

***Racial Bias, Disparities and Oppression in the 1L Curriculum:  
A Critical Approach to the Canonical First Year Law School Subjects***

Boston University School of Law

February 28<sup>th</sup> and 29<sup>th</sup> 2020

*We collectively acknowledge that Boston University occupies the ancestral, traditional, and contemporary unceded lands of the Massachusett. We recognize, support, and advocate for the sovereignty of Indigenous Nations whose traditional territories are in the Commonwealth of Massachusetts, as well as for the many Indigenous peoples and communities who are from other territories but live, work, and study in Boston and Massachusetts. By offering this Land Acknowledgement, we affirm Indigenous sovereignty and commit to holding Boston University more accountable to the needs of Indigenous peoples.*

*1. The Purpose of the Symposium*

Legal analysis can hardly be taught through what Kimberle' W. Crenshaw called a "perspectiveless" pedagogy, that is, without directly addressing conflicts of values, experiences, and worldviews. Students learn the fundamentals of legal analysis in their basic first year classes, which traditionally include Constitutional Law, Criminal Law, Torts, Contracts, Property, and Civil Procedure. Each of these fields of law involves questions of race, wealth inequality, gender, or sexual orientation, either in direct and obvious ways or indirectly and implicitly. Yet, there is often little space for open and competent discussion of these questions. Despite the voluminous body of scholarship about how law reinforces and reproduces power disparities produced in the last few decades, first-year casebooks still tend to be written from an ostensibly neutral perspective. As a result, the legal system is too often presented in the first-year classroom as neutral and equal rather than as a way in which American society polices and enforces disparities and subordination. And, too often, instructors and students alike still operate as if it was possible to create, weigh, and evaluate rules and arguments in ways that neither reflect nor enforce any particular perspective.

This failure to incorporate the perspectives of marginalized and oppressed groups harms students. First-year legal education that fails to directly address hierarchy and subordination provides students with an impoverished experience and a limited and defective legal training that falls short of preparing them for legal practice and interaction in a diverse and demographically shifting country and a globally interdependent world. Furthermore, this “perspectiveless” pedagogy is particularly harmful for students of color, who are expected to be “colorless” legal analysts and to stand apart from their identity, history, and circumstances. On the other hand, first-year instructors who are interested in changing their approach to teaching and adopting an inclusive pedagogy often experience difficulties with doing so. The availability of published teaching materials presenting the perspectives of marginalized groups is limited, and first-year teachers find it hard to integrate discussions of scholarly articles addressing power and hierarchy due to time constraints. Additionally, addressing power disparities and oppression competently and effectively requires experimenting with new pedagogical skills and strategies.

Delivering an inclusive, rigorous, and critical first-year legal education that empowers students to be effective legal professionals requires a fundamental shift in the culture and practice of legal education. Calls for this shift are obviously not new. Efforts to explore the ways in which law schools could promote a critical, inclusive and collective pedagogy started in the 1980s. After lingering for some time, these discussions have been revived in recent years, prompted by shifting demographics, episodes of police violence, nationally visible disparities in access to resources, and efforts of many new and energetic social movements. The proposed two-day symposium brings this new national conversation to the BU Law community. The symposium focuses specifically on race, addressing both substance and pedagogy – that is, *what* we teach in the first year and *how* we teach it. Panels I, II and III, planned for Friday, speak to the substantive question by bringing into sharp relief the role that racial bias, disparities, and oppression play in the basic areas of law traditionally taught in the first year. Panel IV, planned for Saturday morning, speaks to the question of pedagogy by exploring the fundamentals of a race-conscious pedagogy, i.e. the skills, strategies, and materials that first-year instructors need in order to effectively provide an inclusive and critical approach to legal analysis. Each of the four panels will be followed by an hour-long roundtable meant to provide students and faculty ample room for questions and discussion.

