STUD. 383, 393–94 (2003).

27. See C.C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS v–vii (Boston, Little, Brown & Co. 1871).

28. Montoya & Valdes, *supra* note 17, at 1209.

dellian method” to teach students to think like lawyers.²⁹ In Langdell’s own words:

Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees . . . in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering doctrine effectually is by studying the cases in which it is embodied.³⁰

Some scholars have often erroneously referred to this method as the Socratic method.³¹ The designation of the Langdellian method of instruction as the Socratic method has been criticized as a mischaracterization of the true nature of Socratic dialogue.³² The case method as conceived by Langdell involves a teacher asking a series of questions, usually to a single student, in an attempt to lead the student “down a chain of reasoning either forward, to its conclusions or backward to its assumptions.”³³ Professor Neumann, in his thought provoking article, “A Preliminary Inquiry into the Art of Critique,”³⁴ masterfully deconstructs the way the Langdellian method as it is currently used in law school is in fact Protagorean as it coincides with the techniques of Protagoras, Socrates’ rival.³⁵ In particular, Neumann highlights that it was Protagoras who taught students how to develop equally plausible arguments for and against a given proposition.³⁶ For Neumann the wide use of the Langdellian Method has had the “unfortunate effect of inhibiting law school teachers from developing a more truly Socratic method of critique, one that can better teach analytical art to individual students while avoiding the hazards of the Langedellian technique.”³⁷ Neumann explains that the most important element of a true Socratic method is left out of the Langdellian method: where students have the opportunity to engage in knowledge production.³⁸

29. LANGDELL, *supra* note 27, at vi.

30. *Id.*

31. Richard K. Neumann Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725, 729 (1989).

32. *Id.*

33. Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method*, 45 STAN. L. REV. 1571, 1573 (1993).

34. Neumann, *supra* note 31, at 728–29.

35. *Id.*

36. *Id.* at 729.

37. *Id.* at 730.

38. *See id.* at 732. Neumann explains,

Langdell introduced new law school pedagogy to a young academic field. At that time, law as an academic field borrowed from the prevalent European model of that era and stressed a general education with an academic emphasis on law subjects.³⁹ Law was taught much like history or economics, and the study of law focused on legal doctrine and theory.⁴⁰ Langdell introduced the instruction of students in legal doctrine through the study of written judicial opinions.⁴¹ Up to this point, the method of legal instruction in law schools was a combination of the lecture method and the text method, meaning students read texts that related and summarized particular bodies of law, and professors lectured on that material in class.⁴²

Until that time, “[l]egal education in the United States was primarily achieved through apprenticeship training and self-study.”⁴³ The apprenticeship model was predicated on having a practitioner instruct the pupil both on issues regarding legal doctrine and lawyering-related skills.⁴⁴ The student-attorney would remain associated with the lawyer for the period required to become an adept lawyer. The student-attorney-in-training would also be expected to “engage in independent study, often copying portions of legal treatises and making extensive notes.”⁴⁵ “At the end of the eighteenth century, single lawyers or small groups of lawyers began to open proprietary law schools, and provided lectures to groups of students who sought to become lawyers.”⁴⁶

While the case method has been the subject of constant criticism and debate since its introduction in 1870, Langdell’s innovation is generally viewed as “the most significant event in the evolution of American legal

A true Socratic dialogue is divided in two parts: the *elenchus* and the *psychagogia*. In the *elenchus*, the teacher’s questions guide the student to an understanding of the nature and extent of his or her ignorance. . . . In the *psychagogia* (literally, the leading of a soul), the questions help the student construct the knowledge that the *elenchus* showed was lacking.

Id. at 730.

39. Charles R. McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 WASH. U. L. Q. 597, 637 (1981).

40. A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1974 (2012).

41. Rob Trousdale, *White Privilege and the Case-Dialogue Method*, 1 WM. MITCHELL L. RAZA J. 29 (2010).

42. Spencer, *supra* note 40, at 1973.

43. MARGARET MARTIN BARRY et al., PILNET, LEGAL EDUCATION “BEST PRACTICES” REPORT, UNITED STATES 1 (2010).

44. *Id.*

45. *Id.*

46. 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES 13–16 (Steve Sheppard ed., 1999); Charles R. McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 WASH. U. L. Q. 597, 606 (1981).

education.”⁴⁷ During its 100-year reign, the Langdellian method nonetheless has experienced changes. As Valdes and Montoya explain:

But this original version of this model—like all other versions under the other models—has been in constant flux, even as it has become entrenched in its near-hegemonic form. Thus, during the first half of the last century, “realists” who sought to elevate the importance of social reality in the understanding and crafting of legal rules challenged the early premises and purist Langdellian practices of the mainstream, or traditional, model. They succeeded, making empiricism part of the modern imperial tradition as practiced today.⁴⁸

Still, the legal education model as it stands today continues to create “dehumanized individuals” in order to “perpetuate and protect the economic stakes held by barons of global capitalism.”⁴⁹ It has remained the dominant pedagogy because it serves its purpose of producing law students ready for employment in the ruling class’s service.⁵⁰

B. Standing Critiques to the Case Method

The case method in law school has not survived without critique. It has been under fire for a host of different reasons since the early years after its wide acceptance by law schools.⁵¹ A long line of articles and reports by scholars, foundations, and ABA special committees has consistently highlighted the need for pedagogical diversification in law school.⁵² Most of the critiques regarding the exclusive use of the case method have gravitated

47. McManis, *supra* note 46, at 598.

48. Montoya & Valdes, *supra* note 17, at 1209.

49. Matambanadzo, *supra* note 11, at 91.

50. *Id.*

51. See Arthur D. Austin, *Is the Casebook Method Obsolete?*, 6 WM. & MARY L. REV. 157, 164–65 (1965); Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 32–35 (2000); A.V. Dicey, *The Teaching of English Law at Harvard*, 13 HARV. L. REV. 422, 429 (1900); Jerome Frank, *What Constitutes A Good Legal Education?*, 19 A.B.A. J. 723, 726 (1933); Jerome Frank, *Why Not A Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 913 (1933); Lon L. Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 J. LEGAL EDUC. 189, 193–95 (1948) (arguing that the current method of legal education is ineffective because it only focuses on one form of adjudication, the appellate decision, while neglecting all other forms of adjudication, as well as the entire legislative process); W. David Slawson, *Changing How We Teach: A Critique of the Case Method*, 74 S. CAL. L. REV. 343, 344–46 (2000); John H. Wigmore, *Nova Methodus Discendae Docendaeque Jurisprudentiae*, 30 HARV. L. REV. 812, 818–20 (1917).

