OWNING OUR VALUES

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Understanding Systemic Racism Through the Lens of Property Law

(And Skills to Do Something About It)

NATASHA N. VARYANI
Associate Professor of Law
Roger Williams University School of Law

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For Nanak, Krish & Kamal
For helping me know what it is to belong.

For Kevin
Without whom I could not do it all.

For Nani & Nana
Who gave everything so I could do anything.

Intellectual work matters.

Love, friendship, community,

the struggle for justice matter.

And increasingly,

I see these all as the same thing.

—Mari Matsuda, August 2021[1]

1. Remarks given (remotely) at the Inaugural Workshop for Asian American Women in the Legal Academy. It was at this conference that the proposal for this work was first presented at an "incubator" presentation and given comments and support by faculty.

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Land and Labor Acknowledgment

It is only fitting that this book begin with an acknowledgement of all of those people who go unnamed whose property has been taken. The same history that has dispossessed them of their rights has allowed the author the privilege of completing this work.

The land: As the author writes this, she sits on land that belonged to the Pawtucket, Wampanoag, and Massachusett people before they were dispossessed of it. The trauma of colonialism did not end when ownership of land was transferred; rather, indigenous groups, upon losing access to the land and resources of their ancestors, were robbed not only of their property but also of their culture, identity, and history. Though there is no way to correct this, the collective and reasonable grief that is associated with this wrongdoing deserves to be acknowledged (especially at the outset of a book about property). In acknowledging this wrongdoing and pain, let us consider our responsibilities, particularly as we take up the mantel as stewards of the rule of law and of justice, and continually assess how we can address it in ways big and small.

The labor: The author recognizes and acknowledges the labor upon which the country, state, institutions, and actual buildings are built. The United States is built by people who were kidnapped and brought to these shores as though they were property. I recognize the suffering, grief, and contributions of those people who were enslaved as well as the continuing contributions of their descendants. In addition, colonial forces around the world have resulted in immigrant labor, both voluntary and involuntary, documented and undocumented, trafficked and forced. All of these individuals have contributed and continue to contribute to the labor force in the United States, each having a unique and human story. A willful disregard for the humanity of some is a moral

failure that sits at the foundation of our country, culture, and institutions, and it must be acknowledged before the work of beginning to correct it may begin.

In acknowledging these wrongdoings, let each of us consider our responsibilities to the people and to the property that has been impacted and stand in solidarity and actively support the Native, Indigenous, First Nations People, and people who were bought, sold, and born into slavery and servitude. Though their names and humanity may feel lost to history, doing our part to acknowledge and honor their struggles and sacrifices is essential.

Disclosure and Warning to the Reader

Dear Reader,

The material contained herein is not for the faint of heart. Even writing parts of it has made me deeply uncomfortable, and I wonder whether talking about race in this way is the right thing to do. Some of you may come to law school and to this book with a set of experiences that will fill you with rage, sadness, or discomfort, or make your heartbeat quicken for reasons you cannot quite explain. Here's my advice: sit with those feelings. If you need to, close the book for a few minutes (maybe your eyes, too) and try to inspect what is making you feel that way, and then decide what you are going to do about it.

The metaphor of tea is one that has always resonated with me. I share it with you now in the hope that you may find some comfort in your heart and mind in a warm cup of tea the way that I have. I am South Asian by heritage—impacted by colonialism as so many people are. For me, though the lines between India and Pakistan have made things complicated, my parents came to this country bursting with dreams and a new baby (me!) so that I might be born a citizen, and I was. I am, and have always been, American. Still, the routine and memory of making tea for my parents—the mixture, the smell, the ritual—is among my happiest memories. The smell of a good chai transports me back to that ritual that I looked forward to every day, not just for a break in my homework, but because it was time with the people who made me. We hardly discussed ground-breaking topics; in fact, I barely remember anything but the smell of the tea, the stress of dipping the cookies (hoping they would not disintegrate), and the sweetness and relief that continues to be one of my pure joys.

But those days ended, and I moved to Boston where I became a tax lawyer. Boston: where a different set of colonists expressed their rage at the British by throwing tea into the harbor. The protest was about tax. For me, tax has always been about property. The central and existential question has been how much of what someone earns is owned to someone else. For the daughter of immigrants, that question may have landed differently, but even as I represented corporate taxpayers, it never left me.

