

SOCIAL JUSTICE AND THE LEGAL WRITING CLASSROOM: TEACHING KAIROS THROUGH IMMERSIVE EXPOSURE TO CURRENT AND HISTORICAL STRUGGLES FOR CIVIL AND HUMAN RIGHTS

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Those of us who teach legal writing do so much in the legal writing classroom,² and yet it may not be enough if we ignore the world the students are living in as we teach them the fundamentals. Introductory legal writing, analysis, and research skills can feel rote or formulaic to students, which can be a real disadvantage if we hope to get buy-in as we ask them to spend hours and hours mastering difficult skills.

This buy-in is particularly important given our current student population and political climate. Nearly 70% of respondents in a 2022 Law School Admission Council survey indicated that “social justice, helping others or uplifting their community” motivated their decision to come to law school.³ As Traci Yoder has observed, “Many people come to law school because they believe a legal education will provide the tools to

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² The course coverage in the typical legal writing class is vast, often overwhelming. Required legal writing courses, which may range from one to several semesters, must cover predictive and persuasive written and oral legal analysis; many courses also cover legal research. And these larger subjects break down into a multitude of smaller, more discrete skills, including case reading, case comparison, rule synthesis, analogical reasoning, and more. Furthermore, the recent trend has been to increase coverage, not decrease coverage, with many courses also teaching aspects of client counseling, client interviewing, fact investigation, or drafting.

³ Andrew Bauld, *How Students' Motivations for Attending Law School Have Changed*, U.S. News & World Rep. (Sept. 13, 2023), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/applying/articles/how-students-motivations-for-attending-law-school-have-changed>.

assist social movements as well as oppressed and marginalized individuals. Those coming from an activist background often hope that a law degree will offer them the opportunity to use the law for progressive social change.”⁴ Unfortunately, “the actual experience of being in law school,” with its competitive focus on grades and future employment and its early pedagogical focus on analogical reasoning, “can quickly discourage a critical social justice perspective.”⁵ The reality is that students know the world is on fire, and we risk losing credibility and training underprepared advocates if we do not acknowledge that fire in the classroom.

A number of scholars have written about ways to infuse the curriculum with social justice issues, including in the 1L legal writing curriculum. For example, Sha-Shana Crichton has shown how well-suited legal writing classrooms are for introducing such issues, noting that “the positive impact on learning makes it a necessary addition to the first-year law school curriculum.”⁶ She offers examples of ways to incorporate social justice issues into the classroom, including through client letters, closed research memoranda, or simulations. She explains how she has introduced social justice issues into the legal writing course at Howard University School of Law, noting “that introducing the students to issues of social justice early in the law school program builds their confidence, stimulates their interest, motivates them to learn, and empowers them to think of, and use, the law as a vehicle for social change.”⁷ Others have suggested structural changes to the 1L curriculum by creating a hybrid doctrinal/writing course with a social justice focus.⁸ These are just two examples of successful ways to introduce social justice issues into the 1L classroom.

This essay provides another way to do so—without overwhelming an already packed legal writing curriculum—by bringing interdisciplinary

⁴ Traci Yoder, Introduction, National Lawyers Guild, <https://www.nlg.org/wp-content/uploads/2016/03/Introduction.pdf>.

⁵ *Id.*

⁶ Sha-Shana Crichton, *Incorporating Social Justice into the 1L Legal Writing Course: A Tool for Empowering Students of Color and of Historically Marginalized Groups and Improving Learning*, 24 Mich. J. Race & L. 251, 293 (2019).

⁷ *Id.* at 294.

⁸ Rosa Castello, *Incorporating Social Justice into the Law School Curriculum with a Hybrid Doctrinal/Writing Course*, 50 J. Marshall L. Rev. 221 (2017).

work on rhetoric and persuasion into the 1L classroom beyond the basic discussion of ethos, pathos, and logos. This modest but important intervention alters the curriculum without adding to it, infusing the 1L class with social justice issues and introducing more sophisticated rhetorical techniques to train more reflective, effective advocates.

Interdisciplinarity, Kairos, and Law

The critical role of interdisciplinarity in law is increasingly shaping U.S. legal education. Interdisciplinary perspectives bring a richness to legal education; law does not exist in a vacuum. Some interdisciplinary approaches have been a part of the legal curriculum for well over a century (think criminal law and psychology or philosophy).⁹ Others, like the intersection between artificial intelligence and the law, are more recent.