52. See AMER. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal_education_and_professional_development_maccrate_report%29.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report%29.authcheckdam.pdf); AMER. BAR ASS’N, REPORT AND RECOMMENDATIONS: AMERICAN BAR ASSOCIATION TASK FORCE ON THE FUTURE OF LEGAL EDUCATION (Jan. 2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf; WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, SUMMARY: EDUCATING LAWYERS 5 (2007).

around its pedagogical deficiencies to in fact teach students to “think like a lawyer”⁵³ and its inability to produce students who are practice-ready.⁵⁴

In 2007, the Carnegie Foundation for the Advancement of Teaching published a comprehensive report about legal education.⁵⁵ The report highlighted one of the major limitations of legal education as being law schools’ reliance on the case method as the “one way of teaching.”⁵⁶ The report highlights the effectiveness of the method to rapidly socialize students into the standards of legal thinking.⁵⁷ However, the report also highlights that “thinking through the social consequences or ethical aspects of the conclusions remain outside the case-dialogue method.”⁵⁸ From an anti-subordination perspective, one of the most alarming conclusions of the report is that since the first-year “students are told to set aside their desire for justice.”⁵⁹ Students are expected to think like a lawyer and conform, rendering students to abandon the aspiration of justice that might have propelled them to go to law school.⁶⁰

The 2007 publication of the book *Best Practices for Legal Education: A Vision and a Road Map* represented another critical step in the quest for requiring law professors to diversify their pedagogies and to include multiple methods of instruction that incorporate practical experience and reduces the reliance on the Socratic dialogue.⁶¹ *Best Practices*, sponsored by the Clinical Legal Education Association (CLEA) and primarily authored by Professor Roy Stuckey of the University of South Carolina, recommended a series of steps for law schools to improve their programs of legal educa-

53. “While tradition and inertia have undoubtedly perpetuated the predominant teaching method in United States law school classrooms, its ultimate educational effectiveness is questionable.” Julie M. Spanbauer, *Using a Cultural Lens in the Law School Classroom to Stimulate Self-Assessment*, 48 GONZ. L. REV. 365, 374 (2013). “[T]he case method ‘attempt[s] too much’ for the time available and the capacity of the average student and . . . [t]o plunge a student into this chaos [of cases], with his powers untried and imperfect, and his knowledge of principles incomplete, to grope his way through it as best he may, and to triangulate from case to case, supposing that he is getting forward when he is only going astray, is not to educate him, but tends rather to make him proof against education.” W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1, 84 (1997) (quoting Edward J. Phelps, *The Methods of Legal Education*, 1 YALE L. J. 139, 141 (1892)).

54. See Spanbauer, *supra* note 53, at 369.

55. SULLIVAN ET AL., *supra* note 52.

56. *Id.* at 5.

57. *Id.*

58. *Id.* at 6; see also Heidi Boghosian, *The Amoralty of Legal Andragogy*, STANFORD AGORA, <http://agora.stanford.edu/agora/volume2/boghosian.shtml> (last visited Feb. 18, 2015) (Boghosian stresses the importance of teaching students the moral implications of the choices lawyers make).

59. See SULLIVAN ET AL., *supra* note 52, at 6.

60. See Boghosian, *supra* note 58.

61. ROY T. STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 77–116 (Clinical Legal Educ. Ass’n 2007).

tion in order to better prepare students for the practice of law.⁶² The premise of *Best Practices* is that U.S. law schools can and should do more to prepare students to become effective, ethical lawyers.⁶³

As A. Benjamin Spencer has recently argued, the ability of the case-dialogue method to transmit analytical skills effectively has never been demonstrated.⁶⁴ Elizabeth Mertz advanced this argument in her article, “The Language of Law School.”⁶⁵ There, she describes studies of teaching methods that fail to show any connection between the method used and the ability of students to engage in effective legal analysis.⁶⁶ Additionally, Spencer asserts that “the type of thinking promoted by the method is limited to certain kinds of legal analysis, neglecting some of the basic problem-solving skills that today’s practitioners need to develop solutions to their clients’ problem.”⁶⁷ In anticipation of students’ interactions with their clients’ problems, law students should be taught to be active problem solvers and not vicarious learners.⁶⁸

A growing number of scholars have also voiced their concern regarding the impact that the use of the case method has had in silencing and marginalizing women and students of color.⁶⁹ Although the case-dialogue method has been criticized and modified in many ways over the years, it retains its basic hold as the fundamental framework for teaching law students legal doctrine and analysis to this day.⁷⁰ Despite myriad changes in the legal profession and in our understanding of how people learn, the contemporary law school remains remarkably Langdellian in its design as a three-year process in which doctrinal legal knowledge and legal analytical abilities are transmitted to students mostly via a traditional or modified

62. *Id.*

63. *Id.*

64. Spencer, *supra* note 40, at 2029.

65. See Elizabeth Mertz, *The Language of Law School: Learning to ‘Think Like a Lawyer’*, 18 RESEARCHING L., Fall 2007, at 1–2.

66. *Id.*

67. Spencer, *supra* note 40, at 2029.

68. Shirley Lung, *The Problem Method: No Simple Solution*, 45 WILLAMETTE L. REV. 723, 732–33 (2009). “Vicarious learning refers to the process in which students learn principally by listening to other students engage in a one-on-one dialogue with the teacher.” *Id.* at 724–25.

69. LANI GUINIER, MICHELLE FINE & JANE BALIN, BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 49 (1997) (“The pedagogical structure of the first year—produces alienation and a gender-stratified hierarchy.”); ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER” 190, 202 (2007) (how the traditional law school pedagogy has disparate effects depending on students’ race and gender); Carol J. Buckner, *Realizing Grutter v. Bollinger’s “Compelling Educational Benefits of Diversity”—Transforming Aspirational Rhetoric into Experience*, 72 UMKC L. REV. 877, 911 (2004) (how cooperative teaching benefit students of color).

70. Spencer, *supra* note 40, at 2038.

case-dialogue approach, supplemented with optional or mandatory experiential learning components. It must be acknowledged, however, that most professors vary from a pure Langdellian method in their doctrinal courses, and that the method has virtually no place in experiential courses.⁷¹

Many professors have indeed “increasingly blended the Socratic method with other, less confrontational approaches, such as lectures, discussions, simulation exercises and problem-solving sessions”⁷² However, this has not changed the central power dynamic that surrounds the use of the case method: a hierarchical control of power and knowledge that mirrors society and marginalizes students in multiple levels. That is, the professor is the center of the discussion and the validator of the production of knowledge. The professor continues to control what is said, who is to say it, how it should be said and what is correctly said. Therefore, there is little space for a democratic educational experience—for teaching and learning simultaneously. I am not suggesting that the use of the case method as originally proposed or as later reimagined and reinvented is the single sole reason why legal education is inherently oppressive. It is oppressive because it perpetuates a power structure that privileges a white Anglo-Saxon-hetero perspective and dominance as to what is knowledge, truth and law under the mask of neutrality and reason.

II. HOW TRADITIONAL LAW SCHOOL PEDAGOGY HAS FAILED OUTSIDER GROUPS

*[in the context of a meeting to reinstate minority students] [T]he then Dean asked me, “What’s behind those dark, inscrutable eyes?”*⁷³

Traditional law school pedagogies have been inscribed with a false sheer of neutrality that has largely served to obscure the classist, gendered and racial practices it perpetuates. Its claim to neutrality can prevail only as long as the presence of what makes it oppressive is left un-addressed. To borrow a phrase from Sylvanna Falcon and others, this can be described as a “perverse historical blindness.”⁷⁴

As Margaret Montoya has pointed out, “The pedagogical techniques that are utilized in the law school classroom, which is designed architecton-

71. *Id.* at 2027.

72. Eric E. Johnson, *A Populist Manifesto for Learning the Law*, 60 J. LEGAL EDUC. 41, 44, 49 (2010); Amy R. Mashburn, *Can Xenophon Save the Socratic Method?*, 30 T. JEFFERSON L. REV. 597, 621 (2008).

