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TOWARDS ANTI-RACIST LEGAL PEDAGOGY: A RESOURCE

Author: Dr Suhraiya Jivraj (Kent Law School)
Research Assistants: Gee Imaan Semmalar & Dr Philemon Omede

SLSA

Feedback & Crowdsourcing:

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- with comments or feedback from your practice as a result of this resource or
- if you would like to contribute suggestions to this working document which we hope to continue on a crowdsource basis and/or
- if you are interested in joining a network of law school teachers who would like to stay in touch to share good practices.

Contents

1 Introduction

This resource is aimed at assisting teachers to develop anti-racist pedagogy in their teaching in five of the six foundation subjects currently required for a qualifying law degree (QLD).

Whilst it focuses on the specific impact of racial inequalities that exist within law and beyond, it is committed to taking an intersectional approach, acknowledging the ways in which all the protected characteristics and other factors of socio-economic marginalisation can act together forming interlocking oppression and discrimination experienced by students of colour*.

The current QLD subjects tend to be neglected from attention due to the perception that the regulatory requirements limit what can and cannot be taught. However, as Professor Steven Vaughan (2016) has highlighted many of us are unaware of the fairly expansive remit of what can be taught and covered in core modules rather than that content being deemed as 'extra' being confined to optional modules. Given the increasing impetus and recognition of the scale of BME diversity within the Higher Education (HE) sector and professional fields as outlined below, clearly the time is right for law school teachers to ensure that we are embracing and reflecting BME diversity in our core curriculum.

This resource is intended to evolve through crowdsourcing and continue working towards a more anti-racist pedagogy, particularly in foundation modules.

Chapter one outlines the drivers for change underlying the emerging regulatory framework seeking to address inequalities relating to race and education more broadly in HE and in relation to gaps in legal education. It also explores the experiences of racism in HE and highlights the work of the HEFCE Consortium of five universities who have developed an inclusive curriculum framework which acts as a benchmark of current good practice in the sector.

Chapter two outlines the methodology, theoretical framework and tensions in terminology from inclusion to decolonising. Chapter three draws on existing literature and inclusive curriculum resources highlighting key elements to assist teachers prepare the ground for developing a more anti-racist curriculum and classroom. The final chapter highlights existing examples of good practice in legal education gathered through interviews specifically with law school teachers and an online survey in the five QLD subjects and an Introduction to Law module.

* In this resource I use the terms BAME or BME (which refers to people from a Black, Asian, or another ethnic minority background) when drawing from policy or other Equality, Diversity and Inclusion (EDI) documentation which use these terms. My own preferred term is 'people of colour' – it avoids the language of 'minoritising' which can contribute to racialised thinking and discourse and is also a term that emanates from women of colour activism and solidarity politics rather than arising from policy discourse. However, no term can be representative of all and comes from its own particular genealogy and historical and socio-political context. See further here:
https://folukeafrica.com/the-only-acceptable-part-of-bame-is-the-and/
https://gal-dem.com/bookmark-this-are-acronyms-like-bame-a-nonsense/
https://shadesofnoir.org.uk/b-a-m-e-is-l-a-m-e/

"The attainment gap is definitely a product of what we teach. What we can do in the university is reflect on what we're teaching, how we're teaching, how we're assessing."

Interviewee

Education inequalities in higher education

Universities are now required by the Higher Education and Research Act 2017 (HERA) to address awarding disparities (more commonly known as 'attainment gaps'), namely that white students tend to graduate with higher degrees (2.1s and firsts) than their BME peers. The Office for Students (OFS) also established by HERA (s.1) is tasked with a number of functions (s.2(1)) in relation to the English HE sector including registering universities (s.3) with regard to conditions such as promoting "equality of opportunity in connection with access to and participation" (s.2(e)). The OFS has published targets to eliminate inequalities as well as guidance for universities' who must have access and participation plans working towards achieving the national (OFS) targets.

> The Advance HE report 2019, analyses data from 2017-2018 and shows that overall, 80.9% of white students received a first/2:1 compared with 67.7% of BME students, representing a BME degree attainment gap of 13.2%.[1]

Whilst there is a lack of national data on attainment gaps across the awarding of law degrees, it is fair to say that since reports state that **1 in 3 law students are BME**, it is also highly likely that the overall attainment gap figures are to be reflected in many, if not most law schools (Ellison & Jones, 2018). We already know this is the case in relation to teaching of the Graduate Diploma in Law (GDL) and Legal Practice Course (LPC), as the Solicitors Regulation Authority (SRA) stated in its 2015 report (updated 2019) entitled: 'Baseline attainment data: legal education, training and post-qualification':

There is an attainment gap between white and Black, Asian and minority ethnic (BAME) students at all levels of legal education – white students have a higher pass rate and higher scores and on average are paid more during their training contract. Once qualified, BAME solicitors are less likely to work in higher paid roles in larger firms, and are less likely to be partners. The attainment gap is particularly pronounced for Black students, who as a group have lower scores and lower pass rates than white, Asian and mixed ethnicity students.[2]

There can be reluctance to engage in discussions on attainment gaps on the basis that inequalities in the education system already exist before students arrive at university so that we are in fact 'inheriting' the problem. However, this does not preclude working towards anti-racist instead of inclusive curriculum. Moreover, recent figures show that BME students who enter with similar or even better A-Level results than their white peers still graduate with lower degree marks (OFS, 2018). We therefore know that BME students are experiencing barriers to achievement within the university setting which may be down to "awarding disparities" as well as other factors occurring at universities including what we teach (or don't!)

We also know from students themselves whether through bodies such as the National Union of Students (Why is My Curriculum White?) and various decolonising student movements,[3] that racism on campus including lack of diversity within their curriculum has a significant impact on their experience, mental and physical wellbeing whilst at university and therefore their eventual degree mark (Why is My Curriculum White?). This will of course have a continuing impact on future employability which even from a purely instrumental market approach to the issue – as opposed to a social justice orientated approach – does not make good business sense (SRA | Benefits of diversity in the profession).

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1   Degree attainment differed widely by ethnic group, with the gap in receiving a first/2:1 compared with white qualifiers particularly pronounced for students from other Black (24.6%), Black African (23.9%) and Black Caribbean (21.7%) backgrounds. 'Within every ethnic group there is a subgroup of individuals who are more disadvantaged or underrepresented in higher education than others in the group' (OfS, 2018a, p.7). There is hence, the need to look carefully at the subgroups and intersections of disability, race, religion and gender in these reports. Within the BME groups, the attainment gap was much narrower for Chinese (4.3%), mixed (3.7%) and Asian Indian qualifiers (5.2%). Overall, the BME attainment gap was wider in non-SET subjects than SET subjects (15.4 %compared with 10.3%).

2   See also; Sommerlad et al, 2013. Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices and Diversity at the Bar 2019.

3   "Why Isn't My Professor Black? On Reflection – UCL ; #RHODESMUSTFALL – A movement determined to decolonise the space, the curriculum, and the institutional memory at, and to fight intersectional oppression within, Oxford ; DecoloniseUKC ; Keele decolonising the curriculum network; Decolonising the curriculum: what's all the fuss about? Choices and Diversity at the Bar 2019.

The 'business case' is important for the professions and also increasingly within universities themselves as they compete for students who are assessing them on employability training and outcomes. The overlaps between an anti-racist social justice approach – called for by recent decolonising student movements – and a business case approach as drivers for change also impacts other areas. These include barriers existing in entering and accessing Higher Education (HE); disparities in continuation rates[4]; and the jobs – and then pay – gap (OFS, 2018), including within law.[5] It is beyond the scope of this resource to discuss these in any detail, but it is necessary to bear in mind that the prompts herein are only one part of a much larger institutional picture within HE but also for law schools in the interface between them and professional bodies.

Inequalities in legal education

A HEFCE funded consortium of institutions have been leading initiatives on developing an Inclusive Curriculum Framework which are setting a benchmark within HE (see below). However, they are not specifically formulated for law schools and legal education and do not consider the regulatory requirements and professional law bodies to teach core subjects and content. Coupled with elements of the professions being conditioned to expect specific types of knowledge in new entrants, disregarding non-traditional knowledge as surplus or left to be valued by market forces, according to MacDonald and McMorrow (2014), there seems to be little impetus for change in this area. However, in England at least, there does seem to be more recognition that change is required with scholarships and mentoring for BME students led by initiatives such as the Miranda Brawn Diversity Leadership Foundation supported by law firm Hogan Lovells or the Freshfields Stephen Lawrence Scholarship; the Law Society and SRA's Promoting BAME Inclusivity in the Workplace Toolkit for Firms

which also includes example case studies of work on inclusion and diversity by other law firms.

The Law Society has also been working on a long standing project in collaboration with the Ministry of Justice, Judicial Appointments Commission (JAC), the Bar Council and the Chartered Institute of Legal Executives called the Pre-Application Judicial Education (PAJE) programme which is primarily focused on training and supporting BAME individuals who wish to pursue a career within the judiciary, where they are severely underrepresented. Alongside the PAJE programme, they sponsor the BAME 'becoming a judge' workshops led by an ex-JAC Assessor and facilitated by BAME judges, conducted twice a year since 2010. The workshops aim to provide practical advice on how to navigate the application and selection process.

Nevertheless, more still needs to be done within legal education to facilitate this step change particularly given there is increasing research on racism in universities and its multiple impact on students of colour.

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4   Retention rates are lower for all ethnic groups (apart from students of Chinese and Indian ethnicity) compared with their white peers. Additionally, students from a black Caribbean background have the highest non-continuation rates of all ethnic groups.

5   SRA, 2015 and Sommerlad et al, 2013. Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices See also: Are law firms doing enough to encourage diversity?

Racism in higher education

Whilst there are more initiatives on increasing BME students' sense of belonging within universities there is still a lack in both formal and informal mechanisms to tackle alienation that can impact attainment. There is insufficient recognition of the role of racism and racialisation both individually targeted and implicit in the form of 'institutional whiteness' which acts as significant systemic hurdles to student success.

In an analysis of racialised inequalities in Higher Education, Remi Joseph-Salisbury (2019) discusses an illustrative example from 2017 when Femi Nylander, a black student who had graduated the previous year, walked through the grounds of his former College only to find that later that morning a CCTV image of himself had been circulated to staff and students being urged to 'maintain vigilance'. Joseph-Salisbury rejects the claim that this is an isolated incident and places the biases informing the racialised profiling of a Black alumnus as an example of the everyday microaggressions that weigh cumulatively on Black students.

In fact, the Equality and Human Rights Commission (ECHR) 2019 inquiry into racial harassment in higher education highlights the impact of microaggressions. since it is the seemingly small, subtle comments and actions that go largely unnoticed by those with privilege. It documents how this can lead to BAME staff leaving their job or BAME students unable to complete their degree or even contemplate suicide. The report is an indictment of relative inaction by HE institutions in the UK, emphasising the need for them to be more inclusive by *also* being safe and nurturing environments – including within the classroom – particularly for the most marginalised.

As well as countering overt instances of racism, racialisation and beginning the journey of becoming aware of and understanding our own implicit biases and privilege, we can also make a significant contribution within universities as learning environments through our *core* teaching. As Joseph-Salisbury reminds us, intellect has historically already been codified as 'white', exemplified through curricula predominantly predicated on European canonical texts: "the whiteness of academic thought becomes natural and logical, rather than racial" (2019: 7).[6]

The Decolonising SOAS Toolkit highlights racism that BME students repeatedly *experience* including a sense:

- "of exclusion / being differently racialised in classroom and out-of classroom settings
- that academic content of courses asymmetrically objectifies groups / peoples not racialised as white
- that knowledge / perspectives presented on issues are predominantly limited to those produced by/consonant with a specific group
- that pedagogies reproduce forms of privilege and depend on existing forms of confidence / entitlement
- that support systems / personnel may be unsympathetic to specific personal issues or people".

