

Jeannie Suk Gersen was awarded a Barry Prize for Distinguished Intellectual Achievement in 2024. In [this video](#), Mary Ann Glendon of Harvard University interviews Dr. Gersen about how handling difficult and controversial subjects with courage is necessary to advance knowledge in the disciplines and to prepare students well not only for their work, but for a good life and good citizenship.

Mary Ann Glendon, Harvard University

Jeannie Suk Gersen, you are a professor of law at Harvard Law School, where I taught until five years ago and very much enjoyed having you as a colleague. Thank you for agreeing to do this interview for the Barry Prize. I'm a member of the board of the Barry Prize Committee.

I'd like to start with a question about the relationship between what you teach and what you write. You are listed in the *Harvard Law Directory* as a specialist in criminal law and family law. But I know, and many of the people who will be watching this know, that you are also a generalist in the very best sense of the word. You write on current affairs in specialized law journals, but also for a broad audience. You write about art and literature, as well as about your subjects.

I'd like to focus here, at least at the beginning, on your two specialties, criminal law and family law. I'd like to ask where you think, with the state of work in those two areas right now, they are contributing the most to human flourishing, to better life, to the health of the polity?

Jeannie Suk Gersen, Harvard University

When I started in my academic life, I was just coming out of practice as a prosecutor. In my practice, I saw a lot of domestic violence cases and child abuse cases, which I felt I had a good feeling for. I knew how those cases worked in criminal courts. Of course, that's an area where you see an intersection between criminal law and family matters. Sometimes, the involvement of Child Protective Services can be in play. Sometimes, people are getting a divorce and also entering the criminal system with criminal arrests and domestic violence charges. So, this meeting up of the two fields really interested me, because prosecutors have a certain way of thinking and family law experts have a different way of thinking. But so many things that happen in the real court system aren't vacuum sealed into specific fields. That practice experience really has informed my approach to teaching and to doing academic work. It's never about one doctrine, about one line of cases or one line of one field within a line. It's always about looking at the intersections of the field with other kinds of fields. That's the approach I've taken.

You alluded to the fact that I don't just write about criminal law and family law. In fact, I write about whatever seems to me to be urgent to write about at the moment. Sometimes, it's what's in the news. Sometimes, those are Supreme Court cases in any number of fields, including constitutional law and intellectual property and whatever else is going on. Breeding that sense into all of us as lawyers, we are generalists at the end of the day, much more so than other people in a university. Even though we may specialize, we need to figure out ways in which those fields may have an impact on other fields and other fields may have an impact on that field because that will only make us understand things better, whether we're representing a client or trying to shed light on what's going on. That's been my approach in general, to look beyond the immediate thing that's in front of you, and that will help you understand better what it is you're dealing with.

Glendon

One of the many things I admire about you is that you don't step away from controversial subjects. The other thing that I really like because I feel such a kinship with you on this point is that you go the last mile in getting your ideas out to the public. Many law professors stick with academic journals. And yes, our mothers do read them and are happy. But if you have an idea and you think it's important, you really do have to step outside the discipline. That's where you rightly say we have to be generalists. We have to get it out there if we want to make a difference with it.

So, one more question about what's happening in your two fields of academic specialization. I have to ask this because Barry, as you know, is interested in excellence. Where do you see the challenges for intellectual excellence in criminal law and family law?

Gersen

There's excellence in the sense of teaching in those fields and excellence in the sense of writing or doing scholarship in those fields. On the teaching front, there are distinct challenges with both of those fields, more so than with other core subjects in a law school. I joined academia in 2006, so I've been around for almost 20 years. The teaching environment for criminal law has changed very much. I'm sure that's true more generally as well. But it's been much more pronounced and noticeable in criminal law. When I was starting out teaching criminal law, the field had already started to include certain subjects as influenced by the feminist movement. People did the work to make sure it would include not only crimes like murder and conspiracy and attempt and all that stuff, but that there would also be a unit on sexual crimes or sexual assault, domestic violence, those kinds of crimes. The law of attempt wouldn't only address burglaries or attempted robberies, but also attempted sexual assault.

So, the idea of carrying through a concern for gender had already happened in the field when I got there. I arrived just teaching criminal law as it stood at the time in terms of the case books and what curricula tended to include. It did have a robust discussion of subjects that had been considered either insignificant and therefore not included or just too hot to handle and too awkward. Largely male teachers obviously felt more uneasy about touching some of these subjects. So, an influx of female teachers and of teachers who were thinking, there's more to criminal law than just murder and conspiracy. In fact, there's a very important area that's undergone very interesting legal reform in the recent past, in the 1970s, 1980s, and 1990s. So, it's important to talk about that. I arrived to the field teaching like that.

