

HIDDEN LESSONS, UNFORESEEN CONSEQUENCES:
INTERROGATING THE HIDDEN CURRICULUM IN LEGAL
EDUCATION AND ITS IMPACT ON STUDENTS FROM
HISTORICALLY UNDERREPRESENTED GROUPS

Melissa H. Weresh

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In February 2023, students and faculty gathered at the University of Alabama to celebrate the one-hundred-fifty-year celebration of the law school and the fifty-year celebration of its first Black graduates.¹ During the law review symposium commemorating these events, participants learned of Mr. Ramus Rhodes, a long-serving janitor at the University of Alabama School of Law. Specifically, participants were told of Mr. Rhodes' significant and poignant effect on many of the first Black law students at the Law School, including Michael Anthony Figures, Booker Forte, Jr., Ronald E. Jackson (who enrolled in 1969), and Donald Watkins (who arrived a year later).

Watkins has written about the impact of Mr. Rhodes on his law school experience.² He explained that Mr. Rhodes met students in his "office," officially the janitorial closet.³ There, Mr. Rhodes introduced the new students to aspects of the legal education experience that were likely unfamiliar to them. Watkins explains:

Mr. Rhodes taught me how to buy my law books so that my preparation for class would be the most effective in an environment of isolation. He became my unofficial "study group" partner. He profiled all of my professors for me. He showed me how to use the library and how to research published cases. He was my counselor when things seemed unbearable. . . .

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1. UNIV. OF ALA. SCH. OF L., *First African American Graduates at Alabama Law*, CAPSTONE LAWYER, 2022, at 25, 25, <https://www.law.ua.edu/wp-content/uploads/Capstone2022.pdf> [<https://perma.cc/3S8U-7TKM>]. The article explains,

In 1972, Michael Anthony Figures, Booker Forte, Jr., and Ronald E. Jackson became the first Black students to receive a degree from The University of Alabama School of Law. Previously, no law school in the state of Alabama—including the University of Alabama—would accept African American students. In fact, for a time, the State would even provide funding for Black students to study law elsewhere.

2. Donald V. Watkins, *Mr. Ramus Rhodes Revisited: A Bigger Man Than I Ever Knew*, DONALDWATKINS.COM (Jan. 2, 2018), <https://www.donaldwatkins.com/post/mr-ramus-rhodes-revisited-a-bigger-man-than-i-ever-knew> [<https://perma.cc/34W8-F7HS>].

3. *Id.*

All of this coaching, teaching, and mentoring had to be done quietly and discreetly. After all, Mr. Rhodes' purpose on campus was to clean the building, not to mentor me through the rigors of law school.⁴

In short, Mr. Ramus Rhodes unveiled aspects of the law school curriculum that were hidden from these students. Without the guidance of Rhodes, these students might not have learned how to navigate these unfamiliar yet impactful aspects of legal education.

The hidden curriculum is a tacit yet essential component of legal education. Its facets tend to be more accessible to some students than others. Students from historically underrepresented groups are less likely to have access to the hidden curriculum, and this disadvantages them in a variety of ways. Legal educators should therefore explore the content of the hidden curriculum and where it resides in educational settings. In doing so, educators will be in a better position to unveil the hidden curriculum to the benefit of all students.

Part I of this Article examines the concept of the hidden curriculum and notes aspects of the curriculum that may be hidden in legal education. Part II then identifies the type of students who struggle to access the hidden curriculum, examining categories of historically underrepresented groups in legal education and how aspects of their underrepresentation may make access to the hidden curriculum especially problematic. Part III offers a modest framework for identifying areas of inquiry, including suggestions as to what might lie hidden in the physical, social, curricular, and extracurricular program of legal education, as well as in its institutional policies. The Conclusion introduces one final cautionary perspective—that of the motivation, reason, or historical justification for hiddenness in legal education.

I. WHAT IS THE HIDDEN CURRICULUM?

Scholars have attempted to define, study, and interrogate the concept of curricular aspects that are ill-defined or less than apparent to students in formal education.⁵ This Part considers the foundational notion of a hidden curriculum, and then pivots to consider what features of the law school curriculum may be hidden to students.

4. *Id.*

5. *See generally* THE HIDDEN CURRICULUM IN HIGHER EDUCATION (Eric Margolis ed., 2001) [hereinafter THE HIDDEN CURRICULUM]. While beyond the scope of this Article, there has also been significant theorizing around the hidden curriculum, examining the concept from functionalist, Marxist, critical, and resistance perspectives. Eric Margolis et al., *Peekaboo: Hiding and Outing the Curriculum*, in THE HIDDEN CURRICULUM *supra*, 1, 4–17 [hereinafter Margolis et al., *Peekaboo*].

A. *Historical Development of the Concept of a Hidden Curriculum in Education*

The term “hidden curriculum” was first used by a sociologist, Philip Jackson, in 1968.⁶ In *Life in Classrooms*, Jackson studied the experiences of students in elementary classrooms.⁷ He distinguished the “official curriculum,” or the academic demands that educators make explicit,⁸ with the hidden curriculum, consisting of “conformity to institutional expectations” that may not be explicit but that may help students succeed.⁹

In this respect, Jackson’s observations could be viewed to imply that the hidden curriculum sends positive messages to students, or better enables them to achieve in educational settings. But that is not the full story.¹⁰ In other words, as in Jackson’s view, identifying the hidden curriculum may positively impact students, as when they are able to ascertain unstated institutional expectations for successful performance.¹¹ Correspondingly, where students are unable to ascertain these tacit messages, they may be at a disadvantage.¹² Moreover, messages hidden in the curriculum may actually be detrimental to students, as when they potentially signal bias.¹³ By way of example of this duality, in medical education, “the hidden curriculum can teach respect for authority, respect for others’ opinions, ethical patterns, work ethic, etc.,” but it can also “inject stereotyping, bias, or discrimination.”¹⁴

6. See generally PHILIP W. JACKSON, *LIFE IN CLASSROOMS* (1968) (explaining the existence of a hidden curriculum across various educational experiences); see also José Víctor Orón Semper & Maribel Blasco, *Revealing the Hidden Curriculum in Higher Education*, 37 *STUD. PHIL. & EDUC.* 481, 483 (2018). The authors assert that the hidden curriculum concept was “coined by Jackson (1970) in response to disillusionment because of the ineffectiveness of mass schooling from the 1950s onwards in eradicating class, racial and gender inequalities. Rather, schools seemed to play a role in reinforcing social norms and reproducing the status quo outside the classroom.” *Id.* (citations omitted).

7. See generally JACKSON, *supra* note 6.

8. *Id.* at 34.

9. *Id.* at 33–35.

10. In fact, with respect to Jackson’s original formulation, scholars “differentiate between weak and strong hidden curricula: the former (weak) encompass issues such as socialisation of students and understandings of professionalism, whereas the latter (strong) recognise Jackson’s perspectives of rather ominous motives in preserving a hierarchy of power, knowledge and social privilege through social and cultural reproduction.” George Koutsouris, Anna Mountford-Zimdars & Kristi Dingwall, *The ‘Ideal’ Higher Education Student: Understanding the Hidden Curriculum to Enable Institutional Change*, 26 *RSCH. IN POST-COMPULSORY EDUC.* 131, 133 (2021). The Article will return to the latter and possibly suspect strong hidden curriculum, including an examination of motives and justifications for hiddenness, in the Conclusion, *infra*.

11. JACKSON, *supra* note 6, at 33–35.

12. See Marcia Chatelain, *We Must Help First-Generation Students Master Academe’s ‘Hidden Curriculum’*, *CHRON. HIGHER EDUC.* (Oct. 21, 2018), <https://www.chronicle.com/article/we-must-help-first-generation-students-master-academes-hidden-curriculum/> [<https://perma.cc/H347-J4AG>] (explaining the development of a course specifically designed to unveil the hidden curriculum to first-generation students).

13. Elizabeth M. Fraley & Leah Witcher Jackson Teague, *Where the Rubber Hits the Road: How Do Law Schools Demonstrate a Commitment to Training Leaders?*, 14 *TENN. J.L. & POL’Y* 375, 391 (2020) (noting that a “negative hidden curriculum can inject stereotyping, bias, or discrimination”).

14. *Id.*

Scholars have written about four conceptions, or meanings, of the hidden curriculum. First, the hidden curriculum might mean “*unofficial expectations*, or implicit but expected messages.”¹⁵ In this meaning, the hidden curriculum is “the sum total of unofficial institutional expectations, values and norms aimed at by educational administrators, and perhaps teachers and to a lesser extent parents, and which are initially completely unknown to the students.”¹⁶ Second, the hidden curriculum might also refer to “*unintended learning outcomes* or messages.”¹⁷ “Since ‘even the most mundane of activities are often accompanied by unintended consequences,’ these outcomes or messages may never be recognized or identified, and even if they are they may never be formally acknowledged.”¹⁸

Third, the hidden curriculum has been described as “*implicit messages* arising from the structure of schooling.”¹⁹ This meaning is grounded in:

[T]hose classroom social relations that embody specific messages which legitimize the particular views of work, authority, social rules, and values that sustain capitalist logic and rationality. . . . The power of these messages lies in their seemingly universal qualities—qualities that emerge as part of the structured silences that permeate all levels of school and classroom relations.²⁰

Finally, some scholars have focused on the hidden curriculum “as *created* by the students.”²¹ In this meaning, scholars focus on how “[s]tudents’ views about what it is in fact necessary to do are usually different from the tasks as expressed by teachers . . . [leading to a hidden curriculum of] ‘latent, covert tasks that students (and others) infer as the basis for the rewards in the particular setting.’”²² Under this meaning, the hidden curriculum is hidden not from students but from instructors.²³

Modern scholars have also distinguished between the formal and hidden curriculum, referring to the former as consisting of “the syllabus, readings and lectures in specific subjects and lessons which professional accreditation organizations, law schools, professors and bar examiners boards (for example) design to promote the educational achievements.”²⁴ The hidden curriculum is contrastingly described as “an amorphous collection of implicit academic, social, and cultural messages, unwritten rules and unspoken expectations, and

15. John P. Portelli, *Exposing the Hidden Curriculum*, 25 J. CURRICULUM STUD. 343, 345 (1993).

16. *Id.* (citing JACKSON, *supra* note 6).

17. *Id.*

18. *Id.* at 346 (citation omitted).

19. *Id.* at 345.

20. *Id.* at 346 (citation omitted).

21. *Id.* at 345.

22. *Id.* at 346 (citation omitted).

23. *Id.*

24. Fraley et al., *supra* note 13, at 390 (citing Karl Thompson, *The Hidden Curriculum and School Ethos*, REVISESOCIOLGY (Nov. 9, 2017), <https://revisesociology.com/2017/11/09/the-hidden-curriculum-and-school-ethos/> [https://perma.cc/C9LK-NDQR]).

unofficial norms, behaviours and values of the dominant-culture context in which all teaching and learning is situated.”²⁵

Some authors have asserted that “the ‘hidden curriculum’ is not actually hidden, but merely constituted by all those things that are so taken for granted that they are rarely given any attention.”²⁶ Others posit that the hidden curriculum must be studied through the viewpoint of the learner, noting that “‘hidden’ is relative to who is looking—the [hidden curriculum] might be hidden to some groups but not to others, and this may change over time and depending on context.”²⁷ In this context, one author has made clear that “the ‘hidden’ part of ‘hidden curriculum’ always expresses a *relationship*—something is being hidden from someone by someone or something, whether intentionally or not; or something is not being recognised by someone.”²⁸

Noting that the hidden curriculum exists as “unwritten rules, values and normative patterns of behavior which students are expected to conform to and learn while in school,”²⁹ Jackson

argue[d] that what is taught in schools is more than the sum total of the curriculum and believed formal schooling should be understood as a socialization process where students pick up messages through the experience of being in school and interacting with faculty and peers, not just from things they are formally taught.³⁰

And, as previously indicated, the hidden curriculum can communicate aspects of education that are positive or negative.³¹ Because of these consequences, it is essential to interrogate both the location and content of, as well as the reason for, the hidden curriculum of legal education and to consider its impact on students from underrepresented groups.