I draw on the Decolonising SOAS Toolkit **definition of racism**: "broadly understood as forms of discrimination and/or disadvantage accruing from processes of racialisation, i.e. not just interpersonal forms of verbal abuse. Structural racism is understood as the patterned production of hierarchical entitlements and life-chances between racially-identified groups, based on forms of social control. These are often reproduced in public institutions such as the criminal justice system, the health system and education". Visit page 4 on the Toolkit for more detail.

See also Experiences of racialisation and racism on campus.

6   This situation is further exacerbated by the fact that staff in HE is not representative of society. Analysis from the 2016/17 academic year shows that whilst 14,000 professors were white men, only 25 were Black women (UK universities making slow progress on equality, data shows; see also Rollock, 2018). As Joseph-Salisbury (2019) states Black/ brown bodies are seen as "trespassers" rather than bodies that belong to such spaces- and this is reflected in curriculums, staff and student compositions and grading/promotion systems.

Regulatory framework on racism in higher education

It is clear that different forms of racism and racialisation exist within HE. As university teachers we are subject to legal duties under the **Equality Act 2010** as well as regulatory requirements from the **Office for Students** (OFS).

There are also best practice standards and accreditation schemes from **Advance HE** including, where applicable, requirements under the **Athena Swan** and **Race Equalities Charter (REC)** to tackle discrimination and barriers within education on grounds of race and other protected characteristics in education.

REC is underpinned by five fundamental guiding principles:

1   Racial inequalities are a significant issue within higher education. Racial inequalities are not necessarily overt, isolated incidents. Racism is an everyday facet of UK society and racial inequalities manifest themselves in everyday situations, processes and behaviours

2   UK higher education cannot reach its full potential unless it can benefit from the talents of the whole population and until individuals from all ethnic backgrounds can benefit equally from the opportunities it affords

3   In developing solutions to racial inequalities, it is important that they are aimed at achieving long-term institutional culture change, avoiding a deficit model where solutions are aimed at changing the individual

4   Minority ethnic staff and students are not a homogenous group. People from different ethnic backgrounds have different experiences of and outcomes from/within higher education, and that complexity needs to be considered in analysing data and developing actions

5   All individuals have multiple identities, and the intersection of those different identities should be considered wherever possible.

Potential impact of the Solicitors Qualifying Exam (SQE)

The **Solicitors Regulation Authority** as the approver of the current LPC and QLD has significant power in relation to law students being able to go on to practice as solicitors. Plans are underway to move from the LPC to the Solicitors Qualifying Examination (SQE) which, if implemented will abolish the QLD. In its April 2017 Solicitors Qualifying Examination (SQE) Equality, Diversity and Inclusion Risk Assessment the SRA identified three areas for improving EDI within the legal profession:

- Cost of training and qualification
- Fairness of SQE assessment
- Widening participation with greater flexibility in qualifying work experience.

In its 2020/21 business plan, which at the time of writing was currently out for consultation, the SRA said the SQE would not resolve the attainment gap, or its drivers. Rather, they state:

"We believe we can achieve a fair and consistent assessment through good design, question setting and marking, and close monitoring and quality assurance once the SQE is up and running".

They also stated that it was "likely" that the attainment gap would persist, "as it does elsewhere", because the reasons seem to be "complex and rooted in wider societal issues" (SRA to launch project on BAME student underachievement). This seems somewhat of a lost opportunity to have some meaningful impact on working towards a more inclusive curriculum for BME law students.

See also Kirton-Darling, E. & Layard, A. (2020) The Solicitors Qualifying Examination: Perspectives on the Proposed Changes to Legal Qualification. SLSA.

Tackling barriers to inclusion

These recommendations are based on guides from UCL, SOAS, University of Brighton, University of Amsterdam, and Decolonise University of Kent.

Barriers	Pointers
According to recent HESA data 16% of academic staff with known ethnicity were BME in 2017/18 with only 140 professors identified as Black (0.7%) out of a total of more than 21,000. Within that figure male professors outnumber women by three to one with there being only 25 Black British female Professors in UK universities in 2018 although the number of women professors generally has been increasing. (See further here). Staff recruitments and promotions. Lack of BME, particularly Black academic staff in universities. Students are not able to see themselves reflected in the teaching body nor within professional services responsible for student experience.	Prioritise recruitment of BME, particularly Black staff at all levels, especially in positions of power, and in representative bodies. For example, by making staff application procedures and promotions more diversity-informed. Provide more scholarships for BME UG/PG students and greater access to HE and job markets.
Biases in classrooms and grading patterns. In classrooms, there are often comments from teachers and other students which affect the learning environment of BME students.	Organise training for staff on race equality and other key areas including: • (Implicit) bias and cultural sensitivity. • How to create an inclusive classroom with specific teaching strategies that neither exoticise nor minoritise students. Provide pedagogical training around teaching race and other protected characteristics and/or factors of marginalisation, including integrating self- reflexive learning on implicit biases for all staff.

Barriers	Pointers
The curriculum does not include scholars of colour and/or non-Eurocentric knowledge from the Global South.	Rather than just including BME scholars or race as a topic in the syllabus, centre such scholarship in the curriculum and introduce race as an important lens to study law.

Ensure race inclusion as part of module specification approval in the quality assurance (QA) process

Incorporate race equality and racism issues into the review and planning process key boards and committees so they can become "routinised into organisational practice".

Work on improving institutional cultures including within boards and committees that accept and can reinforce discriminatory attitudes and practice. Such boards and committees include: Learning and Teaching Board; Faculty Learning and Teaching Committees; School Learning and Teaching Committees; School Examinations Boards / Committees of Examiners. |
| Lack of proper reporting mechanisms or anti-discrimination policies and procedures in universities that are accessible to students and staff. | Take discrimination and racism more seriously, and more explicitly denounce acts of exclusion.

Incorporate strong anti-discrimination mechanisms and race equality measures – which as the REC principles state – should be part of "the natural process of how an institution monitors and structures learning and teaching issues". Create safe mechanisms to address and tackle instances of discrimination. |

Addressing Racism: The University of Amsterdam Let's Do Diversity Report (2016) recommends:

- Making the enhancement of social justice and diversity a central focus point of the University, including establishing a 'Diversity Unit' and a 'Discrimination Office'.
- Increasing awareness of the impact of certain phrases, jokes and attitudes through a more visible and more explicit Code of Conduct as well as integrating race equality through degree programmes and accreditation processes.

What is an inclusive curriculum?

A variety of initiatives have been launched across the HE sector to address attainment gaps, most notably by Kingston University[7] in a HEFCE funded consortium with five other universities (De Montfort, Greenwich, Hertfordshire, University College London (UCL) and Wolverhampton – and a further education college, NESCOT). The consortium's approach uses central university levers to ensure institutional commitment, including adopting key performance indicators (KPI) and a value-added metric system used to measure whether students have out-performed or under-performed compared with what was expected when entering university.

In relation to teaching and learning, many in the consortium focus on what they refer to as an *Inclusive Curriculum Framework* (ICF). This is underpinned by a recognition that student diversity is a "key strength which provides learning opportunities for all students and staff". Moreover, it aims to help staff to think constructively about *diversifying* their curriculum based on three key principles:

- Create an accessible curriculum for all [INCLUSION].
- Ensure that students see themselves – and their backgrounds – reflected in the curriculum. [DIVERSITY]
- Prepare students with the skills to positively contribute to and work in a global and diverse environment [EQUALITY].

Crucially, having a university level ICF signals *institutional commitment* to embedding this approach:

> "within all aspects of the academic cycle from the development and revitalisation of curricula, through the practice of teaching and learning, to the process of assessment and finally full circle to programme review, modification and revalidation" (*The Project – BME Attainment Gap*).

Alongside the REC principles – this could act as a significant lever for increased institutional accountability to an increasingly diverse student body. However, the REC has been critiqued for failing to deliver racial equality (Bhopal, 2020) and not all institutions have an ICF or other equivalent mechanisms but that should not prevent teachers from taking steps to develop their own anti-racist teaching practice. Some teachers may find it helpful to draw upon the existing recommendations for institutions in the table below to support their individual work. This resource is not seeking to establish a 'framework' as such, in the sense that members of the HEFCE funded consortium such as Kingston or UCL have done. However, their three ICF core principles (see above) can be instructive and vital in the legal education context.

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7   Their action plans also consider the need for inclusive recruitment policies for BAME staff and students, mentoring and employability opportunities for BAME students and consistent reviews of policies and curriculum to assess the impact and needs of inclusive frameworks.

Resources

Bhopal, K. and Pitkin, C. (2020) Same old Story, Just a Different Policy': Race and Policy Making in Higher Education in the UK. *Race Ethnicity and Education*, 23(4): 530-547.

Building the Anti-Racist Classroom (2020) Making the Revolution Irresistible

Ellison, L., & Jones, D. (2019). First Year Law Students: The Impact of Assessment Type on Attainment. *Assessment & Evaluation in Higher Education*, 44(2): 283–293.

Foluke's African Skies (2020) 'Video: Decolonising Decolonisation Discourse'

Joseph-Salisbury, R. (2019). Institutionalised Whiteness, Racial Microaggressions and Black Bodies Out of Place in Higher Education. *Whiteness and Education*, 1–17.

MacDonald, R. A. and T. B. McMorrow. (2014) Decolonizing Law School. *Alberta Law Review.* 51(4): 717-737.

Runnymede Trust

University of Hertfordshire Curriculum Design Toolkit

- Advance HE 'Equality, Diversity, Inclusivity Workshops and Inclusive Teaching
- How to Make Your Teaching More Inclusive – The Chronicle of Higher Education
- Inclusive education: Knowing what we mean – OpenLearn – Open University – E848_1
- Sheffield University's Centre for Excellence in Inclusive Teaching
- The Derek Bok Centre for Teaching and Learning: Teaching in Racially Diverse College Classrooms

Vaughan. S. (2016) The State of the Nation: Diversity and the British Legal Academy. *The Law Teacher*, 50(2): 255-263.

Vaughan, S. (2019) Some Reflections on Diversity and Diversifying the Law Curriculum.

2 Methodology

This resource has been developed from the following three sources:

1   A staff-student 'decolonising the curriculum' <u>project</u> based at the University of Kent Law School during academic years 2018/19 and 2019/20 and its <u>manifesto</u> of key recommendations.

2   An overview of key academic and policy literature on creating inclusive curricula that responds to the BME attainment / university awarding disparities discussed above.[8]

3   Data collected from interviewing members of staff teaching predominantly in the six current qualifying law degree (QLD) subjects in select law schools; *and* an online questionnaire.[9]

The 'Decolonising the Curriculum' project

The research and theoretical underpinning of this resource draws on *critical race theory (CRT) and decolonial studies* (see Jivraj, 2020). In doing so it foregrounds the ethical imperative to collaborate with students as stakeholders in the process that affects them. In fact this resource emerges from a 'decolonising the curriculum project' based at the University of Kent in which collaborating with students has been an integral part of enacting change and developing students themselves into co-producers of knowledge. As is evident from the increasing number of <u>student movements</u> to '<u>liberate</u>', <u>diversify</u> and 'decolonise' their curriculum and university experiences, this work is key for <u>students (of colour)</u> to see themselves and their backgrounds reflected in their journey. The project also takes on the ethical imperative

inherent in CRT and decolonial studies, taking an intersectional approach to understand the role of power in how certain racialised – as well as gendered, classed, ableist and cis – forms of knowledge come to be promulgated through the education system and circulate to what is referred to in the academy as the 'canon' (See Jivraj, 2020; Bhambra et al, 2017 and Arday and Mirza, 2018).

