GRAPPLING WITH LANGDELL[†]

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"Christopher Columbus Langdell . . . May he rot in hell."
—Scott Turow, One L (1979)

When I arrived at Harvard Law School as a first-year student in the Fall of 1980, the law school experience was, to a stunning extent, the same as it would have been for a law student at Harvard in the heyday of Dean Christopher Columbus Langdell. With the exception of one elective in the Spring, the courses were long-established—Contracts, Torts, Criminal Law, Property, Civil Procedure. While legal writing was part of the first-year curriculum, it was of marginal importance: The legal writing class was pass-fail and taught by an upper-class student. The faculty was not diverse: Apart from my Civil Procedure Professor, the trailblazing and brilliant Professor Clyde Ferguson, all my faculty members were white men. The path to a faculty post involved doing *really well* in law school. None of my faculty had a doctoral degree, and there was little exposure to interdisciplinary approaches in my first-year classes. Reading was almost exclusively appellate cases. Grades were based on one end-of-the-semester exam or one end-of-the year exam in each course, so there was no feedback during the semester to give you a sense of how to take law school exams or whether you were getting the material. Classes were huge: There were 125 students in each class. Faculty members largely employed Socratic questioning, and it could be harsh. I will never forget that when my younger brother visited one of my classes to see what law school was like, one of my classmates broke into tears under the faculty member's Socratic questioning.

It had drama. The Paper Chase, One L, and Legally Blonde all narrated the first-year experience, and each became a cultural icon. But if Langdellian education seized the popular imagination, it failed as education. I hated it, as did most of my classmates. I also thought, as did most of my classmates, that it did not prepare us well for the practice of law, that it disadvantaged people who came from backgrounds that did not equip them with an understanding of the secret to success in law school exams, and that it gave us little opportunity to think about the larger questions of justice or what our roles as lawyers should be.

[†] An invited response to Asad Rahim, *The Legitimacy Trap*, 104 B.U. L. REV. 1 (2024).

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Professor Asad Rahim's *Legitimacy Trap* superbly explores the context in which Langdellian teaching emerged, why it became the dominant form of legal education, and its failures.

It is important to recognize that the full-throated Langdellian legal education that I received is a thing of the past. I cannot think of one law school today that has a first-year curriculum similar to the one I received. I was drawn to a career in legal education because I knew its importance for our society and because I thought it had to be changed. Many others had a similar motivation. For decades, legal educators have struggled to create a first-year experience that is more humane and inclusive, that grapples with questions of inequity and power and discrimination, that is interdisciplinary, that prepares students for legal practice in a world where relatively few students will be appellate litigators and where statutes and administrative regulations are of critical importance.

While there has been significant progress in every dimension, however, *The Legitimacy Trap* provides us an opportunity to think about what the enduring legacy of Langdellian education is and what remains to be addressed.

The Legitimacy Trap offers a powerful and thoughtful critique of legal education. It focuses on the historical context in which Langdellian legal education emerged and argues that current educational models improperly continue to rely on a nineteenth century pedagogic approach created to "intimidate and exclude." As a remedy, Professor Rahim calls for smaller 1L sections, continued rejection of US News rankings, and innovations in legal education that address the failures of Langdellian legal education.

In this essay, I will discuss each remedy.

With respect to the first two, I agree with Professor Rahim's basic point, but also have significant differences with him.

With respect to the third, I will discuss Georgetown Law's curriculum B, which was launched in 1991. It is very much an example of the type of curriculum that Professor Rahim calls for. Curriculum B intentionally breaks from the Langdellian model, it is consciously interdisciplinary, it questions law's neutrality, it incorporates public law into the first-year curriculum, and it departs from the Langdellian construct of the private law courses in the traditional curriculum. Georgetown's more than thirty years' experience with Curriculum B shows that the type of break from Langdell that Professor Rahim calls for is not simply a possibility worth pursuing; a successful alternate curriculum has already been created. Moreover, our experience shows that it produces academically strong outcomes in upper-level courses and that it increases the likelihood that students will pursue public interest careers (a goal Professor Rahim hopes the break from the Langdellian curriculum can advance). At the same time, our experience at Georgetown also shows that, while Curriculum B is popular, more students prefer a more traditional curriculum. The traditional curriculum should not be the only option, but it should continue to be an option so that law students can select the pedagogic model that they believe works best for them.

