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DEI in the Legal Profession: Identifying Foundational Factors for Meaningful Change

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DEI IN THE LEGAL PROFESSION: IDENTIFYING FOUNDATIONAL FACTORS FOR MEANINGFUL CHANGE

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FOREWORD

Before getting into the substance of the Essay, we would like to situate ourselves within the larger conversation of diversity, equity, and inclusion ("DEI") by addressing why this work is important to us and describing how DEI has impacted our lives.

I (Robert J. Razzante) am a visiting assistant professor of communication with roots in the highly segregated eastern suburbs of Cleveland, Ohio. Growing up, I would hear white community leaders and friends speak ill of our Black middle-class and working-class neighbors to the immediate west. At an early age, I fell into the habit of showing deference to these leaders, even while their communication degraded our neighbors. However, the older I grew, the more I began to understand how those messages filtered into—and reflected—biases toward Black communities. With more schooling, I developed a vocabulary to name the world around me, and, subsequently, to consciously choose ways to challenge (micro)inequities within myself, others, and communities. This pursuit has led me to develop work on Dominant Group Theory ("DGT")—a communication framework for understanding and describing how those from standpoints of power and privilege communicate in ways that reinforce, impede, and dismantle oppressive actions. Recent dominant group theorizing seeks to understand how people communicate based on intersectional standpoints through commonalities.

I (Breanta Boss) am a first-generation college student and recent law school graduate. I came from humble beginnings in a predominately African American city: New Orleans, Louisiana. I was first exposed to the necessity for DEI when evacuating New Orleans after Hurricane Katrina. As a young girl, it was difficult at first to navigate being in a new cultural environment. Quickly, I understood it was essential to have a shared dialogue when interacting with people of different races, ethnicities, and socio-economic backgrounds. My perspective in this Essay is informed by my experience as an African American woman in higher education and as a legal professional. To me, advancing diversity and inclusion in the legal field is important because a diverse legal field goes hand in hand with forming meaningful connections in the workplace and servicing diverse clientele.

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INTRODUCTION

Justice is fairness. Those in the legal profession are responsible for upholding justice and defining what is fair for people. However, a just society cannot exist without an honest understanding of how injustice has been socially constructed over time to favor members of historically privileged communities. As our country continues to become diversified across many social identities, our social norms and expectations of justice need to evolve to match those changes. And dismissing the importance of diversity, equity, and inclusion ("DEI") is itself an act of injustice that perpetuates these past injustices.

Everyone is implicated by DEI through their different standpoints and social locations. People communicate in different (un)conscious ways based on their standpoint. For example, those who experience marginalization often consciously censor their communication to engage in impression management, while those who communicate from standpoints of power and privilege may consciously choose to act in ways that disrupt exclusionary and discriminatory social norms.[1] At the same time, however, they may also engage in "thinking under the influence," where their actions have unanticipated consequences.[2]

Conversely, others may be inclined to engage in "code switching"[3] to fit into spaces where they feel marginalized. This tactic often seems like a necessary evil to advance in a professional setting because the manifestation of exclusionary and discriminatory social norms can be overt (e.g., crude reactions to natural hair; turbans, hijabs) or covert (e.g., walking down a hallway lined by images of older white men dressed in suits).

Whether communicating from a standpoint of marginalization or privilege, people should recognize how they are implicated in the larger conversation of DEI. As AnaLouise Keating has noted, for social change to happen people need to recognize their commonalities—as opposed to similarities or differences.[4] By focusing on our similarities or differences, we miss out on the opportunity to understand how each other's social location is bound together within the same

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[1] *See* MARK P. ORBE, CONSTRUCTING CO-CULTURAL THEORY: AN EXPLICATION OF CULTURE, POWER, AND COMMUNICATION 14–16 (1998).

[2] BRENDA J. ALLEN, DIFFERENCE MATTERS: COMMUNICATING SOCIAL IDENTITY 9 (2nd ed. 2011).

[3] Codeswitching is a process where people transition between norms of communicating based on their audience. For example, Rachel Jeantel—lead witness for the Trayvon Martin case—failed to codeswitch from African American Vernacular English (AAVE) to "standard English" when testifying—triggering implicit biases that AAVE is not as inteligble as standard English.