B. *The Hidden Curriculum in Legal Education*

In legal education, the hidden curriculum can be described both with respect to its location, or where these messages hide, as well as its content, or the implicit messages that are communicated to students. With regard to location, the hidden curriculum can be viewed to exist in a variety of physical and social settings, experiences, and contexts: “[T]he school context, exercise of authority, curricula, and the characteristics of the staff and students have an

25. Sarah J. Schendel, *Due Dates in the Real World: Extensions, Equity, and the Hidden Curriculum*, 35 GEO. J. LEGAL ETHICS 203, 220 (2022).

26. Semper & Blasco, *supra* note 6, at 484 (citation omitted).

27. *Id.* (citation omitted).

28. *Id.*

29. Fraley et al., *supra* note 13, at 390 (citing Thompson, *supra* note 24).

30. David M. Moss, *The Hidden Curriculum of Legal Education: Toward A Holistic Model for Reform*, 2013 J. DISP. RESOL. 19, 22 (2013) (quoting JACKSON, *supra* note 6, at 34).

31. See Fraley et al., *supra* note 13, at 391.

implicitly socializing effect, transmitting norms that strongly influence students' values and behavior."³² As to the content, the formal curriculum can be characterized as unwritten, unacknowledged, or tacit aspects of the law school experience that do not appear in the formal curriculum but that nonetheless impact students' values, behaviors and attitudes. Hidden aspects of the law school curriculum may influence students' professional development, socialization, and understanding of law and the legal profession.³³

The hidden curriculum exists in various components of legal education. First, the hidden curriculum exists in the culture and norms within law schools. The manner in which law schools transmit the culture of the legal profession, including attitudes, traditions, and identity, can impact students' sense of belonging, especially if their backgrounds differ from the experiences of lawyers in the dominant legal culture.³⁴ Norms and culture can be communicated through the physical environment of the law school, through its branding, iconography, and architecture.³⁵ Specifically, law schools may communicate messages about institutional values tacitly, in physical spaces such as donor recognition walls³⁶ and social environments such as the classroom.³⁷ Messages may also be conveyed in curricular³⁸ and extracurricular experiences.³⁹

32. Semper et al., *supra* note 6, at 482; *see also* Marina Gair & Guy Mullins, *Hiding in Plain Sight*, in *THE HIDDEN CURRICULUM*, *supra* note 5, at 21 (citation omitted) (examining physical characteristics of the educational setting for evidence of the hidden curriculum).

33. *See, e.g.*, Nina Rossouw & Liezel Frick, *A Conceptual Framework for Uncovering the Hidden Curriculum in Private Higher Education*, 10 *COGENT EDUC.* 1, 9 (2023) (noting that “[m]any aspects of the curriculum are ‘hidden,’ not just in their messages but in their effects; and the responsibility of ensuring that these are sustaining and enhancing students’ confidence, self-esteem, and development are worthy of greater attention.”) (citation omitted).

34. *See generally* Susan C. Wawrose, *A More Human Place: Using Core Counseling Skills to Transform Law School Relationships*, 55 *WILLAMETTE L. REV.* 133 (2018). Wawrose acknowledges that “[b]ecause students absorb the hidden curriculum of the professional identity apprenticeship in the way they interact (or fail to interact) with faculty, providing a sound model for being in relationships is critical.” *Id.* at 160. She therefore suggests that when, for example, law faculty “model relational skills in their interactions with students outside of the classroom . . . [t]hey send the message that in the legal profession we treat others civilly, openly, and with respect, regardless of their place in a constructed hierarchy.” *Id.* at 162.

35. *See* Gair & Mullins, *supra* note 32, at 22. The authors explain that, in viewing photographs of a school:

Physical depictions of certain elements of hidden curricula, including classroom structures, architecture, fraternity and sorority gatherings, and representations of school pride, were somewhat obvious, but a large part of what constitutes the hidden curriculum—social relations like race and gender hierarchy, social class reproduction, the inculcation of ideological belief structures, and so on—was much less visible.

Id. And while a discussion of the hidden curriculum in physical structures apart from the law school environment is beyond the scope of the Article, scholars have observed that “variations in student housing experiences and students’ overall struggles to secure affordable and accessible housing act as a ‘hidden curriculum’ that sets up students for uneven academic, housing, and possibly professional and socio-economic trajectories.” Luisa Sotomayor et al., *When Students are House-Poor: Urban Universities, Student Marginality, and the Hidden Curriculum of Student Housing*, 124 *CITIES* 1, 2 (2022) (citations omitted).

36. *See infra* Part III(A)(i).

37. *See infra* Part III(A)(ii).

38. *See infra* Part III(B).

39. *See infra* Part III(C).

Moreover, law schools often overtly emphasize the importance of professionalism in law practice, but specific instruction in this context can be tacit or hidden. “Professionalism has been used to refer ‘to adherence to standards or norms of conduct beyond those required by the ethical rules,’ including civility and respect for others.”⁴⁰ Behaving “professionally” may include implicit messages about professional dress and attire.⁴¹ In one examination, researchers noted “how academic culture creates expectations of class-based gender behavior and presentation of self [] worked to privilege and reproduce class status.”⁴² Through interactions with faculty and peers, students learn about appropriate attire and professional appearance,⁴³ which are crucial in legal settings.

Students thusly learn professionalism in large part from the hidden curriculum, and typically through observation of the faculty and staff at law school.⁴⁴ This may be partially attributable to the amorphous nature of professionalism,⁴⁵ or potentially to biased messages inherent in the concept⁴⁶:

Professionalism is not without serious complications as a concept—the idea of behaving professionally as an unbiased or objective idea “ha[s] been used to create the narrative of white supremacy that underpins professionalism today.” In legal education and practice, “professionalism comes to stand in for the unnamable, the *je ne sais quoi*. It means ‘looks like us’ or ‘acts like us.’ Professionalism implicitly relies on the stereotypes about who belongs in law and who does not.” These stereotypes and biases play out in dress codes that prioritize white and Western standards of dress and hairstyle, and in expectations for speech and body language.⁴⁷

Relatedly, legal education must instill in students professional identity formation.⁴⁸ In an early acknowledgement of the impact of the hidden

40. Schendel, *supra* note 25, at 222 (citing Larry O. Natt Gantt II & Benjamin V. Madison III, *Teaching Knowledge, Skills, and Values of Professional Identity Formation*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (Deborah Maranville et al. eds., 2015)).

41. See generally Gair & Mullins, *supra* note 32. In the context of appearance and attire, the authors indicate that the “body is a crucial socializing force that symbolizes gendered and racialized social meanings. [In the university setting,] [w]omen and academics of color talked about regularly having to maintain a duplicity of being.” *Id.* at 31.

42. *Id.*

43. *Id.* at 33 (noting that, in the university setting, which translates to the law school setting, the “visibly gendered, class-based, and racialized body is clearly an important element of the hidden curriculum as it is transmitted through the interactions of students, professors, administrators, researchers, and scholars”).

44. Hannah R. Arterian, *The Hidden Curriculum*, 40 U. TOL. L. REV. 279, 281 (2009) (“The primary institutional deliverers of professional standards and values are faculty members. Faculty members are the subject of endless scrutiny; whether beloved or detested, or both simultaneously, their behavior is the medium and the message.”).

45. *Id.* at 282 (“Professionalism is not exactly an easy thing to teach or explain. It is certainly difficult to define, and it must have grounding in some values.”).

46. Schendel, *supra* note 25, at 223–24 (citations omitted).

47. *Id.*

48. Under the American Bar Association Accreditation Standard 303(b)(3), law schools must “provide substantial opportunities to students for . . . the development of a professional identity.” *ABA Standards and*

curriculum in this context, Roger Cramton questioned “whether the selection and training of law students [] neglect[s] humane aspects of personal development and experience, the emotional aspects of the professional relationship, and the development of capacities of imagination, empathy, self-awareness, and sensitivity to others,” and whether law students are “encouraged to be indifferent to character, insensitive to human problems, lacking in human concerns.”⁴⁹ With a prophetic nod to the hidden curriculum of professional identity formation in legal education, Cramton concluded that:

[L]ittle guidance and help is provided to the law student who is attempting to cope with the moral and personal problems of detachment and objectivity in the professional role. . . . Too often the young lawyer must grope alone toward an effective strategy for mingling humanism and professionalism in the lawyer-client relationship.⁵⁰

Aspects of networking, social capital, and resource accessibility may be components of the hidden curriculum.⁵¹ Many students implicitly recognize the importance of informal interactions, events, and extracurricular activities that offer opportunities for networking with peers, faculty, and legal professionals, as well as the ways in which those experiences contribute to social capital and career connections.⁵² Understanding the importance of these resources and having the ability to access opportunities may be less transparent to certain cohorts of students.⁵³ For example,

Rules of Procedure for Approval of Law Schools 2023–2024, AM. BAR ASS'N 18 https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-standards-ch3.pdf [https://perma.cc/Y4EZ-MUC9]. The professional identity formation standard is distinct from the requirement under Standard 303(a)(1) that law schools provide ethics instruction to student by offering “one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members.” *Id.*

49. Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 261 (1978).

50. *Id.* at 261–62.

51. See Susan L. Brooks, *Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation*, 14 U. ST. THOMAS L.J. 412, 418 (2018). Brooks explains that the hidden curriculum can be described as “a number of seemingly fixed institutional and structural elements that, while known at some level, tend to remain under the radar of faculty and administrators.” *Id.*

52. See Cristal E. Jones, *Still Strangers in the Land: Achievement Barriers, Burdens, and Bridges Facing African American Students Within Predominately White Law Schools*, 39 MINN. J.L. & INEQ. 13, 37 (2021). Jones explains:

Without an understanding of the secret, and not so secret, social behaviors and norms that govern every day behavior, this uncommon code, or hidden curriculum, may cause African American students to miss out on opportunities that would enhance their academic and social experience in law school. Such experiences include garnering insight on how to gather professional advice, participate in informal networks, or benefit from external systems of support.

Id. (footnote omitted).

53. *Id.* at 40. Jones, who at the time of publication of her article was a law student herself, noted that: [B]eginning law school students are advantaged by their connections to upper-class students or graduates who can share doctrinal class notes, practice exams, and informal networks. These peer advisors, informal networks, and activities are often undetected by African American students, yet provide invaluable insight, counsel, and support to dominant culture classmates.

[P]rivileged students' understanding of the hidden curriculum is the result of "a network advantage," meaning they likely have friends and family who have been through graduate school and can lend guidance. An ease with requesting assistance is also "an entitlement advantage" based on years of practice asking for (and getting) help from teachers, professors, and others in authority.⁵⁴

More specifically, messages about the manner in which to reach out to ask for assistance or resources may be implicit in the law school environment. For example, "[k]nowing how, when, and who to ask for help often becomes part of such an informal curriculum, along with other terminology and practices like understanding office hours, knowing about publication and scholarship, comprehending the importance of conferences, and choosing mentors."⁵⁵

Another aspect of the hidden curriculum is information regarding personal strategies for success in law school.⁵⁶ Overcoming challenges, building confidence, and developing resilience are part of the hidden curriculum, helping to prepare students for the demands of law practice.⁵⁷ However, as one author observes,

to the extent we promote the impression that our students' emotional lives are relatively unimportant, we send an implicit message that emotional competence is either not that important to the practice of law, or that it is a skill-set that students already possess or should intuitively know how to develop. Yet neither proposition is realistic. This message merely sets students up for unrealistic expectations about their ability to work effectively with future clients and for apathy, discontent, and even depression down the road when they ultimately realize they have a limited ability to be of optimal value to many of the clients who come to them for legal guidance.⁵⁸

Id.