US NEWS RANKINGS

I have criticized US News system in the past, and Georgetown Law is one of the schools that is boycotting US News.[1] At the same time, my critique differs from Professor Rahim's. He thinks US News penalizes innovation because, he believes, innovation harms reputation among academics and reputation is a major US News factor. He urges boycotting US News rankings because schools innovating will be hurt in terms of their ranking.[2]

Having closely monitored US News for many years, I have not seen the US News metric as one that discourages innovation. The reputation rankings of US News are sticky. They change little over time. Moreover, to the extent that a school breaks from prior practice and develops an identifiable brand, regardless of what it is, the school's reputation tends to improve (or at least that is my understanding based on observation over the years). NYU's ranking rose when it branded itself as a global law school. Similarly, Northwestern benefitted when it branded itself as an interdisciplinary school with a faculty composed of JD-PhDs. Thus, US News rewards innovation (or at least rebranding).

I have argued that US News should be boycotted, not because it discourages innovation, but in order to encourage the rankings agency to be more transparent about its methodology and to add experts about legal education to the team that determines that rankings methodology. In addition, given Professor Rahim's concern with encouraging a pedagogy that prepares students to succeed as lawyers and to be prepared to make a difference in society, another reason for a boycott would be to encourage US News to adopt a metric that rewards schools that are focused on such preparation. Currently, US News has a number of metrics at odds with Professor Rahim's approach. For example, the current methodology assesses a school's librarian to student ratio and assigns scores to schools on the basis of that ratio. That is a very traditional approach and one that does not reflect the changes in way legal research is done. Conversely, US News does not assess the value of a school's experiential program or the strength of its legal writing program as it determines overall ranking. (Experiential programs and legal writing programs are separately ranked, but those rankings are not part of the overall ranking). Similarly, Associate Deans are given a vote in ranking law schools, but the faculty members responsible for experiential education or the writing program are not. Thus, the US News methodology does not reward a school that devotes its resources to the types of pedagogy Professor Rahim values. A boycott could be aimed at encouraging US News to develop a new metric that rewards schools that have a pedagogy geared to helping students succeed as lawyers. But it is not the reason why Professor Rahim urges a boycott.

[1] William M. Treanor, *U.S. News Has a New Aggressive Defense of Its Rankings. Law School Deans Like Me See It for What It Is.*, SLATE (March 13, 2023, 2:27 PM), https://slate.com/human-interest/2023/03/u-s-news-law-school-rankings-controversy.html [https://perma.cc/AN9E-DJXK].

[2] Asad Rahim, *The Legitimacy Trap*, 104 B.U. L. REV. 1, 63-65 (2024) [hereinafter *Legitimacy Trap*].

ONE L SECTION SIZE

I whole-heartedly agree with Professor Rahim about the pedagogic value of smaller sections.[3] Smaller sections give students an opportunity to speak in a less intimidating setting and to do so more often. They also make it easier for the faculty member to employ different pedagogic approaches, rather than simply Socratic questioning. For example, when I teach, I will ask small groups of students to discuss a particular issue and then report back. Those reports from each group in turn open the way for a larger discussion among all students. Approaches like this cannot effectively be done in traditional large lecture settings.

Perhaps more important, because the faculty member will be grading fewer students, smaller sections make it easier for faculty members to give feedback both during the term and at the end of the semester, rather than relying on one exam at the end of the course. As Professor Rahim observes, how a student does on an end-of-the semester exam when there has been no earlier feedback is not an appropriate measure "of students' intelligence or even of their legal knowledge: sometimes it is simply a matter of whether they have been taught how to take a law school exam." End of the semester exams that are the only grade favor students from a background where they know (before law school starts) how to take exams and they disadvantage first generation students and students from historically underrepresented groups. Multiple opportunities for feedback in a course level the playing field: Students learn when they receive repeated feedback about their performance and have the ability to perform better.

