

RACE AND RACISM IN HIGHER EDUCATION

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Teaching Race in Law Schools

Cynthia Lee, *Race and the Criminal Law Curriculum*, GWU Legal Studies Research Paper No. 2020-15 (2020), <https://ssrn.com/abstract=3572334>.

This paper explores a few areas in the substantive criminal law curriculum where law professors can include discussion of race to enhance students' cultural proficiency and understanding of the law. The first area is jury nullification, an area where the professor presents the idea of having African American jurors in cases of African Americans charged with non-violent crimes. It is ultimately up to students to decide whether they agree or want to rebut the proposal, but this signals a shift towards cultural proficiency as students get to critically think about race. Another area ripe for discussion is hate crimes and the actus reus requirement where professors miss the opportunity to discuss the distinction between thoughts and acts. Some other relevant areas include defenses available to black defendants or defenses used to justify force against black victims. Professors can discuss self-defense in the famous case of Bernhard Goetz, a white man who shot four black youths and was only charged with unlawful possession of a firearm, or by pointing to a more recent case—the killing of an unarmed black teen, Trayvon Martin, by George Zimmerman. By selecting these cases, professors can discuss various ways in which racial bias influences legal decision-makers, including a police officer's decision to arrest an individual, a prosecutor's decision to charge an individual, and a juror's decision to convict or acquit a defendant. In the paper's final remarks, the author acknowledges that a professor may experience student resistance due to his/her own identity. As such, the author suggests teaching in a traditional fashion and establishing one's authority before incorporating discussions about race into the classroom.

Anastasia M. Boles, *The Culturally Proficient Law Professor: Beginning the Journey*. 48 N.M. L. Rev. 145 (2018).

This paper encourages law professors to begin the journey towards switching towards culturally proficient legal education. The author names three powerful implications of culturally proficient instruction: 1) individual professors must examine their own internally-held beliefs in an approach called the "inside-out"; 2) all faculty must work to create a culture of racial inclusion in the law school environment, and 3) professors model cultural proficiency skills in their engagement with students and selection of curricular materials. Professors can begin the "inside out" process by seeking training on cultural proficiency, mitigating unconscious behaviors, and recognizing and reducing microaggressions. Professors may not be perpetrators of bias or stereotypes but may be perpetuating implicit bias. This paper points to a study conducted in a law firm where lawyers were asked to give feedback on a memorandum—one group of lawyers were told the associate was white and the other group was told the associate was African American. Even though the legal memorandum was the same, the fictitious white associate scored higher quantitatively and qualitatively and even elicited comments on his potential and analytical skills. The African American associate, on the other hand, received disparaging comments such as "average at best" or "I can't believe he went to NYU." By examining oneself, professors can finally begin the process of shifting to culturally proficient instruction.

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Alexi Nunn Freeman and Lindsey Webb, *Positive Disruption: Addressing Race in a Time of Social Change Through a Team-taught, Reflection-based, Outward-looking Law School*, 21 U. Pa. J. L. Soc. Change 121 (2018).

This article proposes an instructor collaboration approach that upends the hierarchical nature of the legal classroom. Specifically, it calls for a teaching model that uses non-fiction texts as framing devices instead of legal textbooks, and reflection-focused learning assessments instead of the dreaded law school final exam. The authors contend that one way to commit to teaching race in law schools is through a mandatory race-focused course where students learn substantive critical race theory through an interdisciplinary approach. This approach challenges students to understand how race plays a role in institutions and ultimately impacts verdicts against marginalized groups. Not only does teaching about race improve cultural competency for students, but it also facilitates professors to provide students a full and critical understanding of legal doctrine. By highlighting the social concerns that are often overlooked in the law school curriculum, students will emerge from our law schools who understand how the law disparately impacts the lives of racial minorities in our society.

Eric C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. Legal Educ. 780 (2018).

This paper argues that racialized interaction is an important part of learning that should be consciously implemented. Racialized interactions are experiences that raise issues of race through explicit conversations or implicitly through discussions that may invoke the complexity of race. Professors must be proactive in the classroom by creating an environment attuned to the dynamics of the classroom and by modeling transparency about his/her privileges and biases. Racialized interactions disproportionately affect minority students psychologically. Racialized interactions produce feelings of fear, anxiety, defensiveness, sadness, crying, leaving the classroom, and withdrawing from the class. For example, in a majority white classroom, nonwhite students experience racialized interactions differently than their white peers. In a criminal law class, in the wake of the Trayvon Martin killing, the sole black student in the class was expected to be the voice and moderator for the black perspective. These racialized interactions do not only present themselves in overt manners but also manifest in microaggressions—a snicker at a comment made by a student of color or unfair questioning of a professor's qualifications. Unfortunately, professors often play a role in failing to recognize microaggressions and avoidance of racialized interactions in the classroom instead of adjusting their teaching techniques to elicit thoughtful discourse. This shortcoming is especially harmful because it does nothing to promote learning and minimizes the importance of the subject because it may be uncomfortable to some. Additionally, professors trying to control racialized interactions do little to change the minds of the aggressors because they are not able to analyze the interaction and hear different perspectives. The role of the law school professor is to provide a forum that encourages sharing and challenging of perspectives and is proactive in creating spaces to discuss race in the classroom setting.

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

This paper asserts that law schools should incorporate social justice into the law school curriculum. Because law students are future lawyers who will eventually make and enforce the laws that influence lives and businesses, law schools have a responsibility to teach social justice. The first technique to teach social justice is teaching through narrative—a spoken or written account of events; a story. Narrative is a useful tool because it educates and inspires; it is effective in eliciting emotion which creates empathy toward others and deeper learning. Another useful tool is using scholarly writing to motivate. Professors should allow students to choose a topic on social justice to produce a written work. Students will benefit as they are able to practice essential skills of lawyering such as legal research and time management of a lengthy project. And, students will be able to have the chance to inspire and educate others through writing. This paper contends that writing assignments are the most effective method in teaching students to think critically about social justice.