54. Schendel, *supra* note 25, at 220–21 (footnote omitted).

55. *Id.* at 220.

56. There are resources for some of these aspects of legal education. *See, e.g.*, Donald J. Kochan, "Learning" *Research and Legal Education: A Brief Overview and Selected Bibliographical Survey*, 40 SW. L. REV. 449, 468–70 (2011). Kochan notes:

Undergraduate and law school library shelves are filled with "how to", preparation, studying skill, survival guides, and other materials for the law school experience, seducing alike both prospective students before entering the abyss that is law school and current students looking to learn new strokes as they are tossed into the law school's curved pool and forced to sink or swim.

Id.

57. *See, e.g.*, Barbara Glesner Fines, *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 WASHBURN L.J. 313 (2008) (observing "[p]rofessional development, like morals teaching, is more often 'caught than taught,'" and law faculty need to "learn what can be done to enhance the personal and professional well-being of law students. Faculty members should consider, in the design of each course and the overall curriculum, how, where, and to what extent students are formed as professionals and persons.") *Id.* at 320–22.

58. Robin Wellford Slocum, *An Inconvenient Truth: The Need to Educate Emotionally Competent Lawyers*, 45 CREIGHTON L. REV. 827, 841–42 (2012).

Information about workload balance and stress management may exist within the hidden curriculum.⁵⁹ In addition to failing to adequately instruct students on how to navigate the demands of law school and legal practice, the hidden curriculum of law school may actually obscure the negative impact that legal education has on students: “What is often left unsaid on campus is also important: when schools ignore the impact of stress and fail to pay attention to mental health, this ‘hidden curriculum’ of the law school environment also shapes—or misshapes—the values of the students.”⁶⁰

An associated aspect of the hidden curriculum lies in the pedagogical method employed in legal education, the Socratic method. In Socratic-style classrooms, students learn how to analyze, think critically, and engage in discussions with professors and peers. The hidden curriculum guides them in navigating class dynamics and learning how to constructively contribute to class discussions.⁶¹ Nonetheless, in this setting, “there seems to be only one leader: the professor . . . [b]y focusing heavily on the first and second apprenticeships [of knowledge and skills, respectively], law schools fail to convey additional needed information and skills about being a lawyer rather than merely thinking and doing.”⁶²

Identifying what is important in legal education on the basis of the Socratic methodology and emphasis on foundational knowledge may signal to students inaccurate messages about the realities of law practice. There, students must learn how to navigate the balance between theoretical legal concepts examined in their doctrinal classes and the practical application of law in real-world situations. However,

[g]iven the doctrinal emphasis on the first apprenticeship—thinking like a lawyer—this curricular reality conveys clear messages about the merit of various learning experiences across the three years of a legal education program including seriously distorted messages about law and lawyers. . . . [The] hidden curriculum inaccurately suggests that lawyers mostly

59. See Brittany Stringfellow Otey, *Buffering Burnout: Preparing the Online Generation for the Occupational Hazards of the Legal Profession*, 24 S. CAL. INTERDISC. L.J. 147, 187 (2014). Legal education is increasingly incorporating conversations about balance and well-being in light of ABA Accreditation Standard 303, Interpretation 303-5, which notes that “[t]he development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.” *ABA Standards and Rules of Procedure for Approval of Law Schools 2023–2024*, *supra* note 48, at 19. Even so, Otey acknowledges that, historically, “[t]he law school’s hidden curriculum includes ignoring stress and its consequences, focusing on studies to the exclusion of all else in a student’s life, utilizing substance abuse for escape, and failing to pay attention to mental health.” Otey, *supra*, at 187.

60. Karen Oehme & Nat Stern, *Improving Lawyers’ Health by Addressing the Impact of Adverse Childhood Experiences*, 53 U. RICH. L. REV. 1311, 1329–30 (2018) (footnote omitted).

61. See, e.g., Laura A. Webb, *Speaking the Truth: Supporting Authentic Advocacy with Professional Identity Formation*, 20 NEV. L.J. 1079, 1108 (2020) (exploring the use of the Socratic method and noting that it “implicitly suggests to students that there is a true law, a right answer to a legal question, but that lawyers themselves are not focused solely on finding and speaking it but instead on articulating plausible arguments for opposite outcomes”).

62. Fraley et al., *supra* note 13, at 393.

analyze and argue appellate law and that other functions are less common or important.⁶³

Finally, informal norms around the balance between zealous advocacy, civility, and persuasion may be tacit and therefore less obvious or accessible to some students. Within this context, law schools frequently fail to explicitly address the range of roles lawyers play vis-à-vis their clients. As two authors explain, most of legal education, particularly in doctrinal courses, “focuses almost exclusively on the boundaries of the law, with little attention to clients’ interests.”⁶⁴ In addition to this encompassing focus, “part of the mythology of the ‘duty of zealous advocacy’ is that lawyers are required to protect clients’ interests by taking hard, adversarial positions on the assumption that there are only two possible outcomes: each side can win or lose where there is a zero-sum relationship between the options.”⁶⁵ There are instances in which “one party’s gain inevitably results in an equal loss by the other party,” but lawyers can use other advocacy techniques such as alternative dispute resolution in order to achieve results that are satisfactory to all parties.⁶⁶ Nonetheless, the authors conclude that this perspective is not featured prominently in legal education and its “omission not only reflects an implicit distortion of lawyers’ professional responsibility and identity but also leaves graduates ill-prepared to serve their clients.”⁶⁷

Therefore, the hidden curriculum exists in many aspects of legal education. And, as a reminder, examining the hidden curriculum in legal education requires a focus on both the content of the hidden curriculum, or those tacit messages that are received by students, as well as the location, or place, where these messages hide. The Article turns now to the students and how and why they may struggle to access or understand the hidden curriculum.

II. WHO IS THE HIDDEN CURRICULUM HIDDEN FROM?

Students who are from groups historically underrepresented in legal education are less likely to have access to the hidden curriculum. This Part explores who those students are and the unique challenges they may face in navigating the hidden curriculum.

63. *Id.*

64. John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OHIO ST. J. ON DISP. RESOL. 247, 263 (2010).

65. *Id.*

66. *Id.*

67. *Id.* at 264.

A. *Who Are Underrepresented Groups in Legal Education?*

The term “underrepresented students” in law school typically refers to individuals who are part of demographic groups that have historically been underrepresented in the legal profession.⁶⁸ These groups often face barriers and challenges that can make it more difficult for them to pursue legal education and careers.⁶⁹ The categories of underrepresented students in law school can vary based on factors such as race, ethnicity, gender, socioeconomic status, and individuals with unique or different cognitive-functioning processes.

For example, students from certain minority racial and ethnic backgrounds have been historically marginalized and are less well-represented in the legal community.⁷⁰ These include Hispanics of any race, including students “of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin.”⁷¹ Underrepresented students may also be American-Indian or of Alaskan-native descent.⁷² Black and African-American students are underrepresented,⁷³ as are native Hawaiian or other Pacific Islander students.⁷⁴ Asian students⁷⁵ are also underrepresented in the legal profession, as are students who are of two or more racial categories.⁷⁶

68. See Gabriel Kuris, *What Underrepresented Law School Applicants Should Know*, U.S. NEWS AND WORLD REP. (Jun. 8, 2020 at 9:48 AM), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/what-underrepresented-law-school-applicants-should-know> [<https://perma.cc/BG2H-U7HV>].

69. *Teaching the Hidden Curriculum: Inclusive Teaching Guides & Tips*, B.U., <https://www.bu.edu/teaching-writing/resources/teaching-the-hidden-curriculum/> [<https://perma.cc/4V2M-KDRV>] (noting that students with less access to the hidden curriculum “tend to be from historically underrepresented populations, including first in their families to attend college, multilingual, of color, of nontraditional age, from lower socioeconomic status communities, and from immigrant backgrounds. Because not all students are ‘born into conditions that easily allow them to acquire linguistic practices that are understood as norms leading to common academic assessment standards,’ existing evaluatory practices may be invalid and unfair.”) [hereinafter *Inclusive Teaching*].

70. See generally MIRANDA LI ET AL., AM. BAR FOUND., WHO’S GOING TO LAW SCHOOL? (2020), <https://www.courthousenews.com/wp-content/uploads/2020/05/LawSchoolEnrollment-Study.pdf> [<https://perma.cc/MCK3-UBMS>].

71. ENJURIS, LAW SCHOOL ENROLLMENT BY RACE AND ETHNICITY (2022), <https://www.enjuris.com/students/law-school-race-2022/> [<https://perma.cc/9FEH-GCK3>] (Dec. 16, 2022).

72. *Id.* (defined as students “having origins in any of the original peoples of North America and who maintain[] cultural identification through tribal affiliation or community recognition”).

73. *Id.* (defined as students “having origins in any of the [B]lack racial groups of Africa”).

74. *Id.* (defined as students “having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands”).

75. *Id.* (defined as “having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, and Vietnam”).

76. *Id.* (defined as a “category used to report a non-Hispanic person who selects two or more of the other racial categories”).

There are additional categories of underrepresented populations in law school and legal education. First-generation students,⁷⁷ LGBTQ+ and non-binary students,⁷⁸ students with disabilities,⁷⁹ and students with variation in cognitive functioning⁸⁰ are likely underrepresented in law school. Students who are socioeconomically challenged are less well-represented in law schools.⁸¹ Additionally, underrepresented students may include students from certain religious or cultural backgrounds that are not well-represented in the legal field as well as individuals from regions with historically lower rates of legal representation, such as rural or underserved urban areas.

Specific categories of underrepresented students can vary based on the context and the region of the law school. It is important to note that students might fall within more than one of these categories and may therefore have intersectional challenges with respect to representation in law school and the

77. Melissa A. Hale, *Guest Post: The Importance of Supporting First-Generation Law Students*, LSSSE (Nov. 9, 2022), <https://lsse.indiana.edu/blog/guest-post-the-importance-of-supporting-first-generation-law-students/> [<https://perma.cc/8TYQ-JZ8N>]. Hale defines first-generation students as those “whose parents or legal guardians have not completed bachelor’s degrees” and reports that “[a]ccording to the Law School Survey of Student Engagement (LSSSE), 29% of law students are first-generation.” *Id.*

78. See NAT’L ASS’N OF L. PLACEMENT, *LGBT REPRESENTATION AMONG LAWYERS IN 2017*, NALP BULLETIN (Jan. 2018), <https://www.nalp.org/0118research> [<https://perma.cc/XZD7-LMU2>] (reporting that “[t]he overall percentage of openly lesbian, gay, bisexual, and transgender (LGBT) lawyers reported in the NALP Directory of Legal Employers (NDLE) in 2017 increased to 2.64% compared with 2.48% in 2016”). Interestingly, there is a significant geographic disparity in the numbers reported:

[I]n fact about 56% of the reported openly LGBT lawyers are accounted for by just four cities: New York City, Washington, DC, Los Angeles, and San Francisco. These same four cities accounted for about 39% of the not quite 101,000 lawyers included in these analyses. Thus the percentage of openly LGBT lawyers in these cities is correspondingly higher—about 3.8% overall (and highest in San Francisco specifically at 5.9%) compared with the 2.64% nationwide figure. In these same four cities, the percentage of openly LGBT summer associates is also higher—about 5.7% compared with 4.66% nationwide.

Id.

