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Inequity and distrust: imagining the anti-racist law school

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ABSTRACT

Research on the experience of Black law students is hampered by a lack of trust in the legal academy by people of colour. Staff and students of colour have put emotional energy into responding to universities' requests for feedback only for their views to be misrepresented or ignored; leading to an intergenerational distrust and therefore disengagement. This makes it difficult for law teachers to gain insight into how to decolonise the experiences of their students, leading to clumsy attempts that fail to recognise the vulnerability we demand of students. We give our law students assessments that require them to open themselves up to being judged, often including reflective exercises that reward students who expose their authentic (White) selves. We expect students to trust our assessment practices, despite there still being a considerable Black awarding gap. Black students are the least likely group to submit work - the response of law schools is to encourage Black students to submit, without addressing the underlying lack of trust. This deficit approach is inappropriate. It is our responsibility as legal educators to build trust and maintain it. This paper concludes by imagining an anti-racist law school, that deserves the trust of its Black students.

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1. Introduction

There is a danger that when we discuss whiteness, we create a false binary of White and "other". This "other" is a wonderfully diverse group that we often homogenise and then seek terms to describe, tying ourselves in knots over whether BAME (Black, Asian and Minority Ethnic) is more offensive than BIPOC (Black, Indigenous and People of Colour), or whether terms like GEM (Global Ethnic Majority) are sufficiently positive to mask offence. The problem is not with the terminology, it is with a white-centred reality. A reality that centres whiteness and others everyone else and needs a language of binary identities to sustain and perpetuate itself, as Michael Apple notes: "Race as a category is usually applied to 'non-white' peoples. White people are usually not seen and named. They are centered as the human norm. 'Others' are raced; 'we' are just people".¹

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¹Michael Apple, "The Absent Presence of Race in Educational Reform" (1999) 2 Race Ethnicity and Education 9, 13–14.

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Non-racism is passive in response to this centring of whiteness: while non-racism challenges overt forms of racism it reinforces structures that perpetuate passive forms of institutional and structural racism. LaGarrett King and Prentice Chandler describe non-racism in the context of education as follows: “non-racist or non-racism refers to a passive rejection, opposition and disassociation from behaviors, discourse, and ideology that are considered racist. Non-racist frameworks define racism as extreme, overt, highly visible behavior that consists of irrational and independent actions of individuals ...”.² UK higher education has made serious attempts to embrace non-racism, decrying explicit racism through anti-bullying and harassment policies;³ despite this Black students and staff regularly experience anti-Black racism.⁴ The “Living Black at University” report found that: “More than half of Black students surveyed reported having been the victim of racism in their accommodation and 64% of all student respondents reported having witnessed acts of racism. Not all of these incidents were from fellow students; some were from staff”.⁵ Racism is, according to critical race theory, endemic, and liberal responses that could be characterised as non-racist perpetuate this.⁶ Anti-racism is a different project: “Non-racism and anti-racism have fundamentally different goals and practices premised on radically different understandings of race and racism ...”.⁷ If English law schools are not going to be sites of violence for Black law students then they need to move from non-racist to anti-racist praxis, decentring whiteness and disrupting neoliberal notions that objectivity and meritocracy will achieve substantive equality. Mica Pollock advocates four basic principles for anti-racist education: “rejecting false notions of human difference, acknowledging lived experiences shaped along racial lines, learning from diverse forms of knowledge and experiences, and challenging systems of racial inequality”.⁸ In this paper I advocate anti-racist legal education framed within the principles advanced by Pollock.

Anti-racist legal education, I argue later in this paper, requires us to recognise our own positionality, including our unique privileges and oppressions. This recognition should be explicit and therefore it is important for me to acknowledge my positionality and its inherent privileges and oppressions here. I am a White, heterosexual, cisgender male. I was first in my family to complete A-levels and go on to university, I graduated with a law degree before remaining at university for an MPhil and now have a doctorate. I am a husband and a father. I am of working-class heritage, although as an Associate Professor married to a professional, I have clearly benefitted from social mobility. I am a citizen of the country where I live and a member of the majority racial group. This is the position from which I experience the world, and from which I write.

²LaGarrett J King and Prentice T Chandler, “From Non-racism to Anti-racism in Social Studies Teacher Education: Social Studies and Racial Pedagogical Content Knowledge” in Alicia R Crowe and Alexandra Cuenca (eds), *Rethinking Social Studies Teacher Education in the Twenty-First Century* (Springer 2016) 6.

³Universities UK, “Closing the Gap: Three Years On” (2023) <www.universitiesuk.ac.uk/what-we-do/policy-and-research/publications/closing-gap-three-years> accessed 19 April 2023.

⁴ibid.

⁵Olorunteleola Cartwright, Nick Cartwright and Osaro Ootobo, “Living Black at University Summary Report” (Unite Students 2022) 12.

⁶David Gillborn, “Critical Race Theory and Education: Racism and Anti-Racism in Educational Theory and Praxis” (2006) 27 *Discourse Studies in the Cultural Politics of Education* 11.

⁷King and Chandler (n 2) 6.

⁸Mica Pollock, *Everyday Anti-Racism: Getting Real about Race in School* (The New Press 2008) xx.

There is a common White experience: it is an experience of being centred and privileged, but other than experiencing the absence of this centring and privilege there is no common “other” experience. Even to talk of a common Black experience is to oversimplify and homogenise; before we even consider the complexities of intersectional identities, it is necessary to recognise that the Black British experience differs from that of Black international students and staff, that Africa is not a single culture nor the Caribbean one nation. Intersectionality is defined thus:

... the go-to metaphor and theory for understanding the complexity of interaction between multiple forms of disadvantage based on race, colour, ethnicity, religion, caste, sex, gender, sexual orientation, disability, age etc.⁹

There are though commonalities to the experiences of Black people – distinct from other ethnicities – that mean there is sense in talking about a Black experience (while recognising the limitations). Black people are seen as Black before they are seen as British or migrant¹⁰ – in fact far too often the former masks the latter leading to “but where are you *really* from?”. There is, I believe, an experience that would be recognised by many people who identify, or are seen, as Black and that they would relate to their blackness. This is what I am referencing when I talk of the Black experience.

When the term “Black” is used in this paper it is being used as defined in the “Living Black at University” report:

This research focuses on the experiences of Black students, to avoid the homogenisation of non-White groups, which can hide significant differences between the experiences of those from different ethnicities. For the purposes of this research, the term “Black” is used to include all those who are racialised as “Black”, whether home/EU or international students.¹¹

The Black experience is the focus of this paper. That is not to denigrate other experiences or deny experiences of racism outside Black communities. It is a conscious effort to decentre whiteness by refusing to accept a binary reality of White and “other” that perpetuates the inequity this paper aims to disrupt.

