

FIELD NOTES



Empirical Study of Legal Education and the Legal Profession Winter 2021 Newsletter

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MESSAGE FROM THE CHAIRS

Despite this year's continuing challenges with the ongoing pandemic and all kinds of other weighty, but distracting events in our world, our Section has had a productive and busy year with more to come at the AALS Annual Meeting in January 2022!

In May 2021, the AALS Executive Committee granted permanent status to the Section on Empirical Study of Legal Education and the Legal Profession. We take this as a very welcome reminder of how important empirical work is and will be as legal scholarship continues to evolve, as an affirmation of the programming the Section has offered since its founding in 2017, and as a testament to the foresight and insight of Judith Welch Wegner and others who helped establish this group.

Our Committee for Special Initiatives has continued to be mindful about what our Section can do to support law faculty who are intrigued about the role

that empirical research can play in responding to many of the issues that we are seeing in legal education and in the profession today. We organized a virtual workshop in June aptly called *Q&A for Beginner Empiricists*, and brought together a group of law professors who have successfully conducted empirical work, some of whom are experts and some of whom had no prior training and knew little about how to do so before embarking on a research project, to share about their experiences with getting started and to give some general advice for those who are interested in starting down this path. The program also included time for small group discussions to hear about attendees' research interests and offer advice and support where possible. Thank you to our Committee Members who put together this fantastic program: Swethaa Ballakrishnen, Benjamin Barton, Anahid Gharakhanian, David Santacroce, Melissa Weresh, and Amy Widman.

Thanks to the leadership of our Chair-Elect, Trent Kennedy, we have an exciting program lined up for the Annual Meeting, entitled **What Research Can Tell Us About How Law Schools, Lawyers, And Leaders Can Nourish Democracy**. Focusing on the role of lawyers and law schools in a representative democracy, our primary program will feature insights from Leslie C. Levin of the University of Connecticut, Bertrall Ross of the University of Virginia, and Ann Southworth of the University of California, Irvine and be moderated by University of Arkansas Dean Emeritus Cynthia Nance. We are excited to share their research and hear about the perspectives they have developed on this area of growing scholarly and practical importance. The program is scheduled for the first block (11:00am EST, 8:00am PST) on Friday, January 7.



Section Chair
Jennifer Gundlach



Section Chair-Elect
Trent Kennedy

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This year we are also excited to host a **Works-In-Progress Program** scheduled for 4:45pm EST/1:45pm PST on Thursday, January 6, which will include presentations by (1) Kevin Brown and Kenneth Dau-Schmidt, both at Indiana University-Bloomington Maurer School of Law on *Racial and Ethnic Ancestry of the Nation's Black Law Students: An Analysis of Data from the LSSSE Survey*; (2) Farshad Ghodoosi and Monica Sharif, both at California State University schools, on *Arbitration Effect*; (3) Jessica Findley on *JD-Next: Exposing, Assessing, Preparing Diverse Students for Law School*, from the University of Arizona; and (4) CJ Ryan at the University of Louisville on *The Secret Sauce: Examining Overperforming (and Underperforming) Law Schools on the Bar Exam*.

Finally, the Section is co-sponsoring **Creating Inclusive Cross-Disciplinary Research to Advance the Common Good** at 3:10pm EST/1:10pm PST on Thursday, January 6, under the joint leadership of the Sections on Law and Social Sciences and Law and the Humanities. We hope that these and other programs will make the 2022 Annual Meeting exciting and enriching for all our members. [Registration](#) is open until December 22 and [over 175 AALS member schools](#) have already paid for unlimited registration for their faculty and staff.

As we pass the torch of leadership within our Section, we want to express deep gratitude for all of the incredible work done by members of the Executive Committee. While the pandemic has created unique (and in some cases deeply inequitable) challenges, these scholars and leaders generously gave their time and their expertise to grow our field and sustain our community. Executive Committee members during 2021 include:

Swethaa Ballakrishnen;
Benjamin Barton;
Joel Chanvisanuruk, Secretary/Newsletter Editor;
Meera Deo;
Rachel Moran;
Jeremy Paul;
and our Immediate Past-Chair Victor Quintanilla.