Perhaps the reason that the appeal of tea has persisted since ancient times is because of the indelible mark that it makes. As I sometimes drop my tea in hot water and watch the stain swirl, I always find a metaphor. When I start each academic year, particularly when I teach courses on critical race theory, I hope a new way of thinking will seep into my students like the tea. Stain them a little, change the flavor of everything they do. For all of the rich and beautiful flavor of the tea leaves that has evolved from generations of plants fed from soil, appropriated by colonists, and tended with care, there can be a bitter edge. That bitterness eventually becomes part of the beauty. Once it seeps in, it cannot be undone. For me, seeing and understanding issues related to systemic racism is a lot like that.

Ignoring these issues has never been the answer for me. Though I am generally someone who strives to bring joy to those around me, I write this book knowing that it will be very uncomfortable. The alternative is to not talk about race—to leave our history and our discomfort unexplored. This is a strategy inconsistent with our professional practice as lawyers. The legal profession is one that addresses problems: whether to address or avoid them for our clients, an effective advocate cannot ignore difficult problems. Like so many other essential skills, resilience and grace can be fortified with practice.

For those who read on, I am grateful for your bravery. Your courage, strength, and willingness to engage in understanding at a granular level what we mean when we use the words "systemic racism" will help to dismantle the structures that keep so many people from accessing justice. Remember that this work is difficult, sometimes in ways that you do not expect. Give yourself grace, and if things become unbearable, I find the ritual of a break with a warm cup of tea to be soothing.

With gratitude,
Natasha N. Varyani · MARCH 2024

Preface

Systemic racism is not new. Treating groups of people differently based on their race has been a part of the social, cultural, and legal history of this country from before the time that independence was established. In addition to being woven into our social fabric, treating classes of people differently based on their race has been a part of our legal systems and structures in ways that are inextricably linked with our national identity. This is not a critical way of thinking—it is our history.

What has changed in recent years is the discourse around systemic racism. The tone of that discourse varies by time, place, and context. It is undeniable, however, that understanding "systemic racism" has become a fascination in our social and political landscape. So many times has the phrase "systemic racism" been used that, for some, it has lost its meaning. Meanwhile, the changing and ongoing national discourse around systemic racism has inspired others to come to law school to clarify and do their part to correct its effects. This book is for those students and teachers—the ones who hope to integrate and highlight issues of systemic racism that have long been neglected by our system of legal education.

This book is intended to support both professors and students who are engaged in social justice and believe in the power of a legal education. Written with an awareness of the pressures coming from all sides of a first-year classroom, the text provides brief explanations of doctrine accompanied by detailed examples of how that doctrine connects to the systems that have served to discriminate or to those structures created to perpetuate already-established discriminatory practices. The purpose of this structure is to highlight areas in the first-year property law curriculum (with a focus on heavily (next-generation) bar-tested areas of law) that help to give meaning to the phrase "systemic racism," and to

support the development of students' legal skills in a culturally responsive way.

Two mantras that recur throughout this work (as well as in my classrooms, office hours, and many of my professional and personal interactions) are these: (1) Words Matter, and (2) Relationships Are Everything. While both will be helpful as you read this book, engage with its exercises, and learn the law in all classrooms and forms, it is good practice to keep both in mind even in non-legal practice. Although these two maxims will be used separately on a number of occasions, they are nevertheless connected because our words and our relationships are inextricably intertwined.

Why Property Law?

Though most every first-year professor will tell you that their course is *the most* fundamental and important to the study and practice of law, only professors of property law are correct.

Many students enter law school expecting their property law course to exclusively cover real estate transactions and are surprised to find that its coverage is much more expansive. The law of property is concerned not only with land but also with *ownership*. Property Law is not a course that inspects the rights that people have over their owned property but rather is a study of our collective relationships with one another with regard to those things and places that are valuable to us.[1] At the beginning of the course, it is a useful exercise to consider those items of "personal property" that are most cherished and encourage students to write about them. Regardless of whether students decide to share their thoughts on this type of personal property, the exercise helps to underscore the ways in which the property that is most precious to individuals and worthy of protection sometimes has more to do with our personal experiences and relationships than its market value.