Rhonda V. Magee, *The Way of ColorInsight: Understanding Race and Law Effectively Through Mindfulness-based ColorInsight Practices*, 8 Geo. J.L. & Mod. Critical Race Persp. 251 (2016).

Law school professors must advance scholarship focused on teaching strategies incorporating color insight. This approach challenges the traditional, mechanical way of teaching law to one that increases our capacity to understand race and the role of whiteness in the operation of the law. The overarching goal is inclusiveness—that of the faculty in the broader institution and that of the students in the classroom. As professors seek to increase inclusivity within the classroom, they must be willing to name, explain and respond to unspoken tensions in instructional norms and to the invisible cultural barriers that impede broad inclusivity. Professors should also approach color insight from a place that recognizes the clinically significant degree of trauma, depression, and lower levels of performance in minority students as a result of being ignored in class or implicit bias in the classroom. An interesting trend surfaced in a recent study—when faculty persist in addressing racial disparity with supporting evidence of bias against black people, white support for policies that support greater equality and fairness decreased. While some students may be turned off or take discussions of race as personal attacks, that alone is not reason enough to abandon fostering inclusive classrooms, but rather challenges professors to use different strategies to achieve inclusiveness. For example, classrooms that effectively minimize biases and threats have four commonalities: 1) diversity is an explicit classroom value, 2) relationships between and among co-learners are valued, 3) learning is student centered, and 4) caring is made visible. Effective classrooms also have learning objectives that invite opening or expansion of awareness including routine exploration and self-reflection. This model requires the professor to pose a problem to the classroom and facilitate inquiry into the subject by the community of learners, rather than being imposed by the instructor alone. This paper sets forth an exhaustive three-page list of practices and strategies that professors can implement in the classroom to encourage color insight.

Faisal Babbha, *Towards a Pedagogy of Diversity in Legal Education*, 52 Osgoode Hall L.J. 59 (2015).

Nearly every North American law school has widely embraced diversity initiatives in legal education, which usually leads to a focus on diversification of the student body and faculty. This measure, while helpful to promoting diversity, is not enough. The author points out that, in a globalized economy, there is a demand for lawyers who demonstrate competence in diversity. The commitment to promoting diversity can be fulfilled through the inclusion of disadvantaged students in meaningful ways post-law school admission. For example, law schools continue to teach according to a standard of “whiteness” that, for many, perpetuates a generalized experience of alienation. To combat this, law schools must move towards diversity pedagogy in both theory and practice. From a theoretical perspective, reformed legal education would reorient all aspects of legal reasoning, analysis, doctrine and practice to align with the diversity commitments of the institution. In practice, legal education reform would abandon the stringent adherence to case studies to illustrate cases as this common method fails to account for arbitrary factors such as the political, social, and historical contexts at the time of the decision. Reformed legal education can also align with trends to produce practice ready lawyers by providing students with the opportunity to learn by doing the law, instead of focusing only on reading of a case to understand its logic. Implementing new assessment methods will help students transition from learning a rule to learning a process, and also provide alternate, diverse evaluation methods. This shift to a pedagogy of diversity is gaining traction as the method to develop diversity as a normative goal that promotes critical self-reflection and nurtures a professional culture rooted in a comprehensive understanding of ethical conduct.

Deborah N. Archer, *There is no Santa Claus: The Challenge of Teaching the Next Generation of Civil Rights Lawyers in a Post-racial Society*, 4 Colum. J. Race & L. 55 (2013).

This essay discusses how legal educators must teach race considering the myth of post-racial identity of the United States. Even though a survey of millennials showed that the majority of participants believed race still shapes American life, white participants were less likely to independently bring up conversations about race, resource allocation and/or access. Legal educators must recognize that the typical law school curriculum fails to inadequately address racial issues and by doing so, reinforces the idea of a post-racial society and justice system. The disconnect between students and clients further exacerbates this failure because law students enter the legal profession wrought with assumptions that everyone enjoys the same advantages and suffers the same disadvantages. One way professors can educate their students is through site visits. For example, while working on a case about school segregation, the professor took law students to the starkly disparate “black” and “white” schools. Even then, the students managed to justify the disparities by pointing to a lack of responsibility and advocacy in the black community. However, the professor continued to engage the students and challenged them to read and reflect on articles that helped explain their clients’ narratives. Professors should not give up on their students because they fail to see and challenge systemic issues such as racial discrimination. Rather, professors should help students question their beliefs of existing in a post-racial society.

Deborah Zalesne, *Racial Inequality in Contracting: Teaching Race as a Core Value*, 3 Colum. J. Race & L. 23 (2013).

This paper argues that law schools should incorporate discussions about identity and race into the first-year curriculum with a focus on contract law. Law schools often ignore that the purported neutrality of the law masks the distributive effects of legal rules. Indeed, in courts, contracts are used to invalidate or legitimize the use or allocation of power between parties and often conceal bias, stereotypes, and cultural preferences in a court's decision. The author identifies four areas related to race and racial inequality into the first-year contracts class: 1) racial discrimination in the marketplace, 2) issues of assent and the use of the objective test, 3) public policy issues that disproportionately affect women and families of color, and 4) specific performance and negative injunctions in light of the thirteenth amendment. These areas are ripe for rich discussion of how race affects contract law. One specific example is the issue of assent and how in some cultures, "yes" can mean anything from an emphatic yes to a noncommittal maybe. This paper calls professors to use the great deal of power they yield to teach students what to include and exclude in their analysis of the law. This instruction must be done purposefully and constructively so that students who otherwise would not have considered these perspectives leave law school with an understanding of how racial and cultural conflict operate in our society.