73. Peggy A. Nagae, *Tribute to Derrick Bell*, 36 SEATTLE U. L. REV. i, xl (2012).

74. Sylvanna Falcon et al., *Teaching Outside Liberal-Imperial Discourse, in THE IMPERIAL UNIVERSITY: ACADEMIC REPRESSION AND SCHOLARLY DISSENT*, *supra* note 19, at 261, 268.

ically and epistemologically to be hierarchical, have been repeatedly shown to alienate and silence students, especially students of color and women from different backgrounds.”⁷⁵ She further contends that although women and students of color can use silence as a form of resistance, it is more often a form of “self-censoring, resulting in centripetal, or power centering effects.”⁷⁶

A. *Women and Students of Color*

The last forty years have seen an increasing amount of discussion from feminist legal scholars as to the alienating and discriminatory impact that law school policies and pedagogy has had on female law students and law professors alike.⁷⁷ As Catharine W. Hantzis stresses, sexism in the classroom mirrors and is as pervasive as sexism in society.⁷⁸ The present law school curriculum and pedagogy continues to follow a rationalist scientific model.⁷⁹ The rationalist operator of the scientific model is male, as are the characteristics associated with the case method: objectivity, reason, intellect and truth.⁸⁰ Because the knower is male so is the producer of the knowledge. It follows that the dominant style of law school teaching is an expression of the sexism that plagues law schools and represents a particular challenge to female students and teachers.⁸¹ Female students and teachers are marginalized from the substance and process associated with acquiring, producing, and imparting legal knowledge.

We should all know by now—not only from the theoretical work of feminist scholars but also from the social science based studies—that the traditional law school pedagogy has an adverse impact on female students, replicates white privilege-male models of knowledge and marginalizes women both in overt and indirect ways.⁸² Since at least 1970, studies re-

75. Montoya, *supra* note 11, at 299–300.

76. *Id.* at 300.

77. See Katharine T. Bartlett, *Feminist Legal Scholarship: A History Through the Lens of the California Law Review*, 100 CALIF. L. REV. 381, 427–29 (2012); Nancy Leong, *A Noteworthy Absence*, 59 J. LEGAL EDUC. 279, 288 (2009) (discussing the publishing disparity between male and female law students by analyzing quantitative data).

78. Catharine W. Hantzis, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155, 155 (1988). Until quite recently, women and female professors of color were even absent from the fictionalized pop culture of law school.

79. See Boghosian, *supra* note 58.

80. Susan H. Williams, *Feminist Legal Epistemology*, 8 BERKELEY WOMEN’S L. J. 63, 73 (1993).

81. Hantzis, *supra* note 78, at 155.

82. See generally BEYOND PORTIA: WOMEN, LAW AND LITERATURE IN THE UNITED STATES 327, 328 (Jacqueline St. Joan & Annette B. McElhiney eds., 1997); Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988); David D. Garner, *Socratic Misogyny?—Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 BYU L. REV. 1597; Melissa Harri-

garding women's experiences in law school in general and in the law school classroom in particular have established that "female law students report greater deficiencies in areas ranging from lower levels of class participation and confidence, to overall mental states and depression."⁸³ As Taunya Lovell Banks described it twenty-five years ago:

Although some positive changes have been made, most changes in the teaching of law have been based primarily on what "works" for male law students. Women if they benefit at all, are secondary beneficiaries. Their concerns go largely unaddressed. Despite the increasing number of women entering law school, men still view women, consciously or unconsciously, as abnormal, as strangers or outsiders.⁸⁴

Even though the demographics of law school have continued to change, the dominant white male nature of legal education has not.⁸⁵ As of today, forty-seven percent of all law students, law graduates and new law

son, *A Time of "Passionate Learning": Using Feminism, Law, and Literature to Create a Learning Community*, 60 TENN. L. REV. 393, 395 (1992); Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School"*, 38 J. LEGAL EDUC. 61 (1988).

83. Tanisha Makeba Bailey, *The Master's Tools: Deconstructing the Socratic Method and its Disparate Impact on Women Through the Prism of the Equal Protection Doctrine*, 3 MARGINS 125, 131 (2003).

84. Banks, *supra* note 82, at 138. This article by Taunya Lovell Banks discusses an empirical study done to assess gender bias in law school and how it silences female students. The study suggested that women are silent because the law school classroom environment and language tend to exclude women and make them feel inferior. The article also served as a forward to a complete issue in the *Journal of Legal Education* dedicated to women in law school. On feminist legal theory, see generally Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3 (1988); Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47 (1988); Menkel-Meadow, *supra* note 82. On gender issues related to the profession, see generally Elizabeth M. Schneider, *Task Force Reports on Women in the Courts: The Challenge for Legal Education*, 38 J. LEGAL EDUC. 87 (1988). On curriculum issues, see generally Mary Irene Coombs, *Crime in the Stacks, or A Tale of a Text: A Feminist Response to a Criminal Law Textbook*, 38 J. LEGAL EDUC. 117 (1988); Nancy S. Erickson, *Sex Bias in Law School Courses: Some Common Issues*, 38 J. LEGAL EDUC. 101 (1988); Ann Shalleck, *Report of the Women and the Law Project: Gender Bias and the Law School Curriculum*, 38 J. LEGAL EDUC. 97 (1988). On gender issues related to the classroom see generally Taunya Lovell Banks, *supra* note 82; Patricia A. Cain, *Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections*, 38 J. LEGAL EDUC. 165 (1988); Mary Jo Eyster, *Analysis of Sexism in Legal Practice: A Clinical Approach*, 38 J. LEGAL EDUC. 183 (1988); Catharine W. Hantzis, *supra* note 78; Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147 (1988).

85. For Marcela Rodriguez, it is because the teaching of law perpetuates and reinforces the law as a means of social control that institutionalizes and legitimizes a system based on the social subordination of women and gender-based hierarchies. She adds, however, that as in all constructs of knowledge and power, legal education also has significant potential to question and challenge the system and the daily reality for women in order to initiate and react to social changes. Marcela V. Rodriguez, *Pedagogy and Law: Ideas for Integrating Gender into Legal Education*, 7 AM. U. J. GENDER SOC. POL'Y & L. 267, 269-70 (1999).

students are women.⁸⁶ We have come a long way, yet female students are still “curiously imperceptible” and “outsiders.”⁸⁷

B. Traditional Law School Pedagogy Has Failed Students of Color

Traditional law school pedagogy has also had the effect of often silencing the voices of students of color and keeping them as outsiders.⁸⁸ This is both because of the style of the pedagogy and due to the absence of a diverse faculty that brings outsider perspectives.⁸⁹ As Suzanne Homer has described it:

Many students are alienated by a system that offers no support for those who perceive issues from a different perspective. Women and people of color find it difficult to spend three years as an outsider in a world created by and for the white male establishment. Within the permissible academic legal discourse many voices are obscured. These voices reflect a different experience and consciousness than the voice at the lectern, but they are not heard unless they suppress their native tongues.⁹⁰

The pervasive use of the case method pedagogy has also served to shroud legal analysis under the veil of racial-neutrality ever since. It effectively devalues the experiences of students of color.⁹¹

86. See AMER. BAR ASS'N, A CURRENT GLANCE AT WOMEN IN THE LAW, COMMISSION ON WOMEN IN THE PROFESSION (July 2014), available at http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_july2014.authcheckdam.pdf.