The project – initially entitled 'BAME students as change actors and co-producers of knowledge: towards an inclusive curriculum' – was funded by teaching enhancement awards aimed to empower students within my Race, Religion and Law module to become stronger stakeholders in their own education, facilitating students to:

•   conduct research (leading focus groups) to voice and share with other students their experiences around race, racialisation and (un)belonging on campus, in the classroom and through the curriculum in safe 'café' style spaces, and

•   discuss and disseminate their collective findings (through a one-day workshop) and publication in various formats.

I continued the pedagogic approach from my modules facilitating the students to explore issues that enable them to acquire 'consciousness of their own position and struggle' in society and education whilst training them to lead and run focus group sessions with a mix of law and non-law students. After some critical reading groups on critical race theory and decolonising the university we brainstormed together the issues that they thought would be of high importance to discuss in the focus groups and decided on addressing specific issues, barriers and experiences.

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8   The literature I draw on is from the perspective of the gap being an institutional deficit based on structural and systemic barriers in accessing the curriculum rather than on any 'deficit' on the part of the student. From this perspective, the gap then can be understood more as a disparity in universities awarding degrees: see Shilliam (2015; 2017; 2019) and Jivraj (2020); From Attainment Gap to Awarding Gap – Vikki Hill in conversation with Dr Gurnam Singh (2017)

9   All research instruments have been subject to a rigorous ethics approval process at Kent with full consent obtained from participants in accordance with <u>SLSA</u> and <u>Kent</u> ethics policies, taking account of General Data Protection Regulation (<u>GDPR</u>) requirements.

The focus group themes included:

- International students of colour and the impact of border control
- Muslim women and the impact of racialised Islamophobia and gendered stereotypes
- Muslim men and the impact of the Prevent Duty
- Black men and working against the impact of racialised stereotypes, as well as on
- (dis)ability, racialisation and wellbeing and
- issues faced more generally by all BME students including the specific isolation of LGBTIQ+ students of colour.

Going through this research process including the ethics approval format – from a student perspective – has also been crucial for me in reflecting on the variety of factors that affect the student experience at university of which academics are often unaware. This includes for example, the impact of the government's Prevent strategy on Muslim students lack of sense of belonging on campus; experiences of gendered racism faced by Black women, the additional barriers in obtaining culturally sensitive and appropriate student support including counselling if you are a disabled and/or from a non-English background. After involving over one hundred students in the focus groups the project produced the Decolonising the Curriculum manifesto (Ahmed et al, 2019) a qualitative piece of research launched at a workshop in March 2019.

The focus group leaders have developed this further into book chapters (2020) with academics of colour, including leading figures from different disciplines that they have had the opportunity to collaborate with. The project and the students have certainly been "revolutionary... inspiring a chain reaction of events" disseminating their work across the sector widely, running training for staff and winning awards for their achievements. Nevertheless, as I discuss in my reflections on the next steps for the project in the Decolonise UoK Collective book, sometimes the success can also be pitfalls and we cannot afford to be complacent (Jivraj 2020b). The issues are complex particularly for academics of colour, many of whom are operating from "between a rock and a hard place" (Jivraj, 2020). However, as teachers what we can learn from the project is that we can engage our students in different ways; ones which allow them to see themselves as stakeholders in their own education that reflects the nuance and complexity of their lived realities.

Critical Race Theory (CRT) is a body of legal scholarship begun by people of colour in the USA politically committed to the struggle against racism, particularly as institutionalised in and by law. Derrick Bell, Richard Delgado, Charles Lawrence, Mari Matsuda, Patricia Williams and Kimberlé Crenshaw are some of the prominent CRT scholars.

CRT 'writing and lecturing is characterized by frequent use of the first person, storytelling, narrative, allegory, interdisciplinary treatment of law, and the unapologetic use of creativity. The work is often disruptive because its commitment to anti-racism goes well beyond civil rights, integration, affirmative action, and other liberal measures. This is not to say that critical race theory adherents automatically or uniformly "trash" liberal ideology and method (as many adherents of critical legal studies do). Rather, they are highly suspicious of the liberal agenda, distrust its method, and want to retain what they see as a valuable strain of egalitarianism which may exist despite, and not because of, liberalism.' Bell (1995; 899).

CRT has developed significantly in the UK and internationally since its inception within US legal studies, providing theoretical insight and analysis in areas of:

- law and critical legal thinking (see navigating terminology section below) as well as the work of law school research centres such as Birkbeck Centre for Research on Race & Law and Kent Centre for Sexuality, Race & Gender Justice (SeRGJ);

- education (eg Gillborn, D., Dixson, A., Ladson-Billings, G., Parker, L., Rollock, N. & Warmington, P. (eds) (2018) *Critical Race Theory in Education*. Major Themes in Education, Routledge, London); and

- in relation to Black British Feminism led by the work of Heidi Safia Mirza.

Survey of university law school teachers

Data collected from interviewing members of staff teaching predominantly in the current QLD subjects in select law schools that have already initiated work on inclusive curricula through student success projects or race equality initiatives (Kent, Birmingham, Bristol, Birkbeck College, School of Oriental & African Studies and Warwick).[10] The data also comprises an online questionnaire for law school teachers. It received 50 responses having been publicised through the Socio-Legal Studies Association (SLSA) who have partially funded this project, the Society of Legal Scholars (SLS), Kent Law School and social media outlets primarily twitter between November 2019 and May 2020. The data has been analysed by myself in conjunction with Kent Law School research assistant Gee Imaan Semmalar. Dr Philemon Omede conducted the initial mapping of literature discussed above.

Terminology

Whilst the impetus for this resource has emerged from a student-staff 'Decolonising the Curriculum' collaboration, **it is not a blueprint for law teachers to forge ahead to *decolonise* their curriculum**.[11] Decolonising – as an ongoing process of conceptual thinking and consequent material actions – will mean different things in different contexts and should not be appropriated or politically abstracted from the indigenous and other communities from which they have arisen (Bhambra et al, 2018). As I and others have explored elsewhere decolonising can be fraught with difficulties in the current neo-liberal university context including institutional co-optation which can often undo the very work of the 'branding' itself (Ahmed, 2012; Bhopal, 2018; Ahmet, 2019; Jivraj, 2020). Moreover,

decolonising movements within British universities have predominantly been student led and therefore come from a very particular political trajectory with very few like at SOAS and Kent developing into staff-student collaborations rather than institutional policy.

In the University of London's School of Oriental and African Studies, the only current English university with an institutionally supported 'Decolonising Learning and Teaching Toolkit for Programme and Module Convenors', states:

> Whilst 'decolonisation' is a concept that can be understood in different ways: in our usage, it connects contemporary racialised disadvantages with wider historical processes of colonialism, *seeks to expose and transform them through forms of collective reflection and action.* 'Decolonising SOAS' therefore refers to thought and action within the university t*o redress forms of disadvantage associated with racism and colonialism.* (emphasis added, 2018:3).

Whilst this is crucial work it is not practical to assume that law teachers would be able to individually undertake the work to "redress forms of disadvantage associated with racism and colonialism". Rather, this needs to be tackled at structural and institutional levels as systemic within society. However, what we *can* do individually is to acknowledge as the Decolonising SOAS Toolkit states, that:

> ...[G]lobal histories of Western domination have had the effect of limiting what counts as authoritative knowledge, whose knowledge is recognised, what universities teach and how they teach it.[12]

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10 All research instruments have been subject to a rigorous ethics approval process at Kent with full consent obtained from participants in accordance with SLSA and Kent ethics policies, taking account of General Data Protection Regulation (GDPR) requirements.

11 My own approach is what I refer to as anti-racist, intersectional approach which is discussed in more detail in Jivraj, S. (2020) 'Decolonising the Academy – Between a Rock and a Hard Place', Interventions. 22(4), pp. 552–573.

12 In the case of SOAS, these hierarchies are also entwined with, and highlighted by, the colonial roots of the institution and the various disciplines it teaches. See also The University of Glasgow Slavery report 2018.

Critical and socio-legal scholarship has already long demonstrated that the discipline of law – as taught in the majority of English university law schools – is no exception to perpetuating the domination of particular types of knowledge. The modern formations of law being rooted in coloniality and Empire have most notably been explored in the English academy by the late Professor Peter Fitzpatrick (2001).

Dr Foluke Adebisi reminded us of this contingency of knowledge and legal norms in her opening address to the Decolonisation and the Law School 2019 workshop at Bristol Law School including in relation to the very *land* we were sitting on that day being associated with wealth accumulated off the backs of the trans-Atlantic slave trade. She argued that recent student movements whether for more inclusive, decolonised, diverse or liberated curricula and universities raise important questions for legal academics including:

- How do we become more aware of, and directly mention, how the law came to be and how that 'coming-to-be' has influenced how law is taught, what law is taught, and what law is now?

- How do we teach law as the study of social order, and elucidate how racial stratifications in the social are formed and maintained?

- How do we examine how legal subjectivities are related to other issues, such as the attainment gap and proportionally lower representation of non-white staff in universities? Decolonisation & the Law School: Initial thoughts.

So rather than getting caught in potentially circular discussions of terminology we can draw on the debates as an important opportunity for us to examine these questions in relation to our own practices and their impact on what we *choose to* include in our teaching. We should first consider whether we are committed to expounding the continuities of how law has been integral to creating and sustaining inequalities based on racialisation as well as other social relations.[13] Thus, seeking to 'decolonise' our curricula at a *root and branch* level where our efforts are substantive and not just "cosmetic changes" is likely to constitute too high a bar.[14] If you are nevertheless committed to ideas of social justice and increasing equality of opportunity particularly for our BME students, but it feels daunting and difficult to know where to start then the next section of this resource is for you.

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13   Racialisation is a political phenomenon, underpinned by specific historical processes including colonialism and imperialism, resulting in the production of multiple hierarchies (material, political, epistemic) based on ascribed identity. We understand the category of 'race' as socially constructed and an effect of racism. (SOAS, 2018:4).

14   See Decolonisation Must Disrupt or it is Not Decolonial & Video: Decolonising Decolonisation Discourse.

Resources

Ahmed, S. (2012) *On Being Included: Racism and Diversity in Institutional Life*. Durham, N.C.: Duke University Press.

Arday, J. and Mirza, H. S. (eds) (2018) *Dismantling Race in Higher Education: Racism, Whiteness and Decolonising the Academy*. Cham: Springer International Publishing. doi: 10.1007/978-3-319-60261-5.

Bhambra, G. K., Gebrial, D. and Nişancıoğlu, K. (eds) (2018) *Decolonising the University*. Chicago: Pluto Press.

Bhandar, B. and Ramshaw, S. (2020) 'Reflections on Peter Fitzpatrick's The Mythology of Modern Law', *Critical Legal Thinking*, 28 May. (Accessed: 1 July 2020).

Bell, D. A. (1995) Who's Afraid of Critical Race Theory? *University of Illinois Law Review*. 893-910.

Bhopal, K. and Pitkin, C. (2020) Same old Story, Just a Different Policy': Race and Policy Making in Higher Education in the UK. *Race Ethnicity and Education*, 23(4): 530-547.

