Dismantling the Whiteness of Legal Education

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ABSTRACT

Whiteness is not merely a racial description. Whiteness operates as allegiance to structural racism. The quiet engine of racial hierarchy, whiteness pervades and shapes traditional legal education, rendering legal pedagogy a structurally racist enterprise. Legal education not only reproduces the racism embedded in the law and legal profession, but also obscures the ways legal doctrine, professional norms, and pedagogical practices normalize, protect, and make invisible the advantages that accrue to whiteness itself. In doing so, it produces lawyers ill-equipped to dismantle structural injustice.

This Article breaks new ground in the scholarship on legal pedagogy by defining whiteness as it operates within legal education, analyzing the ways it manifests across legal pedagogy and professional formation, and offering legal educators a holistic methodology with actionable strategies for dismantling its influence. The Article argues that understanding whiteness requires more than identifying racialized harms to people who are not white; it also requires examining the mechanisms through which legal education preserves and distributes white advantage.

The Article calls on legal educators to acknowledge the whiteness of law and pedagogy, to teach students to critically engage with it, and to equip them to recognize, interrupt, and dismantle its oppressive effects. In doing so, legal education can move beyond reproducing structural racism and align more fully with the broader project of racial justice.

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INTRODUCTION

Whiteness pervades legal education. It shapes everything from curricular design and norms about the rule of law, to bar exam preparation and approaches to professional competency.[2] For example, whiteness sustains the false belief that race and racism are tangential to most coursework rather than foundational to understanding how law operates in society. It also underlies the failure to prepare law graduates to think systematically about dismantling structural racism. And its influence extends beyond the classroom itself, contributing to insufficient institutional attention to racialized disparities in bar passage rates and to the broader inequities those disparities reproduce within the legal profession.

Whiteness operates as an allegiance to structural racism. As a result of its influence, whether intentionally or not, legal education reproduces structural racism and produces lawyers ill-equipped to contribute effectively to the project of racial justice. Because of structural racism, people who are racialized as white reap unearned benefits, while people who are racially minoritized can experience systematic harms.[3] The consequences of structural racism's reproduction are visible not only in legal education, but

[2] *See infra* Part II.
[3] Doron Samuel-Siegel, Kenneth S. Anderson & Emily Lopynski, *Reckoning with Structural Racism: A Restorative Jurisprudence of Equal Protection*, 23 RICH. PUB. INT. L. REV. 137, 151 (2020) [hereinafter *Restorative Jurisprudence of Equal Protection*] and sources cited therein.

also in the legal reasoning and institutional decision-making that shape democratic life. As renowned civil rights attorney Sherrilyn Ifill has observed with respect to Supreme Court Justices, there is currently a failure to cultivate the kinds of racial literacy, historical understanding, and democratic accountability necessary for principled legal decision-making in a multiracial society.[4] Her observations pertain equally to all lawyers and judges more broadly. Only with such competencies can legal reasoning become sufficiently "robust, complex, mature, and accountable" to counteract entrenched legal structures that have failed to realize the promise of equal protection.[5]

The shortcomings in the judicial reasoning that Ifill critiques are, at least in part, likely byproducts of the Justices' legal education, which was shaped by whiteness but devoid of explicit training about how whiteness functions and how it might be dismantled.[6] Although today's lawyers and judges did not create the world that produced these deficiencies, they are now helping to shape the world that follows. Without interruption and dismantlement, legal education will continue reproducing the inequities of structural racism rather than equipping lawyers to challenge them.

Recognizing these dynamics requires closer examination of the role legal education itself plays in reproducing structural racial inequality. Scholarship has long documented the benefits and harms produced by structural racism across societal domains, from wealth,[7] to health,[8] and beyond, and has examined the role of legal education in this dynamic.[9]

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[4] Sherrilyn Ifill, *A Court Without the Range: The Reconstruction Court 2.0*, SUBSTACK (June 30, 2025), https://sherrilyn.substack.com/p/a-court-without-the-range.

[5] *Id.*

[6] *See, e.g.*, Angela Onwuachi-Willig, *Roberts's Revisions: A Narratological Reading of the Affirmative Action Cases*, 137 HARV. L. REV. 192, 201 (2023) (discussing the Supreme Court's opinion in Students For Fair Admissions, Inc. v. President and Fellows of Harvard College and examining "how the parts of the opinion's narrative concerning race and admissions have been combined in a way that presumes, assumes, and reinforces the transparent racial lens through which many white people, including nearly all the Justices in the majority, view society").

[7] In 2021, for instance, white households "made up 65.3% of all U.S. households and held 80.0% of all wealth." Briana Sullivan, Donald Hays, & Neil Bennett, *Households With a White, Non-Hispanic Householder Were Ten Times Wealthier Than Those With a Black Householder in 2021*, U.S. CENSUS BUREAU (APR. 23, 2024), https://www.census.gov/library/stories/2024/04/wealth-by-race.html. In the same year, the "median wealth ($24,520) [of Black households] was about one-tenth the median wealth of [white households] ($250,400).". *Id*.

[8] KHIARA M. BRIDGES, CRITICAL RACE THEORY: A PRIMER 4 (2019) (noting that Black Americans and Latinx people have higher rates of diseases such as diabetes, cancer, and others, and are more likely to die from such diseases).

[9] *E.g.,* Kimberlé Williams Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education,* 11 NAT'L BLACK L. J. 1 (1988); Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL ED. 780, 788-92 (2018); Russell A. McClain, *Bottled at the Source: Recapturing the Essence of Academic Support as a Primary Tool of Education Equity for Minority Law Students*, 18 MD. L.J. RACE, RELIG., GENDER & CLASS 139 (2018); Amy H. Soled & Barbara Hoffman, *Building Bridges: How Law Schools Can Better Prepare Students From Historically Underserved Communities to Excel in Law School*, 69 J. LEGAL ED. 268, 290-91 (2020); Nicole P. Dyszlewski, *Introduction*, *in* INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM xiii-xiv (Nicole P. Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppen, Anna Russel & Genevieve B. Tung eds., 2021); Phil Lord, *Black Lives Matter: On Challenging the Soul of Legal Education*, 54 TEX. TECH L. REV. 89 (2021); TERI A. MCMURTRY-CHUBB, STRATEGIES AND TECHNIQUES FOR INTEGRATING DIVERSITY, EQUITY, AND INCLUSION INTO THE CORE LAW CURRICULUM (Wolters Kluwer 2022); Catherine Bramble & Rory Bahadur, *Actively Achieving Greater Racial Equity in Law School Classrooms*, 71 CLEVELAND STATE L. REV. 709 (2022); Doron Samuel-Siegel, *Reckoning with Structural Racism in Legal Education: Methods Toward a*

Further, this scholarship has only recently begun to focus specifically on the role of whiteness, describing the absence of education about whiteness in law school curricula,[10] and documenting how law schools function as "white spaces" where the people, architecture, curricular substance, and teaching practices preserve white advantage.[11]

Yet, there remains a need for scholarship that examines how whiteness operates within legal education itself and delves deeply into how legal educators might dismantle its influence within law school pedagogy and culture. That need is especially pressing because law schools are duty bound to participate in the eradication of racial injustice. Law schools undertake an obligation to educate lawyers capable of "effective, ethical, and responsible participation as members of the legal profession"[12]–a profession with a "special responsibility for the quality of justice."[13]

To help legal educators carry out this duty, this Article advances the literature by conducting a novel analysis of how whiteness operates within legal education. It also offers a comprehensive methodology with actionable strategies for dismantling its pervasiveness. The Article argues that understanding whiteness requires more than identifying racialized harms experienced by people who are not white; it also requires examining the ways legal education normalizes, protects, and makes invisible the advantages that accrue to whiteness itself. In centering whiteness, the Article also deliberately shifts focus away from individual blame and toward the ideas, norms, and institutional practices that sustain structural racism. Whiteness, as conceptualized here, is not about condemning particular people or identities, but about examining the ways individuals are socialized within systems that normalize and reproduce racial hierarchy. Because whiteness operates through ideas and practices rather than immutable personal characteristics, legal educators and law students alike possess agency to reject, interrupt, and dismantle it. Studying whiteness therefore opens space not only for critique, but also for meaningful institutional and individual reform.

The methodology of dismantlement offered here is founded in a pedagogy of antiracism. Consisting of five dimensions which focus on educator self-assessment, student needs and experiences, curricular substance, teaching methods, and accountability, the holistic framework guides law teachers by calling attention to these five inflection points on the pathway to dismantlement. Rather than a linear, step-by-step process, the methodology is a panoply of considerations that can empower law teachers to contribute to dismantling whiteness in legal education within their own spheres of influence. Indeed, the Article's central prescriptive contribution is a practical and actionable methodology that legal educators can employ to

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Pedagogy of Antiracism, 29 CARDOZO J. EQUAL RTS. & SOC. JUST. 1 (2022) [hereinafter *Reckoning with Structural Racism*].

[10] Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N. C. L. REV. 635 (2008).

[11] Bennett Capers, *The Law School as White Space*, 106 MINN. L. REV. 7 (2021).

[12] SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2024–2025) Standard 301(2024).

[13] MODEL RULES OF PRO. CONDUCT, preamble (A.B.A. 2025).

identify, interrupt, and dismantle whiteness within legal pedagogy and professional formation.

For instance, the methodology highlights work that law teachers can do to build knowledge of whiteness itself as well as understand the psychological dynamics that accompany the study of whiteness. The methodology also calls on educators to teach about whiteness across the curriculum and infuse systemic change agency into the culture of legal learning. And it offers strategies to help combat white fragility, reduce racialized disparities in the legal profession, and bolster accountability.

To accomplish its objectives, the Article begins in Part I with a definitional exploration of whiteness and other concepts relevant to dismantlement. Explaining that whiteness operates as an allegiance to structural racism, it illustrates the ideas and ways of being that constitute whiteness, such as entitlement to power, expectations of comfort, and the mythology of racial neutrality. Next, Part II samples the ways whiteness operates in legal education. It identifies ways that whiteness shows up in the substance of the law school curriculum as well as the norms legal educators teach to their students, and demonstrates how whiteness even inhibits the effectiveness of curriculum that addresses race and racism directly. The Article concludes with Part III, where the five-dimensional methodology is described, and where law teachers are offered concrete strategies for employing the methodology to bring about the dismantlement to which this Article aspires.

This project calls on legal educators to acknowledge the whiteness of law and pedagogy; to teach students to critically engage with it; and to equip them to recognize, interrupt, and dismantle the ways whiteness operates. In doing so, legal education can equip law graduates not merely to navigate institutions shaped by whiteness, but to challenge and transform them, thereby aligning legal education more fully with the broader project of racial justice. Accomplishing this work will require legal educators to engage in sustained assessment and reform. The task will not be easy. But only by undertaking it will law schools truly begin playing their part in decommissioning the quiet engine of racial hierarchy.

I. DEFINING WHITENESS

Whiteness is an idea. It is also a way of being. More precisely, it is a set of ideas and the ways that people inhabit those ideas–often without any harmful intent– enacting them in both their private thoughts and societal spaces. To be clear, whiteness is not about individual people so much as it is about ideas that shape people's perceptions of themselves and others, and the actions that result from those perceptions. Historically, whiteness has been inextricable from structural racism.[14]

[14] We might theorize a new, reformed version of whiteness that, while retaining certain of its historical attributes, transitions to a way of being that seeks to dismantle rather than perpetuate structural racism. Such a post-supremacist whiteness would, in theory, function very differently in legal education. *See* Doron Samuel-Siegel, *Post-Supremacist Whiteness* (draft on file with author). Today's whiteness, however, is far from a dismantler, and remains complicit in the reproduction of racial hierarchy.

To prepare for an exploration of how whiteness shapes legal education and how, in turn, legal education reproduces whiteness in the law and legal profession, this Part lays definitional groundwork from which the remainder of the Article proceeds. These definitions are essential because legal educators who wish to understand how whiteness operates within legal education require a shared understanding of what whiteness is and how it manifests. Only with such an understanding will they be equipped to transform the education of lawyers in ways that are not grounded in whiteness and, in turn, have potential to interrupt the reproduction of structural racism.

As such, Part I explains why whiteness must be centered in conversations about legal pedagogy, offers definitional foundations, describes whiteness as conceptualized in this Article, and situates it among the related concepts of white privilege, white supremacy, and structural racism.

A. Why center whiteness?

This Article centers whiteness, demonstrating its operation in legal education and advocating for its dismantlement there. Centering whiteness both de-centers blame and opens up the possibility for individual agency and action. This is because whiteness is about ideas, not about individual people or their identities. All people, at least to some degree and in certain contexts, arguably have access to enacting whiteness. And while individual people can choose whether to enact whiteness or reject and dismantle it, they cannot choose whether to be socialized in a society in which whiteness dominates.[15] So, studying whiteness is not about "bad" people or apportioning "guilt," it is about opening up a space for changing ideas. Therefore, this discussion creates a realistic possibility of giving *individual people something to do* to bring about reform. Each of us has the power to change our ideas, and doing so gives us agency to act in the world in a way that nurtures new, better ideas.

Furthermore, the choice to center whiteness flows from the fact that whiteness can be understood not only as a perpetuator of structural racism, but also as a root cause of the uninterrupted persistence of white privilege and white supremacy.[16] Therefore, once society moves away from the ideas of whiteness, the purported, albeit largely unconscious, justifications for privilege and supremacy will fall away. In other words, dismantling whiteness has the potential to dismantle the other two phenomena as well, all of which is essential to the project of dismantling structural racism.

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[15] *See* ROBIN DIANGELO, WHAT DOES IT MEAN TO BE WHITE: DEVELOPING WHITE RACIAL LITERACY 2 (rev. ed. 2016) (explaining socialization and using a metaphor of fish in water to explain the all-encompassing dimensions of socialization).

[16] *See infra* Part I(D); MICHELLE ALEXANDER, THE NEW JIM CROW 23–26, 31–33 (2010) (explaining that conceptions of race as we know them today were developed by European enslavers as a method to buttress the system of white supremacy necessary to facilitate the enslavement of Africans, whiteness fits within this paradigm, but it subsequently gained a life of its own–separate from its role as a justification for white supremacy and, in turn, enslavement).

B. Foundational Terminology

In preparation for the discussion that follows, let us define briefly some foundational terminology.[17]

Race. The concept of "race" is grounded not in biology but in social and legal constructs.[18] It is not static, but rather a "complex of social meanings constantly being transformed by political struggle."[19] It "symbolizes social conflicts and interests by referring to different types of human bodies," distinguishing between people in ways that scientists have long understood to be "at best imprecise, and at worst completely arbitrary."[20]

Racialization. As noted above, because race is not biological, people are not born with a race.[21] Rather, they are racialized by their society.[22] Racialization is the process through which "economic, political, and social status and opportunities are determined at least in part using a hierarchy in which people designated as one race are preferred over people designated as another race."[23] That is, a person is not born white or Black, for instance, but is instead racialized–or, as some might say, raced–as white or Black. As such, this Article refers to "people raced as [insert racial descriptor]" or "people racialized as [insert racial descriptor]." However, purely for the sake of concision, it often uses simpler constructions such as "[racial descriptor] people" or "people who are [racial descriptor]," which are intended to mean the same.

Specificity and generality. Because of its focus on whiteness, this Article at times uses the phrase "people who are not white." This term is generally problematic because of its potential to signal acceptance of the belief that white racialization is the norm or the default, and that all people can or should be categorized as either white or not white.[24] Use of that term

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[17] While thorough expositions of these definitions are beyond the scope of this Article, referenced source materials can aid those less familiar with the terms to learn more. One additional comment regarding terminology: This Article speaks in terms of an ambitious eradicative goal—the ambition to *dismantle* whiteness in legal education. Some readers might find this choice of language unrealistic, perhaps even naïve or disingenuous. While the likelihood of dismantlement undoubtedly appears chronologically remote, it is this Article's intention to raise awareness and invite action that will make dismantlement in the long term ever more possible. It is this author's belief that, in any event, even absent hope of complete transformation, striving toward dismantlement using terms that are explicit and emphatic is an utterly worthwhile endeavor–a vision of a better future is integral to an eventual arrival at such a future.