## 2. *Symposium Overview*

### **Day 1: Friday**

Breakfast  
(9:00, Atrium)

#### Welcome Remarks

**Angela Onwuachi-Willig**, Dean, Boston University School of Law,

<https://www.bu.edu/law/profile/angela-onwuachi-willig/>

**Anna di Robilant**, Associate Dean for Equity, Justice and Engagement, Boston University School of Law, <https://www.bu.edu/law/profile/anna-di-robilant/>

(9:30-9:45, Room 103)

#### PANEL I

#### **RACE AND PRIVATE LAW: THE ROLE OF RACIAL DISPARITIES AND OPPRESSION IN THE ALLEGEDLY NEUTRAL LAW THAT ENABLES FREE INTERACTIONS BETWEEN EQUAL PRIVATE ACTORS.**

(9:45-11:00, Room 103)

This panel questions the deeply embedded assumption that the private law subjects taught in the first-year, that is Property, Contracts and Torts, establish a neutral framework of legal rules that enables the free and fair interaction between private actors who are equals. This assumption was first challenged by the Legal Realists in the 1930s and by Robert Hale in particular. However, in recent years, the critique offered by the Realists has been marginalized by a new body of scholarship that seeks to revive the pre-realist, formalistic approach to private law. This scholarship re-centers the more traditional aspects of private law analysis, in particular the importance of legal concepts and the inner logic of legal architecture, often obliterating the role that social purposes and political conflicts play in shaping private law. The panel features the work of legal scholars who have powerfully countered this new formalism by showing how private law reinforces racial oppression and enables racialized wealth extraction.

Moderator:

**Maria Hylton**, Boston University School of Law <https://www.bu.edu/law/profile/maria-obrien-hylton/>

Speakers:

- **Osamudia James**, University of Miami Law School  
<https://www.law.miami.edu/faculty/osamudia-james>
- **Emily Houh**, University of Cincinnati Law School  
<https://law.uc.edu/education/faculty/emily-ming-sue-houh.html>
- **Thomas Mitchell**, Texas A& M Law School  
<https://law.tamu.edu/faculty-staff/find-people/faculty-profiles/thomas-w-mitchell>
- **Joseph Singer**, Harvard Law School  
<https://hls.harvard.edu/faculty/directory/10811/Singer>

Coffee Break

(11:00-11:15, Atrium)

Students & Faculty Comments & Questions

(11:15-11:45, Room 103)

**Shilpa Guha** (Boston University School of Law Student), **Nia Johnson** (PhD Candidate, Harvard School of Public Health), **Gary Lawson** (Boston University School of Law, <http://www.bu.edu/law/profile/gary-s-lawson/>), **Jennifer Wriggins** (University of Maine School of Law, <https://mainelaw.maine.edu/faculty/profile/wriggins-jennifer/>)

Lunch with BU Faculty

(12:00-1:00, Barristers Hall)

PANEL II

**RACE & CIVIL PROCEDURE: RACIAL DISPARITIES IN ACCESS TO CIVIL JUSTICE**

(1:15-2:30, Room 103)

This panel seeks to disabuse the belief in legal objectivity in the one first-year subject, in which this belief has proven uniquely deep and persistent: civil procedure. Civil procedure is largely considered a technocratic set of neutral rules that bear no relation to power and hierarchies. Yet, civil procedure implicates power in very fundamental and obvious ways. Particularly, it implicates race. From pleading, to jurisdiction, discovery, and aggregate litigation, civil procedure serves as a context for aversive racism and implicit bias and operates against racial minorities. The panel features the work of scholars who have started a national conversation on how race shapes the operation of civil procedure and determines its outcomes.

Moderator:

**Danielle Keats Citron**, Boston University School of Law,  
<https://www.bu.edu/law/profile/danielle-citron/>

Speakers:

- **Kevin Johnson**, UC Davis School of Law  
<https://leadership.ucdavis.edu/people/kevin-johnson>
- **Suzette Malveaux**, University of Colorado School of Law  
<https://lawweb.colorado.edu/profiles/profile.jsp?id=884>
- **Portia Pedro**, Boston University School of Law  
<https://www.bu.edu/law/profile/portia-pedro/>
- **Norman Spaulding**, Stanford Law School  
<https://law.stanford.edu/directory/norman-w-spaulding/>
- **Sara Sternberg-Greene**, Duke Law School  
<https://law.duke.edu/fac/ssgreene/>