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1. *See* Jennifer Nedelsky, *Law, Boundaries, and the Bounded Self,* 30 Representations 162 (1990); Jennifer Nedelsky, *Reconceiving Rights as Relationships*, 1 Rev. Const. Studies/Revue d'Etudes Constitutionelles 1 (1993). In these works, Professor Nedelsky suggests that instead of centering the idea of the *boundary* in property law, we should instead center the idea of *relationships*.

Writing Prompt: Personal Property	Reflection & Feedback
Consider what property is most valuable to you, and describe why. This may be land (real property) or an object (personal property). To what lengths have you gone to safeguard this property? What is the relationship between the fair market value of this property and its value to you?	In sharing stories about our most precious property, it quickly becomes clear that a great deal of our identity may be wrapped up in our property. As we explore different facets of identity and study the way that groups have been treated, this is an important concept to keep in mind.

Protection of rights in property is central to the story of the history and culture of the United States.[2] In addition to having a connection to our individual identities, the law of property and the ability to protect what we own is a fiercely protected tenet in the U.S. system of laws.[3] It is the denial of this central and protected right that is the basis of the systemic inequities that are explored in this book. There are classes of people, grouped by some facet of their identity, that have historically, intentionally, and systematically been denied rights in property that were granted to and protected by others. Too long has the canon of property law been silent about these groups. This book focuses on those marginalized groups which were denied rights based on their race, but people with intersecting marginalized identities have suffered particularly under these systems of law as well, and this book explores that issue when possible.

2. Thomas Jefferson, when drafting the Declaration of Independence and listing the inalienable rights of "Life, liberty, and the pursuit of happiness," borrowed ideas from John Locke, who, in his Second Treatise on Government (published in 1689), described three "inalienable" rights as life, liberty, and the pursuit of property. Locke describes the right to one's property as a right based in natural law, granted by God and designed to protect mankind.

3. Both the Fifth and Fourteenth Amendments to the U.S. Constitution use the same words to describe the concepts contained in each. Citizens may not be "deprived of life, liberty, or property without due process of law."

Lawyering Skills: Empathy

An important skill for any person practicing law, whether an advisor, advocate, or judge, is empathy. Understanding the position of a client, an adversary, or a third party is essential to the development of any legal argument, yet empathy is often considered a "soft" skill that is not given much (if any) attention in many legal education settings. As with any skill, those who are in the habit of practicing empathy will sharpen it. We will begin here by considering various perspectives.

Professor's Perspective

While insulated, law professors are not immune or blind to social change. There are many who have watched with interest or even participated in social movements addressing systemic racism in the United States. But even those who are marching and protesting in their free time may be reluctant to bring their social-justice views into a classroom. Consider the many good reasons for that reluctance and what supports may assist them:

First: it can be scary. Academia is a place with a strong sense of hierarchy and where pedigree matters. As a group, professors are likely to be acutely aware of a number of unwritten rules that surround them and also wary of navigating in an environment filled with hidden obstacles. For a predominantly white and privileged set,[4] speaking openly and vulnerably about race is simply something they are conditioned not to do. Though the lecture setting and grading structure may give rise to certain power dynamics between professors and students, it is nevertheless important for the latter to remind themselves of the professor's humanity, including the existence of hidden vulnerabilities and fears—and particularly so with regard to the untenured.

Second: course coverage must be considered. In addition to personal feelings of fear and vulnerability that may cause a professor to avoid talking about race and identity in their classroom, professors often cite the amount of material they already have to cover as a reason not to add more to their syllabus. While it is true that every subject area has far

4. Meera Deo, Unequal Profession: Race and Gender in Legal Academia (2019).

more than can be covered in any course (no matter the number of credits), it is still possible to continue to teach these areas of law while inspecting how they have been used to perpetuate systemic racism. Indeed, this book is designed to provide resources to conduct that inspection in heavily bar-tested areas while also assisting in the development of legal analysis skills. Institutionalized racism is so prevalent in our system of laws that it is nearly impossible to find an area of law unburdened by it. Accordingly, professors reluctant to change their course coverage can take heart: all the same bar-tested areas can be examined, and with some slight changes, students who relate to the material on a more personal or visceral level may even retain more of the information.

