

# Lessons from Pandemic Pedagogy: Humanizing Law School Teaching to Create Equity and Evenness

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## Introduction

In only a few months, COVID-19 managed to rattle every modicum of certainty. The law school classroom was no exception. Traditional law school learning came to a screeching halt. Face-to-face classes were moved online. Spring breaks were canceled and semesters cut short. Law school faculty scrambled to pivot and develop teaching strategies and modes of learning that would adequately support Socratic, analytical teaching via a remote, online platform.

For many law students, that pivot exacerbated their ongoing—often silently and independently fought—battles, magnifying the inherent unevenness of the law school experience. Students with children now juggled home schooling and law school obligations. Students caring for older or ill companions now had to be present for both those depending on them and themselves. Students struggling with their psychological well-being attempted to overcome both the traumas of law school and the traumas of the global pandemic. Students from marginalized communities carried the usual and often-invisible weight of navigating spaces that stifle their voice and value while now carrying the stressors of a global pandemic.

Pre-pandemic, this unevenness remained under the radar, but it was now front and center. COVID-19 heightened the impact of the imbalance, making it too crippling to ignore—suddenly there was a clear disadvantage spotlighting an inequitable learning environment due to circumstances beyond students' control. Now, during the pandemic and civil unrest, there was a call for transformation on all fronts: dismantling racial institutions, eradicating inequities in healthcare and deconstructing age-old law school pedagogy.

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COVID-19's pervasive presence motivated faculty members across the country to begin to revisit assessment measures and develop a more equitable learning environment. At a rapid pace, many law schools attempted to create balance through curriculum changes, including modifying exam structure, raising mandatory curves, and loosening rigid attendance policies to foster equity in the classroom. I found myself in more and more faculty conversations focused on strategies to ease the hardships of students. In my own course, I tried to create evenness and equity in teaching more than ever—deadlines were extended, requirements became more flexible, and, most significantly, I frequently checked on the emotional, social, and psychological well-being of my students. Pleasantly surprised and incredibly open with their vulnerabilities, students shared their highs and their lows. These conversations fostered a mutual respect and an endearing rapport. Student after student expressed appreciation, and it seemed that their commitment to my coursework matched their expressions of gratitude. Overall, I believe it provided them with a sense of security and a safe space that encouraged productivity and self-accountability.

Inspired by this unprecedented “pandemic pedagogy,” we have the opportunity to continue to dismantle the antiquated and dysfunctional ideals that guide legal education and permanently replace them with practices that humanize the law school experience. And millennial professors can play a pivotal role in that shift. While millennials are often projected as entitled workers, in actuality we are committed to seeking and sustaining fulfilling work that serves not only to benefit self, but also to add value to the collective good of the progress and development of society.<sup>1</sup> This perspective will aid in cultivating a pedagogical shift in the law school classroom toward equity, evenness, and enlightenment.

In this essay I will expound upon this opportunity to realign the law school classroom in hopes of developing a sustainable, equitable learning environment. In section I, I will shed light on the current law school model, articulating the embedded inequitable pedagogy and the implications of this imbalanced regime. In Section II, I will demonstrate how the pandemic invited the conversation to dismantle these stifling, biased values and create a more equitable learning environment. And in Section III, I will present specific strategies for fostering and sustaining an empathetic, inclusive, and equitable learning experience for all law students.

### **I. The Current Law School Model: Objectivity, Rigor, & Diligence**

In 1870, a century and a half ago, Charles Langdell established the basis of our present-day law school model with the introduction of the case method

1. JAMES CAIRNS, *THE MYTH OF THE AGE OF ENTITLEMENT: MILLENNIALS, AUSTERITY AND HOPE* 1-28 (2017) (challenging the myth of the millennial as entitled and asserting the social and political benefits to society of the millennial mindset of seeking social progress and development).

and the Socratic method.<sup>2</sup> Only five years prior, in 1865, the last enslaved men and women of African descent were freed. In 1869, the first white woman was admitted to law school.<sup>3</sup> Thus, the Langdellian model was essentially introduced for the benefit of white men, and intentionally, to the exclusion of everyone else.<sup>4</sup> The disparate impact of its exclusionary roots still remains today. Over the years, the pedagogy has evolved, but the foundation remains the same, a commitment to a set of values entrenched in traditionalism: overarching objectivity, unrelenting rigor, and dedicated diligence.