Jennifer A Gundlach, Chair
Maurice A. Deane School of Law
Hofstra University

Trent Kennedy, Chair-Elect
Georgetown University Law Center

LSSSE REPORT REVEALS STUDENT CHALLENGES DUE TO COVID



Meera E. Deo
Southwestern Law School
Director, Law School Survey
of Student Engagement

A new Report from Law School Survey of Student Engagement (LSSSE) examines the impact of COVID disruption on law students and legal education. The 2021 LSSSE Annual Report, *The COVID Crisis in Legal Education*, draws from responses from over 13,000 law students at 61 law schools that participated in LSSSE this year, featuring results from two new LSSSE

Modules: *Coping with COVID* and *Experiences with Online Learning*.

The Report reveals that the core of legal education remained relatively stable and overall satisfaction remained remarkably high, with 78% of students rating their law school experience as “good” or “excellent.” High levels of satisfaction are likely due, in large part, to a majority of students (72%) reporting positive relationships with faculty, with a full 93% noting that professors showed “care and concern for students.”

Yet, the overwhelming majority of law students also reported increases in mental or emotional exhaustion (91%), anxiety (87%), and depression (85%) that interfered with daily functioning. Almost two-thirds (63%) of all student respondents had increased concerns about their ability to pay their bills, with both gender and race-based disparities increasing challenges for already marginalized students.

In fact, COVID deepened many pre-existing disparities and inequities in legal education. Vulnerable student populations faced even greater challenges over the past year. This was most shocking and troubling when considering basic human needs. While a disturbing 43% of all law students reported increased concerns with food insecurity, over half of all Black (55%), Latinx (57%), and Asian American (52%) students acknowledged that they worried more this past year about whether they had enough food to eat. Half (52%) of all law student respondents noted that COVID-19 interfered with their “ability to pay for law school and living expenses;” those who had the most significant financial worries included 24% of White students as well as 30% of Asian American students, 35% of Black students, and a shocking 45% of Latinx students. Similarly, 21% of first-gen students were very concerned about finances, compared to just 11% of students who have at least one parent with a college degree. The overwhelming majority (83%) of all law students reported that their concentration suffered as a result of the COVID-19 pandemic, including 86% of men and a staggering 94% of women. Given these significant struggles, it is perhaps no surprise that 79% of students shared that COVID-19 interfered with their ability to succeed as a student, again with notable racial and gender disparities.

The Report urges law school administrators, policymakers, and others invested in legal education to recognize how existing challenges were exacerbated due to the pandemic and make concerted efforts to meet student needs going forward. The effects of COVID-19 will linger even after the pandemic has passed. Food pantries are necessary, but not sufficient. How else can we innovate to expand access, equity, and inclusion? The Report ends with a directive, stating: “The pandemic is a long overdue wakeup call for us to rethink the future of legal education.”

UPCOMING CONFERENCES AND EVENTS

March 18 – 19, 2022: [Conference on Empirical Legal Studies](#), Toronto, Canada.

NARROWING ACCESS TO THE LEGAL PROFESSION: THE PANDEMIC'S IMPACT ON FIRST-GENERATION WOMEN

Erin Freiburger
PhD Student

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and Brain Sciences Indiana
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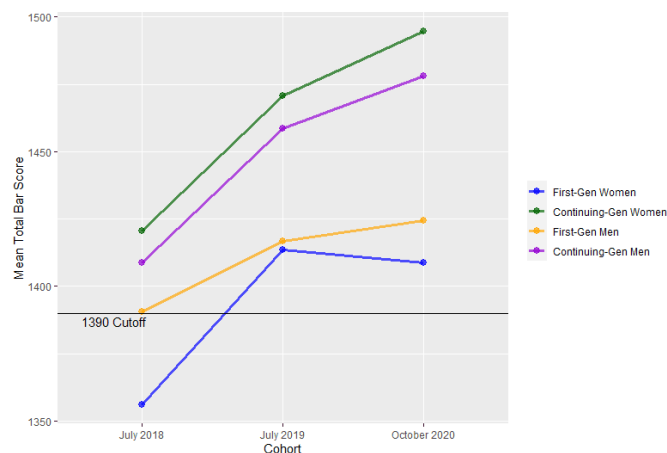
Structural and psychological burdens have disproportionately been shouldered by women during the COVID-19 pandemic, and these burdens have particularly challenged the well-being and professional advancement of women who contend with multiple intersections of disadvantage. In a forthcoming article (Freiburger & Quintanilla et al., under review), we show that the global pandemic has impacted access to the legal profession: an empirical study of performance across thousands of test-takers on the California Bar Exam reveals that performance disparities between socially advantaged and disadvantaged students have widened. Specifically, women who are the first-generation in their families to attend college underperformed on the bar exam relative to test-takers with more social advantages (men and continuing-generation students; see Figure below).