One L sections of 125 were once the norm. Increasingly, however, law schools are realizing, as Professor Rahim does, the importance of smaller sections and are acting on that realization. At Georgetown, for example, we have moved over the last decade from standard sections of 125 to a model in which our plan is that, beginning in the 2025-26 academic year, One L classes will be approximately 55 or less. We are not alone. I recently was on a site visit at another law school which has similarly moved from first year sections of 125 to first sections of 50. Professor Rahim's call for smaller first sections is thus not anomalous.

At the same time, I disagree with Professor Rahim's one size fits all model. Given limited resources, schools have to make trade-offs. The Langdellian model long employed at Harvard Law—one faculty member for 125 students——has one important benefit: it is cheap. At a time in which tuition increases are a concern of us all, an inexpensive model of legal education has great benefit, and that option should not be foreclosed. A school that has limited resources and wants to make available a legal education to as many deserving students as possible, may decide—very appropriately—to keep class size large. I thus disagree with Professor Rahim's call on the ABA to make One L sections of 40 or less a precondition of accreditation.[4] Flexibility here is important. Schools

[3] *See id.* at 67-71.

[4] *See id.* at 70.

have different levels of resources and different missions. Mandating small One L sections for all schools would take away critical flexibility. It would limit schools' ability to make the right trade off in terms of their mission and resources. But, while I would not make small sections an ABA requirement, I agree with Professor Rahim's insight about their value.

DEVELOPING AN ALTERNATE FIRST YEAR CURRICULUM

Finally, I also agree with Professor Rahim's recommendation that schools should encourage faculty to develop alternate first year courses and curricula that depart from the Langdellian model by focusing on theory, power imbalance, the rise of the regulatory state, and considerations of justice, that employ an interdisciplinary approach, that devote attention to public law (as well as private law), that rethink what first year courses should be, and that challenge the idea that neutral principles explain judicial outcomes. But, as with shrinking class size, while more should be done, this is an approach that has already been put in place in some schools. Likely the most prominent alternate first year curriculum is Georgetown Law's "Curriculum B." Curriculum B, launched in 1991, offers an example of what, in very concrete ways, a curriculum of the type Professor Rahim calls for would look like.

This alternate curriculum was developed by a team of faculty who received a grant that allowed them a year to develop it. We call it Curriculum B because it is an alternative to the traditional curriculum ("Curriculum A"). In addition to a legal writing and practice course taught by a full-time faculty member (as is the case with for each section that uses Curriculum A), Curriculum B offers six courses that track with precision the goals championed by Professor Rahim.[5] In language that might have been crafted by Professor Rahim, when the program was first proposed in 1989 its goals were listed as: "1) [to] reconceive separate subject matters in terms of common problems such as incentives, distribution and social control; 2) fully take into account the emergence of the regulatory state and pervasive legislation in most common law areas; 3) invoke other academic disciplines as they bear on law and 4) teach theory, as well as doctrinal analysis of law."[6]

Curriculum B remains true to this vision. Our website today has the following description of this alternate curriculum:

> For generations, the first year of law school focused on disputes between individual plaintiffs and defendants about matters such as who should pay

[5] For an overview of Curriculum B, see *Curriculum B (Section 3)*, GEO. L., https://curriculum.law.georgetown.edu/jd/curriculum-b-section-3/#coursestext [https://perma.cc/96LD-BAWX] (last visited June 22, 2024) [hereinafter Curriculum B].

[6] Carrie Menkel-Meadow, *Taking Law and _____ Really Seriously*, 60 VAND. L. REV. 555, 589, n.138 (2007) (quoting Professor Louis M. Seidman, Georgetown University Law Center, Proposal for Reform of First Year Curriculum of US Law Schools (1989) (submitted to the Fund for the Improvement of Postsecondary Education)).