79. Jak Petzold, *New Questions Focusing on Law Students with Disabilities*, LSSSE (Sept. 7, 2022), <https://lsse.indiana.edu/blog/new-questions-focusing-on-law-students-with-disabilities/> [<https://perma.cc/284D-6FX8>]. The LSSSE report noted that:

In 2022, nearly one in five (19%) of LSSSE respondents had a disability. Students who responded “yes” to the disability question then had the option to select the condition(s) that impact their learning, working or living activities. Mental health conditions were by far the most common, with about 13% of law students having a condition such as anxiety, ADHD, or autism. Four percent of law students had a condition not specified on the survey such as a chronic health condition or a learning disability. Two percent of respondents had a physical disability, and one percent had a sensory disability such as being deaf or hard of hearing.

Id.

80. See Joshua P. Byrne, *Perceiving the Social Unknown: How the Hidden Curriculum Affects the Learning of Autistic Students in Higher Education*, 59 INNOVATIONS EDUC. & TEACHING INT’L 142 (2022).

81. *Stanford Law First-Generation & Low-Income Professionals*, STAN. L. SCH., <https://law.stanford.edu/flip/> [<https://perma.cc/BV7S-ZCZX>] (noting that “[o]nly 2% of students at the top 20 law schools come from the bottom socioeconomic quartile of the population, while more than three-quarters come from the richest socioeconomic quartile”).

legal profession.⁸² And, although law schools and the legal profession are increasingly recognizing the importance of diversity and inclusivity, students from underrepresented groups may still face more challenges in accessing the hidden curriculum.⁸³

As a final note with regard to how underrepresented students are categorized, one author has asserted that categories labeled as “‘diverse students’ or ‘underrepresented students’ are thinly veiled ‘euphemisms’ for race and ethnicity.”⁸⁴ In the context of this Article, that view is too limiting. Rather, the focus of this Article is students who are disadvantaged vis-à-vis the hidden curriculum based on a lack of access to information. This lack of access is likely based on their historical underrepresentation, which may be attributable to race, socioeconomic status, or other intersectionalities explored above.

With that in mind, it is important to remember that lack of access to information is related to historical underrepresentation. As one author explains:

[F]irst-generation students overlap with underrepresented students of color, as well as those from lower socioeconomic classes. Many first-generation students, therefore, come to law school with considerable hurdles: lower access to finances, lower social capital (i.e., fewer networking connections), lack of exposure to professional norms, and finally, hurdles related to academic preparation, especially when so much of the language used in law school might be brand new to them. Most first-generation students themselves come to law school with concerns surrounding academic success, their career path, building a professional network, and finances and family obligations.⁸⁵

It is this lack of access to information that is more fully explored in the following section.

B. *Why Might the Hidden Curriculum Be More Opaque to Students from Underrepresented Groups?*

It should not be surprising that aspects of the hidden curriculum are likely to be less accessible to underrepresented students.⁸⁶ Underrepresented students

82. See, e.g., Hale, *supra* note 77. The report notes that “[s]tudents of color are more likely than their white classmates to be first-generation. More than half of all Latinx students, 45% of Native American students, and 40% of Black or African American students are first-generation.” *Id.*

83. *Inclusive Teaching*, *supra* note 69.

84. Daniel Ortner, *In the Name of Diversity: Why Mandatory Diversity Statements Violate the First Amendment and Reduce Intellectual Diversity in Academia*, 70 CATH. U. L. REV. 515, 553 (2021).

85. Steven Foster et. al., *Closing the Law School Gap: A Collaborative Effort to Address Educational Inequities Through Free, Asynchronous Tools*, 14 J. MARSHALL L.J. 116, 123 (2021); see also Lisa R. Pruitt, *The False Choice Between Race and Class and Other Affirmative Action Myths*, 63 BUFF. L. REV. 981, 1011 (2015) (footnote omitted). Pruitt observes, “[b]eing second-generation college is very often a world apart from being first-generation college. Being raised in a low-income household is fundamentally different from having heard one’s parents or grandparents reminisce about the income-related hardships and deprivations of their youth.” *Id.*

86. Foster et. al., *supra* note 85, at 123.

likely face “challenges that attend lacking a background in the law before beginning law school.”⁸⁷ Because the hidden curriculum may reflect values, norms, and practices of the dominant culture, students from underrepresented groups may lack familiarity with these practices. Even more troublingly, these practices may be at odds with values and norms more familiar to students from underrepresented groups.⁸⁸ For example, in one medical education study, researchers found that medical students from underrepresented groups suffered adverse emotional consequences from feeling pressured to accept a hidden curriculum that was ideologically incongruent with their values.⁸⁹ Law students from underrepresented groups are likely to suffer similarly.

Moreover, the ability to decode the hidden curriculum often requires a level of cultural and social capital.⁹⁰ This may include being aware of how to navigate the social interactions of the dominant group, and understanding unspoken expectations of the dominant group.⁹¹ In the law school classroom students “who are more powerful in the dominant social order often feel more privileged to speak,” while students from underrepresented groups, “have a triple border to pass.”⁹² These students must first “circumvent the implicit dialogic pecking order that would have them speak last and briefly, if at all.”⁹³ Second, they are obligated to contribute to conversations in a language, dialect, and register that is different from what they have known.⁹⁴ Finally, “because those favored by law and by the language of law have marginalized, stigmatized, and colonized outsiders and their communities, speaking in this new language of power is a form of self and community betrayal and creates conscious and unconscious resistance to the process of socialization.”⁹⁵

87. Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 25 LA RAZA L.J. 1, 5 (2015).

88. See, e.g., Samuel Nemiroff et al., *Moral Injury and the Hidden Curriculum in Medical School: Comparing the Experiences of Students Underrepresented in Medicine (URMs) and Non-URMs*, ADVANCES IN HEALTH SCIS. EDUC. (June 29, 2023), <https://link.springer.com/article/10.1007/s10459-023-10259-2> [<https://perma.cc/7XCT-8LKV>].

89. *Id.* The authors noted that the “pressure to assimilate to the values of the [hidden curriculum] (and of the in-group of the medical establishment) can make the process of [professional identity formation] more difficult, as the constant negotiation of personal versus professional identity can exacerbate feelings of isolation, especially in the context of race/ethnicity.” *Id.* (citation omitted).

90. Jones, *supra* note 52, at 37 (asserting that, for example, “African American law students may not have the social capital garnered by their dominant culture peers to help navigate and decipher the secret social behaviors and norms within the legal community”).

91. See Brook K. Baker, *Language Acculturation Processes and Resistance to In “Doctrine”ation in the Legal Skills Curriculum and Beyond: A Commentary on Mertz’s Critical Anthropology of the Socratic, Doctrinal Classroom*, 34 J. MARSHALL L. REV. 131, 137–40 (2000).

92. *Id.* at 137.

93. *Id.*

94. *Id.* at 138.

95. *Id.* at 138–39.

Relatedly, aspects of the hidden curriculum may be based on implicit assumptions about students' prior knowledge and experiences.⁹⁶ These aspects sometimes involve specific language or communication styles that may be unfamiliar to underrepresented students.⁹⁷ Legal education often involves active class participation, group discussions, and oral presentations. It also relies on precise and potentially unfamiliar language. The hidden curriculum might assume that everyone is equally comfortable engaging in these activities and using this language, which can disadvantage some students.⁹⁸ Students from underrepresented groups might face discomfort or hesitancy in participating due to a lack of familiarity with this form of interaction and communication.⁹⁹

These students may also be impeded by feelings of marginalization or imposter syndrome.¹⁰⁰ As one author explains,

Imposter syndrome is particularly pronounced among lawyers who are women, racial minorities, LGBT, disabled or first-generation professionals. Attorneys who don't see themselves reflected in the people they work with tend to question their own legitimacy. Without peers and role models, attorneys in underrepresented groups are more likely to feel as though they don't belong.¹⁰¹

If students are not accustomed to the particular ways of expressing themselves or participating in class discussions, they might feel marginalized or less confident in their abilities.¹⁰² This can perpetuate the assumption that only

96. *The Hidden Curriculum: Helping Students Learn the 'Secret' Keys to Success*, CTRL FAC. RES., AM. UNIV., <https://edspace.american.edu/ctrl/hidden-curriculum/> [https://perma.cc/8QMK-FC46] (explaining that “[h]idden curricula are created when academic institutions prioritize the experiences of particular groups of students over others. Colleges and universities have predominantly catered to white, non-disabled, middle-class students and over generations have shaped their policies with an expectation that students will matriculate with a common level of prior knowledge to draw upon.”).

97. Baker, *supra* note 91, at 138 (explaining, by way of example, “the home language of women is frequently a language of reciprocity and relation, [so] learning a new language of objectivity, rights, and confrontation presents special risks of speaking inartfully, which in turn saps the outsider's will to participate”) (footnote omitted).

98. See Jones, *supra* note 52, at 17–18. Jones explains that law students must learn the language of the law and the methods of its study but that because “this framework, and the law, are derived from the dominant culture, those students who mirror that racial frame are preconditioned with some level of familiarity that facilitates the learning experience.” *Id.* at 18.

99. *Id.* at 21–23 (explaining challenges faced by students of color in navigating the linguistic culture of legal education); see also Carmen G. González, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, 61 FED. LAW. 49, 50 (2014) (“Studies show that students from underrepresented groups often feel like outsiders in predominantly white law schools and regard the law school culture as inhospitable to their experiences and perspectives.”).

100. Jones, *supra* note 52, at 25–26.

101. Susanne Aronowitz, *A Secret Epidemic in the Legal Profession: Imposter Syndrome*, 77 OR. ST. B. BULL. 36, 36 (2017).

102. Jones, *supra* note 52, at 25–26. Jones explains,

African American law students often struggle with a similar and perpetual feeling of being ill-perceived, accompanied by suspicions of whether they actually belong in the law school environment at all. These ongoing doubts, which are equally isolating and disorienting, not only erode the sense of belonging, but can trigger detached and distant learning.

certain types of students belong in the academic environment, triggering a “solo effect”¹⁰³ that can hinder underrepresented students’ engagement in the law school setting. As one student author has explained, the solo effect, or feeling of isolation experienced by minority cohorts within a larger community, is experienced by law students from underrepresented groups “who feel like outsiders, given different cultural experiences, perspectives, and values.”¹⁰⁴ “This isolation, triggered by actual, perceived, or imagined differences, results in an added strain that can take a toll upon an individual’s sense of self or physical well-being.”¹⁰⁵

Students with disabilities or variation in cognitive functioning may struggle to access the hidden curriculum because of an inability to perceive social cues. Because the hidden curriculum is, in part, “a set of unspoken lessons regarding social and cultural expectations,”¹⁰⁶ neurodivergent students may lack access to the hidden curriculum because of impaired social communication.¹⁰⁷

Aspects of the hidden curriculum may also be less accessible to underrepresented groups by virtue of their lack of networking opportunities. Building social networks with peers, professors, and mentors through social events and extracurricular activities is a crucial part of educational success and career advancement. Underrepresented students might have limited access to these networks and mentorship opportunities.¹⁰⁸ This can be due to a variety of factors, including the historical lack of representation in the legal profession, a lack of familiarity with how to engage in networking activities, or other cultural and socioeconomic factors. This can also be due to the fact that both students and faculty may look for mentors who are similarly situated,¹⁰⁹ undermining the ability of underrepresented students to find such a similarly situated mentor.¹¹⁰

Id. (citation omitted).

103. *Id.* at 29–30.

104. *Id.*

105. *Id.* at 30.