Total Bar Exam Performance Across Cohorts by Gender and First-generation Status

In this study, first-generation women voiced the challenge of preparing for the October 2020 bar exam during the pandemic, while balancing the stress and burdens of additional caregiving demands and working while studying. These women recounted, for example:

“Covid has severely disrupted my bar prep. I am currently working full-time and homeschooling 4 kids (2 while at work). I do not have a quiet place to study as I would normally go to the school to study, this is not possible. I am attempting to homeschool all by 2:00 to complete work by 5 to at least give me 4 hours of study time. Sometimes it is possible sometimes impossible. But as I like to say and think I have to make due with the cards I have been dealt, and I can only do what is in my power and ability...”

“I unfortunately have not been able to take a large amount of time off to study for the exam meaning I have had to come up with a schedule where I study before and after work and on the weekends. This has also affected my sleep and well as how my brain performs throughout the day... Additionally, due to a loss of income, the stress of having to pay/manage bills and our rent being increased during this time, this has caused a severe amount of stress. Thankfully my fiance is working now, but we are nowhere near okay financially which is making it hard to focus solely on studying when I also need to ensure our bills are being paid.”



As described in detail in our forthcoming paper, we found that lower performance by first-generation women on the October 2020 bar exam was explained by the amplified burdens and stress produced by the COVID-19 pandemic that these women contended with most—including household financial challenges and additional caregiving demands—as well as prevailing structural demands tied to their interlocking social roles, including the demands of being a primary caregiver and working while studying. Troublingly, first-generation women test-takers, who are largely women of color, were burdened with additional stressors and responsibilities preparing for the bar exam during the pandemic, which narrowed an already precarious pathway into the legal profession.

Moreover, we found that performance disparities across generation-in-college status were particularly exacerbated among women test-takers, revealing that group-based impacts of the pandemic on the professional advancement of U.S. law students should be studied at intersections of social disadvantage. These findings support the need for evaluating the effects of

current bar licensure systems as a step toward developing equitable pathways into the legal profession, while also revealing the need for resources and support

for women who belong to at-risk groups contending with precarity when seeking to join the legal profession.

EXECUTIVE COMMITTEE MEMBER PROFILE: Swethaa S. Ballakrishnen

*Interview by Sarvani Vemuri, BA Student,
Political Science and Psychology, University of Cincinnati*



Swethaa S. Ballakrishnen is Assistant Professor of Law, Sociology, Asian American Studies, and Criminology, Law and Society, at the University of California, Irvine. Their research is focused on the intersection of law, globalization, and stratification, and analyzes the

ways in which legal institutions create, continue, and counter socio-economic inequalities. Our profile of Swethaa explores their empirical research within the legal field.

You can follow Swethaa on Twitter @ssballakrishnen

Field Notes:

Can you tell us about your background and how your interest in empirical inquiry, specifically within the legal field, began?

Swethaa S. Ballakrishnen:

I've always been interested in social extensions of the law. I went to law school as an undergraduate in Hyderabad, India and was in one the first student cohorts within its neoliberal, but also sociolegal, 5 year law school model. Being trained those first few years in sociology, political science, and theory as a way to come to law really changed the course of my life. Particularly, I was trained by a phenomenal sociology professor on thinking about law's work outside of (and as a way of thinking about) doctrine. This background also made me interested in the ways law schools socialized people to be different kinds of lawyers and the implications that could

have for the legal profession. It became clear that you could not understand the legal profession in isolation – that you needed to think through the contexts within which it was being produced.