Collins, P. H. (1986) Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought. *Social Problems*. 33(6): S14–S32.

Collins, P.H & Bilge, S. (2016) *Intersectionality.* Polity Press: Cambridge.

Crenshaw, K. (1989) Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist politics. *University of Chicago Legal Forum*. University of Chicago Law School. 139–168.

Crenshaw, K. (1993) Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. *Stanford Law Review* 43(6): 1241–1299.

Dar, S., Liu, H., Martinez Dy, A., & Brewis, D. N. (2020) The Business School is Racist: Act up! *Organization*. https://doi.org/10.1177/1350508420928521

Fitzpatrick, P. (1992) *The Mythology of Modern law*. London: Routledge.

Fitzpatrick, P. (2001) *Modernism and the Grounds of Law*. Cambridge University Press.

Freire, P. (1996) *Pedagogy of the Oppressed*. Penguin.

Grabham, E., Cooper, D,. Krishnadas, J, and Herman, D. (eds.) (2008) *Intersectionality and Beyond: Law, Power and the Politics of Location*. London: Routledge.

Green. D.A, Law, History, Slavery. [Twitter] (June13-14 2020).

Hall, B. L., and R. Tandon. (2017) Decolonization of Knowledge, Epistemicide, Participatory Research and Higher Education. *Research for All*. 1(1):6-19.

Himonga, C. and Diallo, F. (2017) Decolonisation and Teaching Law in Africa with Special Reference to Living Customary Law. *Potchefstroom Electronic Law Journal*. 20:1.

Sisters of Resistance. (2018) Is Decolonizing the New Black?

Jivraj, S. (2020) Decolonizing the Academy – Between a Rock and a Hard Place. *Interventions*. 22(4):552–573.

Jivraj, S. (2020b) 'Decolonising the University – Success, Pitfalls and Next Steps', in Decolonise UoK Collective. *Towards Decolonising the University: A Kaleidoscope for Empowered Action.* Oxford: Counterpress. 165-180.

Memon, A., and J. Olugboyega. (2020) 'Stripping the White Walls: The Podcast' in Decolonise UoK Collective. *Towards Decolonising the University: A Kaleidoscope for Empowered Action.* Oxford: Counterpress. 91-99.

Mirza. H.S. (1997) *Black British Feminism: A Reader*. London: Routledge.

Office for Students (2018) Topic Briefing: Black and minority ethnic (BME) students.

Tate, S. A., and P. Bagguley. (2017) Building the Anti-Racist University: Next Steps. *Race, Ethnicity and Education*. 20(3):289–299.

"*A curriculum is 'inclusive' if it is 'meaningful, relevant and accessible to all."*

Hocking, 2010, p.1

3 Getting started

The following are *prompts*, particularly for Law School programme directors, and module convenors as well as for all teachers to get started. They are not intended to replace local expertise, interfere with academic freedom or be prescriptive or exhaustive. Rather, they are a synthesis of data of tried practices to support legal educators starting their journey towards a more inclusive curriculum by drawing on existing (inter)national university good practice and recommendations some of which respond to regulatory requirements or codes such as the REC. That in itself does not mean that they are fixed 'solutions' but rather tools and resources that may facilitate continued reflection and pedagogical scholarship (CPD) to be critically assessed, improved as well as actioned through reflective collaboration amongst colleagues. The various sources drawn upon here include:

- University inclusive curriculum checklists and toolkits (eg UCL, SOAS, Kingston, Herts, Amsterdam)
- student manifestos and research (eg at UCL, SOAS, Keele, UAL Zine on decolonising the curriculum)
- Decolonise UoK Kaleidoscope Network Principles and training delivered by:
  - Michelle Grue (University of California, Santa Barbara) entitled: 'Getting started diversifying your own courses' at the University of Kent on 5 March and 24th Sept 2019.
  - Building the Anti-Racist Classroom Collective Workshops at the University of Kent on 23rd June; Organizing for Liberation part 1 with Professor Shirley Ann Tate, Leeds-Beckett University on 15-16 June 2019 and part 2 at Queen Mary University of London on 25-26 October 2019.

Checking in with yourself

A selection of pointers is provided to help you reflect on your social locations and perspectives in your role as an educator.

Start with a short-term goal or task that feels achievable – you do not have to change your entire curriculum and teaching practice in one go. It can take a long time depending on your position but let us start the journey.

1 Ascertain your reasons for diversifying your curriculum, eg:
   - Addressing attainment disparities?
   - Improving student employability and skills?
   - Increase sense of student belonging?
   - Commitment to equality/social justice?
   - Other reasons including for your own promotion and/or meeting regulatory requirements?

2 Examine your own biases including implicit or what some call 'unconscious' bias. We all have them but we need to know them in order to address it in our teaching practice. All you need at this stage of reflection is being honest with yourself. Once you have started this journey, which can be rather difficult for some of us, then you can also check out other and more in depth resources listed below and here.

3 Understand your own intersecting privileges in relation to gender/gender identity, race/ethnicity/racialisation, religion/caste, (dis)abilities, sexuality, socio-economic background, citizenship etc. Developing a better understanding of our own positionalities eg as a white British cis male enables us to consider how race and gender privileges impacts on our views in legal education delivery (see: Bhopal, 2018).

4 Being reflective from the outset is essential to analyse:
   a How our own teaching can often presume a particular student profile, including what we think they *ought* to know as a law student. Who is represented as the 'Other' in our teaching and how.
   b Why this is potentially problematic.
   c How to address this.
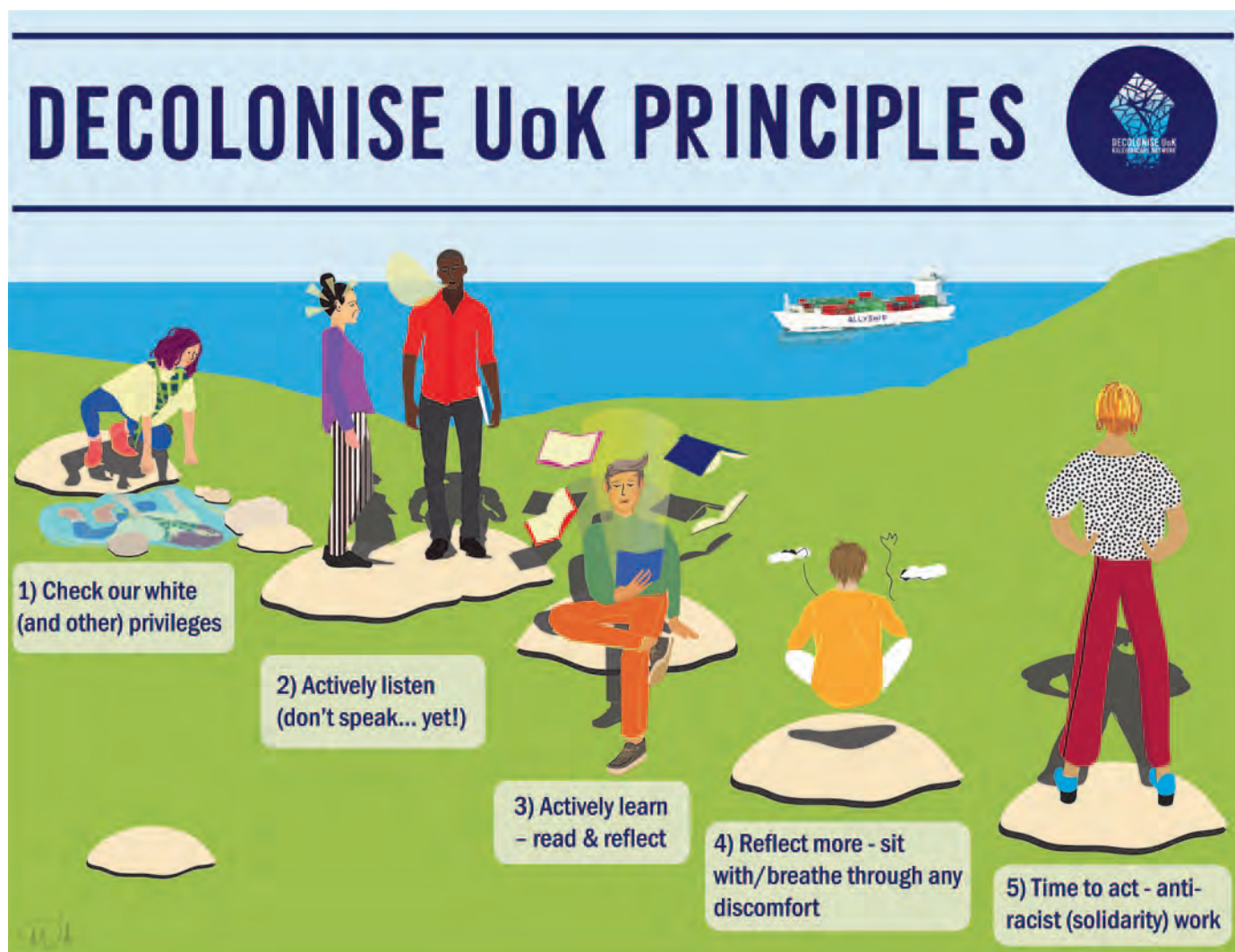
Resources

[Building the Anti-Racist Classroom Collective Suggested Reading & Principled Space](#)

[Decolonise UoK FAQs, Reading List](#)

[An Anti-Racism Reading List](#)

How 'white fragility' reinforces racism – [Video Explainer](#)

Layla Saad. (2020) Me and White Supremacy: A 28-Day Challenge to Combat Racism, Change the World, and Become a Good Ancestor. Quercus. [Download the workbook](#).

Racial Justice Network – [Principles for Decolonial Practice](#)

Understanding White Privilege with Reni Eddo-Lodge – [Podcast](#)

Developing an anti-racist curriculum

1   Work your way through your module content and check if it includes:

a   Material and (socio-legal or other) scholarship on how specific areas of (common) law emerged in particular historical contexts rather than being received/authoritative texts.

b   contemporary problematics – often a legacy of modern historical developments – that students of colour will know about and feel is relevant to them (see case studies in next chapter).

c   Is this material central to each module and not just as an add-on or confined to an introductory or optional course or can different views be juxtaposed alongside each other?

d   Acknowledge the author profile in the module description. Which knowledge makers are you prioritising and which ones are excluded? Are the reasons stated in your module handbook?

e   Monitor the effect of this open acknowledgement on student engagement. This will help to reflect on which authors and cases, issues and/or examples you have *chosen* to include in the readings.

2   Consider whether particular topics or readings could be difficult or even traumatic for individual students or in general and how that might be mitigated by:

a   drawing on people of colour/global south perspectives around particular issues and cases from other (commonwealth) jurisdictions

b   framing particular issues more sensitively, for example, by acknowledging widespread Islamophobia and racial profiling alongside teaching terrorism cases.

3   If appropriate, employ and work with PGR students to ensure that core reading lists are updated regularly with articles and other publications by people of colour.

Developing an anti-racist classroom

1   Ensure a principled space within the classroom that facilitates students of colour to feel comfortable to participate.[15] You can do this by:

a   Paying close attention to the relationship between your position (of relative power), influence as a role model and your perspectives as a teacher and how this is or may be different to those of your students.

b   In smaller classes, divide students into groups or pairs to prepare a brief to advise on different positions or perspectives on Indigenous issues, race etc.

c   If practicable take smaller groups of students on field trips to historical [legal] sites or ask them to visit them if local, as part of their study programme

d   Developing 'diversity literacy'[16] and using non stigmatising, non-threatening language and vocabulary.[17] Refrain from perpetuating racial, gendered and other stereotypes and be open about not knowing everything.

e   Recognising not everybody will relate to the same terms eg BME or people of colour (See FAQs). No one individual should be expected to 'represent their group'.

f   Being aware of who you question, who you agree with, who is silent and who speaks.