87. Banks, *supra* note 82; Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY J. GENDER L. & JUST. 1, 3, 44 (2013). It must be noted that according to the Ms. JD Project, women's membership on law reviews correlates strongly with the number of women graduating from law school. However, the number of students in the editor-in-chief position is disproportionately male. Moreover, women lost approximately five percentage points from the previous study in terms of the overall number of women EIC's from 33 percent to 28.5 percent in 2011-2012. Ms. JD, WOMEN ON LAW REVIEW: A GENDER DIVERSITY REPORT (2010), available at http://ms-jd.org/files/ms_jd_lr_8.23.2010.pdf.

88. See Montoya, *supra* note 11, at 269.

89. See Ian Haney-Lopez, *Community Ties, Race, and Faculty Hiring: The Case for Professors Who Don't Think White*, 1 RECONSTRUCTION 46, 51-53 (1993); see also Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7, 8 (1989).

90. Homer & Schwartz, *supra* note 87, at 2.

91. Jonathan Feingold & Doug Souza, *Measuring the Racial Unevenness of Law School*, 15 BERKELEY J. AFR.-AM. L. & POL'Y 71, 97 (2013). In particular Feingold and Souza argue that:

Presenting legal analysis as a race-neutral endeavor produces racial unevenness in the following way: allegedly race-neutral legal principles dictate what facts are relevant, sufficient or necessary to solve a particular legal problem. Due largely to the legacy of a White (i.e.,] race-normed) judiciary, facts about race and social context have been overwhelmingly marginalized to the category of irrelevant evidence. 'Objective' legal analysis provides little space for the invocation of race.

Id.

Bonita London, Geraldine Downey and Vanessa Anderson took upon themselves the task of documenting students' experiences during their first three weeks of law school, and then assessed their self-reported levels of engagement at the end of the first semester.⁹² The research showed that students of color and women reported—at statistically significant higher rates—feeling invisible, isolated, and alienated, and reported lower frequencies of volunteering in class and three times the experiences of social exclusion.⁹³ Tanisha Makeba Bailey has extensively documented the long list of reports and empirical studies that since the 1970s have concluded that traditional law school pedagogy has historically disfavored women and students of color.⁹⁴

By now there is sufficient anecdotal, empirical evidence and theoretical works regarding law school pedagogy as an oppressive practice that perpetuates subordination. Outcrit scholars know all of this and yet cling to traditional pedagogy themselves. I fear that because the voices of professors of color have also been silenced and forced to speak the language of the masters, we cling to authority within the classrooms to prove ourselves worthy using the masters' tools.⁹⁵ But Audre Lorde has always been right; the case method is not the masters' tool, it is the veil to mask subjugation to the status quo via the exercise of authority.⁹⁶ And authority is the ball that has been kept from professors of color and critical professors so it becomes the desired, the valued.⁹⁷ It is also contrary to principled anti-subordination.

92. Bonita London, Geraldine Downey & Vanessa Anderson, *Studying Institutional Engagement: Utilizing Social Psychology Research Methodologies to Study Law Student Engagement*, 30 HARV. J. L. & GENDER 389, 400 (2007).

93. *Id.* at 401.

94. Bailey, *supra* note 83, at 132–40; *see also* Sari Bashi & Maryana Iskander, *Why Legal Education is Failing Women*, 18 YALE J. L. & FEMINISM 389 (2006); Garner, *supra* note 82, at 1598; Homer & Schwartz, *supra* note 87, at 24–25; Alice D. Jacobs, *Women in Law School: Structural Constraint and Personal Choice in the Formation of Professional Identity*, 24 J. LEGAL EDUC. 462 (1972); Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 320–21 (2000).

95. This is consistent with Freire's concept of adhesion. In the initial stages of emancipation then, the colonized strive for the role of the colonial master:

The very structure of their thoughts has been conditioned by the contradictions of the concrete, existential situation by which they were shaped. Their ideal is to be men; but for them, to be men is to be oppressors. . . . At this level, their perception of themselves as opposites of the oppressor does not yet signify engagement in a struggle to overcome the contradiction; the one pole aspires not to liberation, but to identification with its opposite pole.

PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 45, 46 (Myra Bergman Ramos trans., 30th anniversary ed. 2000) (1970).

96. The law is essentially a paradigm of authoritarian discourse. It is one of the discursive pillars of social control in modern societies, "a power structure through which social and cultural meanings, images, and customs are formed, reflected upon, processed, and reinforced." Rodriguez, *supra* note 85, at 269.

97. Johnson, *supra* note 72, at 55–56.

III. OUTCRIT POSITIONALITY ON PEDAGOGY

*And, most important, learning to think like a lawyer need not and should not mean that you must stop thinking, acting, and feeling like a human being.*⁹⁸

*We are like slave masters of an earlier time, part of the problem.*⁹⁹

The overall goal of an Outcrit pedagogy is to develop a pedagogical strategy that accounts for the central role of racism in higher education, and works toward the elimination of race and racism as part of a larger goal of opposing or eliminating other forms of subordination such as gender, class, and sexual orientation in and out of the classroom.¹⁰⁰ But academia itself is a space of contradiction because it is a “racist, classist and patriarchal” institution that also offers spaces of contestation to teach critical classes on race, class, and gender or teach from a critical pedagogy perspective.¹⁰¹ It is indeed a challenge to turn classrooms into spaces for conversations regarding racism, sexism and homophobia, and how to challenge them.¹⁰²

Outcrit positionality, as a concept, strives to encompass a wide range of analyses predicated on diverse struggles for social justice that interconnect outsider subordinate groups in society.¹⁰³ Outcrit positionality is one of anti-subordination.¹⁰⁴ The principle of anti-subordination is premised on the assumption that society is a hetero-racial patriarchy.¹⁰⁵ As Ruth Colker points out, the problem with this hierarchy is that it denies those at the bottom of the hierarchy the possibility of the fullness of their humanity. The anti-subordination principle is a group-based perspective grounded in an understanding of the way certain groups have been historically treated unequally.¹⁰⁶

It is well settled among Outcrit scholars that the works of critical pedagogy scholars, such as Paulo Freire and Henry Giroux, largely inform

98. DERRICK BELL JR., *The Law Student as Slave*, in THE DERRICK BELL READER 278, 279 (Richard Delgado & Jean Stefancic eds., 2005) [hereinafter BELL, *Student as Slave*].

99. *Id.* at 281.

100. Daniel G. Solórzano & Tara J. Yosso, *Maintaining Social Justice Hopes Within Academic Realities: A Freirean Approach to Critical Race/LatCrit Pedagogy*, 78 DENV. U. L. REV. 595, 596 (2001).

101. Sylvanna Falcon et al., *supra* note 74, at 263.

102. *Id.* at 264.

103. Valdes, *Outsider Jurisprudence*, *supra* note 9, at 67.

104. *Id.* at 73.

105. Ruth Colker, *The Anti-Subordination Principle: Applications*, 3 WIS. WOMEN’S L. J. 59, 64 (1987).

106. *Id.*; see Valdes, *Outsider Scholars*, *supra* note 9, at 843 (2000).