[18] *See, e.g.*, Elizabeth Kolbert, *There's No Scientific Basis for Race—It's a Made-Up Label*, NAT'L GEOGRAPHIC, (Apr. 2018) https://www.nationalgeographic.com/magazine/2018/04/race-genetics-science-africa?.

[19] MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES FROM THE 1960S TO THE 1990S 110 (3d ed. 2015).

[20] *Id.*

[21] *See, e.g.*, Kolbert, *supra* note 18.

[22] *See, e.g.,* Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOCIO. REV. 465, 467 (1997) (explaining the concept of a "racialized social system").

[23] Samuel-Siegel, *Restorative Jurisprudence of Equal Protection*, *supra* note 3, at 147–48 (citing Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOC. REV. 465, 467, 469 (1997)).

[24] *See, e.g.,* Peter J. Aspinall, *Ethnic/Racial Terminology as a Form of Representation: A Critical Review of the Lexicon of Collective and Specific Terms in Use in Britain*, 4 GENEALOGY 1, 8 (2020) (noting that "'[n]on-white' defines the ethnic minority population in negative terms—by what it is not—and as a residual population. . . . and sets 'white' as the standard, making it openly ethnocentric"); *Race and National Origin*, NATIONAL INSTITUTES OF HEALTH STYLE GUIDE, https://www.nih.gov/nih-style-

in this Article is not intended to signal acceptance of such assertions–it rejects the conception of white racialization as normative or default. Rather, its use here occurs in locations where the relationship with white racialization or the enactment of whiteness is the focal point of the sentence. Generally, we should describe people's identities with specificity, and as such the Article refers specifically to people as white, Black, Latinx, Native American, or Asian American and Pacific Islander (AAPI), as appropriate. Occasionally, for the sake of concision, the term "people who are racially minoritized" is used to refer collectively to people who are racialized as Black, Latinx, Native American, or AAPI, but only when such generalization is appropriate to the context.

*Teachers and educators***.** The article employs "law teacher" and "legal educator" interchangeably to refer to all who are engaged in providing legal education—conceived broadly—directly to law students.[25] While we might refer to law teachers using only the terms "professor," "faculty," and "instructor," these terms risk excluding others who educate law students, many of whom have titles such as "librarian," "advisor," "counselor," "dean," or "director." The choice to employ "law teacher" and "legal educator" stems from a desire for inclusivity.

Structural Racism. Structural racism helps us understand whiteness because whiteness is, in essence, a means toward the perpetuation of structural racism. This form of racism is a web of policies and practices that operate across societal domains to preserve racial hierarchy without the need for racial animus.[26] Structural racism is why, for instance, people who are racialized as white own more wealth and have longer life expectancies than others.[27] It is a set of entrenched advantages that, though they originated as the products of overt racist animus, now reproduce themselves without any need for interpersonal racism.[28] People acting under the influence of whiteness perpetuate this form of racism because their behavior–largely unwittingly–preserves precisely these advantages. In other words, what makes whiteness whiteness is that its effect is to reproduce structural racism, preserving both its detriments to people who are not white and its benefits for people who are.

With these foundational definitions in mind, let us proceed to explore the definition of the Article's focal point: whiteness.

C. Defining whiteness

guide/race-national-origin ("Avoid collective reference to racial and ethnic minority groups as non-White unless it was a formal category in a database or research document. Instead, indicate the specific groups.").

[25] I am a faculty member who is racialized as white and whose title is Professor of Law, Legal Practice.

[26] *See generally* Ian F. Haney-López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109(8) YALE L.J. 1717 (2000); DARIA ROITHMAYR, REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGE (2014).

[27] Samuel-Siegel, *Restorative Jurisprudence of Equal Protection*, *supra* note 3, at 151.

[28] *See generally* ROITHMAYR, *supra* note 26, at 109 (describing this form of racism as "locked in").

Whiteness has been described using an array of definitions.[29] Notwithstanding the definitional variety, this Article takes the novel view that one of the unifying themes in this body of work is that, in all of its manifestations, whiteness has the effect of upholding structural racism. It operates as an allegiance to this systematic form of racism.

While cataloging every definition of whiteness is not necessary for the purposes of this Article, sampling a few of the definitions most relevant to legal pedagogy is instructive. It confirms that whiteness is a set of ideas and ways of being that evidences a commitment, intentional or not, to upholding a race-based system of supremacy and subordination.

Expectations of power and control. Whiteness can be understood in part as a collection of attitudes, one of which is an expectation of power and control.[30] In effect, people who are racialized as white are acculturated to anticipate that they generally will have the power to control important aspects of their individual lives without being beholden to the domination of others.[31] In addition to this sense of self-determination, history and experience have conferred upon whiteness an implied legal right to use nearly any means to enforce the domination of white people over those who are not.[32] In other words, whiteness confers a right to life, safety, contracting authority, and property ownership.[33] Furthermore, these rights to self-determination and domination are often experienced as virtually exclusive, meaning that others' rights to the same are subordinate, if they exist at all.[34]

Related to power and control, but on perhaps a more mundane level, whiteness includes an entitlement to be comfortable in any given space.[35] The unabashed entitlement to comfort has manifested recently, for example, in the argument that public schools should be prohibited from teaching about racism and white supremacy on the grounds that doing so might cause white

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[29] *See, e.g.*, Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1761 (1993) (whiteness as a valuable asset, like property, which is "based on relations of power, a social construct predicated on white dominance and Black subordination"); Barbara J. Flagg, *Whiteness as Metaprivilege*, 18 WASH. U. J.L. & POL'Y 1, 6 (2005) ("Whiteness not only is a set of unearned privileges, but the capacity to disguise those privileges behind structures of silence, obfuscation, and denial"); IAN HANEY LOPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 112–16 (2006) (whiteness as both an experience of un-raced-ness but also of natural-ness); Eduardo Bonilla-Silva, *The Invisible Weight of Whiteness: The Racial Grammar of Everyday Life in America*, 26 MICH. SOCIO. REV. 1 (Fall 2012) (whiteness as a barrier to empathy and solidarity with people of color); ROBIN DIANGELO, WHAT DOES IT MEAN TO BE WHITE: DEVELOPING WHITE RACIAL IDENTITY 167–89 (2016) [hereinafter WHITE RACIAL IDENTITY] (whiteness as privilege and normativity); Nancy Leong, *Enjoyed by White Citizens*, 109 GEO. L. J. 1421, 1423 (2021) (whiteness as invisible in American law); *see generally* John O. Calmore, *Whiteness as Audition and Blackness as Performance: Status Protest from the Margin*, 18 WASH. U. J. L. & POL'Y 99 (2005) (whiteness as setting terms on which all who are not white must perform).

[30] *E.g.*, Harris, *supra* note 29, at 1714 (arguing that whiteness is interrelated with rights of domination and that "[w]hiteness can move from being a passive characteristic as an aspect of identity to an active entity that–like other types of property–is used to fulfill the will and to exercise power.").

[31] *Id.* at 1713.

[32] *See* Marissa Jackson Sow, *Whiteness as Contract*, 78 WASH. & LEE L. REV. 1803, 1825 (2022) ("To maintain this racially-casted domination, signatories to the social contract of whiteness continue to negotiate the terms of whiteness to fight the existential threats to that domination . . . [using mechanisms such as] mass incarceration, immigration policy, gentrification schemes and redlining, the destruction and dispossession of land and community utilities, social murder, and systematic killings.").

[33] *Id.* at 1814–15 (arguing such rights are reserved for people raced as white while people raced as Black have no right to contract, humanity, safety, life).

[34] *Id*.

[35] Robin DiAngelo, *White Fragility*, 3 INT'L. J. CRITICAL PEDAGOGY 54, 55 (2011).

children to feel discomfort.[36] This comfort entitlement means also that whiteness entails an expectation of ready access to domination of space at will.[37] This occurs because norms associated with whiteness are normalized and considered neutral, meaning that societal spaces routinely operate in ways that acculturate people operating under the influence of whiteness to unthinkingly expect others to conform to their preferences.[38]

These expectations sometimes lead to behaviors that result in domination of spaces of discussion.[39] Such domination can take the form of speaking disproportionately often, interrupting or dismissing speakers who are not white, or presuming to know more than they do about their own experiences, for example.[40] When whiteness dominates spaces in these ways, there are missed opportunities to cede space to people who are not white, or collaborate actively in the reconfiguration of such spaces into equitable ones. By squandering these opportunities–opportunities which those who enact whiteness possess precisely by virtue of their power to dominate–whiteness effectively reinforces the power to dominate.

Unracing. Whiteness also includes a tendency to subconsciously believe that whiteness's ways of being and experiencing the world are neutral, normal, merely the product of individuality and in no way the result of structured categories,[41] in other words to experience oneself as what this Article calls "unraced." To describe this "tendency of whites not to think about whiteness," Barbara Flagg has coined the term "transparency phenomenon."[42] She explains that, because most people racialized as white exist in predominantly white settings, they tend to mistakenly believe their traits and behaviors, as well as those of other white people, are race-neutral.[43] In fact, she explains, those traits and behaviors are "closely associated with whiteness," and the transparency phenomenon causes white decisionmakers to misconstrue the norms and expectations of whiteness as race-neutral rather than what they are–bias that disadvantages people who are not white.[44]

Furthermore, the view of whiteness as neutral and unraced can impact the exercise of institutional leadership. Employing systems that reinforce

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[36] *E.g.*, Bess Levin, *Florida Advances Bill That Would Ban Making White People Feel Bad About Racism, and No, That's Not a Joke*, VANITY FAIR (Jan. 2022) https://www.vanityfair.com/news/2022/01/florida-sb-148-racism-discomfort?srsltid=AfmBOoq4fIUTi5-w3ycwNupaqnVF5rItF37xpDD0zWO8kaT-fygVs6A-e.

[37] *See, e.g.*, Stephanie Bondi, *Students and Institutions Protecting Whiteness as Property: A Critical Race Theory Analysis of Student Affairs Preparation*, 49 J. OF STUDENT AFF. RSCH. & PRAC. 397, 403–04 (2012) (describing empirical findings of white graduate students being disappointed and frustrated when their experiences were not centered in classroom discussions or they perceived the contributions to be undervalued).

[38] *See* Leong, *supra* note 29, at 1430 ("Default whiteness is deeply normalized, resulting in a society that is so closely tailored to the needs and values of white people that white people can go through life unaware that whiteness is the default. Indeed, many may not even think of themselves in racial terms.").

[39] *See* Stephanie M. Wildman, *The Persistence of White Privilege*, 18 WASH. UNIV. J. L. & POL'Y 245, 255–257 (2005) (discussing the "comfort zone of whiteness" and how that leads to domination in conversations and discourse).

[40] *See id.*

[41] DIANGELO, WHITE RACIAL IDENTITY, *supra* note 29, at 175 (articulating the common conception that "[w]hites are 'just people'--our race is rarely if ever named"); Leong, *supra* note 29, at 1430; BARBARA J. FLAGG, WAS BLIND, BUT NOW I SEE: WHITE RACE CONSCIOUSNESS & THE LAW 1 (1998).

[42] Flagg, *supra* note 41, at 1.

[43] *Id.* at 4.

[44] *Id.* at 4, 29.

rather than dismantle the dominance of whiteness contributes to racial hierarchy's preservation. Such systems might include, for example, those related to hiring and retention in employment settings, curricular development and academic success in educational settings, and service pricing and worker training in healthcare settings. When institutional decisions are made as though structural racism does not exist, or as though norms typical of people raced as white are neutral, they not only permit whiteness to dominate, but squander opportunities to dismantle structural racism.[45]

Accepting Privilege Unchecked. These expectations and norms manifest in daily activities related to white privilege, as well. For instance, whiteness includes a tendency to routinely accept privileges that are not equally available to all people. By doing so without also engaging routinely in concomitant efforts to ensure that such privileges are distributed without reference to race, the enactment of whiteness serves as a cog in a machine that reproduces race-based structural inequality. Examples of this brand of hierarchy preservation include, for instance, accepting inequitable employment compensation, being content receiving advantageous public education for their children, or feeling comforted by the presence of law enforcement officials in public spaces. The daily receipt of these privileges without daily efforts to counterbalance them–efforts such as participating in reform of employment practices that have racially disparate impacts or voting to elect leaders who will implement antiracist education and law enforcement policies–is another form of allegiance to upholding structural racism.

In sum, whiteness is a collection of attitudes and behaviors that flow from an entitlement to relative power, comfort, and individuality. And, by being and thinking in these ways, people who enact whiteness not only benefit from racial hierarchy, but also collectively ensure that that very hierarchy is preserved. The people who enact whiteness most commonly are people racialized as white. However, because whiteness is an idea that can be inhabited and enacted, much as a uniform or a role in a performance might be, whiteness is not automatic. Not every person racialized as white necessarily enacts whiteness at all times.

In each of the many manifestations of whiteness described here and elsewhere, whiteness is the quiet engine of racial hierarchy. It is a set of ideas and ways of being that are core to the existence and reproduction of structural racism.

D. Clarifying further: Whiteness vs. White Privilege vs. White Supremacy

[45] Flagg, *supra* note 29, at 10 ("The notion of a nonracist (but not antiracist) White–one who 'is not racist' but in fact does nothing to dismantle, and enjoys all the benefits of, White supremacy–is dear to the hearts of liberal Whites, and central to the self-perpetuating ideology of White privilege. However, passive White complicity in structures of subordination today is a leading mechanism for the maintenance of White supremacy. Thus, material change in the direction of racial justice requires an end to such complicity.").

Whiteness is a root cause of the persistence of both white privilege and white supremacy. But they are three distinct phenomena. Nevertheless, whiteness is often confused with white privilege or white supremacy. This subpart teases them apart so as to build a foundational understanding of each, including their distinctions and interrelatedness. Once we pull them apart, we can clear the way for an analysis that centers whiteness, which is perhaps the least understood and most intractable of the three.

(1) White Privilege

White privilege is a set of unearned advantages–or, as W. E. B. DuBois called them, wages–conferred by society upon people racialized as white.[46] In his landmark 1935 book, *Black Reconstruction in America*, Du Bois described how white laborers of the era, whose economic interests were "practically identical" to those of Black laborers, nevertheless refused to join forces across racial lines.[47] Instead, they chose solidarity with their wealthy white brethren thanks to valuable compensation the wealthy class provided.[48] That compensation came in the form of unearned "wages"–or privileges–of exactly the type we continue to see today: the ability to move freely in public spaces without having their presence questioned, access to the best schools, freedom from unjust law enforcement practices, uninhibited access to voting rights, and plentiful opportunities to see themselves and their communities reflected accurately in media.[49]

Building on Du Bois's influential work, Peggy McIntosh, writing in 1989, famously used male privilege as an analogue for white privilege, defining the latter as "an invisible package of unearned assets which [one] can count on cashing in each day, but about which [one] was 'meant' to remain oblivious. White privilege is like an invisible weightless knapsack of special provisions, maps, passports, codebooks, visas, clothes, tools, and blank checks."[50]

McIntosh identified no fewer than twenty-six examples of the effects of white privilege in her own life.[51] The list included, for example, the ability

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[46] W. E. B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA, 1860-1880 700 (1935).