[4] ANALOUISE KEATING, TRANSFORMATION NOW!: TOWARD A POST-OPPOSITIONAL POLITICS OF CHANGE 34–39 (2013) ("Without ingoring the many differences among us, . . . inclusionary alliances insist on commonalities, or . . . 'coalitional identities' and 'wholeness in our conradictions.'").

socially constructed norms and expectations.[5] A focus on commonalities allows people from different social locations to recognize how they can leverage each other's standpoints to create change that promotes diversity, equity, inclusion, and justice. After all, we live in a multicultural society, and it is certain that each of us will interact with individuals who come from different backgrounds.

When pursuing diversity, equity, inclusion, and justice through commonalities, practicing critical self-reflexivity is paramount.[6] Self-reflexivity requires us to constantly question ourselves and how we relate to others.[7] *Critical* self-reflexivity is the same process yet with an attunement toward power and how it impacts the ways in which individuals relate to each other.[8] When people practice critical self-reflexivity, they seek to understand how they themselves are situated within existing social norms of inequities, historical (dis)advantage, prejudice, and discrimination. A critical self-reflexivity requires us to understand our social location in relation to others—especially when our actions impact others.[9]

Throughout our drafting process, we consciously worked together to design the flow of this Essay with respect to DEI. We first offer a brief section defining key terms. This section is intended to give the audience the language to incorporate DEI when naming the world around them, as they might not have been exposed to such language before. Offering definitions of key terms begins the process of discovery. We also recognize that our audience may be well-versed in DEI. For this group, offering definitions of key terms allows us to explain exactly where we gathered our terms.

After defining key terms, the Essay proceeds into four main examinations of the importance of DEI: institutional factors, programmatic factors, classroom-specific factors, and intrapersonal factors. These factors reflect Bernardo M. Ferdman's assertion that organizational change should have adjustments at the macro-, meso-, and micro-levels.[10] The institutional factors reflect macro-level changes, whereas the intrapersonal factors reflect micro-level changes. The meso-

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[5] *Id.* ("[W]hen we automatically label people by color, gender, sexuality, religion, nationality, or any other politically charged characteristics[,] . . . we build walls between ourselves and these others. We isolate ourselves from those whom we have labeled 'different.' This automatic difference-based labeling process distorts our perceptions, creating arbitrary divisions and an oppositional 'us-against-them' mentality that prevents us from recognizing potential commonalities.").

[6] *See* Ann L. Cunliffe, *"On Becoming a Critically Reflexive Practitioner" Redux: What Does it Mean to be Reflexive?*, 40 J. MGMT. EDUC. 740 (2016).

[7] *Id.* at 741.

[8] *Id.*

[9] *See* Bernardo M. Ferdman, *Paradoxes of Inclusion: Understanding and Managing the Tensions of Diversity and Multiculturalism*, 53 J. APPLIED BEHAV. SCI. 235, 249 (2017).

[10] *See generally id.* at 239 ("Inclusion spans and connects macro, meso, and micro processes and contexts, ranging from societal and organizational ideologies, values, policies, and practices, to leadership models and practices and group norms and climates, to interpersonal behavior and individual experiences of inclusion.").

level of programmatic and classroom factors reflects the bridge that connects the institutional with the intrapersonal.

Each section begins with anecdotes from current legal professionals reflecting on their experiences navigating law school from a social position of marginalization. These voices are vital to ground the systemic review in actual lived experiences. The Essay concludes with some remarks on the importance of focusing on our commonalities—especially within the legal profession—to create a more just society. We intend that this Essay serve as a tool to foster dialogue about DEI. In doing so, we do not purport to identify or solve all of the ways in which marginalization manifests itself. Rather, we seek to contribute to the ongoing conversation about DEI in law schools and the legal profession.

DEFINITION OF KEY TERMS

We recognize that different readers may have different levels of awareness with respect to DEI. As such, offering definitions of key terms referenced throughout this Essay is important to establish a baseline understanding. This section defines banking education, critical, diversity, equity, inclusion, "-isms," justice, marginalization, pedagogy, power, privilege, problem-posing, and social constructionism as follows:

Banking Education. Banking education refers to the unidirectional flow of knowledge from the all-knowing teacher to the passive-learning student.[11] In banking education, students are in a room to merely learn from the teacher and are understood as not having much to contribute.[12]

Critical. In the context of DEI and education, the term "critical" implies a focus on power.[13] Critical pedagogy is the study of how discourses of power are both brought into the classroom and exist within the classroom. A critical pedagogue is interested in how power operates within and beyond the classroom. Critical pedagogy also considers how discourses of power seep into the classroom to inform student behavior, conversation, and student performance.[14]

Diversity. Diversity is representation. For example, if a classroom is diverse, the student population represents the multitude of social identities that exist in society. Diversity manifests in terms of class, race, gender, sex, sexual orientation, age, ability, religion, nationality, etc.[15]

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[11] *See* PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 72 (2014).