Outcrit positionality on pedagogy.¹⁰⁷ Both Freire and Giroux have concerned themselves with an emancipatory view of education and advocate a more comprehensive and communitarian approach to pedagogy.¹⁰⁸ For Giroux, education is a technology of power, language, and practice that produces and legitimizes forms of moral and political regulation that constructs and offers human beings particular views of themselves and the world.¹⁰⁹ Freire challenged the oppressed—a category that, according to Mohsen al Attar & Vernon Tava, would include law students—“to recast themselves as the ‘subjects’ of a dialogical learning process.”¹¹⁰ This is a role opposite of the passive and submissive role expected of students as “objects” in a conventional (banking) legal education.¹¹¹

It is interesting to note that Outcrit scholars, when concerned with the incorporation of critical pedagogy to the law school curriculum, have largely occupied themselves with changing the substantive themes of law school. This includes the creation of additional courses on race, Latino culture, feminism, queer culture, indigenous culture, and human rights— inclusion of outside perspectives in the traditional courses taught in law schools. What has largely been absent in the discussion is how to teach in a way that represents the principles of critical pedagogy. The notable exception has been Derrick Bell.¹¹²

John Dewey asked one hundred years ago, “Why is it that, in spite of the fact that teaching by pouring in, learning by passive absorption, are universally condemned, that they are still so entrenched in practice?”¹¹³

107. See, e.g., Lawrence, *supra* note 11, at 2248; Matambanadzo, *supra* note 11, at 91; Montoya, *supra* note 11, at 882–83; SpearIt, *supra* note 11, at 469–70.

108. See generally Henry A. Giroux, *Critical Pedagogy and the Postmodern/Modern Divide: Towards a Pedagogy of Democratization*, TCHR. EDUC. Q., Winter 2004, at 31.

109. Margaret E. Montoya, Comment, *Voicing Differences*, 4 CLINICAL L. REV. 147, 161–62 n.49 (1997) (quoting HENRY A. GIROUX, *BORDER CROSSINGS: CULTURAL WORKERS AND THE POLITICS OF EDUCATION* 81 (Routledge Falmer 1992)).

110. Mohsen al Attar & Vernon Tava, *Twail Pedagogy—Legal Education for Emancipation*, 15 PALESTINE YEARBOOK INT’L L. 7, 32–33 (2009).

111. *Id.*

112. Derrick Bell, *Constitutional Conflicts: The Perils and Rewards of Pioneering in the Law School Classroom*, 21 SEATTLE U. L. REV. 1039, 1044–45 (1998) [hereinafter Bell, *Constitutional Conflicts*]. See generally BELL, *Student as Slave*, *supra* note 98, at 278; DERRICK BELL JR., *Victims as Heroes: A Minority Perspective on Constitutional Law*, in THE DERRICK BELL READER, *supra* note 98, at 290; Derrick Bell Jr., *A Pre-Memorial Message on Law School Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 205 (1997); Derrick A. Bell Jr., *Humanity in Legal Education*, 59 OR. L. REV. 243 (1980); Joy Radice, *Derrick Bell’s Community-Based Classroom*, 2 COLUM. J. RACE & L. (SPECIAL FEATURE) 44 (2012).

113. Kara M. Kavanagh, *A Dichotomy Examined: Beginning Teach for America Educators Navigate Culturally Relevant Teaching and a Scripted Literacy Program in their Urban Classrooms* (2010) (Ph.D. Dissertation, Georgia State Univ.) (quoting JOHN DEWEY, *DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION* 38 (1916)).

Derrick Bell understood this and his pedagogy represented a challenge to traditional law school pedagogy.¹¹⁴ His pedagogy was comprised of “equal parts intellectual rigor and humanity”¹¹⁵ It inspired not only learning among his students but also critical thinking about justice, and it further influenced a generation of law professors.¹¹⁶ Bell approached teaching from a place of anti-subordination and also a place of love.¹¹⁷

Bell developed specific pedagogical tools that would allow him to change the power dynamic within the classroom and also offer students different ways to engage in the process of teaching and learning. For example, in *Constitutional Conflicts: The Perils and Rewards of Pioneering in the Law School Classroom*,¹¹⁸ he proposed a participatory course where students assumed a variety of roles: teachers, commentators, lawyers, and judges.¹¹⁹ Bell incorporated critical pedagogy in his teaching by engaging in a participatory approach to teaching.¹²⁰ He aimed to place at the foreground the role of the student and intentionally decenter his role as leader of the discussion in the classroom.¹²¹ For Bell, “[t]he key is to replace a basically passive procedure . . . with one requiring active involvement.”¹²² This for Bell was his way—the student-teacher contradiction that Paulo Freire identified.¹²³ He aspired to a classroom experience where, as Freire proposed, “students become teachers and teachers become learners.”¹²⁴ This phrase has been repeated like a sort of mantra for decades to the point of risking losing its meaning; however, we can take back its powerful mission if we assume it from an anti-subordination perspective. As Andrea McArdle summarized it in her tribute to Derrick Bell:

114. Janet Dewart Bell, *Foreword: In Memory of Professor Derrick Bell*, 36 SEATTLE U. L. REV. iii (2013).

115. Charlotte Garden, *Bell Labs: Derrick Bell's Inspirational Pedagogy*, 36 SEATTLE U. L. REV. xx, xx (2013).

116. As Garden summarizes, “Over the course of his four decades in the Academy, Derrick Bell influenced an entire generation of advocates, starting a revolution in the way law is taught in America.” *Id.* at xxii.

117. Dewart Bell, *supra* note 114; *see also* Steve Bender, *Derrick Bell: Oregon Trailblazer*, 36 SEATTLE U. L. REV. ix (2013); Nagae, *supra* note 73, at ii.

118. Bell, *Constitutional Conflicts*, *supra* note 112, at 1043.

119. *Id.* at 1047–48; *see also* Andrea McArdle, “A Living, Working Faith”: Remembering Our Colleague Derrick Bell, Jr. as Teacher, 2 COLUM. J. RACE & L. (SPECIAL FEATURE) 30, 30–33 (2012).

120. Bell, *Constitutional Conflicts*, *supra* note 112, at 1047.

121. McArdle, *supra* note 119, at 31.

122. Bell, *Constitutional Conflicts*, *supra* note 112, at 1049.

123. *Id.* at 1039. Bell's article opens quoting Freire, “[e]ducation must begin with the solution of the teacher-student contradiction, by reconciling the poles of the contradiction so that both are simultaneously teachers and students.” FREIRE, *supra* note 95, at 59.

124. Bell, *Constitutional Conflicts*, *supra* note 112, at 1050.

Derrick's student-centered, participatory approach in the law school classroom has pointed the way to a pedagogical practice that ultimately offers more to, as it asks more of, law students. It is an approach that stretches and challenges us as teachers as well because it obliges us to confront our own authority in the classroom and surrender some control over student discourse. At the same time, it requires us to engage with a more extensive student work product. One way to remember and honor Derrick would be to consider taking up, or recommitting ourselves to, that challenge and his sense of purpose¹²⁵

If we understand that, to truly overcome subordination and oppression we must look at the production and sharing of knowledge from a collaborative perspective, a democratized view of knowledge, including the teaching and learning of law, must follow.