Interdisciplinarity has the ability to touch and enrich the 1L legal writing curriculum beyond traditional approaches to the discipline. In particular, the interdisciplinary study of the intersection between law and rhetoric has provided a particularly powerful tool for teaching student advocates effective persuasive legal writing, analysis, and oral advocacy. While most in lawyering skills courses have taught the classical rhetorical concepts of ethos, pathos, and logos,¹⁰ there are other sophisticated and nuanced rhetorical concepts that are under-explored.

Though other disciplines have more robustly addressed the role of kairos,¹¹ there is limited scholarship on kairos in the law in general or on the teaching of kairos in law school more specifically. Notably, Susie Salmon and Mark Hannah have explored the concept of kairos in studying

⁹ For example, almost every lawyer began the study of criminal law in the first year of law school not with a discussion of particular crimes but instead on theories of punishment. *See, e.g.*, Jeremy Bentham, *The Rationale of Punishment* (1830) (utilitarian theory of punishment); B. Sharon Byrd, *Kant's Theory of Punishment, Deterrence in its Threat, Retribution in its Execution*, 8 L. & Phil. 151, 151-52 (Aug. 1989) (discussing Immanuel Kant, *The Metaphysics of Morals*) (retributive theory of punishment); H.L.A. Hart, *Prolegomenon to the Principles of Punishment*, in *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford Univ. Press ed., 1968).

¹⁰ Linda L. Berger & Kathryn M. Stanchi, *Legal Persuasion: A Rhetorical Approach to the Science 5* (Routledge Press ed., 2018) (noting that “[m]any of the commonplace strategies and techniques used by today’s legal advocates derive from Aristotle’s *Rhetoric*”).

¹¹ *See, e.g.*, *Rhetoric and Kairos: Essays in History, Theory, and Praxis* 199 (Phillip Sipiora & James S. Baumlin eds., 2002).

and crafting dissents;¹² Ruth Anne Robbins has discussed lessons her students learned about the power of kairos when drafting an amicus brief as part of a domestic violence clinic;¹³ and Linda Berger and Kathryn Stanchi have theorized about the judicial creation of kairotic moments.¹⁴ This essay attempts to build on that work and on my earlier work on kairos by focusing on how studying kairos can help students engage with social justice issues early and often in the 1L curriculum.

The ancient Greeks divided the concept of time into two categories: *chronos* and *kairos*. *Chronos* is what we typically think of when we talk about time—the sequence or chronology of events.¹⁵ *Kairos* is a much more nuanced, qualitative concept of time that focuses on the “right” or “opportune” moment to make a particular argument.¹⁶ Legal scholars and practitioners can use the tool of *kairos* both prospectively and retrospectively. Analyzing prospectively, “an advocate can (1) create a kairotic moment or prime the audience to be receptive to such a moment; or (2) identify and exploit existing kairotic moments based on the topic, the speaker, the audience, and potentially, the surrounding political or social circumstances.”¹⁷ In contrast, “[r]etrospectively, scholars, historians, and advocates can look to surrounding historical circumstances in conjunction with the rhetorical strategies of judges and advocates to better understand why particular arguments succeeded or failed in a given case or line of cases.”¹⁸

Teaching the concept of *kairos* to students helps them see beyond the black letter law to better understand the law’s positionality in the larger social structure, its moment in history. It encourages students to look beyond the four corners of the cases and statutes they are reading to

¹² Susie Salmon & Mark Hannah, *Against the Grain: The Secret Role of Dissents in Integrating Rhetoric Across the Curriculum*, 20 Nev. L.J. 935 (2002).

¹³ Ruth Anne Robbins, *Three 3Ls, Kairos, and the Civil Right to Counsel in Domestic Violence Cases*, 2015 Mich. St. L. Rev. 1359, 1361 (2015).

¹⁴ Berger & Stanchi, *supra* note 10, at 33-37; Linda L. Berger, *Creating Kairos at the Supreme Court: Shelby County, Citizens United, Hobby Lobby, and the Judicial Construction of Right Moments*, 16 J. App. Prac. & Process 147 (2015).