> for an accident or how a contract should be interpreted. Students learned principles of "common law" - that is, law made by judges on a case-by-case basis - that resolved these disputes. This law was thought to be "private" in the sense that it promoted the ability of individuals to order their own lives and did not necessarily involve broad issues of public policy.
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> A curriculum with this focus takes little account of the disruption in the common law system caused by the emergence of the regulatory state in the first part of the last century. Today, it is widely understood that adjudication amounts to much more than a retrospective sorting out of the rights of the particular parties before the court. Legal rules govern the conduct of large classes of people and provide appropriate incentives for how they should act in the future. Most of our law comes not from judges deciding individual cases, but from complex statutory schemes written by legislative bodies and from detailed regulations authored by government agencies. Law has a public focus. It allocates power and distributes resources.
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> Curriculum B is designed to educate students about this modern conception of law and about the problems that result when it conflicts with older conceptions.[7]

Curriculum B is the type of curriculum Professor Rahim is calling for.

As the curriculum was being developed, the faculty consciously employed an interdisciplinary approach. For example, one of the six courses is *Foundations of American Legal Thought*, which draws on history, economics, and philosophy as the students explore what legal justice is. *Property in Time* adapts the traditional property course by giving salience to approaches based in history, economics, and critical race theory.

The faculty who created Curriculum B also reconceived traditional private law categories, rather than relying on the Langdellian structure. The course *Bargain, Exchange and Liability* combines torts and contracts. The course *Democracy and Coercion* combines criminal justice and constitutional law.

Without ignoring private law, Curriculum B brings public law into the first year curriculum. *Democracy and Coercion* examines the powers of the state and limits on state power and the tensions between democracy and individualism. *Government Processes* is similar to the traditional administrative law course and introduces into the first-year curriculum legal questions pertaining to the regulatory state. *Legal Process and Society*, the Curriculum B analogue to Civil Procedure, rather than limiting its coverage to traditional litigation, examines procedures for alternative dispute resolution. Moreover, in addition to looking at cases, rules, and statutes, the course examines social science studies and historical analyses as it probes fundamental questions

[7] *Curriculum* B, *supra* note 5.

concerning the different ways American society resolve legal and political conflict.

Overall, the curriculum is concerned with fundamental questions about law. *Foundations of American Legal Thought* is explicitly concerned with the question: What is legal justice (or is there such a thing as legal justice)? But that question is not limited to *Foundations*. It recurs in every course. In Curriculum B, students examine the extent to which the legal system reflects power imbalance and biases of race, class, gender, and sexual orientation and whether the law in fact embodies neutral principles. They debate what their roles as lawyers should be.

The most fundamental lesson of thirty years of experience with Curriculum B is that it is clearly a success by any measure. It is a non-Langdellian first year curriculum that students enthusiastically sign up for, that prepares them well for upper-level courses, and that encourages public interest careers.

It is, to begin with, popular among Georgetown Law students. While construction of the curriculum in the early 1990s was influenced by the Critical Legal Studies movement, it is attractive to students more than a generation after its development. We cap enrollment at 115—it is our largest first year section—and it is always overenrolled. In a typical year, 130 students will apply for the program, and the 115 who enroll in Curriculum B are selected by lottery.[8]

Student comments reflect this enthusiasm. One alum of the curriculum wrote:

> Because Section Three taught me the law as embedded within contexts of history and legal theory, I am a deeper thinker, both as a practicing lawyer and as a citizen."[9]

Another wrote:

> I was extremely lucky to enroll in Curriculum B. Part of Curriculum B's project is illustrating just how much law animates, and is integrated in, our lives, our institutions, and society generally. Curriculum B made me a more nuanced and more powerful thinker, analyst, and lawyer." A third concluded: "Curriculum B gives students—gave me—the opportunity to think about and discuss ideas in a different way. . . . Thinking back on my decision to enroll in Curriculum B, I know I made the right choice and I'd do it all over again![10]

When Curriculum B was started, its supporters worried whether Curriculum B students would do as well as Curriculum A students in upper-level courses and whether Curriculum B students would have trouble finding employment and passing the bar. *Does the 1L Curriculum Make a Difference*, a recent study by

[8] David Hyman, Jing Liu & Joshua C. Teitelbaum, *Does the 1L Curriculum Make a Difference?*, 21 J. EMPIRICAL LEGAL STUD. 375, 381 (2024).