[12] *Id.*

[13] *See* ROBERT C. ANDERSON, THE CRITICAL PEDAGOGY READER (Antonia Darder, Rodolfo D. Torres & Marta P. Baltodano eds., 3rd ed., 2017).

[14] *See id.*

[15] According to the American Bar Association's National Lawyer Population Survey, women made up 30% of the legal profession in 2007 and 35% in 2017—a marginal increase. According to the same Survey, in 2017, 4% of active attorneys identified as Black/African American and 4% identified as Hispanic/Latino. By 2017, both demographic groups increased to a mere 5% each.[15] A diverse representation of a workforce and profession would

Equity. Equity is about equalizing outcomes as opposed to equalizing opportunities. With equity, attention is placed on the social and cultural context of one's background as an important contributing factor to one's success.[16]

Inclusion. Inclusion is an intentional *process* to invite people—particularly those experiencing marginalization—into decision-making spaces to reduce the potential for being too reductive.[17] For example, Amber Johnson defines radical inclusion as the process of not just inviting people to the dinner party, but also asking people what food they want, what music to play, and where to hold the party.[18]

"-isms." In the context of DEI, people often refer to "-isms"—racism, sexism, classism, etc. These "-isms" denote discrimination against someone based on their standpoint or social location. For example, racism manifests when one person discriminates against another based on their race. Racism can occur at various levels—most notably interpersonal racism and structural racism. Interpersonal racism occurs when one person mobilizes their prejudice toward others at a 1:1 level (e.g., hate speech, microaggressions, physical assault).[19] Structural racism occurs when people mobilize their prejudice toward specific racial groups through institutional leverage points (e.g., laws, policies).[20]

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ideally reflect a larger population. For example, if the legal profession were to represent the larger US population, 50% of attorneys would identify as women (compared to 35%), 17.8% of attorneys would identify as Hispanic/Latino (compared to 9%), and 13.3% would identify as Black/African American (compared to 9%). Unfortunately, these statistics also do not include other marginalized groups such as Asians, Pacific Islanders, or indigenous groups. Allison E. Laffey & Allison Ng, *Diversity and Inclusion in the Law: Challenges and Initiatives*, AM. BAR ASS'N (May 2, 2018), https://www.americanbar.org/groups/litigation/ committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives / [https://perma.cc/2LEB-5SUS]

[16] *See generally* Will J. Jordan, *Defining Equity: Multiple Perspectives to Analyzing the Performance of Diverse Learners*, 34 REV. RSCH. EDUC. 142, 142, 148 (2010).

[17] *See* Amber Johnson, *Exploring the Dark Matter(s) of Wakanda: A Quest for Radical Queer Inclusion Beyond Capitalis*m, 24 J. FUTURE STUDS. 12 (2019).

See, e.g., Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE AND FREEDOM MAGAZINE, July–Aug. 1989, at 10; ROBIN DIANGELO, WHITE FRAGILITY: WHY IT'S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM 7 (2018).

[18] *See* Amber Johnson, Founder, Justice Fleet, Keynote Address at the MuseumNext Portland Conference: Revolution Requires Forgiveness (Oct. 10, 2017), https://www.museumnext.com/article/revolution-requires-forgiveness/ [https://perma.cc/PL A2-DZKJ]; *see also* Mike Murawski, *Towards a More Human-Centered Museum: Part 3, Bringing Out Whole Selves to Our Work*, Art Museum Teaching (Mar. 31, 2018), https://artmuseumteaching.com/2018/03/31/towards-a-more-human-centered-museum-part -3-bringing-our-whole-selves-to-our-work/ [https://perma.cc/R9EV-TAHS].

[19] *See generally* EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA (Rowman & Littlefield, 5th ed. 2017).

[20] *See id.*

Justice. Justice is fairness. It means equal and impartial treatment no matter your social status. Furthermore, justice is "actions designed to remove hurdles to equal opportunity, equal rights, and human liberty."[21]

Marginalization. Marginalization is the experience of being on the sidelines of society. Those who experience societal marginalization may not have access to the same resources as members of dominant groups who can leverage their privileges for personal gain.