This paper looks at undergraduate legal education, focusing on learning, teaching and assessment, yet it also considers the complete student experience and the complexity of living Black in law school. While decolonising the law curriculum – a term I use for ease of conveying meaning and one I do not use uncritically – has received a lot of attention,¹² other areas of university life have not received as much attention,¹³ yet the two are complementary. We cannot expect legal education to be a liberatory experience for Black students if we expose them to a diversified reading list but do so within a white space in which they experience anti-Black racism.¹⁴ This paper does not cover every facet of living Black at law school, nor does it intend to. It builds on the important

⁹Shreya Atrey, ‘Intersectional Discrimination’ (2019, OUP) 1.

¹⁰Nick Cartwright and ‘Teleola Cartwright, “Why is it My Problem If They Don’t Take Part?’ The (Non)Role of White Academics in Decolonising the Law School” (2020) 54 The Law Teacher 532.

¹¹Cartwright, Cartwright and Otobo (n 5) 14.

¹²For example see the Law Teacher special issue on Decolonising the Law School: (2020) 54(4) The Law Teacher.

¹³Universities UK, *Tackling Racial Harassment in Higher Education* (2020) <www.universitiesuk.ac.uk/what-we-do/policy-and-research/publications/tackling-racial-harassment-higher-0> accessed 19 March 2023.

¹⁴Cartwright, Cartwright and Otobo (n 5).

work of universities UK,¹⁵ AdvanceHE,¹⁶ the Living Black at University Commission,¹⁷ and many academics,¹⁸ furthering the conversation. However, the anti-racist law school is a vision that can only be realised through constant vigilance from all of us – those who experience racism and their allies. This paper poses the challenge of whether imagining the anti-racist law school is even a possibility. I do this by first outlining the inequity of experience of Black law students and evaluating the responses of the legal academic to this inequity, responses I argue are inadequate. I argue that this has led to a justifiable distrust of the legal academy by Black students and that this can lead to a reticence to subject themselves to our judgement – a necessary part of the assessment process. I further consider how the focus on reflection in assessment in many law curricula exacerbates this. I conclude by arguing that the best way we can rebuild trust is to be truly anti-racist, while questioning whether an anti-racist law school is even possible.

2. Inequity

Higher education is an unequal experience for law students. This may begin with differing aspirations, because of the lack of diverse role models within the more visible positions of the senior judiciary. We know there is inequality within the admissions system and that this is worse for students applying to “elite” universities. While it is true that Black students enjoyed biggest rise in entry rates to higher education between 2006 and 2020, up from 21.6% to 47.5%,¹⁹ the opportunities are not equally distributed. While 10.9% of the general student population progress to “higher-tariff” institutions, this drops to just 5% for Black Caribbean students.²⁰ Both the study of law and the law itself can be fairly criticised for being colonised:²¹ that is they centre White perspectives and White voices.²² The data tells us that at most institutions retention and progression are racialised and that there is an awarding gap to the detriment of Black and mixed-race students.²³ The data also tells us that those students that survive the leaky pipeline and graduate are less likely to progress to level seven or eight study. Level seven study is Master’s level, while level eight study is doctorate level. On average they will also earn less if they are Black.²⁴ The “Living Black at University” report tells us that Black students

¹⁵Universities UK (n 13); Universities UK, *Black, Asian and Minority Ethnic Student Attainment at UK Universities: Closing the Gap* (2019) <www.universitiesuk.ac.uk/what-we-do/policy-and-research/publications/black-asian-and-minority-ethnic-student> accessed 21 February 2023; Universities UK (n 3).

¹⁶Kalwant Bhopal, “Race Matters: Addressing Competing Inequalities in Higher Education” in Hugo Dale-Rivas (ed), *The White Elephant in the Room: Ideas for Reducing Racial Inequalities in Higher Education* (HEPI 2019).

¹⁷Cartwright, Cartwright and Otobo (n 5).

¹⁸For example see: Foluke Adebisi, *Decolonisation and Legal Knowledge* (University of Bristol Press 2023); and Foluke Adebisi and Katie Bale, “Reinventing Possibility: A Reflection on Law, Race and Decolonial Discourse in Legal Education” in Rachel A Dunn, Paul Maharg and Victoria Roper (eds), *What is Legal Education for? Reassessing the Purpose of Early Twenty-First Century Learning and Law Schools* (Routledge 2020).

¹⁹Department for Education, “Entry Rates into Higher Education” (16 February 2021) <www.ethnicity-facts-figures.service.gov.uk/education-skills-and-training/higher-education/entry-rates-into-higher-education/latest> accessed 15 April 2023.

²⁰Department for Education, “Widening Participation in Higher Education” (14 October 2021) <www.gov.uk/government/statistics/widening-participation-in-higher-education-2021> accessed 15 April 2023.

²¹Foluke Adebisi, “Editorial: Decolonising the Law School: Presences, Absences, Silences . . . and Hope” (2020) 54 *The Law Teacher* 471.

²²Jason Arday and Heidi Safia Mirza (eds), *Dismantling Race in Higher Education: Racism, Whiteness and Decolonising the Academy* (Palgrave Macmillan 2018).

²³Universities UK (n 3).

²⁴Bhopal (n 16).

are less likely to have a positive experience of purpose-built student accommodation, student support and mental health counselling services. They are less likely to be able to access culturally relevant products and services and they will do this in spaces they perceive of as White, sometimes with overt links to chattel slavery, and in institutions that lack diversity of staff. The depth of this inequity of experience continues through campus policing, academic integrity, disciplinary action, microaggressions, overt racism: “Black students still face a discriminatory and hostile racial climate on campus, both implicitly and institutionally”.²⁵ Further, we must not forget that many of these students suffer further disadvantage because of their intersectional identities.

3. The legal academy's response to this inequity

We, the legal academy, have not always responded appropriately to this inequity. When we first became aware of awarding gaps we used the deficit language of attainment gaps, effectively blaming Black students for being victims of a system that failed to reward them with so-called “good degrees”. Daniel Solórzano and Tara Yosso describe this as: “the dominant ideology, which supports deficit notions about students of color while assuming ‘neutrality’ and ‘objectivity’”.²⁶ There are many examples of deficit model interventions that focused on, for example, resilience building and well-being²⁷ alongside providing additional support for minoritised students.²⁸ My own research illustrates that as a sector we are colour-blind and have explained away racial disparities by another characteristic.²⁹ This mirrors the methodologically weak approach of the Sewell report³⁰ which sought either to explain racial disparities by reference to another characteristic or to categorise them as unexplained.³¹ There was no space within the methodological framework to identify a disparity as caused by race; unsurprisingly the report therefore identified no racial disparities.