Students & Faculty Comments & Questions  
(2:30-3:30, Room 103)

**Alesha Ignatius Brereton** (Boston University School of Law Student), **Jasmine Gonzales-Rose** (University of Pittsburgh School of Law, <https://www.law.pitt.edu/people/jasmine-gonzales-rose>), **Peggy Maisel** (Boston University School of Law, <https://www.bu.edu/law/profile/peggy-maisel>), **Lisa Stern** (Boston University School of Law Student)

Coffee Break  
(3:30-3:45, Atrium)

PANEL III

**CRIMINAL LAW AS A SYSTEM OF RACIALIZED SOCIAL CONTROL**

(3:45-5:00, Room 103)

This panel focuses on how the criminal law system, through sentencing rules and mass incarceration, racial profiling, police brutality and surveillance technologies operates as a well-disguised and comprehensive system of racialized social control. The panel features the work of scholars who seek to radically re-imagine the criminal justice system in a way that shifts power and resources to communities of color.

Moderator:

**Gerry Leonard** Boston University School of Law, <https://www.bu.edu/law/profile/gerald-f-leonard/>

Speakers:

- **Bennett Capers**, Brooklyn Law School  
<https://www.brooklaw.edu/faculty/directory/facultymember/biography.aspx?id=bennett.capers>
- **Aya Gruber**, University of Colorado School of Law  
<https://lawweb.colorado.edu/profiles/profile.jsp?id=325>
- **Roger Fairfax**, George Washington University School of Law  
<https://www.law.gwu.edu/roger-fairfax-jr>
- **Eric Miller**, Loyola Law School, Los Angeles  
<https://www.lls.edu/faculty/facultylistl-r/millereric/>
- **Jocelyn Simonson**, Brooklyn Law School  
<https://www.brooklaw.edu/Contact-Us/Simonson-Jocelyn>

Coffee Break  
(5:00-5:15, Atrium)

Students & Faculty Roundtable

(5:15-5:45)

**Rose Collins** (Boston University School of Law Student), **Jimena Mohedas** (Boston University School of Law Student), **Sadiq Reza** (Boston University School of Law, <https://www.bu.edu/law/profile/sadiq-reza/>).

Cocktail Reception

(6:00-7:00, Barristers Hall)

Symposium Dinner for Panelists

(7:00, The Castle)

**Day 2: Saturday**

PANEL IV

**TOWARDS AN INCLUSIVE, CRITICAL AND COLLECTIVE PEDAGOGY**

(9:30-10:45, Room 103)

This panel explores ways of teaching the traditional first-year curriculum through a race-conscious pedagogy. It brings together legal scholars who have done creative and experimental work on several fronts such as developing new syllabi, producing new teaching materials to supplement existing casebooks and devising new formats for lectures and seminars.

Moderator:

**Anna di Robilant**, Boston University School of Law, <https://www.bu.edu/law/profile/anna-di-robilant/>

Speakers:

- **Kali Murray**, Marquette University Law School  
<https://law.marquette.edu/faculty-and-staff-directory/detail/5359383> (property).
- **Peggie Smith**, Washington University in St Louis  
<https://law.wustl.edu/faculty-staff-directory/profile/peggie-r-smith> (contracts).

- **Rebecca Tushnet**, Harvard Law School  
<https://hls.harvard.edu/faculty/directory/11412/Tushnet> (property).

Coffee Break  
(10:45-11:00, Atrium)

Students & Faculty Roundtable  
(11:00-12:30, Room 103)

**Julian Bugarin** (Boston University School of Law Student), **Kanda Faye** (Boston University School of Law Student), **Jonathan Feingold** (Boston University School of Law, <http://www.bu.edu/law/profile/jonathan-feingold/>), **Sean Hickey** (Boston University School of Law Student), **Stacey Menjivar** (Boston University School of Law Student), **Chase Shelton** (Boston University School of Law Student)

Lunch  
Closing Remarks

**Karen Pita Loor**, Associate Dean for Experiential Learning, Boston University School of Law  
(12:00, Room 103)