George W. Conk, *People's Electric: Engaged Legal Education at Rutgers-Newark Law School in the 1960s and 1970s*, 40 Fordham Urb. L.J. 503 (2012).

Lawyers have the power to affect meaningful change through collective advocacy and there are powerful ways professors can get involved in the fight for institutional reform. This article takes a look at the history of a group of Rutgers professors who conceived the school as a law-reform institution. The faculty members advocated to create programs that would address the need for legal representation for the economically disadvantaged in their community and early childhood education. Opponents accused the professors of creating a "nanny state," but the professors persisted and eventually established two successful programs: Community Legal Services for the poor and the Headstart preschool. The professors recognized a need in the Newark community and felt an obligation to use the tools of the law to make a difference. This commitment to diversity was also reflected in the University's emphasis on affirmative action and clinical education. The school created the Minority Student Program, which has graduated over 3,000 minority students since its creation. And, notably, it was the students and the faculty who coauthored a 1970 report calling for legal education reform and a new breed of lawyers who could understand and serve the needs of their diverse communities. Through the establishment of the legal clinics, the Rutgers community has been able to contribute to cases involving civil rights, housing, and public defense. The unique activism of the Rutgers Law community had a huge impact on the development of the law in Newark and engaged students in a way that had not been done previously. Through the clinics, professors were able to train students to go beyond the confines of conventional legal education and learn how to contribute toward social justice.

M. K. Darmer, *Teaching Whren to White Kids*, 15 Mich. J. Race & L. 109 (2009), <https://repository.law.umich.edu/mjrl/vol15/iss1/3>.

This article argues that law schools must both re-think academic methods for teaching criminal procedure within the classroom and expose "post-racial" mythologizing outside the classroom. The author offers an anecdotal example of how to use the *Whren* Supreme Court decision to engage students in questioning the practice of racial profiling. First, the case can be used to explore the limitations of the modern criminal procedure classroom and raise important questions—how have law students been treated by the police, and is there a difference between black law students' experiences and white students? Real stories stemming from opportunities of reflection will allow other students in the classroom to get a true sense of the racialized dynamics lurking beneath the surface of the case. However, professors must be careful to not single out black students to speak about racial injustices in their communities, in what is often called "representing the race," while recognizing that minority group members are more likely than whites to suffer injustices and may want to share those experiences. Second, teaching a case through the lens of race and social injustice invokes powerful narratives that would otherwise go unshared in the academic setting—these illustrative examples are important in the classroom because they bring the case to life for students who are unaware of their privileges. Finally, while case opinions themselves may be wary of using language that denotes racialized interactions, there is a need for professors – especially in mostly white classrooms – to create spaces that question the assumptions and hierarchies that undergrid much case law.

Gloria Ladson-Billings, *Critical Race Theory in Education*, The Routledge International Handbook of Critical Education, 110 (2009).

This article argues that educators must do the hard work of reading the legal scholarship in which Critical Race Theory (CRT) is grounded before introducing the concept to students. The CRT framework has gained popularity in the legal community as both a theoretical lens and as an analytic tool, but implementation of this framework is not one size fits all. The author contends that there are basic theoretical assumptions that ground CRT and raise questions about its future in education. First, critics of the theory accuse the framework of being a monolithic movement by a group of insurgents. Second, while CRT may not be mainstream legal scholarship, it should be implemented nonetheless as an effective method of using storytelling to analyze the myths, presuppositions, and received wisdoms about race. Third, CRT goes beyond the slow process of arguing legal precedence to gain rights for people of color, but rather asserts that people of color need to understand the limits of current legal paradigms to affect sweeping change. Law schools and professors must recognize that their students have been disadvantaged by curriculum throughout their education. This is not a new phenomenon—schools with high populations of minority students have less access to advanced classes either because the schools do not offer them or because they are discouraged from taking them due to the difficulty and the presumption that minority students would be isolated and uncomfortable in advanced courses. Minority communities are also regularly subject to instruction that focuses on low-level skills such as rote memorization and strict behavior standards (an assessment system that is tangential to wealthy schools) and a lack of funding. It would be naïve to think that CRT alone could radically change education, but it does offer a more rigorous set of intellectual lenses to guide our analyses of race and why it still matters in education.

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Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness into Color Insight*, 86 N.C. L. Rev. 635 (2008).

The authors argue that in legal education, the harmful operation of colorblindness should shift to the adoption of “color insight. Acknowledging the law school setting is framed through the lens of whiteness, the authors argue that color blindness perpetuates an incomplete understanding of the nature of white privilege and how it conceals the raced nature of the law. Racial discourse is often overshadowed by existing hierarchies of whiteness that conflate discussions of white privilege with white supremacy and the idea that this country and its modern laws are colorblind. The authors propose classroom techniques and programming that would encourage color insight and foster a more complete understanding of race and whiteness in the law. First, the authors propose going beyond discussions about race in the classroom and actively teaching about whiteness by creating proactive spaces instead of reactive spaces for conversations about race. Second, the authors argue that the burden of creating spaces for discussion about race is not only the teacher’s duty but that of the institutions as well. Finally, the authors provide examples of how teachers can incorporate readings about race in the classroom using supplemental texts and short classroom exercises. Through active planning of instruction and events that address race and whiteness, law schools can advance a culture of color insight and abandon the harmful and false notion of colorblindness.

Nikol Alexander-Floyd, *Critical Race Pedagogy: Teaching about Race and Racism through legal learning strategies*, Political Science and Politics Vol. 41, 183 (2008).