2   Consider how 'race' and gender relates to your subject matter, highlighting how they are socio-political and legal constructs.

3   Signal in advance potentially distressing topics and be ready and open to discuss and deal with any potential controversies sensitively. Do not ignore them, even if it means you need to return to them at a different time or in an alternative way. Be aware of any potential exposure of students to 'trauma triggering'.[18]

4   Listen to and affirm students' experiences of racism and their views on difficult topics including by providing alternative materials and sources for your students to engage with.

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15   NB: This is different to a safe space which cannot be guaranteed.

16   See also Top tips to support BME student success

17   Whilst institutional training can be helpful, learning from colleagues, students where appropriate and external expertise may be more meaningful.

18   Some of the topics might be particularly disturbing for some students. For example, sexual violence, police brutalities against black people, histories of slavery etc. The trauma might be from a personal experience or intergenerational nature.

Reflect, evaluate and learn

1 Consider ways in which courses can be diversified by speaking to and/or surveying students from your modules on what they would like to see addressed, including for areas of concern. If possible, keep some part of the sessions open to explore topics identified by students.

2 Consult with teachers on your teams to identify support needed to execute any changes eg re-organising material to bring different issues to prominence or highlighting critical perspectives to the earlier sessions.

3 Share good practice with colleagues and formalise this – with training and other initiatives eg anti-racist or whiteness reading group – within the department if you can.

4 Go back to the beginning of this chapter, using the prompts to check in with yourself, discuss dilemmas and questions with others and use the readings and resources to learn more about inclusive pedagogy, coloniality and critical thinking.

Resources

Bhopal, K. (2018) *White Privilege: The Myth of a Post-Racial Society*. Bristol: Policy Press.

Critical Legal Thinking Blog

Decolonising Sexualities Network Blog

Advance HE. (2015) Embedding Equality and Diversity in the Curriculum: A Model for Learning and Teaching Practitioners.

Advance HE. (2010) Embedding Equality and Diversity in the Curriculum: Self-evaluation Framework.

Enright, M. (2020) Violence, Law and Black Lives in Britain.

hooks, b. (1994) *Teaching to Transgress: Education as the Practice of Freedom*. London: Routledge.

Non-Binary Gender: Higher Education Staff/Student Guidance (no date) Rewriting the Rules.

Philosophy of Law – Diversity Reading List.

What Exactly are Inclusive Pedagogies? (2020) LSE Higher Education.

Olufemi, L. (2019). 'Space', in L. Olufemi, O. Younge, W. Sebatindira, S. Manzoor-Khan. *A Fly Girl's Guide to University – Being a Woman of Colour at Cambridge and Other Institutions of Power and Elitism*. Birmingham: Verve Poetry Press. 119.

"Students know that the world is a different context to the one they are taught about but they don't speak about it or it's knocked out of them, including what they are interested in."

Survey participant

4 Focus on foundation subjects

Introduction to law

Topics/Barriers	Questions to consider	Pointers
Some university degree courses begin with a compulsory jurisprudence or introduction to law module but many do not or are only in the process of developing one. The benefit of having such a course is to highlight a particular approach such as that of Kent Law School's critical approach to law (see: Critical Introduction to Law by Wade Mansell, Belinda Meteyard, Alan Thomson, 2015).	Are students equipped with the tools to critically analyse and question a range of perspectives on the concepts of race, religion, gender and sexuality, and their intersections in law? Are students left with notions of the objectivity and neutrality of law without them being challenged or questioned? How does colonialism, law and resistance feature in any introductory law module or within the foundational law programme?	Challenge the 'common sense' understanding of law and claims to neutrality of law through other perspectives (see below) or through case studies particularly where there is a paucity of materials. **Case studies** could include: experiences of racism that Black UK (domiciled or international) students may know about such as the **murders of Stephen Lawrence and Anthony Walker** or the **Windrush scandal** or around the issues of **Rhodes Must Fall Oxford** or the **Colston statue in Bristol**. Draw on the work of David Olusoga on race, empire and slavery, Paul Gilroy or Heidi Safia Mirza. Devise tasks like rewriting judgments and reflection on what perspectives have been used as the basis for the re-write eg see Feminist's Judgment Project. See also: https://www.sfjp.law.ed.ac.uk/ Before they arrive give students (fictional) readings, memoirs or commentary such as Afua Hirsch's (2018) *Brit(ish): On Race, Identity and Belonging* (Jonathan Cape), or podcasts, blog posts and social media feeds on issues they may already be familiar with such as on the Grenfell Inquiry.

Topics/Barriers	Questions to consider	Pointers
Very often students think that this is an add-on course that is "soft" and not foundational to their understanding of law. *Outsider jurisprudence* transcends teaching from a critical perspective, but necessarily requires "centering the experiences of outsider groups". Two strategies integral to Canada's approach: introduce outsider materials into first year programmes, or into a separate first year "perspectives" course. (See Burrows, 2005).	What are the historical and contemporary aspects of law and power and how does it operate? Draw upon critical race pedagogy to elevate the relevance of experiential knowledge as "legitimate, appropriate and critical to understanding, analyzing, and teaching about racial subordination," and to explicitly draw on "the lived experience of People of Color by including such methods as storytelling, family histories, biographies, scenarios, parables, cuentos, chronicles and narratives" (Solórzano & Yosso, 2002).	Introduce other perspectives of law we teach i.e. critical race theory, outsider jurisprudence, intersectional analysis, socio legal studies and Interdisciplinarity / comparative legal systems / global law. Teaching other formations of law eg indigenous law and how current problematics such as climate change addressed through these forms of law. See Indigenous law: An Introduction. Signal the importance of and relationship of the above to other parts of the curriculum by: • Forefronting and integrating them throughout the foundation law programme • Including elements in assessment and allocating credit This will send important, if implicit, messages to students about the value law faculties themselves place on the material taught

Resources

Adebisi, F. (2020) A Reading List for New Law Students

Ambedkar, B.R. (1936) The Annihilation of Caste

Awawda, O. (2017) Mabo Case in Australia: Conflicting Approaches to Common Law?

Bakshi, S., Jivraj, S and Posocco, S., (eds). (2016) *Decolonizing Sexualities: Transnational Perspectives, Critical Interventions*. Oxford: Counterpress.

Bell, D. A. (1980) Brown v. Board of Education and the Interest-Convergence Dilemma. *Harvard Law Review*. 93(3):518.

Bernier, B. L. (2000) The Creed According to The Legal Academy: Nihilistic Musings on Pedagogy and Race Relations. *Washington & Lee Race & Ethnic Ancestry Law Journal*. 6(1): 27-56.

Borrows, J. (2005) Indigenous Legal Traditions in Canada. *Washington University Journal of Law & Policy.* 19:167-223.

Dalit Solidarity Network. Caste in the UK.

Collins, P. H. (1986) Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought. *Social Problems.* 33(6): S14–S32.

Delgado, R. (1993) The Inward Turn in Outsider Jurisprudence. *William & Mary Law Review*. 34(3):741-768.

Gabriel, D. (2020) *Transforming the Ivory Tower: Models for Gender Equality & Social Justice.* Trentham Books.

Mahmood, S. (2012) Religious Freedom, the Minority Question, and Geopolitics in the Middle East. *Comparative Studies in Society and History*. 54(2):418– 446.

Mansell, W., Meteyard, B., & Thomson, A. (2015) *A Critical Introduction to Law*. London: Routledge.

McGuinness, S., & Fletcher, R. (2017) Chapter 18 - 'Attorney General v X and Others' in Enright, M., McCandless, J. and O'Donoghue, A. (eds.) (2017*) Northern/Irish Feminist Judgments: Judges' Troubles and the Gendered Politics of Identity*. Oxford: Hart Publishing.

Omi, M., & Winant, H. (1993) 'On the Theoretical Concept of Race' in C. McCarthy, and Crichlow, W. (eds.) *Race, Identity and Representation in Education*. New York: Routledge. 3-10.

Solórzano, D. & Yosso, T. (2002) Maintaining Social Justice Hopes within Academic Realities: A Freirean Approach to Critical Race/LatCrit Pedagogy. *Denver Law Review*. 78(4): 595–621.

The Combahee River Collective Statement.

UK Supreme Court Blog. (2010) The Feminist Judgments Project.

University of Victoria Indigenous Law Research Unit. (2015). Indigenous Law, Gender, and Sexuality.

Williams, P. J. (1991). *The Alchemy of Race and Rights. The Diary of a Law Professor.* Harvard University Press.

Williams, P.J. (2011) Video Lectures on Race & Genetics Part 1 and Part 2.

"The only time we look at non-white material is in relation to colonialism (slavery/anti-slavery) or extremism and the material tends to be negative as opposed to positive."

Decolonising UoK Manifesto, 2019, p.6

Public law

Topics/Barriers

Without a written constitution, students can find it hard to grasp **UK constitutionalism** and the principles upon which it's based. It can be particularly confusing for overseas students from jurisdictions with written constitutions.

Westminster has been described by MPs as the 'mother of Parliaments'. Yet parliamentary sovereignty as a key constitutional principle is replete with contradictions particularly pertaining to use of the royal prerogative eg in relation to the recent case of: *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5

UK Constitutional law can often be taught outside of its context of liberal democracy and/or predominantly in relation to 17th century **English constitutional history** around the 'Glorious Revolution'.

Critical (legal) theory perspectives of enlightenment liberal values are included in some modules particularly if they are taught as second year (rather than first year) modules. However, they often do not take account of 'race'.

Questions to consider

the role and functions of a constitution from taking a comparative approach to constitutional law? How do other (postcolonial) constitutions protect *and* negotiate rights of diverse populations?
How can a global outlook in relation to notions of sovereignty inform how we view and understand Westminster and why it has been described as the mother of all Parliaments?
How has sovereignty been conceived of in the formation of the British empire including in eviscerating indigenous sovereignty eg in Australia and Canada? (see property law section below).

Which models of democracy if any do you teach?

Do you focus mainly on enlightenment thinkers such as Rousseau and Locke and/or the French and American revolutions as defining moments in the emergence of liberal democracy?

Are you aware of the links of key thinkers such as Locke with slavery? See: Decolonising John Locke (2020).

Do you draw on feminist/ critical race analyses of voices represented within constitutions or who constitutes a citizen? See Harris 1990.

Pointers

Ask students to examine constitutions from different jurisdictions including post-Apartheid South Africa which protects socio-economic rights, Iraq or Bolivia, see: Constitute Project.

Engage them in exploring how these constitutions are similar but also explore how they differ. This can be contextualised in contemporary political events eg during the Arab Spring we looked at the Tunisian Constitution.

Discuss how they view the UK constitution in relation to other models and the continued role in the commonwealth and elsewhere in constitution and democracy shaping.

Explore (in lectures) the **Haitian Revolution** which was a series of conflicts that took place between 1791 and 1804 and gave rise to the first nation that emerged from a slave rebellion. This was around the same time that the American (1775-1783) and French (1789-1815) revolutions were taking place.

Engage students in thinking about the different forms in which constituent (citizen) power can be articulated in contemporary (independence and democracy) movements from Scottish independence to current protests in Hong Kong.