As a sector we have been poor at collecting and analysing data.³² Much of the data on awarding gaps conflates all non-White ethnic groups, describing them as BAME,³³ which means that the more positive outcomes for some ethnic groups mask the less positive outcomes for others, obscuring the scale of the problem particularly for Black

²⁵Carl James, Remi Joseph-Salisbury and Amoaba Gooden, “Differences, Contradictions and Racial Reckoning in Higher Education in the United Kingdom, Canada, and the United States” (2022) 38 *Interdisciplinary Humanities* 94, 106.

²⁶Daniel G Solórzano and Tara J Yosso, “Critical Race Methodology: Counter-Storytelling as an Analytical Framework for Education Research” (2002) 8 *Qualitative Inquiry* 23, 23.

²⁷For example see: Jane White, “Evidence Summary: Reducing the Attainment Gap: The Role of Health and Wellbeing Interventions in Schools” (NHS Health Scotland 2017).

²⁸For critical discussion see: DRE Cotton and others, “Understanding the Gender and Ethnicity Attainment Gap in UK Higher Education” (2016) 53 *Innovations in Education and Teaching International* 475.

²⁹Nick Cartwright, “Dominance and Subordination: A Case Study of Race, Identity and Pedagogy in Higher Education” (PhD thesis, University of Northampton 2021) 172–74 <<https://pure.northampton.ac.uk/en/studentTheses/dominance-and-subordination-a-case-study-of-race-identity-and-ped>> accessed 19 April 2024.

³⁰Tony Sewell and others, “Commission on Race and Ethnic Disparities: The Report” (March 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974507/20210331_-_CRED_Report_-_FINAL_-_Web_Accessible.pdf> accessed 17 April 2023.

³¹Andrew Pilkington, “Changing the Narrative on Race and Racism: The Sewell Report and Culture Wars in the UK” (2021) 11 *Advances in Applied Sociology* 384.

³²Nick Cartwright, “If We Stop Looking at Race Inequality, Will it Just Go Away?” (*WonkHE*, March 2022) <<https://wonkhe.com/blogs/if-we-stop-looking-at-race-inequality-will-it-just-go-away/>> accessed 1 September 2023.

³³For example, see: Fatmata Daramy and others, “Co-creating with BAME Students in Legal Education” (2021) 23 (3) *Widening Participation and Lifelong Learning* 80.

students of Caribbean descent.³⁴ For at least two decades government departments and much of the right-wing media have peddled the myth that working-class White boys do less well in education, in spite of the multiple admissions within their own research that the outcomes for other ethnic groups are comparable or worse: “In academic results, FSM [free school meals]-eligible boys from mixed White and Black Caribbean, and Black Caribbean backgrounds, sometimes achieve similar or lower scores to FSM-eligible boys from White British backgrounds”.³⁵ My own research involved sending FOI (freedom of information) requests to 132 UK higher education institutions (HEIs) asking which of their students had faced disciplinary action and for this to be broken down by ethnicity. The responses were that: “83% of the higher education institutions asked ... were unable or unwilling to provide any ethnicity data relating to student experiences of disciplinary action, and of the 17% that were much of this data was of limited utility”.³⁶

There is at the heart of the issue of data an inconsistency. Where data clearly shows an inequality of outcome powerholders demand further evidence before action can be taken, simultaneously failing to require that meaningful data is collected and analysed. This protection of the status quo which upholds inequitable power structures demonstrates the “sheer weight of whiteness”³⁷ in preserving itself – a golden thread throughout this paper.

There are examples of law schools, and the institutions within which they exist, acknowledging the problem and responding to it. Many HEIs put black squares on their public twitter profiles after the racist murder of George Floyd and have engaged in other performative gestures.³⁸ Other HEIs have asked student Afro-Caribbean societies to put on events for Black History Month and recruited Black representatives, unpaid, to speak for all racially minoritised people and peoples. Jessica Agboola explained this as follows: “the work that we are doing is the work that universities should be doing, we are creating our own safety nets. It is additional labour to the educational career we have invested in”.³⁹ This has not only an economic but also an emotional cost: “The impact of this imbalance was manifested in the emotional labour required to present lived experiences in a professional context in such a way as to bridge the gap between knowledge and the emotional resonance of the narrative being curated”.⁴⁰ Putting emotional labour on the already oppressed or expecting someone to speak for everyone who looks like them are inappropriate responses. The labour is sometimes put on those of us with privilege: for example I have been invited to be on several “task and finish groups” at different HEIs, although I am unclear as to what the task was or what finishing could possibly look like.

³⁴ John Hills and others, “An Anatomy of Economic Inequality in the UK: Report of the National Equality Panel” (Government Equalities Office 2010) 73.

³⁵ Social Mobility Commission, “The Forgotten: How White Working-Class Pupils have been Let Down, and How to Change It” (2022) para 20 <<https://publications.parliament.uk/pa/cm5802/cmselect/cmeduc/85/8504.htm>>.

³⁶ Nick Cartwright, “If We Stop Looking at Race Inequality, Will it Just Go Away?” (*WonkHE*, March 2022) <<https://wonkhe.com/blogs/if-we-stop-looking-at-race-inequality-will-it-just-go-away/>> accessed 20 June 2023.

³⁷ Andrew Pilkington, “The Sheer Weight of Whiteness in the Academy: A UK Case Study” in Richard Race and Vini Lander (eds), *Advancing Race and Ethnicity in Education* (Palgrave Macmillan 2014).

³⁸ Osaro Ootobo, “UK Universities’ Responses to Black Lives Matter” (Halpin 2020) <<https://halpinpartnership.com/wp-content/uploads/2020/11/halpin-report-uk-universities-response-to-black-lives-matter.pdf>>.

³⁹ Cited in *ibid*, 22.

⁴⁰ Rachael Minott, “The Past Is Now” (2019) 33 *Third Text* 559, 571.

It is clear that we have done too little to disrupt whiteness or centre blackness. More concerning are the academics who are using their privilege and power to re-centre whiteness, particularly in equality, diversity and inclusion (EDI) discourses.

4. Re-centring whiteness

Poverty is a huge driver of inequality in almost every aspect of public life.⁴¹ Classism persists across the higher education sector and is especially pernicious within our most elite universities: “Throughout our research, we identified patterns of inequality around race and class that often appeared well-understood as unacceptable features of elite university life”.⁴² Intergenerational experience of higher education is a privilege that advantages many students.⁴³ All this is undeniably true, yet to treat poverty and working-class heritage as synonyms and to imbue both with whiteness produces a simple soundbite that only serves the interests of those who wish to re-centre whiteness.