As legal educators we have held tightly to remnants of this age-old pedagogical approach based on the premise that it cultivates critical, analytical minds. The idea is that through objective policies, students learn the impartiality of the law. Through the rigor imposed by loads of reading and mortifying cold-calls about complex information, all students are faced with the same challenge of grasping and learning the legal game. In diligently learning how to play the game, students learn to think and work like lawyers, producing minimal to no error in their work product.<sup>5</sup>

In theory, these values produce a learning environment that shapes law students into effective advocates. Unfortunately, that theory falls short for most students, particularly those from marginalized communities. In *reality*, those values led to a pedagogical model that reverberates its beginnings and perpetuates the social ills of elitism and traditionalism.

Instead of fostering objectivity and fairness, law school has evolved into an atmosphere permeated with unevenness. Unevenness occurs when a student suffers “burdens to her inherent talent or abilities” arising solely from a particular component of his or her identity.<sup>6</sup> In law schools, we see the effects of unevenness arise as a result of race, gender, socioeconomic class, (dis)abilities, etc. Its presence, regardless of the identity component to which it is

2. A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1973-78 (2012) (reviewing the historical development of legal education in the United States).
3. Louis A. Haselmayer, *Belle Babb Mansfield's Legend is Alive and Well*, 55 WOMEN L. J. 152 (1969). See also Karen Tokarz, *Pioneering Women Lawyers Who Changed the Legal Profession and Influenced the Practice of Law, Including Mediation Practice: From Barkeloo Cousins to the Present*, 62 WASH. U. J. L. & POL'Y 15 (2020) (describing the first women to enter the legal profession as influencers).
4. See ROBERT B. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983) (describing how fears of the poor in general, and the immigrant/Jewish poor in particular, led to the acceptance of Langdell's program of graduate education).
5. Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 409 (1971) (describing how Socratic teaching has several values, including “the ability to develop crucial legal analytical skills, to accustom the student to the lawyer's adversary style of exchange, and to provide a forum in which the student speaks in public”). See also Tanisha M. 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 (2003) (challenging the use of the Socratic method on the grounds that it has a disparate impact on women law students).
6. Jonathan Feingold & Doug Souza, *Measuring the Racial Unevenness of Law School*, 15 BERKELEY J. AFR.-AM. L. & POL'Y 71 (2013).

tied, paralyzes students' ability to fully immerse in the law school curriculum, establish full intentionality and presence, and learn in a meaningful way. Ultimately, it strains their ability to succeed.

Consider law students facing the circumstances listed above. Contemplate those students with children, those students with limited access to resources, those students traversing institutionalized racism in the law school classroom, or those navigating some combination thereof. Ponder their experience. Undeniably, their learning experience is quite different from that of their counterparts who are able to focus on law school with minimal distractions and maximal resources. For students with minimal external distractions, the "neutral" policies maintain a degree of fairness and uphold objectivity. But for students experiencing unevenness, those strategies further widen the gap between their own experience and that of their peers,<sup>7</sup> making the possibility of success seem well beyond their reach. The strategies are yet another hurdle that has to be leaped before crossing the finish line. As Feingold and Souza describe it, in the context of race, it is akin to an Olympic sprinter being forced to wear weighted clothing while her opponents are free from such requirement.<sup>8</sup> Thus, instead of creating a unwavering foundation for success, the trifecta of objectivity, rigor and diligence create a myth of meritocracy and unsurmountable stress.

First, the misnomer of "objectivity" creates a false sense of fairness within the law school classroom—that all students are treated the same, regardless of their experience or circumstance. As a result, students with children or limited resources, or from marginalized communities, are perceived as less committed to their education and/or less competent, because even with "neutral" measures in place they are not faring as well as their classmates. They may appear less prepared or miss more classes because of personal obligations demanding their time. Or, similarly, they may not do as well when cold-called in class because of the psychological tax of traversing an uneven atmosphere with multiple hurdles to scale.