Topics/Barriers

The **Rule of Law** is both a technical topic in which textbooks draw on the 'classical' theories of Dicey, Raz and the work of Lord Bingham. The limits of the rule of law and who in particular can be impacted by these conceptual limits are often left unexplored.

Judicial Review can often be taught without engaging with race. Yet cases such *as Wheeler and others v Leicester City Council* [1985] 2 All ER 151 (CA) provide an opening for conversations about responses to apartheid.

Students can perceive the topic of inquiries – with the exception of Hillsborough – as uninteresting and/or irrelevant or remote from them.

Questions to consider

Do you teach the **Chagos Islanders case** *Bancoult v Foreign Secretary (No 2)* (HL) (2009) 1 AC 453 in relation to the rule of law and/or use of the royal prerogative as a limit to the rule of law which impacts citizens of colour?

Watch:
Stealing a Nation, a Special Report by John Pilger

Do you discuss the rule of law implications of surveillance over minority populations in the *Privacy International v IPT and others* (UKSC 2019) case?

What inquiries do you teach about and does 'race' come up as an issue in those? How have they impacted people of colour?

Pointers

Ask students to examine the case and discuss what it tells us about who counts as a UK citizen even in a British overseas territory? How is the rule of law limited by this and other cases eg in relation to terrorism/human rights cases? Compare the English *Bancoult* judgment to subsequent ECtHR and International Court of Justice rulings ratified by the UN General Assembly on the sovereignty dispute between the UK and Mauritius calling for "complete decolonization".

Discuss with students how race is a key aspect of the outcomes of inquiries from the Royal Commission on the Morant Bay rebellion, to Bloody Sunday and most recently, Grenfell. How might law reform take account of race?

Resources

Dar, S. 2019. The Masque of Blackness: Or, Performing Assimilation in the White Academe. *Organization* 26(3):432- 446.

Misra, A. (2020) Decolonising John Locke – Centre for Sexuality, Race and Gender Justice.

Gabriel, D. and Tate, S.A. (2017). *Inside the Ivory Tower: Narratives of Women of Colour Surviving and Thriving in British Academia*. Trentham Books.

Harris, A. P. (1990) Race and Essentialism in Feminist Legal Theory. *Stanford Law Review* 42(3):581-616.

Jordan, E. C. (2014) Professor Angela P. Harris: A Life of Power at the Intersection: When the Equality Walk Matches the Equality Talk. *University of California Davis Law Review.* 47:1081–1104.

Loveland, I. (2018) 'Defining the Constitution' in *Constitutional Law – A Critical Introduction*. (8th edition). Oxford University Press.

Paulin, M. (2020) UK Human Rights Blog: Racism and the Rule of Law.

Pilger, J. (2011) Stealing a Nation. A Special Report [Documentary].

"In Criminal Law it always seems that it's Black males who are the perpetrators so it's not surprising when I went to the local court to observe a case the staff assumed I was a defendant rather than a Black male law student, because how many of them do we know about?"

Final-year law student

Criminal law

In teaching the QLD topics and principles of: murder, manslaughter, nonviolent offences, sexual offences, theft, fraud, and criminal damage (burglary, robbery) the inchoate offences and defences, teachers have stated that it is difficult to include 'other' content. This can be addressed by **placing criminal law within its wider societal context**, particularly in relation to issues that affect BAME students who have reported that they do not want to wait till elective modules towards the end of their degrees to hear about racialisation in the criminal justice system. They are already aware of the Macpherson report that emerged from the inquiry into the murder of the black teenager Stephen Lawrence; policing of 'race' and student riots including police brutality, deaths in custody and disproportionate stop and search and sentencing or indeed in relation to hyper-surveillance of Muslim communities as a result of the Prevent duty. These issues should therefore not be ignored or sidelined within a legitimate legal education. Assessments can also be a way to harness teacher and student 'time' and motivation to contextualise racialisation in criminal law.

Topics/Barriers	Questions to consider	Pointers
Rather shockingly, there is a lack of material particularly in textbooks on the role of "race", "racism" etc in criminal law. One teacher found that the word 'race' or 'racial' was used only three-four times and only in the context of a particular offence related to a racially aggravated assault.	How many times are the words "race", "racism", "racialisation" used in the sources you teach? In what contexts are they used and what are the explicit and implicit bias, messages or stereotypes that they are conveying? Do you use sources eg from criminology or elsewhere to contextualise how actions that are criminalised can often be contingent upon political choices? Eg in relation to drug offences or hate crimes.	Race has to be taken as a lens of analysis throughout the syllabus and not just as a topic. The syllabus has to be examined for the power relations that law is embedded within- that of race, gender, ethnicity, religion etc. Content has been made more racially aware so that we provide students with the critical lens to question whether law is "neutral" in its construction and application eg critically examine the targeted use of stop and search against Black and ethnic minority populations and how counter terrorism measures like the PREVENT duty are used.

Topics/Barriers	Questions to consider	Pointers
The socio-political context of criminal law is often not explicitly stated. For instance, when teaching joint enterprise liability under inchoate offences, is it taught in a way that critically examines how it is embedded within racialised stereotypes and profiling?	Which racialised groups are stereotyped as engaging in "gang violence"? How is "gang violence" linked to structural issues of differential access to education, employment, food and housing for marginalised populations? How does this manifest in the judicial language of the cases examined? Would a critical race or other perspective provide an alternative analysis of the cases?	Examine issues of race in *R v Jogee* [2016] UKSC 8. Analyse *Chan Wing-Siu v The Queen* [1985] 1 AC 168 in the context of British colonialism and race. Draw on materials eg Chapter 4 of Bowling et al (2019) on police culture to build an understanding of racialisation processes. Invite guest speakers eg Leroy Logan MBE to bring expertise or to relate the everyday realities of criminal law back to students. Follow him @LeroyLogan999. Met pays £100,000 to settle new race case	UK news
Both students and teachers have noted how in the lecture slides the image of the police was always white and yet perpetrators often non-white.	What images are used in the slides used in lectures and seminars? What do they convey in terms of racial and gendered stereotypes?	1 Be aware of whether the view you are visually projecting to students is perpetuating racially dominant perspectives and what those images convey. 2 Use neutral images eg Lego figures to avoid racially stereotyping. 3 Signpost students to resources that cannot be covered in more depth as well as available electives for further in-depth study.

Continued

Resources

Building the Anti-Racist Classroom Collective (2020) 'Zine-Making for Anti-Racist Learning and Action' in Decolonise UoK Collective. *Towards Decolonising the University: A Kaleidoscope for Empowered Action.* Oxford: Counterpress. 51-57.

Bernier, B. L. (2000) The Creed According to The Legal Academy: Nihilistic Musings on Pedagogy and Race Relations. *Washington & Lee Race & Ethnic Ancestry Law Journal.* 6(1): 27-56.

Bowling, B., Reiner, R. and Sheptycki, J. W. E. (2019) *The politics of the police: Benjamin Bowling, Robert Reiner, James Sheptycki.* Fifth Edition. Oxford: Oxford University Press.

Braithwaite, J. (1991) 'Poverty, Power, White-Collar Crime and the Paradoxes of Criminological theory. *Australian & New Zealand Journal of Criminology.* 24(1):40-58.

Bridges, L. (2013) 'The Case Against Joint Enterprise. *Race & Class.* 54(4):33–42.

Williams, P. and Clarke, B. (2020) Dangerous Associations: Joint Enterprise, Gangs and Racism. Manchester Metropolitan University: Centre for Crime and Justice Studies.

Grieve, J. G. D. (2017) 'The Stephen Lawrence Inquiry: A Case Study in Policing and Complexity' in Pycroft, A. and Bartollas, C. (eds.) *Applying Complexity Theory: Whole Systems Approaches to Criminal Justice.* Bristol: Policy Press. 141–158.

The Guardian. (June 15 2020) The UK Government Responded to Black Lives Matter By Protecting Statues / The Secret Barrister.

The Guardian. (22 February 2019) Macpherson Report: What Was it and What Impact Did it Have?

The Guardian. (25 April 2018) The Brothers Who Were Searched by the Police For a Fist Bump

Harris. A. P. (2013) 56th Annual John R. Coen Lecture: The Treadmill and the Contract: Race, Class and the Environment in American Law.

Porter, A. (2016) Decolonizing Policing: Indigenous Patrols, Counter-Policing and Safety. *Theoretical Criminology*, 20(4):548–565.

Secret Barrister (2019) *Stories of the Law and How it's Broken.* London: Picador.

Sentas, V. (2014) *Traces of Terror: Counter-Terrorism Law, Policing, and Race.* Oxford University Press.

Tort law

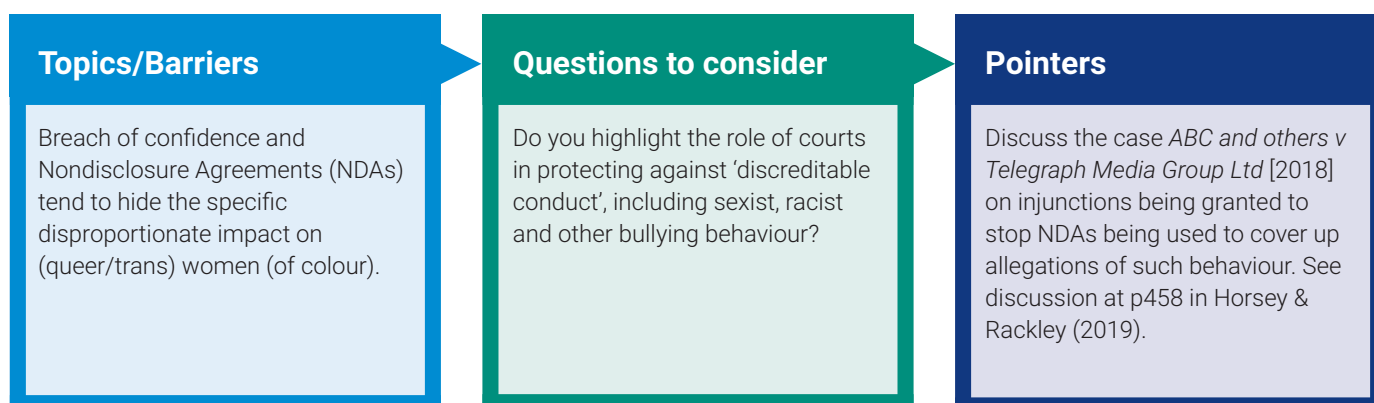| Topics/Barriers	Questions to consider	Pointers
Public Body Liability does not often pay significant attention to the police apart from eg in relation to Hillsborough.	Do Police owe a duty to the victim in negligence and if so how do they owe it and when? Where does responsibility lie? Do you discuss how certain torts and remedies eg payment of damages can reflect and cement existing social advantages and disadvantages i.e. that the outcomes of settlement can be worse for BME people and/or dependent on socio-economic factors (class).	*Brooks v Commissioner of Police for the Metropolis* [2005]. 1 WLR 1495 HL. See case study below. Watch The Journey Exclusive with Duwayne Brooks, OBE – Part 1 and discuss the decision in this case and its implications for Duwayne Brooks.
Questioning of the reasonable man test: "While it is agreed that the reasonable man is neither all-seeing nor all-knowing and that, on occasions, he makes reasonable mistakes, there is less agreement (particularly among feminist legal scholars) about whether these qualities should be tied to the physical characteristics of a man." (Horsey & Rackley, 2019:218).	What is the race/ethnicity, religion, socio-economic context (class), sexual orientation, age, education, and so on of the reasonable person? What difference would it make if the reasonable person benchmark would include being black, Muslim, disabled, transgender or unemployed or living with multiple minoritised identifications?	Discuss with students whether these differences between people is relevant to questions on eg how a reasonable person would drive a car? Is it relevant in some contexts and not others? (See: Cane, 2017 p 37).
The tort of trespass and/or nuisance can be used as a means of controlling protest yet this often remains invisible. Other areas that require further research include torts relating to land, body eg defamation as a result of accusations of domestic abuse/ violence.	In what situations can or has the torts of trespass or nuisance been used to control protests? How does it silence people of colour, and indigenous people defending their lands or situations such water pollution? Whose interests do the land torts protect?' Do they continue the disproportionate impact of their failure as 'green torts' on indigenous communities? To what extent do the land torts prioritise land owner interests over land users/occupiers reinforcing various kinds of inequalities.	Draw from literature eg from Canada to discuss the role of tort law in facilitating extraction and appropriation of and from indigenous land. For eg: Collins, Lynda Margaret and Morales, Sarah, Aboriginal Environmental Rights in Tort (March 28, 2014). Use the protest against the building of a pipeline at Standing Rock. See: Stand Up / Stand N Rock #NoDAPL (Official Video) or The Naked Truth: Mark Ruffalo Speaks on Standing Rock & #NoDAPL

Topics/Barriers	Questions to consider	Pointers
Breach of confidence and Nondisclosure Agreements (NDAs) tend to hide the specific disproportionate impact on (queer/trans) women (of colour).	Do you highlight the role of courts in protecting against 'discreditable conduct', including sexist, racist and other bullying behaviour?	Discuss the case *ABC and others v Telegraph Media Group Ltd* [2018] on injunctions being granted to stop NDAs being used to cover up allegations of such behaviour. See discussion at p458 in Horsey & Rackley (2019).