On 22 June 2022 the government’s Social Mobility Commission published a report on educational attainment⁴⁴ with the headline on the report’s launch page reading: “‘Forgotten’ White working-class pupils let down by decades of neglect, MPs say”. That the poorest in society have been neglected and that this has had a negative impact upon educational outcomes is uncontroversial; however, to exaggerate this to a claim that describes the educational experience of the White working class is dishonest and dangerous. The full title of the report, “The Forgotten: How White Working-Class Pupils Have Been Let Down, and How to Change It” goes further, making the preposterous claim that whiteness and working-class identities had been not merely neglected, but forgotten. The impact of this myth on primary and secondary education has meant that focused interventions have been scrapped and for most pupils educational outcomes have not improved for nearly a decade.⁴⁵ While the Widening Participation agenda and Access and Participation Plans (APPs) have meant universities have focused on students from “non-traditional backgrounds” and areas of deprivation, in a more nuanced way, White working-class identities are being centred in the EDI work of many HEIs. It has been argued that APPs could be better used to advance race equality:

The EHRC has already recommended that government explores providing the OfS with the regulatory framework to assess whether higher education providers “have taken sufficient steps to tackle harassment” and “to impose conditions of funding or registration where this is not the case.” Perhaps a future iteration of the APPs should include specific measures on racial harassment.⁴⁶

This de-centring of blackness within EDI work will undo any marginal gains that Black students and staff have enjoyed in the brief period when blackness was more central to

⁴¹George E Halkos and Panagiotis-Stavros C Aslanidis, “Causes and Measures of Poverty, Inequality, and Social Exclusion: A Review” (2023) 11 *Economies*, Article 110.

⁴²Kalwant Bhopal and Martin Myers, *Elite Universities and the Making of Privilege: Exploring Race and Class in Global Educational Inequalities* (Routledge 2023) 122.

⁴³Hoff A., “Intergenerational learning as an adaptation strategy in aging knowledge societies. in Education Employment Europe (ed), *European Commission* (2007) 126–129. Europe Warsaw: National Contact Point for Research Programs of the European Union.

⁴⁴Social Mobility Commission (n 35).

⁴⁵Joss Hands, “The Pedagogy of the Distressed: Truth-Twisters and Toxification of Higher Education” in Tina Sikka, Gareth Longstaff and Steve Walls (eds), *Disrupted Knowledge* (Brill 2023) 78.

⁴⁶David Mba, “After a Decade of Discussion Progress on Anti-Racism in Higher Education is Still Too Slow” (*WonkHE*, 23 April 2021) <<https://wonkhe.com/blogs/after-a-decade-of-discussion-progress-on-anti-racism-in-he-is-still-too-slow/>> accessed 20 May 2023.

EDI work⁴⁷ and ultimately lead to HEIs sustaining and perpetuating the institutional racism that defines much of the Black student (and staff) experience of legal education.

Whiteness was never forgotten, in fact it was centred, and those experiencing extreme poverty have been let down not by being forgotten but through conscious efforts to centre White to justify austerity politics. Whiteness was normalised to the point where its presence was not jarring; whiteness was therefore only visible to most in the presence of the “other”, namely blackness. We forgot whiteness no more than we forgot how to breathe, but like breathing we only notice it when its centrality and normality are disrupted.

We forget to breathe but continue to do so; were we to neglect to breathe – a conscious choice – then problems would ensue. Similarly, the state has not forgotten that poor people exist within its borders; rather it has made a conscious choice to neglect to support them.

Ahmed⁴⁸ describes the associations that some words have with objects, images and emotions as “sticky”: “In Ahmed’s schema, objects become sticky because they are saturated with affect. Affect is the glue that sticks, sustains, or preserves the connection between ideas, words, emotions and objects”.⁴⁹ Ideas such as poverty become stuck to words like working-class and images of whiteness which conjure feelings of connectedness and familiarity for the majority who identify as white and of working-class heritage. This is used by some in the media to take data which shows a relationship between extreme poverty and poor educational outcomes and spin it into headlines about White working-class boys.

The measure of poverty used by the Department for Education (DfE) in the statistics which are relied on to justify the myth of working-class White boys is entitlement to FSM; this consistently represents around 14% of the UK’s White British population, yet the numbers who self-identify as working-class are disputed. The British Social Attitudes Survey says that: “60% say they are working class, compared with 40% who say they are middle class. This proportion who consider themselves working class has not changed since 1983”.⁵⁰ The Social Mobility Commission found: “Nearly half of all Brits (49%) consider themselves working class”.⁵¹ This shows that at least 49% of the population identify as working class, and of course many more would identify as of working-class heritage. What this misdescription of the data does is take a characteristic about extreme poverty and represent it in a manner that describes the majority, or at least a very significant minority. While boys do less well than girls in all levels of schooling these gaps persist across racial divides and within its own report the Social Mobility Commission admits this: “Evidence also highlighted that there are performance measures on which pupils from ethnic minorities, particularly FSM-eligible Black Caribbean pupils, perform similarly or less well than disadvantaged White pupils”,⁵² adding later: “In academic results, FSM-eligible boys

⁴⁷Otobo (n 38).

⁴⁸Sara Ahmed, *The Cultural Politics of Emotion* (2nd edn, Edinburgh University Press 2014) 11.

⁴⁹Maree Parry, Juliet Rogers and Nan Seuffert, “Perversion and Perpetuation in Female Genital Mutilation Law: The Unmaking of Women as Bearers of Law” (2020) 29 *Social and Legal Studies* 273, 275.

⁵⁰John Curtice and Rachel Ormston (eds), *The British Social Attitudes Survey* (NatCen Social Research 2015) <https://natcen.ac.uk/sites/default/files/2023-08/bsa32_keyfindings.pdf> accessed 19 April 2023.

⁵¹The Rt Hon Alan Milburn and others, *State of the Nation 2017* (Social Mobility Commission 2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/662744/State_of_the_Nation_2017_-_Social_Mobility_in_Great_Britain.pdf> accessed 23 April 2023.