Second, the "rigor" of the curriculum ensures that law school continues to be stressful and unforgiving. It breeds competitive, cutthroat characteristics. The unrelenting reading assignments and the all-or-nothing singular time-pressured final exam create an atmosphere that rewards those with time, a privilege often tied to students with the financial or social capital to create it. Rigor for rigor's sake is counterproductive to evenness.

7. Sean Darling-Hammond and Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 24 NAT'L BLACK L.J. 1 (2015) (recommending alternative approaches to traditional law school pedagogy on the premise that this altered methodology would result in more equitable learning environments); see also Jaekyung Lee, *Racial and Ethnic Achievement Gap Trends: Reversing the Progress Toward Equity?*, 31 EDUC. RESEARCHER, no. 1, 2002, at 3 (discussing racial and ethnic educational achievement gaps generally).

8. Feingold and Souza, *supra* note 7, at 73.

Third, the emphasis on “diligence” reiterates the myth that hard work alone presupposes success. It fails to consider the role of gender, class, and race in a student’s career trajectory. The value of diligence improperly projects the notion that only the strongest and smartest will survive. In truth, a student’s survival is tied more to privilege and capital—social, financial, or otherwise—than strength, tenacity or even competence. Children cannot be put on hold for law school. Financial constraints do not disappear because one is pursuing a law school education. The emotional and psychological turmoil of institutionalized racism does not disappear by virtue of pursuing a juris doctorate.

When these Langedellian values impose such traditional ideals and elitist attitudes, it works to exclude students falling outside of the “norm” of the community. The psychological safety of those students is compromised. “[I]n the learning environment, psychological safety is ‘the sense that one’s identity, perspectives, and contributions are valuable, despite the experience of possibility of discomfort or harm within a learning setting.’”<sup>9</sup> An absence of psychological safety forces students to expend cognitive energy on coping rather than focus on learning.<sup>10</sup> This debilitating phenomenon harms students of color most significantly.<sup>11</sup> The feeling of psychological unsafety is further exacerbated because of additional psychological pressures and the intersectionality of our identities.<sup>12</sup>

Whether intentional or not, students experiencing unevenness do not feel welcome and participate less often in the law school community. Students’ reduced participation has an impact on their law school experience, the relationships that they develop (which impact their professional network), and overall satisfaction of their legal careers.

Simply put: The legal game, like many other proverbial professional battles in the United States of America, is not fought fairly. As a result, the modern law school model stifles growth of the profession and inhibits any meaningful diversity and inclusivity of any students who dare build a life outside of the realm of law school.

9. Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 786 (2018) (quoting Jasmine D. Williams et al., “Can We Say the N-word?: Exploring Psychological Safety During Race Talk, *Research in Human Development*, 13 RSCH. HUM. DEV, 15, 18 (2016)).
10. Lain, *supra* note 10.
11. *Id.* at 787.
12. See Russell A. McClain, *Helping Our Students Reach Their Full Potential: The Insidious Consequences of Ignoring Stereotype Threat*, 17 RUTGERS RACE & L. REV. 1, 6 (2016) (discussing the immobilizing impact of the stereotype threat, which can lead to “underperformance due to psychological pressure placed on members of a group when engaged in tasks for which there is a threat of confirming a negative group stereotype”).

## II. Using Pandemic Pedagogy to Dismantle Traditionalism

As COVID-19 rapidly spread, law schools were forced to reevaluate this unshaken regime of traditionalism and elitism. Upended by a pandemic, law schools scattered to create some semblance of effective learning while managing pandemic-imposed challenges.<sup>13</sup> Concerns of food scarcity, financial stability, and health were suddenly major issues impacting *all* people across the world. Everyone, students and professors alike, faced feelings of grief, hopelessness, despondency, and loss. It was a global pandemic and also a local one, through and through. The law school environment was being turned upside down as professors and students came to realize exactly what that meant to their lives. To compound matters, as the pandemic continued to wreak havoc, the Black Lives Matter movement gained momentum, with protests around the country as police brutality against Blacks exposed ongoing institutionalized and systemic racism.<sup>14</sup>

But school carried on. So, the question for faculty members across the country became: How do we reconcile the ill effects of these monumental societal shifts within our pedagogy? How can we fairly complete this semester while a pandemic (and protests) are literally tearing lives apart?