Pedagogy. Pedagogy is the method, theory, and practice of teaching and learning. Instructional communication—an element of pedagogy—is the study of how verbal and nonverbal communication is used within the classroom to facilitate student learning.[22]

Power. Power can be understood through a variety of lenses. For example, Michel Foucault defines power as the ability to influence one's behavior.[23] Power is also fluid, meaning that power is not possessed by one person. In other words, these are the ways in which power permeates people's behavior and their ability to reinforce, impede, or dismantle oppressive structures.[24]

Privilege. Privilege is defined as an unearned advantage one gains simply by existing.[25] If the world is socially constructed by those who have access to power, then there are certain norms and expectations that favor those in dominant positions. For example, white privilege exists when a white person can move about the world without having to represent their race.[26]

Problem-posing. In problem-posing, students are understood as active contributors to knowledge, in effect making them teachers (i.e., student-teacher).[27] Paulo Freire was a critical pedagogue who challenged the banking model of education by detailing a problem-posing form of education.[28] Within a problem-posing framework, teachers are also understood to be students who can learn from their students' contributions (i.e., teacher-student).[29] Problem-posing begins with posing a question associated with a social issue.[30] Through dialogue, teacher-students and student-teachers engage in, "a process of sensitive and thorough

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[21] TRACY DAVIS & LAURA HARRISON, ADVANCING SOCIAL JUSTICE: TOOLS, PEDAGOGIES, AND STRATEGIES TO TRANSFORM YOUR CAMPUS 22 (2013).

[22] *See generally* CHERI J. SIMONDS & PAMELA J. COOPER, COMMUNICATION FOR THE CLASSROOM TEACHER (2013).

[23] *Cf.* MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972–1977, at 200–01 (Colin Gordon ed., Colin Gordon et al. trans., 1980); ALLEN, *supra* note 2, at 25.

[24] ALLEN, *supra* note 2, at 25–30.

[25] *See, e.g.*, Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE AND FREEDOM MAGAZINE, July–Aug. 1989, at 10; ROBIN DIANGELO, WHITE FRAGILITY: WHY IT'S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM 7 (2018).

[26] *Id. at 7.*

[27] *Id.* at 80–81.

[28] *See* FREIRE, *supra* note 11, at 72.

[29] *Id.* at 80.

[30] *Id.* at 81.

inquiry, inquiry we undertake together to (de)construct ideologies, identities, and cultures."[31]

Social Constructionism. At its core, social constructionism is the creation of realities through communication.[32] People create realities and expectations for behavior through everyday interpersonal interactions.[33] These interpersonal conversations can then trickle up into policies, programming, and laws.[34] Macro-level messages can also trickle down into the way people interact with others at an interpersonal level.[35]

Standpoint Theory. Standpoint theory suggests that those on the margins maintain a "strong objectivity" of reality for being able to materially experience the widespread impact of decisions by those in positions of power.[36] One's standpoint may impact the way they communicate with others.

FOUNDATIONAL FACTORS

In reflecting on the symposium theme, "#IncludeTheirStories: Rethinking, Reimagining, and Reshaping Legal Education," we decided to ground this Essay in several factors that emerged from informal conversations that we have had with recent law school graduates and young legal professionals. Through our personal networks, we asked people who have under-represented social backgrounds in the legal profession to reflect on their experiences with DEI both inside and outside the classroom. For each factor, we first offer an informal comment from a legal professional followed by analysis and commentary on how legal studies programs can improve access to DEI material by considering four particular factors: institutional, programmatic, classroom, and intrapersonal. We begin with the most macro-level factor (institutional) and work our way to the most micro-level (intrapersonal). We bridge the macro- with the micro- by focusing on two meso-level factors (programmatic and classroom). Our hope is that covering all three levels—as Ferdman suggests—allows for a holistic approach to DEI efforts.

INSTITUTIONAL FACTORS

I think it begins with recruiting diverse students and faculty first because it's only when you have different kinds of people in the room that you can begin to have real discussions that more DEI efforts move

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[31] DEANNA L. FASSETT & JOHN T. WARREN, CRITICAL COMMUNICATION PEDAGOGY 55 (2006).

[32] *See generally* PETER L. BERGER & THOMAS LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE (1966) (unifying and establishing the foundational tenets of modern social constructionism).

[33] *Id.* at 43–48.

[34] ANTHONY GIDDENS, THE CONSTITUTION OF SOCIETY 18–21 (1984).

[35] *Id.* at 22.