Then I witnessed as a teacher that, through a combination of society changing and our students and their sensibilities changing, teachers were less and less excited about teaching criminal law. I felt less and less excited about criminal law because this was the one place in the curriculum that 1Ls would think there were such traumatic things going on in the curriculum. Actually, criminal law is the ground zero where we're going to have these distressing experiences, where we're going to have to talk about these things and our classmates will say the most horrid things and it's going to be really upsetting and distressing. Soon into my career, I started getting requests from students saying, I want to sit out the sexual assault unit or I don't want to come to class or I don't want to be called on during that unit. I even had students whom the administration told me had tried to switch out of my criminal law class before they even met

me, because they heard that I was interested in the subject and therefore would spend more time covering it than other teachers.

That whole rash of experiences happened a little bit before 2010, 2011. Now I find it not as fun to teach criminal law, and I unfortunately don't teach it that frequently. I teach constitutional law because that class has a lot of issues that are controversial and a lot of differences of opinion and involve very important social change and issues on which people get really provoked. Yet it doesn't have the same tenor or the same investment. Students don't think they'll be distressed and traumatized by this course. It's a lot more fun to teach constitutional law than criminal law, so I've gravitated toward teaching that subject.

One of the big challenges to excellence in this field is the touchiness, the difficulty of managing emotions. It's very easy for teachers to say, students don't want to be called on, so why should I call on them during this unit? I don't believe in treating subjects as exceptional. If you have a teaching methodology, you should be rigorously applying it. So, I don't actually say, for sexual assault, everyone's allowed to opt out and you don't have to be called on unless you volunteer. I don't do that. Right now that's a very common practice for teachers of criminal law, but it goes to why it's getting harder and harder to teach it. I've seen the tide go one way, and I hope it'll swing back around and that people won't feel as strongly and that we can get back to a way of teaching criminal law that's innovative, that challenges people, that exposes people to real disagreement about things that they care about. That's a big challenge right now, and family law is a little bit like that too, but not as severe.

Glendon

Your raising that subject leads into a question about what is happening in universities generally right now. Universities are in a period of self-examination and thinking very hard about their mission. So, I'd like to talk with you about that a little more, beginning with, do you have a concept of how you think about the mission of a university, the university of which we're a part, and the so-called elite universities that aspire to be specially dedicated to the pursuit of knowledge?

Gersen

Yes. I came to the legal field after doing a doctoral degree in literature. So even though I was never a professor of French literature, I was involved in the field and deeply immersed in it and wrote a dissertation and a book in the field before becoming a lawyer. That informs my approach. Even though I'm teaching in a professional school, I've had the experience of being in a field that is not part of a professional school. It's not preparing people specifically to practice some profession other than maybe becoming an academic and teaching.

I'm of two minds. Obviously, as a law professor right now, I am training students to be members of a certain profession, to inculcate in them certain norms and values, the value of the rule of law, of due process, most fundamentally, and to have those values in mind as they go out and do all the various things that they do. It is not a field that is pure reason. It is a practical reason field. I take that very seriously too, that this isn't just how many angels can dance on the head of a pin. This is something they're going to use, it's going to have some kind of consequence depending on what you think the truth of the matter is.

I generally think of education that way, that we are training citizens, not just lawyers, but general citizens to be part of society and who are going to shape society. The people we train are going to practice their different professions. They're also going to have values that they're going to put into action. I think of the mission of the university that way, that these people are here for a limited time, but we hope that they will be shaped so that they will make really good citizens, even if they'll have very different views about what a good life looks like or what our society ought to be doing.

If I were still in the French literature field, I would still think of it that way. I'm sure that there's a variety of differences in how our colleagues in the humanities and the sciences think of what they do. Maybe for many of them, it really is about knowledge and producing knowledge and truth for its own sake. But I have enough of this streak of utilitarianism in me to feel that even training students in how to do literary analysis or philosophical reasoning ultimately is going to affect what kind of society we have. That's the bigger picture of what universities are doing, and that's what we need to protect.

Glendon

It seems like universities in this period of self-questioning and self-examination are thinking a lot about the quest for knowledge. We also think about our responsibilities for being useful in the world. One question I have about that is, as far as the public at large is concerned, do you think that concept of the quest for knowledge, the fearless quest, wherever it may lead and whatever difficulties it may cause for you, is appreciated as much as the idea of getting a degree that will be useful?

Gersen

When I was a college student, I believe the most popular major was English literature. As time went on, things changed and the English department wasn't inundated with people trying to be English majors and things turned a little bit more toward economics. Then economics became a really popular major. Things have shifted even more so that literature departments are struggling to get people to declare a major in that field. It's not just that it's not as popular; they actually have very few enrollees, and that's a really big change. Then computer science comes onto the scene as an extremely competitive, very popular major. This is all in the time that I've been part of a university community. So, you can see how things are changing.