106. Byrne, *supra* note 80, at 143 (footnote omitted).

107. *Id.* Byrne specifically outlined difficulties in accessing the hidden curriculum faced by students with Autism Spectrum Disorder (ASD). So, for example, students with ASD may have “[i]ssues with intonation, repetitive behaviours and social-emotional reciprocity.” *Id.* As a result, the “way an autistic person presents themselves may be misconstrued as disruptive or insulting by others. Resulting exclusion, or self-isolation due to negative experiences, could restrict social access and reduce overall exposure to the hidden curriculum.” *Id.*

108. See Aronowitz, *supra* note 101, at 36.

109. See Tomiko Brown-Nagin, *The Mentoring Gap*, 129 HARV. L. REV. F. 303, 307–08 (2016).

110. See Eric Margolis and Mary Romero, “*In the Image and Likeness . . .*” *How Mentoring Functions in the Hidden Curriculum*, in THE HIDDEN CURRICULUM 79, *supra* note 5. The authors explain,

If there is a master narrative in graduate school, it is the reproduction of academia itself with its ivory tower, valorization of theoretical knowledge, disciplinary structures, emphasis on discourse and method, and hierarchies of knowledge and rank. Mentoring describes the process whereby people of power embedded in the system personally select and groom their successors—successors who will in their turn safeguard the noble house. From this perspective, the mentoring function is perhaps the most singly important element of the hidden curriculum in higher education.

Underrepresented students might also face financial challenges¹¹¹ that limit their ability to participate in unpaid internships, networking events, or extracurricular activities that are considered part of the hidden curriculum.

Finally, elements of the hidden curriculum can sometimes reinforce cultural biases and stereotypes.¹¹² The legal profession has norms around professionalism and etiquette that may reflect stereotypes of the dominant group.¹¹³ When these culturally established behaviors are viewed as “correct” or “ideal,” students from underrepresented backgrounds might fear negative judgement for not conforming, even though it is recognized that those differences are valuable and contribute to diversity of thought.

III. EXPOSING THE HIDDEN CURRICULUM: TARGETS AND THOUGHTS

With an understanding of what the hidden curriculum consists of and why it may be more hidden from students from underrepresented groups, this Article necessarily turns to potential ideas for unveiling or exposing the hidden curriculum. Here, legal education may benefit from a framework offered in the medical-education context. In *Beyond Curriculum Reform: Confronting Medicine’s Hidden Curriculum*,¹¹⁴ Frederic W. Hafferty offers four areas to explore, including “(1) policy development, (2) evaluation, (3) resource allocation, and (4) institutional ‘slang’ or nomenclature.”¹¹⁵ Hafferty posited different lenses to consider within this framework.¹¹⁶ He explains,

Each of these domains can be approached in two fundamentally different ways. One can explore how particular educational activities are reinforced, or undermined, by certain policies, evaluation procedures, research allocation strategies, or “group speak.” Conversely, one can approach the policies, evaluation activities, resource allocation decisions, and institutional vocabulary as data in and of themselves and ask, “What are the fundamental values and

Id. at 81 (footnote omitted).

111. See Jones, *supra* note 52, at 37–38 (addressing the impact of economic inequality on underrepresented students).

112. Gonzales, *supra* note 99, at 53. Gonzales addresses the challenges faced by faculty of color as they integrate into academia. Her observations below can be extrapolated to the experiences of underrepresented students as they navigate the hidden curriculum:

Class bias in academia is often subtle but pervasive. Academics convey the normative expectations of the profession by their accents, vocabulary, and patterns of speech; by what they read, how they dress, and where they live; and by their preference for understated and indirect communication rather than working-class bluntness. Academics from the working class often encounter enormous pressure to pass as middle or upper class, and they must carefully evaluate the repercussions of coming out as working class in an elitist, class-phobic professional environment.

113. See Jones, *supra* note 52, at 18.

114. Frederic W. Hafferty, *Beyond Curriculum Reform: Confronting Medicine’s Hidden Curriculum*, 73 ACAD. MED. 403 (1998).

115. *Id.* at 404.

116. *Id.*

messages being created and transmitted within each or all of these activities?”¹¹⁷

In the context of these frames, or lenses, legal educators can consider how the law school environment, curricular and extracurricular signals, and institutional policies contribute to the existence of a hidden curriculum and its accessibility to students from historically underrepresented groups in legal education and law practice.

A. *The Law School Environment*

The environment of the law school can be conceptualized physically, in terms of its physical environment, and relationally, in terms of how cohorts within the law school such as students, staff, and faculty interact. Both conceptualizations communicate messages about the norms and values of the institution.

1. *The Physical Environment*

Researchers have investigated what norms, values, and messages can be conveyed in the hidden curriculum in the context of the physical environment of education. So, for example, “the physical environment of the university conveys a hidden curriculum, an example being certain architectural structures being regarded to honour certain histories and convey political agendas.”¹¹⁸ The physical environment, together with the messaging of its iconography and naming, or branding, “put simply, ‘is not innocent.’ It inscribes selective and misleading versions of the past in solid, material forms.”¹¹⁹ Nonetheless, “physical settings do not function as socializing agents *sua sponte*; they are things.”¹²⁰ Rather, the “people who design, ornament, and maintain [these physical spaces] are the true sources of socializing messages.”¹²¹ Because “physical structures persist and continue to affect the people who inhabit them long after those who designed and built them have passed from the scene,”¹²²

117. *Id.*

118. Rossouw & Frick, *supra* note 33, at 8.

119. Stephen Clowney, *Landscape Fairness: Removing Discrimination from the Built Environment*, 2013 UTAH L. REV. 1, 3 (2013). Clowney observes that

the landscape plays a powerful role in shaping how communities think about race and racial power. All too often, a city’s parks, street names, monuments, and memorial spaces conspire to tell stories that praise white achievement, ignore or misrepresent the history of African Americans, and work to physically exclude [B]lacks from important civic spaces.

Id. at 62.

120. Carrie Yang Costello, *Schooled by the Classroom: The (Re)production of Social Stratification in Professional School Settings*, in *THE HIDDEN CURRICULUM*, *supra* note 5, at 43, 45.

121. *Id.*

122. *Id.*

legal educators should consider what implicit messages are communicated by the physical environment, particularly in light of Hafferty's recommendation that educators evaluate resource allocation and its impact on the hidden curriculum.¹²³

For example, in an analysis of the hidden curriculum communicated through the physical environment at the Boalt Hall School of Law at the University of California, Berkeley, Carrie Yang Costello found implicit messages of wealth, privilege, and class stratification.¹²⁴ Donor acknowledgements on displays conveyed the importance of wealth¹²⁵ and the message that donors were mostly white males.¹²⁶ Costello observed that the donor wall conveyed implicit messages to students, including the following:

The first is a reminder that the law has traditionally been a white male preserve. Even so, substantial numbers of women and/or people of color have graduated from Boalt over the past quarter century, but very few appear to have made substantial (financial) contributions to their alma mater. Students may surmise either that female alumnae and alumni of color feel alienated from Boalt and do not desire to donate money to it, or that while they hold fond feelings for Boalt in their hearts, they have not achieved the financial success of their white male peers who do donate. Either possibility might give nontraditional Boalt students pause.¹²⁷

Costello also found implicit messages communicated to students in the law school's artwork,¹²⁸ bulletin boards,¹²⁹ and donor recognition on classrooms and offices.¹³⁰

In contrast to potentially negative messages associated with the physical environment, students experience the hidden curriculum in aspects of the physical environment designed to be inclusive. Examples include resource

123. Hafferty, *supra* note 114, at 404.

124. *See generally* Costello, *supra* note 120.

125. Costello, *supra* note 120, at 47 (noting that, because the donor wall in the law school was arranged in accordance with the amount of the donation, it conveyed the "message to students that being willing and able to give money is admirable, and being willing and able to give a lot [of] money is even more admirable").

126. *Id.* (emphasizing that "students also learn something about the nature of admirable donors: they are mostly male, and apparently mostly white").

127. *Id.*

128. *Id.* at 52–53 (noting that portraits on display featured, almost exclusively, white males).

129. *Id.* at 48–49 (explaining, for example, that career services bulletin boards featuring law firm positions were "full and busy" while public service positions were "sparsely populated and slow to change," sending the message to students that "law firms were where the action was").

130. *Id.* at 48. Costello explained that the expanse of donor recognition on classroom, corridors, offices, and library carrels sent competing messages to students. In one respect, "they gave an impression of wealth, privilege, and historical continuity." *Id.* Paradoxically, "their proliferation was irritating," with students mocking the "graffiti intruding into their private sphere." *Id.*

allocation for physical safe spaces,¹³¹ lactation rooms,¹³² and food pantries.¹³³ The physical environment of the law school is therefore a salient space to explore for hidden messages that are communicated to students.

2. *The Social or Relational Environment*

Because students “learn from their environments, and in the delightfully hermetically sealed world of legal education, there are not many actors to deliver the hidden curriculum, the secret handshake, or the role model,”¹³⁴ law schools should pay attention to implicit signals sent to underrepresented students. Faculty,¹³⁵ staff,¹³⁶ and students¹³⁷ all contribute to the existence and exposure of the hidden curriculum such that the demographics of legal education have a significant impact. Accordingly, law schools should¹³⁸ (and have)¹³⁹ paid increasing attention to the diversity of law school students,¹⁴⁰ faculty and staff,¹⁴¹ and leadership.

131. Vinay Harpalani, “*Safe Spaces*” and the Educational Benefits of Diversity, 13 DUKE J. CONST. L. & PUB. POL’Y 117, 123–25 (2017). Harpalani explains that safe spaces in educational settings can be physical, such as residential housing, but that the term can also extend to classes, events, and student organizations. *Id.* He further emphasizes that because “university campuses can be isolating environments for minority students, safe spaces can help reduce feelings of isolation and assist these students with social adjustment issues on campus.” *Id.* at 130. The concept of safe spaces and brave spaces has, however, received some criticism. As Harpalani explains, “[i]n media and public discourse, safe spaces are largely known through the eyes of their critics.” *Id.* at 120 (footnotes omitted).

132. Staci Zaretsky, *Law School Offers Amazing New Perk For New Mothers*, ABOVE THE LAW (Apr. 7, 2017, 11:45 AM), <https://abovethelaw.com/2017/04/law-school-offers-amazing-new-perk-for-new-mothers/> [<https://perma.cc/SP3W-NJ74>] (reporting on the development of a lactation room at the University of Florida Levin College of Law).

133. See Christine Charnosky, *Drake Law School Opens Food Pantry: “Hungry Law Students Don’t Make Good Lawyers,”* LAW.COM (Oct. 3, 2022, 3:18 PM), <https://www.law.com/2022/10/03/drake-law-school-opens-food-pantry-hungry-law-students-dont-make-good-lawyers/> [<https://perma.cc/GLS5-A824>] (explaining the impetus for the law school to open a food pantry for students struggling with food insecurity).

134. Arterian, *supra* note 44, at 280–81.

135. *Id.* at 282 (asserting that “[f]aculty members will always shoulder the primary burden of the hidden curriculum in legal education”).

136. *Id.* at 287–88 (exploring the contributions of staff on delivering the hidden curriculum).

137. See, e.g., Suzanne E. Rowe, *The Guide to Belonging in Law School*, Russell A. McClain, 25 LEGAL WRITING 1, 2 (2021) (noting that some students learn the hidden curriculum as a result of “luck in meeting upper-level students”).

138. See generally *Standards and Rules of Procedure for Approval of Law Schools 2023-2024*, *supra* note 48, at 15 (requiring law schools to consider diversity and inclusion).

139. *Law School Faculty Demographics* (2022), ENJURIS, <https://www.enjuris.com/students/law-school-faculty-demographics/> [<https://perma.cc/F8MS-J357>] (noting that “the number of minority law professors has increased by 7.43 percentage points since 2011”).

140. *Standards and Rules of Procedure for Approval of Law Schools 2023-2024*, *supra* note 48, at 15 (requiring law schools in Standard 206(a) to “demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity”).

141. *Id.* (requiring law schools in Standard 206(b) to “demonstrate by concrete action a commitment to diversity and inclusion by having a faculty and staff that are diverse with respect to gender, race, and ethnicity”).