Horsey, K. & Rackley, E. 2019. *Tort Law*. Oxford University Press. pp160-161.

Duwayne Brooks was attacked alongside his friend Stephen Lawrence, who was murdered in a racially motivated attack in 1993.[31] Brooks suffered post-traumatic stress disorder, initially as a result of witnessing the murder. He also claimed that his treatment at the hands of the police worsened the condition and that they owed him a duty of care on three grounds: to take reasonable steps to ascertain whether he was a victim of the attack and, if so, to treat him accordingly; to take reasonable steps to give him adequate and appropriate support as a witness to a serious crime; and to treat his statements with reasonable care and attention. The police investigation into Stephen Lawrence's murder was later found by an official inquiry to have been grossly mishandled, and the same inquiry highlighted 'institutional racism' in the Metropolitan Police.[32] One of the findings was that the police had begun mishandling the case whilst at the scene of the attack.[33] When officers found Duwayne Brooks at the scene he was in a state of high anxiety, agitated and, according to the police officers, 'aggressive'. They therefore assumed that the two men had been fighting, rather than that both had been attacked, and treated Duwayne more like a suspect than a witness or victim of violent crime. They did not consider that he would understandably be anxious and agitated after being racially attacked and seeing his friend murdered. The inquiry report found that this mistake was made because of racist stereotyping by officers at the scene and meant that the police, having failed to take his evidence seriously, lost any advantage they might have had in being able to track down the attackers. While the actions of the police in this case were clearly extremely negligent—far more so than in Hill, for example—the law lords ruled unanimously that Duwayne Brooks was owed no duty of care, relying almost entirely on the policy arguments from Hill. They reiterated that the police's primary duty (to the public) is to investigate and suppress crime and that finding they owed a private law duty in the way that Brooks was claiming they did, and had to treat all potential victims or witnesses of crime in the way he was arguing they should, would eat up valuable police time, diverting resources away from their primary functions. While acknowledging the desirability of victims and witnesses of crime being treated seriously and with respect, the law lords found that this was not the same as saying that a duty of care arose. To impose such a duty was to them a step too far and would be 'bound to lead to an unduly defensive approach in combating crime' (Lord Steyn at 1509). Smith v Chief Constable of Sussex Police [2008] upheld these entrenched assumptions.

31. Described by Lord Bingham in the House of Lords as 'the most notorious racist killing which our country has ever known' (at 1).

32. Sir William Macpherson of Cluny, Report on the Stephen Lawrence Inquiry (Cm 4262-I, 1999).

33. This was later confirmed by another inquiry headed by Mark Ellison QC, which looked into a 'cover-up' by the Metropolitan Police of corruption in its ranks in relation to the case: 'The Stephen Lawrence Independent Review: possible corruption and the role of undercover policing in the Stephen Lawrence case' House of Commons, 6 March 2014. See also Tom Harper 'Employees at Scotland Yard ordered to carry out "mass shredding" of Stephen Lawrence evidence, claims damning review of the Met' The Independent 18 March 2014. The Ellison report suggests that Brooks' civil case against the police may also have been tainted by their actions outside the courtroom (at 5.2).

Resources

Abel, R. (2020) Legal Pedagogy and its Discontents. *International Journal of Law in Context*, 16(1): 77–93.

Cane, P. (2017) *Key Ideas in Tort Law*. Oxford: Hart.

Chamallas, M. and Wriggins, J. B. (2010) *The Measure of Injury: Race, Gender and Tort Law*. New York University Press.

Giliker, P. (2010) *Vicarious Liability in Tort: A Comparative Perspective*. Cambridge University Press.

Horsey, K. and Rackley, E. (2019) *Tort Law*. Oxford University Press. (@horseyrackley).

Hurlbert, M. and Fletcher, A. J. (2020) Indigenous Rights in the Context of Oil and Gas Pipelines in Canada: Exposing Naturalised Power Structures Through a Lens of Intersectionality. *International Journal of Law in Context*. 16(1):57–76.

Richardson, J. and Rackley, E. (eds.) (2012) *Feminist Perspectives on Tort Law*. Abingdon: Routledge.

Scott, D.N. (2012) 'Pollution and the Body Boundary: Exploring Scale, Gender and Remedy' in Richardson, J. and Rackley, E. (eds.) *Feminist Perspectives on Tort Law*. Abingdon: Routledge.

"If there is little or insufficient material on race and law in foundation subjects it is not because there is no scope for it but because the research has not been done and we should really understand why that is."

Interviewee

Contract law

Topics/Barriers	Questions to consider	Pointers
Contract law textbooks are often silent about any potential detrimental impact of contracts on parties in favour of presenting a more 'neutral' account of the key doctrinal topics of formalities etc. More discussion is required of the impact on parties, including inequalities in bargaining power and also on the subject of the contract particularly when that 'commodity' is a person. Doctrinal Contract law can conceal its gendered and racialised impact.	Do you teach about the sale of people as property eg during the Transatlantic slave trade and that racialised labour through commodification and contract endures to today? Do you know about the work of Contract Law Professor Patricia J. Williams? Do you tell your students about the Zong case and discuss how slaves are conceived of by law/in the judgment? What are the legalised legacies of slavery? See other historic shipping cases such as *Harris v Watson* (1791) Peake 72,170 ER 94. This case is about whether a broken promise to pay a black sailor for extra work constitutes breach of contract. How is he racialised in the judgment?	In the chapter entitled "Gilded Lilies and Liberal Guilt," Patricia Williams discusses how it felt to find her enslaved great-great-grandmothers' contract of sale. Discuss how the spirit of law differs from the letter of law in relation to slavery and distinctions between privacy and public. The Zong case (*Gregson v Gilbert* (1783) 3 Doug. KB 232) sought enforcement of an insurance contract which compensated slave ship owners for 'loss of cargo'. See: Law, history, slavery Draw out the links to modern employment contracts eg '0' hours which can disproportionately affect BME people.
The 'truth' of legal principles such as 'freedom of contract' are often unchallenged. The impact on different parties of not questioning such principles is often hidden and ignored as feminist critiques of contract law have argued. Patricia Williams describes contract law as "law about alienation" (2000:14). Contract is often taught as a private law subject with little reference to the political blurring of the public/private divide and who that might disproportionately impact.	How much agency do your students have in the contracts they enter into? Have they looked at their student loan contracts carefully or their rental agreements? Have they understood the full (financial) implications of what they have entered into and any debt burden it places on them? Do you teach about contracting out of public services to private companies such as G4S or Serco	Encourage students to engage critically with the notions that underpin various legal principles (eg "freedom of contract") and question their effectiveness. See: Enright, M 2018, Contract Law. Ask students to look at their employment or rental agreements and think about their own bargaining power in entering them and then link to other historic and/or contemporary examples of unequal bargaining power eg tenants' rights under the English feudal property system or for

Continued

Topics/Barrier	Questions to consider	Pointers
	who operate detention centres for asylum seekers like Yarls Wood? What happens when human rights abuses occur and yet the victims are not parties to the contract but only the subject of it?	those who survived the Grenfell Tower fire. Discuss whether human rights violations could constitute breach of contract and the problems of being the subject but not party to the contract that you are subject of. Analysis can also be done with older cases which may now fall under the HRA, such as *Constantine v Imperial Hotels Ltd* [1944] KB 693 which is an English tort and contract law case concerning the implied duty of an innkeeper to offer accommodation to a guest unless for just cause.
Students often do not understand the range of contracts that can exist beyond sale of property. The colonial backdrop to cases is mostly unremarked upon in key materials. This allows both students and teachers to accept historic and contemporary inequities as the norm. The context and personal stories of contracting parties are invisible leaving the impact of the legal decisions unquestioned eg See *Harvey v Facey* [1893] AC 552 PC on the 'offer and acceptance' which involves sale of a former slave plantation 'Bumper Hall Pen'.	Do you discuss marriage as examples of contracts or feminist critiques in relation to formation, terms, remedies, terms, escaping the contract or renegotiating the terms? Do you draw on examples particularly from legal history on eg breach of promise to marry and even Jury cases from the 19th Century where women are posited as inferior and therefore not held to the same capacity for rationality? What impact does this have on any remedies including damages.	This includes materials on gender and contract law; relational contract theory and/or taking a law in context approach (see Enright, 2018). Digging into the personal stories of the contracting parties and including snippets of legal history can help to unsettle certain fixed notions or legal principles. Eg in the key case of Balfour v Balfour highlight the role of the husband as part of the machinery of colonial administration. This also brings contract law more to life and what is at stake for whom.

Resources

Adams, J. N. and Brownsword, R. (1987) The Ideologies of Contract. *Legal Studies*. 7(2):205-223.

Auchmuty, R. (ed.) (2018) *Great Debates in Gender and Law*. London: Macmillan.

Han, S. (2015) Slavery as Contract: Betty's Case and the Question of Freedom. *Law & Literature*. 27(3):395–416.

Kennedy, D. (1976) Form and Substance in Private Law Adjudication. *Harvard Law Review*. 89(8):1685-1778.

Klein, D.J. (2006) Paying Eliza: Comity, Contracts, and Critical Race Theory or 19th Century Choice of Law Doctrine and the Validation of Antebellum Contracts for the Purchase and Sale of Human Beings. *National Black Law Journal*. 20:1-89.

Mulcahy, L. and Wheeler, S. (2005) *Feminist Perspectives on Contract Law*. London: Glass House.

Mulcahy, L. and Andrews, C. (2010) *'Baird textile holdings v Marks and Spencer PLC Judgment'* in Hunter, R., McGlynn, C. and Rackley, E. (eds.) (2010) *Feminist Judgments: From Theory to Practice*. Oxford: Hart. 189-204.

Stanley, A. D. (1998) *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation*. Cambridge University Press.