I don't know that people were majoring in English because they thought it would be useful, but that they thought, maybe it's not useful in a direct applied way; I'm going to read Chaucer and Spenser and it's going to help me work in an investment bank. But plenty of people who wanted to work in investment banks were studying Chaucer and Spenser back when I was in college, and I think that's less common right now. People do think of college as more of a preprofessional experience where they should be doing something that will be useful to them in a career that they hope to enter.

I hope that we can reframe some of the wonderful fields in the humanities and in the sciences that may not have an actual direct application to a clear career as in fact useful for shaping people's minds, for helping people gain skills. It's not just a PR exercise. It's true that certain disciplines, including literary studies and philosophy and political science, and not just the preprofessional fields, are essential for helping people develop their minds. I'm not all the way on the other end of the spectrum where consequences be damned, all you care about is the pure attainment of knowledge. That's a wonderful attitude, but that's not really what's happening. People are attaining knowledge, and things are going to

happen as a result of the knowledge they attain, like it or not. That's the way that a university ought to approach all of the fields that it supports.

Glendon

I can't help thinking that your majoring in French was useful, whether you thought that it was or whether people thought it was at the time, but it made you. Most lawyers are not terribly skilled in writing; I've been reading exams for a long time. I think it has enabled you to go that last mile and take the ideas that you have accumulated about the legal system and express them so gracefully for a popular audience. If I hadn't studied French intensively in college, I would not have gone into international legal. My whole career in a way in international legal studies came out of knowing languages. There is no sharp line.

I guess I should back up and say I shouldn't have suggested a dichotomy between utility and the quest for knowledge. But let me just pursue that subject for a bit. In this period where we're undergoing self-examination with a lot of outside criticism of what we're doing, do you have ideas about what we can say that we're doing well and where we really need to think a little bit more about how we can achieve both of those aims, the quest for knowledge and the contribution to society?

Gersen

One of the things that universities get a bad rap for is some idea that we're doing a things that don't have any application in real life or that an ordinary person wouldn't care about, and we're spending a lot of time navel gazing and things like that. In a way, since I have been in academia in the last 20 years, what I see is because of the rise of social media and of students and professors being able to talk directly to audiences. Regardless of whether they get a book contract or get a magazine publisher, there is more in the way of talking directly to the public and of publishing in a mode that's not just directed to specialists in your field who have to know all the jargon.

When we teach first-year law students, we would not teach them the exact same way we would teach people who've been practicing law for 20 years. They're extremely smart, but they are first-year law students. If I'm going to talk to even someone who's less advanced, a 12-year-old who has the ability to think well, but doesn't have all of the skills and the education, if I ask, what's the separation of powers? I'm going to explain that to a 12-year-old. Honestly, if you cannot explain complicated ideas to someone who is 12 years old and smart, I don't think you understand it that well yourself. So, it's a good development that more academics are thinking that their responsibility is not to some obscure set of colleagues who have some esoteric language, but that they need to translate what they're doing, both for their students and then also for the wider public who can be people wanting to learn from you.

The university, though, could do a better job of making academics comfortable in speaking their mind and sharing their knowledge with the public. They could do that by basically saying and communicating, we have your back when you engage in these kinds of dialogues. You could be wrong because sometimes the things you're saying may be experimental. We shouldn't be so scared that we're going to be wrong, and therefore we clam up and don't speak until we've worked everything out exactly the way we would if we were publishing it in an academic journal. The university could encourage even more broadly the kind of flexibility that comes with a civic-minded responsibility that academics have to educate the broader public, especially by saying, we support you, we protect you when you do that.

Glendon

We should want to make our students feel comfortable in expressing themselves in the classroom and exploring new ideas, but not too comfortable, as you said when you were talking about the difficulties in getting people to appreciate criminal law in its full human dimensions.

Gersen

We should make people comfortable and tolerant of differences of opinion and more. But we should be less comfortable shutting down or saying, this is not acceptable to say. The balance is a bit in flux right now. I hope that we will reach a better equilibrium where people are a little more comfortable. More than at any time in my teaching career, students are not eager to say what they think. So, I generally don't rely for the discussion on students volunteering their opinions. I will structure the discussion so that I will ask, what do you think about this opinion? Or what did Justice Scalia say about this opinion? And what do you think of that? I will structure the questioning so that we can get there, because if I leave it up to volunteering, I won't really get a good, robust discussion anymore. We have to reacclimate our students and the general public to expressing themselves in a way that is rational, that is tolerant of difference, and that isn't about condemning people or being afraid of being condemned.

Glendon

Well, Jeannie Suk, thank you for sharing your ideas, for practicing what you preach, and for being such a great example to the generations of students who are lucky enough to have you as a teacher.

Gerson

Thank you, Mary Ann.