[47] *Id.*

[48] *Id.*

[49] Du Bois wrote of white laborers:

> They were given public deference and titles of courtesy because they were white. They were admitted freely with all classes of white people to public functions, public parks, and the best schools. The police were drawn from their ranks, and the courts, dependent upon their votes, treated them with such leniency as to encourage lawlessness. Their vote selected public officials, and while this had small effect upon the economic situation, it had great effect upon their personal treatment and the deference shown them. White schoolhouses were the best in the community, and conspicuously placed, and they cost anywhere from twice to ten times as much per capita as the colored schools. The newspapers specialized on news that flattered the poor whites and almost utterly ignored the Negro except in crime and ridicule.

Id. at 700–01.

[50] Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE & FREEDOM, July/Aug. 1989, at 1.

[51] *Id.* at 1-2.

to "protect [her] children most of the time from people who might not like them," the ability to "count on [her] skin color not to work against the appearance of financial reliability," the peace of mind that comes from not needing "to ask of each negative episode or situation [in life] whether it has racial overtones," the freedom to "criticize our government and talk about how much [she] fear[s] its policies and behavior without being seen as a cultural outsider," and the presumption of individuality that allows her to "do well in a challenging situation without being called a credit to [her] race."[52] She observed that her list included both advantages that all members of society should have, such as the ability to select any housing one desires and be treated well there, as well as freedoms that society should desire to banish, such as the freedom to be oblivious to the racialized experiences of people who are not white.[53] In sum, McIntosh explained, white privilege is about "unearned advantage and conferred dominance."[54]

Since Du Bois and McIntosh, scholars from across disciplines have documented the existence of white privilege and its many manifestations.[55] Any number of privileges exist beyond those McIntosh catalogued based on her own life. For example, white drivers are one-half to one-third as likely to have their car searched by police during a traffic stop as are Black drivers or Latinx drivers, respectively.[56] And this is true despite the fact that illegal narcotics or weapons are found at higher rates during the stops of white drivers.[57]

The ways people interact and present themselves in the world on a day-to-day basis are affected by white privilege as well. For instance, people racialized as white have the ability to align with predominant norms for beauty and professional appearance, should they so choose, without fundamentally altering the appearance of their facial features, skin, or hair.[58] And white people typically have the freedom not to engage in racial codeswitching, thus avoiding the psychological toll that codeswitching exacts.[59] Racial codeswitching is a process by which one downplays one's traits or attributes that might depart from dominant racial norms. It involves "adjusting one's style of speech, appearance, behavior, and expression in

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[52] *Id.* at 2.
[53] *Id.*
[54] *Id.* at 3.
[55] *E.g.,* L. Taylor Phillips & Brian S. Lowery, *Herd Invisibility: The Psychology of Racial Privilege*, 27 CURRENT DIRECTIONS IN PSYCH. SCI. 156, 157 (2018); John Ehrich & Stuart Woodcock, *What's colour got to do with it? A psychometric assessment of Peggy McIntosh's white privilege*, 50 BRITISH ED. RSCH. J. 2198, 2211-12 (2024).
[56] *See* Nazgol Ghandnoosh, *One in Five: Disparities in Crime and Policing*, SENTENCING PROJECT (Nov. 2, 2023), https://www.sentencingproject.org/reports/one-in-five-disparities-in-crime-and-policing.
[57] *Id.*
[58] *See, e.g.*, Leong, *supra* note 29, at 1429 ("In fashion advertisements, most models are still white. Some products are specifically designed to help nonwhite people adhere to the white beauty standard, such as the skin-lightening product 'Fair and Lovely,' and eye tape or even eyelid surgery meant for Asian-American women to achieve a double eyelid."); Shannon Cumberbatch, *When Your Identity is Inherently "Unprofessional": Navigating Rules of Professional Appearance Rooted in Cisheteronormative Whiteness as Black Women and Gender Non-Conforming Professionals*, 34 ST. JOHN'S UNIV. J. CIV. RTS. & ECON. DEV. 81, 100 (2021).
[59] Courtney L. McCluney, Kathrina Robotham, Serenity Lee, Richard Smith, & Myles Durkee, *The Costs of Code-Switching*, HARV. BUS. REV. (Nov. 15, 2019), https://hbr.org/2019/11/the-costs-of-codeswitching.

ways that will optimize the comfort of others"[60] Unbounded by this constraint, white people can communicate in professional settings using language patterns associated with their racial identity without fear they will be judged less competent or otherwise treated unfairly.[61]

An exhaustive list of privileges is beyond the scope of this project, but it bears noting that the list encompasses the most fundamental of life experiences: White people as a group have access to better health care.[62] They are less likely to die in childbirth.[63] They live longer.[64] They make more money from employment.[65] They own more wealth.[66] And they have greater access to high-quality public education for their children than any other racial group.[67] The list could go on lengthily with any number of privileges of significant gravity.

However, perhaps the most significant of the privileges is the subtle yet incalculable freedom to live in a society where whiteness is deemed normative–where whiteness is the default identity and largely invisible to most white people living their day-to-day lives.[68] Put another way by Nancy Leong: "one of the greatest privileges of whiteness is that most of the time white people do not have to think about being white."[69] Indeed, white privilege includes insulation from thinking about or discussing race or racism at all and, thus, avoiding the discomfort that can flow therefrom.[70]

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[60] *Id*.
[61] *See* Courtney L. McCluney, Myles I. Durkee, Richard E. Smith II, Kathrina J. Robotham, & Serenity Sai-Lai Lee, *To Be, or not to Be . . . Black: The Effects of Racial Codeswitching on Perceived Professionalism in the Workplace*, 97 J. EXPERIMENTAL SOC. PSYCH. 1, 2 (2021).
[62] *See* Nambi Ndugga, Latoya Hill, Alisha Rao, Akash Pilai, & Samantha Artiga, *Key Data on Health and Health Care by Race and Ethnicity,* KFF (Dec. 16, 2025), https://www.kff.org/key-data-on-health-and-health-care-by-race-and-ethnicity/?entry=executive-summary-introduction ("Hispanic, Black, and AIAN people fare worse than White people across the majority of examined measures of health and health care and social determinants of health.").
[63] Donna L. Hoyert, *Maternal Mortality Rates in the United States, 2022*, NAT'L CTR. FOR HEALTH STAT., CDC (May 2024), https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2022/maternal-mortality-rates-2022.pdf (19 deaths per 100,000 live births among white women versus 49.5 deaths per 100,000 live births among Black women) [Referencing Figure 2].
[64] Latoya Hill & Samantha Artiga, *What is Driving Widening Racial Disparities in Life Expectancy?*, KFF (May 23, 2023), https://www.kff.org/racial-equity-and-health-policy/what-is-driving-widening-racial-disparities-in-life-expectancy/ ("In 2019, prior to the onset of the pandemic, overall life expectancy was 78.8 years. AIAN people had the lowest life expectancy at 71.8 years, followed by Black people at 74.8. These groups both had lower life expectancies than White people, whose life expectancy was 78.8 years. Hispanic and Asian people had longer life expectancies of 81.9 and 85.6 years, respectively.").
[65] Eileen Patten, *Racial, Gender Wage Gaps Persist in U.S. Despite Some Progress*, PEW RSCH. CTR. (July 1, 2016), https://www.pewresearch.org/short-reads/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/ ("Among full- and part-time workers in the U.S., blacks in 2015 earned just 75% as much as whites in median hourly earnings and women earned 83% as much as men.").
[66] Briana Sullivan, Donald Hays, & Neil Bennett, *Wealth by Race of Householder*, U.S. CENSUS BUREAU (Apr. 23, 2024), https://www.census.gov/library/stories/2024/04/wealth-by-race.html ("Households with a White, non-Hispanic householder had 10 times more wealth than those with a Black householder in 2021, according to the U.S. Census Bureau's Survey of Income and Program Participation (SIPP).").
[67] *See, e.g.*, ALLISON FRIEDMAN-KRAUSS & STEVEN BARNETT, RUTGERS SPECIAL REP. ON ACCESS TO HIGH-QUALITY EARLY EDUCATION AND RACIAL EQUITY (2020) (documenting unequal access to high quality early-childhood education); Danielle Wingfield, *The Resurgence of Massive Resistance*, 82 WASH. & LEE L. REV. 259, 269 (2025) (noting "there is a long history of attempts to control what kind of knowledge is prioritized in publicly funded education and who has access to such knowledge").
[68] *See, e.g.*, FLAGG, *supra* note 41, at 1.
[69] Leong, *supra* note 29, at 1427.
[70] DiAngelo, *supra* note 35, at 55.

White privilege persists for any number of reasons. But centrally important is the reality that people who benefit from it have a significant incentive to avoid discussing it, or even acknowledging its existence. Indeed, facing white privilege means one must also, as McIntosh stated with eloquence, "give up the myth of meritocracy. If [the privilege exists], this is not such a free country; one's life is not what one makes it; many doors open for certain people through no virtues of their own."[71]

(2) White Supremacy

While whiteness is a way of being–a set of attitudes and behaviors–and white privilege is a societal practice–a set of unearned advantages ranging from the mundane to the life-saving—white supremacy is the systemic ideology that provides the structural supports for both. It is a societal system of power apportionment that flows directly from ideologies of race-based superiority and inferiority.

As defined influentially by Frances Lee Ansley, white supremacy is a system in which white people collectively possess exclusive power to dominate political, economic, and cultural life, and retain that power because of beliefs about white normativity and entitlement.[72] Historically, it was an explicitly racist system premised upon the alleged superiority of people racialized as white over people who are otherwise racialized.[73] Though the explicit racism of white supremacy has largely receded, with recent decades witnessing a de-mainstreaming of explicit claims of race-based superiority and inferiority, the system of white supremacy erected by those who consciously espoused those notions remains in place.[74] This is no surprise given the reality that, as Charles Mills observes, "power relations can survive the formal dismantling of their more overt supports."[75] Indeed, as Mills notes, even in the current moment, with de jure white supremacy out of mainstream fashion, people racialized as white continue to be the

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[71] McIntosh, *supra* note 50, at 2; *see id.* at 3 ("In my class and place, I did not see myself as a racist because I was taught to recognize racism only in individual acts of meanness by members of my group, never in invisible systems conferring unsought racial dominance on my group from birth. . . . The silences and denials surrounding privilege are the key political tool here. They keep the thinking about equality or equity incomplete, protecting unearned advantage and conferred dominance by making these taboo subjects. . . . It seems to me that obliviousness about white advantage, like obliviousness about male advantage, is kept strongly inculturated in the United States so as to maintain the myth of meritocracy, the myth that all democratic choice is equally available to all.").

[72] Frances Lee Ansley, *Stirring the Ashes: Race Class and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993, 1024 n.129 (1989) (defining white supremacy as "a political, economic and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings.").

[73] April S. Love, *Recognizing, Understanding, and Defining Systemic and Individual White Supremacy*, WOMEN OF COLOR ADVANCING PEACE AND SEC. 3 (Ashley Clingman-Jackson, et. al. eds., 2022) ("White supremacy is part of the foundation of western society, and racism is the way in which white supremacy survives. This institutional ideology and its structural manifestation and personal belief systems that white people are superior to other races, has long given white people greater access to resources and power.").

[74] Charles Mills, *White supremacy as sociopolitical system: A philosophical perspective in* WHITE OUT: THE CONTINUING SIGNIFICANCE OF RACISM 36 (Ashley W. Doane &, Eduardo Bonilla-Silva Eds. 2004).

[75] *Id.*

country's "ruling race" and to collectively hold a position of domination over people racialized as Black, Latinx, Native American, or AAPI[76]

Evidence of white supremacy's continued operation is so ubiquitous as to make demands to prove its existence smack of gaslighting. This was the case even before white supremacist apologia became reemergent in the U.S. public square in recent years.[77] However, to reaffirm the destructive nature of white supremacy and illustrate its departure from professed ideals of U.S. democracy, let us concretize a bit further.

To begin, we can note that white supremacy is the underlying system that makes white privilege feasible.[78] It is the power that white supremacy confers upon people racialized as white that permits the day-to-day advantages of white privilege to persist. As Cheryl Harris explains, even in an era free from *de jure* white supremacy, U.S. law itself ratifies "the settled expectations of relative white privilege as a legitimate and natural baseline."[79] It is precisely because U.S. society is "structured on racial subordination" that "white privilege be[comes] an expectation."[80]

It is this structural quality of white supremacy that is the key here. White supremacy is the ideology that shapes the law and legal system, the economic system, even the systems of thought that, in turn allow white people to experience structural freedoms that are not equally available to people who are not white. For example, white people are systematically free from disproportionate incarceration.[81] While they make up 63% of the population, they make up just 33% of those who are incarcerated.[82] Structural maneuvers such as the so called "War on Drugs," executed by predominantly white legislators and policy makers, lie behind this form of white supremacist domination.[83]

White supremacy also animates the racialized allocation of the freedom to experience privileges of citizenship, such as the rights to contract, vote, and be free from violence.[84] As Marissa Jackson Sow describes, white supremacy designates a "place and space outside of politics (social contracting) and proprietorship (commercial contracting)" to which people racialized as Black are consigned. This in essence renders them "nonpersons whom white civilians have the power to contain, detain, expel, or eliminate."[85] And this nonpersonhood results in any number of harms that

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[76] *See id.* at 40.
[77] *See, e.g., Documenting Hate: Charlottesville*, PBS (Aug. 7, 2018). https://www.pbs.org/wgbh/frontline/documentary/documenting-hate-charlottesville/ (journalism documenting the "Unite the Right" rally held in Charlottesville, Virginia in 2017).
[78] *See generally* Harris, *supra* note 29.
[79] *Id.* at 1714.
[80] *Id.* at 1730.
[81] NAACP, *Criminal Justice Fact Sheet*, (last visited Jan. 20, 2026) https://naacp.org/resources/criminal-justice-fact-sheet ("32% of the US population is represented by African Americans and Hispanics, compared to 56% of the US incarcerated population being represented by African Americans and Hispanics. In 2014, African Americans constituted 2.3 million, or 34%, of the total 6.8 million correctional population. African Americans are incarcerated at more than 5 times the rate of whites.").
[82] BRIDGES, *supra* note 8, at 3 (noting that, while "white people make up 63% of the U.S., they make up only 33% of those who are presently incarcerated").
[83] *See generally, e.g.*, ALEXANDER, *supra* note 16, at 31-33.
[84] *See generally* Sow, *supra* note 32.
[85] *Id.* at 1842.

are consistent with white supremacist ideology. For instance, an array of research across the U.S. in recent decades establishes that defendants convicted of murdering white victims are significantly more likely to receive the death penalty than defendants convicted of killing a victim who is not white.[86]

Finally, white supremacy manifests in systems of thought that structure everyday cross-racial interactions. Racial microaggressions are one example. Racial microaggression is a term used to refer to brief, common indignities and insults that convey racial hostility or rely on negative stereotypes.[87] For example, a microaggression occurs when a teacher does not affirm the contribution of a Latinx student during a class discussion, but later affirms a similar comment offered by a white student.[88] Scholars recognize such microaggressions as "visible manifestations of the more indiscernible structures and systems of white dominance. . . . [because they] allow us to 'see' the racist ideologies that are impacting, shortening, and reducing the quality of the lives of people of color."[89]

White supremacy, then, is a systematic framework that structures society in a way that values whiteness and that prioritizes the needs of people racialized as white over people who are not so racialized. In so doing, it both employs and reinforces whiteness.