¹⁵ John E. Smith, *Time and Qualitative Time*, 40 Rev. Metaphysics 3 (1986); John E. Smith, *Time, Times, and the ‘Right Time’: “Chronos” and “Kairos,”* 53 The Monist 1 (1969).

¹⁶ See, e.g., Berger & Stanchi, *supra* note 10, at 33-37.

¹⁷ Rachel Croskery-Roberts, *It’s About Time: Kairos as a Dynamic Frame for Crafting Legal Arguments and Analyzing Rhetorical Performances in the Law*, 33:1 S. Cal. Interdisc. L.J. 57 (Spring 2024).

¹⁸ *Id.*

develop arguments or to conduct legal analysis. To effectively identify or create kairotic moments, they must become attuned to the audience, the argument's purpose, the current circumstances, and the timing in a much more nuanced sense, looking to the argument's effectiveness given the current trend of political and social values and norms, to the argument's role in developing history (to the extent that the advocate can predict it), and to its specific moment in the lawsuit.¹⁹

Kairos in the Legal Writing Classroom

I generally introduce kairos along with Aristotle's three major elements of rhetoric or persuasion and the concept of theme/theory of the case. This approach helps to avoid adding to the curriculum in unmanageable ways while still giving students exposure to kairos.

After a brief introduction to rhetorical concepts, I introduce political speeches of Malcolm X and Dr. Martin Luther King to help students understand competing views of kairos and begin to see how they might bring it into their advocacy. The particular arc of videos – beginning with Martin Luther King's *I Have a Dream* speech in 1963, continuing with Malcolm X's *Ballot or the Bullet* speech, and concluding with Martin Luther King's *The Other America* speech in 1967—allows students to see how kairos works and how the speakers' own views of time and its role in social and legal change evolved. It requires students to view the speeches in context and in conversation with the politics and social upheaval of the 1960s. I finish by tying to the role of kairos in current events or litigation.

Before I play historical speeches, I give students a brief introduction to ethos, pathos, logos, and kairos. In relation to kairos, although we analyze each video separately, we also look at the broader arc of the civil rights videos in the context of the audience for those videos and the political and social environment of the day to determine whether the speakers were able to effectively choose and amplify “right moments” for advancing particular civil rights narratives.

¹⁹ *Id.*

I begin with Martin Luther King's *I Have a Dream Speech*, as students typically have heard excerpts before.²⁰ But many students lack significant historical context for this speech. So, for example, after watching the video, when I ask the students to think about whether Dr. King identified or created a kairotic moment, they are often stumped. I then provide some context. Dr. King gave this speech at the March on Washington for Jobs and Freedom on August 28, 1963. He spoke in front of the Lincoln Memorial, powerful imagery on its own, to a crowd of well over 200,000. The March and this speech are credited with helping pass the Civil Rights Act of 1964.

The parts of the speech that students are most familiar with focus not on an existing kairotic moment, but a hope for a future kairotic moment for social change. It is a "dream" that "one day" the nation will reach a moment when it can live up to its ideals of equality under the law. But as I observed in my article on kairos for scholars and practitioners, other less familiar portions of the speech took the form of a clear call to create a kairotic moment for change, referencing "the fierce urgency of Now."²¹In short, Dr. King was seizing a moment when he had an audience made up of essentially the entire country to move towards a more just and free society and to create momentum and pressure for legislation.

I then transition to two excerpts from Malcolm X's *Ballot or the Bullet* speech that he gave on April 12, 1964, eight months after Dr. King's *I Have a Dream* speech.²² Again, I put the speech in historical context to give the students an understanding of the chronology so they can unearth the kairotic moments. One of the key purposes of this speech was trying to get people to register to vote. The theme was action. This action would be peaceful if possible (through the ballot) or through violence if necessary (the bullet).²³ The other was to move beyond civil rights nationally to a more global view of human rights. In many ways, I see his speech as creating the window of opportunity for later kairotic moments.

²⁰ See Ilya Gokadze, *Martin Luther King, Jr. I Have a Dream Speech*, YouTube (Aug. 28, 2013), <https://www.youtube.com/watch?v=3vDWWy4CMhE>.

²¹ See *supra* note 17, at 85.

²² See 1453malcolmx, *Malcolm X – Don't Sit-In, Stand Up; On Black Nationalism*, YouTube (Feb. 29, 2012), <https://www.youtube.com/watch?v=ZzSgUDrZ60s>

²³ *Id.*

He was part of the critical push for Black voters to register to vote and to take control of their communities and their fates.