In an overwhelming response, law schools implemented sweeping change to answer those questions of reconciling society and pedagogy with a temporary overhaul of current law school policies and teaching methodology. The mandatory grading curve, to which law schools grasp so tightly, was raised at a number of schools.<sup>15</sup> In lieu of raising the curve, other schools implemented pass/fail options for spring semester courses.<sup>16</sup> Attendance policies became more relaxed as everyone prioritized their own health and the health of those around them (if only for self-interested motives). Beyond that, group e-mails and remote faculty meetings became ripe with consideration of students whose struggles were amplified by the pandemic (e.g., students parenting during the pandemic, facing financial difficulty, or caring for the ill). To some degree, life outside of school and empathy became a part of the conversation.

13. Amanda Robert & Stephanie Francis Ward, *Coronavirus and Law Schools: More Universities Shifting to Online Classes*, ABA J. (Mar. 12, 2020), <https://www.abajournal.com/news/article/coronavirus-and-law-schools-more-universities-shifting-to-online-classes>.

14. Lisa Lerer, *The Pandemic and the Protests: Police Brutality, Job Losses, the Coronavirus: Black Americans are Bearing the Brunt of all of it*, N.Y. TIMES (June 4, 2020), <https://www.nytimes.com/2020/06/04/us/politics/the-pandemic-and-the-protests.html>.

15. See, e.g., Dean Sudha Setty, *School of Law Grading Policy Change*, W. NEW ENG. UNIV. (Apr. 13, 2020), <https://www1.wne.edu/coronavirus/update-april-07-2020.cfm>.

16. Karen Sloan, *Law Schools Adopt Pass-Fail Grades as They Move Online Amid COVID-19*, LAW.COM (Mar. 18, 2020), <https://www.law.com/2020/03/18/law-schools-adopt-pass-fail-grades-as-they-move-online-amid-covid-19/?slreturn=20200627234346>.

Unfortunately, even with “pandemic pedagogy,” students continued to carry invisible loads that reasserted the effects of imbalance and unevenness into the curriculum. Consider the following real-life challenges faced by some of my students<sup>17</sup> during the spring and summer online semesters:

A week after classes switched to a fully online format, the automated university registrar system blocked Jason from accessing all remote materials for any of his courses. He had an unpaid balance that prohibited him from accessing the course learning platform until his payments were made in full. The registrar could not override the block. Typically if he were late making his tuition payment he could still attend class, because classes were face to face and classroom doors were not tied to his outstanding balance. Because every component of each of his classes was now online, he missed two weeks of class material. Even with the raised curve, Jason had the lowest possible grade in two of his classes.

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Sabria is the primary caregiver for her three children. During the day, her children are typically in school. Because of the pandemic, her children’s schools switched to remote learning or closed completely. She is now juggling a full load of online courses during the day while home-schooling her two older children and entertaining her 9-month old. She also works part time in a position that she needs to financially support her family. She fell behind significantly in course readings and assignments. She had to request an extension on her final assignment and still turned in the assignment after the extension deadline, resulting in a lower grade for the course.

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Nur was able to complete her class assignments only between 2 and 4 a.m., as she battled insomnia triggered by the pandemic. She slept for most of the day to make up for the sleep she missed at night. She did not do any work during the day because her days were dedicated to two things: (1) fighting to control her frequent, immobilizing panic attacks, and (2) convincing her elderly (and vulnerable, at risk) parents, who resided with her, that they did not need to make another trip to the grocery store. She nearly stopped sleeping completely after the police killing of Ahmaud Arbery, Georgia Floyd, and Breonna Taylor. The collective emotional and mental baggage from the pandemic and the protests led Nur to be less focused on her schoolwork and led her to a depressive state of mind.

So, while a raised curve, looser deadlines, and modifications to the attendance policy made things easier on the surface, there remains significant unevenness clandestinely lurking in the recesses. There remains much work to be done.