Stychin, C.F. (2007) 'De-meaning of Contract' in Munro, V. and Stychin, C. F. (eds.) (2007) *Sexuality and the Law: Feminist Engagements*. Abingdon: Routledge-Cavendish.

Williams, P. J. (1991) *The Alchemy of Race and Rights*. Harvard University Press.

Williams, P.J. (2000) 'Keynote Address at the National Conference on Racism' in the National Conference on Racism Final Report.

Young, C. (2013) *Subject to Contract*. Zürich: JRP Ringier & the Migros Museum of Contemporary Art.

"Highlighting the links between property, inequality and colonisation enables them [students] to understand the effects of the law, who it benefits, who made it, and how we have inherited it and internalized it as fair/just"

Survey participant

Property law

English property law is often confined to black letter law topics such as easements and covenants in Land Law or formalities of a trust in Equity & Trusts focusing on preparing students who want to practice law. However, there is significant scope for teaching through a historical lens and socio-economic context that places all aspects of property law in its global and colonial context. This also offers an opportunity to draw from more recent Commonwealth jurisdiction case law which can often explain English law key concepts more accessibly for all students. It also enables us to make the connections between English law and its continued impact through race and empire including on us as individuals. Are you aware that if you have been a UK tax payer up until 2015 you have been contributing to the reparations that the British state has been paying slave owners since the Zong case. Similarly, the French state had been taking 'compensation' from Haiti for its independence with devastating consequences.

Topics/Barriers	Questions to consider	Pointers
Textbooks tend to give 'the classic analysis of property from Locke, Blackstone etc onwards, focusing on the development of exclusionary property 'rights' and interests revolving around private ownership predominantly of land. This classic view of what property is can be alienating to a diverse student body for whom it is irrelevant to their everyday interactions and experiences of 'property'. A comparative view with Commonwealth cases discussing claims from different settler colonies such as Australia and Canada and their ongoing implications are too often absent.	In this classic formulation whose property rights/interests are foregrounded and whose are left absent? What are the different ways that property can be understood? What would a broader analysis of property rights and interests involve including the different issues resulting from a discussion tenure as a key concept? Eg Do you reflect on housing affordability as one kind of lived problem resulting from the neo-liberalisation of land in post-Empire Britain or remark on how it has become a commodity in a way that it wasn't before?	Discussing what constitutes property and why it matters and to whom enables you to historically situate the classic concept of property/ownership incl. from the colonial past as just one possible story or narrative (see Rose, 1990). Contrast a Lockean view of property rights with the extinguishing of 'native title' in Australia where indigenous lands were appropriated through the 'legal' process of a British government declaring sovereignty over what they referred to as "terra nullius" or empty lands. Use the essay The Brass Ring and the Deep Blue Sea (some parables about learning to think like a lawyer) by Patricia Williams (1991) to think about what property is constituted as, by who and their positionalities. See case study below and check out: UVic Indigenous Law Research Unit ILRU

Topics/Barriers	Questions to consider	Pointers
In the context of eg working out a co-ownership dispute, the idea of ownership itself is often left unexplored. What is it that one can actually own in common law? It's not the land itself, but historically it's an estate which is a slice of time in the land at the pleasure of the king. This is not necessarily essential to know as a practitioner and so practice oriented textbooks may deal with that in a page in the introduction but its legacies can be significant for some more marginalised communities than others.	How did modern ownership of land/territory come about? In what ways is property a racialised subject for students? See Intro to Alchemy of Race & Rights (1991) where Professor Patricia Williams discusses the differences in experiences looking for accommodation between herself as a black woman and her colleague, a white male.	Discuss the ways in which the legacies of empire have resulted in making land into liquid assets as part of the process of imposing colonial control over other territories (see case study). Now it's happening here including through gentrification of poor/migrant urban areas and that's having a whole range of effects. Play this clip to your students and discuss the range of issues that arise within property law: LOWKEY ft. MAI KHALIL – GHOSTS OF GRENFELL (OFFICIAL MUSIC VIDEO)
Students rarely explicitly learn about the process of wealth accumulation of former European colonial powers through land appropriation and 'use' of humans to produce goods and services from the transatlantic slave trade to the arrival of the Windrush. The legacies of this period have entrenched systemic racism resulting in lack of citizenship rights including poor housing; difficulties renting; homelessness.	What are the 'things' – or what Patricia Williams calls the 'objects of property' – that can be owned other than land/houses? How might these histories influence what happens to statues of former slave owners such as Colston in Bristol during the June 2019 Black Lives Matter movement protests?	Teach about ownership of people through slavery and make the links to its legacies including through indentured labour in contemporary economies. The Colonial Logic of Grenfell Read: On Being the Object of Property in The Alchemy of Race and Rights (Williams,1991; 216-238). Read (Snorton, 2017) on 19th century accounts of Black trans people and notions of ownership and sovereignty.

Case Study: Tenure and Native Title cases

It is helpful to take a comparative view eg from Commonwealth case law to explore the spectrum of property interests such as those of indigenous peoples. Teaching the **doctrine of tenure** or exploring the legal basis of title through native title cases in settler colonies, such as the *Mabo* or *Wik* cases from Australia is useful for explaining the impact that English/British colonialism has had across the world by effectively exporting the historical feudal system of land ownership by the ruling class being spread through colonialism.

"In key Australian native title cases like *Mabo* the Australian judges' discussion of English land law is concise in explaining how the English feudal system is imported onto a landmass that was stolen for a long time, and for indigenous people still stolen, but now dealt with differently by the law, but only much more recently. These judges are not necessarily being 'critical' per se, yet they introduce key property law concepts such as tenure and that commentary is often easier to grasp than from English cases. This is because the judges have had to explain the concept (tenure, title etc.) in a contemporary context whilst looking back at its formation in a colonial context. From there you can discuss cases like *Mabo* and put them in conversation with Locke's classical ideas on property to critically examine the legal basis of title and what constitutes tenure as the legal basis on which people can be in a place." (Interviewee)

Cases

Mabo v Queensland (No 2) [1992] HCA 23, (1992) 175 CLR 1 (3 June 1992).

Wik Peoples v The State of Queensland [1996] HCA 40, (1996) 187 CLR 1 (23 December 1996).

Documentry Mabo – The Native Title Revolution (1997)

See also an accessible discussion of land rights in

Australia and Canada in Clarke (2020).

"I will often say to them, like, isn't this bizarre? You know, if you are struggling with this, it's because it's a bizarre concept. And if you're thinking that this case says this when you just told us the principle is the opposite, you are correct. Telling them about the contradictions and tensions is important so that they don't feel stupid."

Interviewee

Equity & Trusts

Topics/Barriers	Questions to consider	Pointers
Genealogy of the trusts are often perceived and conveyed as a singularly English law concept.	Where did the trust come from? Who benefits from trusts and how do they impact or protect wealth accumulation?	When teaching about the origins of equity and trusts law discuss the Shariah law notion of the *waqf* (see Gaudiosi 1988) and use examples of Muslim charitable work, aid relief etc.
Charities law is often taught with little reference to its role in accumulating wealth from slavery and empire.	How have charities been integral to wealth accumulation and preservation that fund higher education institutions such as Oxford and Cambridge Colleges and scholarships as well as others?	Use case studies from various universities including Cambridge and Glasgow to unpack their specific legacies of slavery and empire including through the use of charitable and non-charitable trusts. See also: Legacies of British Slave Ownership Project.
The legal existence of fiduciary duties has been used in the context of settler colonial societies to both appropriate indigenous land and to continue to exert power to 'manage' it where any beneficial interests of pre-existing indigenous people's land rights are recognised.	What are the power issues that can remain hidden within the language of fiduciary duties and relationships? How is it exercised and does it lead to fair outcomes like compensation for appropriation of land?	Read Justice Toohey's dissenting judgment in the Mabo case and watch: https://www.abc.net.au/4corners/judgement-day/4003760

Resources

Bhandar, B. (2018) *Colonial lives of Property: Law, Land, and Racial Regimes of Ownership*. Durham: Duke University Press.

Clarke, A. (2020). *Principles of Property Law*. Cambridge University Press.

Gaudiosi, M. M. (1988) The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College. *University of Pennsylvania Law Review*. 136(4):1231-1261.

Harris. C. (1993) Whiteness as Property. *Harvard Law Review*. 106(8):1709-1790.

Keenan, S. (2017). Smoke, Curtains and Mirrors: The Production of Race Through Time and Title Registration. *Law and Critique*. 28:87-108.

Rose, C. (1990). Property as Storytelling: Perspectives from Game Theory, Narrative Theory and Feminist Theory. *Yale Journal of Law & Humanities*. 2:37-57.

Snorton, C. R. (2017) *Black on Both Sides: A Racial History of Trans Identity*. Minneapolis: University of Minnesota Press.

Verso Books. (2020) The Colonial Logic of Grenfell

Watson, I. (2002). Buried Alive. *Law and Critique*. 13:253-269.

Williams, P. J. (1991) *The Alchemy of Race and Rights. The Diary of a Law Professor*. Harvard University Press.

Survey questions

Embracing and reflecting BME diversity in law school curricula: Why and how?

1 Which of the following modules do you teach/convene or have you taught/convened in the past?
- Public Law
- Criminal Law
- Tort Law
- Contract Law
- Property: Land Law
- Property: Equity & Trusts
- European Union Law
- Please list any other modules you convene/teach or have convened/taught in the past.

2 What does 'decolonising the curriculum' mean to you?

3 What does an inclusive curriculum mean to you, if different from the above?

4 Which of the following initiatives might be important as part of a university legal education for EITHER an inclusive or decolonising curriculum? Please give reasons for your answer
- Inclusive curriculum
- Decolonising the curriculum
- Improve 'good degree' attainment (1st or 2.1) – please specify
- Employability
- Student belonging – please specify
- Commitment to equality/social justice – please specify
- Other – please specify

5 How do you think you teach an inclusive and/or decolonising curriculum in your law modules, if different from your answer(s) in Q2 and 3 above? If you teach more than one module, please specify which module(s) you are referring to in your answers.
- Inclusion of specific topics – please specify
- Readings – please specify
- Cases – please specify
- Other pedagogic tools eg 'decolonising the curriculum' – please specify
- In classroom practices/teaching methods – please specify
- Other roles such as tutor etc – please specify
- I don't

6 Have you attended any of the following training? Please specify to what extent you found them helpful.
- Unconscious Bias
- Cultural Competence
- Equality and Diversity
- Building the Anti-Racist Classroom or Anti-Racism training – please specify
- PGCTHE modules – please specify
- Other
- None of the above

7 Do you work with students to co-produce any of the following in your teaching/modules?
If so please explain how?

8 If you haven't yet taken any steps towards an inclusive and/or decolonising curriculum are you open to doing so?
- Inclusive Curriculum
- Decolonising Curriculum
- Definitely yes
- Probably yes
- Probably not – please explain why
- Definitely not – please explain why

9 Have you experienced any barriers in making changes to decolonise your curriculum? For example, as a result of:
- Lack of expertise/resources and/or training – please specify
- Module Convenor(s) or other (teaching) staff – please specify
- Insufficient time/heavy workload
- Lack of student interest or engagement – please specify
- Other – please specify
- Not applicable

10 What help would you require to provide a more inclusive and/or decolonised curriculum?
Inclusive Curriculum
Decolonising Curriculum
- Training – please specify
- Best Practice resources or toolkit – please specify
- Network of Law Teachers working on inclusive/decolonising curriculum
- Other – please specify
- Not Applicable

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Dr Suhraiya Jivraj
Reader in Law & Social Justice
Kent Law School, University of Kent
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