IV. OUTCRIT PEDAGOGY GOING FORWARD: A DIFFERENT KIND OF TEACHING

*There are two things, above all, that students want: that their professors challenge them and that they care about them.*¹²⁶

*Change-agency tends to be more productive and more secure when attempted collaboratively (safety in numbers) and planned well beforehand.*¹²⁷

A critical approach to traditional law school teaching as part of Outcrit positionality will promote moving from outsider jurisprudence to an outsider critical pedagogy that will embrace a new epistemology of law. I propose, in the spirit of Ira Shor, a progressive teaching practice that includes students in the making of their education, in the production of knowledge about law, and in the critical analysis of justice.¹²⁸ This involves teaching in a collaborative way, promoting democracy in the classroom, pedagogy of caring evidenced by feedback and attention to students, and respect for voices and silences and multiple identities and cultures.

Even though it is an old saying that the best way to learn something is to teach it, many of us hesitate to teach collaboratively with students and to share the authority that being the teacher confers.¹²⁹ I propose that we have

125. McArdle, *supra* note 119, at 33.

126. William Deresiewicz, *Spirit Guides*, SLATE (Aug. 14, 2014, 2:20 PM), http://www.slate.com/articles/life/education/2014/08/the_best_teachers_and_professors_resemble_parental_figures_they_provide.html.

127. IRA SHOR, *WHEN STUDENTS HAVE POWER: NEGOTIATING AUTHORITY IN A CRITICAL PEDAGOGY* 211 (1996).

128. *Id.* at xi.

129. *Id.* at 199.

to forgo authority as the basis of the teacher-student relationship. The reliance on authority perpetuates exclusion. Forgoing authority means finding a new basis for the relationship: collaboration. This includes collaboration in the production of knowledge.

A. Progressive Epistemology

Any pedagogical change has to be preceded by a change in epistemology, an epistemological shift, a more humble law, drawing from the work of critical epistemology scholars. A new epistemology should recognize that “the notion of knowledge has changed radically in recent times and is now seen as social and contextual, at least in most social sciences and in the humanities.”¹³⁰ Students can often be the catalyst for a professor to explore diverse standpoints.¹³¹ They also learn better when they are the proponents of meaning.¹³² This requires a deliberate effort because teaching dynamics are very difficult to alter inasmuch as “the hierarchical effects are so pervasive after just a few weeks of law school,” making it very difficult “to move out of a ‘banking’ method of teaching and to create a more egalitarian learning environment.”¹³³

Outsider jurisprudence has already achieved an epistemological shift within legal academia by expanding the traditional boundaries of legal scholarship and law school curriculum, as well as including outsider perspectives in the discussion of substantive law courses. A further shift in pedagogical praxis is warranted, a shift that entails a new perspective on the production of knowledge in law school, in the nature of knowledge *about* law.¹³⁴ This means a perspective that also recognizes the students as producers of knowledge and empowers them to explore further. In general, Lisa M. Landreman asserts that critical educators have not provided for alternative approaches to the organization of schools, curricula, pedagogy,

130. Åsa GUNNARSSON, EVA-MARIA SVENSSON & MARGARET DAVIES, *EXPLOITING THE LIMITS OF LAW: SWEDISH FEMINISM AND THE CHALLENGE TO PESSIMISM 1–15* (Åsa Gunnarsson ed., Ashgate 2007).

131. See, e.g., Bell & Edmonds, *supra* note 11, at 26–27; Falcon et al., *supra* note 74, at 269.

132. MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 7* (2009) (“Students engage in crucial mental activity when they negotiate meaning and seek to synthesize their personal understandings. The hundreds of studies demonstrating the superiority of cooperative learning groups compared to all other teaching methods support this assertion.”).

133. Montoya, *supra* note 11, at 305.

134. GUNNARSSON, SVENSSON & DAVIES, *supra* note 130.

social relations, or day-to-day practice.¹³⁵ This is an attempt to address the lack of alternative approaches.

B. A Different Role for the Teacher

To be a good facilitator for social justice, educators have to move beyond the mere understanding of the theory of oppression and social justice education.¹³⁶ As Landreman has expertly explained, “Social justice education requires awareness of content and process, and an ability to simultaneously participate in the process and step outside of it to assess and mediate interactions in the group.”¹³⁷

The professor should be a facilitator of learning, a guide and an ally, not the repository of knowledge. To be good guides for this learning journey we must liberate ourselves of the constraints of traditional pedagogy. Being a good guide includes arranging the physical space in a way that minimizes distances and hierarchy, designing developmentally appropriate training, and working with students to create opportunities to reflect on their salient learning experiences.¹³⁸ A good guide also helps students explore who they are and what matters to them and provides opportunities to practice their new learning in the process.¹³⁹

In their article on facilitating social justice learning, Vicente M. Lechuga and others identified three key components facilitators should remember to address. First, facilitators should provide pre-activity reflection and discussion about the social justice issue being addressed. They should engage in an activity that allows participants to apply their experiences and previous knowledge to current events or familiar acts of social injustice (i.e., allow them to engage in reflective action). Finally, they should evaluate the outcomes of their actions to determine if any other actions should follow, and allow for introspection on the experience.¹⁴⁰

These recommendations can be seen at work in the way Derrick Bell organized his classroom. It encouraged interdisciplinary conversations by

135. See Lisa M. Landreman & Christopher MacDonald-Dennis, *The Evolution of Social Justice Education and Facilitation*, in *THE ART OF EFFECTIVE FACILITATION: REFLECTIONS FROM SOCIAL JUSTICE EDUCATORS* 3, 9, 14–15 (Lisa M. Landreman ed., Stylus 2013).

136. *Id.* at 15.

137. Pat Griffin & Mathew L. Ouellett, *Facilitating Social Justice Education Courses*, in *TEACHING FOR DIVERSITY AND SOCIAL JUSTICE: A SOURCEBOOK* 89, 90 (Maurianne Adams et al. eds., 1997).

138. Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 *J. LEGAL EDUC.* 247, 259 (1993).

139. See Landreman & MacDonald-Dennis, *supra* note 135, at 9–10.

140. Vicente M. Lechuga et al., *Power, Privilege, and Learning: Facilitating Encountered Situations to Promote Social Justice*, 50 *J. C. STUDENT DEV.* 229, 237–38 (2009).

students, created a relaxed learning environment, cemented personal interactions among students and between students and the professor, and delivered detailed feedback to students regarding the progress of their work.¹⁴¹

As an ally in the classroom, the professor strives to aid the learning of both privileged and marginalized students alike. Drawing on the work of other critical pedagogues of privilege, Kim A. Case has defined the role of the ally as follows: “A dominant group member who works to end oppression in his or her personal or professional life through support of and as an advocate with and for, the oppressed population.”¹⁴²

Furthermore, for Case, “[b]ecoming an ally in the classroom requires not only attention to social location and intersections of identity, but also to pedagogical strategies to promote student engagement” through learning in a way that connections are made between oppression and students’ life experiences.¹⁴³ To be able to achieve these connections, professors need to *care*.¹⁴⁴ Caring includes a concern for law students beyond the pure academic focus; it requires being mindful of the social and cultural factors that also impact students.¹⁴⁵ This often requires a deliberate exercise from the teacher, but not a tremendous amount of effort:

Non-verbal information, such as maintaining eye contact, smiling, facial expressions and arm gestures are particularly important. In fact, it has been found that these behavioural subtleties, throughout a term of study, contribute more to the classroom atmosphere than significant structural changes at the beginning of a term. Learning students’ names, arriving at class early so as to engage in some informal time with students, and the manner of classroom leadership and control are simple methods of creating an optimal learning environment for students without in any way

141. Radice, *supra* note 112, at 46; Vinay Harpalani, *From Roach Power to Radical Humanism: Professor Derrick Bell’s “Critical” Constitutional Pedagogy*, 36 SEATTLE U. L. REV. xxiii (2013).