17. All names changed and details slightly modified to maintain confidentiality of student experiences.

Unraveling the tightly bound and deeply formed elitist and traditionalist impacts of the current law school model requires a commitment to change. This is a historic opportunity that can and should lead to a transformative shift in law school pedagogy.

### **III. Moving Forward: Using Pandemic Pedagogy to Sustain an Empathetic, Inclusive, and Equitable Experience**

But how? How do you change what has always been? The solution is quite simple. Teach with the understanding that we are not teaching things, we are instead teaching *people*.<sup>18</sup> People have diverse perspectives, experiences, and personal lives. People get sick, lose jobs, raise children, and struggle with mental and physical health. People identify with cultural groups that are marginalized and oppressed to such a degree that, sometimes, it makes it hard to show up. People carry baggage that is not always visible, but is always heavy.

With that baggage, we all face the complex overlap of our professional responsibilities with our personal affairs. The conflict is inevitable. The law school teaching model should incorporate policies that acknowledge that fact of life and support students as they try to balance the ongoing conflict between the two competing worlds.

To be clear, the standard of excellence should not be eliminated from law school expectations and values. However, that standard can improve greatly if doused with empathy in an effort to create equitable spaces. We should humanize our teaching, our policies, and our curriculum.

Of course, systemic change takes time. But professors have the discretion to begin implementing small changes in their classrooms now. For example, borrowing from “pandemic pedagogy,” professors could make more course material available online for later viewing or reading. Providing access to course materials in an asynchronous or on-demand way allows more students to craft their studying approach to fit their lives. Professors could also create a more balanced grading scheme, as opposed to relying on one final exam. The all-or-nothing approach hinges students’ success to a single assessment. As it currently stands, the final exam could be scheduled on a day when a student has a conflict with child care, a day after a racialized police shooting, or when the student is ill. While all very different circumstances, each challenge would significantly impact a student’s ability to perform their best on an exam.<sup>19</sup> Professors can use innovative teaching tools such as in-class assignments or evaluations at different points in the semester as grading mechanisms.<sup>20</sup> This ongoing basis of evaluation ensures that our grading scheme is assessing the mind and competence of our students, not just the circumstances of their lives.

18. Gerald P. López, *Transform—Don’t Just Tinker With—Legal Education (Part II)*, 24 CLINICAL L. REV. 247, 338 (2018).

19. Darling-Hammond & Holmquist, *supra* note 8.

20. *Id.* at 55-59.



I am not asking professors to compromise the integrity of their course material, but instead to reimagine the goal of law school and what it takes for your students to reach those goals. Instill and foster equity in the classroom by incorporating strategies that take into consideration the complexity of human existence, the impact of privilege and the imbalance caused by unevenness.

The evaluation of the feasibility of each of these suggestions is beyond the scope of this piece. And while it may seem the lack of evaluation limits this essay, it is notable to remember that change begins with raising the issue. The value lies in voicing the concerns and the strains of those students who tend to be minimized. The power here is sharing their story and advocating for innovative pedagogy that considers those students and their struggles all the time, not just during a state of emergency.

### **Conclusion**

This year has been rich with chaos and uncertainty. And yet, amid all of the chaos emerged the opportunity for a long-overdue shift in the law school classroom. The pandemic brought the discriminatory impact of law school policies to the forefront. It inspired dialogue about students' challenges at home and raised concerns about students' well-being. Essentially, it seems, the pandemic infused a humanistic, subjective undertone into an environment that is known for its thrashing, stoic, and unbothered overtones. Evenness and equity became a part of the lesson plan as we strive to embody the values of the often-misconstrued millennial worldview: a sense of entitlement to a better now and a better future with a gratitude for the progress that has been made thus far.

Through this evolving remote "pandemic pedagogy," law schools around the country began to move toward equitable spaces in which the context of students' learning mattered. While there are many aspects of the pandemic that we are in a hurry to leave behind, this redirection from tradition to equity should not be one of them. For if we always do what we have always done, then we will always be what we have always been. The legal profession has long been a white, male-dominated space. It is safe to say that it is about time to break the mold.