Third: property law is already too messy. Property Law is most often one of the first courses students take in law school, which means that professors have the combined challenge of teaching the doctrine and helping students develop legal-analysis skills. Unlike some other first-year courses, like Torts, Civil Procedure, or Criminal Law, Property Law courses do not have a natural structure; there are no elements or federal rules to follow. Property law has evolved organically and messily, and accordingly, it is difficult to arrange topics in any particular order. More than with other courses, it is up to each professor to weave the thread of their thoughts through topics that might, to the untrained eye, appear disconnected. Because of the particular challenges that come with teaching the law of property, this book seeks to provide a structure that is not tied to any particular casebook and may be used in any order.

Fourth: students do not yet have the skills to conduct this type of analysis. Licensing requirements and the legal profession have been placing an ever-increasing emphasis on legal-analysis skills. This book provides professors with the opportunity to engage with students in modeling these skills with the actual doctrine. Demonstrating how to effectively hone different parts of a legal analysis may come naturally to professors who have been in practice. This book seeks to help professors draw these skills out in digestible components while also providing examples of some common mistakes students may make as well as typical steps to correct these missteps that students may take early in their legal careers.

Professors are interested in partnering with and supporting students on their path to the legal profession. This book is designed to assist those professors in that goal.

Learner's Perspective

Students are coming to property law, and indeed law school, with fresh eyes. Eager to learn, it is often the case that the actual experience of the first year of law school subverts expectations. Even students who are prepared to be challenged find themselves challenged in different ways than expected. Confusion is a normal part of the law school learning experience. But, especially for those students whose racial identities are not well represented in the profession, many classroom discussions can also feel isolating. Particularly when the standard of "reasonableness" is invoked in a court's ruling or legal reasoning, the homogeneity of the bench, the bar, and even the parties that come before the court (let alone the appeals that find themselves in casebooks) leave very little chance for a culturally responsive rule or analysis. For this reason, students from different backgrounds and cultures from the normative ones presented in the cases may be left wondering whether their own sense of reasonableness has any place in the law. Let's be clear: EVERY SINGLE PERSPECTIVE has a place in the law.

Beginning a legal education is a unique experience. Most people entering law school have enjoyed academic success before arriving, only to find that, as a discipline, learning the law is unlike anything they have done before. Tried and true methods for study, including close reading, information retention, and strong organizational skills are all helpful, but by no means do they guarantee success. Learning the law is something like learning a new language, and with that language comes a culture and customs. Those rigid students who resist may experience frustration and difficulty and be flummoxed by disappointing GPAs for the first time in their academic careers. As with learning a language, however, those who immerse themselves in their studies and engage with as many native speakers as possible will soon develop their own fluency and style. Students should look to professors as guides and embrace the varied styles of each as opportunities to add to a totality of experiences that will determine the type of lawyer they will be. The people with whom you choose to associate yourself throughout your career will shape your identity as a professional and individual. So choose wisely: relationships are everything.

It is important for all law students to know when to speak and when to listen, regardless of whether or not they belong to a marginalized

group. Dynamics in law school sections quickly emerge both inside and outside the classroom, and practicing humility, grace, patience, and bravery are all essential. There are as many approaches to the law classroom as there are individuals sitting in them, each with their own set of experiences and history. Each student should prioritize finding their trusted advisors, both inside and outside of the profession, and seek their counsel regularly. For so many students, the challenge of law school is not the amount of reading or any other academic burden but rather the lack of clear expectations, and this fuels self-doubt. For a profession that spends a great deal of time wrapping up our identities with our work, that self-doubt can be crippling[5]—especially for those students who find the meaning of a seemingly simple and clearly important word like "reasonable" to be elusive.

This book is for those students who are sitting in class and wondering whether what they are thinking has any place in the legal analysis. Whether or not a student sees their particular thoughts reflected or echoed in this book, I hope that engaging with this material gives each and every one confidence that they may find a place for their perspective. The beauty of the common law system is that it is alive and reflects the individuals that it serves. And lawyers have a particular duty and responsibility to shape it into a likeness fitting of the age. So, be empowered. Learn this language and find your voice—remember, *words matter*.

Considering questions related to race and identity while studying doctrine can be draining. Years of working in a doctrinal classroom and in academia suggests that developing a practice of spending time with the material before, during, and after class will help to process and retain information. Reading, rereading, and even transcribing can feel like a diligent and thorough exercise, but given the amount of reading required across doctrinal classes, it can be an impracticable and inefficient solution. Students should try instead an exercise in "active recall," which will take less time and yield better results, even if it feels more difficult.