142. Case, *supra* note 14, at 2; see also Sandra L. Neumann, *The “Why’s” and “How’s” of Being a Social Justice Ally*, in GETTING CULTURE: INCORPORATING DIVERSITY ACROSS THE CURRICULUM 65–75 (Regan A. R. Gurung & Loreto R. Prieto eds., 2009).

143. Case, *supra* note 14, at 9. In the context of teaching about privilege, Case has proposed a model of privilege studies pedagogy that cuts through different subject matters and:

[1] analyzes privilege and power in teaching about privilege . . . [2] emphasizes the definition of privilege . . . [3] focuses on the invisibility of privilege . . . [4] teaches privilege across a wide variety of oppressions . . . [5] frames learning about privilege through an intersectional theory perspective . . . [6] involves educator personal reflection on privilege . . . [7] encourages critical analysis through student reflection and writing about their own privileged identities . . . [8] promotes social action to dismantle privilege . . . [9] values the voice of the marginalized and oppressed . . . and [10] infuses learning about privilege across the curriculum . . .

Id. at 4.

144. A caring pedagogy necessarily involves a more expansive notion of education. Roberto L. Corrada, *Toward an Ethic of Teaching: Class, Race and the Promise of Community Engagement*, 50 VILL. L. REV. 837, 839 (2005).

145. Nelson E. Soto, *Caring and Relationships: Developing a Pedagogy of Caring*, 50 VILL. L. REV. 859, 861 (2005).

compromising the content and rigour of the class. That is, the teacher's attitude, enthusiasm and passion are main ingredients of an effective teaching and learning environment.¹⁴⁶

For Nikki Bromberger, these techniques are particularly important if the professor is using a version of the case method to conduct class:

This teaching method can be stressful for students, as it creates pressure to look intelligent in front of classmates and gives rise to fear of humiliation when students are unable to respond to the lecturer's questions. For many students, a traditional Socratic classroom becomes a forum for students to judge one another, rather than one focused on learning.¹⁴⁷

Professors could set as a class objective the creation of a space for dialogue from different points of view.¹⁴⁸ If the professor is to be a facilitator in a collaborative venture towards knowledge, the professor has to be available to the students because learning is not confined to the classroom. It also entails providing constant feedback and listening to students' points of view.¹⁴⁹ Listening to the students' points of view also includes creating spaces for students to voice their perspectives regarding pedagogy. An alternative is the creation of Student Advisory Teams¹⁵⁰ or Student Advisory Groups¹⁵¹ where students choose representatives to periodically meet with the professor regarding the effectiveness of teaching.¹⁵² In these periodic meetings, students provide constructive criticism of teaching, teachers counter criticisms and explain methods, and students gain a sense of ownership in the classroom.¹⁵³

C. From Authority to Collaboration

We need to supplant authority as the basis for the relationship between professors and students. I propose a shift from authority to collaboration as partners in the classroom.¹⁵⁴ Authority is defined by the professor's right to

146. Nikki Bromberger, *Enhancing Law Student Learning—The Nurturing Teacher*, 1 L. EDUC. REV. 45, 53 (2010) (internal quotation marks omitted).

147. *Id.* at 53–54.

148. Montoya, *supra* note 11, at 298.

149. Derrick Bell has been praised by progressive and conservative students alike for his ability to listen and to provide extensive feedback to students. Harpalani, *supra* note 141.

150. Gerald F. Hess, *Student Involvement in Improving Law Teaching and Learning*, 67 UMKC L. REV. 343, 343 (1998).

151. *See generally* SHOR, *supra* note 127.

152. *See* Eric W. Orts, *Quality Circles in Law Teaching*, 47 J. LEGAL EDUC. 425, 431 (1997).

153. *See id.*

154. *See generally* Hess, *supra* note 150, at 343–66.

command and the students' duty to obey.¹⁵⁵ It is a social construction that can be negotiated by students and professors and is shaped by a multiplicity of factors.¹⁵⁶ We can transform authority into collaboration by negotiation and consent by making students more in control of their educational process.

Collaboration in the classroom means learning together to achieve shared learning goals. "Collaborative learning occurs when students and faculty work together to create knowledge."¹⁵⁷ So the first step in the process is to establish shared objectives, which means that the semester initiates with the professor proposing a syllabus and teaching methods and negotiating with students. Once the learning objectives are agreed upon, the co-laboring and cooperation part begins and meaningful learning happens.¹⁵⁸ Here the role of the professor is less like a traditional expert and more akin to a peer.¹⁵⁹ The characteristics of a collaborative classroom can be summarized as follows: shared knowledge among teachers and students, shared authority among teachers and students, teachers as mediators, and accommodation of multiple identities.¹⁶⁰

In a collaborative learning classroom, the teacher as facilitator indirectly structures the conversation and proposes learning tasks.¹⁶¹ Collaborative learning has been explored successfully, albeit in limited fashion, in law school. Clifford S. Zimmerman has written extensively on using collaborative learning in law school, particularly in legal writing courses.¹⁶² Collaborative teaching has been a standard practice in clinical teaching for decades. Collaborative learning benefits the individual student, the class, and the institution.¹⁶³ Through this type of leaning, students have been found to develop better community interaction and gain mastery of the

155. Judith L. Pace & Annette Hemmings, *Understanding Authority in Classrooms: A Review of Theory, Ideology, and Research*, 77 REV. EDUC. RES. 4, 6 (2007).

156. *Id.* at 5.

157. Roberta S. Matthews, *Collaborative Learning: Creating Knowledge with Students*, in TEACHING ON SOLID GROUND: USING SCHOLARSHIP TO IMPROVE PRACTICE 101 (Robert J. Menges et al. eds., 1st ed. 1996).

158. *Id.* at 112–13.

159. *Id.* at 107.

160. M.B. Tinzmann et al., *What is the Collaborative Classroom?*, N. CENT. REGIONAL EDUC. LABORATORY (1990), available at <http://methodenpool.uni-koeln.de/koopunterricht/The%20Collaborative%20Classroom.htm>.

161. Clifford S. Zimmerman, "Thinking Beyond My Own Interpretation:" *Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 997 (1999).

162. *Id.* See also Lawrence, *supra* note 11, at 2243–46 on using collaborative teaching in civil rights courses.

163. Zimmermann, *supra* note 161, at 1000.

subject and a more positive feeling about their studies.¹⁶⁴ This last benefit is in stark contrast with students' views of the case method. Unfortunately, even some Outcrit scholars are hesitant to trust the students as peers and collaborators in learning. For example, some have justified the need to preserve "cold calling, seating charts, and Socratic dialogue among other signs of authority"¹⁶⁵ due to "unprofessional students."¹⁶⁶ Possible lack of preparation by students is a problem present across methodologies and less present in more authoritarian classrooms.¹⁶⁷ Collaborative learning research has shown that students are more comfortable, engaged, and satisfied in a collaborative learning environment.¹⁶⁸ Students also learn better in a safer space.