This Rutgers professor shares three basic components of his Critical Race Pedagogy. The first strategy is the Socratic method, a longstanding teaching method that is already common in the law school environment. The second method is implementing classroom exercises that allow students to discern and assess narrative and argumentative structures. The paper lays out a framework referred to as Basic Argumentative Structure for Instruction in Critical Thinking (“B.A.S.I.C.”) which is comprised of the following elements: a thesis, supporting arguments, implied arguments, definitions/counter-definitions, and anticipated questions, critiques, and counterarguments. The final method is exercises in logic and argumentation. Professor Floyd’s list includes informal and formal debates, skits, interviews, and mock trials. Additionally, forensic activities, such as debates, moot court, and mock trials are also effective with helping students developing oral presentation skills, argumentative ability, and critical thinking.

Kim Forde-Mazrui, *Learning Law Through the Lens of Race*, 21 J. L. & Pol. 1 (2005).

This thought piece adds to the literature on legal education reform by examining how learning through the lens of race can help students more adequately understand and evaluate the law. It also looks at two biases—one that overestimates the role of race in the law and one that underestimates it. The lens of race is not one that all are willing to embrace and one that some even deny. Lawmakers routinely adopt laws from other states assuming they are legitimate, ignorant to the laws' discriminatory origins, and/or whether the law has been administered in a race-neutral manner. Ignoring the lens of race does not only affect lawmaking, but the courthouse institution as well as it produces results that are biased against black defendants (e.g. biased prosecutorial charging, prosecution of capital crimes, and killers of white victims). Another area that would be well served by looking through the lens of race is education. Doing such would provide insight into purportedly race-neutral policies that have perpetuated segregation of students under the guise of legitimate pedagogical purposes. Although race is a useful lens in which to view the law, it should not be the only lens we examine the law through—a comprehensive approach that takes other relationships into account (i.e. sex or religion) would likely generate useful insights to understanding American law.

Nancy E. Dowd, *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. Fla. L. Rev. 11 (2003).

Legal education may have gone through reform to be more inclusive and value diversity, but law schools continue to perpetuate inequality through teaching practices that are not conscious of the differences, the context, and the cultures represented in the legal classroom. This study which was conducted at the University of Florida highlights three broad patterns that illustrate the differences by race, gender, and race/gender interactions in legal education. First, non-white and white students have contrasting views on whether race matters in the classroom and whether race unconsciously affects grading. Second, non-white students were more likely to feel comfortable with professors of a different gender than white students. Third, and perhaps unsurprisingly, gender diversity is more important to women than to men. To ensure that legal education is addressing the needs of its students, law school pedagogy must change. This article concludes with a set of strategies law schools can implement to achieve the goal of equality in legal education: changes in teaching pedagogy, faculty diversity training and study, faculty composition and culture, and top-down/bottom-up leadership.

Cheryl L. Wade, *Attempting to Discuss Race in Business and Corporate Law Courses and Seminars*, 77 St. John's L. Rev. 901 (2003).

This paper discusses the integration of race in corporate law and governance courses for the purpose of enhancing corporate social responsibility and racial justice. The author contends that "race courses" should not be the only courses that discuss race. When law professors ignore race, they deprive students of the opportunity to learn to speak intelligently about the important and difficult issues of racism and trivializes the experiences of students of color and the challenges they face in American society. The author offers various examples of how to integrate discussions about race in the business and corporate law classrooms such as asking students to make connections between race and the specific class topic and to draw comparisons between companies and corporate dependents. Some course discussions will have positive outcomes and teach students that corporate law includes work that is as equally devoted to social responsibility and racial justice than more obvious fields like criminal law. In business and corporate law, this means moving clients closer to achieving racial equity for the constituencies that are affected by corporate activity.

Gita Z. Wilder, *The Road to Law School and Beyond: Examining Challenges to Racial and Ethnic Diversity in the Legal Profession*, Law School Admission Council (2003), <http://lsacnet.org/research/Challenges-to-Racial-and-Ethnic-Diversity-in-Legal-Profession.pdf>.

White students are more likely to get admitted into law school, even when the applicant pool includes a large pool of diverse students. The students who eventually matriculate from law school are neither representative of the people who applied nor the increasingly diverse United States population. This article identifies various possible targets for action to increase minority representation in the legal profession. The author begins by analyzing educational attainment losses of minority students prior to law school. Minority groups, specifically African Americans and Hispanics, were less likely to enroll in post-secondary education and more likely to drop out of high school than their white counterparts. The author finds that these losses for minority groups translate into losses in the legal education—law schools do not attract a diverse population of minority or first-generation college students, a substantial percentage of minority students who sit for the LSAT never apply to law school, and an overwhelming percentage of minorities who leave law school (58.1%) cite doing so for academic reasons. To understand how to diversify the legal profession, lawyers must understand the reasons why diverse people do not enter the profession or leave law school before attaining a degree. While minority enrollment in law schools is steadily increasing, they are still underrepresented. As such, legal professionals should focus on mitigating some of the gaps in the data such as creating programs that ensure minority students complete college and conducting further research on why minority students sit for the LSAT but never apply to law school.

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Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. Mich. J.L. Reform 51 (1994).

Law schools claim to operate with color blindness, but the impact of certain policies seem to define success and failure through the lens of whiteness. The core curriculum in most law schools focuses on traditional common law subjects found on the bar exam, or statutory courses in corporate or tax law. When African American students do not perform as well as white students, African American students are put in remedial classes under the guise that the inferior performance is due to deficient skills in reading, thinking, and writing. These superficial explanations do little to address the inherent bias in legal education that measures success and implements assessments that favor white students. For example, academic support programs – summer programs, tutorial programs, special legal writing programs – aim to make the skills of African American students indistinguishable from that of their white peers. If a black student fails after the help of those supports, then their failure is compared to that of white students who have simply made bad choices about their use of time and studying. Two other factors play a role in the disadvantages African Americans face in legal education—oral linguistic tradition and alienation. Because of cultural differences, African American students are at a distinct disadvantage when it comes to the technicalities of legal writing structure. While every law school requires some sort of writing class, this does not address the disadvantage that African Americans face as a result of the requirement. Law school assessments are often writing based and present unique challenges for students unaccustomed to legal writing. Ultimately, African American students are left feeling alienated, as if they are not valuable contributors in the classroom, and incapable of doing the work. Until law schools are willing to recognize and act on the differences between white students and African Americans, it is unlikely that there will be a significant change in the number of African American law students that perform unsatisfactorily.

Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 Cal. L. Rev. 1511 (1991).

This paper argues that it is a worthwhile endeavor to encourage the use and integration of racially charged texts even if implementing such materials causes discomfort. The first challenge presented to creating a more racially conscious legal education is the legal education system's unwillingness to depart from the first-year curriculum. The author does not propose specific strategies to reform legal education, but rather lists the advantages of increasing the attention to matters of race. First, the legal community is probably the best-positioned group of academics to enter discourse about race. Professor Ansley offers an anecdote illustrating her challenges with teaching a "Discrimination and Law" class. Teaching in a sixty-nine student, mostly white classroom did not foster the intimate setting necessary to approach sensitive discussions and often resulted in moments of silence and eventually in student evaluations that accused her of creating racial tension. Those comments were a window of opportunity that served as a reminder of the real diversity of beliefs and experiences that exist in a law school. Professors must be careful not to aim to indoctrinate students to conform to the professor's beliefs but instead, offer a variety of perspectives. The deep racial divisions that presently exist throughout society complicate an otherwise easy consensus about whether and how to more explicitly include race in the law school's core curriculum.

Kimberle Williams Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 Nat'l Black L.J. 1 (1988).

Even professors who identify with a minority group must engage in self-reflection to understand how to better promote an inclusive classroom that serves the needs of all learners. Diverse students, in particular, are burdened not only with learning the substantive law, but with detaching lived experiences (in the form of particular perspectives or world views) from their education in a way that white students often do not have to do. Minority students face dilemmas in the law school classroom that often go unchallenged because law is taught in a doctrinal fashion and does little to encourage explanations due to race or social context. Minority students are not encouraged to think this way absent “minority testifying,” which describes the experience of professors calling upon a minority student to provide the basis for a class discussion or debate. While this may be one strategy to encourage a diversification of perspectives, it will result in alienation and subjectification of minority groups unless the instructor also calls into question the objectivity of the dominant perspective. Last, professors must establish antiracism as a norm so that students, minority and white, understand that racial subordination should be condemned and that disregarding or rationalizing minority experiences are not the cost of broader societal interests.

Teaching Race in Law Schools and Undergraduate Classes

Amie Thurber, M. Brielle Harbin, & Joe Bandy, *Teaching Race: Pedagogy and Practice*, Vanderbilt University Center for Teaching, (2019), <https://cft.vanderbilt.edu/guides-sub-pages/teaching-race/>.

This article offers five principles professors should keep in mind when designing their courses to reflect racial understanding: 1) encouraging reflexivity, 2) preparing for and welcoming difficulty, 3) meeting students where they are, 4) engaging affective and embodied visions of learning, and 5) building a learning community. Professors should implement these principles to overcome challenges in the classroom and challenge their students' common beliefs that racism is the problem of a few bad individuals, racism is only relevant to people of color, and that racism is a thing of the past. Because of these challenges, professors must be intentional in designing courses that reflect learning goals with various types of assessments. Professors can also educate students on race by selecting content, labs, and learning activities. Some examples include assigning autobiographical journaling/essays, normalizing difficulty when it comes to learning new things, and using a critical reflection journal to allow students to process their learning and understand their emotional responses to course content and interactions. Professors must also understand where students are in their personal growth journeys and encourage students' arguments even when they are flawed. This creates opportunities to challenge students to think deeply about issues of race and racism. Professors must also be intentional about diversifying the forms of engagement and the forms of assessment. The higher education classroom often treats the professor as the possessor of knowledge—this myopic view does not offer opportunities for peer-to-peer collaboration in class, and alternate forms of assessment to reflect learning. Finally, professors must understand that their own learning is just as important to their abilities to engage in transformational teaching, and as such, should seek communities that share strategies to integrate antiracist content and practices into their courses.

Sonya M. Alemán & Sarita Gaytán, *It Doesn't Speak to me: Understanding Student of Color Resistance to Critical Race Pedagogy*, International Journal of Qualitative Studies in Education 30(2), 128 (2017).

This article focuses on the classroom experience that some students of color face when confronted with critical race pedagogy. The authors identify three triggers that explain student resistance: (1) an entrenchment in majoritarian ideologies; (2) a disavowal of racialized oppression and (3) a disinclination to scrutinize personal experiences marred by race. The authors discuss how to better address the needs of students of color who sometimes unknowingly participate in the marginalization of populations of color through deficit thinking or through the denial of the continuing significance of race. Professors should understand that students of color can be deeply traumatized by their racially marginalized identity and in their struggle to disassociate end up supporting causes that contradict their interests. This trauma manifests itself into being socialized into investing in ideologies of whiteness, meritocracy, deficit thinking, and color blindness. This is despite the alarming fact that many of those students face those exact inequities in education, housing, and health care. This stems from the reality that a significant portion of students of color do not enter classrooms with a solid or positive racial identity. Professors can facilitate the journey of understanding their identities through critical race pedagogy by empowering students to positively self-identify.

Laura Smith, Susan Kashubeck-West, Gregory Payton, & Eve Adams, *White Professors Teaching About Racism: Challenges and Rewards*, The Counseling Psychologist, 45(5), 651 (2017), <https://www.apa.org/education/ce/white-professors-racism.pdf>.