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5. Studies suggest that students from underrepresented communities, particularly Black and brown students in law school, have an increased cognitive load. Cognitive load theory suggests that our cognitive load is broken down into distinct types: intrinsic, extrinsic, and germane. Natasha N. Varyani, *Cognitive Load Theory and Learning the Law: How and Why Minority Students Struggle in Law School*, The Learning Curve (AALS Academic Support Publication), Winter/Spring 2018, at 13.

Active Recall Exercise	
Step 1:	Read an increment of your selection (casebook, class notes, or outline)
Step 2:	Close and remove from sight the selection. Take a short (1–2 minute) break.
Step 3:	On a blank page, recreate the highlights of the selection, filling in as much relevant/salient detail as possible.
Step 4:	Return to selection to check your work. Fill in any information that was missing from your memory.

Engaging in this active-recall activity gives your brain something to do beyond simply reviewing information. Actively engaging your brain by asking it to access information results in better retention. In addition, any relevant pieces that were forgotten on the first pass and added upon review have been flagged for your memory and will also stand out. Finally, getting in the habit of performing this mental exercise will change the way that you begin to read and assess your material the first time through because your brain will begin to put new flags near information that feels salient and relevant, which in turn, will make you a more efficient reader of details. In learning the law, having a command of the details will always be advantageous.

Author's Perspective

As connection and trust are central to my teaching style, it seems only fair that in introducing my work I share a bit about myself. I distinctly remember sitting in my first-year law school classrooms and feeling generally fine but also bewildered. I was able to achieve my goal of passing through law school basically unnoticed. After law school, I spent about a decade in private practice in the area of tax. Apart from a short time spent at an accounting firm, I worked mostly at medium to large law firms; and while I enjoyed the work, it never ignited my passion. While in practice, I felt personally driven to work tirelessly for affinity bar groups, to find and connect with others who, like me, felt like they didn't quite belong. Though we may not have had the language for it at the time, seeking out people who made me feel less alone was what I was passionate about, and mentoring was always a two-way street. I never dreamed that I would be a law professor. Even after a decade, it still sometimes feels incredible that teaching the law is a path available to me.

I am South Asian American, and my existence outside the Black/white racial binary that sometimes exists in policy discussions has required some intentional navigation. I have taught core courses in property, contracts, wills, and tax, and also seminars on tax and critical race theory and the law.

By nature, I am a person who prefers to make people feel good and comfortable. Teaching and writing in the area of critical race theory has changed that a bit. I have found that practice in having difficult conversations, while uncomfortable, can lead to a great deal of growth. I have been so honored and proud to watch many of my students conduct themselves with grace, bravery, and pride while initiating honest, personal, and important conversations about race and the law.

I have three children who inspire almost everything that I do. I try to see the world as I hope it will exist for them and make decisions accordingly. My children are mixed race and have their own paths to navigate with regard to belonging, and I hope that our legal system is one that they can look to and trust for justice when they come of age.

Classroom Management

Classroom dynamics require intentional and careful management when discussing systemic racism. As these issues relate to identity and can, depending on the individual and their lived experiences, be tense or painful to discuss, it may be tempting to avoid unpleasantness by avoiding discussion of these issues at all. But that would be a grave mistake. The price for avoiding a small daily discomfort is having students, especially those from racial minorities, who feel invisible and excluded from a law school curriculum. Presenting a complete picture of the legal history of this country is essential. Whether students come from marginalized groups or not, their knowledge of the law must be complete and they must be shown good models for putting their legal analysis skills to use in a cultural context. Engaging in informed civil discourse in matters that may be emotionally charged is difficult and potentially scary, but that is exactly the job of a lawyer. As with any skill, it is one that is developed and honed and becomes more familiar (if not easier) with practice. Before embarking on the substance of the chapters, I would like to discuss a few lessons I have learned while managing large classrooms in changing times with an increased focus on systemic racism.

Managing Identities

A course in property law is likely to be in a large lecture hall with very little opportunity for personal interaction. Still, particularly as students are beginning their law school journey, many are hyper-focused on presenting their own identities and gleaning what they can about those around them. A professor sets the tone for the classroom in so many ways, including what to share and how.