Professor Ruth Anne Robbins discussed in her article about how even if the right people make the right argument at the wrong time, it may just be an opening for later kairotic moments.²⁴ It is unclear whether Malcolm X chose the wrong moment or whether he was the wrong speaker, but he definitely helped create the space for later kairotic moments. His speech came at a pivotal moment in history and arguably set the stage for later kairotic moments that caused the passage of the Voting Rights Act of 1965. I provide a timeline of those events for students and use additional archival video and photos to help immerse them in the history of the moment.

Finally, I turn back to another excerpt of a speech Dr. King gave in 1967. By 1967, Dr. King himself had come to recognize the importance of kairotic moments and not thinking of time as a chronology one just allows to happen. Although he never used the language of kairos, the speech he gave at Stanford made it clear that he had become convinced that true change involved identifying or creating space for kairotic moments.²⁵ I have students analyze the role of kairos in Dr. King's observations on time and compare it to his perspective in 1963 or Malcolm X's perspective in earlier speeches:

I think there is an answer to that myth. And it is that time is neutral. It can be used either constructively or destructively. And I'm absolutely convinced that the forces of ill-will in our nation, the extreme rightists in our nation, have often used time much more effectively than the forces of goodwill . . . Somewhere we must come to see that social progress never rolls in on the wheels of inevitability. It comes through the tireless efforts and the persistent work of dedicated Individuals. And without this hard work time itself becomes an ally of the primitive forces of social stagnation. And so, we

²⁴ Robbins, *supra* note 13.

²⁵ Reverend Dr. Martin Luther King, Jr., The Other America, Speech at Stanford University, YouTube (Apr. 14, 1967), <https://www.youtube.com/watch?v=dOWDtDUKz-U>.

must help time, and we must realize that the time is always right to do right.²⁶

After students analyze the videos, I then draw the connections for students to see how the discussion of kairos ties to the work of lawyers. There are a number of ways to do so. One approach is through the use of viral videos from the Black Lives Matter movement and a study of the kairotic aspects of the prosecution of Derek Chauvin for the murder of George Floyd.²⁷

Finally, I tie the concept to the student's work by challenging them to look for right moments to advance particular arguments, include particular facts, and the like depending upon the narrative they are weaving within the lawsuit for their client and in light of the outside current events, if relevant or helpful.

I encourage them to think about time more qualitatively. For example, when an advocate is weaving a narrative about the facts in a client's case, *why* did events happen when they did? Did they happen too slowly? Too quickly? Should they not have happened at all? Critically, students are encouraged to think about the timing of an argument given the situation. *When* do you make a given argument? And might an argument work in one time and place and not work in a different time and place, even if the facts are similar?

Student advocates who view kairotic moments as something you can identify or exploit in the moment can analyze whether the speakers properly harnessed the concept of kairos in choosing right moments to advance particular arguments. For student advocates who view kairotic moments as something you can only see in hindsight, looking at historical speeches allows students to see why particular speeches may have worked in the moment or might have been more or less persuasive in hindsight and with a full picture of the historical context of the speech.

Conclusion

This approach has paid dividends. The students are engaged and excited to learn. They feel immersed in the role of a real lawyer rather

²⁶ *Id.*

²⁷ See *supra* note 17, at 58-61 for brief observations regarding the role of kairos in the trial and conviction of Derek Chauvin for the murder of George Floyd.

than trapped in the role of student pretending to be a lawyer. Students also learn the valuable lesson that winning arguments are not static. Right moments in popular culture, politics, or current events may arise that will change an advocate's view of the best arguments to make or the order in which to present those arguments. Related to that point, the concept of *kairos*, particularly when introduced through the lens of historical speeches and viral videos, helps students develop a more sophisticated understanding of the critical roles of audience, purpose, and rhetorical situation—both within the lawsuit and in the larger social or political context.

Finally, learning about *kairos* made students' arguments in their spring motion work more nuanced and thoughtful. The briefs were more sophisticated and interesting to read, in part because introducing *kairos* forced me as the professor to take a step back and let students have more flexibility in crafting their arguments and choosing which arguments to advance. I was less heavy-handed in identifying what the "right" arguments were and more willing to let students explore their own voices using the persuasive devices I had taught them.