⁵²Social Mobility Commission (n 35) para 20.

from mixed White and Black Caribbean, and Black Caribbean backgrounds, sometimes achieve similar or lower scores to FSM-eligible boys from White British backgrounds”.⁵³

Simply the claim that “White working class boys are the lowest performing group at the end of compulsory education”⁵⁴ is false. It is undeniably true that poverty is a driver of disadvantage and that being born into an economically deprived family is one of the biggest predictors of poor educational outcomes; however, poverty and class identity, although correlated, are not synonyms. It is also nearly twice as likely that you will be born into poverty if you are of Black or mixed-Black ancestry than if you’re White British.⁵⁵ Further, if you are born Black, regardless of your socio-economic status, you are less likely to be awarded the best grades at university and are likely to be paid less, after graduating than White colleagues⁵⁶ – this is not true for whiteness.

Poverty, measured by entitlement to FSM, is a race issue. While, according to the Social Mobility Commission, 14% of White British pupils are entitled to FSM, this doubles to 28% for both Mixed White/Black Caribbean pupils and for Black Caribbean pupils.⁵⁷ The racial disparities between who is in poverty are huge: just 7% of Chinese and Indian students are entitled to FSM while 56% of Irish Travellers are.⁵⁸ However, whiteness is less likely to correlate with poverty than for most ethnic groups, and blackness, which is the focus of this paper, almost doubles the likelihood of living in poverty. The least impoverished Black ethnic group is Black Africans with 24% entitled to FSM.⁵⁹

The EDI agenda for most of its existence has been dominated by whiteness and parts of the media and political classes have represented the disadvantage that comes with poverty as a disadvantage that comes at the intersection of whiteness and working-class heritage:

Although the academy is considered to be an arena where progressive views are fostered, we tend to overlook the performance, networks and power structures of White academics and their White hegemony on a profession that is often held up as steward for racial justice and social change ...⁶⁰

The effect of this is to diminish the different disadvantages that each come with poverty, class and race. While intersectionality makes a hugely important contribution to EDI discourse, when race intersects with other identities these other identities are often used to ignore or forgive the issues of race. In my own research I have interviewed members of university senior management teams who see the Black awarding gap as a class issue, racial disparities as related to special educational needs, or who explain racial inequalities as cultural differences around motivation and laziness.⁶¹

⁵³ibid para 30.

⁵⁴Sam Baars, Ellie Mulcahy and Eleanor Bernardes, ‘The underrepresentation of white working class boys in higher education: The role of widening participation’ LKMco 2016 [online] <<https://www.cfey.org/wp-content/uploads/2016/07/The-underrepresentation-of-white-working-class-boys-in-higher-education-baars-et-al-2016.pdf>> accessed 23 May 2024

⁵⁵“Schools, Pupils and Their Characteristics” <<https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics>> accessed 19 April 2023.

⁵⁶“Work and study after higher education” <www.ethnicity-facts-figures.service.gov.uk/education-skills-and-training/after-education/destinations-and-earnings-of-graduates-after-higher-education/latest> accessed 19 April 2023.

⁵⁷Milburn and others (n 51).

⁵⁸ibid.

⁵⁹ibid.

⁶⁰Kimberly A Bates and Eddy Ng, “Whiteness in Academia, Time to Listen, and Moving Beyond White Fragility” (2021) 40 Equality, Diversity and Inclusion 1.

⁶¹Cartwright (n 29) 172–74.

I grew up in a Britain where the equality agenda was dominated by feminism, born only three years after the Equal Pay Act 1970 entered into force, in 1975 entered into force and growing up in a world where men tended to work and women tended to raise children. This was a feminism that was about White women, predominantly middle-class White women, and while it is true that it failed to adequately acknowledge the experiences of women who identified as working class⁶² it was a form of feminism in which women of colour were completely invisible.⁶³ I was the first in my family to go to university. When I graduated from my degree my first role, while studying for my Master's, was as a research assistant to several professors who were part of the Centre for Gender Sexuality and the Law. Queer theory was in its infancy, and we were only starting to investigate the impact of intersectional identities, usually in the context of queer White women. For most of my life the EDI agenda focused on whiteness, and it was not until the racist murder of George Floyd that race, for a short period of time, became dominant within EDI discourses.

In this paper I argue that centring blackness was a short-lived event which, in the context of higher education, has already been displaced by discourses around the experiences of the White working class.

Currently we are witnessing within the ivory towers of higher education a rising discourse around the experiences of what are described as academics of working-class heritage.⁶⁴ Unchecked this risks recreating the disastrous refocusing of educational policy that followed from the wide acceptance of the myth that working-class White boys were being systemically disadvantaged based on data around pupils who were entitled to FSM. While there is a correlation between FSM entitlement and socio-economic class, it is not an accurate marker of working-class heritage. While it is arguable that a fixed definition of socio-economic class would be helpful here, there are also considerable merits to the argument that class identity, combining as it does an amorphous mix of factors, should be a matter for self-identification. It is certainly beyond the scope of this paper to explore these different stances, other than to note that even if it were desirable, a definition would be complex if not impossible.

This would be less of a problem if this myth was only peddled to raise the sales of the right-wing media; however, the impacts of this myth are much worse than that. By creating a group with which the majority identify, ie the White working class, and claiming that this group is the most disadvantaged, successive governments were able to justify the diminution and ultimately the disbanding of policies aimed at genuinely disadvantaged groups. The Education Maintenance Allowance (EMA) which supported students from genuinely impoverished backgrounds was abolished. The Disabled Students' Allowance (DSA) was abolished. Ring-fenced funding for racially minoritised groups was abolished. And we were told that we were "all in it together" by politicians who by dint of being privately educated were themselves excluded from the data. The impact of this is that if we look at the DfE's own data on educational outcomes we see the data has largely remained unchanged over the last decade;⁶⁵ if we then look at data

⁶²Natalie Csengeri, "Radical, Working-Class, Anti-Racist, Anti-Colonial Feminism" (2016) 72 *Socialist Lawyer* 16.

⁶³Chimamanda Ngozi Adichie, *We Should All Be Feminist* (Fourth Estate 2014).

⁶⁴Carole Binns, *Experiences of Academics from a Working-Class Heritage: Ghosts of Childhood Habitus* (Cambridge Scholars Publishing 2019).

⁶⁵Statistics at DfE <www.gov.uk/government/organisations/department-for-education/about/statistics> accessed 19 August 2023.

on what poor educational outcomes lead to later in life we see overrepresentation in the prison population,⁶⁶ lower life expectancy, and worse health outcomes.⁶⁷

I could honestly identify myself as an academic of working-class heritage, centring my own experiences as a White heterosexual male within EDI discourse, displacing disabled, Black, queer and women's voices. It is for these very reasons that I refuse to identify myself as of working-class heritage and claiming disadvantage because of my first in family status.