[36] *See* Sandra Harding, *Rethinking Standpoint Epistemology: What Is "Strong Objectivity?,"* 36 CENTENNIAL REV. 437, 442 (1992); *see also* Laffey & Ng, *supra* note 15.

forward. I think it's also critical to note that diversity of thought is just as important (maybe more important) than diversity in race/gender/ethnicity because if everyone looks different but thinks the same, any conversation surrounding DEI will go absolutely nowhere.[37]

DEI spans macro-, meso-, and micro-level processes.[38] We define institutional factors as macro-level policies and practices that establish norms and expectations for how people show up in certain spaces. As demonstrated in the opening comment above, recruitment has a significant impact on creating an organizational climate for difference. Past organizational communication affirms that diversity of people—especially across all levels of the organization—is paramount to establishing workplaces that promote DEI.[39]

Recruiting, hiring, and retaining marginalized individuals is as important as diversity of thought to establishing a sense of inclusion and equity.[40] For example, María Christina González's writing and poetry reflect how historically marginalized academics are often recruited and hired based on their lived experience of marginalization.[41] Although, over time, academics' behavior can assimilate into the norms and expectations of what it means to behave and act in a space as prescribed by those in dominant positions (e.g., white, male, masculine, cis-gender, able-bodied, middle-upper class, etc.).[42] Diverse representations, as well as diversity of thought that embraces the lived experiences of marginalized groups, are needed to create spaces where diversity is affirmed.

When seeking to promote DEI within the legal profession, attention should be placed on the recruitment of marginalized students and faculty. Additionally, marginalized students' and faculty's retention should be accredited to the affirmation of their lived experiences as opposed to their ability to assimilate into a hegemonic white and masculine environment. If a person's success is dependent on their ability to assimilate, then the institution itself is already designed to create feelings of imposter syndrome. Rather, the institution should be ready to support

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[37] E-mail from a legal professional to Breanta Boss (Nov. 29, 2021, 10:09 AM) (on file with author).

[38] *See generally* Bernardo M. Ferdman, *The Practice of Inclusion in Diverse Organizations: Toward a Systemic and Inclusive Framework*, DIVERSITY AT WORK: THE PRACTICE OF INCLUSION 3, 3–54 (Bernado M. Ferdman & Barbara R. Deane eds., 2013) (arguing that the core of inclusion is how people experience it on both the individual and collective level).

[39] Dawna Ballard, Brenda Allen, Karen Ashcraft, Shiv Ganesh, Poppy McLeod & Heather Zoller, *When Words Do Not Matter: Identifying Actions to Effect Diversity, Equity, and Inclusion in the Academy*, 34 MGMT. COMMUNIC'N Q. 590, 591–92 (2020).

[40] Robert John Razzante, Communicatively Co-constituting Pathways of an Inclusive Workplace: A Participant Generated Methodology 50 (May 2020) (Ph.D. dissertation, Arizona State University) (ProQuest).

[41] María Christina González, *Abandoning the Sacred Hierarchy: Disempowering Hegemony Through Surrender to Spirit*, in COMMUNICATING PREJUDICE 223, 223–34 (Michael L. Hect, ed., 1998).

[42] *Id.*

people's diverse beings and diverse thinking. Furthermore, a top-down approach to DEI is another important matter, for without leaders who wish to incorporate DEI initiatives at the C-suite level, it is difficult to establish a sustainable culture of inclusion.

Institutional factors speak to the larger conversation of privilege and how privilege allows certain people to move about in particular spaces with more ease than those who are not privileged. A metaphor of privilege—as institutionally supported—is an airport moving walkway. Oftentimes, airports have horizontal escalator-looking walkways that allow people to walk quicker than they would if they were walking on the concrete floor. Say, for example, two law students enter a program at the same time—one student is white and the other is Latinx. By way of the legal profession being predominantly white, the white student's body is reflected and represented at all levels of the legal profession, whereas the Latinx student's body is not well represented. Because the white student's body is more represented, it is as if they are walking through an airport terminal on a walking belt, moving at a relatively relaxed pace. However, if the Latinx student were to walk at the same relaxed pace without institutional support (i.e., walking through an airport terminal on concrete), they would not have the proper social networks to keep up with their white counterpart. In fact, the Latinx student would need to walk faster by putting in more effort at establishing social networks.

Institutional factors play an incredibly important role in fostering a legal studies discipline and workplace that values and respects DEI. When seeking to reimagine, rethink, and reshape the legal profession, it is important to keep in mind institutional barriers that make it difficult for students and faculty to thrive—one example being the need to assimilate into a white western way of thinking about law as separate and mutually exclusive from difference. Institutional habits are needed to reconstruct how privilege allows certain people to advance compared to others.