[9] *Curriculum* B, *supra* note 5. Georgetown Law has seven sections in each class. Section Three is traditionally the section that studies Curriculum B, so the terms Curriculum B and Section Three are used interchangeably.

[10] *Id.*

three faculty members (Professors Hyman and Teitelbaum of Georgetown Law and Professor Jung Liu of the East China University of Politics and Law), addressed these issues using careful quantitative analysis. The study compared students who were accepted into Curriculum B with those students who applied to Curriculum B but did not win the lottery. It was a sophisticated study since the only difference between the two groups was the happenstance of the lottery.

The study concluded that Curriculum B students did as well as Curriculum A students in upper-level courses. There was a slight difference in grades of the two groups, but it was not statistically significant. The Curriculum B students had a median GPA in upper-level courses of 3.55; the students who had not won places in Curriculum B had a median GPA of 3.57. At the same time, the Curriculum B students were slightly more likely to pass the bar (88 percent in comparison to 86 percent) and slightly more likely to have employment within ten months of graduation (96 percent versus 93 percent), though neither difference was statistically significant. Thus, Curriculum B students did as well as Curriculum A students as assessed by traditional metrics.

The most important difference between the two groups was that there were statistically differences in the two groups' career paths. 56 percent of the Curriculum A students went into private practice, whereas only 41 percent of the Curriculum B students did. 27 percent of the Curriculum A students went into public sector employment, whereas 39 percent of Curriculum B students did. 5 percent of Curriculum A students clerked; 12 percent of Curriculum B students did. One of Professor Rahim's hopes is that an alternative curriculum will encourage students to pursue public sector job opportunities. The Hyman-Liu-Teitelbaum study indicates that this is a significant effect of the alternative curriculum.

But it is also important to recognize that the Georgetown experience with Curriculum B indicates that the alternative curriculum is not for everyone. While there is more interest in Curriculum B than we have seats, in a typical year only about 25 percent of our incoming students apply for Section Three.

At Georgetown Law, our Curriculum A is very different than the traditional Langdellian curriculum. I would not describe any of our faculty as a classic Socratic questioner. Many have PhDs, and all are open to interdisciplinary approaches. We encourage faculty in their courses to examine the questions whether law is in fact neutral (and, indeed, in order to graduate, students have to take a certain number of courses that critically grapple with law's neutrality).

At the same time, while the changes from the Langdellian model are significant, Curriculum A courses are nonetheless traditional Langdellian courses. Curriculum A students, for example, take Contracts and Torts, not Bargain and Exchange. Curriculum A students do not take Foundations of American Legal Thought.

Yet, while Curriculum A courses reflect the Langdellian heritage, they remain attractive to students. 75 percent of our students do not seek to study Curriculum B. This is an important point. Professor Rahim makes a good argument for alternative curricula. But curricula like Curriculum B should remain alternatives,

rather than the new orthodoxy. If we were to eliminate Curriculum A, most students would be denied the pedagogic approach they prefer.

CONCLUSION

With its illuminating discussion of the history of the emergence of Langellian pedagogy, Professor Rahim's *Legitimacy Trap* makes an important contribution to the ongoing debates about law school teaching. Understanding the historical context clarifies grave problems embedded in the pedagogy.

Professor Rahim's suggested remedies to address those problems are thoughtful. As he argues, small first year sections are preferable to the traditional large sections. I disagree, however, with his recommendation that small sections be made mandatory. That approach would deny law schools important flexibility as they choose how to best advance their mission in light of limited revenue.

I also agree with his recommendation that law schools should boycott US News. But I disagree with his argument that US News should be boycotted because it punishes innovation. It does not. A boycott should be aimed instead at achieving changes in the methodology: more transparency, the addition of legal experts to the team that prepares the methodology that US News employs, and revision of the methodology so that excellence in legal writing and experiential education is rewarded.

Finally, I concur with his recommendation that schools should develop non-Langdellian pedagogies, but I would be remiss as dean if I did not celebrate the fact that Georgetown Law developed such a curriculum more than a generation ago. Our Curriculum B embodies the goals Professor Rahim calls on law schools to pursue. As schools consider Professor Rahim's recommendations, I urge them to look at this innovative and successful alternative curriculum.