The sheer persistence of whiteness, patriarchy, heteronormativity and ableism have always meant that White straight men were going to continue to colonise all aspects of life, and the EDI agenda has proved no exception. In academia staff of colour, and particularly Black staff, have the worst outcomes in terms of probation, retention and progression and are overrepresented in disciplinary action.⁶⁸ The statistics are worse when blackness intersects with other protected characteristics, for example the appalling underrepresentation of Black women within the professoriate.⁶⁹ The recognition within EDI work, after the murder of George Floyd, that blackness was a dominant driver of disadvantage is being displaced and any modest gains achieved will be rowed back on unless we disrupt the connectedness of poverty and whiteness and centre blackness within EDI discourse.

5. Distrust

I am aware of how hard the female-led Black research team for the "Living Black at University" report⁷⁰ worked in researching and publishing that report; their experiences in trying to capture the voices of Black students chimed with my own research of the student experience.⁷¹ Black students and staff are reluctant to come forward and share their experiences, even in online surveys.

I am intentionally adopting an "us and them" narrative here, not because it is normatively correct but because it is the reality of the law schools in which we all coexist. They – Black students – know that the educational experience is unequal, that there is a culture of power that oppresses them. We – the legal academy – might not have always known this, or might have been better able to maintain the pretence of ignorance, but that is no longer true. We know we are the oppressor. They know that we know this, that there is inequity in higher education. They know that we could change things and have chosen avoidance or tokenism over action, have hidden behind structures and policies we pretend are immovable. They have seen us move the immovable when the global pandemic demanded it. They have been excluded, then patronised through deficit interventions (discussed above), then gaslit by policies and structures that do not believe them,⁷² and we have constantly demanded their trust,

⁶⁶"Prison Education: A Review of Reading Education in Prisons" (2022) <www.gov.uk/government/publications/prison-education-a-review-of-reading-education-in-prisons> accessed 19 May 2023.

⁶⁷Health Action Research Group, "The Role of Education in Reducing Health Inequalities" (2021) <www.healthactionresearch.org.uk/tackling-obesity/the-role-of-education/> accessed 19 May 2023.

⁶⁸Katy Sian, "Being Black in a White World: Understanding Racism in British Universities" (2017) 2 *Papeles Del Ceic: International Journal of Collective Identity Research*, papel 176.

⁶⁹Kalwant Bhopal and John Preston (eds), *Intersectionality and "Race" in Education* (Routledge 2011).

⁷⁰Cartwright, Cartwright and Ootob (n 5).

⁷¹Cartwright (n 29).

⁷²See note 69 above.

promised that things will be different this time. We, and they, have danced a less than merry dance that bears all the hallmarks of a multigenerational abusive relationship, and we feel we know that if they just trust us one more time we will really try our best to make it right this time – except now we are not just lying to them, we are lying to ourselves as well. We genuinely do not have any malice; we do not wish harm and we have never actively set out to harm anyone. We just like what we have, and we are not quite ready to accept fully that maintaining that necessitates maintaining a culture of power that feeds off racial oppression, so we literally fiddle while faces burn – this is a skit on fiddling while Rome burns.⁷³

I am therefore using the word *distrust*, as opposed to *mistrust*, intentionally. Mistrust is based on a feeling of unease, while distrust is based on informed judgement – the words have nuanced differences. We would, given the evidence, be naïve if we felt that our Black students merely mistrusted us. With very good reason they distrust us, and this is our fault.

The reasons for this lack of trust are obvious if we stop and reflect. Professor Andrew Pilkington's exciting recent work on the Sewell report exposes how the experiences of Black people are misrepresented to advance a narrative that damages their own interests,⁷⁴ while for decades our sector has both demonised and gaslit Black voices, presenting them as dangerous and at the same time dismissing them as "lunatic wokery". We have been made conscious of the oppression that law schools create for our Black students and we have done little beyond the performative.

The culture wars in which we are working have meant that Charter Marks look radical and allow us some space to feel like we are working progressively while doing little more than reaching minimum requirements.⁷⁵ Equality charters enable organisations to apply for awards that recognise their commitment to and advancement of equality, diversity and inclusion. The Race Equality Charter currently only has 101 members, between them they hold 41 Charter Mark awards, all bar one at bronze level.⁷⁶ Critical race theory tells us that racism is the normal and White powerholders are reflecting this, making non-racism feel like radical, hard work, and anti-racism a pipedream. If we in law schools fall into the trap of congratulating ourselves for our modest efforts in achieving Charter Marks, as if we are celebrating changing the world, then we will erode any remaining trust we have from our Black students. The problem with eroded trust is that we as a legal academy have embraced trust, embedding it in ideas of success and rewarding it in our high stakes assessments.

6. We assess on trust

We expect law students to expose themselves fully to a system that has consistently under-awarded Black students, opening themselves up to racialised violence. We then ask why Black students are less likely to seek our help, as Kate Coulson explores in her

⁷³The Romans called Black people αἰθω ὤψ – αἰθω (aithō, "burn") + ὤψ (ps, "face") - literally burnt faces, which became Aethiopem and later Ethiopia.

⁷⁴Andrew Pilkington, "Changing the Narrative on Race and Racism: The Sewell Report and Culture Wars in the UK" (2021) 11 *Advances in Applied Sociology* 384.

⁷⁵Teleola Cartwright and Nick Cartwright, "'Freedom Is Slavery, Ignorance Is Strength': A Response to Michelle Donelan and the Higher Education (Freedom of Speech) Bill" (Halpin 2022) <<https://halpinpartnership.com/a-response-to-michelle-donelan-and-the-higher-education-freedom-of-speech-bill/>> accessed 20 May 2023.

⁷⁶AdvanceHE, "Race Equality Charter Members" (2020) <www.advance-he.ac.uk/equality-charters/race-equality-charter/members> accessed 20 May 2023.

research, or why they are reluctant to submit work.⁷⁷ One of the reasons that Black students are more likely to fail modules in their law degrees is that they are less likely to submit their work than their peers.⁷⁸

We expect students to bring their own analysis to bear if they are to achieve the highest grades, we tell them to try their very best. We then require them to submit this work to us, for us to judge them on it. We use allegedly objective marking criteria to support this judgement, while knowing that there is a large amount of subjectivity in the art of assigning grades.⁷⁹ We put in place quality assurance systems, including moderation and external examining, and we use these to prevent students from questioning our judgements. We know however that this system is flawed because we have decades of awarding data that tells us this. We know that, when law schools move to anonymous marking, these awarding gaps are reduced. We know that the content of what we teach is colonised, the pedagogic models we adopt perpetuate an unequal power relationship, and that the majority of those involved in judging students' work are White. We ask our students to trust this system, and if they do not, we penalise them.