II. WHITENESS PERVADES AND SHAPES LEGAL EDUCATION

Because whiteness operates as allegiance to structural racism, legal pedagogy shaped by whiteness necessarily participates in the reproduction of racial hierarchy. Until the whiteness of legal education is dismantled, legal education will continue to both reproduce the racism of the law and legal profession and fail to produce lawyers capable of counteracting structural racism.[90]

The duty to interrupt these cycles of structural racism is central to legal education. Indeed, the very first line of the law profession's Model Rules of Professional Conduct calls upon lawyers to view themselves as system actors who are bound to improve the quality of justice.[91] It states: "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having *special responsibility for the quality of justice*."[92] The responsibility for educating lawyers capable of "effective, ethical, and responsible participation as members of the legal

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[86] *Death Penalty Sentencing Indicates Pattern of Racial Disparities*, U.S. General Accounting Office (May 1990) https://www.gao.gov/assets/t-ggd-90-37.pdf; Ways that Race Can Affect Death Sentencing, Death Penalty Information Center https://deathpenaltyinfo.org/policy-issues/biases-and-vulnerabilities/race/ways-that-race-can-affect-death-sentencing?utm_source=chatgpt.com.

[87] Derald W. Sue, Christina M. Capodilupo, Gina C. Torino, Jennifer M. Bucceri, Aisha M. B. Holder, Kevin L. Nadal & Marta Esquilin, *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCH. 271, 273 (2007).

[88] *See id.* at 274–75.

[89] BRIDGES, *supra* note 8, at 184.

[90] *See* Samuel-Siegel, *Structural Racism in Legal Education*, *supra* note 9, at 6–7.

[91] *See* MODEL RULES OF PRO. CONDUCT, PREAMBLE (A.B.A. 2025).

[92] *Id*.

profession"[93] lies with law schools, making this work central to their missions.

To proceed accordingly, law teachers must come to recognize how whiteness shows up in legal pedagogy. As such, this Part will explore the way that whiteness's entitlement to power, control, and domination; expectation of comfort; and perception of white normativity are defining characteristics of the substance legal educators teach and the norms they inculcate across the curriculum. Indeed, the influence of whiteness is present not only in settings often considered to be "race-neutral" but also when law teachers teach explicitly about race and racism. This subpart begins with an exploration of how whiteness shows up in legal pedagogy generally and concludes by noting the powerful hold whiteness has even on typical approaches to specifically teaching about racism.

A. How whiteness shows up in legal pedagogy

Whiteness pervades legal pedagogy across the curriculum. From falsely unracing much of the substance of legal coursework, to preserving power, control, and privilege, traditional approaches routinely enact whiteness.

(1) Unracing

Recall that whiteness includes a tendency to see white people as unraced, and thus to understand traits and behaviors associated with white people as neutral and normative. This attribute of whiteness shows up in legal pedagogy as a belief that most coursework bears no relation to race or racism, as well as a "perspectiveless"[94] approach to conducting legal analysis.

First, unless a course involves race-based discrimination or litigants who are not white, traditional legal pedagogy often does not consider it racialized. That is, many law teachers fail to notice that most every legal doctrine has racialized implications, even if it does not explicitly invoke race. While, in some instances, this dynamic might flow from a professor's or curriculum designer's explicit discomfort with discussing race and racism,[95] whiteness likely is a more predominant culprit.

Viewed as such, we can see Flagg's transparency phenomenon influencing many law teachers' understandings of case law and doctrine.[96] That is, many law teachers misconstrue legal doctrine as race-neutral rather than what it is–a set of human-created rules and procedures that systematically disadvantage people who are not white.[97] Teachers operating

[93] STANDARDS AND RULES OF PROC. FOR APPROVING L. SCH., STANDARD 301 OBJECTIVES OF PROGRAM OF LEGAL EDUC. (A.B.A. 2024-25).
[94] Crenshaw, *supra* note 9.
[95] *See, e.g.*, DiAngelo, *supra* note 35, at 57 (describing a tendency among people who are white to fear and avoid discussions of race and racism).
[96] *See generally* FLAGG, *supra* note 41.
[97] *See* FLAGG, *supra* note 41, at 9.

under the influence of the transparency phenomenon don't recognize that teaching law as though it is race-neutral is an act of decontextualization.[98]

Indeed, whiteness dominates the law. "What is thought to be objective and neutral is in fact based on white values, norms, and conduct. The . . . failure to recognize and account for this fact . . . . can result in silencing, discounting, and further subordinating nonwhite people and their lived experiences."[99]

Unracing shows up in the substance of law courses across the curriculum. For example, it is operating when property law teachers fail to contextualize racially restrictive covenants as part of a widespread effort to systematically prevent Black, Latinx, Native American, and AAPI people from homeownership through the use of law and extra-judicial violence. It shows up when legal writing teachers teach certain rhetorical norms as though they are universal attributes of credibility rather than conventions which are, in reality, grounded in white elitism.[100] Other examples abound, for instance: "teaching about health law without addressing disparate medical outcomes based on race; teaching intellectual property law without addressing its uses to deprive racially minoritized artists of ownership of their creations; [and] teaching civil procedure without addressing disparate access to legal representation."[101]

In addition to unracing's impact on the substance of law courses, it also shapes the analytical habits many legal educators model for their students. Perhaps chief among the ways whiteness shapes these norms is through the practice that Kimberle Crenshaw describes as "perspectivelessness." Perspectivelessness is a way of teaching legal analysis as though it is "objective" in the sense that it is devoid of "cultural, political, and class characteristics," and, as such, can be conducted without "directly addressing conflicts of individual values, experiences, and world views."[102]

Viewed in light of whiteness's penchant for unracing–for viewing white people as the only people who see and interpret the world without a point of view specific to their particular habits, interests, and needs–perspectivelessness can be traced at least in part to the operation of whiteness. Only under a framework that conceives of people with one racial identity as normal and neutral, thus implicitly deeming non-neutral those who are not raced as white, is such exclusionary simplification possible.

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[98] *E.g.*, Samuel-Siegel, *Structural Racism in Legal Education*, *supra* note 9, at 6–7 , at 19; Capers, *supra* note 11, at 56 ("We live in a world built on racialized hierarchies and inequality, and much of the reason we live in such a world is because of what we call the law, from Slave Codes to the enshrinement of slavery in the Constitution to the doctrine of manifest destiny to anti-miscegenation laws to the Chinese Exclusion act to zoning rules to qualified immunity to racialized highway construction to so much more. It is the law, after all, that has contributed to why, even now, we are segregated in where we live and where we go to school and whom we love. Quite simply, law is haunted by race, even when it doesn't realize it.").

[99] Alexis Hoag-Fordjour, *White Is Right: The Racial Construction of Effective Assistance of Counsel*, 98 N.Y.U. L. REV. 770, 783 (2023).

[100] *See* Elizabeth Berenguer, Lucy Jewel & Teri A. McMurtry-Chubb, *Gut Renovations: Using Critical and Comparative Rhetoric to Remodel How the Law Addresses Privilege and Power*, 23 HARV. LATINX L. REV. 205, 212-13 (2020) (discussing such norms and situating them within their racialized context).

[101] Samuel-Siegel, *Structural Racism in Legal Education, supra* note 9, at 6 –7.

[102] Crenshaw, *supra* note 9, at 2.

In sum, these approaches are characterized by what we might call an "unracing" of law in much the same way that whiteness unraces people. That is, just as whiteness dictates that only people who are not white are deemed racialized at all, so too, whiteness in legal pedagogy dictates that legal doctrine is racialized only when it contemplates race explicitly. And, just as seeing white people as inherently neutral and normative is a flawed perspective, so too, is seeing the law as inherently neutral and normative.

(2) Preservation of power and control

Let us recall that, in addition to whiteness as unracing, whiteness is also an expectation of power and control. This attribute of whiteness shows up both as a tendency not to prepare law students to be systemic change agents, and as a failure to pay sufficient attention to racialized disparities in student outcomes.

First, the inclination to preserve power and control leads some legal educators not to prepare law graduates to think systematically about how to replace structurally racist systems with equitable ones. In other words, by omitting from much foundational legal pedagogy an emphasis on antiracist change agency, legal educators effectively reinforce the existing power and control held by people who are white. In other words, what law students learn in law school is "more about justifying the status quo—including the racial status quo—than disrupting it," to borrow Bennett Capers' description of his own law school experience.[103]

For example, much of legal pedagogy inculcates in students a sense that the act of legal analysis begins with rule synthesis and ends with rule application. That is, the pedagogy misses opportunities to teach students how lawyers can play roles in actually *changing* existing legal rules. As a result, students "come to see themselves not as creative catalysts with potential to contribute to structural reform, but as instrumental rule-appliers."[104] They develop habits that resemble a "mechanical process that requires finding extant rules and stamping them onto new client matters much as a robotic arm might stamp a preprinted logo onto the next item coming down the assembly line. And the next, and the next."[105]

Such a process preserves the status quo by combining with unracing to eliminate any discussion of racialized power from the scope of most law school coursework.[106] This process is a missed opportunity to equip law graduates for the dismantlement of systems of racialized inequity, and, as such, it leaves utterly unchallenged the expectation of power and control to which white people are accustomed. In other words, teaching substance in this way is whiteness in action; it amounts to an act of allegiance to structural racism.

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[103] Capers, *supra* note 11, at 12.
[104] Doron Samuel-Siegel, *Operationalizing a Pedagogy of Antiracism in Legal Education*, 35 BERKELEY LATINE J. L. & POL'Y 38, 82 (2026)[hereinafter *Operationalizing a Pedagogy of Antiracism*].
[105] *Id.*
[106] Armstrong & Wildman, *supra* note 10, at 648–49 (using the lens of so-called "colorblind" ideology to level this critique).

Additionally, when institutional decision makers conduct their work as though structural racism does not exist, they are permitting whiteness to dominate. Under-attending to racialized disparities in bar passage rates is an example of how this feature of whiteness shapes legal pedagogy. It also demonstrates yet another manifestation of whiteness as entitlement to power and control.

Racial disparities in bar passage rates are a long-standing reality.[107] According to the most recent national data available from the American Bar Association, ultimate passage rates for 2023 law graduates were higher for white test takers than for any other racial identity group.[108] They passed at a rate of 92 percent, while Hispanic test takers passed at a rate of 82 percent, Black test takers passed at a rate of 74 percent, Asian test takers passed at a rate of 87 percent, and Native American test takers passed at a rate of 81 percent.[109]

Law schools are not solely responsible for the factors that create these disparities. For example, data indicates that bar takers' household incomes[110] may be somewhat predictive of bar passage. However, even after controlling for such factors that are largely beyond the control of legal educators, takers who are not white remain more likely to be unsuccessful on the bar exam than those who are white.[111] This leads scholars to conclude that factors such as stereotype threat are instrumental in the persistent disparities.[112]

Unlike their graduates' incomes, law schools certainly are able to equip graduates with tools to counteract stereotype threat.[113] As such, any failure to do so is attributable to a choice not to prioritize the unique needs of students who are not white. While it is of course true that racialized dynamics such as stereotype threat are products of structural racism, institutional decision makers at times think too narrowly about their role concerning such systemic inequity. They metaphorically throw up their hands in a helpless gesture and accept "stock stories" over which they see themselves as having little to no influence, bemoaning structurally inequitable cycles but without looking internally for ways to interrupt

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[107] *E.g.*, Deborah Jones Merritt, Carol L. Chomsky, Joan W. Howarth, Claudia Angelos, *Racial Disparities in Bar Exam Results—Causes and Remedies*, BLOOMBERG L. NEWS (July 20, 2021, at 04:00 ET) https://news.bloomberglaw.com/us-law-week/racial-disparities-in-bar-exam-results-causes-and-remedies?context=search&index=2; Scott Devito, Kelsey Hample & Erin Lain, Examining the Bar Exam: *An Empirical Analysis of Racial Bias in the Uniform Bar Examination*, 55 U. MICH. J.L. REFORM 597, 610-11 (2022).

[108] Am. Bar Ass'n, *Summary Bar Admission Data: Race, Ethnicity, and Gender* (2025), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2025/2025-summary-race-ethnicity-gender.pdf.

[109] *Id.*

[110] *See, e.g.,* N.Y. State Bd. of Law Examiners & AccessLex Inst., *Analyzing First-Time Bar Exam Passage on the UBE in New York State*, (2021), http://www.accesslex.org/NYBOLE (verifying that availability of temporal and monetary resources are statistically significant bar-passage factors).

[111] *E.g.*, Merritt et al., *supra* note 107; N.Y. State Bd. of Law Examiners & AccessLex Inst., *supra* note 110; Scott DeVito, *De-normalizing Racial Bias in the Bar Examination: Two Pragmatic Solutions*, 63 WASHBURN L. J. 23, 31-32 (2023).

[112] Merritt et al., *supra* note 107.

[113] *See generally* Russell A. McClain, *Helping Our Students Reach Their Full Potential: The Insidious Consequences of Ignoring Stereotype Threat*, 17 RUTGERS RACE & L. REV. 1 (2016) (describing the threat, its impacts on law students, and methods for counteracting it).

them.[114] The result is that law schools simply fail to recognize dynamics such as stereotype threat as actionable.[115] This type of decision making is marked by whiteness in multiple respects–it fails to take account of structural racism and, as a result, it also preserves the power and control that white people have over the legal profession by permitting the bar exam's racialized gatekeeping to persist relatively undisturbed.

(3) Leaving Privilege Unchecked

By inculcating a reverence for the Constitution and the rule of law while neither teaching an equally robust skepticism nor instilling a sense of duty to reform racially oppressive structures, legal pedagogy is again shaped by whiteness.[116] In this instance, what is operating is the tendency of whiteness to accept privilege without also engaging routinely in concomitant efforts to ensure such privilege is distributed without reference to race.

When law students learn about the Constitution and the rule of law more generally, they are learning about a set of governance documents and practices that are fundamentally marred by white supremacist roots.[117] White privilege is therefore inherent within them. That is, these documents and practices confer upon people who are white advantages that are not equally available to people who are not.[118]

Much of legal pedagogy accepts the existence of these advantages without remarking upon them or, at most, frames such discussions as public policy sidenotes. Indeed, even where such discussions occur, traditional legal pedagogy does not centralize teaching students to lawyer in a way that reforms existing systems so as to redistribute privilege equitably.[119]

B. How whiteness shows up even when educators teach explicitly about racism

Even when legal educators do teach in a way that acknowledges the salience of race and racism to legal doctrine and norms, whiteness often gets in the way of telling the story completely. It leads many to center the *oppressive* impacts that racially disparate doctrine and norms have upon people who are not white, but it does so without even mentioning whiteness,

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[114] Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2418-21 (1989) (observing a similarly problematic "stock story" blaming a lack of racial diversity among law faculty on insufficient candidate pipelines).

[115] *See generally* McClain, *supra* note 113.

[116] *See* Capers, *supra* note 11, at 32 ("[W]e teach students from day one about the majesty of the law—that the law, though it may have some flaws, is something to be revered. We rarely suggest that the law may be flawed at its core.").

[117] *Id*. (observing that the Constitution itself "locks in white advantage.").

[118] *See generally* Ruth Colker, *The White Supremacist Constitution*, 2022 UTAH L. REV. 651 (2022.).

[119] *See* Armstrong & Wildman, *supra* note 10, at 157-160 ("Quite simply, from the point of view of minority students, the very subjects we teach reflect an "allegiance to a legal system that since its inception has systematically oppressed black people… If the hope of incoming students, minority or otherwise, is to learn the law so that they can help "make America what America must become…fair, egalitarian, responsive to needs of all of its citizens, and truly democratic in all respects, including its policing…we are sure to disappoint them…Instead, we are teaching them a law that has always been inflected with white interests").

let alone emphasizing the *benefits* white people reap from these very same doctrines and norms.[120]

When they are not taught about the power-preserving impacts of racialized structures, or the fact that structural racism's objective is as much to benefit white people as it is to hurt people who are not, white students are less likely to understand their role in such structures. Teaching about racist inequity only through the lens of race-based oppression–and not the lens of race-based benefits–allows such students to experience themselves as non-relevant bystanders, unimpacted by racist systems, and without a role in dismantling it.