Professors may be racially conscious and have a wealth of knowledge on racism but translating that to classroom teaching presents challenges; while keeping in mind that learning about race is a lifelong process of discovery that professors must be intentional in pursuing. One common challenge is that white professors, even those with years of academic study and countless hours thinking about race, suffer from multicultural impostor syndrome, which may be exacerbated by students questioning their professor's qualifications in teaching about race. Another challenge is multicultural perfectionism, which describes the pressure professors feel to be deeply reflective and accurate about the topic they are teaching in the same way they are experts in other areas. The authors emphasize that perfection cannot be achieved—there is always something new to learn. Professors must accept this and model this behavior so that their students can follow suit. Overall, white professors can aspire for growth in teaching racial content by continuing to learn about whiteness, modeling the learning process in the classroom, developing and modeling an antiracist identity, anticipating obstacles, and identifying supports within their faculty.

Lori D. Patton, *Disrupting Postsecondary Prose: Towards a Critical Race Theory of Higher Education*, *Urban Education* 51(3), 315 (2015).

This article sets forth three propositions to inform educational inequity in postsecondary contexts and the embedded complexities of racism/White supremacy. The first proposition that postsecondary institutions must understand is that the establishment of U.S. higher education is deeply rooted in racism and White supremacy. The evidence that supports this is startling—Harvard University, with the country's largest institutional endowment, has failed to acknowledge its connections to slavery and the role slavery played in Harvard's wealth accumulation. Another noteworthy example can be found by looking at the overwhelmingly White composition of the U.S. Congress, Senate, and Supreme Court (as of 2015, only 26 of over 2000 senators have been people of color). The second proposition is that the functioning of U.S. higher education is intricately linked to imperialistic and capitalistic efforts that fuel the intersections of race, property, and oppression. Institutions must acknowledge that leaders in higher education used slavery for capitalistic gain as they strengthened the establishment of their physical campuses. Moreover, the end result of those efforts was that education was extended only to White men who would later become leaders of those same institutions and follow similar practices of deception, violence, and monetary gain in the name of White superiority. The final proposition is that U.S. higher education institutions serve as venues through which formal knowledge production rooted in racism/White supremacy is generated. As a result of the creation of higher education institutions, the spread of White superiority under the guise of intellectualism and science purported racist ideas as absolute truth. The author acknowledges that higher institutions are not the only mechanism through which racism or White supremacy can be dismantled, but colleges and universities have the responsibility and influence to educate the population of their institutional communities.

David L. Brunnsma, Eric S. Brown, & Peggy Placier, *Teaching Race at Historically White Colleges and Universities: Identifying and Dismantling the Walls of Whiteness*, *Critical Sociology* 39(5), 717 (2013).

The authors argue that a wall of whiteness exists which in turn makes it especially difficult for students at historically white colleges and universities to confront and critically reflect about race. Unfortunately, American schools do not dismantle the wall of whiteness, and instead bolster them through curricular and extracurricular experiences, residential and disciplinary isolation, institutional symbols, and everyday instructional and grading practices. The authors suggest three strategies to begin dismantling the wall of whiteness and its layers that protect white people and perpetuate white supremacy. First, colleges and universities must recognize and remedy the spatial walls that segregate students to be "with their own kind" in dining halls, student unions and student organizations. Because the majority of white students grew up in white socialized communities, educational institutions should implement affirmative action programs for diverse students while teaching the broader student body about all kinds of affirmative action that benefit whites disproportionately such as legacy programs and athletic scholarships. Next, the authors suggest that schools go beyond content integration of antiracist materials; professors must encourage white students to think critically by adopting a dialogic inquiry-based teaching pedagogy. Finally, this paper presents limitations and other factors that could complicate the dismantling of the wall of whiteness such as class privilege, heterosexism, and patriarchy. If American institutions do not change the way they approach the wall of whiteness, they are developing students who graduate without having to be critical and engage in questioning or examination of privilege, structural positions, and race-based entitlement.

Jennifer C. Mueller, Tracing Family, Teaching Race: Critical Race Pedagogy in the Millennial Sociology Classroom, Teaching Sociology 41(2), 172 (2013).

This article discusses teaching college students in the post-racist world illusion in which college-aged students today have grown up. Ironically, this post-racist world has reinvigorated colorblind racism in a time where critical race teaching is necessary. The author proposes that one way to teach critical thinking and social justice is through the lens of data: let the students come to the conclusions about systemic racism when presented with information. One example the author includes shows the differences in family data (e.g. GI Bill, social capital, inheritance, education, inter alia) between white families and families of color. When presented with this data, students are challenged to analyze these aggregate results and facilitate discussion about discrepancies in home, land, and business ownership. That introductory activity exposes students to the reasoning behind wealth transmission in an objective way.

The professor does not function as a lecturer, rather a facilitator of information that guides students to think critically and form their own opinions. As a follow up to the data analysis activity, the author encourages professors to direct their students to self-reflect and engage in practices that raise consciousness and awareness of others and their unique experiences. These strategies are effective because it presents students with empirically grounded data and challenges them to be problem solvers, but professors must implement these techniques regularly to develop the habit of critically thinking about race in their classrooms. The article leaves professors with one key takeaway—educators must keep in mind that it is [their] responsibility to teach students how to find the most “truthful truths” and to ask questions about them.

Penny A. Pasque, Mark A. Chesler, Jessica Charbeneau, & Corissa Carlson, Pedagogical Approaches to Student Racial Conflict in the Classroom, Journal of Diversity in Higher Education 6(1), 1 (2013).