D. Diversification

Using diverse methods of teaching allows for different student voices to be heard. There is a wide array of teaching methods that can be used to diversify teaching beyond the case method. Examples include the problem solving method, simulation and role-play, co-teaching with practitioners, and dividing the group into law firms.¹⁶⁹ Students can be tasked with presenting themes in class as well as proponents of class materials and subjects to be discussed, and professors can integrate video and interactive teaching tools that will allow students to anonymously vote and comment in real time.¹⁷⁰

E. What We Can Save of the Current Teaching Model

Within a diversified collaborative classroom there is also space for a pedagogy of questions. This is a practice proposed by Freire, which "forces and challenges the learners to think creatively and critically, and to adopt a critical attitude towards the world."¹⁷¹ On the contrary, Freire strongly objected to the pedagogy of answers whereby teachers provide answers and solutions to learners, reducing learners to "mere receptacles for prepack-

164. *Id.* at 999.

165. SpearIt, *supra* note 11, at 468.

166. *Id.*

167. Zimmerman, *supra* note 161, at 1001.

168. Matthews, *supra* note 157, at 118.

169. See generally James Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389 (1997); Lawrence, *supra* note 11, at 2244 (discussing role-playing as a pedagogical technique).

170. Matthews, *supra* note 157, at 108–09.

171. Muhammad Kamarul Kabilan, *Creative and Critical Thinking in Language Classrooms*, 6 INTERNET TESL J. (2000), available at <http://iteslj.org/Techniques/Kabilan-CriticalThinking.html>.

aged knowledge.”¹⁷² Freire felt that this pedagogy lacks profundity of thought and cannot stimulate and challenge learners to question, to doubt, and to reject.¹⁷³ Furthermore, this practice of “feeding” the learners robs them of the opportunity to take responsibility for their actions and behaviors.¹⁷⁴ Freire stressed that educators in general forget the fundamental questions that stimulate the answers. He encouraged and focused on questions rather than on answers. According to Freire, teachers are sometimes afraid of questions because they are unsure of the answers and also because maybe the questions might not correspond to the answers that they have. They feel much more secure to talk about the answers they already have.¹⁷⁵

Feminist scholar Judith Fischer has expanded on the work of other feminists and has proposed what she has called the Portia Method, a pedagogy that is more supportive and rejects the notion that a nurturing environment is not a rigorous learning environment.¹⁷⁶ This method includes tempering the excesses of the case method, using diversified teaching tools, distributing more handouts, building better relationships among students and faculty, and hiring more diverse faculty. Law schools that have followed this approach, such as Chapman Law School, have significantly improved women’s law school experiences.

There is space for a *pedagogy of the question*, but for it to be effective it should be used within the context of what Gerald F. Hess has called the eight components of an optimal law school classroom environment: “respect, high expectations, support, collaboration, inclusion, engagement, delight and feedback.”¹⁷⁷

CONCLUSION

More than sixty-five years ago W.E.B. DuBois said that of all the freedoms of which we can think, the freedom to learn is in the long run the most necessary.¹⁷⁸ It stands to reason then that the process of learning itself

172. Neal Bruss & Donald P. Macedo, *Toward a Pedagogy of the Question: Conversations with Paulo Freire*, 167 J. EDUC. 7, 8 (1985).

173. *Id.* at 7–21 (1985).

174. Arthur L. Costa & Robert Marzano, *Teaching the Language of Thinking*, 45 EDUC. LEADERSHIP 29, 30–31 (1987).

175. Bruss & Macedo, *supra* note 172.

176. Judith D. Fischer, *Portia Unbound: The Effects of a Supportive Law School Environment on Women and Minority Students*, 7 UCLA WOMEN’S L.J. 81, 89–90 (1996); *see also* Bailey, *supra* note 83, at 145. This builds on the “ethic of care” proposed by Menkel-Meadow, *supra* note 82, at 78.

177. Gerald F. Hess, *Heads and Hearts: the Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 76 (2002).

178. W.E.B. DU BOIS, W.E.B. DU BOIS SPEAKS: SPEECHES AND ADDRESSES 1920–1963, 256 (Philip S. Phoner ed., 1971).

has to be a liberating one for it to be truly free. Derrick Bell has reminded us that law schools should be “place[s] where things are tried.”¹⁷⁹ He goes on to say that not all experiments succeed but we should be willing to take appropriate risks to achieve law schools that serve all in the future.¹⁸⁰ Attempting to shift power within the classroom is no small proposition, and it is often an unwelcome change both by students and colleagues.¹⁸¹

In the case of women and professors of color who already face a “presumption of incompetence,”¹⁸² they risk the presumption being confirmed in the eyes of students and colleagues by their alternative pedagogy. It represents a counter hegemonic change that might not be without consequence.¹⁸³ Professor Reginald Leamon Robinson details his experiences as a professor of color trying to teach outside the mainstream and how colleagues and students alike marginalized him. He explains that: “Due to Americans’ commitment to a white cultural matrix, white male professors have defined the parameters of good law teaching in a manner which reifies their values, morals, and standards, and which questions implicitly, and sometimes explicitly, the intellectual acumen of minority law professors.”¹⁸⁴

Challenging traditional pedagogy also implies an added risk to those of us that are yet to be tenured or operate outside the tenure stream.¹⁸⁵ But as we take risks, we also make the path easier for those yet to come, “so that it doesn’t hurt and tear and bruise the next person coming after us quite so much.”¹⁸⁶ “Courage is a decision you make to act in a way that works through your own fear for the greater good as opposed to pure self-interest. Courage means putting at risk your self-interest for what you believe is right.”¹⁸⁷

179. Bell, *Constitutional Conflicts*, *supra* note 112, at 244 (citing Eugene F. Scoles, *Challenge and Response in Legal Education*, 48 OR. L. REV. 129, 140 (1969)).

180. *Id.* at 243.

181. Chang & Davis, *supra* note 16, at 44; Lawrence, *supra* note 11, at 2254.

182. Sylvia R. Lazos, *Are Student Teaching Evaluations Holding Back Women and Minorities?: The Perils of “Doing” Gender and Race in the Classroom*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 164, 177–78 (Gabriella Gutiérrez y Muhs et al. eds., 2013).

183. Reginald Leamon Robinson, *Teaching from the Margins: Race as a Pedagogical Sub-Text*, 19 W. NEW ENG. L. REV. 151, 153 (1997).

184. *Id.* at 164.

185. Lazos, *supra* note 182, at 182.

186. Christine Zuni Cruz, *Toward a Pedagogy and Ethic of Law/Lawyering for Indigenous Peoples*, 82 N.D. L. REV. 863, 867 (2006).

187. Naga, *supra* note 73, at xli (quoting DERRICK BELL JR., ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH 40 (2002)).

As Outcrit scholars and professors, we are instructors of living an ethic of anti-subordination life, personally and professionally. To use Derrick Bell's words—" [c]lassrooms are vehicles to communicate not just the subject, but self."¹⁸⁸

188. Natasha Martin, *Derrick Bell: Ethical Ambition and Law Teaching*, 36 SEATTLE U. L. REV. xxxii, xxxii (2013).