To be clear, teaching about the incalculable harms of race-based oppression could not be more important.[121] But to stop short of teaching about the benefits that accrue to whiteness is to leave out a crucial part of the truth. Indeed, doing so risks obscuring the very engine that keeps the machine of structural racism churning out such harms.

One can see that, when it tells just one part of the story of structural racism, legal pedagogy in effect defers to whiteness's entitlement to comfort and makes invisible white privilege in a manner that is consistent with the purportedly unraced normativity of whiteness. Ultimately, this failure to be transparent about whiteness preserves its power and control by minimizing the likelihood that students will see its role and risking those students who are themselves white will not gain awareness of the ways in which they are beneficiaries in a system that needs dismantlement.

Until legal educators reform the approaches described in this Part, law schools will continue their complicity in whiteness's allegiance to structural racism. As such, we turn next to reforms designed to bring about the dismantlement of legal education's whiteness.

III. DISMANTLING THE WHITENESS OF LEGAL EDUCATION

As discussed in Part I, whiteness operates as an allegiance to upholding structural racism. As such, institutions shaped and pervaded by whiteness in the ways described in Part II are, by virtue of their mere day-to-day operation, contributing to the reproduction of systemic racial inequity. They are upholding a race-based system of supremacy and subordination. While this reproduction may occur free of any racial animus or harmful intent, it

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[120] This pattern can be seen, for example, in some of the scholarship that advocates for antiracist legal education. *See, e.g.*, Alfred L. Brophy, *Integrating Space: New Perspectives on Race in the Property Curriculum*, 55 J. Legal Educ. 319 (2005) (centering ways of teaching about how "property law has been used to facilitate racial subjugation); Amy Gaudion, *Exploring Race And Racism In The Law School Curriculum: An Administrator's View On Adopting An Antiracist Curriculum* , 23 RUTGERS RACE & THE LAW REVIEW 131,136-37 (2021) (describing a faculty resolution that, while important and ground-breaking, characterizes the racism that requires curricular response in terms of its devastating effects but without naming its benefits to whiteness); *see also* Armstrong & Wildman, *supra* note 10 (noting, for example, that the Supreme Court's framing of *Brown v. Board of Education*, and specifically "use of the term 'nonsegregated[,]' obscured the [finding below] that white children's education was superior, privileging them. So, even though, in *Brown*, the Supreme Court moved beyond white supremacy discourse, the existing white privilege remained unacknowledged, still alive and powerful").

[121] *See generally, e.g.*, Samuel-Siegel, *Reckoning with Structural Racism*, *supra* note 9 (advocating for a pedagogy of antiracism that will eliminate racialized harms and equip all students to participate in anti-racist change).

nevertheless exacts an array of fundamental costs.[122] Until legal educators make active, methodical antiracist reforms, this harmful state of affairs will continue.

Indeed, this Article's proposed pedagogical strategies are not aimed merely at helping students or legal educators navigate institutions shaped by whiteness, but at equipping legal educators to interrupt and ultimately dismantle whiteness's influence within legal education itself. That is, by striving to develop an awareness of whiteness and eliminate its influence from legal pedagogy, legal educators can take a step toward ending law schools' role in perpetuating structural racism. All law teachers should be thinking about whiteness, and all law students are harmed when law teachers are not clear and honest about its operation in the law and legal profession. Only with a sober awareness of whiteness will legal educators collectively be equipped to dismantle it and create a world in which race-based inequity can be replaced with comprehensive equity.

In other words, the underlying contention of this Article is that law teachers' ultimate aim should be to end legal education's complicity in structural racism. And, since dismantling the whiteness of legal education is an essential step toward that end, a holistic methodology for replacing structurally racist pedagogy with antiracist pedagogy is well-suited for this endeavor.[123] Such a pedagogy of antiracism, composed of five dimensions, is derived from a tapestry of scholarly threads which, when aggregated, suggest inflection points on the pathway to antiracist legal pedagogy.[124] Together they provide a nonlinear panoply of considerations that legal educators can employ to bring about a pedagogy that is antiracist, which necessarily includes a pedagogy that abandons whiteness. Specifically, to pursue the pedagogy, legal educators must account for (A) who we are, (B) our students' psychological and cognitive experiences, (C) the substance we teach, (D) the teaching processes we employ, and (E) the impact of accountability structures.[125]

Only a legal profession knowledgeable about whiteness can have a chance to dismantle structural racism, and such a profession is truly possible only if buttressed by a legal educational establishment that teaches explicitly about it. Dismantling whiteness will require a degree of "imaginative capability, moral grounding, mature accountability, and fealty to democratic principles" that have not historically been driving forces in legal pedagogy.[126] The remainder of this Part will explore each of the pedagogy's five dimensions, along with concrete strategies for deploying them to dismantle the whiteness of legal education.

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[122] *See generally* Samuel-Siegel, *Reckoning with Structural Racism, supra* note 9.
[123] *Id.* at 8.
[124] *Id*.
[125] *Id*.
[126] Ifill, *supra* note 4.

A. Teacher Self-Assessment

Any commitment to undertake reform should begin with an assessment of oneself. As such, this is where our exploration of the pedagogy begins: Law teachers who wish to dismantle the whiteness of legal pedagogy must begin by looking internally.

Every law teacher has experience with whiteness by virtue of its ubiquity. For some, it is a dynamic that operates within them–a set of behaviors and norms that they have been acculturated to embody; for others, it is a dynamic they observe in the people around them and to which they might have an array of reactions. And just as each legal educator is a unique individual who lives life at the intersection of their identities,[127] so, too, must each educator's self-assessment be uniquely tailored. As such, what follows here is a set of general observations educators may use as a springboard.

Few legal educators teach about whiteness.[128] This may be true for a number of reasons, including educators' lack of knowledge about whiteness as well as their own internal psychological barriers to confronting it head on. Taboos about addressing race, racism, and whiteness also may play a role, considering that law teachers may fear job-related consequences when they address controversial topics. This subpart explores these potential barriers briefly in the next few paragraphs, then offers a sampling of strategies for transcending them.

The first likely barrier to teaching about whiteness is that many legal educators lack knowledge about race generally, and about whiteness in the law and legal pedagogy specifically.[129] Indeed, only recently have a relatively small number of law schools begun to provide explicit instruction about the role of whiteness in the law.[130] As such, most law teachers did not have the opportunity to gain an academic footing in this arena in the formative years of their professional lives. Even those who have given thought to the whiteness they observe in others or experience internally may well have lacked opportunities to study the concept formally and engage with its role in the law and legal profession. Unsurprisingly, teachers tend to avoid engaging in topics where they feel they lack expertise.[131]

Second, psychological dynamics may contribute to the lack of law teaching about whiteness. For instance, for law teachers who are white,

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[127] *See generally* Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIV. CHI. LEGAL F. 139. 140 (1989).

[128] *See* Armstrong & Wildman, *supra* note 10, at 651.

[129] *See* Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can be Intellectually Violent*, ABAJOURNAL (Oct. 15, 2020, 11:23 CT), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent (observing that "racial literacy is not a highly valued good" among law faculty).

[130] *E.g., Race and the Law: Systems, Structures, and Solutions*, UNIVERSITY OF MINNESOTA SCHOOL OF LAW https://law.umn.edu/course/6915/race-and-law-systems-structures-and-solutions?utm_source=chatgpt.com ("This course examines whiteness, racism and their connection to traditional legal topics: property, education, and crime."); *Critical Race Theory*, DUKE UNIVERSITY SCHOOL OF LAW, https://law.duke.edu/academics/course/504/?utm_source=chatgpt.com (indicating that course themes include "whiteness and white privilege").

[131] *See, e.g.,* Mark Wyatt, *Towards a re-conceptualization of teachers' self-efficacy beliefs: tackling enduring problems with the quantitative research and moving on*, 37 INTERNATIONAL J. OF RESEARCH & METHOD IN EDUCATION 166, 171 (2012) (discussing teachers' self-efficacy beliefs).

psychological experiences related to their own whiteness might inhibit them from teaching about whiteness structurally.[132] People racialized as white can experience psychological costs when they acknowledge their white identity and white privilege, and they often strive to "immunize" themselves from those costs.[133] That is, their moral embarrassment about whiteness leads some to use "identity-management strategies" such as denying the existence of white privilege or even distancing themselves from the existence of whiteness altogether.[134] For educators who experience this psychological dynamic, teaching about whiteness would, by definition, exact the very costs that flow from acknowledgment, imposing a psychological weight many legal educators may feel unprepared to carry.

For law teachers who identify as Black, Latinx, Native American, or AAPI, different psychological costs may arise from teaching about whiteness. One example is the effects that arise from carrying a disproportionate burden to provide institutional labor on matters related to race.[135] This may present a disincentive to teaching about whiteness, which is a topic that may be even more fraught than others related to racialization and racism thanks to dynamics such as "white fragility."[136] In addition, some legal educators who are Black, Latinx, Native American, or AAPI, may also be navigating complex personal journeys related to whiteness which make teaching about it particularly taxing. For instance, researchers have demonstrated that professionals who are not themselves racialized as white experience the paradoxical requirement to nevertheless strive to enact whiteness in order to be seen as meeting professionalism standards.[137] For educators who experience these psychological dynamics, teaching about whiteness might require an unreasonable quantity of invisible labor.

Third, many legal educators across racial identities see teaching about race and power as a risky endeavor.[138] This perception is not without merit—

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[132] *Id*. at 57 ("Consequently, teachers may concentrate on only "safe" topics about cultural diversity such as cross-group similarities and intergroup harmony, and ethnic customs, cuisines, costumes, and celebrations while neglecting more troubling issues like inequities, injustices, oppressions and major contributions of ethnic groups to societal and human life.").

[133] Eric D. Knowles, Brian S. Lowery, Rosalind M. Chow & Miguel M. Unzueta, *Deny, Distance, or Dismantle? How White Americans Manage a Privileged Identity*, 9 PERSPS. ON PSYCH. SCI. 594, 595 (2014).

[134] *Id*.

[135] *See, e.g.*, Candice Raynor, *Best Practices for Addressing Invisible Labor Among Black Faculty at Predominately White Institutions* (April 2025) (Ph.D. dissertation, Pepperdine University) (Pepperdine Digital Commons) ("Black faculty often serve as unofficial financial aid advisors, student advocates, and mental health counselors . . . . [and] are more likely to be asked to serve on diversity-related committees than their White colleagues . . . ."); John King, *The Invisible Tax on Teachers of Color*, WASH. POST (May 15, 2016), https://www.washingtonpost.com/opinions/the-invisible-tax-on-black-teachers/2016/05/15/6b7bea06-16f7-11e6-aa55-670cabef46e0_story.html.

[136] *See* discussion of white fragility, *infra* Part III(D)(2).

[137] *See, e.g.*, Marcus W. Ferguson Jr. & Debbie S. Dougherty, *The Paradox of the Black Professional: Whitewashing Blackness through Professionalism*, 36 MGMT. COMMC'N Q. 3, 6 (2022) (noting "research has shown that although many Black workers believe they should conform to standards of whiteness, doing so makes them feel as if they are rejecting their blackness …, creating an unacceptable choice for Black workers as they attempt to navigate through their performance.").

[138] Keeshea T. Roberts, *Law Schools Push to Require Anti-Racism Training and Courses*, 46 HUM. RTS. 2, 4, (Dec. 2020) ("Another challenge that law professors face is how to discuss these issues in a safe and productive way. The issue of race is not an easy one to discuss. Most of us tend to avoid discussing the roots of racism in the United States because it takes us to a place where we do not want to go.").

some students and colleagues view this work as lacking objective merit or carrying an inherent political bent.[139] Indeed, perhaps at no time in recent memory have these risks been more verifiable. Recent years have witnessed many state and federal leaders seeking to suppress education concerning the history and present realities of structural racism in the U.S.,[140] as well as penalize educators who decline to participate in the efforts to suppress such knowledge.[141]

This risk might be compounded for law teachers who are not white, for whom there is a widely acknowledged risk of being seen as having a personal stake in the subject matter of structures of racial inequity and being deemed by students or colleagues as pressing a "personal agenda" that does not fit within the bounds of the mainstream curriculum.[142] Such educators are often placed in the difficult position of attempting simultaneously to create a productive learning environment, teach historical and contemporary realities truthfully, and navigate student resistance ranging from silence and disengagement to overt hostility or denial. Some law teachers report experiences with students openly disputing the existence of racism, rejecting classmates' or professors' lived experiences of racial inequity, or advancing arguments rooted in racial stereotypes and assumptions of white normativity.[143] The labor associated with managing these dynamics while remaining professionally composed and pedagogically effective can be profound.

Considering this terrain, it is not difficult to see why law teachers might not be teaching about whiteness or might fear reforming the processes of legal education to dismantle its influence. The lack of knowledge,

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[139] Kevin Cokley, *Teaching About Race and Racism*, UNIVERSITY OF TEXAS SYSTEM (Jan. 13, 2020) https://www.utsystem.edu/sites/academy-of-distinguished-teachers/blog/teaching-about-race-and-racism-2020-01-13?utm_source=chatgpt.com ("Faculty who teach classes about race are sometimes subject to punishment by students in the form of poor courses evaluations and, in extreme cases, complaints to administrators.").

[140] Gregory Krieg & Veronica Stracqualursi, *Takeaways From Virginia Gov. Glenn Youngkin's CNN Town Hall on Public Education*, CNN POLITICS (Mar. 10, 2023, 2:15 PM), https://www.cnn.com/2023/03/09/politics/glenn-youngkin-town-hall-education-cnntv ("Youngkin defended the executive order he signed last year banning 'critical race theory' from being part of public school curriculum, arguing that children should not be taught that 'they are inherently biased.'"); Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, BROOKINGS INST. (Nov. 2021), https://www.brookings.edu/articles/why-are-states-banning-critical-race-theory/ ("The legislations mostly ban the discussion, training, and/or orientation that the U.S. is inherently racist as well as any discussions about conscious and unconscious bias, privilege, discrimination, and oppression. These parameters also extend beyond race to include gender lectures and discussions.").

[141] Stephen Sawchuk, *What Is Critical Race Theory, and Why Is It Under Attack?*, EDUC. WEEK (May 18, 2021), https://www.edweek.org/leadership/what-is-critical-race-theory-and-why-is-it-under-attack/2021/05 ("But social studies educators fear that such laws could have a chilling effect on teachers who might self-censor their own lessons out of concern for parent or administrator complaints.").

[142] *See, e.g.*, BELL HOOKS, TEACHING COMMUNITY: A PEDAGOGY OF HOPE 33 (2003) ("No wonder then that so many white folks find it hard to "listen" to a black woman critic speaking ideas and opinions that threaten their belief systems. In our class discussion someone pointed out that a powerful white male had given a similar talk but he was not given negative, disdainful, verbal feedback. It was not that listeners agreed with what he said; it was that they believed he had a right to state his viewpoint.").

[143] See Lain, *supra* note 9 (describing dismissive and racially charged classroom interactions during discussions of race and racism); DiAngelo, *supra* note 29, at 57–66 (describing defensive reactions to discussions of racism, including denial and invalidation of racialized experiences); *Meera E. Deo, Faculty Insights on Educational Diversity*, 83 FORDHAM L. REV. 3115, 3121–24, 3138–42 (2015) (discussing faculty observations regarding the difficulties of facilitating meaningful classroom conversations about race and the educational challenges that arise in insufficiently inclusive law school environments).

psychological experiences, and material professional threats are real. In light of these barriers, what strategies can law teachers employ to prepare themselves to dismantle the whiteness of legal education? Like any strategic plan, the work begins with self-assessment.