Black students are therefore in a difficult situation. To do well they must expose themselves to a system of judgement that has persistently done violence to people who look like them. We do this by increasing the amount of "reflection" in assessment.⁸⁰ If they wish to protect themselves from this judgement, they must choose not to engage in assessment at all, or to engage in a performative manner knowing that they will be downgraded because of this.

Over the last three decades law schools have tried to improve the student experience and be more inclusive by introducing reflection into assessment.⁸¹ There are sound pedagogic reasons for wanting students to reflect, and we know that students engage more with tasks that are summatively assessed.⁸² Alongside the learning and teaching literature critical pedagogists also argue that students should be made to reflect.⁸³ The disjuncture however is that the type of reflection that critical pedagogists argue for is different from the type of reflection we are adopting within law schools.

Conventional learning and teaching literature tells us that reflection closes the loop of learning. Plowright and Watkins, for example, show that it promotes active deep learning.⁸⁴ Many academics teaching within law schools will have been made to engage with the work of Kolb,⁸⁵ either through postgraduate certificates, or similar, in higher education or through seeking fellowship of the Higher Education Academy.

⁷⁷Kate Coulson, "Engagement of Black Students with Academic Skills Provision at a Widening Participation UK HEI and Why It Is Important" (Living Black at University Symposium, University of Leeds, 7 March 2023).

⁷⁸Lynn Ellison and Dawn Jones, "First Year Law Students: The Impact of Assessment Type on Attainment" (2019) 44 *Assessment & Evaluation in Higher Education* 283.

⁷⁹Georgina Ledvinka, "Reflection and Assessment in Clinical Legal Education: Do You See What I See?" (2006) 9 *Int'l J Clinical Legal Educ* 29.

⁸⁰Ben Livings and Matthew Atkinson, *Contemporary Challenges in Clinical Legal Education: Role, Function and Future Directions* (Taylor & Francis 2023).

⁸¹Georgina Ledvinka, "Reflection and Assessment in Clinical Legal Education: Do You See What I See?" (2006) 9 *Int'l J Clinical Legal Educ* 29.

⁸²David Plowright and Mary Watkins, "There Are No Problems to Be Solved, Only Inquiries to Be Made, in Social Work Education" (2004) 41 *Innovations in Education and Teaching International* 185.

⁸³Lisa Delpit, *Other People's Children: Cultural Conflict in the Classroom* (The New Press 2006) ch 2.

⁸⁴See note 81 above.

⁸⁵David A Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Prentice Hall 1984).

Kolb's work is the bedrock of the form of action research that is taught in most schools of education and what we are told we need to embrace to be reflective practitioners. Kolb argues that reflection allows students the opportunity to make meaning from the information we teach them, and Joplin recommends that we should allow debrief stages in our teaching to facilitate this.⁸⁶ Reflection provides students with the opportunity to make meaning from information, which we often describe as knowledge.⁸⁷

The banking model of education that Freire famously critiques in his seminal work the *Pedagogy of the Oppressed* lacks this element of reflection, describing a pedagogy in which students are entirely passive recipients of information.⁸⁸ However, the reflective practice advocated by critical pedagogists such as Freire, bell hooks⁸⁹ (Gloria Jean Watkins published as bell hooks, taking the conscious decision not to capitalise the initial letters of her pen name) and Delpit⁹⁰ is different from that advocated in the conventional learning and teaching literature, the latter being the form normally included in legal education and assessment. Freire refers to it as *conscientização*, literally critical consciousness,⁹¹ while Delpit calls this exploration reflexivity. The two are synonyms and I will therefore adopt the term "reflexivity" in this paper.

Reflexivity requires the exploration of one's place within society, and this goes beyond mere reflection. Reflection requires students to engage with the question of what the information means within the context of legal study, while reflexivity requires students to engage with the question of what the information means *for them* within the context of *their lived experience* of legal institutions. The former creates knowledge, while the latter creates new forms of knowledge.⁹² As every student's positionality is different, then what it means for each student is different. For oppressed students reflexivity will require them to illuminate the oppressive structures in which they function; mere reflection does not require this.⁹³

While reflection asks the learner to reflect on what they have learned to extract meaning from it, reflexivity asks them to reflect on what they have learned, considering their social, economic and political realities, and extract meaning *for themselves* from what they have learned.⁹⁴ The position of our students includes their social position (ie their race, gender, sexuality, etc ...), their political position (ie their nationality, legal status, etc ...) and their economic position (ie economically privileged, have to work, etc ...).

The lack of positionality within the process of reflection means that students are rewarded for re-creating existing forms of (white) knowledge, not for creating new forms of knowledge. Existing forms of knowledge reflect the culture of power that created them, meaning they are necessarily patriarchal, heteronormative, ableist, and centre whiteness. Students who share the lived experiences of those who benefit from

⁸⁶Joplin L., "On Defining Experiential Education" (1981) 4(1) *Journal of Experiential Education* 17–20. <<https://doi.org/10.1177/105382598100400104>>.

⁸⁷Karen Warren, "A Path Worth Taking: The Development of Social Justice in Outdoor Experiential Education" (2005) 38 *Equity & Excellence in Education* 89.

⁸⁸Paulo Freire, *Pedagogy of the Oppressed* (2nd rev edn, Penguin 1996).

⁸⁹Bell Hooks, *Teaching to Transgress: Education as the Practice of Freedom* (Taylor & Francis 1994).

⁹⁰Lisa Delpit, *Other People's Children: Cultural Conflict in the Classroom* (The New Press 2006).

⁹¹Paulo Freire, *Pedagogy of the Oppressed* (2nd rev edn, Penguin 1996) 174.

⁹²*ibid.*

⁹³Lisa Delpit, *Other People's Children: Cultural Conflict in the Classroom* (The New Press 2006) ch 2.