After graduation, I worked for a few years in a large law firm before going back to teach at my alma mater. I spent a year as a lecturer in the school trying to figure out if I was really interested in teaching, and, on the encouragement of a dear mentor, David Wilkins, applied to law school broadly. I was lucky to get a scholarship to attend HLS the next year, and also start as a research associate and then a predoctoral fellow in [Wilkins' research center](#) that was focused on socio-legal approaches to the legal profession. Now that I think of it, that time at Harvard and with the Center was instrumental because it connected me to many senior scholars who then shaped the course of my research. Not only was I reading their work, I was also in conversation with them, and they shaped how I thought and wrote, and they continue to shape my relationships to legal education.

I was only at Harvard for over two years but I got exposed to a lot of people during that time that influenced my trajectory. It was also around the same time that I was getting very involved with the Law and Society Association's meetings and communities. These exposures helped make abundantly clear to me that the people that were writing in the fields I was interested in (about the empirics of lawyers and legal education in particular) were socio-legal scholars, or they were sociologists, using very specific disciplinary methods that I was impressed by but did not fully understand. So, I applied to a couple of sociology programs during my fellowship, without really knowing what that meant, and I really got incredibly lucky when I got into the doctoral program at Stanford, where Rebecca Sandefur, whose work I admired, was a professor.

During the six years at Stanford, and, really, in the time since, the initial questions that prompted me into this line of research haven't really changed that much: like,

for example, how does globalization change the way in which we think about the world? How does the legal profession produce inequality? What kinds of capital buffer our experiences? These are questions that I've always been interested in, and I try to not lose sight of the luxury in being able to continue perusing those inquiries from within a full-time job.

Field notes:

What sort of responses and feedback did you receive on your book [*Accidental Feminism?*](#)

Swethaa S. Ballakrishnen:

The book came out in January. In the middle of a pandemic, which was hard because it felt like it entered a stage without an audience after a long gestation period. But I've been struck by the generosity of the communities that have had a chance to engage with it. For instance, a student-run legal blog in India did an incredibly thoughtful symposium of the book where four scholars from different positionalities engaged with the book in an online symposium. There have been other reviews by scholars I really admire in the [New Books Network](#), [JOTWELL](#), and the [LSE Review of Books](#) which have been generative and generous.

But I'm very cognizant of the fact that my book is just the start of a conversation. And I don't think that conversation is anywhere close to being done. The unsaid things in a piece of work can make it really hard to let go of something, it is scary to be able to definitively say "This is what I have to say about X". But the engagement that has followed the book has reminded me that these ideas are just a way of engaging with new people that you do not yet know you want to speak with. And especially if you don't know how to talk to them, I think writing can give you a place from which to start that conversation.

Field Notes:

Can you talk a little bit about what specific areas of empirical research you're currently working on?

Swethaa S. Ballakrishnen:

I'm trained as a qualitative researcher, so a lot my work relies on ethnographic interviews, focus groups, and participant observations.

A few years ago, however, with colleagues, I started a large-scale, multiyear empirical project on student networks in law schools, which uses network analysis and panel data alongside in-depth interviews. Essentially, we follow an entire cohort of students across three kinds of schools that all feed into the same job market to track and trace what kinds of networks people make in law school and what kinds of impact it has on the ways in which they think about belonging, satisfaction, and community membership, among a range of other experiential variables.

This kind of work extends in substance a lot of my research interests about inequality and minority experience within legal institutions, but it is an entirely new methodological field for me, which has been interesting. At the same time, methods are as much about the research question as they are about comfort or practice: how do you respond to a question of interest in the best way possible? What can be most effective and compelling? I went to grad school in a very quantitative department, so I was always around a lot of quantitative methods and had learnt to become comfortable with it, but my research questions didn't lend themselves to using this kind of data before, so it has been especially rewarding to work on this project and learn to become comfortable with this new approach to data and analysis. We have just finished two waves of data collection – at the start and end of this cohorts' first year – and have just been greenlit for waves 3 and 4, which is very exciting news.

Field Notes:

When you conceive of research questions, do you follow your interests, or do you target areas that you seek to improve?

Swethaa Ballakrishnen:

I guess I don't think I'm going to be able to fix anything. I don't give myself that much credit. I'm much more interested in learning something new about people that don't have a lot of attention within a given literature. I'm interested in the people that the literature doesn't speak about. I'm interested in the sort of experiences that we don't normally theorize. I'm really interested in working backwards from the periphery. There's the central question that everybody's asking and then you're like,

“Well, if you flip the script and you asked it from a different perspective, what would it look like?”