Speaking openly about my own racial identity in a classroom with more than 100 new and captivated students is consistently one of the most unnatural and uncomfortable experiences that I have each year, but I continue to provide details, and it continues to pay off. Having spent most of my life trying to erase all traces of my cultural heritage in order to "fit in" with various groups, it has become second nature for me to adapt. Working in the tax field in big law firms has meant operating in an environment with virtually no racial, gender, or cultural diversity; accordingly, my habits had evolved to scrub any traces of the parts of my identity that diverged from the norms of my peers. Increasingly, I have begun to share my discomfort with my students, as the reasons for why my habits around speaking about my racial identity have evolved in the way they have is an important part of my story. I understand (truly) how difficult it is for professors to speak about their own lived experiences, but I believe that it helps to engage students for the remainder of the term and sets the tone for the type of earnest efforts that are required for successful discussion.

When managing conversations about identity, it is important to acknowledge privilege when you have it. Many professors may be reluctant to speak about their racial identity because they "don't have one," but that is a way of thinking that may be reframed as a privilege. When speaking about one's own racial identity, it is most important to be honest, even if your personal story is that you never seriously considered race until the moment you opened this book (or more likely, until the #BlackLivesMatter movement shined a light on the significance of race). Owning that part of your story and understanding what that means in the current circumstance is important. Resist the temptation to discuss only the marginalized parts of your identity.[6] Being thoughtful and mindful of

6. Avoid the "Oppression Olympics." *See* Amen Gashaw, *In the Oppression Olympics, Don't Go for the Gold*, Harv. Pol. Rev. (Feb. 1, 2024), https://harvardpolitics.com/in-the-oppression-olympics-dont-go-for-the-gold/.

what privilege and advantages you have had[7] before speaking about your identity with your class will demonstrate the respect you have for and the importance you give to the issues and people before you.

People-First Language and Naming Groups by Race

When communicating about the interests and rights of people under the law and underscoring their humanity, using people-first language[8] can be a helpful tool. Once again, this may be a concept that is more familiar and natural to students than to professors, and some thoughtful research and discussion at the outset of class will go a long way in setting the tone for the semester. People-first language centers on the humanity of individuals instead of on the particular attribute that is the subject of discussion, for example, "person struggling with addiction" instead of "addict." People-first language originated in self-advocacy for disability groups in the 1970s but recently has been used more prevalently to help destigmatize mental-health and substance-abuse disorders. Destigmatization can be especially important when dealing with certain issues in property law—when speaking about the concept of nuisance, for example, the phrase "people who are unhoused" can be used instead of "the homeless." This small change will signal to students the importance of humanity and help them to keep a visceral connection to the application and analysis of the law.

Referring to racial groups can be a particularly thorny subject, and I have found it helpful to have a discussion with the class early on so that

7. For a starting point, see Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, *in* Re-visioning Family Therapy: Race, Culture, and Gender in Clinical Practice 147–52 (M. McGoldrick, ed. 1998), reprinted from Peace and Freedom 10–12 (July/Aug. 1989), also reprinted in modified form from "White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences through Work in Women's Studies" (1988).

8. For more information and to learn a bit of the history of people-first language, see Shannon Wooldridge, *Writing Respectfully: Person-First and Identity-First Language*, Nat'l Inst. of Health (Apr. 12, 2023), https://www.nih.gov/about-nih/what-we-do/science-health-public-trust/perspectives/writing-respectfully-person-first-identity-first-language. N.B. Many state and local jurisdictions have made it a priority to update their modus operandi to include people-first language throughout.

they understand we are collaborators. This requires that the professor actually be open to collaboration on this point, which may feel like a risk and requires a great deal of trust (perhaps a leap of faith early on in the semester). It can be particularly challenging to discuss older cases that were written using racial language that is now considered hate speech. There has been some discussion among law professors about how to navigate this issue,[9] and excellent professors have taken different approaches. Each professor each year must rise to the challenge of navigating what will work best with a new group of students in a constantly changing world. Below is an example of a prompt I have sometimes shared with a class to initiate discussion:

> As we begin, let us carefully consider together what words we will choose, because for everyone, ESPECIALLY lawyers, *words matter*. There are times that the words that we omit speak volumes: when we do not specify the race or gender or ability of a person, we demonstrate the assumptions we have about the race, gender, and ability that we have collectively centered: white, male, and able.
>
> Throughout the course of the semester, we will be speaking about the way that our laws, particularly our property laws, have treated a particular race, and since words are important, I want to agree, together, on how to refer to this race. In some cases in our text you will find the term "African American," and in other places you will find much more harsh language. While I recognize the context was different and understand that history is important, I see no reason to repeat it in this classroom and feel uncomfortable doing so. One modern trend is to use the term Black (with a capital B) because Black culture is now distinct from African culture. I would like to start the discussion by proposing that we use the word "Black" throughout the semester and want to invite a discussion on this topic. Agree? Do not agree? Why or why not? Without placing an additional burden on anyone, I want to say that I am particularly interested in those people with relevant experience.