With regard to increasing student diversity in law schools, the implications of the SCOTUS decisions in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*¹⁴² and *Students for Fair Admissions, Inc. v. University of North Carolina*¹⁴³ are beyond the scope of this Article. Even so, law schools can comply with the ruling while still taking steps to build a diverse student body.¹⁴⁴ And, if, as one author suggests, diversity promotes the values of “effectuat[ing] the inclusion of underrepresented students,” “facilitat[ing] racial cooperation and understanding,” and “prevent[ing] racial isolation and alienation,”¹⁴⁵ improving diversity in law schools might have a positive impact on revealing the hidden curriculum.

As illustrated by Mr. Ramus Rhodes’ impact on the first Black students at the University of Alabama School of Law, diverse faculty and staff who can provide guidance and mentorship have a positive impact on making the hidden curriculum accessible to students.¹⁴⁶ “Studies show that mentors help students navigate institutional bureaucracies, attain legitimacy, build social capital, and secure postgraduation employment.”¹⁴⁷ Nonetheless, there is a mentoring gap:

Just as students are differently situated with respect to financial resources, educational opportunities, and academic performance, they are differently situated with regard to the ability to build a support network. The gap in access to mentors is frequently associated with students’ backgrounds—race, class, and gender. Wealthy, white, and male students are better positioned to attract mentors because they tend to have greater social capital. Students disadvantaged by race, income, education, gender, and other stigmatized social markers tend to have less social capital. These students find it more difficult to approach and secure mentors.¹⁴⁸

142. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (striking down affirmative action in admissions).

143. *Students for Fair Admissions, Inc. v. Univ. of N. Carolina*, 142 S. Ct. 896 (2022) (consolidated with *Students for Fair Admissions*, 600 U.S. at 181).

144. U.S. DEP’T JUST. & U.S. DEP’T EDUC., QUESTIONS AND ANSWERS REGARDING THE SUPREME COURT’S DECISION IN *STUDENTS FOR FAIR ADMISSIONS, INC. V. HARVARD COLLEGE AND UNIVERSITY OF NORTH CAROLINA* 3 (2023) (noting that schools can “use strategies that remove barriers and expand opportunity for all,” including, for example, the use of targeted outreach and recruitment).

145. Devon W. Carbado, *Intraracial Diversity*, 60 UCLA L. REV. 1130, 1145–46 (2013) (tethering the stated values of diversity to representations about diversity made in *Grutter v. Bollinger*, 539 U.S. 306 (2003)).

146. But it should be acknowledged that this may place undue burdens on faculty and staff of color. See Leonard M. Baynes, *Who Is Black Enough for You? An Analysis of Northwestern University Law School’s Struggle over Minority Faculty Hiring*, 2 MICH. J. RACE & L. 205 (1997). Baynes explains that “[f]aculty of color often have ‘unofficial’ additional burdens placed on them, such as mentoring students of color and junior faculty of color, serving as the representative voice of people of color on various faculty committees, and interacting with the larger community of color.” *Id.* at 225 (footnotes omitted).

147. Tomiko Brown-Nagin, *The Mentoring Gap*, 129 HARV. L. REV. F. 303, 307–08 (2016) (further explaining that “[s]tudents with mentors achieve higher grades, graduate at higher rates, and are more likely to attend graduate and professional school”).

148. *Id.* at 308 (footnote omitted).

The mentoring gap can also be attributed to characteristics of faculty. Because white males comprise the majority of doctrinal law faculty,¹⁴⁹ similarly situated, privileged law students are likely to benefit from these faculty members' mentorship.¹⁵⁰ Legal educators could therefore address the hidden curriculum by examining mentoring opportunities for students, striving to ensure through institutional policies or resource allocation considerations that all students have access to productive mentor relationships.

In addition to taking a meaningful approach to mentoring underrepresented students, law schools should focus on policy development and "structural initiatives—including meaningful numerical representation of students of color, curriculum reform, and faculty diversity,"¹⁵¹ in order to provide underrepresented students with role models, mentors, and advisors who understand their unique challenges and who can also offer guidance on aspects of the curriculum that may be hidden to these students.¹⁵²

B. Curricular and Pedagogical Signals

Legal educators should also interrogate what implicit and explicit messages are conveyed in the context of the law school curriculum. One obvious way to make the hidden curriculum less hidden is to expose it explicitly.¹⁵³ Legal educators could do so by including topics in the express curriculum such as effective communication, including the nomenclature expected in professional settings, networking and self-promotion, and navigating professional settings, including discussions regarding workplace etiquette. In creating a course called *Mastering the Hidden Curriculum*, Marcia Chatelain addresses tacit rules and

149. See Ruth Anne Robbins et al., *Persistent Structural Barriers to Gender Equity in the Legal Academy and the Efforts of Two Legal Writing Organizations to Break Them Down*, 65 VILL. L. REV. 1155, 1161 (footnote omitted) (2020) (noting that while "current data are hard to find, roughly 64% of traditional, tenured faculty teaching casebook courses are men").

150. Brown-Nagin, *supra* note 109, at 308. Brown-Nagin explains that the predominance of white, male faculty "can compound the advantages of economically privileged, white, and male students." *Id.* Also, because faculty may self-select mentees who are similar to them, "[e]ither selection method can disadvantage students of color and low-income students (who face implicit bias and stereotypes)." *Id.* at 308–09. She concludes that "these dynamics make it less likely that economically disadvantaged, nonwhite, and female students will form mentoring relationships with experienced teachers. Consequently, these students are deprived of the academic, social, and professional advantages that flow from effective mentoring." *Id.* at 309.

151. *Id.* at 311.

152. See, e.g., Renee Nicole Allen, *Get Out: Structural Racism and Academic Terror*, 29 WM. & MARY J. RACE, GENDER & SOC. JUST. 599, 619 (2023). Allen asserts that "the numbers demonstrate that Black students and faculty continue to have limited access to the legal academy. Limited access leads to limited opportunities to recruit Black people, mentor Black people already in the academy, and diversify the legal profession." *Id.* (footnote omitted).

153. See, e.g., Rowe, *supra* note 137, at 2 (asserting that legal educators "should reveal explicitly to all students the 'hidden curriculum' that a few discover through connections to attorneys in their families or luck in meeting upper-level students. That hidden curriculum includes both simple ideas like how to have a successful study group and the purpose and content of a course outline, as well as nuanced opportunities like building networks among professors, judges, and practitioners.") (footnote omitted).

expectations.¹⁵⁴ Many of Chatelain's students are first-generation, and she explains that the "course shows students how to cultivate relationships, advocate for themselves, and pursue opportunities in ways that their more advantaged peers have learned from college-educated parents and mentors."¹⁵⁵ The syllabus includes practical material regarding degree completion and financial assistance, as well as readings focused on cultural capital and imposter syndrome.¹⁵⁶

At Mercer Law School, first-year students complete a course addressing professionalism and ethics, and in the course, aspects of the hidden curriculum are addressed directly.¹⁵⁷ As Daisy Hurst Floyd describes:

We discuss what students have learned from the environment of competition, from what is not taught in law school as well as what is taught, and from the dominant paradigm of "thinking like a lawyer" that infuses their law school experiences. We address the ways in which images of lawyers in popular culture influence students' understanding of the lawyer's role and the values of the profession. We discuss lawyers they know, lawyers they have observed in the course of work or externship experiences, and well-known lawyers from history or current events.¹⁵⁸

In terms of curricular structure, one author focuses on the issue of requesting extensions on work in law school, arguing that knowing how to navigate feedback and instruction, including knowing how and when to ask for extensions is part of the hidden curriculum.¹⁵⁹ Students from more privileged backgrounds likely have more access to information regarding this process than students from underrepresented backgrounds, primarily because their "understanding of the hidden curriculum is the result of 'a network advantage,' meaning they likely have friends and family who have been through graduate school and can lend guidance."¹⁶⁰ "An ease with requesting assistance is also 'an entitlement advantage' based on years of practice asking for (and getting) help from teachers, professors, and others in authority."¹⁶¹

Contrastingly, according to one study, Black and Latino students reported being hesitant to ask professors for assistance, fearing bias.¹⁶² Underrepresented students, particularly those who are unfamiliar with the practices of assistance accessible to the dominant group, will be less likely to understand the hidden curricular implications of such assistance:

154. Chatelain, *supra* note 12.

155. *Id.*

156. *Id.*

157. Daisy Hurst Floyd, *Pedagogy and Purpose: Teaching for Practical Wisdom*, 63 *MERCER L. REV.* 943, 952 (2012).

158. *Id.*

159. Schendel, *supra* note 25, at 221.

160. *Id.* at 220–21.

161. *Id.* at 221.

162. Darling-Hammond & Holmquist, *supra* note 87, at 39.

The reticence of less privileged students to ask for help is due not only to a lack of practice, but also concerns (express or latent) about how their request might be heard or understood by a professor:

Meanwhile, if you're not from a privileged background, you might find it more difficult to ask professors for help. Professors—like all people—are prone to subconscious biases. Given that possibility of bias, you might worry about how your professors will judge you for needing help. You might worry that if a professor sees you as 'difficult' or 'demanding,' they won't want to invest in you or your career.¹⁶³

This reluctance, which may be based in part on information housed in the hidden curriculum, has serious consequences, “including affecting ‘students’ access to institutional resources, acquisition of cultural and social capital, educational experiences,’ and even the ability to seek professional opportunities after graduating.”¹⁶⁴ Thus, even though “leaving extensions up to a more informal system of individual request may seem humane and practical,”¹⁶⁵ being explicit about how and when students should ask for assistance exposes aspects of the hidden curriculum for students who might not otherwise have information about why these requests may and should be granted.¹⁶⁶

Legal educators could also consider what implicit messages are communicated in the context of the sequence, credit value, and category of faculty teaching courses. As faculty “consider the sequence of courses within and across the years of law school, it is unmistakable that certain courses hold more weight than others in the hierarchy of legal education.”¹⁶⁷ Indeed, when students encounter doctrinal classes as predominant and heavily weighted in the first-year curriculum, they may come to understand the knowledge dimension of legal education as the primary objective, largely because they “understand what legal educators and lawyers value by what is first and dominantly offered to them.”¹⁶⁸

163. Schendel, *supra* note 25, at 221 (quoting JESSICA MCCRORY CALARCO, A FIELD GUIDE TO GRAD SCHOOL: UNCOVERING THE HIDDEN CURRICULUM 3–4 (2020)).

164. *Id.* (quoting Anthony Abraham Jack, *(No) Harm in Asking: Class, Acquired Cultural Capital, and Academic Engagement at an Elite University*, 89 SOC EDUC. 1, 1–2 (2015)).

165. *Id.* at 219.

166. *Id.* at 233. Schendel emphasizes:

Both professors and students will benefit from extension policies being explicit, standardized for all students, and clearly linked to professionalism and practice. Law school is not only preparation for “real life,” it *is* real life. Our students learn the law from us, but they also learn how to learn, how to teach, how to ask for help, how to admit mistakes, and how to respond to the mistakes of others. How we prepare them for the “real world”—including discussions about due dates and deadlines—teaches students what they can expect of judges, of opposing counsel, and of themselves.

Id. (footnote omitted).

167. Moss, *supra* note 30, at 21.

168. Nelson P. Miller, *An Apprenticeship of Professional Identity: A Paradigm for Educating Lawyers*, MICH. B.J. 20, 21 (Jan. 2008).