This article explores why a majority of higher education faculty value diversity in the classroom but report making few or no changes in their classroom practices to teach about racial conflict. Through interviews with 66 faculty members, the authors were able to identify common challenges professors face in dealing with racial conflict in the classroom and proposes different ways of dealing with the racial interactions. The study identified five ways professors handle racial conflict in their classrooms: (1) the “not in my classroom” approach; (2) the “let’s not make a scene” minimization and avoidance approach; (3) the “taking control” through defusing, distraction, and diversion approach; (4) the “reactive usage” of turning overt conflict into a learning opportunity; and (5) the “proactive usage” which surfaces underlying or covert conflicts that impede learning. The authors adduce that the most effective way of dealing with racial conflict in the classroom is to recognize the conflict and confront it after considering a number of factors like the source of the conflict, personal biases, and the voices of the involved parties. The authors also submit that inquiry-based teaching strategies have proven to be effective because they incorporate many of the interactional or experiential methods necessary to address racial conflict in the classroom. Institutions can support faculty by providing opportunities to expand their faculty members’ base of knowledge about race through trainings. Institutions should also provide faculty development on how to deal with conflict within their classrooms and in the university system.

Shaun R. Harper, *Race Without Racism: How Higher Education Researchers Minimize Racist Institutional Norms*, *The Review of Higher Education* 36(1), 9 (2012).

This study seeks to answer how higher education scholars discuss and make sense of race-related findings that emerge in their studies. The author provides four useful ideological frameworks to help explain how people, namely professors, interpret information concerning race relations. The first framework, abstract liberalism, focuses on the idea that force should not be used to achieve social policy. The second framework is naturalization, which allows white professors to explain away racial phenomena by suggesting that they are natural occurrences. The third framework is cultural racism, or the belief that cultural-based (and often ignorant and untrue) arguments explain the status of minorities in society. The final framework is the minimization of racism which suggests that discrimination is no longer a central factor affecting minorities' life chances. While this article does not set forth specific strategies for professors, it does provide frameworks that will help professors advance their understandings, or lack thereof, of critical race theory and how to narrow racial gaps, diversify college campuses, and conduct research that informs the creation of environments that no longer marginalize persons of color.

Pat Clark, *I Don't Think I'm Biased*. *Teaching Tolerance* 46(37), (2010), <http://www.tolerance.org/magazine/number-37-spring-2010/feature/i-don-t-think-i-m-biased>.

The process of building a culturally competent classroom must take into consideration that white students are often confronting racially diverse identities for the first time when they enter a classroom. Even though teachers know their classrooms will be diverse, it is not until some initial event or "encounter" that shatters a person's current feelings, that multicultural discourse is advanced. The author finds that individuals, when confronted with the potential of personal bias, do not always respond well. As such, Clark sets forth strategies to facilitate processing and further engagement when an individual exhibits any of the following negative responses to reflection on race: dismissal, disbelief, acceptance, discomfort, or disclosure. The author's proposed strategies on how to confront negative responses are not only applicable to students, but also to teachers, who must continuously engage in self-examination and understand their roles as facilitators of discussion and co-learners.

Christopher Justice, James Rice, Wayne Warry, Sue Inglis, Stefania Miller, & Sheila Sammon, *Inquiry in Higher Education: Reflections and Directions on Course Design and Teaching Methods*, *Innovative Higher Education* 31(4), 201 (2007).

This article explains how the inquiry-based teaching model can be used in the classroom in conjunction with any core program, how educators can implement it in their classrooms, and provides a list inquiry-based learning activities. This article teaches instructors how to design inquiry activities and provides examples of learning assessments. The authors use the inquiry process framework which, in summary, encourages self-reflection and self-evaluation through the scientific method. Under this framework, students engage a topic, develop a question and hypothesis, identify resources and gather information, analyze the information, communicate new understandings, and evaluate the success. The article further explains how each step of the inquiry process can be used in the classroom and provides sample questions that can help professors elicit high quality classroom discourse.

Best Practices in Addressing Race in Legal Education

Committee on Legal Aid and the Committee on Continuing Legal Education of the New York State Bar Association, *Racial Justice – Best Practices for Lawyers*, New York State Bar Association, (Oct. 2018).

This compilation of best practices was presented at a conference for legal professionals in 2018. The committee that created this list outlined that law schools and law firms need to intentionally approach work through a social justice lens. Some best practices to approach the work and engage colleagues include raising racial justice issues in weekly intake or project meetings, developing a monthly newsletter, and identifying the race of all clients at intake meetings. To engage clients in a social justice lens, lawyers can expand current racial categories for intake and reporting, develop a script to ask clients for racial identification or immigration status, and tailor language to culture norms (e.g. do not refer to a client as an illegal immigrant; instead talk about their immigration status). Lawyers should also seek to engage in best practices when engaging with opposing counsel by considering and raising issues of implicit bias and through identifying creative legal strategies and arguments. As advocates, lawyers should understand their unique position to make written and/or oral arguments implicating racial justice issues to decision making bodies and use their skills to affect change. Finally, lawyers should engage in advocacy, education, and campaign strategies such as utilizing social media to post about racial justice issues and analyzing quantitative and qualitative data and reviewing it for trends.

New York City Bar, *Empowering Tomorrow's Leaders: Best Practices for Supporting Diverse Students During Law School and Into Employment*, Committee on Diversity Pipeline Initiatives, (Apr. 2014).

While many law firms have good intentions in implementing diversity initiatives, many law firms do not see it as a necessary factor that impacts the bottom line. Most law firms are simply complying with federal law instead of being proactive and using inclusion strategies to integrate diversity initiatives with the corporation's long-term strategic goals. This report explores why nearly 86% of women of color leave law firms before their seventh year—a time that marks the blossoming of their legal careers, and provides recommendations to create opportunities, utilize resources, and reduce costly turnover. Minority attorneys tend to leave law firms because of feelings of isolation, lack of mentoring, stereotypes about ability, and higher expectations than their white peers. The report attributes law firm success to the following factors: understanding the business case for diversity, senior partner commitment, collaboration between partners and staff, firm-wide ownership and participation, and confidential resources for all attorneys. The article concludes with ten concrete steps legal professionals can take to move towards inclusiveness in law firms: develop and communicate the business case, have senior partners take the lead, mandate top-down diversity training, establish accountability, develop mechanisms to have an effective mentoring program, emphasize lateral hires, promote work-life balance, expand recruitment, make diversity activities billable, and implement equal treatment programs.