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9. Jeannie Suk Gersen, *The Importance of Teaching* Dred Scott, The New Yorker (June 8, 2021), https://www.newyorker.com/news/our-columnists/the-importance-of-teaching-dred-scott.

Depending on the semester, there may be a lively and robust discussion that takes the remainder of the class and spills out into hallways and office hours. In other semesters, this may be met with radio silence. Regardless, encouraging students to think about this quietly while reading as well as throughout their career is advisable. Even in those semesters where little feedback is offered in class, this is a frequent topic of discussion among students from various races and communities in the safety of private discussions. Working collaboratively helps to build trust and develop skills that can be honed throughout the semester. Practicing civil discourse in law school classrooms is essential, and, though difficult, is increasingly a part of the profession that students will enter.

Technology

Though the sudden jolt to legal education caused by the COVID-19 pandemic is behind us, its effects continue to reverberate. While professors were required to distill their classroom goals and adapt their methods to teach traditional standards while imagining a new professional practice, student expectations were rapidly shifting. Even though the constraints of quarantine have lifted, some of the lessons learned and creative ideas that sprung up during that time may continue to be used to support teaching and learning goals and be particularly helpful in finding ways to increase law students' engagement.

Tools that were used extensively when classes were remote, such as polling questions, word clouds, and other types of micro-assessments periodically issued during the lecture, can continue to be utilized in in-person classes to help assess students' comprehension and legal-skills development and to maintain focus. Some question this latter objective, arguing that practicing lawyers have no one looking over them to ensure that they maintain their focus. While this may be true, law school may nevertheless serve as a bridge to the real world by providing students with the tools they need to begin to self-direct and become healthy, self-regulated learners. Accordingly, suggestions for such micro-assessments appear periodically through this work. Most effective, however, are those exercises that ask students to find a way to relate the material back to their own personal experiences, which helps to build particularly strong cognitive links to the substantive material.

Legal Skills in Cultural Context

As the practice of law evolves to fit the rapidly changing world, so does the barrier to entry. The NextGen bar exam will be administered for the first time in 2026, and the changes reflect the trends in legal practice and education. Designed to better assess candidates in those areas that are necessary to become an effective member of a modern bar, the NextGen bar exam takes into consideration the resources available to modern lawyers and emphasizes lawyering skills. This book attends to those skills, particularly with regard to the concept of practicing a culturally responsive legal analysis. Just as conducting a civil discourse in a classroom that deals with race and identity may seem difficult, so too may a written analysis dealing with cultural norms feel unnatural. Modern trends, however, demand that lawyers sharpen their skills in culturally responsive advocacy. For that reason, the second half of each chapter is dedicated to finding ways to do that in the most heavily tested areas in the NextGen bar exam.

Know Your Limits (and What to Do with Them)

It is essential to acknowledge that engaging in difficult discussions and learning the law in this way is hard work. Being mindful of one's limits is an incredibly helpful guiding principle. Each of us has two unique sets of limits: one internal and one external.

Awareness of our internal limits helps us to be the best possible version of ourselves we can be. Being able to honestly assess what comes naturally to us and what does not can help to steer us in the right direction, that is, where we can be most efficient and most useful in advancing the causes that mean the most to us. Knowing who you are and what you can make it easier to navigate the most direct path to success.

External limits are a different story. Unlike our internal limits, these constraints are placed on us by others—they are expectations from the outside world. Some of these limits are valid support structures set by experienced individuals which are meant to buttress your own work and assist you in building your own structure. Other limits, however, are

nothing more than constraints disguised as supports, and knowing the difference is important, because these are the barriers and limits that must be broken through. It is my deepest hope that this work will help you, everyone engaged in learning the law to dismantle systemic racism, to know the difference and to act accordingly.