Moreover, “faculty status and course assignments—that is, who teaches what course—are a facet of [the legal education] program that likely do not go unnoticed by our students.”¹⁶⁹ Faculty who teach doctrinal courses are more likely to be white, male, and come from privileged backgrounds,¹⁷⁰ while skills-focused faculty are more likely to be female.¹⁷¹ The gendered connotations of this hierarchy in law schools send implicit messages to students, “reproduc[ing] existing power relations in law” and “impoverish[ing] both law teaching and the production of legal knowledge.”¹⁷² Relatedly, the

hierarchy sends the message that only law students of a certain type (most probably from socioeconomically privileged backgrounds) are qualified to deploy the kind of knowledge connected to structural critique and law reform. In effect, this knowledge hierarchy prevents non-elite law students from accessing the symbolic capital generated by institutions that specialize in theory and critique.¹⁷³

As a result, law schools should carefully consider the implicit messages communicated by the professoriate.¹⁷⁴

The Socratic approach to legal education may further be a valuable space in which to consider how—in keeping with Hafferty’s framework—evaluative techniques and the use of certain nomenclature,¹⁷⁵ together with the signaling of rewards and success, contribute to a hidden curriculum less accessible to underrepresented students. Susan Sturm and Lani Guinier explain that “[l]aw students embark on a journey of collective learning, through faculty interrogation, practice, repetition, and public performance. That process is intentionally destabilizing: it invites students to suspend judgment, to question their intuitions, to read structurally, to learn a new language, and to ask different questions.”¹⁷⁶ Students proceed through a uniform curriculum in the first year, taking exams and being evaluated in relation to one another¹⁷⁷ and, in the

169. Moss, *supra* note 30, at 21.

170. Lucille A. Jewel, *Oil and Water: How Legal Education’s Doctrine and Skills Divide Reproduces Toxic Hierarchies*, 31 COLUM. J. GENDER & L. 111, 116 (2015) (“[P]rofessors who obtain positions as traditional doctrinal teachers are most likely to hail from a privileged background.”); *see also* Robbins et. al, *supra* note 147, at 1161 (noting that roughly 64% of doctrinal faculty are men).

171. Robbins et al., *supra* note 149, at 1161 (noting that “women consistently dominate in clinical and legal writing faculty positions: the most recent data indicate that 67% of clinical faculty and 70% of legal writing faculty are women”) (footnotes omitted).

172. Jewel, *supra* note 170, at 123–24.

173. *Id.* at 130–31 (footnote omitted).

174. *Id.* at 133 (arguing that “[p]lacing skills on the same level as doctrine will also halt the reproduction of a legal culture that reinforces existing power relations”).

175. Hafferty, *supra* note 114, at 404.

176. Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 521 (2007).

177. *Id.* The authors observe,

In law school, the process of “getting it” tends to be both collective and public. Everyone has the same classes and exam schedule in the first year. Students are evaluated in most of their classes in relation to each other on a uniform metric. They find themselves going to the same meetings,

process, become familiar with the “culture” of legal education.¹⁷⁸ The authors note,

Culture is inscribed in the rhythms and rituals of shared or common activity, such as when and where students and faculty regularly meet, when they engage in collective rites of passage, such as first-year exams, how value is assessed and communicated, and how status is negotiated within the law school community. It is also constructed by the shared norms and the implicit rules of the game, the habits of thinking, and the mental models that frame how people interpret their experience.¹⁷⁹

Aspects of this culture, transmitted in part through the Socratic interactions, may be more or less accessible to certain types of students. Kimberlé Crenshaw has explained that,

In many instances, minority students’ values, beliefs, and experiences clash not only with those of their classmates but also with those of their professors. Yet because of the dominant view in academe that legal analysis can be taught without directly addressing conflicts of individual values, experiences, and world views, these conflicts seldom, if ever, reach the surface of the classroom discussion. Dominant beliefs in the objectivity of legal discourse serve to suppress the conflict by discounting the relevance of any particular perspective in legal analysis and by positing an analytical stance that has no specific cultural, political, or class characteristics.¹⁸⁰

It is therefore not surprising that, in a study of law students’ self-reported levels of engagement over the course of the first semester of law school, “[s]tudents 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.”¹⁸¹ Law faculty should therefore evaluate how to make Socratic discussions and the classroom environment more inclusive. One idea in this respect is to use small groups discussions, which could potentially “prevent students of color from shrinking within a large class [and] ultimately benefit their professional advancement.”¹⁸²

applying through the same on-campus interview process for jobs, and competing for the same law reviews and clerkships.

Id. (footnote omitted).

178. *Id.* at 522 (explaining that “[b]y culture, we mean the norms and understandings of acceptable and desirable practice, inscribed and reinforced by rules, routines, incentives, rewards, and patterns of behavior”).

179. *Id.*

180. Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN’S STUD. 33, 34–35 (1994) (footnote omitted).

181. Sturm & Guinier, *supra* note 176, at 516 n.4 (citing Bonita London et al., *Daily Life During the Transition to Law School: Utilizing Social Psychology Research Methodologies to Study Law Student Engagement*, 30 HARV. J.L. & GENDER 389 (2007)).

182. Leslie P. Culver, *White Doors, Black Footsteps: Leveraging “White Privilege” to Benefit Law Students of Color*, 21 J. GENDER RACE & JUST. 37, 82 (2017).

As Hafferty emphasized, the evaluative techniques¹⁸³ employed in law school may also hide aspects of the hidden curriculum.¹⁸⁴ Sturm and Guinier highlight how “adversarial conflict provides the underlying framework of interaction, knowledge generation, and problem solving.”¹⁸⁵ The adversarial framework of legal education may “reinforce[] [a] culture of competition,” discouraging students from underrepresented groups from “speaking when they are uncertain about whether they are ‘right.’”¹⁸⁶ This may have a tendency to silence what students view as an outsider, or different perspective.¹⁸⁷ The adversarial framework with its “focus on a specific and narrow view of adversarial conflict inhibits dissent that might challenge the validity of the questions being asked, the adequacy of goals being pursued, or the neutrality of values implicitly conveyed.”¹⁸⁸

In light of these observations, Sturm and Guinier recommend that law school reformers make law school culture—itsself an aspect of the hidden curriculum—more apparent. To do so legal educators should “interrogate structures of evaluation and incentives,”¹⁸⁹ and “expand their focus to reach the variety of locations and incentives affecting students’ development as lawyers.”¹⁹⁰ In order to achieve these objectives, law schools should endeavor to foster a classroom environment where diverse perspectives are valued and encouraged by using diverse examples and case studies that reflect a variety of cultural backgrounds and experiences. Student voices and perspectives should be included in such a reevaluation, with law schools focused on creating “structures that allow individuals to reflect upon the larger structural picture of which they are a part.”¹⁹¹

Another way to expose the hidden curriculum is to educate faculty about its existence and consequences. Specifically, faculty should be educated about how cultural differences might affect how students from various backgrounds

183. Here, in keeping with Hafferty’s framework, the Article endeavors to differentiate between curricular evaluative *techniques*, such as the Socratic method and common curricular and pedagogical techniques employed in teaching legal analysis, from evaluative *policies*, such as mandatory grading curves. The latter are addressed in Part III(D), *infra*.

184. See Hafferty, *supra* note 114, at 405 (explaining that evaluative techniques “are not simply instruments of assessment [but are] also vehicles for conveying what is and is not important” within the educational setting).

185. Sturm & Guinier, *supra* note 176, at 526. The authors explain that, in law school classes, legal issues are “converted into binary options, and they are ‘resolved’ by using authority and rigorous analysis to test the strength of those options. Competition functions to establish truth.” *Id.*

186. *Id.* at 530.

187. *Id.* (noting that “students don’t want to take chances either by stepping out of a highly stylized way of interacting or by introducing novel ideas about which they are curious but unsure”).

188. *Id.* The authors explain, “[w]hen people cannot change the way in which the problem itself is being addressed, they often opt for silence to avoid signaling acquiescence in a framework they find troubling. That silence then reinforces the sense that everyone must conform to a set pattern of interaction.” *Id.*

189. *Id.* at 550.

190. *Id.* at 551.

191. Hafferty, *supra* note 114, at 406.

engage with the hidden curriculum. In legal analysis, for example, students are instructed to identify the facts most relevant to a court's determination. This may, however, assume a level of common context and experience among students. As one Latinx student explains, "[t]oo often in law school, a Latino is expected to have access to knowledge that requires living in a more affluent household."¹⁹² Selecting and analyzing salient facts in legal analysis "presupposes that there is 'only one relevant reality,' obscures ethnic and socio-economic context with which outsider groups may be more familiar than their white peers, and leaves these outsider groups with the question: 'What about the other facts?'"¹⁹³ Thus, faculty should consider the hidden messages received by underrepresented students in the law school curriculum, including the reality that underrepresented students often have intersecting identities, such as being a racial or ethnic minority, LGBTQ+, or having a disability, and legal educators should therefore consider how these identities might impact their experiences.¹⁹⁴

C. Extracurricular Signals

Extracurricular opportunities also contribute to the hidden curriculum in legal education and its impact on students from underrepresented groups. Extracurricular activities are valuable resume builders, but may be intimidating based on the amount of time they take from academic study.¹⁹⁵ While this is accurate to a degree,¹⁹⁶ there are significant benefits to participating in law review, moot court, and the like, including improved job prospects.¹⁹⁷ Providing more explicit guidance about the balance between these competing priorities—

192. Marcus Lind-Martinez, *Latinidad, White Supremacy, and Reforming First-Year Moot Court Competitions to Confront Racial and Ethnic Bias*, 23 HARV. LATINX L. REV. 125, 130 (2020).

193. *Id.* at 129–30 ("Legal analysis demands that we assess relative facts, but the facts at the margins are often understood only by those who are most marginalized.").

194. Part of this education should include an emphasis on implicit bias. *See* Culver, *supra* note 182, at 73. Culver asserts that

[i]f the legal academy wants to play a substantive role in changing the diverse landscape of the profession for which we are preparing our students, white professors must both seek to change their *conscious* stereotypes against people of color and be willing to reconstruct their *unconscious* biases by changing their environment.

Id.

195. *See* Brenden Lee, *Life After Law School: From A Large Firm Perspective*, 29 STETSON L. REV. 1297, 1298–99 (2000). Lee notes that the "workload in law school is more demanding than undergraduate studies" and that learning time management skills becomes increasingly important as students begin extracurricular activities. *Id.* at 1298.

196. *Id.* at 1299 (noting that there is some truth to the fear that additional requirements associated with extracurricular activities will impact academic performance).

197. Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall*, 38 U.C. DAVIS L. REV. 1209, 1267 (2005) (emphasizing that membership in extracurricular organizations like law review and moot court "signifies a level of academic achievement and is believed to increase students' marketability for more competitive legal jobs").

themselves aspects of the hidden curriculum¹⁹⁸ that are likely accessible to students who have mentors—would be a beneficial target for legal educators seeking to expose the hidden curriculum.

D. Communicating the Hidden Curriculum Through Institutional Policies and Initiatives

A final target for addressing and illuminating aspects of the hidden curriculum is institutional policies¹⁹⁹ that may impact some students more acutely than others. Aspects of the hidden curriculum may “include mandatory grading curves, ranking of students, On-Campus Interviewing, and the Law Review, all of which are characterized by extreme competition and the scarcity of what might be viewed as good career opportunities for law graduates.”²⁰⁰ By way of example and with respect to career development programming, some students may sense that if they are not at the top of the class, their job prospects are unfavorable and “their career strategies offices are disinterested in them.”²⁰¹ Outreach efforts by career development offices to target students who may misapprehend their job prospects or who are not fully aware of the resources these offices provide might help combat misunderstandings communicated through the hidden curriculum.²⁰²

Institutional grading, office hour, and attendance policies are other potential targets for inquiry. For example, grading policies, such as curves or mandatory grading distributions, can create a competitive atmosphere among students.²⁰³ These policies can communicate the message that success in law school is primarily about outperforming peers rather than personal growth or collaborative learning.²⁰⁴ The implicit messages communicated by these policies

198. Bridget McCormack, *Teaching Professionalism*, 75 TENN. L. REV. 251, 259 (2008) (“The traditional law school classroom’s implicit curriculum is full of lessons about professional values such as preparation, diligence, engagement in counter-argument, and thoroughness.”).

199. See Hafferty, *supra* note 114, at 404 (reminding legal educators to consider policy development in the context of examining the hidden curriculum).