Each legal educator committed to this work can take stock of their own knowledge, experience, capacity, and risk-tolerance. Teachers should begin by assessing their degree of understanding of whiteness generally, its definitions and manifestations. Seek out knowledge from scholars such as those cited in this piece and others. Consider the ways in which whiteness may operate in your own or others' behaviors, thoughts, and assumptions. Take notice of your psychological experiences relating to whiteness. Ask yourself whether you are affected by threats to self-image or risks to job security.[144]

After self-assessment, consider responsive strategies that are reasonable under your professional circumstances. When making this analysis, it may be helpful to explore your own risk tolerance and risk aversion. Pause to consider both methods for minimizing risk, as well as principled arguments for accepting some degree of it. For legal educators who have the privilege to take some risk, extra incentive for doing so may emerge from the reality that law students stand to learn important lessons from observing their teachers taking risks. Law students often tend to be risk averse.[145] And, while all lawyering might be said to entail some degree of risk, for those who desire to take part in antiracist lawyering or other efforts to dismantle structural inequity, risk taking will likely be routine. Thus, by undertaking some degree of tolerable risk, law teachers have an opportunity to lead by example.

The pedagogy this Article advocates requires a growth mindset.[146] And, to implement a growth mindset, one must understand not only where one wants to end up in the future, but where one is now. Knowing one's current state makes it possible to build a methodical strategy for traversing the distance between the present and the aspired-for future.[147]

B. Student Experiences and Needs

Like their teachers, all law students acculturated in the United States are affected by whiteness. It pervades culture, habituating people who are

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[144] This act of self-assessment is more likely to be effective if accompanied by a lack of self-judgment. Recognize that to be a person in the United States likely means being acculturated from the earliest of ages to enact one's relationship with whiteness in ways that might be so ingrained as to be nearly reflexive absent mindful intervention.

[145] *E.g.*, Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L. REV. 959, 960-61 (2018).

[146] *See generally* CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS (2007).

[147] To aid in this process, consider consulting publicly available self-assessment rubrics designed specifically for higher education teachers. While existing rubrics do not necessarily center whiteness, they nevertheless offer rich insights about the sorts of questions one might ask. E.g. Self-Assessment Rubric for Inclusive Teaching Effectiveness, University of Rhode Island. https://web.uri.edu/atl/wp-content/uploads/sites/1970/Self-assessment-rubric-for-inclusive-teaching-effectiveness-112823.pdf?utm_source=chatgpt.com; Inclusive Teaching Higher Education Rubric, Virginia Tech https://www.inclusive.vt.edu/content/dam/inclusive_vt_edu/inclusive_documents/ITRubric_2020.pdf?utm_source=chatgpt.com.

white to enact it, and people who are not white to navigate it.[148] As such, by the time they arrive in law school, most students are steeped in whiteness, many without conscious awareness of its qualities or manifestations.[149] Law teachers committed to racial justice have an opportunity to interrupt this habituation by offering students space to develop the self-awareness, knowledge, and skills to choose alternatives to reproducing whiteness and, in turn, structural racism.

As discussed below, teaching explicitly about whiteness throughout the curriculum is an essential step toward achieving this objective.[150] But, to make this curricular work meaningful, educators should strive to understand the cognitive and psychological experiences students bring to this work. Approaching pedagogical work with awareness about students' experiences and needs will help law teachers to design curricula that are approachable, manageable, and relevant to students' own roles as future lawyers. While sweeping generalizations are risky, this subpart discusses psychological and education literature that offers insights that may well be relevant to a wide array of law students.

For students who are white, significant psychological incentives exist to downplay the realities and salience of whiteness. As such, legal education that addresses whiteness may elicit from them resistance that will need to be overcome. Multiple psychological threats can be triggered when white people reckon with knowledge of whiteness and white privilege, and these threats can result in defensive measures that may inhibit student learning. For example, what psychologists call "meritocratic threat" occurs when people become aware of having privilege and experience fear that their successes are actually products of that privilege rather than their own attributes or work. Relatedly, this threat occurs when people fear that their failures are especially stark because those failures occurred in spite of privilege.[151] Furthermore, "group-image threat" stems from the realization that one's identity group is "guilty of past, or engaged in present, moral wrongdoing against outgroups."[152] As a result of meritocratic and group-image threats, some white people are prone to take measures to maintain a sense of innocence about whiteness,[153] i.e. to deny its existence or distance themselves from its privileges.[154] However, once convinced that white privilege, for example, exists, many white people become more likely to support efforts to counteract it.[155]

Students who are Black, Latinx, Native American, or AAPI may have a variety of past exposure navigating whiteness, as well as potential psychological experiences in settings where whiteness is a subject of study. For many, awareness concerning racism and race-based privilege likely long

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[148] *See, e.g.*, DIANGELO, WHITE RACIAL IDENTITY, *supra* note 29 (explaining socialization and using a metaphor of fish in water to explain "the all-encompassing dimensions of socialization").
[149] *See* Part I(A), *infra*.
[150] *See* Part III(C), *infra*.
[151] Knowles, Lowery, Chow & Unzueta, *supra* note 133, at 598-99.
[152] *Id*. at 599.
[153] Phillips & Lowery, *supra* note 55, at 157.
[154] Knowles, Lowery, Chow & Unzueta, *supra* note 133, at 599.
[155] Phillips & Lowery, *supra* note 55, at 159.

pre-dates law school enrollment. However, not all Black, Latinx, Native American, and AAPI students have experience navigating spaces where whiteness predominates,[156] nor does lived experience automatically give students the tools to articulate or navigate them. Even for students with extensive personal experience with whiteness, the dearth of explicit societal discussion and education on whiteness means law courses may be their first opportunity for curricular learning on the subject. Regardless of preexisting awareness, for students who are conscious of personal or communal harms flowing from whiteness and structural racism, such curriculum might provoke strong emotions.[157] It might also trigger the psychological phenomenon known as racial battle fatigue–the stress responses that people who are racially minoritized can experience as a result of racial microaggressions and other encounters with racism.[158]

Legal educators who wish to dismantle the whiteness of legal education should learn about students and account for their diverse needs. Doing so will enable them to tailor pedagogy, including potential student self-assessment and reflection opportunities, that meets students where they are. To aid in their learning, teachers can seek our resources from the authors cited here and others. They might also consult with colleagues whose expertise and job descriptions include student wellbeing and mental health, such as student affairs professionals and counseling center staff.

In addition to insights and strategies gleaned from trained colleagues, law teachers may be able to account for some of the psychological burdens of studying whiteness by making efforts to orient teaching around ideas, not people.[159] That is, teach about whiteness in a way that makes clear it is a set of ideas and ways of being, not an indictment of a group of people or the individual members of that group. Framing whiteness as "a set of ideas that [students] can endorse or oppose and resist" may have positive effects for students of various identities.[160] For instance, this framing may help those who are white to maintain a posture of receptivity to the subject matter, rather than experiencing defensiveness or other manifestations of white fragility.[161] Additionally, this frame may allow students who are Black, Latinx, Native American, or AAPI to feel less necessity to engage in the

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[156] *E.g.*, ENID LOGAN, STAYCE BLOUNT, LOUIS MENDOZA, CHAVELLA PITTMAN, RASHAWN RAY & NICOLE TRUJILLO-PAGAN, *Double Consciousness: Faculty of Color Teaching Students of Color About Race, in* TEACHING RACE AND ANTI-RACISM IN CONTEMPORARY AMERICA 123, 128 (Kristin Haltinner, ed. 2014) (noting that some students, for instance Black students who grew up in predominantly Black environments, may not be accustomed to "the chilly climate of academic institutions that privilege hegemonic, patriarchal, and traditional ideals.").

[157] *See, e.g.*, MIRANDA HASKIE & BRADLEY SHREVE, *Hozho Nahasdlii: Finding Harmony in the Long Shadow of Colonialism. Two Perspectives on Teaching Anti-Racism at a Tribal College, in* TEACHING RACE AND ANTI-RACISM IN CONTEMPORARY AMERICA 91, 93 (Kristin Haltinner, ed. 2014) (describing Navajo students experiencing anger, disbelief, and other intense emotions when learning about the history atrocities against Native Americans).

[158] Kristen J. Mills, Stephen J. Quaye, Neal J. McKinney, Hunter V.J. Jones & Na'eem Allen-Stills, *Investigating Racial Battle Fatigue Among Black College Students Using Photo-Elicitation Methodology*, 62 J. STUDENT AFF. RSCH. & PRAC. 391, 391 (2025).

[159] Cyndi Kernahan, *Teaching About Race and Racism in College Classrooms*, NAT'L EDUC. ASS'N (Feb. 11, 2022), https://www.nea.org/advocating-for-change/new-from-nea/teaching-about-race-and-racism-college-classrooms.

[160] *Id.*

[161] *See* Part III(D), *infra*, for further discussion of white fragility.

disproportionate labor of validating their white classmates and self-censoring to spare white students' feelings.[162]

Fortunately for the purposes of this endeavor, many students arrive in law school at least in part because they want to be agents of systemic change.[163] While they look to legal educators to teach them what it takes to bring that change about and help them build the knowledge and skills to do so, the motivation to change resides in many students long before they enroll, and may well help them cope with the psychological costs that accompany this work.

C. Curricular Substance

To dismantle the whiteness of legal pedagogy, it is necessary not only to engage in teacher self-assessment and develop informed understanding of students' psychological and cognitive experiences, but also to reform the substance of the law curriculum. This subpart discusses teaching explicitly about whiteness and change-agency and equipping all students to transcend the legal profession's barriers to entry. These are offered as examples of how each legal educator has the potential to contribute to dismantlement within their own spheres of influence.

(1) Teach explicitly about whiteness throughout the curriculum

The first step toward dismantling the whiteness of legal education is to refuse to participate in the project of unracing. To do so, law teachers should reject the norm of treating whiteness as invisible. That is, law teachers must supplant the tendency to teach doctrine and convention as though they are unraced. To do so, it is necessary to first and foremost teach about whiteness, thereby equipping our students to recognize its operation in their own lives and in the law and legal profession.

This work begins when law teachers acknowledge the role of racialization, racism, and whiteness in every sphere of the law and legal profession. When teaching about everything from individual appellate opinions to doctrinal trends, and from lawyering conventions to professionalism norms,[164] create opportunities for students to consider how whiteness is operating in the background. Strive to replace legal analysis pedagogy that enshrines perspectivelessness with pedagogy that embraces historical context, human experiences of the law, and policy implications as central to the core doctrinal curriculum.

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[162] Tabitha Grier-Reed, Alyssa Maples, Anne Williams-Wengerd, & Demitri McGee, *The Emergence of Racialized Labor and Racial Battle Fatigue in the African American Student Network (AFAM)*, 6 J. COMMITTED SOC. CHANGE RACE & ETHNICITY 95, 114–15 (2020) (describing this experience among Black undergraduate students in a predominantly white setting and explaining that it is a form of racialized labor).

[163] *See, e.g.,* Ossei-Owusu, *supra* note 129 ("Students who recognize racial gaps in their learning are not wrong for being frustrated, skeptical or confused. These sentiments make sense, especially since legal education—for reasons that are sensible and illegitimate—is not designed to offer the types of racial literacy that all students should receive.").

[164] Samuel-Siegel, *Reckoning with Structural Racism*, *supra* note 9, at 49.

Teachers endeavoring to do this work should also adjust traditional approaches for acknowledging racism's role in the law. Law teachers must emphasize the *benefits* that whiteness reaps from doctrines and norms that reproduce structural racism. This is not so much a change in substance as it is in the narrative we build around it. Invite students to think as much about the advantages that accrue to people who benefit from whiteness as the detriments to people who are harmed directly by racial inequity. Doing so has potential to bring home to students the role of whiteness in their own lives and help them begin to conceive more expansively of methods to dismantle it.

In addition to teaching explicitly about whiteness in coursework across the curriculum, courses that provide in-depth treatment of whiteness and its role in the law and legal profession are an important tool in the dismantlement arsenal. Not only does offering such courses serve a signaling function to all students, but it also ensures that a growing number of students grapple with the topic in depth.[165] Creating a cadre of knowledgeable students will both empower them to be well-informed about whiteness, its role and manifestations, and also have a multiplier effect.[166] That is, those students will bring their knowledge to other academic and co-curricular settings throughout the law school, increasing the likelihood that whiteness will be more frequently named and grappled with.

To address the many attributes and manifestations of whiteness most effectively, definitional foundation laying is a logical starting place for such seminars. Further, since most students will enter the course without prior formal study of whiteness and may well be laboring under the false belief that whiteness is normative or neutral, opportunities for self-assessment, discussion, and reflection are essential to the effectiveness of the endeavor.[167]

For example, the course I teach is built around the following description and learning objectives:

The practice and study of law in the U.S. often fail to account for the racialized nature of U.S. society. Among these gaps are explorations of the ways whiteness functions to apportion privilege, normalize inequity, and dictate convention. In this reading group, we will begin to explore the meaning and operation of whiteness in the law and our own lives regardless of racial identity. Specifically, students will: (a) Gain knowledge about historical and contemporary dynamics of racialization and their implications for the law and legal profession. (b) Learn to recognize common definitions and critiques of whiteness and race-based advantage and disadvantage in the U.S. legal system. (c) Practice the skills of critical reading, reflection, self-

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[165] *See id.* at 6–8 (arguing that legal education should equip all students to contribute to the dismantlement of structural racism and emphasizing the importance of intentional antiracist pedagogy).

[166] *Cf. id*. at 8–9 (describing antiracist pedagogy as a process-oriented methodology intended to prepare students to recognize and counteract structural racism across professional contexts).

[167] *See id.* at 31–36 (emphasizing the importance of developing knowledge about white normativity, structural racism, and antiracism as foundational components of legal pedagogy); *see* Armstrong & Wildman, *supra* note 10, at 635 (arguing that legal education should move beyond colorblindness by engaging students in critical reflection about whiteness, racial normativity, and racialized advantage).

assessment, dialogue, and collaboration. (d) Consider the role of racialization in their own professional identity formation.

We begin by reading definitional materials such as Cheryl Harris' foundational *Whiteness as Property*[168] and historian Nell Irvin Painter's *The History of White People*.[169] The course is then structured around understanding the manifestations of whiteness as well as the phenomena of white privilege and white supremacy,[170] before turning attention to its role in legal education and the legal profession, and finishing with an opportunity to engage in summative personal reflection.[171]

My central intentions for the course are twofold: to raise students' consciousness of whiteness and its operation in their own lives and in the law and legal profession, and to expose them to key themes and thinkers to which they will be able to turn for continued learning as their journeys progress. As such, in addition to the Harris and Painter pieces, the syllabus includes selections by other key thinkers including James Baldwin,[172] Robin DiAngelo,[173] George Yancey,[174] and Bennet Capers.[175]

Throughout the course, I assign personal reflections which invite students to explore their own awareness of and relationships with whiteness, consider the interaction of professionalism norms based in whiteness with their own professional identity formation, apply what they are learning to other coursework and internship experiences, and identify matters about which they intend to learn more in the future.

Students emerge from the course expressing reflections such as: "I can now appreciate the necessity of acknowledging race—one, as a means of awareness that race implicates a person's worldview, and two, as a means of challenging whiteness as the normative baseline of our society." "I cannot help but feel as though in many ways I live thinking I am not part of the problem and yet I am living according to systems that are structured to oppress." "Whiteness is a tool that has been utilized for hundreds of years, and now we have the responsibility to decide how it will be used in our own lives."