⁹⁴Malala Yousafzai, *We Are Displaced: My Journey and Stories from Refugee Girls Around the World* (Weidenfeld & Nicholson 2019) prologue.

the culture of power are therefore at an advantage when we assess mere reflection. Students are encouraged to replicate oppressive forms of knowledge and rewarded for doing so;⁹⁵ this form of education does not: “engage the whole person: what they know, how they act, and who they are”.⁹⁶

The types of assessment based on mere reflection also reward trust. We ask students to make themselves vulnerable by sharing their innermost feelings. Not only does this disadvantage students who distrust the assessment process and are therefore unwilling to make themselves vulnerable to our judgement, it also disadvantages students whose reflections deviate from the replication of existing forms of knowledge. In order to navigate this space Black students often adopt working identities; these identities are either dominant or subordinate, yet they report a democratic, colour-blind meritocracy.⁹⁷

Conversely reflexivity requires that every student must use her authentic voice, uninterrupted.⁹⁸ Reflexivity requires that students reflect on the non-neutrality of the learning environment and the culture of power that is replicated within it.⁹⁹ Many students, especially Black students, do not feel comfortable in the learning environment when it is misrepresented as an objective and neutral setting, but which in fact reflects “socially embedded practices”.¹⁰⁰

Reflexivity allows for the lived experiences of oppression to become part of the authentic student learning journey. This allows students to reveal their authentic identity and acknowledge that the learning environment is neither meritocratic nor democratic. Power within the learning environment does not correlate with merit nor is it distributed democratically and to pretend otherwise replicates racial oppression. As bell hooks argues, these undemocratic expressions of power contribute to the endemic racism and patriarchy of the colonised curriculum.

Critical race pedagogists further argue that this reflexive creation of new forms of knowledge needs to be co-intentional.¹⁰¹ We, as legal educators, have a valuable role to play in our Black students’ co-intentional learning journey. We need to create a law school where there is constructive confrontation of the positions of power the students and teacher inhabit, a space where we encourage the meaningful critical interrogation of these positions of power. The culture of power, however, will persist and we must acknowledge this. Any assessment of reflexivity that materially contributes to the summative outcome of the students’ law degree will therefore advantage those with power and disadvantage those without.

High stakes, summative assessment either of mere reflection or of reflexivity is therefore going to perpetuate relationships of dominance and subordination. However, both reflection and reflexivity have a vital role to play in the education of our Black law students.

⁹⁵David Gillborn, *Racism and Education: Coincidence or Conspiracy?* (Routledge 2008).

⁹⁶Gloria Dall’Alba and Robyn Barnacle, “An Ontological Turn for Higher Education” (2007) 32 *Studies in Higher Education* 679, 689.

⁹⁷Devon W Carbado and Mitu Gulati, *Acting White? Rethinking Race in Post-Racial America* (OUP USA 2013).

⁹⁸bell hooks, *Teaching to Transgress: Education as the Practice of Freedom* (Taylor & Francis 1994).

⁹⁹Lisa Delpit, *Other People’s Children: Cultural Conflict in the Classroom* (The New Press 2006) ch 2.

¹⁰⁰Renee Smit, “Towards a Clearer Understanding of Student Disadvantage in Higher Education: Problematising Deficit Thinking” (2012) 31 *Higher Education Research & Development* 369, 374.

¹⁰¹Michael E Jennings and Marvin Lynn, “The House That Race Built: Critical Pedagogy, African-American Education, and the Re-conceptualization of a Critical Race Pedagogy” (2005) 19(3–4) *Educational Foundations* 15.

7. In conclusion: imagining the anti-racist law school

This paper has argued above that the persistent inequalities within English legal education have created a relationship of distrust between law schools and their Black students. There have been some actions, outlined above, which had among their stated aims the aim of being more inclusive. As a result of this there have been modest shifts, with some law schools now in a position to describe some of their attitudes and behaviours as non-racist. The challenge now is to imagine what an anti-racist law school might look like, an imagined institution that deserves the trust of our Black students.

Critical race pedagogists hold that if education is going to cease to be a site of oppression then we must be explicitly liberatory in our actions: “CRP must encourage the practice of an explicitly liberatory form of both teaching and learning . . . advocating for justice and equity in both schooling and education as a necessity if there is to be justice and equity in the broader society”.¹⁰² Much of the practice in the modern law school purports to be inclusive but is not explicitly liberatory, for example embedding summative reflective assessment. As praxis this has not removed the culture of power that leads to different educational experiences, as critical race pedagogy would predict. The anti-racist law school would be one with the stated objective of being explicitly liberatory and would see this as a co-intentional project between faculty and students.

To achieve this the anti-racist law school would need to acknowledge the primacy of race and racism within the student experience. The primacy of race does not necessitate adopting an essentialist position, and we should recognise other drivers of oppression and the complexities of intersectional identities. As law teachers we have a position of power within learning and teaching spaces which can make it difficult for us to acknowledge something without being able to explain it. We have been institutionalised to see ourselves as the “sage on the stage” and admitting ignorance can sometimes feel like weakness. However, if we refuse to acknowledge the existence of endemic racial inequality within our law schools for fear of not having the answers, we will be denying the reality of the lived experiences of our Black students. This gaslighting is likely to reinforce feelings of distrust and reinforce the culture of power which centres whiteness.

Having acknowledged the primacy of endemic racism we must then acknowledge the extent of racism. Racism is endemic, persistent and stubborn, and there is what Pilkington describes as a “sheer weight” of whiteness.¹⁰³ Failing to acknowledge the extent of racism would be similar to what is described as “colour-blind racism”¹⁰⁴ or “white transparency”.¹⁰⁵ Acknowledging the extent of racism means that we see the correlation between characteristics and behaviours and identity which is key to understanding the experiences of Black students.

Reflexivity should not only be part of the student learning journey, as discussed above, but it should also be part of our praxis as law teachers. Again, I

¹⁰²Michael E Jennings and Marvin Lynn, “The House That Race Built: Critical Pedagogy, African-American Education, and the Re-conceptualization of a Critical Race Pedagogy” (2005) 19(3–4) *Educational Foundations* 15, 25–27.

¹⁰³Andrew Pilkington, “The Sheer Weight of Whiteness in the Academy: A UK Case Study” in Richard Race and Vini Lander (eds), *Advancing Race and Ethnicity in Education* (Palgrave Macmillan 2014).

¹⁰⁴Robert D Reason and Nancy J Evans, “The Complicated Realities of Whiteness: From Color Blind to Racially Cognizant” (2007) 120 *New Directions for Student Services* 67, 67.

¹⁰⁵Joe R Feagin, Hernan Vera and Nikhita Imani, *The Agony of Education: Black Students at White Colleges and Universities* (Routledge 1996).

am distinguishing the reflection required in educational action research from reflexivity and its demands that we must recognise our own positionality, including our privilege. The imagined anti-racist law school would be staffed by reflexive professionals.

I remain unconvinced of the possibility of imagining an anti-racist law school, devoid of white spaces, where our praxis would deserve the trust and respect of our Black students. I am certain, however, that if we do not try to imagine an anti-racist law school then it will forever remain an impossibility. I am also convinced that there is value in trying to be explicitly liberatory and I can imagine, and look forward to, a law school making a bold and unequivocal commitment to the endeavour of anti-racism.

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