American Bar Association, *Diversity in the Legal Profession: The Next Steps*, (Apr. 2010).

This policy report examines the state of diversity in the legal profession based on over a hundred interviews with lawyers. If the legal profession only aims to address inclusivity when faculty and students are already members of the legal community, then they have failed. There is a growing consensus on the need for the legal profession to help dramatically improve the P-20 (pre-school through advanced degree) pipeline. This requires civic engagement activities in communities that aim to keep diverse students in school, facilitate the involvement of students' families, and help all students improve their academic performance to pursue higher education. The report sets forth a list of recommendations. First, the ABA encourages law schools and firms to make a commitment to diversity beyond simply adopting a diversity statement. This would require law schools to teach diversity courses in a problem-solving format, disseminate information and select texts that foster creating inclusive learning and work environments, develop a system of accountability, and promote diversity through the ABA such as working with the Section on Legal Education. Second, the ABA focus on planning—law schools must create diversity strategies that are attune with their cultural and institutional norms, educate law school applicants about excessive student loans, and work with experts to plan, design, and implement diversity education programs that can be used for pipeline outreach efforts. Finally, the report offers educational practices that will help promote diversity: providing funding for LSAT prep courses to diverse law school applicants who cannot afford them, taking a more holistic approach to reviewing applicants, and using alternate assessment methods other than the LSAT and college GPA to determine law school admissions.

Roy Stuckey, *Best Practices for Legal Education: A Vision and A Road Map*, Clinical Legal Education Association, (2007).

This policy report sets forth a set of best practices in addressing the failure of legal education to train report graduates on how to deal sensitively and effectively with diverse clients and colleagues. This can be done through five exercises or skills. First, professors should make it a habit to ask students to list and diagram similarities and differences between them and their clients. Second, professors should ask students to analyze the possible effects of similarities and differences on the interaction between the client, the legal decision-maker, and the lawyer. Third, professors must teach students to explore alternative explanations for clients' behaviors that might be based on cultural differences. Fourth, professors should teach students to identify before and during communications with clients to avoid potential cross-cultural pitfalls that may impede education. Last, students must be encouraged to explore themselves as cultural beings who have and are influenced by biases and stereotypes. For a law school to be racially, culturally, and socio-economically diverse, students must be taught to develop a better understanding of how race and culture can affect a client's world view, and how it may influence their objectives and decisions.

**NALP, *NALP Diversity Best Practices Guide*, The Association for Legal Career Professionals, (March 2006),
http://www.nalp.org/assets/221_diversitybestpracticesgui.pdf.**

This report serves as a resource for legal employers who seek to establish diversity initiatives for their firms. Based on industry research and interviews with legal professionals, the guide is a collection of diversity best practices in four areas: leadership; retention, culture, and inclusion; professional development; and recruitment. Commitment from leadership to progress the diversity landscape is critical to a successful strategy for enhancing diversity at a firm. The firm leadership could show commitment by making diversity a core firm value, including diversity on the agenda at firm retreats, and allocating resources to hire professionals who will help diverse lawyers develop. Firms must go a step further to create a culture that genuinely values and reflects diversity. Firms can achieve this by counting diversity-related activities towards firm commitment hours, holding firm leaders accountable for diversity goals, and by mandating equal access for diverse attorneys to quality work assignments. Firms will benefit and be more effective if their professional development practices focused on diversity—this could include more educational programming or mentoring programs. Last, there is unlikely to be a change at law firms if there is not a change in the pool of law students. Because of the important role law schools play in developing lawyers, law schools should conduct career workshops, support minority law student associations, actively recruit diverse faculty and students, and collaborate with local high schools to create a pipeline for young people to access college and law school.

Minority Corporation Counsel Association, *Creating Pathways to Diversity: A Set of Recommended Practices for Law Firms*, Minority Corporate Counsel Association, (2000).

While many law firms have good intentions in implementing diversity initiatives, many law firms do not see it as a necessary factor that impacts the bottom line. Most law firms are simply complying with federal law instead of being proactive and using inclusion strategies to integrate diversity initiatives with the corporation's long-term strategic goals. This report explores why nearly 86% of women of color leave law firms before their seventh year—a time that marks the blossoming of their legal careers, and provides recommendations to create opportunities, utilize resources, and reduce costly turnover. Minority attorneys tend to leave law firms because of feelings of isolation, lack of mentoring, stereotypes about ability, and higher expectations than their white peers. The report attributes law firm success to the following factors: understanding the business case for diversity, senior partner commitment, collaboration between partners and staff, firm-wide ownership and participation, and confidential resources for all attorneys. The article concludes with ten concrete steps legal professionals can take to move towards inclusiveness in law firms: develop and communicate the business case, have senior partners take the lead, mandate top-down diversity training, establish accountability, develop mechanisms to have an effective mentoring program, emphasize lateral hires, promote work-life balance, expand recruitment, make diversity activities billable, and implement equal treatment programs.

OUR MISSION

The Center for Security, Race and Rights (CSRR) engages in research, education, and advocacy on law and policy that adversely impact the civil and human rights of America's diverse Muslim, Arab, and South Asian communities.

CSRR's work is organized around three themes:

1

The contemporary and historical intersection of race and religion in the United States

2

Criminalization of Muslim identity through United States and global national security laws and policies

3

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