(2) Teach change-agency

In addition to interrupting whiteness's project of unracing, a legal education that rejects whiteness must account for whiteness's entitlement to power and control and its tendency to accept privileges without engaging in

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[168] Harris, *supra* note 29.
[169] NELL IRVIN PAINTER, THE HISTORY OF WHITE PEOPLE (2010).
[170] *See* Capers, *supra* note 11, at 10–14 (arguing that law schools reproduce whiteness through institutional culture, pedagogy, and assumptions about normativity and belonging).
[171] *See* Samuel-Siegel, *Restorative Jurisprudence of Equal Protection*, *supra* note 3, at 138–43 (defining structural racism as systemic and self-replicating and emphasizing the importance of contextualizing racial inequality within broader social and historical structures).
[172] JAMES BALDWIN, *The White Man's Guilt, in* BALDWIN: COLLECTED ESSAYS 722 (Toni Morrison ed., 1998) (originally published in EBONY 1965).
[173] DiAngelo, *supra* note 35.
[174] George Yancey, *"Innocent" White People are also Complicit in the Anti-Black Murders in Buffalo*, TRUTHOUT (May 17, 2022), https://truthout.org/articles/innocent-white-people-are-also-complicit-in-the-anti-black-murders-in-buffalo/.
[175] Capers, *supra* note 11.

concomitant efforts to ensure they are distributed without reference to race. Legal pedagogy enacts this feature of whiteness when it frames foundational coursework with a disproportionate emphasis on the status quo. As such, to pursue dismantlement, legal educators should center from the earliest days of law school lessons and skillsets that enable students to envision themselves as agents of change.

Educators who teach in the first-year curriculum have an especially important duty in this realm. Rather than teaching foundational doctrine in a way that inculcates an uncritical reverence for the Constitution and precedent, they should be explicit about the ways that those sources embody whiteness and reproduce structural racism. Simultaneous with teaching the fundamentals, first-year teachers should teach a concomitant skepticism, model a sense of duty to reform racially oppressive structures, and begin drawing attention to the skills and strategies that bring about change.

To accomplish this goal, law teachers can begin by simply naming early and often for their students the role of lawyers in making change. They can elect not to frame coursework in terms that might lead students to view themselves as instruments in a perpetual cycle of reproducing existing structures. Instead, they can seek opportunities to build a sense that students are creative agents who act in clients' best interests even when those interests have not historically been protected by law. Opportunities for conveying this sense exist across the semester–from course learning outcomes and policies, to reading assignments, classroom discussion methods, and exam questions.

To concretize, educators can draw students' attention to the work of lawyers that resulted in changes to the law. By, for instance, not just assigning appellate opinions but also teaching about the lawyering that made those opinions possible–such as briefs and client counseling skills–teachers can illuminate the instrumental role lawyers have played in the law's development and direction.[176] Looking behind the case law can help students gain a more robust understanding of the role of lawyer as not just receiver and applier of the law, but also shaper of it.

Recent scholarship offers an array of additional recommendations for teaching in a way that helps students see themselves as change agents. First, for instance, law teachers can teach about rule synthesis in a way that bolsters students' sense of agency.[177] Rather than merely experts in *stare decisis*, they can learn to think of themselves as skilled at unsettling the law.[178] Second, they can instruct students to employ critical case briefing.[179] By thinking broadly about the implications of appellate opinions, students can move beyond merely understanding what the law is to understanding

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[176] Sherri Lee Keene & Susan A. McMahon, *The Contextual Case Method: Moving Beyond Opinions to Spark Students' Legal Imaginations*, 108 VA. L. REV. ONLINE 72, 83–85 (2022).
[177] Samuel-Siegel, *Operationalizing a Pedagogy of Antiracism*, *supra* note 104, at 81.
[178] *Id.*
[179] Hoang Pham, *The Critical Case Brief: A Practice Approach to Integrating Critical Perspectives in the 1L Curriculum*, in INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM 51, 54 (NICOLE P. DYSZLEWSKI, RAQUEL J. GABRIEL, SUZANNE HARRINGTON-STEPPEN, ANNA RUSSEL & GENEVIEVE B. TUNG EDS., 2021).

what the law could be.[180] Third, even an act as simple as routinely naming the existence of structural racism and the law's role in it without being prompted to do so by students questions[181] is a way to model honest grappling with systemic inequity. And the list goes on.[182]

(3) Teach to reduce racialized disparities in bar passage and professional access

Finally, to excise whiteness from the substance we teach we must reject curricular decisions that in any manner accept existing racialized power distributions. Whiteness expects power and control, and a profession with barriers to entry that disproportionately affect people who are not white preserves such power and control. As such, to dismantle the whiteness of legal education, legal educators must make substantive curricular choices that maximize the likelihood of all law graduates succeeding in the profession.

Preparing law graduates to pass the bar exam is one concrete example of this component of dismantlement. As discussed above, bar exam takers who are white pass at rates higher than all other takers.[183] While many legal educators are working tirelessly to see to it that these gaps are closed, the statistics remain alarming, demonstrating that innovative strategies are necessary. Recognizing that disparate bar passage rates are at least in part a function of whiteness, and that failure to eliminate them is an act of allegiance to structural racism, law teachers committed to antiracism have every incentive to increase the urgency with which they view the problem.

Indeed, some scholars have argued that racialized disparities associated with bar licensing are so entrenched that meaningful antiracist reform may require reconsideration of the bar exam itself. These scholars contend that the bar exam functions less as a measure of minimum competency than as a mechanism for preserving exclusionary professional hierarchies with disproportionate racialized effects.[184]

Short of abolition, a significant literature on methods for bolstering bar success is available.[185] While exploring it is beyond the scope of this piece,

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[180] *See id.*

[181] *See, e.g.*, Teri A. McMurtry-Chubb, STRATEGIES AND TECHNIQUES FOR INTEGRATING DIVERSITY, EQUITY AND INCLUSION INTO THE CORE LAW CURRICULUM: COMPREHENSIVE GUIDE TO DEI PEDAGOGY, COURSE PLANNING, AND CLASSROOM PRACTICE 78 (Wolters Kluwer 2022) (noting the importance of the teacher being the "first [to] raise[ ] the issues of race, class, and gender as they arise. . .and weav[ing] them into the discussion. . . .").

[182] *See, e.g.,* Scott L. Cummings, *Movement Lawyering*, 2017 U. ILLINOIS L. REV. 1645, 1725-30 (2017); Samuel-Siegel, *Operationalizing a Pedagogy of Antiracism*, *supra* note 104.

[183] *See infra* Part II(B).

[184] While full exploration of bar abolition is beyond the scope of this Article, such critiques further underscore the urgency of confronting the role whiteness plays in legal education and professional gatekeeping. *See* Deborah Jones Merritt & Logan Cornett, *Building a Better Bar: The Twelve Building Blocks of Minimum Competence*, 98 DENV. L. REV. 413, 417–23 (2021) (arguing that the traditional bar exam poorly measures minimum competence and disproportionately excludes historically marginalized applicants); Andrea A. Curcio, Carol L. Chomsky & Eileen Kaufman, *Testing, Diversity, and Merit: A Reply to Dan Subotnik and Others,* 9 U. MASS L. REV. 206, 221–29 (2014) (discussing racialized disparities in bar passage and questioning the legitimacy of standardized testing mechanisms as gatekeeping devices).

[185] *See, e.g.*, Jason M. Scott et al., *The Imperative to Promote Diversity Post*-Students for Fair Admissions *Analyzing the Effects of Student-Body Diversity on Attrition, GPA, and Bar Passage in Law Students and Graduates*, 96 J. HIGHER EDUC. 596 (2025); Scott Devito et al., *Examining the Bar Exam: An Empirical*

those who are committed to dismantling the whiteness of legal education should begin by recognizing that eliminating racial disparities in bar success requires institution-wide effort. Expecting Academic Success educators and others whose responsibilities are explicitly bar-related to rapidly bring about this crucial systemic reform is unrealistic. Rather, each legal educator has a role to play.

For instance, as noted above, stereotype threat, unequal academic support, racial isolation, financial inequities, and other structural barriers likely play a role in disparate bar passage outcomes,[186] and all legal educators have a role to play in minimizing its effects.[187] Furthermore, social scientific evidence indicates the importance of bolstering both academic and personal support for law students at risk of experiencing racialized bar-passage disparities.[188] This is especially so in the first year, when the difficulties of transitioning to law school can become magnified if not addressed early.[189]

In sum, the substance of legal pedagogy cannot emerge from the shadow of whiteness until it confronts whiteness head-on, and both prepares students for entry into the profession and equips them to be agents of change. By including explicit instruction about whiteness, preparing students for change agency, and working toward the elimination of racialized disparities in bar passage, legal educators have the potential to dismantle the whiteness of legal pedagogy's substance.

D. Teaching Methods

While this Article is built on the hope for a future where whiteness no longer shapes legal education, it is imperative that law teachers equip students to navigate present conditions successfully. Doing so is not an endorsement of those conditions, nor a suggestion that adaptation alone can dismantle whiteness. Rather, students must be equipped not only to survive institutions shaped by whiteness, but also to recognize, challenge, and ultimately transform them. Developing a profession–and future professorate–capable of undertaking the dismantlement for which this Article advocates requires preparing students to remain intellectually grounded, professional effective, and committed to antiracist change even while operating within imperfect institutions. As such, this subpart discusses two sample teaching methods that have the potential to accomplish this goal. Drawing from these samples, law teachers can build other strategies that will meet the needs of their particular students and institutional context.

(1) Tailor orientations for learning success

Analysis of Racial Bias in the Uniform Bar Examination, 55 U. MICH. J.L. REFORM 597 (2022); Merritt et al., *supra* note 107; Timothy T. Clydesdale, *A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age, and Related Gaps in Law School Performance and Bar Passage*, 29 L. & SOC. INQUIRY 711 (2004).

[186] *E.g.*, Merritt et al., *supra* note 107.

[187] *See generally,* McClain, *supra* note 113.

[188] Clydesdale, *supra* note 184, at 761.

[189] *Id.* at 762.

Succeeding in today's law schools requires the skills to navigate whiteness and its manifestations in legal education. Failing to equip students for the particular ways that whiteness shows up in legal pedagogy is a missed opportunity to help them maximize their success. This is because manifestations of whiteness such as those discussed above[190] can produce barriers to student learning and introduce challenges to students' professional identity formation. Such barriers include inhibition of participation and learning;[191] disillusionment and alienation;[192] and wellbeing challenges that result from microaggressions and other day-to-day products of minoritization.[193]

To ensure that all students are prepared to learn effectively from legal pedagogy shaped by whiteness, legal educators can implement orientation programs specifically tailored to meet the needs of students who identify as Black, Latinx, Native American, or AAPI. Such programs need not be offered exclusively to students based on their identity, indeed doing so in the current political climate is becoming an increasingly fraught undertaking.[194] Rather, the suggestion here is to be sure that every orientation program includes content that responds thoughtfully to the particular needs of students whose learning may be especially at risk due to the way whiteness pervades the pedagogy. Fortunately, programming that does so also has potential to help all students succeed, making it an endeavor without downside.[195]

For instance, since coming to terms with the unracing of legal pedagogy in their first several weeks of coursework can be a jarring experience, legal educators can orient students to it in advance. Revealing this dynamic to students through a critical lens in an orientation setting can proactively eliminate the jolt of recognition that faces students left to their own devices– a jolt which carries risk of disillusionment and alienation.[196] But eliminating the lonely experience of that jolt is just a start. Educators engaged in orientation should also help students develop tools to experience themselves as agents in relation to the unracing, rather than people who are powerlessly subject to it. Strategies toward this objective might include methods as simple as reassuring students that upper-level elective courses are available to help build context and grapple with the roles of race and racism. That is,

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[190] *See infra* Part II.
[191] McClain, *supra* note 113.
[192] *See, e.g.*, Ossei-Owusu, *supra* note 129; Crenshaw, *supra* note 9, at 9.
[193] Sue, Capodilupo, Torino, Bucceri, Holder, Nadal & Esquilin, *supra* note 61; McCluney, *supra* note 87.
[194] *See, e.g.,* Rebecca Beitsch, *DOJ memo presses federal funding recipients to nix DEI*, THE HILL (July 31, 2025, 2:04 PM), https://thehill.com/homenews/administration/5430267-doj-memo-funding-recipients-dei/.
[195] While such universal applicability should not be a prerequisite to orientation programming, the hope here is to center the needs of students most likely to be disadvantaged by whiteness while minimizing the risk that such programming will be rendered impossible by so-called "DEI bans" and similar efforts to curtain equity.
[196] *See* Susan L. Brooks, *Transforming the Law School Matrix*, 2 J. L. TEACHING & LEARNING 101, 107 (2025) (observing that such experiences may result in withdrawal, disengagement, poor performance, and unhappiness with their legal education); Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication*, *Pedagogy and Discourse*, 33 U. MICH. J.L. REFORM 263, 308 (2000).

assure students that, even if the 1L curriculum is anemic in this sense, future opportunities exist to build greater context and explore structural reform.

Additionally, first-year orientation programs can engage thoughtfully in efforts to reveal what is hidden from view when it comes to norms that maintain the dominance of whiteness. The traditional Socratic method, for example, can preserve the dominance of whiteness by, for instance, enhancing the likelihood that students experiencing stereotype threat will face undue psychological stress.[197] To mitigate this risk, legal educators can orient students to the method more transparently, modify it, or abandon it altogether. For those who continue to employ the method, legal educators should teach students explicitly what the method is, what its goals are, and how they should engage with it in order to maximize their learning rather than fear or performance anxiety. Explaining both the potential benefits and critiques of the method respects students and begins cultivating their ability both to navigate the method effectively and to think critically about its effects on learning and classroom power dynamics.

As legal educators become increasingly attuned to how whiteness pervades legal pedagogy, they should simultaneously consider how to equip students to succeed in the face of this reality. Until a future in which the whiteness of pedagogy has been dismantled, those committed to dismantlement can work toward it by preparing a generation of law students who will succeed despite its harms.

(2) Create conditions to reduce white fragility

One side effect of whiteness's tendency to dominate space is "white fragility." Coined by Robin DiAngelo, the term white fragility refers to the tendency of white people to experience discomfort in discussions concerning race and racism.[198] The discomfort flows from the fact that many white people lack practice engaging in such discussions[199]—a logical byproduct of whiteness's tendency to dominate space. This discomfort manifests in defensiveness, withdrawal, or other moves that allow people who experience fragility to return to a state of equilibrium.[200]

It is easy to see, then, that white fragility inhibits the likelihood of productive discussions concerning race and racism. If students who are white experience defensiveness or withdrawal, they are less likely to be open to learning and their reactions are more likely to impede the productivity of classroom discussions.[201] This means that, until law school classrooms are predominantly free of white fragility, the utility of the curricular reforms of the nature described above is likely to be blunted.[202] As such, by creating conditions that reduce white fragility, legal educators can increase the

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[197] *See* McClain, *supra* note 113 (noting that the Socratic method can trigger stereotype threat); Bramble & Bahadur, *supra* note 9, at 730.
[198] DiAngelo, *supra* note 35, at 57.
[199] *Id.* at 57.
[200] *Id.* at 64.
[201] *See id.*
[202] *See* Knowles, Lowery, Chow & Unzueta, *supra* note 133, at 599–601 (documenting the tendency to deny or distance from white privilege).

likelihood of classroom environments that make learning about whiteness possible.

To help students who might experience white fragility overcome it, DiAngelo recommends inviting them to consider first their own internal experiences with the dynamic, before next exploring its manifestations in interpersonal situations, as well as institutional and societal settings.[203] Because white fragility results from a lack of the stamina necessary to engage in discussions that touch on race and racism,[204] giving students space to build that stamina is a pathway to reducing fragility. Doing so can create an incremental pace of learning and reflection that will aid students to encounter the challenges of this work without disruptive disequilibrium.[205]

Law teachers can create conditions in which students get a small taste of the discomfort that occasions white fragility and then help students use effective coping mechanisms to navigate without unhelpful defensive moves DiAngelo describes. Pedagogical techniques that operationalize these strategies are plentiful. For example, one might require students to engage in individual written reflections that call on them to recall personal experiences and reflect on their relevance to systemic dynamics. If class size permits, law teachers can comment on the reflections and note places where students might have more room to explore or reflect. In larger classes, teachers might offer class-wide self-assessment rubric-style documents. An incrementally higher risk endeavor, but which remains relatively low-risk are think-pair-share discussions in which students engage individually, and then with one another, on discussion questions before sharing selected reflections with the whole class.