PROGRAMMATIC FACTORS

Honestly, the lack of DEI in law school was nothing I wasn't already used to coming from a predominately white institution for undergrad ("PWI"). I think to truly engage with DEI in legal studies, you have to seek out the opportunities yourself. For me, this meant getting involved in affinity groups and seeking out classes with a specific focus on examining DEI in legal studies (e.g., Critical Race Theory; Race and American Law). Assess if this is a space you really want to be in because it's a mentally tough space to navigate in general, and being under-represented just adds an extra layer of complexity. However, if you find this is a space you want to be in, there is MORE than enough room here for under-represented students to come in and take up space. Don't see other underrepresented

*students as competition – tokenism is nothing to find pride in. Find your
community and help them along. The goal should always be to make room
for others like you in this space.*[43]

In the context of inclusion specifically, Sara Ahmed notes that organizational
inclusion is the willing of inclusion until it no longer needs to be willed.[44] When the
will, or commitment, to DEI is present, there will be conscious actions to manifest
those commitments.[45] Historically, the legal profession has been predominantly
made up of white cis-men. Over time, habits are formed by in-group members that
perpetuate norms reflected by white cis-men. As diverse bodies enter the space,
norms and expectations may be challenged because they no longer reflect its
membership. When that happens, adjustments are needed.

As reflected by Sara Ahmed's comment on inclusion, developing a
commitment to inclusion requires an initial will to create an inclusive, diverse, and
equitable workplace, classroom, or legal studies program.[46] A lack of will makes
DEI difficult to realize. However, an initial will—backed by other attempts to
manifest a true commitment—can build and have an accumulation effect that, over
time, becomes the new norm or expectation for how difference is treated.

To connect institutional commitments with intrapersonal commitments,
attention on the meso-programmatic level is important. Meso-level actions help to
create and sustain an ongoing conversation about the role DEI plays within a legal
studies program. As noted in the comment at the beginning of this section, those
from marginalized backgrounds need to find spaces where conversations concerning
DEI are welcomed, affirmed, and expected. Specifically, the comment above about
taking up space is an important factor needed to jumpstart DEI efforts because a lack
of diverse representation among faculty and students reduces the will to create
spaces that affirm difference. Further, as noted in the opening comment, programs
(i.e., clubs and associations specifically) offer space for students to occupy space
within the legal profession and law schools.

However, in personal experience, these intentional programmatic spaces are
often added to the foundational curriculum as voluntary.[47] To remedy this difference,
law schools could support the efforts of existing programs by encouraging students
to become active members within clubs and associations. Furthermore, schools
could double down on their commitments to DEI by monetarily supporting students

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[43] E-mail from a legal professional to Breanta Boss (Nov. 29, 2021, 10:09 AM) (on file
with author).

[44] *See* SARA AHMED, ON BEING INCLUDED: RACISM AND DIVERSITY IN INSTITUTIONAL
LIFE 27 (2012) (noting that "[d]iversity [will] be institutionalized when it becomes part of
what the institution is already doing, when it ceases to cause trouble").

[45] *Id*. at 117–20.

[46] *Id.* at 128.

[47] Peter Blanck, Ynesse Abdul-Malak, Meera Adya, Fitore Hyseni, Mary Killeen &
Fatma Altunkol Wise, *Diveristy and Inclusion in the American Legal Profession: First Phase
Findings from a National Study of Lawyers with Disabilities and Lawyers who Identify as
LGBTQ+*, 23 U.D.C. L. REV. 23, 25 (2020).

through fellowships, scholarships, and other monies that could go toward a program that enables underrepresented students to take up space within the legal profession. Returning to Ahmed's comment, an initial commitment might be a spark for change, although it's the need for a continual spark that re-commits the legal studies program to DEI.

CLASSROOM FACTORS

> *The best professors, the most inclusive professors, set a tone for the environment of the classroom. They acknowledge[] that everyone's opinions and values will be respected, but they also acknowledge the faults of the system, with case law, with commentary. They speak up for the under-represented and provide insight and value as an academic for how the world could be made a better place through diversity in the law.*[48]

Paulo Friere juxtaposes banking styles of education with problem-posing styles of education.[49] A banking style of education is when a teacher uni-directionally shares information with students as if they were empty vessels.[50] A problem-posing style of education, on the other hand, centers dialogue as the means for questioning how social phenomena are socially constructed while imagining ways to socially deconstruct norms that no longer exist.[51] Fasset and Warren build on Freire's critical pedagogy by offering a critical communication pedagogy that focuses on "a process of sensitive and thorough inquiry . . . to (de)construct ideologies, identities, and cultures."[52] Within the law school classroom, critical communication pedagogy can be used as a tool to facilitate conversations through a lens of power, privilege, and oppression.