Field Notes:

What are some communities or groups that want to turn your attention to?

Swethaa S. Ballakrishnen:

Every time you think you’ve figured out one dimension of inequality, there’s just another dimension of inequality that you haven’t thought of yet. I think that’s both really depressing and incredibly promising because it reminds you that the work is never done and that there’s more work to do.

My new project, which is called Rethinking Inclusion, sort of tries to unpack the ways in which we think about inclusion for more invisible identities. So religious minorities or queer and trans and non-binary folk that are trying to navigate these spaces: what is the experience of what we think of as “good inclusion” look like for them? What are our limits and priors when we construct frameworks of equality and who does it disadvantage? For example, what does inclusion look like for disability that is not already coded as accommodation friendly or visibly necessary? How do organizations define and reify its definitions of words like “first generation” or “queer” or “BIPOC” or any other number of examples, and who does that category include or exclude? In short – what kinds of inequalities are reproduced by organizational commitments to “good inclusion”. If you’re just allowing people to enter and then leaving them to their own devices, then what are the models of identity capital that gets reproduced in these spaces? That’s where my focus is now.

Field Notes:

What are challenges you confront in your work?

Swethaa Ballakrishnen:

There are constant barriers. Every time you write something, there are all the things you didn’t write that become obvious to you. My book’s called *Accidental*

Feminism. I struggled with calling it feminism because it’s not actually feminism, its parity. So, I spent half the introduction of the book really struggling with what it means. Could liberal feminism in an elite law firm be what we think of as feminism? On the one hand, it is an empirical finding that’s interesting and useful. But on the other hand, it does limit itself by being defined in a certain way, and all categories do that. When you have a finding, you’re necessarily saying something else is not true or not as important to pay attention to.

As a scholar, that’s really hard. I said to someone recently that “If I was to write this book again or where I am right now, I don’t think I could have written it without a caste critique at the start of it, rather than something that you add on later.” I star to unpack it, but the project was never set up to answer many of these questions. Rather, it was never set up to fully pay attention to identity in the way that I think it theoretically deserves. And from when you collect data to when you write about it – especially if it is data from graduate school, time has passed: the data’s relevance might have shifted, but also, *you* might have changed. That is a challenge I’m constantly contending and trying to work with.

There's always loss in writing because when you write something, there's something you're *not* writing. It's a scary prospect for a thing to live out in the world beyond one's control, especially if you're a junior scholar. I call this paralyzing unease with writing agoraphobia in the book. This concept that there are all these ideas, and you want to make an intervention, and you want it to have impact, but you're also sort of not sure if it'll (or should!) stand.

That's the hardest part about writing, getting over that fear and allowing yourself to be wrong. Allowing parts of your future self, to look back on your current or past self and say, “actually, you know what? That wasn't the perfect reading of whatever it was I was writing about.” I think scholars are served by that kind of reflexive vulnerability if they want to keep growing. I think that's the real critical project in front of us as researchers.

MEMBER AND OTHER PUBLICATIONS

Deo, Meera E., Unequal Profession, Unleashed (April 30, 2021). Rutgers Law Review, Vol. 73, No. 3, 2021, Available at SSRN: <https://ssrn.com/abstract=3928810>

Gundlach, Jennifer A. and Santangelo, Jessica, Understanding the Metacognitive "Space" and Its Implications for Law Students' Learning (July 1, 2021). Available at SSRN: <https://ssrn.com/abstract=3878133>

Yacoub, Amin R., The Devolution of Legal Academia in the United States and the Revolutionization of the Hiring Standards of Law Professors (October 1, 2021). Available at SSRN: <https://ssrn.com/abstract=3934655>

Taylor, ZW, An Empirical Analysis of the ApplyTexas Postsecondary Application (July 13, 2021). Available at SSRN: <https://ssrn.com/abstract=3885813>

Zhang, Emily, Questioning Questions in the Law of Democracy: What the Debate over Voter ID Laws' Effects Teaches about Asking the Right Questions (October 14, 2021). UCLA Law Review, 2022, Available at SSRN: <https://ssrn.com/abstract=3942940>

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