By designing exercises that incrementally build students' stamina for engaging with discussions of race and racism, law teachers have potential to minimize the operation of white fragility in the classroom.

E. Accountability

In this era of retrenchment and backlash against antiracist reforms,[206] teaching about race and racism carries as much–if not in some instances more–political and legal risk as ever before. Furthermore, many institutions lack strategic goals or expectations vis-à-vis teaching about structural racism or white supremacy and certainly teaching about whiteness. Meanwhile,

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[203] DiAngelo, *supra* note 35, at 66-67.

[204] *Id.* at 56 (defining white fragility as "the reduced psychosocial stamina that racial insulation inculcates").

[205] *Id.*

[206] Lis Power, *Fox News' obsession with critical race theory, by the numbers*, MEDIA MATTERS FOR AMERICA (June 15, 2021), https://www.mediamatters.org/fox-news/fox-news-obsession-critical-race-theory-numbers ("By labeling everything that has to do with race 'critical race theory,' Fox is attempting to shut down conversations about race and racism—which is ironic given the network's claims that it champions free speech. And even though many conservatives who lambast it don't have a clue what the theory actually is, their efforts are working as 21 states are either introducing bans or have banned what they call 'critical race theory.' Many educators in those states have argued that the bills and laws would essentially 'whitewash history' and have criticized legislators for making it difficult to have necessary conversations about race.").

other institutions actually prohibit it.[207] Under these circumstances, legitimate questions arise about how to do this work. What measures can legal educators use to ensure that they are pursuing the goals this Article proposes, doing so methodically, making progress, and challenging themselves to carry out an unflagging commitment to dismantlement even in times when institutional leadership may be lacking?

The degree to which individual legal educators and law faculties collectively can engage in the strategies this Article describes may be subject to local policies and pragmatic considerations related to job security. But, regardless of the limitations of the moment, work toward educating all students effectively remains the duty of every accredited law school.[208] And educators–working both individually and collectively[209]– have at their disposal various mechanisms for holding themselves accountable to this standard systematically.[210] Strategic plans and learning outcomes are offered in this subpart as sample ways of getting started.

(1) Write a strategic plan

Strategic planning is a methodology that originated in the business sector. It is built on a clearly articulated vision for the future, which in turn enables the planner to formulate a list of strategies and tactics calculated to achieve that vision.[211] The beauty of the strategic plan framework for our purposes is that it offers a simple methodology for outcome-driven planning that proceeds from methodical assessment of both the planner and the intended audience.

An effective strategic plan allows the planner to develop "clarity of purpose and direction" and specify tangible "action steps required to accomplish the overall purpose."[212] At the core of an effective plan is a statement of the planner's mission and values, both of which flow from a clearly articulated vision. In this instance, the vision is a law school free of the detriments that flow from whiteness. The mission is to dismantle the whiteness of legal education, and this mission is informed by values such as a commitment to educating all students effectively and ensuring all law graduates are prepared to carry out their special duty to bring about justice.[213]

Each educator can build and document a personal strategic plan. It should state the educator's planned-for mission and relevant values. And then, building from those, it should articulate four or five objectives that the educator will work toward over a designated period of time, for example

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[207] *See, e.g., Dismantling DEI: A Coordinated Attack on American Values*, MOVEMENT ADVANCEMENT PROJECT, https://mapresearch.org/report/dismantling-dei-a-coordinated-attack-on-american-values.

[208] STANDARDS AND RULES OF PROCEDURE FOR APPROVING LAW SCHOOLS, Standard 301(a) Objectives of Program of Legal Education (A.B.A. 2024–25) ("A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.").

[209] *See, e.g.*, Samuel-Siegel, *Operationalizing a Pedagogy of Antiracism*, *supra* note 104, at 101 (discussing the benefits of faculty learning communities in the work of antiracist pedagogy).

[210] *E.g.*, Samuel-Siegel, *Reckoning with Structural Racism*, *supra* note 9, at 61–65.

[211] *E.g.*, Robert C. Shirley, *Strategic Planning: An Overview*, 1988(64) NEW DIRECTIONS HIGHER ED. 5, 5 (Winter 1988).

[212] *Id.*

[213] MODEL RULES OF PRO. CONDUCT, preamble (A.B.A. 2025).

one, two, or three academic years. Objectives should be specific, measurable, and achievable.[214] And, for each objective, the planner should list a few actionable tactics to employ during the planned-for period.[215]

One might write a plan that is specific to dismantling whiteness within their purview, or instead might choose to build a plan whose mission is broader–for instance, to contribute to the dismantlement of structural racism in the law and legal profession. This plan would make up just one dimension of the educator's overall plans for a given academic year. Eliminating the pervasiveness of whiteness might be one of the plan's specific objectives. Here is one example of what a vision statement, a mission statement, and one whiteness-related objective and set of tactics might look like:

- Vision: My long-term vision is a country in which the law and legal profession no longer produce nor reproduce structural racism.

- Mission: My mission as a legal educator is to teach and mentor in such a way that I do not reproduce the harms of structural racism and, instead, equip all of my students to participate in the dismantlement of it.

    - Objective #1: I will make efforts throughout this academic year to make progress toward eliminating the detrimental effects of whiteness in the legal pedagogy within my purview.

        - Tactic A - Knowledge Development: I will devote two hours each week throughout August and September to educating myself about whiteness.[216]

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[214] *Hit the mark when you set SMART goals*, IT'S YOUR YALE, https://your.yale.edu/hit-mark-when-you-set-smart-goals.

[215] *Id.*

[216] In addition to the sources cited throughout this article, other resources are plentiful. Consider, for example: TONI MORRISON, PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION (1993); Barbara J. Flagg, *Fashioning a Title VII Remedy for Transparently White Subjective Decisionmaking*, 104 YALE L.J. 2009 (1995); HANEY LOPEZ, *supra* note 29; STEPHANIE M. WILDMAN, WITH CONTRIBUTIONS BY MARGALYNNE ARMSTRONG, ADIRENNE D. DAVIS, AND TRINA GRILLO, PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA (1996); RICHARD DELGADO AND JEAN STEFANCIC, EDS., CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (1997); George A. Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINX L. REV. 321 (1997); THE MAKING AND UNMAKING OF WHITENESS (Birgit Brander Rasmussen, Eric Klinenberg, Irene J. Nexica, & Matt Wray eds., 2001); Flagg, *supra* note 29; GEORGE YANCY, LOOK, A WHITE!: PHILOSOPHICAL ESSAYS ON WHITENESS (2012); WHITE SELF-CRITICALITY BEYOND ANTI-RACISM: HOW DOES IT FEEL TO BE A WHITE PROBLEM? (George Yancy ed., 2015); Fredrik deBoer, *Admitting that white privilege helps you is really just congratulating yourself*, WASH. POST (Jan. 28, 2016), https://www.washingtonpost.com/posteverything/wp/2016/01/28/when-white-people-admit-white-privilege-theyre-really-just-congratulating-themselves/; DAVID R. ROEDIGER, WORKING TOWARD WHITENESS: HOW AMERICA'S IMMIGRANTS BECAME WHITE (2d ed. 2005); Rachel Cargle, *When Feminism Is White Supremacy in Heels*, HARPER'S BAZAAR (Aug. 16, 2018), https://medium.com/harpers-bazaar/when-feminism-is-white-supremacy-in-heels-7e99d27bf5ca; Sarah Bellamy, *Performing Whiteness*, PARIS REV. (June 8, 2020), https://www.theparisreview.org/blog/2020/06/08/the-performance-of-white-bodies/; Simon Clark, *How White Supremacy Returned to Mainstream Politics*, CTR. FOR AM. PROGRESS (July 1, 2020), https://www.americanprogress.org/wp-content/uploads/sites/2/2020/06/WhiteNationalism-report1.pdf; Leong, *supra* note 29; Tatiana Flores, *"Latinidad is Cancelled": Confronting an Anti-Black Construct*, 3 LAT. AM. & LATINX VISUAL CULTURE 58 (2021); Sow, *supra* note 32; Keith

- Tactic B - Self-Assessment: I will devote four hours in September to conducting a self-assessment concerning my own relationship with whiteness.[217]

- Tactic C - Getting to know my students: During the first three weeks of classes, I will use a scalable technique to get to know my students individually[218] and reflect on how to meet their needs, particularly as they relate to navigating a legal academy and profession that remain shaped by whiteness.

- Tactic D - Curricular reform: I will identify and apply at least three discreet revisions to the substance and/or processes of my curriculum that are designed to move toward a legal education shaped less by whiteness.[219]

One of the advantages of using strategic planning as a goal-setting framework is that it combines into one accessible undertaking everything from our loftiest idealistic aspirations to our most nuts-and-bolts opportunities for self-direction. But whatever planning tool each educator chooses to employ, it is certain that planning increases the likelihood of success because it provides the tools needed to hold oneself accountable.

Planning transparently for one's students is equally important, as such the next subpart will focus on a key tool for success on that front–learning outcomes.

(2) Use learning outcomes as an opportunity to concretize dismantlement

"Learning outcomes are measurable statements that articulate at the beginning what students should know, be able to do, or value as a result of" a course or program.[220] They bolster educators' intentionality concerning what and how they teach.[221] They also create transparency by allowing students to develop realistic expectations[222] and permitting other teachers to pursue consistency.[223] For all of these reasons, they serve naturally as a tool of accountability.

H. Hirokawa, *Race, Space, and Place: Interrogating Whiteness Through a Critical Approach to Place*, 29 WM. & MARY J. RACE GENDER & SOC. JUST. 279 (2023); Hoag-Fordjour, *supra* note 99.

[217] *See infra* Part III(A).

[218] *E.g.*, Samuel-Siegel, *Reckoning with Structural Racism*, *supra* note 9, at 43–47 (discussing strategies for doing so).

[219] *See infra* Part III(C).

[220] *Setting Learning Outcomes*, CORNELL UNIV. CTR. FOR TEACHING INNOVATION, https://teaching.cornell.edu/teaching-resources/designing-your-course/setting-learning-outcomes (last visited July 11, 2023).

[221] *E.g.*, Steven C. Bahls, *Adoption of Student Learning Outcomes: Lessons for Systemic Change in Legal Education*, 67 J. LEGAL EDUC. 376, 389–90 (2018).

[222] *Id.* at 381.

[223] *Introduction to Learning Outcomes, Assessment, and Evaluation Standards*, A.B.A., https://www.americanbar.org/groups/legal_education/committees/outcomes-assessments/outcomes-assessments-introduction-and-

But learning outcomes are more than merely helpful–they are required. To be accredited by the American Bar Association, law schools must articulate and publish them.[224] And, as a result of recent amendments to the accreditation standards, those learning outcomes must be articulated not only at the program level but also for each individual course.[225] Schools are in turn required to use the learning outcomes to measure student attainment.[226]

Course learning outcomes concretize the course's central purposes, provide a basis for assessing students' learning progress, and define the outcomes that are essential to excellence.[227] As such, they are opportunities for educators to both make commitments and set expectations. Learning outcomes can be framed at varying levels of specificity or generality depending on the circumstances under which the law teacher is operating. To ensure that outcomes are aligned closely with generally recognized priorities, one might anchor outcomes to particular ABA standards, school-wide programmatic outcomes, or lawyer professionalism obligations.

For instance, the ABA accreditation standard that requires legal education relating to bias, racism, and cultural competency provides a basis for learning outcomes such as: "Students will be able to identify and articulate ways in which existing doctrine reflects racism and related societal hierarchies and power distributions, such as whiteness, white privilege, and white supremacy."[228]

The ABA Model Rules of Professional Conduct that imposes on lawyers a duty to serve as an advisor who exercises "independent professional judgment and render[s] candid advice" might inspire outcomes such as: "Students will consider the relevance of disparities in societal and political power for future client representation, and develop skills for accounting for such disparities in pursuit of their client's best interests."[229]

The ABA accreditation standard requiring law schools to teach about professional identity formation is a foundation for outcomes such as: "Students will reflect on their awareness, perceptions, and experiences of

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history/#:~:text=Standard%20302%20specifies%20the%20four,4)%20and%20other%20professional%20skills (noting the course-level requirements will be effective for the 2026-27 academic year).

[224] *See A.B.A.*, *supra* note 12, Standard 301(b) Objectives of Program of Legal Education (2024-25) (requiring the establishment and publication of learning outcomes designed to prepare students for bar admission and participation in the profession as described in 301(a)).

[225] *See A.B.A.*, *supra* note 223.

[226] *See, A.B.A., supra* note 12, Standard 301(a) Objectives of Program of Legal Education, Standard 315 Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods.

[227] *See generally* MICHAEL H. SCHWARTZ, SOPHIE SPARROW & GERALD HESS, TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 38 (Carolina Academic Press, 2nd ed. 2017).

[228] *See, A.B.A., supra* note 12, Standard 303(c) Curriculum (requiring that law schools "provide education to law students on bias, cross-cultural competency, and racism" at the start of their legal education and on one additional occasion).

[229] *See, e.g.*, MODEL RULES PRO. CONDUCT, Rule 2.1 Advisor (AM. BAR ASS'N. 2025) ("In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, *social and political factors*, that may be relevant to the client's situation.") (emphasis added).

identity-based privilege, and develop skills necessary to account for such privilege in the course of client representation."[230]

Learning outcomes can also create opportunities for law teachers and students to engage collaboratively in imagining reforms to the legal profession itself. Rather than treating existing professional structures as fixed or inevitable, educators can invite students to critically assess how legal institutions reproduce racial hierarchy and to envision alternative approaches that would move the profession toward greater equity and democratic accountability.[231] In this way, legal pedagogy can cultivate not only professional competence, but also the capacity to participate thoughtfully in reform efforts aimed at dismantling whiteness within legal education and the legal profession more broadly.

In sum, legal educators can erect structures of accountability within their own individual spheres of responsibility; there is no need to await institutional measures that might be slow to come. Through individual strategic planning and thoughtful learning outcomes, each law teacher has the power to make efforts toward dismantling the whiteness of legal pedagogy.

IV. CONCLUSION

For so long as the ideas and ways of being that constitute whiteness pervade legal education, the structural racism that it protects will be free to thrive largely undisturbed in the law and legal profession. But the continued injustice of structural racism is inconsistent with lawyers' "special responsibility for the quality of justice."[232] As such, law teachers–the people who prepare lawyers to carry out this special responsibility–are duty-bound to interrupt these unjust cycles. Dismantling the whiteness of legal education is essential to that interruption.

Whiteness is, by its very nature, an elusive construct. It thrives on not being noticed or named. However, legal educators can play an integral role in reforming this reality. By not merely noticing and naming, but also methodically critiquing and dismantling whiteness in legal education, they have the power to bring about a legal profession and, in turn, a system of laws, that truly begin a departure from the United States' long journey of structural racism. By decommissioning the quiet engine of racial hierarchy, law teachers will live up to their obligations to students and, in turn, contribute to the establishment of equal justice under law.

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[230] *See A.B.A., supra* note 12, Standard 303(b) Curriculum ("A law school shall provide substantial opportunities to students for . . . the development of a professional identity.").
[231] *See generally* Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 96–101 (2020) (theorizing "non-reformist reforms" that shift power to marginalized communities to build democratic accountability and transform structural inequality).
[232] MODEL RULES OF PRO. CONDUCT, preamble (A.B.A. 2025).