Classrooms provide unique opportunities for DEI discussions since classrooms are microcosms of the world around us. Tone setting is a key component of critical communication pedagogy, as class discussions can actually be harmful if educators—in the role of facilitators—create a space where lived experiences are judged or dismissed by unempathetic listeners. Understandably, academics are invested in maintaining impartiality and encouraging diverse opinions in the classroom setting.[53] However, as stated in the comment above, academics have the responsibility to ensure that DEI discussions remain respectful and safe. Importantly, academics can use case law to pinpoint instances in which dominant social groups have leveraged their privileges to shape legal institutions. Such lessons

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[48] E-mail from a legal professional to Breanta Boss (Nov. 22, 2021, 9:43 AM) (on file with author).

[49] FREIRE, *supra* note 11, at 72.

[50] *Id.* at 79.

[51] *Id.*

[52] FASSETT & WARREN, *supra* note 31.

[53] *Id.* at 53.

include the concepts of separate but equal in constitutional law, racial deed restrictions in property law, and issues of racial disparity and sentencing in criminal law.

Academics can also support marginalized communities by participating themselves in DEI initiatives outside of the classroom. Participation signals to students that they are at an institution that is invested in them outside of their educational success. In addition, academic voices help provide support to students whose voices are being silenced. The *Together We Dine* series is one DEI initiative that academics can participate in on campus.[54] *Together We Dine* is a "dining event that is geared to spark courageous and safe conversations about race at the dining table among total strangers. Led by a facilitator, participants engage in healthy and structured dialogue that builds relationships and trust."[55]

This program is a positive example of DEI initiatives that can be incorporated on campuses because it utilizes DEI professionals and places students and faculty on an even playing field. Specifically, the program encourages participants to take a step back and assess (1) how they relate to the struggles of marginalized and oppressed groups, and (2) if they do not relate, how they can uplift these groups.

Academics may feel hesitant to incorporate DEI discussions into their classrooms because of their unfamiliarity with the subject. However, DEI is a continuing learning journey, and cross-cultural competency is gained over time. Participation in DEI initiatives with other staff and faculty members is just one way to navigate this journey.

INTRAPERSONAL FACTORS

The biggest and hardest part was just trying to fit in with a bunch of people who have no idea or clue what your life is like as a person of color. My advice to others coming after me is to stay true to yourself. Don't try to fit into what the majority mold is. And don't try to fit into what the majority thinks you should be.[56]

Co-cultural theory is a communicative framework for helping individuals to understand why and how historically marginalized groups communicate with dominant groups in contexts that create privilege—marginalization through power.[57] As noted in the opening comment of this section, there is an ongoing internal

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[54] *See Together We Dine*, PROJECT UNITY, https://projectunity.net/signature-programs/together-we-dine/ [https://perma.cc/774A-G766] (last visited Jan. 24, 2022).

[55] *Together We Dine: A Dining Event to Encourage Couageous and Safe Conversations About Race and Diversity*, PROJECT UNITY, https://www.projectunity.net/events/together-we-dine-4/ [https://perma.cc/DH9H-T78Y] (last visited Jan. 24, 2022).

[56] E-mail from a legal professional to Breanta Boss (Nov. 29, 202, 12:40 PM) (on file with author).

[57] ORBE, *supra* note 1, at 14.

questioning of how to act within dominant group spaces. When in this position, students should consider the following six influential factors.[58]

First, students should consider the *situational context* and with whom they interact.[59] For example, when communicating with other students, they may be more likely to be authentically clear on the draining cognitive dissonance they experience.

Second, students should consider the *perceived costs and rewards* of communicating in a certain way.[60] Perhaps remaining silent and censoring their frustrations maintains the potential reward of graduating from law school and receiving career opportunities—whereas the cost of speaking up may harm their chances.

Third, students should consider their *abilities* to communicate in a way they desire.[61] For example, though students might want to advocate for themselves and their peers, they might not know how to navigate power dynamics within the legal profession.