200. Brooks, *supra* note 51, at 418.

201. *Id.*

202. See, e.g., Steven R. Smith, *The Fourth Industrial Revolution and Legal Education*, 39 GA. ST. U. L. REV. 337, 399, 381 n.242 (2023). Smith recommends an assessment of career development resources, stating that assessing “the hidden curriculum, among other things, includes using career counseling surveys to ‘determine the extent to which students perceive that their career counselors helped them to become professionals,’ surveying alumni, and assessing ‘whether students in the 2L and 3L Externship Program have embodied lessons learned in the 1L curriculum.’” *Id.* (quoting Larry Cunningham, *Assessing the Hidden Curriculum*, L. SCH. ASSESSMENT (Feb. 28, 2017), <https://lawschoolassessment.org/2017/02/28/assessing-the-hidden-curriculum/> [<https://perma.cc/ZVM7-X4SR>]).

203. See Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 896 (1997) (“Grade normalization policies do create and intensify a competitive atmosphere in education.”). *But see* Joshua M. Silverstein, *In Defense of Mandatory Curves*, 34 U. ARK. LITTLE ROCK L. REV. 253, 255 (2012).

204. Fines, *supra* note 203, at 899–902 (explaining how grading practices, including mandatory curves, “[u]nderprivileg[e] the [v]alue of [l]earning”).

can also have a negative impact on underrepresented students.²⁰⁵ With regard to office hour policies, “some professors believe that ‘mandatory office hours can help mitigate the negative impact of this [fear of confirming stereotypes] by making office hours seem more accessible and by encouraging students from all backgrounds to engage.’”²⁰⁶

In the context of attendance policies, educators have observed how the transition to online teaching during the pandemic revealed inequities that students experience in law school that may have been less apparent prior to 2020:

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.²⁰⁷

As a result of this recognition, many law schools adjusted their attendance policies.²⁰⁸ This type of institutional policy adjustment likely communicated—through the unspoken, hidden curriculum—that legal educators were aware of pressures that impact attendance. To the extent that law schools have returned to rigid attendance policies that fail to account for these pressures, legal educators stand in a position to “dismantle the antiquated and dysfunctional ideals that guide legal education and permanently replace them with practices that humanize the law school experience.”²⁰⁹

205. *Id.* at 902–05. Glesner Fines explains,

We have only just begun to explore the implications of how our learning environments have differential impacts on those students who represent classes of persons historically disenfranchised by the legal system and by society. From a number of perspectives, however, one can see how a learning environment that prizes individualistic competition and conformity would impede certain groups of students more than others.

Id. at 903 (footnote omitted); see also Morrison Torrey, *Actually Begin to Satisfy ABA Standards 211(a) and 212(a): Eliminate Race and Sex Bias in Legal Education*, 43 HARV. C.R.-C.L.L. REV. 615, 617 (2008). Torrey argues:

Eliminate letter grades, relying upon a pass/fail system. There simply is no valid educational reason to assign grades other than to assess competency. A pass/fail (possibly supplemented with a “high pass”) satisfies this goal. In a world in which first-year grades control law review selection and other benefits, and statistically are nearly impossible to overcome, minorities and white women, who tend to get lower first-year grades, are adversely impacted.

Id.

206. Culver, *supra* note 194, at 84 (alteration in original) (quoting Darling-Hammond & Holmquist, *supra* note 87, at 39–40).

207. Kinda L. Abdus-Saboor, *Lessons from Pandemic Pedagogy: Humanizing Law School Teaching to Create Equity and Erenness*, 69 J. LEGAL EDUC. 621, 621 (2020).

208. *Id.* at 622.

209. *Id.*

Finally, legal education's traditional, institutional focus on the first and second apprenticeships of knowledge and skills,²¹⁰ and perhaps less of an emphasis on the third apprenticeship of professional identity formation, may further signal to students that their personal development as a legal professional is not a priority.²¹¹ In terms of implicit messaging, "legal education continues to send strong messages that 'thinking like a lawyer,' getting straight A's, and finding a high paying job at a big law firm are the only things that matter."²¹² These facets of the hidden curriculum that exist within institutional policies prioritizing certain types of courses or experiences are "heavily influential and also have been shown to be highly damaging to students' self-esteem, overall well-being, and positive professional identity formation."²¹³ Legal educators should therefore explore how institutional policies send implicit messages to students about the values and priorities of legal education.

CONCLUSION

In assessing the hidden curriculum in legal education, educators should recognize a critical, yet previously unexplored aspect—that it is relational, meaning that educators "must ask not only *what* is hidden, but *by* whom and *from* whom."²¹⁴ In *Peekaboo: Hiding and Outing the Curriculum*,²¹⁵ the authors explore the notion of hiddenness. They first address the primary meaning of hidden, differentiating between what has yet to be discovered and what is known but yet hidden.²¹⁶ Further investigating "hiddenness," the authors note numerous ways in which things become hidden. Aspects of the curriculum may be hidden in order to "conceal or protect" or to "secrete."²¹⁷ The curriculum may further be hidden "by a general social agreement not to see."²¹⁸ An example of this is hierarchies that exist in education that prioritize or devalue certain systems like, for example, "the statuses of disciplines, and the ranks of higher

210. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 132–33 (2007).

211. Brooks, *supra* note 51, at 417–18.

212. *Id.* at 418.

213. *Id.*

214. Portelli, *supra* note 15, at 347 ("This is precisely the issue which makes the notion of the hidden curriculum so complex. There are different forms and levels which hiddenness can take.")

215. Margolis et al., *Peekaboo*, *supra* note 5.

216. *Id.* at 1. The authors query whether the curriculum is "yet to be discovered or [whether it has] been hidden by someone." *Id.* (citing Jane Roland Martin, *What Should We Do with a Hidden Curriculum When We Find One?*, 6 CURRICULUM INQUIRY 135 (1976)). Further exploring how a curriculum may be transparent to some learners and tacit to others, the authors note, "Until learning states are acknowledged or the learners are aware of them, however, they remain hidden even if sociologists, bureaucrats, and teachers are all aware of them. Thus a hidden curriculum can be found yet remain hidden, for finding is one thing and telling is another." *Id.*

217. *Id.*

218. *Id.* at 2 (analogizing to the fairy tale "The Emperor Has No Clothes").

education institutions [that] are hiding in plain sight.”²¹⁹ Other forms of hiddenness are less intentional, as when “cultural meanings are hidden in symbolism; meanings that may involve obscure allusions and connections lurking in texts but remaining beneath the surface.”²²⁰

More troubling in the context of this Article is the way in which aspects of the curriculum may be hidden in order to marginalize and oppress:

We hide the evidence of wrongdoing. Many kinds of socialization are indeed covert, will not work if made visible, and in fact will produce resistance if revealed. Here we are thinking of intentionally produced forms of subordination, discrimination, and hegemony that benefit some at the expense of others. . . . “The place from which power is exercised is often a hidden place. When we try to pin it down, the center always seems to be someplace else. Yet, we know that this phantom center, elusive as it is, exerts a real, undeniable power over the whole social framework of our culture and over the ways we think about it.” This is clearly a form of “Hide the Penny,” and we want to know who did the hiding.²²¹

Thus, in the analysis of what might be done to illuminate the hidden curriculum in legal education, legal educators must interrogate structures, policies, norms, and motivations that could reveal how and why the hidden curriculum, or aspects of it, are less accessible to students from underrepresented groups.

The foregoing should not be interpreted to disparage the goals and methods of law schools or legal educators. Indeed, as one scholar has explained, the relationship between causes and agents of the hidden curriculum can be complicated to consider:

Some outcomes are attributable to law school. However, some would appear to be co-constructed between law school and law students, while others are attributable to primarily external agents or causes.

One can use these three broad groupings (attributable, co-construction and external) to summarise participants’ perceptions about what is, and what is not, potentially within law school’s capacity to control and therefore part of a hidden curriculum at law school.²²²

219. *Id.* (“In this sense some of the hidden curriculum may be intentionally hidden in plain sight, precisely so that it will remain undetected.”).

220. *Id.* at 3.

221. *Id.* The authors caution that

We are not talking of oppression-without-an-oppressor, but covert elements of hidden curricula that have been intentionally hidden and which some segments struggle to keep hidden. Curriculum is both a site of and one of the stakes in conflicts between various social groups. These curricula can best be discovered by examining such things as funding, salary levels, the sources of research support, the biases of standardized tests, and additional mechanisms of discrimination and oppression.

Id. at 3–4.

222. Andrew Alan Henderson, *The Effects of the Hidden Curriculum in Australian Legal Education* 355 (December 17, 2021) (Ph.D. dissertation, Australian National University) (on file with author).

Nonetheless, because some aspects of the hidden curriculum may be essential for student success,²²³ and because the hidden curriculum is less accessible to students from underrepresented groups,²²⁴ examining not just the content and location of, but the rationale behind the hidden curriculum is essential for making it transparent for all students.

The foregoing remarks make clear that an analysis of the hidden curriculum in legal education “is neither easy nor free from controversy.”²²⁵ What legal educators ascertain in the context of “such an analysis may appear decidedly strange, shocking, or outlandish to insiders. Findings and conclusions will run counter to the group’s prevailing wisdom and therefore will stand a good chance of being rejected out of hand.”²²⁶ Nonetheless, to borrow once again from the wisdom of Sturm and Guinier, the thoughts offered in this Article “are heuristic, not prescriptive.”²²⁷ That acknowledgement should empower educators to critically evaluate aspects of the legal education experience that might be hidden from students who may already feel they are at a disadvantage and to invite a conversation in legal education as to how to better support these students.

And, in spite of the obstacles that may be occasioned by such a conversation, readers may return once again to the powerful impact of Mr. Ramus Rhodes. His instinctive way of revealing aspects of the hidden curriculum to students is evidence of great grace and wisdom. Watkins recalls that Rhodes met with him following Watkins’s graduation ceremony, and asked that Watkins “not forget about us,” referring to the many Black individuals who had paved the way for Watkins’s journey at the law school.²²⁸ In response, Watkins

looked into Mr. Rhodes’ eyes and squeezed his hand as I replied with tears in my eyes, “I will never forget you or them[.]” When [Rhodes] released my hand, a sudden calmness came over Mr. Rhodes that I had never seen before. He knew that the message he was sending had been received; that his sacrifices and contributions had paid off; that his life’s work had real meaning; and that his legacy would live on through me and the other black law students who embraced the love and knowledge he gave us and used it as our “bridge over troubled waters.”²²⁹

223. See, e.g., Laura L. Castro, *The Future Is Now*, ABA J., July 1999, at 72 (describing an outreach program that a law student from an underrepresented group credited with teaching him the “hidden curriculum” of success).

224. See *supra* Section II.B.

225. Hafferty, *supra* note 114, at 405.

226. *Id.* (“This is one of the core challenges (and frustrations) of working within this domain.”).

227. Sturm & Guinier, *supra* note 176, at 552.

228. Watkins, *supra* note 2.

229. *Id.* Watkins explained

As I began a 43-year legal career that would, in time, be marked by numerous landmark civil rights cases, I always knew that a piece of Mr. Rhodes was living within me. My name was on the law

In light of this sentiment, it is clear that Rhodes's impact extended beyond exposing the hidden curriculum, and that he had an undeniable and profound impact on the first Black students at the University of Alabama School of Law. His contributions were therefore deservedly a powerful spotlight for remarks made throughout the symposium. Watkins has indicated, "I never forgot."²³⁰ In the spirit of celebrating the history of the University of Alabama School of Law, and in recognition of how legal educators *can* illuminate the hidden curriculum for students, neither should we.

degree, the law license, and the multitude of cases that would reshape Alabama's educational, political, economic, judicial, and healthcare landscape for decades, but Mr. Rhodes' fighting spirit was with me every step of the way.

230. *Id.*