Fourth, a student's *field of experience* consists of their past experiences and whether they have positive or negative experiences of speaking up. This field of experience should inform their actions.[62] These past experiences become lifescripts that may either inhibit or enable someone to voice their concerns.

The last two factors consist of *preferred outcome* and *communication approach*.[63] When determining how to communicate in a dominant group context, students should first consider their preferred outcome: assimilation, accommodation, or separation.[64] In the comment at the beginning of this section, the legal professional shared that future students should not assimilate their behavior so easily, but should instead accommodate by being true to themselves—all while staying engaged in the law program. The communication approach speaks to the manner in which one communicates: aggressive, assertive, or nonassertive.[65] In the opening comment, the legal professional shared how an assertive stance on being oneself is a stand of integrity to oneself—as opposed to nonassertively assimilating into the dominant group culture.

As a communicative framework, co-cultural theory offers insight into the cognitive dissonance that marginalized students experience.[66] Law professors can use co-cultural theory to increase their awareness of these factors running through their students' minds and gain insight into how this internal processing may become a distraction for their students. Such an awareness can increase the likelihood that law professors will respond in compassionate ways that will help to alleviate this suffering. However, to respond in compassionate ways, professors need to establish

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[58] *Id.* at 15.

[59] *Id.* at 98–101.

[60] Orbe, *supra* note 1, at 102–03.

[61] *Id.* at 95.

[62] *Id.* at 93–95.

[63] *Id.* at 89, 104.

[64] *Id.* at 98.

[65] *Id.* at 104.

[66] *Id.* at 66.

an open line of communication with their students so that professors know how to demonstrate such compassion.

For those communicating from a dominant group standpoint, dominant group theory offers insight into the internal processing—or unconscious actions—of dominant group members.[67] Such internal processing consists of the same influential factors, with the exception of preferred outcome, which is replaced with *interactional outcome*: reinforcing dominant oppressive structures, impeding dominant oppressive structures, or dismantling dominant oppressive structures.[68] Although dominant group members may wish to create a space that invites and affirms marginalized students' concerns, the intention alone does not create the actual outcome of inclusion. As such, dominant group members need to dedicate themselves to investigating the conditions in which inclusion manifests.

CONCLUSION

We began this Essay with some critical self-reflexivity of our own standpoints and what we hope this Essay could accomplish. To reiterate, we hope our contributions can continue the conversation of DEI in the context of the legal profession. Along the way, we offered references to other scholars and practitioners who do DEI work in a variety of contexts.

Our hope is that this Essay offered a heuristic to consider when advocating for and enacting meaningful change to promote DEI in law school and in the legal profession.The legal profession is not immune from conversations of DEI. Furthermore, DEI—in the context of the legal profession—has widespread implications for defining and upholding justice. However, by not having the necessary language or tools to embrace DEI, the legal profession runs the risk of reinforcing dominant structures of oppression that perpetuate centuries of injustice, especially toward historically marginalized groups.

To create organizational and cultural change, there must be several contributing factors identified across the macro-, meso-, and micro-levels.[69] Here, we offered four specific factors that may serve as a springboard for creating an inclusive and equitable legal profession. First, institutional factors should be reconsidered to create pathways for underrepresented and marginalized students to pursue law school. Second, programmatic efforts should be made to reduce attrition of marginalized students, and instead create a learning environment where students' diverse social locations are embraced and reflected within the curriculum. Third, when institutional foundations are set and programmatic changes are created, the classroom becomes a central location where DEI can be embraced and provide learning opportunities.

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[67] See Robert J. Razzante & Mark P. Orbe, *Two Sides of the Same Coin: Conceptualizing Dominant Group Theory in the Context of Co-Cultural Theory*, 28 COMMC'N THEORY 354, 357–58 (2018) (noting how unconscious bias pervades the thinking of dominant group members).

[68] *Id*. at 361.

[69] *See* Ferdman, *supra* note 9, at 239.

    In this Essay, we offered a critical communication pedagogy as one particular framework for using dialogue "a process of sensitive and thorough inquiry . . . to (de)construct ideologies, identities, and cultures."[70] Such an educational space can serve as an outlet for students to process their cognitive dissonance regarding difference at the intrapersonal level—our fourth factor. Intrapersonal factors, such as cognitive dissonance, if not affirmed and processed, can lead to the continual questioning of one's place within law school and the legal profession—a continual feeling of imposter syndrome.

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[70] FASSETT & WARREN, *supra* note 31.